



**CONDYN**

**SERVICE LEVEL AGREEMENT**

entered into between

**CONNECTIVITY DYNAMICS (PTY) LTD**

("Condyn")

and

---

("The Customer")

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## CUSTOMER AGREEMENT

### 1. PARTIES

1.1 CONNECTIVITY DYNAMICS (PTY) LTD

("Condyn")

and

1.2 \_\_\_\_\_

("the Customer")

### 2. BACKGROUND

2.1 The Customer requires Information security services relating to the product supplied by CONDYN and CONDYN has the expertise and is authorised to support.

2.2 The Customer wishes to avail itself of the support provided by Condyn.

2.3 The parties have agreed that Condyn will provide the support required by the Customer in terms of this agreement.

### 3. INTERPRETATION AND DEFINITIONS

3.1 Unless inconsistent with the context, an expression which denotes:

3.1.1 any gender includes the other genders;

3.1.2 a natural person includes an artificial person and vice versa;

3.1.3 the singular includes the plural and vice versa.

3.2 Unless inconsistent with the context, the expressions set out in this clause will have the following meanings:

3.2.1 "account manager" means the persons appointed by Condyn and the Customer respectively to manage the relationship between the parties as contemplated in 13;

3.2.2 "agreement" means this agreement between Condyn and Customer comprising of this document ("Agreement Document") and the schedules which are attached to this agreement and are signed by the parties or which, after the conclusion of this agreement may be agreed by the parties in writing and are filed with this agreement;

- 3.2.3 “business day” means any weekday between 08h00 and 17h00 (South African Standard Time) save for proclaimed public holidays in the Republic of South Africa;
- 3.2.4 “call” means a query or fault reported to Condyn in terms of this agreement for assistance or investigation by persons designated by Condyn to provide the services to the Customer;
- 3.2.5 “call priority” means the priority of a call determined in accordance with this agreement;
- 3.2.6 “change” means instances where the Customer is changing the configuration of its software, alternatively its hardware, alternatively its networks and Condyn’s assistance is required to ensure that the functionality and/or security provided by the products supplied by Condyn to the Customer is not compromised;
- 3.2.7 “client” means the computer equipment and peripherals, including system software and other software required where applicable, on which the software is installed and operated;
- 3.2.8 “CEO” means the chief executive officer appointed by the board of directors of Condyn;
- 3.2.9 “Condyn” means Connectivity Dynamics (Pty) Ltd, (Registration Number: 1998/007501/07, a company incorporated under the laws of South Africa with it’s registered office at Unit 32 Cambridge Office Park, Bauhinia Street, Highveld Techno Park, Centurion, South Africa;
- 3.2.10 “Customer” means the customer stipulated in the Information and Services Schedule appended to this agreement marked A;
- 3.2.11 “information system” means the hardware, software and network used by the Customer and in conjunction with which the managed security service (MMS) may be implemented and used by the Customer;
- 3.2.12 “intellectual property rights” means, without limitation, copyrights, patents, trade marks, service marks, design rights and other intellectual property rights of whatever nature;
- 3.2.13 “products” means the hardware and/or software stipulated in the Information and Service Schedule appended to this agreement marked A;
- 3.2.14 “Managed Security services (MMS)” means the services stipulated in the Information and Service Schedule appended to this agreement marked A;
- 3.2.15 “supplier” means the supplier to the Customer (including Condyn if this is the case) of the products stipulated in the Information and Services Schedule marked A;

3.2.16 “technical specifications” means technical and functional manuals relating to the software as amended from time to time.

3.2.17 “user” means any person who uses the Customer’s information system and the products.

#### **4. GOOD FAITH**

In exercising their rights and obligations under this agreement, the parties shall comply with principles of good faith and fair dealing.

#### **5. APPOINTMENT AND ACCEPTANCE**

5.1 The Customer hereby appoints Condyn, which accepts such appointment, to provide the Managed Security services to it.

5.2 The parties respectively agree to fulfil all their obligations in terms of the provisions of this agreement.

#### **6. TERM AND TERMINATION**

6.1 This agreement shall commence on the commencement date stipulated in the Information and Services Schedule marked A and continue thereafter indefinitely unless terminated according the customer agreement as per [www.condyn.net](http://www.condyn.net)

6.2 This agreement may be terminated by either party giving the other party not less than 3 (three) months written notice of its intention to terminate the agreement. This contract cannot be cancelled within the first twelve months from inception date unless

6.3 A general increase of 10% will be charged in every renewal date of the agreement.

### **SERVICES**

#### **7. SERVICE DESCRIPTION**

7.1 The services provided by Condyn and governed by the provisions of this agreement is aimed to assist the Customer in the investigation and the provision of assistance in the resolution of queries and problems relating to the products and services.

7.2 If the Customer’s support team has carried out initial investigations and cannot resolve a query or problem it may log a call with the Condyn support department.

7.3 The services will include:

- 7.3.1 The investigation and the assistance of the Customer in resolving issues relating to:
- 7.3.1.1 access to the products or components of the products;
  - 7.3.1.2 issues affecting the operation of the products;
  - 7.3.1.3 failure of the products to operate as contemplated in operation or user manuals;
  - 7.3.1.4 the implementation of changes to the products.
- 7.4 The services to be supplied by Condyn to the Customer in terms of this agreement shall be stipulated in Schedule A and described under the heading "Description of Services".
- 7.5 The account managers of Condyn and the Customer as well as persons authorised by the account manager to provide and manage services shall be obliged to ensure that calls made to Condyn and responses to the calls are carried out in terms of the provisions of this agreement.

## **8. ADDITIONAL SERVICES (SERVICE PLUS)**

- 8.1 If in addition to the normal support services provided by Condyn to its Customers, the Customer requires additional services, these will be stipulated under the Additional Services (Services Plus) heading in Schedule A. Unless provided for in Schedule A, or in a written proposal provided by Condyn and accepted in writing by a duly authorised representative of the Customer, no right to Additional Services (Services Plus) will be attributed to the Customer by virtue of this agreement.
- 8.2 Additional Services (Services Plus) may include, without limitation:
- 8.2.1 managed services of products supplied by Condyn to the Customer on the basis as may be stipulated in Schedule A; or
  - 8.2.2 Twenty Four Seven (24:7) standby services for emergencies which may occur outside of the business days stipulated in this agreement; or
  - 8.2.3 on-site services as may be agreed between the parties; or
  - 8.2.4 any other services which it is agreed between the parties in writing may be rendered by Condyn to the Customer.
- 8.3 The provision of on site services shall, unless agreed to the contrary in writing, be subject to Condyn charging for any travel, accommodation and sustenance charges that may be incurred by Condyn in providing the on site services.

- 8.4 The provision of any services which occur outside of Condyn's normal service hours, defined as "business days", shall be subject to Condyn's right to increase fees charged for time falling outside of business days by 50% of the charges that would be charged during normal business hours (time and a half) and by 100% over weekends or proclaimed public holidays (double time).
- 8.5 If a client requires urgent service Condyn shall provide these services on a time and materials basis subject to the provisions of this clause 8 of the agreement. The Customer shall be deemed to owe the fees and charges made in these circumstances to Condyn notwithstanding the absence of a written agreement relating to the specific services provided by Condyn to the Customer.
- 8.6 The Customer shall pay all charges charged in terms of this agreement by no later than the time period stipulated in Condyn's terms and conditions governing payment,.
- 8.7 Should the Customer fail to make payment of the additional fees or charges contemplated in this clause 8 by the expiry of the period allowed in terms of Condyn's terms and conditions, Condyn shall be entitled, but not obliged, to suspend its services to the Customer until such time as payment of all sums due by the Customer to Condyn have been made. The suspension of Condyn's services as contemplated in this paragraph 8.7 shall be without prejudice to all other rights which Condyn has in terms of this agreement or in law.

## 9. PROVISION OF SERVICE

- 9.1 The services will be provided by Condyn remotely via electronic communication links to the Customer's information system. It shall be the Customer's sole responsibility to ensure that appropriate access to its information system and the products (where applicable) which are subject to this agreement.
- 9.2 On-site service to the Customer which will be provided in terms of the Information and Services Schedule annexed to this agreement marked A.

## 10. CHANGE CONTROL

- 10.1 If the Customer requires change control to be exercised by Condyn as a result of any change which it is proposed be implemented by the Customer, Condyn will only provide these services if requested by the person nominated by the Customer and stipulated in Schedule A to authorise the changes, at least 2 (two) business days in advance of the changes being implemented.
- 10.2 The request for change control to be exercised shall be in writing (preferably addressed by eMail to [support@condyn.net](mailto:support@condyn.net)) and will stipulate a full description of the change which is to



be made and the change control which Condyn are required to exercise. Further, the contact details of the technical person who will be responsible for implementing the change must be provided to Condyn.

- 10.3 Condyn shall, on receipt of the change control request from the Customer provide details by eMail to the Customer of the contact persons who will attend to the change control and the estimated fees and charges for providing the services.
- 10.4 Unless this request is rejected in writing by the Customer, the Customer shall be deemed to have accepted the fees and charges stipulated in the eMail addressed by Condyn to the Customer as contemplated in 10.3.

## **11. SERVICE HOURS**

- 11.1 The hours during which the service is available are:
- 11.1.1 During business hours;
- 11.1.2 When a critical (Priority 1) call has been logged during service hours, the service department will continue to work on the call outside of standard service hours at no extra cost to the Customer.
- 11.1.3 The work contemplated in 11.1.2 will continue until the call has been satisfactorily resolved.
- 11.1.4 If it becomes apparent that the fault giving rise to the call is one which is outside of Condyn's mandate or ability to resolve, Condyn will be entitled to cease work provided that it takes steps to inform the supplier of the products of the call and assists the Customer in obtaining the appropriate service to assist in the resolution of the call.
- 11.1.5 In the circumstances contemplated in 11.1.4 Condyn's account manager shall be obliged to keep the Customer's account manager properly informed as to the efforts being undertaken to resolve the call and communications with the supplier.

## **12. SERVICE SUPPORT**

- 12.1 Condyn will appoint appropriate personnel to provide the services, the names and contact numbers of which will be provided to the Customer as stipulated in the Information and Services Schedule marked A.
- 12.2 Condyn undertakes that the services will be provided in a professional manner with the skill required to provide the services and that the personnel appointed by Condyn to provide the services will have received appropriate training.

### 13. SERVICE MANAGEMENT

- 13.1 Condyn will appoint an account manager who shall be primarily responsible for the management of the relationship between the parties and who is authorised to:
- 13.1.1 Consider and recommend to authorised signatories of Condyn the signature of documentation required for the management of the services and any issues arising from the services;
  - 13.1.2 Appoint or replace members of the service team assigned to the Customer; and
  - 13.1.3 Delegate powers to the Condyn service team which are adequate and appropriate to allow for the services to be provided in terms of this agreement.
- 13.2 The Customer shall appoint an account manager responsible for the management of the relationship between the parties and who is duly authorised to:
- 13.2.1 Sign all documentation required for the management of the services;
  - 13.2.2 Appoint persons responsible for the support of the product and communicating with the Condyn service team relating to any issues which may impact the use of the products by the Customer;
  - 13.2.3 Delegate powers to members of the Customer's support team which are adequate in terms of the Customer's obligations in this agreement.
- 13.3 Condyn's account manager and the Customer's account manager shall, inter alia-
- 13.3.1 Act as the primary point of contact in communications and negotiations relating to the parties' contractual obligations established in this agreement;
  - 13.3.2 Receive all notices sent to it by the other party in terms of this agreement;
  - 13.3.3 Authorise or accept, as the case may be, services and/or the replacement of products and software which may result from the services as contemplated in this agreement and which may be excluded from the standard service provisions and provided as value-added services;
  - 13.3.4 Sign all documentation relating to the completion of the services provided by Condyn to the Customer in terms of this agreement;
  - 13.3.5 Authorise payments to be made in terms of this agreement;
  - 13.3.6 Be responsible for the oversight of information security requirements that may be required by the parties being implemented and maintained;

13.3.7 Generally manage all issues relating to the services provided by Condyn to the Customer arising from this agreement.

13.4 The account managers shall ensure that regular meetings are held to discuss the services provided by Condyn to the Customer and any issues which may arise from the provision of this the services.

13.5 Where appropriate and to avoid unnecessary cost of travel to either the Customer or Condyn telephone conferences may be arranged to meet this requirement. These telephone conferences will be deemed to be the meetings that are provided for in 13.4.

13.6 The meetings shall be aimed at:

13.6.1 The appropriate management of the services;

13.6.2 Facilitating the exchange of information necessary for the management of the service;

13.6.3 The provision of appropriate contact details of the respective parties' appointed representatives relating to the services, which information is as a routine to be updated on a monthly basis;

13.6.4 To plan any services that may be required in the support of the products with a view to ensure as little disruption to the customer as possible.

13.7 The Condyn account manager shall:

13.7.1 Prepare an agenda for each meeting in consultation with the Customer account manager;

13.7.2 Minute the proceedings of each meeting; and

13.7.3 Distribute the minutes of the meeting to all relevant parties within 14 (fourteen) days of the meeting having taken place.

#### **14. TARGET CALL RESPONSE TIME**

14.1 Condyn will make all commercially reasonable endeavours to respond to all calls within the shortest possible time, consistent with the agreed call priority, during standard service hours.

14.2 The target call response times and type of call associated with each call priority are:

Call Priority	Effect on the System	Target response within (hours)	Progress Up-date	Examples of the effect of the problem
1	Critical Impact	1	4 Hours	<ul style="list-style-type: none"> <li>The product cannot be accessed and/or used by the Customer and results in the Customer not being able to conduct its business.</li> </ul>
2	High Impact	3	6 Hours	<ul style="list-style-type: none"> <li>A significant element of the products is unavailable or unusable, seriously affecting the business function of the Customer.</li> </ul>
3	Medium Impact	5	1 Business Day	<ul style="list-style-type: none"> <li>There is a potential impact on the business of the Customer if the issue is not addressed.</li> </ul>
4	Low Impact	10	3 Business Days	<ul style="list-style-type: none"> <li>A general query relating to products operation.</li> </ul>
5	No impact	30	As may be agreed between the parties	<ul style="list-style-type: none"> <li>Non-urgent product queries.</li> <li>A query regarding the future or potential use of the products.</li> </ul>

14.3 All time periods stipulated in the above table are to be regarded as business days or hours within a business day as defined in 3.2.3.

## 15. EXCLUDED SERVICES

15.1 The following services are not part of the services provided by Condyn and if undertaken by Condyn will be charged at the Condyn prevailing rate:

15.1.1 An error or fault caused by third party hardware or software used in conjunction with the products, unless expressly agreed to in the Information and Services Schedule marked A.

15.1.2 Any defects or errors resulting from any modifications to the products made by any person other than Condyn or its appointed representative.

15.1.3 Any products which fall outside of the version or release for the product as stipulated in Schedule A.

15.1.4 Inappropriate use of the products or operator error.

- 15.1.5 Any fault in any third party software or hardware used in conjunction with the products, unless expressly agreed to in the Information and Services Schedule marked A.
- 15.1.6 Services carried out at the request of the Customer, which Condyn finds arise from the incorrect reporting of a defect or error.
- 15.1.7 The effects, problems or errors caused to the products by the Customer's failure to maintain its information system correctly.
- 15.1.8 The effects, problems or errors caused by the Customer's failure to properly protect against virus' or malware.
- 15.2 Services to be performed outside of the standard service hours shall be charged for by Condyn:
  - 15.2.1 At the Customer's request, unless specifically stipulated in the Service Schedule marked A;
  - 15.2.2 The services provided in respect of any products not stipulated in Schedule A which form part of the Customer's information system;
  - 15.2.3 The services provided by Condyn in respect of change control that is required to be exercised by a member of the Condyn service team.
- 15.3 If the services required by a call placed by the Customer is excluded from the services which Condyn is obliged to provide to the Customer in terms of this agreement, the call will be discussed by the account managers, a quotation supplied for the costs of the excluded work and work will only proceed against written agreement between Condyn and the Customer having been concluded.

## **16. PROCEDURES FOR THE LOGGING AND PROCESSING OF CALLS**

Procedure for logging call:

- 16.1 Calls may be logged with Condyn by:
  - 16.1.1 eMail addressed to the Condyn Service email address stipulated in the Information and Services Schedule marked A;
  - 16.1.2 full details must be provided when logging a call, which shall include:
    - 16.1.2.1 the name, eMail address and telephone number of the person that the Customer has assigned to deal with the call;
    - 16.1.2.2 the products in respect of which the services are required;
    - 16.1.2.3 the nature of the defect or failure in the products;

- 16.1.2.4 steps that have been taken to diagnose the reason for the defect or failure in the products.
- 16.1.2.5 whether the call is for services stipulated in the Information and Services Schedule marked A or whether a value added service is required as stipulated in the Information Schedule marked A.
- 16.2 The Customer will be provided with a call number by return of eMail. The call number will be a primary reference for the call and will be used in all subsequent communication relating to the call.
- 16.3 Telephone calls between the representatives of Condyn and authorised representative of the Customer may be made. However, such calls have to be followed up with an eMail to Condyn.
- 16.4 Call Tracking
- 16.4.1 All calls are logged and maintained on the Condyn call logging system.
- 16.4.2 Condyn will maintain a list of calls. These will include calls waiting to be actioned, currently being actioned and completed calls.
- 16.4.3 The lists relating to the calls will be maintained by Condyn for a period of 3 (three) years after the call has been completed.
- 16.4.4 Calls will be dealt with in order of priority.
- 16.5 Call Management
- 16.5.1 On receipt of a call Condyn (represented by its call manager) shall assign priority to the call.
- 16.5.2 If the person making the call to Condyn does not agree with the priority he may communicate with the Call Manager to discuss the priority assigned. However, the discretion for designating the priority of the call will remain in the discretion of the Call Manager.
- 16.5.3 If the Customer remains unhappy with the priority assigned to the call by the Condyn Call Manager the matter may be escalated to the account managers of the parties for resolution.
- 16.6 Call escalation
- 16.6.1 A call may be escalated if it:
- 16.6.1.1 has not been prioritised correctly and requires more urgent attention;

- 16.6.1.2 has not been responded to within the target call response time;
- 16.6.1.3 is complex, and the assistance is required of another member of the Condyn service team;
- 16.6.1.4 has wider implications than was at first obvious when the call was made and on investigation requires escalation;
- 16.6.1.5 cannot be progressed without further sharing of information between the parties or additional expertise being used to either diagnose or assist in the resolution of the defect or failure;
- 16.6.1.6 Condyn shall escalate the call by referring it firstly to the technical team leader, thereafter the technical director and thereafter the CEO

16.7 Customer responsibility

The Customer will:

- 16.7.1 ensure that only persons who are properly trained have access to the products and will use the products in a proper manner;
- 16.7.2 The Customer will:
  - 16.7.2.1 provide access to its information system to Condyn by effective high speed electronic communications approved by Condyn and stipulated in the Information and Services Schedule marked A;
  - 16.7.2.2 provide to authorised Condyn personnel access to its information system on request to investigate calls;
  - 16.7.2.3 allow Condyn to install utility or diagnostic programmes to assist it in providing the services and to allow Condyn to remove or disable access to utility or diagnostic programmes at any time;
  - 16.7.2.4 provide its full cooperation to Condyn personnel in the diagnosis of any fault in the products;
  - 16.7.2.5 if required, obtain the consent of the owner of software to allow Condyn to use the source code of the software or such part of the source code as may be necessary to enable it to diagnose and assist in the resolution of the call;
  - 16.7.2.6 make available to Condyn, free of charge, all information, facilities and services reasonably required by Condyn to enable it to provide the services.

## 16.8 Initial support

16.8.1 The Customer shall nominate individuals employed by the Customer to provide initial support to users of the products.

16.8.2 The Customer will ensure that all persons nominated to provide initial support have received adequate training in the use of the products in order to perform initial support duties and tasks.

16.8.3 The Customer will ensure that initial support is available when any member of the Customer's personnel may require assistance.

16.8.4 The Customer's users shall not be entitled to contact Condyn directly and only persons designated by the Customer from time shall log calls to Condyn.

16.8.5 The Customer's initial support personnel will not contact Condyn for assistance unless they have already attempted to resolve the issues reported by the Customer's users.

## 16.9 Description of initial support

16.9.1 Generally the Customer will ensure that its initial support personnel shall do all things that are generally required to provide support to users of the product including, without limitation:

16.9.1.1 taking calls and providing advice to users regarding the products functionality;

16.9.1.2 undertaking preliminary diagnosis;

16.9.1.3 ensuring that problems that can be resolved without reference to Condyn are resolved internally and are not logged as calls with Condyn;

16.9.1.4 ensuring that agreed procedures relating to the logging of calls are adhered to at all times;

16.9.1.5 monitoring outstanding calls and, where necessary, escalating calls following the agreed procedures;

16.9.1.6 cooperating with Condyn personnel in the diagnosis of any fault in the products and the initiation of any diagnostic or verification options on the products at the request and under instruction from Condyn; and

16.9.1.7 ensuring that all service packs and updated version of software (including third party software used by the Customer in conjunction with the products) are timeously loaded onto its information system, provided that where necessary upgrades and



service packs shall be loaded and tested on the test system of the Customer before being applied to the live system.

## **17. INTELLECTUAL PROPERTY RIGHTS**

- 17.1 The Customer acknowledges and accepts that any and all intellectual property rights in any products, including the software which may form the component of the products, documentation relating to the products or services and in the services supplied by Condyn to the Customer or its customer, vests in Condyn or the supplier as the owner of the intellectual property right.
- 17.2 This agreement does not, unless expressly agreed in writing, vest in the Customer or its customers' intellectual property rights, express or implied, in the products or services including, without limitation, any software which may form a component of the product or services.
- 17.3 The Customer shall take all commercially reasonable measures to ensure that its customers are fully aware of the owner's intellectual property rights and bind themselves in writing to protect the intellectual property rights of the owner.
- 17.4 The Customer undertakes that it shall use all commercially reasonable measures to ensure that all licence agreements relating to the use of software which may form a component of the product or services provided to the customer have been duly accepted in terms of the licensing requirements of the software, prior to the commencement of use of the software by its clients.

## **18. WARRANTIES, INDEMNIFICATION AND REMEDIES**

### **18.1 Warranties**

Condyn confirms that in cases where warranties provided by suppliers of the products apply to the products that defects and failures shall, if in the entire discretion of Condyn it is necessary to do so, be referred to the supplier in accordance with the warranties.

### **18.2 Limitation of warranties**

- 18.2.1 The products and services, including software provided as a component of the products or services are provided on an "as-is" basis, and Condyn and/or suppliers do not warrant that operation of the software will be uninterrupted or error free.
- 18.2.2 Loss of data. Under no circumstances shall Condyn and/or suppliers be responsible for loss or corruption of data or information, and the Customer acknowledges the importance of establishing and maintaining back-up routines both prior to the installation of the

software on each client, in the normal course of business, and undertakes to do so wherever prudent.

- 18.2.3 Exclusivity of warranties. The warranties contained herein are exclusive and in lieu of all other warranties and representations of any kind whatsoever, whether express or implied, statutory, or otherwise and or other warranties are hereby expressly excluded to the fullest extent permitted by law.

## **19. LIMITATION OF LIABILITY**

- 19.1 Direct damages. Unless there is wilful misconduct on the part of Condyn or its employees, the liability of Condyn for direct damages whether in contract, delict or otherwise shall, in respect of any one incident or a series of incidents attributable to the same cause, be limited to a claim by the Customer which shall not under any circumstances exceed the value of the monthly service fee charged by Condyn to the Customer or R10,000.00 (Ten Thousand Rand), whichever is the lesser.
- 19.2 Consequential damages. Neither party shall, as a consequence of this agreement, under any circumstances be liable whether in contract, delict or otherwise for the use, loss or corruption of data or information, lost revenues, lost profits, loss of business, or any indirect or consequential damages of any nature irrespective of whether such were unforeseeable, suffered or incurred directly or indirectly by the other party.

## **20. WITHOUT PREJUDICE**

The expiration or termination of this agreement for any reason whatsoever shall be without prejudice to any right or obligation of either party to the agreement which has arisen prior to such termination or expiration as a consequence of this agreement.

## **21. BREACH**

Should any party breach any provision or term of this agreement and fail to remedy such breach within 7 (seven) days or such shorter period as this agreement may expressly stipulate, of receipt of written notice requiring such party to do so, the aggrieved party shall be entitled, without prejudice to any other remedy which may be available to it in terms of this agreement or at law, to claim specific performance of any obligation, or to cancel this agreement, in either case without prejudice to its rights to claim damages.

## **22. TERMINATION**

- 22.1 Either party may if the other party:

- 22.1.1 is the subject of any legal proceedings concerning its solvency; or
- 22.1.2 ceases trading; or
- 22.1.3 commits an act of insolvency; or
- 22.1.4 makes an arrangement or compromises with its creditors; or
- 22.1.5 an order is granted by a competent court placing the party under judicial management or provisional or final liquidation of the party; or
- 22.1.6 it has become unable to pay its debts within the meaning of the insolvency legislation of any country to which that party may be subject;
- 22.1.7 fails to remedy a breach within the time-limit prescribed in the breach provisions of this agreement provided for in 21.

immediately terminate this agreement by notice in writing.

- 22.2 Any termination of this agreement will be without prejudice to any other rights or remedies of either party under this agreement or any applicable law and will not in any way affect any accrued rights or liabilities of either party at the date of termination.

## **23. DISPUTE RESOLUTION**

- 23.1 The parties accept that disputes may arise between them during the term of this agreement.
- 23.2 If the account managers appointed by the parties to manage their relationship are unable to resolve the dispute within 7 (seven) business days of it being referred to them by their immediate counterpart they shall refer the dispute to the chief executive officers of the respective parties.
- 23.3 Should the chief executive officers of the parties fail to resolve the dispute within 7 (seven) business days of the dispute being referred to them, such dispute shall be submitted to be decided by arbitration in terms of 24.

## **24. ARBITRATION**

- 24.1 Should any dispute arise which has not been resolved in terms of 23.3 between the parties in connection with the interpretation or application of the provisions of this agreement or its breach or termination or the validity of any documents furnished by the parties pursuant to the provisions of this agreement, that dispute will be referred to and be determined by arbitration in terms of this clause.

- 24.2 Subject to 23 any party to this agreement may demand that a dispute be determined in terms of this clause by written notice given to the other party.
- 24.3 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.
- 24.4 The arbitration will be held:
- 24.4.1 in Pretoria;
  - 24.4.2 with only the legal and other representatives of the parties to the dispute present;
  - 24.4.3 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; and
  - 24.4.4 on the basis that the arbitrator will be entitled to decide the dispute in accordance with what he considers to be just and equitable in the circumstances.
- 24.5 The arbitrator will be acceptable to both parties and, if the matter in dispute is principally:
- 24.5.1 a legal matter, a practising attorney or advocate of a least 10 (ten) years' standing;
  - 24.5.2 an accounting matter, a practising chartered accountant of at least 10 years standing;
  - 24.5.3 any other matter, any independent person.
- 24.6 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.
- 24.7 Should the parties fail to agree on an arbitrator within 14 (fourteen) days after the giving of notice in terms of clause 24.2 above, 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 24.5 and 24.6.
- 24.8 The parties or the arbitrator may be entitled to call for expert testimony relating to any technical issue which may be in dispute.
- 24.9 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.

24.10 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 in his sole discretion may deem fit with the question of costs, including if applicable, costs on the attorney and client scale, and his own fees.

24.11 The provisions of this clause:

24.11.1 constitute an irrevocable consent by the parties to any proceedings in terms hereof and no party will be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions;

24.11.2 constitute an irrevocable consent by the parties that the order of the arbitrator may be made an order of any competent court in South Africa;

24.11.3 are severable from the rest of this agreement and will remain in effect despite the termination of or invalidity for any reason of this agreement.

## **25. EXCUSABLE DELAY**

25.1 Save for payment of any sums owed by one party to the other, neither party shall be liable for any delay in performance, or non-performance, of any of its obligations, hereunder caused by circumstances beyond that party's reasonable control that under normal practice can be designated as a force majeure, insurrection or riots, embargoes, wrecks, delays in transportation, requirements or regulations of any kind.

25.2 Each party hereby agrees to provide notice forthwith to the other upon becoming aware of an event giving rise to excusable delay. Such notice shall contain details of the circumstances giving rise to the excusable delay as well as the anticipated period of delay if this is possible.

25.3 The party who is delayed in fulfilling its obligation shall make all commercially reasonable efforts to fulfil its obligations as soon as possible after the excusable delay has occurred and shall keep the other party informed of when it is likely to be able to perform or fulfil its obligation in terms of this agreement.

## **26. CONFIDENTIALITY**

26.1 The parties recognise that in their dealings with one another, governed by the terms of this agreement, they may each receive proprietary information of the other party, or in the case of Condyn, its suppliers, including but not limited to, information that is marked in a manner that conveys its confidentiality, information that is confidential or a trade secret, concerns customers, financial or contractual arrangements or dealings, reports, source and object program codes and development plans ("confidential information").

- 26.2 Each party agrees it shall take all commercially reasonable steps to protect the confidentiality of confidential information.
- 26.3 Neither party shall grant access to any confidential information received from the other to any of its personnel save to the extent that access to the information is required for the performance of obligations of the parties in terms of this agreement.
- 26.4 Neither party shall grant access to any confidential information received from the other to any third party without the prior written consent of the other party, unless the disclosing party is legally obliged to make disclosure of such information without obtaining the prior written consent of the other party.
- 26.5 The provisions of this clause 25 shall survive the termination of this agreement.

## **27. PRIVACY**

- 27.1 The parties acknowledge that in the course of the services undertaken, their personnel may have access to and sight of personal information relating to persons whose personal information has been gathered by the other party.
- 27.2 The parties further acknowledge that they are aware that this information is regarded as strictly private to the other and the person to whom it relates, that the information is, or may become subject, to the protection of privacy or data control legislation within South Africa or any other competent jurisdiction and that the improper disclosure of such information may render the other party liable to criminal or civil proceedings.
- 27.3 The parties undertake to ensure that only their personnel, representatives or agents who, in the course of providing the services to Condyn need to have access to personal information, are given such access and that they are aware of the obligation not to disclose such information to any third party.
- 27.4 The parties agree that in the event of a breach of the obligations established in this clause 27 due to the wilful default or negligence of the party in breach, its personnel, agents and representatives shall indemnify the other against all direct damages suffered by the other party as a result of such breach.
- 27.5 The provisions of this clause 27 shall survive the termination of this agreement.

## **28. INFORMATION SECURITY**

- 28.1 Customer acknowledges that it and all of its personnel that are granted access to Condyn's premises, information or information systems shall be subject to the information security policies, practices and procedures governing information security within Condyn.

- 28.2 Customer shall ensure that all of its personnel who are given access to Condyn’s premises, information or information systems are aware of their obligations in terms of Condyn’s information security controls.
- 28.3 Where necessary, in the sole discretion of the CEO, Customer personnel shall sign agreements governing their adherence to the information security controls required by Condyn.
- 28.4 If Customer personnel are granted remote access to Condyn’s information system, whether for reasons of installation or support, an agreement governing the provision of remote access shall be entered into (which shall incorporate Condyn’s right to audit the information security controls implemented by Customer) prior to the provision of remote access.
- 28.5 The provisions of this clause 28 shall survive the termination of this agreement.

**ADMINISTRATIVE PROVISIONS**

**29. ADDRESSES AND NOTICES**

29.1 For the purposes of this agreement, including the giving of notices and the serving of legal process, the parties choose the following contact details:

29.2 Condyn:

Physical Address	UNIT 32 CAMBRIDGE OFFICE PARK, BAUHINIA STREET, HIGHVELD TECHNO PARK, CENTURION
Telefax	+27 (0)12 683-8816
Email	Jorina@condyn.net

29.3 The Customer at the physical address, telefax number and eMail address referred to in 3.1 of the Information and Services Schedule marked A.

29.4 A party may at any time change its contact details by notice in writing to the other party provided that the new physical address is an address in South Africa at which process can be served, such new contact details being effective on receipt by the addressee of such written notice.

29.5 Any notice given in connection with this agreement shall:

- 29.5.1 be delivered by hand; or
- 29.5.2 be sent by prepaid registered post; or
- 29.5.3 be sent by telefax (if the domicilium includes a telefax number),

29.5.4 be sent by email (if the domicilium includes an email address)  
to the address, telefax or email address chosen by the party concerned.

29.6 A notice given as set out above shall be deemed to have been duly given:

29.6.1 if delivered, on the date of delivery;

29.6.2 if sent by post, 10 (ten) days after posting;

29.6.3 if sent by telefax, on the day that the telefax is transmitted;

29.6.4 if sent by email, on the day that it enters an information system outside of the control of the addressor and if the parties are in the same information system, on the day that it becomes capable of being retrieved by the addressee.

### **30. ENTIRE CONTRACT**

This agreement constitutes the entire contract between the parties with regard to the matters dealt with in this agreement and no representations, (save for any fraudulent misrepresentations) terms, conditions or warranties not contained in this agreement shall be binding on the parties

### **31. VARIATION AND CANCELLATION**

No agreement varying, adding to, deleting from or cancelling this agreement, shall be effective unless reduced to writing and signed by or on behalf of the parties.

### **32. NO REPRESENTATIONS**

None of the parties may rely on any representation, which allegedly induced that party to enter into this agreement, unless that representation is recorded in this agreement.

### **33. ADVICE**

33.1 The Customer acknowledges that the Customer's duly authorised employees or agents have carefully read the provisions of this agreement and that where necessary have obtained appropriate professional advice.

33.2 The Customer acknowledges that the rule of construction that any ambiguity in this agreement is construed against the stipulator (Condyn) shall not apply.



#### **34. INDULGENCES**

No indulgence granted by a party shall constitute a waiver of any of that party's rights under this agreement; accordingly, that party shall not be precluded, as a consequence of having granted such indulgence, from exercising any rights against the other which may have arisen in the past or which may arise in the future.

#### **35. COSTS**

Each party shall bear its own costs relating to the negotiation, drafting and settling of this agreement.

#### **36. CESSION**

None of the parties may cede their rights nor delegate their obligations without the prior written consent of any other parties, which consent will not be unreasonably withheld.

#### **37. VALIDITY**

If any provision of this agreement is found or held to be invalid or unenforceable, the validity of all the other provisions hereof will not be affected thereby and the parties agree to meet and review the matter and if any valid or enforceable means is reasonably available to achieve the same object as the invalid or unenforceable provision, to adopt such means by way of variation of this agreement.

#### **38. LAW AND JURISDICTION**

This agreement shall be governed by and construed in accordance with the laws of South African and each party to this agreement submits to the non-exclusive jurisdiction of the South African courts.

#### **39. AUTHORITY**

The persons signing this agreement hereby warrant that they are properly empowered and duly authorised to sign this agreement on behalf of the parties.

SIGNED AT \_\_\_\_\_ ON \_\_\_\_\_ 20\_\_\_\_

AS WITNESSES:

1.

\_\_\_\_\_

CONNECTIVITY DYNAMICS (PTY) LTD, duly authorised

2.

\_\_\_\_\_

Name:  
Capacity:

SIGNED AT \_\_\_\_\_ ON \_\_\_\_\_ 20\_\_\_\_

AS WITNESSES:

1.

\_\_\_\_\_

THE CUSTOMER, duly authorised

2.

\_\_\_\_\_

Name:  
Capacity: