

STANDARD TERMS AND CONDITIONS

1. Definition

- 1.1. **'Agreement'** means the Proposal (Letter of Engagement), the terms and conditions below and all attachments hereto;
- 1.2. **'Confidential Information'** means (but not limited to) any and all strategic, sensitive and/or confidential business, private, personal and/or privileged information, in whatsoever format and, without limitation, includes information concerning the disclosing party's operations, business affairs, relationships, contracts, clients, suppliers, plans, ideas, employees, expressed thoughts, processes, techniques, trade secrets, know-how, experience, goodwill, reputation and financial status and any part and/or element of the foregoing
- 1.3. **'Customer'** is the person or business reflected in the Letter of Engagement or Hosting Agreement
- 1.4. **'Fees'** means the charges payable by the Customer, taking into consideration the rates as per the proposal, time spend by Lextrado in providing the Services and complexity of the Services, depending on the service paid in advance;
- 1.5. **"Intellectual Property Rights"** means, but shall not be limited to, concepts, know-how, data processing techniques, Confidential Information, copyrights, patents, designs, inventions, trademarks, which are created, invented and/or developed;
- 1.6. **'Services'** means the services that are to be rendered by Lextrado to the customer in accordance with the Letter of Engagement or Agreement or such additional requirements as may be instructed by the Customer subsequent to the Effective Date.
- 1.7. **'Terms and conditions'** means the terms and conditions below, that forms part of the Letter of Engagement/Proposal/Agreement by reference.

2. Fees and payments

- 2.1. Invoices for Services will be presented 7 days prior to payment due date and will be due and payable in advance on the first day of each month for which services are to be rendered.
- 2.2. All prices and/or costs quoted by Lextrado shall be inclusive of all applicable taxes but excluding South African Value Added Tax, which shall be shown clearly and separately to the agreed fees charged in terms of this Agreement;
- 2.3. Customer may not, for any reason whatsoever, defer, adjust, set-off or withhold any payment due to Lextrado in terms of or arising out of this Agreement; If Customer fails to make any payment or portion of a payment due in terms of this Agreement, Lextrado may, without prejudice to Lextrado's rights in terms of this Agreement or at law, charge:-
 - 2.3.1. interest on any unpaid amount from the date the account became due until the date of payment, at the prevailing prime overdraft rate of ABSA Bank Limited , plus 2% (two per centum); and
 - 2.3.2. Collection charges of R80.00 per follow up communication.
- 2.4. The Customer agrees that no notice in terms of section 129 of the National Credit Act is required if Customer default on any payment and Lextrado will be entitled to the aforesaid interest and collection fees on default of payment;
- 2.5. In the event of a dispute over an amount of fees, the amount not in dispute shall be paid on presentation of an invoice without any set off or counter claim, which may be alleged.
- 2.6. Lextrado reserves the right to suspend any service until all amounts are paid in full.
- 2.7. Hosting on the E-Discovery platform will be charged in \$US and calculated in corresponding Rand value as per the date of invoice.
- 2.8. Scanning cost will be calculated at the end of each assignment, unless otherwise agreed by the parties. Payment strictly 30 days from date of invoice.

3. Protection of Confidential Information

- 3.1. Each of the parties undertakes not to use or disclose to any other party, any Confidential Information disclosed by the disclosing party during the

period of or arising out of the relationship between them, unless such Confidential Information is:

- 3.1.1. within the public domain, except where same is in the public domain by reason of any breach by either of the parties to this agreement; or
- 3.1.2. already and independently known to the party to whom it was disclosed, prior to signature of this agreement; or
- 3.1.3. obtained lawfully through a third party and not through the party to whom it was disclosed, or an employee of such party.
- 3.1.4 independently developed by the recipient; released for disclosure by the disclosing Party with its written consent; or
- 3.1.5 required to be disclosed in response to a valid order of court or other governmental agency or if disclosure thereof is otherwise required by law.
- 3.2. Lextrado reserves the right to use the name of the customer as a reference in proposals, presentations or similar submissions to other prospective customers, unless the customer expressly forbids such disclosure.
- 3.3. If a Party is obliged to divulge Information it shall, provided that circumstances permit the time to do so, forthwith and before releasing the Information, inform the other Party of the obligation if so permitted.
- 3.4. Each Party undertakes to the other to make all its relevant employees, agents, contractors and consultants aware of the confidentiality of the Information and the provisions of this clause and to take all such steps as shall from time to time be necessary to ensure compliance by its employees, agents, contractors and consultants with the provisions of this clause.
- 3.5. For the avoidance of doubt, no provision of this Agreement should be construed in such a way that the disclosing party is deemed to have granted its consent to the receiving party to disclose the whole or any part of the Information in the event that the receiving party received a request for the whole or any part of the Information in terms of the provisions of the Promotion to Access to Information Act, No 2 of 2000, as amended (the "Act"). The receiving party shall be obliged to notify the disclosing party immediately when it receives such a request to enable the disclosing party to object and approach a court of competent jurisdiction if necessary, to protect its interests.

4. Intellectual Property Rights

- 4.1. All right, title and interest in and to all Intellectual Property relating to any products owned by the Parties, their vendors and/or suppliers and the software used to implement such products shall at all times remain the sole property of such Parties, their vendors or suppliers.

5. Services

- 5.1. The Services are provided to the customer subject to availability of suitable qualified personnel and scope of the services provided.
- 5.2. Lextrado reserves the right to assign, reassign and substitute personnel at any time and also to provide the same or similar services and materials to other customers.
- 5.3. It is the Customers responsibility to specify and determine its objectives and obtain its desired outcomes.
- 5.4. The Customer shall afford to the personnel of Lextrado such access to the Customer or premises where Services need to be executed as is reasonably required for the provision of the Services, subject to the Customer's security requirements. The Customer shall make such security requirements (including IT security measures) and any amendments made thereto from time to time, applicable to Lextrado's Personnel, available to the Lextrado for inspection.
- 5.5. Lextrado reserves the right to terminate the contract with notice of 1 calendar month

6. Dispute resolution

- 6.1. If the Parties are unable to resolve any dispute resulting from this Agreement by means of joint co-operation or discussion between the individuals directly involved with the execution of this Agreement, within 5 (five) days after a dispute arises or such extended time period as the Parties may in writing allow, then such a dispute shall be submitted to the most senior executives of the Parties who shall

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STANDARD TERMS AND CONDITIONS

endeavour to resolve this dispute within 5 (five) days after it has been referred to them.

- 6.2. Should the dispute not be resolved in the aforesaid manner, then it shall be resolved by way of arbitration in accordance with the provisions of paragraph 7 below.

7. Arbitration

- 7.1. Any dispute referred to arbitration pursuant to clause 6.2 shall be determined by arbitration in terms of this clause.
- 7.2. This clause shall not preclude any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction.
- 7.3. The arbitration shall be held:
- 7.3.1. at Pretoria in the Republic of South Africa;
- 7.2.1. with only the legal or other representatives of the Parties to the dispute present thereat;
- 7.2.2. mutatis mutandis in accordance with the provisions of the Supreme Court Act, No 59 of 1959, the rules made in terms of that Act and the practice of the division of the High Court referred to in 7.7;
- 7.2.3. otherwise in terms of the Arbitration Act, No 42 of 1965, it being the intention that the arbitration shall be held and completed as soon as possible.
- 7.3. The arbitrator shall be, if the matter in dispute is principally:
- 7.3.1. a legal matter, a practising advocate or attorney of Pretoria of at least 15 (fifteen) years standing;
- 7.3.2. an accounting matter, a practising chartered accountant of Pretoria of at least 15 (fifteen) years standing;
- 7.3.3. any other matter, an independent person, agreed upon between the Parties to the dispute.
- 7.4. 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 shall be deemed to be a legal matter.
- 7.5. Should the Parties fail to agree on an arbitrator within 14 (fourteen) days after the giving of notice in terms of 6.2, the arbitrator shall be appointed at the request of either Party to the dispute by the President for the time being of the Law Society of the Northern Provinces according to the provisions of 7.3;
- 7.6. The decision of the arbitrator shall be final and binding on the Parties to the dispute and may be made an order of the court referred to in 7.7 at the instance of any of the Parties to the dispute.
- 7.7. The Parties hereby consent to the jurisdiction of the High Court of South Africa (Gauteng North Local Division) in respect of the proceedings referred to in 7.2.
- 7.8. The Parties agree to keep the arbitration including the subject matter of the arbitration and the evidence heard during the arbitration confidential and not to disclose it to anyone except for purposes of an order to be made in terms of 7.6.
- 7.9. The provisions of this clause:
- 7.9.1. constitute an irrevocable consent by the Parties to any proceedings in terms hereof and no Party shall be entitled to

withdraw there from or claim at any such proceedings that it is not bound by such provisions;

- 7.9.2. are severable from the rest of this Agreement and shall remain in effect despite the termination of or invalidity for any reason of this Agreement.
- 7.9.3. Each party will bear their own costs of arbitration.

8. Warranties

- 8.2. Each Party warrants to the other Party that:
- 8.2.1. it has full capacity and authority and all necessary licences, permits and consents to enter into and to perform this Agreement;
- 8.2.2. this Agreement is executed by a duly authorised representative of that Party; and
- 8.2.3. the execution and delivery of this Agreement, and the performance by the warranting Party of its obligations under it, will not:
- 8.2.3.1. result in a breach of any provision of the Memorandum or Articles of Association or Partnership Deed, if applicable, of the warranting Party; or
- 8.2.3.2. result in a breach of or constitute a default under any instrument or agreement to which the warranting Party is a Party to or by which the warranting Party is bound; or
- 8.2.3.3. result in a breach of any order, judgement or decrees of any court or Governmental agency to which the warranting Party is a Party or by which the warranting Party is bound.
- 8.3. Lextrado warrants that the Services shall be supplied by appropriately experienced, qualified and trained personnel and in a professional manner with reasonable care, skill and diligence.
- 8.4. Except as expressly stated in this Agreement all conditions and warranties whether express or implied, statutory or otherwise (including but not limited to any conditions or warranty for, fitness for particular purpose, satisfactory quality, usefulness or timeliness) are excluded.

9. Conflicts of interest

Lextrado provides a wide range of services to a large number of customers. Lextrado attempts to identify such situations but cannot guarantee that it has identified all those situations that exist or may exist. The parties agree to notify each other in the event of conflicts arising. No service provided by LexTrado can be considered by the client to be exclusive and by accepting an assignment LexTrado does not accept any restriction of trade.

10. Breach and Termination

- 10.2. Neither party will be liable for failure to fulfil its obligations when due to causes beyond its reasonable control including, without limitation, the insolvency or breach of any supplier, acts of God, strikes or lockout.
- 10.3. Any failure or delay by either party in exercising any right or remedy will not constitute a waiver.
- 10.4. If either party is in default or breach of this agreement, the aggrieved party should notify the defaulting party in writing to remedy the default within 10 (ten) days. If the defaulting party fails to remedy such default then without prejudice to any other rights it may have in terms hereof or in law, the aggrieved party shall be entitled to:
- 10.4.1. claim specific performance
- 10.4.2. cancel this Agreement which shall be effective when the defaulting Party receives a written notice of such cancellation
- 10.4.3. claim any monies due in terms of this Agreement and, claim damages from the defaulting Party.
- 10.5. Notwithstanding anything to the contrary in this agreement, either party shall be deemed to be default if it:
- 10.5.1. is placed in provisional or final liquidation/sequestration or
- 10.5.2. is placed under judicial management, whether subject to a provisional or final order.
- 10.6. No party may cancel this Agreement on the grounds of a breach of a term of this Agreement unless the breach is material.
- 10.7. Without prejudice to the aforesaid right, where such breach is the result of non payment from the Customer and Customer does not execute payment after notice as set out above, Lextrado may suspend Services until the amount due and outstanding has been paid in full. Aforesaid suspension shall not be seen as a cancellation or termination unless Lextrado specifically indicate cancellation of the Agreement;
- 10.8. No claim may be instituted against Lextrado arising from the terms of this Agreement or performance by the Parties in terms thereof unless dispute resolution proceedings are instituted in terms of this Agreement by the Client within 1 (one) year of such purported cause of action arising.

11. Force Majeure and Limitation

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STANDARD TERMS AND CONDITIONS

- 12.1. Neither Party shall have any claim against the other Party ("the Affected Party") for any delay or failure of the Affected Party to carry out any of its obligations under this Agreement arising from or attributable to acts of God, war, terrorism, government, labour action or unrest, failure of suppliers or contractors or any other cause whatsoever beyond the control of the Affected Party ("*force majeure*").
- 11.2. The performance of the obligations of the Affected Party shall, subject to clause 56, be suspended for the duration of the *force majeure*, which shall be deemed to commence only upon the date of written notice by the Affected Party to the other Party. Upon cessation of the *force majeure*, this Agreement shall again become fully operative and the Affected Party shall immediately resume its performance.
- 11.3. If the suspension of performance continues for more than 60 (sixty) consecutive calendar days, then either Party may summarily terminate this Agreement by written notice to the other Party, prior to the cessation of the *force majeure*.
- 11.4. Any claim by the Client against Lextrado howsoever arising shall in the aggregate be limited to the Service Charges paid by the Client to Lextrado with regard to the Specific Service to which the claim relates, during the month preceding institution by the Client of the claim against Lextrado. In any event, Lextrado will not be liable to the Client for: (a) indirect or special damages and/or (b) loss of income or profit, howsoever arising, whether or not caused by its employees, agents and/or contractors, and regardless of form or cause of action. The provisions of this clause are also stipulated for the benefit of the employees, agents and/or contractors of LEXTRADO.

12. General

- 12.2. These Standard Terms and Conditions constitutes the entire agreement between the parties regarding the issues addressed herein with respect to the Services rendered pursuant to it; supersedes all previous proposals, communications and agreements between the parties, both written and oral; and supersedes any other terms and conditions which may be submitted by Customer.
- 12.3. This agreement may not be amended or added to except in writing signed by a duly authorised representative of each party.
- 12.4. No failure by either Party to enforce any provision of this Agreement shall constitute a waiver of such provision or affect in any way a Party's right to require performance of any such provision at any time in the future, nor shall the waiver of any right arising from any subsequent breach nullify the effectiveness of the provision itself, or be used as an estoppel against any Party in respect of its rights under this Agreement;
- 12.5. Neither party shall be entitled to cede or assign any of its rights or obligations in terms of this agreement without the prior written consent of the other party. Any cession or assignment prohibited by this clause will be void. Each paragraph and provision of this Agreement is severable and if one or more paragraphs or provisions are declared invalid, the remaining provisions of this agreement will remain in full force and effect.
- 12.5 Idle time, based on any reason outside the control of the contractor, will be billed at an equivalent rate in line with number of documents that can be processed in that period.
- 12.6 The Customer agrees not to directly or indirectly, during this Agreement or for a period of 2 (two) years after termination of this Agreement make any offer of employment or employ any employee of Lextrado or consultant Lextrado employed during rendering of the Services to the Customer. Breach of this condition will render the Customer liable to pay pre-estimated liquidated damages to Lextrado equal to 2 (two) years salary for the particular employee or consultant..
- 12.7 The headings in this agreement shall not in any way affect or govern the interpretation of construction of the Terms and Conditions.
- 12.8 This Agreement will be governed by the laws of the Republic of South Africa.
- 12.9 Each Party hereby consents to the jurisdiction of the Pretoria Magistrate's court.
- 12.10 Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement, shall survive any termination or expiration of this Agreement
- 12.11 Nothing in this Agreement constitutes either Party as the agent, principal, representative or partner of the other, and no Party shall be entitled to hold out to any third party that the relationship between the Parties is that of a partnership, joint venture or the like.
- 12.12 In the event that any of the terms of this Agreement are found to be invalid, unlawful or unenforceable, such terms will be severable from the

remaining provisions, which shall remain of full force and effect. If any invalid term is capable of amendment to render it valid, the Parties agree to negotiate in good faith an amendment to remove the invalidity.

Acceptance Signature: