

# STANDARD TERMS AND CONDITIONS LEXTRADO

(Lextrado EDS Pty (Ltd)-032020)

## 1. Definition

- 1.1. **'Agreement'** means any Services agreement, Quotation or LOE (Letter of Engagement) as the case may be, the terms and conditions below and all attachments hereto as well as any written confirmation of instruction,
- 1.2. **'Confidential Information'** means any information of whatever nature which has been or may be obtained by either party from the other party pursuant to a Contract Document, whether in writing or in electronic form or pursuant to discussions between the Parties or which can be obtained by examination, testing, visual inspection or analysis, including without limitation, scientific, business or financial data, know-how, formulae, processes, designs, sketches, photographs, plans, drawings, specifications, sample reports, models, customer lists and details, price lists, studies, findings, computer software, inventions or ideas, result from performance tests, Customer Data and the names of other Lextrado customers. For the avoidance of doubt, Confidential Information is inclusive of any intellectual property that either Party may disclose to the other pursuant to this agreement;
- 1.3. **'Customer'** AND/ OR **'Client'** will have the same meaning and is the person or business reflected in the Letter of Engagement or Agreement documents and depending on the case, may include the Customer's Customer (for eg. where services are delivered for a third party)
- 1.4. **'Customer Data'** means the Customer's data - provided to Lextrado either by the Customer or by any third party on the Customer's behalf or direction; or data specific to the Services which Cyanre upload, generates, processes, or supplies to the Customer in the performance of the Services;
- 1.5. **'Effective Date'** means the date on which a representative of the customer signs the Proposal / Letter of Engagement or on receipt of instructions from customer to commence Services in accordance with a Proposal or Letter of Engagement;
- 1.6. **'Fees'** means the charges payable by the Customer, taking into consideration the rates as per the proposal or costing structure for time spend or services rendered by Lextrado EDS Pty (Ltd) (**hereinafter Lextrado**) in providing the Services or cost otherwise agreed to by client;
- 1.7. **"Implementation Phase"** means the period (as set out under the relevant Service Schedule) required to execute the initial implementation of hardware and/or software or issuing of required Service access details to enable a Customer to utilise the requested Service
- 1.8. **"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;
- 1.9. **'Letter of Engagement' or 'Proposal' or "MSA" or "Service Schedule"** means the terms of reference agreed between the Customer and Lextrado detailing the services that are to be rendered by Lextrado to the customer;
- 1.10. **'Services'** means any services to be performed by Lextrado in terms of a Service Schedule, which also includes Deliverables and Subscription Services. The Service Schedule forms an integral part of all engagements.
- 1.11. **'Scope briefing'** refers to the Service Schedule or Letter of Engagement or other instruction to proceed.
- 1.12. **'Terms and conditions'** mean the terms and conditions below

## 2. Fees and payments

- 2.1.1. The charges payable by the Customer to Lextrado shall be as set out under each Schedule of Services. Hosted Services are payable MONTHLY IN ADVANCE;
- 2.1.2. Default provisions: Unless otherwise agreed in writing -
- 2.1.3. Lextrado requires a PO (Purchase Order), signed quote or signed Service Schedule before commencing, scheduling and/or planning any work request;
- 2.1.4. Where Lextrado was required to do work which was not planned, the Customer is required to provide a PO on Lextrado's request for example:
  - 2.1.4.1. Unplanned after-hours support work where an immediate resolution is required a PO upfront would delay an immediate resolution of the problem;
  - 2.1.4.2. Any on-site support provided whereby it is difficult to ascertain the time upfront.
  - 2.1.4.3. the Customer shall pay the Fees within 7 (seven) days from date of statement (unless otherwise agreed to in writing by both Parties) in South African Rands, free of conditions, set-off, bank - or exchange

costs, commission or any other deduction by means of electronic transfer into a bank account designated in writing by Lextrado.

- 2.1.5. Any Fee stated in a currency other than South African Rand shall be paid in South African Rands by using the exchange rate applicable on the date of the invoice, as obtained from: <http://www.xe.com/>.
- 2.1.6. the 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 the Agreement;
- 2.1.7. Fees will escalate annually (during January each year) by the CPI rate as published by Statistics South Africa plus 5% (two per centum) or 10% (ten per centum), whichever is the highest, unless otherwise agreed to under a Service Schedule;
- 2.1.8. Lextrado may, in its sole discretion and notwithstanding any instructions by Customer, appropriate any payment received from or on behalf of Customer, to any indebtedness of Customer to Lextrado arising from any cause whatsoever.
- 2.1.9. 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 each Service Schedule. Taxes or other charges, such as (but not limited to) transfer fees, bank charges, local taxes and value added taxes in other jurisdictions shall not be deducted from the payments due to Lextrado but shall be paid in addition to the fees due to Lextrado;
  - 2.1.10. Travel- and accommodation cost, are not inclusive of the Service and/or Deliverable charges.
    - 2.1.10.1. Lextrado's standard hourly rate will apply for travel time;
    - 2.1.10.2. Lextrado's actual travel and accommodation cost will be billed to client;
    - 2.1.10.3. The above costs shall be subject to prior written approval from the Customer where reasonably possible.
- 2.2 Currency/Index-linked products / solutions (as indicated under the Service Schedule) may have their price adjusted between proposal / quotation date and invoice date, with reference to the exchange rate as available on <http://www.xe.com/>, on the day of issuing the invoice to the Customer;
  - 2.2.1. It is agreed that should there be a subsequent price increase on components of the Services or Deliverables that are currency/indexed linked, beyond the control of Lextrado, including but not limited to foreign exchange fluctuations, increased third party products or services (i.e. third party software), surcharges, taxes, rates or levies, Lextrado shall be entitled to increase the affected Service Fees accordingly, by the rand value of the increase but in proportion to the Services provided after written notification to Customer.
- 2.3. If, at any time whilst using the Services, the Customer exceeds the amount of disk storage space / data usage bracket specified in Documentation or Service Schedule, Lextrado shall be entitled to charge the Customer, and the Customer shall pay, the data usage fee as per the next data bracket stipulated under the relevant Service Schedule.
- 2.4. If the 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 Service Schedule or at law:-
  - 2.4.1. following a 7 (seven) days written notice period of its intention to suspend the Services, disable the Customer's password, account and access to all or part of the Services and Lextrado shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid. Usage of the Services will only be restored once Lextrado, at its sole discretion, is satisfied with the circumstances of any such restoration. All costs and risks associated with service suspension and re-connection will be borne by the Customer;
  - 2.4.2. charge interest on any unpaid amount from the date the account became due until the date of payment, at the prevailing prime overdraft rate of Lextrado's commercial bank overdraft lending rate, plus 2% (two per centum).

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## 3. Protection of Confidential Information

- 3.1. For the purpose of this Agreement, Confidential Information shall not include:
  - 3.1.1. information which is required by law or a court of competent jurisdiction to be publicly released, to the extent only that it is necessary to comply with such law or with the order of such court; or
  - 3.1.2. any information which the receiving Party can prove by substantial written evidence was already in its possession, without breach of any Contract Document, or which is already or becomes public knowledge through no wrongful act of the receiving Party or was acquired independently of the disclosing party by the receiving party in circumstance that do not amount to a breach of the provisions of the Contract Documents.
- 3.2. Each Party hereby undertakes to the other that it shall:
  - 3.2.1. keep confidential the existence and terms and conditions of the Contract Documents;
  - 3.2.2. keep confidential the Confidential Information and not disclose any of the same or any part thereof to any third party (other than its professional advisors, auditors, bankers and Personnel executing the Services and / or Deliverables) without the prior written permission of the disclosing party ;
  - 3.2.3. not use the Confidential Information or any part thereof except for the performance of its obligations under the Contract Documents;
  - 3.2.4. without prejudice to the obligations contained herein, ensure that its employees, agents or sub-contractors are under the same obligations of confidence as set out herein prior to the receipt of such Confidential Information; and
  - 3.2.5. upon the termination of this Agreement or any Service Schedule, for whatever reason, return to the disclosing party (and procure the return from any employees, agents or sub-contractors of) all Confidential Information in whatever format (including all copies) belonging to the disclosing Party , which is capable of being so returned.
  - 3.2.6. not to derive any benefit, whether directly or indirectly, from the Confidential Information, nor, without limiting the generality of the foregoing, be engaged, involved, concerned or interested, whether directly or indirectly, in the economic exploitation, whether by marketing, promoting, advertising, changing, adapting, reverse-engineering, publishing or selling in any manner whatsoever, the Confidential Information;
- 3.3. Any documents or records (including written instructions, drawings, notes or memoranda) relating to the Confidential Information of the Customer which are made by Lextrado or which come into Lextrado's possession during the currency of this agreement, shall be deemed to be the property of the Customer and shall be surrendered to the Customer on demand, and in any event on the termination of Lextrado's appointment by the Customer and Lextrado will not retain any copies thereof or extracts thereof.
- 3.4. The disclosing party may, at a time by way of written notice to the receiving party , require the receiving party to return any material containing, pertaining to or relating to Confidential Information from any word processor, computer or any other similar device into which it was entered or programmed, and may, in addition, require the receiving party to furnish a written statement (certified as correct by a director of receiving party) to the effect that upon such a return, receiving party has not retained in its possession, or under its control, either directly or indirectly, any such material;
- 3.5. As an alternative to the return of the material contemplated above, the receiving party and / or its representatives shall at any instance of disclosing party, destroy such material and furnish disclosing party with a written statement (certified as correct by a director of receiving party) to the effect that such material has been destroyed;
- 3.6. the Parties indemnify and agree to keep each other indemnified against all costs, claims, demands, liabilities, losses and expenses arising out of any breach on the part of the receiving party (including its agents, employees and sub-contractors) of the provisions of this clause 18.
- 3.7. The obligations in this clause shall survive in perpetuity.

## THE CUSTOMER DATA

- 3.8. Ownership in all Customer Data, whether under its control or not, shall continue to vest in the Customer and Lextrado shall use the same for the purposes of providing the Services and/or Deliverables or as directed by the Customer and shall not obtain any proprietary rights in the Customer Data. The Customer hereby grants to Lextrado (and Lextrado's contractors as necessary) a non exclusive, royalty free licence to use,

reproduce and modify any of the Customer Data provided to Lextrado for the purposes of providing the Services and/or Deliverables or as directed by the Customer for the duration of the Agreement.

- 3.9. Privacy and Data Protection.
  - 3.9.1. Lextrado and the Customer are each responsible for complying with their respective obligations under applicable privacy and data protection laws, if any, governing the Customer Data.
  - 3.9.2. The Customer remains solely responsible for determining the purposes and means of Lextrado's processing of Customer Data under this Agreement.
  - 3.9.3. The Customer is and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data;
  - 3.9.4. Lextrado shall, in providing the Services, comply with its Information Security and Privacy Policy relating to the privacy and security of the Customer Data available on request, as such document may be amended from time to time by Lextrado in its sole discretion.
  - 3.9.5. **Processing of Personal Information:** If Lextrado processes any Personal Information on the Customer's behalf when performing its obligations under the Contract Documents, the parties record their intention that the Customer shall be the Responsible Party and Lextrado shall be an Operator and in any such case:
    - 3.9.5.1. the Customer shall ensure that the Customer is entitled (as per applicable data protection legislation) to transfer the relevant Personal Information to Lextrado so that Lextrado may lawfully use, process and transfer the Personal Information in accordance with Contract Documents on the Customer's behalf;
    - 3.9.5.2. Lextrado shall process the Personal Information only in accordance with the terms of the Contract Documents and any lawful instructions reasonably given by the Customer from time to time;
    - 3.9.5.3. Lextrado shall notify the Customer immediately in writing if there are reasonable grounds to believe that the Personal Information has been accessed or acquired by any unauthorised person or that there has been any loss or corruption of Personal Information. Lextrado agrees to use its best endeavours to assist the Customer, where such information has been used, lost, corrupted or disclosed in remedying such unauthorised use, loss, corruption or disclosure.
    - 3.9.5.4. Disclosure of any Personal Information to any of Lextrado's employee or representative: Lextrado shall procure that each employee or representative is aware of the confidential nature of the information being disclosed and shall be bound by an applicable confidentiality provision.
    - 3.9.5.5. (where required) the Customer acknowledges and agrees that the Personal Information may be transferred or stored outside the country where the data may be hosted and/or the customer or authorised users are located in order to carry out the Services and Lextrado's other obligations under the Contract Documents; Lextrado presently utilised Amazon Web Services as their cloud solutions partner, who is in compliance with ISO27001 and ISO9001, has AES 256 bit level encryption, and is currently situated in St Louis USA, which will be migrated to SA in the first quarter of 2020.
  - 3.9.6. **Provisions of Information**
    - 3.9.6.1. If the Customer is required to provide information to a third party, regarding the Customer Data, Lextrado will reasonably cooperate with the Customer in providing such information. The Customer will reimburse Lextrado for its reasonable charges for such assistance provided on a time and materials basis.
    - 3.9.6.2. Upon Lextrado's or the Customer's reasonable written request, the Customer or Lextrado will provide the other with such information that it has regarding Customer Data and its processing that is necessary to enable the requester to comply with its obligations under this clause and the applicable privacy and data protection laws.
  - 3.9.7. Both Parties shall take reasonable technical and organisational measures to preserve the integrity of the Customer Data or any other information that may contain Personal Information, and to prevent any unauthorised or unlawful access and processing Personal Information or its accidental loss, destruction or damage.
  - 3.9.8. Lextrado shall follow its archiving procedures for Customer Data as set out in its Data Retention and Disposal Policy, available on request, as such document may be amended by Lextrado in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Lextrado to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Lextrado in accordance with the archiving procedure described in its Data Retention and Disposal Policy or as agreed to by the customer in the scope of work or Letter of

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engagement. Lextrado shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party, except those third parties sub-contracted by Lextrado to perform services related to Customer Data maintenance and back-up.

## 4. Services

- 4.1. The Services are provided to the customer subject to availability of suitable qualified personnel and scope of the services provided.
- 4.2. 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.
- 4.3. It is the Customers responsibility to specify and determine its objectives and obtain its desired outcomes.
- 4.4. The Customer agrees that services provided by Lextrado could provide positive or negative results, depending on the data made available to Lextrado. These results would have no influence on the Fees invoiced by Lextrado.
- 4.5. 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 and any amendments made thereto from time to time, applicable to Lextrado's Personnel, available to the Lextrado for inspection.
- 4.6. Lextrado reserves the right to terminate the contract with notice of 1 calendar month
- 4.7 The customer agrees that should Lextrado change platforms at any time during the course of the engagement, Lextrado may transfer the data hosted to the new platform subject to agreement of cost reached by the parties

## 5. Dispute resolution

Any dispute arising from the Agreement shall be subject to the following dispute resolution procedures -

- 5.1. **Informal dispute resolution:** Prior to referring any dispute to arbitration, the Parties shall first attempt to resolve their dispute informally by referring a dispute to its senior management. Senior management of both Parties shall discuss the problem and attempt to resolve the dispute, without the necessity of any formal proceeding, within 14 (fourteen) days of the dispute having been referred.
- 5.2. **Informal dispute resolution does not reduce Parties' rights:** Proceedings in terms of this clause shall not be construed to prevent a Party from instituting formal proceedings earlier to obtain urgent or interim relief, avoid the expiration of any applicable limitations period, or preserve a superior position with respect to other creditors.
- 5.3. **Institution of Formal Proceedings:** Subject to the provisions of clauses 5.1 and 5.2, the Parties agree that either Party may elect to refer any dispute which may arise to either the High Court of South Africa or to arbitration proceedings. Upon election by a Party initiating the relevant dispute proceedings, the other Party will be bound by such election for the purposes of the dispute in question.
- 5.4. **Arbitration:** If the Parties are unable to resolve any dispute informally and either Party has elected to commence arbitration proceedings to resolve the dispute, then such dispute shall on written demand by the electing Party be submitted to arbitration at AFSA.
- 5.5. **Status of arbitration ruling:** The decision of the arbitrator shall be binding on the Parties to the arbitration after the expiry of the period of 20 (twenty) days from the date of the arbitrator's ruling if no appeal has been lodged by any Party or upon the issue of determination by the appeal panel, as the case may be. A decision, which becomes final and binding and may be made an order of court at the instance of any Party to the arbitration. The parties agree to keep the arbitration

confidential and not to disclose it to anyone except for purposes of obtaining an order as contemplated herein.

- 5.6. **Continued performance:** Each Party agrees to continue performing its obligations under the Agreement while any dispute is being resolved.
- 5.7. **Rapid resolution of disputes:** The Parties shall use commercially reasonable efforts to resolve disputes arising as rapidly as possible.
- 5.8. **Confidentiality:** All disputes will be dealt with in confidentiality to protect the reputation of the parties;
- 5.9. **Excluded relief:** This shall not preclude either Party from seeking urgent or interim relief from the High Court of South Africa or any other competent organs of state created for the specific purpose of regulating the business or industry activities in which the Parties are engaged.
- 5.10. **Agreed Jurisdiction:** the Parties hereby consent to the jurisdiction of the North Gauteng High Court (Pretoria) in respect of proceedings.

## 6. Warranties

- 6.1. In addition to those specific warranties under any Service Schedule, Lextrado warrants that in relation to each Service provided in terms of a Service Schedule -
  - 6.1.1. It, and where applicable Lextrado Personnel, will possess and have the right to use knowledge and expertise sufficient to enable Lextrado to provide the Services and/or Deliverables;
  - 6.1.2. the Services and/or Deliverables shall be provided in:-
    - 6.1.2.1. a proper and professional manner by suitably qualified Personnel.
    - 6.1.2.2. accordance with all applicable laws and regulations.
  - 6.1.3. Lextrado and Lextrado's Personnel will comply with their obligations in terms of this Agreement with the care and diligence required in accordance with the best practice and standards prevailing in Lextrado's industry.
- 6.2. The Customer warrants that it has not been induced to enter into this Agreement by any prior representations, warranties or guarantees, whether oral or in writing, except as expressly contained in this clause or a Service Schedule.
- 6.3. Except as expressly stated in this Agreement or any subsequent Service Schedule, 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 to the extent permitted by law.
- 6.4. The Customer warrants that -
  - 6.4.1. in the event that Lextrado Personnel are required to use software owned or operated by the Customer, the Customer warrants that all necessary user licenses have been obtained in advance;
  - 6.4.2. the use of Customer Data provided by the Customer to Lextrado does not and will not infringe the Intellectual Property Rights of any other person; and
  - 6.4.3. the Customer hereby indemnifies and holds Lextrado harmless from any claim for damages by any third party as a result of the breach of this warranty, including all costs incurred on an attorney and own client basis.

## 7. Notices

- 7.1. The Parties choose as their *domicilia citandi et executandi* for all purposes the addresses as set out on the cover page of this Agreement
- 7.2. Either Party shall be entitled from time to time, by written notice to the other, to vary its address to any other address which is not a post office box or *poste restante*.
- 7.3. Any notice to either Party which is -
  - 7.3.1. sent by prepaid registered post in a correctly addressed envelope to the address specified above shall be deemed to have been received, unless the contrary is proved, within 14 (fourteen) days from the date on which it was posted; or
  - 7.3.2. delivered to the Party by hand, shall be deemed to have been received on the day of delivery, provided that it has been delivered to a responsible person during ordinary business hours.
- 7.4. Notwithstanding anything to the contrary contained in this clause, a written notice or other communication actually received by either Party and for which written receipt has been obtained, shall be adequate written

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notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen address.

## 8. 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.

## 9. Lextrado Intellectual Property

- 9.1. The Customer acknowledges and agrees that Lextrado and/or its licensors own and retain all right, title and interest in the Services and the Documentation including without limitation, all reproductions, Enhancements, Upgrades, New Releases, modifications and/or derivative works thereto that is used in connection with the Services to the extent listed in each Service Schedule. Except as expressly stated herein, the Contract Documents do not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.
- 9.2. Lextrado confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.
- 9.3. The Customer shall only utilise and ensure its employees and contractors utilise Lextrado's Intellectual Property as per the terms and conditions of the Contract Documents or such license terms and conditions made available to the Customer for purposes of the Services.
- 9.4. Without limiting specific use restrictions under any Service Schedule, the Customer shall not allow any third party to use (gain access to) or copy any of Lextrado's Intellectual Property during the utilisation of same by the Customer. Where any integration may be required between the Intellectual Property of Lextrado and any third party Intellectual Property, the Customer shall notify Lextrado in writing prior to any integration. On receipt of such notification Lextrado shall submit to the Customer the necessary specifications and procedures to be followed during integration and the Customer shall allow Lextrado to manage the process.
- 9.5. Use of third party Intellectual Property licensed to the Customer
- 9.6. Prior to the commencement date of the Service Schedule, the Customer shall at its own expense procure the grant of such licenses or permissions to Lextrado as are necessary under the terms of any third party licenses, lease, rental or other agreement in respect of Lextrado's use of third party software for the purpose of providing the Services during the Service Schedule term.
- 9.7. Ownership of the third party software, including all Intellectual Property Rights in it, shall remain in the relevant third party.

## 10. LIMITATION OF LIABILITY

- 10.1. Unless otherwise agreed to under this Agreement or any Service Schedule, this clause 21 sets out the entire financial liability of Lextrado (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
  - 10.1.1. any breach of this agreement;
  - 10.1.2. any use made by the Customer of the Services and Documentation or any part of them; and
  - 10.1.3. any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.
- 10.2. Except as expressly and specifically provided in any Contract Document:
  - 10.2.1. the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. Lextrado shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Lextrado by the Customer in

connection with the Services, or any actions taken by Lextrado at the Customer's direction;

- 10.2.2. all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
- 10.2.3. the Services and the Documentation are provided to the Customer on an "as is" basis.
- 10.3. Nothing in this agreement excludes the liability of Lextrado:
  - 10.3.1. for death or personal injury caused by Lextrado's negligence; or
  - 10.3.2. for fraud or fraudulent misrepresentation.
- 10.4. Lextrado shall not be liable whether in delict (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
- 10.5. Lextrado's total aggregate liability in contract, delict (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the amount of the total fees paid by the Customer to Lextrado during the 3 months immediately preceding the date on which the claim arose (excluding set-up and ingestion fees).

## 11. Breach and Termination

- 11.1. 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.
- 11.2. Any failure or delay by either party in exercising any right or remedy will not constitute a waiver.
- 11.3. 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:
  - 11.3.1. claim specific performance
  - 11.3.2. cancel this Agreement which shall be effective when the defaulting Party receives a written notice of such cancellation
  - 11.3.3. claim any monies due in terms of this Agreement and, claim damages from the defaulting Party.
- 11.4. Notwithstanding anything to the contrary in this agreement, either party shall be deemed to be default if it:
  - 11.4.1. is placed in provisional or final liquidation/sequestration or
  - 11.4.2. is placed under judicial management, whether subject to a provisional or final order.
- 11.5. No part may cancel this Agreement on the grounds of a breach of a term of this Agreement unless the breach is material.
- 11.6. 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;

## 12. General

- 12.1. This agreement may not be amended or added to except in writing signed by a duly authorised representative of each party.
- 12.2. 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;
- 12.3. 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

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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..

- 12.6.1 The headings in this agreement shall not in any way affect or govern the interpretation of construction of the Terms and Conditions.
- 12.7 This Agreement will be governed by the laws of the Republic of South Africa.
- 12.8 Each Party hereby consents to the jurisdiction of the Pretoria Magistrate's court.
- 12.9 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