

MERCHANT TERMS & CONDITIONS

1. INTERPRETATION AND STATUS OF THIS AGREEMENT

- 1.1 Upon acceptance hereof by the Merchant, these Merchant Terms & Conditions constitute a valid and legally binding agreement between Trustlink (Pty) Ltd ("Trustlink") and the Merchant.
- 1.2 This Agreement is an enabling Agreement under the terms and conditions of which the Merchant may from time to time acquire or be offered Services from Trustlink. Such Services, the charges thereof and any other specific terms shall be set out in the Service Schedules to this Agreement. Such Service Schedule shall be agreed between the Parties from time to time and executed before the Commissioning of such Services.
- 1.3 Except where specifically provided for to the contrary, the Service Schedule to this Agreement shall incorporate the terms and conditions of this Agreement. Insofar as any condition in the Service Schedule conflicts with those of this Agreement the conditions in the Service Schedule shall prevail. For the avoidance of doubt the terms of one Service Schedule shall not apply to any other Service Schedule.
- 1.4 All Services rendered by Trustlink to the Merchant under this Agreement or any Service Schedule hereto shall, in addition to the terms and conditions as set out in this Agreement or the relevant Service Schedule, be subject to the CHIPS™ Terms and Conditions (which is attached hereto and marked as Annexure MSA1), as well as the AOS Terms and Conditions (which is attached hereto and marked as Annexure MSA2).
- 1.5 The headings to the clauses of this Agreement shall have no effect upon its interpretation.
- 1.6 In this Agreement, except where the context clearly indicates a contrary intention, the singular includes the plural and vice versa, words importing the masculine gender include the other genders and vice versa, the word "person" includes a company, close corporation and any other juristic person and a partnership and any other body of persons (whether corporate or incorporate).
- 1.7 The Parties warrant and acknowledge that the relationship between them is not in the nature of a partnership and that neither Party is in any manner entitled to make or enter into binding agreements of any nature on behalf of the other Party.

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- 1.8 If any provision in a definition is a substantive provision conferring rights or imposing obligations on a Party, notwithstanding that it is only in the interpretation clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement.
- 1.9 Words and expressions defined in any clause shall, unless the application of such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.
- 1.10 The rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply.
- 1.11 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 1.12 Unless specifically otherwise provided, any number of Business Days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a Saturday, Sunday or public holiday, the next succeeding Business Day.
- 1.13 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.

2. DEFINITIONS

In this Agreement, unless the context otherwise indicates:

- 2.1 **Agreement** means these Merchant Terms & Conditions, save as provided for in clause 1.3 above, apply to the Service Schedule;
- 2.2 **AOS Terms and Conditions** means Automated Outsourcing Services (Pty) Ltd's, who is the administrator of the Services, terms and conditions for the use of the administration services;
- 2.3 **Business Day** means any other day than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;
- 2.4 **CHIPS™ Terms and Conditions** means Trustlink's terms and conditions for the use of Trustlink's Services;

2.5 **Commission(ing)** means that the Services have been accepted by the Merchant in accordance with the terms and conditions as stipulated in the applicable Service Schedule and are available for use by the Merchant;

2.6 **Confidential Information** means, without limiting the generality of the term:

2.6.1 information relating to the Disclosing Party's strategic objectives and planning for both its existing and future needs;

2.6.2 information relating to the Disclosing Party's business activities, business relationships, products, services, customers and clients (including that of its associated or affiliated companies);

2.6.3 information contained in the Disclosing Party's software and associated material documentation;

2.6.4 technical, scientific, commercial, financial and market information, know-how and trade secrets;

2.6.5 data concerning business, relationships, architectural information, demonstrations, processes and machinery;

2.6.6 plans, designs, drawings, functional and technical requirements and specifications; and

2.6.7 information concerning faults or defects in the Disclosing Party's systems, hardware and/or software or the incidence of such faults or defects;

but excluding information or data which:

2.6.8 is lawfully in the public domain at the time of disclosure to the Receiving Party;

2.6.9 subsequently becomes lawfully part of the public domain by publication or otherwise through no fault or breach on the part of the Receiving Party;

2.6.10 the Receiving Party can demonstrate to have had rightfully in its possession prior to disclosure to the Receiving Party;

2.6.11 the Receiving Party rightfully obtains from a third party who has the right to disclose such information;

2.6.12 is independently arrived at or developed by the Receiving Party separate and independent from the disclosure made by the Disclosing Party;

2.6.13 is disclosed by the Receiving Party to satisfy an order of a court of competent jurisdiction or to comply with the provisions of any law or regulation in force from time to time; provided that in these circumstances, to the extent permitted by such law or regulation the Receiving Party shall advise the Disclosing Party to take whatever steps it deems necessary to protect the interest in this regard; provided further that the Receiving Party will disclose only that portion of the information which it is legally required to disclose and the Receiving Party will use its reasonable

endeavours to protect the confidentiality of such information to the widest extent possible in the circumstances;

provided that any combination of features will not be deemed to be within the foregoing exceptions merely because individual features are in the public domain or in a Party's possession, but only if the combination itself and its principle or operation are in the public domain or in a Party's possession;

2.7 **Disclosing Party** means any Party who discloses Confidential Information to the other Party;

2.8 **Effective Date** means the date of acceptance of this Agreement by the Merchant or in respect of each of the Service Schedules concluded hereunder, means the date of acceptance of the relevant Service Schedule by the Merchant;

2.9 **Merchant** means the company or business owner as provided for in the on-line registration form;

2.10 **Party** means any one of the Parties to this Agreement. The term "**Parties**" will have a corresponding meaning;

2.11 **Receiving Party** means any Party who receives or acquires the Confidential Information of the other Party under any circumstances whatsoever;

2.12 **Service(s)** means any services or technology or software to be rendered to the Merchant pursuant to individual Service Schedules issued from time to time hereunder;

2.13 **Service Schedule** means a supplementary agreement with its annexures signed by both Parties describing the specific Services to be performed and the terms and conditions relating thereto. Each Service Schedule shall refer to this Agreement and shall be deemed to include all of the terms and conditions set forth herein, subject to clause 1.3;

3. DURATION

3.1 This Agreement shall commence on the Effective Date and shall continue indefinitely, provided it is not terminated or cancelled in terms of the provisions of this Agreement.

3.2 In the event where this Agreement is terminated while there is still any Service Schedule in force, the Parties will continue to give effect to the Service Schedule then still in force, until expiry of such Service Schedule or as Trustlink requires, as if this Agreement was still in force.

4. NATURE AND SCOPE

Trustlink shall provide to and the Merchant shall accept Services in accordance with Service Schedules issued from time to time hereunder and the Merchant shall pay to Trustlink all charges due to Trustlink for the provision of such Services.

5. DUTIES OF TRUSTLINK

5.1 Trustlink shall Commission the Services by the dates agreed upon as set out in each Service Schedule.

5.2 Trustlink shall comply with the terms of this Agreement and any mutually agreed Service Schedule.

5.3 The Merchant agrees that Trustlink may, at its sole discretion, subcontract the whole or any part of its obligations under this Agreement or Service Schedule and Trustlink agrees that it will retain full responsibility for such obligations despite such subcontract.

6. DUTIES OF THE MERCHANT

6.1 The Merchant shall accept the Services on the dates agreed upon as set out in each Service Schedule.

6.2 The Merchant shall comply with the terms of this Agreement and any mutually agreed Service Schedule.

7. CHARGES & PAYMENT

7.1 The Merchant shall pay to Trustlink the service fees as set out in each Service Schedule.

7.2 All services fees set out in each Service Schedules are exclusive of Value Added Tax (at the standard rate) or similar tax, which shall be added to all invoices at the applicable current rate.

7.3 The service fees and any other fees are payable at the time provided for in each Service Schedule.

8. TERMINATION & BREACH

8.1 Should either Party breach or otherwise be in default of any of its obligations under or in terms of this Agreement or any Service Schedule and remain in default or fail to remedy such

breach, if such breach is indeed capable of remedy, within 14 (fourteen) Business Days of receipt of written notice calling upon it to do so, the other Party will be entitled, but not obliged, in addition to any other rights which it may have or remedies which may be available to it to:

8.1.1 cancel this Agreement, with or without claiming damages, provided that such breach constitutes a material breach; or

8.1.2 to obtain an order against the defaulting Party for specific performance, with or without claiming damages.

8.2 A Party to this Agreement will be deemed to be in breach if such Party:

8.2.1 commits any act of insolvency as defined in the Insolvency Act, No. 24 of 1936 or takes steps to place itself, or is placed under sequestration, liquidation, administration or debt review or surrenders its estate;

8.2.2 fails to satisfy a substantial judgment against that Party within 21 (twenty-one) days after that Party becomes aware of the judgment, except if that Party provides evidence on an ongoing basis to the reasonable satisfaction of the other Party that steps have been initiated within the 21 (twenty-one) days to appeal, review or rescind the judgment and to procure the suspension of execution of that judgment and that such steps are being expeditiously pursued. The period of 21 (twenty-one) days shall run from the date on which the judgment becomes final, or the date on which the attempts to procure the suspension of the execution fail;

8.2.3 is found guilty of theft, fraud, forgery or any other related crime.

8.3 Termination will not discharge either Party from performing any obligation already due or from making payment of any sums already due or becoming due by reason of the termination.

9. FORCE MAJEURE

9.1 Whilst Trustlink aims to provide uninterrupted Services, it cannot guarantee this as interruptions may be caused by factors beyond Trustlink's reasonable control including, but not limited to an event of fire, lightning, explosion, electricity and utility services, flood, hurricane, act of God, war, terrorism, civil disorder, delivery failures, failure of communications networks and facilities, including the Internet, epidemics, plagues, strikes; boycotts, and lock-outs of all kinds and go-slows (excluding boycotts, strikes, lock-outs and go-slows by or of Trustlink's own personnel) or any other event beyond Trustlink's reasonable control (a "Force Majeure Event").

- 9.2 If Trustlink is prevented or restricted directly or indirectly from carrying out all or any of its obligations under this Agreement or a Service in terms of the applicable Service Schedule due to a Force Majeure Event, Trustlink shall be relieved of its obligations during the period that such event and its consequences continue but only to the extent so prevented and Trustlink shall not be liable for any delay or failure on the performance of any obligations hereunder or loss or damages, either general, special or consequential which the Merchant may suffer due to or resulting from such delay or failure, provided always that Trustlink (i) shall give written notice to the Merchant of any such inability to perform or interruption to Trustlink's Services and (ii) shall use reasonable endeavours to mitigate the effects and duration of the Force Majeure Event. Trustlink shall, upon termination of the Force Majeure Event, giving rise to such non-performance, give the Merchant written notice. Trustlink shall not be entitled to invoke this clause if it failed to take all steps and precautions which could reasonably be expected to have been taken, in order to prevent such act or event occurring and in order to mitigate and minimise the effect of such event.
- 9.3 Should the Force Majeure Event continue for a period of more than 14 (fourteen) days, then the Merchant is entitled to terminate the affected Service with immediate effect.
- 9.4 Trustlink will, wherever possible, provide advance warning on its website of any known or planned interruptions and will try to ensure any interruption is kept as brief as possible.
- 9.5 In no event will Trustlink be legally responsible (liable) to the Merchant for any failure by the Merchant and/or its third-party service providers (including banks) or any of the Merchant and/or third-party service providers systems, network and/or equipment which has an impact on the Services.

10. CONFIDENTIAL INFORMATION

- 10.1 From time to time during the duration of this Agreement or any Service Schedule hereto one Party (the Disclosing Party) may disclose Confidential Information to the other Party (the Receiving Party).
- 10.2 The Receiving Party will treat and keep all Confidential Information as secret and confidential and will not, without the Disclosing Party's prior written consent, directly or indirectly communicate, disclose, publish, utilise, employ, exploit or in any manner or for any reason or purpose whatsoever use (whether in writing or orally or in any other manner) the Confidential Information of the Disclosing Party to any other person other than in accordance with the terms of this Agreement or any Service Schedule hereto.

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- 10.3 The Receiving Party will use the Confidential Information of the Disclosing Party for the sole purpose of complying with its obligations under this Agreement or any Service Schedule hereto.
- 10.4 Notwithstanding the provisions of clause 10.2, the Receiving Party may disclose Confidential Information:
- 10.4.1 to those of its agents, representatives or employees who strictly need to know the Confidential Information, provided that the Receiving Party shall initiate internal security procedures to prevent unauthorised disclosure and will take all practical steps to impress upon those agents, representatives or employees who need to be given access to the Confidential Information, the secret and confidential nature thereof;
 - 10.4.2 to the extent that the confidentiality of the Confidential Information is nullified by an occurrence as contemplated in clauses 2.6.8 to 2.6.13 above, whichever occurs first.
- 10.5 The contents and the existence and the scope of this Agreement or any Service Schedule hereto are Confidential Information.
- 10.6 If any Confidential Information is copied, disclosed or used other than for the purpose set out in this Agreement or any Service Schedule hereto then, upon becoming aware of such disclosure, without prejudice to any rights or remedies of the Disclosing Party, the Receiving Party shall as soon as practicable notify the Disclosing Party of such event and, if requested by the Disclosing Party, take such steps (including the institution of legal proceedings) as shall be necessary to remedy (if capable of remedy) the default and/or to prevent further unauthorised copying, disclosure or use.
- 10.7 Notwithstanding whether the Receiving Party uses the Confidential Information in accordance with this Agreement or any Service Schedule hereto or not (including modifying or amending the Confidential Information), all Confidential Information shall remain the property of the Disclosing Party and its disclosure shall not confer on the Receiving Party any rights of the Disclosing Party, including Intellectual Property Rights, over the Confidential Information whatsoever beyond those contained in this Agreement or any Service Schedule hereto.
- 10.8 Use by the Receiving Party of any Confidential Information in accordance with the terms of this Agreement or any Service Schedule hereto will not infringe on the Intellectual Property

of any other person and no notification of any actual or potential claim alleging such infringement has been received by the Disclosing Party.

- 10.9 The Receiving Party agrees to ensure proper and secure storage of all Confidential Information and any copies thereof to at least the same standard as the Receiving Party keeps its own Confidential Information. The Receiving Party shall not make any copies or reproduce in any form any Confidential Information except for the purpose of disclosure as permitted in accordance with this Agreement.
- 10.10 The Disclosing Party may at any time request the Receiving Party to return any material containing, pertaining to, or relating to the Confidential Information save where the Receiving Party is required to retain any such Confidential Information by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body or stock exchange or in accordance with internal policy or guidance, or where the Confidential Information has been disclosed under clauses 2.6.8 to 2.6.13 above.
- 10.11 Alternatively to clause 10.10, the Receiving Party shall, at the instance of the Disclosing Party, destroy such material and furnish the Disclosing Party with a written statement to the effect that such material has been destroyed.
- 10.12 The Receiving Party shall comply with a request in terms of this clause 10.10 within a reasonable amount of time in the circumstances of receipt of such request.
- 10.13 The Merchant will not make any announcements, provide any press release, use Trustlink's trade marks, or otherwise disclose any information to the press or other media concerning Trustlink's services, software or the terms of this Agreement or any Service Schedule hereto, without the prior written approval of Trustlink, except for any release necessitated by the rules of any stock exchange or any other regulatory authority with jurisdiction,
- 10.14 Without prejudice to any other rights or remedies of the Disclosing Party, the Receiving Party acknowledges and agrees that damages would not be an adequate remedy for any breach by it of the provisions of this clause 10 and that the Disclosing Party shall be entitled to seek the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of any such provision by the Receiving Party, and no proof of special damages shall be necessary for the enforcement of the rights under this clause 10.

11. COMPLAINTS & DISPUTES

- 11.1 Should the Merchant have any concerns or issues relating to the provision of the Services, Trustlink's Support Department can be contacted at support@chips.co.za or +27 (0)12 470 4800.
- 11.2 Should a dispute of any nature whatsoever arise between the Merchant and Trustlink on any matter provided for in or arising out of this Agreement or any Service Schedule hereto and such dispute is not resolved through the Support Department of Trustlink then, save for urgent or interim relief which may be granted by a competent court, such a dispute may be submitted to confidential arbitration in terms of the expedited rules of the Arbitration Foundation of South Africa. Arbitration proceedings shall be conducted in Pretoria in English.
- 11.3 The expedited arbitration rules may be downloaded from the following link: http://www.arbitration.co.za/downloads/expedited_rules.

12. ADDRESS FOR NOTICES

- 12.1 For all the purposes of this Agreement or any Service Schedule hereto or with regard to any matter arising here out or in connection herewith, the Parties hereby choose the following addresses as their respective *domicilia citandi et executandi*:
- 12.1.1 Trustlink: Glenfield Office Park, Block C, Faerie Glen, Pretoria.
- 12.1.2 The Merchant: the address of the company or business owner as provided for in the on-line registration form.
- 12.2 Any Party shall be entitled by 14 (fourteen) days' written notice to the other Party to change its domicilium as set out above.
- 12.3 Any notice which may be required to be given to a Party to this Agreement shall be sent to such Party's address as set out above, or duly amended from time to time, and shall:
- 12.3.1 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery; or
- 12.3.2 if posted by prepaid registered post be deemed to have been received by the addressee on the 5th Business Day after dispatch, including the day of posting; or

12.3.3 if transmitted by facsimile be deemed to have been received by the addressee on the 1st Business Day after dispatch; or

12.3.4 if transmitted by e-mail be deemed to have been received by the addressee on the 1st Business Day after dispatch.

12.4 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by one of the Parties from the other shall be adequate written notice or communication to such Party, notwithstanding that it was not sent to or delivered as its chosen *domicilium citandi et executandi*.

13. ELECTRONIC COMMUNICATIONS

To the fullest extent permitted by applicable law, the Merchant consents to receiving the Agreement or any part thereof, and any Service Schedule or any part thereof, and any other agreements, notices or other communications from Trustlink regarding the Merchant's use of the Service, electronically. Electronic communications may be posted on Trustlink's website and/or sent to the e-mail address Trustlink has on record for the Merchant.

14. CESSION

Trustlink is entitled to assign this Agreement to any third party without the Merchant's consent other than if such assignment would be to the Merchant's detriment, but for security reasons, the Merchant may not cede, assign or otherwise transfer this Agreement or any Service Schedule hereto or any of its rights or obligations hereunder or under any Service Schedule hereto to any other person without obtaining Trustlink's prior written consent.

15. SEVERABILITY

If any term, condition, agreement, requirement or provision contained in this Agreement or any Service Schedule hereto is held by any court having jurisdiction to be unenforceable, illegal, void or contrary to public policy, such term, condition, agreement, requirement or provision shall be of no effect whatsoever upon the binding force or effectiveness of any of the remainder of this Agreement or any Service Schedule hereto, it being the intention and declaration of the Parties that had they or either of them known of such unenforceability, illegality, invalidity or that the provision was contrary to public policy, they would have entered into an agreement, containing all the other terms and conditions set out in this Agreement or any Service Schedule hereto.

16. NON-VARIATION

No addition to or variation, consensual cancellation or novation of this Agreement or any Service Schedule hereto and no waiver or release of any right arising from this Agreement or any Service Schedule hereto or its breach or termination shall be of any force or effect unless reduced to writing and signed by both the Parties or their duly authorized representatives, or in the case of waiver or release, by the Party so waiving or releasing.

17. NON-WAIVER

No latitude, extension of time or other indulgence which may be given or allowed by either Party to the other in respect of the performance of any obligation under this Agreement or any Service Schedule hereto or the enforcement of any right arising from this Agreement or any Service Schedule hereto and no single or partial exercise of any right by either Party shall under any circumstances be construed to be an implied consent by such Party or operate as a waiver, release or a novation of, or otherwise affect any of that Party's rights in terms of or arising from this Agreement or any Service Schedule hereto or estop such Party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term of this Agreement or any Service Schedule hereto.

18. ENTIRE AGREEMENT

This Agreement constitutes the whole Agreement between the Parties as to the subject matter hereof and no agreements, representations or warranties between the Parties other than those set out herein will be binding on the Parties.

19. LAW & JURISDICTION

19.1 This Agreement and all Service Schedules hereto shall be governed and construed according to the laws of the Republic of South Africa. The Parties consent to the jurisdiction of the South African courts for the purposes of this Agreement.

19.2 The Parties hereby consent and submit to the exclusive jurisdiction of the High Court of the Republic of South Africa in any dispute arising from or in connection with this Agreement or any Service Schedule hereto.

20. LEGAL COSTS

20.1 Each Party shall pay its own legal costs relating to the drafting and negotiating this Agreement or any Service Schedule hereto.

20.2 If legal action is instituted by Trustlink against the Merchant, Trustlink shall be entitled to claim legal costs from the Merchant on a scale as between attorney and client.

21. COUNTERPARTS

This Agreement or any Service Schedule hereto may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same agreement.