

Terms of service - Hosting

TALOOMA'S GENERAL TERMS

These are the general terms of our relationship that include the duration of the Agreement, fees payable by you, Talooma's right to monitor communications and content in specific circumstances, steps to protect the security of your data and Talooma's systems, when Talooma is authorised to suspend or terminate your services, and the resolution of disputes between us.

Summary of our General Terms:

- The Agreement will commence upon signature of the service agreement.
- By signing the service agreement, you confirm that you are prepared to accept electronic invoices from Talooma for purposes of claiming input tax.
- The Agreement is binding unless and until you or we give notice to terminate.
- We may change the features or functionality of any Service over time.
- You must comply with the Acceptable Use Policy that applies to your use of the Services.
- We can prevent your access to the Service/s if you breach the Agreement or for technical reasons.
- You accept that you will get no rights to the intellectual property in the hosting server computer systems.
- Subject to your right to withdraw your consent in certain instances, we may obtain your personal information and use it, for certain specified purposes, including for, internal Talooma marketing and contract administration as well as to enable us to collect your debit order payment.
- Our liability to you is substantially limited.
- The Agreement is subject to South African law.
- We will use your given address as your address for service.

TALOOMA'S SPECIFIC TERMS

Talooma's Specific Terms go into more detail and address specific issues around our hosting packages, e-mail and domain names. These terms must be viewed as an extension of our General Terms.

Talooma Hosting Terms (General Terms)

(Last updated: 18 August 2010)

(Previous versions: none)

Talooma (Pty) Limited (Registration No. 2002/031545/07) ("Talooma") is a South African web hosting service provider that provides a range of web hosting Services to its Customers. Talooma provides the Services to its Customers subject to the Talooma Hosting Terms.

1. Interpretation

This clause will apply to the Talooma Hosting Terms, unless a contrary intention appears.

1.1 The clause headings in the Talooma Hosting Terms have been inserted for purposes of convenience only and will not be taken into consideration in its interpretation.

1.2 Any reference to

- (i) the singular includes the plural and vice versa,
- (ii) any gender includes the other genders and
- (iii) a natural person includes a juristic person and vice versa.

1.3 The rule of construction that a contract must be interpreted against the party responsible for the drafting or preparation of the contract, will not apply to this Agreement and the Parties waive any rights they have to rely on the rules.

1.4 Unless the context indicates a contrary intention, the words and expressions defined in clause 2 will, throughout the Talooma Hosting Terms, bear the meanings assigned to them in that clause 2 and similar expressions will bear corresponding meanings.

1.5 Any reference to "days" will be construed as being a reference to calendar "days" unless qualified by the word "business" in which instance a "business day" will be any day other than a Saturday and a Sunday or a public holiday as gazetted by the Government of the Republic of South Africa from time to time. Any reference to "business hours" will be construed as being the hours between 08h00 and 17h00 on any business day.

1.6 Whenever "including" or "include", or "excluding" or "exclude", together with specific examples or items follow a term, they will not limit its ambit.

1.7 Terms other than those defined within these General Terms will be given their plain English meaning, and those terms, acronyms, and phrases known in the Information Technology industry will be interpreted in accordance with their generally accepted meanings.

1.8 Defined terms appearing in these General Terms in title case will be given the meaning as defined, while the same terms appearing in lower case will be interpreted in accordance with the ordinary meaning as qualified by clause 1.7 and will, unless the context otherwise indicates, include the term as defined.

2. Definitions

In the Talooma Hosting Terms, unless inconsistent with or otherwise indicated by the context, the following terms will have these meanings:

2.1 "Agreement" means the contract entered into between Talooma and the Customer consisting of, amongst others, the Talooma Hosting Terms and any application form or addendum completed by the Customer;

2.2 "Application Form" means the application form completed by the Customer for the initiation of the individual Service/s as may be amended from time to time under the Agreement and specifically includes any offline and paper versions of the Application Form;

2.3 "Business Day" means any day other than a Saturday, a Sunday or a public holiday in the Republic of South Africa;

2.4 "Commencement Date" means the date when a customer profile is created and Talooma furnishes the Customer with the Customer Data;

2.5 "Customer" means: i. the person identified on the application form or in any addendum, relating to the relevant Service subscribed for by the Customer and in the case of a Domain Name, ii. a Reseller enrolled under the Talooma Reseller programme who hosts directly with Talooma;

2.6 "Customer Data" means any username, password, or e-mail address provided by Talooma to the Customer as part of the Services, but expressly excluding Customer Domains managed by Talooma as part of the Services;

2.7 "General Terms" means these terms and conditions;

2.8 "Talooma Hosting Terms" means the General Terms, the Specific Terms, the Acceptable Use Policy, and Privacy Policy, all of which are published at www.Talooma.co.za/index.php/hosting/legal/legal-notices/ under their respective headings;

2.9 "Intellectual Property Rights" means all patents, trademarks, service marks, design rights, copyright, trade or business name, know-how, concepts, ideas, methods, procedures, processes, techniques, models, reports, templates, or software (or any changes or additions and other similar rights or obligations) whether or not registerable, registered or application for registration has been made in any party of the world;

2.10 "ISPA" means the Internet Service Providers' Association of South Africa;

2.11 "Marks" means any trademarks, logos, brand names, domain names or other marks of either of the Parties;

2.12 "Party" and "Parties" means Talooma and the Customer;

2.13 "Services" means the services provided by Talooma to the Customer;

2.14 "Service Fees" means fees and charges payable by the Customer to Talooma in respect of the Services, which Service Fees are dealt with in clause 7 and are set out in the application form/s, and any addenda, completed by the Customer in respect of the Services;

2.15 "Specific Terms" mean the terms and conditions which supplement the General Terms and govern the use of individual Services selected by the Customer;

2.16 "Website" means the website from which the Services are provided, currently being <http://www.Talooma.co.za>

3. Talooma Hosting Terms

3.1 Talooma provides the Services to its Customers subject to the Talooma Hosting Terms.

3.2 These General Terms govern the contractual relationship between the Parties, duly supplemented by the Specific Terms.

3.3 To the extent that:

3.3.1 any individual Service selected by the Customer is not dealt with in the Specific Terms, the individual Service will be governed by the General Terms and Acceptable Use Policy;

3.3.2 any Specific Terms are binding upon the Customer, those Specific Terms are deemed included in the Talooma Hosting Terms.

3.4 The Acceptable Use Policy represents the terms and conditions pertaining generally to the Customer's use of the Services and specifies the activities prohibited by the Customer and is intended to enhance the use of the Internet by preventing unacceptable use. The Customer is required at all times to comply with the Acceptable Use Policy, which is deemed to form part of the Talooma Hosting Terms. The Acceptable Use Policy, as amended from time to time, is posted on the Website.

3.5 Save as expressly provided to the contrary in the Talooma Hosting Terms, if there is a conflict in meaning, the following precedence ranking will apply (from highest to lowest): i. these General Terms; ii. the Specific Terms; iii. the Acceptable Use Policy; iv. the Privacy Policy; v. (v) other policies that may be introduced from time to time and notified to the Customer; vi. (vi) any documents incorporated by reference in this Agreement.

4. Amendment to Talooma Hosting Terms

This clause will apply to the Talooma Hosting Terms, unless a contrary intention appears.

4.1 Talooma reserves the right, at any time, to amend any of the Talooma Hosting Terms to which the Customer is bound without specific notice to the Customer. An updated version of the Talooma Hosting Terms will be posted on the Website.

4.2 It is the Customer's responsibility as a diligent user to peruse any amended Talooma Hosting Terms posted on the Website and the Customer undertakes to regularly visit the Website so as to remain advised of the amended Talooma Hosting Terms.

4.3 If the Customer objects to any amended Talooma Hosting Terms that are binding upon it or are to become binding upon it, the Customer is entitled to terminate its relationship with Talooma under clause **14.2**.

5. Customer Status

5.1 The Customer may be an incorporated entity (such as a company or close corporation), trust, partnership, or individual.

5.2 If a person enters into the Agreement in a representative capacity on behalf of a Customer who is an incorporated entity or on behalf of an unincorporated entity, or in any other representative capacity recognised in South African law, the person warrants that: i. they are legally authorised to do so and indemnifies Talooma against any loss or damage that Talooma may sustain resulting from the person's lack of authority; ii. all the information supplied to Talooma at any time relating to the entity, trust, partnership, association or other person who they represent is true, accurate, and complete.

5.3 Talooma reserves the right to treat all misrepresentations by the Customer or the person representing it as fraud and the person indemnifies Talooma against any loss or damage that Talooma may sustain resulting from the person's lack of authority.

5.4 If Talooma discovers that the Customer has fraudulently contracted for the receipt of Services or that its representative has contracted without contractual capacity to do so, Talooma may terminate the Talooma Hosting Terms or Service/s immediately without any further liability to the Customer and the Customer may not claim any restitution or refund of any amount already paid, regardless of whether the Customer has used the Services or not.

5.5 The Customer will, if requested by Talooma, furnish Talooma with sufficient evidence of the authority of the person who will, on behalf of the Customer, take any action or execute any documents required or permitted to be taken or executed by the person under the Agreement. This would include providing proof of permission to debit from the authorised signatory of the Customer's bank account.

5.6 If a dispute arises between individuals or entities involved with the Customer (including partners, shareholders, trustees, employees), Talooma may act on the representation of a person claiming to be duly authorised to represent the Customer, without being obliged to obtain independent verification of the authority. The Customer indemnifies Talooma from any action or inaction based on the representation. However, if Talooma, in its sole and absolute discretion, requires independent verification of the authority of any individual, the Customer must provide it in a format reasonably acceptable to Talooma.

6. Commencement and Duration

6.1 The application form submitted by the Customer to Talooma will be treated as an offer by the Customer to make application for the Service/s. The Customer's offer will only be deemed to have been received by Talooma once this has been confirmed to the Customer by Talooma.

6.2 The Talooma Hosting Terms will commence and become binding on the Customer with effect from the Commencement Date of the services.

6.3 The Talooma Hosting Terms will endure for an indefinite period until terminated under clause 14.

6.4 Rivonia, Gauteng will be deemed to be the place where the Parties have concluded the Agreement (or any part).

7. Service Fees

7.1 All Service Fees payable by the Customer are payable in advance.

7.2 Where applicable, Talooma will furnish the Customer with a VAT invoice in electronic format. The Customer agrees that by submitting an application form to Talooma when making application for the Service/s, that the application constitutes confirmation by the Customer to accept electronic invoices for purposes of claiming input tax.

7.3 The Service Fees will be payable on a monthly basis as specified on the Website and are calculated in accordance with the rate schedule on the Website.

7.4 The Service Fees will be paid by way of debit order and the Customer authorises Talooma to effect the necessary transfers from the Customer's designated bank account at the beginning of each and every month for the continued duration of the Talooma Hosting Terms. The Customer must put the debit order in place within seven days of the Commencement Date. A rejected debit order will accrue a handling fee of R100 per rejection.

7.5 Where the Customer fails to supply valid and current bank account details when paying Talooma via Debit Order for the Services, the Customer will be held liable for all fines and penalties resulting from the failed transaction.

7.6 The Customer may only pay cash for the Services in circumstances where the Service Fee is payable on an annual basis. This would exclude any incremental over-usage charges .

7.7 Where the Customer's use of any service commences during a month rather than at the start of that month, the Customer will be charged on a pro rata basis for those Services provided during that month.

7.8 Talooma reserves the right to amend or vary the Service Fees from time to time and any amendment or variation of the Service Fees will be deemed to be an amendment of the Talooma Hosting Terms. If Talooma does amend its Service Fees, it will give the Customer at least 30 days prior notice. If the Customer objects to any amended Service Fees that affect it, it may terminate its relationship with Talooma under clause 14.7.

7.9 The Customer may not withhold any payment of any amount due to Talooma for any reason, including any alleged breach of the Talooma Hosting Terms by Talooma. In addition, the Customer may not:

- (i) set-off against; or
- (ii) demand any discount, refund (other than under clause 7.10), or reduction in respect of, any Service Fees owed to Talooma.

7.10 The Service Fees are exclusive of value added tax. The Customer will pay any increase in Value Added Tax.

7.11 If a dispute arises between the parties, the Customer must continue paying the Service Fees as and when they become due and payable under the Talooma Hosting Terms.

7.12 The Customer may terminate the Service within:

7.12.1 seven days after the Commencement Date if the Customer decides not to continue subscribing for the Service/s; or

7.12.2 within thirty days after the Commencement Date if Talooma fails to meet the service levels for hosting services and e-mail services as specified in the Specific Terms, provided that the Customer's right to terminate must be exercised by notice from the Customer to Talooma transmitted via e-mail to billing@Talooma.co.za. If the Customer terminates the Service for one of these reasons, the Customer may receive a refund of any Service Fees from Talooma. Talooma may refund the Customer for any third party costs already incurred by Talooma directly or indirectly as a result of the initial request for the Service. The Customer remains responsible for any third party costs.

8. Monitoring

8.1 Whilst Talooma monitors its Services to determine that its facilities are operating satisfactorily, Talooma does not, as a general practice, monitor its Customers activities. Where Talooma is required to intercept communications in accordance with the Regulation of Interception and Provision of Communication-Related Act, 70 of 2003 ("the Monitoring Act"), any interception of communications must be strictly carried out in accordance with the requirements of the Monitoring Act, as and when required under the Monitoring Act.

8.2 With specific regard to the monitoring of content that is found on a website belonging to a Customer and which is hosted by Talooma, Talooma has no knowledge of, nor interest in, Customer content hosted by Talooma or published by Talooma on the Customer's behalf using the Services and further that Talooma does not in any way contribute or approve the content.

8.3 Despite this, if Talooma, in its sole and unfettered discretion, determines that any content is in violation of any law (including the Films and Publications Act 65 of 1996) or of the Acceptable Use Policy, or if Talooma receives a takedown notice from ISPA, as contemplated in section 77 of the Electronic Communications and Transactions Act 25 of 2002, it may: i. request or require the Customer to remove, amend, or modify the content forthwith; ii. terminate access to any Services or suspend or terminate any Services without notice; iii. delete the offending content without notice; or iv. notify the relevant authorities of the existence of any content, make any back-up, archive, or other copies of any content, or take any further steps as required or requested by any authorities without notice.

8.4 Talooma may disclose any content, material, or data (including any data of the Customer) if: i. required by law; ii. lawfully requested to do so by any authorities, including the South African Police Services pursuant to a subpoena under section 205 of the Criminal Procedure Act 51 of 1977; or iii. in accordance with a judicial, administrative or governmental order. Talooma does not have to give the Customer notice.

8.5 The Customer will have no recourse against Talooma if Talooma acts under this clause and accordingly waives its right to make any claim or demand, or to institute any legal proceedings against Talooma.

9. Security

9.1 All Customer Data allocated to the Customer is personal to the Customer and the Customer will be liable for any loss or damage sustained by the Customer, Talooma or any third party as a result of any actions by the Customer or any other person to whom the Customer has disclosed its Customer Data.

9.2 The Customer authorises Talooma to act on any instruction given by or purporting to originate from the Customer, even if it transpires that both Talooma and the Customer have been defrauded by someone else, unless the Customer has notified Talooma under clause 9.3 prior to Talooma acting on a fraudulent instruction.

9.3 If any security violations are reasonably believed to have occurred in connection with the Customer's account, Talooma will investigate forthwith and, if necessary, change the relevant Customer Data, including access codes and passwords, and give the Customer immediate notification. A copy of the results of any investigation will be provided to the Customer at no cost.

9.4 The Customer must advise Talooma immediately if any other person gains access to its Customer Data following the Talooma procedures relating to reporting misuse <http://www.Talooma.co.za/index.php/hosting/legal/reporting-abuse-procedure/> and must give its full co-operation to Talooma in any investigation carried out by Talooma.

9.5 The Customer indemnifies Talooma against any claim from:

- (i) the Customer's disclosure of its Customer Data to a third person;
- (ii) the use of the Customer Data by a third person; or
- (iii) any resulting action by the Customer or third party.

9.6 Talooma reserves the right to take any action it may deem necessary at any time to preserve the security and reliable operation of its infrastructure. The Customer will not do anything (or permit anything to be done) that will compromise Talooma's security.

9.7 Although Talooma applies reasonable endeavours to provide disaster recovery, Talooma does not specify any recovery time, nor is Talooma liable for any loss or damage incurred or suffered by the Customer arising from or in connection with any cause as a result of its failure to provide, or delay in providing, or providing only partial disaster recovery. The Customer is required to make back-ups of its data. Nothing contained in the Talooma Hosting Terms will be construed as a representation that any back-ups of data implemented by Talooma will be successful or in any way will avoid disaster.

10. Warranties

10.1 Talooma warrants that it has the facilities, infrastructure, capacity, and capability to provide the Services.

10.2 Despite this warranty, the Services are provided "as is" and "as available" and without any further warranty of any kind, whether express or implied, including warranties of merchantability, fitness for purpose, title, or non-infringement.

10.3 Under no circumstances will any advice or information furnished by Talooma (its agents or employees) be construed as a warranty of any kind.

11. Intellectual Property Rights

11.1 The Customer is obliged to comply with all laws applicable to any Intellectual Property Rights in respect of any data or information created, accessed, retrieved, stored, or disseminated by the Customer through the Customer's use of the Services.

11.2 The Customer is prohibited from using any of the Talooma Marks without the prior written approval of Talooma.

11.3 The Customer grants Talooma a non-exclusive licence to use its Marks for the limited purposes of enabling Talooma to exercise its rights or to fulfil its obligations under the Talooma Hosting Terms.

11.4 Other than as specifically provided for in the Talooma Hosting Terms, Talooma will wholly and exclusively retain all existing, and become the exclusive and unencumbered owner of all Intellectual Property Rights employed in or otherwise related to its network infrastructure, business and the provision of any of the Services under the Talooma Hosting Terms.

12. Customer Indemnities

12.1 The Services are provided subject to all applicable laws and the Customer accordingly indemnifies Talooma from any liability attributable to any regulatory body or civil or criminal proceedings instituted against Talooma or for any loss or damage suffered by the Customer or any third party as a consequence of any interruption or unavailability of the Services.

12.2 The Customer unconditionally and irrevocably indemnifies Talooma and holds Talooma free from and harmless against all losses suffered or incurred by the Customer or Talooma or instituted against Talooma by any third party as a direct or indirect result of the Customer's use of the Services, the Customer's failure to comply with any Talooma Hosting Terms, or any downtime, outage, degradation of the network, interruption in or unavailability of the Services. Included within the ambit of downtime, outage, degradation of the network, interruption, or unavailability of the Services is any of the following:

(i) software or hardware service, repairs, maintenance, upgrades, modification, alterations, replacement or relocation of premises affecting the Services,

(ii) non-performance or unavailability of any of the services provided by a electronic communications network or service provider, including, line failure, or in any international services or remote mail servers,

(iii) non-performance or unavailability of external communications networks to which the Customer or Talooma's network infrastructure is connected, and

(iv) repairs, maintenance, upgrades, modifications, alternations or replacement of any hardware forming part of the Services, or any faults or defects in the hardware.

12.3 The Customer will defend Talooma against any claim against which Talooma is indemnified under clause 12.2 and elsewhere in the Talooma Hosting Terms ("indemnified claim") and pay any and all costs, damages and expenses (including attorneys fees on the attorney and own client scale) finally awarded against Talooma by a court of competent jurisdiction or agreed to in a written settlement agreement signed by the Customer directly arising from the indemnified claim, provided that:

(i) Talooma will notify the Customer in writing as soon as Talooma becomes aware of the indemnified claim to enable the Customer to take steps to contest it,

(ii) the Customer may assume sole control of the defence of the claim or related settlement negotiations and

(iii) Talooma will provide the Customer, at the Customer's expense, with the assistance, information, and authority necessary to enable the Customer to perform its obligations under this clause.

12.4 The Customer must pay to Talooma the amount of an indemnified claim forthwith upon request for payment. If the Customer contests the indemnified claim, the Customer must pay to Talooma the amount of the indemnified claim forthwith after any judgment or order is granted, provided that in those circumstances where the Customer does not at any time proceed with the contest of the claim timeously and promptly, Talooma may require the Customer either to

pay the amount of the claim in question in trust to its attorneys pending the outcome of the proceedings, or Talooma may require the Customer to give proper and adequate security therefore.

13. Suspension of the Services

13.1 Talooma is entitled to temporarily suspend its obligations under the Talooma Hosting Terms: i. to give effect to clauses 8.3 or 9.5, ii. to service, repair, maintain, upgrade, modify, alter, replace, or improve any of the Services; or iii. where third parties have alleged that the Customer has engaged in unlawful activities arising from or connected to the Services.

13.2 Where circumstances permit, Talooma will use its best endeavours to provide prior notice of any the suspension to the Customer. Talooma will not be liable for any resulting loss or damage incurred or suffered by the Customer arising from or in connection with or from any cause.

14. Termination

14.1 Termination by Talooma: Talooma may terminate the Talooma Hosting Terms together with any Services on three days written notice to the Customer at its address provided for the giving of notice in clause 18.

14.2 Termination by the Customer: The Customer may terminate the Talooma Hosting Terms together with any Services on 90 days written notice to Talooma in one of two ways:

(i) via e-mail to accounts@talooma.com,

(ii) to Talooma via fax at 086 632 5862 and to Talooma at its address provided for the giving of notice in clause 18.

14.3 All purported terms of termination communicated to Talooma in any manner other than as specified may, at Talooma's sole discretion, be deemed to have been invalidly given and without force and effect.

14.4 Breach: If the Customer breaches any of the Talooma Hosting Terms, Talooma may, without prejudice to any other rights that Talooma may have and without notice to the Customer,:

(i) claim immediate payment of all outstanding charges due to Talooma,

(ii) terminate or suspend the Customer's use of any or all of the Services,

(iii) terminate its relationship with the Customer or

(iv) list the Customer with any credit bureau, Internet service provider list, or the South African Fraud Prevention Service and- the Customer expressly consents to this.

In all instances, Talooma may retain all Services Fees already paid by the Customer and recover all of its costs associated (including legal costs on an attorney and own client scale) with the Customer's breach, whether incurred prior to the institution of or during legal proceedings, or if judgment has been granted, in connection with the satisfaction of the judgment.

14.5 Retention of hardware or software: Where Talooma is in possession of any hardware or software belonging to the Customer as a result of Talooma's provision of the Services to the Customer, and the Customer is in default of its payment obligations to Talooma, Talooma may retain the hardware or software pending the Customer's settlement of all amounts owed by the Customer to Talooma. Where the Customer fails to make payment of all amounts owed to Talooma within 60 days of any notice by Talooma to the Customer, Talooma may dispose of the property to defray any expenses as well as any amounts owed by the Customer to Talooma.

14.6 Return of hardware or software: Where the Customer is in possession of any Talooma hardware or software in consequence of the provision of a Service and the related Service terminates, the Customer will immediately return the hardware or software to Talooma and may not retain it for any reason.

15. Force Majeure

15.1 On the happening of a Force Majeure Event, any delay or failure in performance or resulting breach by Talooma will not be a breach of the Talooma Hosting Terms by Talooma, nor will Talooma be liable.

15.2 For purposes of this clause, a "Force Majeure Event" means any act of God, of public enemy, fire, explosion, earthquake, perils of the sea, flood, storm or other adverse weather conditions, war declared or undeclared, civil war, revolution, civil commotion or other civil strike, riot, blockage, embargo, sanctions, epidemics, act of any Government or other authority, compliance with Government orders, failure of any supplier of electricity, including Eskom, and telecommunications infrastructure or telecommunications lines provided by any third party, including the Telkom Limited group of companies, or any circumstances of like or different nature beyond Talooma's reasonable control.

16. Dispute Resolution

16.1 A dispute concerning this Agreement exists once a Party notifies the others in writing of the nature of the dispute and requires it to be resolved under this clause. The Parties must refer any dispute to be resolved by: • negotiation; failing which • mediation; failing which • arbitration.

16.2 Within ten business days of notification, the Parties must seek an amicable resolution to the dispute by referring it to designated and authorised representatives of each of the Parties to negotiate and resolve it by the Parties signing an agreement resolving it within 15 business days.

16.3 If negotiation fails, the Parties must refer the dispute for resolution by mediation under the rules of the Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its stead) ("AFSA").

16.4 If mediation fails, the Parties must refer the dispute within 15 business days for resolution by arbitration (including any appeal against the arbitrator's decision) by one arbitrator (appointed by agreement between the Parties) as an expedited arbitration in Johannesburg under the then current rules for expedited arbitration of AFSA. If the Parties cannot agree on any arbitrator within a period of ten business days after the referral, the arbitrator will be appointed by the Secretariat of AFSA.

16.5 The periods for negotiation or mediation may be shortened or lengthened by written agreement between the Parties.

16.6 This clause will not preclude any Party from access to an appropriate court of law for interim relief in respect of urgent matters by way of an interdict, or mandamus pending finalisation of this dispute resolution process, for which purpose the Parties irrevocably submit to the jurisdiction of a division of the High Court of the Republic of South Africa. This clause is a separate, divisible agreement from the rest of this Agreement and must remain in effect even if the Agreement terminates, is nullified, or cancelled for any reason or cause.

16.7 Any award made by the arbitrator

- (i) will be final and binding,
- (ii) will be carried into effect, and
- (iii) may be made an order of any Court to whose jurisdiction the Parties are subject.

16.8 This clause constitutes an irrevocable consent by the Parties to any proceedings and no Party may withdraw or claim that it is not bound by this clause.

17. Exclusion and Limitation of Liability

17.1 Talooma (and its directors, employees, agents, consultants or advisers) are not liable for any indirect, extrinsic, special, penal, punitive, exemplary or consequential loss or damage (whether arising, or may arise out of (or the use of) the Services, under contract, delict including negligence or gross negligence or otherwise), sustained by the Customer (its directors or servants), including any loss of profits, loss of operation time, corruption or loss of information, loss of contracts, or loss of profits.

17.2 Talooma's total liability to the Customer will accordingly be limited to the payment of direct damages only, which direct damages will be limited to a maximum amount of

- (i) three months of the Customer's base hosting fee or
- (ii) R2,500, whichever is the lesser.

17.3 Talooma's liability for direct damages under clause 17.2 will be excluded where the liability results or may result from the Customer's use of any third party services or products accessible or used in conjunction with the Services, but which are not provided by Talooma.

17.4 This clause will apply even if Talooma may have been advised of the possibility of the loss or damage being incurred prior to its occurrence

18. Notices

18.1 Addresses: All notices to Talooma, whether in respect of court process, notices or other documents or communications, must be given to Talooma at Ground Floor, The Business Centre, 8 Gembok Lane, Rivonia, South Africa.

18.2 All notices that Talooma is required to give may be given via e-mail to the e-mail address furnished to Talooma on the application form when the Customer first subscribed for the Services.

18.3 Notice or communication to be in writing: Any notice or communication required or permitted to be given under this Agreement will be valid and effective only if in writing.

18.4 Requirements for notices by the Customer: Any notice from the Customer to Talooma

- (i) sent by prepaid registered post will be deemed to have been received,
- (ii) delivered by hand will be delivered during ordinary business hours at the physical address and will be deemed to have been received on the day of delivery.

19. General

19.1 Whole Agreement: The Agreement constitutes the entire agreement between the Parties in respect of its subject matter. Each Party will only be bound by any undertakings, representations, warranties, or promises recorded in the Agreement.

19.2 No Variation: No variation, consensual cancellation, or addition to the Agreement will be of any force or effect unless reduced to writing and signed by the Parties or their duly authorised representatives.

19.3 Waiver: No waiver of any of the terms of the Agreement will be binding or effectual for any purpose unless expressed in writing and signed by the Party giving the waiver, and any the waiver will be effective only in the specific instance and for the purpose given. No failure or delay by either Party in exercising any right, power, or privilege will operate as a waiver, nor will any single or partial exercise of any right, power, or privilege preclude any other or further exercise of any other right, power, or privilege.

19.4 Severability: If any term is held to be invalid, unlawful, or unenforceable, the term will be severable from the remaining terms, which will continue to be valid and enforceable. If any term held to be invalid is capable of amendment to render it valid, the Parties will negotiate an amendment to remove the invalidity.

19.5 Applicable Law: The Agreement will be governed by and construed in accordance with the law of the Republic of South Africa and all related disputes, actions, and other matters will be determined in accordance with that law.

19.6 Survival: Despite termination of the Agreement, any clause, which, from the context, contemplates ongoing rights and obligations of the Parties, will survive the termination and continue to be of full force and effect.