



Jasco
Communications
Standard Terms
for the
Supply of Solutions

1 Definitions and Interpretation

- 1.1 In the Agreement:
- 1.1.1 “Acceptance Criteria” means the criteria agreed to between the Parties against which the Solution is to be measured.
 - 1.1.2 “Acceptance Test(ing)” means the testing of the Solution, undertaken by the Company, with or without the assistance or participation of the Customer in order to determine whether the Solution meets the set Acceptance Criteria.
 - 1.1.3 “Agreement” between the Parties comprises these Terms as well as any other written agreements, including but not limited to, accepted Quotations, SLA’s, MSA’s and Credit Applications.
 - 1.1.4 “Business Day” means any day other than a Saturday, Sunday or official public holiday of the Republic of Kenya.
 - 1.1.5 “Company” means Jasco Communications Limited (registration number: CPR/2013/100698), a company duly registered in accordance with the laws of Kenya.
 - 1.1.6 “Component” means any tangible or intangible item purchased by the Customer as part of a Solution and as identified in a Quotation.
 - 1.1.7 “Confidential Information” shall include, *inter alia*;
 - 1.1.7.1 Corporate Information - all and any information, whether or not recorded in documentary form or on computer disk, relating to the business, business methods, corporate plans, management systems, finances, customer details, maturing new business opportunities or research and development projects of the Disclosing Party;
 - 1.1.7.2 Data - any and all data relating to customers, telematics data and any other data that may from its nature be deemed confidential;
 - 1.1.7.3 Intellectual Property Information - all intellectual property pertaining to all software, firmware, algorithms, trademarks, patents, design rights, copyrights, trade names, trade secrets, passwords, secret codes, proprietary information, technology, rights and licenses, proprietary rights and processes, whether registered or not, know-how, research and development in progress and any and all other intellectual property, including, without limitation, all things authored, discovered, developed, made, perfected, improved, designed, engineered, devised, acquired, produced, conceived and first reckoned to practice by the Disclosing Party as a result of or in connection with its business;
 - 1.1.7.4 Marketing Information - all and any information, whether recorded in documentary form or on computer disk or tape, relating to the marketing of any past, present or future product or service including, without limitation, targets and statistics, market share statistics, marketing surveys and plans, market research reports, advertising and promotional material, the names, addresses, telephone numbers, contact names and identities of customers (existing and future), the nature of its business operations and requirements) and other information, whether or not recorded in documentary form or on computer disk or tape, to which attaches an equivalent level of confidentiality; and
 - 1.1.7.5 any other information which is identified as confidential, could reasonably be expected to cause harm or risk to the Company and any other information designated by the Company as confidential or which is manifestly confidential.
 - 1.1.8 “Credit Application” means a written request for an extension of credit using the latest approved Company template.
 - 1.1.9 “Customer” means the purchaser of the Solution from the Company.

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- 1.1.10 “Customer Data” means Customer’s data (including personal data), text, recorded messages and/or voice conversations transmitted via the Services and any financial information.
 - 1.1.11 “Disclosing Party” means the Party disclosing its Confidential Information to the Receiving Party.
 - 1.1.12 “Document(s) or Documentation” means any drawings, manuals and other printable or electronic media.
 - 1.1.13 “Group of Companies” means any entity where the majority of the shares are owned by the ultimate shareholder of the Party.
 - 1.1.14 “Losses” means all losses, damages, costs, claims, judgments and penalties.
 - 1.1.15 “MSA” means the Managed Services Agreement, which covers the customer specific service deliverables, including but not limited to the solution coverage, geographic location/s, on-site services, service response, escalations and agreed deliverables.
 - 1.1.16 “OEM” means the Original Equipment Manufacturer whose components are used as components in the products of another company, which then sells the finished item or solution to users. OEM also includes independent software vendors specializing in making and selling software, designed for mass or niche markets, or Software as a Service providers.
 - 1.1.17 “OEM agreements” means any agreements between the Company and any OEM related to any Component of the Solution provided to the Customer, including but not limited to, support agreements, services, software as a service, software licensing and end-user agreements.
 - 1.1.18 “Parties” means the Company and the Customer and “Party” means, as the context requires, either one of them.
 - 1.1.19 “Premises” means the agreed place of deployment of the Solution.
 - 1.1.20 “Quotation” means a written quotation (or proposal), Service Level Agreement or Managed Services Agreement prepared by the Company and provided to the Customer for the supply of the Solution(s) including delivery and installation location.
 - 1.1.21 “Receiving Party” means the Party receiving any information regarding the Disclosing Party.
 - 1.1.22 “Rejection” means written notification from the Customer to the Company that the Solution has failed to meet their Acceptance Criteria, specifying the grounds of failure.
 - 1.1.23 “Services” means the services agreed to be rendered by the Company to the Customer.
 - 1.1.24 “SLA” means the Service Level Agreement covering the customer specific service deliverables, including but not limited to the solution coverage, geographic location/s, on-site services, service response, escalations and agreed deliverables.
 - 1.1.25 “Solution” means a set of related Components, software programs and/or services including consulting, software customization, implementation SLA and MSA, sold as a single package or independently.
 - 1.1.26 “Standard Terms” means the terms and/or conditions for the supply of Solutions as per this document.
 - 1.1.27 “Subscription License” grants a non-transferable right-to-use license to a user for a defined term only and is not a perpetual license.
 - 1.1.28 “UAT” means the Customer’s User Acceptance Test(ing).
 - 1.1.29 “VAT” means Value Added Tax as defined within the Value Added Tax Act, 1991.
 - 1.1.30 “VPN” means Virtual Private Network.
 - 1.2 If any provision in a definition confers rights, or imposes obligations on any Party, effect is given to it as a substantive provision of the Agreement.

- 1.3 Unless the context indicates otherwise an expression, which denotes any gender includes all others; reference to a natural person includes a juristic person; the singular includes the plural, and the plural includes the singular.
- 1.4 Any number of days prescribed in the Agreement excludes the first day and includes the last day and any relevant action or notice validly done or given on the last day.
- 1.5 Unless the context indicates otherwise if the day for payment of any amount or performance of any obligation falls on a day which is not a Business Day, that day will be the preceding Business Day.
- 1.6 The words “including” and “in particular” are without limitation.
- 1.7 Any reference to a document or instrument includes the document or instrument as ceded, delegated, novated, altered, supplemented or replaced from time to time.
- 1.8 A reference to a Party includes that Party’s successors-in-title and permitted assigns.
- 1.9 The rule of interpretation that, in the event of ambiguity, the Agreement must be interpreted against the Party responsible for the drafting of the Agreement, does not apply.
- 1.10 The termination of the Agreement does not affect those of its provisions which expressly provide that they will operate after termination, or which must continue to have effect after termination, or which must by implication continue to have effect after termination.
- 1.11 No statement, recommendation, figure, advice, formula, specification, illustration, diagram, price list, dimension, weight, performance estimate, drawing or any other representation given by the Company to the Customer shall form part of the Agreement or be construed as a representation including the Agreement unless contained in writing in the Quotation.
- 1.12 The Parties warrant that they have the necessary power and authority to conclude the Agreement.

2 Duration of the Agreement

- 2.1 The Agreement commences on written acceptance by the Customer of the first Quotation, and endures until fulfilment of the Parties’ obligations, unless terminated earlier, as per Clause 18 (*Breach and Termination*) and in accordance with the said Agreement.
- 2.2 Quotations are open for acceptance by the Customer in writing within 30 days after the date of the Quotation.

3 Order of precedence

- 3.1 Where any of the provisions of a Quotation shall be found to conflict with or differ from the provisions of these Standard Terms, the provisions of the Quotation shall prevail.
- 3.2 If Quotations in respect of the same Solutions conflict, the one agreed by the Parties later in time prevails.

4 Supply of Solutions

- 4.1 Unless otherwise agreed in writing, the Customer must take delivery of the Solution at the agreed location as indicated in the Quotation. The Customer agrees that a change in the agreed location constitutes a material change to the Solution that has an effect on delivery time, implementation time, price, service levels and service functionality capability.
- 4.2 The Customer must take delivery of the Solution when delivery is tendered by the Company.
- 4.3 Should the Customer delay the delivery, implementation or acceptance of the Solution for any reason, the Company will be entitled to invoice the Customer for any costs incurred by the Company resulting from the delay, including but not limited to labor hours, labor rate increases, standby allowances, administration costs and the time value of money for any payments made by the Company to third parties in connection with the Customer, calculated at the rate of two percent (2%) above the fluctuating prime bank overdraft lending rate, published by Central Bank of Kenya.
- 4.4 The Company does not guarantee delivery on any specific date, but will endeavor to give delivery on the dates as agreed. Notwithstanding any time or date for delivery stipulated by the Customer,
 - 4.4.1 the Company shall not be liable for any Losses arising from delays in delivery or failure to deliver for any reason whatsoever, and
 - 4.4.2 neither shall such delay or failure entitle the Customer to cancel the Agreement.
- 4.5 The Customer shall, at its own expense, prepare its environment in accordance with the Company's installation instructions and procedures and such preparation shall be completed at least 72 hours prior to the agreed delivery date.
- 4.6 The Customer shall bear all the costs for any electrical, structural or non-structural alterations required in its environment and the purchase, installation and assembly of inter alia any emergency electrical power generating equipment or disaster recovery equipment, required.
- 4.7 The Customer shall render every assistance necessary and ensure access as may be reasonably required to enable the Company to effect a speedy installation.
- 4.8 The Customer shall ensure that the technical and operational staff of the Company has access via an Internet based VPN to the Customer's environment to facilitate remote servicing and troubleshooting during project and subsequent support phases.
- 4.9 The Company will supply the Solution as described, and in the quantities as specified in the Quotation to the Customer. Where required, all hardware, software, hypervisors, virtual servers, operating systems, or other systems that were not included as part of the bill of materials stipulated, as being supplied by the Company, shall be supplied by the Customer.
- 4.10 Any hardware, software, licenses, activation fees and non-service related components of the Solution will be invoiced on delivery or prior to activation thereof.
- 4.11 Unless otherwise agreed, OEM Agreements will initiate upon delivery or activation of the relevant hardware, software and licenses and will be invoiced thereupon.
- 4.12 The balance of the order price will be invoiced on acceptance or first commercial use of the Solution, unless acceptance or first commercial use is delayed due to factors outside the Company's control, in which case the balance will be invoiced immediately.
- 4.13 The Customer acknowledges that the Solution installed or delivered is subject to the OEM Agreements as updated from time-to-time and explicitly agrees to adhere to these. Upon request by the Customer, the Company will provide a copy of the then-current applicable OEM Agreements to the Customer.

5 Price

- 5.1 The Customer will pay the price for the Solution stated in the Quotation, subject to any adjustments under Clauses 4.3, 5.2, 5.4, 5.6 and 6.4. The Company will give written notice of any increase in price of the Solution prior to delivery of the Solution.
- 5.2 The Company reserves the right to increase the price of the Solution annually and will provide notification of such increase to the Customer by no less than 30 calendar days prior to the effective date of the increase.
- 5.3 All prices and charges set out or referred to in the Quotation, are exclusive of VAT payable in terms of the Value Added Tax Act, 2013, as amended and any other rates, taxes, duties, charges or imposts which may be or become payable thereon. Accordingly, the Company shall be entitled to add VAT at the prescribed rate, to the value of any supply made by it in terms of this Agreement and, should any VAT or other rates, taxes, duties, charges or imposts be or become payable on any amount or price set out in this Agreement, such amount shall be increased with an amount equal to the amount of such VAT or such other rate, tax, duty, charge or impost payable in respect thereof.
- 5.4 The Company shall be entitled to increase the price in respect of any local or foreign withholding or other taxes or charges, which the Customer is required to withhold.
- 5.5 Prices quoted are valid for the Solution as indicated in the Quotation only. The applicable price will be adjusted as a result of any changes to the Solution as requested by the Customer. A new Quotation or variation Quotation, reflecting the changes to the request, must be accepted by the Customer in writing prior to any delivery or further delivery of the Solution.
- 5.6 Where the price given in the Quotation is subject to exchange rate variations, the Company will as soon as possible after receipt of the Customer's accepted Quotation, obtain forward cover for a defined period, for any change in the rate of exchange. The rate at which such cover is obtained will be used to calculate the final price of the Solution and the Customer will be advised of the final price promptly thereafter.
- 5.7 In adjusting the price pursuant to Clause 5.6, the Company shall be obliged to disclose to the Customer only the amount subject to the variation and the rate of exchange. The Customer shall not be entitled to receive other information relating to the cost or price analysis of the Solution sold.
- 5.8 Should any further forward cover for any rate of exchange variances be required to be taken beyond the cover period procured by The Company, due to any factors outside of the control of the Company or as a result of the Customer's failure to make payment on or before the agreed date of payment, the associated costs and penalties shall be invoiced to the Customer and the Customer indemnifies the Company for any losses incurred or monies paid for such additional cover.
- 5.9 If the Customer disputes the Company's right to adjust the price of its Solutions or the amount of any adjustment, the dispute will be resolved subject to Clause 22 (*Dispute Resolution*).
- 5.10 A certificate signed by the Company's auditors as to the amount of any increase shall be prima facie proof of the amount due to the Company and shall be binding upon both Parties.

6 Payment

- 6.1 If the Company's credit control procedure results in credit being granted to the Customer, payment is due within 30 days from the date of the Company's invoice.
- 6.2 Where any payment to be made by the Customer to the Company in terms of this Agreement falls due on a date, which is not a Business Day, then such payment shall be made on the business day immediately preceding such due date.
- 6.3 If the Company does not extend credit to, or withdraws credit from, the Customer, Solutions must be paid for in full, prior to or on the date of delivery.
- 6.4 If any amount due to the Company is not paid on the due date, the Company may suspend any of the Components in the Solution and the Customer will be liable to pay interest on the overdue amount at the rate of two percent (2%) above the fluctuating prime bank overdraft lending rate, published by Central Bank of Kenya, from time to time, calculated with effect from the due date of payment to the date of payment, both days inclusive on a daily basis, compounded monthly.
- 6.5 Should the Customer dispute the charge reflected as being payable by it in terms of any invoice furnished to it by the Company, the Customer shall, within 30 days of invoice date, deliver a notice in writing to the Company, containing details of such a dispute. The dispute will be resolved subject to Clause 22 (*Dispute Resolution*).
- 6.6 All payments shall be made to the Company by way of electronic funds transfer in USD currency (unless payment in another currency is specified) and free of the cost of transfer of funds, exchange, deduction or set-off into the Company's bank account as follows:

Name of bank:	CFC Stanbic
Branch name:	Chiromo Road, Nairobi
Swift Code:	SBICKENX
Account holder:	Jasco Communications Ltd.
Account number:	0100003674236

or in another method specified by the Company in writing.

- 6.7 The Parties agree that a statement of account issued by the Company, specifying the amount owing by the Customer to the Company and stating that the said amount is due and owing, shall be prima facie proof of the amount of such indebtedness.

7 Risk and Ownership

- 7.1 All risk of loss or damage to the Solution or any components thereof pass to the Customer on signed acceptance or the Customer signing a delivery note.
- 7.2 Notwithstanding this Clause 7 (*Risk and Ownership*), if delivery, or acceptance of any of the components of the Solution is delayed due to the fault, negligence or breach by the Customer of any of its obligations in terms of Clause 8 (*Acceptance of the Solution*), all risk of loss or damage to the specific components passes to the Customer on the date on which delivery is tendered by the Company. The Customer shall be liable to the Company for any resulting Losses and will reimburse the Company for its reasonable expenses, including storage charges, on demand.

- 7.3 Notwithstanding anything to the contrary in the Agreement, where ownership of Components of the Solution, by their nature, will pass to the Customer, ownership will be affected only on the Company's receipt of payment of the full price as quoted by the Company to the Customer.

8 Acceptance of the Solution

- 8.1 The Company and the Customer may agree to Acceptance Criteria applicable to the Solution. If no Acceptance Criteria are agreed then signature by the Customer for the acceptance of the Solution, will constitute acceptance in terms of these Standard Terms.
- 8.2 The Customer will give reasonable assistance required by the Company to properly undertake Acceptance Testing of the Solution.
- 8.3 The Customer will have ten (10) Business Days within which to perform any further UAT post the successful completion of the Acceptance Testing. Solutions will be deemed accepted if the Customer fails to give notice of its acceptance or Rejection of the Solution within the time permitted or uses the Solution in a commercial or production environment.
- 8.4 If the Customer rejects the Solution, it may
- 8.4.1 request the Company to remedy the faults within ten (10) Business Days or such longer period agreed to by the Parties. The Solution or any of its components will be re-submitted to the Customer for Acceptance Testing. Clauses 8.1 to 8.4 apply to the re-submission and further Acceptance Testing of the Solution until it has met the agreed Acceptance Criteria;
or
- 8.4.2 accept the Solution at a reduced charge by agreement with the Company.
- 8.5 Should a dispute arise in terms of the acceptance of the solution, the dispute will be resolved in terms of Clause 22 (*Dispute Resolution*).

9 Suspension and Repossession of Solutions

- 9.1 Subject to Clause 18 (*Breach and Termination*), if any amount due and payable by the Customer to the Company is in arrears, the Company shall have the right to, without prejudice, suspend Components of the Solution under the Agreement then in force between the Company and the Customer, until such amount has been paid in full.
- 9.2 The Company, in addition to any other remedies that it may have, shall have the right, which the Customer shall permit, to repossess any Components sold to the Customer and any written works produced as a result of rendering the Services in respect of which payment in full has not been received timeously.
- 9.3 If the Customer sells the Components before it has paid for them in full it shall be obliged to incorporate in the terms of such sale, provisions reserving ownership of the Components to the Company until the Company has received the purchase price in full and provisions enabling the Company to exercise its rights in terms of Clause 9.2 against the purchaser of such components. Written notice of the Company's rights must also be given to the landlord of any Premises on which the Components are situated. Copies of the sale agreements or notices to landlords must also be provided to the Company upon request.

10 Cancellation of OEM Agreements

- 10.1 The Customer will be invoiced for any costs, escalated by a 5% administration fee, levied by any OEM as a result of The Customer's early cancellation or termination of any Component.
- 10.2 Notwithstanding the provisions of Clause 6.1, any invoices raised as a result of early cancellation or termination will become due and payable immediately.
- 10.3 Cancellation terms for individual OEMs are available upon request.

11 Warranties

- 11.1 The Customer shall rely on the pass through warranty of the OEMs and shall have no recourse to the Company in respect of errors, defective or unsatisfactory Components and / or software.
- 11.2 The warranty given in this Clause 11 (*Warranties*) shall not apply to defects caused by abnormal usage of or incorrect application of or incorrect installation for normal usage of the components or by any neglect on the part of any person other than the Company. The warranty given in these conditions shall lapse and be of no force and effect if repairs to any allegedly defective components are attempted or effected by any person not authorized thereto in writing by the Company. If the Customer believes that the Components are subject to a defect covered by this warranty it shall, if possible, return the components at its own expense to the Company.
- 11.3 If there is any defect in materials or workmanship covered by the warranties referenced in this Clause 11 (*Warranties*), the Company may either remedy such defect or reimburse the Customer the net invoice price of the components.
- 11.4 Should it transpire that the components are not defective or that the defects are not covered by this warranty, the Customer shall pay the Company for its Services rendered according to the Company's standard tariff of charges applicable at the time the Services are rendered.
- 11.5 Save as set out in the Agreement, no warranty or guarantee applies in respect of the Solution supplied by the Company and the Company's sole liability shall be in terms of the Agreement.

12 Support and Maintenance

- 12.1 The Company shall not be liable to carry out any service, maintenance or repair work on any of the components supplied and/or the Services rendered save as may be provided for in, and in terms of an SLA / MSA entered into between the Parties.

13 Confidentiality

- 13.1 The Parties agree to disclose Confidential Information to one another to the extent deemed necessary or desirable by each of them in their sole discretion.
- 13.2 The Parties acknowledge that the Confidential Information is a proprietary, special, and unique asset to the Disclosing Party.

- 13.3 The Parties agree that neither them nor any of their employees will, at any time, disclose the Confidential Information to any third party for any reason or purpose whatsoever without the prior written consent of the Disclosing Party, save as in accordance with the provisions of this Agreement.
- 13.4 The Receiving Party will not use the Confidential Information for any purpose other than that for which it is disclosed in connection with the Solution, complying with their obligations under this Agreement, or as otherwise permitted by the Disclosing Party in writing in accordance with the Agreement.
- 13.5 Notwithstanding anything to the contrary contained in this Agreement the Parties agree that the Confidential Information may be disclosed by the Receiving Party to its professional advisors, agents, employees and consultants on a need-to-know basis; provided that the Receiving Party takes whatever steps are necessary to procure that such professional advisors, agents, employees and consultants agree to abide by the terms of this provision to prevent the unauthorized disclosure of the Confidential Information to any third party.
- 13.6 The Parties acknowledge and agree that the unauthorized disclosure or use of the Confidential Information by a third party may cause irreparable loss, harm and damage to the Disclosing Party and accordingly the Receiving Party indemnifies and holds the Disclosing Party harmless against any loss, action, expense, claim, harm or damage of whatsoever nature, suffered or sustained by the Disclosing Party pursuant to a breach by the Receiving Party of any of the provisions of the undertakings set out herein.
- 13.7 The obligations of the Parties shall not apply to any Confidential Information that:
 - 13.7.1 is known, or in the possession of the Receiving Party prior to the disclosure thereof by the Disclosing Party;
 - 13.7.2 is or becomes publicly known, otherwise than pursuant to a breach of this Agreement by the Receiving Party;
 - 13.7.3 is developed independently of the Disclosing Party by the Receiving Party in circumstances that do not amount to a breach of the provisions of this Agreement;
 - 13.7.4 is disclosed by the Receiving Party to satisfy an order of court of competent jurisdiction or to comply with the provisions of any law or regulation in force from time to time; provided that in the circumstances, the Receiving Party shall advise the Disclosing Party to take whatever steps it deems necessary to protect its interests 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 endeavors to protect the confidentiality of such information to the widest extent possible in the circumstances;
 - 13.7.5 is disclosed to a third party pursuant to the prior written authorization of the Disclosing Party;
 - 13.7.6 is received from a third party in circumstances that do not result in a breach of the provisions of this Agreement.
- 13.8 Upon termination of this Agreement for whatever reason, the Parties shall return to the other Party, all Confidential Information as well as all relevant confidential documentation in their possession.
- 13.9 The contents, existence and the scope of this Agreement is Confidential Information.
- 13.10 The Parties will not acquire any rights in respect of Confidential Information.
- 13.11 The Parties will receive and use Confidential Information in such a way as to reasonably prevent any unauthorized access to it.

- 13.12 Without prejudice to any rights of the Disclosing Party arising from the unauthorized disclosure of its Confidential Information, if a Party becomes aware that Confidential Information has been disclosed contrary to the terms of the Agreement, that Party must immediately:
- 13.12.1 inform the other Party in writing specifying what Confidential Information has been disclosed, how and to whom it has or may have been disclosed, when the unauthorized disclosure took place and what steps will be taken to retrieve the Confidential Information and prevent future unauthorized disclosures;
 - 13.12.2 take such steps as are necessary or as the other Party directs to retrieve the Confidential Information from unauthorized persons and to prevent further unauthorized disclosure of the Confidential Information; and
 - 13.12.3 cooperate with the other Party in taking any steps necessary to retrieve the Confidential Information from unauthorized persons and to prevent further disclosure of the Confidential Information.
- 13.13 Upon the request of the Disclosing Party, the Receiving Party will return, destroy or expunge from any storage device all Confidential Information (other than documents prepared for the Customer) provided that, if required by law or for purposes of using the Solution, the Receiving Party may retain one copy of the Confidential Information for the period so required.
- 13.14 Where the Company has required destruction of the media containing Confidential Information the Customer must, on request, confirm in writing that it has destroyed all Confidential Information and made reasonable efforts to expunge Confidential Information stored electronically from any storage device on which it was held.
- 13.15 All requests in terms of Clauses 13.13 and 13.14 must be complied with within five (5) Business Days.

14 End-Users

- 14.1 The Company shall be entitled at any time to deal directly with any person to whom the Customer has sold or ordinarily sells or hopes to sell any Solution, if in the Company's absolute discretion, it considers that it is necessary to do so to protect any of its rights (whether in terms of any Agreement or not), including its reputation.

15 Intellectual Property Rights

- 15.1 All rights and interest in intellectual property in the Solution, any adaptation, development or modification thereof, and any discoveries connected therewith, whether by the Company or the Customer shall vest in the Company or its licensors.
- 15.2 The Customer will not acquire any rights or interest in intellectual property in the Solution save as stated in the Agreement.
- 15.3 The Company grants to the Customer a royalty-free, non-transferable license to use, and to permit its contractors to use, any intellectual property embedded or incorporated in the Solution and/or written works developed, created or designed as a result of rendering Services. This license extends to other Company Intellectual Property made available to the Customer under an Agreement where the Company does not ordinarily require a specific license agreement to be concluded in respect thereof or a to be paid for such license. The Customer may use, and permit its contractors to use, the Company's Intellectual Property solely for its internal business purposes. This clause will survive termination of any other terms of the Agreement.

- 15.4 If any Intellectual Property rights in the Solution are found to be registerable or patentable, the Company will be entitled to file applications for such registrations in its name in whichever country it chooses and the Customer shall, if and when so required by the Company, and at the expense of the Company, apply for or join in applying for a patent or such other registered protection as may be appropriate, on behalf of the Company and will execute all documents and do all things necessary for vesting the protection and all rights, title and interest in respect of the Intellectual Property rights to the Company or in such other person as the Company may specify, absolutely and as sole beneficial owner.
- 15.5 The Customer agrees not to:
- 15.5.1 license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make the Solution, or any Component of the Solution, available to any third party in any way;
 - 15.5.2 copy, reproduce, vary or modify the software in the Solution, or any Component of the Solution, in any way whatsoever nor may the Customer communicate or offer such software to any third party;
 - 15.5.3 decompile, reverse compile, disassemble or print the source code nor derive nor attempt to derive the source code of the software used in the Solution.
 - 15.5.4 modify or make derivative works based upon the components of the Solutions;
 - 15.5.5 create unauthorized access to the Solution or frame or mirror any content on any other device; or
 - 15.5.6 reverse-engineer the Solution.

16 Indemnity

- 16.1 The Customer indemnifies the Company against all Losses suffered (including costs on the attorney and own client scale) arising out of any:
- 16.1.1 breach by the Customer of Clause 13 (*Confidentiality*) or 15 (*Intellectual Property Rights*);
 - 16.1.2 infringement of intellectual property which takes place as a result of the Company following any instructions given to it by the Customer; or
 - 16.1.3 Losses arising from use of the Solution rendered by the Company to the Customer, suffered by the Customer or a third party, after Acceptance of the Solution.

17 Force Majeure

- 17.1 Save for payments due from the Customer to the Company, either Party shall not be responsible for its failure to perform any obligation under the Agreement in the event that such failure is caused by force majeure.
- 17.2 For the purposes of the Agreement, “force majeure” shall mean any circumstance which:
- 17.2.1 is beyond the reasonable control of the Party and for which it is not responsible; and
 - 17.2.2 is not a circumstance which the Party could, by the implementation of a standard of care and skill which could reasonably be expected of the Party, have avoided.

- 17.3 Subject to the above, force majeure includes but is not limited to war (whether declared or not), revolution, invasion, insurrection, riot, civil commotion, mob violence, sabotage, blockade, embargo, boycott, the exercise of military or usurped power, fire, explosion, theft, storm, flood, drought, wind, lightning or other adverse weather condition, epidemic, pandemic, quarantine accident, breakdown of machinery or facilities, strike, lockout or labor dispute, acts or restraints of government imposition, or restrictions of or embargoes on imports or exports.
- 17.4 Notwithstanding the provisions of Clause 17.2, a labor dispute, strike or lockout, which could be resolved by the Party acceding to the demands of it, shall be deemed an event of force majeure.
- 17.5 The Party shall give notice to the other Party of an event of force majeure within 5 (five) Business Days.
- 17.6 If the event of force majeure, the Party giving notice of such event of force majeure shall be entitled to such extension of time in which to perform such obligation as may be reasonable in the circumstances, taking into account the interests of both Parties, provided that if the force majeure situation persists for a period in excess of ninety days, the Party shall be entitled upon notice to the other to terminate the Agreement.
- 17.7 The Customer is not entitled to recover any damages that it may suffer because of premature termination in terms of this Clause 17 (*Force Majeure*).

18 Breach and Termination

- 18.1 Should any Party (“Defaulting Party”) breach any of the provisions of this Agreement, then the other Party (“Aggrieved Party”) may give the Defaulting Party 30 (thirty) days’ written notice or such longer period as the Aggrieved Party may specify in the notice, to remedy the breach. If the Defaulting Party fails to comply with the notice, the Aggrieved Party may:
- 18.1.1 claim immediate payment and/or performance by the Defaulting Party of all of the Defaulting Party’s obligations that are due for performance; or
- 18.1.2 subject to these Clauses 18.3 and 18.4, cancel the Agreement upon written notice to the Defaulting Party where the breach constitutes a material breach, in either event without prejudice to the Aggrieved Party’s right to claim damages or to exercise any other rights that the Aggrieved Party may have under the Agreement or in law.
- 18.2 Either Party shall be entitled to cancel the Agreement by written notice to the other Party and/or claim immediate payment of any monies due from any cause arising, notwithstanding any earlier agreement for credit, if:
- 18.2.1 the Customer fails to pay any amount due to the Company under this or any other Agreement on the due date thereof; or
- 18.2.2 the other Party is sequestered or placed in liquidation or under judicial management whether provisionally or finally; or
- 18.2.3 the other Party commits any act of insolvency; or
- 18.2.4 the other Party enters into any compromise with his creditors; or
- 18.2.5 the other Party fails to satisfy, take on appeal or on review any judgment granted against him within 7 days after the date of judgment.
- Any cancellation is without prejudice to any claim that the Company may have in respect of any breach of the Agreement by the Customer arising prior to the date of cancellation.
- 18.3 In the event that any Agreement or part thereof is terminated by either Party, all amounts payable by the Customer to the Company for the remainder of the term of

that Agreement in effect as of the effective date of the termination shall immediately be due and payable.

19 Limitation of liability

- 19.1 The Company's liability shall be limited to 30% of the relevant amounts paid by the Customer under the Quotation, or 30% of the annual SLA price received from the customer over the preceding 12 (twelve) month period, or R 2 000 000, whichever is the lesser, for direct losses or damage suffered by the Customer arising from delict or negligence by the Company.
- 19.2 Notwithstanding this Clause 19.1 (*Limitation of liability*), neither Party shall be liable for any indirect or consequential losses whatsoever suffered by the other Party.

20 Legal Charges

- 20.1 In the event of the Company instructing its attorneys to recover money or the Solution or components of the Solution from the Customer, the Customer shall be liable for and shall pay all legal costs incurred by the Company on an attorney and own client scale including collection commission and tracing agents' charges.

21 No Relaxation

- 21.1 No relaxation which either Party may give at any time in regard to the carrying out of any of the obligations in terms of any Agreement shall prejudice or be a waiver of any of that Party's rights in terms of that or any other Agreement.

22 Dispute Resolution

- 22.1 Any dispute arising from or in connection with the Agreement, its breach, termination or cancellation must be resolved in terms of this Clause 22 (*Dispute Resolution*).
- 22.2 Disputes must be referred to senior executives of each Party with settlement authority as soon as possible for attempted resolution. The Parties' senior executives must attempt to resolve the dispute as speedily as possible and will meet as often as necessary to do so, not later than 14 days from the date when the dispute has been declared. Any settlement must be recorded in writing and signed by authorized persons on behalf of each Party. The senior executives will have failed to resolve the dispute when either Party declares this to be the case.
- 22.3 If the senior executives do not resolve the dispute, the dispute will be resolved by way of mediation at the instance of either Party.
- 22.4 The mediation will be held, subject to the provisions of the Agreement, with only the Parties, their legal representatives, arbitrator/s and any witnesses who may be called to give evidence present and otherwise in accordance with the Rules of the Chartered Institute of Arbitrators-Kenya Branch in the first instance.
- 22.5 If the dispute is not resolved through mediation, either party may submit the dispute to the Kenyan courts of law.
- 22.6 Nothing contained in the Agreement will preclude either Party from obtaining urgent or interim relief on an urgent basis from a court of competent jurisdiction.
- 22.7 This Clause 22 (*Dispute Resolution*) constitutes each Party's irrevocable consent to mediation proceedings, and no Party may withdraw from such proceedings or claim that it is not bound by this clause.
- 22.8 The Parties will continue to perform their respective obligations under the Agreement pending the resolution of a dispute, it being agreed that neither Party may, without the

agreement of the other, terminate the Agreement based on the issues under dispute until the dispute is finally resolved.

23 Applicable law and jurisdiction

- 23.1 Kenyan law governs the Agreement.
- 23.2 The Parties unconditionally consent and submit to the non-exclusive jurisdiction of the High Court of Kenya with regard to all matters arising from the Agreement.

24 Errors and Omissions

- 24.1 Subject to the terms of the Agreement, neither Party hereto shall be prejudiced in any way by inadvertent errors or omissions made by such Party in connection with this Agreement provided such errors and omissions are corrected promptly in writing following discovery thereof. Upon the discovery of an inadvertent error or omission by either Party hereto, appropriate adjustments shall be made as soon as practicable to restore the Parties, to the fullest extent possible, to the position they would have been in had no such inadvertent error or omission occurred.

25 General

- 25.1 The Agreement as defined in Clause 1 (*Definitions and Interpretation*) above is the whole agreement between the Parties in regard to its subject matter.
- 25.2 No addition to or variation or consensual cancellation of the Agreement, including this clause, has effect unless in writing and signed by the Parties.
- 25.3 Any purchase order terms provided by the Customer are invalid and hereby rejected. Acceptance of an order and/or purchase order by the Company shall not constitute acceptance of such terms provided on a purchase order from the Customer and/or any other communication medium from the Customer to the Company.
- 25.4 The Parties undertake to do everything reasonable in their power necessary for or incidental to the effectiveness and performance of the Agreement.

- 25.5 Save as is specifically provided in the Agreement, no Party is entitled to cede any of its rights or delegate any of its obligations under the Agreement, unless to any Group of Companies the Party has a direct or indirect legal, beneficial or equitable ownership of more than 50% of the aggregate shareholder voting rights, without the prior written consent of the other Party affected by the transfer of rights or obligations, which consent shall not be unreasonably withheld.
- 25.6 Any illegal or unenforceable provision of the Agreement may be severed, and the remaining provisions of the Agreement continue in force.
- 25.7 The Agreement may be executed in counterparts, each of which will be an original and which together constitute the same agreement.

26 Notices and addresses

- 26.1 Any notice, consent, approval or other communication in connection with the Agreement will be in writing in English.
- 26.2 The Customer chooses the physical address and/or email address corresponding to its name on the Quotation as the address to which any notice must be sent (domicilium citandi et executandi).
- 26.3 The Company chooses the physical address of Jasco Communications Ltd., Westcom Point Building, 9th Floor, Mahiga Mairu, Westlands, Nairobi, Kenya as the address to which any notice must be sent (domicilium citandi et executandi).
- 26.4 Any Party may, by notice to the other Party, change its address and/or the person, if any, for whose attention any notice must be marked.
- 26.5 Any notice takes effect when received by the recipient (or on any later date specified in the notice) and, unless the contrary is proved, is deemed to be received:
 - 26.5.1 on the day of delivery, if delivered by hand to a responsible person at the recipient's physical address. If delivery is not on a Business Day, or is after ordinary business hours on a Business Day, the notice is deemed to be received on the Business Day after the date of delivery;
 - 26.5.2 on the first Business Day after the date of transmission, if sent by email to the recipient's email address.
 - 26.5.3 Despite anything to the contrary in the Agreement, a notice actually received by a Party is effective even though it was not sent, or delivered, or sent and delivered to its address.