

## AGREEMENT BETWEEN CANVAS AND TENT (PTY) LTD AND THE CLIENT FOR THE PURCHASE AND MAINTANCE OF GOODS

### 1. IMPORTANT NOTICE

- 1.1 Where reference is made to the CPA in terms and conditions of this Agreement those terms and conditions will only apply to consumers as defined for the purposes of the CPA. Clients that are not consumers for purposes of the CPA are not entitled to the benefits of such terms and conditions.
- 1.2 By signing or initialling this Agreement the Client agrees to the terms and conditions contained in this Agreement. If there is any provision in this Agreement that the Client does not fully understand, please ask for an explanation before signing. Should the Client be a Consumer of the Goods, then the Reseller shall bring the contents of this Agreement to the Consumer's attention.
- 1.3 This Agreement contains certain terms and conditions which appear in similar text style to this clause and which
- 1.3.1 may limit the risk or liability of Canvas and Tent or a Third Party;
- 1.3.2 may create risk or liability for the Client;
- 1.3.3 may compel the Client to indemnify Canvas and Tent or a Third Party; and/or
- 1.3.4 serves as an acknowledgement, by the Client, of a fact.
- 1.4 The Client's attention is drawn to these terms and conditions because they are important and should be carefully noted.
- 1.5 Nothing in this Agreement is intended to or must be understood to unlawfully restrict, limit or avoid any rights or obligations, as the case may be, created for either the Client, a Third Party or Canvas and Tent in terms of the CPA.

### 2. DEFINITIONS

- 2.1 "Acceptance", "Accepts" or "Accepted" has the meaning detailed in clause 7 below;
- 2.2 "Additional Services" means any additional services, installations or goods and/or value-added services to be provided to the Client by Canvas and Tent, which is not included in the Maintenance Service;
- 2.3 "Agreement" means this agreement together with all annexures and schedules hereto, as may be amended from time to time;
- 2.4 "Business Day" means any day other than a Saturday, Sunday or public holiday;
- 2.5 "Client" means a Consumer, Reseller or person or legal entity who Accepts an quotation of Canvas and Tent for the sale of the Goods, Additional Services or Maintenance Services or whose order for the Goods, Additional Services or Maintenance Services is Accepted by Canvas and Tent;
- 2.6 "Confidential Information" means any information or data of any nature, tangible or intangible, oral or in writing and in any format or medium, which by its nature or content is identifiable as confidential and/or proprietary to the Disclosing Party and/or any third party, or which is provided or disclosed in confidence; and which the Disclosing Party, or any person acting on its behalf, may disclose or provide to the Receiving Party or which may come to the knowledge of the Receiving Party by whatsoever means, but specifically

excluding information or data which (i) is lawfully in the public domain at the time of disclosure thereof; (ii) subsequently becomes lawfully part of the public domain by publication or otherwise; (iii) becomes available from a source other than one of the Parties which is lawfully entitled without any restriction on disclosure to disclose such Confidential Information; and (iv) is disclosed pursuant to a requirement or request by operation of law, regulation or court order, provided that in these circumstances, (a) the Receiving Party shall advise the Disclosing Party in writing prior to such disclosure to enable the Disclosing Party to take whatever steps it deems necessary to protect its interest in this regard; (b) the Receiving Party will disclose only that portion of the information which it is legally required to disclose; and (c) the Receiving Party will use its reasonable endeavours to protect the confidentiality of such information to the widest extent possible in the circumstances;

- 2.7 "CPA" means the Consumer Protection Act, 68 of 2008 and the regulations to the Consumer Protection Act, 68 of 2008 (as amended from time to time);
- 2.8 "Consumer" means a person or legal entity that buys the Goods from the Reseller. For clarity purposes, when this Agreement refers to a "consumer" then such will refer to a person or entity as defined in the CPA.
- 2.9 "Disclosing Party" means a Party that discloses Confidential Information;
- 2.10 "Intellectual Property" means any know-how (not in the public domain), invention (whether or not patented), design, trade mark (whether or not registered), or copyright material (whether or not registered), goodwill, processes, process methodology and all other identifiably or similar intellectual property as may exist anywhere in the world and any applications for registration of such intellectual property;
- 2.11 "Insurance" shall mean an arrangement by which a Third Party undertakes to provide a guarantee of compensation for specified loss, damage, illness, or death, due to the Goods, in return for payment of a specified premium.
- 2.12 "Losses" means all losses, liabilities, costs, expenses, fines, penalties, damage, damages and claims and all related costs and expenses (including legal fees on the scale as between attorney and own client, tracing and collection charges, costs of investigation, interest and penalties);
- 2.13 "Maintenance Service" or "Maintenance" shall mean the required maintenance or maintenance services for the specified Goods for preserving the condition or the state of the Goods in accordance with the specifications or general accepted standards published on the Website by Canvas and Tent.
- 2.14 "Canvas and Tent" shall mean Canvas and Tent (Pty) Ltd a private company, duly incorporated in terms of the Companies Act 71 of 2008, with registered place of business as set out in the "Contact Information" section in this Agreement and shall include any affiliate business, company or subsidiary including, but not limited to Weatherhaven RCS and Tents Direct.
- 2.15 "Price" shall mean the selling price that the Client accepts on the quote or order that which may include

- the Goods, Additional Services, Maintenance Service, delivery, installation and Insurance. Should the Goods be sold to a Consumer by a Reseller, then the price shall be the price which the Consumer paid to the Reseller.
- 2.16 "Receiving Party" means the Party that receives disclosure of any Confidential Information;
- 2.17 "Reseller" means a person or legal entity, or a Third Party acting on behalf of the Reseller, that purchases the Goods, Additional Services or Maintenance Services with the intention of reselling them to a Consumer;
- 2.18 "Goods" means the quality, quantity and description of the goods, as defined in the order or quotation after Acceptance or the goods that the Consumer purchased from the Reseller.
- 2.19 "Signature Date" means the date on which the last party signs this Agreement and the date on which this Agreement becomes operative;
- 2.20 "Staff" means any employee, independent contractor, agent, consultant, sub-contractor or other representative of Canvas and Tent;
- 2.21 "the Parties" means the parties to this Agreement, being Canvas and Tent and the Client;
- 2.22 "Third Party" means a person, legal entity, contractor or entity other than a Party;
- 2.23 "VAT" means Value Added Tax as levied under the Value Added Tax Act, No. 89 of 1991 (as amended); and
- 2.24 "Web Site" means <http://www.canvasandtent.co.za>;
- 3. SALE OF GOODS**
- 3.1 Canvas and Tent shall sell and the Client shall purchase the Goods after Acceptance, at the Price reflected on the order or quotation. Should there be any inconsistency between the Price reflected on the order and the quotation then the Price on the order shall apply.
- 3.2 The Client shall be responsible for ensuring the accuracy of the information provided to Canvas and Tent, or any Third Party, necessary to establish the requirements and specifications of the Goods being sold to the Client.
- 3.3 If the Goods are to be manufactured or any process is to be applied to the Goods by Canvas and Tent in accordance with a specification submitted by the Client, the Client shall indemnify Canvas and Tent against any Losses.
- 3.4 Canvas and Tent reserves its right to make any changes in the specifications of the Goods which are required in order to conform to any applicable statutory or regulatory requirements, which will not materially affect the quality or performance of the Goods.
- 4. THE PRICE OF THE GOODS**
- 4.1 All Prices quoted are valid for 7 (seven) days only, unless otherwise specified, or until earlier Acceptance by the Client, after which time they may be altered by Canvas and Tent without giving notice to the Client.
- 4.2 Canvas and Tent reserves the right, by giving notice to the Client at any time before delivery and/or installation, to increase the Price of the Goods to reflect any increase in the cost to Canvas and Tent which is due to any factor beyond the control of Canvas and Tent such as any change in delivery dates, quantities or specifications for the Goods which is requested by the Client, or any delay caused by any instructions of the Client or failure of the Client to give Canvas and Tent adequate information or instructions.
- 4.3 The Price shall be exclusive of VAT.
- 4.4 Manufacturing of any products or Goods will only commence once the Client signed and approved the specifications and drawings relating to such product or Goods.
- 5. TERMS OF PAYMENT**
- 5.1 Subject to any special terms agreed in writing between Canvas and Tent and the Client, Canvas and Tent shall be entitled to invoice the Client for the Price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Client or the Client wrongfully fails to take delivery of the Solar Goods, in which event Canvas and Tent shall be entitled to invoice the Client for the Price at any time after Canvas and Tent has notified the Client that the Goods is ready for collection or (as the case may be) Canvas and Tent has tendered delivery of the Goods.
- 5.2 The Client shall pay the Price before delivery and installation of the Goods.
- 5.3 If the Client agreed to make payment of the Price on a due date, and fail to do so, then, without prejudice to any other right or remedy available to Canvas and Tent, they shall be entitled to:
- 5.3.1 cancel the contract or suspend any further deliveries, installation, Additional Services or Maintenance Services;
- 5.3.2 appropriate any payment made by the Client to such of the Goods as a reasonable cancellation charge; and
- 5.3.3 charge the Client interest (both before and after any judgment) on the amount unpaid, at the rate of four per cent per annum above Barclays Bank Plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest)
- 6. DELIVERY AND INSTALLATION**
- 6.1 Delivery of the Goods shall be made by Canvas and Tent at the Clients premises if agreed to by Canvas and Tent. Canvas and Tent will notify the Client of the anticipated date of installation and delivery of the Goods not less than 5 (five) Business Days prior to such installation and delivery date.
- 6.2 Any dates quoted for delivery and/or installation of the Goods are approximate only and Canvas and Tent shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence for this Agreement unless previously agreed by Canvas and Tent in writing.
- 6.3 The Client will grant Canvas and Tent reasonable access to the Client's premises to enable Canvas and Tent or its agents, as the case may be, to install and or deliver the Goods
- 6.4 The Client will, to the extent relevant, ensure that a representative is available at its premises on the date on which the installation is to commence in order to co-operate with the installation process.
- 6.5 Where the Goods is to be delivered in instalments, each delivery shall constitute a separate contract and failure by Canvas and Tent to deliver any one or more of the instalments in accordance with this Agreement or any claim by the Client in respect of any one or more instalments shall not entitle the Client to treat the Agreement as a whole as repudiated.

- 6.6 If Canvas and Tent fails to deliver the Goods (or any instalment) for any reason other than any cause beyond its reasonable control or the Client's fault, and the Client is deemed to be a consumer in terms of the CPA, then Canvas and Tent is accordingly liable to the Client, however, Canvas and Tent's liability shall be limited to the excess (if any) of the cost to the Client (in the cheapest available market) of similar goods to replace those not delivered.
- 6.7 If the Client fails to take delivery and/or installation of the Goods or fails to give Canvas and Tent adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Client's reasonable control or by reason of Canvas and Tent's fault) then, without prejudice to any other right or remedy available to Canvas and Tent, Canvas and Tent may store the Goods until actual delivery and charge the Client for the reasonable costs (including Insurance) of storage.
- 6.8 Canvas and Tent shall comply with general accepted standards and practices relating to the installation of the Goods.
- 7. ACCEPTANCE**
- 7.1 The Client shall sign a confirmation of acceptance of the Goods upon delivery and/or installation of the Goods.
- 7.2 Should the Consumer purchase the Goods from a Reseller, then the Consumer shall be deemed to have accepted ("**Acceptance by Consumer**") the Goods on the date of the purchase from the Reseller. The Reseller shall ensure that the Consumer is aware of the contents of this Agreement and that all provisions of this Agreement are brought under the Consumers attention.
- 7.3 The Client shall be deemed to have accepted the Goods ("**Acceptance**"):
- 7.3.1 where completion of installation and delivery is signed off by the Client, as evidenced by a duly completed "Sign Off Letter"; or
- 7.3.2 where the Client accepts the quotation or order for the Goods; or
- 7.3.3 by paying any deposit, in cash or kind, to Canvas and Tent for the Goods, Additional Services or any other products or services.
- 7.4 Acceptance may not be cancelled by the Client except with an agreement in writing by Canvas and Tent, and the Client shall indemnify Canvas and Tent in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Canvas and Tent as a result of cancellation.
- 7.5 Subject to clause 7.4, Acceptance may be cancelled in accordance with the CPA if the Client is a consumer. In which case the provisions of the CPA shall apply to the cancellation of the Acceptance.
- 7.6 Should the Acceptance by a Consumer be cancelled or if the Goods are returned to the Reseller, for whatever reason, then the Reseller shall be liable for any costs incurred by Canvas and Tent due to the cancellation of the Acceptance, return of the goods or any Losses suffered by Canvas and Tent.
- 8. RISK AND PROPERTY**
- 8.1 Risk of damage to or loss of the Goods shall pass to the Client:
- 8.1.1 in the case of the Goods to be delivered at Canvas and Tent 's premises, at the time when Canvas and Tent notifies the Client that the Goods is available for collection; or
- 8.1.2 in the case of the Goods to be delivered otherwise than at Canvas and Tent's premises, at the time of delivery or, if the Client wrongfully fails to take delivery of the Goods, the time when Canvas and Tent has tendered delivery of the Goods, unless the Client is a consumer, as defined in the CPA, then the provisions of the CPA shall apply.
- 8.2 Notwithstanding delivery and the passing of risk for the Goods, or any other provision of this Agreement, the property rights in the Goods shall not pass to the Client until Canvas and Tent has received in cash or cleared funds payment in full of the Price and all other goods agreed to be sold by Canvas and Tent to the Client for which payment is then due.
- 8.3 Until such time as the property rights in the Goods passes to the Client, the Client shall hold the Goods separate from the property of the Client and Third Parties and properly stored, protected and insured and identified as Canvas and Tent's property.
- 8.4 Until such time as the property rights in the Goods passes to the Client, Canvas and Tent shall be entitled at any time to require the Client to deliver up the Goods to Canvas and Tent and, if the Client fails to do so forthwith, to enter upon any premises of the Client or any Third Party where the Goods are stored and repossess the Goods.
- 8.5 The Client shall not be entitled to pledge or in any way charge by way of security for any indebtedness the Goods which remain the property of Canvas and Tent, but if the Client does so all moneys owing by the Client to Canvas and Tent shall (without prejudice to any other right or remedy of Canvas and Tent) forthwith become due and payable.
- 9. INSOLVENCY OR NON PAYMENT**
- 9.1 This clause applies if:
- 9.1.1 the Client makes any voluntary arrangement with its creditors or (being an individual or legal entity) becomes bankrupt or (being an legal entity) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction);or
- 9.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Client; or
- 9.1.3 the Client ceases, or threatens to cease, to carry on business; or
- 9.1.4 Canvas and Tent reasonably apprehends that any of the events mentioned above is about to occur in relation to the Client and notifies the Client accordingly; or
- then, without prejudice to any other right or remedy available to Canvas and Tent, it shall be entitled to cancel the Agreement and/or suspend any Maintenance Services or Additional Services under this Agreement without any liability to the Client, and if the Goods have been delivered and installed but not fully paid for, the Price shall become immediately due and payable notwithstanding any previous agreement arrangement to the contrary.
- 10. ADDITIONAL SERVICES**
- 10.1 Canvas and Tent may, at the request of the Client, provide the Client with some Additional Services.
- 10.2 The Client acknowledges that Additional Services will be provided to the Client, if available and subject to



the Client accepting a written quote or order for the Additional Services.

## 11. INSURANCE

- 11.1 Unless the quote or order of the Client states otherwise, the Client shall at all material times during the existence of this Agreement, have Insurance against any physical or indirect damages or Losses that might occur to the Goods or due to the use of the Goods.
- 11.2 Canvas and Tent may at any time request proof of such Insurance from the Client. Failure of the Client to provide such proof within 7 days from the date of the written request shall be deemed to be a material breach of this Agreement.
- 11.3 To avoid any ambiguity, this clause shall be applicable to a Reseller but will not be applicable to a Consumer.

## 12. RESELLERS DUTIES

- 12.1.1 The Reseller shall at all material times comply with the provisions of the CPA.
- 12.1.2 Except as authorised by Canvas and Tent, the Reseller shall not act in a way which will incur any liabilities, whether directly or indirectly, on behalf of Canvas and Tent.
- 12.1.3 The Reseller shall not act in any way that is prejudicial to the goodwill of Canvas and Tent.
- 12.1.4 The Reseller shall promptly inform Canvas and Tent of any complaint or after-sales inquiry by a Consumer or any Third Party.
- 12.1.5 Should any claim be instituted by a Consumer or other Third Party, flowing from a sale of the Goods by the Reseller, in respect of damage to property, death or personal injury arising from any fault or defect in the materials or workmanship of the Goods and any Losses, reasonable costs, claims, demands and expenses arising out of or in connection with that liability ("**Relevant Claim**"), then the Reseller shall immediately, after becoming aware of such a Relevant Claim:
- 12.1.5.1 Give notice to Canvas and Tent of such a Relevant Claim;
- 12.1.5.2 Afford access to Canvas and Tent to its premises and permit copies to be taken of any materials, records or documents as Canvas and Tent may require to defend the Relevant Claim;
- 12.1.5.3 Allow Canvas and Tent the exclusive conduct of any legal proceedings and take whatever action as Canvas and Tent shall direct to defend or resist the Relevant Claim, including the use of professional advisers nominated Canvas and Tent; and
- 12.1.5.4 Not admit any liability or settle the Relevant Claim without the prior written consent of Canvas and Tent.
- 12.1.6 The Reseller shall indemnify Canvas and Tent from any Losses or cost that may be incurred by Canvas and Tent, or any Third Party due to any non-compliance with the provisions of the CPA by the Reseller or any Relevant Claim that is due to any act or omission on the part of the Reseller.

## 13. EXCUSED PERFORMANCE

- 13.1 Canvas and Tent will be excused from performing any of its duties under this Agreement (including any

Maintenance Services and Additional Services) under circumstances (i) of force majeure; (ii) where the failure by Canvas and Tent to perform is as a result of the actions of or failure to act by the Client, or any Third Party appointed by the Client; and/or (iii) where such failure is as a result of circumstances beyond the reasonable control of Canvas and Tent ("**Excusable Event**"). In the event of the occurrence of an Excusable Event which results from the actions of or failure to act by the Client, or any Third Party appointed by the Client, Canvas and Tent will provide notice to the Client of the occurrence of an Excusable Event and the Client will be afforded a period of 5 (five) days ("**Remedial Period**") within which to remedy such actions or failure to act.

- 13.2 Upon the occurrence of an Excusable Event or, where the Client has failed to remedy its actions or failure to act as contemplated in clause 13.1 above, on the expiry of the Remedial Period, Canvas and Tent's failure to perform shall not be a breach of this Agreement and Canvas and Tent's obligation to perform shall be extended on a reasonable basis in proportion to the prejudice caused by the Excusable Event. Canvas and Tent shall be entitled to charge an hourly rate for any additional hours it requires to perform its duties affected by an Excusable Event which arises as a result of the actions of or failure to act by the Client, or any Third Party appointed by the Client.
- 13.3 Canvas and Tent will not be liable for any failure to fulfil any obligation or to provide the Remote Assistance, Maintenance Services or Additional Services in terms of this Agreement or for any Losses arising out of such failure, where such failure is a result of any Excusable Event.

## 14. NON-DISCLOSURE

- 14.1 The Parties shall hold in confidence all Confidential Information received from each other in terms of, or arising from this Agreement, and shall not divulge or permit the Confidential Information to be divulged to any person, save for officers, employees, consultants and professional advisors who have a need-to-know, provided that such officers, employees, consultants and professional advisors are required by agreement, instruction or otherwise to treat such Confidential Information in accordance with the terms and conditions of this Agreement prior to such disclosure.
- 14.2 The Receiving Party agrees:
- 14.2.1 not to disclose Confidential Information to any Third Party for any reason or purpose whatsoever without the prior written consent of the Disclosing Party;
- 14.2.2 not to utilise, employ, exploit or in any other manner whatsoever use Confidential Information for any purpose whatsoever other than strictly in relation to this Agreement; and
- 14.2.3 that the unauthorised or unlawful use or disclosure of Confidential Information may cause irreparable loss, harm and damage to the Disclosing Party.
- 14.3 The Receiving Party agrees to protect Confidential Information by using the same standard of care used to safeguard its own information of a confidential nature and by taking all reasonable steps to prevent any unauthorised disclosure of Confidential Information.
- 14.4 The Disclosing Party may, at any time by way of written notice to the Receiving Party, require the

Receiving Party to return or destroy any material containing, pertaining to or relating to Confidential Information and to irretrievably expunge such Confidential Information from any word processor, computer or other similar device into which it was entered or programmed, and may, in addition, require the Receiving Party to furnish a written statement (certified as correct by a director of the Receiving Party) to the effect that, upon such return, the Receiving Party has not retained in its possession, or under its control, either directly or indirectly, any such material. The Receiving Party will comply with all requirements in terms of this clause 14.4 within 7 (seven) days of receipt of written notice thereof.

14.5 Without limiting any other provision of this Agreement, the Client hereby undertakes and agrees that it will at all times, including during and after the term of this Agreement, keep all information relating to the Client's use of the Goods including any benchmarks, performance results and other information related to or arising from this Agreement and/or the Goods, confidential.

14.6 This clause 14 shall survive termination of this Agreement.

**15. MAINTENANCE**

15.1 The Client shall be responsible for the Maintenance of the Goods according to the specifications, general standards and accepted practices determined by Canvas and Tent.

15.2 Should Canvas and Tent agree to render Maintenance Services on behalf of the Client, at a price determined by Canvas and Tent, then Canvas and Tent shall comply with general accepted standards and practices relating to the Maintenance Services of the Goods.

15.3 Exclusions

15.3.1 This Agreement specifically excludes the repair of faults, or correction of faulty goods of the Goods that is not defined in the Maintenance Services.

15.3.2 The Maintenance Services to be provided by Canvas and Tent to the Client shall not include:

- 15.3.2.1 Any building or environmental work external to the Goods.
- 15.3.2.2 Maintenance Services rendered more difficult by changes or alterations in the original specifications of the Goods by the Client;
- 15.3.2.3 Re-installation, moving or removing of the Goods;
- 15.3.2.4 Repair of damage arising from any act, error, fault, neglect, misuse or omission of the Goods by the Client or any Third Party, whether that Third Party is under the control or direction or authority of the Client or not;
- 15.3.2.5 Repair of damage caused by electrical power or any other environmental factor;
- 15.3.2.6 Repair of damage caused by the operation of the Goods by any Third Party or the Client;
- 15.3.2.7 Repair of any damage caused by the operation of the Goods other than in

accordance with any specification, directions or recommendations by Canvas and Tent which has been published on the Website.

15.3.2.8 Maintenance Services of the Goods at a place other than the location of its delivery or installation, unless written consent has been obtained of Canvas and Tent, subject to any terms and conditions determined by Canvas and Tent.

15.3.2.9 Maintenance Services made more difficult by the Client's failure to comply with the provisions contained in this Agreement.

15.3.3 Should the Goods be damaged:-

- 15.3.3.1 Through deliberate or accidental misuse of the Client or any Third Party;
- 15.3.3.2 By lighting;
- 15.3.3.3 By floods;
- 15.3.3.4 By storms;
- 15.3.3.5 By any "acts of God"
- 15.3.3.6 By earthquakes, or earth tremors;
- 15.3.3.7 Goods installed, or services rendered, by a Third Party to the Goods;
- 15.3.3.8 Any circumstances not in the control of Canvas and Tent; or
- 15.3.3.9 Due to the Goods operating under environmentally adverse conditions; then

the repair will fall outside any guarantee or warranty in relation to the Goods and the Client will be charged on a time and material basis for the any services rendered by Canvas and Tent.

15.4 If, in the reasonable opinion of Canvas and Tent, the Goods has become obsolete, Canvas and Tent may:

- 15.4.1 Direct the Client to effect specified modifications or accept specified upgrades, including replacement, which shall be an additional cost to the Client;
- 15.4.2 Direct the Client as to the nature of and the costs of refurbishing, overhaul or other on-site or off-site Maintenance Services, which shall be an additional cost to the Client ; or

15.5 Client's obligations in relation to the Goods.

15.5.1 The Client undertakes to:

- 15.5.1.1 care and use the Goods in accordance with any specifications, manuals, documentation or instructions provided by Canvas and Tent and may only use the Goods for the purpose it was designed for.
- 15.5.1.2 To make any configuration changes in accordance with and within the specified limits supplied in writing by Canvas and Tent.
- 15.5.1.3 To co-operate with Canvas and Tent in diagnosing faults by carrying out any diagnostic fault testing or routines prescribed by Canvas and Tent, where appropriate.

## 16. INTELLECTUAL PROPERTY

- 16.1 The Goods consists of proprietary products or goods, in which all Intellectual Property rights are and shall remain the exclusive property of Canvas and Tent. The Client hereby expressly acknowledges and agrees it shall under no circumstances have any right, title or interest to the Intellectual Property, save as provided for in this Agreement.
- 16.2 For the avoidance of doubt, Canvas and Tent retains all Intellectual Property and any other proprietary rights in and to any customisation, modifications, enhancements and upgrades effected to the Goods, irrespective of whether such customisations, enhancements, modifications or upgrades were developed by the Parties or any Third Party.
- 16.3 The Client shall not during the term of this Agreement or thereafter, without the prior written consent of Canvas and Tent -
- 16.3.1 directly or indirectly, register any Intellectual Property forming part of the Goods, anywhere in the world;
- 16.3.2 directly or indirectly register or use any Intellectual Property confusingly similar to the Goods;
- 16.3.3 claim or seek to obtain any proprietary right in respect of the Goods;
- 16.3.4 incorporate and/or combine the Goods with any other intellectual property; and/or
- 16.3.5 alter or amend the Goods in any way.
- 16.4 The provisions of this clause 16 will survive termination of the Agreement.

## 17. BREACH

- 17.1 In the event of either of the Parties ("Defaulting Party") committing a breach of any of the terms of this Agreement and failing to remedy such breach within a period of 10 (ten) business days after receipt of a written notice from the other Party ("Aggrieved Party") calling upon the Defaulting Party so to remedy, then the Aggrieved Party shall be entitled, at its sole discretion and without prejudice to any of its other rights in law, either to claim specific performance of the terms of this Agreement or to cancel this Agreement without further notice, and in either case to claim and recover damages from the Defaulting Party.
- 17.2 The Parties agree that any costs awarded will be recoverable on an attorney-and client scale unless a Court specifically orders that such scale shall not apply.
- 17.3 Notwithstanding anything to the contrary contained herein, either Party will be entitled to terminate this Agreement immediately if the other Party -
- 17.3.1 takes steps to place itself, or is placed in liquidation, whether voluntary or compulsory or under judicial management in either case whether provisionally or finally where circumstances exist which would allow for the winding up of such Party in terms of the Companies Act, 2008 ;
- 17.3.2 takes steps to deregister itself or is deregistered;
- 17.3.3 commits an act which would be an act of insolvency as defined by the Insolvency Act, No. 24 of 1936 if committed by a natural person; and/or
- 17.3.4 commits an act of fraud.

- 17.4 Termination of this Agreement will not relieve a Party of obligations imposed upon such Party by statute or regulation or by this Agreement prior to its termination.

## 18. WARRANTY DISCLAIMER

- 18.1 Canvas and Tent gives no warranty and makes no representation of any kind, express or implied, regarding the Goods, the Additional Services or the Maintenance Services, including without limitation, as to the condition, quality, performance, merchantability or fitness for purpose save to the extent that it warrants that the Goods, Maintenance Service and Additional Services meet the requirements of section 54, 55, 56 and 57 of the CPA.
- 18.2 Canvas and Tent shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Client;
- 18.3 Canvas and Tent shall be under no liability in respect of any defect arising from fair wear and tear (other than that which is covered by the Maintenance Service), wilful damage, negligence, abnormal working conditions, failure to follow Canvas and Tent's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without Canvas and Tent's approval.
- 18.4 Canvas and Tent shall be under no liability if the total Price for the Goods has not been paid by the due date for payment.
- 18.5 It is the Client's responsibility to ensure that the facilities and functions of the Goods meet the Client's requirements.
- 18.6 Use of any Additional Services and Maintenance Services is entirely at the risk of the Client and shall at all times and for all purposes be strictly subject to the terms and conditions of this Agreement.

## 19. LIMITATION OF LIABILITY

- 19.1 Notwithstanding anything to the contrary in this Agreement, in the event that Canvas and Tent is found to be liable for any loss or damages suffered by the Client and/or any other person arising from this Agreement and/or any use of the Goods, such liability will to the maximum extent permissible in law, be limited to an amount equal to the Price in respect of the Goods paid by the Client to Canvas and Tent. Neither Party shall be liable to the other for any consequential damages, save in the event of (i) a breach of clause 13 above; and (ii) any claims or Losses for which the Client has indemnified Canvas and Tent.
- 19.2 The provisions of clause 19.1 will not apply where Canvas and Tent is liable for any loss or damage (i) attributable to the wilfull misconduct or gross negligence of Canvas and Tent, its Staff or authorised representatives; or (ii) due to any liability arising from section 61 of the CPA.

## 20. FORCE MAJEURE

A Party shall not be liable for a failure to perform any of its obligations in terms of this Agreement insofar as it is able to prove that such failure was due to an impediment beyond its reasonable control. For the purposes of this clause "impediment" does not include lack of authorisations, licenses, permits, or approvals necessary for the performance of this Agreement.

## 21. CESSION OF AGREEMENT

- 21.1 The Client may not cede, assign or otherwise transfer its rights and/or obligations under this Agreement without the prior written consent of Canvas and Tent.

- 21.2 Canvas and Tent shall be entitled to assign, cede, transfer, subcontract and dispose of in any other way any of its rights and/or obligations under this Agreement to any third party on 90 (ninety) Business Days' written notice to the Client to such effect.
- 22. WHOLE AGREEMENT**  
This Agreement comprises of the entire Agreement between the Parties in relation to its subject matter, supersedes all prior document exchanges relating to the Goods and may only be amended in writing under signature of both parties.
- 23. FAILURE TO ENFORCE RIGHTS**  
No extension of time or indulgence granted by either party to the other shall be deemed in any way to affect, prejudice or derogate from the rights of such party in any respect under this Agreement.
- 24. GENERAL**
- 24.1 This Agreement shall be construed and governed in accordance with the laws of the Republic of South Africa and the parties submit to the non-exclusive jurisdiction of the High Court of South Africa.
- 24.2 The Parties choose their respective addresses for receiving legal notices and other communications under this Agreement at the addresses set out under "**Contact Information**".
- 24.3 Any Party shall be entitled from time to time, by written notice to the other(s), to vary its address for receiving legal notices and other communications under this Agreement to any other address within the Republic of South Africa which is not a post office box or *poste restante*.
- 24.4 All notices given in terms of this Agreement shall be in writing and any notice given by any party to another ("the addressee") which:
- 24.4.1 is delivered by hand or transmitted by fax, shall be deemed to have been received by the addressee on the first working day after the date of delivery or transmission, as the case may be;
- 24.4.2 is posted by pre-paid registered post from an address within the Republic of South Africa to the addressee at its address identified in clause 24.2 for the time being shall be deemed to have been received by the addressee on the 7th (seventh) day after the date of such posting;
- 24.4.3 is delivered by e-mail shall be deemed to have been received by the addressee on the first working day after the date of sending.
- 24.5 Should any of the terms and conditions of this Agreement be held to be invalid, unlawful or unenforceable, such terms and conditions shall be severable from the remaining terms and conditions which shall continue to be valid and enforceable. If any term or condition held to be invalid is capable of amendment to render it valid, the Parties agree to negotiate an amendment to remove the invalidity.
- 24.6 No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this Agreement will be of any force or effect unless in writing and signed by the Parties.
- 24.7 Any provision of this Agreement which contemplates performance subsequent to any termination or expiration will survive any termination or expiration and will continue in full force and effect.
- 24.8 Each Party agrees that, in its respective dealings with the other Party under or in connection with this Agreement, it will act in good faith.
- 24.9 Each Party will bear and pay its own costs of or incidental to the drafting, preparation and execution of this Agreement.
- 25. ARBITRATION**
- 25.1 Any dispute, difference or question which may arise at any time hereafter between Canvas and Tent and the Client touching the true construction of this Agreement, or the rights and liabilities of the Parties hereto, shall, except as provided in clause 25.2 below, unless otherwise herein expressly provided, be referred to the decision of a single arbitrator in Pretoria to be agreed upon between the Parties or, in default of agreement for 14 (fourteen) days, to be appointed by the Chairperson of the Law Society of South Africa at the request of either Party in accordance with and subject to the provision of the Arbitration Act 42 of 1965 or any statutory modification or re-enactment thereof for the time being in force.
- 25.2 The decision of the arbitrator shall be final and binding on the parties and will parties will not have a right to appeal.

### **CONTACT INFORMATION**

	<b>Canvas and Tent</b>	<b>Client</b>
<b>Name:</b>	Canvas and Tent (Pty) Ltd	
<b>Registration No</b>	1996/14167/07	
<b>VAT number</b>		
<b>Attention:</b>	Mr L Bekker	
<b>Physical Address:</b>	11 Yellow Street, Ezakheni Industrial Park, LadySmith	
<b>Telephone:</b>	036 634 1904	
<b>Fax:</b>	036 634 1573	
<b>Email:</b>	louw@canvasandtent.co.za	
<b>Web Site:</b>	www.canvasandtentsa.com	

Dated at ..... on the ..... day of .....  
20\_\_.

As witnesses:

1. \_\_\_\_\_

2. \_\_\_\_\_

**CLIENT**

Per: \_\_\_\_\_

**Name:**

**Capacity:**

(who warrants that he/she is duly authorised thereto).

Dated at ..... on the ..... day of .....  
20\_\_.

As witnesses:

1. \_\_\_\_\_

2. \_\_\_\_\_

**CANVAS AND TENT**

Per: \_\_\_\_\_

**Name:**

**Capacity:**

(who warrants that he/she is duly authorised thereto).