TERMS OF USE

1. **DEFINITIONS**

1.1 For purposes of these Terms of Use:

1.1.1 "**Affiliate**" means with regard to either Party, any legal entity which that Party Controls, which Controls that Party, or which is under common Control with that Party, and which enters into these Terms of Use;

1.1.2 "**Client**" means the Client (or any Affiliate) that has entered into these Terms of Use, the SaaS and Services Agreement and any Service Order, and where such Client or Affiliate is defined as "User", Subscriber", "Customer" or any other designation in the SaaS and Service Agreement and / or the Service Order, the term Client shall include reference to such reference to User, Client or other designation;

1.1.3 "**Control**" means owning more than 50% of the issued share capital or having the legal power to direct or cause the direction of the general management and policies of the company in question;

1.1.4 "**Documentation**" means any technical, instructional or supplementary material related to the MagicOrange Solution, including manuals and on-line files;

1.1.5 "**Effective Date**" means the Signature Date;

1.1.6 "**Force Majeure Event**" means, in respect of a Party, any circumstances beyond its reasonable control, including without limitation, flood, fire, earthquake, war, tempest, hurricane, industrial action, government restrictions, failures of the internet or any public telecommunications network, hacking attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures or acts of God;

1.1.7 "**Intellectual Property Rights**" includes all current and future intellectual property rights of any kind whatsoever and however embodied which may subsist or be capable of protection wheresoever in the world, including (without limitation) patents, trademarks, present and future rights of copyright, moral rights, rights in and to designs, rights in and to inventions, topography rights, rights in and to trade secrets, rights in and to trade names, business names, domain names and logos, the right to keep information confidential and private, rights in and to know-how, rights in and to databases (including rights of extraction), and all rights and forms of protection of a similar nature or having equivalent effect to any of them which may subsist or be capable of protection at any time wheresoever in the world, whether or not any of these is registered and including applications for any such rights or registration thereof and any goodwill related to or arising from such rights;

1.1.8 "**MagicOrange**" means MagicOrange (Pty) Ltd (registration number 2011/135028/07), a company incorporated in accordance with the laws of South Africa and, where required, shall include its Affiliates;

1.1.9 "**MagicOrange API**" means the application programming interface, as written by MagicOrange, which allows a third-party system to interface with the MagicOrange Solution, to perform a variety of functions and includes any associated Documentation;

1.1.10 "**MagicOrange IP**" means any and all Intellectual Property Rights that MagicOrange has created, acquired or otherwise has rights in and may, in connection with the MagicOrange Solution and/or the performance by MagicOrange of its obligations under these Terms of Use, employ, provide, modify, create or otherwise acquire rights in;

1.1.11 **"MagicOrange Solution"** includes:

1.1.11.1 the Software;

1.1.11.2 the Website;

1.1.11.3 the MagicOrange API, if applicable;

1.1.11.4 all Upgrades and Updates thereto; and

1.1.11.5 any related Documentation;

1.1.12 "**Parties**" means MagicOrange and the Client, collectively and "**Party**" means either one of them individually, as the context requires;

1.1.13 "**Partners**" means third party consultancy business appointed by MagicOrange that implements the MagicOrange Solution and contracts directly with the Client;

1.1.14 "**Personnel**" means, in respect of a Party any director, employee, agent, consultant, contractor or other representative of that Party;

1.1.15 "**SaaS and Services Agreement**" means the agreement entered into between the Client and MagicOrange (or any Affiliate of either of them), or the Client and a Partner, pursuant to which the Client appoints MagicOrange to provide certain web-based and other professional services;

1.1.16 "**Service Orders**" means a services or work order or scope of works of similar document agreed to and signed by both Parties regulating the specific terms relating to a SaaS and Services Agreement, including any schedules or annexures thereto;

1.1.17 "**Signature Date**" means the date of signature of the SaaS and Services Agreement or Service Order, whichever occurs first, by the relevant party signing such document last;

1.1.18 "**Software**" means the solution or software owned and/or licensed by MagicOrange which it uses for the purpose of providing the MagicOrange Solution;

1.1.19 "**Specifications**" means the functional and/or technical specifications of the MagicOrange Solution as published by MagicOrange from time to time;

1.1.20 "**Term**" means the subscription, license or right of use term or any other similar designation describing the duration of appointment or other arrangements, as set out in the SaaS and Services Agreement and / or the Service Order;

1.1.21 "**Terms of Use**" means these terms and conditions of use and includes any schedules, annexures, exhibits and attachments hereto;

1.1.22 "**Updates**" means corrections, bypasses or revisions to the MagicOrange Solution which at MagicOrange's sole determination add no functionality to the MagicOrange Solution;

1.1.23 "**Upgrade**" means a modification to the MagicOrange Solution which increases the functionality or changes the technology or version of the technology of the MagicOrange Solution;

1.1.24 "**User**" means a duly authorized member of the Client's Personnel with a unique logon to the MagicOrange Solution;

1.1.25 "**User Parameters**" means (i) the requirement that the MagicOrange Solution may be used only for Client's internal business purposes to manage Client's information technology or other shared services resources, and (ii) any other limitations on Client's use of the MagicOrange Solution specified in the applicable Service Order or such limitations as prescribed by MagicOrange from time to time;

1.1.26 "**Website**" means the website(s) at such domain(s) as may be designated by MagicOrange from time to time which provides the Client and its Users with access to the MagicOrange Solution.

1.2 Headings and sub-headings are inserted for information purposes only and shall not be used in the interpretation of these Terms of Use.

1.3 Whenever a term is followed by the word "including" or "include" or "excluding" or "exclude" and specific examples, the examples shall not limit the ambit of the term.

1.4 Any reference to:

1.4.1 "sign" means the handwritten signature, electronic signature or other electronic confirmation of acceptance and "signed", "signing" and "signature" shall have a corresponding meaning; and

1.4.2 "writing" means any mode of reproducing information or data in physical and electronic form, and "written" and "write" shall have a corresponding meaning

1.5 References to any enactment shall be deemed to include references to the enactment as re-enacted, amended or extended from time to time.

1.6 References to persons shall include natural and juristic persons and references to either Party shall include the Party's successors or permitted assigns.

1.7 Unless otherwise stated in these Terms of Use, when any number of days is prescribed in these Terms of Use the first day will be excluded and the last day included, unless the last day falls on a day that is not a business day, in which event the last day shall be the next business day.

1.8 Expressions defined in these Terms of Use shall bear the same meanings in Service Orders, unless otherwise stated therein. Where any term is defined within the context of any particular clause in these Terms of Use, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of, notwithstanding that the term has not been defined in clause 0 of these Terms of Use.

1.9 The rule of construction that an agreement shall be interpreted against the Party responsible for its drafting or preparation shall not apply.

2. STATUS OF THESE TERMS OF USE

2.1 These Terms of Use are incorporated by reference to the SaaS and Services Agreement and each Service Order. By signing such Service Order, the User agreed to be bound by these Terms of Use.

2.2 These Terms of Use will and the Client's written consent to the Terms of Use will govern the Client's current and all future SaaS and Services Agreements and Service Orders and may not be amended in accordance with these Terms of Use.

2.3 Insofar as the meaning of any term or condition in a schedule or annexure to the SaaS and Services Agreement or a Service Order or any other document referred to in the SaaS and Services Agreement or a Service Order, excluding these Terms of Use, conflicts with the meaning of the body of the SaaS and Services Agreement or relevant Service Order, the meaning of the terms and conditions in the body of the SaaS and Services Agreement or relevant Service Order, as the case may be, shall prevail.

3. DURATION

3.1 These Terms of Use shall commence on the Effective Date and shall remain in force until there are no Service Orders in operation, unless terminated earlier pursuant to these Terms of Use.

3.2 Any mutually executed document that serves to effectively renew any then-current Term are included in the definition of Service Order as that term is used hereunder. Each Service Order will be effective until the completion of the work thereunder, or as may be otherwise provided in the Service Order.

4. RIGHT OF USE

4.1 Subject to the terms and conditions of these Terms of Use, MagicOrange grants to Client a limited, worldwide, non-exclusive, non-transferable right, without right of sub-license, during the Term, to use the MagicOrange Solution in accordance with the User Parameters. The Client's right to use the MagicOrange Solution is limited by and subject to applicable law.

4.2 MagicOrange reserves to itself all rights to the MagicOrange Solution not expressly granted to Client in accordance with these Terms of Use.

4.3 The Client:

4.3.1 accepts the use rights granted to it in terms of this clause;

4.3.2 acknowledges that it will only access and use the MagicOrange Solution in accordance with the terms of these Terms of Use;

4.3.3 shall take commercially reasonable measures to ensure that no malicious software is introduced into the MagicOrange Solution or any other MagicOrange system by its Personnel or any third party;

4.3.4 is authorised to access and use the MagicOrange Solution only within the User Parameters;

4.3.5 shall use reasonable efforts to prevent any unauthorised use of the MagicOrange Solution, and will promptly notify MagicOrange in writing of any unauthorised use that comes to Client's attention and provide all reasonable cooperation to prevent and terminate such use; and

4.3.6 acknowledges that it obtains no rights of ownership of the MagicOrange Solution whatsoever; and

4.3.7 shall have no entitlement to the MagicOrange Solution after termination of these Terms of Use and agrees to fully indemnify MagicOrange, its Affiliates, Partners and Personnel from any claims that may arise from Users arising from such termination.

4.4 The Client shall not, without the prior written consent of MagicOrange:

4.4.1 modify, translate or create derivative works based on the MagicOrange Solution, nor reverse assemble, decompile or reverse engineer the MagicOrange Solution, whether in whole or in part, or otherwise attempt to derive the source code, underlying ideas, algorithms, file formats or programming of the MagicOrange Solution, nor shall it permit, whether directly or indirectly, any third party to do so;

4.4.2 except to the extent provided for in the SaaS and Services Agreement, a Service Order or these Terms of Use, merge or combine the whole or any part of the MagicOrange Solution with any other software or documentation;

4.4.3 grant any third party besides the Client's Personnel access to the MagicOrange Solution, including by way of lease, download, as an application or bureau service provider or any other method;

4.4.4 use the MagicOrange Solution to provide a service to any third party similar to any services provided by MagicOrange pursuant to the SaaS and Services Agreement;

4.4.5 lend or transfer the MagicOrange Solution or any part thereof to any third party;

4.4.6 except to the extent provided for in the SaaS and Services Agreement, a Service Order or these Terms of Use, sub-license or otherwise transfer the use of the MagicOrange Solution, whether in whole or in part, to any third party; or

4.4.7 remove, delete or obscure any copyright, trademark or other marks or proprietary notices associated with or generated by the MagicOrange Solution.

4.5 In respect of the Client's Users, the Client shall:

4.5.1 procure each User's adherence to the conditions of these Terms of Use; and

4.5.2 at all times remain solely liable for the acts and omissions of such Users as if they were the acts and omissions of the Client.

4.6 MagicOrange reserves the right forthwith to suspend or terminate the access to the MagicOrange Solution (either in whole or in part) to any User in the event of a default or breach by such User of these Terms of Use, or if at any time the User ceases to be a User as defined.

5. USE OF MAGICORANGE API

5.1 The Client acknowledges that, if Client data is loaded into or from the MagicOrange Solution this will be done via the MagicOrange API (unless otherwise agreed between the Client and MagicOrange), and the Client is granted access to the MagicOrange API in order to facilitate the Client's ability, subject to these Terms of Use, to upload and download the Client's own data. The Client may use the MagicOrange API solely for the purpose of uploading or downloading data to the MagicOrange Solution.

5.2 For the purposes of giving effect to clause 5.1:

5.2.1 the Client shall:

5.2.1.1 not use or access the MagicOrange API in any way that, in MagicOrange's judgment, adversely affects the performance or function of the MagicOrange API or interferes with the ability of authorised parties to access the MagicOrange API; and

5.2.1.2 undertake, at its cost, all technical work required (including developing or modifying any computer software, code or data) in order to integrate with the MagicOrange API and such integration shall be tested to the satisfaction of both Parties prior to being made available to the Client's Users.

5.2.2 MagicOrange shall:

5.2.2.1 make available the MagicOrange API (including any Documentation) to the Client to allow integration with the MagicOrange Solution as set out in clause 5.2.1.1; and

5.2.2.2 assist with the testing of the standard MagicOrange API to ensure that the Client is able to upload or download data to or from the MagicOrange Solution into the Client's platform.

6. CHANGE OF MAGICORANGE SOLUTION

6.1 MagicOrange agrees to provide the Client with reasonable notice of any changes to the MagicOrange Solution on a best efforts basis. To that end, wherever possible, MagicOrange agrees to notify the Client of any minor changes to the MagicOrange Solution at least 2 days before the proposed changes and to notify the Client of any major changes to the MagicOrange Solution at least 7 days before the proposed changes.

6.2 If required by the Client and agreed to by MagicOrange in writing, additional support may be provided by MagicOrange to the Client in respect of the management and implementation of changes resulting from clause 6.1, and/or in respect of old versions of the MagicOrange Solution, on such terms and conditions as may be agreed between the Parties in writing.

6.3 MagicOrange agrees to supply the Client with sufficiently detailed Documentation covering any such changes.

7. MAGICORANGE WARRANTIES

7.1 MagicOrange warrants that:

7.1.1 it is entitled to and has the rights necessary to grant the rights and licenses in relation to the MagicOrange Solution contemplated in these Terms of Use; and

7.1.2 throughout the currency of these Terms of Use, the MagicOrange Solution will substantially comply with the Specifications when used in accordance with the Documentation and the terms of these Terms of Use.

7.2 MagicOrange warrants further that:

7.2.1 MagicOrange has the legal right and full power and authority to execute and deliver, and to exercise MagicOrange's rights and perform MagicOrange's obligations under, these Terms of Use; and

7.2.2 MagicOrange and its Personnel will not knowingly introduce any malicious software into the Client's systems.

7.3 MagicOrange hereby excludes and disclaims all warranties, whether expressed or implied, statutory or otherwise, except those warranties expressly made in these Terms of Use, including (1) any implied warranties of satisfactory quality, no latent defects, merchantability and fitness for a particular purpose; (2) all warranties in respect of the accuracy of any information obtained, accessed or provided through the MagicOrange Solution; (3) any warranties that the Software will be accessible at any given time, uninterrupted, or error-free; and (4) all warranties in respect of third-party software applications provided pursuant to these Terms of Use.

8. CLIENT WARRANTIES

The Client warrants that:

8.1.1 it has not been induced to enter into these Terms of Use by any prior representations, warranties or guarantees (whether oral or in writing), except as expressly contained in these Terms of Use and signed by the Parties;

8.1.2 by entering into these Terms of Use the Client is not acting in breach of any agreement to which the Client is a party;

8.1.3 it will, in using the MagicOrange Solution, at all times (i) comply with all applicable laws and (ii) not infringe on any third party's Intellectual Property Rights,

and the Client hereby indemnifies and holds MagicOrange harmless from any claim for damages by any third party as a result of the breach of these warranties, including all legal costs incurred on an attorney-and-own-client basis.

9. **INTELLECTUAL PROPERTY**

9.1 All right, title and ownership of any code, forms, algorithms, methodologies, frameworks or materials developed by or for MagicOrange or the Client independently and outside of these Terms of Use and provided during the course of these Terms of Use ("**Existing Material**") shall remain the sole property of the Party providing the Existing Material.

9.2 MagicOrange has created, acquired or otherwise obtained rights in the MagicOrange IP and notwithstanding anything contained in these Terms of Use, MagicOrange will own all right, title and interest, including all rights under all copyright, patent and other intellectual property laws, in and to the MagicOrange IP.

9.3 To the extent that the Client utilises any MagicOrange IP in connection with MagicOrange's performance under these Terms of Use, the MagicOrange IP shall remain the property of MagicOrange and the Client shall acquire no right or interest therein.

10. **INTELLECTUAL PROPERTY INFRINGEMENT**

10.1 MagicOrange will defend the Client and its Personnel (the "**Indemnified Parties**") against any claims made by an unaffiliated third party against the Indemnified Parties that the MagicOrange Solution infringes its patent, design, copyright or trade mark and will pay the amount of any resulting adverse final judgment (or settlement to which MagicOrange consents). MagicOrange will reimburse the Indemnified Parties with all costs reasonably incurred by the Indemnified Parties in connection with assisting MagicOrange with the defence of the action. The Indemnified Parties shall promptly notify MagicOrange of the claim in writing and MagicOrange shall have sole control over its defence or settlement.

10.2 Should any third party succeed in its claim for the infringement of any Intellectual Property Rights, MagicOrange shall, at MagicOrange's discretion and within 30 days of the infringing item having been found to so infringe:

10.2.1 obtain for the Client the right to continue using the infringing item or the parts which constitute the infringement;

10.2.2 replace the infringing item or the parts which constitute the infringement with another product which does not infringe and which in all respects operates substantially in accordance with its specifications;

10.2.3 alter the infringing item in a way as to render it non-infringing while still in all respects operating substantially in accordance with its specifications; or

10.2.4 withdraw the infringing item.

10.3 MagicOrange shall not be liable for any claim which arises out of goods or services selected by the Client and which are procured by the Client from third parties.

10.4 If an Indemnified Party seeks indemnification under these Terms of Use, the Indemnified Party will: (i) give prompt notice to MagicOrange concerning the existence of the indemnifiable event; (ii) grant authority to MagicOrange to defend or settle any related action or claim; and, (iii) provide such information, cooperation and assistance to MagicOrange as may be reasonably necessary for MagicOrange to defend or settle the claim or action. An Indemnified Party's failure to give prompt notice shall not constitute a waiver of the Indemnified Party's right to indemnification and shall affect MagicOrange's indemnification obligations only to the extent that MagicOrange's rights are materially prejudiced by such failure or delay. Notwithstanding anything to the contrary set forth herein, (i) an Indemnified Party may participate, at its own expense, in any defence and settlement directly or through counsel of its choice, and (ii) MagicOrange will not enter into any settlement agreement on terms that would diminish the rights provided to the Indemnified Party or increase the obligations assumed by the Indemnified Party under these Terms of Use, without the prior written consent of the Indemnified Party.

10.5 The provisions of this clause 10 constitute stipulations for the benefit of third parties (being Indemnified Parties other than the Client) who are not party to these Terms of Use and who shall be entitled to accept such benefits at any time and in whatsoever manner.

10.6 This clause 10 shall survive termination of these Terms of Use.

11. **LIMITATION OF LIABILITY**

11.1 To the extent permitted by applicable law, regardless of the form (whether in contract, delict or any other legal theory) in which any legal action may be brought, each Party's maximum liability for damages for anything giving rise to any legal action under these Terms of Use shall be an amount equal to the total fees paid or due and payable by the Client to MagicOrange in respect of the use of the MagicOrange Solution for the period 12 months preceding the claim.

11.2 The Client shall bring any claim arising under or relating to these Terms of Use within 12 months from the date of the claim arising, or, if later, within 12 months from the date the Client first became aware of the matters leading to the claim, and failure to do so shall result in any such claim automatically and irrevocably expiring.

11.3 To the extent permitted by applicable law, in no event shall either Party or its Personnel be liable for any indirect, incidental, special or consequential damages or losses (whether foreseeable or unforeseeable) of any kind (including loss of profits, loss of goodwill, damages relating to lost or damaged data or software, loss of use, damages relating to downtime or costs of substitute products) arising from these Terms of Use.

11.4 Without limiting the generality of the foregoing, to the extent permitted by applicable law, MagicOrange shall not be liable for any delay, failure, breakdown, damage, loss, costs, claim, penalty, fine or expense arising from:

11.4.1 use of the MagicOrange Solution otherwise than in accordance with the terms of these Terms of Use;

11.4.2 the Client effecting any changes, modifications or upgrades to the MagicOrange Solution without MagicOrange's prior written consent;

11.4.3 operator error on the part of the Client, or any fault in any hardware or third-party software supplied or used by MagicOrange or software supplied to or obtained by the Client from any entity other than MagicOrange, whether directly or indirectly;

11.4.4 the intentional or negligent act or omission of any person who is not a member of MagicOrange's Personnel;

11.4.5 compliance by MagicOrange with any applicable legislation

11.4.6 the negligence of the Client or any of its Personnel;

11.4.7 any failure or delay of the Client in performing its obligations under these Terms of Use, or reporting any faults or failures to MagicOrange;

11.4.8 the actions or omissions of any telecommunications authority or a supplier of telecommunications services; or

11.4.9 any other cause beyond the reasonable control of MagicOrange, including the failure or fluctuation of electrical supplies, accidents or natural disasters.

11.5 The limitation contained in this clause 11 shall not apply to any breach by a Party of the other Party's Intellectual Property Rights, or a breach of a Party's indemnification obligations under these Terms of Use.

11.6 MagicOrange shall not be liable for any loss or damage of whatsoever nature suffered by the Client arising out of or in connection with any breach of these Terms of Use by the Client or any act, misrepresentation, error or omission made by or on behalf of the Client or the Client's Personnel. MagicOrange accepts no liability whatsoever for service interruptions, accidents or any operational aspect of the Client.

12. **BREACH AND TERMINATION**

12.1 Should either Party ("**Defaulting Party**"):

12.1.1 commit a material breach of these Terms of Use and fail to remedy the breach within 7 days of having been called on in writing by the other Party to do so;

12.1.2 fail to pay any invoice that is more than 60 days outstanding;

12.1.3 commits an act which would be an act of insolvency under applicable insolvency laws;

12.1.4 effect or attempt to effect a compromise or composition with its creditors;

12.1.5 ceases, suspends or threatens to cease or suspend a material part of its business; or

12.1.6 be provisionally or finally liquidated or placed under judicial management, administration or becomes subject to any similar proceedings,

then the other Party ("**Innocent Party**") may, in its discretion and without prejudice to its rights in these Terms of Use or in law, terminate these Terms of Use or the Service Order to which the breach relates on written notice to the Defaulting Party.

13. **EFFECT OF TERMINATION**

13.1 The effect of terminating these Terms of Use will be to terminate the ability of either Party to enter into subsequent Service Orders that incorporate the terms of these Terms of Use. Termination of these Terms of Use will not, by itself, result in the termination of the SaaS and Services Agreement or any Service Orders previously entered into (or extensions of the same) that incorporate the terms of these Terms of Use. The terms of these Terms of Use will continue in effect for the purposes of the SaaS and Services Agreement and such Service Orders unless and until each such Service Order itself is terminated or expires.

13.2 On termination of these Terms of Use for any reason, all amounts due to MagicOrange prior to termination shall become due and payable even if they have not been invoiced. The amounts may not be withheld for any reason, unless the arbitrator directs otherwise.

13.3 On termination, cancellation or expiry of these Terms of Use for any reason, the rights of use and any licenses granted to the Client and its Users hereunder, shall automatically and immediately terminate.

13.4 For the avoidance of doubt, the termination of these Terms of Use shall also result in the immediate termination of any then-outstanding Service Order thereunder.

13.5 The expiry or termination of these Terms of Use shall not affect the enforceability of the terms which are intended to operate after expiry or termination.

14. **ARBITRATION AND DISPUTE RESOLUTION**

14.1 Any dispute arising out of or in connection with these Terms of Use (including the validity and enforceability of these Terms of Use) shall be determined by way of arbitration at the instance of either Party in accordance with this clause 14.

14.2 Either Party may demand that a dispute be referred to arbitration by giving written notice to that effect to the other Party.

14.3 Nothing in these Terms of Use shall preclude either Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction.

14.4 Unless otherwise agreed by the Parties, the arbitration shall be held:

14.4.1 in Durban in the English language;

14.4.2 with only the Parties, their legal representatives, arbitrator/s and any witnesses who may be called to give evidence present; and

14.4.3 otherwise in accordance with the provisions of the expedited rules of the Arbitration Foundation of Southern Africa ("**AFSA**"); and

14.4.4 immediately and with a view to its being completed within 21 days after it is demanded.

14.5 The arbitrator will be a senior counsel with no less than 15 years' standing agreed upon between the Parties, and failing such agreement within 10 days after the arbitration has been demanded, the nomination will be made by the chairman of AFSA at the request of either Party.

14.6 The Parties irrevocably agree that the decision in arbitration proceedings:

14.6.1 shall be final and binding on the Parties;

14.6.2 shall be carried into effect; and

14.6.3 may be made an order of any court of competent jurisdiction.

14.7 The costs of any reference to arbitration will be borne by the unsuccessful Party, unless otherwise determined by the Parties or the arbitrator, irrespective of which Party referred the dispute to arbitration.

14.8 A demand by a Party to submit a dispute to arbitration in terms of this clause 13 is adequate legal process to interrupt any prescription laws in respect of legal claims.

14.9 This clause 14 is severable from the rest of these Terms of Use and shall remain valid and binding on the Parties notwithstanding any termination of these Terms of Use.

14.10 Nothing contained in these Terms of Use will prevent either Party from applying to court for urgent or interdictory relief.

14.11 MagicOrange retains the right to institute collection proceedings in a court of law of competent jurisdiction for matters involving outstanding payment.

15. **NOTICES**

15.1 All notices, authorizations and requests given or made in connection with these Terms of Use must be sent by hand, pre-paid registered post or e-mail to the addresses and numbers set out on the relevant SaaS and Service Agreement. By providing such contact information, each Party consents to its use for purposes of administering these Terms of Use by the other Party and other parties that help a Party administer these Terms of Use.

15.2 The Parties record that, whilst they may correspond via e-mail during the currency of these Terms of Use for operational reasons, no formal notice required in terms of these Terms of Use may be given via e-mail other than to those e-mail addresses indicated for notice in the SaaS and Services Agreement or any Service Order entered into by the Parties from time to time.

15.3 Each Party may by giving written notice to the other Party, change the addresses and numbers set out in the SaaS and Services Agreement to any addresses and numbers in the Party's country of domicile, provided that the change shall only take effect 14 days after delivery of the written notice.

15.4 Notice shall be deemed to have been given:

15.4.1 if delivered by hand to a responsible person during Business Hours to the designated physical address, on the date of delivery;

15.4.2 if sent by pre-paid registered post in a correctly addressed envelope to the designated postal address, on the 14th day after the date of posting; or

15.4.3 if sent by e-mail to the designated e-mail address for notices, on the 2nd business day following the date of successful transmission.

15.4.4 If a notice or communication is actually received by a Party, adequate notice or communication shall have been given.

16. **FORCE MAJEURE**

16.1 Neither Party shall be liable for any failure to fulfil its obligations under these Terms of Use if and to the extent the failure is caused by any Force Majeure Event.

16.2 Should any Force Majeure Event arise, the affected Party shall notify the other Party without delay and the Parties shall meet within 7 days of the notice to negotiate in good faith alternative methods of fulfilling its obligations under these Terms of Use, if any.

16.3 Should either Party be unable to fulfil a material part of its obligations under these Terms of Use for a period in excess of 30 days due to a Force Majeure Event, the other Party may at its sole discretion cancel the affected Service Orders and these Terms of Use, forthwith by written notice.

17. **ASSIGNMENT AND SUBCONTRACTING**

17.1 Neither Party shall be entitled to cede, assign, delegate or otherwise transfer (other than an assignment by MagicOrange to any successor of all or substantially all of the business or assets of MagicOrange) the benefit or burden of all or any part of these Terms of Use without the prior written consent of the other Party, provided that that either Party may assign these Terms of Use without the other Party's consent to a successor by way of merger, acquisition, sale of assets, or operation of law.

18. **RELATIONSHIP AND DUTY OF GOOD FAITH**

18.1 Nothing in these Terms of Use shall be construed as creating a partnership between the Parties and neither Party shall have any authority to incur any liability on behalf of the other or to pledge the credit of the other Party. Without limiting the generality of the foregoing, when any Personnel of MagicOrange is required to act in an executive capacity on behalf of the Client, MagicOrange cannot accept responsibility for his omissions or acts and the Client shall, therefore, indemnify MagicOrange against all costs, claims, damages and expenses which may arise in connection with such act.

19. **GENERAL**

19.1 These Terms of Use constitute the entire agreement between MagicOrange and the Client in respect of the subject matter of these Terms of Use.

19.2 MagicOrange may modify these Terms of Use from time to time by giving the Client notice.Unless a shorter period is specified by MagicOrange (e.g. due to changes in the law or exigent circumstances), the modifications become effective upon acceptance thereof by the Client or relevant User, as the case may be. If MagicOrange specifies that the modifications to these Terms of Use will take effect prior to the acceptance by the Client and the Client notifies MagicOrange in writing of its objection to the modifications within 30 days after the date of such notice, MagicOrange (at its option) will either: (a) permit the Client to continue under the existing version of these Terms of Use until expiration of the then-current Term (after which time the modified Terms of Use will go into effect); or (b) allow the Client to terminate these Terms of Use. The Client or a User may be required to click to accept or otherwise agree to the modified Terms of Use in order to continue using the MagicOrange Solution, and, in any event, continued use of the MagicOrange Solution after the modified version of these Terms of Use becomes effective will constitute the Client's acceptance of such modified version.

19.3 No granting of time or forbearance shall be, or be deemed to be, a waiver of any term of these Terms of Use and no waiver of any breach shall operate as a waiver of any continuing or subsequent breach.

19.4 If the whole or any part of a term of these Terms of Use is void or voidable by either Party or unenforceable or illegal, the whole or that part (as the case may be) of that term, shall be severed, and the remainder of these Terms of Use shall have full force and effect, provided the severance does not alter the nature of these Terms of Use between the Parties.

19.5 This Agreement constitutes a stipulation in favour of a Party's relevant Affiliates, which may accept the benefits of the stipulation at any time and in whatsoever manner.

19.6 These Terms of Use shall be governed and construed according to the laws of South Africa.

19.7 Each Party shall be responsible for its own legal and other costs relating to the drafting and negotiation of these Terms of Use.

19.8 Neither Party will make or issue any formal or informal announcement or statement to the press in connection with these Terms of Use, without the prior written consent of the other Party, which consent shall not unreasonably be withheld.

19.9 The Client hereby consents to the use by MagicOrange of the Client's name in any proposals or other similar documents which MagicOrange may issue or submit from time to time, and/or on any website(s) owned or operated by or on behalf of it or its Affiliates from time to time.