

GENERAL TERMS & CONDITIONS OF SERVICE

YOUR CONTINUED USE OF THIS WEBSITE AND OUR SOFTWARE AND SERVICES INDICATES THAT YOU HAVE BOTH READ AND ACCEPTED THESE TERMS & CONDITIONS AND ALL DOCUMENTS INCORPORATED HEREUNDER

See Related Terms: Our [General Privacy Statement](#) (as amended or updated from time to time)

IMPORTANT: CLAUSES 12 (INDEMNITY) AND 13 (LIMITATION OF LIABILITY) LIMIT MPOWERED'S LIABILITY AND PLACE OBLIGATIONS AND RISKS ON YOU. PLEASE READ THEM CAREFULLY.

1. APPLICATION AND ACCEPTANCE

- 1.1 These Terms & Conditions govern the licensing of the Software and the rendering of the Services by Mpowered to the Customer in the absence of a duly signed Mpowered License Agreement or Services Agreement (each an "Agreement"), or pending the conclusion thereof.
- 1.2 The Customer is bound by these Terms & Conditions from the earliest of its acceptance or signature of any quotation issued by Mpowered, its access to or use of the Software or Services, or any other conduct indicating acceptance.
- 1.3 These Terms & Conditions form part of every quotation, order or engagement between the parties and prevail over any conflicting term in a Signed Quote.
- 1.4 These Terms & Conditions are Mpowered's standard terms and apply to all customers on the same basis. Mpowered may amend them from time to time by publishing an updated version on its website. An amendment applies from the start of the Customer's next Renewal Period or, for Services, to Signed Quotes accepted after publication.
- 1.5 Mpowered does not amend or add to these Terms & Conditions for individual customers. Any customisation, amendment or addition the Customer requires must be negotiated and recorded in a signed License Agreement or Services Agreement. No other document,

including a Signed Quote, purchase order or the Customer's own terms of purchase, varies these Terms & Conditions.

- 1.6 An Agreement, once signed, supersedes these Terms & Conditions from its signature date in respect of the Software or Services it covers, save for rights and liabilities accrued before then.
- 1.7 Provisions relating to the Software apply only to a Subscription, and provisions relating to Services apply only to Services.
- 1.8 Where the Customer is a "consumer" as defined in the Consumer Protection Act, 68 of 2008, nothing in these Terms & Conditions limits any right the Customer has under that Act, and these Terms & Conditions shall be read accordingly.

2. DEFINITIONS AND INTERPRETATION

- 2.1 In these Terms & Conditions:
 - 2.1.1 **B-BBEE Certificate:** a B-BBEE verification certificate, sworn affidavit or other document evidencing the B-BBEE status of an entity.
 - 2.1.2 **Beagle Data:** all B-BBEE Certificates and other records held in the Beagle Database™, however and by whoever captured (including by Mpowered in rendering the Services, or by the Customer), and do not constitute Customer Data.
 - 2.1.3 **Beagle Database™:** Mpowered's proprietary, shared, multi-client database of B-BBEE Certificates, scorecard records and related supplier information.
 - 2.1.4 **Business Day:** any day which is not a Saturday, Sunday or public holiday in the Republic of South Africa.
 - 2.1.5 **Confidential Information:** all information of a party which is by its nature confidential or is identified as confidential, including the Software, the Documentation, Mpowered's methodologies and pricing, the results of any performance tests of the Software, and the Customer Data.

2.1.6	Customer: the person or entity purchasing a Subscription and/or Services from Mpowered.	2.1.17	Signed Quote: the quotation or proposal issued by Mpowered and signed or otherwise accepted by the Customer, which records the Software, Services, fees, term and related particulars.
2.1.7	Customer Data: the data, information and materials, excluding Beagle Data, captured or uploaded by the Customer, its Users or Mpowered on the Customer's behalf, or provided to Mpowered for purposes of the Services (including supplier lists and procurement spend data).	2.1.18	Software: Mpowered's B-BBEE software applications (including the BEEtoolkit™, the Supplier Management System and the Beagle Database™) made available to the Customer as a service via the internet, including all updates and releases.
2.1.8	Deliverables: the reports, cleansed supplier lists, exception reports, compliance status reports and other outputs prepared by Mpowered specifically for the Customer in rendering the Services, as described in the Signed Quote.	2.1.19	Specified Entities: the entities (if any) listed as such in the Signed Quote, on whose behalf the Customer may use the Software or receive the Services.
2.1.9	Documentation: Mpowered's user guides and instructions for the Software, as made available from time to time.	2.1.20	Subscription Fees: the subscription fees payable by the Customer to Mpowered, as set out in the Signed Quote.
2.1.10	Effective Date: the start date of the Subscription or Services recorded in the Signed Quote or, if none, the date on which the Customer becomes bound under clause 1.2.	2.1.21	Supplier: any supplier, vendor or service provider of the Customer or of a Specified Entity whose details are provided to Mpowered for purposes of the Services.
2.1.11	Mpowered: Mpowered Business Solutions (Pty) Ltd, Reg. no 2000/029482/07, Nicol Main Office Park, Office 223, Building C, 2 Bruton Street, Bryanston, Gauteng, 2191.	2.1.22	Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Software and the Documentation.
2.1.12	Normal Business Hours: 08h00 to 17h00 (South African Standard Time) on each Business Day.	2.1.23	Virus: any malicious code, including viruses, worms and trojan horses, which may impair the operation of any software, hardware, network or data.
2.1.13	Personal Information: has the meaning given in POPIA.	2.2	Headings do not affect interpretation, the singular includes the plural, "writing" includes e-mail, a reference to legislation is to that legislation as amended, and no rule of construction applies against the party that drafted these Terms & Conditions.
2.1.14	POPIA: the Protection of Personal Information Act, 4 of 2013.		
2.1.15	Service Fees: the fees payable for the Services, as set out in the Signed Quote.	3.	SUBSCRIPTION
2.1.16	Services: the services rendered by Mpowered to the Customer as described in the Signed Quote, which may include supplier clean-up services, supplier compliance management services, B-BBEE consulting and advisory services, training and support, but which exclude the Subscription.	3.1	Subject to payment of the Subscription Fees, Mpowered grants the Customer a revocable (in accordance with these Terms & Conditions), non-exclusive, non-transferable right, within the Republic of South Africa and for the Subscription Term, to permit its Users to use the Software and Documentation solely for managing the B-BBEE compliance of the Customer and its Specified Entities (the "Subscription").

- 3.2 The Subscription does not extend to any other subsidiary, holding or affiliated company of the Customer. The Customer may request that additional Specified Entities or Software modules be added; if Mpowered approves the request, the additions take effect on acceptance of Mpowered's quote, with fees pro-rated for the remainder of the current billing period.
- 3.3 The Customer shall ensure that its Users keep their passwords confidential and comply with these Terms & Conditions, shall prevent and promptly report any unauthorised access, and shall permit Mpowered, no more than once per Subscription Term and on 10 (ten) Business Days' notice, to audit its use of the Software at Mpowered's expense.
- 3.4 Save as permitted by law or these Terms & Conditions, the Customer shall not:
- 3.4.1 copy, modify, frame, mirror, republish, distribute, reverse engineer or create derivative works from the Software or Documentation;
- 3.4.2 use the Software to build a competing product or service, or to provide services to third parties (subject to clause 3.5);
- 3.4.3 license, sell, rent, transfer or otherwise make the Software available to any person other than its Users;
- 3.4.4 use automated, scripted or bulk methods to access, scrape or extract data from the Software, or bulk export, replicate or extract the Beagle Database™ or any material portion of the Beagle Data (the Customer may, during the Subscription Term, view and download individual Beagle Data records returned by its searches, for its own record-keeping).
- 3.4.5 upload or transmit any Virus, or any unlawful, harmful, defamatory, obscene, discriminatory or infringing material, which Mpowered may disable.
- 3.5 A Customer that is a consultant may use the Software to provide services to its clients, provided that each client has its own Subscription. Using one Subscription for several clients is a material breach.
- 3.6 The Subscription is granted for the Customer's own internal B-BBEE compliance requirements, having regard to the ordinary size, structure and operations of the Customer and the Specified Entities. Should Mpowered reasonably determine that the Customer's usage is materially disproportionate to such use, it may, on written notice, require the Customer to remedy the usage within a reasonable period and, failing that, propose an adjusted Subscription Fee to be recorded in a new Signed Quote.
- 3.7 Mpowered may suspend access to the Software immediately on written notice where this is necessary to prevent harm to the Software or other users, where required by law, or where there is a security risk or suspected unauthorised access, and shall restore access as soon as the cause of suspension has been remedied.
4. **SOFTWARE AVAILABILITY AND SUPPORT**
- 4.1 Mpowered shall use commercially reasonable endeavours to ensure that the Software is available at least 98% of the time in any calendar month, excluding scheduled maintenance (of which Mpowered shall, where reasonably practicable, give at least 48 (forty-eight) hours' notice), Force Majeure, the Customer's own systems or internet connectivity, misuse of the Software, and suspension in accordance with these Terms & Conditions.
- 4.2 Mpowered will, at no additional cost, provide its standard support in respect of the Software by telephone, e-mail or live chat during Normal Business Hours to Users who have attended Mpowered's training. Additional training and support beyond Mpowered's standard support may be purchased separately at Mpowered's then-current rates.
- 4.3 Mpowered may enhance, modify, replace or discontinue features of the Software from time to time, provided that such changes do not materially reduce the core functionality of the Software licensed to the Customer.
- 4.4 Installation of the Software on the Customer's own premises or infrastructure requires a separate on-premise agreement.

5. SERVICES

- 5.1 Mpowered shall render the Services described in the Signed Quote with reasonable skill, care and diligence, principally during Normal Business Hours. Unless expressly included in the Signed Quote, the Services exclude consulting, advisory, verification preparation, data remediation and strategy work, which may be quoted for separately.
- 5.2 Where the Signed Quote includes supplier clean-up or supplier compliance management services, the Customer authorises Mpowered to contact its Suppliers in its name, solely to request and follow up on B-BBEE Certificates and related information. Mpowered may not bind the Customer or make any representation or commitment to a Supplier on the Customer's behalf.
- 5.3 Mpowered conducts reasonable desktop checks on B-BBEE Certificates, but is not a B-BBEE verification agency and does not verify or guarantee any Supplier's B-BBEE status or the validity of any B-BBEE Certificate. Mpowered shall notify the Customer of any certificate it reasonably suspects to be fraudulent or invalid; any resulting decision or reporting obligation remains the Customer's.
- 5.4 The supplier services depend on the cooperation of the Suppliers, over which Mpowered has no control. Mpowered does not guarantee any response rate and is not liable for any failure or delay by a Supplier.
- 5.5 B-BBEE Certificates obtained by Mpowered and captured into the Beagle Database™ become Beagle Data, which Mpowered may make available to its other clients and licensees, and Mpowered may rely on a current certificate already held in the Beagle Database™ instead of requesting it. Mpowered shall not disclose the Customer Data, including the Customer's supplier list, its supplier relationships or its procurement spend.
- 5.6 Mpowered shall provide the Deliverables, and copies of the B-BBEE Certificates obtained for the Customer's Suppliers, in the format and at the intervals set out in the Signed Quote, subject to clause 10.4.
- 5.7 Should the Customer fail to provide timely and accurate information or otherwise delay the

Services, Mpowered shall not be liable for the resulting delay, agreed timelines shall be extended accordingly, and Mpowered may, after notifying the Customer, charge for additional time reasonably spent at its then-current rates.

6. CUSTOMER DATA AND DATA PROTECTION

- 6.1 The Customer shall own all rights, title and interest in and to all of the Customer Data (excluding Beagle Data) and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 6.2 Customer Data captured in the Software is automatically backed up every 24 (twenty-four) hours in at least two geographically separate locations within the Republic of South Africa. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Mpowered to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Mpowered per its recovery procedure. Mpowered shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by the Customer.
- 6.3 Mpowered shall comply with its General Privacy Statement, as amended from time to time.
- 6.4 For purposes of POPIA, the Customer is the Responsible Party and Mpowered is the Operator in respect of Personal Information contained in Customer Data, and Mpowered shall:
- 6.4.1 process such Personal Information only on the Customer's documented instructions and as reasonably required to provide the Software and Services, unless required by law to do otherwise;
- 6.4.2 implement appropriate, reasonable technical and organisational measures to secure the integrity and confidentiality of such Personal Information, as required by section 19 of POPIA;
- 6.4.3 notify the Customer without undue delay, and in any event within 72 (seventy-two) hours, of becoming aware of any unauthorised access to or acquisition of such Personal Information;

6.4.4 appoint sub-processors only if they are bound by data protection obligations no less onerous than these, make its list of sub-processors available on request, notify the Customer of any change, and permit the Customer to object to a new sub-processor within 30 (thirty) days of notification;

6.4.5 not transfer such Personal Information outside the Republic of South Africa without the Customer's prior written consent, save that the Customer hereby consents to transfers to the sub-processors notified to it in terms of clause 6.4.4, provided that each such transfer complies with section 72 of POPIA; and

6.4.6 inform the Customer within 5 (five) Business Days of any request from a data subject for access to such Personal Information.

6.5 In respect of any Personal Information contained in Beagle Data, Mpowered sources, verifies and processes such information for its own purposes and acts as an independent Responsible Party, and not as an Operator.

6.6 The Customer confirms that it has all permissions and consents required from data subjects (including the representatives of its Suppliers) to provide Personal Information to Mpowered for purposes of the Software and Services. Customer Data shall be returned or deleted on termination in accordance with clause 14.4.

7. **MPOWERED'S OBLIGATIONS AND WARRANTIES**

7.1 Mpowered undertakes that the Software will perform substantially in accordance with the Documentation, and that the Services will be rendered with reasonable skill, care and diligence.

7.2 The undertaking in clause 7.1 does not apply to non-conformance caused by use contrary to Mpowered's instructions or by modification by anyone other than Mpowered, and Mpowered's sole obligation for a breach of it is to use reasonable endeavours to correct the non-conformance or provide an alternative. Mpowered does not warrant that the Software will be uninterrupted or error-free or will meet the Customer's requirements, and is not responsible for delays or failures caused by the internet or other communications networks, or

for any third-party website, product or service accessed through the Software.

7.3 Mpowered warrants that it implements and maintains commercially reasonable administrative, technical and organisational measures designed to protect the integrity and confidentiality of the Software and the Customer Data, consistent with generally accepted industry standards, as independently attested in Mpowered's annual SOC 2 Type II report. Information on these measures is available at <https://mpowered.trust.site/> for information purposes only.

7.4 The Software and Services are tools to assist with B-BBEE compliance and are not a substitute for independent legal, financial or verification advice. Mpowered does not warrant that their use will result in any particular B-BBEE status or compliance outcome, and the Customer remains responsible for any decision to implement Mpowered's advice or recommendations.

7.5 Mpowered maintains professional indemnity, cyber liability and public liability insurance with a reputable insurer and shall, on the Customer's reasonable written request, provide written confirmation of such cover. The existence of insurance does not increase Mpowered's liability under these Terms & Conditions.

7.6 Each party warrants that it has the legal capacity and authority to be bound by these Terms & Conditions, and that it has not offered, given, requested or accepted, and shall not offer, give, request or accept, any bribe or other undue advantage in connection with these Terms & Conditions, in contravention of the Prevention and Combating of Corrupt Activities Act, 12 of 2004.

8. **CUSTOMER'S OBLIGATIONS**

The Customer shall:

8.1 provide Mpowered, in a timely manner, with all co-operation, information and access reasonably required to provide the Software and Services;

8.2 comply with all applicable laws, and obtain all consents and permissions required for Mpowered to perform under these Terms & Conditions;

8.3	be responsible for its own network, systems and internet connectivity, and ensure that they meet Mpowered's reasonable specifications;	9.4.2	add all reasonable legal costs incurred to recover the outstanding amount to the Customer's account; and
8.4	remain solely responsible for the accuracy and completeness of the Customer Data, for all decisions regarding its procurement, the recognition of Suppliers' B-BBEE status and the compilation of its B-BBEE scorecard, and for its compliance with the laws of the Republic of South Africa.	9.4.3	after giving the Customer at least 5 (five) Business Days' written notice, suspend access to the Software and/or the rendering of the Services, without liability, until all outstanding amounts have been paid. Suspension does not relieve the Customer of its payment obligations.
8.5	not, during the Subscription Term or while Services are rendered, and for 12 (twelve) months thereafter, directly or indirectly solicit or entice any senior employee of Mpowered with whom it had material contact to leave Mpowered's employ.	9.5	The Customer shall notify Mpowered in writing of any disputed invoice, with reasons, within 10 (ten) Business Days of receipt, and shall pay the undisputed portion by the due date. The parties shall endeavour to resolve the dispute within 10 (ten) Business Days of notification, failing which clause 18 applies.
9.	CHARGES AND PAYMENT	9.6	All fees are payable in South African Rand, exclude VAT (which shall be added at the applicable rate) and are non-cancellable and non-refundable, save as provided in these Terms & Conditions.
9.1	The Customer shall pay the Subscription Fees and/or the Service Fees, as applicable, in accordance with this clause 9 and the Signed Quote.	9.7	For the calculation of any time-based charges, 30 (thirty) minutes or less will constitute a half-hour and more than 30 (thirty) minutes, but less than or equal to 60 (sixty) minutes will constitute an hour.
9.2	The fees exclude travel, accommodation and subsistence expenses for Services rendered outside a 100 (one hundred) kilometre radius of Mpowered's offices, which the Customer shall reimburse, provided that they are agreed with the Customer before they are incurred.	9.8	Fees shall not be adjusted during a Subscription Term, save for any escalation recorded in the Signed Quote. Mpowered may increase the Subscription Fees with effect from the start of any Renewal Period on at least 90 (ninety) days' prior written notice to the Customer, and the Signed Quote shall be deemed to be amended accordingly.
9.3	Mpowered shall invoice the Customer as follows, and the Customer shall pay each invoice on presentation (and shall provide any purchase order information it requires to be reflected on Mpowered's invoices):	10.	INTELLECTUAL PROPERTY RIGHTS
9.3.1	for Subscription Fees, annually in advance (unless the Signed Quote provides otherwise), on the Effective Date and at least 30 (thirty) days before each Renewal Period; and	10.1	The Customer acknowledges and agrees that Mpowered and/or its licensors own all intellectual property rights in the Software, the Documentation, the Deliverables and Mpowered's methodologies, templates and tools, including any customisations, enhancements or modifications made to them. Save for the rights expressly granted in these Terms & Conditions, the Customer acquires no right, title or interest in such intellectual property, and no other licence is implied.
9.3.2	for Service Fees, as set out in the Signed Quote.	10.2	Mpowered warrants that it has the rights
9.4	If any amount remains unpaid for more than 30 (thirty) days after its due date, Mpowered may, without prejudice to its other rights and remedies:		
9.4.1	levy interest on the outstanding amount at the prescribed rate under the Prescribed Rate of Interest Act, 55 of 1975;		

necessary to grant the rights granted in these Terms & Conditions.

10.3 All right, title and interest in the Beagle Database™ and the Beagle Data vests in Mpowered (or, where applicable, the third party from which particular Beagle Data originates), regardless of which party uploads, verifies or causes it to be captured, and regardless of whether it was obtained in rendering the Services to the Customer or at the Customer's cost. Access to the Beagle Database™ confers no ownership, exclusivity or proprietary right in the Beagle Data.

10.4 Subject to payment of the Service Fees, Mpowered grants the Customer a non-exclusive, non-transferable, perpetual licence to use the Deliverables, and the copies of B-BBEE Certificates provided to it, for the internal B-BBEE compliance, procurement and record-keeping purposes of the Customer and the Specified Entities (including their B-BBEE verification). The Customer shall not sell, publish or make them available in bulk to any third party (other than its verification agency, auditors and professional advisers), or use them to compile or populate any database or service similar to or competing with the Beagle Database™.

11. CONFIDENTIALITY

11.1 Each party shall keep the other's Confidential Information confidential, use it only to perform these Terms & Conditions, and ensure that its employees and agents do the same. This does not apply to information that:

11.1.1 is or becomes publicly known other than through any act or omission of the receiving party;

11.1.2 was in the other party's lawful possession before the disclosure;

11.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

11.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence;

11.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any

regulatory or administrative body, provided that (where lawfully permitted) the receiving party gives the disclosing party prompt written notice before disclosure.

11.2 Mpowered acknowledges that Customer Data, including the Customer's supplier list, the identity of its Suppliers and its procurement spend, is the Confidential Information of the Customer. Beagle Data is not the Confidential Information of the Customer.

11.3 This clause 11 shall survive termination of these Terms & Conditions, however arising, for 5 (five) years, or indefinitely in respect of trade secrets.

12. INDEMNITY

12.1 A party seeking indemnification shall promptly notify the indemnifying party of the claim, allow it sole conduct of the defence and settlement (provided that no settlement imposing an obligation on, or admitting liability of, the indemnified party is made without that party's consent, not to be unreasonably withheld), provide reasonable cooperation at the indemnifying party's cost, and make no admission or settlement without the indemnifying party's consent. A failure to do so reduces the indemnifying party's liability to the extent of the resulting prejudice.

12.2 The Customer shall indemnify, defend and hold harmless Mpowered, its directors, employees and agents against any claims, losses, liabilities, costs and expenses (including legal costs on an attorney-and-own-client scale) arising out of or in connection with:

12.2.1 any unlawful, inaccurate or misleading Customer Data or other information provided by or on behalf of the Customer;

12.2.2 any breach by the Customer of applicable law, including POPIA;

12.2.3 any misuse of the Software by the Customer or its Users;

12.2.4 any third-party claim (including by a Supplier) arising from the Customer's conduct, data or use of the Software, or from Mpowered acting on the Customer's instructions (including contacting Suppliers under clause 5.2), other than a claim that the

- Software as provided by Mpowered infringes third-party intellectual property rights; and
- 12.2.5 any breach by the Customer of clause 10.
- 12.3 Mpowered shall indemnify the Customer against any third-party claim that the Customer's use of the Software, Documentation or Deliverables in accordance with these Terms & Conditions infringes that third party's intellectual property rights, and shall pay any damages and costs finally awarded, or agreed in settlement by Mpowered, except to the extent that the claim arises from a modification by anyone other than Mpowered, use contrary to these Terms & Conditions or Mpowered's instructions or after notice of the infringement, or combination with any product, service, data or material not supplied by Mpowered.
- 12.4 If the Software is, or is likely to become, the subject of such a claim, Mpowered may at its option and cost procure the right for the Customer to continue using it, modify or replace it so that it becomes non-infringing, or terminate the affected Subscription and refund the prepaid Subscription Fees for the unused period. This clause states the Customer's sole remedy for third-party intellectual property claims.
- 13. LIMITATION OF LIABILITY**
- 13.1 Save as expressly set out in these Terms & Conditions, all implied warranties are excluded to the extent permitted by law, the Software and Documentation are provided "as is" and "as available", and the Customer is responsible for the results it obtains from, and the conclusions it draws from, the Software, Services and Deliverables.
- 13.2 Neither party shall be liable to the other, however arising, for any loss of profits, revenue, business, goodwill, opportunity or anticipated savings, pure economic loss, or any indirect, special or consequential loss.
- 13.3 Each party's total aggregate liability arising in connection with these Terms & Conditions shall not exceed 2 (two) times the Subscription Fees and Service Fees paid or payable by the Customer in the 12 (twelve) months immediately preceding the event giving rise to the claim.
- 13.4 Clauses 13.2 and 13.3 do not apply to the Customer's obligation to pay fees, or to liability for death or personal injury caused by negligence, fraud, gross negligence or wilful misconduct, deliberate breach of confidentiality, infringement of intellectual property rights, or any other liability which cannot be excluded by law.
- 13.5 Where any loss is caused partly by the Customer's fault, Mpowered's liability shall be reduced to the extent that is just and equitable having regard to the Customer's share of the fault.
- 14. TERM AND TERMINATION**
- 14.1 These Terms & Conditions commence on the Effective Date. A Subscription continues for the initial term recorded in the Signed Quote and thereafter renews automatically for successive periods of 12 (twelve) months (each a "Renewal Period" and, together with the initial term, the "Subscription Term"), unless either party gives written notice of non-renewal at least 60 (sixty) days before the end of the then-current term. Services continue until they are completed or the period recorded in the Signed Quote expires.
- 14.2 The Customer may terminate a Subscription or Services on at least 60 (sixty) days' written notice, with effect from the last day of the notice period (the "Termination Date"). The Customer shall pay the Subscription Fees up to the Termination Date and, for a once-off or fixed Service Fee, the portion attributable to Services rendered and expenses incurred up to that date. Mpowered shall refund, pro rata, any fees paid in advance for the period after, or for Services not rendered by, the Termination Date.
- 14.3 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate these Terms & Conditions without liability to the other if:
- 14.3.1 the other party commits a material breach of any of these Terms & Conditions and (if such a breach is remediable) fails to remedy that breach within 30 (thirty) days of that party being notified in writing of the breach;
- 14.3.2 the other party is placed in liquidation or business rescue, commits an act of insolvency, compromises or attempts to

compromise with its creditors generally, or suffers any similar event in respect of its debts.

14.4 On termination of these Terms & Conditions, for any reason:

14.4.1 all Subscriptions granted under these Terms & Conditions shall terminate on the effective date of termination (being, in the case of termination under clause 14.2, the Termination Date);

14.4.2 each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;

14.4.3 the Customer may download its Customer Data until the effective date of termination and, provided it has not requested immediate deletion, may at Mpowered's discretion and at an agreed fee be granted up to 60 (sixty) additional days to do so. In respect of Services, Mpowered shall, at the Customer's written election made within 30 (thirty) days of termination, return the Customer Data in a commonly used electronic format or securely delete it. Thereafter Mpowered shall securely delete the Customer Data, subject to applicable legal retention requirements. The Customer's right to download data does not extend to Beagle Data;

14.4.4 Mpowered shall, subject to payment of all amounts due to it, deliver to the Customer all Deliverables completed up to the date of termination; and

14.4.5 the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

15. **FORCE MAJEURE**

Neither party shall be liable for any failure or delay in performing its obligations under these Terms & Conditions (other than payment obligations) to the extent caused by circumstances beyond its reasonable control, including industrial action, failure of a utility service or of third-party telecommunications or network infrastructure, an

act of God, war, riot, civil commotion, malicious damage, fire, flood, storm or governmental action, but excluding any circumstance attributable to that party's failure to take reasonable precautions ("Force Majeure"), provided that it promptly notifies the other party of the event and its expected duration. If Force Majeure prevents a party from performing a material part of its obligations for more than 60 (sixty) days, the other party may terminate these Terms & Conditions by written notice, in which event the Customer shall pay all amounts due up to the date of the Force Majeure and Mpowered shall refund any fees paid in advance for the period after termination.

16. **GENERAL**

16.1 Subject to clause 1.4, these Terms & Conditions and the Signed Quote constitute the whole agreement between the parties on their subject matter, and neither party relies on any representation not set out in them.

16.2 No indulgence or failure to enforce a right is a waiver of that right. Any invalid provision shall be severed or read down to the extent necessary, without affecting the remaining provisions.

16.3 The Customer may not cede, assign or delegate any of its rights or obligations without Mpowered's prior written consent, which shall not be unreasonably withheld.

16.4 Mpowered may cede, assign or delegate any of its rights or obligations under these Terms & Conditions on at least 60 (sixty) days' written notice to the Customer, provided that the transferee is bound by these Terms & Conditions. Mpowered may appoint subcontractors in performing its obligations and remains responsible for their performance.

16.5 Nothing in these Terms & Conditions creates a partnership or agency between the parties (save for Mpowered's limited authority under clause 5.2 to contact Suppliers) or confers any right on a third party.

17. **NOTICES**

17.1 Any notice under these Terms & Conditions shall be in writing and delivered by hand to the physical address, or sent by e-mail to the e-mail address, set out in the Signed Quote (or, for Mpowered, the address in clause 2.1.11), or to

such other address as a party may notify. Each party chooses its physical address so recorded as its domicilium citandi et executandi.

17.2 A notice delivered by hand is deemed received on delivery. A notice sent by e-mail during Normal Business Hours is deemed received on transmission, provided no delivery failure notification is received, and otherwise at 08h00 on the next Business Day.

18. **GOVERNING LAW AND DISPUTE RESOLUTION**

18.1 These Terms & Conditions are governed by the laws of the Republic of South Africa.

18.2 The parties shall first attempt to resolve any dispute through good-faith negotiation between

senior representatives within 10 (ten) Business Days, failing which either party may by written demand refer the dispute to arbitration in Johannesburg before a single arbitrator, in accordance with the rules of, and administered by, the Arbitration Foundation of Southern Africa.

18.3 Nothing in this clause prevents a party from approaching a competent court for urgent relief or for judgment on a liquidated claim. For this purpose, the Customer consents, in terms of section 45 of the Magistrates' Courts Act, 32 of 1944, to the jurisdiction of the Magistrates' Court, although Mpowered may elect to proceed in any division of the High Court having jurisdiction.