



# QUALITY MANUAL FORMS

<b>Document Title</b>	<b>TERMS AND CONDITIONS OF SERVICE</b>		
<b>Document Number</b>	<b>Q.M.S I.T 014</b>	<b>Access:</b>	<b>Controlled</b>
<b>Revision Number</b>	<b>01</b>	<b>Revision Date:</b>	<b>[●] 2023</b>
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## TERMS AND CONDITIONS OF SERVICE:

### 1. Definitions and Interpretation

1.1. The following terms shall have the meanings set out below unless the context requires otherwise:

- a) **“Business Day”** means any day which is not a Saturday, Sunday or official South African public holiday;
- b) **“Credit Terms”** means Hexagon’s standard terms and conditions of credit contained in Hexagon’s Application for Credit Facilities and Suretyship;
- c) **“Customer”** means the party who affixed its name and signature to a Purchase Order;
- d) **“Effective Date”** means, in respect of each Purchase Order, the effective date stipulated in each Purchase Order, in the absence of which it shall be the signature date of such Purchase Order;
- e) **“Hexagon”** means Hexagon Electrical Proprietary Limited (registration number 2006/025351/07);
- f) **“Invoice”** means a valid tax invoice to be issued by Hexagon to the Customer in respect of the Services;
- g) **“Parties”** means Hexagon and the Customer, and “Party” shall refer to either one of them, as the context may require;
- h) **“Prime”** means the publicly quoted basic rate of interest, compounded monthly in arrears and calculated on a 365-day year irrespective of whether or not the year is a leap year, from time to time published by Hexagon’s primary bankers as being its prime overdraft rate;
- i) **“Quote”** means any written quotation provided by Hexagon to the Customer prior to the delivery of a Purchase Order;
- j) **“Purchase Order”** means a Purchase Order, scope of works or similar document delivered to Hexagon for the supply of Goods or Services;
- k) **“Remuneration for Services”** means the amount specified in the Purchase Order for the rendering of services to the Customer, subject to clauses 2.2, 2.3, 2.4, 3.7, 4.2, and 4.10.
- l) **“Services”** means any and all services rendered or to be rendered by Hexagon to its customers from time to time;
- m) **“Terms of Service”** means these standard terms and conditions of service;
- n) **“VAT”** means value-added tax payable in terms of the Value-Added Tax Act (No 89 of 1991);
- o) **“Personal Information”** means information relating to an identifiable, living, natural person, including financial information related to a person, including information provided by the Customer, or information obtained from a Credit Bureau or from CIPC (the Companies and Intellectual Property Commission), any identifying number, symbol, email address, physical



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address, telephone number, location information, online identifier or other particular assignment to the person; and/or the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about that person;

p) **“Data Subject”** means each director of the Customer and each shareholder of the Customer that is a natural person.

- 1.2. Whenever a provision is followed by the word “including” or “include” and specific examples, such examples shall not be construed so as to limit the ambit of the provision concerned.
- 1.3. References to persons shall include natural and juristic persons and references to either Party shall include such Party’s successors or permitted assigns.
- 1.4. Any references in these Terms of Service to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT.
- 1.5. The headings to the clause in these Terms of Service are for reference purposes only and shall not affect their interpretation.
- 1.6. The rule of construction that, in the event of ambiguity, a contract shall be interpreted against the party responsible for the drafting thereof, shall not apply in the interpretation of these Terms of Service.
- 1.7. Unless otherwise provided, defined terms appearing in these Terms of Service in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.
- 1.8. These Terms of Service apply to Services rendered to the Customer by Hexagon from time to time pursuant to one or more Purchase Orders delivered by the Customer to Hexagon. Each Purchase Order delivered by the Customer shall result in a separate service agreement coming into force, which agreement shall incorporate these Terms of Service.
- 1.9. Unless agreed otherwise by both Parties in terms of a separate agreement (including a Purchase Order) governing the subject matter hereto, these Terms of Service shall apply to the rendering of Services to the Customer by Hexagon. They shall form part of every contract for the supply of Services by Hexagon.
- 1.10. The Customer agrees that these Terms of Service, as read with a Purchase Order and standard terms and conditions of service as contained in the Application for Credit Facilities and Suretyship (if applicable):
  - a) Represent the entire agreement between the Customer and Hexagon regarding the subject matter hereof and that no alterations or additions to them may be effected unless agreed to by both Parties, reduced to writing and signed by the Customer and a duly authorized representative of Hexagon;
  - b) Will, in the absence of any other agreement, govern all future contractual relationships between the Parties regarding the provision of Services;
  - c) Are final and binding and are not subject to any suspensive or resolutive conditions;
  - d) Supersede all previous terms and conditions of service; and
  - e) Apply to all servants and subcontractors of Hexagon.



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1.11. Where relevant, these Terms of Services are exempt from the provisions of the Consumer Protection Act (No 68 of 2008), by reason of the fact that the Customer is a juristic person whose asset value or annual turnover as at the Effective Date, equals or exceeds R2,000,000.00 and the Customer warrants that the representation made by it in this regard is true and correct.

## 2. Quotes

- 2.1. The Customer may from time to time request one or more Quotes from Hexagon reflecting the indicative Remuneration for Services to be rendered to the Customer by Hexagon, as well as indicative delivery times where relevant.
- 2.2. All Quotes will remain valid for a period of 30 days from the date of the Quote. All Quotes are subject to correction of *bona fide* errors by Hexagon, and the prices quoted in any Quotes are subject to any increases in the price of resources of Hexagon before or after the delivery of the Purchase Order.
- 2.3. All Remuneration for Services communicated and quoted are exclusive of Value Added Tax and ancillary charges unless otherwise stated in the Quote.
- 2.4. If Hexagon agrees to render the Services at the Customer's premises, or at any premises that requires travelling, then in addition to the Remuneration for Services, the Customer shall pay Hexagon all costs of travel and ancillary charges, if applicable.

## 3. Purchase Orders

- 3.1. The Customer may place Purchase Orders for Services from time to time pursuant to Quotes provided to it by Hexagon.
- 3.2. All Purchase Orders by the Customer shall be in writing and transmissible by email. Each Purchase Order is subject to acceptance by Hexagon in writing, or by means of performing the services or by means of verbal confirmation of the Purchase Order by Hexagon.
- 3.3. If the Customer places a verbal / telephonic Purchase Order, such order will be confirmed in writing by the Customer and transmissible by email prior to acceptance by Hexagon.
- 3.4. In the event of the Customer placing a verbal / telephonic Purchase Order and fails to confirm the Purchase Order in writing, Hexagon will not be responsible for any errors or misunderstandings occasioned by the Customer's failure to place the Purchase Order in writing or to accurately record the Purchase Order in writing and these Terms of Service will still be applicable to the Purchase Order.
- 3.5. The scope of Services shall be as stipulated in a Purchase Order.
- 3.6. The Purchase Order form shall include the following information:
  - a) The range of the Services required;



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- b) The date by which the Services should be provided to the Customer;
- c) Other relevant information / supporting documents; and
- d) Such instructions from the Customer as, in the sole discretion of Hexagon, are necessary to enable Hexagon to render the Services.

- 3.7. Should the instructions not be timeously furnished or deficient in any respect, then Hexagon shall be entitled to increase the Remuneration for Services set out in the Customer’s Purchase Order by such amount as may be necessary to cover the increase in costs occasioned by the delay in furnishing the instructions.
- 3.8. Notwithstanding the provision of clause 1.10.a, all Purchase Orders or variations to Purchase Orders, whether verbal or in writing, shall be binding and irrevocable, if agreed on by both parties, and subject to these Terms of Service, and may not be cancelled by the Customer (unless otherwise agreed to by Hexagon).
- 3.9. Purchase Orders placed by the Customer shall constitute irrevocable agreements for rendering of Services at the usual prices of Hexagon as on the date when the Customer places the order for the Services, subject to clauses 2.2, 2.3, 2.4, 3.7, 4.2, and 4.10.
- 3.10. Hexagon shall not be obliged to accept or act upon any changes, modifications or additions to the original Purchase Order if such changes, modifications or alterations were given after Hexagon’s acceptance of the Customer’s Purchase Order.
- 3.11. Once the Customer’s Purchase Order has been accepted by Hexagon, a binding contract on the Services, subject to the conditions contained herein, will have been entered into by and between Hexagon and the Customer, which contract shall not without written consent of Hexagon be capable of variation or cancellation. Should the cancellation take place after Hexagon has started rendering the Services or after Hexagon has incurred any charges in preparation of rendering the Services, the provisions of this clause shall apply mutatis mutandis. A certificate issued by Hexagon or one of its agents and signed in behalf of anyone purporting to be a duly authorised person, which authority need not be proven shall, ipso facto, be proof of the amount of ancillary charges incurred and shall be sufficient to discharge the burden of proof for the purposes of pleading, and no further evidence relating thereto need to be adduced at any trial or application for judgement or at which the document is rendered for evidence.

## 4. Price and Payment Terms

- 4.1. The Remuneration for Services shall be the amount more fully set out in a Purchase Order, subject to clauses 2.2, 2.3, 2.4, 3.7, 4.2 and 4.10.
- 4.2. The Remuneration for Services shall be subject to any variations from time to time, in any third party costs such as labour costs, travel costs, costs of materials and other costs which are out of the control of Hexagon, irrespective of whether those variation occurred before or after the time of the Quote or Purchase Order.
- 4.3. Hexagon shall cause an Invoice to be delivered to the Customer against rendering of the Services.
- 4.4. Payment of the Remuneration for Services shall be made against delivery of the Invoice, unless



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Hexagon has granted the Customer credit, in which event such payment shall be in accordance with the standard Credit Terms as contained in the Application for Credit Facilities and Suretyship.

- 4.5. Hexagon will not make any exception to clause 4.4. in respect of Invoices in dispute or under query. The balance of payment due should be settled ass per these terms and once the Invoice dispute have been resolved, the amount overpaid, if any, will be refunded or credited to the Customer's account.
- 4.6. Hexagon reserves the right to request advance payments of the Renumeration for Services, if the Customer:
- a) Fails to make payment of the Renumeration for Services and ancillary charges for any Services on the due date thereof;
  - b) Commits a material breach of any provision of these Terms of Service and fails to remedy such breach within 5 (five) Business Days after delivery of a written notice requiring the Customer to do so;
  - c) Commits and act of insolvency, as contemplated in the Insolvency Act 24 of 1936;
  - d) Takes steps to place itself, or is placed in liquidation or sequestration, whether voluntary or compulsory or commences business rescue proceedings;
  - e) Effects or attempts to effect a compromise or composition with its creditors generally or any class of its creditors;
  - f) Is subject to any resolution passed to enable it to be wound-up, dissolved or deregistered;
  - g) Default or threaten to default in the performance of its obligations generally, or cease to or threaten to cease to carry on business;
  - h) Commits an act of fraud or is found guilty of a crime involving financial dishonesty;
  - i) Any judgement is given against the Customer in any court of law, which is not appealed or remains unsatisfied for a period of 10 (ten) days;
  - j) Any of the events contemplated in clauses 4.6.a to 4.6.i occurs in relation to any agreement relating the Terms of Service of, or any person providing, security or credit support for the obligations of the Customer; or
  - k) If Hexagon is of the opinion that there is a risk that they might not receive the Renumeration for Services and ancillary charges.
- 4.7. Payment of the Remuneration for Services shall be made in Rands by electronic funds transfer directly into a bank account nominated by Hexagon in writing, from time to time, free from deductions, set-off and any bank charges or other such charges and taxes.
- 4.8. Should the Customer fail to settle the outstanding amount within the prescribed time, Hexagon shall, without prejudice to Hexagon's rights under these Terms of Service, be entitled to charge interest at the rate of Prime plus 4% *per annum*, nominal annual rate compounded monthly, on the overdue amount or to charge interest on overdue amounts as provided for at the relevant time in terms of the Prescribed Rate of Interest Act 55 of 1975, at Hexagon's sole discretion. Said interest shall accrue from due date for payment to date of payment receipt by Hexagon and shall be payable on demand.



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- 4.9. Hexagon shall have the right to appropriate payments as it in its discretion deems fit.
- 4.10. Hexagon reserves its right to renew its pricing structure in accordance with the market, economic, and other relevant circumstances.
- 4.11. Where the Customer requires a Customer order number or other pertinent information on the Invoice to be issued by Hexagon, the number or other pertinent information must be supplied by the Customer on placement of the Purchase Order. The Customer shall not be entitled to withhold any payment because of the Customer’s failure to comply with the aforesaid provisions.
- 4.12. The Customer agrees that any amount due and payable to Hexagon may be determined and proven by a certificate issued by Hexagon or one of its agents and signed on behalf of anyone purporting to be a duly authorised person, which authority need not be proven. Such certificate shall be binding and prima facie proof of the indebtedness of the Customer.

## 5. Security and Credit Support

Hexagon shall not be obliged to render any Services pursuant to these Terms of Service, unless the Customer has provided the security and/or credit support required by Hexagon from time to time and in the form and substance acceptable to Hexagon. Such security and credit support may include, suretyships, guarantees, bank guarantees and cash deposits.

## 6. Rendering of the Services

- 6.1. Rendering of the Services to the Customer shall take place as indicated in the applicable Purchase Order and the Customer will be obliged to accept the Services and allow Hexagon to render the Services on the date specified in the applicable Purchase Order.
- 6.2. Hexagon shall be entitled to split the rendering of the Services ordered in its sole and unfettered discretion.
- 6.3. Should the Customer fail to accept the Services or allow Hexagon to render the Services on the date specified in clause 6.1, the risk of loss or damage or any expenses pursuant thereto shall be for the Customer’s account. If Hexagon has incurred expenses, such as travel expenses, to render the Services and the Customer did not accept the rendering of the Services or allowed Hexagon to perform the Services on the specified date, the Customer will be liable for any expenses incurred by Hexagon.
- 6.4. Should the Customer be unable to accept the Services or to allow Hexagon to render the Services on the date specified in clause 6.1, the Customer will notify Hexagon in writing within a reasonable time and propose a new date for the rendering of Services.
- 6.5. Hexagon shall be entitled to invoice each rendering of the Services actually done, separately, notwithstanding that such Services was ordered in separate Purchase Orders.



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- 6.6. Hexagon shall endeavour to render the Services at the earliest possible time but in no instance can Hexagon accept liability for any loss or damages arising from the late rendering of Services. No liability shall attach to Hexagon because of the failure to render the Services due to circumstances beyond Hexagon's control.
- 6.7. Notwithstanding anything on the contrary in these Terms of Service, if Hexagon cannot render the Services, render the Services timeously, render some of the Services, or render some of the Services timeously for any reason beyond its control, including but not limited to lack of instruction from the Customer, stock shortage, industrial dispute or break-down, production delays, government action, state of war, riot or civil disturbance, natural pandemics, disasters or act of God, Hexagon shall notify the Customer and may, in its discretion, cancel whole or part of the Purchase Order forthwith. In the event of such cancellation Hexagon shall not be liable for any loss whatsoever, including any consequential loss of profits, special damages, or any direct or indirect loss, thereby caused.
- 6.8. Rendering of Services times, service levels and performance times given are merely estimates and are not binding on Hexagon. Hexagon shall, during the term of these Terms of Service, render the Services with efficiency and efficacy, in accordance with industry practice and standards.
- 6.9. Any liability in respect of any failure to render the Services or render the Services timeously, shall be limited to an amount equal to the amount of the Renumeration for Services of such Purchase Order, excluding any ancillary charges.
- 6.10. If any Services, functions, responsibilities or tasks not specifically described in these Terms of Service are required for the proper performance of the Services, such services, functions, responsibilities and tasks shall not be deemed to be implied by and included within the scope of the Services, unless they are an inherent part of, or a necessary sub-part included within, the Services as determined by Hexagon. Hexagon shall, as an expert in its field, make every reasonable effort to alert the Customer to any services, functions, responsibilities or tasks that are not covered in terms of these Terms of Service and which may incur additional obligations for the Customer not specifically referred to in these Terms of Service.
- 6.11. Hexagon retains all intellectual property rights of whatsoever nature in its drawings, specifications, data and all other information and documents in relation to the Services.
- 6.12. Hexagon's trademarks and names shall not be used by the Customer without the prior written consent of Hexagon. Customer agrees that it shall not (or permit any third party to) reverse engineer, decompile, modify or tamper with the Services provided.
- 6.13. No right or license is granted in favour of or between the parties hereto under these Terms of Service in relation to any patent, trademark, copyright, registered design, or other intellectual property right.
- 6.14. All Services rendered and deliverables provided by Hexagon to the Customer shall be deemed to be accepted if the Customer fails to provide Hexagon with written notice of its rejection thereof within 48 (forty-eight) hours of rendering the Services. Hexagon shall be entitled to rely on all decisions and approvals of the Customer in connection with the Services.
- 6.15. Hexagon shall be responsible, at its own costs, to provide its staff with suitable facilities, including office space, furniture, storage, adequate computer resources (including necessary third party rights to use such software), telephone and email service, copying and general office supplies which may be necessary in connection with Hexagon's performance of the Services.



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6.16. Hexagon shall be entitled to verify claims as to any and all such alleged defective Services performed by reviewing the relevant Services and underlying data and records. The Customer shall furnish to Hexagon upon reasonable request, any other information received by the Customer or any other third party who will or may be helpful to Hexagon in assessing alleged defective Services and afford Hexagon all requested assistance in performing remedial work.

6.17. Hexagon reserves the right to suspend, delay or cancel the rendering of some or all of the Services if the Customer:

- a) Fails to make payment of the Renumeration for Services and ancillary charges for any Services on the due date thereof;
- b) Commits a material breach of any provision of these Terms of Service and fails to remedy such breach within 5 (five) Business Days after delivery of a written notice requiring the Customer to do so;
- c) Commits and act of insolvency, as contemplated in the Insolvency Act 24 of 1936;
- d) Takes steps to place itself, or is placed in liquidation or sequestration, whether voluntary or compulsory or commences business rescue proceedings;
- e) Effects or attempts to effect a compromise or composition with its creditors generally or any class of its creditors;
- f) Is subject to any resolution passed to enable it to be wound-up, dissolved or deregistered;
- g) Default or threaten to default in the performance of its obligations generally, or cease to or threaten to cease to carry on business;
- h) Commits an act of fraud or is found guilty of a crime involving financial dishonesty;
- i) Any judgement is given against the Customer in any court of law, which is not appealed or remains unsatisfied for a period of 10 (ten) days;
- j) Any of the events contemplated in clauses 6.17.a to 6.17.i occurs in relation to any agreement relating the terms and conditions of, or any person providing, security or credit support for the obligations of the Customer; or
- k) If Hexagon is of the opinion that there is a risk that they might not receive the Renumeration for Services and ancillary charges.

6.18. Any suspension, delay or cancellation of Services as a result of any of the foregoing events shall not affect any other right which Hexagon may have against the Customer based on these Terms of Service or otherwise.

## 7. Warranties, Guarantees and Declarations

7.1. The Customer acknowledges that it does not rely on any representations made by Hexagon with regards to the Services of any of its qualities other than those contained in these Terms of Service. All specifications, price lists, performance figures, advertisements, brochures and other technical data furnished by Hexagon in respect of the Service, verbally or in writing, will not form part of





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these Terms of Service in any way unless agreed to in writing by Hexagon.

- 7.2. The Customer agrees that neither Hexagon nor any of its employees will be liable for any innocent misrepresentations made to the Customer.
- 7.3. It is the sole responsibility of the Customer to determine that the Services rendered are suitable for the purposes of intended use.
- 7.4. The Customer hereby confirms that the Services on the Invoice issued to the Customer duly describes the Services rendered to the Customer at the prices agreed to by the Customer in a Purchase Order and, where rendering/performance has already taken place, that the Customer is satisfied that the Services conform in all respects to the quality and quantity ordered and are free from any defects.
- 7.5. No claim under these Terms of Service shall arise unless the Customer has, within 48 (forty-eight) hours of the alleged breach given Hexagon 30 days' written notice by prepaid registered post or email to rectify any defect or breach of these Terms of Service. To be valid, claims must be supported by the original delivery note or tax invoice.
- 7.6. Any item delivered to Hexagon shall serve as a pledge in favour of Hexagon for present and past debt and Hexagon shall be entitled to retain or realize such pledges as it deems necessary for appraisers sworn or realized value which will be offset against the Customer's debt.
- 7.7. Under no circumstances shall Hexagon be liable for any consequential damages or indirect liability of any nature whatsoever, and under no circumstances shall Hexagon be liable for any damage arising from any misuse or abuse of the Services or the deliverables.
- 7.8. Hexagon warrants to the Client that –
  - a) It will provide the Services with all due care and skill and in a timeous manner;
  - b) It shall adhere to standards of excellence and quality in the performance of the Services, in accordance with industry practice.
- 7.9. The aforementioned warranties constitutes Hexagon's only express warranties concerning the Services and any deliverables created pursuant thereto and are made expressly in lieu of all other warranties and representations, express or implied, including any implied warranties of fitness for a particular purpose, satisfactory quality, adequacy or otherwise to the extent permitted by law and all such warranties are hereby excluded to the fullest extent permitted by law.
- 7.10. Neither Hexagon nor any of its employees, officers, agents or sub-contractors shall be liable for any loss or damage, whether direct, indirect, consequential or otherwise suffered by the Customer or its employees, officers, agents or sub-contractors, arising from any cause in connection with the delivery of the Services (including any act, omission, neglect or default on the part of Hexagon or any of its employees, officers, agents or sub-contractors) whether such loss or damage results from breach of contract, delict, negligence or any other cause whatsoever.
- 7.11. Hexagon shall further not be liable to the Customer for any damage, loss, liability or injury of whatsoever nature and howsoever arising that may result from any *vis maior* (i.e. irresistible, overpowering act of God that causes damage or disruption) or *casus fortuitous* (i.e. an accident against which due prudence could not have provided), including unforeseeable interruptions in electricity, strikes, acts of war, interruption of transport, flood, storm or fire.



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7.12. The Customer hereby indemnifies Hexagon against any claims made by a third party against Hexagon howsoever arising, including but not limited to, any loss, expense and/or damages including consequential damages, loss of revenue and profits, legal costs on the scale as between attorney and his own client and any other costs arising out of or in connection with or which may be sustained or incurred by the Customer as a direct or indirect consequence of the rendering of the Services.

## 8. Breach of Contract and Dispute Resolution

- 8.1. Any dispute arising from or in connection with these Terms of Service shall, if it cannot first be settled through bona fide negotiations between the Parties, at the sole discretion of Hexagon, be referred and finally settled by arbitration in accordance with the arbitration rules of the Arbitration Foundation of Southern Africa.
- 8.2. The arbitration shall be held at Johannesburg, South Africa and shall be conducted in the English language.
- 8.3. The decision of the arbitrator shall be final and binding on the Parties and may be made an order of a court of competent jurisdiction.
- 8.4. Nothing herein contained shall preclude either Party from obtaining interim relief from a court of competent jurisdiction on an urgent basis.
- 8.5. Regardless of the provision of clause 8.1 – 8.4, Hexagon shall, at its discretion, be entitled to institute formal legal action in any competent court for any breach committed by the Customer of any of these Terms of Service without first referring the matter for arbitration.
- 8.6. In the event of the Customer committing any breach of any of the Terms of Service including, but not limited to, the failure to make payment of the invoiced Remuneration for Services on the due date, Hexagon shall be entitled to claim damages from the Customer occasioned by its breach. Hexagon shall, in the alternative, be entitled to enforce the provision of these terms and conditions and claim payment of the full amount due by the Customer, any instalments of the price falling due in the future to become due and payable immediately.
- 8.7. In such an event Hexagon shall at its discretion, be entitled to charge interest on overdue amounts as provided in clause 4.8 above or as provided for at the relevant time in terms of the Prescribed Rate of Interest Act 55 of 1975.
- 8.8. Should Hexagon take legal action against the Customer in the event of the Customer's breach, the Customer shall be liable for all legal fees incurred by Hexagon in the recovery of any amounts owing, including costs on the attorney and own client scale, collection commission and tracing costs.
- 8.9. In the event of Hexagon or its agents instructing attorneys to collect from the Customer an amount owing to Hexagon, the Customer agrees to pay all costs on the scale between attorney and own client, including that of an attorney and counsel, incurred by Hexagon in the event of any default



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by the Customer, any litigation regarding the validity and enforcement of these Terms of Service. The Customer will also be liable for any tracing, collection or valuation fees incurred as well for any costs, for any form of security that Hexagon may demand.

- 8.10. In the event of Hexagon or its agents instructing a Debt Collector to collect from the Customer an amount owing to Hexagon, the Customer agrees to pay collection commission in accordance with the terms of the Debt Collector's Act, 114 of 1998.
- 8.11. The Customer agrees that the amount due and payable to Hexagon may be determined and proved by a certificate issued by Hexagon or one of its agents and signed on its behalf by anyone purporting to be a duly authorised person, which authority need not be proven. Such certificate shall be binding and shall be prima facie proof of the indebtedness of the Customer.
- 8.12. If the Customer breaches these Terms of Service and Hexagon elects not to cancel the Purchase Order, Hexagon shall be entitled to suspend performance of its obligations until the Customer has complied with its obligations.
- 8.13. Any relaxation, leniency or indulgence which Hexagon may extend to the Customer shall not in any way constitute a waiver of Hexagon's rights in terms hereof.
- 8.14. The Customer consents to the jurisdiction of the Magistrate's Court in terms of Section 45 of the Magistrates Court Act 32 of 1944 as amended, having jurisdiction under Section 28 of the said Act, notwithstanding that the claim amount may exceed the normal jurisdiction of the Magistrate Court.
- 8.15. The provisions of this clause shall survive the termination or expiration of a Purchase Order and shall remain of full force and effect until mutually terminated by the Parties in writing.

## 9. Immediate Termination

9.1. If the Customer:

- a) Fails to make payment of the Remuneration for Services and ancillary charges for any Services on the due date thereof;
- b) Commits a material breach of any provision of these Terms of Service and fails to remedy such breach within 5 (five) Business Days after delivery of a written notice requiring the Customer to do so;
- c) Commits and act of insolvency, as contemplated in the Insolvency Act 24 of 1936;
- d) Takes steps to place itself, or is placed in liquidation or sequestration, whether voluntary or compulsory or commences business rescue proceedings;
- e) Effects or attempts to effect a compromise or composition with its creditors generally or any class of its creditors;
- f) Is subject to any resolution passed to enable it to be wound-up, dissolved or deregistered;
- g) Default or threaten to default in the performance of its obligations generally, or cease to or threaten to cease to carry on business;



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- h) Commits an act of fraud or is found guilty of a crime involving financial dishonesty;
- i) Any judgement is given against the Customer in any court of law, which is not appealed or remains unsatisfied for a period of 10 (ten) days;
- j) Any of the events contemplated in clauses 9.1.a to 9.1.i occurs in relation to any agreement relating the terms and conditions of, or any person providing, security or credit support for the obligations of the Customer; or
- k) If Hexagon is of the opinion that there is a risk that they might not receive the Remuneration for Services and ancillary charges.

Hexagon shall be entitled, in its sole discretion if it deems fit, without prejudice to, and without constituting a release or waiver of, any other rights or remedies which it may have under these Terms of Service or in law, either to immediately terminate these Terms of Service or the relevant Purchase Order to which the breach relates forthwith or to claim immediate specific performance of all of the Customer's obligations, whether or not due for performance.

- 9.2. If the Customer is in default (including in payment of any Remuneration), Hexagon shall be entitled, in addition to all other remedies in these Terms of Service or at law, to suspend the Services (or any part thereof) until such default has been remedied in full by the Customer. Hexagon shall not be liable for any loss or inconvenience suffered by the Customer and/or its customers as a result of any suspension made in terms hereof.
- 9.3. If the Services and (or any part thereof) are suspended as a consequence of the breach, fault, act or omission of the Customer, the Customer shall pay to Hexagon all reasonable costs and expenses incurred by the implementation of such suspension and/or recommencement of the provision of the Services.
- 9.4. The effect of terminating these Terms of Service shall be to terminate the ability of either Party to enter into any subsequent Purchase Order that incorporates the terms of these Terms of Service. Termination of these Terms of Service shall not, by itself, result in the termination of any Purchase Order previously entered into (or extensions of the same) that incorporates the terms of these Terms of Service. The terms of these Terms of Service shall continue in effect for the purposes of such Purchase Order unless and until each such Purchase Order itself is terminated or expires.
- 9.5. The expiry or termination of any Purchase Order or these Terms of Service shall not affect the enforceability of the terms which are intended to operate after expiry or termination.
- 9.6. In the event of cancellation Hexagon is entitled not to deliver any undelivered balance of a Purchase Order and to recover any loss sustained here by the Customer.

## **10. Further Undertakings**

- 10.1. Hexagon may periodically audit its assets held by the Customer.
- 10.2. The Customer warrants that the information completed by it and/or provided to Hexagon is truthful, complete and accurate in all respects, and is supplied voluntarily for the purpose of concluding



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these Terms of Service and, if applicable, obtaining credit from Hexagon in connection with the supply of Services.

10.3. Hexagon shall be entitled to rely upon all and/or any of the information supplied herein as being complete, true and accurate.

## 11. Governing Law

These Terms of Service are subject to the laws of the Republic of South Africa. Should the Customer be domiciled outside the Republic of South Africa, this agreement, all contracts and Purchase Orders between the Customer and Hexagon shall be governed and interpreted in accordance with the law of the Republic of South Africa and the South African Courts shall have jurisdiction in respect thereof.

## 12. Notices

12.1. Any notice sent by Hexagon to the Customer pursuant to these Terms of Service shall be deemed duly received by the Customer:

- a) Within 3 (three) days of mailing by prepaid registered mail to any of the Customer's business or postal addresses or to the personal address of any director, member, partner or owner of the Customer; or
- b) Within 24 (twenty-four) hours of being emailed to any of the Customer's email or any director's, members, partners or owner's email addresses; or
- c) On being delivered by hand to the Customer or any director, member, shareholder, partner or owner of the Customer; or
- d) Within 48 (forty-eight) hours if sent by overnight courier.

12.2. The Customer undertakes to inform Hexagon in writing within 7 (seven) days of any change of director, member, shareholder, owner, or partner or address or 14 (fourteen) days prior to disposal of the Customer's business and failure to do so will constitute a material breach of these Terms of Service.

## 13. Data Protection

13.1. Hexagon is committed to compliance with the Protection of Personal Information Act. No. 4 of 2013 ("POPIA").

13.2. The Customer consents to Hexagon:

- a) The Customer consents to the collection, processing and storage of Personal Information by Hexagon related to Data Subjects, for the purposes of both the opening and ongoing



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management of a Customer account;

- b) Performing a credit search on the Customer’s record, as well as the record of Data Subjects, with one or more of the registered Credit Bureaus when assessing the Customer’s Application for Credit (and at any other time in discretion);
- c) Recording the existence of the Customer’s account with any Credit Bureau;
- d) Transmitting any information pertaining to the Customer and to any Data Subject to any third party that provides credit vetting services, credit guarantee insurance providers and brokers, collection service providers and entities that provides financing to Hexagon, (hereinafter referred to as “Approved Third Parties”), and to any such Approved Third Party in turn conducting its own Credit Bureaus and other credit vetting and debt collection processes;
- e) Recording and transmitting details of how the Customer has performed and how the account is conducted by the Customer in meeting its obligations on the account, including to a Credit Bureau and Hexagon credit insurers.

13.3. The Customer acknowledges and agrees that any information regarding its credit worthiness, defaults in payment to Hexagon, and details of how its account with Hexagon is conducted may be disclosed to any other creditor of the Customer, to Approved Third Parties, and, to any registered Credit Bureau after 21 (twenty-one) days’ notice have been given to the Customer.

13.4. The Customer warrants and represents that:

- a) It has concluded a contract with each Data Subject and that in terms of such contract, the Customer has obtained the consent from such person to the processing of Personal Information by suppliers and Approved Third Parties, in the credit vetting process;
- b) The processing of Personal Information by Hexagon is necessary for the legitimate interests of Hexagon inter alia in Hexagon credit vetting, credit management and funding processes;
- c) The Customer warrants that all Personal Information supplied to Hexagon is accurate, up to date, is not misleading and that it is complete in all respects; and
- d) The Customer undertakes to immediately advise Hexagon of any changes to the relevant Personal Information of a Data Subject, but not limited to, a change of ownership or control in the Customer.

## 14. General

14.1. Neither Party will make or issue any formal or informal announcement or statement to the press in connection with these Terms of Service, without the prior written consent of the other Party.

14.2. Hexagon may:

- a) cede, assign or transfer any of its rights or obligations under these Terms of Service to an



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affiliate of Hexagon or any third party contractor to carry out any of its rights or obligations under these Terms of Service without the Customer's consent, provided that Hexagon shall remain liable for performance of such third party contractors. Hexagon shall not be required to disclose the terms (including payment terms) of any sub-contract entered into with respect to Hexagon's obligations under these Terms of Service; and

b) cede as a cessionary or assignee, all claims which the Hexagon may have against the Customer under these Terms of Service or a Purchase Order to a third party, pursuant to a funding or discounting arrangement or similar transaction,

and to the extent that any such cession or assignment results in a splitting of claims, the Customer hereby consents to such splitting of claims.

14.3. The Customer shall not be entitled to cede, assign or transfer any of its rights or obligations under these Terms of Service without the prior written consent of Hexagon.

14.4. Hexagon may, at its sole discretion, levy charges in respect of copy documentation requested by the customer.

14.5. The invalidity of any part of these Terms of Service shall not affect the validity of any other part.

14.6. Any Purchase Order or supply of Services is subject to cancellation by Hexagon due to *force majeure* events, including but not limited to inability to secure labour, power, materials, or supplies, or by reason of an act of God, war, civil disturbance, pandemic, epidemy, riot, state of emergency, strike, lockout, or other labour disputes, fire, flood, drought or legislation.

14.7. The Customer agrees that no indulgence whatsoever by Hexagon will affect the provisions of these Terms of Service or any of the rights of Hexagon thereunder, and such indulgence shall not constitute a waiver by Hexagon in respect of any of its rights herein. Under no circumstances will Hexagon be stopped from exercising any of its rights in terms of these Terms of Service.

## 15. Business Rescue and Liquidation Proceedings

The Customer warrants that, as at date of placing the Purchase Order as described in clause 3, it is duly registered, in business and not in business rescue in terms of Chapter 6 of the Companies Act 2008 and has not made application to be placed under business rescue or in liquidation. Furthermore, the Customer warrants that it does not have any intention of making application for business rescue and is not aware of any current or pending circumstances relating to the business that could give rise to an application for business rescue or liquidation. The Customer agrees that in the event that the Customer is placed under business rescue and the conclusion of any compromise of the debt under such approved business rescue plan will not reduce the liability of any person or entity that has signed surety for the debts due by the Customer to Hexagon and such surety shall remain liable for the full amount of the debt that was due before such compromise, notwithstanding that is acknowledged, agreed and understood by the Customer that the Surety may be entitled to have recourse against the Customer for amount paid by the surety to Hexagon pursuant to such suretyship.