

# (TDS) Targeted Digital Solutions Pty Ltd

## STANDARD TERMS AND CONDITIONS OF SERVICE

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## 1. INTERPRETATION

1. In this Agreement, unless clearly inconsistent with or otherwise indicated by the context, the following expressions bear the meanings set out hereunder:

1. "Agreement" means the agreement set out in this document together with all annexures hereto;
2. "Client" means the person or entity to whom and/or on whose behalf TDS supplies the Services;
3. "Companies Act" means the Companies Act No. 71 of 2008 as amended from time to time;
4. "data message" means a data message as defined by the Electronic Communications and Transactions Act No. 25 of 2002, including but not limited to an email message;
5. "electronic signature" shall mean an electronic signature as defined by the Electronic Communications and Transactions Act No. 25 of 2002;
6. "hosting services" means the provision of access to a dedicated or shared server onto which any Service Deliverable has been installed and that is ordinarily capable of accepting requests from connected computing devices;
7. "Personal Data" means personal data as defined in the Protection of Personal Information Act No.4 of 2013;
8. "Proposal" means any written document, including but not limited to a service guide, proposal, estimate or quote expressly or implicitly accepted by the Client describing the Services or containing additional specific terms and conditions applicable to the Services;
9. "Services" means all services and Service Deliverables designed, developed, procured or supplied by TDS;
10. "Service Deliverable" means any product or other form of service deliverable supplied or to be supplied by TDS;
11. "TDS" means Targeted Digital Solutions Pty Ltd Registration No. 2015/331683/07 of Spaces, 1 Bridgeway Crescent, Century City, Cape Town;
12. "Third Party Services" means Services provided by persons other than TDS that are procured by TDS for the benefit of the Client; and
13. "Working Day" means any day other than a Saturday, Sunday or public holiday in the Republic of South Africa.

2. Any reference to the singular includes the plural and vice versa, any reference to natural persons includes legal persons and vice versa and any reference to a gender includes the other gender.
3. The section headings inserted into this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
4. This Agreement shall be governed by, construed and interpreted in accordance with the laws of South Africa save that the contra proferentem rule whereby an ambiguity may be interpreted against the party responsible for its drafting shall be excluded from the interpretation hereof.
5. All proposals submitted to the Client by TDS and any terms and conditions contained therein shall be deemed to be supplemental to and subject to the terms and conditions of this Agreement.
6. In the event of any direct conflict between the terms of this Agreement and the terms of any Proposal, that conflict shall be resolved in accordance with the provisions of:
  1. the Proposal, where the conflict relates to fees, payment terms, milestone dates and schedules; or
  2. this Agreement in all other cases.

## 2. INTRODUCTION

1. The Client is desirous of contracting with TDS for the performance of the Services and on the terms and conditions provided for in this Agreement.
2. TDS and the Client acknowledge and agree that their relationship shall at all times be governed by the principle of good faith and undertake to exercise their responsibilities towards each other with an appropriate degree of professionalism, transparency, mutual respect and consideration.
3. Save as contemplated in clauses 4 and 2.5 below or as otherwise recorded in a Proposal, nothing in this Agreement shall be construed as creating any agency, partnership or joint venture relationship between the parties and neither party shall be capable of binding the other to any obligation save as may be expressly contemplated and provided for herein.
4. For certain types of Third-Party Services, such as the management of digital advertising campaigns, TDS shall be authorised to act as the Client's agent in dealing with third parties. Where the Client provides TDS with access credentials to the Client's accounts with third parties, or authorises TDS to create any such accounts, including but not limited to search engine or social media advertising accounts and the like, the Client acknowledges and agrees that TDS shall be authorised to operate and transact on such accounts as an agent for and on behalf of the Client.

5. The Client acknowledges and agrees that Third Party Services may be subject to their own additional terms and conditions and that it shall be the responsibility of the Client to familiarise itself and comply with any such Third-Party Service terms and conditions.

### 3. APPOINTMENT

The Client hereby confirms the appointment of TDS to supply the Services and TDS hereby accepts the appointment.

### 4. BINDING AGREEMENT

1. Where the terms of this Agreement are communicated in paper form only, this Agreement shall become binding from the date of signature of the last party signing a paper copy thereof.
2. Wherever the terms of this Agreement are communicated and offered by electronic means, including by electronic mail or hyperlink and irrespective of whether a paper copy is produced or not, this Agreement shall become binding from the earlier of the date on which the accepting party first expressly indicates its acceptance of the terms hereof in writing including, but not limited to, by means of a data message or electronic signature, or the date on which the last signing party signs any printed copy thereof.
3. Unless otherwise terminated pursuant to the provisions of section 17 or by written agreement between the parties, this Agreement shall continue to endure and shall apply to all Services supplied by TDS to the Client at any time.
4. Where the Client instructs TDS to commence with the provision of any particular services prior to a Proposal having been formally accepted and agreed to, the Client shall be liable for all time and materials allocated by TDS towards the supply of any such Services.
5. Where these Standard Terms and Conditions of Service are submitted as part of any tender process, any Services to be supplied by TDS in the event that any such tender may be awarded to it shall be supplied in accordance with these Standard Terms and Conditions unless the parties expressly record otherwise.

### 5. PROVISION OF MATERIALS, INFORMATION & CONTENT

1. The Client shall provide TDS with the materials and information identified in any accepted Proposal and any other information which TDS may reasonably require or request from the Client in order to facilitate or enable the provision of the Services by TDS and TDS shall not be liable for any service delays or service interruptions occasioned by the Client's non-compliance with the provisions of this clause.
2. The Client hereby indemnifies and holds TDS harmless against all liabilities, costs and expenses which TDS may incur as a result of any claim:



1. for breach of any third-party Intellectual Property Rights arising from the use by TDS of any intellectual property, including specifications, written materials, data, tables or software supplied to TDS by the Client or any person acting on the Client's behalf; and
2. arising as a result of any content posted by the Client or any third party to any social media platform, website or by means of any mail or other form of communication service that is managed or maintained by TDS for the Client.

## 6. INTELLECTUAL PROPERTY RIGHTS

1. Subject to the provisions of this Agreement, all original content and intellectual property developed specifically for the Client during the provision of the Services by TDS shall vest entirely with the Client on receipt of payment in full for the Services. TDS may, however, reuse any knowledge, skills, tools, methods and experience that its personnel gather during the performance of the Services hereunder and such reuse shall not be deemed to be in violation of this Agreement.
2. Where TDS incorporates the intellectual property of any third party into any materials or software authored or developed for the Client, TDS shall ensure that it has all necessary permissions and consents required to enable it to do so. Ownership of any such third-party intellectual property shall not pass to the Client and TDS shall ensure that the Client shall be licensed to make use of any such third-party intellectual property on terms and conditions to be disclosed to the Client by TDS. The Client agrees to indemnify TDS in respect of any failure on the Client's part to comply with the terms of this Agreement, or to abide by the terms of any specific licences granted to it in respect of any such third-party intellectual property.
3. Save for as set out in this section, the Client acknowledges and agrees that TDS shall exclusively own and retain all rights in the know-how, methods, tools and processes that it uses in the normal course of its business or that have been designed or created for the purposes of carrying out the Services and that its personnel may re-use any skills developed by them during the performance of the Services without being in breach of the terms hereof.

## 7. SERVICE LEVELS & PREPARATION

1. TDS undertakes to supply the Services in a professional and workmanlike manner and in accordance with any agreed service levels appropriate to the Services as contained in the Proposal or any other annexure or service level agreement that the parties may agree to in writing.

2. Save as may expressly be provided for to the contrary in any annexure or Proposal, TDS shall undertake such preparation and provide such training to its own personnel as may be necessary for the due performance of its duties in terms of this Agreement.

## 8. SPECIFIC PROVISIONS RELATING TO SERVICE DELIVERABLES DESIGN & DEVELOPMENT WHERE APPLICABLE

1. It shall be the Client's exclusive responsibility to ensure that the design, functional and technical requirements and parameters of any Service Deliverable to be designed or developed by TDS, or third party deliverables including software to be supplied by TDS, are fully documented in any specification drawn by TDS or any third party and that any particular Client requirements are comprehensively recorded therein. The consequences of any failure so to do, financial or otherwise, will be for the sole account of the Client who shall be bound to accept TDS's reasonable interpretation and understanding of the Client's requirements as documented or as otherwise communicated.
2. TDS makes no warranty that operation of any Service Deliverable developed or supplied by it, shall be completely error-free, nor that any particular website or web application that it develops will be compatible with any particular web browser or other software other than the browsers and software expressly identified and contemplated in any Proposal or development specification approved of by TDS in writing.
3. Once TDS determines that the design or development of any Service Deliverable, which for the purposes of this clause 8 shall be deemed to include any particular milestone, component or module of a Service Deliverable, has been completed or is ready for the Client to review, TDS will notify the Client in writing.
4. Either party may request or recommend a change to any Deliverable by preparing and submitting a written Change Request which shall set forth any requested or proposed change.
5. TDS shall act professionally in evaluating any requested changes to Service Deliverables and in accordance within its reasonable discretion. Notwithstanding the foregoing, neither TDS nor the Client shall be obliged to agree to any Change Request but neither party will unreasonably withhold its agreement to such request or recommendation, and on such terms and conditions as may be appropriate.
6. TDS and the Client shall communicate in writing, or shall meet, to discuss any Change Request as soon as is reasonably practicable.
7. Any agreement to a Change Request shall become valid as an amendment to a Proposal only when recorded in writing and signed by an authorised representative of each party.

8. Until such time as any Change Request is formally agreed to in writing and becomes effective, TDS shall, unless otherwise agreed, continue to perform and to be paid as if such change had not been agreed to.
9. TDS reserves the right to charge a reasonable fee for considering Change Requests submitted by the Client and for preparing service impact assessments, estimates or quotations related thereto which fee shall be agreed upon between the parties prior to the submission of any such assessment, estimate or quote to the Client.
10. Any clause in this Agreement restricting sub-contracting shall not apply to any sub-contract with a body incorporated or carrying on business in the Republic of South Africa and that is wholly or partially owned by TDS nor to the outsourcing of any hosting services, where applicable, as defined in paragraph 1.6 hereof.
11. Where TDS develops a website or other form of software deliverable for the Client, TDS shall provide the Client with an opportunity to test that Service Deliverable same an operating environment that is reasonably determined by TDS to be appropriate for testing purposes and the following additional provisions shall apply:
  1. The Client shall carry out and complete acceptance testing and in accordance with any testing plan stipulated by TDS following the receipt of a notification in terms of paragraph 11 (or a notification in terms of paragraph 8.11.3 as the case may be) and, within 10 Working Days of receipt of any such notification, shall advise TDS of the results of acceptance testing in writing.
  2. During acceptance testing, any observed deviation between the specified operation, appearance or performance of the Service Deliverable and the actual operation, appearance or performance thereof shall be categorised as follows:
    1. Category 1: a deviation which severely corrupts the integrity of all data processed by the Service Deliverable or prevents the Service Deliverable from functioning at all or otherwise renders it completely inaccessible to users;
    2. Category 2: a deviation which renders the Service Deliverable partially inaccessible to users or which causes some of the functionality to be inaccessible or which executes tasks in a manner that deviates from the specified manner and which produces an objectively incorrect result to any such task;
    3. Category 3: a deviation which performs or executes tasks in a manner than deviates from the specified manner but produces a correct result to any such task and does not affect a user's ability to access the Service Deliverable or any of its functionality; and

4. Category 4: any other observation which does not constitute a deviation from the required specification, relates only to the appearance, look or feel of the Service Deliverable or is trivial in nature.
3. Once all category 1 and 2 errors reported during the 10 (ten) day period referred to in paragraph 11 have been rectified by TDS or, in the case of a category 3 error, once a reasonable work-around has been made available to the Client (whose acceptance thereof shall not be unreasonably refused); TDS shall notify the Client that it may re-test the Service Deliverable and the provisions of paragraphs 8.11, 8.11.1 and 8.11.2 of this Agreement shall apply in respect of such re-testing save that the period referred to in paragraph 8.11.1 shall be reduced to 5 Working Days in respect of any such further testing.
4. The Service Deliverable will have passed acceptance testing where no verifiable category 1, 2 or 3 errors are reported by the Client during the period provided for testing (or re-testing as the case may be) in terms of this section 8.
5. For the avoidance of doubt it is recorded that all category 4 errors and any other errors reported to TDS outside the periods allotted for the completion of acceptance testing (or re-testing as the case may be), or any extension of any such periods that may be agreed by TDS in writing, shall be dealt with and addressed at the discretion of TDS and on such terms and conditions as TDS may determine appropriate including terms relating to the invoicing for any further services on a time and materials basis or as part of any maintenance and support services where applicable.
6. TDS hereby warrants to and in favour of the Client that for 30 days following the completion of acceptance testing of any Service Deliverable developed by TDS for the Client, the Service Deliverable shall operate in material conformance with the functionality described in the development specifications where properly configured, used and maintained in the contemplated operating environment save however that where any such Service Deliverable is modified or altered in any manner by any person other than TDS, including whether by attachment, infiltration or plug-in of any other Service Deliverable application or virus, this warranty shall immediately lapse and be of no force and effect.
7. Where TDS provides maintenance and support services to the Client, the reporting of any faults shall be in accordance with the fault categorisation specified in any accepted maintenance and support Proposal, failing which in accordance with the fault categorisation system provided for in paragraph 11.2 above.



8. Unless otherwise agreed in writing by the parties, after acceptance of any Service Deliverable developed by TDS for the Client and following payment of all sums due by the Client, TDS agrees to assign in writing any new and original copyright in the Service Deliverable to the Client with the exclusion of any retained copyright or third party copyright incorporated therein.
9. Unless expressly provided for to the contrary in writing, any warranty, maintenance and support services to be provided to or for the Client by TDS shall exclude the repair of any fault, error or malfunction arising from:
  1. the Client's breach of any of the provisions of the Agreement;
  2. any Force Majeure event;
  3. misuse or incorrect handling or operation of any software or Service Deliverable by the Client, its servants, agents and/or sub-contractors;
  4. electrical power failures and fluctuations in power or humidity control;
  5. use of any software or Service Deliverable other than in the ordinary course of the Client's activities;
  6. relocation of any hardware on which the Service Deliverable has been installed without the written agreement of TDS;
  7. operator error on the part of the Client or any person permitted by it to access or use any Service Deliverable;
  8. the acts or omissions of any person not being a duly authorised employee, sub-contractor or agent of TDS or any third party not authorised by TDS to act in terms of this Agreement;
  9. faults arising in any hardware or software supplied to or obtained by the Client from any person or entity other than TDS;
  10. the actions, omissions or service interruptions of any utilities provider or third-party service provider, including a telecommunications service;
  11. the Client's incorporation or attachment of any program, plug-in or device to any software or Service Deliverable;
  12. changes to any Service Deliverable made by the Client or any person not authorised to do so in writing by TDS;
  13. failure to provide a suitable operating environment for any Service Deliverable or accessing or using any Service Deliverable other than on the specified or recommended operating environment for same;
  14. the unauthorised use of any username, profile or password;

15. faults arising in any products or materials not directly or indirectly supplied by TDS;
  16. any failure by the Client to backup data used in, produced by or otherwise associated any Service Deliverable;
  17. use of any Service Deliverable for any other purpose other than that for which it was designed; or
  18. any other exclusions expressly outlined elsewhere in this Agreement, in any Proposal or as otherwise agreed to by the parties in writing.
10. Repair of any faults arising as a result of any of the circumstances provided for in of any of the sub-paragraphs to paragraph 11.9 may be undertaken by TDS at its discretion and may be subject to additional time and material charges in accordance with TDS's prevailing standard rates.

## 9. FEES

1. Fees shall be payable to TDS on the specific basis set forth in any Proposal or any annexure hereto detailing the fees to be paid, failing which in accordance with TDS's prevailing standard rates for time and materials.
2. All invoices supplied by TDS shall describe the nature of Services invoiced for, the billing period where applicable and the fee charged to the Client.
3. All invoices shall be payable by the Client on presentation thereof unless otherwise agreed to by the parties in writing and all payments shall be made without any deduction, set off or exchange.
4. In the event that the Client wishes to dispute all or any portion of an invoice supplied by TDS, then, and in that event, and subject to the provisions of paragraph 5, the Client shall promptly notify TDS in writing of its full reasons for doing so. Notwithstanding the provisions of section 16, upon notification of a dispute the parties shall attempt to resolve such dispute in good faith and the Client shall continue to make payment to TDS of all undisputed invoices or undisputed components of any invoices.
5. In the case of partial or total non-payment by the Client of any charges due to TDS under this Agreement, including in respect of any disputed invoice or disputed component thereof which is later resolved in favour of TDS, the Client shall be liable to make payment of interest on the amount payable at the rate of 2% per month calculated on a daily basis from the date such charges first become due and compounded monthly in arrears until receipt of full payment by TDS.
6. If and where applicable, the Client shall pay all taxes of whatsoever nature that may be levied or charged against the Services supplied in terms of this Agreement or otherwise arising out of the ordinary

fulfilment of any of the terms and conditions of this Agreement as well as any materials or travel expenses reasonably incurred by TDS in execution of the Services provided that such expenses shall be approved of by the Client in writing and shall exclude any travel undertaken by any member of TDS's personnel between their ordinary place of residence and their ordinary place of work. Unless expressly indicated to the contrary, all fees and charges outlined in any Proposal shall be indicated exclusive of VAT.

7. Where the Client procures Third Party Services from TDS as its agent or applies for terms of credit from TDS, TDS shall be authorised at any time during the currency of this Agreement to carry out credit reference checks in respect of the Client, to obtain credit related information and reports from any recognised credit bureau, to request or introduce a deposit amount to be paid by the Client and to revise at any time the payment terms offered to and the payment schedules to be adhered to by the Client.
8. Retainer fees shall be due and payable irrespective of whether the Client makes full use of TDS's retained resources or services. TDS may, in its sole discretion, agree to apply a temporary service credit to the Client's account for unutilised retained services that have been paid for by the Client provided that any such service credit shall not exceed 50% of the value of the unutilised services and provided further that any such service credit shall expire within the month following the month to which the credit relates and shall not be rolled over into any further month or used as a basis for calculating any further service credits.

## 10. EQUIPMENT

1. All risk in and to any goods or equipment supplied by TDS to the Client shall pass to the Client on delivery thereof.
2. The delivery and installation of any equipment may be subject to a reasonable delivery and installation fee.
3. Unless a separate written purchase order agreement is entered into between TDS and the Client providing otherwise, all goods and equipment intended to be sold to the Client shall remain the sole and exclusive property of TDS until paid for in full.
4. Where any goods or equipment loaned or leased to the Client by TDS is located in premises not owned by the Client, the Client shall ensure that all necessary permissions have been obtained from the owner or landlord of such premises prior to delivery or installation thereof at the premises and shall furthermore take all such steps as may be required to ensure that the goods or equipment are at all times excluded from any lien, pledge or hypothec over goods or equipment located at the premises and the Client agrees to indemnify and hold TDS harmless against any and all damages and expenses it may suffer as a result of

the Client's failure to comply with the provisions of this clause including, but not limited to, special, incidental and consequential damages and loss of profits.

## 11. LIABILITY

1. The Client acknowledges and agrees that it is in a position to identify and evaluate the potential impact, benefits and risks associated with or arising out of Services including insofar as they relate to its activities and stakeholders.
2. Save for where the Client has expressly requested and authorised TDS in writing to procure and arrange, at the Client's own approved expense, professional indemnity or project insurance to cover and insure against any claims that may be made against TDS by the Client in respect of the Services and save for where the Client has made payment in full of the costs of any such insurance prior to the commencement of the Services, TDS shall not be liable to the Client in respect of any claim for any damages or loss including special, exemplary, indirect, incidental, consequential, punitive or tort damages arising out of, or in connection with this Agreement or the Services.
3. Under no circumstances and in no event shall TDS be liable to the Client, nor any third party to whom the Client may cede any of its rights where authorised to do so in terms of this Agreement, in respect of any claim made against TDS or arising out of the Services or any act or omission of TDS other than a claim for an insured event or circumstance expressly contemplated and provided for by the insurance cover referred to in paragraph 2 above where such cover is procured at the request and expense of the Client. TDS's liability to the Client or any third party in respect of any claim arising as a result of any insured event or circumstance shall not exceed the maximum aggregate amount or amount per claim that may be successfully claimed by TDS in terms of any such cover. On the request of the Client, TDS shall furnish the Client with a copy or summary of its insurance policy document and it shall at all times remain the responsibility of the Client to ensure that the terms and extent of any such cover held or procured by TDS is sufficient in its nature and extent and is on terms satisfactory to the Client.
4. TDS shall have no liability to the Client or any other person arising from any act or omission of a Third-Party Service provider. TDS's sole and exclusive responsibility in relation to Third Party Services shall be act with reasonable diligence and care in selecting Third Party Service providers and in responsibly managing the Client's account with any such Third Party where applicable.



5. Save as expressly contemplated and provided for herein, under no circumstances shall TDS be liable to the Client for any other claims including any claims for consequential or indirect damages or loss, including loss of business or loss of profits.

## 12. NON-SOLICITATION

The Client shall not during the currency of this Agreement, nor within a period of twelve months following its termination, without the prior written consent of TDS, hire or engage, nor offer to hire or engage, directly or indirectly, whether as an employee, consultant, independent contractor or in any other capacity, any person who was at any time during the period of this Agreement an employee or contractor of TDS engaged directly or indirectly in the provision of the Services to the Client. Where the Client breaches this clause, or where a related person to the Client within the meaning of section 2 of the Companies Act takes any action that would constitute a breach if taken by the Client, the Client shall be liable to make payment of an amount to TDS that is equal to the gross remuneration that the relevant employee or contractor would have received if he or she had been employed on a full time basis for three months by TDS at his or her last remuneration level.

## 13. CONFIDENTIALITY AND DATA PROTECTION

1. Each party (the “Restricted Party”) shall, and shall ensure that every other member of its personnel shall keep confidential and shall not use for its own purposes, nor disclose, any information of a confidential nature about the other party or its business (including but not limited to Client information, trade secrets and information of commercial value) which becomes known to the Restricted Party unless such information is already in the public domain otherwise than by reason of a breach by the Restricted Party of its obligations under this section 13. Disclosure is, however, permitted to the extent that any such disclosure is:
  1. required by law;
  2. requested by the Restricted Party’s professional advisers or a regulatory body to whose jurisdiction or rules the Restricted Party is subject or in relation to a prospective investment by or in the Restricted Party;
  3. to the Restricted Party’s employees, agents or professional advisers where it is reasonably necessary or desirable to enable the Restricted Party to comply with this Agreement provided that before the disclosure takes place the Restricted Party makes such employees, agents or professional advisers aware of its obligations of confidentiality under this Agreement

and at all times procures compliance by such employees and agents therewith; or

4. made with the prior written consent of the other party.
2. The Parties agree not to disclose to any unauthorised person any Personal Data of a data subject that is processed by either party in terms of this Agreement and to comply in all respects with the provisions of any applicable data protection legislation to which they may be or become subject.
3. Each party agrees that the provisions of this section 13 shall survive the termination of this Agreement, however arising.

#### 14. TRANSFER OF RIGHTS AND OBLIGATIONS

The Client shall not cede, assign or transfer any of its rights or obligations in terms of this Agreement nor any Proposal without the prior consent in writing of TDS.

#### 15. DISPUTE RESOLUTION

1. Should any dispute, disagreement or claim arise between the parties concerning this Agreement, the parties shall endeavour to resolve same by negotiation by the respective project managers, in the first instance, and thereafter by a senior executive of each party.
2. The parties hereby consent to the non-exclusive jurisdiction of the Cape Town Magistrates' Court for any claim sounding in money up to the value of R1 million.
3. TDS shall be entitled to the award of legal costs in any litigation arising in terms of this Agreement or any Proposal on the scale of attorney and client.

#### 16. TERMINATION

1. Unless expressly provided for to the contrary in an accepted Proposal, and in the provision of Website Security and Online Advertising (pay-per-click PPC Google AdWords) as per the indicated contractually agreed term, including but not limited to in relation to the minimum duration of any services contemplated by that Proposal, and save as provided for in terms of any retainer engagement, the Client shall be entitled to terminate the provision of the Services by TDS at any time, with two calendar months' notice, provided that TDS shall be entitled to retain in its sole and absolute discretion any payments or deposits advanced by the Client at any time prior to providing notice of termination.
2. Either TDS or the Client shall have the right to terminate this Agreement by written notice if any of the following events occurs with respect to the other (the "Defaulting Party"):
  1. the Defaulting Party is in material breach of any of its obligations hereunder and in the case of a remediable breach fails to

- remedy within 15 Working Days of receipt of a notice requiring that the breach be remedied;
2. any resolution is passed, or order made for the winding-up or administration of the Defaulting Party otherwise than for the purposes of a reconstruction or amalgamation;
  3. a receiver is appointed over any of the assets of the Defaulting Party or any arrangement or composition is made with the creditors of the Defaulting Party; or
  4. the Defaulting Party ceases or threatens to cease to carry on business or suspends payment of all or substantially all of its debts or is unable to pay its debts as they fall due.
3. Termination of this Agreement pursuant to this section 16 shall be without prejudice to the rights of either party arising in respect of any breach of this Agreement at any time prior to termination.

## 17. FORCE MAJEURE

TDS shall have no liability to the Client in respect of anything which, apart from this provision, may constitute a breach of this Agreement arising by reason of Force Majeure, which for the purposes of this Agreement shall mean and include any circumstances beyond the reasonable control of TDS including, but not limited to, acts of God, fire, flood, acts or regulations of any governmental or supra-national authority, war or national emergency, accident, riots, civil commotion strikes, lock-outs, labour strikes, or breakdown or interruption of power, communication of transportation services.

## 18. NOTICES

1. Save for all communications and reporting otherwise specifically provided for in elsewhere in this Agreement, any notice or other document to be given under this Agreement shall be given in writing and shall:
  1. if delivered by courier service be deemed to have been duly received by the addressee on the date of delivery;
  2. if posted by prepaid registered post be deemed to have been received by the addressee on the 8th day following the date of such posting; or
  3. if sent by electronic mail to a correct address for the addressee, be deemed, until the contrary is proved by the addressee, to have been received within 1 hour of sending where transmitted during the hours of 08h00 – 16h00 of any business day or at noon on the following business day where transmitted outside of such business hours.

2. Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by one of the parties from the other, including a communication by way of electronic mail, shall constitute adequate written notice or communication to such party.

## 19. WAIVER

Failure or delay by either party to exercise or enforce any right conferred upon it by this Agreement shall not be deemed to be a waiver of any such right or of any other right hereunder.

## 20. WARRANTIES

1. Each of TDS and the Client warrants that it is legally entitled to enter into this Agreement; that the performance of its obligations under this Agreement will not in any way constitute an infringement of any other person's rights including the intellectual property rights of any third party; that the persons signing or accepting this Agreement on behalf of it are duly authorised to do so; and furthermore that its entry into and performance of this Agreement does not and will not violate any agreement to which it is a party or is binding on it.
2. Each party's undertakings set out in this Agreement shall be the full extent of its obligation to the other party concerning its performance or non-performance under this Agreement. Accordingly, except as aforesaid, all warranties, conditions or representations, expressed, implied, statutory or otherwise and whether arising under this Agreement or under any prior agreement or in oral or written statements made by or on behalf of either party in the course of negotiations with the other party or its representatives are hereby excluded, insofar as the same are capable of exclusion by law.
3. Save as expressly provided for in this Agreement, no warranty, condition, undertaking, term, or otherwise is given or to be implied as to the suitability of any services supplied or software developed or supplied by TDS for the Client for any particular purpose including compliance with any legal obligation to which the Client may be subject, or for use under any specific conditions, notwithstanding that any such purpose or conditions may be known or made known to TDS and all such warranties, conditions, undertakings and terms are hereby expressly excluded.

## 21. VARIATION/AMENDMENTS

Save as expressly provided by this Agreement no amendments or variations of this Agreement shall be effective unless agreed to in writing by the duly authorised representatives of TDS and the Client.



## 22. SERVICE GUIDE

Please see our Service Guide, this guide includes detail around the products and services provided, what they include and the processes involved.