

## FINSTOCK PROPRIETARY LIMITED

### Standard Terms and Conditions for Managed Planning Services

#### 1 INTERPRETATION AND DEFINITIONS

- 1.1 In this agreement the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:
- 1.1.1 **"Affiliate"** means, with respect to any person or entity, any other person or entity that controls, is controlled by, or is under common control with, such first person or entity.
  - 1.1.2 **"Agreement"** means this Agreement together with all Schedules thereto;
  - 1.1.3 **"BI"** means Business Intelligence;
  - 1.1.4 **"Managed Planning Services"** means, the outsourcing of the process of the planning of supply chain requirements, the facilitation of continuous improvement, as well as the presentation and integration of results;
  - 1.1.5 **"FinStock Software"** means the software products produced, owned or duly licensed for use or for distribution by FinStock, together with any other software and related documentation developed by FinStock;
  - 1.1.6 **"Confidential Information"** means non-public information of either party that is disclosed by one party to the other party pursuant to this Agreement in written form or orally and marked "Confidential", "Proprietary" or with a similar designation. If disclosed orally, such information is confidential at the time of disclosure if a written summary of such information is sent to the receiving party within thirty (30) days of disclosure and such summary is marked "Confidential", "Proprietary" or with a similar designation.  
Confidential Information also includes all summaries or abstracts of Confidential Information;
  - 1.1.7 **"The Client"** means an individual or a company purchasing FinStock's products and/or services for their internal use and not for resale;

- 1.1.8 “**Documentation**” means any user documentation, on any media, provided by FinStock for use with the Software including FinStock’s on-line help files, standard manuals, program listings, data models, flow charts, logic diagrams, input and output forms, functional specifications, instructions and complete or partial copies of the foregoing;
- 1.1.9 “**DPM**” means Data Protection Manager;
- 1.1.10 “**Effective Date**” means the date upon which the project commences as per the FinStock Proposal
- 1.1.11 “**End Date**” means the effective date of the expiration or termination of this Agreement;
- 1.1.12 “**Error**” means a defect that causes FinStock Software not to perform substantially in accordance with the specification set forth in the documentation and which can be reproduced by The Client and FinStock;
- 1.1.13 “**FinStock Proposal**” means the proposal signed between FinStock and the Client for the products and services offered by FinStock;
- 1.1.14 “**FinStock**” means FinStock (Pty) Ltd, Registration number 2015/212626/07;
- 1.1.15 “**FTP**” means File Transfer Protocol;
- 1.1.16 “**Hosted Environment**” means an environment where FinStock Software and Third-Party Software resides and is being operated on either FinStock’s or a third party’s infrastructure outside The Client’s firewall;
- 1.1.17 “**Intellectual Property Rights**” means any patent, design, copyright, trade secret or other proprietary right;
- 1.1.18 “**ISP**” means Internet Service Provider;
- 1.1.19 “**Modifications**” means any modifications, revisions, updates, improvements, enhancements, new releases corrections, or programming

changes to the data contained in the third-party software which The Client is able to view;

- 1.1.20 “**Output**” means the results of the processing of The Clients data which is displayed using FinStock Software and/or Third-Party Software;
  - 1.1.21 “**Product**” means FinStock products and configurations as listed in FinStock Proposal and agreed upon between the parties from time to time with any exclusions, additions or discounts FinStock may make;
  - 1.1.22 “**Qualified Individuals**” means at least one individual appointed by The Client who is knowledgeable in the use and application of FinStock products and Third-Party Software, as primary contact between The Client and FinStock.
  - 1.1.23 “**Service Levels**” means the levels of performance as specified in Schedule A to this agreement;
  - 1.1.24 “**Signature Date**” means the date of signature of FinStock Proposal by all relevant parties;
  - 1.1.25 “**Territory**” means all countries on the African continent;
  - 1.1.26 “**Third Party Software**” means the computer program(s) (if any) required to display the output of The Clients data as provided by FinStock.
  - 1.1.27 “**Update**” means a set of the Software in which detected shortcomings are remedied.
- 1.2 In this Agreement unless the contrary intention appears:
- 1.2.1 the headings of the clauses in this agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modification nor amplification of the terms of this agreement nor any clause hereof;
  - 1.2.2 cross reference to a Clause number is a reference to all its Sub-clauses;

- 1.2.3 words in the singular number include the plural and vice versa;
  - 1.2.4 words importing a gender include any other gender;
  - 1.2.5 a reference to a person includes a partnership and a body, whether corporate or otherwise;
  - 1.2.6 a reference to an Annexure or Schedule is a reference to an Annexure or Schedule to this Agreement;
  - 1.2.7 All Annexures and/or Schedules to this agreement are incorporated herein by reference and FinStock has the right to amend same in writing at its sole and exclusive discretion;
  - 1.2.8 where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
  - 1.2.9 monetary references are references to South African currency;
  - 1.2.10 references to natural persons include corporations and vice versa; and
  - 1.2.11 the plural includes the singular and vice versa.
- 1.3 Where an obligation is imposed on a party under this Agreement, that obligation shall be deemed to include an obligation to ensure that no act, error or omission on the part of the party's employees, agents or sub-contractors or their employees or agents occurs which prevent the discharge of that party's obligation;
- 1.4 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the agreement;
- 1.5 When any number of days is prescribed in this agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.

## 2 RECITALS

FinStock hereby declares that it owns the Intellectual Property Rights and owns all distribution rights to the Products listed in in the FinStock Proposal.

### 3 DURATION

This Agreement shall take effect on commencement date as per the FinStock Proposal and continue for a period as stipulated in the FinStock proposal. This agreement shall be automatically renewed at the end of each period for an additional 12-month terms provided that either party hereto may terminate this Agreement in accordance with clause 13 below.

### 4 FINSTOCK'S WARRANTIES & OBLIGATIONS

4.1 FinStock warrants to and in favour of The Client that:

4.1.1 FinStock has sufficient rights in and to FinStock's Software and the Logo to grant the rights contemplated by this Agreement without obtaining the consent of any other person and, to the best of FinStock's knowledge, FinStock's products do not infringe any South African copyright, South African patent or other South African intellectual property rights.

4.1.2 FinStock extends a warranty to The Client that FinStock's Software will provide comprehensive output relating to supply chain planning, as well as the presentation and integration of results in accordance with the Documentation for the agreement period. If the Software does not perform as warranted, FinStock shall undertake to correct the Software, or if correction of the Software is not reasonably possible, terminate the agreement in accordance with paragraph 13.2.3.5 below. The aforesaid is The Clients only remedy for breach of warranty. The warranty set forth above is made to and for the benefit of Client only and will be enforceable against FinStock only if:

4.1.2.1 the defect is not caused by a Third-Party Software malfunction.

4.1.2.2 Data and supply chain parameters provided by The Clients are correct

4.1.3 FinStock expressly disclaims and excludes any and all other warranties, whether express or implied, including

(i) all implied warranties of merchantability and fitness for a particular purpose with respect to FinStock's Products; or

(ii) all warranties that FinStock's products will meet the requirements of The Client or operate in any combination selected by The Client.

No warranty is given by FinStock that FinStock's products will be bug-free or that it will operate without interruptions.

- 4.2 FinStock's obligations include the following:
- 4.2.1 FinStock shall extract raw data from The Client periodically and as per prior arrangement with The Client and transfer said data to FinStock's hosting servers and or client server, depending on hosting preference.
  - 4.2.2 FinStock shall insert said raw data into FinStock Software in order for said data to be re-worked and interpreted in accordance with The Client's needs and requirements.
  - 4.2.3 FinStock shall furthermore configure FinStock Software in accordance with The Client's requirements and provide the standard data outputs.
  - 4.2.4 FinStock shall, in accordance with the standard product requirements, display the results obtained from FinStock's software by utilising either FinStock software and or third-party BI Software and or Workflow Software.
  - 4.2.5 FinStock shall validate the data output in accordance with the data input and the agreed configuration and supply chain parameters. FinStock shall not be responsible for ensuring that the data input is correct.
  - 4.2.6 FinStock shall use FinStock's software and or third-party business intelligence software for the Client to see the results obtained from FinStock's software.
  - 4.2.7 FinStock shall be solely responsible for ensuring that it has adequately licensed and installed all necessary Third-Party software required for FinStock to deliver the services as per this agreement. This is exclusively pertaining to the Third-Party Software which FinStock uses to re-work the raw data provided by The Client. FinStock, however, makes no representations or warranties and shall have no responsibility regarding the licensing and/or installation of the Third-Party BI Software as per paragraph 5.2.5 below.
  - 4.2.8 The Client shall decide whether or not to insert the processed data back into The Clients' software and FinStock shall not carry any responsibility in this regard.
  - 4.2.9 FinStock shall furthermore set up a planning and operation review session as per the FinStock Proposal with The Client, on a date agreed upon between the parties to ensure the agreed upon objectives are achieved.

- 4.2.10 FinStock shall also ensure collaborative continuous improvement programme with The Client as per the FinStock proposal.
- 4.2.11 FinStock shall adhere to the Service Levels as set out in Schedule A
- 4.2.12 Fees and charges relating to adding additional products to the environment or relating to hardware or software to support the existing or additional products, shall be negotiated as required. Said additions shall be addressed as an addendum to the FinStock Proposal
- 4.2.13 Consultative support will be provided by FinStock to The Client's Qualified Individual/s. This Consultative support relates to error management and interpretation of output only.
- 4.2.14 All other services not referred to in this Clause shall be charged separately according to FinStock's applicable Professional Services tariffs.

## **5 CLIENTS WARRANTIES & OBLIGATIONS**

- 5.1 The Client warrants to and in favour of FinStock that:
  - 5.1.1 The Client has made and will make no representation, warranty, claim or promise to any party relating to FinStock's Software except as FinStock has expressly authorised in writing.
- 5.2 The Clients obligations include the following:
  - 5.2.1 The Client shall provide the raw data to FinStock in order for FinStock to transfer said data into its hosting server.
  - 5.2.2 The Client shall attend to all necessary data clean-ups before said data is provided to FinStock.
  - 5.2.3 The Client shall ensure that the data files are properly and adequately maintained.
  - 5.2.4 The Client shall, in addition to the requirements set out in paragraph 5.2.13.2, ensure that The Client makes the necessary personnel available to assist FinStock if and where necessary.

- 5.2.5 The Client acknowledges that the Services provided in accordance with this agreement relate to FinStock receiving raw data from The Client and re-working said data in accordance with The Clients' requirements. FinStock re-works the data using FinStock's software in conjunction with other software and provides output to The Client to use as The Client sees fit. In order to adequately and comprehensively display the results obtained from the re-worked data, the Client requires Third Party BI Software. The Client shall be solely responsible for ensuring that it has licensed and installed all necessary Third-Party BI Software. FinStock makes no representations or warranties and shall have no responsibility regarding the Third-Party BI Software or the licensing thereof.
- 5.2.6 The Client shall inform FinStock immediately of any changes in ownership or control of The Client and of any change in its organisation or method of doing business.
- 5.2.7 The Client agrees that it will make available to FinStock all data required within the timelines set out in the FinStock Proposal.
- 5.2.8 If any action or lack thereof required by The Client, causes a project delay, e.g., delay in the handover of data, or poor quality of data, FinStock shall not be forced to comply with the KPI's as set out in Schedule A below. In instances where The Client causes a project delay, FinStock shall perform the tasks affected by said delay within a reasonable time.
- 5.2.9 The Client is to define the parameters in which FinStock shall configure FinStock's software.
- 5.2.10 The Client is to validate the results obtained from FinStock's software before executing
- 5.2.11 The Client is solely responsible for acquiring licenses for the Third-Party business intelligence software.
- 5.2.12 The Client is to ensure that a sufficient number of Third-Party business intelligence software licenses are obtained for FinStock's as well as The Client's use.

5.2.13 The Client will provide the following:

- 5.2.13.1 Corporate network with sufficient capacity to access the Hosted Application and to support the scope of use;
- 5.2.13.2 Technical systems administration support to assist in the configuration of firewalls, proxy servers or other network interface devices as required for the scope of use;
- 5.2.13.3 Workstations that meet the minimum requirements for Third Party software;
- 5.2.13.4 Data as defined during the implementation;

## 6 SOFTWARE

FinStock Products include as components certain software programs (collectively "Programs") proprietary to FinStock or licensed by it from third-party vendors, which may be periodically updated and substituted. FinStock has all rights necessary for it to market and distribute the Programs as FinStock Product components, as well as the right and authority to conclude this Agreement and to grant rights hereunder regarding the Programs. Title to the Programs remains with FinStock and/or their licensors, and Client has no rights to transfer them

## 7 ARBITRATION

- 7.1 Should any dispute arise out of or in connection with this agreement (including, but not limited to, any purported cancellation of this agreement or the validity of any suspension of this agreement), any party shall be entitled to require, by written notice to the other party, that the dispute be submitted to arbitration in terms of this clause. Said arbitration shall take place in Cape Town.
- 7.2 Subject to the provisions of this clause, the arbitration shall be held under the provisions of the Arbitration Laws for the time being in force in the Republic of South Africa; provided that:
  - 7.2.1 the arbitrator shall be, if the question in issue is:
    - 7.2.1.1 primarily an accounting matter, an independent practising-chartered accountant of not less than 20 (TWENTY) years standing;
    - 7.2.1.2 primarily a legal matter, an independent practising attorney of not less than 20 (TWENTY) years standing;

- 7.2.1.3 any other matter, a suitably qualified independent person having thorough experience in the industrial technology and/or software industry,

agreed upon by the parties and failing such agreement within 7 (SEVEN) days after the date upon which the arbitration is demanded, appointed by the committee of the Arbitration Association of South Africa or any similar existing body at the time when the arbitration is demanded (who may appoint one of their number), which may be instructed by either party to make the nomination at any time after the expiry of that 7 (SEVEN) day period.

7.3 The arbitrator shall be entitled:

- 7.3.1 to investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with the dispute, and for that purpose shall have the widest powers of investigating all the books and records of either party to the dispute and the right to take copies or make extracts there from and the right to have them produced and/or delivered at any reasonable place required by him for the aforesaid purpose;
- 7.3.2 to interview and question under oath representatives of either of the parties;
- 7.3.3 to decide the dispute according to what he considers just and equitable in the circumstances;
- 7.3.4 to make such award, including an award for specific performance, damages or a penalty or otherwise as he in his discretion may deem fit and appropriate;

7.4 The arbitration shall be held as quickly as possible after it is demanded with a view to its being completed within 30 (THIRTY) days after it is demanded;

7.5 Immediately after the arbitrator has been agreed upon or nominated in terms of this clause, any of the parties to the dispute shall be entitled to call upon the arbitrator to fix a date and place when and where the arbitration proceedings shall be held and to settle the procedure and manner in which the arbitration proceedings will be held.

7.6 Any award that may be made by the arbitrator:

- 7.6.1 shall be final and binding;
- 7.6.2 will be carried into effect; and

7.6.3 may be made an order of any court to whose jurisdiction the parties to the dispute are subject.

7.7 Notwithstanding the foregoing, any party shall be entitled to seek an interdict in any Court of competent jurisdiction should any party be entitled to such relief in law.

## **8 FEES**

8.1 The fees in connection with the services rendered by FinStock are in accordance with the FinStock proposal signed by the Client.

8.2 FinStock may at any time change the fees as long as such change is in writing and communicated to The Client.

8.3 Fees shall escalate annually on the 1st day of January of each succeeding year. Said escalation shall be agreed upon between the parties in the FinStock Proposal but may not amount to a percentage increase less than the CPI for that year.

## **9 INVOICING AND PAYMENT TERMS**

9.1 FinStock shall invoice The Client for the products purchased and services rendered in accordance with the fees and in accordance with the agreed invoicing terms and payment terms as stipulated in the FinStock Proposal.

## **10 CONFIDENTIALITY**

10.1 In accordance with this agreement, confidential Information may be used only for performance under this Agreement but may not be copied or reproduced unless such copying or reproduction is a requirement for using such information. Any and all Confidential Information remains the property of the disclosing party and the receiving party is obliged to return to the disclosing party all copies and reproductions no later than the date of termination of this Agreement.

10.2 The receiving party shall

- (i) at all times, both during the term of this Agreement and at all times, thereafter, keep in confidence and trust all of the Confidential Information received;
- (ii) not use the Confidential Information of the disclosing party other than as necessary to perform its obligations or exercise its rights under this Agreement;
- (iii) take all reasonable steps to prevent unauthorized disclosure or use of the Confidential Information of the disclosing party and to prevent it from falling into the public domain or into the possession of unauthorised persons. The

receiving party shall not disclose Confidential Information of the disclosing party to any person or entity other than its officers, employees and consultants who need access to such Confidential Information in order to affect the intent of this Agreement and who have entered into written confidentiality agreements with the receiving party which protects the Confidential Information of the disclosing party; and

- (iv) not use The Client data to send unsolicited email messages to Clients Customers. Should a Client specifically ask either party not to use the data in any particular way, it will not be used in a manner that is inconsistent with that request. If either party is notified of such request, this party will notify the other party thereof.
- 10.3 A disclosure of Confidential Information in response to a valid order by a court or other governmental authority, or otherwise required by law, shall not be considered to be a breach of this Agreement or a waiver of confidentiality for other purposes, provided that the party disclosing Confidential Information shall send to the other party, without any delay, a written notice thereof.
- 10.4 Either party may provide a copy of this Agreement to potential acquirers, merger partners or investors and to their employees, agents, attorneys, investment bankers, financial advisors and auditors in connection with the due diligence review of such party who are under obligation of confidentiality substantially similar to those set forth in this Agreement. In addition, either party may provide a copy of this Agreement to:
- (i) a public accounting firm in connection with the quarterly and annual financial or tax audits; and
  - (ii) to outside legal advisors in connection with obtaining legal advice relating to this Agreement or any related matters.
- 10.5 Confidential Information classification shall not apply to information that:
- (i) is already known to the receiving party at the time of disclosure;
  - (ii) becomes publicly known through no action or failure to act on the receiving party;
  - (iii) is received by the receiving party from a third party without restriction on disclosure;
  - (iv) is independently developed by the receiving party without reference to the Confidential Information of the disclosing party; or

(v) is approved for release by written authorisation of the disclosing party.

The receiving party bears a burden of proof under subsections (i) and (iv) of this clause.

10.6 FinStock's oral and visual presentations describing FinStocks Products and plans, business and product plans, and any inspections thereof by Client or its personnel shall all be deemed Confidential Information under this Agreement whether so marked or not.

## **11 LIMITATION OF LIABILITY**

Except for the express warranties stated in this agreement or in FinStock Proposal or in any pre-packaged licence agreement for any FinStock product component, FinStock (on behalf of itself and its licensors) disclaims all other representations and warranties, express or implied, regarding the programs, including all implied conditions or warranties or non-infringement, merchantability and fitness for a particular purpose with respect to defects in diskettes, compact disks or other physical media and documentation, operation of the programs and any application or use of the programs. In no way shall FinStock (or its licensors) be liable for any loss of profit or any other commercial damage, including but not limited to special, incidental, consequential, punitive or other damages.

## **12 INDEMNITY**

Beyond the liability of FinStock set out in clause 11, The Client shall defend and hold harmless FinStock and each of its managers, members, affiliates, agents and representatives from and against any and all claims, losses, damages and liabilities caused to any third party arising out of or based on distribution of FinStock's products under this Agreement unless such damages, claims or losses have been directly caused by any wilful act or gross negligence of FinStock. Nothing shall limit the liability for fraud or for the personal injury arising from negligence of either party or that of its employees, agents or sub-contractors.

## **13 TERM AND TERMINATION**

13.1 This Agreement shall take effect on commencement date as per the FinStock Proposal and continue for a period as stipulated in the FinStock proposal. This agreement shall be automatically renewed at the end of each period for an additional 12-month term provided that either party hereto may terminate this Agreement at any time, without cause, by giving notice as agreed in the FinStock Proposal

13.2 This Agreement may be terminated for cause upon written notice:

13.2.1 By either party upon 7 days' written notice if the other commits a material breach of the Agreement and fails to cure it within the 7 days;

13.2.2 By FinStock immediately if Client files for or has instituted against it any proceedings as to its bankruptcy, insolvency, reorganization, liquidation, receivership, or dissolution or there is an assignment for the benefit of creditors;

13.2.3 By FinStock upon 7 days' written notice if

- (i) if Client tries to register this Agreement with any government conferring any exclusivity upon Client;
- (ii) if Client assigns this Agreement without FinStock's prior written consent;
- (iii) upon substantial change in Client's ownership; or
- (IV) if any change or enactment of law or regulation after the date of this Agreement interferes, in FinStock's opinion, with the parties' rights or obligations stated herein.
- (V) If correction of the Software is not reasonably possible as per clause 4.1.2 above.

## 14 EFFECT OF TERMINATION

14.1 Upon termination or expiration of this Agreement for any reason whatsoever, The Client shall immediately:

- (i) cease all Use of Software, and Documentation;
- (ii) discontinue any use of the name, logo, trademarks, service marks or slogans of FinStock and the trade names of any Software;
- (iii) return to FinStock or, at FinStock's request, destroy, all Software, derivative works, Documentation, Confidential Information and related materials and all copies thereof; and
- (iv) irretrievably delete, remove and erase the Software from any storage media. The Client shall furnish FinStock with a certificate signed by an executive officer of The Client verifying that the same has been done.

- 14.2 Termination will discharge and release FinStock from all obligations and liability under this Agreement, except as it expressly provided for above. The sole fact of this Agreement's termination shall not make either party liable to the other for any compensation, reimbursement, losses or damages whatsoever.

## **15 OWNERSHIP AND RESTRICTIONS**

- 15.1 The Client acknowledges that FinStock and/or its parent or affiliates are the sole and exclusive owners of the name "ToolsGroup" and "FinStock" and any abbreviations or variations thereof, and of any and all of FinStock's trademarks and trade names, service marks, trade logos and trade dress (collectively "Trademarks") as FinStock may unilaterally amend periodically (registered or not). Client agrees not to register or use any mark(s) that are similar enough to be construed as FinStocks Trademarks. Client acquires no rights to the Trademarks, and Client hereby assigns and transfers to FinStocks all rights that it may acquire in and to the Trademarks, whether by operation of law or otherwise. Any approval for Client's use of any FinStock's Trademark shall be made pursuant to a FinStock's Trademark License Agreement executed separately by and between the Parties hereto.
- 15.2 The Client hereby acknowledges that, as between The Client and FinStock, all patents, copyrights, trade secret rights and other intellectual property rights embodied in FinStock's products are and at all times shall remain the sole and exclusive property of FinStock. The Client shall not challenge FinStock's ownership unless it is owned by any other person than FinStock or FinStock's affiliate or subsidiary.
- 15.3 The Client shall implement and maintain reasonable security measures to safeguard all FinStock's product materials, and all copies of FinStock's product materials made by or on behalf of The Client, from access or use by any unauthorised person. The Client shall not permit or cause any third party to, alter, update, upgrade or modify the whole or any part of FinStock's product nor merge any part of FinStock's product with any other computer software programs nor, save to the extent expressly permitted by applicable laws, decompile, disassemble or reverse engineer the object code of FinStock's products nor attempt to do any of these things. Unless agreed otherwise in this Agreement, The Client shall not alter, obscure, remove, interfere with or add to any of the trademarks, trade names, logos or notices used on or contained in FinStock's materials at the time they are delivered to The Client and shall ensure that all those trademarks, trade names, logos and notices are reproduced on all copies of FinStock's product materials made by or on behalf of The Client.
- 15.4 The Client hereby expressly agrees to FinStock performing random and ad hoc studies on The Client for marketing purposes. FinStock shall not disclose any of The Clients confidential information to any Third Party and the results of said studies shall be used in such a way as to ensure The Clients identity and confidential information is protected at all times.

## 16 FORCE MAJEURE

- 16.1 With the exception of the obligation to make payment, the provisions of clause 14 are subject to the provisions of this clause, regarding the obligations of the Parties;
- 16.2 For the purposes of this clause, an event of *force majeure* shall be deemed to be an occurrence or series of occurrences beyond the reasonable control of the “defaulting party”, which renders impossible the delivery of software and/or the performance of any obligation in terms of this agreement.
- 16.3 Without derogating from the generality of the foregoing, *force majeure* shall however not include any inability on the part of the “defaulting party” to comply with any obligation for financial reasons alone.
- 16.4 In the event of a dispute as to whether an incident falls within the definition of *force majeure*, the matter shall be dealt with as provided for in clause 9.
- 16.5 The “defaulting party” will not be liable for any failure to perform any obligation in terms of this agreement in the event and to the extent that such failure is caused by an event of *force majeure*. All such obligations shall be suspended during the duration of such *force majeure*.
- 16.6 The “defaulting party” shall give the other party prompt notice of the onset of *force majeure*, describing in detail the nature of the force and the extent of the interruption. While the force persists, the “defaulting party” shall take all reasonable steps to eliminate it. Upon cessation of the force, the “defaulting party” shall resume performance of its obligations without undue delay.
- 16.7 Notwithstanding the provisions of this clause, and without prejudice to any other rights which the parties may have, should the *force majeure* persist for a period of more than two weeks after the giving of the aforesaid notice, either party may terminate this agreement in writing by giving the other party not less than seven days written notice thereof.

## 17 NOTICES AND DOMICILIUM

- 17.1 For all purposes of this agreement including, but not by way of limitation, the giving of any notice, the making of any communication and the serving of any process, the parties respectively choose *domicilium citandi et executandi* ("domicile") as the addresses set out in the FinStock Proposal

- 17.2 Each of the parties, by written notice to the other, shall be entitled from time to time to vary their domicile to any address, provided that such address may not be a post office box or poste restante.
- 17.3 Any notice given and any communication by any party to any other ("the addressee") which:
- 17.3.1 is delivered by hand during the normal business hours of the addressee at the addressee's domicile for the time being, shall be presumed, until the contrary is proved, to have been received by the addressee at the time of delivery;
  - 17.3.2 is posted by pre-paid registered post from an address within the Republic of South Africa to the addressee at the addressee's domicile for the time being, shall be presumed, until the contrary is proved, to have been received by the addressee on the sixth day after the date of posting;
  - 17.3.3 any notice given by any party to the addressee, which is transmitted by e-mail to the addressee's e-mail address, shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee on the first business day after the date of transmission.

## 18 MISCELLANEOUS

- 18.1 This document contains the entire agreement between the parties and none of them shall be bound by any undertakings, representations, warranties, promises or the like not recorded herein. This agreement supersedes all prior agreements or representations, oral or written, regarding this subject matter.
- 18.2 No provision contained in this agreement shall be construed as conferring any rights other than the rights expressly stated in this agreement upon either of the contracting parties by way of implication, estoppel or otherwise.
- 18.3 No alteration, variation or cancellation by agreement of, addition or amendment to, or deletion from this agreement shall be of any force or effect unless in writing and signed by or on behalf of the parties.
- 18.4 No indulgence, extension of time, relaxation or latitude which the one party ("the grantor") may show, grant or allow to the other ("the grantee") shall constitute a waiver by the grantor of any of the grantor's rights in terms hereof and the grantor shall not thereby be prejudiced or precluded from exercising any of its rights against the grantee in the future.

- 18.5 Should any of the terms and conditions of this Agreement be held to be invalid, unlawful or unenforceable, such terms and conditions will be severable from the remaining terms and conditions which will continue to be valid and enforceable.
- 18.6 Each of the provisions of this Agreement shall remain in full force and effect through the End Date of this Agreement, and the terms which by their nature should survive, shall survive such End Date. The “End Date” shall be the effective date of the expiration or termination of this Agreement.
- 18.7 This Agreement will be governed by and construed in accordance with the law of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with such law.
- 18.8 The parties hereto hereby consent and submit to the jurisdiction of the Magistrates Court for the District of Cape Town, in any dispute arising from or in connection with this Agreement.
- 18.9 The Client may not assign its rights or obligations under this Agreement or subcontract any portion of its performance hereunder without FinStock’s prior written consent sent by e-mail, fax, or registered mail. FinStock may assign its rights or delegate its duties hereunder without The Client’s consent in whole or in part to any affiliate or subsidiary of FinStock, to a purchaser of part or all of FinStock’s shares, to a purchaser of part or all of FinStock’s business, or to a distributor appointed by FinStock for the Territory.
- 18.10 This Agreement may be executed by each of the Parties in different counterparts, each of which, when so executed, shall be deemed to be an original, and all of which, taken together, shall constitute one and the same agreement. An agreement bearing at least one original signature and other faxed or scanned signatures of the authorised representatives of the Parties shall be deemed to be an original version of this Agreement.

## SCHEDULE A

### Service Levels

### Service Catalogue

The service provider will provide the following services to The Client for SO99+ and related SQL integration:

Service	Description	Examples
<b>1. User Support</b>	Receive, document, and prioritize support tickets and help The Client staff in the use of existing applications or services.	<ul style="list-style-type: none"> <li>• Provide help desk support</li> <li>• Answer queries about applications</li> <li>• Receive and document bug reports</li> <li>• Collect and document requests for changes</li> <li>• Consolidate queries and pass over to ITT international support where required</li> <li>• Share status of requests</li> </ul>
<b>2. Problem Correction</b>	Bring SO99+ back to its original functionality before the problem arose. This may include a permanent fix or a temporary work around until a permanent fix is found.	<ul style="list-style-type: none"> <li>• Apply bug fixes by installing new SO99+ versions if available</li> <li>• Retrieve functionality after abnormal program terminations</li> <li>• Complete root cause analysis</li> </ul>
<b>3. Process and Application Improvement</b>	Assist the Client in planning the better use SO99+ to meet business strategy and goals. This is a proactive attempt by FinStock to improve applications and processes, based on FinStock's increased application and business knowledge over time.	<ul style="list-style-type: none"> <li>• Help the Client staff to make strategic decisions that meet business goals.</li> <li>• Provide functional, architectural and process improvements as required for the support and maintenance of SO99+ and the SQL integration layer.</li> </ul>

### User Support and Problem Correction

The following procedures will be used to respond to problems that are received by FinStock. A problem is defined as an unplanned system event which adversely affects SO99+ processing or deliverables.

#### a. Ticket based support system

A web-based support ticket system will be used by FinStock to manage support queries. The Client users will be required to log tickets in this system before they can be dealt with by FinStock.

The link to the webpage will be shared by FinStock to all The Client users.

## b. Prioritization Approach

Service requests for problems received by the help desk will be given a Severity Code based on how important responding to the problem is to the primary business of The Client as a whole, as well as the availability of workarounds. The Severity Code will be the basis for scheduling work on the backlog and assigning resources to the request. Critical, important, and supportive application functions are defined in the section below:

Severity Code	Definition
<b>Red</b>	A problem has made a critical SO99+ or SQL integration function unusable or unavailable and no workaround exists.
<b>Yellow</b>	A problem has made a critical SO99+ function unusable or unavailable but a workaround exists.
<b>Green</b>	A problem has diminished critical or important SO99+ functionality or performance, but the functionality still performs as specified in the user documentation.
<b>Blue</b>	A problem has diminished supportive application functionality or performance.

## Response and Resolution Times

Severity codes are used in order to determine appropriate response and resolution times. Response and resolution times are measured from when the incident is opened by The Client. If the problem is not resolved within the defined timeframe, continuous effort will be applied until the problem is resolved.

Severity Code	Initial Response	Estimation Response	Subsequent Responses	Resolution
<b>Red</b>	60 minutes	4 hours	Daily	2 Days
<b>Yellow</b>	2 Hours	8 Hours	Weekly	1 Week
<b>Green</b>	8 Hours	2 Days	Weekly	2 Weeks
<b>Blue</b>	8 Hours	2 Days	Weekly	20 working days

- **Initial Response** is when a ticket is opened and acknowledged by help desk staff.
- **Estimation Response** is when the user that logged the ticket is informed of an estimated resolution time.
- **Subsequent Responses** is the frequency with which the user that logged the ticket is updated on the resolution status.
- **Resolution** is the point at which the problem is resolved, and the application function is returned to a usable and available state.



FinStock

## Quarterly Status Report

FinStock will provide The Client with a status report that gives an overall summary of the following:

- Project health
- On-going activities
- Completed tasks
- Upcoming milestones and releases
- Bug fixes
- Risk identification and mitigation plan
- Action items across different application areas