FINSTOCK

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   "**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;

1.1.5   "**Client**" means the individual or entity that enters into a Proposal with FinStock;

1.1.6   "**Customer Client**" has the meaning ascribed to that term in clause 2.1

1.1.7   "**Data**" means any data, including Personal Information as amplified if applicable by the definition thereof set out in the Electronic Communications and Transactions Act 25 of 2002, the Protection of Personal Information Act 4 of 2013 and/or any equivalent legislation of the jurisdiction(s) where the Services are being provided and/or performed, supplied to FinStock by the Client or Processed on behalf of the Client by FinStock;

1.1.8   "**Data Protection Laws**" means the Protection of Personal Information Act 4 of 2013 and any other applicable laws relating to the protection of Data;

1.1.9   "**Deliverable**" means any deliverable or material provided by FinStock to the

Client pursuant to a Proposal, which may include software, web material, reports and/or paper deliverables;

1.1.10 "**Documentation**" means any user documentation, on any media, provided by FinStock to the Client for use with the FinStock 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;

1.1.11 **"DPM"** means Data Protection Manager;

1.1.12 "**Effective Date**" means the date upon which the Proposal becomes effective, as therein set out;

1.1.13 **"End Date"** means the date of expiry or termination of the Proposal, as set out in this Agreement or the Proposal;

1.1.14 **"Error"** means a defect that causes FinStock Software not to perform substantially in accordance with the specification set forth in the Documentation;

1.1.15 "**FinStock**" means FinStock (Pty) Ltd, Registration number 2015/212626/07, and/or FinInvest Holdings (Pty) Ltd, Registration number 2017/655991/07, and/or FinDev (Pty) Ltd, Registration number 2023/925715/07

1.1.16 "**Proposal**" means the FinStock proposal or Statement of Work signed between FinStock and the Client for the Deliverables and/or Services offered by FinStock;

1.1.17 **"FinStock Software"** means the software products produced, owned or duly licensed for use by FinStock, together with any other software and related documentation developed by or for FinStock, and which FinStock is authorised to make available to the Client in accordance with this Agreement;

1.1.18 **"FTP"** means File Transfer Protocol;

1.1.19 **"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;

1.1.20 **"Intellectual Property"** means any know-how (not in the public domain), invention (whether or not patented), design, trade mark (whether or not registered), or Copyright Material (whether or not registered), goodwill, Processes, Process methodology and all other identifiably or similar

intellectual property as may exist anywhere in the world and any applications for registration of such intellectual property. For the purposes of this definition, "**Copyright Material**" means any material in which copyright subsists;

1.1.21 "**Intellectual Property Rights**" means rights of a party in and to Intellectual Property;

1.1.22 **"ISP"** means Internet Service Provider;

1.1.23 **"Managed Planning Services"** means the planning of supply chain requirements, the facilitation of continuous improvement, as well as the presentation and integration of results;

1.1.24 "**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;

1.1.25 "**Output**" means the results of the Processing of the Clients' Data which is displayed using FinStock Software and/or Third-Party Software;

1.1.26 "**Primary Client**" has the meaning ascribed to that term in clause 2.1;

1.1.27 "**Process**" means any operation or activity or any set of operations, whether or not by automatic means, including:

    1.1.27.1 collecting, receipt, recording;

    1.1.27.2 organising, collating, storing, merging, linking;

    1.1.27.3 updating, modifying, alteration, consultation;

    1.1.27.4 blocking, degradation, erasure; destruction;

    1.1.27.5 retrieval, testing, use, dissemination or distribution;

1.1.28 **"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;

1.1.29 **"Qualified Individuals"** means at least one individual appointed by the Client who is knowledgeable in the use and application of FinStock Software and Third-Party Software, as primary contact between the Client and FinStock;

1.1.30 **"Service Levels"** means the levels of performance, if any, as specified in the FinStock Proposal;

1.1.31 "**Services**" means any services provided by FinStock to the Client referred to in a Proposal;

1.1.32 "**Signature Date**" means the date of signature of the Proposal by all relevant parties;

1.1.33 **"Statement of work"** means the statement of work signed between FinStock and the Client for the products and services offered by FinStock;

1.1.34 **"Supplier Client"** has the meaning ascribed to that term in clause2 ;

1.1.35 **"Territory"** means all countries worldwide;

1.1.36 **"Third Party Software"** means the computer program(s) (if any) required to display the Output as provided by FinStock;

1.1.37 **"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

2.1   FinStock's clients include both those who outsource Managed Planning Services to FinStock (referred to as the "**Primary Client**") and the customer of the Primary Client ("**Customer Client**") or the suppliers of the Primary Client ("**Supplier Client**") who utilize the Output to align their product and service offerings with the Primary Client's supply chain requirements.

2.2   FinStock intends to provide its Clients with Deliverables and Services in accordance with this Agreement.

3   DURATION

3.1   This Agreement shall take effect on the Signature Date of any Proposaland shall endure for the term of any Proposal.

3.2   Termination of this Agreement in accordance with clause 3.1 will not affect any Proposal which was concluded prior to the effective date of termination of this Agreement, and this Agreement shall continue to apply to all such Proposal(s) as if this Agreement had not been terminated.

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 FinStocks Software to grant the rights contemplated by this Agreement without obtaining the consent of any other person and, to the best of FinStock's knowledge, the Deliverables 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 the FinStock 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 duration of the Proposal. If the FinStock Software does not perform as warranted, FinStock shall undertake to correct the FinStock Software in accordance with the Service Levels. The aforesaid is the Client's only remedy for breach of warranty. The warranty set forth above is made to and for the benefit of the 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 Client are correct.

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

4.1.3.1   all implied warranties of merchantability and fitness for a particular purpose; and

4.1.3.2   all warranties that the Services or Deliverables will meet the requirements of the Client or operate in any combination selected by the Client.

4.1.4   No warranty is given by FinStock that FinStock Software will be bug-free or that it will operate without interruptions.

4.2   FinStock's obligations to the Primary Client for the period under which FinStock is obliged to provide the Services under a Proposal concluded with that Primary Client include the following:

4.2.1   FinStock shall extract raw Data from the Primary Client periodically in accordance with the terms of the Proposal and transfer said Data to FinStock's hosting servers and/or client server, depending on the hosting preference;

4.2.2   FinStock shall insert said raw Data into the FinStock Software in order for the said Data to be Processed, analyzed, and interpreted by the FinStock Software in accordance with the Documentation and the Proposal ;

4.2.3   FinStock shall furthermore configure FinStock Software in accordance with the requirements set out in the Proposal and provide the standard Outputs;

4.2.4   FinStock shall display the results obtained from the FinStock Software by utilising either FinStock Software and/or third-party BI Software and or Workflow Software;

4.2.5   FinStock shall validate the Output against 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 the FinStock Software and/or third-party BI Software to display the results obtained from the FinStock 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 it to provide the Services. This is exclusively pertaining to the Third-Party Software which FinStock uses to Process 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 clause 5.2.6 below.

4.2.8 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;

4.2.9 FinStock shall also ensure collaborative continuous improvement programme with the Primary Client as per the Proposal;

4.2.10 consultative support will be provided by FinStock to the Primary Client's Qualified Individual/s. This Consultative support relates to error management and interpretation of output only; and

4.2.11 all other services not referred to in this Clause shall be charged separately according to the Proposal.

5 CLIENTS WARRANTIES & OBLIGATIONS

5.1 The Client warrants to and in favour of FinStock that the Client has made and will make no representation, warranty, claim or promise to any party relating to the FinStock Software except as FinStock has expressly authorised in writing.

5.2 The Clients obligations include the following:

5.2.1 the Primary Client shall provide the raw Data referred to in the Proposal to FinStock within the timelines set out in the Proposal in order for FinStock to transfer said Data into its hosting server;

5.2.2 the Primary Client shall ensure that the raw Data is accurate, up to date and comprehensive enough to enable FinStock to provide the Services;

5.2.3 the Primary Client shall attend to all necessary Data clean-ups before said Data is provided to FinStock;

5.2.4 the Primary Client shall ensure that the Data files to be transferred to FinStock are properly and adequately maintained;

5.2.5 the Primary Client shall, in addition to the requirements set out in clause 5.2, ensure that the Primary Client makes the necessary Qualified Individuals available to assist FinStock if and where necessary;

5.2.6   the Primary Client acknowledges that the Services provided in accordance with the agreed Proposal require FinStock to receive raw Data from the Primary Client and to Process said Data in accordance with the Proposal. FinStock Processes the Data using the FinStock Software in conjunction with other software and provides the resultant Output to the Primary Client to use as the Primary Client sees fit. In order to adequately and comprehensively display the Output, the Primary Client could require Third Party Software, such as BI Software. The Primary Client shall be solely responsible for ensuring that it has licensed and installed the required software. FinStock makes no representations or warranties and shall have no responsibility regarding the BI Software or the licensing thereof;

5.2.7   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;

5.2.8   if any action or lack thereof required by the Primary Client, causes a delay to the Services or Deliverables or comprises the Services or Deliverables, e.g., delay in the handover of Data, or poor quality of Data, FinStock shall be excused from complying with the KPI's as set out in the Proposal. In instances where the Client causes a delay to the Services or Deliverables, FinStock shall perform the tasks affected by said delay within a reasonable time.

5.2.9   the Primary Client is to define the parameters in which FinStock shall configure the FinStock Software in the Proposal;

5.2.10   the Primary Client is responsible to validate the Outputs (proposals) provided by FinStock before executing on any of the proposals;

5.2.11   the Primary Client, if required, will provide the following:

5.2.11.1   corporate network with sufficient capacity to access the Hosted Application and to support the scope of use;

5.2.11.2   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 of the Services and/or Deliverables;

5.2.11.3   workstations that meet the minimum requirements for Third Party software; and

5.2.11.4   accurate and reliable Data as defined during the Proposal.

6   INTELLECTUAL PROPERTY RIGHTS

6.1   Save as expressly otherwise provided herein, nothing herein contained shall be construed so as to transfer any Intellectual Property Rights owned by one party to another.

6.2   All Intellectual Property Rights in Deliverables produced by the Supplier, whether in existence at Signature Date or created during this Agreement, the Services and the FinStock Software shall vest in FinStock, or to the extent that FinStock procured a license from a third party to use any intellectual property in accordance with this Agreement, such third party, save that the Client is granted a limited, non-exclusive right and license to use the FinStock Software solely for the purposes set out in this Agreement.

6.3   Nothing herein contained shall be construed as transferring any Intellectual Property Rights in the Deliverables, save that:

6.3.1   where Deliverables contain Intellectual Property belonging to FinStock or a third party, the Client shall be entitled to use such Intellectual Property solely for purposes of making use of the Deliverable in the manner intended by FinStock; and

6.3.2   where the Deliverable contains Data belonging to the Client, the Client shall retain ownership of that Data and grants FinStock the right to use such Data for purposes of complying with its obligations under this Agreement and the Proposal.

6.4   The Primary Client hereby indemnifies and holds the Supplier Client and/or Customer Client harmless from any and all losses arising from, or in connection with any claim or action arising from the Primary Client's infringement of FinStock's Intellectual Property Rights and/or any Intellectual Property Rights of any third party.

7   DATA PROTECTION

7.1 The parties acknowledge and agree that all Data provided by the Client to FinStock, or to which FinStock may be exposed, shall constitute Confidential

7.2   FinStock hereby warrants, represents and undertakes in favour of the Client that:

7.2.1   it shall at all times strictly comply with all Data Protection Laws;

7.2.2   it shall not, at any time Process Data for any purpose other than with the express prior written consent of the Client, and subject to clause 7.8, to the extent necessary to provide the Services to the Client; and

7.2.3   it shall ensure that all its systems and operations which it uses to provide the Services, including all systems on which Data is Processed as part of providing the Services, shall at all times be of a minimum standard required by Data Protection Laws.

7.3   FinStock shall take appropriate and reasonable technical and organisational measures to prevent the loss of, damage to or unauthorised destruction of Data and the unlawful access to or Processing of Data.

7.4   FinStock shall take reasonable steps to identify all reasonably foreseeable internal and external risks posed to Data under FinStock's possession or control and establish and maintain appropriate safeguards against any risks identified. FinStock shall regularly verify that the safeguards are effectively implemented and keep a record of such verification. The safeguards shall be updated continually in response to new risks or deficiencies in previously implemented safeguards. Records kept must be available for inspection on 7 (seven) days' notice, upon notice in writing from the Client.

7.5   FinStock shall immediately notify the Client (i) of any risks posed to Data that it has identified; (ii) of the safeguards established by FinStock to mitigate the impact of the risks; and (iii) that the safeguards have been effectively implemented.

7.6   FinStock shall notify the Client of any security compromises or suspected security compromises of which it becomes aware or suspects, immediately on becoming so aware or forming such a suspicion.

7.7   The Client shall implement and maintain reasonable security measures to safeguard all FinStock Intellectual Property 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 Intellectual Property nor merge any part of FinStock's Intellectual Property 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 Intellectual Property nor attempt to do any of these things. Unless agreed otherwise in this Agreement,

7.8 Notwithstanding the provisions of this clause 7:

    7.8.1 the Primary Client hereby authorizes FinStock to share its Data and Output with the Primary Client's suppliers provided that FinStock shall only disclose that part of the Data and/or Output which is relevant to that supplier's products and services. It is the Primary Client's responsibility to ensure that its suppliers keep that information confidential and comply with Data Protection Laws in connection therewith; and

    7.8.2 the Supplier Client hereby authorizes FinStock to share its Data and Output with the Primary Client to whom they supply products and/or services provided that FinStock shall only disclose that part of the Data or Output which is relevant to the Primary Client. It is the Supplier Client's responsibility to ensure that the Primary Client keep that information confidential and complies with Data Protection Laws in connection therewith;

    7.8.3 the Customer Client hereby authorizes FinStock to share its Data and Output with the Primary Client to whom they supply products and/or services provided that FinStock shall only disclose that part of the Data or Output which is relevant to the Primary Client. It is the Customer Client's responsibility to ensure that the Primary Client keep that information confidential and complies with Data Protection Laws in connection therewith;

8 ARBITRATION

8.1 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.

8.2 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:

    8.2.1 the arbitrator shall be, if the question in issue is:

        8.2.1.1 primarily an accounting matter, an independent practising-chartered accountant of not less than 20 (TWENTY) years standing;

8.2.1.2   primarily a legal matter, an independent practising attorney of not less than 20 (TWENTY) years standing;

8.2.1.3   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.

8.3   The arbitrator shall be entitled:

8.3.1   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;

8.3.2   to interview and question under oath representatives of either of the parties;

8.3.3   to decide the dispute according to what he considers just and equitable in the circumstances;

8.3.4   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;

8.4   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;

8.5   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.

8.6   Any award that may be made by the arbitrator:

8.6.1   shall be final and binding;

8.6.2   will be carried into effect; and

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

8.7   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.

9   FEES AND PAYMENT

9.1   The fees in connection with the services rendered by FinStock shall be pre-agreed and set out in the Proposal.

9.2   The invoicing and payment terms shall be set out in the Proposal.

9.3   The Client shall make all payments without deduction, set-off or withholding of any nature into the bank account set out in the invoice.

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 or termination of this Agreement.

10.2   The receiving party shall

10.2.1   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;

10.2.2   not use the Confidential Information of the disclosing party other than as necessary to perform its obligations or exercise its rights under this Agreement;

10.2.3 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

10.2.4 not use The Client Data to send unsolicited email messages to the Client's 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:

10.4.1 a public accounting firm in connection with the quarterly and annual financial or tax audits; and

10.4.2 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:

10.5.1 is already known to the receiving party at the time of disclosure;

10.5.2 becomes publicly known through no action or failure to act on the receiving party;

10.5.3 is received by the receiving party from a third party without restriction on disclosure;

10.5.4   is independently developed by the receiving party without reference to the Confidential Information of the disclosing party; or

10.5.5   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

11.1   Except for the express warranties stated in this Agreement, FinStock (on behalf of itself and its licensors) disclaims all other representations and warranties, express or implied in respect of the Services, Deliverables and FinStock Software, including all implied conditions or warranties or non-infringement, merchantability and fitness for a particular purpose. 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.

11.2   FinStock's aggregate liability to the Client under this Agreement and the Proposals shall be limited to the fees paid by the Client in the 6 (six) month period immediately prior to the date on which the cause of action arose.

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 the Client's use of the Services, the Deliverables and/or the FinStock Software 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   TERMINATION

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

13.1.1   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;

13.1.2   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;

13.1.3   By FinStock upon 7 days' written notice if

13.1.3.1   if Client tries to register this Agreement with any government conferring any exclusivity upon Client;

13.1.3.2   if Client assigns this Agreement without FinStock's prior written consent;

13.1.3.3   upon substantial change in Client's ownership;

13.1.3.4   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; or

13.1.3.5   If its license to use the FinStock Software or any component thereof ceases.

14 EFFECT OF TERMINATION

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

14.1.1   cease all use of the FinStock Software, and Documentation;

14.1.2   discontinue any use of the name, logo, trademarks, service marks or slogans of FinStock and the trade names of any FinStock Software;

14.1.3   return to FinStock or, at FinStock's request, destroy, all software, derivative works, Documentation, Confidential Information and related materials and all copies thereof relating to the Services; and

14.1.4   irretrievably delete, remove and erase the FinStock 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 TRADE MARK 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 "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 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.

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 aforegoing, *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 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 the Proposal 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 the Proposal 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 the Proposal.

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.