

DIRECT HIRE CERTIFIED IMPLEMENTATION PARTNER AGREEMENT

The following **Terms and Conditions**, together the **Programme Overview** and a completed and signed **Application Form**, constitute the **DH Implementation Partner Agreement (“the Agreement”)**

BETWEEN

MCI CONSULTANTS (PTY) LTD.

REGISTRATION NUMBER: 1983/011766/07

REGISTERED ADDRESS: GROUND FLOOR BLOCK 1, 18 NICOL ROAD, BEDFORDVIEW
JOHANNESBURG, SOUTH AFRICA, 2007

PHONE NO: +27 114543420 EMAIL: INFO@MCI.CO.ZA

(“MCI”)

AND

COMPANY NAME: _____

COMPANY REGISTRATION NO.: _____

REGISTERED ADDRESS: _____

PHONE NO: _____ EMAIL: _____

(“THE PARTICIPANT/ THE IMPLEMENTATION PARTNER”)

Provided that:

- **MCI** has received a completed and signed copy of the **Programme Application Form**, and a signed copy of this **Agreement**, signed on behalf of **The Participant**; and
 - **MCI** has received payment in full of all the **Programme Fees**; and
 - **MCI** has confirmed such receipt and has confirmed, in writing, the enrolment of **The Participant** into the **Programme**;
- then:

The Participant/ The Implementation Partner and **MCI** are each referred to herein as a **“Party”** or together as the **“Parties”**.

And The **Parties** agree that:

- a) **The Participant** is actively working towards or has successfully completed all of the **Programme** requirements to be eligible to participate in the **Implementation Partner Programme (‘the Programme’)**.
- b) Once **the Participant** has completed the Certifications, **the Participant** will be referred to hereinafter as the **Implementation Partner**.
- c) **The Programme** benefits and requirements are subject to change at the sole discretion of **MCI** and are detailed within the **MCI Partner Programme Overview (“Programme Overview”)** which may be amended from time to time:
www.mcidirecthire.com/dhciptoverview .
- d) **The Participant** may participate in the **Programme** during the **Term**, provided that **the Participant** complies with the following terms and conditions of this **Agreement**:

SECTION A: DEFINITIONS

In this **Agreement** and its associated documentation, the following terms shall have the meanings set out below:

1. **MCI Consultants (Pty) Ltd ("MCI")** means the company that is the owner and developer of the **Direct Hire Recruitment Software** and provides the **Programme** to **the Participant** at its sole discretion.
2. **"The Participant"** means the company and individual(s) named in this **Agreement** as **The Participant** that will be participating in the **Programme**.
3. **"DH Certified Implementation Partner" ("Implementation Partner")** means **the Participant** that has paid the current **Programme Fees** and obtained and maintained the necessary certifications for each year.
4. **"Certified Implementation Consultant"** means any individual employed by **the Participant** that has successfully completed the **Programme** and obtained the necessary certifications.
5. **"Effective Date"** shall be 1 April 2023.
6. **"Expiration Date"** of the initial term shall be 31 March 2024.
7. **Sage South Africa (Pty) Ltd. ("Sage")** means a company that is an **Authorised Direct Hire Recruitment Software Reseller** and the company which appoints **The Participant** as a **Sage Business Partner ("Business Partner")** to the **End User(s)** to provide the **Services**.
8. **"Services"** means consulting services, implementation services, setup and configuration services, training services and **End User** support services as it pertains to the **Software**.
9. **"Software"** means all software developed by **MCI** and includes the **Direct Hire Recruitment Software**, **Direct Video Software**, any documentation provided with or as part of such **Software**, any **Software** upgrades, modifications, or updates that is licensed to **End Users** for use in their businesses and/or **Software** that is provided to **the Participant** during the **Term** for demonstration purposes.
10. The **Direct Hire End User License Agreement ('DH EULA')** means the agreement signed between the **End User** and **MCI** which regulates the usage of the **Software**.
11. **"The DH Partner Programme Overview "** means the document provided by **MCI**, that is an integral part of this **Agreement**, which outlines the **Programme**, and the terms and conditions for ongoing participation in the **Partner Programme**:
www.mcidirecthire.com/dhcupoverview.
12. **"End User(s)"** means companies, clients, customers and/or any legal entity that have been granted license(s) by **MCI** to utilize the **Software** and that has a signed the **DH EULA**.
13. **"Programme Fees"** means the fees payable by **the Participant** and **Implementation Partner** detailed within the **Programme Overview** which includes but is not limited to initial sign-up fees, competency fees, assessment fees, renewal fees and late renewal fees.
14. **"Established Due Date"** means the payment due date for **Programme Fees** that will be reflected on **the Participant's/Implementation Partner's** invoices from **MCI**.

SECTION B: PROGRAMME PARTICIPATION

1. REQUIREMENTS FOR PARTICIPATION

1.1 SCOPE OF PARTICIPATION

The **Implementation Partner** (previously the **Participant**) will provide the **Services** to the **End User(s)** of the **Software** for the **Competency(ies)** for which it is certified under the **Programme**.

2. PROGRAMME FEES AND TERMS OF PAYMENT

2.1 The **Participant/ Implementation Partner** understands that any **Programme Fees** that are paid for each **Term** of this **Agreement**, and any subsequent **Term**, are non-refundable, unless expressly set forth and agreed to in writing by both **Parties**.

2.2 Payment for **Programme Fees** are due and payable via EFT by the **Due Date** that will be reflected on the **MCI** invoice.

2.3 Payment for **Programme Fees** must be received in full by **MCI** in order for the **Participant / Implementation Partner** and its appointed **Consultants** to participate in the **Programme**.

3. CERTIFICATION

3.1 The **Participant** must satisfy the certification and ongoing recertification requirements as detailed in the **Programme Overview**, before it can be appointed as an **Implementation Partner** to be able to provide the **Services** to the **End User(s)**.

4. PROVISIONING OF SOFTWARE SERVICES TO THE END USER

4.1 The **Implementation Partner** acts independently from **MCI** and has no authority whatsoever to legally bind **MCI** to any agreements.

4.2 The **Implementation Partner** agrees and understands that **MCI**, **Sage** or a **Sage Business Partner** may refer it to an **End User(s)** to perform **Services**.

4.3 On occasion, an **End User** may request the **Implementation Partner** to perform **Services** without a referral and independently from the allocated **Sage Business Partner**.

4.3.1 In this event, the **Implementation Partner** agrees to notify **MCI** and to:

(a) refer the **End User** back to the assigned **Business Partner** or,

(b) notify the **Business Partner** if the **End User** insists on having the **Implementation Partner** perform the **Services** independent of the referring **Business Partner**. Such notification must be provided in writing but must occur before any **Services** are performed.

5.2 The **Implementation Partner** will maintain a record of all **End Users** to whom it has provided **Services**.

5.3 The **Implementation Partner** will also maintain a record of all **Consultants** that were involved in the provision of the **Services** to the **End User(s)**.

5.4 The records will be kept for a period of at least 5 (five) years after the date of rendering of such **Services** and will be made available to **MCI** upon request.

5.5 If the inspection discloses any underpayment of **Programme Fees**, the **Implementation Partner** will remit the amount of such underpayment, together with interest at the prime overdraft rate +2% from due date thereof to date of payment, within 7 (seven) days from date of invoice.

7. NOTIFICATION OF ERRORS

7.1 The **Implementation Partner** will notify **MCI** immediately of any errors experienced with the **Software** that either the **Implementation Partner** or **End User(s)** encounter. Problems must be submitted in writing to support@mcidirecthire.com.

8. COMPLIANCE WITH LAWS

8.1 When providing the **Services** to the **End Users**, the **Implementation Partner** undertakes to comply with all applicable local laws of the **End Users'** geographic location, territory, or country.

9. USE OF MCI LOGOS

9.1 The **Implementation Partner** agrees that **MCI** retains exclusive ownership of the trademarks represented by its company name, logo, **Software**, and products. The **Implementation Partner** may use the **Direct Hire** name, logo, and trademarks only in the manner approved in writing by **MCI**. Any use of **MCI** logos by **Implementation Partner** and any goodwill resulting from such use inures to the benefit of **MCI** for all purposes.

10 IMPLEMENTATION PARTNER REPRESENTATIONS AND WARRANTIES

10.1 CONDUCT

10.1.1 The **Implementation Partner**, its agents and representatives will conduct its business, and themselves, in a manner that reflects favorably upon **MCI** and **MCI** products. The **Implementation Partner** will at all times maintain the highest level of professional and ethical practices in providing the **Services** to **End Users**.

10.2 COMPETENCY

10.2.1 The **Implementation Partner** agrees that it will use its best efforts to maintain competence in the **Services** and use of the **Software** for which the **Implementation Partner** is certified. The **Implementation Partner** will use its best efforts, judgment, and skill to ensure that all **Software** is properly setup and configured and that the **End User** receives the highest quality **Services** around the **Software**. In the event, for any reason, The **Implementation Partner** is not able to provide the highest quality **Services** to an **End User(s)**, the **Implementation Partner** will immediately notify **MCI** in writing.

11 PARTNER PROGRAMME OVERVIEW

11.1 The **Implementation Partner** agrees that they will comply with the terms and conditions in the **Programme Overview** as it may be amended from time to time. The **Implementation Partner** represents that they have read and understood the **Programme Overview**.

12 CONFIDENTIALITY AND OWNERSHIP OF THE SOFTWARE AND DOCUMENTATION

- 12.1 The **Implementation Partner** hereby acknowledges that any, and all, of the trademarks, trade names, copyrights, patents, and other intellectual property rights used or embodied in or in connection with the **Software** and other parts thereof, in which **MCI** has an interest, is and shall remain the sole property of **MCI**.
- 12.2 All material and proprietary information regarding the **Software** will be treated as confidential and owned by **MCI**.
- 12.3 The **Implementation Partner** is specifically prohibited from disclosing any information regarding the **Software** to parties that may be considered as competitors to **MCI** or who may wish to develop any part of the **Software**.
- 12.4 In particular, the **Implementation Partner** shall not permit third parties to have access to the **Software** without the prior written consent of **MCI**, who may require that such third parties execute a written confidentiality agreement before being given access to the **Software**.
- 12.5 The **Participant** and/or the **Implementation Partner** will not be involved in any endeavour or relationship to attempt to replicate any part of the **Software** functionality, or reengineer, disassemble or decompile the **Software**.
- 12.6 Any modification and/or developments to **Software** requested by the **Implementation Partner** and/or the **End User** shall be the property of **MCI**, unless agreed to in writing by all parties.
- 12.7 This clause is severable from this **Agreement** and will remain in effect for 24 (twenty-four) months after termination of this **Agreement**.

13 INTELLECTUAL PROPERTY RIGHTS

- 13.1 All title, copyright and other intellectual property rights related to **Software** and its documentation shall remain vested in **MCI**.
- 13.2 The intellectual property provided by **MCI** will not infringe or misappropriate any intellectual property right, confidential information, trade secret, privacy or other proprietary right of any third party or the **Implementation Partner**.
- 13.3 **MCI's** use of the **Software** does not infringe the **Implementation Partner** intellectual property rights or any third-party intellectual property rights.
- 13.4 The copyright and other Intellectual Property Rights of whatever nature in the **Software** and the documentation, as well as all modifications, extensions, customisations, scripts or other derivative works of the **Software** and the **Services**, are, and shall remain, the sole property of **MCI**, and the **Implementation Partner** acquires no rights in or to the **Software** or documentation other than those expressly granted by this **Agreement**.
- 13.5 The **Implementation Partner** shall use reasonable endeavours to prevent any violation of **MCI's** proprietary rights in the **Software** and shall promptly report to **MCI** any such violation that comes to its attention.

14 MCI DISCLAIMER OF WARRANTIES

- 14.1 Any and all information provided or made available by MCI to The Participant and/or the Implementation Partner to assist with its participation in the programme is provided “as is” with no express or implied warranties of any kind. The excluded warranties include but are not limited to the warranties of merchantability, of fitness for a particular purpose, quality, or productiveness, capacity, and against infringement. MCI does not warrant that the information will meet the Implementation Partner’s requirements or that it is error free.

15 THE IMPLEMENTATION PARTNER’S INDEMNITY

- 15.1 The Implementation Partner agrees to indemnify and hold MCI harmless and shall have no claim of any nature whatsoever whether for damages, special damages, a remission of any amounts due in terms of the agreement, cancellation or otherwise, against MCI, its directors, employees, and agents, in respect of any loss or damage sustained by the Implementation Partner and/or End User of any nature whatsoever, arising out of or connected with the Agreement, the implementation of the Agreement, the Software, the use of the Software, the provisioning of Services or otherwise.

SECTION C: MCI SOFTWARE LICENSE

1. LICENSE GRANT TO MCI SOFTWARE

- 1.1. MCI hereby grants to the Implementation Partner, and not to any other third party, including any parent, subsidiary, affiliate, employer, or any other third parties claiming through the Implementation Partner, a non-exclusive, non-transferable limited license to use the Software for which the Implementation Partner is authorised, in object code form only, as described in Clause 2 and subject to the Implementation Partner’s strict compliance with the license restrictions set forth in Clause 3.

2. PARTICIPANT SOFTWARE LICENSE UTILISATION

- 2.1. The Implementation Partner may utilize the Software only in its capacity as a Certified Implementation Partner during participation in the Programme and then only for the purposes of:
- 2.1.1. Learning to use the Software so that its Certified Consultants can provide the Services to the End Users for the usage of the Software;
 - 2.1.2. Demonstrating the Software to End Users; and
 - 2.1.3. Providing Services to End Users.
- 2.2. The Implementation Partner shall conform to the recommended hardware and operating system requirements as set forth in the user documentation when using the Software.
- 2.3. The Implementation Partner shall notify MCI of any unauthorised use or disclosure of the Software.

3. SOFTWARE LICENSE RESTRICTIONS

- 3.1. The Implementation Partner shall not sell, use, sublicense, distribute, copy, modify, or transfer the Software except as expressly described in this Agreement.
- 3.2. The Implementation Partner shall not disclose, provide, or otherwise make available to third parties for any purpose the Software in any form, without the prior written consent from MCI, except such transfers or disclosures as are specifically authorised by this Agreement.
- 3.3. The Implementation Partner shall use its best efforts, including but not limited to, entering into confidentiality agreements with its Consultants, to prevent any unauthorised copying, disclosure, or use of the Software by any of its Consultants or other persons permitted access to the Software. The Implementation Partner shall be responsible for any unauthorised copying, disclosure, or use by any such persons.
- 3.4. The Implementation Partner shall not access, store, distribute or transmit any viruses, or any material, during the course of its use of the Software and provisioning of Services that:
- 3.4.1. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive.
 - 3.4.2. facilitates illegal activity.
 - 3.4.3. depicts sexually explicit images.
 - 3.4.4. promotes unlawful violence.
 - 3.4.5. is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability. or
 - 3.4.6. in a manner that is otherwise illegal or causes damage or injury to any person or property.

3.5. **MCI** reserves the right, without liability or prejudice to its other rights to the **Implementation Partner**, to disable the **Implementation Partner's** access to any **Software**.

4. NO OTHER RIGHTS

4.1. Except as set forth in this **Section B**, neither this **Agreement** nor the **Implementation Partner's** participation in the **Programme**, grants or gives rise to any license or assignment of any intellectual property rights in the **Software**, whether such license is implied, statutory, or arises by function of law.

5. ACCEPTANCE

5.1. The **Implementation Partner** agrees that its access to the **Software** will be conclusive evidence of the **Implementation Partner Agreement** that the **Software License** governs use of such **Software**.

6. PROPRIETARY RIGHTS

- 6.1. The **Implementation Partner** agrees that the **Software** and all information or data regarding the **Software** supplied by **MCI**:
- 6.1.1. are trade secrets of **MCI**;
 - 6.1.2. are protected by the **South African Intellectual Property Act No.98 of 1978** and **International Treaty Provisions**;
 - 6.1.3. are very valuable to **MCI**; and
 - 6.1.4. that their use and disclosure must be carefully and continuously controlled.
- 6.2. The **Implementation Partner** further agrees that underlying ideas, algorithms, concepts, procedures, processes, principles, know-how, and methods of operations are confidential and contain trade secrets. **MCI** and its suppliers own and retain title to the **Software**, data, or any other information furnished by **MCI** to the **Implementation Partner**. The **Implementation Partner** agrees not to remove or destroy any proprietary markings or proprietary legends placed upon or contained within the **Software**.

7. PROTECTION DEVICES

7.1. **MCI** may adopt from time to time mechanical or electronic methods that **MCI** deems necessary to control unauthorised use or distribution of the **Software**. The **Software** may only be used with a protection device or with a code that is provided to the **Implementation Partner** for that purpose.

8. DISCLAIMER OF WARRANTIES FOR SOFTWARE

8.1. The **Software** is provided "as is" with no express or implied warranties of any kind. The excluded warranties include but are not limited to the warranties of merchantability, of fitness for a particular purpose, quality, or productiveness, capacity, and against infringement. **MCI** does not warrant that the **Software** will meet the **Participant's/Implementation Partner's** requirements or that the operation of the **Software** will be uninterrupted or error free. **MCI** does not warrant any software that has been altered or changed in any way by anyone other than **MCI**. **MCI** is not responsible for problems caused by changes in the operating characteristics of computer hardware or computer operating systems that are made after the release of the **Software** or for problems in the interaction or combination of the **Software** with **non-MCI Software**.

9. THIRD PARTY SOFTWARE AND DATA

9.1. **MCI** is not responsible for the continuing availability or operation of any **Software**, applications or data, licensed, developed or provided by any party other than **MCI**, nor for the **Software** when embedded in any system developed by any party other than **MCI**. **MCI** cannot warrant the continuing availability or compatibility of any third-party integrations with the **Software** and disclaims same.

10. TERMINATION OF LICENSE

10.1. **Either Party** may terminate this license if any breach of the license remains uncured for more than thirty (30) days after a **Party** receives notice of its breach. This **MCI** license also terminates upon the expiration or termination of this **Agreement** or the **Implementation Partner's** participation in the **Programme**. It is understood by the **Implementation Partner** that upon expiration or termination of this license, **Implementation Partner's** access to the **Software** and all associated data will be revoked by **MCI**.

SECTION D: GENERAL TERMS

1. TERM AND TERMINATION OF AGREEMENT

- 1.1. The initial term of this **Agreement** will be a period of 12 (twelve) months from the **Effective Date**.
- 1.2. The **Agreement** can be automatically renewed in March each year for successive 12 (twelve) month terms as long as the **Implementation Partner** continues to pay in full the annual **Programme Fees** and maintains the required **Certifications** applicable at that point in time as detailed in the **Programme Overview**.
- 1.3. The **Implementation Partner** may terminate the **Agreement** as at the end of each term by giving **MCI** 30 (thirty) days written notice.
- 1.4. **MCI** may terminate the **Agreement** at its sole discretion by giving the **Implementation Partner** thirty 30 (thirty) days written notice of such termination.
- 1.5. On termination of the **Agreement**, the **Implementation Partner** will hand over all information regarding any **End Users** that are still utilizing the **Software**, to **Sage** in order for **Sage** to appoint a new **Business Partner** to provide the **Services**, or to **MCI**.
- 1.6. Within 30 (thirty) days of termination or expiration of this **Agreement**, the **Implementation Partner** undertakes to return to **MCI** any and all materials and **Confidential Information** that the **Implementation Partner** received from **MCI** as a result of or in relation to the **Implementation Partner** participation in the **Programme**.
- 1.7. Termination of this **Agreement** includes termination of the license granted in **Section B**.

2. INDEPENDENT CONTRACTOR

- 2.1. The **Implementation Partner** is not an agent or representative of **MCI** for any purpose. **MCI** assumes no responsibility or liability for the type or quality of **Services** rendered to an **End User**. **MCI** and the **Implementation Partner** are, and at all times will be and remain, independent contractors as to each other, and at no time will either be deemed to be the agent of the other, and no joint venture, partnership, agency, or other relationship will be created or implied herein. Except as expressly set forth herein, **Each Party** will bear full and sole responsibility for its own expenses, liabilities, cost of operation, and the like.

3. SUBCONTRACTING

- 3.1. In the event that **MCI** subcontracts with the **Implementation Partner** to supply **Services** to an **End User** on behalf of **MCI**, such services, as well as the associated payment terms (if any) will be described in a **Statement of Work** or other agreement. All terms of this **Agreement** will apply to such **Statement of Work** or other agreement.

4. ALLOCATION OF RISKS

- 4.1. **The Participant** agrees that this **Agreement** fairly allocates the risk of the transaction contemplated hereunder between **the Parties**.

5. WHOLE AGREEMENT AND NON-WAIVER

- 5.1. No indulgence of whatever nature or any relaxation of any of the terms or conditions of this **Agreement** granted by any **One Party** to the **Other** shall in any way constitute a waiver or a novation of the grantor's rights to strictly enforce the terms hereof, not operate as any estoppel.
- 5.2. No warranty, representation or statement made by any **One Party** to the **Other** which is not contained in this **Agreement** shall be of any force or effect or binding upon the **Parties**.
- 5.3. This **Agreement**, together with the **Programme Overview**, constitutes the sole and exclusive record of the **Agreement** between **the Parties** relating to the subject matters hereof and no variation, modification or waiver of any provision thereof, or consent to any departure there from by **Any Party**, shall be of any force or effect unless the same shall be confirmed in writing and signed by or on behalf of **That Party** and **Any Other Party** affected thereby, and in any event the same shall be effective only in the specific instance and for the purpose, and to the extent for which made or given.

6. ANTI-BRIBERY

- 6.1. **MCI** is committed to maintaining the highest standards of honesty, integrity and ethical conduct.
- 6.2. This and other **MCI** policies uphold our commitment to the fight against bribery and corruption, in both private and public sector transactions, including facilitation payments.
- 6.3. The **MCI Code of Conduct** is communicated to all employees.

- 6.4. **MCI's Code of Conduct Policy** clearly states that: "In dealing with public officials, other corporations and private citizens, we will not seek to influence others, either directly or indirectly, by paying or receiving bribes or kickbacks, including but not limited to payments to local officials by **MCI** employees or agents for the completion of routine governmental administrative actions (so-called facilitation payments), or by any other measure that is unethical or that will tarnish our reputation for honesty and integrity. Even the appearance of such conduct must be avoided."
- 6.5. The **Implementation Partner** shall not, and shall procure that its **Consultants**, agents, and sub-contractors, shall not offer, solicit, or accept an inducement/advantage in connection with the **Services** under the **Agreement**.
- 6.6. The **Implementation Partner** shall not engage in any activity, practice or conduct which would constitute an offence under the Act or policies.
 - 6.6.1. Unethical conduct may or may not constitute illegal or corrupt behaviour.
 - 6.6.2. Breach of this clause shall be deemed a material breach of this **Agreement** entitling **Either Party** to terminate it immediately.

7. BREACH

- 7.1. Should **A Party** allege that the **Other Party** is in default of performance of any of its obligations in terms of the **Agreement**, the **Aggrieved Party** shall notify the **Defaulting Party** in writing of such default specifying the nature thereof.
- 7.2. Should the **Other Party** be in breach after notice as above and remain in breach for 14 days after written notice to rectify the breach has been delivered, the **Aggrieved Party** shall be entitled forthwith to cancel this **Agreement**, and claim subject to the terms of the **Agreement**, for any loss or damage the **Aggrieved Party** may sustain.
- 7.3. Notwithstanding the foregoing, or any other provision contained herein, **A Party** shall be entitled to terminate this **Agreement** immediately, and without notice, on one or more of the following events:
 - 7.3.1. the **Other Party** being declared insolvent or suffering a judgement to be granted or entered against him in or by any court of law.
 - 7.3.2. the **Other Party** being convicted of an offence involving dishonesty.
 - 7.3.3. the **Other Party** committing a material breach.
 - 7.3.4. the **Other Party** committing a material breach.

8. REMEDIATION

- 8.1. The **Implementation Partner** agrees that if the **Implementation Partner** fails to abide by this **Agreement**, **MCI** will be entitled to specific performance, including immediate issuance of a temporary restraining order or preliminary injunction enforcing this **Agreement**, and to a judgment for damages caused by participant's breach, and to any other remedies provided by applicable law.

9. JURISDICTION

- 9.1. **The Parties** hereby consent to the jurisdiction of the **South African Magistrate's Court** in terms of Section 45 of Act 32 of 1944, as amended, for all purposes in terms of this **Agreement**. **Both Parties** shall nevertheless be entitled to institute action in any other court having competent jurisdiction.

SECTION E: CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

1. DEFINITIONS:

- 1.1 "**Disclosing Party**" means the party that provides or discloses information and/or data that is confidential.
- 1.2 "**Receiving Party**" means the party that accepts or receives information and/or data that is confidential.
- 1.3 "**Confidential Information**" means any information or data of any nature, tangible or intangible, oral or in writing and in any format or medium, which by its nature or content is or ought reasonably to be identifiable as confidential and/or proprietary to the **Disclosing Party** or which is provided or disclosed in confidence, and which the **Disclosing Party** or any person acting on behalf of the **Disclosing Party** may disclose or provide to the **Receiving Party** or which may come to the knowledge of the **Receiving Party** by whatsoever means.
- 1.4 "**POPI**" means the **Protection of Personal Information Act 4** adopted by the Republic of South Africa on 26 November 2013 and as amended from time to time.
- 1.5 "**Data**" means 'personal information' as that term is defined in the **Protection of Personal Information Act 4 of 2013** ("**POPI Act**").

1.6 **"Processing"** means any operation or activity or any set of operations, whether by automatic means, concerning personal or any information.

1.7 Without limitation, the **Confidential Information** of the **Disclosing Party** shall include the following even if it is not marked as being 'confidential', 'restricted' or 'proprietary' (or any similar designation):

1.7.1 Information relating to the **Disclosing Party's** business activities, business relationships, products, services, processes, data, and Staff, including agreements to which the **Disclosing Party** is a party.

1.7.2 Information contained in or constituting or relating to the **Disclosing Party's** systems, machinery, hardware or software, networks, telecommunications services and facilities, including third party products, and associated material, and information or incidents concerning faults or defects therein.

1.7.3 The **Disclosing Party's** technical, scientific, commercial, financial and market information (including valuations and forecasts), methodologies, formulae, and trade secrets.

1.7.4 The **Disclosing Party's** architectural information, demonstrations, plans, designs, drawings, processes, process maps, functional and technical requirements and specifications and the data relating thereto.

1.7.5 **Intellectual Property** that is proprietary to the **Disclosing Party** or that is proprietary to a third party, including but not limited to third party products and data relating to the customers of the **Disclosing Party**.

1.7.6 Business process outsourcing knowledge of the **Disclosing Party** and information relating to the **Disclosing Party's** current and existing strategic objectives, strategy documents and plans for both its existing and future information technology, processing, business processing and business process outsourcing.

1.8 **Confidential Information excludes** information or data which:

1.8.1 is lawfully in the public domain at the time of disclosure thereof to the **Receiving Party**; or

1.8.2 subsequently becomes lawfully part of the public domain by publication or otherwise; or

1.8.3 is or becomes available to the **Receiving Party** from a source other than the **Disclosing Party** which is lawfully entitled without any restriction on disclosure to disclose such **Confidential Information** to the **Receiving Party**; or

1.8.4 is disclosed pursuant to a requirement or request by operation of law, regulation or court order but then only to the extent so disclosed and then only in the specific instance and under the specific circumstances in which it is obliged to be disclosed; **provided that:**

- the onus shall at all times rest on the **Receiving Party** to establish that such information falls within such exclusions.
- and the information disclosed will not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information in the public domain or in a **Party's** possession.
- and any combination of features will not be deemed to be within the foregoing exclusions merely because individual features are in the public domain or in a **Party's** possession, but only if the combination itself is in the public domain or in a **Party's** possession.

2. AGREEMENT:

2.1 The **Receiving Party** acknowledges the importance of the **Confidential Information** to the **Disclosing Party** and, where applicable, third-party proprietors of such information, and recognises that the **Disclosing Party** and/or third-party proprietors may suffer irreparable harm or loss in the event of such information being disclosed or used otherwise than in accordance with this **Agreement**.

2.2 The **Receiving Party** agrees and undertakes:

2.2.1 **No publication of Confidential Information:** Except as permitted by this **Agreement**, not to disclose or publish any **Confidential Information** in any manner, for any reason or purpose whatsoever without the prior written consent of the **Disclosing Party** and provided that in the event of the **Confidential Information** being proprietary to a third party, it shall also be incumbent on the **Receiving Party** to obtain the consent of such third party.

2.2.2 **No exploitation of Confidential Information:** Except as permitted by this **Agreement**, not to utilise, employ, exploit or in any other manner whatsoever use the **Confidential Information** for any purpose whatsoever without the prior written consent of the **Disclosing Party** and provided that in the event of the **Confidential Information** being proprietary to a third party, it shall also be incumbent on the **Receiving Party** to obtain the consent of such third party.

2.2.3 **Restricting dissemination of Confidential Information:** To restrict the dissemination of the **Confidential Information** to only those of its staff who are actively involved in activities for which use of **Confidential Information** is authorised and then only on a "need to know" basis and the **Receiving Party** shall initiate,

maintain, and monitor internal security procedures reasonably acceptable to the **Disclosing Party** to prevent unauthorised disclosure by its staff; and

- 2.2.4 **Obligations with regards to staff:** To take all practical steps, both before and after disclosure, to impress upon its Staff who are given access to **Confidential Information** the secret and confidential nature thereof.
- 2.3 All **Confidential Information** disclosed by the **Disclosing Party** to the **Receiving Party**, or which otherwise comes to the knowledge of the **Receiving Party**, is acknowledged by the **Receiving Party**:
 - 2.3.1 **Confidential Information** is proprietary: to be proprietary to the **Disclosing Party** or where applicable, the relevant third-party proprietor.
 - 2.3.2 Disclosure does not confer rights: not to confer any rights of whatsoever nature in such **Confidential Information** on the **Receiving Party**; and
 - 2.3.3 **PAIA**: to have been provided in confidence by the **Disclosing Party**, for the purposes of section 64(1) of the Promotion of Access to Information Act 2 of 2000.
- 2.4 The **Receiving Party** shall protect the **Confidential Information** in the manner, and with the endeavour, of a reasonable person protecting their own **Confidential Information**. In no event shall the **Receiving Party** use less than reasonable efforts to protect the confidentiality of the **Confidential Information**.
- 2.5 The **Disclosing Party** may at any time on written request to the **Receiving Party**, require that the **Receiving Party** immediately return to the **Disclosing Party** any **Confidential Information** and may, in addition, require that the **Receiving Party** furnish a written statement to the effect that upon such return, it has not retained in its possession or under its control, either directly or indirectly, any such **Confidential Information** or material.
- 2.6 Alternatively, the **Receiving Party** shall, as and when required by the **Disclosing Party** on written request to the **Receiving Party**, destroy all such **Confidential Information** and material and furnish the **Disclosing Party** with a written statement to the effect that the same has been destroyed.
- 2.7 The **Receiving Party** shall comply with any request in terms of this clause within 30 (thirty) days of receipt of such request.
- 2.8 In the event, that the **Receiving Party** is required to disclose the **Confidential Information** pursuant to this agreement the **Receiving Party**:
 - 2.8.1 Will advise the **Disclosing Party** thereof prior to disclosure, if possible.
 - 2.8.2 will take such steps to limit the extent of the disclosure to the extent that it lawfully and reasonably practically can.
 - 2.8.3 will afford the **Disclosing Party** a reasonable opportunity, if possible, to intervene in the proceedings; and
 - 2.8.4 will comply with the **Disclosing Party's** requests as to the manner and terms of any such disclosure.
- 2.9 Nothing contained in this **Agreement** will restrict **Either Party** from the use of any generic ideas, concepts, know-how, or techniques developed or learned by such Party, in the course of performing any **Services** under the **Agreement**, provided that in doing so such Party does not disclose **Confidential Information** to third parties or infringe the Intellectual Property rights of the other Party or third parties who have licensed or provided materials to the other Party.
- 2.10 Neither of the **Parties** shall disclose any aspect of this **Agreement** or any information of a proprietary or confidential nature to another party other than as may be required by law.

SECTION F: DATA PRIVACY AND PROTECTION AS DEFINED IN THE PROTECTION OF PERSONAL INFORMATION ACT 4 OF 2013

1. **The Parties** agree that they will comply with the **POPI** regulations and process all the information and/or personal data in respect of the **Services** being rendered in accordance with the said regulation and only for the purpose of providing the **Services** set out in the **Agreement**.
2. **The Parties** agree that the **End User** owns the **End User Data** and all **Intellectual Property Rights** in it.
3. **The Parties** agree and acknowledge that all information provided, whether personal or otherwise, may be used and processed by **MCI**.
4. **The Parties** acknowledge that in providing the **Services** to the **End User** that **the Parties** may be exposed to the **End User's Data**.
5. **The Parties** will use their best endeavours and take all reasonable precautions to ensure that any information provided, is only used for the purposes it has been provided.
6. **The Parties** specifically record that all **Data** provided by the **End User** to **the Parties** or to which **the Parties** may be exposed in the performance of its obligations in terms of this **Agreement**, shall constitute **Confidential Information** and as such, **the Parties** shall comply with all the provisions of this **Agreement** in relation to same.

7. The **Implementation Partner** hereby warrants in favour of **the End User**, that it shall, at all times, strictly comply with all applicable legislation and with all the provisions and requirements of **the End Users' Data Protection Policies and Procedures** as may be updated from time to time as notified to the participant in writing.
8. **The Parties** hereby warrant and undertake that they shall not, at any time copy, compile, collect, collate, process, mine, store, transfer, alter, delete, interfere with or in any other manner use the **Data** for any purpose other than with the express prior written consent of **the End User**, and to the extent necessary to provide the **Services**.
9. All **Data**, including **Customer Data**, provided by **the End User**, or accessed (or accessible) by **the Parties**, shall be used by **the Parties** only in connection with the provision of the services and shall not be commercially exploited by **the Parties** in any manner whatsoever.
10. **The Parties** further warrant that they shall ensure that all systems which it uses to provide the **Services**, including all systems onto which **the Client's Data** is copied, compiled, collected, collated, processed, mined, stored, transmitted, altered, or deleted, or otherwise used as part of providing the **Services**, shall at all times be of a minimum standard required by law for the protection, control and use of **Data**.
11. **The Parties** agree that they have procured written undertakings from all staff that those staff members who have access to **Confidential Information** are bound by confidentiality undertakings no less onerous than those contained in this **Agreement**.
12. **The Parties** may retain **Confidential Information** to the extent required by, and for the duration of, any **Services** performed for **the End Users** in terms of agreements between **the Parties**, provided that **the End User** has not waived performance of such **Services** and subject to the right of **the End User** to recover the **Confidential Information** at any time on the terms agreed herein.
13. **The Parties** shall, in writing, notify **the End User** immediately where there are reasonable grounds to believe that the personal information received from and processed on behalf of **the End User** has been accessed or acquired by any unauthorised person.

SECTION G: SIGNATURES

Signed and accepted by:

THE PARTICIPANT / IMPLEMENTATION PARTNER

MCI CONSULTANTS (PTY) LTD

Signed at: _____

Signed at: _____

Date: _____

Date: _____

Signature: _____

Signature: _____

Name: _____

Name: _____

Designation: _____

Designation: _____

Who warrants his/her authority hereto

Who warrants his/her authority hereto