

TWYN

SOFTWARE AS A SERVICE (SAAS) SUBSCRIPTION AGREEMENT

BETWEEN

JURUMANI SOLUTIONS PROPRIETARY LIMITED

AND

##CUSTOMER NAME##

THIS AGREEMENT is dated xxxxxx

PARTIES

1. **JURUMANI SOLUTIONS PROPRIETARY LIMITED** incorporated and registered in South Africa with company number 2006/028143/07 whose registered office is at 4 Challenger avenue, International Business Gateway, Midrand, Gauteng, 1685 (**Supplier**).
2. ----- (**Customer**).

1. INTERPRETATION

1.1. The definitions and rules of interpretation in this clause apply in this Agreement.

Agreement means this Software as a Service (SAAS) Subscription Agreement together with any Annexures and or Schedules, which are incorporated herein by reference;

Affiliate means any legal entity directly or indirectly, during the term of this Agreement, controlling, controlled by, or under common Control with another entity.

Authorised Users: those employees, agents, Affiliates and independent contractors of the Customer who are authorised by the Customer to use the Services, as further described in Clause **Error! Reference source not found.**

Business Day: a day other than a Saturday, Sunday or public holiday in South Africa when banks are open for business.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as such in terms of Clause 12.5 or Clause 12.6.

Control means in relation to: (a) a juristic person the ability of another person, directly or indirectly, to ensure that the activities and business of that juristic person are conducted in accordance with the wishes of the latter person, and the latter person shall be deemed to so control the juristic person if the latter person owns, directly or indirectly, the majority of the issued share capital, members interest or equivalent equity and/or holds, directly or indirectly, the majority of the voting rights in the juristic person or the latter person has the right to receive the majority of the income of that juristic person on any distribution by it of all of its income or the majority of its assets on its winding-up; and (b) a trust: (i) the ability to control the majority of the votes of the trustees; (ii) the ability to appoint the trustees holding the majority of the voting rights of trustees; or (iii) such trust operates for the benefit of such person/s, and "Controlling" and "Control" shall be construed accordingly;

Customer Data: the data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

Customer Representative: a person duly authorised by the Customer to act on its behalf for the purposes of this Agreement and identified to the Supplier by written notice from the Customer.

Implementation Plan: Jurumani will implement the Twyn Software and the Twyn Services in a phased approach and according to the agreed plan.

Implementation Phase Work: means the work, duties and obligations to be carried out by the Supplier for the delivery and implementation of the Twyn Software and the Twyn Services.

Implementation Phase Fees: the fees payable by the Customer to the Supplier for the Implementation Phase Work, as set out in [Schedule 2].

Effective Date: the date of this Agreement.

Fees: collectively the Implementation Phase Fees and the Subscription Fees as described in clause 10;

Initial Subscription Term: means 24-month term commencing when Authorised User starts using live Services;

Normal Business Hours: 9.00 am to 5.00 pm local SA time, each Business Day.

Renewal Period: the period described in clause 16.1.

Subscription Fees: the subscription fees payable by the Customer to the Supplier for the User Subscriptions, as set out in [Schedule 2].

Subscription Term: has the meaning given in Clause 16.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

Twyn Services: the services provided by the Supplier to the Customer via the Twyn Platform under this Agreement as more fully detailed in [Schedule 1].

Twyn Platform: the portfolio of software modules which includes Groove capabilities amongst other elements developed, owned and managed by the Supplier

Personal Information: has the meaning ascribed to that term in the POPI Act;

POPI Act: the Protection of Personal Information Act 4 of 2013 and any regulations issued under that legislation, as amended from time to time.

Project Manager: the Supplier employee who has overall responsibility for the provision of the Services.

Use means use of the Twyn Services for the normal business purposes of the Authorised Users (which shall not include allowing the use of the Twyn Software by, or for the benefit of, any person other than the Authorised Users),

User Subscriptions: the user subscriptions purchased by the Customer pursuant to Clause 9.1 which entitle Authorised Users to access and use the Twyn Services in accordance with this Agreement.

Variation: means an alteration to the scope of Services in the form of an addition or substitution as instructed by the Customer in writing which affects the timetable set out in the Implementation Plan.

1.2. Words in the singular include the plural and those in the plural include the singular.

1.3. References to "including" or "includes" shall be deemed to have the words "without limitation" inserted after them.

- 1.4. A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment, and includes any subordinate legislation for the time being in force made under it.
- 1.5. Holding company and subsidiary mean a "holding company" and "subsidiary" as defined in the Companies Act, 71 of 2008.
- 1.6. Except where a contrary intention appears, a reference to a clause, schedule or annex is a reference to a clause of, or schedule or annex to, this Agreement.
- 1.7. Clause and schedule headings do not affect the interpretation of this Agreement.
- 1.8. Writing or written includes faxes but neither e-mail nor any other form of electronic communication, except where expressly provided to the contrary.
- 1.9. The schedules to this Agreement, together with any documents referred to in them, form an integral part of this Agreement and any reference to this Agreement means this Agreement together with the schedules and all documents referred to in them, and such amendments in writing as may subsequently be agreed between the parties.
- 1.10. If any conflict arises between the terms and conditions of this Agreement and any provision of any schedule, the terms and conditions of the schedule shall prevail.
- 1.11. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) [and that person's personal representatives, successors or permitted assigns].

2. BACKGROUND

- 2.1. The Supplier owns and operates the Twyn Platform and makes the Twyn Services available to subscribers via the internet on a pay-per-use basis.
- 2.2. The Customer wishes to use the Twyn Services in its business operations.
- 2.3. The Supplier has agreed to provide the Twyn Services to the Customer, and the Customer has agreed to take and pay for such implementation and use subject to the terms and conditions of this Agreement.

3. IMPLEMENTATION

- 3.1. The Supplier shall implement the Twyn Services for the Customer in an agile way as agreed between the parties.

3.2. The Service Subscription term and associated commercial conditions will apply from any one of the following being satisfied:

3.2.1. Demonstrated service operation for the Customer using Customer data

3.2.2. Agreed completion of Services implementation

4. USER SUBSCRIPTIONS

4.1. Subject to the Customer purchasing the User Subscriptions in accordance with Clause 5.3 and Clause 10.1, the restrictions set out in this Clause 4 and the other terms and conditions of this Agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to Use the Twyn Services during the Subscription Term solely for the Customer's internal business operations.

4.2. In relation to the Authorised Users, the Customer undertakes that:

4.2.1. the maximum number of Authorised Users that it authorises to access and use the Twyn Services shall not exceed the number of User Subscriptions it has purchased from time to time;

4.2.2. it will not allow any User Subscriptions to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Twyn Services;

4.2.3. each Authorised User shall keep a secure password for his use of the Twyn Services, that such password shall be changed on a frequent basis as required by the Supplier and that each Authorised User shall keep his password confidential;

4.2.4. it shall permit the Supplier or the Supplier's designated auditor to audit the Twyn Services in order to establish the Authorised Users to audit compliance with this Agreement. Each such audit may be conducted no more than once per quarter, at the Supplier's expense, and this right shall be exercised with reasonable prior written notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;

4.2.5. if any of the audits referred to in Clause 4.2.4 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, the Customer shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual; and

4.2.6. if any of the audits referred to in Clause 4.2.4 reveal that the Customer has underpaid Subscription Fees to the Supplier, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices set out in Paragraph 1 of Schedule 1 within 10 Business Days of the date of the relevant audit.

4.3. The Customer shall not:

4.3.1. except as may be allowed by any applicable law and except to the extent expressly permitted under this Agreement:

4.3.1.1. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Twyn Services in any form or media or by any means; or

4.3.1.2. attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Twyn Services; or

4.3.2. access all or any part of the Twyn Services in order to build a product or service which competes with the Twyn Services; or

4.3.3. use the Services to provide Services to third parties; or

4.3.4. subject to Clause 15, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorised Users, or

4.3.5. attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this Clause 4.

4.4. The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify the Supplier.

5. ADDITIONAL USER SUBSCRIPTIONS

5.1. Subject to Clause 5.2 and Clause 5.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number at the prices as set out in per Schedule 1 and the Supplier shall grant access to the Services and the documentation to such additional Authorised Users in accordance with the provisions of this Agreement.

5.2. If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify the Supplier in writing. The Supplier shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request (such approval not to be unreasonably withheld). Where the Supplier approves the request, the Supplier shall activate the additional User Subscriptions within 7 days of its approval of the Customer's request.

5.3. If the Supplier approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within 30 days of the date of the Supplier's invoice, pay to the Supplier the relevant fees for such additional User Subscriptions and, if such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by the Supplier for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

6. TWYN SERVICES

- 6.1. The Supplier shall, during the Subscription Term, provide the Twyn Services to the Customer on and subject to the terms of this Agreement.
- 6.2. The Supplier shall use commercially reasonable endeavours to make the Twyn Services available 24 hours a day, seven days a week, except for:
 - 6.2.1. planned maintenance as determined by the Supplier in its sole discretion; and
 - 6.2.2. unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least 10 Normal Business Hours' notice in advance.
 - 6.2.3. Unscheduled maintenance for dedicated deployments will be performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least 24 Normal Business Hours' notice in advance.
 - 6.2.4. Should there be any form of technical or functional performance issue affecting service delivery, the Supplier warrants that it shall use all commercially reasonable efforts at its own expense to ensure the Twyn Service is restored.

7. SERVICE UPTIME COMMITMENT

- 7.1. For the purposes of this 'Service Uptime Commitment' section, the following definitions will apply:

"Downtime" means a critical full outage/severe issue that constitutes a catastrophic problem causing complete inability to use the Subscription Service, across a significant portion of the production environment (e.g. crash or hang), resulting in production downtime and where there is no workaround or solution to the problem.

"Excluded" means the following: (i) unavailability caused by circumstances beyond our reasonable control, including, without limitation, act of God, acts of government, emergencies, natural disasters, flood, fire, civil unrest, acts of terror, strikes or other labor problems (other than those involving our employees), or any other force majeure event or factors; (ii) any problems resulting from Customer's combining or merging the Subscription Service with any hardware or software not supplied by us or not identified by us in writing as compatible with the Subscription Service; (iii) interruptions or delays in providing the Subscription Service resulting from telecommunications or internet service provider failures outside of the datacenter as measured by a third party availability monitoring provider; (iv) any interruption or unavailability resulting from the misuse, improper use, alteration, or damage of the Subscription Service; and (v) unavailability while we perform maintenance on the Subscription Service when necessary, in twyns sole, reasonable discretion.

"Service Uptime" means $(\text{total hours in calendar month} - \text{Excluded duration} - \text{Downtime duration}) / (\text{total hours in calendar month} - \text{Excluded duration}) \times 100\% = \text{Service Uptime}$.

- 7.2. We will use commercially reasonable efforts to meet a Service Uptime of 99.0% for our Subscription Service in each calendar month. All availability calculations will be based on our system records.

7.3. Notwithstanding anything to the contrary in this Agreement, as Customer's sole and exclusive remedy for failure to meet Service Uptime commitments, in the event there are two (2) or more consecutive calendar months during which the Service Uptime falls below 99.0% in a given calendar month, Customer will be entitled to receive a credit equal to the pro-rated amount of fees applicable to the downtime as measured within two (2) or more consecutive calendar months during which the Service Uptime fell below 99.0%. The credit will be applied against an invoice or charge for the following renewal Subscription Term, provided Customer requests such credit within twenty (20) days of the end of the relevant calendar month in which Twyn did not meet the Service Uptime of 99.0%.

8. SUPPLIER'S OBLIGATIONS

8.1. The Supplier warrants and undertakes that the Twyn Services will be performed substantially in accordance with the Service Level Agreement and this Agreement and with reasonable skill and care.

8.2. The warranties provided in terms of Clause 8.1 shall not apply to the extent of any non-conformance which is caused by use of the Twyn Services contrary to the Supplier's instructions, or modification or alteration of the Twyn Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in Clause 8.1.

8.3. The Supplier shall be responsible for the maintenance, monitoring and support of the AWS infrastructure and Mongo Database.

8.4. The Customer acknowledges and agrees that the Supplier does not warrant that:

8.4.1.1. the Customer's use of the Twyn Services will be uninterrupted or error-free; and/or

8.4.1.2. that the Twyn Services and/or the information obtained by the Customer through the Twyn Services will meet the Customer's requirements.

8.5. The Supplier is not responsible for any delays, implementation failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Twyn Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

8.6. This Agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or Twyn Services which are similar to those provided under this Agreement.

8.7. The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

9. CUSTOMER'S OBLIGATIONS

9.1. The Customer shall:

9.1.1. provide the Supplier with

9.1.1.1. all necessary co-operation in relation to this Agreement; and

9.1.1.2. all necessary access to such information as may be required by the Supplier;

in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;

9.2. without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement;

9.3. carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or Implementation schedule as set out in the Implementation Plan or otherwise as reasonably necessary;

9.4. ensure that the Authorised Users use the Twyn Services in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;

9.5. obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this Agreement, including without limitation the Twyn Services;

9.6. ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and

9.7. be, to the extent permitted by law and except as otherwise expressly provided in this Agreement or Implementation Plan, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, Implementation failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet,.

10. FEES

10.1. The Customer shall pay the Subscription Fees to the Supplier for the User Subscriptions in accordance with this Clause 10 and the provisions of **Schedule 1** and **Schedule 2**.

10.2. The Customer shall on the Effective Date provide to the Supplier valid, up-to-date and complete approved purchase order information acceptable to the Supplier and any other relevant valid, up-to-date and complete contact and billing details.

- 10.3. The Supplier shall invoice the Customer for the Fees payable in respect of the Initial Subscription Term and any Renewal Period, subject to Clause 16, in accordance with the selected payment option as set out [in **Schedule 2**].
- 10.4. If the Supplier has not received payment within 30 days after the due date, the Supplier shall be entitled upon 30 days written notice to the Customer:
- 10.4.1. without prejudice to any other rights and remedies, the Supplier may, disable the Customer's password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
- 10.4.2. interest shall accrue on a daily basis on such due amounts at an annual rate equal to the published prime interest rate plus 2% in South Africa from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 10.5. All amounts and fees stated or referred to in this Agreement:
- 10.5.1. shall be payable in the currencies as reflected in Schedule 2
- 10.5.2. are non-cancellable and non-refundable;
- 10.5.3. are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate
- 10.6. The Supplier shall be entitled to increase the Fees upon agreement with the Customer, the fees payable in respect of the additional User Subscriptions purchased pursuant to Clause 5.3 at the start of each Renewal Period upon 90 days' prior notice to the Customer and Schedule 1 shall be deemed to have been amended accordingly. If the Customer does not agree to this increase, either party can choose to terminate the subscription at the end of the then-current term by giving formal notice which must be received before the next renewal period begins.
- 10.7. The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services. Except as expressly stated herein, this Agreement does not grant the Customer any rights to any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.
- 10.8. The Supplier confirms that it has all the rights in relation to the Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

11. DATA PROTECTION

- 11.1. Both parties will comply with all applicable requirements of the POPI Act. This Clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the POPI Act.
- 11.2. The parties acknowledge that if the Supplier processes any Personal Information on the Customer's behalf when performing its obligations under this Agreement, the Customer is the "Responsible Party" and the Supplier is the "Operator" as defined in and for the purposes of the POPI Act.

11.3. Without prejudice to the generality of Clause 11.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Information to the Supplier for the duration and purposes of this Agreement so that the Supplier may lawfully use, process and transfer the personal data in accordance with this Agreement on the Customer's behalf.

12. CONFIDENTIALITY

12.1. Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:

12.1.1. is or becomes publicly known other than through any act or omission of the receiving party;

12.1.2. was in the other party's lawful possession before the disclosure;

12.1.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

12.1.4. is independently developed by the receiving party, which independent development can be shown by written evidence.

12.2. Subject to Clause 12.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.

12.3. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

12.4. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 12.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

12.5. The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.

12.6. The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.

12.7. No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

12.8. The above provisions of this Clause 12 shall survive termination of this Agreement, however arising.

13. INDEMNITY

13.1. The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising directly out of the Customer's Use of the Services, provided that:

13.1.1. the Customer is given prompt notice of any such claim;

13.1.2. the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and

13.1.3. the Customer is given sole authority to defend or settle the claim.

13.2. The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Customer's use of the Services in accordance with this Agreement infringes any South African patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

13.2.1. the Supplier is given prompt notice of any such claim;

13.2.2. the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and

13.2.3. the Supplier is given sole authority to defend or settle the claim.

14. LIMITATION OF LIABILITY

14.1. Neither party excludes or limits liability to the other party for fraud or fraudulent misrepresentation, death or personal injury caused by negligence or any matter for which it would be unlawful for the parties to exclude liability.

14.2. Neither party shall be liable to the other under this Agreement under any circumstances for any incidental, indirect, special or consequential losses or damages, loss of use, loss of claim, loss of data, loss of business, loss of profits, loss of revenue, loss of production, loss of agreements or contracts and loss of goodwill resulting from any cause whatsoever.

14.3. Notwithstanding anything to the contrary contained in this Agreement, either Parties liability for any and all claims under or in connection with this Agreement, whether in contract, delict or otherwise, and whether related to any one event or a series of connected events shall be limited to the Fees payable over the Initial Subscription Term.

14.4. The Supplier shall not be liable for any delay in Implementation of the Services that is caused by an event, circumstance or cause within the scope of clause 19 or the Customer's failure to provide the Supplier with adequate Implementation instructions.

15. ASSIGNMENT AND SUBCONTRACTING

This Agreement is personal to the parties and neither party shall cede, assign, transfer, subcontract or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).

16. TERM AND TERMINATION

16.1. This Agreement shall, unless otherwise terminated as provided in this Clause 16, commence on the Effective Date and shall continue for the Initial Subscription Term unless:

16.1.1. either party notifies the other party of termination, in writing, at least 30 days before the end of the Initial Subscription Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or

16.1.2. otherwise terminated in accordance with the provisions of this Agreement,

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

16.2. Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, either party may at any time terminate this Agreement with immediate effect by giving written notice to the other party if:

16.2.1. the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;

16.2.2. the other party commits a material breach of any term of this Agreement (other than failure to pay any amounts due under this Agreement) and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

16.2.3. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

16.2.4. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the commencement of business rescue proceedings or winding up of that other party;

16.2.5. the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;

16.3. On termination of this Agreement for any reason:

16.3.1. all rights to Use granted under this Agreement shall immediately terminate and the Customer shall immediately cease all use of the Services;

16.3.2. each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;

16.3.3. the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than ten days after the effective date of the termination of this Agreement, a written request from the Customer for the most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and

16.3.4. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.

17. NOTICES

17.1. Each Party chooses its *domicilium citandi et executandi* for all purposes relating to this Agreement, including the giving of any notice or serving of any documents in legal proceedings at the physical address as follows:

Supplier: Physical Address: 4 Challenger avenue, International Business Gateway, Midrand, 1685

E-mail: markf@jurumani.com

Customer: Physical Address-

Email-

Any Party may by written notice to the other Parties change its *domicilium* from time to time to another address, not being a post office box or a *poste restante*, in South Africa, provided that any such change shall only be effective on the fourteenth day after deemed receipt of the notice by the other party.

17.2. Any notice shall be deemed to have been duly received:

17.2.1. if delivered personally, when left at the address and for the contact referred to in this clause;

17.2.2. if sent by pre-paid first-class post or recorded Implementation, at 9.00 am on the fifth Business Day after posting; or

17.2.3. if delivered by commercial courier, on the date and at the time that the courier's Implementation receipt is signed.

17.3. This clause 17 shall not operate so as to invalidate the giving or receipt of any written notice which is actually received by a party other than by a method referred to in this clause 17.

17.4. The parties record that whilst they may correspond via email or facsimile during the currency of this Agreement for operational reasons, no formal notice, legal processes or any amendment or variation to this Agreement may be given or concluded via email.

18. DISPUTE RESOLUTION

18.1. Any dispute which may arise between the parties concerning this Agreement shall be determined as provided in this clause 18.

18.2. For the purpose of this clause 18, a dispute shall be deemed to have arisen when one party serves on the other a notice in writing stating the nature of the dispute.

18.3. Unless this Agreement has already been terminated by the date of the notice of dispute, the Supplier shall, in every case, continue with the provision of the Services with all due diligence regardless of the nature of the dispute and the Customer shall continue to make payments (excluding any disputed sums) in accordance with Clause 10.

18.4. After service of the notice of dispute, the following procedure shall be followed by the parties (all periods specified in this clause 18.4 shall be extendable by mutual agreement):

18.4.1. within five days, the Project Manager and the Customer Representative shall meet to attempt to settle the dispute;

18.4.2. if the Project Manager and the Customer Representative are unable to reach a settlement within seven days from the date of service of the notice, the managing directors of each of the parties shall meet within the following seven days to attempt to settle the dispute; and

18.4.3. if no settlement results from the meeting specified in clause 18.4.2, for the following 28 days the parties shall attempt to settle the dispute by mediation by an independent mediator, with costs to be shared equally between the parties.

18.5. If no settlement is reached under clause 18.4:

18.5.1. such dispute shall be referred for arbitration, to be carried out in accordance with the rules of the Arbitration Foundation of Southern Africa (or its successor-in-title) (AFSA) by an arbitrator appointed by AFSA. There shall be no right of appeal as provided for in article 22 of such rules; and

18.5.2. the arbitrator's decision shall (in the absence of clerical or manifest error) be final and binding on the parties and his or her fees for so acting shall be borne by the parties in equal shares unless he determines that the conduct of either party is such that such party should bear all of such fees.

18.5.3. Notwithstanding anything to the contrary contained in this clause 18, any party shall be entitled to obtain interim relief on an urgent basis from any competent court having jurisdiction

19. FORCE MAJEURE

19.1. Neither party shall in any circumstances be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control, and in such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for 30 days or more, the party not affected may terminate this Agreement by giving 30 days' written notice to the other party.

19.2. If termination occurs under clause 19.1, all sums paid to the Supplier by the Customer under this Agreement shall be refunded to the Customer, except that the Supplier shall be entitled to payment on a quantum meruit basis for all work done before termination, provided that the Supplier takes all reasonable steps to mitigate the amount due.

20. GOVERNING LAW AND JURISDICTION

20.1. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of South Africa.

20.2. The parties irrevocably agree that the High Courts of South Africa shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

21. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

22. REMEDIES

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

23. ENTIRE AGREEMENT

23.1. This Agreement and any documents annexed to it and constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of this Agreement.

23.2. Each party acknowledges that, in entering into this Agreement, it does not rely on any statement, representation, assurance or warranty (Representation) of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement.

23.3. Each party agrees that the only rights and remedies available to it arising out of or in connection with a any statement, representation, assurance or warranty shall be for breach of contract as expressly provided in this Agreement.

24. VARIATION

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

25. SEVERANCE

25.1. If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

25.2. If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

26. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same Agreement.

27. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party, except as expressly authorised by the Customer or the Supplier (as the case may be).

This Agreement has been entered into on the Effective Date.

SIGNED at _____ on _____ 20__ For and on behalf of

SUPPLIER

who warrants that he / she is duly authorised thereto

Signature _____

Name of Signatory _____

Designation of Signatory _____

SIGNED AT _____ ON _____ 20__

FOR AND ON BEHALF OF

THE CUSTOMER

WHO WARRANTS THAT HE / SHE IS DULY AUTHORISED THERETO

Signature _____

Name of Signatory _____

Designation of Signatory _____

SCHEDULE 1 – FEES

1. IMPLEMENTATION SERVICE FEES

- 1.1. The Supplier will implement the Twyn Services for the customer in a manner agreed by both parties.
- 1.2. A series of phases, approach and estimate are the customer proposal. Using this as guidance, the supplier will work with the customer in an agile manner do configure, develop and enhance the service.
- 1.3. The implementation work will be charged for on a time and materials basis using a blended rate xxx.
- 1.4. Any further customisation or development work will be charged on a time and materials basis, which are given in Table A

TABLE A: TIME AND MATERIAL PRICING

2. SUBSCRIPTION FEES

- 2.1. The twyn modules are priced on a monthly subscription basis. The full list twyn modules and latest list pricing is published on twyn website (www.twyn.ai).
- 2.2. Subscription Service Fees shall be paid in accordance with the payment option as selected pursuant to **Schedule 2**.

3. INFRASTRUCTURE FEES

3.1. The Twyn Services for Customer will be deployed on the Twyn multi-tenant platform.

SCHEDULE 2 – PAYMENT

- 1.1 Payment shall be made by the Customer to the Supplier no later than 30 (thirty) days from date of invoice.
- 1.2 The Supplier will invoice the Subscription Fees for the negotiated bundle (and any additional User Subscriptions as per clause 6 of the agreement) as set out in [Schedule 1].
- 1.3 Subscription fees become due when customer authorized users gain access to twyn in production.
- 1.4 Any notified changes to users will be adjusted for at that time and invoiced to the completion of the selected payment cycle.
- 1.5 The Supplier shall invoice implementation work costs on a monthly basis.
- 1.6 The Supplier shall invoice any customization and development work costs on a monthly basis.