



ACJUSA TERMS AND CONDITIONS

Last amended May 2022

A DEFINITIONS AND INTERPRETATION

- A.1 In this Agreement the following definitions will apply:
- A.1.1 **Agreement** means this Agreement together with the schedules and any appendices attached hereto;
- A.1.2 **Commencement Date** means the date on which both parties' signature appears on the AJS Quotation and Software Service Agreement;
- A.1.3 **Confidential Information** means Information relating to one Party or its Agents (the "Disclosing Party") and/or the business carried on or proposed or intended to be carried on by the Disclosing Party and which is made available in connection with this Agreement to the other Party (the "Receiving Party") (or its Agents) by the Disclosing Party or which is recorded in agreed minutes following oral disclosure to the Receiving Party and any other information which is otherwise made available by the Disclosing Party to the Receiving Party, whether before, on or after the date of this Agreement, including any information, analysis or specifications derived from, containing or reflecting such information but excluding information which:
- A.1.3.1 is publicly available at the time of its disclosure or becomes publicly available (other than as a result of disclosure by the Receiving Party or any of its Agents contrary to the terms of this Agreement); or
- A.1.3.2 was lawfully in the possession of the Receiving Party or its Agents (as can be demonstrated by its written records or other reasonable evidence) free of any restriction as to its use or disclosure prior to its being so disclosed; or
- A.1.3.3 following such disclosure, becomes available to the Receiving Party or its Agents (as can be demonstrated by its written records or other reasonable evidence) from a source other than the Disclosing Party, which source is not bound by any duty of confidentiality owed, directly or indirectly, to the Disclosing Party in relation to such information.
- A.1.4 **Contract Period** starts on the **Commencement Date** and continues indefinitely unless terminated by either party by giving a calendar month's notice;
- A.1.5 **Default** means any breach of the obligations of either Party or any act, omission, negligent act or statement of either Party, its employees, agents or sub-contractors and in respect of which liability arises from the defaulting Party to the other;
- A.1.6 **Fees** means the charges for the AJS software calculated in accordance with Schedule 2 (Fees) or any amendment thereto at the sole discretion of ACJUSA;
- A.1.7 **Information** means all information including, without limitation, any information relating to systems, operations, plans, intentions, market opportunities, know-how, trade secrets and business affairs in whatever form, whether in oral, tangible or in documented form and, if in tangible or documented form, whether marked or identified as being proprietary or not;
- A.1.8 **Intellectual Property** includes any copyright, design rights, patents, inventions, logos, business names, service marks and trademarks, Internet domain names, moral rights, rights in databases, data, source codes, reports, drawings, specifications, know-how, business methods and trade secrets, applications for registration, and the right to apply for registration, for any of these rights and all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world;
- A.1.9 **Party** means any one of the Parties to this Agreement. The term "**Parties**" shall have a corresponding meaning;
- A.1.10 **Personnel** means the employees, agents and approved sub-contractors of the Service Provider who are assigned to perform the Services;
- A.1.11 **Regulatory Requirements** means all legal and regulatory requirements in the Republic of South Africa and any other jurisdiction from which the Services are delivered that are applicable in relation to the AJS software;
- A.1.12 **Representative** means the appointed Party representatives;
- A.1.13 **Third Party** means any person or entity which is not a Party to this Agreement;
- A.1.14 **Value Added Tax** or VAT means value added tax imposed in terms of such applicable legislation, including any similar tax which may be imposed in place thereof from time to time; and
- A.2 In this Agreement, unless the context otherwise requires:
- A.2.1 if any provision in a definition is a substantive provision conferring rights or imposing obligations on a Party, notwithstanding that it is only in the interpretation clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement;
- A.2.2 in this Agreement a Party includes a reference to that Party's successors in title and assigns allowed at law;
- A.2.3 any reference in this Agreement to:
- A.2.3.1 "**business hours**" shall be construed as being the hours between 08h00 and 17h00 on any business day. Any reference to time shall be based upon South African Standard Time;
- A.2.3.2 "**days**" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;
- A.2.3.3 "**law**" means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law and "**legislation**" will have the equivalent meaning;
- A.2.3.4 "**person**" means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality; and
- A.2.3.5 "**writing**" means legible writing and in English and excludes any form of electronic communication.
- A.3 the words "**include**" and "**including**" mean "**include without limitation**" and "**including without limitation**". The use of the words "**include**" and "**including**" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it;
- A.4 the words "**shall**" and "**will**" and "**must**" used in the context of any obligation or restriction imposed on a Party have the same meaning;
- A.5 words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement;
- A.6 unless otherwise provided, defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning;
- A.7 a reference to any statutory enactment shall be construed as a reference to that enactment as at the Commencement Date and as amended or substituted from time to time;
- A.8 unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day;
- A.9 if the due date for performance of any obligation in terms of this Agreement is a day which is not a business day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately preceding business day;
- A.10 where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention;
- A.11 the rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply;
- A.12 the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provided that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- A.13 no provision of this Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (*stipulatio alteri*) who is not a party to this Agreement.

1. **Use of Software**
 - 1.1. ACJUSA has the right to provide and support AJS software, related Intellectual Property rights and related services (hereinafter referred to as the "AJS system" or "system"). ACJUSA hereby grants the client the right to access and use the AJS system. This right is granted on a non-exclusive, non-transferable basis and subject to the specific terms and conditions of this Agreement, which may be updated and amended by ACJUSA in their sole and ultimate discretion from time to time. ACJUSA warrants that it has the right to grant the right to use the AJS system to the client and that the system will function according to the specifications, which shall be made available upon request.
 - 1.2. The number of users is stipulated in the AJS Quotation and Software Service Agreement issued to the client by ACJUSA or its nominee. The client shall determine the number of users, the level of access, and the user rights allowed to each specific user. This may change from time to time during the course of this Agreement.
 - 1.3. The client takes responsibility for utilizing the system. AJS takes no responsibility for failure to use or misuse of the system by any of the client's users.
 - 1.4. This Agreement will be effective from the Commencement Date and will endure indefinitely on a month-to-month basis, subject to termination by either Party giving the other Party one calendar month's written notice to that effect.
2. **Obligations of the Client**
 - 2.1. Payment of service fees - ACJUSA or its nominee shall issue an invoice every month in advance for the month following the date of the invoice. The invoice shall be in accordance with the quotation and any amendments thereto. Payment is due and the client will pay all due amounts strictly upon presentation of the invoice. ACJUSA may suspend or terminate system access for late payment or non-payment of any invoices. Service fees will be adjusted according to fluctuating user requirements. ACJUSA reserves the right to increase the service fees at any time during the period of this Agreement, subject to one calendar month's written notice to that effect.
 - 2.2. Training - The client shall ensure that all users are fully trained. Authorised ACJUSA trainers and training material are available upon request at standard going rates from time to time. ACJUSA will not be responsible for the ineffectiveness of the system due to inadequate user training/knowledge.
3. **Consent to process information**
 - 3.1. By signing this Agreement, the client accepts, consents and acknowledges that ACJUSA may collect, store, use and process information that can be associated with the client and/or its users of the system, which information can be used to identify the client and/or his/her/its users ("Personal Information").
 - 3.2. The client hereby acknowledges that Personal Information includes, the client's (and/or user's):
 - 3.2.1. name and surname;
 - 3.2.2. email address;
 - 3.2.3. telephone number(s);
 - 3.2.4. identity number;
 - 3.2.5. banking details;
 - 3.2.6. company name, company registration number, and VAT number (if the client is a juristic entity);
 - 3.2.7. postal address and/or street address; and
 - 3.2.8. username and password (log-in details) (if/where applicable).
 - 3.3. The client hereby consents to the collection and processing of Personal Information by ACJUSA for various purposes, including:
 - 3.3.1. services purposes – such as requests for and providing services in accordance with this Agreement;
 - 3.3.2. marketing purposes – such as pursuing lawful related marketing activities;
 - 3.3.3. business purposes – such as internal audit, accounting, recording keeping, business planning, and joint ventures, disposal of business, or other proposed and actual transactions; and
 - 3.3.4. legal purposes – such as handling claims, complying with regulations, for detection and prevention of fraud, crime, money laundering or other malpractice and pursuing good governance.
 - 3.4. The client acknowledges that the Personal Information will not be further processed and shall only be processed for the purposes for which it was collected, as set out in this Agreement, and as agreed between the client and ACJUSA.
 - 3.5. ACJUSA will not sell the Personal Information. No Personal Information will be disclosed to any third party except as provided in ACJUSA's privacy policy, which can be found at www.ajs.co.za
 - 3.6. The client hereby consents to and acknowledges that ACJUSA may need to disclose the Personal Information to its employees that require the Personal Information in order to do their jobs. These include ACJUSA's employees, responsible management, human resources, accounting, audit, compliance, information technology, or other Personnel. Access to the Personal Information is only authorised for employees who require such information in order to fulfil their employment responsibilities.
 - 3.7. The client acknowledges that the records of Personal Information will not be retained any longer than necessary for achieving the purpose for which the Personal Information was collected or subsequently processed, unless the retention of the Personal Information is required or authorised by law, or the client has consented to the retention of the Personal Information.
 - 3.8. During the period of retention of Personal Information, ACJUSA will continue to abide by all its obligations stipulated in its privacy policies and/or applicable legislation.
 - 3.9. Subject to clause 3.6 and clause 18 below, the client acknowledges that ACJUSA may retain the Personal Information for historical, statistical or research purposes in circumstances where ACJUSA has established appropriate safeguards against the Personal Information being used for any other purposes.
 - 3.10. Subject to having provided ACJUSA with adequate proof of identity, the client acknowledges that he/she/it is entitled to request access to the Personal Information and/or request that the Personal Information be destroyed, deleted or de-identified as soon as reasonably practicable:
 - 3.10.1. after ACJUSA are no longer authorised to retain the Personal Information in terms of clause 3.8; or
 - 3.10.2. the purpose for which the Personal Information is required has been fulfilled.
 - 3.11. ACJUSA shall destroy or delete the record of Personal Information in a manner that prevents its reconstruction in an intelligible form and in accordance with clause 18.1.9, unless otherwise agreed between the Parties.
 - 3.12. The client may request ACJUSA to –
 - 3.12.1. correct or delete Personal Information about the client, in ACJUSA's possession or under ACJUSA's control, that is inaccurate, irrelevant, excessive, out of date, incomplete, misleading, or obtained unlawfully; or
 - 3.12.2. destroy or delete a record of Personal Information about the client which ACJUSA is no longer authorised to retain in terms of this Agreement.
 - 3.13. The client shall notify ACJUSA of its request(s) referred to in clause 3.12 by emailing, phoning or notifying ACJUSA via the client's online account (if/where applicable) and in accordance with ACJUSA's privacy policy found at www.ajs.co.za
 - 3.14. Upon receipt of a request from the client in terms of clause 3.10, ACJUSA undertakes, as soon as reasonably practicable, to –
 - 3.14.1. correct the Personal Information;
 - 3.14.2. destroy or delete Personal Information; or
 - 3.14.3. provide the client with credible evidence in support of the Personal Information.
 - 3.15. ACJUSA is not responsible for, gives no warranties and makes no representations whatsoever in respect of any privacy policy and/or practice belonging to linked or third-party websites.
 - 3.16. Where the client processes Personal Information of his/her/its customers, employees, agents, data subjects, being the person to whom the Personal Information related (referred to as the "Data Subjects"), the client undertakes to ensure:
 - 3.16.1. that it shall, at all material times when using the system, comply with its own data privacy and protection policies in order to safeguard all Personal Information;
 - 3.16.2. that all reasonable steps are taken and put in place all reasonable measures to secure and protect all Personal Information which they process; and
 - 3.16.3. that the client's employees undergo adequate training and comply fully with all applicable laws and regulations.

- 3.17. The Parties undertake to ensure that all/any Personal Information processed for specific Data Subjects, shall be processed separately from Personal Information relating to any other Data Subject and in accordance with applicable legislation.
- 3.18. The Parties' obligations in terms of this clause, clause 18 and in terms of applicable legislation, shall endure for an indefinite period from receipt of the Personal Information, regardless of any suspension of services by ACJUSA or access to the system, termination of this Agreement and/or the business relationship, for any reason whatsoever.
- 3.19. Unless otherwise instructed in writing by the client, the client's consent given to ACJUSA in terms of this Agreement, shall be applicable and valid in respect of any/all additional services required by the client (whether in terms of or outside of this Agreement) and in addition to the Service Level Agreement, the signed AJS Quotation and Software Service Agreement, as may be amended from time to time.
- 3.20. The client acknowledges and accepts that ACJUSA may, from time to time, need to share the client's Personal Information with ACJUSA's affiliated companies and/or authorised third-party service providers in order to render its services adequately and efficiently. Details of ACJUSA's affiliate companies are set out in ACJUSA's privacy policy document, which can be accessed at the following link: <https://ajs.co.za/privacy-policy/>
- 3.21. By signing this Agreement, the client consents to ACJUSA sharing all/any Personal Information with ACJUSA's affiliated companies and/or authorised third-party service providers in order to assist ACJUSA with rendering its services in terms of this Agreement and/or in terms of clause 3.19, and specifically the client consents to Personal Information being transferred to a foreign country where ACJUSA reasonably believes this to be necessary. ACJUSA undertakes to ensure that its affiliate companies and/or the authorised third-party service provider has implemented the appropriate technical and organisational security measures in the relevant jurisdiction in which the Personal Information is being transferred, and that it has implemented and taken technical and organisational security measures to safeguard the security of the client's Personal information in-transit.
- 4. System usage and security conditions**
- 4.1. The client agrees to use the system only for its own lawful internal business purposes, in accordance with this Agreement.
- 4.2. The client is responsible for ensuring that all usernames and passwords required to access the system are kept secure and confidential.
- 4.3. Where the AJS system is hosted on an ACJUSA Cloud Server, the client is obliged to immediately inform ACJUSA of any unauthorised use or other breach of security as soon as there is a suspicion of such activity. ACJUSA may, at its own discretion, reset client passwords and user access rights as and when deemed necessary. The client shall take all reasonable steps to maintain or enhance the security of and access to the system. ACJUSA is available to advise and consult on security and make recommendations but it is the responsibility of the client to approach ACJUSA in this regard.
- 4.4. The client shall not:
- 4.4.1. do or neglect to do anything that may damage or undermine the security or integrity of the system or hosting environment;
- 4.4.2. do or neglect to do anything that allows the system to be used by anyone without the express written consent of ACJUSA;
- 4.4.3. attempt to gain access to any software, program or data set other than the system to which the client has been granted access in terms of this Agreement;
- 4.4.4. do or neglect to do anything that may damage any other client's or user's hardware or software;
- 4.4.5. upload or submit content, material or data that may be offensive or in violation of any law (including data or other material protected by copyright or trade secrets which the client does not have the right to use);
- 4.4.6. attempt to modify copy, adapt, reproduce, disassemble, decompile or reverse-engineer any part of the system;
- 4.4.7. use or allow others to use the system for the benefit of any third party or to perform a similar service;
- 4.4.8. expect that the system will be completely error free. ACJUSA undertakes to rectify a material system error or material malfunction if the latest current version of the system can be demonstrated to contain an error or malfunction;
- 4.4.9. expect ACJUSA to rectify any system malfunctions that are caused by any of the following: defective equipment, modifications made by unauthorised persons, defective third party software or systems, defective peripheral products, any negligent action, corrupt data, or any device or system installed by any person unauthorised by ACJUSA.
- 5. Confidentiality, non-disclosure and Privacy**
- 5.1. Unless either Party has the prior written consent of the other or unless required to do so by law:
- 5.1.1. Each Party will preserve and respect the confidentiality of all confidential information of the other obtained during the course of this Agreement. Neither Party will, without the prior written consent of the other, disclose or make known any confidential information to any person, or use the same for its own benefit, other than as contemplated by this Agreement, excepting if,
- 5.1.2. it becomes public knowledge other than by a breach of this clause;
- 5.1.3. it is obtained from a third party under lawful circumstances and who is under no obligation to restrict its disclosure;
- 5.1.4. it is in the possession of the receiving party without restriction and was obtained before the date of receipt from the disclosing party; or
- 5.1.5. it is or has been independently developed without access to the confidential information.
- 5.2. Specifically, subject to the conditions above in clause 4.1, the client shall not disclose or allow others in its employ to disclose any information about the system, documentation or features to anyone who is not entitled thereto. All system information must be treated as confidential, for the client's own use and may not be disclosed to any third party without the written approval of ACJUSA.
- 5.3. The client undertakes to protect the Intellectual Property of ACJUSA at all times.
- 5.4. The above obligations shall endure for an indefinite period regardless of any suspension of services by ACJUSA or access to the system, termination of this Agreement or the business relationship, for any reason.
- 6. Software support and maintenance**
- 6.1. ACJUSA or its nominee undertakes to provide the support services as specified in the Service Level Agreement which can be found at www.ajs.co.za/SLA.html.
- 7. Intellectual Property**
- 7.1. The system and all Intellectual Property Rights in the system, the website and any documentation relating thereto remain the property of ACJUSA. Authorised changes commissioned by the client also become the Intellectual Property of ACJUSA unless specifically and separately agreed by the parties.
- 7.2. The data remains the property of the client. Access to the client's data, using the AJS software, is contingent on full payment of all related ACJUSA invoices.
- 7.3. The client agrees that ACJUSA may copy, transmit, store, and back-up relevant information and data for the purposes of enabling continued and optimum use of the system.
- 7.4. ACJUSA will adhere to best practice policies and procedures to prevent data loss but cannot guarantee that there will be no loss of data at any given time. ACJUSA expressly excludes liability for any loss of data under any circumstances whatsoever.
- 8. Communication conditions**
- 8.1. The client is entitled to use such communications tools within the system that may be available or become available over the duration of this Agreement. These communication media may include email, SMS messages, forums, chat rooms or message centres. The client agrees to use such communication media for lawful purposes only. These communication media are not to be used for the posting or dissemination of material that is unrelated to the use of the system. The client or any of its users shall not use these communication media for offers of goods or services for sale, unsolicited commercial email, files that may damage any other person's computing devices or software content that may be offensive to any other users of the system or for anything else that may be material in violation of any law (including material that is protected by copyright or trade secret).
- 8.2. The client confirms that, when communicating via these online media, it is permitted to make such communication. ACJUSA is not in any way obliged to ensure that any of the communicated online material is legitimate or that it related only to the use of the system alone. The client agrees to exercise caution and discretion when using these communication media as should be exercised with any other web-based communication forum. ACJUSA reserves the right to remove any communication at any time at its sole discretion.

- 9. Indemnity**
- 9.1. The client hereby indemnifies ACJUSA against all claims, costs, damage and loss arising from any of the terms and conditions of this Agreement or the breach thereof.
- 9.2. The client indemnifies ACJUSA against any claim for direct or indirect and consequential losses including, but not limited to, loss of profit or other consequential damages arising out of the use of the system or the inability to use the system for whatever reason.
- 10. Third-party applications**
- 10.1. In the event that the client requires third-party applications for use in conjunction with the system, the client acknowledges that ACJUSA may allow the providers of those third-party applications to access the client's data as required for the interoperation of such third-party applications with the system.
- 10.2. ACJUSA shall not be responsible for any disclosure, modification or deletion of the client's data resulting from any such access by third-party application providers.
- 11. Automated data and software integrations delivered into the AJS system**
- 11.1. Automated data feeds and third-party software integrations are sometimes required by the client to be implemented to operate with the AJS system. These are sometimes charged for either directly or indirectly. The charges can be either based on transactions or by monthly or annual fee.
- 11.2. ACJUSA reserves the right to pass on any charges related to the provision of data feed data or third-party software integrations on a case-by-case basis at ACJUSA's sole discretion. ACJUSA undertakes to inform the client of any such charges and indicate as far as possible as to the extent and nature of such charges. The client will have the discretion as to whether to accept these charges or not as the need may be.
- 11.3. Examples of such include, but are by no means limited to, the following: Bank integration and data import, integrations with the client's clients and data import, SMS service providers, telephone system integration, cost recovery integration, switching software or devices, or any software integration or data transfer of any nature.
- 12. Signatory Warranties**
- 12.1. The person who signs this Agreement warrants that where the use of the system and related service is registered on behalf of another person or legal entity that the signatory has the full legal and binding authority to agree to this Agreement on behalf of that person and or legal entity.
- 12.2. The person who signs this Agreement furthermore warrants that by registering to use the system it binds the person on whose behalf the system is registered, to the performance of all the obligations in terms of this Agreement in its entirety.
- 12.3. In the event that the person who signs this Agreement on behalf of another person or legal entity without the required legal authority to do so, the signatory to this Agreement becomes personally liable for all amounts due to ACJUSA in terms of this Agreement, for the full period thereof.
- 12.4. Nothing contained in this Agreement shall be construed as creating a company, close corporation, joint venture, partnership or association of any kind.
- 12.5. Neither of the Parties (nor their respective agents) shall have the authority or right, nor shall any Party hold itself out as having the authority or right, to assume, create or undertake any obligation of any kind whatsoever, express or implied, on behalf of or in the name of the other Party.
- 13. Acknowledgements:**
- 13.1. The client acknowledges that it is authorised to use the system and the information and data including any information or data input into the system by any person it has given authority to use the system. The client is furthermore allowed to access the processed information and data that is made available to it via its use of the system.
- 13.2. Nothing in this Agreement confers, or purports to confer, a benefit on any person other than the client stipulated in this Agreement. The client agrees that if it uses the system on behalf of or for the benefit of anyone other than itself (whether a body corporate or otherwise) the client warrants that it has the right to do so.
- 13.3. The client is responsible for authorising any person who is given access to the system information or data and agrees that ACJUSA has no obligation to provide any person access to such information or data without the client's specific authorisation. ACJUSA may refer any requests for information to the client. The client indemnifies ACJUSA against any claims or loss relating to:
- 13.3.1. ACJUSA's refusal to provide any person access to the client's information or data;
- 13.3.2. ACJUSA making available information or data to any person in accordance with its privacy policy, which policy document can be accessed at the following link www.ajs.co.za and/or in accordance with clause 3 of this Agreement.
- 13.4. The provision of, access to and use of the system is at the sole risk of the client.
- 13.5. ACJUSA does not warrant that the use of the system and related service will be entirely uninterrupted or error free. The client acknowledges that various factors may from time to time interfere with or prevent access to the system. ACJUSA shall not in any way be responsible for any such interference or lack of the client's access or use of the system.
- 13.6. This Agreement does not provide for an accounting service or any work that should be done by the client's accountant or bookkeeper and the use of the system does not constitute the receipt of accounting advice.
- 13.7. It is the sole responsibility of the client to determine that the system meets the needs and requirements of its business and that it is suitable for the purposes for which it is used. ACJUSA provides no warranties about the system or related service. ACJUSA does not warrant that the system will meet the client's requirements or that it will be suitable for any particular purpose whatsoever. To avoid doubt, all such possible conditions or warranties are excluded in so far as is permitted by law, including (without limitation) warranties of merchantability, fitness for purpose, title and non-infringement.
- 13.8. The client remains solely responsible for complying with all applicable Regulatory Requirements, accounting, tax and other laws. It is, furthermore, the client's responsibility to ensure that storage of and access to relevant data via the system complies with laws applicable to it (including any laws that require extended retention of records).
- 14. Consumer guarantees**
- 14.1. The client hereby warrants that it is acquiring the right to access and utilise the system for business purposes and that any statutory consumer guarantees or legislation intended to protect non-business consumers in any jurisdiction will not apply to the supply of the system or this Agreement.
- 15. Limitation of Liability**
- 15.1. Notwithstanding anything else contained in this Agreement, the parties confirm that the client will not hold ACJUSA liable or responsible for any loss (including loss of information, data, profits and savings) or damage including consequential damages resulting, directly or indirectly, from any use of, or reliance on, the system.
- 15.2. If the client suffers any loss or damage as a result of ACJUSA's negligence or failure to comply with this Agreement, any claim by the client against ACJUSA will be limited in respect of any one incident, or series of connected incidents, to the fees paid by the client in the previous 3 months.
- 15.3. If the client is not satisfied with the service, its sole and exclusive remedy is to terminate this Agreement.
- 16. Breach**
- 16.1. The client shall be in breach of this Agreement if:
- 16.1.1. there is a breach of any of the clauses of this Agreement and same breach, which is capable of being remedied, is not remedied within 14 (fourteen) business days of receiving notice of the breach.
- 16.1.2. notwithstanding the preceding clause, any non-payment of any account or invoice in respect of this Agreement shall constitute a breach without any notice to that effect.
- 16.1.3. the client commits an act of insolvency or is placed under a provisional or final winding-up or judicial management or makes an assignment for the benefit of creditors, or fails to satisfy or take steps to have set aside any judgment taken against it within 7 (seven) business days after such judgment has come to its notice.

- 16.2. In the case of a breach ACJUSA may, at its sole discretion:
- 16.2.1. obtain an order against such defaulting Party for specific performance, with or without claiming damages; or
 - 16.2.2. cancel this Agreement and the client's access to the system;
 - 16.2.3. suspend the client's use of the system;
 - 16.2.4. suspend or terminate access to all data by the client.
- 17. Accrued Rights**
- 17.1. Termination of this Agreement, for whatever reason, including cancellation due to a breach by the client, shall be without prejudice to any rights and obligations of the Parties accrued up to and including the date of termination.
 - 17.2. On termination and/or cancellation of this agreement the client shall:
 - 17.2.1. remain liable for any accrued charges and amounts which became due for payment before or after termination; and
 - 17.2.2. immediately cease to use the system and related services.
 - 17.3. It is acknowledged by both Parties that the non-disclosure, confidentiality and/or protection of information clauses of this Agreement survives the termination and/or cancellation of this Agreement.
- 18. Protection of Information**
- 18.1. The Parties undertake to ensure that they will protect the information of the other Party it may receive in connection with its performance of this Agreement. To the extent that either Party processes confidential information of the other Party, including but not limited to Personal Information relating to its employees, clients and suppliers, each Party agrees that it shall:
 - 18.1.1. restrict access to information to employees or agents who are properly authorised to process such information and who, by virtue of their office or contract are subject to appropriate confidentiality obligations;
 - 18.1.2. follow the other Party's instructions in connection with processing such information;
 - 18.1.3. implement reasonable, appropriate technical and organisational measures to preserve the integrity and confidentiality of the information and to prevent any unauthorised processing, access, use, corruption or loss of the information;
 - 18.1.4. verify that all security measures that are in place are effectively implemented;
 - 18.1.5. not disclose any such information to any third party without the prior written consent of the other party or unless required by law;
 - 18.1.6. not transfer or process information outside of South Africa to recipients/third parties that are not subject to appropriate data protection principles unless consent of the other Party is obtained to do so. Any external third party shall be prevented from further transferring Personal Information to any other third parties.
 - 18.1.7. ensure that the third party has implemented the appropriate technical and organisational security measures in the relevant jurisdiction in which the Personal Information is being transferred, and that it has implemented and taken technical and organisational security measures to safeguard the security of the Personal information in-transit;
 - 18.1.8. conduct regular assessments to identify all reasonable, foreseeable internal and external risks to the information in that Party's possession or control and update and align safeguards with the risks identified;
 - 18.1.9. delete any information in its possession or control upon the expiry of the applicable retention period as prescribed by law, or upon the expiry or termination of this Agreement, or within 10 (ten) days of a written request by the other Party requesting the deletion or handing over of such information, whichever occurs first, unless otherwise agreed upon between the Parties; and
 - 18.1.10. provide the other Party upon reasonable advance notice with access to its premises to ensure that appropriate security measures are in place to protect the information.
 - 18.2. In protecting information as set out above, the Parties agree to adhere to all data privacy laws, and in the event of any unauthorised, unlawful and/or unintended processing or where there are reasonable grounds to believe that the Personal Information has been accessed or acquired by any unauthorised person, each Party will immediately notify the other Party and co-operate with all reasonable requests to investigate and remedy such incident and provide appropriate response to the other Party, as well as the Data Subject whose Personal Information may have been breached.
- 19. Applicable Law and Jurisdiction**
- 19.1. This Agreement is governed by, and all disputes, claims, controversies, or disagreements of whatever nature arising out of or in connection with this Agreement, including any question regarding its existence, validity, interpretation, termination or enforceability, shall be resolved in accordance with the laws of South Africa.
 - 19.2. The Parties hereby consent and submit to the jurisdiction of the High Court of the Republic of South Africa in any dispute arising from or in connection with this Agreement.
- 20. Arbitration**
- 20.1. Any disputes arising out of this Agreement may, in the first instance be referred to the Parties' senior executives for resolution. In the event of the dispute not being resolved within 14 (fourteen) business days of the date of such referral (or longer as may be agreed in writing between the said executives), the dispute may be referred to the Arbitration Foundation of South Africa and in such event, each Party consents to the arbitration proceedings and that the decision of the arbitrator will be binding to both, carried into effect and be made an order of court. Nothing contained in clause 19.1 above will preclude a party to approach a court of law with the required jurisdiction to enforce its rights in terms of this Agreement.
- 21. Domicilium and notices**
- 21.1. The Parties chosen domicilia citandi et executandi for all purposes relating to this Agreement including the giving of any notice unless otherwise agreed, **as per the signed AJS Quotation and Software Service Agreement.**
 - 21.2. All notices, requests, consents and other communications shall be in writing and be deemed given on the same day if delivered personally or sent by email, or after 3 (three) business days if mailed by prepaid registered or certified mail.
- 22. General**
- 22.1. This Agreement constitutes the sole record of the Agreement between the Parties in relation to the subject matter hereof. No undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement, shall be binding on any of the Parties.
 - 22.2. No variation, addition, deletion, or agreed cancellation will be of any force or effect unless in writing and signed by or on behalf of the Parties hereto. Failure or delay on the part of any Party hereto in exercising any right, power or privilege hereunder will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof.
 - 22.3. This Agreement replaces all prior commitments relating to the parties and shall endure and be enforceable against the successors in title of the Parties.
 - 22.4. If any term, condition, provision or performance, or any part of a term, condition, provision or performance of this Agreement is determined to be invalid, illegal, unlawful or unenforceable to any extent, that term, condition, provision or performance or the relevant part thereof shall be severed from the remaining terms,

conditions, provisions and performance of this Agreement, or amended to make it valid, legal, lawful and enforceable, in such a manner as to leave the amended Agreement substantially the same in essence, and this Agreement so amended shall remain in force and effect.

- 22.5. ACJUSA may cede, assign or otherwise transfer its rights in terms of this Agreement or any part, share or interest therein and may also cede, assign, subcontract or otherwise transfer any rights or obligations hereunder, without the prior written consent of the client.
- 22.6. The client shall not be entitled to cede, assign or otherwise transfer its rights in terms of this Agreement nor any part, share or interest therein nor any rights or obligations hereunder, without the prior written consent of ACJUSA.
- 22.7. Each Party agrees that, in its respective dealings with the other Party under or in connection with this Agreement, it shall act in good faith.
- 22.8. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement as at the date of signature of the Party last signing one of the counterparts. The Parties undertake to take whatever steps may be necessary to ensure that each counterpart is duly signed by each of them without delay.

23. External dependencies (Site Requirements):

- 23.1. A System requirements Document is available from your Account Manager upon request.