

1.0 Recitals

- 1.1 The **Customer** acknowledges and agrees that by using the **Hosting Service**, it accepts the Terms and Conditions listed in this Customer Licence Agreement.
- 1.2 Pursuant to a **Service Order**, the **Service Provider** is providing **Services** for the **Customer**.
- 1.3 As part of the **Services**, the **Service Provider** will host the **Hosting Service** and the **Customer Data** on the terms and conditions contained herein and for which the **Customer** shall pay the subscription as set out in the **Service Order**.

2.0 Definitions

2.1 "Agreement"

- 2.1.1 means the Terms and Conditions listed in this Customer Licence Agreement. The **Customer** acknowledges and agrees that by using the **Services** and **Hosting Service**, it accepts the Terms and Conditions listed in this Customer Licence Agreement.

2.2 "Affiliated Service Provider"

- 2.2.1 Joint Buildings Contract Committee (association incorporated under section 21) Registration number 199701767608
- 3.1.2 Professional Consultants Services Agreement Committee (PROCSA) Joint Venture

2.3 "Customer":

- 2.3.1 means the party to whom the right of use (license) for using the **Hosting Service** is awarded.

2.4 "Customer Data":

- 2.4.1 means the information entered into the **Hosting System** by the **Customer** or **Third Party Customers** in the course of the authorized use of the **Hosting Service** and stored on the **Host Server** for retrieval by the **Customer** or its **Third Party Customers**.

2.5 "Host Server":

- 2.5.1 means the server used by the **Service Provider** through which the **Customer** or **Third Party Customers** accesses the **Hosting System** identified by a **URL** and by one or more accounts, user identifications and passwords assigned by the **Service Provider**.

2.6 "Hosting Service":

- 2.6.1 means the computer system (e-CORE, e-JBCC, e-PROCSA inter alia) licensed to the **Service Provider** for which the **Customer** has access rights granted pursuant to this **Agreement** and which is housed on the **Host Server**.

2.7 "Intellectual Property Rights":

- 2.7.1 means interventions, patent applications, patents, design rights, utility models, copyrights, trademarks, service marks, trade names domain name rights, mask-work rights, know-how and other trade secrets rights and all other intellectual property rights and derivatives thereof and forms of protection of a similar nature anywhere in the world.

2.8 "Service Order":

- 2.8.1 means the signed and mandated documentation by which the **Customer** orders **Hosting Services** from the **Service Provider** from time to time.

2.9 "Services":

- 2.9.1 means the **Hosting Services** consisting the right to use the **Hosting Services** for the creation, storage, tracking and retrieval of **Customer Data** for internal use and for use by **Third Party Customers** via the internet in terms of the standard operating protocols of the system design.

2.10 "Service Provider":

- 2.10.1 means the party so named in the **Agreement** who grants the right of use (license) of the **Hosting Services** to the **Customer** in accordance with the terms and conditions of this **Agreement**.

2.11 "Third Party Customers":

- 2.11.1 means second tier customers (customers of the customer) that are sold subscriptions to use the **Hosting Services** by the **Customer** subject to the terms and conditions of this **Agreement**.

2.11 "URL" the Uniform Resource Locators being www.e-core.co.za and or www.e-cloud.co.za

2.12 "Account Holder" is the defined as the billing entity of the **Customer** or **Third Party Customer**

2.13 "Commencement Date" means the date where the **Customer** is given access to the **Hosting Services**.

3.0 License Subscription Rights Granted

3.1 The **Service Provider** hereby grants to the **Customer** a conditional non-transferable right to use the **Hosting Services** subject to the terms and conditions of the **Agreement** for the creation, storage, tracking and retrieval of **Customer** and **Third Party Customer Data** for internal use and for use by **Third Party Customers**, providing that the **Customer** shall have no right to act as a reseller or distributor of the **Hosting Service** itself and will only sell subscriptions to access and use the system in terms of this **Agreement**. All rights not specifically granted to the **Customer** are reserved by the **Service Provider**.

3.2 Terms and Conditions of the License

- 3.2.1 The **Customer** agrees not to cause or permit the reverse engineering, disassembly or decomposition, copying, duplicating or dissemination of the **Hosting Services**.
- 3.2.2 The **Service Provider** retains all the copyright, intellectual property rights and other proprietary rights in the **Hosting Service**. The **Customer** agrees that the **Service Provider** retains all title, copyright, intellectual property rights (express or implied) in the **Hosting Service** other than those rights expressly permitted in this **Agreement**. This is not an agreement of sale and does not transfer any rights of ownership related to the **Service** or the **Hosting Service** or the **Host Server** to the **Customer**.
- 3.2.3 The **Customer** agrees that that the name, logo and product names of the **Host Service** are trademarks and no right or license is granted to use them.
- 3.2.4 The **Customer** agrees that that the names, logos and product names of e-CORE, e-CLOUD, the **Service Provider** and **Affiliated Service Providers** are trademarks, and no right or license is granted to use them.
- 3.2.5 In the event that the **Customer** provides any suggestions, ideas, enhancements or feedback with respect to the **Services** and/or the **Hosting Service** and/or the **Host Server** the **Customer** agrees that the **Service Provider** may freely use, reproduce, license, distribute and otherwise commercialize the feedback in any way deemed fit by the **Service Provider**.
- 3.2.6 The **Customer** agrees that it will not use the **Hosting Service** for sharing inappropriate materials including and without limitation, materials containing viruses or other harmful code, unsolicited mail, copyright materials to which the **Customer** or the **Third Party Customers** do not have the rights, pornography or other offensive material, harassing, tortuous or defamatory material or any other material prohibited by international or local law.
- 3.2.7 The **Service Provider** shall have the right to audit the use of the **Hosting System** by the **Customer** or the **Third Party Customers** at any time.
- 3.2.8 Access to the **Host Service** is restricted to the number of computer workstations as specified (If applicable) in the **Service Order**.

- 3.2.9 In the case of printing of **Affiliated Service Provider** documents, the **Customer** warrants that documents will be printed in colour and will bind all pages of the documents in their entirety.
- 3.2.10 The **Customer** agrees that it will not access the **Hosting Service**, if it does not agree to the terms and conditions stipulated under this **Agreement**.

4.0 Services and Obligations

4.1 Hosting Services

- 4.1.1 The **Service Provider** will provide the **Customer** and **Third Party Customers** with access to the online **Hosting Service** selected in the **Service Order(s)** and will provide for the storage and retrieval of **Customer Data** in connection with the **Hosting System**.
- 4.1.2 The **Customer** and **Third Party Customers** are responsible for obtaining access to the internet using software and hardware that meets minimum requirements of the **Hosting Service** including all security requirements.
- 4.1.3 The **Customer** and **Third Party Customers** are fully responsible for the safe keeping of all passwords, account names and user identification and the **Service Provider** accepts no liability whatsoever for unauthorized registration of users or unauthorized access to the **Hosting Service**.
- 4.1.4 The **Service Provider** agrees that in the event of prolonged interruption of the service for more than 72 hours from notification by the **Customer** the monthly fee calculated by using the month immediately prior to the claim event shall be deducted from amounts owing by the **Customer** to the **Service Provider** as a penalty.
- 4.1.5 The **Customer** is assigned the right to charge a subscription fee for the on-selling of the use of the **Hosting Service** to **Third Party Customers** at a fee subject to the terms and conditions of payment and the minimum subscription fee stated in this **Agreement** or the **Service Order**.
- 4.1.6 The **Hosting Service** will permit the **Customer** to register new **Third Party Customers** without reference to the **Service Provider**.

4.2 Data Security

- 4.2.1 The **Customer** and **Third Party Customers** agree to access the **Service** and to store and retrieve data using third party programs including specifically internet "browser" programs that are appropriate for the **Customer's** and **Third Party Customers'** needs and that are compatible with the security and other protocols specified by the **Service Provider**.
- 4.2.2 The **Service Provider** agrees to host the primary system in a data centre that satisfies Tier 2 standards and to back-up in a remote location **Hosting Services** and **Customer Data** using industry standard back up tools and data security protocols and other methods reasonably deemed to be adequate for secure business data and to notify the **Customer** in the event of a breach of security or the loss of **Customer Data**.

4.3 Data Ownership

- 4.3.1 The **Customer** and **Third Party Customers** shall retain ownership of all **Customer Data** stored or retrieved in connection with the use of the **Hosting Service**.
- 4.3.2 The **Customer** and **Third Party Customers** represent and warrant that they collectively have the rights or the rights to use all **Customer Data** including the right to upload **Customer Data** to the **Host Server** and that the **Service Provider** is indemnified and held harmless from any third party claims for infringement relating to **Customer Data** usage.
- 4.3.3 The **Service Provider** undertakes to provide **Services** with an internet response time that generally mimics conventional internet download speeds and to take care not to design the **Hosting Service** in a manner that will create obvious

inefficiencies. The **Customer** acknowledges that it has had the opportunity to test the response time of the **Hosting Service** and finds it acceptable.

- 4.3.4 The **Hosting Service** may be subject to limitations, delays and other problems inherent in the use of the internet and electronic communications and the **Service Provider** is not responsible for any disruptions, delays, failures or any consequential impact of such events. The **Service Provider** will facilitate a contingency plan to bring into service the back-up site in such cases within the stated 72 hours if delays persist after notification by the **Customer**.
- 4.3.5 In the event of such a downtime certain information sent to the **Host Server** might not have been processed and will have to be resent by the **Customer** or the **Third Party Customer**. No liability whatsoever is accepted for any consequences of lost data in such an event.

5.0 Indemnities, Warranties and Remedies

- 5.1 Except as expressly stated in this **Agreement**, the **Service Provider** or **Affiliated Service Providers** do not make any representation warranty or guaranty as to the reliability, timelines, quality, suitability, truth, availability, accuracy or completeness of the **Service** or any other content or information except as expressly set forth in this **Agreement**.
- 5.2 The **Service Provider** or **Affiliated Service Providers** do not warrant that:
 - 5.2.1 The use of the **Service** will be secure, timely, uninterrupted or error-free.
 - 5.2.2 The **Service** will operate with any other software system or data.
 - 5.2.3 The **Service** will meet the **Customers** requirements or expectations.
 - 5.2.4 Any **Customer Data** will be accurate or reliable.
 - 5.2.5 That the **Services** are free of viruses or other harmful components
 - 5.2.6 That the **Services** are "fit for use".
- 5.3 In no event shall the **Service Provider's** or **Affiliated Service Providers** aggregate liability exceed the amounts paid or due from the **Customer** in the one month immediately prior to a disruption event.
- 5.4 Neither the **Service Provider** or **Affiliated Service Providers** will be liable for any indirect, punitive, special, exemplary, incidental consequential or other damages of any nature including the loss of data, revenue, profits, use or any other economic advantage in any way connected with the **Service**.

6.0 Termination

- 6.1 The **Termination Date** will be in accordance with the specific duration contained in this **Agreement** or specifically in the **Service Order**
- 6.2 The **Service Provider** reserves the right to terminate or suspend all or part of the **Hosting Service** in the event of late payment (exceeding 30 days from invoice) of the invoiced amounts due.
- 6.3 In the event of late or non-payment of the invoiced amounts the **Service Provider** will issue an email warning to the **Customer** and 7 (seven days) days thereafter suspend all or part of the **Service**.
- 6.4 If payment is not received within 7 (seven days) days thereafter, the **Service** will be deemed to be terminated.
- 6.5 In the event of termination the **Service Provider** agrees to provide the **Customer** copies or duplicates of the information on the system on CD or other such appropriate electronic medium on a cost plus 30% basis.
- 6.6 In the event of the implementation of the suspension clause the **Customer** holds the **Service Provider** free of all and any obligation or liability to **Third Party Customers**.

7.0 Specific Deliverables, Schedule and Contract Specific Information

- 7.1 The **Service Provider**
 - 7.1.1 Contracts On-Demand cc Reg. No 2006/180225/23
- 7.2 The **Customer**
 - 7.2.1 As stated in the **Service Order**
- 7.3 **The Extent of the License Excludes:**
 - 7.3.1 Any use of the system after **Termination** of the license

7.3.2 Any unlawful activity applicable to any country or area affected by the use of the system.

7.4 Training & Support

- 7.4.1 The **Service Provider** will train a **Customer** representative on how to use the system providing that such training is done on a quote, accept and execute process.
- 7.4.2 The right to train trainers will be restricted to the **Service Provider** and may not be undertaken by the **Customer** or his assigns.
- 7.4.3 The **Service Provider** will assist with the answering of system related email questions and answers on the same basis as training stated above.
- 7.4.4 The **Service Provider** shall provide the **Customer** with technical assistance and endeavour to promptly answer all technical queries raised by the **Customer** or **Third Party Customers** concerning the use or application of the **Hosting Service**.
- 7.4.5 The **Service Provider** shall provide the **Customer** with updates of any new versions of the **Hosting Service** in the event that the **Service Provider** releases any modifications, enhancements or replacements of or additions to the **Hosting Service**.

7.5 Duration and Termination

- 7.5.1 The duration of this **Agreement** is from the **Commencement Date** to the date of **Termination** unless the **Agreement** is terminated in terms of the **Agreement**. In such an event the **Termination** date will be the date one month after written advice of intent to **Terminate** by either party to the **Agreement**.

7.6 Transferring of Rights

- 7.6.1 The **Customer** may not cede or assign its rights and obligations in terms of this **Agreement** without written approval of the **Service Provider**.

7.7 Subscription and Payment

- 7.7.1 The Subscription fee for the license to use the **Hosting Service** will be that amount reflected in the **Service Order**.
- 7.7.2 Included in the subscription fee is the cost of data storage up to a limit of 3 gigabyte capacity per **Account Holder**. In the event of excessive demand over this limit, the **Service Provider** reserves the right to adjust the subscription.
- 7.7.3 Payment will be due in advance within 7 days of the receipt of invoice for each month of the duration of the **Agreement**.

8.0 Copyright

8.1 PROCSA Documents

- 8.1.1 The Professional Consultants Services Agreement Committee reserves all rights to its publications whether in printed or electronic format. No part of these publications may be reproduced, stored in any retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, scanning, recording, or otherwise, without the prior permission of PROCSA. Unauthorized reproduction of the publications is an infringement of copyright. Judicial proceedings can and will be taken to obtain relief and the recovery of damages.

8.2 e-PROCSA Service

- 8.2.1 The copyright of the e-PROCSA Service rests in the **Service Provider**

8.3 JBCC Documents

- 8.3.1 The Joint Building Contracts Committee reserves all rights to its publications whether in printed or electronic format. No part of these publications may be reproduced, stored in any retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, scanning, recording, or otherwise, without the prior permission of JBCC. Unauthorized reproduction of the

publications is an infringement of copyright. Judicial proceedings can and will be taken to obtain relief and the recovery of damages.

8.4 e-JBCC Service

- 8.4.1 The copyright of the e-JBCC Service rests in the **Service Provider**

9.0 Domicilium and Notices

- 8.1 The parties choose domicilium citandi et executandi ("domicilium") for the purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purpose arising from this **Agreement**, as follows -

8.1.2 Contracts On-Demand cc

189 Olympic Duel Avenue

Northlands Business Park
Newmarket Rd
North Riding
Tel: 011-704 6965

- 8.1.3 Any party shall be entitled from time to time, by written notice to the others, to vary its domicilium to any other address within the RSA which is not a post office box or poste restante.

- 8.1.4 Any notice given and any payment made by any party to another ("addressee") which is delivered by hand during the normal business hours of the addressee at the addressee's domicilium for the time being shall be rebuttably presumed to have been received by the addressee at the time of delivery; is posted by prepaid registered post from an address within the RSA to the addressee at the addressee's domicilium for the time being shall be rebuttably presumed to have been received by the addressee on the tenth business day after the date of posting.

- 8.1.5 Any notice given by any party to another which is sent by telefacsimile to the numbers referred to in 11.1 shall be rebuttably presumed to have been received by the addressee on the first business day succeeding the day on which the telefacsimile is successfully transmitted.

9. General

- 9.1 This **Agreement** and its annexures constitute the entire record of the agreement between the parties in regard to the subject matter hereof.
- 9.2 No party shall be bound by any express or implied term, undertaking, representation, warranty, promise or the like not recorded herein.
- 9.3 No alteration, variation or cancellation by agreement of, addition or amendment to or deletion from this agreement or any of its annexures shall be of any force or effect unless in writing and signed by or on behalf of the parties.
- 9.4 No indulgence, extension of time, relaxation or latitude which any party ("grantor") may show, grant or allow to another ("grantee") shall constitute a waiver by the grantor of any of its rights and the grantor shall not thereby be prejudiced or estopped from exercising any of its rights against the grantee which may have then already arisen or which may thereafter arise.

9.5 This agreement is personal to the parties and no party shall be entitled to cede, assign, transfer or otherwise make over any of its rights or delegate any of its obligations hereunder without the prior written consent of the other parties.