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MASTER SERVICE AGREEMENT

LEJWELEPUTSWA DISTRICT MUNICIPALITY

BYTES
UNIVERSAL SYSTEMS

Realising your imagination

MASTER SERVICES AGREEMENT ("MSA")

ALTRON TMT (PTY) LTD

(Registration No. 1984/003805/07)

represented by its division, **BYTES UNIVERSAL SYSTEMS**

(hereinafter referred to as "**BYTES**")

Between

LEJWELEPUTSWA DISTRICT MUNICIPALITY

(hereinafter referred to as "**THE CUSTOMER**")

(jointly hereinafter referred to as "the **PARTIES**")

dated this ~~29~~ day of ~~July 2016~~ (the "Effective Date")

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IT IS AGREED AS FOLLOWS:

A. Bytes designs, develops, and implements specialist solutions, and provides a portfolio of services, products, software and solutions that address business critical problems, which the Customer requires.

B. The Parties now wish to record the terms and conditions upon which Bytes will provide such services, products, software and solutions to the Customer, as set out herein.

AGREEMENT

1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement, words and phrases on the front page shall have the meanings assigned to them on that page. Furthermore, the following words and expressions shall have the following meanings and derivatives of any words or expressions and cognate expressions shall bear corresponding meanings, unless otherwise required by the context in which they are used herein:

1.1.1. **"Affiliate"** in relation to Bytes, means any company which is a subsidiary of Bytes as defined in the Companies Act 71 of 2008 (as amended) , or a holding company of Bytes as defined in section 2(2) of the Companies Act 71 of 2008 (as amended), or a fellow subsidiary of that company's holding company.

1.1.2. **"AFSA"** means the Arbitration Foundation of Southern Africa or its successors in title, provided that should AFSA or a successor not be in existence at any time, any appointment required to be made by AFSA shall be made by the Chairperson of the Cape Town Bar Council.

1.1.3. **"Agreement"** means this Master Services Agreement and the Schedules and annexures thereto, as amended or supplemented from time to time.

1.1.4. **"Annual Rate Card Rates"** means the rates set out in Annexure 1.

1.1.5. **"Business Days"** means Monday to Friday, excluding official public holidays in the Republic of South Africa.

1.1.6. **"Business Requirements"** means a written analysis of the Customer's business requirements, and includes both technical and non-technical items.

1.1.7. **"Bytes Intellectual Property"** means any and all intellectual property which Bytes is the proprietor of including such intellectual property which Bytes may, in connection with the supply of the Software, Deliverables and/or performance of the Services hereunder, create or acquire;

1.1.8. **"Bytes Personnel"** means individuals who are employees of, or independent contractors to, or otherwise engaged by Bytes.

1.1.9. **"Bytes Software"** means all software owned by Bytes or an Affiliate of Bytes, and which is used by or for Bytes in the provision of the Software and/or the rendering of the Services, but excludes Third Party Software and open source software.

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1.1.10. **"Change"** means any change to, variation, substitution, addition to, or deletion of a Product and/or a Service (as such Product and/or Service is set forth in a Schedule previously executed between the Parties).

1.1.11. **"Change Control Procedure"** means the procedure for implementing a Change in clause 11.

1.1.12. **"Change Control Note"** has the meaning given to it in clause 11.1.

1.1.13. **"Commencement Date"** means 1st July 2016.

1.1.14. **"Confidential Information"** has the meaning given to it in clause 15.

1.1.15. **"Customer Input"** means the inputs reasonably required of the Customer and its staff in order to enable Bytes to provide the Software and/or the Services to the Customer.

1.1.16. **"Customer Intellectual Property"** means any and all intellectual property which Customer is the proprietor of, as at the Commencement Date or the date of execution of a Schedule, as the case may be.

1.1.17. **"Data"** means any data, including Personal Information, irrespective of the media or form;

1.1.18. **"Deliverables"** means the items detailed in a Schedule to be delivered by Bytes to the Customer as part of the Services.

1.1.19. **"Documentation"** means the documentation made available by Bytes from time to time that the Customer would reasonably require to be provided (as part of the Software and/or Services) that describes the function and use of the Software and/or Services, and matters associated therewith.

1.1.20. **"Expenses"** has the meaning given to it in the Annual Rate Card Rates.

1.1.21. **"Force Majeure Event"** means unpredictable adverse weather conditions, national industrial strikes (excluding strikes or labour disputes originated by or involving only the relevant Party's workforce or any part of it or the workforce of its agents or sub-contractors), war, acts of God, acts of terrorism, floods, earthquakes or civil disturbance, which in each case could not reasonably be foreseen and is beyond the reasonable control of the relevant Party or its employees or agents.

1.1.22. **"Incident"** means any event in relation to any part of the Software, which result in, or may result in, a deviation from the standard operation of the Software.

1.1.23. **"Intellectual Property Rights"** means all and any the rights and to intellectual property including (without limitation) the rights in and to trade marks, service marks, unregistered trade names, domain names, logos, get-up, patents, provisional patents, inventions (whether patentable or not), Know-How, confidential information, utility models, registered and unregistered design rights, copyright, semi-conductor topography rights, database rights, rights in respect of any new or existing compilation of any data or information not covered under any existing copyright, any structured analysis, reports, application and any resulting Know-how, use or any other results originating or following from or as a consequence of data being made available in respect of any of the aforementioned or part thereof, and all similar

proprietary rights which may subsist in any part of the world including, (without limitation), any registration of such rights and applications and rights to apply for such registrations.

1.1.24. **"Know-how"** means technical data, formulae, standards, technical information, specifications, processes, methods, code books, working materials, as well as all information, knowledge, assistance, trade practices and secrets, and improvements thereto, divulged, disclosed, or in any way communicated to the Customer under this Agreement, unless such information was, at the time of disclosure, or thereafter lawfully enters the public domain.

1.1.25. **"Locations"** means those premises on which the Customer operates, as specified in a Schedule.

1.1.26. **"Losses"** means all losses, liabilities, costs, expenses, fines, penalties, damages and claims, and all related costs and expenses (including legal fees on the scale as between attorney and own client, tracing and collection charges, costs of investigation, interest and penalties).

1.1.27. **"Personal information"** has the meaning ascribed to it in the Promotion of Access to Information Act 2 of 2000 (as amended).

1.1.28. **"Regulator"** means any person having regulatory, supervisory or governmental authority over any part of Bytes's or the Customer's business.

1.1.29. **"Relief Event"** means:

1.1.29.1.   a Force Majeure Event as contemplated in clause 22; or

1.1.29.2.   a failure by the Customer, or its staff, to provide any Customer Input:

1.1.29.2.1. within the timeframes contemplated in this Agreement or any Schedule or failing such contemplation within a reasonable period stipulated by Bytes in any written request for such Customer Input or within any period agreed by the Parties in writing; or which is of the required accuracy, standard or quality, including (without limitation) where such Customer Input is defective, corrupted (in the case of data) or inaccurate; or

1.1.29.2.2. where the Customer replaces any of its staff and such replacement negatively and materially affects the timeous and expeditious provision by Bytes of any of its obligations pursuant to this Agreement; or

1.1.29.2.3. any failure on the part of the Customer or its staff to comply with any obligation stipulated in this Agreement or a Schedule, whether same constitutes a material breach or not; or

1.1.29.2.4. any inaccuracy or non-occurrence of the assumptions or dependencies stated in a Schedule; or

1.1.29.2.5. where the Customer implements any changes to the environment, systems or processes in respect of which Bytes is undertaking a particular project or Schedule; or

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1.1.29.2.6. where any bona fide dispute arises between the Parties.

1.1.30. **"Residual Knowledge"** means general or generic information which is retained unaided in the memory of a receiving Party.

1.1.31. **"Revision"** means a modification within the Software version (e.g. v1.0 to v1.1), where the Revision contains bug-fixes, workarounds and/or error correction to maintain compliance with the Documentation, but provides no additional functionalities to either of the aforementioned.

1.1.32. **"Schedule"** means a document that describes the Software to be provided and/or Services to be performed by Bytes, and sets forth certain additional terms and conditions concerning such Software and/or Services as provided for in clauses 5 to 9 (inclusive). Each Schedule shall be mutually agreed upon by the Parties from time to time. The Schedules include the:

1.1.32.1. Software Licence and Maintenance Schedule;

1.1.32.2. Software Development Schedule;

1.1.32.3. Software Installation Schedule; and

1.1.32.4. Specialist Services Schedule.

1.1.33. **"Schedule Charges"** means the amounts, fees and charges that the Customer shall pay Bytes for supplying the Software and/or performing the Services under a Schedule, or Annexure 1, as applicable.

1.1.34. **"Services"** means the specific obligations, services, functions, activities and responsibilities to be provided or to be performed by Bytes as set forth in this Agreement.

1.1.35. **"Service Manager"** has the meaning given to it in clause 13.1.

1.1.36. **"Software"** means the Bytes Software and/or Third Party Software and/or open source software.

1.1.37. **"Specifications"** means the written designs, technology design, integration specifications or other specifications for the Software and/or Services that may be agreed upon by the Parties in a Schedule.

1.1.38. **"Systems"** means telecommunication systems, computer programs, Software, computer and communications networks, hardware, firmware, servers, devices, cabling and related equipment, databases, the tangible media on which they are recorded and their supporting documentation, including input and output format, program listings, narrative descriptions, source code, executable code, operating instructions and user manuals.

1.1.39. **"Third Party Software"** means software in respect of which the Intellectual Property Rights are owned by a third party (other than any Affiliate of Bytes), but excludes (without limitation) the Bytes Software and open source software.

1.1.40. **"Upgrades"** means the change from the current Software version to a higher Software version (e.g. v1.0 to v2.0):

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1.1.40.1. where such Software version Upgrade contains bug-fixes or workarounds to maintain compliance with the Schedule;

1.1.40.2. where a Fault that was previously reported to Bytes (whether by the Customer or otherwise) is corrected; or

1.1.40.3. where variations are necessitated by changes to the Software, Services;

and which may or may not provide additional functionalities to those set forth in a Schedule.

1.2. The following rules of interpretation shall apply to this Agreement:-

1.2.1. The singular shall include the plural and vice versa.

1.2.2. Reference to one gender shall include the other and the neuter.

1.2.3. Reference to natural persons shall include bodies corporates and vice versa.

1.2.4. The clause headings in this agreement have been inserted for convenience only and shall not affect its interpretation.

1.2.5. Any reference to an enactment is to that enactment as at the date of signature by the Party last signing, and as amended or re-enacted from time to time.

1.2.6. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the agreement.

1.2.7. When any number of days is prescribed in this agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.

1.2.8. Expressions defined in this Agreement shall bear the same meanings in the Schedules or annexures to this Agreement, which do not themselves contain their own definitions.

1.2.9. Where any term is defined within the context of any particular clause of this Agreement or in a Schedule or annexure, the term so defined, unless it is clear from the clause, Schedule or annexure, as the case may be, in question that the term so defined has limited application to that clause, Schedule or annexure, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause.

1.2.10. The rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply.

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2. STRUCTURE OF THIS AGREEMENT

2.1. This Agreement establishes the overarching relationship between the Parties for the procurement of Software and/or Services, and details the general legal terms and conditions which will govern the relationship between the Parties.

2.2. The Parties shall from time to time, agree and record the details of such Software and/or Services in the relevant Schedule, including (without limitation) the legal, commercial and operational terms relating to such Software and/or Services.

2.3. The Parties shall sign the Software Licence Schedule and the Software Maintenance Schedule upon the execution of this Agreement. The other Schedules may be concluded between the Parties at a later stage, as and when required.

2.4. Each Schedule and Change Control Note shall upon execution thereof by each Party be deemed to be incorporated and form part of this Agreement.

2.4.1. In the event of a conflict between:

2.4.1.1. the Agreement and any Schedule to the Agreement; or

2.4.1.2. the Agreement and any standard terms and conditions or otherwise provided by Bytes to the Customer; or

2.4.1.3. the Agreement and a Change Control Note,

then this Agreement shall prevail; and

2.4.2. in the event of a conflict between a Change Control Note and a Schedule, then the Change Control Note shall prevail.

2.5. The terms and conditions set forth in a Schedule shall not be effective until such Schedule is executed by both Parties in accordance with this Agreement.

2.6. Save where expressly provided to the contrary, the terms of one Schedule shall not apply to any other Schedule.

2.7. Upon execution of a Schedule, the Customer will order the Software and/or Services from Bytes by submitting a Purchase Order to Bytes.

3. TERM OF THE AGREEMENT

3.1. This Agreement shall come into force and effect on the Commencement Date and shall continue for a period of one (1) year (or such other period as the parties may agree in writing from time to time) (the "**Licence Term**"), unless terminated in accordance with the provisions of clause 24.

3.2. A Schedule shall, where applicable, set forth the date on which that Schedule will come into force and effect as well as its duration.

3.3. Any Schedule entered into by and between the Parties under this Agreement will terminate at the earlier of the date upon which this Agreement terminates, or the date upon which the duration of the Schedule comes to an end.

3.4. The termination of a Schedule (other than the Software Licence Schedule, the Software Maintenance Schedule and the Software Installation Schedule) shall not result in any other Schedule terminating.

4. PERFORMANCE

4.1. Subject to the terms and conditions of this Agreement, the Customer hereby engages Bytes to supply the Software and perform the Services as further set forth in a Schedule. Bytes shall during the Licence Term supply the Software and render the Services to the Customer as set out in each Schedule and in accordance with the terms and conditions of this Agreement.

4.2. Bytes shall provide sufficient numbers of relevant skilled, experienced and qualified persons to supply the Software and perform the Services and comply with its obligations under this Agreement.

4.3. The Customer shall report any failure or malfunction of the Software, Services and/or the Customer System to Bytes, by following the escalation procedure set out in clause 6.7.6.

4.4. The Customer acknowledges and agrees that where Bytes deems it necessary, and at its own discretion, Bytes will enter into agreements with third party service providers and/or sub-contractors to deliver part or all of the Software and/or Services.

5. SOFTWARE LICENCE

5.1. LICENCE GRANT

5.1.1. Upon execution of the Software Licence Schedule, Bytes grants to the Customer, and the Customer accepts, a non-exclusive, non-transferable licence, to use and operate the Software and the Documentation for the Licence Term, at the Locations, solely for its internal business functioning purposes.

5.1.2. The grant of the licence to the Software as contemplated in clause 5.1.1entitles the Customer to:

5.1.2.1. allow its authorised employees, independent contractors and agents ("**Users**"), to use the Software solely for the internal business functioning purposes of the Customer;

5.1.2.2. make the Software available to such number of Users as agreed between the Parties in the Software Licence Schedule. Only licensed Users may use the Software and only at the Locations. The Customer may, with the prior written consent of Bytes, extend the licence to additional Users, and the Software Licence Schedule will be substituted for a new Software Licence Schedule, provided that any appropriate additional Licence Fee is paid to Bytes before such use;

5.1.2.3. cause any User to only use the Software on a single piece of equipment at any one time (the "**User Machine**"), or any replacement for that User Machine;

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5.1.2.4. store the whole or any part of the Software on the User Machine or other storage unit or disk; and

5.1.2.5. the continued use of the Software by the Users at a new Location, provided that Bytes is informed in writing of the change of the Location before use of the Software commences at the new Location.

5.1.3. Should the Customer wish to extend the use and operations of the Software and the Documentation beyond the Licence Term that shall be a matter for negotiation and agreement between the Parties.

5.2. LICENCE FEE

The licence fee for the Software will be agreed between the parties in the Software Licence Schedule (the "**Licence Fee**"), and is invoiced annually in advance.

5.3. BYTES'S UNDERTAKINGS IN RESPECT OF THE SOFTWARE

5.3.1. Bytes shall deliver and, if applicable, install the Software on the User Machines and the Customer's servers in such a manner as to render such Software operational and to permit acceptance testing, if so required by the Customer in writing. Where the Customer requires the installation of Software, the Parties will enter into a Software Installation Schedule as provided for in clause 8 below.

5.3.2. With each new installation of Software, Bytes shall issue the Customer with the Documentation for the Software.

5.4. DELIVERY, RISK AND OWNERSHIP

5.4.1. Bytes will notify the Customer of the type of program storage media required for the delivery of the Software, if applicable. Unless returnable or disposable media are used, the program storage media must be provided by the Customer or purchased from Bytes at its Annual Rate Card Rates.

5.4.2. Any special or subsequent order of the Software requested by the Customer, shall be at the Customer's costs and expense, and will be charged at the Annual Rate Card Rates.

5.4.3. If program storage media and/or documentation is lost or damaged during a delivery facilitated by Bytes, Bytes will replace the item at no additional charge to the Customer. If loss or damage occurs on or after delivery to the Customer, Bytes will replace the item at the Annual Rate Card Rates.

5.4.4. The Customer will carry the risk in and to the Software upon delivery thereof to the Location.

5.5. RETURN OF SOFTWARE ON TERMINATION OF THE SOFTWARE LICENCE

5.5.1. The licence to use the Software is personal to the Customer and is non-transferable during, or on the termination of, the Licence Term.

5.5.2. The Customer shall within thirty (30) days from the last day of the Licence Term, uninstall the Software on the Customer System, and provide Bytes with written confirmation that the Software was uninstalled. The Customer will on notice from Bytes:

5.5.2.1. return the Software to Bytes, in such format as Bytes may prescribe, at the Customer's cost and expense; or

5.5.2.2. destroy the Software and provide Bytes with written confirmation that the Software was destroyed.

6. SOFTWARE MAINTENANCE SERVICES

6.1. GENERAL

Bytes will repair Faults in the Software licensed to the Customer as contemplated in a Software Licence Schedule, for the duration of the Licence Term ("**Software Maintenance Services**"), subject to the execution of a Software Maintenance Schedule between the Parties.

6.2. DEFINITIONS

For the purposes of this clause 6.2, the words and expressions below shall have the following meanings:

6.2.1. "**Fault**" means in relation to the Software:

6.2.1.1. any failure to comply with the Documentation; or

6.2.1.2. any material defect in the operation, functionality or design of the Software.

6.2.2. "**Incident Logging Procedure**" means the procedure for the logging of Incidents in clause 6.7.5.1.3.

6.2.3. "**Mean time to Repair (MTTR) Target**" means the targeted repair time, which is the mean time between the Customer placing the call, and the time when the Software is up and running in conformity with the Documentation, or an acceptable Workaround is provided until the Software can be updated in the next Roll Out. Where the extent or complexity of the problem is such that the **MTTR Target** cannot be met, Bytes will inform the Customer of the extended time required, and keep the Customer informed on the progress.

6.2.4. "**Mean Time to Respond (MTR) Target**" means the mean time between the Customer placing the call and the telephonic contact from the Service Desk.

6.2.5. "**Repair Time**" means the time from when the Service Desk first addresses the problem until the Software is up and running in conformity with the Documentation. "**Repair Time**" is therefore the sum of the MTR and MTTR Targets.

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6.2.6. **"Remote Access"** means having remote authorized electronic access from Bytes's offices to the Customer System in order to perform diagnostic and remedial functions.

6.2.7. **"Roll Out"** means the updating of Software with the latest Upgrades and Revisions of the Software, together with the documentation relevant to the new Upgrades and Revisions.

6.2.8. **"Service Desk"** means the Bytes service desk for the Customer to access the Software Maintenance Services.

6.2.9. **"Service Desk Hours"** means between the hours of 08h00 and 16h30, Monday to Friday, excluding official public holidays in South Africa.

6.2.10. **"Severity Condition"** means the severity of the Incident that the Customer has experienced with the Software, as provided for in clause 6.7.

6.2.11. **"Workaround"** means a temporary solution to an Incident which negates the impact of an Incident on the Software such that the Software operates and the Software is provided in accordance with the relevant Documentation notwithstanding the loss of functionality.

6.3. SOFTWARE MAINTENANCE FEE

The charges for the Software Maintenance Services (the **"Software Maintenance Fee"**) will be agreed between the parties in the Software Maintenance Schedule, and is invoiced annually in advance.

6.4. SERVICE DESK AVAILABILITY

6.4.1. Bytes will provide the Software Maintenance Service to the Customer during the Service Desk Hours.

6.4.2. The Customer is entitled to receive Software Maintenance Service outside of the Service Desk Hours (**"Standby Maintenance"**), subject to:

6.4.2.1. prior arrangement with the Bytes Service Manager; and

6.4.2.2. payment for such Standby Maintenance at the Annual Rate Card Rates.

6.5. EXCLUSIONS FROM THE SCOPE OF THE SOFTWARE MAINTENANCE SERVICES

The following functions fall outside of the scope of the Software Maintenance Services:

6.5.1.1. professional and consulting Services (which can be procured under the Specialist Services Schedule); and

6.5.1.2. support and maintenance of all hardware including (without limitation) servers, desktops, printers and other devices (which can be procured under a technical support agreement).

6.6. SCOPE OF THE SOFTWARE MAINTENANCE SERVICES

6.6.1. The Software Maintenance Services are limited to repairing Faults in Software listed in a Software Licence Schedule.

6.6.2. The Customer will log Incident in accordance with the Incident Logging Procedure.

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6.6.3. Bytes will log any Incidents reported by the Customer, and allocate a unique Incident number for tracking purposes.

6.6.4. If Bytes requires Remote Access into the Customer's dedicated server to correct a Fault, Bytes will notify the Customer in advance in writing that such access is required.

6.6.5. Bytes will use its reasonable endeavors to restore Faults within the MTTR Targets. The MTTR Target for Faults in Software listed in a Software License Schedule are set out below:

Severity 1	Severity 2	Severity 3
MTR	MTR	MTR
2:00 hours	4:00 hours	8:00 hours
Repair Time	Repair Time	Repair Time
6:00 hours	8:00 hours	16:00 hours
MTTR	MTTR	MTTR
8:00 hours	12:00 hours	24:00 hours

6.6.6. The MTTR referred to above, will be measured from the time that the call is placed into the Service Desk, until such time as:

6.6.6.1. the Software at the Location is up and running in conformity with the Documentation; or

6.6.6.2. an acceptable Workaround is provided until the Software can be updated in the next Roll Out.

6.6.7. The above measurements will be determined only during the Service Desk Hours.

6.6.8. Once a Fault has been repaired, Bytes will notify the Customer in writing of the reason(s) for the Fault, and the measures taken to rectify the Fault.

6.6.9. The repair of a Fault as provided for in this clause 6.6 is the Customer's only remedy for that Fault.

6.7. SEVERITY CONDITIONS

6.7.1. The Severity of an Incident will be determined by the Customer as set out below:

Severity 1	The use of the Software, system, or subsystem, is prevented, and a substantial interruption of operations results.
	Constant or frequent restarting of the Software, system, or operating system is required.
	The Location is down hard and needs to be up as soon as possible **(Critical)**.

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Severity 2	The use of a function or process of the Software, system, or subsystem, is prevented.
	The Software, system, or subsystem, is unable to perform the task for which it was designed and for which there is no known reasonable solution.
	The Location is still able to function; Bytes will however need to address the Incident (**Not Critical**).
Severity 3	The use of a function or process of the Software or system is prevented, for which there is a reasonable solution which does not impair normal business operations.
	The target resolution of the Incident is in a future Upgrade, unless otherwise agreed between the Parties. The Incident needs to be addressed during the normal course of maintenance (**No impact to the Customer**).

6.7.2. Exclusions from the Measurement of Bytes's Performance:

    6.7.2.1. Bytes will use its reasonable endeavors to action all calls within the agreed response, and targeted Response and Repair Times during the Service Desk Hours.

    6.7.2.2. Where for any reason, Bytes is delayed or prevented by the Customer from obtaining access to the Customer System, or Software installed on the User Machines, or any other act or omission by the Customer, the resultant period of delay will be excluded from the measurement of its performance of the Software Maintenance Services.

6.7.3. Performance Measurements

    6.7.3.1. Bytes's performance in rendering the Software Maintenance Services will be measured on a location basis over such period as jointly agreed between Bytes and the Customer. Such period can either be quarterly, bi-annually or annually. Such exercise is herein after referred to as "**Performance Measurement**."

    6.7.3.2. Bytes will supply the Customer with reports on its Performance at such intervals as the Parties may agree to from time to time.

    6.7.3.3. The Parties will convene meetings to discuss Bytes's performance in rendering the Software Maintenance Services. These dates of such meetings will be agreed between the Parties upon signature of the **Software Maintenance Schedule**.

6.7.4. Bytes's Responsibilities

    6.7.4.1. Bytes will in addition to its obligations as aforementioned, also:

        6.7.4.1.1. monitor the performance of the Software;

        6.7.4.1.2. advise the Customer of mandatory software changes as and when this comes to the knowledge of Bytes;

        6.7.4.1.3. undertake a Roll Out on a periodic basis or as and when required, within Bytes's sole discretion;

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6.7.4.1.4. report any potential problems to the Customer that could cause Software deficiencies;

6.7.4.1.5. hold regular meeting with the Customer to review the status of the Software; and

6.7.4.1.6. inform the Customer of new products, new maintenance services, methodologies, technology or functionality that may be beneficial to the Customer.

6.7.5. The Customer's Responsibilities

6.7.5.1. The Customer will in addition to its obligations as aforementioned, also:

6.7.5.1.1. allow Bytes reasonable access to and use of hardware, software, equipment and other resources of the Customer which are reasonably required by Bytes to perform the Software Maintenance Services, provided that Bytes provides the Customer with reasonable advance notice of Bytes's requirements. All such resources shall be provided to Bytes by the Customer in reasonable working order;

6.7.5.1.2. ensure compliance by the Customer Service Manager with his obligations under the Agreement;

6.7.5.1.3. report all Incidents to Bytes by following the Incident Logging Procedure set out below:

1	Log the Incident by contacting Bytes during Service Desk Hours on telephone number (+27 21) 818 1411
2	Send an email to samras.support@bytes.co.za or a fax to (+27 21) 818 1414
3	Include as much of the follow in the email or fax: System Module Program Name Error Message displayed in detail Nature of Incident Contact name and telephone number Urgency of the call (Severity Level) Location address
4	Record the unique Incident reference number supplied by Bytes
5	Fax or email a duly completed Incident form to Bytes

6.7.5.1.4. advise Bytes when equipment is moved or the Customer System is undergoing change;

6.7.5.1.5. ensure that the Users operate the Software in accordance with the Documentation;

6.7.5.1.6. provide suitably skilled staff capable of following telephonic instructions, whenever the Incident Logging Procedure is followed;

6.7.5.1.7. execute the Customer's remote access connection procedure (as agreed between the Parties from time to time), whenever Remote Access is required;

6.7.5.1.8. install a suitable means of communication for the purpose of Remote Access by the Service Desk;

6.7.5.1.9. regularly procure SAMRAS End-user Training from Bytes at the Annual Rate Card Rates, and ensure that all Users regularly undergo such training;

6.7.5.1.10. agree the dates and frequency of the Software Review meetings with Bytes and attend such meetings;

6.7.5.1.11. ensure that the Customer System is adequately backed up, and that appropriate test and disaster recovery (DR) environments as well as business continuity plans (BCP) are in place to ensure a full recovery of data in the event of a disaster.

6.7.6. Escalation Procedure

6.7.6.1. Should Bytes fail to attended to an Incident within the agreed MTTR Target, the Customer may contact the designated Bytes representative on (021) 060 0384 in the following order:

6.7.6.1.1. 1st call: Client Service Manager – SAMRAS – Miss Rhoda Engelbrecht

6.7.6.1.2. 2nd call: SAMRAS General Manager – Miss Jane Khaled

6.7.6.1.3. 3rd call: Bytes Regional Managing Director - Mr. Gary.Lailvaux

(herein after "**Bytes Management**").

6.7.6.2. Bytes Management will expedite the resolution of the Incident as swiftly as possible and report back to the Customer.

6.7.6.3. The Customer may escalate calls at any time depending on the impact to the Customer's business requirements.

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6.7.6.4.   Should Bytes require input from the Customer's staff in order to assess a Fault or for any other reason arising, and the Customer Service Manager is unavailable, Bytes may escalate the request to the appropriate management structure within the Customer.

6.7.7.   Review

Any amendments to the Software Maintenance Services as set out in this clause 6, arising from (without limitation) system or operational changes, will be made by the Parties under the Change Control Procedure, alternatively the Parties will undertake a complete revision of the Software Maintenance Services.

7.   SOFTWARE DEVELOPMENT SERVICES

7.1.   The Customer may from time request Bytes to adapt, modify, or vary the Software ("**Modifications**"), provided that where the Modifications, as determined by Bytes in its sole discretion:

7.1.1.   fall within the scope of the Software Maintenance Services, then Bytes will perform such development as part of such services; or

7.1.2.   are substantial in nature, or fall outside the scope of the Software Maintenance Services ("**Substantial Modifications**"), the Parties shall conclude a separate Software Development Schedule to record and agree on the work to be undertaken.

7.2.   The Software Development Schedule will include the following:

7.2.1.   the Business Requirements Document;

7.2.2.   the Specifications;

7.2.3.   specify whether the software will be supplied by Bytes or the Customer;

7.2.4.   the scope of the work to be undertaken by Bytes;

7.2.5.   the financial model on which Bytes will charge the Customer for the development work (the "**Software Development Charges**"), which can be either a:

7.2.5.1.   fixed fee;

7.2.5.2.   at a negotiated rate which takes account of the nature and complexity of the development work; or

7.2.5.3.   at the Annual Rate Card Rates;

7.2.6.   the time period for conclusion of the development work;

7.2.7.   the acceptance testing criteria and procedure, if applicable; and

7.2.8.   other specific requirements and conditions.

7.3.   Bytes shall:

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7.3.1. if applicable, supply the Software and undertake the development work in such a manner as to meet the Business Requirements and comply with the Specifications;

7.3.2. produce documentation sufficient to enable the Customer to use the Substantial Modifications;

7.3.3. perform all other services assigned to it in the Software Development Schedule; and

7.3.4. deliver the Substantial Modifications to the Customer within the time lines as agreed in the Software Development Schedule.

7.4. Where the Customer is required to supply the software, the Customer will be responsible for the procurement thereof and will enter into the requisite licensing arrangement directly with the licensor or owner of that software, as the case may be. The Customer will also be responsible for (without limitation) the licence fees, licence renewal fees, upgrades, releases, and updates of such software.

7.5. The Software Development Charges will be paid as provided for in the Software Development Schedule.

7.6. Bytes shall upon request by the Customer:

7.6.1. install the Substantial Modifications at the relevant Location upon the execution of an Software Installation Schedule between the Parties; and

7.6.2. provide Software Maintenance Services in respect of the Substantial Modifications upon the execution of a Software Maintenance Schedule between the Parties.

8. SOFTWARE INSTALLATION SERVICES

8.1. The Customer may from time to time request Bytes to install Software at a Location or elsewhere, whereupon the Parties will work together to formulate a Software Installation Schedule.

8.2. The Software Installation Schedule will include the following:

8.2.1. the description of the Software to be installed;

8.2.2. the Specifications;

8.2.3. the scope of the work to be undertaken by Bytes;

8.2.4. the financial model on which Bytes will charge the Customer for the installation ("**Installation Charges**"), which can be either:

8.2.4.1. a fixed fee;

8.2.4.2. at a negotiated rate which takes account of the nature and complexity of the installation required; or

8.2.4.3. at the Annual Rate Card Rates;

8.2.5. the time period for conclusion of the installation;

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8.2.6. the acceptance testing criteria and procedure, if applicable; and

8.2.7. other specific requirements and conditions.

8.3. Bytes shall use its reasonable endeavours to:

8.3.1. undertake the installation in accordance with the requirements of the Software Installation Schedule; and

8.3.2. complete the installation within the time lines as agreed in the Software Installation Schedule.

8.4. The Installation Charges will be paid as provided for in the Software Installation Schedule.

9. SPECIALIST SERVICES

9.1. The Customer may from time to time require the specialist expertise and knowledge of Bytes to perform certain consulting services ("**Specialist Services**").

9.2. The Parties will work together to formulate a Specialist Services Schedule which will include the following:

9.2.1. the Business Requirements Document;

9.2.2. the scope of the work to be undertaken by Bytes;

9.2.3. the financial model on which Bytes will charge the Customer for the Specialist Services ("**Specialist Services Charges**"), which can be:

9.2.3.1. a fixed fee;

9.2.3.2. at a negotiated rate which takes account of the nature and complexity of the Specialist Services required;

9.2.3.3. a retainer; or

9.2.3.4. at the Annual Rate Card Rates;

9.2.4. the period of time, and hours during which the Specialist Services will be rendered; and

9.2.5. any other specific requirements and conditions.

9.3. Bytes shall render the Specialist Services in accordance with the provisions of the Specialist Services Schedule, and in accordance with the reasonable guidelines established by the Customer.

9.4. The Specialist Services Charges will be paid as provided for in the Specialist Services Schedule.

10. GENERAL OBLIGATIONS OF THE PARTIES

10.1. REPORTS

10.1.1. The Parties agree that Bytes will from time to time produce and present to the Customer a written report (the "**Closure Report**"), that sets out the performance by Bytes under a Software Development Schedule, Software Installation Schedule, or Specialist Services

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Schedule, as the case may be. A representative of the Customer will sign off on each Closure Report presented by Bytes.

10.1.2. Bytes will provide the Customer with an update on the Software and/or Services provided under this Agreement, as and when required by the Customer. This could take the form of a meeting or a phone call.

10.2. OUT OF SCOPE SERVICES

10.2.1. Services, functions, responsibilities or tasks that fall outside the scope of Services, as determined by Bytes in its sole discretion, will be considered to be out-of-scope ("**Out-of Scope Services**").

10.2.2. The Parties agree that Bytes is entitled to charge the Customer for any Out-of-Scope Services required by the Customer, at the Annual Rate Card Rates.

10.2.3. The details of the Out-of-Scope Services shall be described in the invoice for such services.

10.3. ACCEPTANCE TESTING

10.3.1. Except to the extent that a Schedule contains specific acceptance provisions, all Services performed and Software and/or Deliverables provided by Bytes to the Customer shall be deemed to be accepted if the Customer fails to provide Bytes with written notice of its rejection thereof within seven (7) days after delivery. Bytes shall be entitled to rely on all decisions and approvals of Customer in connection with the Services, Software and/or Deliverables.

10.3.2. If Software is subject to acceptance testing by the Customer, the Schedule shall set out the acceptance testing criteria and the applicable time periods for (a) acceptance testing ("**Acceptance Testing Period**") and (b) error correction ("**Error Correction Period**"). Within 48 (forty eight) hours of the expiry of the Acceptance Testing Period, Customer will inform Bytes in writing whether the Software has been accepted, failing which the Software will be deemed to have been accepted by the Customer.

10.3.3. Acceptance will be given or refused as measured against the acceptance testing criteria only and may not be unreasonably withheld, conditioned or delayed by the Customer. Only serious Faults that have been reported to Bytes in writing and have not been corrected by Bytes during the Error Correction Period, may constitute grounds for withholding acceptance.

10.3.4. On request of the Customer, Bytes shall inform the Customer of the cause of any Faults in the Software and details of the steps taken by the Bytes to rectify such Faults.

10.3.5. Bytes's obligations under this clause are Customer's sole remedy for any Faults in the Software, and the Customer will not be entitled to claim for any Losses arising from or in connection with a Fault.

10.4. DELIVERY

10.4.1. All terms of delivery stated in a Schedule have been specified to the best of Bytes's knowledge on the basis of the information known to Bytes at the time of signing of the Schedule. Bytes

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shall use its reasonable endeavours to comply with these terms of delivery but the mere fact that any stated term (of delivery) has been exceeded shall not constitute default on the part of Bytes. Bytes shall not be bound by any terms (of delivery), which cannot be met due to circumstances beyond its control which occurred after, or could not reasonably have been foreseen at the time when, the Schedule was concluded (including (without limitation) an act or omission or breach by the Customer of its obligations under the Agreement). If it transpires that the term for delivery is likely to be exceeded under the conditions set out in this clause 10.4.1, Bytes shall notify the Customer and the parties shall consult as soon as possible as to the consequences thereof.

10.4.2. Bytes's obligations under this clause are the Customer's sole remedy for any delay on the terms of delivery, and the Customer will not be entitled to claim for any Losses arising from or in connection with any delay on the terms of delivery.

10.5. HARDWARE

The Customer may from time to time require Bytes to supply certain hardware to the Customer. This will be done on such terms and conditions as the Parties may agree to at that point in time.

10.6. OBLIGATIONS OF THE CUSTOMER

10.6.1. The Customer shall at its own cost:

10.6.1.1. provide Bytes with the Customer Input as and when reasonably required by Bytes;

10.6.1.2. provide Bytes and the Bytes Personnel with such access to all relevant Customer Sites as may be reasonably required by Bytes and the Bytes Personnel to enable Bytes to comply with its obligations stipulated in this Agreement. Such access includes logical and physical access to networks, information, documentation and data, as applicable;

10.6.1.3. arrange for the Customer's staff to provide Bytes and the Bytes Personnel with such reasonable assistance at the Locations as may be reasonably required by Bytes to provide the Software and/or render the Services in accordance with the provisions of this Agreement;

10.6.1.4. provide such suitable environmental conditions as may be required by Bytes and the Bytes Personnel at any of the Locations including (without limitation) the provision of electricity, telephone services and other connectivity (including access to email, internet and networks), lighting and air-conditioning;

10.6.1.5. provide adequate office space and such reasonable office services as may be required by the Bytes Personnel, to gain access to the Locations in order to supply the Software and/or render the Services;

10.6.1.6. provide Bytes with all such other reasonable assistance and information, in order for Bytes to supply the Software and/or render the Services in accordance with the Agreement;

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10.6.1.7. consider all requests by Bytes for consent or authorisation without any unreasonable delay, having regard to the nature of the request and the impact which any delay in such consent or authorisation may have on the provision of the Software and/or Services pursuant to this Agreement; and

10.6.1.8. provide all such other assistance and support as may be contemplated in this Agreement or any Schedule.

10.6.2. The Customer shall ensure that, for the purposes of this Agreement, any third party performs its duties and functions as may be required by Bytes to enable Bytes to provide the Software and/or perform the Services.

10.6.3. Save where Bytes is in material breach of a material term of this Agreement and such appointment is required to mitigate the Customer's loss, the Customer shall not appoint any third party to provide any products and/or services similar, or substantially similar to the Software and/or Services, without the prior written consent of Bytes.

11. CHANGE CONTROL PROCEDURE

11.1. If at any time during the Licence Term, either Party wishes to propose a Change to the Services and/or Software in a Schedule, they will do so by concluding a form setting out the following:

11.1.1. a description of the Change;

11.1.2. the reasons for the Change;

11.1.3. the likely impact of the Change on the Software and/or Services;

11.1.4. the resource requirements;

11.1.5. the likely implementation date for the Change;

11.1.6. the costs, expenses and fees to be incurred by each Party in connection with the Change; and

11.1.7. any alteration to the Schedule Charges as a result of the Change, including the reasons for any such alteration.

(herein after the "**Change Control Note**").

11.2. A Change Control Note shall form an annex to the relevant Schedule, and when executed by an authorized representative of each Party, shall be incorporated herein and made a part of the Agreement.

11.3. Bytes shall not commence with the implementation of any Change prior to the execution of the Change Control Note by both Parties.

11.4. Bytes shall be entitled, in its sole discretion, to reject a Change Control Note in such circumstances where:

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11.4.1.   the change would substantially render Bytes's obligations under the Schedule impossible to perform;

11.4.2.   Bytes does not have the necessary resources to undertake the change; or

11.4.3.   the Change is not financially or operationally feasible for Bytes to implement.

12. FEES AND PAYMENTS

12.1.   Fees

12.1.1.   Unless expressly otherwise provided for herein, and subject to clause 12.3.5, any fees due to Bytes under this Agreement will be agreed to in a Schedule.

12.1.2.   Should the Parties fail to agree on a fee in any Schedule, the Parties specifically agree that Bytes will be entitled to charge the Customer on a time and material basis, at the Annual Rate Card Rates.

12.1.3.   The Parties agree that the Annual Rate Card Rates in Annexure 1 hereto, will apply during the Licence Term.

12.2.   Payment Terms

12.2.1.   Unless stated to the contrary in a Schedule, all payments shall be paid by the Customer to Bytes within thirty (30) days of receipt of invoice.

12.2.2.   A certificate signed by the Bytes's Service Manager or any other authorised representative of Bytes, shall constitute prima facie proof of the amount due and payable by the Customer to Bytes.

12.2.3.   The Customer will be liable to pay Bytes interest on any late payments at the publicly quoted overdraft rate charged by Bytes's bankers from time to time plus an additional two and a half percentage points (2.5%). Such interest shall be compounded monthly in arrears.

12.2.4.   All amounts payable under the Agreement are subject to exchange rate fluctuations, and the final amount will be determined with reference to exchange rate on the date of invoicing.

12.3.   General

12.3.1.   Without derogating from any other remedy available to Bytes in terms of this Agreement or in law, in the event of any late payment of any amount due to Bytes, Bytes shall be entitled to suspend the supply of the Software and/or its performance of the Services, until such time as Bytes has received:

12.3.1.1.   payment for all amounts due together with any interest thereon, at the publicly quoted overdraft rate charged by Bytes's bankers from time to time plus an additional two and a half percentage points (2.5%);

12.3.1.2.   costs for the idle time of allocated Bytes resources; and

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12.3.1.3. other third party costs incurred by Bytes arising from or in connection with the Customer's failure to make timely payment.

12.3.2. Such suspension shall not constitute a breach by Bytes of its obligations under this Agreement. In addition, the Customer indemnifies and holds Bytes harmless against any Losses suffered by the Customer as a result of the suspension of the supply of any Software, or the performance of any of the Services. The Customer agrees that any Losses suffered would be as a consequence of its failure to comply fully with the terms of this Agreement, including but not limited to this clause 12.3.2.

12.3.3. The Customer shall under no circumstances whatsoever be entitled to withhold payment of any invoice, including any disputed payments (which shall be referred to dispute resolution by the Customer under clause 19).

12.3.4. All payments due shall be:

12.3.4.1. made by electronic transfer into Bytes's designated account;

12.3.4.2. immediately available and freely transferable; and

12.3.4.3. free of any deductions or set-off whatsoever.

12.3.5. To the extent that Bytes incurs any Expenses on behalf of the Customer as a result of the provision of any of the Services, the Customer shall reimburse Bytes in full within thirty (30) days of the date of presentation of a value added tax invoice from Bytes. The invoice will detail the nature and extent of such Expenses.

12.3.6. In addition to the Schedule Charges, Expenses, or any other charges payable under this Agreement, the Customer shall be liable for:

12.3.6.1. all taxes, duties, government surcharges, royalties and the like imposed by any governmental authority having jurisdiction over the Services;

12.3.6.2. payment of VAT or any other taxes on the Schedule Charges or Expenses if applicable.

13. GOVERNANCE STRUCTURES

13.1. In order to facilitate the smooth and effective management of the relationship, and the provision by Bytes of the Software and/or Services in terms of this Agreement, the Parties shall each appoint a suitably qualified and responsible person to act as their appointed service manager ("Service Manager").

13.2. The Service Managers will have the power and authority to make decisions with respect to actions to be taken by them in the ordinary course of the day-to-day management of this Agreement (but will not be entitled to vary the terms of this Agreement or any Schedule unless duly authorised to do so).

13.3. All invoices, communications, documentation and materials relating to this Agreement shall be sent by each Party to the appropriate Service Manager.

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13.4. Either Party may, on seven (7) days written notice to the other, appoint an alternative Service Manager who is suitably qualified and responsible.

13.5. The Service Managers may implement such further contract governance structures as may be set out in a specific Schedule.

14.RELIEF EVENTS

In the event of a Relief Event arising:

14.1. Bytes's Service Manager will notify the Customer's Service Manager in writing or via e-mail of the Relief Event within a reasonable time period after becoming aware of such Relief Event;

14.2. the time for Bytes's performance shall be extended on a reasonable basis in proportion to the prejudice caused by the Relief Event, and Bytes may charge for any additional hours reasonably required to execute the Services or remedy the Relief Event, on a time and materials basis at the Annual Rate Card Rates;

14.3. any milestone affected by the Relief Event ("**the Affected Milestone**"), as well as all other milestones on the affected critical path of the Affected Milestone, if any, shall be extended by a period equal to the period by which the Affected Milestone is de facto impacted as agreed by the Parties in writing, or, failing agreement as determined in terms of clause 19;

14.4. if an amount would have been payable to Bytes by the Customer had it not been due to an Relief Event, Bytes shall be entitled to invoice the Customer for work actually completed at a milestone date (i.e. on a pro rata completion basis), notwithstanding the fact that a milestone had not been achieved; and

14.5. Bytes shall not be liable for any failure to provide any Software and/or Services in terms of this Agreement where such failure is a result of any Relief Event.

15.CONFIDENTIALITY

16.1 "**Confidential Information**" means any confidential or proprietary information of a Party, including without limitation, any engineering designs and drawings, Know-how, trade secret, research data, process, technique, research project, work in process, future development, technical, manufacturing, marketing, business plan, financial or personnel matters relating to the Party, its present or future products, sales, Bytes's customers, employees, investors or business, whether disclosed orally or in written or magnetic media, that:

16.1.1 is in writing and marked "confidential" or "proprietary" by the disclosing Party prior to or at the time of the disclosure thereof; or

16.1.2 the receiving Party knows or reasonably should have known is of a confidential or proprietary nature; or

16.1.3 is identified by the disclosing Party in writing as confidential or proprietary, and such writing is received by the receiving Party within thirty (30) days after disclosure of Confidential Information, and describes such information and referencing the place and date of the oral or visual disclosure and the names of the employees or officers of the receiving Party to whom such disclosure was made.

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16.2 Except to the extent expressly authorized by this Agreement or unless otherwise agreed in writing by the Parties, each Party agrees that, for the Licence Term of this Agreement and for three (3) years thereafter, it shall keep confidential and shall not publish or otherwise disclose, and shall not use for any purpose other than as provided for in this Agreement, any Confidential Information, unless the receiving Party can demonstrate by competent proof that such Confidential Information:

16.2.1 was already known to the receiving Party, other than under an obligation of confidentiality, at the time of disclosure by the other Party; or

16.2.2 was generally available to the public or otherwise part of the public domain at the time of its disclosure to the receiving Party; or

16.2.3 became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission of the receiving Party in breach of this Agreement; or

16.2.4 was disclosed to the receiving Party, without restrictions on further disclosure, by a third party who had no obligation to the disclosing Party not to disclose such information to others; or

16.2.5 was independently discovered or developed by the receiving Party without the use of Confidential Information and/or Intellectual Property belonging to the disclosing Party.

16.3 If any Confidential Information of the disclosing Party must be disclosed to any third party by reason of legal, accounting or regulatory requirements beyond the reasonable control of the receiving Party, the receiving Party shall promptly notify the disclosing Party of the order or request and permit the disclosing Party (at its own expense) to seek an appropriate protective order.

17 DATA PROTECTION

17.1 The Parties acknowledge that in the performance of their obligations under this Agreement, Bytes may be exposed to the Data of the Customer, and the Customer may be exposed to the Data of Bytes.

17.2 Each Party's Data shall be and remain the property of that Party and its Affiliates. Neither Party shall not divulge the Data of the other Party to third parties (unless provided otherwise in this Agreement) and a Party shall use the Data of the other Party only for purposes of this Agreement. Neither Party shall possess or assert any lien or other right against or to the other Party's Data, or sell, assign, lease or otherwise dispose of the other Party's Data, or any part thereof, to third parties. Each Party shall take such steps as are reasonably required to prevent its, employees, sub-contractors and their employees, and agents from doing the same.

17.3 The Parties specifically record that all:

17.3.1 Data provided by the Customer to the Bytes, or to which the Bytes may be exposed; and

17.3.2 Data provided by Bytes to the Customer, or to which the Customer may be exposed,

shall constitute Confidential Information and as such, each Party shall comply with all the provisions of clause 15 with regard to such Data.

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17.4 Each Party hereby warrants in favour of the other Party that it shall at all times strictly comply with all applicable data and privacy legislation, or which may be required by regulation or any relevant industry body, in relation to the Data of the other Party (or its Affiliates).

17.5 Each Party hereby warrants and undertakes that it shall not, at any time copy, compile, collect, collate, process, mine, store, transfer, alter, delete, interfere with or in any other manner use the Data of the other Party for any purpose other than with the express prior written consent of that Party, and then only to the extent necessary for the purposes of this Agreement.

17.6 Each party shall institute and operate all necessary back-up procedures to its Systems to ensure that, in the event of any information system malfunction or other loss of data, any relevant records can be recovered promptly and that the integrity thereof and any database containing such material can be maintained.

18 WARRANTIES AND INDEMNITIES

18.1 Bytes hereby excludes and disclaims all warranties, whether express or implied, statutory or otherwise, except those warranties expressly made in this clause 18. Without limiting the aforegoing Bytes hereby disclaims:

18.1.1 any implied warranties of satisfactory quality or fitness for a particular purpose, merchantability, or compliance with the Customer's requirements and/or Specifications, with respect to the Software, Services and/or Deliverables (or any part thereof); and

18.1.2 all warranties in respect of Third Party Software or open source software, utilised by or licensed to the Customer by any third party or by Bytes, or used by Bytes in the supply of the Software and/or the performance of the Services pursuant to this Agreement.

18.2 The Customer represents and warrants that it has not been induced to enter into this Agreement by any prior representations, warranties or guarantees, whether oral or in writing, except as expressly contained in this clause 18.

18.3 Each Party hereby represents and warrants to the other Party that:

18.3.1 it has full power and authority to enter into and perform this Agreement;

18.3.2 the person signing this Agreement on such Party's behalf has been duly authorized and empowered to enter into this Agreement; and

18.3.3 the execution of this Agreement by such Party, and the performance by such Party of its obligations and duties hereunder, do not and will not violate any agreement to which such Party is a party or by which it is otherwise bound.

18.4 The Customer represents and warrants that:

18.4.1 it will comply with the provisions of the Municipal Finance Management Act 56 of 2003 in its performance under this Agreement, and all applicable legislation which govern the performance of its obligations under this Agreement;

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18.4.2 it is duly authorised to, and will pay all amounts under this Agreement as they become due (including (without limitation) the Schedule Charges, charges for Out-of Scope Services, charges under Annexure 1, and any Expenses);

18.4.3 it has used, and will for the duration of the Licence Term use, industry standard anti-virus software and devices to screen all materials provided by it to Bytes;

18.4.4 software, information, data, and materials provided by the Customer to Bytes, does not and will not infringe the Intellectual Property Rights of any third parties;

18.4.5 it shall put measures in place preventing the Users from modifying, de-compiling, disassembling or otherwise reverse-engineering, reproducing or adapting the Software or any part thereof, or attempt to do any of these things; and

18.4.6 it shall not sub-licence, sell or otherwise distribute the Software.

18.5 The Customer indemnifies and holds Bytes harmless against any Losses suffered by Bytes, as a result of a breach by the Customer of any warranty or undertakings given by the Customer in clause 18.4.

19 DISPUTE RESOLUTION

19.1 In the absence of any specific provision to the contrary, should any dispute, disagreement or claim arise between the Parties ("**the Dispute**") concerning this Agreement, the Parties shall endeavour to resolve the Dispute by negotiation.

19.2 This entails one of the Service Manager inviting the other Service Manager in writing to meet and to attempt to resolve the Dispute within 10 (ten) days from date of written invitation.

19.3 If the dispute has not been resolved by such negotiation within 10 (ten) days of the commencement thereof by agreement between the Parties, then such dispute shall, to the exclusion of the ordinary courts, be referred by either Party to (and finally resolved by) arbitration administered by and under the then Rules of AFSA.

19.4 The arbitration shall be conducted in English, and the seat and place of the arbitration shall be Cape Town, South Africa.

19.5 Notwithstanding anything to the contrary in this clause 19, any Party shall be entitled to apply for, and if successful, be granted, an interdict or other interim and/or urgent relief from any competent court having jurisdiction.

20 LIMITATION OF LIABILITY

20.1 To the maximum extent permitted by law, except for any liability arising out of a breach of clause 15 (Confidentiality), clause 17 (Data Protection), or any indemnity given by either Party to the other under this Agreement, in no event will either Party be liable for any attorney's fees, consequential, indirect, exemplary, special or incidental damages, including without limitation any loss or corruption of data, and costs of procurement of substitute goods or services, arising from or relating to this Agreement, however caused and under any theory of liability (including negligence), even if such Party has been advised of the possibility of such damages.

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20.2 The total cumulative liability of Bytes arising from or relating to this Agreement and in relation to each Schedule, shall not exceed one hundred percent (100%) of the total amount paid to (and received by) Bytes under the applicable Schedule that gives rise to such liability, during the twelve (12) months preceding the date on which the liability arises.

20.3 Bytes shall, without limiting the generality of clauses 20.1 and 20.2, not be liable to the Customer or any cessionary or third party claiming through or on behalf of the Customer:

20.3.1 for any indirect, special or consequential damages (including loss of profits or revenue (whether direct or indirect)) arising out of or related to this Agreement, the Software and/or the Services; or

20.3.2 for any loss or damage arising directly or indirectly as a result of the abuse, misuse or unauthorised use of the Software and/ the Services and/or any equipment, tools or communications mediums in conjunction with which and/or by means of which the Software and/or Services are supplied or rendered, by the Customer or any of its staff; or

20.3.3 for any loss or damage arising directly or indirectly in connection with any delay, failure, breakdown, damage or injury caused by:

20.3.3.1 equipment, programmes, software and services supplied by or obtained by the Customer without the prior consent or knowledge of Bytes; or

20.3.3.2 equipment, programmes, software or services modified by the Customer or any third party not authorised to do so in terms of this Agreement; or

20.3.3.3 any loss or corruption of data for any reason whatsoever; or

20.3.3.4 the acts or omissions or requirements of any telecommunications or communications provider, the Bytes Systems, or telecommunication services or equipment operated or owned by Bytes.

20.4 Nothing in this Agreement shall exclude or limit the liability of either Party to the other for:

20.4.1 personal injury or death; or

20.4.2 liability resulting from wilful misconduct; or

20.4.3 liability resulting for fraud including fraudulent misrepresentation.

21 REGULATORY

The Parties agree that, within six (6) months of the relevant provisions of the Protection of Personal Information Act 4 of 2013 being promulgated, the Parties shall if so requires, enter into a separate operator agreement regulating the processing of Personal Information.

22 FORCE MAJEURE

22.1 Neither Party shall be liable to the other for non-performance (either in whole or in part) or delay in performance of their respective obligations if caused by a Force Majeure Event. While a Force Majeure Event subsists, the Party so affected shall be relieved of liability to the other for failure to perform its

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obligations hereunder and such obligations shall be suspended until such time as performance can be resumed (provided that the relevant affected Party could not have prevented the failure or delay by taking reasonable precautions or measures).

22.2 Either party shall be entitled to terminate a Schedule on not less than thirty (30) days written notice to the other Party, if a Force Majeure Event persists for more than fourteen (14) consecutive days.

22.3 The Customer will not be liable for the payment of any termination fees or have any other liability to Bytes if a Schedule is terminated in terms of clause 22.2, save for payment of such portion of the Schedule Charges and/or Expenses as are due and payable by the Customer to Bytes for Software and/or Services rendered under that Schedule up to and including the date of the occurrence of the Force Majeure Event.

23 INTELLECTUAL PROPERTY

23.1 The Parties acknowledge and agree that :

23.1.1 The Customer retains ownership of the Customer Intellectual Property.

23.1.2 Bytes is granted a world-wide, non-transferable, royalty-free, non-exclusive licence for the licence for the duration of this agreement in respect of such Customer Intellectual Property for the sole purpose of providing Software and/or the Services to the Customer pursuant to this Agreement.

23.1.3 Bytes is the sole owner of the Bytes Intellectual Property and any and all Intellectual Property Rights in respect of the Software, Deliverables and/or performance of the Services, whether created prior to or during the term of this Agreement.

23.2 All Intellectual Property Rights in and to the Bytes Intellectual Property are and shall remain vested in Bytes. The Customer shall not during or at any time after termination or expiry of this Agreement or any Schedule acquire or be entitled to claim any right or interest in Bytes Intellectual Property or in any way question or dispute the ownership thereof by Bytes or the validity of such Intellectual Property Rights.

23.3 The Customer acknowledges that Bytes Intellectual Property may only be used by the Customer as specifically authorised in terms of this Agreement, or otherwise in writing by Bytes. Unless expressly stated otherwise, upon termination of this Agreement or the relevant Schedule, the Customer shall forthwith discontinue the use of Bytes Intellectual Property.

23.4 The Customer hereby:

23.4.1 cedes, assigns and transfers to Bytes such Intellectual Property Rights that it holds in respect of the Software, Deliverables and/or Services; and

23.4.2 undertakes to sign all documents and do all things as may be necessary to give effect to the provisions of this clause 23.

23.5 Neither Party may, without the prior written consent of the other, use the names, service marks, trademarks, logos or other corporate identifications of the other Party.

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23.6 The Customer indemnifies and holds Bytes harmless against any claim by a third party against Bytes and/or its Affiliates, or any Losses suffered by Bytes and/or its Affiliates, arising from the Customer's actual or alleged infringement or misappropriation of the intellectual property or any other proprietary rights, of a third party.

24 TERMINATION

24.1 Either Party may terminate this Agreement, or any Schedule thereto, immediately upon written notice to the other Party at any time, if the other Party is in material breach of any material provision of this Agreement or a Schedule, as the case may be, and:

24.1.1 such breach is not capable of remedy; or

24.1.2 the other Party fails to remedy such breach within thirty (30) Business Days of written notice to remedy such breach, (such notice stating that failure to remedy the breach may give rise to termination under this clause 24.1).

24.2 Either Party may terminate this Agreement (including all the Schedules) effective immediately if the other Party commits any act of insolvency under any applicable laws under which it is regulated.

24.3 Should the Customer terminate this Agreement for any reason whatsoever, it will be liable for fees including but not limited to:

24.3.1 de-allocation of resources;

24.3.2 termination fees or charges invoked under third party agreements; and

24.3.3 purchases of specific software licenses, on-going software licence costs or other expenses incurred by Bytes for support of the functionality contained in a Schedule.

24.4 Upon termination or expiration of this Agreement for any reason:

24.4.1 any amounts owed to Bytes under this Agreement before such termination or expiration will be immediately due and payable; and

24.4.2 Bytes shall cease to be bound to provide or perform, and the Customer shall cease to be entitled to order or receive, any Software and/or Services under the Agreement.

24.5 On termination or expiry of this Agreement, the Customer shall:

24.5.1 return to Bytes any relevant documents and other materials provided by Bytes or created by Bytes, including all copies thereof; and

24.5.2 return to Bytes any data provided or created by Bytes in the performance of this Agreement, such data to be returned in a format specified by Bytes; and

24.5.3 uninstall any Software provided by Bytes, and do such other things in connection therewith as Bytes may reasonably require.

24.6   Each Party's further rights and obligations shall cease immediately on expiry or termination of this Agreement, but expiry or termination does not affect either Party's accrued rights and obligations at the date of expiry or termination.

24.7   In the event that the Customer requires any assistance upon the termination or expiration of this Agreement or any Schedule, such assistance shall be rendered at Bytes's sole discretion and shall be chargeable on a time and material basis at the Annual Rate Card Rates.

25 NON-SOLICITATION

Neither Party shall, without the prior written consent of the other Party, either during the Licence Term or within twelve (12) months of the termination of this Agreement, engage, employ or otherwise solicit for employment, whether directly or indirectly, any person who during the currency of this Agreement was a member of the staff of the other Party involved in the acquisition or provision of Software and/or Services.

26 NOTICES

26.1   Each of the Parties chooses their respective addresses set forth on the cover page of this Agreement, for the purposes of giving any notice, the payment of any sum, the serving of any process and for any other purposes arising from this Agreement ("**Address for Notices**").

26.2   Each of the Parties shall be entitled from time to time, by written notice to the other, to vary its Address for Notices to any other physical address.

26.3   Any notice given and any payment made by a Party to the other Party ("**the Addressee**") which:

26.3.1   is delivered by hand or courier during the normal business hours at the Address for Notices for the time being shall be presumed, until the contrary is proved by the Addressee, to have been received by the Addressee at the time of delivery;

26.3.2   is posted by prepaid registered post to the Addressee at the Address for Notices for the time being shall be presumed, until the contrary is proved by the Addressee, to have been received by the Addressee on the fourteenth (14th) day after the date of posting.

26.4   Where, in terms of this Agreement any communication is required to be in writing, the term "writing" shall include communications by facsimile or electronic mail. Communications by facsimile shall, unless the contrary is proved by the Addressee, be deemed to have been received by the Addressee twenty four (24) hours after the time of transmission. Communications by way of electronic mail shall, unless the contrary is proved by the Addressee, be deemed to have been received by the Addressee one (1) hour after the time of transmission.

26.5   Where delivery under clause 26.3 or clause 26.4 takes places on a day which is not a Business Day, receipt will be deemed to have taken place on the first Business Day following that day (which is not a Business Day).

26.6   Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen Address for Notices.

27 GENERAL

27.1 Nothing in this Agreement shall be construed as precluding or limiting in any way the right of Bytes to supply goods or services of whatsoever nature (including (without limitation) goods or services which are the same or similar to the Software and/or the Services), to other customers.

27.2 The Customer shall promptly inform Bytes in writing if the Customer becomes aware that any person or entity is infringing any of Bytes's and/or a third party's Intellectual Property Rights. The Customer shall cooperate fully with Bytes in any legal action taken by Bytes against such Third Parties, provided that Bytes shall pay all expenses arising from such an action.

27.3 Neither Party may publish or cause to be published any advertisement, publicity release or other information relating to the other Party, its Affiliates, or their businesses, without the prior written consent of that entity.

27.4 This Agreement shall be binding upon the Parties' respective successors and permitted assigns. Neither Party may cede its rights, delegate its obligations, or assign its rights and obligations under this Agreement (an "**Assignment**") without the prior written consent of the other Party. Notwithstanding the aforegoing, Bytes shall be entitled to effect an Assignment to any of its Affiliates.

27.5 Unless otherwise provided for herein, no variation, modification, amendment, supplement to or waiver of this Agreement or any of its provisions shall be binding upon the parties hereto, unless made in writing and duly signed by both parties.

27.6 No indulgence, leniency or extension of time which any Party ("**the Grantor**") may grant or show to any other Party, shall in any way prejudice the Grantor or preclude the Grantor from exercising any of its rights in the future.

27.7 All provisions and the various clauses of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall in such jurisdiction only and only to the extent that it is so unenforceable, be treated as if of no force and effect, and the remaining provisions and clauses of this Agreement shall remain of full force and effect.

27.8 This Agreement and each Schedules thereto constitute the entire agreement between the parties in connection with the subject matter hereof and supersedes and replaces:

27.8.1 all prior and contemporaneous negotiations and/or agreements between the Parties; and

27.8.2 any undertakings given to or on behalf of the Parties, whether oral or written, with respect to the subject matter hereof.

27.9 Save to the extent otherwise provided for herein, no warranties, representations, undertakings, terms or conditions in connection with the subject matter hereof not incorporated in this Agreement and the Schedules, shall be binding on either of the Parties and/or their Affiliates (excluding fraudulent misrepresentation).

27.10 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination, or

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which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

27.11   Each Party hereto is an independent contractor of the other and neither shall be deemed an employee, franchisee, agent, partner or joint venture of the other, and nothing contained herein shall be construed as creating any agency, employment relationship, franchise, partnership, principal-agent or other form of joint enterprise between the Parties.   Neither Party will have, and will not represent to any third party that it has, any authority to act on behalf of the other Party.

27.12   Except as expressly provided to the contrary, provisions of this Agreement are solely for the benefit of the Parties to this Agreement, and not for the benefit of any other person or legal entity.

27.13   Except as otherwise specifically provided herein, each Party will bear and pay its own legal costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of this Agreement and any Schedule thereunder.

27.14   This Agreement will in all respects be governed by and construed under the laws of the Republic of South Africa. The Parties hereby consent and submit to the non-exclusive jurisdiction of the High Court of the Republic of South Africa in any dispute arising from or in connection with this Agreement.

27.15   This Agreement may be executed in 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.

27.16   The persons signing this Agreement in a representative capacity warrant their authority to do so.

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IN WITNESS WHEREOF, each of the parties hereto has caused this Master Services Agreement to be entered into on the day and year first before written.

SIGNED _____

duly authorised for and on behalf of

ALTRON TMT (PTY) LTD ACTING THROUGH ITS DIVISION BYTES UNIVERSAL SYSTEMS

Name _____ P. J. GOLDING _____

Date _____ 0/07/2016 _____

Place _____ CAPE TOLON _____

SIGNED _____

duly authorised for and on behalf of

LEJWELEPUTSWA DISTRICT MUNICIPALITY

Name _____ PK PITSO _____

Date _____ 29/07/2016 _____

Place _____ WELKOM. _____

ANNEXURE 1: ANNUAL RATE CARD RATES

Service	
Hourly rate for professional services and training on site:	

Description	Hourly Rate in ZAR
Project Support Officer	1 200.00
Project Manager	970.00
Business Analyst	820.00
Change management specialist	1 100.00
Team Lead	970.00
Subject matter expert	1 300.00
Senior Implementation ERP Specialist	970.00
Implementation ERP Specialist	720.00
Junior Implementation ERP Specialist	680.00
Enterprise architect	1 200.00
Senior Developers	970.00
Junior Developers	570.00
Senior Data Migration Specialist	970.00
Junior Data Migration Specialist	450.00
ICT specialist	890.00

Service	
Travel time where site is 50 kilometres from the applicable Bytes offices ("**Travel Time**") (one hour for every 50 kilometres travelled, depending on circumstances).	50% of above rates
Per kilometre rate for travel (dependent on actual costs)	R3,30/km
Training per day per student at the SAMRAS Training Centre	R1 850,00
Reasonable travel and accommodation disbursements and any other expenses reasonably incurred by Bytes in connection with the rendering of the Software and/or Services (including (without limitation Travel Time) ("**Expenses**")	At actual cost
Actual cost of providing or replacing program storage media	At actual cost
Actual cost of delivery of program storage media	At actual cost

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AUTHORISED DISTRIBUTOR OF UNISYS

SOFTWARE PROGRAM PRODUCT LICENCE AND MAINTENANCE AGREEMENT
PRODUCT SCHEDULE AND CHARGES

Lejweleputswa FS 2016-1

Thomas Pattullo Building, 19 Jan Smuts Street, Cape Town, 8001
BYTES UNIVERSAL SYSTEMS a division of Altron TMT (Pty) Ltd, hereinafter called BUS, agrees to provide to the undersigned, hereafter called the Customer,
the under-mentioned applications and Production System Maintenance Service for period 1/7/2016 to 30/6/2017.

CUSTOMER		CUSTOMER No.		
Lejweleputswa District Municipality		ENTRY No.		
P. O. Box 2163		BYTES OFFICE	Cape Town	
Welkom, 9460		DATE	01-Jul-16	

	EQUIPMENT	LOCATION						Unit ANNUAL	TOTAL
	SOFTWARE	Cnr Tempest & Jan Hofmeyr Roads						S/W SERVICE	S/W SERVICE
		Jim Fouche Park							
		Welkom							
PRODUCT NUMBER	DESCRIPTION		QUANTITY	OTLF	MONTHS				
SAMRASclassic	SAMRASclassic 30 User		1	N/A	12			R162,612.29	R162,612.29
Acu	AcuCobol Runtime 30 User		1	N/A	12			R9,686.62	R9,686.62
Flex	FlexGen Runtime 30 User		1	N/A	12			R15,026.21	R15,026.21
Qry	Flexgen EasiQuery 2 User		1	N/A	12			R6,566.99	R6,566.99
USQL	USQL ODBC for Cobol 10 User		1	N/A	12			R12,385.64	R12,385.64
Frontier	Flexgen Frontier 19 Licences		1	N/A	12			R2,890.00	R2,890.00
SCM	SAMRASclassic SCM Module		1	N/A	12			R25,397.33	R25,397.33
O/S	Linux Operating System							R4,868.56	R4,868.56

The prices stated above have been calculated on a Rand / US$ rate: n/a | R 0.00 | | | Exclusive | R239,433.64
If applicable travelling time, expenses, accomodation etc. will be for the customer account | R | - | | VAT | R33,520.71
at current rates. | R | - | | Inclusive | R272,954.35

For and on behalf of
BUS

Jane Khaled
General Manager, SAMRAS Division

For and on behalf of
Lejweleputswa District Municipality

The signatory warrants that he/she is
authorised to sign on behalf of the customer.

Stamp

Thus done and signed by both
BUS and Customer
subject to attached conditions.