TERMS AND CONDITIONS

1. <u>DEFINITIONS:</u>

In this agreement, unless inconsistent with or otherwise indicated by the context, the words and phrases set out below will have the following meanings:-

1.1. "**Agreement**" means this Agreement including the Proposal, any addendums and/or variation orders and/or any annexures attached hereto;

1.2. "**Business day**" means any day other than a Saturday, Sunday or official Public holiday in the Republic of South Africa;

1.3. "**Client**" shall be the person, company, entity set out in the proposal and to whom the proposal is addressed and/or any subsidiary of such client;

1.4. "**Commencement Date**" means the date as specified in the Proposal Document for project commencement;

1.5. "**Confidential Information**" means, without limitation, all secret knowledge, technical information and specifications, manufacturing techniques, designs, circuit diagrams, instruction manuals, blueprints, electronic artwork, samples, devices, demonstrations, formulae, Know-How, Information about materials, marketing and business information generally and other materials of whatever description in which the parties have an interest in being kept confidential;

1.6. "**Development team**" shall be those persons as referred to in clause **8**;

1.7. "**Intellectual property**" includes, inter alia, but is not limited to, methodologies, products, materials, processes, systems, data, designs, strategies, plans, know-how, specifications, programs, source, code improvements, client lists (current and prospective), discoveries and trademarks;

1.8. "**Parties**" shall mean the client and Tilda Technologies respectively;

1.9. "**Price**" shall mean the costs estimate as set out in the Proposal as amended or varied;

1.10. "**Proposal**" means the written Proposal given to the client by Tilda Technologies and the words Proposal Form and/or Proposal document shall have a corresponding meaning;

1.11. "**Scope of work**" shall mean the tasks and/or products and/or services to be delivered by Tilda Technologies as set out in the Proposal together with any variation order relating thereto and works shall have the corresponding meaning;

1.12. "**Source code**" means the source code of computer software and shall include inter alia, all logic, diagrams, flow charts, protocols, autographic representations, algorithms, routines, sub-routines, utilities, modules, file structures, coding sheets, coding, script, listings, team specifications and program specification and all other materials relating to this computer software, whether in the form of magnetic media or otherwise and documents necessary to enable reasonably skilled programmers to maintain, amend, modify, develop and enhance the computer software or to develop an application without reference to any other person or document and whether in eye-readable or machine readable form;

1.13. "**Tilda Technologies**" shall mean Tilda Technologies (Pty) Ltd, with Registration Number: 2011/129694/07 a Company duly registered and incorporated in terms of the company laws of the Republic of South Africa with its' registered office at **10 OSCAR STREET, UNIT D6, PROSPUR BUSINESS PARK, HUGHES, BOKSBURG, 1459**;

1.14. "**Variation order**"   shall mean any written document signed by both parties amending the scope of work or the contract price.

2. INTERPRETATION:

In this Agreement, unless the context clearly indicates a contrary intention:

2.1. Any reference to a gender includes the other gender; any reference to natural persons includes legal persons and vice versa; and any reference to the singular includes the plural and vice versa;

2.2. The headings appearing in this Agreement are for reference purposes only and shall not affect the interpretation of this Agreement;

2.3. The expression "including" and its derivatives (such as "include" and "includes") means including but without limitation;

2.4. If any provision in a definition is a substantive provision, conferring rights or imposing obligations on any Party, notwithstanding that such provision is only contained in the relevant definition, effect shall be given thereto as if such provision is in the body of this Agreement;

2.5. Where any expression is defined within the context of any particular clause in this Agreement, the expression so defined, unless it is clear from that clause that the expression so defined has limited application to that clause, shall bear the meaning ascribed to it for all purposes of this Agreement notwithstanding that the expression has not been defined in clause **1**;

2.6. The rule of construction that, in the event of ambiguity, the contract shall be interpreted against the party responsible for the drafting thereof shall not apply in the interpretation of this Agreement;

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 within the Republic of South Africa in which case the last day shall be the next succeeding Business Day;

2.8. Where figures are referred to in numerals and words, if there is any conflict between the two, the words shall prevail;

2.9. Reference to any legislation is to such legislation as at the Signature Date and as amended or replaced from time to time;

2.10. The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement which of necessity must continue to have effect after such expiration or termination notwithstanding that the clauses themselves do not expressly provide for this;

2.11. Should any of the terms and conditions of this Agreement be held to be invalid, unlawful or unenforceable, such terms and conditions will be severable from the remaining terms and conditions which will continue to be valid and enforceable;

2.12. If any term or condition held to be invalid is capable of being amended to render it valid, the parties agree to negotiate an amendment to remove the invalidity;

2.13. In the event of any conflict, ambiguity or any inconsistency between the provisions contained in this Agreement and a Proposal Document, the provisions contained in the Agreement shall take precedence over such Proposal Document for the purposes of resolving such conflict or inconsistency unless it is clearly stated and is apparent from such Proposal Document that the intention of the Parties was to amend or deviate from the provisions of this Agreement;

3. APPOINTMENT:

3.1. The client hereby appoints Tilda Technologies as from the commencement date to execute the scope of works in accordance with the terms and conditions contained herein;

3.2. The parties record that Tilda Technologies and/or any member of the development team are appointed on a contract basis to undertake the scope of work as set out herein;

3.3. The parties further record that Tilda Technologies and/or any member of the development team is not an "employee" as referred to in the Labour Relations Act 66 of 1995 and Basic Conditions of Employment Act 75 of 1997 and as such neither Tilda Technologies nor any persons engaged by it shall be entitled to any of the benefits as contained in such legislation, save as provided for in terms of this Agreement;

3.4. Tilda Technologies acknowledges and agrees that it is engaged as an independent contractor to the Client and nothing contained in this Agreement shall render Tilda Technologies or any persons engaged by it, an employee, agent or partner of the client and Tilda Technologies and any persons engaged by it, shall not hold him/itself out as such;

3.5. Although Tilda Technologies shall be entitled to represent itself as a consultant to the Client when providing Services, the Client shall not be vicariously liable for any of the acts or omissions of Tilda Technologies;

3.6.   Tilda Technologies shall have the status of an independent contractor and shall be exclusively responsible for the payment of any statutory contributions (including UIF and SITE) and for the discharge of any income tax liability and value added tax payable in respect of any fees due to Tilda Technologies under this Agreement and shall pay any such contributions and taxes to the appropriate authorities;

4. <u>CONTRACT PRICE:</u>

4.1.   The contract price shall be the price as set out in the Proposal. It is recorded that the price as set out in the Proposal is a costs estimate and subject to variation. In the event of the costs estimate being increased, Tilda Technologies shall advise the client in writing who shall then be responsible to make payment of the increased price, in accordance with the terms hereof, to Tilda Technologies;

4.2.   In the event of it becoming apparent that the costs estimate will increase by **more than 25%** of the original cost price as set out herein, Tilda Technologies shall first obtain the client's written consent to continue with the scope of work, before continuing therewith;

4.3.   Should the client not consent to the increased costs, Tilda Technologies shall be entitled to payment in accordance with the proposal and the costs estimate for services rendered to date and shall thereafter have the right to elect whether it wishes to continue with the scope of works. Should it wish to continue with the scope of work, the price will remain as per the costs estimate however, should Tilda Technologies not wish to continue with the scope of work, Tilda Technologies shall give the client written notice thereof and thereafter Tilda Technologies shall cease to render any further services, Tilda Technologies shall be entitled to payment of the value of the work done to date of notification in accordance with the values as set out in the costs estimate;

4.4.   In the event of Tilda Technologies giving notice to the client of a price increase in writing, the client's written confirmation thereof shall constitute a variation order.

5. <u>PAYMENT OF THE CONTRACT PRICE:</u>

5.1.   The client shall be responsible to make payment of the price as set out in the Proposal, alternatively if no payment terms are contained in the Proposal, the client shall make payment of all invoices submitted by Tilda Technologies in accordance with this agreement within **thirty (30) days** from receipt of such invoice;

5.2.   In the event of the Proposal requiring a deposit to be paid by the client, Tilda Technologies shall have no obligation to commence executing the scope of work prior to receipt of the deposit;

5.3. In the event of any dispute arising between Tilda Technologies and the client relating to this contract, the client may not withhold payment of any invoices due and payable by the client as at date of the dispute. Such invoices may also not be offset against any amount of whatsoever nature which the client may claim Tilda Technologies owes the client.

6. COMMENCEMENT/COMPLETION:

6.1. Tilda Technologies shall commence with the execution of the scope of work on the commencement date, alternatively, where a deposit is payable, on receipt of the payment of the deposit;

6.2. Tilda Technologies shall continue diligently with the execution of the scope of work on all business days between the hours 08h30 to 13h00 and 14h00 to 16h30;

6.3. The client accepts that the completion date as set out in the Proposal is simply an estimate and the client shall have no claim against Tilda Technologies of whatsoever nature or be entitled to terminate this agreement in the event of Tilda Technologies not being able to execute the scope of work by the completion date, subject to the following conditions:-

6.3.1. Tilda Technologies has complied with its obligations as set out in sub clause **6.2** above;

6.3.2. Any delays are not occasioned due to the neglect by Tilda Technologies of its obligations in terms hereof or abandoning the scope of work, and/or;

6.3.3. The delays would nevertheless have occurred notwithstanding the reasonable application of Tilda Technologies to avoid such delays.

6.4. Tilda Technologies shall only be obliged to work on finalising the scope of work outside office hours in the event of the Proposal specifically stating so;

6.5. Unless the proposal specifically provides for support work after the completion of the scope of works, Tilda Technologies shall have no obligation to provide any subsequent support to the client;

6.6. In the event of the Proposal making provision for support work, Tilda Technologies will respond on receipt and acknowledgement of written notification, in which event Tilda Technologies will assign a person to deal with the request for support:-

6.6.1. By remotely accessing the client's server within 24 (twenty-four) hours, and;

6.6.2. If necessary, to provide on-site support within a period of 72 (seventy-two) hours from acknowledging receipt of the written notification;

7. THE TILDA GUARANTEE:

7.1.   Tilda Technologies Guarantees that the software solution that the client receives will be according to the agreed scope of work; Should we fail to meet this commitment, we will "Put in the hours" at our cost;

7.2.   The Tilda Technologies Guarantee is subject to the condition that the scope of works has been sufficiently detailed and agreed by Tilda Technologies and the client and is documented in the "Scope of Works" section of the proposal submitted to the client;

7.3.   Any Guarantee claim must be lodged against a specific scope of work item that is documented in the proposal but does not function according to the wording in the scope of works;

7.4.   The Tilda Technologies Guarantee will not be valid in any case where the disputed functionality is not documented in the scope of works;

7.5.   The Tilda Technologies Guarantee is valid for three (3) months after completion of the scope of works by Tilda Technologies;

8. DEVELOPMENT TEAM:

8.1.   The development team shall comprise those individuals as set out in the Proposal;

8.2.   Tilda Technologies shall endeavour to retain the services of each member of the development team until final completion of the scope of works.   However, under circumstances where any member of the development team decides, on his own volition to leave the employ of Tilda Technologies, Tilda Technologies' obligation shall be limited to simply replacing the said member with a member competent to continue the execution of the scope of the works. Tilda Technologies shall not be liable to the client in respect of any damages which the client may claim arising out of the delay occasioned by the aforegoing;

8.3.   Notwithstanding the aforegoing, in the event of Tilda Technologies being entitled to dismiss any of the development team member/s for reasons recognised as lawful in terms of the Labour Relations Act, the provisions of sub-clause **7.2** shall apply mutatis mutandis;

8.4.   The client shall be entitled on written request to the curriculum vitae of each of the development team members setting out the experience and qualifications of each member;

8.5.   In the event of the client not being satisfied, based on reasonable and sustainable grounds, with the experience and/or qualification of any of the development team members, the client may give notice to Tilda Technologies in which event Tilda Technologies shall be entitled to substitute such development team member.   In the event of Tilda Technologies being unable to substitute such a development team member or satisfy the client on reasonable grounds that it will still be able to execute the scope of works, Tilda Technologies may cancel the agreement. On cancellation if Tilda Technologies has not commenced executing the scope of works, the parties shall have no claim against one another of whatsoever nature arising out of the cancellation. Should

Tilda Technologies have commenced work, Tilda Technologies shall be entitled to payment for the services rendered to date of such cancellation in accordance with the agreed price;

8.6. Each member of the development team shall when using or accessing the client's site, or where Tilda Technologies acts in the capacity as sub-contractor accessing the principal's site or the technical infrastructure of any of the facilities of the client or the principal, comply with the all the reasonable policies and procedures imposed by the client and/or the principal relating to the site, the technical infrastructure and such facilities. Subject to the client and/or the principal (as the case may be) making available to the development team member its work place policies, the team member undertakes to adhere to such work place policies;

8.7. The client shall ensure that Tilda Technologies and/or any development team member shall be provided with a work and/or project area that is conducive to the development work being done and the scope of work being executed. The client shall ensure that Tilda Technologies and/or the development team member have access to the relevant hardware and software to enable them to execute the scope of work. Each development team member shall also be entitled to the benefits as set out in the Basic Conditions of Employment Act relating to ablution facilities, lunch/tea breaks, safety and working environment;

8.8. In the event of the client having to train any of the staff/officers/representatives/employees of Tilda Technologies in respect of the client's computer system to enable Tilda Technologies to carry out the scope of work, unless it is specifically provided to the contrary in the Proposal, Tilda Technologies shall have no further obligation to the client relating to the scope of work after the completion thereof (notwithstanding the cost and/or duration of such training) and by accepting such training Tilda Technologies does not make any representation or create any expectation to the effect that it will subsequently provide support to the client, unless provided to the contrary in the Proposal, the client shall be responsible for all costs relating to such training.

9. <u>INTELLECTUAL PROPERTY/COPYRIGHT/SOURCE CODE:</u>

Unless provided to the contrary in the Proposal:-

9.1. The source code relating to any product developed for and on behalf of the client by Tilda Technologies will belong to Tilda Technologies, but a copy of the source code will be provided to the client, who shall be responsible for the safe keeping of the source code, including any backups thereof. The client furthermore undertakes not to utilise the program so developed or any source code commercially, other than directly for its own purposes and the client may not sell the program/source code to any outside third party for commercial gain;

9.2. Any routines, sub-routines, software, programs and the like utilised by Tilda Technologies in producing/completing the scope of works, will remain the sole and exclusive property of Tilda Technologies and the client shall have no rights whatsoever to the aforegoing and may not exploit same in any way whatsoever.

10. <u>WARRANTIES/WAIVERS/INDEMNITIES:</u>

10.1. Tilda Technologies undertakes to execute the scope of works with due diligence and due care and attention. Notwithstanding the aforegoing, the client hereby waives any claim of whatsoever nature and howsoever arising which the client may have against Tilda Technologies based on any allegation that Tilda Technologies has failed to fulfil its duties properly in terms of this agreement;

10.2. The client furthermore, subject to the provisions of sub-clause **9.1** above, indemnifies Tilda Technologies against any loss or damages of whatsoever nature and howsoever arising which may be made by the client and/or any other party relating to the execution of the scope of work by Tilda Technologies or the presence of Tilda Technologies and/or members of the development team and/or officers/employers of Tilda Technologies on the premises of the client or, where Tilda Technologies acts in a sub-contracting capacity towards the client, on the premises of the principal of the client;

10.3. The parties agree that the client shall bear all the risks associated with the execution of the scope of works and hereby indemnifies Tilda Technologies, its members, employees and agents against any loss or damage of any nature whatsoever suffered by any person including any member, employee and/or agent of the client resulting from or occasioned by the rendering of the services, except for instances of gross negligence by Tilda Technologies. Without derogating from the generality of the aforegoing, the client indemnifies and holds Tilda Technologies, its members, employees and agents harmless against:

10.3.1. Any damages suffered by the client, its delegates, guests or any third party, including but without limiting the generality of the aforegoing, damages arising from any failure by Tilda Technologies to fulfil any of its obligations in terms of this agreement (excluding intentional failure and gross negligence) and;

10.3.2. Any loss suffered by the client, its delegates, guests or any third party arising from whatsoever cause, including but not limited to personal injury, death of any person, loss of or damages to any items of whatsoever nature , direct damages, indirect damages or consequential damages;

10.4. In the event of Tilda Technologies being held liable for damages to the client and/or any third party, notwithstanding the waivers and indemnities contained herein and Tilda Technologies has to pay damages such damages shall be limited to an amount not exceeding the price (as amended) as contained herein.

11. CONFIDENTIALITY:

11.1. Tilda Technologies acknowledges that in executing the scope of works, Tilda Technologies shall have access, directly or indirectly, to material and information confidential to the client, be it of strategic, operational, financial or corporate nature;

11.2. During Tilda Technologies' appointment and thereafter, Tilda Technologies will not divulge to any person any trade secret or any other confidential information concerning the business affairs of the client and/or clients of the client, which may have come to Tilda Technologies' knowledge during the appointment and the execution of works (except to the extent required by law). The confidential information shall be deemed to include, but shall not be limited to, trade secrets, products, new developments, business methods, techniques, discoveries, inventions, devices, improvements, machines, processes, identity of clients and customers and computer programs;

11.3. Tilda Technologies furthermore undertakes that it will not utilise for itself or on behalf of any third party, any such information for personal or financial gain;

11.4. Tilda Technologies shall not discuss or disclose to any person information regarding the contract price, the scope of works other than what is necessary to allow Tilda Technologies to fulfil its obligations in terms of this agreement. Disclosure may be made to employees/contractors and/or representatives of the client and/or Tilda Technologies insofar as such information is relevant to enable Tilda Technologies to perform its functions in executing the scope of works;

11.5. Tilda Technologies undertakes to ensure that each and every employee and/or sub-contractor in their employment shall agree to be bound by the Confidentiality set out in this agreement, binding them in their personal capacity;

11.6. The obligation in this clause shall survive the termination of this agreement.

12. BREACH:

12.1. In the event of either party ("**the defaulting party**") committing any breach of this agreement and failing to remedy such breach within **seven (7) days** of date of written notice given by the other party ("**the aggrieved party**") to the defaulting party, the aggrieved party shall without prejudice to any other rights which it may have either in terms of this agreement or at law be entitled:-

    12.1.1. To enforce the terms of this agreement, or;

    12.1.2. To cancel this agreement;

    12.1.3. And in either event to claim such damages from the defaulting party as it may have sustained by reason of such breach and to which it is entitled in law.

12.2. On termination of this agreement by either party, the parties shall forthwith return to the other, any proprietary or confidential information in one party's possession belonging to the other.

13. APPLICABLE LAW AND JURISDICTION:

13.1. The parties agree to the Jurisdiction of the Magistrate's Court having jurisdiction, as the case may be, notwithstanding that the amount in issue may exceed the monetary Jurisdiction of such court. The parties however, reserve the right at their discretion to institute any action against the other in any Provincial or Local Division of the High Court of South Africa;

13.2. This contract shall be governed by the laws of the Republic of South Africa.

14. DOMICILIA AND NOTICES:

For the purposes of the giving of notices and the serving of legal process in terms of this agreement, each of the parties chooses as their respective *domicilium citandi et executandi* ("**Domicilium**"):

14.1. The Client chooses as its *domicilium* the address as stated on the Proposal and to which the Proposal has been addressed;

14.2. **TILDA TECHNOLOGIES:**

Physical Address:	**10 OSCAR STREET, UNIT D6, PROSPUR BUSINESS PARK, HUGHES, BOKSBURG, 1459**
Fax Number:	**(011) 823 6686**
Email Address:	**info@tildatech.co.za**
Attention:	**Brett Robertson**

14.3. Any party may at any time, by providing the other party with **7 (Seven) days** written notice, change its' *domicilium* to any other address in South Africa which is not a post office box or post restante;

14.4. Any notice given in connection with this agreement shall, save where a particular form of notice is stipulated, be delivered to the *domicilium* chosen by the party:

    14.4.1. By hand;

    14.4.2. Sent by courier;

    14.4.3. Sent by fax (if a fax number has been provided);

    14.4.4. Sent by electronic mail (if an email address has been provided).

14.5. A notice given as set out above shall be deemed to have been duly given (unless the disputing party proves the contrary):

    14.5.1. If delivered by hand, on the date of delivery;

    14.5.2. If sent by courier, on the date of delivery by the courier service concerned;

    14.5.3. If sent by fax, on the first Business day after the date of transmission;

    14.5.4. If sent by electronic mail, on the first Business day after the date of transmission.

14.6. Any written notice actually received by a party shall be valid, notwithstanding that it may not have been given in accordance with the preceding provisions of this clause.

15. <u>GENERAL:</u>

15.1. This agreement together with any variation order constitutes the entire agreement between the parties. No variation, amendment, modification or consensual cancellation of this agreement shall be of any force or effect unless reduced to writing and signed by the duly authorised representatives of each of the parties;

15.2. Neither party to this agreement has given any warranty or made any representation to the other party, other than any warranty or representation which may be expressly set out in this agreement;

15.3. No waiver by Tilda Technologies of any breach, failure or default in performance by the client, and no failure, refusal or neglect by Tilda Technologies to express any right hereunder or insist upon strict compliance with or performance of the client's obligations under this agreement, shall constitute a waiver of the provisions of this agreement and Tilda Technologies may at the time require strict compliance with the provisions of this agreement;

15.4. Should Tilda Technologies institute action against the client pursuant to a breach by the client of this agreement, then without prejudice to any other rights which Tilda Technologies may have, Tilda Technologies may recover from the client all legal costs incurred by it, including attorney and own client charges, tracing fees and such collection commission as Tilda Technologies is obliged to pay to its attorneys;

15.5. No cession, delegation or any other transfer of the rights or obligations of the client in terms of, or on account of this agreement will be valid unless the prior written consent of Tilda Technologies has been obtained;

15.6. A certificate signed by a director or manager of Tilda Technologies shall be prima facie proof of the client's indebtedness to Tilda Technologies in terms of this agreement and shall be sufficient proof to obtain provisional sentence, summary judgment and/or default judgment against the client;

Signature: _____

Capacity: _____

Date of acceptance: _____

Name in print: _____