

# Terms of Use Agreement

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## Platform As A Service Agreement

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BOOLIER PLATE - AGREEMENT TEMPLATE

Dated: @Date

between

DotParse PTY LTD

and

@customerOranizationName

**THIS AGREEMENT is dated @Date**

### Parties

**DotParse (PTY) LIMITED** and registered in the Republic of South Africa with company number **2017/147347/07** whose registered office is at **Bronze Building, Nooitgedacht Village Estate, Koelenhof, Stellenbosch, Western Cape** ("Supplier").

@customerOranizationName and registered in the Republic of South Africa with company number @customerOranzationRegNo whose registered office is at @customerPhysicalAddress,@customerPhysicalAddressTown, @customerPhysicalAddressTown ("Customer").

### Background

1. DotParse has developed and operates applications and software platforms which it makes available to subscribers, for the purpose of this document it shall be referred to as ("the DotParse Services").
2. The Customer wishes to use the DotParse Service in its business operations.
3. DotParse has agreed to provide and the Customer has agreed to take and pay for the Service subject to the terms and conditions of this Agreement.

### Agreed terms

#### 1. Interpretation

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

**DotParse:** means DotParse (Pty) Limited, a company registered in the Republic of South Africa with registration number 2017/147347/07 which is the proprietary owner of the DotParse Services;

**Agreement:** this service subscription agreement between DotParse and the Customer and any schedules or annexures, as well as any duly executed amendments hereto.

**API:** application programme interface.

**Authorised Users:** those employees, agents and independent contractors of the Customer who

are authorised by the Customer to use the Services and the Documentation, as further described in clause 2.3(d), and, for the avoidance of doubt, shall not include any customers of the Customer who access the Software as part of the Customer's business.

**BRS:** the Business Requirements Schedule, as per Schedule 3;

**Business Day:** a day other than a Saturday, Sunday or public holiday in the Republic of South Africa proclaimed as such under the Public Holidays Act 36 of 1994.

**Change of Control:** the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and controls, controlled and the expression change of control shall be construed accordingly.

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

**Customer Data:** the data inputted/uploaded by the Customer, Authorised Users, End User or DotParse on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services, including Personal information about the Authorised Users and the End Users.

**Effective Date:** the date of this Agreement (see cover page).

**End Users:** the customers of the Customer that may select the Customer solutions/services via the DotParse Services.

**EULA:** End User License Agreement to be made available to all Authorised Users from time to time. Current version attached hereto under Schedule 2.

**Initial Subscription Term:** the initial term of this Agreement as set out in the Subscription Fees

**Normal Business Hours:** 8.00 am to 5.00 pm local RSA time, each Business Day.

**Operator:** as defined in the POPI Act;

**Pattern Data:** non-personally identifiable information, data and reports derived from or compiled through the DotParse Service, including but not limited to demographics data, mobility patterns, location data and trend data such as aggregated data and statistics indicating frequency of use and popularity of the Services. For greater certainty, Pattern Data is data that does not identify a specific Authorised User or End User and is data which does not relate to a specific customer's business (including data relating to a specific customer's locations that receive the Services).

Personal Information: personal information as defined under the POPI Act;

**POPI Act:** the Protection of Personal Information Act 4 of 2013.

**Privacy Policy:** DotParse's policy for applying privacy and data protection in relation to the Customer Data as made available at [www.DotParse.com](http://www.DotParse.com) or such other website address as may be notified to the Customer from time to time. DotParse in its sole discretion may amend such document from time to time.

**Processing /Process:** as defined under the POPI Act.

**Renewal Period:** the period described in clause 15.1.

**Responsible Party:** as defined in the POPI Act;

**DotParse Services:** means the core DotParse Platform as a Service (PaaS) offering available on a subscription-basis through the DotParse proprietary PaaS technology as per the terms of this Agreement. The DotParse Services includes access to free modules and paid modules for customers experience management, workflow management, content management, API integration

and other features and functionality described in the Documentation and made available by DotParse from time to time;

**Services:** means collectively the “DotParse Service” and the “Support Services”;

**Service Levels:** the service levels as stated under Schedule 3 and as agreed to from time to time between the Parties;

**Software:** the online software applications APIs and platform software provided by DotParse as part of the Services.

**Subscription Fees:** the subscription fees payable by the Customer to DotParse for the Active Connection Subscriptions, as set out in paragraph 1 of Schedule 1.

**Subscription Term:** has the meaning given in clause 15.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

**Support Services:** means any services and features provided by DotParse in support of or supplemental to the DotParse Service as further described in the Support Services Policy;

**Support Services Policy:** DotParse's policy for providing support in relation to the Services as made available at [www.DotParse.com/support](http://www.DotParse.com/support) or such other website address as may be notified to the Customer from time to time. DotParse in its sole discretion may amend such documents from time to time.

**User Subscriptions:** the user subscriptions purchased by the Customer pursuant to clause 10.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with this Agreement.

**Virus:** anything or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

2. Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
3. A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) [and that person's legal and personal representatives, successors or permitted assigns].
4. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
7. A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.
8. A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.

9. A reference to writing or written includes e-mail.
10. References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.
11. The rule of interpretation that a written agreement shall be interpreted against the party responsible for the drafting or preparation of that agreement shall not apply.

## **2. User subscriptions & Grant of Rights**

1. Subject to the Customer purchasing the User Subscriptions in accordance with clause 3.3 and clause 10.1, the restrictions set out in this clause 2 and the other terms and conditions of this Agreement, DotParse hereby grants to the Customer a non-exclusive, non-transferable and revocable license to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.
2. On creation of the Customer's account with DotParse, DotParse will provide the Customer with its own account, under which account the Customer will be able to create its own login details enabling direct access to its Services for multiple levels of access by Customer's Authorised Users.
3. In relation to the Authorised Users, the Customer undertakes that:
  1. the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time. However, in the event that such User Subscriptions are purchased in advance by the Customer, DotParse acknowledges and accepts that the Customer may exceed the number of User Subscriptions purchased in advance due to the growth of the Customer's business and, in such a case, the Parties will in good faith agree upon and arrange for the backdating of any amounts owing in respect of such extra User Subscriptions;
  2. it will not allow any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;
  3. each Authorised User shall keep a secure password for his use of the Services and Documentation, that such password shall be changed no less frequently than monthly and that each Authorised User shall keep his password confidential;
  4. it shall maintain a written, up to date list of current Authorised Users and provide such list to DotParse within 5 (five) Business Days of DotParse's written request at any time or times;
  5. it shall permit DotParse to audit the Services in order to establish the name and password of each Authorised User. Such audit may be conducted no more than once per quarter, at DotParse's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to interfere with the Customer's normal conduct of business;
  6. if any of the audits referred to in clause 2.3(e) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to DotParse's other rights, the Customer shall promptly disable such passwords and DotParse shall not issue any new passwords to any such individual; and

7. if any of the audits referred to in clause 2.3(e) reveal that the Customer has underpaid Subscription Fees to DotParse and the Customer can not submit within 5 (five) days from receipt of said audit report to DotParse any proof that the audit is not accurate, then without prejudice to DotParse's other rights, the Customer shall pay to DotParse an amount equal to such underpayment as calculated in accordance with the prices set out in paragraph 1 of Schedule 1 within [10] Business Days of the date of the relevant audit.

4. In relation to the End Users:

1. Each End User shall be allowed access to the DotParse Services subsequent to written request to DotParse in the format as prescribed from time to time via DotParse or directly with DotParse login facility made available to the Customer and the End Users and acceptance of said request by DotParse;
2. Each End User shall be obliged to agree to the DotParse Services EULA prior to any utilisation of the DotParse Services, which terms and conditions shall not limit their rights as allowed under law.

5. Lawful purposes

1. The Customer will at any and all times meet the Customer obligations in this Agreement, as well as any and all laws, regulations and policies that may apply to the use of the Services in the Customer country, including applicable laws and rules that govern the Customer services in a specific industry and laws relating to collection and use of personal information.
2. The Customer agrees to use the Services solely for lawful purposes only. In this respect the Customer will take reasonable efforts not to allow a third party to, without limitation (i) use the Services to manage any illegal operations or causes damage or injury to any person or property, (ii) use any type of spider, virus, worm, trojan-horse, time bomb or any other codes or instructions that are designed to distort, delete, damage or disassemble the technology underlying the Services (including proprietary software, (iii) send any unsolicited commercial communication not permitted by applicable law; (iv) infringe the rights of any party, (v) endanger any part of any system or Internet connection of DotParse or any third party through the Customer use of the DotParse Service.
3. and DotParse reserves the right, without liability or prejudice to its other rights to the Customer, on reasonable notice to disable the Customer's access (including any Authorised User's access) to any material that breaches the provisions of this clause.

6. The Customer shall further take reasonable steps not to allow any third party to, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:

1. attempt to copy (directly or indirectly), modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
2. attempt to decompile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
3. access all or any part of the DotParse Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or

4. use the Services and/or Documentation to provide a service bureau or services to third parties in competition with DotParse; or
  5. subject to clause 25.5, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the DotParse Services and/or Documentation available to any third party except the Authorised Users and the End Users, or
  6. attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2;
  7. remove any proprietary notices, labels, or marks from the DotParse Services or modify, alter, or deface any of the trademarks, servicemarks, or other intellectual property made available through the Services nor use any of the foregoing except for the specific purpose for which such intellectual property is made available to the Customer;
  8. circumvent any user limits or other use restrictions that are built into the Services.
7. **Third Party Software.** The Software underlying the DotParse Service may incorporate and embed software and other technology owned and controlled by third parties. Any such third party software or technology that is incorporated in the Software falls under the scope of this Agreement. Such third party software is licensed; not sold and will be provided to the Customer on the license terms of this Agreement unless additional or separate license terms apply as indicated at the time of account access.
8. The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the DotParse Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify DotParse.

### **3 Additional user subscriptions**

1. Subject to clause 3.2 and clause 3.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in paragraph 1 of Schedule 1 and DotParse shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this Agreement.
2. If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify DotParse in writing. DotParse shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request within 5 (five) days, with such approval not to be unreasonably withheld.
3. If DotParse approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within 30 (thirty) days of the date of DotParse's invoice, pay to DotParse the relevant fees for such additional User Subscriptions as set out in paragraph 2 of Schedule 1 and, if such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

### **4 SERVICES**

1. DotParse shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this Agreement against the Service

Levels.

2. DotParse shall make the Services available 24 hours a day, seven days a week, except for:
  1. planned maintenance carried out during the maintenance window of 10.00 pm to 3.00 am South African time. DotParse shall where reasonably possible notify the Customer in writing 24 (twenty four) hours prior to said planned maintenance; and
  2. unscheduled maintenance performed outside Normal Business Hours, provided that DotParse has used reasonable endeavours to give the Customer at least 6 (six) Normal Business Hours' notice in advance, but, in any event, as soon as DotParse becomes aware of the need for the unscheduled maintenance; or
  3. unavailability caused by a force majeure event (see further section 17).
3. DotParse will, as part of the Services and at no additional cost to the Customer, provide the Customer the Services against the Service Levels. DotParse may amend the Service Levels in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at DotParse's then current rates. New or amended service levels shall be confirmed in writing and be added as an addendum to this Agreement.
4. Incremental Services. From time to time, additional Supplier or third-party functionality (such functionality being deemed not to be part of the DotParse Service) may be made available by DotParse to Customer (in the case of third-party functionality, such functionality being made available on a pass-through basis pursuant to terms specified by the third-party provider of such functionality), and which additional functionality may be purchased by Customer for additional fees in accordance with any additional terms and conditions specified by DotParse.
5. Changes to the Software or other technology. DotParse may alter, update or upgrade the Software or any other technology from time to time. Updates and upgrades to core framework and plug-ins will be processed automatically.
6. Service Limitations. The DotParse Service is a back-up service in its cloud components however not on site deployments and accordingly DotParse will not be responsible for any lost data or functionality due to server crashes or other events outside of DotParse's reasonable control.

## **5 SECURITY**

1. Appropriate and reasonable security measurements shall be applied by DotParse to protect the:
  1. User identity, i.e. unique User profiles that are password protected. It is the responsibility of each Authorised User to protect his/her own username and password
  2. Customer Data – see clause below;
  3. communications over the Software and networks under the control of DotParse and/or DotParse, including but not limited to appropriate encryption for communication with the Customer mobile applications and third-party platforms.
2. Changes and deletions on the Software during the provision of the Services will be time stamped and done by administrators only and will be recorded for audit purposes.
3. The Customer shall use commercially reasonable efforts to prevent unauthorized access to, or use of, the DotParse Service and notify DotParse promptly of any such unauthorized access or use.

## 6 OPTIONAL SERVICES

Customer may request, in writing, optional services (“Optional Services”). Optional Services may include extended consulting services, customisation, additional integration services, training, business analysis and additional professional services. Optional Services are subject to the mutually agreed terms, conditions and prices for such Optional Service at that time.

## 7 CUSTOMER DATA

1. The Customer owns and retains ownership of all Customer Data that the Customer provides, stores and processes through the DotParse Service and shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data;
2. Where applicable, as described in Schedule 1, part 3 on whose responsibility the storage of relevant data; DotParse shall follow its archiving procedures for Customer Data as set out in clause above. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for DotParse to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by DotParse in accordance with DotParse's archiving procedures. DotParse shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by DotParse to perform services related to Customer Data maintenance and back-up).
3. The Customer hereby grant DotParse a worldwide, royalty-free, and non-exclusive license during the term of the Customer's subscription to access Customer Data in order to provide the Services, including storing, hosting and management of such content (“Content License”) provided that DotParse complies with the provisions of the POPI Act in doing so.
4. The Customer understand that DotParse, in performing the required technical steps to provide the Services, may
  1. transmit or distribute Customer Data over various public or private networks and in various media; and
  2. make such changes to Customer Data as are necessary to conform and adapt that Customer Data to the technical requirements of connecting networks, devices, Services or media.
5. The Customer confirms and warrants to DotParse that the Customer has all the rights, power and authority necessary to grant the above Content License and that use of the Content in the manner contemplated will not breach the rights of any third party.
6. The Customer hereby grants DotParse a right, during the term of the Customer's subscription, to create Pattern Data in order to enhance and improve the Services.
7. DotParse shall, in providing the Services, comply with its Privacy Policy, available to the Customer on written request and where there is any conflict between the Privacy Policy and the POPI Act, the latter will prevail.
8. If DotParse processes any Personal Information on the Customer's behalf when performing its obligations under this Agreement, the parties record their intention that the Customer shall be the Responsible Party and DotParse shall be an Operator and in any such case:



1. the Customer acknowledges and agrees that the Personal Information may be transferred or stored outside the Republic of South Africa or the country where the Customer and the Authorised Users or End Users are located in order to carry out the Services and DotParse's other obligations under this Agreement;
2. the Customer shall ensure that the Customer is entitled to transfer the relevant Personal Information to DotParse and their selected service providers so that DotParse may lawfully use, process and transfer the Personal Information in accordance with the POPI Act and this Agreement on the Customer's behalf;
3. although DotParse will bring to the attention of the Authorised Users and End Users its privacy Policy, the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation including but not limited to the POPI Act;
4. DotParse shall process and ensure that all third parties participating in the provision of the Services shall process the Personal Information only in accordance with the terms of the POPI Act, this Agreement (including the Privacy Policy) and any lawful instructions reasonably given by the Customer from time to time; and
5. each party shall (and ensure that its service providers) take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal information or its accidental loss, destruction or damage.
6. DotParse shall notify the Customer immediately in writing if there are reasonable grounds to believe that the personal information has been accessed or acquired by any unauthorised person or that there has been any loss or corruption of personal information.
7. DotParse agrees to assist the Customer, where such information has been used, lost, corrupted or disclosed in remedying such unauthorised use, loss, corruption or disclosure.

## **8 SUPPLIERS OBLIGATIONS AND WARRANTIES**

1. DotParse represents and warrants that during the Term:
  1. it will provide the Service in a manner consistent with general industry standards applicable to the provision thereof and with reasonable skill and care;
  2. the DotParse Service shall perform in accordance with the Documentation and shall be fit for the use to which it is contemplated it will be put;
  3. It will not do or permit to be done or omit or permit the omission of anything in relation to any element of the DotParse Service which may reasonably be expected to damage, or materially interfere, in any way whatsoever, with the proper and normal operation of Customer's electronic communications network.
  4. It will comply with all applicable laws and regulations with respect of its activities under this Agreement; and
  5. It shall not infringe the rights of any third party
2. The undertaking at clause 8.1(e) shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to DotParse's instructions, or modification or alteration of

the Services by any party other than DotParse or DotParse's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Notwithstanding the foregoing, DotParse:

1. does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
2. is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
3. This Agreement shall not prevent DotParse from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.
4. DotParse warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.
5. In addition to all other remedies available to the Customer, should DotParse fail in any respect to comply with the warranties set out above, DotParse hereby agrees, subject to clause below, to indemnify the Customer completely and hold it fully harmless against any loss, damage or expense (including reasonable legal fees) sustained or incurred directly or indirectly as a result of such failure.

## **9 CUSTOMERS OBLIGATIONS**

1. The Customer shall use commercially reasonable efforts to:
  1. provide DotParse with:
    1. all necessary co-operation in relation to this Agreement; and
    2. all necessary access to such information as may be required by DotParse;in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
  2. comply with all applicable laws and regulations with respect to its activities under this Agreement;
  3. carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, DotParse may adjust any agreed timetable or delivery schedule as reasonably necessary;
  4. ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
  5. ensure that its network and systems comply with the relevant specifications provided by DotParse from time to time; and

6. be solely responsible for, to the extent same is within its control:
  1. procuring and maintaining its network connections and telecommunications links from its systems to DotParse's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet;
  2. Determining what Customer Data must be uploaded and the Customer policies and/or guidelines made available to Authorised Users to utilise the Services for the benefit of the Customer.

## 10 CHARGES AND PAYMENTS

1. The Customer shall pay the Subscription Fees to DotParse for the User Subscriptions in accordance with this clause 10 and the **Subscription Fees**
2. The Customer shall on the Effective Date provide to DotParse valid, up-to-date and complete contact and billing details and, if the Customer provides:
  1. its approved purchase order information to DotParse, DotParse shall invoice the Customer:
    1. on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
    2. subject to clause 15.1, at least 30 days prior to each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period,
    3. and the Customer shall pay each invoice within 30 (thirty) days after the receipt of such invoice.
  2. If DotParse has not received payment within 20 (twenty) days after the due date, and without prejudice to any other rights and remedies of DotParse:
    1. DotParse may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and DotParse shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
    2. interest shall be calculated on a monthly basis on such due amounts at an annual rate equal to 3 (three) % over the then current base lending rate of DotParse's commercial bankers from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
3. All amounts and fees stated or referred to in this Agreement:
  1. shall be payable in South African Rand;
  2. are, non-cancellable and non-refundable;
  3. are exclusive of value added tax, which shall be added to DotParse's invoice(s) at the appropriate rate.
4. If, at any time whilst using the Services, the Customer exceeds the amount of disk storage space specified in the Documentation, DotParse shall charge the Customer, and the Customer shall pay, DotParse's then current excess data storage fees. DotParse's excess data storage fees current as at the Effective Date are set out **Subscription Fees**.

5. The agreed Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 3.3 and/or the excess storage fees payable pursuant to clause 10.5 will escalate annually at the annual anniversary date of the Effective Date by the CPI rate as published by Statistics South Africa from time to time, unless the parties agree otherwise in writing at least 30 (thirty) days prior to the anniversary date of the Effective Date.

## **11 PROPRIETARY RIGHTS**

1. Except for the rights and license granted in this Agreement, the Customer acknowledges and agrees that any and all intellectual property rights to or arising from the Software and technology and Documentation used to provide the Service, including Pattern Data, are and shall remain the exclusive property of DotParse (but not limited to). Nothing in this Agreement is intended to transfer any such intellectual property rights to, or to vest any such intellectual property rights in, the Customer, Authorised User or End User. The Customer, Authorised Users and End users are only entitled to the limited use of the intellectual property rights granted to them in this Agreement and subsequent EULA. The Customer will not take any action to jeopardise, limit or interfere with DotParse's or its licensor's intellectual property rights. Any unauthorised use of said intellectual property rights is a violation of this Agreement as well as a violation of intellectual property laws and other common law rights, including without limitation patent laws, copyright laws and trademark laws.
2. None of the intellectual property rights in the Customer's trademarks and brands shall be used by DotParse for any purpose without the Customer's prior written consent.
3. All intellectual property rights belonging to the Customer prior to the execution of this Agreement shall remain vested in the Customer and nothing contained in this agreement is intended to transfer any such intellectual property rights to, or to vest any such intellectual property rights in, DotParse.
4. DotParse shall at all times whether during or after termination or expiry of this Agreement indemnify and keep the Customer indemnified against all losses, claims, damages, liabilities, additional licence fees and expenses (including all reasonable legal fees) incurred by or awarded against the Customer or which are agreed by the Customer to be paid by way of settlement or compromise arising out of or in relation to any infringement or alleged infringement of any Intellectual Property Rights of any Third Party which is suffered by the Customer as a result of the Customer's receipt of the DotParse Services or its use or possession thereof.
5. API License. Subject to the terms and conditions of this Agreement, DotParse grants the Customer a non-exclusive, non-transferable license for the Customer use of DotParse's and/or its licensor's APIs to develop software applications that will interface with the Customer's platform ("Applications"). The Customer acknowledges that the APIs contain confidential information and know-how and the Customer shall not use such confidential information or know-how except to the extent necessary to exercise the rights granted to the Customer hereunder. If the Customer uses open source software in conjunction with the APIs, the Customer must ensure that the Customer use of such open source software does not: (i) create, or purport to create, obligations on DotParse with respect to the Software; or (ii) grant, or purport to grant, to any third party any rights to or immunities under DotParse's intellectual property or proprietary rights in the APIs.

6. API License Restrictions. For greater certainty, the Customer shall not, except to the extent permitted under clause 11.5:
1. disclose any performance, benchmarking, or feature-related information about the APIs;
  2. distribute, lease, rent, grant a security interest in, assign, or otherwise transfer the APIs;
  3. create a subset, superset or other derivative work of the APIs;
  4. disclose, transfer or otherwise provide to any third party any portion of the APIs or confidential information or know-how, except as explicitly permitted herein.
  5. develop an Application using the APIs and any open source software that results in any program file(s) that contain code from both the APIs and any open source software (including without limitation libraries), if the open source software is licensed under a license that requires any "modifications" be made freely available. The Customer also may not combine the APIs with programs licensed under the GNU General Public License ("GPL") in any manner that could cause, or could be interpreted or asserted to cause, the APIs or any modifications thereto to become subject to the terms of the GPL;
  6. violate any law, statute, ordinance, contract or regulations;
  7. include any viruses, Trojan horses, worms time bombs or other computer programming routines that may (or are intended to) damage, interfere with or expropriate any system or data.
7. Application Guidelines. Any Application created using the API must be submitted for review by DotParse prior to being made available for use with the DotParse Service. DotParse, reserves the right to restrict use of any Application on the DotParse Service which does not meet DotParse's approval at any time.
8. API Title. All right, title, and interest (including all intellectual property rights) in, to and under the APIs (including all copies thereof) shall remain with DotParse, alternatively its licensors. The Customer shall retain all ownership rights (including all intellectual property rights) in any Applications that the Customer creates and utilizes with the APIs and DotParse Service, except that all ownership rights (including all intellectual property rights) to any element of the APIs incorporated into or embodied in the Customer's Applications shall remain with DotParse and its licensors. Title to any custom applications created jointly with DotParse will be agreed in a separate statement of work and professional services agreement.

## **12 CONFIDENTIALITY**

1. Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:
  1. is or becomes publicly known other than through any act or omission of the receiving party;
  2. was in the other party's lawful possession before the disclosure;
  3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
  4. is independently developed by the receiving party, which independent development can be shown by written evidence; or

5. is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
2. Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
3. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
4. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
5. The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute DotParse's Confidential Information.
6. DotParse acknowledges that the Customer Data is the Confidential Information of the Customer.
7. This clause 12 shall survive termination of this Agreement, however arising.
8. No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

### **13 INDEMNITY**

1. The Customer shall defend, indemnify and hold harmless DotParse (including its officers, directors, employees, affiliates, licensors, suppliers and subcontractors), against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's and its Authorised Users' misuse of the Services and/or Documentation, violation or breach of any term of this Agreement or any applicable law or regulation, whether or not reference herein, or violation of any rights of any third party, provided that:
  1. the Customer is given prompt notice of any such claim;
  2. DotParse provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
  3. the Customer is given sole authority to defend or settle the claim.
2. DotParse shall defend, indemnify and hold harmless the Customer, its officers, directors and employees against any claim, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) made or brought against the Customer by a third party alleging that the use of the Services as permitted hereunder infringes or misappropriates the intellectual property rights of a third party, and shall indemnify the Customer for any damages finally awarded against, and for reasonable attorney's fees incurred by, the Customer in connection with any such claim, provided that:
  1. DotParse is given prompt notice of any such claim;

2. the Customer provides reasonable co-operation to DotParse in the defence and settlement of such claim, at DotParse's expense; and
  3. DotParse is given sole authority to defend or settle the claim.
3. In the defence or settlement of any claim, DotParse may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 20 (twenty) Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
  4. In no event shall DotParse, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
    1. a modification of the Services or Documentation by anyone other than DotParse; or
    2. the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by DotParse; or
    3. the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from DotParse or any appropriate authority.

#### **14 LIMITATION OF LIABILITY**

1. This clause 14 sets out the entire financial liability of the parties (including any liability for the acts or omissions of their employees, agents and sub-contractors):
  1. arising under or in connection with this Agreement;
  2. in respect of any use made by the Customer of the Services and Documentation or any part of them; and
  3. in respect of any representation, statement or delictual act or omission (including negligence) arising under or in connection with this Agreement.
2. Except as expressly and specifically provided in this Agreement the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. DotParse shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to DotParse by the Customer in connection with the Services, or any actions taken by DotParse at the Customer's direction;
3. Nothing in this Agreement excludes the liability of either party for:
  1. death or personal injury caused by DotParse's negligence;
  2. infringement of a third party's intellectual property; or
  3. fraud or fraudulent misrepresentation.
4. Subject to clause 14.2 and clause 14.3, and to the maximum extent permitted by applicable law:
  1. Neither of the Party's nor any of their affiliates, licensors, suppliers, subcontractors shall have any liability to the other Party or any other person or entity for any damages (whether arising from this Agreement, related to the Software, or to any Services provided to the Customer by DotParse (including its affiliates, licensors, suppliers or subcontractors)) for any indirect, incidental, special, punitive or consequential damages, including but not limited to data,

business interruption, loss of data, replacement or recovery costs or other commercial or economic loss, whether arising from contract, delict or any other theory of liability, even if a Party (including its affiliates, licensors, suppliers and subcontractors) has been advised of the possibility of such damages, or they are foreseeable.

2. In no event shall a Party's aggregate liability arising out of or related to this Agreement, whether in contract (including in respect of the indemnity at clause 13.2), or delict (including negligence or breach of statutory duty) or under any other theory of liability, exceed the total amount paid by the Customer hereunder or, with respect to any single incident the amount paid by the Customer hereunder for the Services in the 6 (six) months preceding the incident.

## **15 TERMS OF TERMINATION**

1. This Agreement shall, unless otherwise terminated as provided in this clause 15, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this Agreement will continue indefinitely, subject to either Party providing sixty (60) calendar day's written notice of termination to the other Party, unless otherwise terminated in accordance with the provisions of this Agreement; and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the Subscription Term.
2. Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
  1. the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 7 (seven) days after being notified in writing to make such payment;
  2. the other party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 7 (seven) days after being notified in writing to do so;
  3. the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
  4. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts or commit any act of insolvency within the meaning of section Insolvency Act 1936;
  5. an application is made to court, or an order is made, for the business rescue of a party;
  6. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 (fourteen) days;
  7. the other party suspends or ceases carrying on all or a substantial part of its business; or
  8. a party infringe someone else's intellectual property rights, or engage in fraudulent, immoral or illegal activities, or for other similar reasons;



9. any warranty given by DotParse in clause 8.4 of this Agreement is found to be untrue or misleading.
3. Without affecting any other right or remedy available under this Agreement, the Customer acknowledges and agrees that DotParse may suspend and/or terminate the use of the DotParse Services with immediate effect by giving written notice to the Customer if the DotParse Services are utilised unlawfully or that there is an infringement of any of its intellectual property rights.
4. Notwithstanding anything to the contrary contained in this Agreement the Customer shall have the right to request the cancellation of the Agreement upon at least 60 (sixty) days' written notice to this effect. In the event that the Customer provides DotParse with a notice of discontinuation as aforesaid, the Agreement shall be discontinued on the required termination date specified in the said notice without payment of any penalty, charges or fees being due by the Customer therefore.
5. On termination of this Agreement for any reason:
  1. all licences granted under this Agreement shall immediately terminate;
  2. each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
  3. DotParse must deliver to the Customer the then most recent back-up of the Customer Data or destroy or otherwise dispose of any of the Customer Data in its possession in accordance with the Customer's wishes, evidenced in writing. DotParse shall adhere to such request within 30 (thirty) days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by DotParse in returning or disposing of Customer Data; and
  4. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

## **16 FORCE MAJEURE**

A party shall have liability to the other under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the party is notified of such an event and its expected duration

## **17 CONFLICT**

If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement shall prevail.

## **18 RIGHTS AND REMEDIES**

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

## **19 NO PARTNERSHIP OR AGENCY**

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **20 THIRD PARTY RIGHTS**

Except for those specific rights stated under this Agreement for the benefit of DotParse, this Agreement does not confer any rights on any person or party other than the parties to this Agreement and, where applicable, their successors and permitted assignments.

## **21 DISPUTE RESOLUTION**

Any dispute arising from the Agreement shall be subject to the following dispute resolution procedures

- 1. Informal dispute resolution:** Prior to referring any dispute to arbitration, the Parties shall first attempt to resolve their dispute informally by referring a dispute to its senior management. Senior management of both Parties shall discuss the problem and attempt to resolve the dispute, without the necessity of any formal proceeding, within 14 (fourteen) days of the dispute having been referred.
- 2. Informal dispute resolution does not reduce Parties' rights:** Proceedings in terms of this clause shall not be construed to prevent a Party from instituting formal proceedings earlier to obtain urgent or interim relief, avoid the expiration of any applicable limitations period, or preserve a superior position with respect to other creditors.
- 3. Arbitration:** If the Parties are unable to resolve any dispute informally, then such dispute shall on written demand by the electing Party be submitted to arbitration at Arbitration Foundation of Southern Africa as per the Expedited Rules and arbitration shall be held in Cape Town in the English language.
- 4. Status of arbitration ruling:** The decision of the arbitrator shall be binding on the Parties to the arbitration after the expiry of the period of 20 (twenty) days from the date of the arbitrator's ruling if no appeal has been lodged by any Party or upon the issue of determination by the appeal panel, as the case may be. A decision, which becomes final and binding in terms of this clause 22.4 may be made an order of court at the instance of any Party to the arbitration. The parties agree to keep the arbitration confidential and not to disclose it to anyone except for purposes of obtaining an order as contemplated herein.
- 5. Continued performance:** Each Party agrees to continue performing its obligations under the Agreement while any dispute is being resolved.
- 6. Rapid resolution of disputes:** The Parties shall use commercially reasonable efforts to resolve disputes arising as rapidly as possible.

7. **Confidentiality:** All disputes will be dealt with in confidentiality to protect the reputation of the parties;
8. **Excluded relief:** This clause 22 shall not preclude either Party from seeking urgent or interim relief from any competent Court having jurisdiction.

## 22 JURISDICTION

**Agreed Jurisdiction:** the Parties hereby consent to the jurisdiction of the Western Cape High Court, Cape Town in respect of proceedings referred to in clause 21

## 23 NOTICES

1. Each Party chooses as its address for all purposes under the Contract Documents (“chosen address”), whether for serving any court process or documents, giving any notice, or making any other communications of whatsoever nature and for any other purpose arising from this Agreement (“notice”), as follows:
  1. the Customer
    1. Physical Address:
      - @customerPhysicalAddress, @customerPhysicalAddressTown, @customerPhysicalAddressProvince, @customerPhysicalAddressPostalCode,
    2. Postal Address:
      - @customerPostalAddress, @customerPostalAddressTown, @customerPostalAddressProvince, @customerPostalAddressPostalCode
    3. Email:@customerLegalEmail
    4. Marked with the attention of: CEO or Managing Director
  2. the Supplier
    1. Physical Address:
      - Bronze Offices, Nooitgracht Village, Koelenhof,
      - Stellenbosch, Western Cape, 7605
    2. Postal Address:
      - Bronze Offices, Nooitgracht Village, Koelenhof,
      - Stellenbosch, Western Cape, 7605
    3. Email:legal@dotparse.com
    4. Marked with the attention of: CEO or Managing Director
2. Any notice required or permitted under this Agreement shall be valid and effective only if in writing.
3. Either Party shall be entitled from time to time, by written notice to the other, to vary its address to any other address which is not a post office box or poste restante.
4. Any notice to either party which is
  1. sent by prepaid registered post in a correctly addressed envelope to the address specified for it under clause above shall be deemed to have been received, unless the contrary is proved,

within 14 (fourteen) days from the date on which it was posted; or

2. delivered to the party by hand, shall be deemed to have been received on the day of delivery, provided that it has been delivered to a responsible person during ordinary business hours; or
  3. sent by email to the addressee shall be deemed to be received, unless the contrary is proven and in the absence of any administrator or mail server error messages, when data message enter the information system of the recipient.
5. Notwithstanding anything to the contrary herein, a written notice actually received by a party, including a notice sent by email, shall be an adequate notice to it notwithstanding that it was not sent or delivered to its chosen address.

## 24 GENERAL PROVISIONS

### 1. Entire agreement

1. This Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
2. Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.

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

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

### 4. Severance:

1. If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
2. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

### 5. Assignment:

1. The Customer shall not, without the prior written consent of DotParse, which shall not be unreasonably withheld, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
2. DotParse may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

## 25 GOVERNING LAW

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

This Agreement has been entered into on the date stated at the beginning of it.

Signed by

Name & Surname: Jarryd Pearce

Designation: Director

for and on behalf of **DotParse PTY Ltd**

.....

Director (I hereby confirm that I am authorised to sign on behalf of DotParse Pty Ltd on this day @dateTimeStamp)

Signed by

Name & Surname: @customerRepresentative

Designation: @customerRepresentativeDesignation

for and on behalf of **@customerOrganizationName**

.....

(I hereby confirm that I am authorised to sign on behalf of @customerOrganizationName on this day @dateTimeStamp)