



**Standard Terms and Conditions for the supply  
of products and/or the provision of services to**

**Adaptive Customer**

## **1 DEFINITIONS**

- 1.1** In this Agreement, the words detailed hereunder will have the meanings assigned to them unless inconsistent with the context of this Agreement.
- 1.2** "Agreement" means these Standard Terms and Conditions and any Application Forms, Schedules, Annexures, Attachments and Addendums hereto.
- 1.3** "Customer" means the party specified as Customer on the agreement or application form to which these terms are attached.
- 1.4** "Effective Date" means the date, notwithstanding the date of signature of this Agreement when the service is commissioned by Supplier for use by the Customer irrespective of whether or not the Customer uses the Services.
- 1.5** "EULA" means the End User License Agreement of each respective vendor.
- 1.5.1** Ivanti EULA and other legal documents available for review at the following link: <https://www.ivanti.com/en-gb/company/legal>
- 1.5.2** Agiloft EULA and other legal documents available for review at the following link: <https://www.agiloft.com/company/agreements/>
- 1.6** "Services" means the services provided by Supplier as specified in the Schedules to this agreement including all software and equipment necessary for the provision of the Services.
- 1.7** "VAT" means Value Added Tax as defined in the Value Added Tax Act 89 of 1991.
- 1.8** "Supplier" means name Adaptive Dynamics (Pty) Ltd (company registration number 2007/015314/07).

## **2 COMMENCEMENT AND DURATION**

- 2.1** This Agreement will become effective on, the Effective Date and will continue in effect until terminated according to its terms. Should the Effective Date occur after the date of signature of this Agreement, nothing herein contained shall be construed as to give either party the right to cancel or rescind this Agreement before the Effective Date.
- 2.2** The duration period of the Services shall be specified in the relevant agreement/s or Service Specification schedules to which these terms are applied.

## **3 QUOTES, CHARGES AND PAYMENTS**

- 3.1** A quotation is valid for 30 (thirty days), unless stated otherwise on the official quotation.
- 3.2** Prices quoted may be adjusted based on the actual configuration verification process, where applicable.
- 3.3** Unless a price has been quoted by Supplier, which will then apply, the price of the services and/or products shall be the current ruling price of Supplier on the date that the services and/or goods are supplied /delivered to the Customer.
- 3.4** Any agreed budget is necessarily based on the assumption that the information required in order to render the services is made available in accordance with agreed timetables, is complete and accurate and that the Customer's key executives and personnel are available.

- 3.5** Any delays or other unanticipated problems caused by the Customer which are beyond the control of Supplier, may result in additional charges being levied against the Customer for which invoices will be raised.
- 3.6** Where services are provided on a time and material basis, a minimum charge of 1 (one) hour will apply.
- 3.7** All Services provided are to be billed as of the Effective Date in respect of each Service.
- 3.7.1** Where Supplier provides a single solution comprising a number of Services/components, billing will commence for each respective Service/component as and when each Service/component of that solution becomes available for use.
- 3.8** The Customer is responsible for and agrees to pay Supplier all fees for the Services in South African currency, without deduction or set-off of any amount of whatsoever nature for whatsoever reason.
- 3.9** All prices specified exclude VAT and any other taxes and duties including but not limited to regulatory surcharges, which the Customer becomes obligated to pay by virtue of the Agreement.
- 3.10** Prices as reflected in the quotation are based on the quoted exchange rate and charges are subject to exchange rate variations where applicable. The Customer will be liable for the variance unless prior arrangements for forward cover have been agreed.
- 3.11** The Customer may elect to pay invoices in US Dollar and Great British Pound directly with Adaptive into our local foreign exchange account.
- 3.12** Travel and accommodation costs and any other reasonable disbursements made by Supplier in connection with the services rendered will be charged to the Customer at cost plus VAT. Motor vehicle travel is charged at the prevailing AA rate. This clause is only applicable when not covered specifically by the quotation.
- 3.13** Travel time will be recovered both ways at the same rate as the labour rate. This clause is only applicable when not covered specifically by the quotation.
- 3.14** All services required or goods ordered by the Customer shall be prepared on an order form and sent by facsimile transmission, mail, hand delivered or ordered via the Supplier digital portal at. On receipt of such order form by Supplier, such order shall be binding on the Customer.
- 3.15** The Customer agrees that in the event of any portion of an invoice of indebtedness being disputed, then the Customer undertakes to forthwith pay the undisputed amount of such indebtedness according to the agreed terms of credit allowed by Supplier.
- 3.16** In the event of any dispute arising as to the amount or calculation of any fee or charge to which Supplier is entitled, the Customer undertakes to forthwith pay the undisputed amount of such indebtedness, whereafter the dispute shall be referred to Supplier' auditors. They shall act as experts and their decision shall be final and binding on Supplier and the Customer.
- 3.17** Payment Terms:
- 3.17.1** Invoices shall be tax invoices which comply with the Value Added Tax Act and are payable within 30 days of presentation, subject to the invoices not being linked to a foreign exchange rate. Where invoices are linked to foreign exchange rates, these invoices are to be settled within 7 days. Where payment is linked to services, invoices will be rendered periodically against agreed to milestones, delivery and completion of work.
- 3.17.2** The credit facilities may be withdrawn by Supplier at any time on notice to the Customer and on reasonable grounds.

**3.18** Interest is payable on overdue payments from due date to date of payment in full, at 2% (two percent) above the prevailing prime overdraft rate charged by Supplier' bankers.

**3.18.1** Any such late payment charge shall be paid immediately by the Customer upon receiving written notification from Supplier advising of the amount thereof and that it has exercised its rights in terms hereof.

**3.19** In the event of any default by the Customer of any provision of this agreement, the Customer hereby consents and authorises Supplier to furnish the name, credit record and repayment history of the Customer to any credit bureau Supplier may use any means to verify the information provided by the Customer including in a credit application or on an order form.

## **4 CUSTOMER'S OBLIGATIONS**

**4.1** The Customer shall comply strictly with all restrictions imposed on computer networks through which any information and/or data transmitted by the Customer passes. In particular, the Customer shall at all times comply with any conditions of use by an OEM ("Original Equipment Manufacturer") and/or Vendor, where applicable and where a legal nexus in the form of a contract has been created between the Customer and such OEM and/or Vendor.

**4.2** The Customer shall not commit nor attempt to commit any act or omission with directly or indirectly:

**4.2.1** Damages in any way Supplier' technical infrastructure or any part thereof;

**4.2.2** Impairs or precludes Supplier from being able to provide the Services in a reasonable and business-like manner;

**4.2.3** Constitutes an abuse or malicious misuse of the Services or is calculated to have the abovementioned effect. In such an event, should Supplier incur expenses to remedy the situation, Supplier reserves the right to charge the Customer the amount necessary to cover Supplier' additional expenditure. Notwithstanding the above, Supplier reserves the right to take any other appropriate action it may deem necessary to remedy the situation.

**4.3** The Customer is prohibited from selling, reselling or otherwise dealing with the Services in any manner whatsoever. Without limitation to the foregoing, any consideration which the Customer may receive whilst acting in breach of this prohibition shall be forfeited to Supplier.

**4.4** The Customer is prohibited from allowing any person other than its employees or other authorised parties, access to Services through any of the Customer's equipment, personnel and/or address.

**4.5** The Customer is prohibited from modifying any equipment (including but not limited to router equipment) utilised by the Customer to receive any of the Services, in any way whatsoever, including the changing of any of the setting of the equipment.

**4.6** The Customer may at any time not use the Services in contravention of any South African law. In particular, the Customer undertakes to familiarise itself and ensure that it is kept continuously appraised of all South African law in force from time to time which has any bearing on the Services and/or its use. The Customer acknowledges that Supplier has no obligation to assist the Customer in this regard.

**4.7** The Customer, by accepting these Terms and Conditions, furthermore agrees to use the Software in accordance with the various Vendor EULA and Product Use Rights.

## **5 SUPPLIER RESPONSIBILITIES**

Supplier will perform the services in a timely and professional manner and in accordance with best practice applicable in the information technology industry.

## **6 CONFIDENTIALITY**

**6.1** All Supplier staff is bound by a professional obligation not to disclose to a third party any information confidential to the Customer. The recipient of the information contained in this document, a quotation or order agrees to receive the information in confidence and to keep the information in confidence using the same degree of care as is used by the recipient to protect its own confidential information but in no event less than a reasonable degree of care. The recipient agrees to use such information only for the purposes of exercising its rights and fulfilling its obligations under this agreement.

## **7 INTELLECTUAL PROPERTY**

**7.1** Supplier retains all copyright and other intellectual property, including moral rights in all utilities, software, solutions, designs, techniques, methods, methodologies, tools, processes, templates, data or other materials provided, created or developed by Supplier either before or during the rendering of services or the supply of products by Supplier.

**7.2** Where Supplier does development work at the specific request of and/or under the control of the Customer, ownership in such developed work will only pass to the Customer when Supplier has received full and final payment in respect thereof.

**7.3** Supplier further reserves the right, where fees have been invoiced and payments are outstanding, to exercise a lien in respect of those outstanding fees over any processes implemented, infrastructure, products and other solutions including any documentation relating thereto, which has been delivered to the Customer.

## **8 OWNERSHIP**

Ownership of the products sold to the Customer shall only pass once payment of such products has been made to Supplier in full. Risk of loss and damage in the products shall pass to the Customer upon delivery of the products in accordance with the agreed delivery terms (whether or not under the relevant Incoterms).

## **9 INDEMNITY**

**9.1** The Customer hereby unconditionally and irrevocably indemnify Supplier and agree to indemnify and hold Supplier harmless against all losses, damages, claims, liability and/or costs, of whatsoever nature, howsoever and whenever arising, suffered or incurred by Supplier as a result of any claim instituted against Supplier by a third party as a result of, without limitation:

**9.1.1** the Customers use of Supplier services or goods other than as allowed or prescribed in this Agreement; and

**9.1.2** any other cause whatsoever relating to this Agreement or the provision of services or goods to the Customer where the Customer have acted wrongfully or failed to act when the Customer had a duty to so act.

## **10 LIMITATION OF LIABILITY AND WARRANTY**

- 10.1** Except as otherwise expressly provided herein to the contrary, Supplier will, in no event, be liable to the Customer or any third party for any loss or damage of whatsoever nature and/or however arising (including consequential, or incidental loss or damage which shall include but shall not be limited to loss of property or of profit, business, goodwill, revenue, data or anticipated savings) or for any costs, claims, demands of any nature, whether asserted against Supplier or against the Customer by any party, arising directly or indirectly out of the Services, their use, access, withdrawal or suspension or out of any information or materials provided or not provided, as the case may be.
- 10.2** Subject to clause above, the entire liability of Supplier and the Customer's exclusive remedy for damages from any cause related to or arising out of this Agreement, regardless of the form of action, whether in contract or delict, will not exceed the aggregate fees and charges paid by the Customer under this Agreement for the period of 12 (twelve) months preceding the Customer's written notice to Supplier in respect of such claim.
- 10.3** The Customer hereby indemnifies Supplier against and holds Supplier harmless from any claim by any third party arising directly or indirectly out of access to or use of the Services or information obtained through the use thereof or in respect of any matter for which the liability of Supplier is excluded in terms of clauses above.
- 10.4** Because of the need to conduct maintenance, repair and/or improvement work from time to time on the technical infrastructure by means of which the Services are provided, the provision of the Services may be suspended from time to time, and all liability on the part of Supplier of any loss or damage (whether direct or consequential) thereby incurred or for any costs, claims, or demands of any nature arising there from, is excluded, and the provisions of clause above shall apply mutatis mutandis to such exclusion. Should the provision of the Services be suspended by Supplier for the purpose aforementioned for a period in excess of 48 (forty-eight) consecutive hours, Supplier shall give the Customer credit in an amount which represents a pro rata portion of the Customer's basic monthly subscription fee for the month during which the said suspension occurred.
- 10.5** Where the Services provided include Hosting Services, then, notwithstanding anything to the contrary contained in this Agreement, Supplier reserves the right in its absolute discretion and after the receipt by Supplier of any complaint from any governmental department, or any other third party (including but not limited to any Internet industry body or any other organisation) that the Customer's web site contains information that infringes against any third party's rights in terms of the Constitution of the Republic of South Africa, the Electronic Communications and Transactions Act, any other legislative enactment or regulation in force from time to time, or is defamatory in nature, to immediately give written notice to the Customer of Supplier's intention to remove the offending information or any portion thereof from the Customer's web site. Should such offending information not be removed from the web site by the Customer within 24 hours of written notice to that effect, Supplier shall be entitled to immediately remove the offending information or any portion thereof from the Customer's web site, or where it is not possible to remove such content, to terminate the Hosting Services of the Customer. Any removal or termination by Supplier shall in no way constitute a breach by Supplier of this Agreement.
- 10.6** SUPPLIER SHALL, INSOFAR AS RELEVANT, PASS THROUGH ALL HARDWARE AND/OR SOFTWARE WARRANTIES RECEIVED FROM THIRD PARTY ORIGINAL EQUIPMENT MANUFACTURERS, LICENSORS OR AUTHORISED DISTRIBUTORS OF THE PRODUCTS, TO THE CUSTOMER. SUPPLIER DISCLAIMS ALL OTHER WARRANTIES IN RELATION TO THE PRODUCTS INCLUDING AS TO FITNESS FOR PURPOSE OR MERCHANTABILITY, INSOFAR IT IS ENTITLED TO DO SO BY LAW.

## **11 NON SOLICITATION**

- 11.1** The Customer and Supplier undertake to the other of them that during the course of this agreement and for a period of 12 (twelve) months following its conclusion it will not:
- 11.1.1** solicit or entice away any employee of Supplier or the Customer respectively who was actively involved in connection with this agreement; and
- 11.1.2** employ any such person or engage them in any other way.
- 11.2** In the event of a breach of the terms of this undertaking, the Party in breach will pay on demand, a sum equivalent to 30% of the total annual remuneration package of the employee concerned during the 12 (twelve) months prior to the breach occurring, to the other Party, as pre-estimated and liquidated damages.

## **12 REQUIRED STANDARDS AND PRINCIPLES OF ETHICAL BUSINESS CONDUCT**

**12.1** The Customer confirms that it fully subscribes to the principles of lawful and ethical business conduct as are expressly or implicitly dealt with in the said policies. For the sake of clarity, the relevant principles are summarized as follows:

- Fair competition and avoidance of anti-competitive conduct
- Integrity in business dealings – no corruption or bribery
- Sustainability – no inappropriate risks for human and the environment
- Equal opportunities in securities trading – no insider trading
- Proper record keeping and accurate financial reporting – no deception
- Fair and respectful working conditions – no discrimination
- Respecting the legal rights of others – no infringement of intellectual property rights
- No conflicts of interest between business and personal rights
- Cooperation with the authorities – no misinformation
- Compliance with laws, regulations, rule and standards, in South Africa and elsewhere
- Observance of ethical obligations without causing harm to others other than by fair commercial competitive practices
- Not to supply defective or dangerous products
- Not to improperly induce or influence someone by the provision of gifts, entertainment or other gratification
- To report any events or suspected events of bribery, corruption, improper inducement or influencing, or any other unlawful conduct
- To respect human rights and to uphold fair labour practices – no abuse of basic human rights or unfair labour practices (including child and forced labour).

**12.2** The Supplier distances itself from any conduct that deviates from the principles referred to above and it reserves its rights not to deal with any party whose conduct is contrary to these principles. Supplier therefore hereby reserves the right to terminate this agreement forthwith in the event that any information comes to its attention which causes it to conclude in its sole opinion, that in its conduct towards Supplier in terms of or in connection with this agreement the Customer has engaged in an act or omission which constitutes a material breach or disregard of the above mentioned principles of lawful and ethical business conduct. Such termination shall be justified and lawful and shall not be capable of giving rise to any damages claims against or any other liability for Supplier.

## **13 FORCE MAJEURE**

- 13.1** Supplier shall not be liable for non-performance under this Agreement to the extent to which the non- performance is caused by events or conditions beyond the control of Supplier, provided that Supplier makes all reasonable efforts to perform.
- 13.2** It is expressly recorded that for purposes of this clause the following shall be considered circumstances beyond the control of Supplier and the force majeure provisions shall apply:-
- 13.2.1** an ECNS and/or third party service provider fault that affects the Services; and/or
- 13.2.2** the non-performance, inability to perform or delay in performance by the ECNS provider or any supplier relating to the provisioning of equipment, services and/or facilities to Supplier that affects the Services; and/or
- 13.2.3** acts or omissions of any government, government agency, provincial or local authority or similar authority, any laws or regulations having the force of law, civil strife, riots, insurrection, sabotage, acts or war or public enemy, illegal strikes, interruption of transport, lockouts, flood, storm, earthquake or fire.

## **14 BREACH AND TERMINATION**

- 14.1** Either party may terminate this Agreement upon expiration of the initial period term by written notice delivered at least 90 (ninety) days prior to the expiration of that term.
- 14.2** After expiry of the initial term (as specified on either the Agreement, Application form or the Schedule relative to the service), either party may terminate this agreement giving 90 (ninety) days written notice before the expiry of the stated extension of the subsequent term.
- 14.3** Notwithstanding suspension of the Services or termination of this Agreement, the Customer shall pay Supplier all outstanding amounts in respect of the Services rendered during the duration of this Agreement.
- 14.4** If the Customer hereto:
- 14.4.1** breaches any of the terms or conditions of this Agreement and fails to remedy such breach or pay such amount, as the case may be, within 7 (seven) days after the receipt of written notice from Supplier;
- 14.4.2** does not comply with the Vendor's EULA;
- 14.4.3** commits any act of insolvency;
- 14.4.4** endeavours to compromise generally with its creditors or does or causes anything to be done which may prejudice Supplier' rights hereunder or at all;
- 14.4.5** allows any judgement against it to remain unsettled for more than 10 (ten) days without taking immediate steps to have it rescinded and successfully prosecuting the application for rescission to its final end; or
- 14.4.6** is placed in liquidation or under judicial management (in either case, whether provisionally or finally) or, being an individual, his estate is sequestrated or voluntarily surrendered;
- 14.5** Supplier shall have the right, without prejudice to any other right which it may have against the Customer, to:
- 14.5.1** suspend or terminate the Service/s;
- 14.5.2** treat as immediately due and payable all outstanding amounts which would otherwise become due and payable over the unexpired period of the Agreement, and to claim such amounts as well as any other amounts in arrears including interest and to cease performance of its obligations

hereunder as well as under any other contract with the Customer until the Customer has remedied the breach; and/or

**14.5.3** cancel this Agreement; in any event without prejudice to Supplier' right to claim damages.

**14.6** The Customer shall be liable for all costs incurred by Supplier in the recovery of any amounts or the enforcement of any rights which it has hereunder, including collection charges and costs on an attorney and own client scale whether incurred prior to or during the institution of legal proceedings or if judgement has been granted, in connection with the satisfaction or enforcement of such judgement.

**14.7** Subject to what is set out in Clause above, Supplier shall be entitled to suspend the provision of the Services where the Customer breaches any provision of this Agreement or where any payment to Supplier is overdue by more than 30 (thirty) days.

## **15 EFFECTS OF TERMINATION**

**15.1** Customer data and backups will not be available after the termination date, and there is no obligation on Supplier to provide data or retain data after the termination date.

**15.2** If the Customer requires Supplier to extract data, the storage must be provided by the Customer and will be charged at Supplier' then current rate.

## **16 PRIMA FACIE PROF**

**16.1** A certificate signed by a director or manager of Supplier as to the existence and the amount of the Customer's indebtedness to it, shall be prima facie proof of the contents and correctness thereof for all purposes, including any application for default or summary judgment in any competent court or in respect of any collection charges by a collection agent or attorney appointed by Supplier.

**16.2** A signed delivery note shall constitute prima facie proof that the services and/or products have been supplied and delivered to the Customer, whether signed by the Customer, an employee, an agent or representative of the Customer.

## **17 NON WAIVER**

No extension of time or any other relaxation of indulgence granted by either Party ("grantor") to the other Party shall operate as, or be deemed to be a waiver by the grantor of any of its rights the relevant provision of this agreement or of any other provision.

## **18 GOVERNING LAW AND JURISDICTION**

This agreement with Adaptive and the services they provide shall be governed by and construed in accordance with the laws of the Republic of South Africa and any dispute arising out of this agreement shall be subject to the exclusive jurisdiction of the South African Courts.

As the Ivanti Service Manager Solution is delivered through Ivanti U.K. Ltd. it will be governed by the laws of England and Wales without regard to conflict of laws principles and any dispute arising out of or in connection with the software or service provided as part of the Hosted Service. You consent to the exclusive jurisdiction and venue in the courts within London, United Kingdom insofar the Ivanti Software as a Service Solution.

## **19 COSTS**

In the event that Supplier institutes legal action against the Customer for whatsoever reason, then the Customer undertakes to pay the legal costs of Supplier on the scale as between attorney and Customer.

## **20 WHOLE AGREEMENT**

This agreement, as referred to in clause 21, constitutes the entire agreement between the parties with respect to its subject matter, and no variation, addition, deletion, consensual cancellation or amendment to any term or condition hereof shall be valid or binding on Supplier or the Customer unless reduced to writing and signed by an authorised representative of both parties. All and any terms, conditions, representations or warranties contained in or on an order or quotation in addition to or in conflict with these terms and conditions shall be null and void and not form part of this agreement.

## **21 BINDING AGREEMENT**

Customer agrees that, by placing its order in whatever medium or form including by way of hand delivery, post, facsimile, email, electronic data exchange or electronic data message and whether or not on the Supplier digital portal referred to in clause 1.11, a binding agreement shall come into force and effect, based on these terms and conditions, the quotation and the order (and no other terms and conditions) between Supplier and the Customer with respect to the subject matter of these terms and conditions, subject to clause 20 and provided its credit application was successful.

## **22 NON EXCLUSIVITY AND INDEPENDENT CONTRACTORS**

**22.1** There shall be no exclusivity between the Parties and the Customer and Supplier may conclude agreements for the procurement and sale of products and services not forming the subject matter of this agreement from any third party without restriction.

**22.2** The Parties are and shall at all times be independent contractors vis-à-vis each other in relation to this agreement and neither Party shall be authorised to act as the agent or representative of the other Party in any way whatsoever or to bind the other Party by any means.