

**e4 ACCOUNTABLE INSTITUTION AGREEMENT
PART 2: e4 ACCOUNTABLE INSTITUTION STANDARD TRADING TERMS**

TO BE NOTED: THE STANDARD TRADING TERMS CONTAINED IN THIS DOCUMENT (stipulated on e4's website at www.e4.co.za) COMPRISE PART 2 OF THE CONTRACT BETWEEN e4 AND THE ACCOUNTABLE INSTITUTION (which has completed and signed a 'PART 1: ACCOUNTABLE INSTITUTION DETAILS' document). ALL BUSINESS BETWEEN e4 AND THE ACCOUNTABLE INSTITUTION IS EXCLUSIVELY ON THE BASIS THAT THESE STANDARD TRADING TERMS SHALL ALWAYS APPLY. e4 MAY AMEND THESE STANDARD TRADING TERMS AT ANY TIME. THE ACCOUNTABLE INSTITUTION AGREES TO BE BOUND BY THE THEN-CURRENT VERSION OF THESE STANDARD TRADING TERMS STIPULATED ON e4'S WEBSITE. IF THE ACCOUNTABLE INSTITUTION DOES NOT AGREE TO THESE TERMS ITS ONLY REMEDY IS TO DISCONTINUE MAKING USE OF e4'S SERVICES.

1 INTRODUCTION

- 1.1 FICA is aimed at combating money laundering.
- 1.2 In terms of section 21 of FICA an Accountable Institution may not establish a business relationship or conclude a single transaction with a client unless the Accountable Institution has taken prescribed steps to establish and verify the identity of that client.
- 1.3 These prescribed steps include obtaining information about the client (e.g. full names, date of birth, identity number, income tax registration number and residential address).
- 1.4 This information must then be verified by comparing it against that client's FICA Documents (e.g. RSA identity document, SARS documents (income tax registration number), and municipal utility accounts (residential address), as updated from time to time).
- 1.5 There is a need in the market for a stordoc-Database that is trustworthy and where Accountable Institutions can:
 - 1.5.1 establish and verify the identity of clients in terms of section 21 of FICA.
 - 1.5.2 outsource the keeping of records required to be kept in terms of section 22 of FICA.
- 1.6 There is also a need in the market for natural/legal persons to be able to leverage and make use of a central stordoc-Database to:
 - 1.6.1 meet their own internal risk management objectives of, among other things, establishing and verifying client identities (despite not necessarily being Accountable Institutions in terms of FICA);
 - 1.6.2 electronically store copies of other documents (e.g. marriage certificates, contracts or invoices).
- 1.7 e4 provides intermediary services and Information System Services pertaining to the stordoc-Database, whereby a stordoc-Client is able to present his/her/its FICA Documents and/or other non-FICA Documents to be copied and certified, and authorise the uploading and storage of his/her/its Client Electronic Documents to the stordoc-Database.
- 1.8 Where a stordoc-Client is to present his/her/its FICA Documents to an Accountable Institution, it is envisaged that associated time delays and any related inconvenience can be avoided by the stordoc-Client authorising (e.g. through use of electronic sms/text messaging) the Electronic Communication of his/her/its applicable Client Electronic Documents, stored in the stordoc-Database, in order for the Accountable Institution to timeously establish and verify the stordoc-Client's identity. This may include the Accountable Institution downloading the applicable Client Electronic Documents for its records of the individual transaction for which the stordoc-Client's identity is required to be established and verified.
- 1.9 The Accountable Institution wishes to appoint e4 to render the stordoc-Services in accordance with the terms of this Agreement.

2 DEFINITIONS

In this Agreement, unless clearly inconsistent with or otherwise indicated by the context:

- 2.1 **Accountable Institution** means the person:
 - 2.1.1 whose details appear in Part 1 of this Agreement; and
 - 2.1.2 referred to in Schedule 1 of FICA;For the purposes of this Agreement, the definition of Accountable Institution shall be interpreted, *mutatis mutandis*, to include a person that is not an accountable institution in terms of FICA, and who nonetheless wishes to appoint e4 to render the stordoc-Services in accordance with the terms of this Agreement (as discussed in clause 1.6.1).
- 2.2 **the/this Agreement** means the contract between the Parties as recorded by the terms contained in Part 1 and Part 2, collectively.
- 2.3 **Authorisations** means all licenses, permits, or approvals of whatsoever nature required by a Party in terms of any Regulatory Provisions to enable them to exercise their respective rights and fulfil their respective obligations under this Agreement.
- 2.4 **Certification Practice Statement** means the then current document, published on the LAWtrust Website, that LAWtrust requires adherence to that, among other things, sets out the rules and/or practices required to be adhered to by all persons participating in the LAWtrust public key infrastructure scheme.
- 2.5 **Client Electronic Documents** means Data records of a stordoc-Client's Personal Information, FICA Documents or non-FICA Documents, as the case may be, uploaded to be stored in the stordoc-Database, including any updates thereto from time to time.
- 2.6 **Commencement Date** means the Date of Signature.
- 2.7 **Competent Authority** means collectively the National, Provincial, Regional and Local government of the Republic of South Africa and/or their successors in title, any Court of competent jurisdiction or any agency, authority, body or standard-setting institution appointed to regulate and/or oversee standards applicable to the Services, and includes without limitation the FIC, the National Credit Regulator and the National Credit Tribunal established in terms of the National Credit Act, 2005.
- 2.8 **Consultant** means the person appointed by e4 to assist in uploading Client Electronic Documents to the stordoc-Database.
- 2.9 **Consultant Agreement** means the document to be signed by a Consultant recording the contract between e4 and the Consultant pertaining to the Consultant Services.
- 2.10 **Consultant Services** means the services to be performed by the Consultant referred to in the stordoc-Manual, which include using the Hardware and Software to upload Client Electronic Documents to the stordoc-Database.
- 2.11 **CPI** means the Consumer Price Index, as published by Statistics South Africa or any other relevant South African governmental department from time to time.
- 2.12 **Cryptography Product** means a product that makes use of cryptographic techniques and used by senders or recipients of Data Messages for the purposes of enabling (i) secure access to Information Systems

- and/or Data by authorised persons; (ii) the authenticity and integrity of Data; or (iii) ascertaining the correct source of Data.
- 2.13 **Data** means electronic representations of information in any form.
- 2.14 **Data Message** means Data generated, sent, received or stored by electronic means and includes a stored record.
- 2.15 **Date of Signature** means the date this document is signed by the Accountable Institution without change/alteration to its contents, save as provided for in Part 1.
- 2.16 **Digital Certificate** means a Digitally Signed Data Message that is a public key certificate in the version 3 format specified by ITU-T Recommendation X.509, which includes the following information: (i) identity of the certificate authority issuing it; (ii) the name or identity of its subscriber, or a device or electronic agent under the control of the subscriber; (iii) a public key that corresponds to a private key under the control of the subscriber; (iv) the validity period; (v) the Digital Signature created using a private key of the certificate authority issuing it; and (vi) a serial number.
- 2.17 **Digital Signature** means a transformation of a Data Message using an asymmetric cryptosystem such that a person having the initial message and the signer's public key can determine whether: (i) the transformation was created using the private key that corresponds to the subscriber's public key; and (ii) the message has been altered since the transformation was made.
- 2.18 **Digitally Signed** means having used a Digital Signature to sign a Data Message for the purposes of identification and/or authorisation.
- 2.19 **e4** means e4 Strategic (Proprietary) Limited, registration number 2006/027343/07.
- 2.20 **e4 Group** means e4, its holding company and subsidiaries as well as subsidiaries of its holding company from time to time (as such terms are defined in the Companies Act, 1973).
- 2.21 **e4 Website** means the e4 website on the Internet consisting of its home page with the address of www.e4.co.za and other web pages under the control of e4 and linked by hyperlink to the home page or each other.
- 2.22 **Electronic Communication** means a communication by means of Data Messages.
- 2.23 **Erroneous Issuance** means: (i) the issuance of a Digital Certificate not in accordance with the requirements of the Certification Practice Statement, (ii) the issuance of a Digital Certificate to a person who is not the person named in the Digital Certificate; or (iii) the issuance of a Digital Certificate without the authorisation the person named in the Digital Certificate.
- 2.24 **FIC** means the Financial Intelligence Centre, established in terms of section 2 of FICA.
- 2.25 **FICA** means the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) as amended.
- 2.26 **FICA Documents** means original source documentation required by the Accountable Institution to verify the stordoc-Client's identity and related information, e.g. RSA identity document, SARS documents (income tax registration number), and municipal utility accounts (residential address), as updated from time to time.
- 2.27 **FICA Regulations** means the Money Laundering and Terrorist Financing Control Regulations (published under GN R1595 in GG24176 of 20 December 2002).
- 2.28 **Hardware** means the e4 supplied USB Crypto Tokens and/or such other hardware prescribed by e4 to enable secure Electronic Communication between Information Systems.
- 2.29 **Information System** means a system for generating, sending, receiving, storing, displaying or otherwise processing Data Messages and includes the Internet.
- 2.30 **Information System Services** means the provision of connections, the operation of facilities for Information Systems, the provision of access to Information Systems, the transmission or routing of Data Messages between or among points specified by a user and the processing and storage of Data, at the individual request of the recipient of the service.
- 2.31 **Intellectual Property** means all copyright, rights in business names, trade marks, trade names, service marks, patents, designs and/or inventions as well as all rights to source codes, trade secrets, confidential information, know-how and all other rights of a similar character (regardless of whether such rights are registered and/or capable of registration) and all applications and rights to apply for protection of any of the same.
- 2.32 **Intermediary** means a person who, on behalf of another person, whether as agent or not, sends, receives or stores a particular Data Message or provides other services with respect to that Data Message.
- 2.33 **Internet** means the interconnected system of networks that connects computers around the world using the TCP/IP and includes future versions thereof.
- 2.34 **LAWtrust** means Law Trusted Third Party Services (Proprietary) Limited, registration number 2001/004386/07.
- 2.35 **LAWtrust Subscriber Agreement** means the document recording the contract between LAWtrust and a person pertaining to the application for, acceptance of, and use of a Digital Certificate issued by LAWtrust.
- 2.36 **LAWtrust Website** means the LAWtrust website on the Internet consisting of its home page with the address of www.lawtrust.co.za and other web pages under the control of LAWtrust and linked by hyperlink to the home page or each other.
- 2.37 **Part 1** means the document with heading '*FICA Accountable Institution Agreement*' and which contains the section '*Part 1: FICA Accountable Institution Details*' that contains the Accountable Institution's details.
- 2.38 **Part 2** means e4's standard trading terms as recorded in this document.
- 2.39 **Parties** means e4 and the Accountable Institution collectively.
- 2.40 **Party** means either one of the Parties, as the case may be.
- 2.41 **Personal Information** means information about an identifiable person, including, but not limited to full names, date of birth, identity number, income tax registration number and residential address.
- 2.42 **Regulatory Provisions** means, collectively, the prevailing laws, regulations, ordinances, directions, orders, decrees, policy directives and standards of the Government of the Republic of South Africa and any other Competent Authority, which in any way affect or apply to the Parties, and the Services.
- 2.43 **RICA** means the Regulation of Interception of Communications and Provision of Communication-Related Information Act, 2002 (Act 70 of 2002) as amended.
- 2.44 **Services** means the stordoc-Services and/or Storage Services and/or Training Services, as the case may be, provided by e4 to the Accountable Institution, and as they may evolve during the continued duration of this Agreement, and as they may be described, supplemented, enhanced, modified or replaced by any subsequent agreement between the Parties, and include such services, functions or responsibilities not specifically described in this Agreement but reasonably

- and necessarily required for the proper provision of the Services.
- 2.45 **Software** means the e4 supplied software used to enable the functioning of the Hardware.
- 2.46 **Staff** means any employee, independent contractor, agent, consultant, sub-contractor or other representative of a Party.
- 2.47 **Storage Services** means the services rendered by e4 pertaining to keeping records in terms of section 24(1) of FICA and Chapter 2 of the FICA Regulations on the Accountable Institution's behalf.
- 2.48 **stordoc** means the products and services marketed by e4 under the name and style 'stordoc'.
- 2.49 **stordoc-Client** means a means a legal or natural person who is a prospective/existing client of an Accountable Institution and whose identity needs to be established and verified in terms of FICA; The definition of stordoc-Client shall be interpreted, *mutatis mutandis*, to include a person that is not a client in terms of FICA, and who nonetheless has appointed e4 to render stordoc-Services discussed in clause 1.6.2:
- 2.50 **stordoc-Client Agreement** means any contract that may exist between e4 and the stordoc-Client, pertaining to stordoc-Services.
- 2.51 **stordoc-Database** means e4's Information System used to, among other things, store Client Electronic Documents.
- 2.52 **stordoc-Manual** means the then current electronic document located on the e4 Website, and named as such, that, among other things, sets out the rules and/or practices required to be adhered to by:
- 2.52.1 the Consultant in using the Hardware and Software.
- 2.52.2 the Accountable Institution in making use of the Services.
- 2.53 **stordoc-Services** means Intermediary services and Information System Services rendered by e4 pertaining to the stordoc-Database.
- 2.54 **TCP/IP** means the Transmission Control Protocol Internet Protocol used by an Information System to connect to the Internet.
- 2.55 **Training Services** means training services rendered to the Accountable Institution's Staff and the Consultant in, among other things, accessing and/or making use of the stordoc-Database, Hardware, Software, Digital Certificates, and the requirements of the Accountable Institution in establishing and verifying the stordoc-Client's identity as published in the stordoc-Manual.
- 2.56 **Transaction** means the accessing and/or downloading of Client Electronic Documents by an Accountable Institution.
- 2.57 **Updates** means incremental enhancements and fixes to the Software.
- 2.58 **Upgrades** means new versions of the Software that include new major features and significantly improved functionality.
- 2.59 **USB** means Universal Serial Bus, an industry standard interface socket designed to support Electronic Communication between computers and various computer peripheral devices.
- 2.60 **USB Crypto Token** means a Cryptography Product peripheral device which plugs into a computer's USB port, and used to enable, among other things, secure Electronic Communication between Information Systems.
- 2.61 **VAT** means Value Added Tax in terms of the Value Added Tax Act, 1999 or any similar tax on the supply or sale of goods and/or services.

3 SERVICE PROVIDER APPOINTMENT

The Accountable Institution hereby appoints e4 to assist it in keeping record, in terms of section 24(1) of FICA, by rendering the Services with effect from the Commencement Date, and e4 hereby accepts such appointment on the terms contained in this Agreement.

4 DURATION

4.1 This Agreement shall commence on the Commencement Date and continue indefinitely, unless:

- 4.1.1 cancelled in accordance with clause 20; or
- 4.1.2 terminated by either Party on 12 (twelve) months notice to the other Party.

4.2 The Accountable Institution shall have no claim whatsoever against e4 arising from any cancellation or termination in terms of clause 4.1.

5 SUPERSESION

From the Commencement Date this Agreement replaces and supersedes all previous agreements between the Parties regarding the subject matter hereof.

6 NATURE OF RELATIONSHIP

The relationship between the Parties shall be governed by this Agreement and nothing contained herein shall be deemed to constitute a partnership, joint venture or the like between them, nor to constitute one Party the agent of the other for any purpose. Neither Party will because of the other Party's actions incur any personal liability as co-partner to any third party and neither Party will allowed to authorise, represent or hold out to any third party that the relationship between the Parties is as of a partnership, joint venture or the like as aforesaid.

7 EXCLUSIVITY

This Agreement is exclusive to e4, and accordingly, for the duration of this Agreement, the Accountable Institution shall:

- 7.1 make exclusive use of the Services.
- 7.2 not conduct itself in any way so as to exclude making use of the Services.
- 7.3 not appoint any other third party, or use any other third party, to provide services that are the same as or substantially similar to the Services being performed for the Accountable Institution in terms of this Agreement.

8 STORAGE SERVICES

8.1 The Accountable Institution, where applicable, and in perpetuity notwithstanding the termination of this Agreement:

- 8.1.1 authorises e4, its Staff, and the Consultant to collect, collate, process and store applicable Client Electronic Documents.
- 8.1.2 authorises the storage of applicable Client Electronic Documents in the stordoc-Database for the duration required by FICA and/or any other applicable legislation.
- 8.1.3 authorises e4, its Staff, and the Consultant to disclose or receive applicable Client Electronic Documents to or from:
- 8.1.3.1 any other accountable institution seeking to establish a business relationship or conclude a single transaction with the stordoc-Client.
- 8.1.3.2 any third party for the purposes of updating applicable Client Electronic Documents in the stordoc-Database.
- 8.1.3.3 any third party seeking to receive services from e4 similar to the Services.
- 8.1.3.4 any competent authority for the purposes of investigation or prevention of any criminal activity.
- 8.2 In rendering the Storage Services e4 shall:

- 8.2.1 ensure that the Accountable Institution has access to the applicable Client Electronic Documents of the stordoc-Client.
- 8.2.2 assist the Accountable Institution in providing the FIC with all particulars of e4 required to be disclosed in terms of section 24(3) of FICA and section 20 of the FICA Regulations.
- 8.2.3 assist the Accountable Institution in providing the FIC with all reasonable assistance necessary to access, examine and copy the applicable Client Electronic Documents of the stordoc-Client.

9 TRAINING SERVICES

- 9.1 In rendering the Training Services e4 shall:
 - 9.1.1 provide adequate Staff to render such services.
 - 9.1.2 follow the course content set out in the stordoc-Manual and any other FICA training material.
 - 9.1.3 provide all necessary course material to the Accountable Institution's Staff in attendance.
 - 9.1.4 provide such services from its training facilities at its Johannesburg, Durban and Cape Town offices.
 - 9.1.5 ensure its training facilities are adequately equipped to provide such services.
- 9.2 The Accountable Institution:
 - 9.2.1 agrees and accepts the course content meets the reasonable training requirements of all accountable institutions making use of the Services.
 - 9.2.2 shall arrange for e4 to provide Training Services when required, and at the time suitable to both Parties.
 - 9.2.3 shall be responsible for ensuring the attendance of its Staff enrolled for a particular course, including costs of travel, accommodation, and subsistence.
 - 9.2.4 shall forfeit the course fees of its Staff whose attendance is not cancelled at least 2 (two) Business Days prior to the commencement of the course concerned.

10 STORDOC-SERVICES

- 10.1 In rendering the stordoc-Services e4 shall:
 - 10.1.1 cause the Consultant to sign and agree to abide by the terms of the Consultant Agreement, upload a copy to the stordoc-Database, and securely retain and store the original.
 - 10.1.2 ensure a copy of any documented stordoc-Client Agreement (if applicable) has been uploaded to the stordoc-Database.
 - 10.1.3 provide the Consultant with the Hardware, Software, Digital Certificates and Training Services required to perform the Consultant Services.
 - 10.1.4 periodically evaluate the performance of the Consultant in performing the Consultant Services.
 - 10.1.5 provide the Accountable Institution's Staff with Digital Certificates and Training Services required to access applicable Client Electronic Documents in the stordoc-Database.
 - 10.1.6 render the Services within the normal working hours of the Accountable Institution.
 - 10.1.7 allow the Accountable Institution to have reasonable access to the Information Systems used to render the stordoc-Services, in order to audit the efficacy thereof.
 - 10.1.8 under no circumstances have any authority whatsoever to contract in the name of, or to create any liability whatsoever in the name of, or on behalf of the Accountable Institution.
 - 10.1.9 take reasonable security precautions to protect the integrity of the Client Electronic Documents uploaded to the stordoc-Database.
- 10.2 The Accountable Institution shall:

- 10.2.1 be responsible for ensuring its Staff maintain the confidentiality and/or protection from compromise (e.g. lost, stolen, used wrongfully, or used by any other person) of any personal identification number (PIN) and/or Digital Certificate that may be issued to its Staff and used, amongst other things, to identify oneself and gain access to e4's Information Systems, and shall be fully responsible for all activities that occur under such PIN code, or Digital Certificate, as the case may be, and with or without the Accountable Institution's knowledge.
- 10.2.2 immediately notify e4 of any compromise, or suspected compromise, of any PIN code, or Digital Certificate, as the case may be.
- 10.2.3 use Client Electronic Documents for its internal business purposes only.
- 10.2.4 not disclose or share Client Electronic Documents to any other accountable institution in a manner that bypasses or otherwise circumvents e4 being able to provide services similar to the Services to such accountable institution.

11 STORDOC-MANUAL

- 11.1 e4 shall ensure the most recent draft of the stordoc-Manual is available for downloading from the e4 Website.
- 11.2 e4 shall have the right to unilaterally amend the terms of the stordoc-Manual as it, in its sole discretion, deems fit.
- 11.3 The terms of the then current stordoc-Manual on the e4 Website are acknowledged by the Accountable Institution to be binding when making use of the Services.
- 11.4 The Accountable Institution shall ensure its Staff comply at all times with the terms of the stordoc-Manual.

12 DIGITAL CERTIFICATES

- 12.1 Where the use of Digital Certificates is required the Accountable Institution shall:
 - 12.1.1 ensure its designated Staff sign and abide by the terms of the LAWtrust Subscriber Agreement prior to requesting the issuance of a Digital Certificate to that person;
 - 12.1.2 ensure that its subscribers are properly trained to use Digital Certificates in a competent, professional and workmanlike manner;
 - 12.1.3 promptly request revocation of the Digital Certificate issued to a Staff member when:
 - (a) the person is no longer a member of its Staff;
 - (b) there has been an Erroneous Issuance of the Digital Certificate;
 - (c) the private key corresponding to the Digital Certificate's public key has been lost or compromised or is reasonably suspected of being lost or compromised;
- 12.2 Where e4/LAWtrust has reason to believe that any of the Accountable Institution's Staff are not abiding by the terms of the LAWtrust Subscriber Agreement, e4 may immediately, without incurring any liability, be entitled to revoke such person's Digital Certificate.
- 12.3 The Accountable Institution warrants and agrees that:
 - 12.3.1 all information material to the issue of a Digital Certificate shall be true and correct in all material respects;
 - 12.3.2 its Staff shall at all times comply with the Certification Practice Statement and any other requirements reasonably required by e4/LAWtrust in governing the use of Digital Certificates;
 - 12.3.3 the Digital Certificates issued to its Staff in terms of this Agreement shall not at any time be used for any unlawful purpose.

13 SERVICE EXCLUSIONS

- 13.1 e4 shall not be liable for any failure to perform its obligations, whether in whole or part, directly or indirectly attributable to:
- 13.1.1 any failure by the Accountable Institution to comply with its obligations in terms of this Agreement (including any withholding of performance by e4 as a result of such failure).
- 13.1.2 the non-availability of or any unreasonable delays in the provision of Staff of the Accountable Institution or information or decisions required from the Accountable Institution, including delays in testing and/or accepting deliverables.
- 13.1.3 the non-availability or incorrect functioning of any computer or other systems owned or developed by or in possession of the Accountable Institution.
- 13.1.4 any material defects in Data provided by the Accountable Institution to e4.
- 13.1.5 the installation of new releases of any third party software and hardware at the Accountable Institution's request from time to time.
- 13.2 In addition, the Services shall not include:
- 13.2.1 maintenance of software in the possession of the Accountable Institution in respect of which e4 does not have a right to use and/or maintain;
- 13.2.2 services required directly or indirectly as a result of:
- (a) any failure by the Accountable Institution to maintain appropriate environmental conditions with respect to its software and/or hardware;
 - (b) damage to or misuse of any software or hardware by any person other than e4 or its Staff;
 - (c) software or hardware being modified or maintained (or attempts being made to do so) by someone other than e4 or its Staff;
 - (d) service disruptions due to factors beyond e4's direct areas of responsibility;
 - (e) Data loss as a result of lack of adequate virus protection and/or due to storage medium failure.

14 SUB-CONTRACTORS

e4 shall be entitled to outsource the performance of the Services to sub-contractors, however e4 shall at all times remain responsible and liable to the Accountable Institution for the delivery of the Services.

15 SERVICE CHARGES

- 15.1 In consideration for the Services rendered by e4 to the Accountable Institution, the Accountable Institution shall pay e4 all Transaction Fees (exclusive of VAT) set out in e4's then current price list, and any other agreed fees (e.g. any fees directly payable to the Consultant or the Consultant's employer, as the case may be), with all payments to be made within 30 (thirty) calendar days from the date of e4's invoice therefore by direct transfer into the bank account advised in writing by e4 from time to time.
- 15.2 The fees payable to e4 in terms hereof shall escalate annually on the first day of January of every year this Agreement endures by the average monthly increase in the CPI during the first 12 (twelve) months of the 15 (fifteen) month period immediately prior to the increase date in question.
- 15.3 If this Agreement expires, is cancelled or terminates for any reason whatsoever, the Accountable Institution shall not be entitled to any refund of any fees paid.
- 15.4 All payments in terms of or arising out of this Agreement shall be made in cash, in South African Rands, free of conditions, set-off, bank exchange, commission or any other deduction to the party thereto and neither Party

shall have the right to defer, adjust or withhold any payment due to the other in terms of or arising out of this Agreement.

- 15.5 e4 shall have the right, in its sole discretion and without prejudice to any other rights it may have, to suspend the provision of the Services, without incurring any liability, in the event that the Accountable Institution for whatever reason refuses, fails and/or neglects to make any payment of any amount invoiced by e4 in terms of clause 15.1.

16 INDEMNITY

- 16.1 **The Accountable Institution accepts the Services "as is" and "as available" with any faults or failings and without any representation, warranty or guarantee whatsoever, express or implied, including without limitation any implied warranty of prompt or proper delivery, accuracy, completeness, quality, continuity of service, connectivity, merchantability, fitness for a particular purpose or non-infringement or compliance with any Regulatory Provision.**
- 16.2 The Accountable Institution hereby indemnifies and holds harmless e4, any company within the e4 Group, from and against any and all claims, penalties, demands, actions, proceedings, losses, damages, costs and expenses (including claims from the FIC, the stordoc-Client, or other third parties) arising directly or indirectly out of or in connection with any act or omission of e4 relating to the Services, including any incorrect or incomplete Client Electronic Documents uploaded to the stordoc-Database.

17 COMPLIANCE WITH LEGISLATION

- 17.1 Each Party shall at its own risk and expense procure all Authorisations that it may require. Each Party does not make any representations, nor give any warranties or guarantees of any nature whatsoever in relation to any Authorisations, including but not limited to the granting thereof and whether required by e4 or the Accountable Institution.
- 17.2 Each Party shall at all times comply with all Authorisations and Regulatory Provisions, as well as the conditions, standards and requirements prescribed by any Regulatory Provision or any Competent Authority which may be applicable from time to time in respect of the Services.

18 INTELLECTUAL PROPERTY RIGHTS

- 18.1 The Parties acknowledge that any and all Intellectual Property rights subsisting in or used in respect of their products, technology and services are and shall remain the property of either e4 or the Accountable Institution. The Parties shall not, during or at any time after termination of this Agreement acquire or be entitled to claim any right or interest therein or in any way question or dispute the ownership thereof.
- 18.2 It is specifically agreed between the Parties that nothing in this Agreement shall be construed to allow either to claim ownership of the other Party's Intellectual Property.
- 18.3 Copyright and all modifications to the Intellectual Property and/or Material relating to the products and/or services as supplied by each of the Parties shall remain with each of the Parties respectively.

19 CONFIDENTIALITY

- 19.1 Each Party hereby undertakes to the other Party, for the duration of this Agreement and for a period of 2 (two) years thereafter:
- 19.1.1 to keep confidential all information whether written (including information contained in electronic format) or oral concerning the business and affairs of the other Party that it obtains or receives from the other Party or any third party (the Information);

- 19.1.2 not without the other Party's written consent to disclose the Information in whole or in part to any person save its Staff involved in the implementation of this Agreement, and who have a need to know the Information;
- 19.1.3 to use the Information solely in connection with the implementation of this Agreement and not for its own benefit or that of any third party; and
- 19.1.4 to keep confidential the terms and conditions of this Agreement.
- 19.2 The terms of clause 19.1 shall not apply to the whole or any part of the Information which is:
- 19.2.1 already known to the recipient without obligation of confidence;
- 19.2.2 independently developed by the recipient;
- 19.2.3 publicly available without breach of this Agreement;
- 19.2.4 lawfully received from a third party;
- 19.2.5 released for disclosure by the disclosing Party with its written consent; or
- 19.2.6 required to be disclosed in response to a valid order of court or other governmental agency or if disclosure thereof is otherwise required by law.
- 19.3 If a Party is obliged to divulge Information in terms of clause 19.2.6 it shall, provided that circumstances permit the time to do so, forthwith and before releasing the Information, inform the other Party of the obligation.
- 19.4 Each Party undertakes to the other to make its relevant Staff aware of the confidentiality of the Information and the terms of this clause 19 and to take all such steps as shall from time to time be necessary to ensure compliance by its Staff with the terms of this clause 19.
- 19.5 Upon the expiry or termination of this Agreement for any reason, each Party shall promptly return to the other Party all documents, diskettes, drawings and any other mediums containing the Information of the other Party (as well as all copies, notes or reproductions thereof).
- 19.6 Save for compliance by a Party with the requirements of the JSE Securities Exchange and the Securities Regulation Panel, no Party may publish any announcement of this transaction without the prior written consent of the other Party, which approval shall not be unreasonably withheld.
- 19.7 Notwithstanding clause 19.1, e4 may use the other Party's name as a reference for the purpose of marketing, advertising and other related matters.
- 20 BREACH**
- 20.1 If either Party commits a breach of this Agreement and fails to remedy such breach within 15 (fifteen) Business Days after receipt from the other Party of written notice calling upon it to do so, then the Party aggrieved by the breach may, in addition to and without prejudice to any other right it may have in law or in terms of this Agreement, either:
- 20.1.1 enforce the performance of the terms of this Agreement;
- 20.1.2 subject to clause 20.3, cancel this Agreement and recover such damages as it may have sustained.
- 20.2 Without limiting the generality of clause 20, breach shall include either Party being provisionally or finally wound-up or being placed under a provisional or final order of judicial management or liquidation or being sequestered.
- 20.3 The aggrieved Party may cancel the Agreement only if the breach is a material breach and not capable of being remedied by payment in money or, if it is capable of remedy by payment in money, if and the Party committing the breach fails to make payment

within 15 (fifteen) Business Days after final determination of the amount.

21 FORCE MAJEURE

- 21.1 Neither Party shall have any claim against the other Party (the Affected Party) for any failure of the Affected Party to carry out any of its obligations under this Agreement as a result of any cause whatsoever beyond the control of the Affected Party (force majeure).
- 21.2 The performance of the obligations of the Affected Party shall, subject to clause 21.1, be suspended for the duration of the force majeure. Upon cessation of the force majeure, this Agreement shall again become fully operative and the Affected Party shall immediately resume its performance.
- 21.3 If the suspension of performance continues for more than 180 (one hundred and eighty) consecutive calendar days, then either Party may terminate this Agreement by written notice to the other Party.

22 LIMITATION OF LIABILITY

- 22.1 Under no circumstances will e4 or the Consultant, as the case may be, be liable to the Accountable Institution for any consequential, indirect, special, punitive or incidental damages, whether foreseeable or unforeseeable, even if the loss or damage arises out of negligence on the part of e4 and/or the Consultant and/or the Consultant's employer, as the case may be, and regardless of form or cause of action, whether in contract or delict or for restitution, whether based on this Agreement, any commitment performed or undertaken under or in connection with this Agreement, or otherwise.
- 22.2 Under no circumstances will the Consultant's Employer be liable to the Accountable Institution for any damages at all, howsoever arising.
- 22.3 Subject to clause 22.1, the total aggregate liability of e4 or the Consultant, as the case may be, under all agreements with all accountable institutions receiving stordoc-Services, including under this Agreement, and regardless of (i) whether such is in relation to a single claim or a series of claims, (ii) form or cause of action, whether in contract or delict or for restitution, will not exceed an amount equal R1,000,000-00 (one million Rand) per calendar year (1 January to 31 December) for all claims (including legal costs, fees and expenses) relating to e4 or the Consultant, as the case may be, arising in that year, provided that e4 or the Consultant, as the case may be, shall incur no liability whatsoever unless written notice of the claim is served within 6 (six) months of the date that the Accountable Institution became aware of any claim or ought reasonably to have become aware thereof.
- 22.4 Notwithstanding the aforementioned terms of this clause 22, e4 or the Consultant, as the case may be, will incur no liability under this Agreement if, without the prior written consent of e4:
- 22.4.1 the Accountable Institution, or its Staff perform or attempt to perform, or allow third parties to perform any of the obligations of e4 under this Agreement;
- 22.4.2 the Accountable Institution, or its Staff commit or attempt to commit any act or omission which negatively affects the obligations of e4 under this Agreement.
- 22.5 Insofar as any of the work and/or Services to be carried out by e4 in terms of this Agreement is carried out by any of its Staff, the terms of clauses 22.1, 22.3 and 22.4 are stipulated for their benefit as well as that of e4 and they shall each be exempted accordingly.
- 23 ARBITRATION AND DISPUTE RESOLUTION**
- 23.1 If any dispute arises out of or in connection with this Agreement the Parties to the dispute shall in the first

- instance, by agreement, appoint a third Party to act as a mediator (and not as an arbitrator) to mediate in the resolution of the dispute. If the Parties to the dispute are not able to agree on the mediator within 5 (five) Business Days from the date on which a Party demanded mediation in writing, the mediator shall be selected by the Secretariat of the Arbitration Foundation of Southern Africa (AFSA), or any successor body thereto.
- 23.2 If the mediation referred to in clause 23.1 fails to resolve the dispute within 5 (five) Business Days after the appointment of the mediator, the dispute shall be finally resolved in Sandton in accordance with the then current rules of AFSA (the Rules) by 1 (one) arbitrator appointed by agreement between the Parties to the dispute. If the Parties to the dispute cannot agree on the arbitrator within a period of 10 (ten) Business Days after expiry of the 5 (five) Business Day mediation period, the arbitrator shall be appointed by the Secretariat of AFSA.
- 23.3 Each Party:
- 23.3.1 expressly consents to any arbitration in terms hereof being conducted as a matter of urgency; and
- 23.3.2 irrevocably authorises the other Party(ies) to the dispute to apply, on behalf of all Parties to the dispute, in writing, to the Secretariat of AFSA, in terms of article 23(1) of the Rules, for the arbitration to be conducted on an urgent basis.
- 23.4 The decision or award resulting from the arbitration shall be final and binding on the Parties, and may be made an order of court at the instance of any Party to the dispute. The Parties hereby irrevocably submit to the jurisdiction of the Witwatersrand Local Division of the High Court of the Republic of South Africa should either Party wish to make the arbitrator's award an order of court.
- 23.5 There shall be no right of appeal as provided for in article 22 of the Rules.
- 23.6 The arbitration will be held in camera, in the English language and will be kept confidential by the Parties.
- 23.7 The terms of this clause 23 shall not preclude any Party from access to an appropriate court of law for interim relief in the form of an interdict, mandamus or order for specific performance pending the outcome of the mediation or arbitration in terms of this clause 23 or in respect of such mediation or arbitration, for which purpose the Parties irrevocably submit to the jurisdiction of the Witwatersrand Local Division of the High Court of the Republic of South Africa.
- 24 DOMICILIUM AND NOTICES**
- 24.1 The Parties choose as their respective *domicilium citandi et executandi* (Domicilium Address) for all purposes hereunder as follows:
- 24.1.1 For the Accountable Institution: the Accountable Institutions' physical address set out in Part 1 of this Agreement.
- 24.1.2 e4: e4's physical address set out in Part 1 of this Agreement.
- 24.2 Any Party shall be entitled from time to time, by written notice to the other(s), to vary its Domicilium Address to any other address within the Republic of South Africa which is not a post office box or *poste restante*.
- 25 GENERAL**
- 25.1 This Agreement constitutes the entire Agreement between the Parties with regard to the subject matter hereof.
- 25.2 The terms and conditions contained on either Party's purchase order, order acceptance forms and/or invoices shall not apply to, supplement or supersede any terms of this Agreement.
- 25.3 No alteration or variation to, or consensual cancellation of this Agreement, including this clause, shall be of any force or effect, unless it is recorded in writing and signed by the Parties, provided that e4 shall be entitled to unilaterally alter or vary the terms of this Part 2 without the consent of the other Party, which alteration or variation to this Agreement shall be of force and effect despite not being signed by the Parties.
- 25.4 The terms of clauses 2, 13, 16 to 26 shall survive the expiry, cancellation or termination of this Agreement for any reason.
- 25.5 Nothing in this Agreement constitutes either Party as the agent, principal, representative or partner of the other, and no Party shall be entitled to hold out to any third party that the relationship between the Parties is that of a partnership, joint venture or the like.
- 25.6 No failure or delay by a Party to enforce any provision of this Agreement shall constitute a waiver or suspension of such provision or affect in any way a Party's right to require performance of any such provision at any time in the future, nor shall the waiver of any right arising from any subsequent breach nullify the effectiveness of the provision itself.
- 25.7 No Party may cede its rights and/or delegate its obligations under this Agreement without the prior written consent of the other Party, provided that e4 shall be entitled to cede its rights and/or delegate its obligations under this Agreement to any company in the e4 Group without the consent of the other Party.
- 25.8 In the event that any of the terms of this Agreement are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining terms, which shall remain of full force and effect. If any invalid term is capable of amendment to render it valid, the Parties agree to negotiate in good faith an amendment to remove the invalidity.
- 25.9 If any conflict arises between the terms contained in Part 2 and those contained any other document, including Part 1, the terms contained in Part 2 of this Agreement shall prevail.
- 25.10 Unless otherwise agreed in writing between the Parties, no Party shall for the duration of this Agreement and for a period of 12 (twelve) months after expiry or termination thereof for its own benefit or as a representative of or agent for any third party, persuade, induce, encourage, procure or solicit (or procure such persuasion, inducement, encouragement, procurement or solicitation of) the personnel of the other Party or of the e4 Group:
- 25.10.1 to become employed, or interested, directly or indirectly in any manner whatsoever, by it or in any business which is in competition with the business carried on by the other Party or by the e4 Group; or
- 25.10.2 to terminate his/her employment with the other Party or with the e4 Group; or
- 25.10.3 to disclose any Intellectual Property of the other Party or the e4 Group to any person not authorised by the owner of the Intellectual Property to receive it.
- 25.11 This Agreement may be signed in two or more counterparts, one or more of which may be delivered via telefax, and the signed counterparts, taken together, shall constitute a binding agreement between the Parties.
- 25.12 Each Party acknowledges that it does not enter into this Agreement on the basis of and does not rely on any representation, warranty or other provision, whether express or implied, except as expressly provided in this Agreement. All conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by the law of the Republic of South Africa.



- 25.13 This Agreement shall be governed by, construed and interpreted in accordance with the laws of the Republic of South Africa.
- 25.14 The Parties shall each pay their own costs of negotiating, drafting, preparing and implementing this Agreement and any annexure to it. If any Party is awarded costs by an arbitrator or court, he shall be entitled to be reimbursed by the other Party on the basis of Attorney and own Attorney charges.

26 INTERPRETATION

- 26.1 In this Agreement, unless the context requires otherwise:
- 26.1.1 words importing any one gender shall include the other two genders;
- 26.1.2 the singular shall include the plural and vice versa;
- 26.1.3 a reference to natural persons shall include created entities (incorporated or unincorporated) and vice versa;
- 26.1.4 "Business Day" means any day other than a Saturday, Sunday or any official public holiday within the Republic of South Africa;
- 26.1.5 any reference to an enactment is to that enactment as at the Date of Signature, as amended or re-enacted from time to time;
- 26.1.6 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive provision in the body of this Agreement, notwithstanding that it is only in the definition clause;
- 26.1.7 when any number of days (whether Business Days or calendar days) is prescribed in this Agreement, that number of days shall be reckoned exclusively of the first and inclusively of the last day, unless the last day (in the case of calendar days) falls on a Saturday, Sunday or official public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding Business Day;
- 26.1.8 when any number of days is prescribed and it is not specified whether those days are Business Days or calendar days, they shall be deemed to be calendar days; and
- 26.1.9 expressions or words defined in this Agreement shall bear the same meaning in the annexures to this Agreement which do not themselves contain definitions for such expressions or words.
- 26.2 Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 26.3 If reference is made in this Agreement to any other document for the purpose of defining words and/or phrases used in this Agreement, the applicable definition or description in such document shall be read and interpreted in terms of this Agreement as if specifically incorporated herein.

27 RICA

The terms of this Agreement shall apply *mutatis mutandis* to where e4 is required to provide services similar to the Services in respect of Chapter 7 of RICA.

END OF PART 2