

**e4 CONSULTANT AGREEMENT:
PART 2: CONSULTANT 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 CONSULTANT (WHO HAS COMPLETED AND SIGNED A 'PART 1: e4 CONSULTANT DETAILS' DOCUMENT). ALL BUSINESS BETWEEN e4 AND THE CONSULTANT IS EXCLUSIVELY ON THE BASIS THAT THESE STANDARD TRADING TERMS SHALL ALWAYS APPLY. e4 MAY AMEND THESE STANDARD TRADING TERMS AT ANY TIME. YOU AGREE TO BE BOUND BY THE THEN-CURRENT VERSION OF THESE STANDARD TRADING TERMS STIPULATED ON e4'S WEBSITE.

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, among other things, a 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 concomitant 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 e4 has been contracted by the Client to provide stordoc-Services, and wishes to appoint the Consultant to render the Services as its sub-contractor 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 a person referred to in Schedule 1 of FICA and who is also a Client; 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 has appointed e4 to render stordoc-Services 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 **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.
 - 2.4 **Client** means the stordoc-Client or an Accountable Institution, as the case may be.
 - 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 **Commissioners of Oaths Act** means the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act 16 of 1963).
 - 2.8 **Consultant** means the natural person whose details are recorded in Part 1 of this Agreement.
 - 2.9 **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.
 - 2.10 **Data** means electronic representations of information in any form.
 - 2.11 **Data Message** means Data generated, sent, received or stored by electronic means and includes a stored record.
 - 2.12 **Date of Signature** means the date Part 1 of this Agreement is signed by the Consultant.
 - 2.13 **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.

- 2.14 **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.
- 2.15 **Digitally Signed** means having used a Digital Signature to sign a Data Message for the purposes of identification and/or authorisation.
- 2.16 **Electronic Communication** means a communication by means of Data Messages.
- 2.17 **FICA** means the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) as amended.
- 2.18 **FICA Documents** means original source documentation required by an Accountable Institution to establish and verify a stordoc-Client's identity in terms of FICA.
- 2.19 **Hardware** means the e4 supplied USB Crypto Tokens and/or such other hardware prescribed by e4 to enable secure Electronic Communication between Information Systems.
- 2.20 **Information System** means a system for generating, sending, receiving, storing, displaying or otherwise processing Data Messages and includes the Internet.
- 2.21 **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.
- 2.22 **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.
- 2.23 **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.
- 2.24 **Internet** means the interconnected system of networks that connects computers around the world using the TCP/IP and includes future versions thereof.
- 2.25 **e4** means e4 Strategic Proprietary Limited, registration number 2006/027343/07.
- 2.26 **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, 2008).
- 2.27 **LAWtrust** means Law Trusted Third Party Services (Proprietary) Limited, registration number 2001/004386/07.
- 2.28 **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.
- 2.29 **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.
- 2.30 **Part 1** means the document with heading 'e4 Consultant Agreement' and which contains the section 'Part 1: stordoc Consultant Details' that contains the Consultant's Personal Information.
- 2.31 **Part 2** means e4's standard trading terms as recorded in this document.
- 2.32 **Parties** means e4 and the Consultant, collectively.
- 2.33 **Party** means either of the Parties, as the case may be.
- 2.34 **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.
- 2.35 **RICA** means the Regulation of Interception of Communications and Provision of Communication-Related Information Act, 2002 (Act 70 of 2002) as amended.
- 2.36 **Services** means, among other things, the services to be performed by the Consultant, referred to in the stordoc-Guides, which include using the Hardware and Software to upload Client Electronic Documents to the stordoc-Database.
- 2.37 **Software** means e4 supplied software used to enable the functioning of the Hardware.
- 2.38 **Staff** means any employee, independent contractor, agent, consultant, sub-contractor or other representative of e4.
- 2.39 **stordoc** means the products and services marketed by e4 under the name and style 'stordoc'.
- 2.40 **stordoc-Client** 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.
- 2.41 **stordoc-Client Agreement** means any contract that may exist between e4 and the stordoc-Client, pertaining to stordoc-Services.
- 2.42 **stordoc-Database** means e4's Information System used to among other things, store Client Electronic Documents.
- 2.43 **stordoc-Guides** means the then current processes and/or procedures (published in the resource centre section of the e4 Website) required to be adhered to by the Consultant when rendering the Services.
- 2.44 **stordoc-Services** means the Intermediary services and Information System Services pertaining to the stordoc-Database provided by e4 in terms the stordoc-Services Agreement concluded with the stordoc-Client concerned.
- 2.45 **stordoc-Services Agreement** means either the stordoc-Client Agreement or the e4 Accountable Institution Agreement, as the case may be.
- 2.46 **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.
- 2.47 **TCP/IP** means the Transmission Control Protocol Internet Protocol used by an Information System to connect to the Internet.
- 2.48 **Transaction** means the uploading of Client Electronic Documents to the stordoc-Database by the Consultant.
- 2.49 **Updates** means incremental enhancements and fixes to the Software.

- 2.50 **Upgrades** means new versions of the Software that include new major features and significantly improved functionality.
- 2.51 **USB** means Universal Serial Bus, an industry standard interface socket designed to support Electronic Communication between computers and various computer peripheral devices.
- 2.52 **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.
- 2.53 **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

- 3.1 In respect of the stordoc-Services, e4 hereby appoints the Consultant as its sub-contractor to render the Services with effect from the Commencement Date and the Consultant hereby accepts such appointment on the terms contained in this Agreement.
- 3.2 Should the Consultant not be an *ex officio* Commissioner of Oaths, the Consultant may apply to the Department of Justice, pursuant to the Commissioners of Oaths Act, and request appointment as a Commissioner of Oaths, which appointment shall be at the sole discretion of the Department of Justice.

4 DURATION

- 4.1 This Agreement shall commence on the Commencement Date and continue in force until the earlier of:
- 4.1.1 the termination, cancellation or expiration of the last stordoc-Services Agreement for any reason;
- 4.1.2 the cancellation or termination of this Agreement in accordance with clause 18; or
- 4.1.3 the termination of this Agreement by e4 (for whatever reason) giving at least 7 (seven) days written notice to that effect to the Consultant.
- 4.2 The Consultant shall have no claim of whatsoever nature against e4 arising from any termination, cancellation or expiration in terms of clause 4.1. For the avoidance of any doubt, the Consultant shall have no claim to fees relating to any Transaction which occurs after the termination, cancellation or expiration of this Agreement.

5 SUPERSESION

From the Commencement Date, this Agreement replaces and supersedes any and all previous agreements heretofore made and executed by the Parties regarding the subject matter hereof.

6 NATURE OF RELATIONSHIP

The Consultant shall at all times remain an independent service provider to e4 and the Accountable Institution, and shall not be regarded as an employee (as defined in the Labour Relations Act, 1995 (as amended)) of e4 or the Accountable Institution, and the terms of the Basic Conditions of Employment Act, 1997 (as amended), as well as any other statutes, regulations, agreements or policies that regulate an employer/employee relationship or any substituted legislation replacing them, shall not apply to the relationship with e4 or the Accountable Institution.

7 CONSULTANT'S OBLIGATIONS

- 7.1 The Consultant shall render the Services to the Client, as e4's sub-contractor, or to e4, as the case may be.
- 7.2 Where the stordoc-Services Agreement is amended, and the amendments necessitate any amendment to this Agreement, the Parties shall negotiate amendments to this Agreement in good faith. If the Parties are unable to agree on any amendments within 14 (fourteen) days from the date on which e4 requested the Consultant to commence negotiations regarding such amendments, e4 may terminate this Agreement on a further 14 (fourteen) days written notice to the Consultant. The Consultant shall have no claim of whatsoever nature against e4 arising from such termination.
- 7.3 The Consultant shall not:
- 7.3.1 incur any liability on behalf of e4 and/or the Accountable Institution nor in any way make any contract binding upon e4 and/or the Accountable Institution.
- 7.3.2 make any representation or give any warranty with regard to the business of e4 and/or the Accountable Institution and services offered by e4 and/or the Accountable Institution, other than such representations and warranties as are specifically approved or given in the stordoc-Guides.

8 HARDWARE AND SOFTWARE

- 8.1 e4 shall provide the Consultant with the Hardware and Software, including any Updates and/or Upgrades, required to perform the Services.
- 8.2 e4 hereby grants the Consultant a personal, non-exclusive, and non-transferable license and/or sublicense to use the Software.
- 8.3 All risk of loss of or damage to the Hardware shall be borne by the Consultant upon delivery to the Consultant.
- 8.4 The Consultant shall:
- 8.4.1 install the Software, Updates and Upgrades at his/her own risk and expense.
- 8.4.2 not be entitled to access to or supply of the source code of the Software.
- 8.4.3 shall ensure that he/she receives proper training to use the Hardware and Software in a competent, professional and workmanlike manner.
- 8.4.4 be solely responsible for the confidentiality and protection from compromise (e.g. lost, stolen, used wrongfully, or used by any other person) of the Hardware and Software.
- 8.4.5 be solely responsible for all activities that occur through use of the Hardware or Software, as the case may be, and with or without his/her knowledge.
- 8.4.6 shall immediately notify e4 of any compromise, or suspected compromise, of the Hardware or Software, as the case may be.
- 8.4.7 indemnify and hold harmless e4 and/or the Client against any loss, damage, or injury arising from his/her failure to comply herewith.

9 DIGITAL CERTIFICATES

- 9.1 Where the use of Digital Certificates is required the Consultant shall:
- 9.1.1 abide by the terms of the LAWtrust Subscriber Agreement and Certification Practice Statement prior to requesting to be issued with a Digital Certificate.

- 9.1.2 ensure that he/she receives proper training to use Digital Certificates in a competent, professional and workmanlike manner.
- 9.2 If e4 has reason to believe that the Consultant is not abiding by the terms of the LAWtrust Subscriber Agreement, e4 may immediately, without incurring any liability in terms of this Agreement, be entitled to revoke the Consultant's Digital Certificate.
- 9.3 The Consultant warrants and agrees that:
- 9.3.1 all information material to the issue of a Digital Certificate shall be true and correct in all material respects.
- 9.3.2 he/she shall at all times comply with the Certification Practice Statement and any other requirements which may be reasonably made by LAWtrust in governing the use of Digital Certificates.
- 9.3.3 the Digital Certificate issued in terms of this Agreement shall not at any time be used for any unlawful purpose.
- 10 CONSULTANT SERVICES**
- 10.1 The Consultant shall render the Services competently, diligently, to the best of his/her ability and to the standards required by e4 and/or the Accountable Institution.
- 10.2 In the performance of the Services in terms hereof, the Consultant shall:
- 10.2.1 ensure the stordoc-Client has authorised the storage of his/her/its Client Electronic Documents (including Personal Information and FICA documents) in the stordoc-Database.
- 10.2.2 ensure the stordoc-Client has authorised the disclosure by e4 of his/her/its Client Electronic Documents to or from (i) any Accountable Institution seeking to establish a business relationship or conclude a single transaction with him/her/it; and (ii) any legitimate third party (e.g. SARS, deeds office, credit bureaux, municipalities, SABC) for the purposes of verifying his/her/its Personal Information in the stordoc-Database.
- 10.2.3 cause his/her own personal FICA Documents to be uploaded to the stordoc-Database.
- 10.2.4 perform the Services in a competent, professional and workmanlike manner and in accordance with the directives of e4, including those contained in the stordoc-Guides.
- 10.2.5 carry out all reasonable and fair instructions given by e4.
- 10.2.6 refrain from any action that may be prejudicial or adversely affect e4, the Accountable Institution and/or their standing, reputation or goodwill.
- 10.2.7 comply with all security and operational procedures of e4 and/or the Accountable Institution.
- 10.2.8 submit and permit e4 and/or the Accountable Institution to conduct identity, credit and criminal background checks of his/her profile.
- 10.2.9 attend all scheduled and/or urgent meetings requested by e4 and/or the Accountable Institution.
- 10.2.10 perform the Services within the normal working hours of the Accountable Institution as well as any additional hours as may reasonably be required by e4 and/or the Accountable Institution.
- 10.2.11 not undertake any business activity, directly or indirectly, which would in any way infringe on the rendering of the Services or which involve the rendering of a similar or competing service to any third party, without obtaining the prior written consent of e4.
- 10.2.12 not sub-contract the provision of any Services or otherwise assign or transfer any of his/her obligations in terms hereof, without the prior written consent of e4.
- 10.2.13 liaise exclusively with and take instructions exclusively from the authorised representative of e4.
- 10.2.14 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 e4 and/or the Accountable Institution.
- 10.2.15 ensure that he/she receives proper training in the use of the Hardware and Software.
- 10.2.16 notify e4 immediately, in writing, of any matter which could be a risk to or which is likely to frustrate or limit the ability of the Consultant to render the Services efficiently or at all.
- 10.2.17 perform the Services at such locations as reasonably required by e4 and/or the Accountable Institution.
- 10.2.18 comply fully with the Justices of the Peace and Commissioners of Oaths Act, No. 16 of 1963.
- 11 CLIENT ELECTRONIC DOCUMENTS**
- 11.1 The Consultant shall:
- 11.1.1 make available to e4 all Client Electronic Documents which are required by e4, in accordance with the stordoc-Guides.
- 11.1.2 ensure the Client Electronic Documents are correct and complete and, where applicable, legible to the naked eye.
- 11.2 The Consultant acknowledges that:
- 11.2.1 both e4 and the Client shall rely upon the accuracy, completeness and correctness of Client Electronic Documents.
- 11.2.2 e4 shall be entitled to unilaterally (for whatever reason) reject, delete or quarantine any Client Electronic Documents uploaded by the Consultant to the stordoc-Database.
- 12 INDEMNITY**
- The Consultant hereby indemnifies and holds harmless e4 and/or any company within the e4 Group and/or any Client from and against any and all claims, demands, actions, proceedings, losses, damages, costs and expenses (including claims from third parties) arising directly or indirectly out of or in connection with any act or omission of the Consultant relating to the Services, including any incorrect or incomplete Client Electronic Documents uploaded by the Consultant to the stordoc-Database.
- 13 EXCLUSIVITY**
- The Consultant shall render the Services exclusively to e4 and shall not, either directly or indirectly, offer services that are the same or substantially similar to the Services to the Client and/or any other third party.
- 14 NO COMMISSIONING FEES**
- Neither e4, the Consultant or anyone else shall request or receive payment for commissioning any documents.
- 15 CONFIDENTIALITY**
- 15.1 The Consultant undertakes to e4, for the continuance of this Agreement and indefinitely thereafter:
- 15.1.1 to keep confidential all Personal Information of Clients, the Hardware, the Software, all information whether written (including information contained in

- electronic format) or oral concerning the business and/or affairs of e4 that it obtains or receives from e4 or any third party, as well as the terms of this Agreement (the Information).
- 15.1.2 not without e4's prior written consent to disclose the Information in whole or in part to any person.
- 15.1.3 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.
- 15.2 The terms of clause 15.1 shall not apply to the whole or any part of the Information which is:
- 15.2.1 already known to the Consultant without obligation of confidence.
- 15.2.2 publicly available without breach of this Agreement.
- 15.2.3 lawfully received from a third party.
- 15.2.4 released for disclosure by the e4 or the Client, as the case may be, with their prior written consent.
- 15.2.5 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.
- 15.3 If the Consultant is obliged to divulge Information in terms of clause 15.2.5 he/she shall, provided that circumstances permit the time to do so, forthwith and before releasing the Information, inform e4 of the obligation.
- 15.4 Upon the expiry or termination of this Agreement for any reason, the Consultant shall promptly return to e4 all documents, diskettes, drawings and any other medium containing the Information of the other Party (as well as all copies, notes or reproductions thereof) and delete and remove the Information from its electronic data bases and deliver to e4 a certificate that he/she has done so.
- 15.5 The Consultant shall not publish any announcement of this transaction without the prior written consent of e4.
- 15.6 e4 is entitled to disclose the fact that the Consultant is service provider of e4.
- 15.7 All terms of this clause 15 shall apply, with the necessary alterations made, between the Consultant and the Accountable Institution with regard to any information of the Accountable Institution obtained or received by the Consultant.
- 16 INTELLECTUAL PROPERTY**
- 16.1 Subject to Clauses 16.2 and 16.3 below, all Intellectual Property owned by a Party, the Client, their respective vendors and/or suppliers shall at all times remain the sole property of the Party, the Client, their respective vendors and/or suppliers, as the case may be.
- 16.2 The Consultant agrees and accepts that he/she has no claim whatsoever in and to any Intellectual Property pertaining to the stordoc-Services, the stordoc-Database, the Hardware and the Software.
- 16.3 The Consultant hereby assigns to e4 all right, title and interest the Consultant may have in and to any Intellectual Property created by the Consultant in rendering the Services, and shall sign all documents and do all things that may be necessary to record and perfect the transfer of the Intellectual Property into the name of e4.
- 17 WARRANTY**
- 17.1 The Consultant warrants that he/she:
- 17.1.1 shall render the Services in accordance with the terms contained in this Agreement and the stordoc-Guides;
- 17.1.2 shall render the Services with the necessary diligence, care and skill as may be reasonably expected, having due regard to requirements of the Client; and
- 17.1.3 is sufficiently qualified and possesses the necessary skill and expertise for the purpose of clause 17.1.2.
- 17.2 If the Consultant breaches any warranty in clause 17.1, the Consultant shall at his/her own cost and expense, at the request of e4 (and without prejudice to any other rights of e4) promptly correct and/or redo the Services, as may be necessary to comply with the warranties within the time period stipulated by e4.
- 17.3 To the extent that e4 has given any warranties relating to the Services in the stordoc-Services Agreement and/or any other applicable agreement which warranties have not been provided by the Consultant in this Agreement, then the Parties shall in good faith, negotiate the necessary amendments to this Agreement to include such warranties. If the Parties are unable to agree on any amendments within 14 (fourteen) days from the date on which e4 requested the Consultants to commence negotiations regarding such amendments, e4 may terminate this Agreement on a further 14 (fourteen) days written notice to the Consultant. The Consultant shall have no claim of whatsoever nature against e4 arising from such termination.
- 18 BREACH**
- 18.1 If the Consultant commits any breach of this Agreement and fails to remedy the breach within 30 (thirty) days after receipt from e4 of written notice calling upon him/her to do so then e4 shall be entitled, in addition to and without prejudice to any other right it may have in law or in terms of this Agreement, to:
- 18.1.1 enforce specific performance of the terms of this Agreement; or
- 18.1.2 cancel this Agreement; and
- 18.1.3 in either event recover such damages as e4 may have sustained.
- 18.2 No claim may be instituted against e4 arising from the terms of this Agreement or performance in terms thereof unless dispute resolution proceedings are instituted by the Consultant within 1 (one) year of such purported cause of action arising.
- 18.3 In addition, e4 shall be entitled at any time to summarily terminate this Agreement and discontinue the Services of the Consultant by written notice to the Consultant:
- 18.3.1 upon notification by the Client to e4 or the Consultant that it is dissatisfied with the Services rendered for any reason whatsoever;
- 18.3.2 on grounds including (but not limited to) lack of qualification, lack of the required degree of competence, unsuitability for inclusion in the relevant working team, unsatisfactory performance and/or dishonesty.
- 18.4 e4 shall immediately inform the Department of Justice should a Consultant's services be discontinued.
- 19 FORCE MAJEURE**
- 19.1 Neither Party shall have any claim against the other Party (the Affected Party) for any delay or failure of the Affected Party to carry out any of its obligations under this Agreement arising from or attributable to acts of God, war, terrorism, government, labour action or unrest, power failure, failure of suppliers or contractors or any other cause whatsoever beyond the control of the Affected Party (Force Majeure).

19.2 The performance of the obligations of the Affected Party shall, subject to clause 19.3, be suspended for the duration of the Force Majeure, which shall be deemed to commence only upon the date of written notice by the Affected Party to the other Party. Upon cessation of the Force Majeure, this Agreement shall again become fully operative and the Affected Party shall immediately resume its performance.

19.3 If the suspension of performance continues for more than 60 (sixty) days, then either Party may summarily terminate this Agreement by written notice to the other Party, prior to the cessation of the Force Majeure, whereupon e4 shall notify the Department of Justice accordingly.

20 LIMITATION OF LIABILITY

20.1 Any claim by a Party against the other Party, howsoever arising, shall in the aggregate be limited to the amount paid by e4 to the Consultant for the period of 6 (six) months immediately preceding the institution of the claim.

20.2 In any event, neither Party will be liable to the other Party for: (a) indirect or special damages and/or (b) loss of income or profit, howsoever arising, whether or not caused by its employees, agents and/or contractors, and regardless of form or cause of action.

20.3 The terms of this clause 20 are also stipulated for the benefit of the employees, agents and/or contractors of e4 and the Accountable Institution.

21 ARBITRATION AND DISPUTE RESOLUTION

21.1 If any dispute arises out of or in connection with this Agreement the Parties may at any time, by agreement, refer the dispute for resolution by way of Arbitration.

21.2 If the Parties agree to refer the dispute to Arbitration, each Party:

21.2.1 agrees that the Arbitration will be held in Midrand in accordance with the then current rules of the Arbitration Foundation of South Africa (AFSA) (the Rules) by 1 (one) arbitrator appointed by agreement between the Parties. If the Parties cannot agree on the arbitrator within a period of 14 (fourteen) days after the date on which the Parties agreed in writing to refer the dispute to arbitration the arbitrator shall be appointed by the Secretariat of AFSA;

21.2.2 expressly consents to any arbitration in terms hereof being conducted as a matter of urgency; and

21.2.3 irrevocably authorises the other Party to apply, on behalf of both Parties, 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.

21.2.4 The decision or award resulting from the arbitration may be made an order of court at the instance of either Party. The Parties hereby irrevocably submit to the jurisdiction of the High Court of the Republic of South Africa should either Party wish to make the arbitrator's award an order of court.

21.3 There shall be a right of appeal as provided for in article 22 of the Rules.

21.4 The arbitration will be held in camera, in the English language and will be kept confidential by the Parties.

21.5 The terms of this clause 21 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 arbitration in terms of this clause 21 or in respect of such arbitration, for which purpose the Parties irrevocably

submit to the jurisdiction of the High Court of the Republic of South Africa.

22 DOMICILIUM AND NOTICES

22.1 The Parties choose as *domicilium citandi et executandi* (Domicilium Address) as follows:

22.1.1 The Consultant: the Consultant's physical address set out in Part 1 of this Agreement.

22.1.2 e4: e4's physical address set out in Part 1 of this Agreement.

22.2 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*.

23 GENERAL

23.1 This Agreement constitutes the entire Agreement between the Parties with regard to the subject matter hereof.

23.2 The terms 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.

23.3 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 means of hand-written signatures, by the Parties.

23.4 The terms of clauses 15 to 24 shall survive the expiry, cancellation or termination of this Agreement for any reason.

23.5 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.

23.6 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.

23.7 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.

23.8 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.

23.9 If any conflict arises between the terms contained in Part 2 and those contained any other document, including Part 1 or the stordoc-Guides, the terms contained in Part 2 of this Agreement shall prevail.

23.10 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:
- 23.10.1 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
- 23.10.2 to terminate his/her employment with the other Party or with the e4 Group; or
- 23.10.3 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.
- 23.10.4 It should be noted on termination of your contract your appointment as a Commissioner of Oaths will be cancelled.
- 23.11 This Agreement may be signed in two or more counterparts, one or more of which may be delivered via facsimile, and the signed counterparts, taken together, shall constitute a binding agreement between the Parties.
- 23.12 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.
- 23.13 This Agreement shall be governed by, construed and interpreted in accordance with the laws of the Republic of South Africa.
- 23.14 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 client charges.
- 23.15 Information or documents sent to e4 by Electronic Communication shall be deemed to have been received by e4 only once e4 has acknowledged receipt thereof in writing.
- 24 INTERPRETATION**
- 24.1 In this Agreement, unless the context requires otherwise:
- 24.1.1 words importing any one gender shall include the other two genders;
- 24.1.2 the singular shall include the plural and vice versa;
- 24.1.3 a reference to natural persons shall include created entities (incorporated or unincorporated) and vice versa;
- 24.1.4 "Business Day" means any day other than a Saturday, Sunday or any official public holiday within the Republic of South Africa;
- 24.1.5 any reference to an enactment is to that enactment as at the Date of Signature, as amended or re-enacted from time to time;
- 24.1.6 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;
- 24.1.7 when any number of 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 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;
- 24.1.8 when any number of days is prescribed and the type of days it is not specified they shall be deemed to be calendar days; and
- 24.1.9 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.
- 24.2 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.
- 24.3 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.
- 25 RICA**
- The terms of this Agreement shall apply *mutatis mutandis* to where e4 is required to provide services similar to the stordoc-Services in respect of Chapter 7 of RICA.

END OF PART 2