

# Terms and Conditions

## (A) INTERPRETATION

- A.1 In this Agreement the headings of clauses are for reference purposes only and shall not be taken into account in interpreting the contents hereof, the singular will include the plural and vice versa, one gender will include the other gender and, unless inconsistent with the context, the following words will have the meanings ascribed to them:
- A.2 "Agreement" or "this Agreement" shall mean these terms and conditions and, if applicable, any additional or further terms or any addendum containing specific and detailed reference to this Agreement, which, once signed by both parties, shall form part of this Agreement.
- A.3 "CCMA" shall mean the commission for conciliation mediation and arbitration
- A.4 "Commencement date" shall mean the date of commencement of this Agreement.
- A.5 "Connection" shall mean the date that Customer's is granted access to the system and the electronic CCMA notifications are received for the first time
- A.6 "Content" means any and all information, data, graphics, text, and transmissions contained in the notifications and reports as well as on the system.
- A.7 "Hosted Environment" means a hardware/Software system combination under the control of the supplier, on which the service or any portion thereof is run.
- A.8 "Intellectual Property Rights" means all rights in and to the intellectual property, including copyright, in:
- A.8.1 The system;
- A.8.2 Product embodying the system and the proprietary information
- A.8.3 all rights to intellectual property which may be devised or come into the existence in the future in any Modifications, Variations, Enhancements or improvements to the system and products embodying the system
- A.8.4 The electronic delivery mechanism and management tool
- A.8.5 The Supplier's service and concept;
- A.8.6 The Suppliers business; and
- A.8.7 The method of sales of the services
- A.9 "Profile" means the list of entities, company names or trading names for which notifications are to be delivered. Such profile is provided to the supplier by the customer.
- A.10 "Notifications" shall mean electronic delivery via email to designated recipients, as and when and provided these are received by the Supplier from the CCMA, all CCMA case information in respect of the customer's profile. Such notifications includes notice of set downs, postponements and cancellations in respect of new CCMA cases originating after date of connection and existing CCMA cases which originated prior to the date of connection provided the entity name originally captured can be matched to the customer's profile.
- A.11 "Services" or "Service" shall mean the provision of CCMA notifications to a user's outlook diary ..
- A.12 "The System" shall "mean the application computer programme known as "ER Navigator". Enabling Industrial relations process management via web based process workflow and document management, including but not limited to the source code, system workflow, user interface and database, and documentation templates built under an Application Service Provider infrastructure using Microsoft .net. The term "system" as defined shall include, without limiting the generality of the above:
- A.12.1 all future Updates, Modifications and Enhancements to the system as well as improvements thereof, which will be incorporated in and form a part of the system automatically immediately when the Updates, Modification and Enhancements to the system as well as improvements thereof are made; and
- A.12.2 all descriptive documentation, design documentation and user documentation associated with or useful in the utilisation of the Software, whether incorporated in humanly intelligible media or not
- A.13 "Proprietary Information" means the technical or market knowledge and information of the Supplier embodied in the system, electronic delivery mechanism and products embodying the system and mechanism
- A.14 "Recipient" shall mean any named person designated by the Customer to receive CCMA electronic notifications as contained in a distribution list.
- A.15 "Users" shall mean individuals granted access to the system for use or management of the functionality related to the service only and will exclude any other functionality and modules available on the system.
- A.16 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.
- A.17 The Agreement shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa.

## (B) COMMENCEMENT, DURATION AND TERMINATION

- B.1 This service will commence on acceptance of the terms and conditions and completion of the registration documentation. .
- B.2 This service can be terminated by the customer on the provision of written notice to the supplier at any time. .

## (C) THE SERVICE

- C.1 The Supplier will deliver notifications to the Customer's recipients in respect of the customer's profile as and when and provided these are received by the Supplier from the CCMA. Notifications will be sent via email outlook requests. Notifications include Notice of set downs and cancellations This electronic delivery of notifications is a secondary means of delivery and does not replace the primary means of delivery from the CCMA via fax or other methods.
- C.2 Notifications will be delivered to the Customer from as many CCMA regions as are applicable to the Customer or customer profile.
- C.3 Notifications will be delivered to as many recipients as are contained in the Customer's distribution list for any given month.

## (D) SET UP

- D.1 The Customer's profile as well as recipient information and distribution lists will be captured by the supplier.
- D.2 Thereafter the distribution list will be managed by the customer.

## (E) FEES, BILLING AND PAYMENT

- E.1 The fees payable are as follows:

Recipients (Per legal entity)	Monthly fee (Including Vat)
1-10	R249,00

- E.2 The fee may be paid monthly in advance by the customer by signing the debit order mandate provided. Alternatively the customer may elect to pay the fee by electronic transfer in which case a 12 month fee of R 2988 inclusive of Vat is paid each year.
- E.2 Where the customer has elected the monthly debit order option and cancellation has been provided during the month no refund will be provided for the period of the remainder of the month.
- E.3 Where the customer has made an annual payment by electronic transfer and has elected to cancel prior to the end of the 12 month period a refund equal to the monthly fee multiplied by the full remaining calendar months will be paid to the customer.
- E.3 The fees will escalate by a percentage equal to the year on year percentage increase in the Consumer Price Index on each anniversary of the commencement date. .

## (F) RIGHTS, OWNERSHIP AND COPY RIGHTS.

- F.1 Supplier retains all ownership and intellectual property rights to the system and service. Customer obtains the right to use the system and service for its own internal purposes and not for distribution, transfer, sale or use for the benefit of any third party except as otherwise expressly provided herein. Customer obtains the right to receive electronic notifications and reports for its own internal purposes and not for the benefit of any third party except as otherwise expressly provided herein
- F.2 The Supplier retains copyright in all or any content including material which form part of the system, ER Navigator domain/URL and service. The Customer retains ownership in Customer specific data transmitted via the system and notifications.
- F.3 The Customer agrees and undertakes on its own behalf and on behalf of its users and recipients not to copy, reproduce, publish, modify, and/or distribute any content or material associated with the system or ER Navigator domain/URL This does not apply to Customer own specific data generated by the utilisation of the system and communicated to and/or from the domain/URL for the express use by the Customer.
- F.4 "ER Navigator", "Human Capital Management Technologies" and other marks, logo's or trademarks used by the Supplier, whether registered or unregistered, are trademarks of the Supplier and its holding or subsidiary companies and the Customer and their user's use of any of these trademarks is strictly prohibited without the prior written consent of the Supplier.
- F.5 The Customer agrees and undertakes on its own behalf and on behalf of its users not to reverse engineer, disassembled de-compile, translate or copy the system for any reason;
- F.6 The Customer its users and recipients shall use or permit the use of the system and service only for the purposes and in the manner for which it is intended to be used.

- F.7 The Customer shall not permit any person other than its users and recipients to obtain any right of use of the system and service.
- F.8 The Supplier reserves the right to alter, modify, upgrade or update the system or service. Any modification shall be communicated to the Customer one-week prior to the said modification being implemented.

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**(G) CUSTOMER RESPONSIBILITY**

- G.1 The customer shall complete the written consent document on the customer's letterhead. Such consent will be provided by the supplier to the CCMA in order for the supplier to receive the designated CCMA case information from the CCMA on behalf of the customer

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**(h) SUPPLIER OBLIGATIONS**

- H.1 The supplier will provide the customer with the CCMA electronic notification service only to the extent that it receives the designated CCMA case information from the CCMA

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**(I) DISCLAIMER**

- I.1 The Supplier provides the Customer with electronic delivery of notifications only as received from the CCMA. The Supplier does not validate the content of such notifications for accuracy and assumes no responsibility for any of the content contained therein, nor shall the Supplier be liable for any losses or damages arising from the Customer's failure to act or acting as a result of the receipt of such notifications.
- I.2 The Supplier does not make any representations nor does it give any warranty or guarantee of any nature whatsoever in respect of the system or service other than the provision of CCMA Notifications electronically if these have been received from the CCMA and provided the CCMA continues to contract with the Supplier to provide such information to the Supplier on an ongoing basis.
- I.3 Without derogating from the generality of I.1 the Supplier does not warrant or guarantee that the Service will be operational and available without interruption or that email notifications once sent by the supplier and delivered over the internet to the customer will be received or accepted by the customer's email server or firewall and the Customer acknowledges that there are various factors that may cause downtime or delay in the Service or which can affect the receipt of such notifications
- I.4 The Supplier does not warrant, guarantee or undertake that the information received, transmitted, and/or available by/to the Customer, its users and its recipients by way of the Service-
  - I.3.1 will be preserved or sustained in its entirety indefinitely
  - I.3.2 will be suitable for any purpose other than the purpose for which the service was designed and for which the Customer intends to make use of it
  - I.3.3 will be free of inaccuracies or defects or bugs or viruses of any kind,
 And the Supplier assumes no liability, responsibility or obligations in regard to any of the above exclusions.

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**(J) LIMITATION OF LIABILITY**

- J.1 The Supplier shall not, unless due to wilful default or gross negligence, be liable to the Customer, its users or its recipients or any third party for any loss or damage of whatsoever nature and howsoever arising from the use of the system or service provided in terms of this agreement (including consequential or incidental loss or damage such as, without limitation, loss of profit, business, goodwill, revenue or anticipated savings). In the case of wilful default or gross negligence on the part of the Supplier, the liability of the Supplier in respect of loss sustained by the Customer as a result thereof, shall be limited to an amount equal to the aggregate of the connection fees payable by the Customer during the initial contract period.
- J.2 Without derogating from the generality of J.1 the Supplier shall not be liable for any damage or loss arising from loss of any of the Customers information, the loss or corruption of any data or the incompatibility of any of the Customers hardware, software or applications with those of the Supplier.
- J.3 The Customer indemnifies and holds the Supplier harmless against any damage, loss, failure, defect or destruction arising from or connected to the service, irrespective of the cause of such damage, loss, failure, defect or destruction.

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**(K) BREACH**

- K.1 Subject to F6 and I.2, in the event of the breach of any of the terms and conditions of this agreement by either party hereto and failure of such party to remedy such breach within 14 days after receipt of written demand by the aggrieved party to effect such remedy, the aggrieved party shall be entitled to terminate this agreement forthwith without further notice to such other party, and such termination shall be without prejudice to any right of the aggrieved party to recover, inter alia, any costs, damages or expense arising from or consequent upon such breach, subject to the limitations in J.
- K.2 Alternatively to K.1, in the event that the Customer shall fail to effect payment of any amount payable by it on the due date or within 14 days thereafter, the Supplier shall be entitled without further notice to claim payment of the amounts due and unpaid.

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**(L) GENERAL**

- L.1 This Agreement constitutes the whole agreement between the parties hereto and no warranties, promises, representations or inducements of whatsoever nature and whether express or implied other than those in this Agreement have been made, given or held out by any of the parties hereto or any other person on their behalf.
- L.2 No amendment, variation, addition or consensual cancellation of this Agreement or any provision or term thereof and no extension of time, waiver or relaxation of any of the provisions or terms of this Agreement shall be binding unless recorded in a written document signed by each of the parties hereto. Any such extension, waiver or relaxation which is so given or made shall be construed as relating strictly to the matter in respect whereof it was made or given.
- L.3 No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement shall operate as an estoppel against any party in respect of its rights under this Agreement, nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with this Agreement.
- L.4 The parties hereto undertake to do all such things, perform all such actions and take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or the maintenance of the terms, conditions and/or import of this Agreement.