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# DAC Systems Standard Business Terms

Version 2

DAC-LGL-1510-001



For ease of expression, DAC Systems (Pty) Ltd. is referred to as "DAC", the Client is referred to as "the Client" and the full extent of the services to be provided by DAC and the Client are collectively referred to as "the Project".

## Project Responsibility

1. DAC and the Client acknowledge that the success of the Project is the joint responsibility of both parties. Failure by either party to fulfil its obligations may impact the other's ability to meet its obligations on the Project;
2. DAC and the Client recognise they must both use all reasonable endeavours to meet agreed deadlines;
3. DAC may appoint sub-contractors to assist in meeting its obligations on the Project;
4. DAC will agree with the Client its needs for appropriate involvement of Client personnel, reasonable working accommodation, communications and access to equipment.

## Scope of project

5. The scope of the Project is described in the Memorandum of Agreement. Although elements of the scope may necessarily change over time, DAC will have no obligations to proceed with any change proposed by the Client until the cost and schedule impact has been agreed. DAC will develop the cost and schedule impact of proposed changes within a reasonable period of receiving instructions from the Client. If the project is reliant on Client facilities, infrastructure, personnel or skills, DAC reserves the right to treat absences of Client facilities, infrastructure, personnel or skills as a proposed change in scope even if caused by circumstances beyond the Client's control.

## Confidentiality

6. During the Project the Client is likely to have access to confidential information of DAC, including (but not limited to) DAC's past, present and future research, development, business activities, products, services and technical knowledge. Similarly, DAC is likely to have access to confidential information of the Client.
7. Accordingly, each party ("the Recipient") agrees and undertakes in favour of the other party ("the Protected Party") that the confidential information of the Protected Party may be used by the recipient only in connection with the Project and will be kept in the strictest confidence and will not be disclosed to any third party except with the prior signed written approval of the Protected Party or pursuant to an order, directive or subpoena issued by any competent court or authority. The Client agrees that the Memorandum of

Agreement (including its annexes) constitutes confidential information of DAC as contemplated in this paragraph.

## Intellectual Property Rights

8. DAC will retain the intellectual property rights and copyright of any work performed by its personnel, save for all such work as is paid for wholly and exclusively by the Client, and may retain such copies of outputs as are necessary for its reference purposes. DAC may re-use concepts and other outputs of the Project provided confidential information of the Client is safeguarded.

## Remedies and liabilities

9. DAC's objective is to work with the Client to achieve the business objectives of the Project. If, in doing so, the Client suffers proven damages resulting from an act or omission of a DAC director or employee, DAC would recognise this as its responsibility, up to but not exceeding the amount of fees received from the Client for that phase of work.
10. The Client agrees that DAC shall be given a reasonable opportunity to remedy any failure or shortcoming in the delivery of the services to the Client notified to DAC within three months of delivery. DAC undertakes, at its expense, to use all reasonable efforts to implement such remedy as soon as reasonably possible after any such failure is reported to DAC. Subject to the financial limits set forth above, the Client agrees that this provision is the exclusive remedy available to the Client in the event of any failure or shortcoming in the project.
11. DAC will carry reasonable insurance cover in respect of any negligence by DAC which causes death or personal injury to the Client's employees or contractors.
12. DAC shall not be liable for any indirect or consequential loss or damage of any kind under any circumstances including negligence (whether arising under contract, common law or otherwise) including but not limited to loss of profits, loss or corruption of data, loss of operation time or loss of contracts, whether caused by its directors, employees, agents or others for whom in law it may be liable.
13. DAC's liability under paragraphs 9 and 10 is in lieu of and to the exclusion of any warranty or term of any kind relating to the condition, performance, merchantability or fitness for purpose of the services.

### 3<sup>rd</sup> Party Software

14. As part of its obligations on a Project DAC might supply 3<sup>rd</sup> party software products or software platforms or access to 3<sup>rd</sup> party software products or software platforms as part of a DAC software solution. Should the supplied 3<sup>rd</sup> party software products or platforms be defective or unavailable for any reason whatsoever, DAC will refer this to the IP Holder of the software product for urgent rectification. DAC does not provide any guarantees or warranties for any 3<sup>rd</sup> party software products or platforms other than that provided by the IP holder of the 3<sup>rd</sup> party software products or platforms.

### Infringement and Copyright

15. DAC will defend, at its expense, a third party claim that any service DAC has provided infringes a South African copyright. In the event that any damages are finally awarded against the Client in respect of such a claim, these will be paid by DAC. This indemnity will not apply if the infringement is the result of the Client modifying, misusing or providing services to a third party or failure to use enhancements supplied by DAC or information, documents, facilities or products which are supplied by the Client for the purposes of the Project. This indemnity constitutes the Client's sole and exclusive remedy and the DAC's entire liability with respect to any deliverable or service infringing any third party rights.

### Force Majeure

16. DAC will not be liable for any delay in performing or failure to perform its obligations if such failure or delay is as a result of causes outside its reasonable control.

### Quality Assurance

17. The Client agrees, if so requested by DAC, to allow representatives of any organisation responsible for certifying standards of work access to the Client's premises and to co-operate, so far as is reasonable, with such representatives.

### Personnel

18. DAC believes that a planned rotation of its personnel is in the Client's best interests, both in terms of quality and cost management. DAC reserves the right to meet its responsibilities through the allocation of appropriate available skilled personnel without a guarantee that specific individuals will be assigned.

19. In the event of the resignation of a DAC or Client project team member who is a key resource on the Project, the respective employer will endeavour to replace that person within a reasonable time period or otherwise agree to a reallocation of resources or scope change to the Project.
20. Neither Party shall employ or contract the services of any person who is or was employed, contracted or engaged by the other Party during the tenure of this agreement, the duration of the Project and for a period of one year thereafter, whether directly or indirectly through any third party, unless the relevant Party specifically consents. Breach of this condition will render the breaching Party liable to pay damages equal to 6 (six) month's emoluments for the employee or contractor concerned for the period prior to leaving the employ of the relevant Party.

## Termination of agreement

21. The Client may terminate or restrict DAC's services at any time in which case the Client will be liable for all work done at DAC's standard billing rates which may be higher than proposed rates contracted for the Project, since proposed rates will have included assumptions on the volume of work and levels of staffing at various stages. The Client will also be liable for any cancellation charges incurred by DAC. DAC may terminate its participation in the project if its fees remain unpaid for sixty (60) days or if the Client commits significant or repeated breach of agreement.
22. In the event that any proposed change of scope is as a result of circumstances beyond the Client's control and the cost implication of the change of scope is, in the opinion of the Client, material, the Client may forthwith terminate or restrict DAC's services in which event the Client will be liable for all work done at the proposed rates contracted for the project.

## Payment

23. DAC's fees are normally billed as follows:
1. For fixed price projects monthly amounts according to a specific schedule, or otherwise equal monthly estimated amounts based on the duration and remaining fees specified in the Memorandum of Agreement as adjusted by changes in scope;
  2. For time and material projects monthly amounts based on the hours worked up to the second last Sunday of the month.

24. The economics of DAC's proposal are based on timeous payment of invoices to balance expenditures on salaries and office costs. As a consequence, all invoices for fees and expenses will be payable monthly on presentation or as scheduled in the Memorandum of Agreement. Any sum which remains outstanding beyond ten (10) days will bear interest from the date of presentation until paid in full. This interest will be at the then current Standard Bank Prime Rate compounded monthly.

#### **Statement of Confidentiality and Copyright**

25. © 2015 Copyright DAC Systems (Pty) Ltd. All rights reserved.

26. The material contained in this document is proprietary to DAC Systems (Pty) Ltd and will not be reproduced, stored or distributed in any form and by any means, in whole or in part, without prior written consent from DAC Systems (Pty) Ltd.

## Signatures

27. Signed at \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_ year \_\_\_\_\_

28. For [CLIENT]: \_\_\_\_\_

### Witnesses:

29. 1. \_\_\_\_\_

### Witnesses:

30. 2. \_\_\_\_\_

31. Signed at \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_ year \_\_\_\_\_

32. For DAC Systems (Pty) Ltd: \_\_\_\_\_

### Witnesses:

33. 1. \_\_\_\_\_

### Witnesses:

34. 2. \_\_\_\_\_