

## Standard Terms and Conditions

Between

Fidelity Fire Solutions (Pty) Ltd

Registration Number: 2002/030253/07

And

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ID/Registration Number:

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### DEFINITIONS

In this Agreement, unless the context clearly indicates otherwise, the following words and expressions have the meanings assigned to them:

- 1.1 “**Account Holder**” means the natural or juristic person whose bank account is debited in respect of all charges as contemplated in this Agreement and whose bank details are contained in the Schedule;
- 1.2 “**Agreement**” means these standard terms and conditions, as well as the Schedule;
- 1.3 “**Business Days**” means a day that is not a Saturday, Sunday, or a public holiday in South Africa;
- 1.4 “**Control Room**” means the place to which signals from the Communicator are transmitted and monitored by Fidelity Fire Solutions (Pty) Ltd;
- 1.5 “**CPA**” means the Consumer Protection Act, No. 68 of 2008;
- 1.6 “**Customer**” means the natural or juristic person whose full detail is contained in the Schedule;
- 1.7 “**FFS**” means Fidelity Fire Solutions (Pty) Ltd, a private company duly incorporated in terms of the company laws of South Africa, with registration number 2002/030253/07;
- 1.8 “**Instruction**” means any instructions that FFS issues to the Customer from time to time, In Writing;
- 1.9 “**In Writing**” means notification by the Parties in terms of this Agreement in any written format, which includes written notification as contemplated in section 12 of the ECT;
- 1.10 “**Key Holder**” means any natural person or persons nominated by the Customer, whose detail is contained in the Schedule, or any other natural person or persons nominated by the Customer In Writing, from time to time, to hold the keys to the Premises and who maybe contacted when a signal is received by FFS;
- 1.11 “**Normal Working Hours**” means 9:00 to 17:00, Monday to Fridays, excluding public holidays;

- 1.12 **“Parties”** means the parties whose detail are contained in the Schedule, and **“Party”** shall refer to either one of them, as the context may require;
- 1.13 **“Premises”** means the premises where the Services are provided by FFS, detail of which is contained in the Schedule;
- 1.14 **“Schedule”** means the document marked “Schedule”, which forms part of this Agreement;
- 1.15 **“Services”** means the fire prevention and extinguish services selected by the Customer, as contained in the Schedule.
- 1.16 **“South Africa”** means the Republic of South Africa;
- 1.17 **“Start Date”** means the date upon which the client has opted in or signed up;

## 2 **RECORDAL**

- 2.1 The Parties wish to enter into this Agreement and wish the terms of their agreement to be recorded in writing, as they hereby do.

## 3 **TERM**

- 3.1 This Agreement shall, subject to all other provisions pertaining to termination thereof, commence on the Start Date, from which date

FFS shall provide the Services, and continue for a period of 36 (thirty six) months thereafter.

- 3.2 FFS shall, in accordance with the provisions of the CPA, notify the Customer In Writing, of the impending expiry date, including a notice of:

3.2.1 any material changes that would apply if the Agreement is to be renewed or may otherwise continue beyond the expiry date; and

3.2.2 the options available to the Customer, namely expressly to:

3.2.2.1 direct FFS to terminate the Agreement on the expiry date; or

3.2.2.2 agree to a renewal of the Agreement for a further fixed term.

- 3.3 On the expiry of this Agreement, it shall be automatically continued on a month-to-month basis, subject to any material changes of which FFS has given notice In Writing, unless the Customer has exercised any the options as contemplated in clauses 3.2.2.1 or 3.2.2.2 above.

## 4 **SERVICES:**

- 4.1 FFS will provide the services to the Customer as more fully set out in the Schedule.

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## **5. CUSTOMER'S OBLIGATIONS**

In addition to the obligations contained elsewhere in this Agreement or otherwise the Customer:

- 5.1 Shall give FFS access to the Premises in order to perform the Service;
- 5.2 Shall not misuse or allow the unauthorized use of the FFS assistance by any person or entity;
- 5.3 Shall not appoint any Key Holder who does not have an operational telephone;
- 5.4 If applicable, shall ensure that the Key Holder attends to the Premises as soon as is reasonably possible after being advised to do so by FFS.
- 5.5 If applicable, shall provide FFS with clear warnings and/or instructions In Writing with regard to:
  - 5.5.1 animals and all possible dangers pertaining thereto, as well as to update FFS of any newly acquired animals which may pose a threat to FFS personnel; and
  - 5.5.2 all and any other possible dangers and/or hazardous conditions at the Premises.
- 5.6 Shall ensure that the System and all relevant telephones are operational to enable the FFS to communicate with the Customer and Key Holder.

5.7 In the event of a relocation to different Premises ("the different Premises"):

- 5.7.1 Shall give SF 20 (twenty) Business Days' notice In Writing of the relocation and, subject to clauses 6.16 and 6.17 below, simultaneously request FFS to reconnect at the different Premises, to enable FFS to continue to provide the Services;
- 5.7.2 If applicable, shall be liable for a connection fee at FFS's standard rates applicable at the relevant time;
- 5.7.3 Agrees and accepts, that this Agreement shall not terminate by virtue of the relocation by the Customer to different Premises and the onus is on the Customer to inform FFS of their new address;
- 5.8 Shall ensure that the contents of the Premises are adequately insured, and FFS shall not be liable for any loss or damage which the Customer may suffer, should the Customer not be adequately insured.
- 5.9 Shall notify the Control Room In Writing no less than 72 (seventy two) hours prior to the Premises being unoccupied for any period exceeding 7 (seven) days.
- 5.10 Shall notify FFS In Writing at least 10 (ten) Business Days

prior to the next debit order deduction, of any changes to the debit order instruction or banking details.

## **6 LIMITATION OF FADT'S LIABILITY**

- 6.1 The Services provided by FFS are intended to enhance the Customer's fire protection, but does not warrant to the Customer that:
- 6.1.1 the Services will not detect or avert all occurrences or the consequences arising of any fire;
- 6.1.2 particular losses or injuries will be prevented by using the Services;
- 6.1.3 FFS will not be held liable for any damages for entrance nor any fire damages caused.
- 6.2 The Customer agrees that FFS shall be exempt from liability, and the Customer indemnifies and holds FFS and the Fire Personnel harmless, against and/or for any loss, damage or injury arising directly or indirectly:
- 6.2.1 from any of the occurrences as set out above;
- 6.2.2 from any failure arising from a cause beyond the control of FFS;
- 6.2.3 from any failure arising as a result of the Customer's failure to meet the obligations imposed by this Agreement or follow

Instructions regarding the use of the Services;

- 6.2.4 for any other reason and/or cause, of whatsoever nature;
- 6.3 The Customer is hereby made aware that, in terms of the CPA, SF shall not be liable for harm caused by any unsafe product characteristic, failure, defect or hazard if:
- 6.3.1 the said harm is wholly attributable to SF's compliance with any public regulation;
- 6.3.2 the alleged unsafe product characteristic, failure, defect or hazard-
- 6.3.2.1 did not exist in the products at the time it was supplied by FFS; or
- 6.3.2.2 was wholly attributable to compliance by FFS with instructions provided by the person or legal entity who supplied the service;
- 6.3.3 it is unreasonable to expect FFS to have discovered the unsafe product characteristic, failure, defect or hazard, having regard to FFS's role in marketing the Services to the Customer ; and
- 6.3.4 the claim is not brought within the time limits as prescribed in the CPA.
- 6.4 FFS shall not be liable for any damage, loss, injury, or any other claim arising from any servicing, alterations, modifications, changes, movements, removal, tampering or interference in respect of the Services or any third

party, not subject to the control of FFS.

- 6.5 It is understood and agreed by the Customer that FFS is not an insurer.
- 6.6 FFS shall not be held responsible for any damage to the Premises caused as a result of FFS' attempts to extinguish a fire, including but not limited to any damage caused to do so, unless FFS failed to exercise reasonable care in removing the equipment.
- 6.7 In all instances FFS' liability will be limited to \_\_\_\_\_ per event and \_\_\_\_\_ per annual aggregate. FFS will not be liable for any consequential loss of whatsoever nature.
- 6.8 The limitations of liability set forth in this Agreement shall be to the benefit of all, subsidiaries, group companies and affiliates of FFS, whether directly or indirectly, as well as to the benefit of all FFS' employees, agents, officers, shareholders and directors.

## **7 CHARGES**

- 7.1 The Customer is liable for:
- 7.1.1 the timeous payment of the charges as set out in the Schedule.
- 7.1.2 payment of the following additional charges:
- 7.1.2.1 any statutory charges pertaining to the provision of the Services;
- 7.1.2.2 bank charges and other costs

related to a debit order, including the rejection in respect thereof;

- 7.1.2.3 the undermentioned, at AF's prevailing rates from time to time, namely:
- 7.1.2.3.1 false alarms caused by the Customer;
- 7.1.2.3.2 faults caused by the Customer or any other person, thing or event which FFS could not reasonably be expected to prevented or foreseen;
- 7.1.2.3.3 attendances by FFS at the Premises, upon the Customer's request pertaining to repairs or services outside of Normal Working Hours; and
- 7.1.2.3.4 failure by the Customer to comply with his obligations in terms of this Agreement, resulting in FFS incurring costs and/or expenses and/or any damages therefrom, whether directly or indirectly.

## **7.2 Increases:**

- 7.2.1 FFS shall, on the anniversary of this Agreement each year, be entitled to increase its charges as referred above, which increases shall always be CPI (Consumer Price Index) related.
- 7.2.2 In the event that there is an increase in any input cost of FFS directly related to providing the Services, including but not limited to risk, socio

economic environment, as well as cost pertaining to, interest rate, forex, labour, fuel, vehicle maintenance and support, whether as a result of legislation, Sectoral Determination or otherwise, FFS shall be entitled to increase the charges commensurately to cover the increased cost of such additional input cost.

## **8 PAYMENT**

- 8.1 For the duration of this Agreement, the Customer agrees to have the charges as set out in clause 8 debited against the Account Holder's bank account, by means of debit order, in advance by no later than the \_\_\_\_\_ (\_\_\_\_\_) Business Day of each month.
- 8.2 In the event of the Customer's debit order not having been established timeously, the Customer shall make payment to FFS of the \_\_\_\_ (\_\_\_\_) month's charges as referred to above, by way of electronic funds transfer.
- 8.3 The Customer warrants that he has received the express authorisation from the Account Holder to use his nominated bank account, should the Customer not be the Account Holder.
- 8.4 The Customer is obliged to immediately pay FFS all extra and other charges which are not paid by way of debit order as referred to

above upon presentation of an invoice by FFS to the Customer in that regard.

FFS does not accept cash and post-dated cheques.

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## **9 RESCISSION AND TERMINATION OF THE AGREEMENT**

- 9.1 Cooling-off period: The Customer shall, in the event of this Agreement having arisen from direct marketing as contemplated in terms of section 16 of the CPA, be entitled to rescind this Agreement, during the cooling-off period of 5 (five) days from the Start Date, by giving notice to FFS In Writing.
- 9.2 Termination:
- 9.2.1 The Customer may cancel this Agreement:
- 9.2.1.1 upon the expiry of the 36 (thirty six) month term, as provided for in clause 3 hereof, without penalty or charge; or
- 9.2.1.2 at any other time, by giving FFS 20 (twenty) Business Days' notice In Writing, which termination shall be subject to the provisions of the CPA, including the provisions referred to above.
- 9.2.2 In the event of a material failure by the Customer to comply with this Agreement, which shall include, but not limited, to the Customer failing to comply with his obligations, FFS may

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cancel this Agreement after giving the Customer 20 (twenty) Business Days' notice In Writing of such failure by the Customer, unless the Customer has rectified the failure within that period.

9.2.3 Upon termination of this Agreement, FFS shall immediately cease providing the Services.

9.2.4 In the event of cancellation of this Agreement as contemplated above in addition and without prejudice to any other rights that FFS may have in law:

9.2.4.1 the Customer remains liable to FFS for any amounts owed to FFS in terms of this Agreement up to the date of cancellation; and

9.2.4.2 FFS may make any claim as prescribed in terms of section 14(3) of the CPA, including that it may impose a reasonable cancellation penalty with respect to any goods supplied, Services provided, or discounts granted, to the Customer in contemplation of the Agreement enduring for its intended fixed term.

## **10 FORCE MAJEURE**

10.1 Neither Party shall be liable to the other Party for any failure to perform part of or all of its obligations under this Agreement when such failure is due to strike, labour troubles, riots, storms, fires, explosions, floods,

unavoidable accidents, wars, embargoes, blockades, legal restrictions, acts of God, acts of terror, or any other causes which are beyond the control of the Parties, provided that the force majeure event is brought to the attention of the other Party on notice, In Writing, within a reasonable time of the occurrence of the force majeure event.

10.2 If the force majeure event continues for a period of more than 30 (thirty) Business Days from the day of receipt of the notice referred to in clause 13.1, either Party may terminate this Agreement, on notice In Writing to the other.

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## **11 EXCUSED PERFORMANCE**

11.1 It is recorded that FFS obligations to provide the Services and the Customer is obliged under the terms of this agreement to adhere to the terms and perform.

11.2 In the event of the Customer failing to comply with his obligations first, shall be entitled to withhold its counter-performance and shall be excused from performing the same.

11.3 For the avoidance of doubt and as an example, this means that if the Customer does not pay any charges as contemplated in this agreement timeously, FFS shall not be obliged to perform any of its obligations.

11.4 The Customer acknowledges that it is his obligation to ensure that he has duly performed in order to entitle the Customer to the reciprocal performance by FFS and that it is not FFS' obligation to notify him that he has not performed and therefore that FFS is not obliged to perform its counter-performance.

11.5 Notwithstanding that FFS may withhold its performance as aforesaid, the Customer is not absolved from its obligation to make payment as contemplated above, even during the period which FFS' performance is excused or withheld.

11.6 Notwithstanding the provisions above, SF shall endeavor to notify the Customer In Writing of any non-performance of his obligations and of SF's intention not to provide the Services or until the Customer has duly performed.

11.7 Save as otherwise provided for in this Agreement, SF shall not be in breach of its obligations of this Agreement to the extent that such a breach is a direct result of:

11.7.1 any delay resulting from the failure by the Customer to provide timely consent or instructions to FFS, as contemplated in this Agreement;

11.7.2 a failure by a third party, other than an agent of FFS, to provide any services directly or indirectly

connected to the Services; and/ or

11.7.3 telecommunications, infrastructure and communication line faults, power failures or power interruptions.

## **12. BREACH**

Should the Customer breach any of the provisions of this Agreement, whether of a material nature or not, then FFS may, without prejudice to any other rights in terms of this Agreement or in law and at FFS' sole election, give the Customer 5 (five) Business Days' notice In Writing, or such longer period of time as FFS may specify in the notice, to remedy the breach. If the Customer fails to comply with the notice, FFS may claim immediate payment and/or performance by the Customer of all of the Customer's obligations, or such part thereof as may be demanded, whether yet due for performance or not, without prejudice to FFS' right to claim damages or to exercise any other rights that FFS may have under this Agreement or in law.

## **13 NOTICES**

13.1 The Parties choose as their respective addresses as set out in the Schedule, for all purposes arising out of in connection with this Agreement.

13.2 Any notice given in terms of this

Agreement shall be In Writing and shall:

- 13.2.1 if delivered by hand to the physical address, be deemed to have been duly received by the addressee on the date of delivery; and
- 13.2.2 if delivered by prepaid registered post to the postal address, be deemed to have been received by the addressee on the 14<sup>th</sup> (fourteenth) day following the date of such posting;
- 13.2.3 if transmitted by email, be deemed to have been received by the addressee on the same day on which the email was sent; and
- 13.2.4 if transmitted by way of data message, be deemed to have been received by the addressee on the same day on which the data message was sent.

## **14 GENERAL**

- 14.1 No addition to, variation, modification or consensual cancellation of this Agreement shall be of any force or effect, unless In Writing and signed by or on behalf of the Parties.
- 14.2 This Agreement supersedes all prior agreements between the Parties, pertaining to the provision of the Services.

- 14.3 A reference to a Party in a document includes that Party's successors-in-title and permitted assigns.
- 14.4 The headings appearing in this Agreement are for reference purposes only and shall not affect the interpretation thereof.
- 14.5 Any provision in a definition of this Agreement which is substantive or otherwise imposes obligations on any Party shall be given effect to as a substantive provision.
- 14.6 A reference to one gender includes all other genders.
- 14.7 Recordal shall be binding on the Parties and are not merely for information purposes.
- 14.8 The use of the word "including" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it.
- 14.9 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement which expressly provide that they shall operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 14.10 If any provision requires the consent, approval or agreement of any Party, that Party may not act unreasonably in withholding or

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delaying any such consent, approval or agreement.

14.11 FFS shall be entitled to cede, assign, delegate or transfer any of its rights and/or obligations in terms of this Agreement, in whole or in part, to any other party, without the Customer's consent, unless it is to the detriment of the Customer.

14.12 The Customer may not, without FFS' written consent, cede, assign, delegate or transfer any of his rights and/or obligations in terms of this Agreement, in whole or in part, to any other party.

14.13 FFS is at all times entitled to engage contractors or sub-contractors to carry out any of its obligations under this Agreement.

14.14 If the Customer entered into this Agreement together with any other person, both persons are jointly and severally liable to FFS.

14.15 FFS requires the authorised signatory of the Account Holder to sign the debit order as contained in the Schedule, failing which FFS shall not be obliged to provide the Services to the Customer.

14.16 The Customer shall be liable for any legal costs incurred by FFS in enforcing any provision of this Agreement on the attorney and own client scale.

14.17 The grant of any indulgence, extension of time or relaxation of any provision by a Party under the

Agreement shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.

14.18 The Customer warrants:

14.18.1 that he has read all the terms and conditions of this Agreement and that he is fully acquainted with the content, nature and purpose thereof;

14.18.2 that all information disclosed in the Schedule is true and accurate to the best of his knowledge and belief; and

14.18.3 that he is duly authorised to sign this Agreement.

14.19 The Customer authorises FFS to collect the personal and special information contained in this Agreement and to disclose the same to a data operator who may process the information on FFS' behalf for purposes of providing the Services, as contemplated in the Protection of Personal Information Act, No. 4 of 2013.

14.20 The Customer consents, in terms of the National Credit Act, No. 34 of 2005, to FFS performing a credit check in respect of the Customer.

Signed at \_\_\_\_\_ on this  
\_\_\_ day of \_\_\_\_\_ 20\_\_\_

\_\_\_\_\_  
Signature

Name: \_\_\_\_\_

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