

## WHIZZOH CUSTOMER TERMS AND CONDITIONS

Updated 1 February 2020

### 1. TERMS

- 1.1. These Terms (“Terms”) govern your (“Customer” or “you”) use of the mobile application, together with applications, website, interactive website, content, products and services (“Services”) made available by Whizzoh (Proprietary) Limited (“Whizzoh”) a private company with registration number 2014/144875/07, incorporated in accordance with the laws of the Republic of South Africa with registered address at 110 Conrad Drive Craighall Park Johannesburg.
- 1.2. By accessing and using the Whizzoh Services, the Customer agrees to be bound by the Terms set out in this legal notice. If you do not wish to be bound by these Terms, you may not access, display, use, download, or otherwise copy or distribute the Whizzoh Services.
- 1.3. The Whizzoh Services are only available to persons over the age of 18 years. If you are under the age of 18, you must obtain your parents’ or legal guardians’ advance authorisation, permission and consent to be bound by these Terms before accessing the Whizzoh Services.
- 1.4. Whizzoh reserves the right, in its sole discretion, to amend and/or replace any of, or the whole of, the Terms. Such amendments shall supersede and replace any previous Terms and shall be made available on the applicable Whizzoh Service. Each time a Customer accesses the applicable Whizzoh Service, the Customer shall be deemed to have consented, by such access and/or use, to the Terms, as amended and/or replaced by Whizzoh from time to time. If you are not satisfied with the amended Terms, you should refrain from using the Whizzoh Services.
- 1.5. Whizzoh will however give the Customer prior notice where Whizzoh has collected personal information from the Customer and the purpose for which Whizzoh collected that information, is affected by the intended amendment.
- 1.6. If there is anything in these Terms that you do not understand then please contact us as soon as possible – see clause 11 below for contact details. Please note that calls to us are charged at national rates and may be monitored for training, security and quality assurance purposes.

### 2. SERVICES

The Whizzoh Services constitute a technology platform that enables the Customer of Whizzoh’s website, Interactive website and mobile application provided as part of the Whizzoh Services (each, a “Whizzoh App”) to advertise for assistance services (a “Call”), select an independent third party service provider (“SP”) from a bid received from the SP (“Bid”), schedule an appointment with the SP, and effect payment to the SP. Any reference to the Whizzoh App includes reference to the Whizzoh interactive website.

### 3. CUSTOMER ACCOUNT

- 3.1. Whizzoh makes the Whizzoh Services available to the Customer through the use of the Whizzoh App or interactive website on the Customer's mobile device.
- 3.2. The Customer must register a Customer account ("Account") on the Whizzoh App or interactive website in order to have access to the Whizzoh Services.
- 3.3. Registration of an Account will require the Customer's name, physical address, mobile number and credit card details.
- 3.4. Upon registration of an Account, a test transaction of R1 will be processed against the credit card.
- 3.5. The Customer undertakes to provide accurate registration information and to keep such information up to date. Whizzoh reserves the right to, immediately and without notice, close Accounts that have been opened with inaccurate, stolen or false information.
- 3.6. Registration will also require the Customer to supply the Whizzoh App with a password ("Password"). The Customer undertakes to keep the Password confidential and to immediately notify Whizzoh if the Customer is aware or suspects that an unauthorised person has obtained access to the Password or if there has been unauthorised use of the Password. The Customer acknowledges and agrees that Whizzoh will not be liable in the event that any unauthorised person uses or transacts on the Whizzoh App due to a failure by the Customer to maintain the confidentiality of the Password.
- 3.7. The Customer may not transfer the Account to any other person or entity.
- 3.8. The Account may not be used for unlawful purposes, and Whizzoh reserves the right, to immediately and without notice, close Accounts that have been opened for, have been used for, or are being used for unlawful purposes.
- 3.9. The Customer consents to receipt of SMS messages to verify registration and for other administrative and promotional purposes. The Customer is entitled to opt out of the promotional SMS messages.
- 3.10. The Customer acknowledges that the Whizzoh App will require notifications to be switched on, on the mobile device, to utilise the Whizzoh Services. The Customer can elect to disable these notifications, but acknowledges and accepts that this will limit the Customer's ability to use the Whizzoh App.
- 3.11. The Customer further acknowledges that the Whizzoh App requires internet access through the mobile device. It is the Customer's responsibility to obtain the data network access necessary to facilitate communication of the mobile device with the Whizzoh server. The Customer is responsible for all fees associated with mobile internet communications.

#### 4. PAYMENT

- 4.1. Payment will be made online by credit card only through a sufficiently secure payment system. The SP is not permitted to accept, and the Customer is not permitted to make, payment by any other means. Such conduct shall constitute a breach of contract by the Customer.
- 4.2. The online payment system allows for review, corrections and withdrawal by the Customer prior to placing a final order.
- 4.3. The Customer acknowledges that payment will be processed once the Customer accepts the initial bid and subsequent/updated bids where applicable, and once the Customer makes payment via the Wirecard payment portal.
- 4.4. The SP will not perform any further work outside of the work detailed in the accepted Bid, unless a further Bid is provided to the Customer via the Whizzoh App.
- 4.5. Payment will be made to the SP within 3 (THREE) Business Days after payment has been made by the Customer. Payment to the SP may be suspended pending resolution of any legitimate complaint or dispute lodged by the Customer with Whizzoh before the expiry of 3 Business Days from the date of payment by the Customer.
- 4.6. The Customer will be required to rate the SP Service according to a scale of 1 to 5. If the Customer is not satisfied with the delivery of the SP Service, the Customer has the right to lodge a complaint through the Whizzoh App by rating the service 1 or 2 out of 5. After the complaint has been investigated, in consultation with the SP at the sole discretion of Whizzoh the SP will repair the work, or the Customer will be allocated a different service provider, or the payment will be refunded to the Customer. Nothing in this clause shall restrict or prevent the SP or the Customer from exercising their rights against the other in terms of the Consumer Protection Act 68 of 2008 ("CPA"). Whizzoh reserves the right to moderate comments posted by a Customer and shall be entitled, but not obliged, to review, modify or remove any Customer comments. In the event that the Customer does not rate the SP Service within 24 (Twenty-Four) hours of the service being rendered, the rating will default to a 5 and payment will be made to the SP.
- 4.7. If the Customer holds a valid membership of a group benefit scheme in terms of which a company provides the Customer Services to its members as part of a group benefit ("a Customer Group Scheme"), and the Customer has duly registered his membership with the Customer Group Scheme using the Whizzoh App:
  - 4.7.1. Whizzoh will facilitate payment by the Customer Group Scheme of the charges incurred by the SP Services to the value of the minimum benefits available to the Customer in terms of the Customer Group Scheme ("the Minimum Benefits");
  - 4.7.2. Whizzoh will clearly indicate to the Customer on the Whizzoh App at the time of each Call what Minimum Benefits are available to the Customer;

- 4.7.3. The SP will not perform any further work outside of the work covered by the Minimum Benefits, unless a Bid is provided to the Customer via the SP App and Whizzoh App. The Customer is personally liable for any additional or co-payments in excess of the Minimum Benefits and undertakes to make payment thereof on demand to Whizzoh, which payment will be processed online by charge against the Customer's credit card.
- 4.8. Subject to the provisions of the CPA where applicable, if the Customer, through no fault of the SP, cancels the booking made via the Whizzoh App:
  - 4.8.1. before the SP's representative has been dispatched, no cancellation fee will be processed by Whizzoh;
  - 4.8.2. after the SP has dispatched a representative and such representative is indicated on the SP App as being en route, the cancellation shall be subject to a cancellation penalty of R 300.00 which charge shall be levied automatically upon cancellation by the Customer.
  - 4.8.3. once the SP representative has arrived on site, the cancellation fee shall be equal to the full amount invoiced by the SP and accepted by the CUSTOMER, which charge shall be levied automatically upon cancellation by the Customer.

## **5. SCOPE OF USE**

- 5.1. Whizzoh grants the Customer a non-exclusive, non-transferable, limited and revocable (reversible) right to access, display, use and download the Whizzoh App and Interactive website any current and future content available through the Whizzoh App ("the Content"), for personal, non-commercial purposes and in connection with the Whizzoh Services only.
- 5.2. The Customer hereby agrees that it shall not itself, nor through a third party:
  - 5.2.1. copy (other than for backup, archival or disaster recovery purposes), reproduce, translate, adapt, vary, modify, lease, licence, sub-licence, encumber or in any other way deal with any part of the Whizzoh App or Content for any reason and in any manner, unless it is consistent with the intent and purpose of these Terms;
  - 5.2.2. decompile, disassemble or reverse engineer any portion of the Whizzoh App;
  - 5.2.3. write and/or develop any derivative of the Whizzoh App or any other software program based on the Whizzoh App;
  - 5.2.4. modify or enhance the Whizzoh App. In the event of a Customer effecting any modifications or enhancements to the Whizzoh App in breach of this clause, such modifications and enhancements shall be the property of Whizzoh;

- 5.2.5. without Whizzoh's prior written consent, provide, disclose, divulge or make available to or permit the use of or give access to the Whizzoh App by persons other than the Customer;
  - 5.2.6. remove any identification, trademark, copyright or other notices from the Whizzoh App;
  - 5.2.7. post or transmit, by means of reviews, comments, suggestions, ideas, questions or other information through the Whizzoh App, any content which is unlawful, harmful, threatening, abusive, harassing, defamatory, vulgar, obscene, sexually-explicit, profane or hateful, or racially, ethnically or otherwise objectionable content of any kind; and/or
  - 5.2.8. notwithstanding anything contained to the contrary in these Terms, use the Whizzoh App for any purpose other than personal, non-commercial and information purposes. The Whizzoh App and the Content may not be reproduced or otherwise exploited for any commercial purpose without the express prior written consent of Whizzoh.
- 5.3. Any unauthorised use terminates this license.
  - 5.4. Whizzoh reserves the right to refuse service, terminate Accounts, remove or edit Content, or cancel Bids in its sole discretion.
  - 5.5. Whizzoh does not offer products or services to minors. If you are under the age of 18, you may act upon any offers on the Whizzoh App.

## **6. INTELLECTUAL PROPERTY**

- 6.1. For the purpose of this clause, "Intellectual Property Rights" means all and any of the rights in and to intellectual property of any nature whatsoever owned and/or controlled directly or under licence by Whizzoh, now or in the future, including without limitation, Whizzoh's rights, title and interest in and to all technology, source code/s, trade secrets, logos, systems, methods, trademarks, trade names, styles, insignia, designs, patents and copyright, and all similar proprietary rights which may subsist in any part of the world, whether registered or not.
- 6.2. All copyright and other intellectual property rights in all content, trademarks, software, data, material, including logos, databases, text, graphics, icons, hyperlinks, confidential information, designs, agreements, and multimedia works, published on or via the Whizzoh App, including the Content ("proprietary material"), are the property of, or are licensed to, Whizzoh and as such are protected from infringement by local and international legislation and treaties.
- 6.3. By submitting reviews, comments and/or any other content (other than personal information) to Whizzoh for posting on the Whizzoh App, the Customer automatically grants Whizzoh and its affiliates a non-exclusive, royalty-free, perpetual, irrevocable right and licence to use, reproduce, publish, translate, sub-license, copy and distribute such

content in whole or in part worldwide, and to incorporate it in other works in any form, media, or technology now known or hereinafter developed, for the full term of any copyright that may exist in such content. Subject to this licence, the Customer retains any and all rights that may exist in such content.

- 6.4. All rights not expressly granted are reserved and no right, title or interest in any proprietary material or information contained in the Whizzoh Apps is granted to the Customer.
- 6.5. Irrespective of the existence of copyright, the Customer acknowledges that Whizzoh is the proprietor of all material on the Whizzoh App (except where a third party is indicated as the proprietor), whether it constitutes confidential information or not, and that the Customer has no right, title or interest in any such material.

## **7. THIRD PARTIES**

- 7.1. The Customer acknowledges that Whizzoh is not the service provider of the emergency home assistance services (“the SP Services”) and the SP Services are provided by SP’s who are independent third parties and who are not employed by or are agents of Whizzoh.
- 7.2. Certain accredited SP’s have been accredited by Assist247 and certain accredited SPs have been accredited by Digicall on behalf of Whizzoh by way of an independent audit by industry experts. Accreditation means that the SP appears to comply with the minimum regulations and qualifications necessary to provide the relevant SP Service competently and professionally (“Accreditation”).
- 7.3. Notwithstanding Accreditation, access to the SP’s via the Whizzoh App is for convenience and facilitation purposes only and Whizzoh does not endorse the SP’s or their practices and operations.
- 7.4. While Whizzoh endeavours to provide access only to reputable service providers, Whizzoh does not accept responsibility or liability for the SP Services to be provided by the SP’s.
- 7.5. The Customer agrees that Whizzoh shall not be held liable, directly or indirectly, in any way for any loss or damage of any kind incurred as a result of any dealings with, instructions to, or presence of SP’s. Any dealings that the Customer may have with any SP’s, are at the Customer’s own risk and solely between the Customer and the SP.
- 7.6. Whizzoh may display or use information of third parties on the Whizzoh App. Whizzoh has no control over this information and makes no representations or warranties of any nature as to its accuracy, appropriateness or correctness. The Customer agrees that such information is provided “as is” and that Whizzoh shall not be liable for any losses or damages that may arise from the Customer’s reliance on it, howsoever these may arise.

## 8. LIMITATION OF LIABILITY

- 8.1. The Customer's use of the Whizzoh App, the Whizzoh Services, the SP Services, the Content and any other information contained on the Whizzoh App is entirely at the Customer's own risk and the Customer assumes full responsibility and risk of loss resulting from the use thereof.
- 8.2. Whizzoh makes no representations or warranties, whether express or implied, as to the accuracy, completeness or reliability of any information, data and/or content on the Whizzoh App, including without limitation:
  - 8.2.1. Whizzoh does not warrant that the Whizzoh Services, the Whizzoh App, or information or downloads or services provided in terms thereof shall be error-free or that they shall meet any particular criteria of performance or quality. Whizzoh expressly disclaims all implied warranties, including without limitation, warranties of merchantability, fit-ness for a particular purpose, non-infringement, compatibility, security and accuracy.
  - 8.2.2. Whilst Whizzoh has taken reasonable measures to ensure the integrity of the Whizzoh Apps and its contents, no warranty, whether express or implied, is given that any files, downloads or applications available via the Whizzoh Apps are free of viruses, or any other data or code which has the ability to corrupt, damage or affect the operation of the Customer's system; and
  - 8.2.3. Whizzoh disclaims any responsibility for the verification of any claims. Information published on the Whizzoh App may be done so in the format in which Whizzoh receives it and statements from third parties are accepted as fact.
- 8.3. Whizzoh will make every effort to facilitate the SP Services to the Customer through the SP's, however the service is a 'Best Effort' service, and Whizzoh does not provide any guarantee or undertaking whatsoever as to the timeous performance of the accepted SP, and/or the quality of the service and work performed.
- 8.4. The Whizzoh App and Whizzoh Service relies on the GPS of both the Customer's as well as the SP's mobile devices to assist in locating the Customer's address and the SP's location. Whizzoh cannot be held responsible for the failure of the GPS on any of these devices and can provide no guarantees with regard to the accuracy of GPS as provided by the mobile device.
- 8.5. The transmission of information via the internet, including without limitation e-mail and via the Whizzoh App, is susceptible to monitoring and interception. The Customer bears all risk of transmitting information in this manner. Under no circumstances shall Whizzoh be liable for any loss, harm, or damage suffered by the Customer as a result thereof. Whizzoh reserves the right to request independent verification of any information transmitted via e-mail or via the Whizzoh App and the Customer consents to such verification should Whizzoh deem it necessary.

8.6. To the extent permissible by law:

- 8.6.1. Neither Whizzoh, nor Digicall Group nor their affiliates, shareholders, agents, consultants or employees shall be liable for any damages whatsoever, including without limitation any direct, indirect, special, incidental, consequential or punitive damages, howsoever arising (whether in an action arising out of contract, statute, delict or otherwise) related to the use of, or the inability to access or use the content of the Whizzoh App or any functionality thereof, or the information contained on the Whizzoh App, even if Whizzoh knows or should reasonably have known or is expressly advised thereof.
- 8.6.2. The liability of Whizzoh for faulty execution of the Whizzoh App as well as all damages suffered by the Customer, whether direct or indirect, as a result of the malfunctioning of the Whizzoh App shall be limited to Whizzoh rectifying the malfunction, within a reasonable time and free of charge, provided that Whizzoh is notified immediately of the damage or faulty execution of the Whizzoh App. This liability shall fall away and be expressly excluded if the Customer attempts to correct or allows third parties to correct or attempt to correct the Whizzoh App without the prior written approval of Whizzoh. In no event shall Whizzoh be liable to the Customer for loss of profits or for special, incidental, consequential or punitive losses or damages arising out of or in connection with the Whizzoh App or its use or the delivery, installation, servicing, performance or use of it in combination with other service.
- 8.6.3. The Customer hereby unconditionally and irrevocably indemnifies Whizzoh and its shareholders and agrees to hold Whizzoh and its shareholders free from all loss, damages, claims and/or costs, of whatsoever nature suffered or incurred by Whizzoh or instituted against Whizzoh as a direct or indirect result of:
  - 8.6.3.1. use of the Whizzoh App by the Customer;
  - 8.6.3.2. modification of the Whizzoh App without the consent or knowledge of Whizzoh;
  - 8.6.3.3. failure by the Customer to comply with any of the terms or any other requirements which Whizzoh may impose from time to time;
  - 8.6.3.4. the actions or requirements of any telecommunications authority or a supplier of telecommunications services or software; or
  - 8.6.3.5. any unavailability of, or interruption in, the service which is beyond the control of Whizzoh.



## **9. PRIVACY**

- 9.1. Whizzoh takes the Customer's privacy seriously and is committed to protecting the Customer's personal information. Whizzoh uses the personal information that collected from the Customer in accordance with this clause 9.
- 9.2. Personal Information when used in this clause 9 means information that can identify the Customer as an individual or is capable of identifying the Customer. By personal information, Whizzoh does not mean general, statistical, aggregated or anonymised information.
- 9.3. The Customer's use of the Whizzoh Services and the Whizzoh App signifies the Customer's consent to Whizzoh collecting and using the Customer's personal information as specified below.
- 9.4. Personal Information is collected through the registration of an Account and as a result of communications between the Customer and Whizzoh.
- 9.5. Personal Information is used: to provide the Customer with a list of the appropriate SP's; to confirm that the Whizzoh Services and SP Services have been delivered; to invite the Customer to provide a rating and comments on the SP and SP Services; to validate the Customer as a customer when using the Whizzoh App; when providing help desk support to the Customer; to prevent and detect criminal activity, fraud and misuse of or damage to the Whizzoh App, Whizzoh Services or networks and to prosecute those responsible; and to contact the Customer for marketing purposes. The Customer is entitled to opt-out of marketing communication.
- 9.6. The time periods for which Whizzoh keeps the Customer's Personal Information may vary according to the use or purpose attached to the information. Unless there is a specific legal requirement requiring Whizzoh to keep the Personal Information, Whizzoh will not keep it for longer than necessary for the purpose for which the information was collected or for which it is to be processed.
- 9.7. Whizzoh will provide certain of the Customer's personal information, such as the Customer's name, contact telephone number and physical address, to the nominated Whizzoh SP so that the Whizzoh SP may provide the SP Service.

## **10. SECURITY**

- 10.1. In order to ensure the security and reliable operation of the Whizzoh App and Services to all Whizzoh Customers, Whizzoh hereby reserves the right to take whatever action it may deem necessary to preserve the security, integrity and reliability of its network and back-office applications.
- 10.2. The Customer may not utilise the Whizzoh App in any manner which may compromise the security of Whizzoh's networks or tamper with the Whizzoh App in any manner whatsoever, which shall include without limitation, gaining or attempting to gain unauthorised access to the Whizzoh App, or delivering or attempting to deliver any

unauthorised, damaging or malicious code to the Whizzoh App, all of which is expressly prohibited. Any person or entity which does so, or attempts to do so, shall be held criminally liable. Further, should Whizzoh suffer any damage or loss, civil damages shall be claimed by Whizzoh against the Customer.

- 10.3. Any Customer who commits any of the offences detailed in Chapter 13 of the Electronic Communications and Transactions Act 25 of 2002 ("ECTA") (specifically sections 85 to 88 (inclusive)) shall, notwithstanding criminal prosecution, be liable for all resulting liability, loss or damages suffered and/or incurred by Whizzoh and its affiliates, agents and/or partners.

## **11. COMPLIANCE WITH SECTION 43(1) OF ECTA**

- 11.1. In compliance with section 43(1) of the Electronic Communications and Transactions Act 25 of 2002, the following is noted in respect of Whizzoh:

- 11.1.1. Full name: Whizzoh (Proprietary) Limited

- 11.1.2. Registration number: 2014/144875/07

- 11.1.3. Physical address: 110 Conrad Drive Craighall Park Johannesburg

- 11.1.4. Telephone number: 0861 944 996

- 11.1.5. Website address: [www.whizzoh.co.za](http://www.whizzoh.co.za)

- 11.1.6. Email address: [info@whizzoh.co.za](mailto:info@whizzoh.co.za)

- 11.1.7. Names of office bearers: Paul Zietsman Meyer, Ruben Horatio Moggee, Frederik Hendrik Kluever, and Leon Vermaak.

- 11.1.8. Registered at: The Companies and Intellectual Property Commission

- 11.2. The disclosures by each SP in terms of section 43(1) of the Electronic Communications and Transactions Act 25 of 2002 are available on platforms wherever applicable.

## **12. COMPLAINTS AND DISPUTES**

- 12.1. By accepting these Terms, the Customer agrees and subscribes to the current version of the Whizzoh Dispute Resolution Policy, which is available in clause 16 below.

- 12.2. If the Customer is not satisfied with the delivery of the SP Service, the Customer has the right to lodge a complaint through the Whizzoh Customer App or by email to [admin@whizzoh.co.za](mailto:admin@whizzoh.co.za).

- 12.3. If the SP is not satisfied with the conduct of the Customer, the SP has the right to lodge a complaint through the Whizzoh SP App or by email to [admin@whizzoh.co.za](mailto:admin@whizzoh.co.za).

- 12.4. In the event a complaint is lodged by the Customer before the expiry of 3 (THREE) Business Days after payment by the Customer, and within Whizzoh's sole discretion, payment to the SP will be suspended pending resolution of any complaint.
- 12.5. The Whizzoh Dispute Resolution Policy does not exclude or restrict any rights of the Customer or SP exercisable against the other in terms of the CPA and ECTA.

### **13. SUSPENSION AND TERMINATION**

- 13.1. Whizzoh is entitled without notice, in addition to any other remedy available to it at law or under these Terms, including obtaining an interdict, to cancel these Terms, limit or deny the Customer use of the Whizzoh App and Services, or to claim specific performance of any obligation whether or not the due date for performance has arrived, in either event without prejudice to Whizzoh's right to claim damages, should any Customer:
  - 13.1.1. breach any of these Terms;
  - 13.1.2. in the sole discretion of Whizzoh, use the Whizzoh App in an unauthorised manner; or
  - 13.1.3. infringe any statute, regulation, ordinance or law.
- 13.2. Breach of these Terms entitles Whizzoh to take legal action without prior notice to the Customer and the Customer agrees to reimburse the costs associated with such legal action to Whizzoh on an attorney and own client scale.

### **14. NOTICES**

- 14.1. Except as explicitly stated otherwise, any notices shall be given by email to admin@whizzoh.co.za (in the case of Whizzoh) or to the email address the Customer has provided to Whizzoh (in the Customer's case), or such other address that has been specified.
- 14.2. Notice shall be deemed given 48 (forty-eight) hours after an email is sent, unless the sending party is notified that the email address is invalid.
- 14.3. Alternatively, Whizzoh may give the Customer notice by registered mail, postage prepaid and return receipt requested, to the address which the Customer has provided to Whizzoh. In such case, notice shall be deemed given 7 (Seven) days after the date of mailing.
- 14.4. The Customer acknowledges that all agreements, notices or other communication required to be given in terms of the law or these Terms may be given via electronic means and that such communications shall be "in writing". Notwithstanding anything to the contrary, a written notice or communication actually received by a party shall be an adequate written notice or communication to it, notwithstanding that it was not sent to or delivered at its chosen address(es) for that purpose.

## 15. GENERAL

- 15.1. These Terms shall be governed in all respects by the laws of the Republic of South Africa as such laws are applied to agreements entered into and to be performed within South Africa, including the ECTA and the CPA where such Acts find application.
- 15.2. The Whizzoh App is controlled, operated and administered by Whizzoh from its offices within the Republic of South Africa. Whizzoh makes no representation that the content of the Whizzoh App is appropriate or available for use outside of South Africa. Access to the Whizzoh App from territories or countries where the content of the Whizzoh App is illegal is prohibited. Customers may not use the Whizzoh App in violation of South African export laws and regulations. If the Customer accesses the Whizzoh App from locations outside of South Africa, that Customer is responsible for compliance with all local laws.
- 15.3. Whizzoh does not guarantee continuous, uninterrupted or secure access to the Whizzoh App or Services, as operation of the Whizzoh App may be interfered with as a result of a number of factors which are outside of Whizzoh's control.
- 15.4. If any provision of these Terms is held to be illegal, invalid or unenforceable for any reason, such provision shall be struck out from these Terms and the remaining provisions shall be enforced to the full extent of the law.
- 15.5. Whizzoh's failure to act with respect to a breach by the Customer or others does not constitute a waiver of Whizzoh's right to act with respect to subsequent or similar breaches.
- 15.6. The Customer shall not be entitled to cede its rights or assign its rights or delegate its obligations in terms of these Terms to any third party without the prior written consent of Whizzoh.
- 15.7. Whizzoh shall be entitled to cede its rights or assign its rights or delegate its obligations in terms of these Terms to any third party without the prior written consent of the Customer.
- 15.8. No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.
- 15.9. The head notes to the paragraphs to these Terms are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 15.10. Words importing the singular shall include the plural and vice versa, and words importing the masculine gender shall include females and words importing persons shall include partnerships and corporate and unincorporated entities.
- 15.11. These Terms set forth the entire understanding and agreement between Whizzoh and the Customer with respect to the subject matter hereof.

## 16 DISPUTE RESOLUTION

- 16.1 Any, dispute, difference and/or question which may arise at any time during the term of this Agreement or thereafter between the Parties from or in connection with the construction, interpretation and/or termination of this Agreement and/or the rights, obligations and liabilities of the Parties hereto must first be referred to the Parties for negotiation. Should the dispute remain unresolved for a period of 14 (fourteen) days from the dispute being referred for negotiation, then the parties may refer the dispute to arbitration in accordance with the Rules of the Arbitration Foundation of South Africa or its successor in title.
- 16.2 There will be one arbitrator who will be practising Counsel at the Johannesburg Bar Council of at least 10 (ten) years standing as such.
- 16.3 The appointment of the arbitrator will be agreed upon between the Parties to the dispute, but failing such agreement between them, any of the Parties to the dispute may after 14 (fourteen) days of the demand for arbitration, request the chairman at the relevant time of the Johannesburg Bar Council to appoint an arbitrator and, in making his appointment, to have regard to the nature of the dispute.
- 16.4 The arbitration will be held at a venue in Johannesburg, South Africa in English.
- 16.5 The parties will provide their best endeavours to ensure that the arbitration is concluded within 60 (sixty) days of the appointment of the arbitrator.
- 16.6 The decision of the arbitrator will be final and binding on the Parties, will be carried into effect and may be made an order of any court of competent jurisdiction. Each of the Parties hereby submits itself to the jurisdiction of the South Gauteng Division of the High Court of South Africa should the other Party wish to make the arbitrator's decision an order of that court. The terms and conditions recorded in this clause:
- 16.6.1 will remain in effect despite the termination or invalidity or alleged invalidity for any reason of this Agreement or any part thereof; and
- 16.6.2 Will not preclude any Party from applying for, and if successful, be granted, an interdict from any competent court having jurisdiction.
- 16.7 In matters of litigation:
- 16.7.1 each Party hereby consents and submits to the jurisdiction of the Magistrate's Court having jurisdiction over its person in respect of all proceedings connected with this Agreement, notwithstanding that the amount claimed or the value of the matter in dispute exceeds such jurisdiction.
- 16.7.2 either Party shall be entitled to institute all or any proceedings against the other Party in connection with this Agreement in the High Court of South Africa.

16.7.3 the Parties agree that the South African courts contemplated above shall have exclusive jurisdiction with regard to any matter contemplated herein.