

BY ACCEPTING THIS AGREEMENT THROUGH AN ORDERING DOCUMENT THAT INCORPORATES THIS AGREEMENT (THE "ORDERING DOCUMENT"), THE CUSTOMER AGREES TO FOLLOW AND BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THE TERMS AND CONDITIONS OF THIS AGREEMENT AND, IN SUCH EVENT, "YOU" AND "THE CUSTOMER" AS USED IN THIS AGREEMENT SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF THE CUSTOMER OR SUCH ENTITY DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU AND/OR THE CUSTOMER MAY NOT USE THE SERVICES.

## SERVICES TERMS AND CONDITIONS

This Agreement ("Agreement") is between Rocket Science (Pty) Ltd ("Rocket Science ") and the individual or entity that has requested to utilise the Services ("The Customer"). This Agreement sets forth the terms and conditions that govern Orders placed by the Customer for Services under this Agreement.

### 1. AGREEMENT DEFINITIONS

- 1.1. "After hours support" means 22h00 to 07h00 GMT+2 7-days a week;
- 1.2. "Anti Malware" means anti-virus signature and behavioural protection;
- 1.3. "Backup Recovery Point" means backup frequency;
- 1.4. "Backup Recovery Time" means the time it will take for a restore to start;
- 1.5. "Backup Register" means a database of backup meta data that is formed and stored on a backup client device;
- 1.6. "Business Day" Monday to Friday 07:00 to 17:00 GMT+2;
- 1.7. "Customer" refers to the individual or entity that has engaged with Rocket Science for or ordered the Services under this Agreement;
- 1.8. "Customer Applications" means all software programs, including any source code for such programs, that the Company or its Users provide and load onto, or create using, any Rocket Science "platform-as-a-service" or "infrastructure- as-a-service" Services;



- 123. "Response Time"** means the time for a support engineer to accept a call;
- 124. "Seed restore"** means seed restore is a reverse seeding process to download data from the cloud in bulk for use in a local restore, where cloud services are utilised. This is useful if the Internet connection on the target computer isn't fast enough or if uploading data from the Internet is undesirable (for example, due to security reasons);
- 125. "Seeding"** means the process of uploading backup data to the cloud in bulk. Seed backups are performed to a temporary storage medium and then transferred to the cloud from a machine with a high-speed Internet connection;
- 126. "Services"** means the descriptions of the Services selected by the Customer and set out in the Customer Order, which may be one or a combination of:
- 1.26.1. Adobe Experience Cloud;
  - 1.26.2. Red Hat Solutions;
  - 1.26.3. Amazon Web Services (AWS);
  - 1.26.4. Apple Based Solutions;
  - 1.26.5. Huawei converged infrastructure and cloud services;
  - 1.26.6. Media Asset Management;
  - 1.26.7. Storage & Storage Workflows;
  - 1.26.8. Video -on-Demand (VOD) and Content Delivery Networks (CDN);
  - 1.26.9. Broadcast \* Playout Solutions; and
  - 1.26.10. Workflow Design & Automation.
- 127. "Services Environment"** refers to the combination of hardware and software components owned, licensed or managed by Rocket Science to which Rocket Science grants the Customer and its Users access as part of the Services which it has ordered. As applicable and subject to the terms of this Agreement and the Order, Rocket Science Programs, Third Party Content, Customer Content and Applications may be hosted in the Services Environment;
- 128. "Services Period"** refers to the period of time for which the Customer ordered the Services, as specified in the Customer Order document;

129. **“Service Specifications”** means the descriptions set out in the Customer Order;
130. **“Support Hours”** 06h00 to 22h00 GMT+2 7-days a week;
131. **“Support Procedure Document”** means the document located at [www.rocketscience.co.za](http://www.rocketscience.co.za) which details the standard support terms and procedures;
132. **“Support Level”** means an Incident or Task logged at the Rocket Science Helpdesk with a response time determined by a Level 1, Level 2, Level 3 or Task classification;
133. **“Task”** means planned maintenance or changes;
134. **“Third Party Content”** means all text, files, images, graphics, illustrations, information, data, audio, video, photographs and other content and material, in any format, that are obtained or derived from third party sources outside of Rocket Science and made available to the Customer through, within, or in conjunction with its use of the Services. Examples of Third Party Content include data feeds from social network services, rss feeds from blog posts, and data libraries and dictionaries. Third Party Content does not include Separately Licensed Third Party Technology;
135. **“Users”** means those employees, contractors, and end users, as applicable, authorized by the Customer or on its behalf to use the Services in accordance with this Agreement and the Customer’s Order. For Services that are specifically designed to allow the Customer’s suppliers, customers or other third parties to access the Services to interact with the Customer, such third parties will be considered “Users” subject to the terms of this Agreement and the Customer Order.

## 2. TERM OF AGREEMENT

21. This Agreement shall commence on the Effective Date of the Ordering document and, subject to the rights of termination stipulated herein, continue thereafter until the termination or lapsing of all Services listed in the Ordering document
22. Each Service Specification contemplated in an Ordering document shall commence on the relevant Service Commencement Date and shall endure for the relevant Services Period, whereafter it shall be automatically renewed for further renewal periods, subject to the right of either Party to terminate any Services at the end of its relevant Service Period or any Renewal Period on no less than 90 (ninety) days written notice to the other Party.

## 3. RIGHTS GRANTED

31. For the duration of the Services Period and subject to the Customer payment obligations, and except as otherwise set forth in this Agreement or the Customer Order, Rocket Science will perform the Services for the Customer.
32. To enable Rocket Science to provide the Customer and the Customer Users with the Services, the Customer hereby grants Rocket Science the right to use, process and transmit, in accordance with this Agreement and the Customer Order and Content for the duration of the Services Period, plus any additional post-termination period, during which Rocket Science provides the Customer with access to retrieve an export file of the Customer Content.

#### **4. OWNERSHIP AND RESTRICTIONS**

41. The Customer retains all ownership and intellectual property rights in and to the Customer Content. Rocket Science or its licensors retain all ownership and intellectual property rights to the Services, including all Rocket Science solutions, and derivative works thereof, and to anything developed or delivered by or on behalf of Rocket Science under this Agreement.
42. The Customer may not, and may not cause or permit others to:
  - 4.2.1. perform or disclose any benchmark or performance tests of the Services, including any Rocket Science programs;
  - 4.2.2. perform or disclose any of the following security testing of the Services environment or associated infrastructure: network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, or penetration testing; and
  - 4.2.3. license, sell, rent, lease, transfer, assign, distribute, host, outsource, permit timesharing or service bureau use, or otherwise commercially exploit or make available the Services, Rocket Science programs, ancillary programs or Rocket Science materials to any third party, other than as expressly permitted under the terms of the applicable Order.

#### **5. SERVICE SPECIFICATIONS**

51. The Services provided by Rocket Science include combinations of the following:
  - 5.1.1. Adobe Experience Cloud;
  - 5.1.2. Red Hat Solutions;
  - 5.1.3. Amazon Web Services (AWS);

5.1.4. Apple Based Solutions;

5.1.5. Huawei converged infrastructure and cloud services;

5.1.6. Media Asset Management;

5.1.7. Storage & Storage Workflows;

5.1.8. Video -on-Demand (VOD) and Content Delivery Networks (CDN);

5.1.9. Broadcast \* Playout Solutions; and

5.1.10. Workflow Design & Automation.

- 52.** The Customer Order will specify the Service specifications selected by the Customer. Rocket Science and its affiliates may perform certain aspects of the Disaster Recovery and Cloud Backup Services, such as service administration and support, as well as other Services (including Professional Services), from locations and/or through the use of subcontractors, worldwide.

## **6. USE OF THE SERVICES**

- 61.** The Customer is responsible for the integrity of the Data targeted for Backup. Rocket Science backs up data "as is" and will restore data in the same format it was backed up in.

## **7. MINIMUM SERVICE LEVELS**

The minimum service levels for the Disaster Recovery and Cloud Backup Services are as follows:

- 71. Data Recovery:** Subject to clause 8 below, Rocket Science will provide 100% recovery guarantee of Successfully Backed Up Data.
- 72. Data Restoration Initiation for Online data:** The Customer will be able to restore and manage the Customer data from a live dashboard. An online data restore will begin within 180 minutes from the point that the online data is requested.

## **8. SERVICE LEVEL DEFINITIONS**

- 81. Successfully Backed Up Data:** Rocket Science can only provide a 100% data recovery guarantee on data that has been backed up to the Data Tapes without error corruption. Upon each backup operation our backup software will set a flag that clearly indicates that a successful backup has occurred. Data backup success will also be reported on a daily basis. In the event of a backup failure the Customer may schedule or contact Rocket Science to arrange for a subsequent backup.

- 82. Where there has been either a failure to properly back up to Data Tapes, keep own Back Up Register, failure to load Anti-Malware, or a failure with the Data Tapes themselves, Rocket Science will not be able to provide a guaranteed back up and will not be liable for any data loss in this regard. Customers are therefore encouraged to keep a further data back up source.**
- 83. Data Restoration Initiation:** In most cases the Customer will be able to restore files without Rocket Science assistance through the live dashboard, in line with the Customer recovery time objectives (RTO).
- 84. Measured Unavailable Time for Service:** Disaster Recovery is deemed to be unavailable to the Customer when the Service is fully interrupted (an "Outage"). The measured unavailable time starts upon notification of an Outage by the Customer to the Rocket Science support team in accordance with the Support Procedure Document. The measured unavailable time ends when the affected Service is restored. Additional time taken by the Customer to perform confirmation testing is not included in the measured unavailable time if the Service is in fact restored. The Customer acknowledges that although Rocket Science does monitor use of the Backup Service, the Customer is responsible for notifying Rocket Science of any Outages or other Service issues.
- 85. Data Retention Time (DRT):** Rocket Science recommends that Customers follow a prescribed schedule for backups as follows: Data to be retained over a 28 day cycle with full backups occurring weekly and differential backups running on a daily basis. Customer data will therefore age and new data will overwrite data that is more than 28 days old.
- 86. Recovery Point Objective (RPO):** Data backup occurs at a fixed point in time according to a schedule agreed upon between the parties. Failure by the Customer to comply with these back up periods will result in Rocket Science not being liable for the loss of any data. Any data that exists between backups is vulnerable. The length of time between backups is the recovery point objective (RPO). This is the point back in time to which the Customer data must be recovered. This would typically be a maximum of 24 hours since backups take place daily. If a more frequent backup schedule is required it must be pre-arranged with Rocket Science and reflected in the Customer Order Document.
- 87. Recovery Time Objective (RTO):** This is the maximum elapsed time required to complete the recovery of the Customer data. RTO is a function of the size of the data delivery circuit and the total amount of data to be recovered. In most cases where the total data recovered is less than 1 terabyte this could be 6, 12 or 24 hours if the Customer environment is properly functioning and ready to receive data. RTO objectives should be discussed with a Rocket Science account executive. An RTO measurement will begin only when the Customer environment is properly functioning and ready to receive data.

## **9. Support Procedure**

The Customer must contact Rocket Science at E-Mail: [help@RocketScience.com](mailto:help@RocketScience.com) to report all Service problems in accordance with the Support Procedure Document.

## **10. Service Level Exemptions**

Degradation in the performance of the Services and unavailable time shall not be included for the purposes of determining whether the Services meet the minimum service requirements, or for calculating measured unavailable time if such degradation or unavailable time arises from: (i) Scheduled Maintenance or other service interruptions agreed to by the Customer for the purpose of allowing Rocket Science to upgrade, change, implement an Order, maintain, or repair the Services or related facilities; (ii) directly or indirectly as the result of the Customer's acts or omissions, any person for whom the Customer are legally responsible, or any person using the Services; (iii) failure of equipment or systems not within Rocket Science's Backup, or of equipment or systems not provided, or under the control or direction of Rocket Science including equipment or systems Rocket Science may obtain or contract for at the Customer's request; (iv) any failure by the Customer to afford access to any location for which the Customer is responsible, or to any facilities of Rocket Science for the purpose of investigating and correcting a degradation in the Services or an Outage and any Force Majeure Event.

## **11. Scheduled and Unscheduled Maintenance**

Scheduled Maintenance means any maintenance activities performed at the Rocket Science point of presence (POP) to which the Customer facilities are connected. The Customer shall be given at least 15 business days' advance notice of any maintenance activities. Notice of scheduled maintenance shall be given to the Customer designated contact person.

**12.** Unscheduled maintenance means any maintenance activities performed at the Rocket Science point of presence (POP) to which the Customer facilities are connected as a result of a threat or an emergency. A Threat is defined as a situation or condition that would not normally cause an outage to a customer but introduces a very low risk to services or may lead to a brief service interruption of less than 100 milliseconds. In the case of a threat Rocket Science will strive to provide the Customer with three business days' advance notice. In the event of an emergency (defined as unplanned critical repairs, acts of vandalism and/or nature that has caused or could cause a degradation or interruption of service) Rocket Science will make best efforts to provide the Customer with notice and an estimated time to repair.

## **13. FEES AND TAXES**

**13.1.** All fees payable to Rocket Science are due prior to commencement of the Services, in line with the Cost Estimate issued by Rocket Science, unless expressly agreed between the Parties. Once placed, the Customer Order is non-cancelable and the sums paid non-refundable, except as provided in this Agreement or the Customer Order. The Customer will pay any value-added or other similar taxes imposed by applicable law that



Rocket Science must pay based on the Services ordered by the Customer.

- 132.** The Customer will reimburse Rocket Science for all reasonable expenses incurred related to providing any Professional Services provided by Rocket Science . Fees for Services listed in an Order are exclusive of taxes and expenses.

The Customer agrees and acknowledges that it has not relied on the future availability of any Services, programs or updates in entering into the payment obligations in the Customer Order, however, the preceding does not relieve Rocket Science of its obligation during the Services Period to deliver Services that the Customer has ordered under this Agreement. Interest of 2.5% charged on late payments. All rights reserved. All goods remain property of rocket science until paid for in full.

**133.**

#### **14. TERM AND TERMINATION**

- 141.** Services provided under this Agreement shall be provided for the Services Period defined in the Customer Order, unless earlier suspended or terminated in accordance with this Agreement or the Order. The Services that are ordered will Auto Renew for additional Services Periods unless (i) The Customer provides Rocket Science with written notice no later than thirty (30) days prior to the end of the applicable Services Period of its intention not to renew such Services, or (ii) Rocket Science provides the Customer with written notice no later than ninety (30) days prior to the end of the applicable Services Period of its intention not to renew such Services.

- 142.** UPON THE TERMINATION OF THE SERVICES FOR ANY REASON WHATSOEVER, THE CUSTOMER DATA WILL BE HELD FOR 30 DAYS FOR THE PURPOSES OF RETRIEVAL BY THE CUSTOMER. AT THE END OF SUCH 30-DAY PERIOD, AND EXCEPT AS MAY BE REQUIRED BY LAW, THE CUSTOMER CONTENT WILL BE DELETED OR OTHERWISE RENDERED INACCESSIBLE.

- 143.** Rocket Science may temporarily suspend the Customer password, account, and access to or use of the Services if the Customer or the Customer Users violate any provision of this Agreement. Any suspension or termination by Rocket Science under this paragraph shall not excuse the Customer from its obligation to make payment(s) under this Agreement.

- 144.** This Agreement may be terminated or suspended by Rocket Science with immediate effect in the event that the Customer:

14.4.1. commits an act or omission that, if it was a natural person, would be an act of insolvency in terms of the Insolvency Act 24 of 1936, as amended;

14.4.2. institutes business rescue proceedings;

14.4.3. ceases operating its business as a going concern; or

14.4.4. is provisionally or finally liquidated.

**145.** If either party breaches a material term of this Agreement and fails to correct the breach within 30 days of written notice of the breach, then the breaching party is in default and the non-breaching party may terminate the Order under which the breach occurred. If Rocket Science terminates the Order as specified in the preceding sentence, the Customer must pay within 7 days all amounts that have accrued prior to such termination, as well as all sums remaining unpaid for the Services under such Order plus related taxes and expenses. Except for nonpayment of fees, the nonbreaching party may agree in its sole discretion to extend the 7 day period for so long as the breaching party continues reasonable efforts to cure the breach. The Customer agrees that if it is in default under this Agreement, the Customer may not use the Services ordered.

**146.** Provisions that survive termination or expiration of this Agreement are those relating to limitation of liability, indemnification, payment and others which by their nature are intended to survive.

## **15. CONFIDENTIALITY**

**151.** By virtue of this Agreement, the parties may have access to information that is confidential to one another ("Confidential Information"). The parties agree to disclose only information that is required for the performance of obligations under this Agreement.

**152.** A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

**153.** Both Parties agree not to disclose each other's Confidential Information to any third party other than as set forth in the following sentence for a period of three years from the date of the disclosing party's disclosure of the Confidential Information to the receiving party; however, Rocket Science will hold the Customer Content that resides within the Services environment in confidence for as long as such information resides in the Services environment. Both Parties may disclose Confidential Information only to those employees, agents or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than required under this Agreement. Rocket Science will protect the confidentiality of the Customer Content or the Customer Applications residing in the Services environment in accordance with the Rocket Science security practices defined as part of the Service Specifications applicable to The Customer Order. In addition, The Customer Personal Data will be treated in accordance with the terms of clause 16 below. Nothing shall prevent either party from disclosing the terms or pricing under this Agreement or Orders placed under this Agreement

in any legal proceeding arising from or in connection with this Agreement or from disclosing the Confidential Information to a governmental entity as required by law.

## 16. DATA PROTECTION

In performing the Services, Rocket Science will comply with the Rocket Science Privacy Policy located at [www.RocketScience.co.za](http://www.RocketScience.co.za) and incorporated herein by reference. The Rocket Science Privacy Policy is subject to change at Rocket Science's discretion; however, Rocket Science policy changes will not result in a material reduction in the level of protection provided for the Customer Personal Data provided as part of the Customer Content during the Services Period of the Customer Order.

## 17. WARRANTIES, DISCLAIMERS AND EXCLUSIVE REMEDIES

**17.1.** Rocket Science warrants that it will perform the Services in all material respects as described in the Service Order, and in a professional manner. If the Services provided to the Customer were not performed as warranted, the Customer must promptly provide written notice to Rocket Science that describes the deficiency in the Services (including, as applicable, the service request number notifying Rocket Science of the deficiency in the Services).

**17.2** Rocket Science does **not** guarantee that:

17.2.1.the Services will be performed error-free or uninterrupted, or that Rocket Science will correct all services errors;

17.2.2.the Services will operate in combination with the Customer Content or the Customer Applications, or with any other hardware, software, systems, services or data not provided by Rocket Science;

17.2.3.the Services will meet the Customer requirements, specifications or expectations. The Customer acknowledges that rocket science does not control the transfer of data over communications facilities, including the internet, and that the Services may be subject to limitations, delays, and other problems inherent in the use of such communications facilities. Rocket Science is not responsible for any delays, delivery failures, or other damage resulting from such problems. Rocket science is not responsible for any issues related to the performance, operation or security of the services that arise from the Customer Content, the Customer Applications or Third Party Content;

17.2.4.Rocket Science does not make any representation or warranty regarding the reliability, accuracy, completeness, correctness, or usefulness of Third Party Content or services, and disclaims all liabilities arising from or related to third party content or services; and

17.2.5.Rocket Science does not guarantee that all data can be recovered, specifically where the Customer

failed to use recommended software, failed to perform back-ups, or where Data Tapes have failed.

**17.3.** For any breach of the services warranty, the Customer's exclusive remedy and Rocket Science's entire liability shall be the correction of the deficient services that caused the breach of warranty, or, if Rocket Science cannot substantially correct the deficiency in a commercially reasonable manner, the Customer may terminate the deficient Services and Rocket Science will refund to the customer the fees for the terminated Services that the customer pre-paid to rocket science for the period following the effective date of termination. Such refund is only applicable where the deficiency of the Services was reasonably within Rocket Science's control.

**17.4.** To the extent not prohibited by law, these warranties are exclusive and there are no other express or implied warranties or conditions including for software, hardware, systems, networks or environments or for merchantability, satisfactory quality and fitness for a particular purpose.

## **18. LIMITATION OF LIABILITY**

**18.1.** Neither party shall be liable for any indirect, incidental, special, punitive, or consequential damages, or any loss of revenue or profits (excluding fees under this agreement), data, or data use.

**18.2.** Rocket Science's aggregate liability for all damages arising out of or related to this agreement or the Customer Order, whether in contract or delict, or otherwise, shall be limited to the total amounts actually paid to Rocket Science for the Services under the order giving rise to the liability in the twelve (12) month period immediately preceding the event giving rise to such liability less any refunds or credits received by the customer from rocket science under such order.

## **19. INDEMNIFICATION**

**19.1.** Subject to the terms of this Section 19 (Indemnification), if a third party makes a claim against either the Customer or Rocket Science ("Recipient" which may refer to the Customer or Rocket Science depending upon which party received the Material), that any information, design, specification, instruction, software, service, data, hardware, or material (collectively, "Material") furnished by either the Customer or Rocket Science ("Provider" which may refer to The Customer or Rocket Science depending on which party provided the Material) and used by the Recipient infringes the third party's intellectual property rights, the Provider, at the Provider's sole cost and expense, will defend the Recipient against the claim and indemnify the Recipient from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by the Provider, if the Recipient does the following:

19.1.1. notifies the Provider promptly in writing, not later than 30 days after the Recipient receives notice of the claim (or sooner if required by applicable law);

19.1.2. gives the Provider sole control of the defense and any settlement negotiations; and

19.1.3. gives the Provider the information, authority and assistance the Provider needs to defend against or settle the claim.

19.1.4. If the Provider believes or it is determined that any of the Material may have violated a third party's intellectual property rights, the Provider may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may end the license for, and require return of, the applicable Material and refund any unused, prepaid fees the Recipient may have paid to the other party for such Material. If such return materially affects Rocket Science 's ability to meet its obligations under the relevant Order, then Rocket Science may, at its option and upon 30 days prior written notice, terminate the Order.

**192.** The Provider will not indemnify the Recipient if the Recipient (a) alters the Material or uses it outside the scope of use identified in the Provider's user or program documentation or Service Specifications, (b) uses a version of the Material which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material which was made available to the Recipient, or (c) continues to use the applicable Material after the end of the license to use that Material. The Provider will not indemnify the Recipient to the extent that an infringement claim is based upon any information, design, specification, instruction, software, service, data, hardware or material not furnished by the Provider. Rocket Science will not indemnify the Customer for any portion of an infringement claim that is based upon the combination of any Material with any products or Services not provided by Rocket Science . Rocket Science will not indemnify the Customer to the extent that an infringement claim is based on Third Party Content or any Material from a third party portal or other external source that is accessible to the Customer within or from the Services (e.g., a social media post from a third party blog or forum, a third party Web page accessed via a hyperlink, etc.). Rocket Science will not indemnify the Customer for infringement caused by the Customer actions against any third party if the Services as delivered to the Customer and used in accordance with the terms of this Agreement would not otherwise infringe any third party intellectual property rights. Rocket Science will not indemnify the Customer for any intellectual property infringement claim(s) known to the Customer at the time Services rights are obtained.

**193.** The term "Material" defined above does not include Separately Licensed Third Party Technology. Solely with respect to Separately Licensed Third Party Technology that is part of or is required to use the Cloud Services and that is used: (a) in unmodified form; (b) as part of or as required to use the Cloud Services; and (c) in accordance with the usage grant for the relevant Cloud Services and all other terms and conditions of this Agreement, Rocket Science will indemnify the Customer for infringement claims for Separately Licensed Third Party Technology to the same extent as Rocket Science is required to provide infringement indemnification for Materials under the terms of the Agreement.

**19A.** This clause 19 provides the parties' exclusive remedy for any infringement claims or damages.

## **20. FORCE MAJEURE**

Neither party shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; pandemic; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancelation of any export, import or other license); or other event outside the reasonable control of the obligated party. Both parties will use reasonable efforts to mitigate the effect of a force majeure event. This Section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or the Customer's obligation to pay for the Services actually received during this period.

## **21. GOVERNING LAW AND JURISDICTION**

This Agreement is governed by the substantive and procedural laws of the Republic of South Africa and the Customer and Rocket Science agree to submit to the exclusive jurisdiction of, and venue in, the courts in the Republic of South Africa in any dispute arising out of or relating to this Agreement.

## **22. NOTICE**

**221.** Any notice required under this Agreement shall be provided to the other party in writing. If the Customer has a dispute with Rocket Science or if the Customer wishes to provide a notice under the Indemnification Section of this Agreement, or if the Customer become subject to business rescue or other similar legal proceedings, the Customer will promptly send written notice via electronic mail to the Rocket Science selected email address and via hand delivery to: Rocket Science (Pty) Limited **Nicol Main Office Park, 2 Bruton Road, Bryanston, Johannesburg.**

**222.** To request a termination of Services in accordance with this Agreement, the Customer must submit a service request to Rocket Science at the address specified in the Customer Order.

**223.** Rocket Science may give notices applicable to the Customer by means of a general notice on the Rocket Science portal for the Backup Services, and notices specific to the Customer by electronic mail to the Customer e-mail address on record in Rocket Science 's account information.

## **23. ASSIGNMENT**

The Customer may not assign this Agreement or give or transfer the Services or an interest in them to another individual or entity. If the Customer grants a security interest in any portion of the Services, the secured party has no right to use or transfer the Services or any deliverables.

## **24. OTHER**

- 24.1.** Rocket Science is an independent contractor and accordingly no partnership, joint venture, or agency relationship exists between the parties. Each party will be responsible for paying its own employees, including employment related taxes and insurance. The Customer shall defend and indemnify Rocket Science against liability arising under any applicable laws, ordinances or regulations related to the Customer termination or modification of the employment of any of the Customer's employees in connection with any Services under this Agreement. The Customer understands that Rocket Science's business partners and other third parties, including any third party firms retained by the Customer to provide consulting or implementation services or applications that interact with the Services, are independent of Rocket Science and are not Rocket Science's agents. Rocket Science is not liable for, bound by, or responsible for any problems with the Services arising due to, any acts of any such business partner or third party, unless the business partner or third party is providing Services as an Rocket Science subcontractor on an engagement ordered under this Agreement and, if so, then only to the same extent as Rocket Science would be responsible for Rocket Science resources under this Agreement.
- 24.2.** If any term of this Agreement is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with another term consistent with the purpose and intent of this Agreement.
- 24.3.** Except for actions for nonpayment or breach of Rocket Science's proprietary rights, no action, regardless of form, arising out of or relating to this Agreement may be brought by either party more than three years after the cause of action has accrued.
- 24.4.** The Customer shall obtain at its sole expense any rights and consents from third parties necessary for the Customer Content to be backed up, including such rights and consents as are necessary for Rocket Science to perform the Services under this Agreement.
- 24.5.** The Customer agrees to provide Rocket Science with all information, access and full good faith cooperation reasonably necessary to enable Rocket Science to provide the Services and the Customer will perform the actions identified in the Customer Order as the Customer responsibilities.
- 24.6.** The Customer remains solely responsible for the Customer regulatory compliance in connection with its use of the Services. The Customer is responsible for making Rocket Science aware of any technical requirements that result from the Customer regulatory obligations prior to entering into an Order governed by this Agreement. Rocket Science will cooperate with the Customer efforts to determine whether use of the standard Rocket Science Services offering is consistent with those requirements. Additional fees may apply to any additional work performed by Rocket Science or changes to the Services.

**24.7.** Rocket Science may audit the Customer's use of the Services (e.g., through use of software tools) to assess whether the Customer's use of the Services is in accordance with the Customer Order and the terms of this Agreement. The Customer agrees to cooperate with Rocket Science 's audit and provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with the Customer's normal business operations. The Customer agrees to pay within 30 days of written notification any fees applicable to the Customer's use of the Services in excess of the Customer's rights. If the Customer does not pay, Rocket Science can end the Customer's Services and/or the Customer's Order. The Customer agrees that Rocket Science shall not be responsible for any of the Customer's costs incurred in cooperating with the audit.

## **25. ENTIRE AGREEMENT**

**25.1.** The Customer agrees that this Agreement and the information which is incorporated into this Agreement by written reference (including reference to information contained in a URL or referenced policy), together with the applicable Order, is the complete agreement for the Services ordered by the Customer and supersedes all prior or contemporaneous agreements or representations, written or oral, regarding such Services.

**25.2** It is expressly agreed that the terms of this Agreement and any Order shall supersede the terms in any purchase order, procurement internet portal, or other similar non-Rocket Science document and no terms included in any such purchase order, portal, or other non-Rocket Science document shall apply to the Services ordered. In the event of any inconsistencies between the terms of an Order and the Agreement, the Order shall take precedence. Except as otherwise permitted in Clause 5 (Service Specifications) and clause 16 (Data Protection) with respect to the Services, this Agreement and Orders hereunder may not be modified and the rights and restrictions may not be altered or waived except in a writing signed by Rocket Science . No third party beneficiary relationships are created by this Agreement.