



RESELLER AGREEMENT

2021

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territory as stipulated in the Information Schedule marked A.

RESELLER AGREEMENT

1. PARTIES

The reseller agreement is made between Connectivity Dynamics (Pty) Ltd T/A CONDYN (hereinafter: "CONDYN" the Distributor a corporation registered under the laws of the Republic of South Africa having its address at Ground Floor, Lakeview Building, 1277 Mike Crawford Street, Centurion, 0046 and;

Reseller as per Schedule A (attached)

Whereas:

- 1.1 CONDYN imports and markets security & risk software and appliances for the protection of information in its generation, processing, communication and storage.
- 1.2 CONDYN also provides professional services relating to the installation and technical support of the products it markets as well as the development of processes and training of people required in the proper use of its products and services and to attain appropriate levels of information security.
- 1.3 The Reseller wishes to market and implement the products and services provided by CONDYN.
- 1.4 The parties have agreed that the Reseller will market and sell the products and services within the

2. INTERPRETATION AND DEFINITIONS

2.1 Unless inconsistent with the context, an expression which denotes:

2.1.1 any gender includes the other genders;

2.1.2 a natural person includes an artificial person and vice versa;

2.1.3 the singular includes the plural and vice versa.

2.2 Unless inconsistent with the context, the expressions set out in this clause will have the following meanings:

2.2.1 "account manager" means the persons appointed by CONDYN and the Reseller respectively to manage the relationship between the parties as contemplated in 15.

2.2.2 "agreement" means this agreement between CONDYN and Reseller comprising of this document ("Agreement Document") and its schedules, and any other documentation, including but not limited to Business and Marketing Plans, which are, at any time, made part of this Agreement

2.2.3 "client" means the computer equipment and peripherals, including system software and other software required where

- applicable, on which the software is installed and operated;
- 2.2.4 “CEO” means the Chief Executive Officer appointed by the board of directors of CONDYN;
- 2.2.5 “CONDYN” means Connectivity Dynamics (Pty) Ltd, (Registration Number: 1998/007501/07, a company incorporated under the laws of South Africa with it’s registered office at Lakeview bld, Ground Floor, 1277 Mike Crawford Street, Centurion, South Africa;
- 2.2.6 “customer” means a customer of the Reseller that purchases the products and services in accordance with the agreements appropriate to the products and services, including without limitation, the right to use software in accordance with relevant software licences;
- 2.2.7 “delivery project” means the project consisting of the initial delivery of products (including any software which may be a component of the products) and services required to implement the products provided to customers which may be performed by either the Reseller and/or CONDYN as may be stipulated in delivery project documentation;
- 2.2.8 “intellectual property rights” means, without limitation, copyrights, patents, trade marks, service marks, design rights and other intellectual property rights of whatever nature;
- 2.2.9 “new release” means a software release provided by suppliers which may consist of substantial improvements or enhanced functionality in software provided to the Reseller or customer;
- 2.2.10 “Reseller” means the reseller stipulated in the Information Schedule marked A;
- 2.2.11 “services” means, without limitation, delivery of products (including software which may be components of the products), implementation of products, training on products and support services delivered to customers in terms of this agreement, a service agreement or a training agreement entered into between CONDYN and the Reseller or customer;
- 2.2.12 “software” means the computer programs and related user documentation stipulated in the Information Schedule marked A;
- 2.2.13 “software evaluation agreement” means the evaluation licence agreement for software between the customer and CONDYN substantially in the form of the supplier customer evaluation agreement;

2.2.14 “supplier” means the supplier to CONDYN of the products (and where appropriate software) as stipulated in Schedule B;

2.2.15 “technical specifications” means technical and functional manuals relating to the software as amended from time to time;

2.2.16 “territory” means the regions, country or countries stipulated in the Information Schedule marked A.

3. GOOD FAITH:

In exercising their rights and obligations under this agreement, the parties shall comply with principles of good faith and fair dealing.

4. APPOINTMENT AND ACCEPTANCE

4.1 CONDYN hereby appoints the Reseller, who accepts such appointment, as an authorised reseller of the products and services in the territory.

4.2 The parties agree to fulfil all their obligations in terms of the provisions of this agreement.

5. TERM AND TERMINATION

5.1 This agreement shall commence on the commencement date stipulated in the Information Schedule marked A and continue thereafter indefinitely unless terminated in terms of the provisions of 5.2, 177,18 or 19

5.2 This agreement may be terminated by either party giving the other party not less than 6 (six) months written notice of its intention to terminate the agreement.

6. LICENCE GRANT

6.1 CONDYN hereby grants to the Reseller, and the Reseller accepts the grant of the non-exclusive, non-transferable right to market the products and services to customers in the territory.

6.2 To the extent required, the Reseller will enter into relevant licences with the suppliers of software supporting the products or services supplied by CONDYN.

7. CONTRACTUAL RELATIONSHIP

7.1 Non-exclusive rights:

7.1.1 The Reseller acknowledges that this agreement is non-exclusive and shall not prevent CONDYN from directly or indirectly marketing and selling its products within the territory.

7.1.2 CONDYN may restrict the Reseller from selling products or services supplied by other security application vendors provided that this restriction is expressly stipulated in the Information Schedule marked A.

7.1.3 Subject to the provisions of 7.1.2 CONDYN acknowledges that the

Reseller may sell products or services from other security application vendors provided that prior to entering into this agreement the Reseller has made full disclosure of these products or services to CONDYN and CONDYN has provided its express agreement in writing that the Reseller continues to market the products and services.

- 7.2 No breach of existing duties. The Reseller represents that entering into this agreement will not breach any fiduciary or other duty or any covenant, agreement or understanding to which Reseller is a party or by the terms of which Reseller (or its employees, resellers or agents) may be bound. During the term of this agreement, Reseller shall not enter into any agreement or understanding that conflicts with the Reseller's ability to perform its obligations under this agreement.
- 7.3 Customers outside territory. The Reseller shall not actively market or sell the products or services to prospective customers or customers outside of the territory.
- 7.4 No relationship. This Agreement does not constitute any relationship of association, joint venture or partnership between the parties. The parties to this agreement are and shall remain independent entities. The Reseller shall be solely responsible for appointing its own employees and

representatives who shall be compensated solely by the Reseller.

- 7.5 Own costs and expense. Each party shall subject to the other provisions of this agreement, perform its duties hereunder at its own cost and expense.
- 7.6 No rights of representation. The Reseller shall not make any representations and warranties on behalf of CONDYN and/or CONDYN suppliers or otherwise bind or commit CONDYN and/or CONDYN's suppliers in any way unless expressly authorised by CONDYN to do so in writing.
- 7.7 CONDYN right to decline orders. CONDYN shall have the right at any time upon giving the Reseller reasonable notice to refuse to accept any order, tender or request submitted by the Reseller on behalf of a customer and shall accept an order in its absolute discretion and on such terms and conditions as it may consider appropriate.
- 7.8 Referral and publication rights of CONDYN. During the term of this Agreement, the Reseller agrees that CONDYN may make public (on the Internet and otherwise) that the Reseller is a reseller of CONDYN and may refer to Reseller (including use of Reseller's corporate logo) in advertising and promotional materials.

8. OBLIGATIONS OF RESELLER

- 8.1 Best efforts
- 8.1.1 General. Reseller shall perform its duties hereunder with necessary skill and care and in a timely and professional manner and shall on a continuing basis use its best efforts to actively market, promote and extend to the greatest extent possible the sale of the products and services to customers within the territory.
- 8.1.2 Good business relations. Reseller shall use its best efforts to maintain good business relations with customers and to maintain CONDYN's goodwill in the market in a manner consistent with prudent business practice.
- 8.2 Sales efforts and performance requirements.
- 8.2.1 Business and Marketing Plans:
- 8.2.1.1 The parties have agreed that the Reseller shall fulfil its obligations in terms of the Business and Marketing Plan which CONDYN will require the Reseller to provide to it.
- 8.2.1.2 The Business and Marketing Plan shall be substantially in the format of the draft Business and Marketing Plan appended to this agreement marked B or as may be amended by CONDYN from time to time.
- 8.2.1.3 The first Business and Marketing Plan will be negotiated between the parties in the negotiation of this agreement and shall be signed by authorised representatives of the parties simultaneously with this agreement
- 8.2.1.4 The Business and Marketing Plans agreed between the parties shall be filed with this agreement and regarded by the parties as effective for the period covered by the Business and Marketing Plan.
- 8.2.1.5 All Business and Marketing Plans shall be retained with this agreement for a period of 5 (five) years after the expiry of the period referred to in the Business and Marketing Plan.
- 8.2.2 Measurement:
- 8.2.2.1 The parties agree that the marketing and sales efforts of the Reseller shall be measured against the objectives agreed to in the then current Business and Marketing Plan.
- 8.2.2.2 The Reseller shall report on its sales and marketing efforts in terms of 8.3.

- 8.2.2.3 The parties agree that their respective account managers will meet on a quarterly basis to discuss the Reseller's performance status against the Business and Marketing Plan. If necessary, the account managers may determine how the Reseller may improve its performance and may revise performance requirements in terms of the Business and Marketing Plan.
- 8.2.2.4 Any downward revisions of the marketing and sales objectives in terms of a Business and Marketing Plan may only be made by CONDYN in the entire discretion of the CEO.
- 8.2.3 Quality control:
- 8.2.3.1 Reseller shall advertise and promote the products and services in a commercially reasonable manner and CONDYN reserves the right to set reasonable quality control standards for all advertising and promotional materials related to the products and services.
- 8.2.3.2 Reseller agrees that any advertising and promotional materials prepared in connection with the selling of
- the products and services shall conform to a standard or style, appearance and quality, stipulated by CONDYN and/or the supplier from time to time.
- 8.2.3.3 Reseller shall, at its own expense, furnish to CONDYN samples of such advertising and promotional materials for approval as to style, appearance and quality (which approval shall not be unreasonably withheld).
- 8.2.3.4 The Reseller's use of CONDYN or the supplier's product trademarks and trade names shall be subject to the requirements stipulated by the supplier or CONDYN from time to time.
- 8.3 Forecasts and reporting:
- 8.3.1 Annual Business and Marketing Plan:
- 8.3.1.1 The Reseller shall deliver to CONDYN on an annual basis, not less than 2 (two) months prior to the anniversary of the commencement date of this agreement, a Business and Marketing Plan for the ensuing year for CONDYN's consideration.
- 8.3.1.2 Unless agreed to the contrary by the CONDYN account

manager the Business and Marketing Plan shall be substantially similar to the draft Business and Marketing Plan appended to this agreement marked B and shall contain, without limitation, the Reseller's anticipated marketing activities, a financial plan including a budget forecast, details of prospective business and a detailed account plan for existing and prospective customers.

8.3.1.3 The parties shall negotiate the Business and Marketing Plan in good faith and the Reseller shall provide the agreed Business and Marketing Plan, duly signed by the authorised signatory of the Reseller, to CONDYN within 3 (three) days of the agreement being concluded, for acceptance and signature by CONDYN's CEO.

8.3.1.4 Once agreed and signed by the account managers of both parties the Business and Marketing Plan shall be filed with this agreement as a record of the obligations of the Reseller for the period stipulated in the Business and Marketing Plan.

8.3.2 Status reports and forecasts:

8.3.2.1 Reseller shall deliver to CONDYN twice monthly agreed Forecast and Status Reports in accordance with the format communicated in writing by CONDYN which, unless amended by CONDYN, shall be substantially in the form of the report appended hereto marked C.

8.3.2.2 Furthermore, the Reseller shall, upon CONDYN's request, deliver additional status reports and forecasts. Such additional reports or forecasts shall be delivered within 1 (one) week from CONDYN requesting the report or forecast.

8.3.3 Tenders and other requests. Reseller shall notify CONDYN promptly of all requests for tenders from third parties, and other prospective business.

8.4 Requirements regarding personnel, premises and information to customers:

8.4.1 Experienced sales personnel:

8.4.1.1 The Reseller shall maintain sufficient and suitably experienced sales personnel, knowledgeable in the function, specifications, application, use and

- advantages of the products and services.
- CONDYN and/or the supplier.
- 8.4.1.2 The Reseller shall ensure that its personnel are properly trained in the products and services which it contemplates marketing and selling to customers in terms of this agreement.
- 8.4.1.3 To the extent that Reseller's personnel are found to have insufficient knowledge and expertise relating to the products and services, CONDYN may require that the Reseller's personnel attend training courses to assist the Reseller in fulfilling the suppliers requirement.
- 8.4.2 Pertinent information and indemnity.
- 8.4.2.1 Reseller shall at all times provide pertinent and comprehensive information concerning the products and services to prospective customers.
- 8.4.2.2 The Reseller shall not make representations, warranties or offer any indemnities to customers or others with respect to the specifications, features or capabilities of the products and services that are inconsistent with the published literature or documentation supplied by
- 8.4.2.3 The Reseller hereby indemnities and holds CONDYN harmless against all consequences arising from any representations made or warranties or indemnities provided by the Reseller inconsistent with its obligations in terms of this agreement.
- 8.5 Compliance with and efforts to protect Intellectual Property Rights
- 8.5.1 Reseller agrees to take all measures necessary and reasonable to ensure compliance with the intellectual property rights of CONDYN and/or the supplier of products or services which are subject to this agreement as may be more fully provided in this agreement.
- 8.5.2 The Reseller shall wherever necessary, or if required by CONDYN in writing, bind its employees and/or contractors by written agreement to protect the intellectual property rights of CONDYN and/or the supplier of a product, service or software provided in accordance with this agreement.
- 8.6 No right to transfer products or services. Reseller may not transfer, sell, re-license, outsource, rent or lease the products or services or use

the products or services for service bureau or other third-party use without the prior written consent of CONDYN, which consent shall be at the entire discretion of CONDYN's CEO.

8.7 Reverse Engineering. The Reseller shall take all steps necessary to ensure that any software which is a component of the products or services is not modified, enhanced, reverse engineered, disassembled or decompiled contrary to the provisions of this agreement or any licence agreement applicable to the software or product of which the software is a component.

8.8 Rights to copy software. The Reseller shall take all commercially reasonable steps to ensure that any software or documentation provided as a component of, or for the purposes of using the products or services, is not copied, save with the express consent of CONDYN and/or the supplier of the software or documentation. Reseller shall only make copies strictly in accordance with the licence granted to the Reseller.

8.9 Labelling. The Reseller may not remove or alter any label, logo, trademark or other proprietary notice on the product, software or any documentation supplied with the products, services or software.

8.10 Compliance audit. Upon reasonable notice by CONDYN to Reseller, for purposes of ensuring compliance with

this agreement, including but not limited to, compliance with obligations relating to software licensed to Reseller, CONDYN has the right to audit the Reseller, its customers and any end users of software supplied as a component of the products and services. Any such audit shall be conducted during regular business hours and shall not unreasonably interfere with Reseller's or its customer's business activities. Reseller shall assist CONDYN in facilitating an audit required by CONDYN.

9. OBLIGATIONS OF CONDYN

9.1 Best efforts:

9.1.1 General. CONDYN shall perform its duties hereunder with necessary skill and care and in a timely and professional manner and shall on a continuing basis use commercially reasonable efforts to actively support the Reseller in its marketing and sale of the products and services to customers in the territory.

9.1.2 Good business relations. CONDYN shall use commercially reasonable efforts to maintain the goodwill of CONDYN and the Reseller, in a manner consistent with prudent business practice.

9.1.3 Service Performance. CONDYN shall by prior written agreement with Reseller provide technical

support, training and services to the Reseller.

9.1.4 Quotations. CONDYN shall, against a request from the Reseller, provide a quotation relating to the products and services in respect of which a quotation is required as expeditiously as possible in the circumstances and shall expressly indicate the period of validity of the quotation.

9.1.5 Software License and Services Agreements and Software Evaluation Agreements:

9.1.5.1 Where applicable, CONDYN shall provide Reseller with the then current software License and Services Agreements relevant to the products and services, on request of the Reseller and against signature of all relevant documentation.

9.1.5.2 Where Reseller or its customers require the evaluation of software CONDYN shall supply evaluation software to the Reseller subject to the evaluation software licences, or any other agreements which may be appropriate.

9.1.6 Training of Reseller personnel. The training of personnel identified by the Reseller and agreed to by CONDYN, shall be

subject to the provisions of the then current CONDYN Training Agreement and the fees and costs for training as at the time that the request is made.

9.1.7 Documentation, sales and advertising material. CONDYN will provide Reseller with available technical specifications, other technical literature regarding the products and services, and sales and advertising material, as it deems necessary or appropriate in promoting the sale of the products and services.

10. PROVISION OF SERVICES

10.1 Delivery Projects. During the term of the Agreement, Reseller shall be responsible for all Proof of Concept's undertaken by its prospective customers or customers and for the initial delivery of the products and services (including software which are components of the products or services or evaluation software if appropriate) to customers.

10.2 Planning of delivery project. In the initial delivery of products to the customer the Reseller shall be responsible for preparing a plan to facilitate the delivery of products and, where necessary, services to the customer. Without limitation the delivery plan will include the identification of principal parties at the customer, the Reseller and CONDYN

required to facilitate the delivery of the products, a full description of the products, software, components of the products and services that may be required for the implementation, details of the configurations required for the installation of the software, backup procedures, technical support required by the customer and training which may be required by the customer.

10.3 Delivery of service releases and new releases. During the term of the Agreement, Reseller shall be responsible for any on-site delivery of service releases of software which is a component of any products or services and shall ensure that these are delivered in accordance with the standard procedures of CONDYN.

10.4 If required by the Reseller, or if CONDYN's suppliers require CONDYN to do so, CONDYN shall assist with the delivery and installation of products, service releases and new releases and the Reseller shall be charged at the then current rates applicable to the provision of these services.

10.5 After the termination of this Agreement, and if requested by CONDYN to do so in writing, Reseller undertakes to provide on-site delivery of service releases and new releases to customers during the term of the applicable software license and services agreement. Reseller's obligations in this regard shall be

negotiated in good faith and be performed in terms of the Reseller's general terms and conditions for IT-consultancy services and at the then current rates for such services charged by the Reseller to its most favoured customers.

10.6 Training of customer technical staff: Reseller shall be responsible for providing sufficient training to the customer's technical staff and help desk personnel to enable the customer to fulfil its first tier support obligations in terms of this agreement or any Delivery Projects or agreements with its customers. Such training shall be made available to each customer as an integral part of a delivery project and shall be properly documented as contemplated in 10.2

10.7 Additional services. In addition to the standardised service packages, customers may request additional services and on-site support to be provided by the Reseller and CONDYN. If the additional services are required to be delivered by CONDYN, CONDYN shall make the services available on terms agreed in writing between the Reseller and CONDYN.

10.8 Where a supplier of products and services provided by CONDYN to the Reseller requires that the Reseller's or its customer's staff be certified to operate the products or the software supplied as a component of the

products, CONDYN will enforce the supplier policy.

10.9 If certified training is required the Reseller shall ensure that the appropriate training is arranged and that the persons identified for certification have been certified before they commence operating the products.

10.10 Technical Support Services. Technical support services will be supplied by CONDYN in terms of the Services Schedule appended to this agreement as Schedule D.

11. QUOTATIONS, ORDERING PROCEDURES AND DELIVERY

11.1 Quotation

11.1.1 If a customer requires the Reseller to provide products or services the Reseller shall provide to CONDYN a written list of the products and services required as well as any other pertinent information which may be necessary to allow CONDYN to prepare a quotation.

11.1.2 CONDYN shall, within a reasonable period and subject to suppliers providing the necessary information including price of products and component software, respond by providing a written quotation to the Reseller.

11.1.3 The quotation shall be valid for the period expressly stipulated

and any request or products and services falling outside of the quotation period will require a further quotation.

11.2 Ordering

11.2.1 If the quotation is acceptable and to the extent that a customer has not already bound itself to appropriate agreements governing the supply of products and services by the Reseller, the Reseller shall cause its customer to sign any agreements relating to the products or services, including the software which may be a component of the products or services.

11.2.2 The Reseller shall provide CONDYN with the necessary agreements duly completed and signed.

11.2.3 The Reseller shall deliver to CONDYN orders which shall, without limitation, stipulate the identity of the customer, the address for delivery of the products or provision of services, the products and services required including, in the case of licensed software, the number of users, all pertinent information relating to delivery and any other information which may be required by CONDYN from time to time.

11.3 Confirmation of Order

- 11.3.1 CONDYN shall within 2 (two) business days of receipt of an order confirm acceptance of the order.
- 11.3.2 If CONDYN cannot accept the order its account manager shall discuss any changes which must be made to the order with his or her counterpart at the Reseller as soon as reasonably possible after receiving the order.
- 11.3.3 To the extent commercially reasonable the parties agree that changes to the order will be negotiated in good faith. Once the terms of a revised order have been finalised the revised order shall be submitted to CONDYN in the manner contemplated in 11.2.3.
- 11.4 Delivery
- 11.4.1 Unless expressly agreed to the contrary by the parties products will be collected by the Reseller from the location specified by CONDYN in the confirmation of the order.
- 11.4.2 The services which may be ordered and provided by CONDYN shall be provided in terms of the provisions of the order and a Service Agreement to be entered into between the Reseller and CONDYN.
- 11.4.3 The services shall be provided at the locations stipulated in the Service Agreement, or where appropriate, in a Training Agreement.
- 11.5 Payment
- 11.5.1 CONDYN shall issue in respect of each order for products and services an invoice or, where appropriate, separate invoices referencing the order.
- 11.5.2 Upon receipt of an invoice the Reseller shall check that the invoice is correct and if not it shall promptly notify CONDYN of any objections it may have to the invoice. If no objection is received to an invoice by no later than 7 (seven) days prior to its due date the invoice shall be deemed to be correct in all respects
- 11.5.3 Unless expressly agreed by the parties in writing to the contrary, payment of all amounts due to CONDYN shall be made subject to the provisions of the invoice and the Information Schedule marked A and all payments will be made into CONDYN's bank account as stipulated in the Information Schedule marked A.
- 11.5.4 Should CONDYN wish to change any of its banking details or provisions relating to payment it may do so by notice in writing provided to the Reseller no less than 7 (seven) days before the change will take effect.

11.6 Suspension of delivery of products or services. If the Reseller fails to pay any amounts which are due to CONDYN by the dates agreed or stipulated, CONDYN shall be entitled to immediately and without notice suspend delivery of products and/or service to the Reseller or its customers.

11.7 Tax and costs

11.7.1 All charges are exclusive of value-added tax, sales tax, customs duties, or similar taxes or imposts.

11.7.2 All direct costs, out of pocket expenses, including but not limited to, the cost of travel, subsistence and accommodation incurred by CONDYN in delivering the services to the Reseller or the Reseller's customer which may not be payable by the customer shall be for the Reseller's account.

11.8 Interest and legal recovery costs

11.8.1 CONDYN may, in its discretion, apply interest on overdue payments of invoices at a rate of 2% (Two per centum) above the Prime Rate charged by Standard Bank of South Africa to its preferred clients, or the maximum interest rate allowed by applicable law, whichever is the greater, from the day after the due date until the date that payment of the outstanding balance including

interest has been paid in full, both days inclusive.

11.8.2 Reseller agrees to pay to CONDYN all costs incurred in the recovery of outstanding amounts due by the Reseller to CONDYN, including but not limited to, all legal costs on the scale of attorney and own client, advocate's fees, tracing fees, collection commissions, any court or sheriff's fees and any further disbursements incurred in the collection of the monies due by the Reseller to CONDYN.

11.8.3 All amounts paid by the Reseller to CONDYN shall be allocated firstly to payment of legal and collection costs, thereafter to interest and finally to the capital outstanding.

11.9 Cost increase

11.9.1 CONDYN reserves the right to increase fees in relation to services rendered by it to the Reseller or its customer provided that such increases will not be made more than once in any 6 (six) month period and shall not be effective without the Reseller having received at least 15 (fifteen) days notice of the intended increase.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 The Reseller acknowledges and accepts that any and all intellectual property rights in the products, including the software which may form the component of the products, documentation relating to the products or services and in the services supplied by CONDYN to the Reseller or its customer, vests in CONDYN or the supplier as the owner of the intellectual property right.
- 12.2 This agreement does not, unless expressly agreed in writing, vest in the Reseller or its customers' intellectual property rights, express or implied, in the products or services including, without limitation, any software which may form a component of the product or services.
- 12.3 Reseller shall take all commercially reasonable measures to ensure that its customers are fully aware of the owner's intellectual property rights and bind themselves in writing to protect the intellectual property rights of the owner.
- 12.4 Reseller undertakes that it shall use all commercially reasonable measures to ensure that all licence agreements relating to the use of software which may form a component of the product or services provided to the customer have been duly accepted in terms of the licensing requirements of the software, prior to the commencement of use of the software by its clients.

13. WARRANTIES, INDEMNIFICATION AND REMEDIES

- 13.1 Warranties. CONDYN confirms that it has obtained the necessary warranties from suppliers that they have all relevant rights to, and interest in products and services, including without limitation, the software which may form a component of a product or service, to licence and provide the products or services in accordance with this agreement and any software licences, service agreement or evaluation agreements which may be provided in terms of this agreement.
- 13.2 Limitation of warranties.
- 13.2.1 The products and services including software provided as a component of the products or services are provided on an "as-is" basis, and CONDYN and/or suppliers do not warrant that operation of the software will be uninterrupted or error free.
- 13.2.2 Loss of data. Under no circumstances shall CONDYN and /or supplier be responsible for loss or corruption of data or information, and Reseller acknowledges the importance of establishing and maintaining back-up routines both prior to the installation of the software on each client, in the normal course of business, and undertakes to do so wherever prudent.

- 13.2.3 Disclaimer of implied warranty. CONDYN and/or supplier makes no representation or warranty, express or implied, of fitness for a particular purpose or use other than what is described in the technical specifications of a product or software.
- 13.2.4 Exclusivity of warranties. The warranties contained herein are exclusive and in lieu of all other warranties and representations of any kind whatsoever, whether express or implied, statutory, or otherwise and or other warranties are hereby expressly excluded to the fullest extent permitted by law.
- 13.3 Remedies
- 13.3.1 Indemnification. CONDYN undertakes to cause the appropriate supplier to defend and indemnify Reseller against any third party claim that the products or software infringes upon such third party's Intellectual Property Rights, provided that:
- 13.3.1.1 Reseller promptly notifies CONDYN in writing of the claim;
- 13.3.1.2 CONDYN or the supplier shall have the sole control of the defence and all related settlement negotiations; and
- 13.3.1.3 Reseller and its customers provide CONDYN and supplier with the assistance, information and authority necessary for supplier to perform its obligations under 13.3.1.
- 13.3.2 Product and software modification or replacement. If the a product or software is held to constitute an intellectual property right infringement, or such is considered by supplier to constitute such infringement, supplier shall have the option, at its own expense and using commercially reasonable efforts, to:
- 13.3.2.1 modify the products or software such that it no longer constitutes an infringement;
- 13.3.2.2 obtain a license for Reseller to continue marketing the products or software; or
- 13.3.2.3 replace the products or software with substitutes which do not constitute infringements, provided that such substitutes do not entail a material diminution in performance or function of the product or software.
- If supplier, in its reasonable judgment, is not able to exercise any of the above options within 3 (three) months of the date it received written notice of the Intellectual Property Right infringement from CONDYN

and/or Reseller, supplier and/or CONDYN shall be entitled to terminate the agreement relating to the product or software.

13.3.3 Exclusivity of Remedies. Except as set out in this Section 13.3, Reseller's sole remedy for any breach of supplier obligations hereunder shall be the correction of product or software errors which caused the breach, or as regards to services, the re-performance of the unsatisfactory services.

13.4 Indemnification by Reseller. Reseller shall indemnify CONDYN and supplier in respect of any claim against CONDYN and supplier arising out of the Reseller or its customer's use of third party software in combination with the software not approved by CONDYN and supplier.

14. LIMITATION OF LIABILITY

14.1 Direct damages. Unless there is wilful misconduct on the part of CONDYN or its employees, the liability of CONDYN for direct damages whether in contract, delict or otherwise shall, in respect of any one incident or a series of incidents attributable to the same cause, be limited to a claim by the Reseller which shall not under any circumstances exceed the value of the order in respect of which damages may occur placed by the Reseller on CONDYN or R50,000.00 (Fifty

Thousand Rand), whichever is the lesser.

14.2 Consequential damages. Neither party shall, as a consequence of this agreement, under any circumstances be liable whether in contract, delict or otherwise for the use, loss or corruption of data or information, lost revenues, lost profits, loss of business, or any indirect or consequential damages of any nature irrespective of whether such were unforeseeable, suffered or incurred directly or indirectly by the other party.

15. RELATIONSHIP MANAGEMENT

Management and administration

15.1 Each party shall appoint an account manager, who shall be primarily responsible for the management of the relationship between the parties.

15.2 The Account managers shall *inter alia*:

15.2.1 act as the primary point of contact in communications and negotiations between the parties;

15.2.2 negotiate and recommend to the CONDYN CEO the terms of the Business and Marketing Plan to be agreed between the parties each year;

15.2.3 where appropriate, ensure that quotations requested and orders made by the Reseller are responded to or accepted, as the

- case may be, as expeditiously as possible;
- 15.2.4 provide any information reasonably required by the other party in respect of quotations, orders and/or payments, including but not limited to, overdue or disputed payments;
- 15.2.5 manage any specific project or sales undertaken by the Reseller, including but not limited to, delivery projects;
- 15.2.6 arrange meetings and consultations between the parties and where necessary with the customer;
- 15.2.7 facilitate the exchange of information necessary to allow the Reseller to properly advise the customer and place orders on CONDYN to provide appropriate products and services and the implementation of the products or services;
- 15.2.8 where necessary to provide and manage services directly between CONDYN and the customer;
- 15.2.9 receive and process orders, invoices, confirm that the amounts invoiced are due, and authorise the payment of invoices;
- 15.2.10 generally, manage issues arising from this agreement.

15.3 The account managers shall meet with their immediate counterparts as often as may be necessary or as may be stipulated in this agreement to discuss any issues relating to the relationship between the parties.

15.4 Account managers shall make appropriate records of the meetings with their counterparts, (copies of which shall be distributed to appropriate persons) and ensure the secure retention of these records.

15.5 The parties shall provide the name, telephone number, mobile number, fax number and email address for the account managers appointed by them and these details shall, in respect of the account managers appointed at the time of signature of this agreement be recorded in schedule A.

16. WITHOUT PREJUDICE

The expiration or termination of this agreement for any reason whatsoever shall be without prejudice to any right or obligation of either party to the agreement which has arisen prior to such termination or expiration as a consequence of this agreement.

17. BREACH

Should any party breach any provision or term of this agreement and fail to remedy such breach within 7 (seven) days or such shorter period as this agreement may expressly stipulate, of receipt of written notice requiring such party to do so, the

aggrieved party shall be entitled, without prejudice to any other remedy which may be available to it in terms of this agreement or at law, to claim specific performance of any obligation, or to cancel this agreement, in either case without prejudice to its rights to claim damages.

18.2 Any termination of this agreement will be without prejudice to any other rights or remedies of either party under this agreement or any applicable law and will not in any way affect any accrued rights or liabilities of either party at the date of termination.

18. TERMINATION

19. LAWFUL AND ETHICAL BEHAVIOR

- 18.1 Either party may if the other party:
- 18.1.1 is the subject of any legal proceedings concerning its solvency; or
 - 18.1.2 ceases trading; or
 - 18.1.3 commits an act of insolvency; or
 - 18.1.4 makes an arrangement or compromises with its creditors; or
 - 18.1.5 an order is granted by a competent court placing the party under judicial management or provisional or final liquidation of the party; or
 - 18.1.6 it has become unable to pay its debts within the meaning of the insolvency legislation of any country to which that party may be subject;
 - 18.1.7 fails to remedy a breach within the time-limit prescribed in the breach provisions of this agreement provided for in 17.

- 19.1 The Reseller and its personnel shall at all times in dealings with CONDYN and its customers behave with the utmost integrity.
- 19.2 If CONDYN reasonably suspects that in any dealings between the Reseller and CONDYN or the Reseller and its customers, the Reseller or any of its personnel is guilty of behaviour that is unlawful, unethical or dishonest, CONDYN shall be entitled to suspend the operation of this agreement, or summarily terminate the agreement with immediate effect.
- 19.3 If, as a result of unlawful, unethical or dishonest behaviour by the Reseller or its personnel, CONDYN suffers any loss or damages it shall be entitled to recover the loss or damages suffered from Reseller.

immediately terminate this agreement by notice in writing.

20. DISPUTE RESOLUTION

- 20.1 The parties accept that disputes may arise between them during the term of this agreement.
- 20.2 If the operational managers appointed by the parties to manage their

relationship are unable to resolve the dispute within 7 (seven) business days of it being referred to them by their immediate counterpart they shall refer the dispute to the chief executive officers of the respective parties.

20.3 Should the chief executive officers of the parties fail to resolve the dispute within 7 (seven) business days of the dispute being referred to them, such dispute shall be submitted to be decided by arbitration in terms of 21.

21. ARBITRATION

21.1 Should any dispute arise which has not been resolved in terms of 20.3 between the parties in connection with the interpretation or application of the provisions of this agreement or its breach or termination or the validity of any documents furnished by the parties pursuant to the provisions of this agreement, that dispute will be referred to and be determined by arbitration in terms of this clause.

21.2 Subject to 20 any party to this agreement may demand that a dispute be determined in terms of this clause by written notice given to the other party.

21.3 This clause will not preclude any party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

21.4 The arbitration will be held:

21.4.1 in Pretoria;

21.4.2 with only the legal and other representatives of the parties to the dispute present;

21.4.3 in accordance with the formalities and procedures settled by the arbitrator, and may be held in an informal and summary manner, on the basis that it will not be necessary to observe or carry out the usual formalities or procedures, pleadings and discovery or the strict rules of evidence, it being the intention that the arbitration will be held and completed as soon as possible; and

21.4.4 on the basis that the arbitrator will be entitled to decide the dispute in accordance with what he considers to be just and equitable in the circumstances.

21.5 The arbitrator will be acceptable to both parties and, if the matter in dispute is principally:

21.5.1 a legal matter, a practising attorney or advocate of a least 10 (ten) years' standing;

21.5.2 an accounting matter, a practising chartered accountant of at least 10 years standing;

21.5.3 any other matter, any independent person.

- 21.6 Should the parties to the dispute fail to agree whether the dispute is principally a legal, accounting or other matter within 7 (seven) days after the arbitration was demanded, the matter will be deemed to be a legal matter.
- 21.7 Should the parties fail to agree on an arbitrator within 14 (fourteen) days after the giving of notice in terms of clause 21.2 above, the arbitrator will be appointed at the request of any party to the dispute, by the Chairman for the time being of the Johannesburg Bar Council according to the provisions of clauses 21.5 and 21.6.
- 21.8 The parties or the arbitrator may be entitled to call for expert testimony relating to any technical issue which may be in dispute.
- 21.9 The decision of the arbitrator will be final and binding on the parties to the dispute and may be made an order of any court to whose jurisdiction the parties are subject at the instance of any of the parties to the dispute.
- 21.10 The arbitrator will be entitled to make such award, including an award for specific performance, an interdict, damages or a penalty or otherwise as he in his sole discretion may deem fit with the question of costs, including if applicable, costs on the attorney and client scale, and his own fees.
- 21.11 The provisions of this clause:
- 21.11.1 constitute an irrevocable consent by the parties to any proceedings in terms hereof and no party will be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions;
- 21.11.2 constitute an irrevocable consent by the parties that the order of the arbitrator may be made an order of any competent court in South Africa;
- 21.11.3 are severable from the rest of this agreement and will remain in effect despite the termination of or invalidity for any reason of this agreement.

22. EXCUSABLE DELAY

22.1 Save for payment of any sums owed by one party to the other, neither party shall be liable for any delay in performance, or non-performance, of any of its obligations, hereunder caused by circumstances beyond that party's reasonable control that under normal practice can be designated as a force majeure, insurrection or riots, embargoes, wrecks, delays in transportation, requirements or regulations of any kind.

22.2 Each party hereby agrees to provide notice forthwith to the other upon becoming aware of an event giving rise to excusable delay. Such notice shall contain details of the circumstances giving rise to the excusable delay as well as the

anticipated period of delay if this is possible.

- 22.3 The party who is delayed in fulfilling its obligation shall make all commercially reasonable efforts to fulfil its obligations as soon as possible after the excusable delay has occurred and shall keep the other party informed of when it is likely to be able to perform or fulfil its obligation in terms of this agreement.

23. CONFIDENTIALITY

- 23.1 The parties recognise that in their dealings with one another, governed by the terms of this agreement, they may each receive proprietary information of the other party, or in the case of CONDYN, its suppliers, including but not limited to, information that is marked in a manner that conveys its confidentiality, information that is confidential or a trade secret, concerns customers, financial or contractual arrangements or dealings, reports, source and object program codes and development plans (“confidential information”).

- 23.2 Each party agrees it shall take all commercially reasonable steps to protect the confidentiality of confidential information.

- 23.3 Neither party shall grant access to any confidential information received from the other to any of its personnel save to the extent that access to the information is required for the

performance of obligations of the parties in terms of this agreement.

- 23.4 Neither party shall grant access to any confidential information received from the other to any third party without the prior written consent of the other party, unless the disclosing party is legally obliged to make disclosure of such information without obtaining the prior written consent of the other party.

- 23.5 The provisions of this clause 22 shall survive the termination of this agreement.

- 23.6 Non- Circumvention

- 23.6.1 At any time prior to the expiration of five years from the date of this agreement, it is expressly agreed that the identities of any individual or entity and any other third parties (including, without limitation, suppliers, customers, financial sources, manufacturers and consultants) discussed and made available by the CONDYN in respect of the purpose and any related business opportunity shall constitute Confidential Information and the reseller or any Group company or associated entity or individual shall not (without the prior written consent of, or having entered into a commission agreement with, the CONDYN):

- 23.6.2 directly or indirectly initiate, solicit, negotiate, contract or enter into any business transactions,

agreements or undertakings with any such third party identified or introduced by the CONDYN; or

23.6.3 seek to by-pass, compete, avoid or circumvent **CONDYN** from any business opportunity that relates to the **purpose** by utilising any Confidential Information or by otherwise exploiting or deriving any benefit from the Confidential Information.

23.6.4 The **Reseller** covenants that any financial gain made by it, or any associated party, from a breach of clause 23.6.1 shall be held on trust for the benefit of the **CONDYN** and then be transferred to a nominated account of **CONDYN**, until which time such outstanding amount shall incur interest at the rate of 4% per annum above Standard Bank of South Africa Limited base rate from time to time

23.6.5 Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment and **reseller** shall pay the interest together with the overdue amount

23.6.6 Clause 23.6.2 does not effect the Condyn's ability to also sue for damages should the covenants in clause 23.6.1 be violated in any way.

24. PRIVACY

24.1 The parties acknowledge that in the course of the services undertaken, their personnel may have access to and sight of personal information relating to persons whose personal information has been gathered by the other party.

24.2 The parties further acknowledge that they are aware that this information is regarded as strictly private to the other and the person to whom it relates, that the information is, or may become subject, to the protection of privacy or data control legislation within South Africa or any other competent jurisdiction and that the improper disclosure of such information may render the other party liable to criminal or civil proceedings.

24.3 The parties undertake to ensure that only their personnel, representatives or agents who, in the course of providing the services to CONDYN need to have access to personal information, are given such access and that they are aware of the obligation not to disclose such information to any third party.

24.4 The parties agree that in the event of a breach of the obligations established in this clause 24 due to the wilful default or negligence of the party in breach, its personnel, agents and representatives shall indemnify the other against all direct damages suffered by the other party as a result of such breach.

24.5 The provisions of this clause 24 shall survive the termination of this agreement.

25.5 The provisions of this clause 25 shall survive the termination of this agreement.

25. INFORMATION SECURITY

25.1 Reseller acknowledges that it and all of its personnel that are granted access to CONDYN's premises, information or information systems shall be subject to the information security policies, practices and procedures governing information security within CONDYN.

25.2 Reseller shall ensure that all of its personnel who are given access to CONDYN's premises, information or information systems are aware of their obligations in terms of CONDYN's information security controls.

25.3 Where necessary, in the sole discretion of CONDYN's managing director, Reseller personnel shall sign agreements governing their adherence to the information security controls required by CONDYN.

25.4 If Reseller personnel are granted remote access to CONDYN's information system, whether for reasons of installation or support, an agreement governing the provision of remote access shall be entered into (which shall incorporate CONDYN's right to audit the information security controls implemented by Reseller) prior to the provision of remote access.

ADMINISTRATIVE PROVISIONS

26. ADDRESSES AND NOTICES

26.1 For the purposes of this agreement, including the giving of notices and the serving of legal process, the parties choose the following contact details:

26.2 CONDYN:

Physical Address	Lakeview Building, Ground Floor, 1277
Email	lorina@condyn.net

26.3 The Reseller at the physical address referred to in clause 1 and email address referred to in 4.1 of the Information Schedule marked A.

26.4 A party may at any time change its contact details by notice in writing to the other party provided that the new physical address is an address in South Africa at which process can be served, such new contact details being effective on receipt by the addressee of such written notice.

26.5 Any notice given in connection with this agreement shall:

- 26.5.1 be delivered by hand; or
- be sent by prepaid registered post; or

26.5.2 be sent by email (if the domicilium includes an email address)

to the address, telefax or email address chosen by the party concerned.

26.6 A notice given as set out above shall be deemed to have been duly given:

26.6.1 if delivered, on the date of delivery;

26.6.2 if sent by post, 10 (ten) days after posting;

26.6.3 if sent by telefax, on the day that the telefax is transmitted

26.6.4 if sent by email, on the day that it enters an information system outside of the control of the addressor and if the parties are in the same information system, on the day that it becomes capable of being retrieved by the addressee.

27. ENTIRE CONTRACT

This agreement constitutes the entire contract between the parties with regard to the matters dealt with in this agreement and no representations, (save for any fraudulent misrepresentations) terms, conditions or warranties not contained in this agreement shall be binding on the parties

28. VARIATION AND CANCELLATION

No agreement varying, adding to, deleting from or cancelling this agreement, shall be effective unless reduced to writing and signed by or on behalf of the parties.

29. NO REPRESENTATIONS

None of the parties may rely on any representation, which allegedly induced that party to enter into this agreement, unless that representation is recorded in this agreement.

30. ADVICE

30.1 The Reseller acknowledges that the Reseller's duly authorised employees or agents have carefully read the provisions of this agreement and that where necessary have obtained appropriate professional advice.

30.2 The Reseller acknowledges that the rule of construction that any ambiguity in this agreement is construed against the stipulator (CONDYN) shall not apply.

31. INDULGENCES

No indulgence granted by a party shall constitute a waiver of any of that party's rights under this agreement; accordingly, that party shall not be precluded, as a consequence of having granted such indulgence, from exercising any rights against the other which may have arisen in the past or which may arise in the future.

32. COSTS

Each party shall bear its own costs relating to the negotiation, drafting and settling of this agreement.

33. CESSION

None of the parties may cede their rights nor delegate their obligations without the prior written consent of any other parties, which consent will not be unreasonably withheld.

34. VALIDITY

If any provision of this agreement is found or held to be invalid or unenforceable, the validity of all the other provisions hereof will not be affected thereby and the parties agree to meet and review the matter and if any valid or enforceable means is reasonably available to achieve the same object as the invalid or unenforceable provision, to adopt such means by way of variation of this agreement.

35. LAW AND JURISDICTION

This agreement shall be governed by and construed in accordance with the laws of South African and each party to this agreement submits to the non-exclusive jurisdiction of the South African courts.

36. AUTHORITY

The persons signing Schedule A of this agreement hereby warrant that they are properly empowered and duly authorised to sign this agreement on behalf of the parties.