

BlckRhino Technologies (Pty) Ltd

Certra (the product)

Commercial & Licence Terms

V4.0



BlckRhino Technologies (Pty) Ltd Terms and Conditions

1. Definitions:

- 1.1. In these terms and conditions, the following expressions shall have the following meanings and cognate expressions shall bear corresponding meanings:
 - 1.1.1. "Agreement" means this agreement between the Customer and BlckRhino;
 - 1.1.2. "BlckRhino" means BlckRhino Technologies (Pty) Ltd, a private company, with Registration Number 2022/714411/07, registered in terms of the laws of the Republic of South Africa, having its principle place of business at 37 Blaauwberg Road, Bloubergstrand, Western Cape, 7441, and email address: legal@blckrhino.com;
 - 1.1.3. "Authorised Users" means those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services;
 - 1.1.4. "Business Day" means any day of the week, excluding Saturdays, Sundays and official public holidays in the Republic of South Africa;
 - 1.1.5. "Confidential Information" shall mean any information or data of any nature, tangible or intangible, oral or in writing and in any format or medium, received by one Party from the other Party and is marked as confidential or a similar notice (if disclosed in writing or a tangible form), identified as confidential (if disclosed verbally) or should reasonably be treated as confidential under the context in which such disclosure was made, including information or data which by its nature or content is, or ought reasonably to be identifiable as confidential and/or proprietary to the Party from whom such information is acquired;
 - 1.1.5.1. Confidential Information shall not include information that the Party receiving the information can demonstrate:
 - 1.1.5.1.1. is lawfully in the public domain at the time of disclosure thereof;
 - 1.1.5.1.2. subsequently becomes lawfully part of the public domain by publication or otherwise; and
 - 1.1.5.1.3. is or becomes available to the Party receiving such information from a source other than the Party revealing the information, which source was lawfully entitled, without any restriction on disclosure, to disclose such information to a third party.
 - 1.1.5.2. The Party receiving the Confidential Information will:

- 1.1.5.2.1. safeguard Confidential Information with the same degree of care as it exercises with its own Confidential Information, but no less than reasonable care;
- 1.1.5.2.2. not disclose any Confidential Information to third parties; and
- 1.1.5.2.3. will use the other Party's Confidential Information solely in the exercise of the rights and obligations under these Terms and Conditions and for no other purpose.

1.1.5.3. The Party so receiving the Confidential Information may disclose same only pursuant to a requirement or request by operation of law, regulation or court order, but then only to the extent so disclosed and then only in the specific instance and under the specific circumstances in which it is obliged to be disclosed;

1.1.6. "Customer" means the customer purchasing the Services from BlckRhino, either directly from BlckRhino or via an authorised reseller of the Services;

1.1.7. "Customer Data" means the data input or submitted by the Customer or its Counterparty, or by its Authorised Users, or BlckRhino on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services;

1.1.8. "Documentation" means collectively:

- 1.1.8.1. any documents made available to the Customer by or on behalf of BlckRhino which sets out a description of the Services and the user instructions for the Services, and that relate to the functional, operational and/or performance of the Software; and
- 1.1.8.2. all user, operator, system administration, technical, support and other manuals and all other materials published or otherwise made available by BlckRhino that describe the functional, operational and/or performance capabilities of the Software;

1.1.9. "Effective Date" means the date on which the Customer's account is marked active on the Certra Platform;

1.1.10. "Initial Term" means the initial period during which the Services will be provided as specified in the Order;

1.1.11. "Certra Platform" means the Certra software application, as described on Certra.co.za, provided by BlckRhino as part of the Services, also called the Software;

1.1.12. "Order" means the Customer's order for the Services on the Certra.co.za website; Certra Platform; or as per a signed proposal form;

1.1.13. "Parties" means BlckRhino and the Customer, and "Party" means either one of them, as the context requires;

1.1.14. "Services" means the subscription services provided through the Certra Platform to the Customer under the Agreement, as more particularly described in the Documentation;

- 1.1.15. "Software" means the software applications provided by BlckRhino as part of the Services;
- 1.1.16. "Subscription" means the Certra software application as a service (SaaS) subscribed for by each Customer;
- 1.1.17. "Subscription Fees" means the subscription fees payable by the Customer to BlckRhino, as set out in the Order; and
- 1.1.18. "Term" means the renewal, after the Initial Term period during which the Services will be provided.
- 1.2. The rule of construction in terms of which an agreement shall be interpreted against the party responsible for its drafting shall not apply.
- 1.3. The words "**include**" and "**including**" mean "include without limitation" and "including without limitation". The use of the words "**include**" and "**including**" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 1.4. Where an expression has been defined, whether in clause 1 above, or elsewhere, and such definition contains a provision conferring a right or imposing an obligation on any Party, then, notwithstanding that it is contained only in a definition, effect shall be given to that provision as if it were a substantive provision contained in the body of the Agreement.
- 1.5. Expiration or termination shall not affect such of the provisions of this Agreement which of necessity must continue to have effect after such expiration or termination, notwithstanding that such provision may not expressly provide.
- 1.6. This Agreement contains a number of words and phrases which have specific meanings denoted by such words being capitalised.
- 1.7. In this Agreement, headings are for convenience only and are not intended to be used to interpret the Agreement.
- 1.8. If the Agreement refers to a party who is liquidated or sequestered (or has been through a comparable process under a different legal system), then the Agreement will also be applicable to, and binding on, that party's liquidator or trustee, as the case may be.
- 1.9. Unless this Agreement indicates to the contrary, any references to any gender includes the other gender, a natural person includes an artificial person and vice versa, the singular includes the plural and vice versa.
- 1.10. Where this Agreement specifies any number of days, the number of days excludes the first day and includes the last day, unless the last day falls on a Saturday, Sunday or gazetted public holiday in the Republic of South Africa, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or gazetted public holiday in the Republic of South Africa. Generally speaking, references to a "day" are references to typical calendar day.

2. Subscriptions

- 2.1. Subject to the payment as per the Order of the relevant Subscription Fees, BlckRhino hereby grants to the Customer a non-exclusive, without right to sub-license, non-transferable right to use the Software and the Services during the Term solely for the Customer's internal business operations, unless otherwise reduced to writing and agreed to by both Parties through the execution of an agreement governing the use of the Software for or within other entities.
- 2.2. The Customer shall not:
 - 2.2.1. except as may be allowed by any applicable law which is incapable of exclusion by agreement between the Parties, and except to the extent expressly permitted under the Agreement, attempt to copy, alter, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software, method and/or Documentation (as applicable) in any form or media or by any means; or
 - 2.2.2. attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software or Services;
 - 2.2.3. access all or any part of the Services in order to build a product or service which competes with the Services and/or the Documentation; or
 - 2.2.4. except with BlckRhino's prior written consent, use the Services to provide services to third parties; or
 - 2.2.5. subject to the provisions of this Agreement that provide the contrary, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
 - 2.2.6. attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2;
- 2.3. The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify BlckRhino.
- 2.4. The rights provided under this clause 2 are granted to the Customer only and shall not be considered granted to any subsidiary or holding company of the Customer or to any other unauthorised person.

3. Services

- 3.1. BlckRhino shall, during the Term, provide the Services to the Customer on and subject to the terms of the Agreement.
- 3.2. BlckRhino shall use its reasonable efforts to ensure that any maintenance activity which may interrupt access to the Services, shall not be performed during "Normal Business Hours" (9.00 am to 5.00 pm GMT+2, Monday to Friday, excluding public holidays). The Customer acknowledges that BlckRhino may interrupt access to the Services at any time to perform essential emergency maintenance.

4. End-User Data

- 4.1. The Customer shall own all right, title and interests in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 4.2. If BlckRhino processes any personal data/information on the Customer's behalf when performing its obligations under the Agreement, the Parties record their intention that the Customer shall be the responsible party/data controller and BlckRhino shall be a data operator/processor, and in any such case:
 - 4.2.1. the Customer shall ensure that it is entitled to transfer the relevant personal data/information to BlckRhino so that BlckRhino may lawfully use, process and transfer the personal data/information in accordance with the Agreement on the Customer's behalf;
 - 4.2.2. the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
 - 4.2.3. each Party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data/information or its accidental loss, destruction or damage; and
 - 4.2.4. each Party shall comply with all applicable data protection legislation, including the Protection of Personal Information Act 4 of 2013.
- 4.3. The Customer acknowledges that and consents to BlckRhino generating, collecting, and using anonymised aggregated data relating to the Customer's use of the Services.

5. Charges and Payment

- 5.1. All Services will be charged for in advance.
- 5.2. Where credit card billings are used, by submitting the valid credit card details, the Customer agrees to settle the Subscription Fees in accordance with the Order and this clause 5, and hereby authorises BlckRhino to bill such credit card as specified in the Order.
- 5.3. Each payment covers a specified period of access to the Certra Platform and a specified number of activity credits. Should the access period expire, or the activity credits be fully applied through usage, the Customer authorises BlckRhino to continue to bill in accordance with the Order and clause 15.1.
 - 5.3.1. If such payment has not been made, or in the case of a credit card that credit card has expired or been cancelled, and without prejudice to any other rights and remedies available to BlckRhino, BlckRhino may, without liability to the Customer, disable the Customer's account and access to all or part of the Services, and BlckRhino shall be under no obligation to provide any or all of the Services until payment has been received by BlckRhino.

- 5.4. All amounts and fees stated or referred to in the Agreement:
 - 5.4.1. shall be payable in the currency represented on your Order;
 - 5.4.2. are non-cancellable and non-refundable;
 - 5.4.3. are inclusive of value-added tax.

6. BlckRhino's Obligations

- 6.1. BlckRhino undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care to be expected of a service provider in the industry.
- 6.2. BlckRhino warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Agreement.

7. Customer's Obligations

- 7.1. The Customer shall be solely responsible for:
 - 7.1.1. procuring and maintaining its network connections and telecommunications links from its systems to the Platform, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet,
- and the Customer shall:
 - 7.1.2. comply with all applicable laws and regulations with respect to its activities under the Agreement;
 - 7.1.3. carry out all other Customer responsibilities set out in the Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the Parties, BlckRhino may, in its sole discretion, adjust any agreed timetable or delivery schedule as reasonably necessary;
 - 7.1.4. ensure that the Authorised Users use the Services in accordance with the terms and conditions of the End User Licence Agreement found on the Certra Portal (the "EULA") and shall be responsible for any Authorised User's breach of the Agreement and/or EULA;

- 7.1.5. obtain and shall maintain all necessary licences, consents, and permissions necessary for BlckRhino, its contractors and agents to perform their obligations under the Agreement, including the Services;
- 7.1.6. ensure that its network and systems comply with the relevant specifications provided by BlckRhino from time to time;
- 7.1.7. ensure the system is not abused, including methods to circumvent license restrictions and intended usage.
- 7.1.8. ensure that all fees for the use of the Services are paid timeously; and the Customer shall provide BlckRhino with:
- 7.1.9. all necessary cooperation and assistance in relation to the Agreement;
- 7.1.10. all necessary access to such information as may be required by BlckRhino, including Customer Data.

8. Proprietary Rights

- 8.1. The Customer acknowledges and agrees that BlckRhino and/or its licensors own all intellectual property rights in the Platform, Services and the Documentation.
- 8.2. Except as expressly stated herein, the Agreement does not grant the Customer any rights to, or in, patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Platform, Services or the Documentation.

9. Confidentiality

- 9.1. Each Party may be given access to Confidential Information from the other Party in order to perform its obligations under the Agreement or otherwise. A Party's Confidential Information shall exclude information that:
 - 9.1.1. is or becomes publicly known other than through any act or omission of the receiving Party or connected parties;
 - 9.1.2. was in the receiving Party's lawful possession before the disclosure, as is evidence by the receiving Party's written records;
 - 9.1.3. is lawfully disclosed to the receiving Party by a third party without restriction on disclosure;
 - 9.1.4. is independently developed by the receiving Party, which independent development can be shown by written evidence; or
 - 9.1.5. is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body, and only such Confidential Information that must be so disclosed.

- 9.2. Each Party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of the Agreement.
- 9.3. Each Party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the Agreement.
- 9.4. Neither Party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 9.5. The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute BlckRhino's Confidential Information.
- 9.6. BlckRhino acknowledges and agrees that the Customer Data is the Confidential Information of the Customer.
- 9.7. No Party shall make, or permit any person to make, any public announcement concerning the Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including any relevant securities exchange), any court or other authority of competent jurisdiction.
- 9.8. This clause 9 is severable from the rest of this Agreement and shall remain in full force and effect notwithstanding any termination or cancellation of this Agreement, or any part thereof.

10. Suspension

- 10.1. BlckRhino may disable a Customer's account on the CertraPlatform or access to the Services for legal or regulatory reasons or as otherwise permitted under this Agreement, and BlckRhino will notify the Customer of such within 48 (forty-eight) hours. BlckRhino reserves the right to remove any and all parts of the Software that is deployed in relation to the Agreement.
- 10.2. If BlckRhino disables a Customer's account on the Certra Platform or access to the Services due to regulatory reasons, BlckRhino will also suspend new billings for the Customer's Subscription until the Subscription is re-enabled.

11. Performance Warranty

- 11.1. BlckRhino provides no warranty on the performance of the Services and Software but undertakes that best efforts will be applied to ensure that the Services and the Software will substantially conform to the specifications and the Documentation, and that the Services will be available for 95% (ninety-five percent) of the time, measured across any calendar month.

- 11.2. Provided Customer notifies BlckRhino in writing with a specific description of the Software's nonconformance and BlckRhino validates the existence of such nonconformance, BlckRhino undertakes to repair or replace, in its sole discretion, the non-conforming Software. This is Customer's sole and exclusive remedy under any claim arising from the warranties provided in clause 11.1. Customer's written notification of any nonconformance must include sufficient detail for BlckRhino to analyse the alleged non-conformance. Customer and End-User must provide commercially reasonable assistance to BlckRhino in analysing and remedying any nonconformance of the Software.
- 11.3. BlckRhino does not warrant that the Customer's use of the Platform, Services and Documentation will be uninterrupted or free from minor defects or errors that do not materially affect such performance; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements.
- 11.4. BlckRhino is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 11.5. The warranties provided herein do not apply:
 - 11.5.1. if the Services have not been used as provided for in this Agreement, or the Software is not used in accordance with the Documentation; or
 - 11.5.2. to any Customer unlicensed activities.
- 11.6. Express Disclaimer: BlckRhino and its licensors disclaim all other representations, warranties, conditions or guarantees with respect to the Software, express or implied, including without limitation, any implied warranties of merchantability, quality or fitness for a particular purpose except to the extent that any warranties implied by law cannot be validly waived.

12. Third-Party Claims – Infringement and Defence of Customer

- 12.1. BlckRhino will, at its sole discretion, either defend the Customer against or settle any intellectual property infringement claim brought by the owner of such intellectual property against Customer, in which claim the owner alleges that the use of the Software by the Customer in terms of this Agreement constitutes a direct infringement or misappropriation of such owner's patent claim(s), copyright, trademark or trade secret right/s, provided that:
 - 12.1.1. BlckRhino is given prompt notice of any such claim by Customer;

- 12.1.2. the Customer provides reasonable cooperation to BlckRhino in the defence and settlement of such claim, at BlckRhino's expense; and
- 12.1.3. BlckRhino is given sole authority to defend or settle the claim.
- 12.2. In the defence or settlement of any such claim, BlckRhino may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate the Agreement immediately without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 12.3. In no event shall BlckRhino, its employees, agents and subcontractors be liable to the Customer to the extent that the alleged infringement is based on:
 - 12.3.1. a modification of the Services, Software or Documentation by anyone other than BlckRhino; or
 - 12.3.2. the Customer's use of the Services, Software or Documentation in a manner contrary to the instructions given to the Customer by BlckRhino; or
 - 12.3.3. the Customer's use of the Services, Software or Documentation after notice of the alleged or actual infringement from BlckRhino or any appropriate authority; or
 - 12.3.4. any acts of omissions of the Customer not authorised under this Agreement; or
 - 12.3.5. the use of the Services or Software, or any part thereof, in combination with any equipment or programs not supplied by BlckRhino and/or not approved by BlckRhino.
- 12.4. The foregoing states the Customer's sole and exclusive rights and remedies, and BlckRhino's (including BlckRhino's employees', agents' and subcontractors) entire obligations and liability for infringement of the intellectual property right or right of confidentiality.

13. Third-Party Claims – Indemnity by the Customer in respect of their use of Services

- 13.1. Subject to clause 12 above, the Customer shall defend, indemnify and hold harmless BlckRhino against claims, actions, proceedings, losses, damages, expenses and costs (including court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:
 - 13.1.1. the Customer is given prompt notice of any such claim;
 - 13.1.2. BlckRhino provides reasonable cooperation to the Customer in the defence and settlement of such claim, at the Customer's expense; and

- 13.1.3. The Customer is given sole authority to defend or settle the claim, provided that BlckRhino's written consent to defend or settle is first obtained, which consent shall not be unreasonably withheld or delayed.

14. Limitation of Liability

- 14.1. BlckRhino shall have no liability under this Agreement for the Customer's use of the Software and Services unless otherwise specifically recorded therein.
- 14.2. Under no circumstances, and regardless of the nature of any claim, will BlckRhino, its licensors or any of its employees be liable to the Customer or Authorised User or any other person or entity, for in any amount for special, incidental, consequential, or indirect damages, loss of goodwill, reputation, bargain or opportunities or anticipates savings, loss of profits, work stoppage, data corruption or loss, computer failure or malfunction, attorneys' fees, court costs, interest or exemplary or punitive damages.
- 14.3. For the avoidance of doubt, any reference in this Clause 14 to "arising under or in connection with this Agreement" (or any similar expression) shall include a reference to all Order/s made under or in connection with this Agreement.

15. Agreement Term and Termination

- 15.1. The Initial Term of the Agreement shall commence on the Effective Date and shall continue for the period specified in the applicable Order. This Agreement shall not terminate on the expiry of the Initial Term but shall continue to endure in full force and effect thereafter on a month-to-month basis, subject to the right of either Party to terminate the Agreement on one calendar months' notice in writing to the other Party.
- 15.2. Without affecting any other right or remedy available to it, either Party may terminate the Agreement with immediate effect by giving written notice to the other Party if:
 - 15.2.1. the other Party is in breach of this Agreement and if the breach is capable of remedy, fails to remedy such breach within 14 (fourteen) calendar days of receipt of a notice to do so; and/or
 - 15.2.2. the other Party is in breach of this Agreement and if the breach is not capable of remedy; and/or
 - 15.2.3. the other Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts; enters into or applies for (or calls meetings of members or creditors with a view to) one or more of a moratorium, winding up, administration, liquidation (of any kind, including provisional), business

rescue, or composition or arrangement with creditors; or has any of its property subjected to one or more of the appointment of a receiver (of any kind), enforcement of security, distress, or execution of a judgment (in each case to include similar events under the laws of other countries).

- 15.3. On termination of the Agreement for any reason:
 - 15.3.1. all licences granted under the Agreement shall immediately terminate;
 - 15.3.2. each Party shall return and make no further use of any equipment, property, Software, Documentation and other items (and all copies of them) belonging to the other Party;
 - 15.3.3. Unless otherwise required by applicable law, BlckRhino may destroy or otherwise dispose of any or all of the Customer Data in its possession; and
 - 15.3.4. any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.

16. Force Majeure

- 16.1. BlckRhino shall have no liability to the Customer under the Agreement if BlckRhino is prevented from or delayed in performing its obligations under the Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of BlckRhino or any other party), failure of a utility service or transport or telecommunications network, internet or telecommunication systems failures, equipment failures, electrical power failures, cyber warfare, cyber intrusion and cybercrime, cyber espionage, computer or cyber sabotage; failures of third-party systems, infrastructure, software and applications, act of God, war, riot, civil commotion, malicious damage, pandemic, compliance with any law or governmental order, rule, regulation or direction, banking sanctions, orders of courts, agencies or tribunals, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors, provided that the Customer is notified of such an event and its expected duration.

17. Dispute resolution

- 17.1. Save as otherwise contained herein, should any dispute arise between the Parties in connection with this Agreement, the Parties, or their nominees, shall attempt on the basis of good faith to settle such dispute by way of negotiation.

- 17.2. If either Party provides written notification to the other that such attempt has failed then each Party shall attempt to agree upon the appointment of a suitably qualified mediator, within 7 (seven) days of such dispute being referred.
- 17.3. If agreement is not reached as to the appointment of such mediator within 7 (seven) days after either Party has in writing called for the appointment of a mediator, or where an appointment has been agreed upon and such mediator is not able to mediate a resolution of such dispute within 30 (thirty) days after such appointment then any Party may give written notice to the other Parties referring the dispute to arbitration in accordance with the provisions of this clause ("Arbitration Notice").
- 17.4. The arbitration shall be:
 - 17.4.1. held at Cape Town;
 - 17.4.2. conducted in the English language;
 - 17.4.3. held before a single arbitrator;
 - 17.4.4. subject to the provisions of this clause 17, conducted in accordance with the Arbitration Foundation of Southern Africa (AFSA) Rules; and
 - 17.4.5. held as soon as is reasonably practicable in the circumstances and with a view to it being completed within 30 (thirty) Business Days of the date of the Arbitration Notice.
- 17.5. The arbitrator shall be if the question in issue is:
 - 17.5.1. primarily an accounting matter an independent accountant advocate with no less than 10 (ten) years' experience agreed upon between the Parties;
 - 17.5.2. primarily a legal matter, an independent practicing senior advocate with no less than ten years' standing agreed upon between the Parties;
 - 17.5.3. any other matter a suitably qualified independent person agreed upon between the Parties.
- 17.6. If the Parties cannot agree upon a particular arbitrator under the provisions of clause 17.3 above within 7 (seven) Business Days after the arbitration has been demanded, the nomination shall be made by the President for the time being of the South African Institute of Chartered Accountants within 7 (seven) days after the Parties have so failed to agree.
- 17.7. The arbitrator shall determine which Party shall pay the costs of and incidental to the arbitration or, if more than 1 (one) Party is to contribute, the ratio of their respective contributions, and the scale on which such costs are to be paid.

- 17.8. Subject to each Party's rights of appeal in accordance with the AFSA Rules, the Parties irrevocably agree that the decision of the arbitrator shall be final and binding on them, shall be carried into effect, and shall be capable of being made an order of any court of competent jurisdiction.
- 17.9. The provisions of this clause 17:
 - 17.9.1. constitute irrevocable consent by the Parties to any proceedings in terms of this clause 17 and no Party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions;
 - 17.9.2. are severable from the rest of this Agreement and shall remain in effect despite the termination, or invalidity for any reason, of this Agreement; and
 - 17.9.3. shall not preclude any Party from obtaining interim relief on an urgent basis from any court of competent jurisdiction pending the decision of the arbitrator.

18. Waiver

- 18.1. No waiver or abandonment by either Party of any of its rights in terms of this Agreement shall be binding on that Party, unless such waiver or abandonment is in writing and signed by the duly authorised representative of the waiving Party.

19. Severance

- 19.1. If any provision of this Agreement shall be held illegal or unenforceable such provision shall be severable and shall in no way affect or impair the validity or enforceability of the remaining provisions of this Agreement.

20. Entire Agreement

- 20.1. This Agreement and the applicable Order constitutes the entire agreement between the Parties and no representation by either of the Parties, whether made prior or subsequent to the signing of this Agreement, shall be binding on either of the Parties unless in writing and signed by the duly authorised representatives of both the Parties. Each Party acknowledges that in entering into this Agreement or any Order it has not and will not rely on any representation or statement

(written or oral) made by any person (whether or not a party to this Agreement or the applicable Order) other than those expressly set out in this Agreement or the applicable Order and that, in respect of the representations and statements which are expressly set out in this Agreement or any Order.

21. Assignment

- 21.1. The Customer may not cede and/or assign any of its rights and obligations in terms of this Agreement or an Order without the prior written consent of BlckRhino, which is signed by BlckRhino's duly authorised representative. BlckRhino may cede and/or assign any of its rights and obligations in terms of this Agreement or an Order without the consent of the Customer.

22. Third-Party Rights

- 22.1. This Agreement is made for the benefit of the Parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit or be enforceable by anyone else.

23. Notices

- 23.1. The Parties choose domicilium citandi et executandi ("domicilium") for all purposes arising from or pursuant to this Agreement:
 - 23.1.1. In respect of BlckRhino, the address and contact details set out in clause 1.1.2; and
 - 23.1.2. In respect of the Customer, the address and contact details as recorded in the latest Order received from such Customer.
- 23.2. Either Party hereto shall be entitled to change its domicilium from time to time, provided that any new domicilium selected by it shall be an address other than a box number, and shall be in the Republic of South Africa, and any such change shall only be effective upon receipt of notice in writing by the other Party of such change.
- 23.3. All notices, demands, communications or payments intended for either Party shall be made or given at such Party's domicilium for the time being.
- 23.4. A notice sent by one Party to the other Party shall be deemed to be received:

- 23.4.1. on the same day, if delivered by hand;
- 23.4.2. one day after transmission if sent by email;
- 23.4.3. on the third day after despatch, if sent by prepaid courier.
- 23.5. If any notice is sent by email, the provisions of the Electronic Communications and Transactions Act 25 of 2002 governing receipt of data messages, shall apply.
- 23.6. Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen domicilium citandi et executandi.

24. Governing Law and Jurisdiction

- 24.1. This Agreement shall be governed in all respects by and shall be interpreted in accordance with the laws of the Republic of South Africa and the Parties hereby consent and submit to the jurisdiction of the High Court of South Africa, Western Cape Division, Cape Town, for any proceedings arising out of or in connection with this Agreement.
- 24.2. Subject to clause 17, the Parties irrevocably agree that the courts of South Africa have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation.
- 24.3. All costs, charges and expenses of any nature whatever which may be incurred by a Party in enforcing its rights in terms of this Agreement, including legal costs on the scale of attorney and own client and collection commission, irrespective of whether any action has been instituted, shall be recoverable from the Party against which such rights are successfully enforced.