



STANDARD TERMS AND CONDITIONS
PRODUCTS AND SERVICES

October 2016



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1. DEFINITIONS

In these Standard Terms and Conditions (hereinafter referred to as "T&C"), unless the context clearly indicates otherwise:

- 1.1 " Airline" means any airline which from time to time conducts any Flights;
- 1.2 "Arrival Date" means the date of arrival of the Guests at the first destination of a Booking, as set out in any Cost Analysis;
- 1.3 "Arrival Tax" means any taxation or other levy payable to any airport or other port authorities in any country in which the Guest arrives;
- 1.4 "Booking" means any booking and/or reservation and/or provisional reservation facilitated by Khaya for and/or on behalf of the Client as a result of a Cost Analysis approved by the Client and which shall include *inter alia* and without limitation bookings in respect of any Hotel, Hotel Facilities, Flights, Transportation and the like;
- 1.5 "Client" means the person (natural or juristic) on whose behalf Khaya has procured (directly and/or indirectly) any Facilities and/or made any Booking, which shall also include any Guest;
- 1.6 "Khaya" means Khayamedia Comercio Internacional De Eventos Desportivos Lda (previously known as Uniwise Trading e Serviços Lda), Registration Number and Vat Number 511 169 965, a private company duly registered in accordance with the laws of the Republic of Portugal with its registered office and principal place of business at Rua da Hortas N° 1, Edificio do Carmo 5-500, Funchal 5-500, Madeira, Portugal;
- 1.7 "Cost Analysis" means any proposal and/or document/s prepared by Khaya setting out *inter alia* the rates and all material information applicable to any aspect of any Booking and which may include the rates applicable to any, Hotel

- accommodation, Hotel Facilities, Facilities, Flights, and any Booking and the like, and any amendment to the aforesaid agreed between the parties in writing by way of e-mail or otherwise;
- 1.8 "Departure Tax" means any taxation or other levy payable to any airport or other authorities in any city from which the Guest departs;
- 1.9 "Event" means any sporting or similar event;
- 1.10 "Euro" means the Euro, the lawful currency of the European Union, (excluding the United Kingdom, Sweden and Denmark);
- 1.11 "Facilities" means any facility and / or product, including Hotel or similar accommodation, Hotel Facilities, Transportation, Flights, site seeing tour or other matters which are the subject of any Booking and/or which arise directly and/or indirectly from a Booking;
- 1.12 "Fact Sheets" means any printed document containing such details of the Hotels and/or Facilities, which shall include any electronic documents contained on websites and the like, such where applicable;
- 1.13 "Flights" means those flights between the departure destination and the arrival destination which are undertaken by the Guests;
- 1.14 "Group" means a minimum of 10 (Ten) Guests who conduct their travel as part of a single Booking together in one group;
- 1.15 "Guest" means any person for whom the Client (via Khaya) makes a Booking in accordance with these T&C and shall include any person/s who has been nominated and/or sent by the Client to make use of any of the Facilities and/or Booking;
- 1.16 "Guest Payment" means any amount due to the provider of any Facility, such in respect of expenses incurred by any Guest and which are not included in any Cost Analysis, and which shall include *inter alia* room service and laundry charges,

- additional charges for the use of facilities undertaken by the Guest, food and beverage (including alcohol) costs and the like;
- 1.17 "Hotel Facilities" means and includes all the physical and other facilities (services) offered by Hotels, transportation and the use of other facilities available to Guests of the Hotel in question;
- 1.18 "Hotels" means any hotel, guest house, lodge, apartment, villa or other facility in which people are entitled to, at a cost, reside temporarily, reference to which shall, where the context requires, be reference to the ability to book accommodation therein;
- 1.19 "Maximum Occupancy" means the maximum amount of persons who may utilise any Facility and/or Booking, details of which shall be made available by Khaya to the Client upon request;
- 1.20 "Territory" means the country and/or geographical areas in which any Event is to take place;
- 1.21 "Transportation" means any form of conveyance of Guests to and from any destination, place of interest, Hotel, Facility, Airport, and the like, undertaken for and on behalf of the Client and for which a Booking has been undertaken by Khaya and which shall include the hiring of any vehicle for or on behalf of a Guest;
- 1.22 "USD" means United States Dollars, the lawful currency of the United States of America;
- 1.23 The singular shall include a reference to the plural and vice versa;
- 1.24 A natural person shall include a reference to a body corporate;
- 1.25 Any one gender shall include a reference to each of the other genders;
- 1.26 When any number of days is prescribed in these T&C, it shall mean business days and shall be reckoned exclusively of the day on which the obligation in question first arises. If the due date for performance of any obligation in terms of these T&C is a day which is not a business day in Portugal then (unless otherwise stipulated) the

- due date for performance of the relevant obligation shall be the immediately preceding business day;
- 1.27 Any reference to an enactment, any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment or legislative measure of government (including local or provincial government) statutory or regulatory body which has the force of law means the relevant enactment or legislative measure applicable in Portugal as at the date of signature of these T&C and as amended or re-enacted from time to time;
- 1.28 If any provision in a definition is a substantive provision imposing rights or obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of these T&C;
- 1.29 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.30 Words and expressions defined in any sub-clause shall, for the purpose of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause;
- 1.31 Except as expressly provided to the contrary herein, each paragraph, clause, term and provision of these T&C and any portion thereof shall be considered severable and if, for any reason any part of these T&C is held to be invalid, contrary to, or in conflict with any applicable present or future law or regulation or in terms of a final, binding judgment issued by any Court, it shall not impair the operation of, or have any other affect upon, such other portions of these T&C as may remain otherwise intelligible, which shall continue to be given full force and effect and bind the parties;
- 1.32 To the extent that any restraint of trade or other restrictive covenant contained in these T&C is deemed unenforceable by virtue of its scope in terms of the subject matter thereof, area, business activity prohibited and/or length of time, but could be enforceable by reducing any or all thereof, the parties agree that same shall be enforceable to the fullest extent permissible under the laws and public policies applied in the jurisdiction in which enforcement is sought;
- 1.33 Where these T&C requires any or all of the parties to reasonably approve or not unreasonably withhold approval for any matter or thing and that such party declines to approve or withholds such approval, the onus of proving that the party who has declined to approve or has withheld such approval in doing so is acting



unreasonably shall be that of the other party;

- 1.34 The *eiusdem generis* rule shall not apply and whenever the term “including” is used followed by specific examples, such examples shall not be construed so as to limit the meaning of that term;
- 1.35 Reference to a party includes a reference, unless the context expressly requires otherwise, to that party’s successors in title and assigns allowed at law or in terms of these T&C;
- 1.36 If any obligation or act is required to be performed on a particular day it shall be performed (unless otherwise stipulated) by 16h00 (local time in Madeira) on that day.

2. INTRODUCTION

- 2.1 These T&C relate to Khaya's ability to facilitate the providing of certain services to and obtaining them on behalf of the Client with specific reference to accommodation and other facilities and services for an Event.
- 2.2 Khaya conducts the business of *inter alia* a destination management company facilitating bookings for Guests and/or Groups for and in respect of *inter alia* Hotels, Hotel Facilities, Transportation and Flights.
- 2.3 In fulfilling its obligations as set forth hereinabove Khaya is entitled to and shall, from time to time, facilitate Bookings for and on behalf of the Client in accordance with these T&C, which Booking/s the Client accepts will be in the name of Khaya and shall vest in Khaya.

3. BINDING AGREEMENT

- 3.1 These T&C shall be deemed to have come into effect immediately upon submission by Khaya of any quotation and/or Cost Analysis and shall remain in force unless and until altered in writing and signed by both parties.
- 3.2 The Client is bound by any Cost Analysis (and any amendment thereof), Arrival and Departure Dates and all other matters that may arise out of a Booking facilitated by Khaya where such have been accepted in writing by the Client.
- 3.3 Any amendments to these T&C must be agreed upon in writing by both parties and signed.



4. PAYMENT TERMS

- 4.1 The Client shall be responsible to make payment to Khaya of all amounts payable in accordance with these T&C and any Costs Analysis, such payment to be made in accordance with the provisions of clause 4.6 hereunder.
- 4.2 Payment as aforesaid shall be made in accordance with the dates and/or time schedule reflected on the Cost Analysis, *failing which* the Client shall make payment to Khaya of all amounts as follows:
- 4.2.1 a 50% (Fifty per centum) non-refundable deposit, calculated on the total cost as set out in any Cost Analysis (from time to time) within 14 (Fourteen) days from receipt by the Client of confirmation that the relevant reservations and/or Bookings have been made by Khaya on behalf of the Client; and
- 4.2.2 an additional 35% (Thirty five per centum) of the total amount referred to in an Cost Analysis (from time to time) by no later than 180 (One Hundred and Eighty) days prior to the earliest Arrival Date in respect of the first Guest of the Client; and
- 4.2.3 the remainder of the amount due (15% (Fifteen per centum)) as set forth in any Cost Analysis (from time to time) by no later than 60 (Sixty) days prior to the earliest Arrival Date.
- 4.3 Should, subsequent to any payment referred to in above having been made, a new and/or amended Cost Analysis be agreed upon by the Parties then and in such event:
- 4.3.1 if the total amount due by the Client to Khaya in terms of all applicable Cost Analysis decreases then all amounts “overpaid” previously by the Client in terms of clause 4.2 above are to be deducted from the next payment due by the Client to Khaya, and such subsequent payment is to be reduced accordingly; and/or
- 4.3.2 if the total amount due by the Client to Khaya in terms of all applicable Cost Analysis increases then all amounts which should have been paid previously in accordance with the provisions of clause 4.2 above are to be paid by the Client to Khaya immediately upon acceptance of the Cost Analysis giving rise to such increased cost.
- 4.4 Prior to acceptance of any Cost Analysis by the Client, all rates contained in the Standard Terms and Conditions - October 2016



Cost Analysis are subject to alteration on written notice by Khaya, where such alteration arises lawfully from the supplier of the Hotel or the Facilities. In the event of there being an increase in any Arrival Tax and/or Departure Tax, or other costs, payment thereof shall be made by the Client immediately upon request.

4.5 All rates are quoted in Euro. Where the Client agrees the charges for a Booking as set out in a Cost Analysis, the Client shall be obliged to ensure payment to Khaya of the required amount in currency quoted in the Cost Analysis and into the bank account set forth in clause 7.1 hereunder.

4.6 All rates and other amounts detailed in the Cost Analysis are to be paid free of any bank charges, transfer and related costs and the like and Khaya reserves the right to require payment of any of the aforesaid costs and any additional amounts which may arise as a result of exchange rate fluctuations, which amounts shall be payable by the Client immediately upon demand.

5. **VALUE ADDED TAX**

The Client and Khaya agree that the position relating to Value Added Tax may vary in respect of each Facility, Booking, Event and/or each Territory. As a result of the aforesaid the Client and Khaya agree that all amounts referred to in these T&C and in any Cost Analysis are exclusive of any Value Added Tax (and any increase thereof) which may become payable.

6. **FAILURE TO MAKE PAYMENT**

6.1 Should the Client fail to make payment as and when same is due to Khaya, Khaya reserves the right, without further notice, to cancel any Booking (in part or in whole) to which the failure to make payment applies, which cancellation shall be subject to the cancellation policy as set forth in clause 8 below.

6.2 The Client acknowledges and accepts that the payments referred to in clause 4.2 are non-refundable and Khaya shall be under no obligation whatsoever, save in accordance with the cancellation policy referred to in clause 8 hereunder or as otherwise expressly set out in these T&C, to refund to the Client any deposits or other amounts paid by the Client.

6.3 In addition to all other remedies available to Khaya in terms of these T&C, Khaya



shall be entitled to charge interest at the maximum rate allowed in law on any amounts due but unpaid, such interest being compounded and calculated from due date to date of final payment, both days inclusive.

7. PAYMENT DETAILS

- 7.1 Unless otherwise stipulated by Khaya in writing, all payments due to Khaya shall be free of bank and similar charges and are to be paid into the bank account reflected in the invoice being paid, by way of telegraphic transfer, of immediately available funds.
- 7.2 A copy of each transfer is to be e-mailed for the attention of the accounts department and Volkhard Bauer to duarteferreira@mri-cheetah.com and accounts@khaya.global. No payments will be allocated until such time as proof of payment has been transmitted to Khaya as set forth hereinbefore.

8. CANCELLATION POLICY

- 8.1 In the event of the lawful and/or agreed cancellation and/or alteration (hereinafter referred to as "the cancellation") by the Client of any Bookings (other than as a result of a force majeure event) and unless:
- 8.1.1 agreed to the contrary in writing by Khaya, which is to be signed by a duly authorized representative of Khaya; or
- 8.1.2 the contrary expressly appears from the Cost Analysis,
- the following cancellation policies shall be applicable:
- 8.1.3 if the cancellation takes place more than 180 (One Hundred and Eighty) days prior to the Arrival Date, the non-refundable deposit referred to in clause 4.2.1 shall be forfeited;
- 8.1.4 if the cancellation takes place between 180 and 121 days before Arrival Date – cancellation cost shall be 60% (Sixty per centum) of the cost of the Booking as per the Cost Analysis; and
- 8.1.5 if the cancellation takes place less than 120 (One Hundred and Twenty) days prior to the Arrival Date – cancellation cost shall be 100% (One hundred per centum) of the cost of the Booking as per the Cost Analysis.
- 8.2 In the event of a cancellation by the Client, all sums paid by the Client to Khaya in relation to the affected Booking other than any sums specified in clauses 8.1.3



to 8.1.5 (inclusive) shall be repaid to the Client by Khaya within 30 (Thirty) days. The Client hereby authorizes Khaya to do all things necessary so as to ensure that repayment of any sums to be refunded by the provider of any Facility is made to Khaya.

8.3 Notwithstanding that which is set forth in 8.1 and 8.2 above in the event that the supplier of any Facility has a cancellation policy which imposes a more onerous obligation than that which is contained hereinabove, then and in such event such more onerous cancellation policy shall be applicable provided that the same has been set out in any Cost Analysis agreed to by the Client.

8.4 The Client further acknowledges that access to any Hotel does not create any tenancy and upon expiry of the Booking Guests thereof will be required to vacate such Hotel immediately.

9. **MAXIMUM OCCUPANCY**

9.1 The Client further acknowledges that any Hotel accommodation and the use of any Facilities may be subject to Maximum Occupancy and/or maximum use by reference to time or otherwise.

9.2 As a result of the aforesaid the Client agrees that use of any Hotel and/or Facilities shall be subject to the Maximum Occupancy stipulated by the service provider in question.

10. **FORCE MAJEURE**

10.1 A party is not liable for a failure to perform any of its obligations in so far as that party proves:

10.1.1 That the failure was due to an impediment beyond its reasonable control;

10.1.2 That it could not reasonably be expected to have taken the impediment and its effects upon the party's ability to perform into account at the time of the submission of any Cost Analysis; and

10.1.3 That it could not reasonably have avoided or overcome the impediment or at least its effects.

10.2 An impediment referred to in clause 10.1 may result from events such as the following, the enumeration not being exhaustive:

10.2.1 War, whether declared or not, civil war, civil violence, riots and revolutions,

- acts of piracy, acts of sabotage;
- 10.2.2 Natural disasters such as violent storms, cyclones, earthquakes, tidal waves, floods, destruction by lightning;
- 10.2.3 Explosions, fires, destruction of machines, of factories and of any kind of installations;
- 10.2.4 Boycotts, strikes and lock-outs of all kinds, go-slows, occupation of factories and premises, and work stoppages;
- 10.2.5 Acts of governmental or regulatory or similar authority.
- 10.3 Relief from liability for non-performances by reason of the provisions of this clause shall commence on the date upon which the party seeking relief gives notice of the impediment relied upon and shall terminate upon the date upon which such impediment ceases to exist; provided that if such impediment continues for a period of more than 10 (Ten) days either party shall be entitled to terminate the agreement by 5 (Five) days written notice to the other party.
- 10.4 In the event that Khaya is prevented (in part or in full) from providing the Facilities agreed in any Cost Analysis to the Client as a result of an impediment referred to in clause 10.1 (and does not provide the Client with a reasonable substitute for such Facilities), Khaya shall reimburse to the Client a sum commensurate with the value of the Facilities not so delivered (as agreed by the parties following good faith discussions). In the event of any dispute over the sum to be so reimbursed the provisions of clause 20 shall apply.

11. OTHER SERVICES

- 11.1 Where any other services have been arranged and/or booked by Khaya at the request of the Client and where such or part thereof have not been paid and are not contained in the Cost Analysis, Khaya reserves the right to require that payment thereof be made directly to the supplier of the Facilities. In the event that Khaya requires the payment for such additional services to be paid to Khaya the relevant provisions of clauses 4 and 6 above shall apply.
- 11.2 All costs and charges as are referred to in clause 11.1 above and which have been incurred by or on behalf of the Client shall be borne and paid for by the Client. In the event of a dispute in respect of the costs as aforesaid, the provisions of clause 20 shall apply.



- 11.3 Nothing contained herein shall be construed as obliging Khaya to render any additional services or to make payment of any costs associated with any additional services.

12. APPLICABLE RULES AND REGULATIONS

- 12.1 The Client and any Guest shall abide by any and all rules and regulations imposed by any/all Hotel, Airline, Transportation supplier or the supplier of any and all Facilities booked by Khaya for the benefit of the Client.
- 12.2 It shall be the Client's responsibility to acquaint themselves with all the necessary rules and regulations provided to the Client by Khaya in respect of and relating to any Facilities, Airlines, Hotels, Hotel Facilities and/or any other Facilities which arise out of any Booking undertaken by Khaya on behalf of the Client.
- 12.3 Notwithstanding the provisions of clause 12.1 above, the Clients shall also be responsible for acquainting themselves with any insurance and/or medical and/or medical insurance that may be required in respect of the travel arrangements for the Guests.
- 12.4 In addition to that which is referred to hereinabove, the Client acknowledges that the Client will be responsible for any damages occasioned by Guests who occupy any Hotel, utilize the Hotel Facilities or any other Facilities (inclusive of Transportation) made available by or on behalf of Khaya in accordance with these T&C, such to include *inter alia* any breakages, thefts, damages, and the like.

13. SUPPLY OF SERVICES

- 13.1 The Client acknowledges that any and all Bookings made by Khaya and the supply of any Facilities booked by Khaya is provided by independent third parties. The Client also acknowledges that Khaya is not the supplier of any Hotel, Hotel Facilities and/or other Facilities and/or any bookings and can therefore not be held responsible should any of the aforesaid not meet with the required standards.
- 13.2 Khaya will use its best endeavours to ensure that any Hotel, Hotel Facilities, Facilities and/or other matters relating to any Bookings are in accordance with the details furnished by Khaya to the Client. Khaya undertakes to conduct such

reasonable periodic inspections of the Hotel, Hotel Facilities and/or Facilities so as to endeavour to ensure that they meet with the necessary and required specifications as set forth in the relevant Cost Analysis. In addition to the aforesaid Khaya shall ensure that an appropriate clause is inserted in Khaya's agreements with the suppliers of the Facilities so as to ensure that the supplier of such Facilities is obliged to provide the Facilities in accordance with the specifications or descriptions set out in the relevant Cost Analysis.

13.3 Khaya shall take reasonable steps to:

13.3.1 verify the availability of any of the Facilities and matters arising out of and in respect of any Booking; and

13.3.2 ensure that the Facilities (i) meet with the approval of the Client; (ii) correspond with any standards set out in the Cost Analysis; and

13.3.3 verify any information contained on any websites and Fact Sheets; and

13.3.4 ensure that any and all of the Facilities and other aspects relating to the Bookings, Hotels, Hotel Facilities, food and the like meet the standards required by the Client and are provided at the best available rates; and

13.3.5 inspect the Facilities, Hotels, Hotel Facilities and the like periodically so as to ensure, insofar as is possible, that the aforesaid meet with the standards required by the Client as set forth in the Cost Analysis.

14. **NON CIRCUMVENTION**

14.1 Save in order to obtain a Fact Sheet, marketing material and the like, (all to be undertaken with the prior written consent of Khaya), the Client agrees that it shall not be entitled to contact any Hotel or the provider of any of the Facilities and the like for the purposes of circumventing the provisions of these T&C by making alternative arrangements with the relevant Facility provider.

14.2 In addition to that which has been set forth hereinabove, the Client agrees and undertakes that should the provider of any of the Facilities contact the Client directly in an attempt to facilitate any business which conflicts with and/or expands and/or alters and/or substitutes a Booking, the Client shall:

14.2.1 advise such supplier to contact Khaya; and

14.2.2 refuse to have any dealings with the aforesaid and shall not in any manner whatsoever conduct itself in such a manner which may, will, is likely to or



may be construed as an attempt to circumvent the ability of Khaya to facilitate the Bookings and earn the fees to which Khaya would be entitled, save for such alleged circumvention. In the event that the Client conduct themselves in a manner inconsistent with that as set forth in this clause 14.2 Khaya shall be entitled to act in accordance with the provisions of clause 14.1 above.

15. LIABILITY

- 15.1 Subject to clauses 12.4, 15.2 and 15.3, under no circumstances shall the total aggregate liability of either party (however arising) under or in relation to any Booking, including (but not limited to) liability for breach of contract, misrepresentation (whether delictual or statutory), delict (including but not limited to negligence), breach of statutory duty, or otherwise, exceed the sum payable by the Client to Khaya as set out in the relevant Cost Analysis.
- 15.2 Subject to Clause 15.3, under no circumstances shall either party be liable to the other for any of the following types of loss or damage arising under or in relation to these T&C (whether arising for breach of contract, misrepresentation (whether delictual / in tort or statutory), delict / tort (including but not limited to negligence), breach of statutory duty, or otherwise):
- 15.2.1 any loss of profits, business, contracts, anticipated savings, goodwill, or revenue, any wasted expenditure, or any loss or corruption of data (regardless of whether any of these types of loss or damage are direct, indirect or consequential); or
- 15.2.2 any indirect or consequential loss or damage whatsoever, even if that party was aware of the possibility that such loss or damage might be incurred by the other.
- 15.3 Nothing in these T&C shall operate so as to exclude or limit the liability of either party to the other for death or personal injury arising out of negligence, or for any other liability which cannot be excluded or limited by law.

16. GROUP RATES

- 16.1 Any Booking facilitated by Khaya in respect of a Group shall be facilitated based on Group Rates.



16.2 In the event of any increase in the number of Guests, the Client acknowledges that any rates set forth on the Cost Analysis may alter. On notification by the Client that additional Guests are required for a Booking, Khaya shall provide a revised Cost Analysis for the Client's approval as soon as reasonably practical.

16.3 It shall be the responsibility of the Client to ensure that each Group is accompanied by a responsible person who shall at all times be required to ensure compliance, by the Client and Guests with the provisions of these T&C and the relevant rules applicable in respect of the use of any Facilities.

17. CHANGE OF ARRANGEMENTS, ROUTE AND THE LIKE

17.1 Subject to the remaining provisions of this clause 17, Khaya reserves the right, when necessary and in circumstances that arise as a result of any cause outside the control of Khaya to alter any Booking, any aspects of any itinerary, travel arrangements and the like and substitute the same with alternative arrangements of comparable quality.

17.2 Khaya shall immediately upon becoming aware of the need to alter any Bookings, aspect of the itinerary or travel arrangements and the like, advise the Client, in writing, of such changes together with details of the changes in question and the proposed substitute Bookings, itinerary or travel arrangements.

17.3 Unless the Client advises Khaya, in writing, within 5 (Five) days from date of receipt of the alterations that it does not accept the alterations, Khaya shall be entitled to make such alterations as are contemplated in 17.1 above.

18. INSURANCE AND MEDICAL EXPENSES

18.1 It is the responsibility of the Clients to ensure that they and their Guests have sufficient insurance and medical cover for the Guests to cater for any unforeseen eventuality.

18.2 Khaya shall not, under any circumstances, be required to take out any insurance policy for and on behalf of the any Client in respect of the Guests and/or their goods.

19. GOVERNING LAW AND JURISDICTION

19.1 These T&C shall be governed by the laws of Portugal from time to time and the



Client consents to the jurisdiction of the Courts of Portugal.

- 19.2 For the purposes of founding jurisdiction the Client acknowledges that payment of any funds to Khaya shall be sufficient for the purposes of founding such jurisdiction.

20. **ARBITRATION**

- 20.1 Any dispute between the parties in regard to any matter arising out of these T&C or its interpretation or their respective rights and obligations under these T&C or its cancellation or any matter arising out of its cancellation, shall be submitted to and decided by arbitration.

- 20.2 The arbitrator shall be, if the question in issue is:

- 20.2.1 primarily a legal matter, a practicing Senior Legal practitioner of not less than 15 (fifteen) year's standing;

- 20.2.2 any other matter, an independent person,
agreed upon between the parties and failing agreement, appointed by the then President of the Madeira Society of Chartered Accountants.

- 20.3 If agreement cannot be reached within 7 (Seven) days after the arbitration has been decided as to whether the question in issue falls under 20.2.1 or 20.2.2, then a practicing Senior Legal practitioner of not less than 15 (fifteen) years' standing as such agreed upon between the parties concerned and, failing agreement, appointed by the then President of the Madeira Society of Chartered Accountants as soon as possible thereafter, shall determine, on a written statement of facts given to him by each of the parties separately or both jointly (or by either if the other fails to furnish a written statement within 5 (Five) days after being called upon to do so) whether having regard to 20.4 the question in issue falls under 20.2.1 or 20.2.2, so that an arbitration can be held and concluded as soon as possible.

- 20.4 If the question in issue is not primarily a legal matter, then:

- 20.4.1 the arbitrator shall be entitled to decide the matter submitted to him according to what he considers just and equitable in the circumstances without being obliged to apply strict rules of law;

- 20.4.2 the arbitration may be held in an informal manner on such basis as the arbitrator may determine with a view to deciding it as expeditiously as



possible.

20.5 Subject to the other provisions of this clause 20 the arbitration shall be held at such place and in such manner as determined by the Arbitrator appointed as set forth hereinabove.

21. **NON-WAIVER**

No party shall be regarded as having waived or be precluded in any way from exercising any right under or arising from these T&C by reason of such party's having at any time granted any extension of time for or having shown any indulgence to the other party with reference to any payment or performance hereunder or having failed to enforce or delayed in the enforcement of any right of action against the other party.

22. **CONFIDENTIALITY**

22.1 The Parties acknowledge that any information supplied in connection with these T&C or in connection with each other's technical, industrial or business affairs which has or may in any way whatsoever be transferred shall be considered confidential and the Parties undertake, as set out hereunder, that they shall not disclose this information other than in accordance with the provisions of these T&C or with the express written consent of the remaining parties.

22.2 The undertaking and obligations contained in this clause 22 do not apply to information which -

22.2.1 is publicly available at the date of disclosure or thereafter becomes publicly available from sources other than the Parties;

22.2.2 is already in possession of the receiving party prior to its receipt by or disclosure to such receiving party;

22.2.3 is required by law or any regulatory authority to be disclosed;

22.2.4 after being disclosed to the receiving party is disclosed by any other person to the receiving party otherwise than in breach of any obligation of confidentiality.

22.3 The Parties shall take such precautions as may be necessary to maintain the secrecy and confidentiality of such material and information in respect of its directors, employees, agents, and/or directors or employees or agents or any



assignee, sub-contractor or distributor or any other person to whom any such confidential or proprietary data may have been or will be disclosed.

- 22.4 Save as may be required by law or any regulatory authority, no announcement or publicity of the existence of these T&C or its content or the transaction embodied in these T&C shall be made or issued by or on behalf of any party without the prior written agreement of all the Parties.

23. SEVERABILITY

Each of the provisions of these T&C shall be considered as separate terms and conditions and in the event that these T&C is affected by any legislation or any amendment thereto, or if the provisions herein contained are by virtue of that legislation or otherwise, held to be illegal, invalid, prohibited or unenforceable, then any such provisions shall be ineffective only to the extent of the illegality, invalidity, prohibition or unenforceability and each of the remaining provisions hereof shall remain in full force and effect as if the illegal, invalid, prohibited or unenforceable provision was not a part hereof.

24. WHOLE AGREEMENT

These T&C, any documents, terms and conditions and documents incorporated and/or referred to in these T&C read together with any Cost Analysis constitute the entire agreement between the Parties (and service providers referred to herein were applicable) and no variation or consensual cancellation of these T&C and the aforesaid agreement shall be of any force or effect unless reduced to writing and signed by or on behalf of all the Parties.