

## GOMETRO CUSTOMER MASTER TERMS AND CONDITIONS

between

**GoMetro Proprietary Limited**

(Registration no. 2011/116784/07)

**(GoMetro**

**and**

**You**

(our **Customer**)

These Customer Master Terms and Conditions (**Customer Master Terms**) must be read together with the Customer Agreements you have entered into with GoMetro, as well as our Privacy Policy (available on our website or on request), Data Protection Agreement (available on our website or on request), and our Returns Policy (available on our website or on request), (all together, our **Terms**).

By entering into a Customer Agreement with GoMetro, you agree to be legally bound by all our Terms.

### **CONSUMER PROTECTION ACT NOTICE**

**Certain aspects of our Terms may apply to you if you are a protected consumer under the Consumer Protection Act, 2008 (CPA), and we will refer to you as a CPA Customer in this document.**

**You are a CPA Customer if—**

- **you are an individual or small business with assets and turnover of less than R2 million; or**
- **you are an individual or small business with assets and a turnover of R2 million or more in the limited circumstances mentioned under the CPA.**

#### **1. Definitions, interpretation and general matters**

These are dealt with in Annexe A.

## 2. **Products and Services**

### 2.1 **Customer Agreements**

Requests for Products or Services must be recorded in a Customer Agreement signed by duly authorised representatives of both Parties.

### 2.2 **Requests for Products or Services, orders**

2.2.1 If you need Products or Services from GoMetro not provided for in an existing Customer Agreement, please submit a request for proposal to GoMetro, and specify a commercially reasonable timeframe for a response by GoMetro taking into account the nature of the Product or Service you need.

2.2.2 We will together agree GoMetro proposals in good faith. Once a proposal is agreed, we will together enter into a Customer Agreement.

2.2.3 Customers may cancel any purchase orders before delivery, in which case GoMetro may charge you a reasonable sum for that cancellation. We will not charge you for cancellation where—

2.2.3.1 the order price was affected by changes in the Rand exchange rate;

2.2.3.2 our invoiced sum is higher than the quoted sum; or

2.2.3.3 where you cannot honour the order by reason of death or hospitalisation.

### 2.3 **Supply of Products and Services: GoMetro's duties to you**

GoMetro will be in line with Good Industry Practices—

2.3.1 supply our Products and Services with appropriate workmanship and on time, and comply with all relevant Laws in doing so;

2.3.2 plan for, identify, and realise opportunities to improve our Products and Services;

2.3.3 make available appropriate Personnel to perform the Services defined under your Customer Agreement;

- 2.3.4 comply with all Laws, industry certifications, memberships and affiliations relevant to our Products and Services, and will make sure that our Personnel also comply with this duty;
- 2.3.5 on your written request, provide you with any information that you may need to comply with your duties under any Laws relating to our supply of Products and Services and we will cooperate with you in complying with those duties;
- 2.3.6 secure any information from you that we need to supply our Products and Services;
- 2.3.7 comply with all your lawful and commercially reasonable instructions concerning our supply of Products and Services to you;
- 2.3.8 be ethical, fair and transparent in our dealings with you;
- 2.3.9 cooperate with your Personnel and appropriate third party service providers directly concerned with any Products or Services that we have supplied to you, and will give them all reasonable information, materials and assistance that you ask for in writing;
- 2.3.10 where no delivery date is specified for any Service Deliverable, make sure that we deliver this within a commercially reasonable time after the Commencement Date of your Customer Agreement;
- 2.3.11 as far as is commercially reasonable, perform our duties under your Customer Agreement without any interruptions, save for instances that are specifically dealt with elsewhere in these Customer Master Terms or your Customer Agreement; and
- 2.3.12 as far as is commercially possible and appropriate to the nature of our Products and Services, develop and supply our Products and Services in a way that is scalable and supports the dynamics of your business.

## 2.4 **Delivery management**

- 2.4.1 If you are a CPA customer, you have the automatic right to inspect your Products upon delivery. GoMetro recommends that all Customers inspect Products upon delivery.

- 2.4.2 You must let us know as soon as reasonably possible if any Product or Service does not comply with our agreed proposal, in which case GoMetro will—
- 2.4.2.1 investigate the cause of the non-compliance;
  - 2.4.2.2 provide you with a report detailing the cause of, and procedure for correcting, the non-compliance and, where you ask for this, the status of our remedial efforts; and
  - 2.4.2.3 implement an appropriate corrective procedure.
- 2.4.3 GoMetro will use appropriate procedures to report on its supply of Products or Services to you at a sufficient level of detail to prove its alignment with your requirements.
- 2.4.4 GoMetro will notify you in writing as soon as is possible for us if we are aware that there are circumstances that may negatively affect our Products or Services under your Customer Agreement, or the feasibility of a project with you, irrespective of the cause of those circumstances. In this case, you agree that you and GoMetro will jointly determine and record in writing how any identified issues will be addressed.

## 2.5 **Service resilience**

- 2.5.1 GoMetro will maintain appropriate service and operational resilience (including in relation to information security, business continuity and disaster recovery) in keeping with Good Industry Practices.

## 2.6 **Your acknowledgments**

In using our Products and Services, you acknowledge and agree that—

- 2.6.1 you and your Authorised Users are solely responsible for the accuracy, suitability and completeness of all your own information, including information that you give to GoMetro or generate or use in connection with our Products or Services;
- 2.6.2 you and your Authorised Users are solely responsible for all decisions that you make based on any output from our Products or Services;

- 2.6.3 you and your Authorised Users are solely responsible for deciding whether the output from our Products or Services is suitable for purpose; and
- 2.6.4 you and your Authorised Users are solely responsible for keeping copies and records of our Product or Service outputs and any related information that you want to preserve.

### **3. Charges for Products and Services**

#### **3.1 Applicable Charges and invoicing**

3.1.1 GoMetro will invoice you for the Charges specified in the Customer Agreements, and—

3.1.1.1 each invoice will have a detailed statement of account and appropriate supporting documentation (which may include delivery notes, timesheets for Services supplied on a time-and-material basis, evidence of expenses incurred, and the like);

3.1.1.2 each statement of account will show the calculations for the relevant sums invoiced, including detailed and categorised breakdowns of those sums, as well as applicable taxes, and any outstanding balance due by you;

3.1.1.3 each invoice is a valid tax invoice in Law.

3.1.2 Invoiced Charges—

3.1.2.1 unless otherwise stated in Customer Agreements, are inclusive of VAT, to be separately itemised on each invoice; and

3.1.2.2 will be stated in your local currency.

3.1.3 GoMetro will invoice you at cost for our disbursements for delivering Products and Services, and as agreed under your Customer Agreement, failing which GoMetro's standard expense reimbursement structures will apply.

3.1.4 Invoices and related statements of account will be submitted in advance to your Designated Representative.

#### **3.2 Your payments**

- 3.2.1 You must pay any sum due to us within the time stated in our Customer Agreement with you. If the Customer Agreement does not state a time for payment, you must pay within the time stated in our invoice, failing which our standard payment term is 30 days from the date of the invoice.
- 3.2.2 You must pay any sum due to GoMetro directly into the bank account nominated by us for this purpose, free of deductions and in immediately available funds.
- 3.2.3 GoMetro may change its designated bank account by giving you 30 days' prior written notice.
- 3.2.4 Where your payments are delayed under any Law, including any requirement for exchange control approval, you will not be in breach of your duties under your Customer Agreement, provided that you can show reasonable proof of this.

### 3.3 **Disputed Charges**

3.4 If you dispute any sum in an invoice, you must let us know in writing of your dispute, and must provide us with at least—

3.4.1 the invoice number;

3.4.2 the sum in dispute; and

3.4.3 a reasonably detailed description of the reason for the dispute.

3.5 You agree not to withhold payment of invoiced Charges for any reason, including where there is a dispute about an invoice or payment. Disputes about payments must be resolved under 18 (*Disputes*), and affected payments will be settled between us according to the outcome of that process.

### 3.6 **Price increases**

GoMetro's Charge increases will be reviewed annually. While GoMetro aims to keep our Charge increases CPI related, we will take all elements and costs into consideration when determining increases. These increases are at our discretion.

## 4. **Your Warranties**

4.1 By entering into a Customer Agreement, you warrant that—

- 4.1.1 you act as principal and not as agent for an undisclosed principal;
- 4.1.2 you may lawfully agree to our Terms and have the necessary internal authorities, rights and capacity to carry out your duties and exercise your rights under our Terms;
- 4.1.3 all data that you give to us under your Customer Agreement is accurate, complete, up to date and lawfully obtained; and
- 4.1.4 you have and will maintain adequate procedures, policies, controls, Systems and technology in line with Good Industry Practice to prevent Destructive Code from affecting our Products or Services or any of our GoMetro Systems;
- 4.1.5 you will never attempt to change, modify, copy, decompile, circumvent, disable, or tamper with any part of our Products or Services, including any security features, or attempt to or reverse engineer any part of our Products or Services, and will do everything in your power to prevent anyone else from doing so; and
- 4.1.6 you will not expose any part of our Products, Services or GoMetro System to Destructive Code, and will do everything in your power to prevent anyone else from doing so.
- 4.2 Each warranty that you give—
  - 4.2.1 is a material representation that GoMetro has relied on in entering into any Customer Agreement with you; and
  - 4.2.2 is separate and divisible from every other warranty you have given, and will not be affected by any invalidity or lack of enforceability of any other warranty for any reason.

## 5. **No Encumbrance**

Under no circumstances must any GoMetro Hardware, Licensed Software or any other goods belonging to GoMetro, be Encumbered (for example, under any lien or hypothec). We will immediately suspend your access to all of our Services and you agree that we may in our discretion immediately cancel all of your agreement/s with us if this happens.

## **6. Terms for particular Customer Agreement types**

Although these provisions relate to specific types of Customer Agreements, they must be interpreted as broadly as possible so that any rights or duties of one type of Customer Agreement that do not conflict with or limit those of another type, will apply to that other type, with any necessary changes of detail, to the benefit of GoMetro.

### **6.1 GoMetro Hardware Supply Agreements**

#### **6.1.1 GoMetro third party installers**

6.1.1.1 If you do not have suitable facilities to install any component of any Product (including tyre sensors), you must arrange for installation at a GoMetro approved dealer. Our approved dealer's charges are not included in our agreement and are for your own account.

6.1.1.2 You must let us know in writing as soon as you become aware of any incorrect or faulty installation of any Product or component of any Product (including any Service Deliverable) by our approved dealer.

6.1.1.3 If you do not let us know about any incorrect or faulty installation under 6.2.1.3, or in any event do not let us know in writing within 30 days of you first becoming aware of those circumstances, you agree that we will not be liable for any Loss of any kind suffered by any party connected with those circumstances.

6.1.1.4 A failure to report under this clause is a breach of your duties under our Terms and you agree that you will indemnify us and protect us as stated in 10.

### **6.2 GoMetro Hardware Lease Agreements**

#### **6.2.1 Your duties under the Lease**

6.2.1.1 You must use the Products only for their intended purpose as communicated by GoMetro and in a careful and proper manner complying with our instructions and specifications.

6.2.1.2 You must return the Products as soon as our agreement is cancelled or expires.



- 6.2.1.3 The Products must be in substantially the same condition on return as they were when you first received them, excepting ordinary wear and tear. You must properly pack returned Products for shipment and you are responsible for any damage caused during the return shipment.
- 6.2.1.4 You are liable for, and must pay to us on demand, the new replacement cost of any lost or materially damaged Products. You agree to continue all your rental payments on lost or damaged Products until GoMetro has received the replacement costs in full. Here, **materially damaged** means any damage to the Products where the repair cost equals or exceeds 50% of the fair market value of the Products at the time.
- 6.2.2 You must cooperate and provide reasonable assistance to GoMetro in the event we need to recall any of our Products.
- 6.2.3 **GoMetro retains title to the Products**
- 6.2.3.1 GoMetro retains all legal and beneficial titles to the Products.
- 6.2.3.2 You must not remove or cover any image on the Products showing GoMetro's branding or our ownership of the Products.
- 6.2.3.3 If you default under our Terms, or where GoMetro has good reason to believe that you are likely to do so, you agree that we are allowed to de-install and remove the Products from your possession (or from the possession of a third party holding the Products on your behalf).
- 6.2.3.4 Our actions under 6.2.3.3 will be for your cost and you agree to indemnify GoMetro against those costs. You agree to cooperate with us and to give us all the assistance that we need to de-install and remove the Products.

#### 6.2.4 **Insurance**

You must keep the Products insured in line with Good Industry Practice against all risks of Loss from every cause for not less than their full replacement value. You agree to give us proof of that insurance if we ask for it in writing.

#### 6.2.5 **GoMetro third party installers**

6.2.5.1 If you do not have suitable facilities to install any component of any Product (including tyre sensors), you must arrange for the installation at a GoMetro approved dealer. Our approved dealer's charges are not included under your Lease and are for your own account.

6.2.5.2 You must let us know in writing as soon as you become aware of any incorrect or faulty installation of any Product or component of any Product (including any Service Deliverable) by our approved dealer.

6.2.5.3 If you do not let us know about any incorrect or faulty installation under 6.2.1.3, or in any event do not let us know in writing within 30 days of you first becoming aware of those circumstances, you agree that we will not be liable for any Loss of any kind suffered by any party connected with those circumstances.

6.2.5.4 A failure to report under this clause is a breach of your duties under our Terms and you agree that you will indemnify us and protect us as stated in 10.

#### 6.2.6 **Penalties on early cancellation**

Cancellation of your lease before the end of its term will attract the penalty Charge stated in Annexe B of your Lease.

#### 6.3 **SaaS SLAs**

##### 6.3.1 **Licence grant, rights and restrictions**

6.3.1.1 GoMetro will provide your Authorised Users with the necessary documents about how to access and use the GoMetro SaaS.

6.3.1.2 You may only analyse, reformat, print or display reports generated by the GoMetro SaaS strictly for internal use.

### 6.3.1.3

You must not—

- (a) sell, transfer possession of, or provide rights of access to and use of the GoMetro SaaS or any related documentation or data to any third party;
- (b) change, modify, copy, decompile, circumvent, disable, or tamper with any part of our GoMetro SaaS, including any security features, or attempt to or reverse engineer our GoMetro SaaS; and
- (c) expose our GoMetro SaaS to Destructive Code.

### 6.3.2

#### **Authorised Users, passwords and usernames**

#### 6.3.2.1

When GoMetro receives a notice of a security problem affecting our Products, Services or GoMetro Systems, we may in our judgment immediately revoke your access to any Licensed Software and our GoMetro Systems and conduct a full investigation to determine the extent of the breach. GoMetro will restore your access as soon as is reasonably possible in the circumstances but only once we are satisfied that there are no further problems or risks.

#### 6.3.2.2

You must do everything in your power to make sure that Authorised Users safeguard their usernames and passwords, and that Authorised Users do not allow any other person to access or use our SaaS.

### 6.3.3

#### **Disconnection and suspension**

#### 6.3.3.1

GoMetro may disconnect or suspend your access to our GoMetro SaaS if you do not pay the applicable Charges within 10 Business Days after receiving a written notice from us asking you to make good your failure.

#### 6.3.3.2

If you make good your failure after we have disconnected or suspended your access to our GoMetro SaaS, you must give us written confirmation of the payments you have made and ask us in writing to reconnect you.

6.3.3.3 GoMetro will only reconnect you to our GoMetro SaaS if we have confirmed your proof of payment.

6.3.3.4 GoMetro's rights here do not limit our other rights under our Terms.

## 7. Relationship management

7.1 Each of us will make sure that our authorised representatives or relationship managers are accessible, contactable and authorised to resolve issues to ensure that our respective duties are properly fulfilled.

7.2 Either of us may change its authorised representatives or relationship managers at any time by notifying the other in writing.

7.3 GoMetro wants to provide you with access to the highest quality of support. If at any time you believe that GoMetro's Products or Services could be improved, please raise the matter immediately with our Designated Representative, so that we can ensure that your concerns are dealt with properly and promptly.

## 8. Third party software

You may need to use certain third party software to access and use our Products and Services. If so, you must make sure that you and your Authorised Users have valid and current licences for that third party software, and that you and your Authorised Users comply with those licences.

## 9. Disclaimer, limitation of liability

9.1 You acknowledge and accept that GoMetro gives no express or implied representations or warranties of whatever kind concerning its Products or Services other than warrants that it will supply them in line with Good Industry Practice, save as stated under a specific Customer Agreement.

9.2 GoMetro does not represent or warrant that our Products or Services will meet your particular requirements.

9.3 GoMetro is not liable for any Loss due to—

9.3.1 our Products or Services not meeting any of your particular requirements;

- 9.3.2 incorrect or faulty installation of any Product or component of any Product (including any Service Deliverable) by you or your Personnel (including third party installers hired by you);
- 9.3.3 any Loss of any kind suffered by any party as a result of the installation of any Product or component of any Product (including any Service Deliverable) by you or your Personnel (including third party installers hired by you);
- 9.3.4 any errors, malware or other harmful components which you or an Authorised User is exposed to solely due to using the internet or another communications network to access our Products or Services;
- 9.3.5 loss, destruction or corruption of any of your data while uploading data or downloading data from our Products or Services;
- 9.3.6 unauthorised access to or alteration of—
  - 9.3.6.1 transmissions of data (including Authorised User passwords); or
  - 9.3.6.2 any material or data sent or received, or not sent or received by any person,which could not have been prevented by GoMetro's standard security measures complying with its data and information security obligations, policies and undertakings under our Terms;
- 9.3.7 any of your service providers suspending your or your Authorised Users' access to the internet or any communications network, or GoMetro suspending your or your Authorised Users' access to our Products or Services under our Terms; or
- 9.3.8 any errors, disruptions, delays, or other circumstances affecting services provided by our third party service providers in connection with any of our Products or Services that negatively impact or disrupt GoMetro's supply of Products or Services to you or otherwise prevent us from, or hamper us in, fulfilling our duties to you under our Terms.
- 9.4 You agree that GoMetro's maximum liability for any proven Loss in connection with a Customer Agreement is strictly limited to the Charges which you have paid

for the year in which you suffered the Loss. You agree that this maximum liability is the aggregate liability for all claims, no matter how these came about.

- 9.5 GoMetro is not responsible for any indirect, consequential, special, punitive or other Loss including any loss of revenue or profits, related in any way to a Customer Agreement or our commercial relationship with you.

## 10. Indemnity

- 10.1 You agree to indemnify GoMetro, our directors, officers, agents, service providers, and employees, against any Loss that we suffer from your breach of any of the duties you owe to us, or to any third party, whether those are under our Terms or at Law.

- 10.2 Where a third party brings a claim to do with any breach by you under 10.1, you agree to defend GoMetro against that claim and to indemnify us by—

- 10.2.1 paying all costs and damages finally awarded against us to the extent this results from the third party claim; or

- 10.2.2 paying the sum under any written settlement negotiated and approved by you. You may not, without GoMetro's prior written consent, settle any such claim if that settlement requires us to admit any liability, to make any monetary payment, to undertake any material obligation, or if that settlement is reasonably likely to negatively affect any aspect of our business.

## 11. Breach of our Terms

- 11.1 If a Party is in Default, then the aggrieved Party is entitled without notice, in addition to any other remedy available to it at Law or under our Terms, to cancel the Customer Agreement or to claim specific performance of any duty owed to the aggrieved Party, whether or not the performance of that duty is due at the time.

- 11.2 The aggrieved Party does not have to perform under the Customer Agreement at any time while the other Party has not fulfilled a corresponding duty owed to the aggrieved Party and is in breach of the Customer Agreement. The due date for the aggrieved Party to fulfil that corresponding duty under the Customer Agreement will be extended until the date that the defaulting Party makes good its breach.

11.3 These rights do not limit the aggrieved Party's right to claim damages.

## 12. Interrupting Circumstances

12.1 If a Party is aware that there are Interrupting Circumstances, or that these are reasonably likely to happen, that Party must notify the other Party in writing, and give a full description of those circumstances.

12.2 If Interrupting Circumstances cause a Party to delay, or fail to perform, any of its duties under our Terms, the affected duties will be paused for the duration of the Interrupting Circumstances, which will be understood by each of us as having begun when the other Party receives the notice under 12.1.

12.3 If any duties are paused due to Interrupting Circumstances for longer than 30 days, the Party that is owed the duty may cancel the Customer Agreement on 5 Business Days' notice to the Party in default.

12.4 This clause does not apply to any duty to pay any sum owed to a Party for so long as a commercially viable payment mechanism is available to the Party owing the duty.

## 13. Cancellation

13.1 Unless a particular Customer Agreement states otherwise, GoMetro may cancel any Customer Agreement for convenience at any time, on 30 days' prior written notice to you.

13.2 Either Party may cancel a Customer Agreement where the other is in Default.

13.3 Our other Terms are not cancelled when any Customer Agreement is cancelled and will continue to regulate our dealings for the maximum period allowed at Law.

13.4 GoMetro's right to cancel under this clause applies to any particular part of any Customer Agreement, including any specific Product or Service supplied under a Customer Agreement, or any component forming part of a Product or Service, so far as those particular parts are severable from the remainder of the agreement, Products or Services.

13.5 Each of us must delete from its electronic databases all Confidential Information of the other in its possession and must return or destroy any and all hard copies of that Confidential Information, as asked for by the Party who that Confidential Information belongs to.

13.6 When a Customer Agreement is cancelled, you will have no claim against GoMetro for indemnification or compensation of any kind and in connection with any Loss as a result of that cancellation, to the maximum extent allowed at Law.

13.7 GoMetro may cancel any purchase orders pending on the effective date of the cancellation of our Customer Agreement, without any liability, unless you are a CPA Customer.

#### 14. **Confidentiality**

14.1 Each of us will treat Confidential Information as private and confidential and safeguard it accordingly. Neither Party may disclose any Confidential Information to any other person without the other's prior written approval, and each Party must prevent Confidential Information it has received from falling into the hands of unauthorised persons.

14.2 Each Party will only use the other's Confidential Information so far as is necessary to comply with or exercise its rights under our Terms, or to comply with a Law.

14.3 You will not use or disclose any pricing information without GoMetro's prior written consent.

14.4 You warrant that you have all necessary justifications, including, where required, consent, under the Data Protection Laws to share Personal Information for the purposes of carrying out your duties under our Terms.

14.5 Your duties under this clause will survive the cancellation for any reason of your Customer Agreement for the maximum period allowed at Law.

#### 15. **Publicity**

15.1 You must not refer to GoMetro, or use any of GoMetro's proprietary marks, in your marketing or promotional material or on your online platforms, without our prior written approval.

15.2 Neither Party has the right to publish any announcement or statement in connection with our commercial relationship, without the prior written approval of the other Party.



## **16. Protection of Personal Information**

- 16.1 GoMetro respects your privacy and is committed to complying with all Data Protection Laws. Your rights and our duties are set out in detail in our Data Protection Policy, which you can access on our website. You can also ask for a free hardcopy of that policy.
- 16.2 By entering into a Customer Agreement, you warrant that you have first read and understood our Data Protection Policy.

## **17. Intellectual Property Rights**

### **17.1 GoMetro's rights**

- 17.1.1 All Intellectual Property Rights in and to Products, Services and any GoMetro Systems remain at all times vested in GoMetro or its third party licensors, as the case may be.
- 17.1.2 Any Intellectual Property Rights developed by GoMetro or by the Parties acting jointly during the term of your Customer Agreement belong exclusively to GoMetro and may not be reproduced without our prior written consent to the extent that your Customer Agreement does not state otherwise.
- 17.1.3 You agree that you will sign any instruments and take all actions necessary for us to perfect our Intellectual Property Rights when asked to do so by GoMetro.

### **17.2 GoMetro Background Intellectual Property**

Where GoMetroBackground Intellectual Property is embedded in a Service Deliverable, the rights to that Background Intellectual Property remain with GoMetro supplying it and will not transfer to the Customer.

### **17.3 Use of Intellectual Property**

- 17.3.1 Neither Party has any rights, title, or interest in any of the Intellectual Property Rights of the other Party.
- 17.3.2 Each Party will only use the other's Intellectual Property so far as is necessary to comply with or exercise its rights under our Terms, and then only by strictly complying with our Terms.

- 17.3.3 Neither Party will do or permit anything which is likely to prejudice, affect, impair, or destroy the other Party's Intellectual Property Rights. Without limiting any other duty in this clause, you must not-
- 17.3.3.1 sell, transfer possession of, or provide rights of access to and use of the GoMetro SaaS or any related documentation or data to any third party; or
- 17.3.3.2 change, modify, copy, decompile, circumvent, disable, or tamper with any part of our GoMetro SaaS, including any security features, or attempt to or reverse engineer our GoMetro SaaS.
- 17.3.4 We will each immediately notify the other in writing of any actual or threatened infringement of a Party's Intellectual Property Rights that may come to our attention.

## 18. Disputes

- 18.1 This clause—
- 18.1.1 is an irrevocable consent by both of us to its dispute resolution processes, and neither of us can withdraw from any of those processes or claim that they are not bound by this clause or those processes;
- 18.1.2 is a separate and divisible agreement from the rest of our Terms and is not void, voidable, or unenforceable on any grounds affecting any other part of our Terms;
- 18.1.3 remains effective even if any other part of our Terms expires or is terminated; and
- 18.1.4 does not prevent either of us from approaching any competent court for urgent interim relief.
- 18.2 If there is any dispute between us relating to our commercial relationship or any aspect under our Terms (a **Dispute**), we will first negotiate in good faith to settle that Dispute. Our respective representatives for that negotiation must be at least of general management level seniority.
- 18.3 If we do not settle a Dispute within 10 (ten) Business Days after one of us has notified the other that a Dispute exists, we must refer the Dispute to an Expert for determination.

- 18.4 We will work together to ensure that the Expert delivers their determination within 10 (ten) Business Days after the Dispute is referred to them, or another mutually agreed period.
- 18.5 If one of us rejects the determination of the Expert, we will make sure that the Dispute is decided and finally resolved by arbitration in Cape Town under the Commercial Arbitration Rules of the Arbitration Foundation of Southern Africa.
- 18.6 The arbitrator will be a person agreed between us and, if we do not agree within five Business Days after either of us has communicated to the other that the Dispute must be resolved by arbitration in the circumstances under 18.5, a person appointed in the same manner as the Expert.
- 18.7 Each of us agrees that the arbitrator's decision will be final and binding on each of us, and that we must each promptly carry out that decision. Either of us can have that decision made by an order of court.

## Definitions, interpretation and general clauses

### 1. Definitions

In all of our Terms—

- 1.1 **Authorised User** means an individual specifically authorised by the Customer to access and use any specific Product or Service, and notified to GoMetro in writing where this is required under a Customer Agreement;
- 1.2 **Authority** means any governmental, administrative, fiscal or judicial authority, court, department, commission, tribunal, registry or industry body;
- 1.3 **Background Intellectual Property** means designs, formats and materials which can be demonstrated to have been developed by a Party (or its third party licensor), other than in the course of the supply of Products or Services and, if forming part of a Service Deliverable, has been approved for inclusion into the relevant Service Deliverable by the Party who developed it;
- 1.4 **Business Day** means any day other than a Saturday, Sunday or gazetted national public holiday in the Republic of South Africa;
- 1.5 **Charges** mean sums payable by a Customer under a Customer Agreement in return for GoMetro supplying Products, Services, and access to GoMetro Systems or Service Deliverables, and include rental charges, service charges, purchase prices, and compensation for any disbursements on the part of GoMetro;
- 1.6 **Commencement Date** means the effective commencement date of a particular Consumer Agreement as stated under that agreement; if no commencement date has been stated, then this will be the date on which GoMetro confirms that it has received a properly countersigned copy of your Consumer Agreement from you;
- 1.7 **Companies Act** means the Companies Act, 2008;
- 1.8 **Confidential Information** means information, in whatever form, that may reasonably be understood to be confidential or to have material commercial value, that a Party receives from another in the context of our commercial relationship, and this includes information relating to—

- 1.8.1 any of our Terms;
- 1.8.2 our Products and Services;
- 1.8.3 the business and affairs of a Party;
- 1.8.4 Intellectual Property; and
- 1.8.5 Personal Information,

but excludes—

- 1.8.5.1 information lawfully in the public domain other than through the fault of the receiving Party or another person receiving that Confidential Information;
  - 1.8.5.2 information independently developed by a recipient, without reference to the Confidential Information itself;
  - 1.8.5.3 information already lawfully known or received from a third party, in each case without a duty of confidence other than under our Terms;
- 1.9 **Consumables** means consumable items used in the operation of a Product or Service (including any relevant Service Deliverable);
  - 1.10 **CPA** means the Consumer Protection Act, 2008;
  - 1.11 **CPI** means the headline Consumer Price Index in respect of metropolitan areas and for all items as published by Statistics South Africa from time to time;
  - 1.12 **Customer** means any party that has entered into a Customer Agreement and agreed to our Terms;
  - 1.13 **Customer Agreement** means any agreement between GoMetro and a Customer relating to Products or Services, including any Lease, sale, or SaaS agreement;
  - 1.14 **Customer Data** means data made available to GoMetro by or on behalf of a customer by any means and in any way, including by entering it into or transferring it to any System, platform or equipment accessible to GoMetro, and this includes data that GoMetro generates, processes, or supplies to a Customer during the supply of the Products or Services or otherwise;

- 1.15       **Customer System** means (i) any System or other associated infrastructure (including vehicles and other equipment) owned by, or leased or licensed to a Customer, or (ii) any System or other associated infrastructure of a Customer's third party service providers or licensors, other than any GoMetro Product, Service or System, and accessible to GoMetro for the purpose of supplying Products or Services to a Customer or which is used by a Customer to access GoMetro Products, Services or Systems;
- 1.16       **Data Protection Laws** means all Laws relating to the protection of data or of Personal Information, including—
- 1.16.1           the POPIA; and
- 1.16.2           the European Union General Data Protection Regulation 2016/679 (**GDPR**) and Laws implementing or supplementing the GDPR;
- 1.17       **Data Protection Policy** means GoMetro's policy concerning privacy and compliance with Data Protection Laws, available in hardcopy on request by the Customer and on our website;
- 1.18       **Data Subject** means the person that Personal Information relates to;
- 1.19       **Default** means circumstances where—
- 1.19.1           a Party does something which, if done by a natural person, would be an act of insolvency under the Insolvency Act, 1936;
- 1.19.2           a Party is subject to a compromise or composition, or a threatened compromise or composition with its creditors;
- 1.19.3           there is a provisional or final liquidation of a Party;
- 1.19.4           there is a default or cessation or a reasonable prospect of default or cessation (as the case may be) of a Party's normal line of business;
- 1.19.5           a Party is aware that the other Party is *financially distressed* as defined in the Companies Act;
- 1.19.6           a Party becoming aware that the other is reasonably likely to undergo business rescue or if a Party proposes to do so;
- 1.19.7           a Party is deregistered under any Law;

- 1.19.8 a Party becomes aware of materially adverse information about the other Party when it conducts due diligence checks;
- 1.19.9 a Party commits a breach of a material duty under our Terms, noting that a breach of a warranty by a Customer or misuse of GoMetro's Intellectual Property is automatically a material breach; or
- 1.19.10 a Customer does not make good any other breach under our Terms within 10 Business Days after receiving written notice from GoMetro to do so;
- 1.20 **Designated Representative** means the person nominated in **Annexe A** of our Customer Agreement with you;
- 1.21 **Destructive Code** means any computer code, malware, instructions, devices or other materials that are reasonably likely to—
- 1.21.1 disrupt, disable, harm or impede the operation or use of any software;
- 1.21.2 permit an unauthorised party to access any software or System;
- 1.21.3 contain harmful, malicious or hidden procedures, routines or mechanisms; or
- 1.21.4 cause or allow unauthorised damage to, or loss, theft, destruction or corruption of, infrastructure, data, storage media, programs, networks, hardware or communications, or otherwise interfere with the operation of any of those things;
- 1.22 **Encumbrance** means any interest (including any right to acquire, option or right of pre-emption), pledge, lien, assignment, hypothecation, title retention or other security agreement or arrangement;
- 1.23 **Error Correction** means any Updates or fixes to a Product, Service, System or any other equipment or infrastructure to address a deficiency, problem, error or bug affecting any of these;
- 1.24 **Expert** means an independent expert agreed upon by the Parties in writing, or if the Parties cannot agree within 10 Business Days, one of the following—
- 1.24.1 for a technical matter (such as a technology, engineering or commercial process related matter): an independent technical expert of not less than 10 years' proven experience in the relevant technical area;

- 1.24.2 for an accounting matter: an impartial chartered accountant of not less than 10 years' PQE;
- 1.24.3 for a legal or regulatory matter: an impartial practising legal professional of not less than 10 years' PQE;
- 1.25 **Good Industry Practice** means doing anything while using a degree of skill, speed, care, diligence, judgment, and foresight, and using practices, controls, Systems, technologies and processes, expected from a skilled, experienced and market-leading business undertaking the same activities;
- 1.26 **GoMetro Licensor** means a third party licensor of GoMetro who grants the necessary rights to GoMetro for products or services of that licensor, constituting or incorporated in the Products (including the Licensed Software) or the Services;
- 1.27 **GoMetro Policies** means GoMetro's policies published on its websites from time to time, including the Data Protection Policy and the Returns Policy;
- 1.28 **GoMetro SaaS** means SaaS supplied by GoMetro to a Customer under a SaaS agreement and as described in that agreement;
- 1.29 **GoMetro System** means (i) any System or other associated infrastructure or equipment owned by, or leased or licensed to GoMetro, or (ii) any System or other associated infrastructure or equipment of GoMetro's third party service providers or licensors, whether or not these are used by GoMetro to supply Products or Services;
- 1.30 **GoMetro Hardware** means any hardware or other infrastructure that is a Product supplied by GoMetro to a Customer under a Customer Agreement, including under a Lease;
- 1.31 **Intellectual Property Rights** means all current and future rights of copyright, patents, trademarks, rights in databases, inventions, trade secrets, know-how, rights in designs, topographies, trade and business names, domain names, marks, logos and devices, rights to claim as Confidential Information, and all other intellectual property rights, proprietary rights or other rights of a similar nature, whether registered or unregistered, and applications for any of those rights, where those applications can be made, capable of protection anywhere in the world;



- 1.32 **Interrupting Circumstances** means circumstances beyond a Party's power to avoid, to control, or to foresee, which are not that Party's fault, and which cannot be mitigated by that Party's commercially reasonable efforts;
- 1.33 **Law** means (i) the common law and any legislation, regulation, by-law, or policy of any Authority; (ii) any binding judgment, order, ruling, determination, directive, or legal precedent, and (iii) any applicable industry code or policy, or standard enforceable by law or a regulatory or industry body, passed or published by any Authority in any relevant jurisdiction;
- 1.34 **Lease** means an agreement entered into between you and GoMetro for the lease of GoMetro Hardware;
- 1.35 **Licensed Software** means the software programs licensed by GoMetro to a Customer under a Customer Agreement, including GoMetro SaaS and all applicable Upgrades;
- 1.36 **Loss** means any loss, damages, liabilities, costs (including legal costs on an attorney and own client basis), claims, charges, expenses or penalties;
- 1.37 **New Release** means any Upgrade, update or new version of a Product, Service, System or any other software (including any SaaS) and associated infrastructure or equipment, which may include new features and enhancements to existing features, altered or added functionality and changes in code;
- 1.38 **Parties** means GoMetro and the Customer and—
- 1.38.1 any reference to a Party will, depending on the context, include that Party, its Personnel, and its related or inter-related persons as those terms are defined under the Companies Act;
- 1.38.2 a reference to GoMetro or you (a Customer) will be interpreted in the same way as in 1.23.1;
- 1.39 **POPIA** means Protection of Personal Information Act, 2013;
- 1.40 **Personal Information** means any information related to a Data Subject which is protected as such under Data Protection Laws;
- 1.41 **Personnel** means any person who is a director, employee, agent, consultant, subcontractor, a third party service provider or other representative of a Party, as well as each of their corresponding personnel;

- 1.42 **Product** means any GoMetro Hardware, Consumables, Licensed Software, equipment, data or any other goods purchased or leased or subscribed for by a Customer from GoMetro under a Customer Agreement;
- 1.43 **Returns Policy** means GoMetro's returns policy, available in hardcopy on request by the Customer and on our website;
- 1.44 **SaaS** means *Software as a Service*;
- 1.45 **SaaS SLA** means a service level agreement entered into between GoMetro and a Customer in connection with GoMetro's supply of GoMetro SaaS to that Customer;
- 1.46 **Service/s** means the services, functions, responsibilities and Service Deliverables, including SaaS, supplied by GoMetro to the Customer under a Customer Agreement, and includes services, functions and responsibilities not specifically described in a Customer Agreement but reasonably and necessarily required for the proper performance and supply of the services, functions, responsibilities and Service Deliverables by GoMetro;
- 1.47 **Service Deliverable** means anything supplied by GoMetro to you under a Customer Agreement in connection with our Products and Services other than those Products and Services, including any Customer Data, replacement parts, custom-developed software and databases, as well as specific reports, process documents, design documents, statements of requirements, specifications, reference manuals, user guides and training materials;
- 1.48 **System** means a computerised or other electronic or communication system, including its functionality, individual components; all associated installed software, SaaS, databases, specifications, manuals and the like, and any Upgrades, Error Corrections and enhancements to any of these from time to time;
- 1.49 **Upgrade** means in respect of System (including any SaaS) or any component of that System: any upgrades, Error Corrections and New Releases made available through software maintenance or support services, irrespective of whether these relate to on-premises software, or as part of SaaS; and
- 1.50 **VAT** means value-added tax under the Value-added Tax Act, 1991.

## 2. Interpretation

2.1 In all of our Terms—

2.1.1 references to statutory provisions include legislation made under that provision, and any amendments or re-enactments of that provision;

2.1.2 references to a gender also refer to other genders. The singular also refers to the plural, and natural persons also refer to artificial persons;

2.1.3 where a term has a specific meaning in the Companies Act, then that meaning applies unless otherwise defined;

2.1.4 a definition imposing substantive rights or obligations is enforceable, despite being contained in a definition;

2.1.5 any definition has the same meaning throughout the Agreement, unless otherwise stated or inconsistent with the context in which it appears;

2.1.6 a definition under a clause being interpreted will prevail over any other conflicting definition in the context of that clause;

2.1.7 specified periods are counted from the first day and ending with the last day. If the last day is not a Business Day, then the last day is the next Business Day;

2.1.8 if the day for an action is not a Business Day, then the intended day for that action is the next Business Day;

2.1.9 where a provision is illegal, invalid, or unenforceable in any jurisdiction, then that provision is ineffective in that jurisdiction only to the extent of the prohibition or unenforceability. The provision will be treated as if it had not been written and will be severed from the rest of the Agreement. This will not invalidate the remaining provisions or affect their enforceability in any other jurisdiction;

2.1.10 an expression referring to a process available under South African law (such as a winding-up) is interpreted to include any equivalent or analogous process in any other jurisdiction, if any of the Parties is subject to the law of that jurisdiction;

- 2.1.11 references to any sum will mean that sum exclusive of VAT, unless the sum expressly includes VAT; and
- 2.1.12 the rule that the meaning of general words or terms used in association with specific words or terms that belong to a particular class of words is restricted to that same class does not apply. Whenever "including" is followed by specific examples, those examples do not limit the meaning of any word or term to the same class as the examples given.
- 2.2 If a person is required to act as an expert and not as an arbitrator, then:
- 2.2.1 the expert's determination is final and binding, unless there is a clear error;
- 2.2.2 the expert determines how their fees and costs are calculated and apportioned, and the Parties will pay the expert accordingly;
- 2.2.3 the expert determines the methods and processes they use, as long as they are not biased, unfair, or unreasonable;
- 2.2.4 the expert will consult with the relevant Parties before making a determination, but the extent of the consultation is in the expert's discretion;
- 2.2.5 the expert may take advice from any person they consider to have expert knowledge on the matter in question, taking into account confidentiality obligations.
- 2.3 If a Customer Agreement expires or is terminated, its provisions will remain effective where (i) they explicitly provide for this, or (ii) they must necessarily continue to be effective, even if the relevant provisions themselves do not provide for this.
- 2.4 Customer Agreements are negotiated by the Parties and drafted for their mutual benefit. The rule of construction that a contract should be interpreted against or to the disadvantage of the Party responsible for drafting it will not apply.
- 2.5 References to writing or written (i) include faxes, PDF or similar format, non-editable electronic documents, and any other permanent, non-editable form of visible reproduction of words, but (ii) do not include editable Word-format documents, or data messages under the Electronic Communications and Transactions Act, 2002 (**ECTA**) not listed under (i).

### 3. **General clauses**

#### 3.1 **entire contract**

Our Terms replace any previous agreements and understandings between the Parties on the same subject matter. The Parties will not rely on any promises or representations that are not included in our Terms.

#### 3.2 **no stipulation for the benefit of a third person**

Neither these Master Terms nor any Customer Agreement benefits any third parties. Only the Parties to Customer Agreements may accept any benefit under its provisions.

#### 3.3 **no representations**

The Parties cannot rely on any promises or representations that are not included under our Terms.

#### 3.4 **variation, cancellation and waiver**

Any changes to, or cancellation of, any of our Terms, or the waiver of any right under our Terms must be made in writing and signed by all Parties. Changes cannot be made solely through data messages as defined under the ECTA.

#### 3.5 **indulgences**

If a Party breaches any of our Terms, the other may still exercise their rights under our Terms unless it is clear from the context that the aggrieved Party does not intend to exercise those rights. An aggrieved Party may also accept late performance by the Party in default. Nothing in this clause prevents an aggrieved Party from later exercising any of its rights under our Terms or at Law.

#### 3.6 **cession and delegation**

You may not transfer your rights or obligations under our Terms without the consent of GoMetro. Here, a transfer includes any cession, delegation, assignment, and any change in a legal entity which has rights or obligations under our Terms (by any mechanism, including following an amalgamation or merger).

#### 3.7 **applicable law and jurisdiction**

Our Terms are governed by the laws of South Africa. The Parties submit to the jurisdiction of the High Court of South Africa (Western Cape Division, Cape Town) for any proceedings in connection with our Terms.

**3.8 costs**

Each Party will bear their own legal costs associated with our commercial relationship, subject to the order of any competent Authority.

**3.9 independent advice**

Each Party has had the opportunity to seek independent legal advice about our commercial relationship. You agree that our Terms are fair and reasonable and accurately reflect your intentions.

**3.10 good faith**

We will act in good faith towards each other and will not bring each other into disrepute.

**3.11 co-operation**

Each of us will do everything in our respective powers to fulfil our Terms.