



## **BLUEKEY SEIDOR ZAMBIA LIMITED - TERMS AND CONDITIONS**

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

### 1. DEFINITIONS

In this Agreement the following terms shall have the meanings set out below:

- 1.1 **"Add-on"** means any development that adds new and independent or extends functionality to the Software, but does not modify existing functionality, and is developed using SAP application programming interfaces or other SAP code that allows other software products to communicate with or call on the Software;
- 1.2 **"Affiliates"** means any legal entity in which the Customer, directly or indirectly, holds more than fifty percent (50%) of the shares or voting rights. Any such legal entity shall be considered an Affiliate for only such time as such interest is maintained;
- 1.3 **"Agreement"** means this agreement and all annexures and addendums;
- 1.4 **"Bluekey Seidor"** means Bluekey Seidor Zambia Limited, registration number 12017O009215, a private company with limited liability and its successors in title, with its registered address situated at 2nd Floor Saturnia House, Dunduza Chisidza Crescent, Longacres, Lusaka, Zambia.
- 1.5 **"Bluekey Seidor Materials"** means the various concepts, ideas, methods, methodologies, procedures, processes, know-how, and techniques; models (including, without limitation, function, process, system and data models); templates; general purpose consulting and software tools, utilities and routines; and logic, coherence and methods of operation of systems which Bluekey Seidor or any third party has created, acquired or otherwise has rights in;
- 1.6 **"Business Day"** means any day other than a Saturday, Sunday or public holiday within the meaning of the Public Holidays Act, in Zambia;
- 1.7 **"Business Hours"** means from 08h00 to 17h00 on a Business Day;

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- 1.8 **"Confidential Information"** means information or data, whether disclosed orally or in writing, that is identified as being confidential or proprietary at the time of disclosure or which by its nature would generally be deemed in the information technology or telecommunications industry to be of a confidential nature and includes, without limitation the terms and conditions of this Agreement and any information relating to a Party's:
- 1.8.1 business, business policies, business plans, pricing models, rate cards, Order and other business and commercial information; and
  - 1.8.2 know-how, trade secrets, specifications, drawings, sketches, models, samples, data, diagrams and flow charts, and
  - 1.8.3 potential customers, customer lists, sales, sales figures and products; and
  - 1.8.4 technical information, including use of technology, systems, hardware, software (and the incidence of any faults therein) and related material and documentation; and
  - 1.8.5 past, present and future research and development;
- 1.9 **"Consulting Services"** means the optional services provided by Bluekey Seidor in respect of, *inter alia*, system builds, training and integration, as more fully set out in the Maintenance and Support Document;
- 1.10 **"Customer Data"** means all data furnished to Bluekey Seidor by the Customer, or generated in the course of the provision of the Services, but excludes any derivative data which is created by Bluekey Seidor for its own internal purposes or which is proprietary or confidential to Bluekey Seidor or its suppliers;
- 1.11 **"Customer Input"** means the inputs reasonably required of the Customer in order to enable Bluekey Seidor to provide the Services to the Customer, as set out in clause 7 and expanded upon in the Order where necessary;
- 1.12 **"Customer Partner"** means a legal entity or individual that requires access to the Software in connection with the Customer's internal business operations, such as customers, distributors and/or suppliers of the Customer;
- 1.13 **"Designated Unit"** means information technology devices (e.g. hard disks or central processing units) identified by the Customer pursuant to or in connection with this Agreement that have been previously approved by Bluekey Seidor or otherwise officially made known to the public as appropriate for Use or interoperation with the Software;
- 1.14 **"Destructive Element"** means any "back door", "time bomb", "time lock", "trojan horse", "worm", "drop dead device", "virus" or other computer software routine or code intended or designed to:
- 1.14.1 permit access to or the use of a computer system by an unauthorised person, or
  - 1.14.2 disable, damage, erase, disrupt or impair the normal operation of a computer system;

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- 1.14.3 damage, erase or corrupt data, storage media, programmes, equipment or communications, or otherwise interfere with operations of a computer system;
- 1.15 "**Dispute Resolution Procedure**" means the procedure set out in clause 22;
- 1.16 "**Documentation**" means Bluekey Seidor or its licensors' then-current technical and/or functional documentation which is made available by Bluekey Seidor to the Customer with the Software;
- 1.17 "**Effective Date**" means the date on which the agreement between the Parties is signed or the date that the Products and Services or availability of the Products and Services is provided to the Customer, whichever is earlier;
- 1.18 "**EULA**" means the SAP End User License Agreement, SAP End User support document, any software modification service level agreements which, together with this Agreement, the Software Use Rights Schedule as well as any Order, governs the Customer's Use of the Software;
- 1.19 "**Excusing Cause**" means:
- 1.19.1 a force majeure event as contemplated in clause 24 hereof; or
- 1.19.2 a failure by the Customer, or its Staff, to provide Customer Input to Bluekey Seidor:
- 1.19.2.1 within the timeframes contemplated in this Agreement, or failing such contemplation within a reasonable period stipulated by Bluekey Seidor in any written request for such Customer Input or within any period agreed by the Parties in writing; or
- 1.19.2.2 which is not of the required accuracy, standard or quality, including, without limitation, where such Customer Input is defective, corrupted (in the case of data) or inaccurate;
- 1.19.3 A failure of any Customer provided Infrastructure which affects the Products and Services provided by Bluekey Seidor;
- 1.19.4 where the Customer breaches any term of this Agreement; or
- 1.19.5 where any bona fide dispute arises between the Parties;
- 1.20 "**Fees**" means the fees and charges to be paid by the Customer to Bluekey Seidor from time to time in terms of this Agreement, including but limited to the License fees, annual Maintenance Fees, annual Support fees, Consulting Service Fees and any other fees as may be chargeable under this Agreement from time to time as detailed in the applicable Order;
- 1.21 "**Independent Expert**" means an independent expert appointed by written agreement between the Parties to resolve a dispute between them in terms of this Agreement;
- 1.22 "**Infrastructure**" means the system of hardware and/or software and/or facilities that support the delivery of the Services and Products from Bluekey Seidor;

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- 1.23 **"Initial Term"** means the period over which particular Subscription Licenses, Maintenance, Support and/or Consulting Services will be provided, commencing on the Service Commencement Date and enduring for the Term set out in the Order;
- 1.24 **"Intellectual Property Rights"** means any and all rights in the nature of intellectual property rights anywhere in the world (whether registered or unregistered) owned, possessed or controlled by a Party, directly or indirectly, including, without limitation, patents, trademarks, service marks, design rights, copyright (including all copyright in any designs and computer software), source codes, moral rights, databases, trade or business names, whether capable of registration or not, but including any right to register same;
- 1.25 **"License"** means either the subscription license model or the perpetual licence model, or both as the context indicates, purchased by the Customer and set out in the Order;
- 1.26 **"Line-item Service"** means the specific licenses and Services to be provided by Bluekey Seidor pursuant to this Agreement, as set out in the relevant Order;
- 1.27 **"Maintenance"** means the standard software support provided to the Customer by SAP in accordance with the Maintenance and Support Document;
- 1.28 **"Maintenance Fee"** means the annual fee that is billed to the Customer in respect of any perpetual license for the standard support set out in the Support and Maintenance Document;
- 1.29 **"Maintenance and Support Document"** means the document located at <http://www.seidor.com/en-ss/solutions/seidor-zambia-legal-compliance> describing the Services and service levels available to the Customer under Maintenance, Support and/or Consulting Services, which may be amended or supplemented from time to time by the parties in terms of the Variation Procedure;
- 1.30 **"Modification"** means
- 1.30.1 a change to the delivered source code or metadata; or
- 1.30.2 any development, other than a change to the delivered source code or metadata, that customizes, enhances, or changes existing functionality of the Software including, but not limited to, the creation of any new application program interfaces alternative user interfaces or the extension of Bluekey Seidor data structures; or
- 1.30.3 any other change to the Software (other than an Add-on) utilizing or incorporating any Software Materials.
- 1.31 **"Network"** means all the equipment and/or network infrastructure used by Bluekey Seidor or its representative, to provide the Products and/or Services to the Customer;
- 1.32 **"Network Maintenance"** means planned repairs and improvements carried out from time to time to the Network by Bluekey Seidor;

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- 1.33 **“Order/Order Document”** means the document stipulating the specific Services and/or Products to be provided by Seidor One to the Customer in terms of this Agreement, and specifically includes any “quotation” provided by Bluekey Seidor to new and existing Customers. The order document and/or quotation shall include, inter alia, the applicable Fees, Initial Term (if applicable), Renewal term (if applicable) and other information relevant to the Services in respect of products and services to be provided. Such Order or quotation may be amended or supplemented to from time to time by the Parties should the need arise;
- 1.34 **"Parties"** means, collectively, Bluekey Seidor and the Customer, and **"Party"** refers to either one of the Parties, as the context may require;
- 1.35 **"Prime Rate"** means the publicly quoted prime rate of interest (percent, per annum) from time to time charged by FirstRand Bank Limited, as certified by any manager of such bank, whose appointment and authority it shall not be necessary to prove, calculated daily and compounded monthly in arrears;
- 1.36 **"Products"** means the Infrastructure, hardware and/or Software, provided by Bluekey Seidor to the Customer in terms of this Agreement from time to time;
- 1.37 **"Renewal Period"** means a minimum period of 12 (twelve) months or as set out in the Order Document in respect of any Products and/or Services that are automatically renewed;
- 1.38 **“SAP”** means SAP SE, a European company (Societas Europaea), located at Dietmar-Hopp-Allee 16 in 69190 Walldorf, Germany and registered at the commercial register of Mannheim under the registration number HRB 350269, as well as any SAP affiliates and subsidiaries;
- 1.39 **“Seidor Africa”** means any or all, as the case may be, of the following group companies Seidor One (Pty) Ltd, Seidor Networks (Pty) Ltd, Seidor Analytics (Pty) Ltd, Westrocon Seidor (Pty) Ltd, Seidor Kenya Limited, Seidor Tanzania Limited, Seidor (Mauritius) Ltd, Bluekey Seidor Zambia Limited;
- 1.40 **“Services”** means Support and/or Consulting Services;
- 1.41 **"Site"** means the sites to or at which the Services will be provided as set out in the Order;
- 1.42 **“Software”** means
- 1.42.1 any and all software products licensed to the Customer under this Agreement as specified in the Ordering Document;
- 1.42.2 any new releases, updates or versions thereof, made available to the Customer; and
- 1.42.3 any complete or partial copies of any of the foregoing
- 1.43 **"Software Materials"** means any software, programs, tools, systems, data or other materials made available to the Customer prior to or after the Effective Date including, but not limited to, the Software and Documentation;

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- 1.44 “**Software Use Rights Schedule**” means the Software Use Rights Schedule current at the Effective Date of the Order which is made available at: <https://www.sap.com/about/trust-center/agreements/on-premise/>.
- 1.45 “**Staff**” means any director, employee, agent, consultant, contractor or other representative of a Party involved in the provision or acquisition of the Services;
- 1.46 “**Support**” means the support services provided by Bluekey Seidor, subject to payment of the annual Support Fee or payment for use on a Time and Material Basis, as more fully set out in the Maintenance and Support Document;
- 1.47 “**Support Fees**” means the fees billed annually or on a time and material basis, as the case may be, to the Customer for the Support set out in the Maintenance and Support Document;
- 1.48 “**Term**” means the period over which particular Services or Products will be provided, commencing on the Effective Date and enduring for the period set out in the relevant Order Document, as well as any renewal thereof or until terminated in accordance herewith;
- 1.49 “**Time and Material Basis**” means the method of billing based on actual time spent and materials used, based on Bluekey Seidor standard rates from time to time;
- 1.50 “**Use**” means to activate the processing capabilities of the Software, load, execute, access, employ the Software, or display information resulting from such capabilities; and
- 1.51 “**Variation Procedure**” means the Agreement variation procedure set out in clause 12.

## **2. SOFTWARE LICENSES**

- 2.1 Software licenses may be Ordered by the Customer in terms of either a perpetual or subscription basis.
- 2.2 **Perpetual licenses**
- 2.2.1 Perpetual license/s entitle the Customer to use of the Software in accordance with clause 2.2.3 below.
- 2.2.2 Maintenance is provided to the Customer in line with the Maintenance and Support Document and is subject to advance payment of the annual Maintenance Fee. Where the perpetual license holder does not have active Maintenance the Customer will not be entitled to updates and upgrades to the Software. Certain faults discovered may only be resolved by a fix from the Software author. In the event that the Customer wishes to purchase or re-commence with Maintenance, the Customer shall be billed a fee equal to the annual Maintenance Fee for the years (or part thereof) not paid by the Customer as well as the then current annual Maintenance Fee prior to the activation or re-commencement.
- 2.2.3 **License Grant.** Subject to Customer’s compliance with all the terms and conditions of this Agreement, the EULA, the Software Use Rights Schedule as well as any Order, the Customer

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shall be granted a non-exclusive, non-transferable, perpetual license to Use the Software, Documentation, and other Software Materials at specified site(s) to run the Customer's and its Affiliates' internal business operations and to provide internal training and testing for such internal business operations, unless terminated in accordance with the terms of this Agreement. The Customer may make Modifications and/or Add-ons to the Software in furtherance of its permitted Use under this Agreement and shall be permitted to use Modifications and Add-ons with the Software in accordance with this clause 6.

### **2.3 Subscription licenses**

2.3.1 Subscription License/s entitle the Customer to utilise the Software in accordance with clause 2.3.3 below for the duration of the Term. Subscription Licenses Ordered by the Customer shall automatically renew at the end of the relevant subscription license Term unless terminated in accordance with clause 5.3 below.

2.3.2 Standard Maintenance is provided to the Customer in line with the Maintenance and Support Document subject to full and advance payment of all subscription license fees.

2.3.3 License grant – Subject to Customer's compliance with all the terms and conditions of this Agreement, the EULA, the Software Use Rights Schedule as well as any Order, the Customer shall be granted a non-exclusive, non-transferable, term based license to Use the Software, Documentation, and other Software Materials at specified site(s) within the Territory to run the Customer's and its Affiliates' internal business operations and to provide internal training and testing for such internal business operations for the duration of the subscription terms, unless terminated earlier in accordance with the terms of this Agreement. The Customer may make Modifications and/or Add-ons to the Software in furtherance of its permitted Use under this Agreement and shall be permitted to use Modifications and Add-ons with the Software in accordance with this clause 6.

### **2.4 The Customer shall not:**

2.4.1 use the Products and Services to provide services to third parties (e.g, business process outsourcing, service bureau applications or third-party training) other than to Affiliates;

2.4.2 lease, loan, resell, sublicense or otherwise distribute the Products and Services;

2.4.3 distribute or publish license keycode(s);

2.4.4 make any Use of or perform any acts with respect to the Products and Services other than as expressly permitted in accordance with the terms of this Agreement and the Documentation;

2.4.5 use Products and/or software components other than those specifically identified in the Order, even if it is also technically possible for the Customer to access other software components. The Customer may permit Customer Partners to Use the Software only through screen access, solely

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in conjunction with the Customer's Use, and may not Use the Products or Services to run any of Customer Partners' business operations.

### **2.5 The Customer shall:**

2.5.1 In respect of its and its Affiliates Use of the Software, adhere to the terms and conditions of this Agreement, the Software Use Rights Schedule and the EULA located at <https://www.sap.com/about/trust-center/agreements/on-premise/>.

2.5.2 Ensure that all Affiliates' Use of the Software, Documentation and other SAP Materials to run their internal business operations is subject to the following:

2.5.2.1 that the Affiliate agrees in writing to comply with the terms of this Agreement; and

2.5.2.2 a breach of the Agreement terms by Affiliate shall be considered a breach by the Customer hereunder.

## **3. INFRASTRUCTURE**

3.1 Where the Customer does not have sufficient Infrastructure to support the Products and Services Ordered, the Customer may Order either of the following Infrastructure solutions from Bluekey Seidor:

3.1.1 **Bespoke Solution** – In this solution the Customer requirements will be scoped and quoted separately either by Bluekey Seidor or by sister company, Seidor Networks, with the option of either physical on-premise or cloud hosted solutions.

3.1.2 **Inclusive Solution** - This solution is available on Subscription Licenses and as a cloud Hosting solution only. This option is further subject to certain limitations such as limited functional scope as well as maximum user count, to be agreed and recorded in the relevant Order. In this solution Bluekey Seidor will include and bundle the cost of the hosting into the Subscription License fees as a cost per user. The inclusive Infrastructure solution is rendered in terms of this Agreement and the hosting terms and conditions document located at <http://www.seidor.com/en-ss/solutions/seidor-zambia-legal-compliance>.

## **4. ORDERING**



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- 4.1 To receive any Products and Services, the Customer must accept the Order provided by Bluekey Seidor by returning the signed Order to the relevant representative and making payment of the Fees required as set out in the Order.
- 4.2 An Order shall be binding on both Parties on acceptance of the Order by the Customer and may only be terminated in accordance with the provisions of this Agreement. Acceptance of the Order may be done electronically or by means of physical signature of an Order.
- 4.3 Notwithstanding clause 4.2 above, Bluekey Seidor shall have the right to cancel or alternatively, subject to Clause 4.4, amend the details of an Order Document, if:
- 4.3.1 the cost of any third-party services required for that Service or a related Service change from those used in Bluekey Seidor's calculation of the Charges in a Service;
  - 4.3.2 a change in the delivery time of any third-party services required for that Service or a related Service requires a change to the agreed Ready for Go-Live date;
  - 4.3.3 that Service or a related Service is supplied subject to survey and such survey reveals information that was unknown to Bluekey Seidor at the time of quoting and which could affect the availability, performance, delivery timeframes and/or Charges offered; or
  - 4.3.4 other changes are made to the terms upon which a third-party element of a Service is supplied or a third party is unable or unwilling to provide such element.
- 4.4 If Bluekey Seidor amends the details of a Service as set out in an Order in accordance with Clause 4.3, Bluekey Seidor will notify Customer and provide Customer with a new Order Document (a "Revised Order") for the affected Service(s).
- 4.4.1 If accepted by Customer, the Revised Order will replace the original Order and will be treated as an Order for the purposes of this Agreement.
  - 4.4.2 The Customer shall have five (5) Working Days to accept the changes or to cancel the affected Service by signing and returning the Revised Order.
  - 4.4.3 If Customer does not accept the Revised Order within five (5) Working Days of notification, Bluekey Seidor reserves the right to cancel the affected Service as described in the original Order or the entire Order by notice in writing to Customer and without Bluekey Seidor incurring any Liability.
  - 4.4.4 If there are any Services on the Order other than those described in the Revised Order, these shall remain unaffected.
- 4.5 **Subscription Licenses.**
- 4.5.1 Additional Subscription Software Licenses may be added at any time and the price will be pro-rated to the end of the current paid-up period, whereafter they will auto renew annually together with all other Subscription licenses held by the Customer, unless terminated in accordance with clause 5.3. A customer is not entitled to add licenses beyond the maximums for the scheme/tier that the

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Customer is on without upgrading to a new scheme/tier, nor is a Customer allowed to add any additional Licenses during the three month cancellation notice period.

4.5.2 Subscription Licenses Ordered by the Customer shall automatically renew at the end of the relevant subscription license Term unless terminated in accordance with clause 5.3 below.

### **4.6 *Perpetual Licenses.***

4.6.1 Additional Perpetual Software Licenses may be added at any time and the price will be determined by the ruling price at that time. The Customer may not add licenses beyond the maximums for the scheme/tier that the Customer is on without upgrading to a new scheme/tier.

4.6.2 Perpetual Licences may not be cancelled once the Order has been accepted by the Customer.

4.6.3 Annual Maintenance applicable to any perpetual licenses shall renew automatically in January of each year unless terminated in accordance with clause 5.2.

4.6.4 Where a Customer does not have active Maintenance in place in respect of its Perpetual Software Licenses and wishes to re-instate annual Maintenance, the Customer shall be liable for the cost of the Maintenance Fee's in respect of the Terms between the date of the last active Maintenance Term and the date of re-instatement of Maintenance.

4.7 Licenses may be reallocated or transferred to other terminals or users within the Customer during a Term without such reallocation/transfer amounting to a variation, but no transfer or allocation may be made to any third parties or any other legal entity.

4.8 Any terms and conditions contained in a Customer order form, purchase order, letter or other document generated or managed by the Customer or terms added by Customer to an Order prepared by Bluekey Seidor shall notwithstanding Clause 4.2 be invalid with respect to the Services provided hereunder unless agreed to in writing by Bluekey Seidor. However, should this Agreement be held by a court of competent jurisdiction to include Customer's terms and conditions then in the event of any conflict or apparent conflict this Agreement shall always prevail over Customer's terms and conditions.

4.9 If there is any inconsistency between the provisions of this Agreement, the Maintenance and Support Document, an Order, the conflict shall be resolved by interpreting the documents in the following descending order of priority:

4.9.1 the Order;

4.9.2 the Maintenance and Support Document;

4.9.3 this Agreement.

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### **5. DURATION**

- 5.1 This Agreement shall commence on the Effective Date and, subject to the rights of termination, continue for the Term recorded in the Order.
- 5.2 A Maintenance term commences in January and terminates in December of each year. All Maintenance terms in respect of perpetual licenses automatically renew in January of each year, unless terminated by the Customer in writing no less than three months prior to the expiry of the then current Maintenance term.
- 5.3 A subscription License commences on the date recorded in the Order and subsists for the term recorded in the Order. All Subscription Licences shall automatically renew at the end of the term on the anniversary of the Order unless terminated by the Customer in writing no less than three months prior to the end of the then current term.
- 5.4 A Support Services term commences in January and terminates in December of each year. All Support Services will automatically renew in January of each year, unless terminated by the Customer in writing no less than three months prior to the expiry of the then current Support term.

### **6. PRODUCTS AND SERVICES**

- 6.1 ***Provision of Products and Services.*** Bluekey Seidor shall during the term of this Agreement provide the Products and Services to the Customer in accordance with the terms of this Agreement, as read with the relevant Order.
- 6.1.1 Where the Customer is attending to the hosting of the Software the Customer agrees to install the Software only on Designated Units located at the Customer's facilities and in the Customer's direct possession. With advance written notice to Bluekey Seidor, the information technology devices may also be in the facilities of a Customer affiliate and be in such affiliate's direct possession. The Customer must be appropriately licensed at all times as stated in the Software Use Rights Schedule for any individuals that Use the Software, including employees or agents of such Affiliates and Customer Partners. Use may occur by way of an interface delivered with or as a part of the Software, a Customer or third-party interface, or another intermediary system. If the Customer receives licensed Software that replaces previously licensed Software, its rights under this Agreement regarding the previously licensed Software end when it deploys the replacement Software for Use on productive systems following a reasonable testing period. At the date the rights

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to the previously licensed Software and the Customer shall comply with clause 19.3 of this Agreement with respect to such previously licensed Software.

6.1.2 The Customer is not entitled to copy, translate, disassemble, decompile nor reverse engineer the Software. The Customer must not create or attempt to create the source code from the object code of the Software. The Customer is permitted to back up data in accordance with good information technology practice and for this purpose to create the necessary backup copies of the Software. Backup copies on transportable discs or other data media must be marked as backup copies and bear the same copyright and authorship notice as the original discs or other data media, unless technically infeasible. The Customer must not change or remove Bluekey Seidor, Seidor Africa, SAP or other licensor copyright and authorship notices.

6.1.3 Customer affiliate's Use of the Products, Documentation or Software Materials to run their internal business operations as permitted under clauses 2.2 and 2.3 is subject to the following:

6.1.3.1 The Customer ensures that such affiliate agrees in writing to comply with the terms of this Agreement; and

6.1.3.2a breach of the Agreement terms by such affiliate shall be considered a breach by the Customer hereunder. If the Customer has an affiliate or subsidiary with a separate license or support agreement for SAP software with Bluekey Seidor, any member of SAP or any other distributor of SAP software, the Software shall not be Used to run such affiliate's or subsidiary's business operations even if such separate agreement has expired or is terminated, unless otherwise agreed to in writing by the parties.

6.2 **Delivery.** An email acknowledgement, or delivery note signed by the Customer, is proof that goods have been received in good condition. In cases of electronic delivery of the Software, Bluekey Seidor makes the Software available through the issuance or electronic activation of a license key, or by the provision of an active link for download of the Software.

6.2.1 Receipt by the Customer of the software license key, the deployment of the software on Customer hardware, or an email to the Customer of an active download link constitutes delivery of a license.

6.2.2 Licenses are granted on a non-exclusive, non-transferable fixed term or perpetual basis, subject to the Customer's Order, to Use the Software and ownership does not pass to the Customer.

6.2.3 Ownership of goods which are part of a Subscription agreement does not pass to the Customer.

6.2.4 Our obligation to deliver goods and software licenses is precedent on receipt of payment in full and the availability to us of the products ordered. Our obligation to deliver services is precedent on timely payment for services invoiced.

6.2.5 Project delivery dates will be mutually agreed to during the project kick-off meeting and will be adhered to, except for circumstances outside of our reasonable control or as a result of change/addition to project scope.

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### **6.3 Setup of Services.**

6.3.1 Bluekey Seidor shall commence activation of the Products and Services upon acceptance of the relevant Order by the Customer and payment of the Fees set out in the Order.

6.4 **Support Channels** The support services rendered in terms of this Agreement and the procedures to activate support services, are detailed in the Maintenance and Support Document located at <http://www.seidor.com/en-ss/solutions/seidor-zambia-legal-compliance>.

## **7. CUSTOMER INPUT**

In order to enable Bluekey Seidor to provide the Products and Services in terms of this Agreement, the Customer shall, to the extent required by Bluekey Seidor and at the Customer's cost: -

- 7.1 allow Bluekey Seidor, its partners and its Staff reasonable access to the Site or relevant hardware infrastructure dedicated to the Software, which access is required to enable Bluekey Seidor to fulfil its obligations in terms of this Agreement;
- 7.2 provide electricity services, telephone services and other connectivity (including access to networks, information, documentation and data) at the Site;
- 7.3 Make available sufficiently competent and authorised resources, with appropriate access rights and permissions, to assist Bluekey Seidor and consider all requests by Bluekey Seidor for consent or authorisation without any delay, having regard to the nature of the request and the impact which any delay in such consent or authorisation may have on the provision of Services pursuant to this Agreement;
- 7.4 comply with all reasonable policies, procedures and instructions of Bluekey Seidor in respect of the provision of the Products and Services pursuant to this Agreement;
- 7.5 use best efforts to ensure that no Destructive Element is introduced into the Software, the Customer's or Bluekey Seidor information technology systems by the Customer's Staff or any third party; and
- 7.6 provide all such other assistance and support as may be contemplated in this Agreement.

## **8. CUSTOMER OBLIGATIONS**

- 8.1 **Regulatory compliance.** The Customer has sole responsibility to ensure that the information it and its users transmit and receive over the network complies with all applicable laws and regulations. The Customer hereby indemnifies Bluekey Seidor and holds it harmless against any claims by third parties in respect of prohibited activities conducted by the Customer or its users.
- 8.2 The Customer warrants, represents and covenants on an on-going basis to Bluekey Seidor as follows:

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- 8.2.1 it is authorised (in terms of the Companies Act, its Articles of Association, its Rules and all other Applicable Laws) to enter into the relevant Order and all internal and formal procedural requirements of the Companies Act, its Articles of Association, its Rules and shareholders agreement have been complied with in respect of the entry into the relevant Order;
- 8.2.2 it is not Financially Distressed and has not taken any steps to undertake:
- 8.2.2.1 the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation of the Customer;
- 8.2.2.2 a composition, assignment or arrangement with any creditor;
- 8.2.2.3 the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of the Customer or any of its assets; or
- 8.2.2.4 enforcement of any security interest over any assets of the Customer;
- 8.2.3 it is currently complying with and shall comply with all Applicable Laws.
- 8.3 **Acceptable Use.** The Customer hereby agrees that in using the Services it shall at all times comply and where applicable, shall procure that its Staff at all times comply, with this Agreement, the EULA and the Software Use Rights Schedule from time to time. The Software Use Rights Schedule is located on its website at <https://www.sap.com/about/trust-center/agreements/on-premise/> which is incorporated herein by reference.
- 8.4 **Security.** The Customer shall at all times adhere to all Bluekey Seidor policies located at <http://www.seidor.com/en-ss/solutions/seidor-zambia-legal-compliance> as well as to security and safety measures applicable to its networks from time to time. In particular, the Customer shall not engage in any of the following:
- 8.4.1 misuse, unauthorised use, abuse of or interference with any of Bluekey Seidor or any third party's equipment or other property loaned by or under the supervision of Bluekey Seidor;
- 8.4.2 the harassment of any person including Bluekey Seidor personnel or authorised representatives, or personnel or representatives of any of Bluekey Seidor other Customers;
- 8.4.3 any unlawful activity or assisting therein, while using the Bluekey Seidor Services.
- 8.5 **General Customer obligations.** The Customer shall not take any steps or fail to take any steps which directly or indirectly:
- 8.5.1 damage the Software or any part thereof;
- 8.5.2 impair or preclude Bluekey Seidor from being able to provide Products and Services in a professional manner;

## **BLUEKEY SEIDOR ZAMBIA LIMITED - TERMS AND CONDITIONS**

8.5.3 constitutes an abuse or malicious misuse of the Products and/or Services provided by Bluekey Seidor; or

8.5.4 is calculated to have one or more of the above-mentioned effects.

8.6 **Effect of non-compliance.** To the extent that the Customer is in breach of any provision of clauses 6 and 8, Bluekey Seidor reserves the right to suspend all Products and Services to the Customer until such time as the Customer remedies the situation and if Bluekey Seidor incurs any expense in remedying the effects of any of the acts or omissions referred to above, the Customer shall reimburse Bluekey Seidor on demand in the amount necessary to cover such expense.

### **9. AUDIT**

9.1 Bluekey Seidor or its representative shall be permitted to audit (at least once, which may include on-site and/or remote audit) the usage of the Products and Services. The Customer shall cooperate reasonably in the conduct of such audits. In the event an audit reveals that:

9.1.1 The Customer has Used the Software in excess of the license quantities or levels stated in the Order, the Customer shall pay such underpaid fees and/or for such excess usage based on the then-current price list, terms and conditions in effect at the time of the audit and shall order the Software license quantities or levels used in excess from Bluekey Seidor and execute an additional Order to affect the required licensing of any additional quantities or levels. Reasonable costs of the audit shall be paid by the Customer if the audit results indicate usage in excess of the licensed quantities or levels. Bluekey Seidor reserves all rights at law and equity with respect to both the Customer's underpayment of license fees or support fees and usage in excess of the license quantities or levels.

### **10. DATA**

10.1 **Ownership.** Ownership in all Customer Data, whether under its control or not, shall continue to vest in the Customer and Bluekey Seidor shall not obtain any proprietary rights in such data. For the avoidance of doubt, the Parties agree that the Customer Data will at all times be the sole property of the Customer.

10.2 **Restricted use.** In performing the Services, Bluekey Seidor will comply with the Bluekey Seidor Privacy Policy which is available on request, and incorporated herein by reference. The Bluekey Seidor Privacy Policy is subject to change at Bluekey Seidor's discretion, however, Bluekey Seidor policy changes will not result in a material reduction in the level of protection provided for Customer Personal Data provided as part of the Customer Content during the Services Period of its Order.

### **11. EXCUSING CAUSES**

In the event of an Excusing Cause arising:

## **BLUEKEY SEIDOR ZAMBIA LIMITED - TERMS AND CONDITIONS**

- 11.1 Bluekey Seidor will notify the Customer, in writing, of the Excusing Cause within a reasonable period of becoming aware of such Excusing Cause;
- 11.2 the time/service levels for Bluekey Seidor performance shall be extended on a reasonable basis in proportion to the prejudice caused by the Excusing Cause. Where a breach by the Customer has resulted in an Excusing Cause Seidor may charge for any additional hours required to remedy the Excusing Cause on a Time and Materials Basis; and
- 11.3 Bluekey Seidor shall not be liable for any failure to provide any Services in terms of this Agreement where such failure is a result of any Excusing Cause.

### **12. VARIATION PROCEDURES**

- 12.1 **No Variation.** Subject to changes published by Bluekey Seidor on <http://www.seidor.com/en-ss/solutions/seidor-one-legal-compliance/> and subject further to the provisions of this clause 12, no variation, addition or consensual cancellation of this Agreement or Order or any component thereof shall be of any force or effect unless reduced to writing and signed by the Parties or their duly authorised representatives.
- 12.2 **Amendments to Line-Item Services.** In the event that the Customer wishes to make amendments to any Order or Line-Item Services provided to the Customer, Such amendments shall be implemented on the following basis:
  - 12.2.1 Subscription licenses termination/reduction - The Customer shall not be entitled to terminate any subscription licenses during the Term of any subscription. A reduction/termination of subscription licenses may only be done at the end of the subscription Term by providing 90 days written notice to Bluekey Seidor of the Customer's desire to terminate/reduce subscription licenses. The Customer may not reduce the number of subscription licenses beyond the minimums for the scheme/tier Customer is on, where applicable.
  - 12.2.2 Annual Maintenance termination – In respect of any perpetual software licenses, the Customer shall not be entitled to terminate annual Maintenance during the Term of such Maintenance. A termination of annual Maintenance for the following Term may be done no later than 30 September of each year by providing no less than three months written notice of termination, in compliance with clause 5.2. Annual Maintenance may not be partially cancelled or renewed, Annual Maintenance is only available and provided to a Customer in respect of all the perpetual licenses held by the Customer and not in respect of a portion of the perpetual licenses held by the Customer.
  - 12.2.3 Support termination - The Customer shall not be entitled to terminate annual Support during the Term of such Support Service. A termination of annual Support for the following Term may be done no later than 30 September of each year, by providing three months written notice of termination, in compliance with clause 5.4.



**BLUEKEY SEIDOR ZAMBIA LIMITED - TERMS AND CONDITIONS****13. CONSIDERATION**

- 13.1 **Consideration.** As consideration for the provision of the Products and the Services pursuant to this Agreement, the Customer shall pay Bluekey Seidor the relevant Infrastructure fee, License Fee, Maintenance Fee and Services Fee selected by the Customer and set out in the relevant Order.
- 13.1.1 Payment for Licenses and Maintenance is to be made in advance in accordance with the provisions of the Order. Failure by the Customer to timeously terminate annual Maintenance will result in Bluekey Seidor's liability to SAP and other vendors for the Maintenance Fee;
- 13.1.2 Licenses, Maintenance and Support Services will not be activated for any period for which Fees due are outstanding;
- 13.1.3 Payment for Infrastructure solutions in respect of Subscription and fixed cost services is to be made quarterly in advance or as stated in the Order;
- 13.1.4 Variable hosting costs will be billed in arrears and payment must be made within 7 (seven) days of date of invoice;
- 13.1.5 For the duration of Use of the Software, Subscription software license fees will escalate on each contract renewal date by an amount guided by the Consumer Price Index inflation rate;
- 13.1.6 Annual Maintenance Fees and Support Fees will escalate in January of each year by an amount guided by the Consumer Price Index inflation rate;
- 13.1.7 Price escalations issued on third party products which exceed Consumer Price Index inflation rate, will be passed on to the Customer at the rate of such price escalation as passed to Bluekey Seidor by the third-party provider.
- 13.2 **VAT & Other Taxes.** All amounts stipulated in this Agreement are, unless otherwise indicated, stipulated exclusive of Value-Added Tax, Withholding Tax, or other similar sales tax applicable to the Order, which shall be payable by the Customer at the applicable rate.
- 13.3 **Consulting Service Fees.** Consulting Service fees will be calculated at Bluekey Seidor's then current Time and Material charge and invoiced monthly in arrears, or at the rate and payment terms as set out in the Order. A detailed VAT invoice will be produced. Any Services required to be performed at the Customer's site and/or locations other than remotely by Bluekey Seidor, will be subject to reasonable travel costs and expenses.
- 13.4 All Maintenance and Support Services are dependent on the full payment of the relevant Fees by the Customer.

## **BLUEKEY SEIDOR ZAMBIA LIMITED - TERMS AND CONDITIONS**

- 13.5 **Payments.** All payments by the Customer must be made in the currency reflected in the Order, free of set-off and bank charges.
- 13.6 **Overdue amounts.** If the Customer fails to make any payment on the due date, Bluekey Seidor may, without prejudice to any of its rights, charge the Customer interest on the overdue amounts at the Prime Rate, plus any additional costs incurred by Bluekey Seidor related to collections as a result of Customer's failure to make any payment on the due date, including, *inter alia*, collection commission and attorney's fees on the attorney own client scale. All such default interest shall automatically accrue from the day following the date the relevant amount was due until it is paid in full and shall accrue both before and after judgment. Such interest shall be payable on demand.
- 13.7 **Suspension of Products and Services.** In addition, Bluekey Seidor shall be entitled, without liability, to suspend the Services and/or the provision of Infrastructure for any period during which any Fees (including all interest thereon) are outstanding or in arrears, provided that Bluekey Seidor shall give the Customer no less than five Business Days written notice (which shall include by way of e-mail) of its intention to suspend the Products and Services.
- 13.8 **No set-off.** The Customer will not be entitled to withhold payment of any amount payable in terms of this Agreement to satisfy any claim against Bluekey Seidor arising from this or any other agreement with Bluekey Seidor, nor will the Customer be entitled to set off any such amount payable in terms of this Agreement against any amount owing to it by Bluekey Seidor in terms of this or any other agreement.
- 13.9 **Credit Checks.** Bluekey Seidor reserves the right to conduct credit checks on the Customer from time to time and the Customer consents to such credit checks.

### **14. SAFETY AND SECURITY**

- 14.1 Each Party agrees to comply with safety and security procedures notified to them by the other Party and with the requirements of any applicable health and safety legislation or any other Applicable Law.
- 14.2 The Parties shall each at their own cost and expense take whatever steps as are necessary to procure and discharge their respective obligations under this Agreement and applicable law to ensure the health and safety of each party and/or their employees, agents, directors, sub-contractors and members of the public.

### **15. SUSPENSION OF SERVICES**

- 15.1 Bluekey Seidor may lawfully suspend and withdraw all or part of the Products and Services at any time until further notice to Customer if:

## **BLUEKEY SEIDOR ZAMBIA LIMITED - TERMS AND CONDITIONS**

- 15.1.1 Bluekey Seidor reasonably considers that the continued provision of the Products and Services may cause Bluekey Seidor to breach an Applicable Law or be in contravention of any operating licence or other authorisation;
- 15.1.2 Customer is in breach of or otherwise is not complying with any of the provisions of this Agreement, Bluekey Seidor having given the Customer five days written notice to remedy the breach; or
- 15.1.3 Any payment or invoice delivered by Bluekey Seidor to Customer is not paid by the due date without valid dispute.
- 15.2 The exercise of Bluekey Seidor's right to suspend the Products and Services under clause 15 at its sole discretion is without prejudice to any other remedy available to Bluekey Seidor under the Agreement and does not constitute a waiver of Bluekey Seidor's right to subsequently terminate the Agreement. Suspension of the Products and Services under clause 15 shall be without prejudice to and shall not affect Customer's obligation to pay the charges related to the suspended products and Services which shall continue during the period of suspension.
- 15.3 This clause 15.3 shall operate without prejudice to Clause 15.2 where:
- 15.3.1 in Bluekey Seidor's sole discretion the circumstances giving rise to a suspension under clause 15.1 are lifted; and/or
- 15.3.2 Customer makes payment of any overdue invoice triggering suspension under clause 15.1.3 together with applicable interest thereon; and/or
- 15.3.3 Customer otherwise remedies a breach triggering suspension under clause 15.1.2 to Bluekey Seidor's reasonable satisfaction and provides acceptable assurances as to future performance,
- 15.4 Bluekey Seidor shall reinstate the Products and Services and may require the Customer to pay a reasonable reconnection fee in advance as a pre-condition to making the Products and Services available again and to cover any third-party costs that may be directly related to the reconnection of the Products and Services.

## **16. INTELLECTUAL PROPERTY**

- 16.1 Each Party has created, acquired or otherwise obtained Intellectual Property Rights in various products, technology or methodology which it may employ, provide, modify, create, acquire or otherwise use during the currency of this Agreement. Each Party shall retain all right, title and interest in same and the other Party shall not have nor acquire any right, title or interest therein.
- 16.2 All Bluekey Seidor or its licensors' intellectual property, including Add-ons, Modifications licensed to the Customer or created by our Staff, whether in the course of provision of Services under this Agreement or not, shall belong to Bluekey Seidor or our licensors, subject to any Use rights, expressly granted to the Customer in clauses 2.2, 2.3 and this clause 16. Except for the rights set forth in clauses 2.2, 2.3 and this

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clause 16 herein, the Customer is not permitted to modify or otherwise make derivative works of the Software or other Software Materials.

- 16.3 All Modifications and all rights associated therewith shall be the exclusive property of Bluekey Seidor or its licensors. All Add-ons developed by Bluekey Seidor or its licensors (either independently or jointly with the Customer) and all rights associated therewith shall be the exclusive property of Bluekey Seidor or its licensors. The Customer agrees to execute those documents reasonably necessary to secure Bluekey Seidor or its licensors' rights in the foregoing Modifications and Add-ons. All Add-ons developed by or on behalf of the Customer without Bluekey Seidor or its licensors' participation ("Customer Add-on"), and all rights associated therewith, shall be the exclusive property of the Customer subject to Bluekey Seidor or its licensors' rights in and to the Software and Software Materials; provided that the Customer shall not be entitled to commercialize, market, distribute, license, sublicense, transfer, assign or otherwise alienate any such Customer Add-ons. Bluekey Seidor or its licensors retain the right to independently develop their own Modifications or Add-ons to the Software, and the Customer agrees not to take any action that would limit Bluekey Seidor or its licensors' sale, assignment, licensing or use of its own Software or Modifications or Add-ons thereto.
- 16.4 Any Modification developed by or on behalf of the Customer without Bluekey Seidor or its licensors' participation or Customer Add-on must not (and subject to other limitations set forth herein), enable the bypassing or circumventing of any of the restrictions set forth in this Agreement and/or provide the Customer with access to the Software to which the Customer is not directly licensed; nor unreasonably impair, degrade or reduce the performance or security of the Software; nor render or provide any information concerning the Software license terms, Software, or any other information related to Software Materials.
- 16.5 The Customer covenants, on behalf of itself and its successors and assigns, not to assert against Bluekey Seidor or its licensors or their affiliated companies, or their resellers, distributors, suppliers, commercial partners and customers, any rights in any Customer Add-ons or Modifications or other functionality of the Software accessed by such Customer Add-ons or Modifications.
- 16.6 If, at any time any Customer or any subcontractor or affiliate of the Customer is deemed, by virtue of the Copyright and Performance Rights Act Chapter 406 of the Laws of Zambia or otherwise, to be the first owner of any Intellectual Property Rights related to any of the Products or Services, the Customer shall immediately assign (or procure the assignment of) all Intellectual Property Rights in such Products and Services to Bluekey Seidor or its licensors.

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### **17. BLUEKEY SEIDOR WARRANTIES**

#### **17.1 *Intellectual Property Warranties:***

17.1.1 Bluekey Seidor warrants that no aspect of the provision of the Services or any Bluekey Seidor Materials will infringe any Intellectual Property Rights of any third party, and Bluekey Seidor shall, at its cost, defend the Customer against any such claim, provided that in respect of all such claims, the Customer:-

17.1.1.1 gives prompt notice to Bluekey Seidor of such claim and Bluekey Seidor has the election to control the defence thereof;

17.1.1.2 takes all reasonable steps to mitigate any loss or liability in respect of the claim; and

17.1.1.3 does not compromise or settle the claim in any way without Bluekey Seidor prior written consent.

17.2 ***Service warranties.*** Bluekey Seidor warrants that in relation to each Service provided in terms of this Agreement it will provide same in accordance with all applicable laws and regulations.

17.3 ***Disclaimer of warranties.*** Bluekey Seidor does not guarantee that (a) the services will be performed or the products will be available or error-free or uninterrupted, or that all errors will be corrected by Bluekey Seidor, (b) the products will operate in combination with customer content or applications, or with any other hardware, software, systems, services or data not provided by Bluekey Seidor, (c) the products and services will meet customer requirements, specifications or expectations, and (d) any nonconformance caused by a modification or add-on (other than a modification or add-on made by Bluekey Seidor or a member of sap. the customer acknowledges that Bluekey Seidor does not control the transfer of data over communications facilities, including the internet, and that the products and services may be subject to limitations, delays, and other problems inherent in the use of such communications facilities. Bluekey Seidor is not responsible for any delays, delivery failures, or other damage resulting from such problems. Bluekey Seidor is not responsible for any issues related to the performance, operation or security of the products and services that arise from the customer content, applications or third party content. Bluekey Seidor does not make any representation or warranty regarding the reliability, accuracy, completeness, correctness, or usefulness of third party content or products and services, and disclaims all liabilities arising from or related to third party content or services.

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

17.5 This clause 17 will also apply for the benefit of SAP and their respective licensors.

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- 17.6 **No representations.** The Customer warrants that it has not been induced to enter into this Agreement by any prior representations, warranties or guarantees, whether oral or in writing, except as expressly contained in this clause 17.
- 17.7 **Survival.** This clause 17 shall survive termination of this Agreement and applies to Bluekey Seidor and its Licensors.

### **18. CONFIDENTIAL INFORMATION**

- 18.1 **Confidentiality obligation.** Each Party ("**the Receiving Party**") must treat and hold as confidential all Confidential Information of the other Party ("**the Disclosing Party**") to which they have access, or which otherwise becomes known to them during the currency of this Agreement.
- 18.2 **Exceptions.** The obligations of confidentiality contained herein shall not apply to any confidential information which the Receiving Party thereof can show (and it shall be for the Receiving Party to prove this by documentary evidence) -
- 18.2.1 is, at the time of disclosure to the Receiving Party by the Disclosing Party, within the public domain and could be obtained by any person with no more than reasonable diligence; or
- 18.2.2 comes into the public domain and could be obtained after such disclosure, otherwise than by reason of a breach of any of the undertakings contained in this Agreement; or
- 18.2.3 is, at the time of such disclosure, already within the possession of the Receiving Party, or it has been independently developed by the Receiving Party; or
- 18.2.4 is subsequently provided to the Receiving Party by a person who has not obtained such information from the Disclosing Party, provided that, in any such case, such information was not obtained illegally or disclosed by any person in breach of any undertaking or duty as to confidentiality, whether express or implied; or
- 18.2.5 is disclosed with the written approval of the Disclosing Party; or
- 18.2.6 is or becomes available to a third party from the Disclosing Party on an unrestricted basis; or
- 18.2.7 is obliged to be reproduced under order of a court or government agency of competent jurisdiction or in satisfaction of the requirements of any stock exchange or other regulatory authority.
- 18.3 **Duties of Parties.** The Receiving Party therefore agrees to hold such Confidential Information in the strictest confidence, not to make use thereof other than for the performance of the obligations under this Agreement, to release it only to Staff and professional advisors requiring such information on a need-to-know basis and not to release or disclose it to any other person.
- 18.4 **Survival.** The Parties agree that the provisions of this clause will survive the termination of this Agreement.

## **BLUEKEY SEIDOR ZAMBIA LIMITED - TERMS AND CONDITIONS**

- 18.5 ***Obligation prior to disclosure.*** Bluekey Seidor shall procure that any party to whom it validly discloses the confidential information of the Customer, as contemplated in clause, 18.2 undertakes to respect the secret, confidential and proprietary nature thereof.

### **19. TERMINATION**

#### **19.1 *Termination for cause***

19.1.1 Without prejudice to any rights and remedies that may have accrued to a Party, either Party may terminate this Agreement or any Order with immediate effect by providing the other Party written notice of its intention to do so if the other Party:

19.1.1.1 ceases to trade (either in whole or as to any part involved in the performance of this Agreement or any Order);

19.1.1.2 becomes insolvent, is sequestrated, or placed under provisional liquidation, or finally liquidated, or placed into business rescue;

19.1.1.3 makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt, is unable to pay its debts under any Applicable Law relating to insolvency or bankruptcy or the relief of debtors.

19.1.2 Bluekey Seidor may terminate this Agreement and/or suspend Services in accordance with clause 15 should the Customer fail to pay in full the Fees set out in the Order.

#### **19.2 *Breach***

19.2.1 Either Party shall be entitled to terminate any relevant Order or the Agreement, if the breach directly impacts all active Orders, where the other Party:

19.2.1.1 commits a material breach of such Order or this Agreement which is incapable of remedy;  
or

19.2.1.2 fails to remedy or persists in a remedial material breach of such Order or this Agreement following the expiry of a period of seven days following service of a notice detailing the breach and requiring its remedy, and for the purposes of this clause such material breach shall include but not be limited to a failure to make payment of an overdue invoice irrespective of the reason for such non-payment including in any case where Customer claims Force Majeure in respect of the same.

#### **19.2.2 *Upon any termination under this Clause 19.2:***

19.2.2.1 in which Customer is the Party in breach, Customer shall be liable for and shall pay on demand all Fees and charges incurred up to the termination date as well as for the balance of all Fees that would have been paid until the end of the Term of any terminated Orders.

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The Customer acknowledges and agrees that this clause is reasonable in all respects and it is necessarily required by Bluekey Seidor to protect its interests.

### **19.3 *Effects of Termination***

19.3.1 Upon termination of any Order and/or this Agreement in accordance with clause 19.1, the Customer shall be liable for an early termination fee equal to the sum due under such Order for the remainder of the Term. The Parties record that the early termination charges are not a penalty, but a genuine estimate of the actual damages that Bluekey Seidor will suffer as a result of the early termination.

19.3.2 Upon termination of any Order and/or this Agreement all Fees and charges incurred (whether or not invoiced) shall be immediately due and payable, the Customer shall immediately cease to have any right of Use in terms of the relevant Products and Services and neither Party shall have any further obligation to the other in respect of the same save that such termination: (i) shall not operate as a waiver of any breach hereof nor affect a Party's accrued rights, liabilities and obligations as at the date of termination; or (ii) affect any provision which is expressly or by implication intended to come into force on, or continue in force after, termination, including without limitation Clauses 4.9, 19.2.1, this Clause 19.3; and (iii) shall in no case give rise to an obligation on the part of Bluekey Seidor to refund any Charges. The Customer acknowledges and agrees that this Clause is reasonable in all respects and it is necessarily required by Bluekey Seidor to protect its interests.

19.3.3 Within 30 days after any termination, the Customer shall irretrievably destroy, delete and/or uninstall the Products subject to the termination (excluding any paid up Perpetual Licenses) and Confidential Information in every form, except to the extent it is legally required to keep it for a longer period in which case such return or destruction shall occur at the end of such period. The Customer must certify to Bluekey Seidor in writing that it has satisfied its obligations under this clause 19.3.3. The Customer agrees to certify in writing to Bluekey Seidor that it and each of its Affiliates have performed the foregoing.

## **20. LIMITATION OF LIABILITY**

20.1 Subject to clause 20.3 below, Bluekey Seidor shall have no liability under this Agreement and/or the Customer's use of the Products and Services in the event that:

20.1.1 the Software is not used in accordance with the Documentation; or

20.1.2 the defect or liability is caused by the Customer or its Affiliates; or

20.1.3 the Services and Software are used in conjunction with any third-party software for which the Customer lacks sufficient rights from the third-party vendor for such use; or

20.1.4 for any Customer activities not permitted under the EULA.



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- 20.2 Under no circumstances and regardless of the nature of any claim will Bluekey Seidor, Seidor Africa, SAP, its licensors or the Customer be liable to each other or any other person or entity for in any amount for special, incidental, consequential, or indirect damages, loss of good will or profits, work stoppage, data loss, computer failure or malfunction, attorneys' fees, court costs, interest or exemplary or punitive damages.
- 20.3 Subject to clauses 20.1 and 20.2 above, but notwithstanding any other provision of this Agreement, Bluekey Seidor's maximum aggregate liability to the Customer, whether in contract, delict (including negligence), breach of statutory duty or otherwise, arising under or in connection with this Agreement, shall be limited to the lower of:-
- 20.3.1 a sum equal to the total Fees paid to Bluekey Seidor under this Agreement in a twelve-month period; or
- 20.3.2 that proportion of the loss or damage (including interest and costs) suffered by the Customer, which is ascribed to Bluekey Seidor by a Court of competent jurisdiction or Arbitrator allocating a proportionate responsibility to the Customer having regard to the contribution to the loss or damage in question by the Customer or any other person based upon relative degrees of fault.
- 20.4 The provisions of this Agreement allocate the risks between Bluekey Seidor and the Customer. The Fees paid by the Customer reflect this allocation of risk and the limitations of liability herein. It is expressly understood and agreed that each and every provision of this Agreement which provides for a limitation of liability, disclaimer of warranties or exclusion of damages, is intended by the Parties to be severable and independent of any other provision and to be enforced as such.
- 20.5 Any limitations to the liability and obligations of Bluekey Seidor according to this clause 20 will also apply for the benefit of Seidor Africa, SAP and their respective licensors.

**21. NON-SOLICITATION**

Except as expressly authorized in writing in advance by both parties, neither party shall solicit, offer work to, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Staff during the Term of this Agreement and for a period of 12 (twelve) months thereafter. In the event that either party solicits the other party's personnel in contravention of this clause, the soliciting party shall pay to the other party an amount equal to 100% (one hundred percent) of the solicited employee's annual cost to company as a penalty. It being agreed that such amount represents a fair and reasonable estimate of the costs incurred in training, skilling and educating an employee.

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### **22. DISPUTE RESOLUTION**

- 22.1 **Committee.** Any dispute which arises between the Parties shall first be referred to Bluekey Seidor in writing and Bluekey Seidor will use its best endeavours to resolve the dispute within fourteen days of the dispute having been referred to it, or such extended time period as the Parties may agree in writing.
- 22.2 **Litigation.** If the Parties are unable to resolve any dispute arising from this Agreement by means 22.1 the dispute shall be finally resolved by way of litigation, and to this end the Parties hereby consent to the jurisdiction of the Zambian courts. Nothing in this clause 22 shall preclude any Party from seeking interim and/or urgent relief from the Zambian courts prior to the outcome of the result of committee referral referred to in clause 22.1.
- 22.3 **Severability.** clause 22.1 is severable from the rest of this Agreement and shall remain valid and binding on the Parties notwithstanding any termination of this Agreement.

### **23. DOMICILIA AND NOTICES**

- 23.1 **Addresses.** Bluekey Seidor selects as its *domicilia citandi et executandi* the physical addresses set out in clause 1.4. The Customer selects as its *domicilia citandi et executandi* the physical addresses set out the Order.
- 23.2 **Change of Address.** Either Party may give written notice to the other, change its domicilium to any other physical address in Zambia to any other Zambian number, provided that such change shall take effect fourteen days after delivery of such written notice.
- 23.3 **Deemed Receipt.** Any notice to be given by either Party to the other shall be deemed to have been duly received by the other Party -
- 23.3.1 if addressed to the addressee at its domicilium and posted by pre-paid registered post on the 10<sup>th</sup> day after the date of posting thereof, or
- 23.3.2 if delivered to the addressee's domicilium by hand to a responsible person apparently in charge of the addressee's premises, during Business Hours on a Business Day, on the date of delivery thereof, or
- 23.4 **Use of email.** The Parties record that formal notices required in terms of this Agreement, may be given via email.

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### 24. FORCE MAJEURE

24.1 Performance of the obligations of Bluekey Seidor in terms of this Agreement shall be excused for as long as and to the extent that such Party is unable to deliver performance because of any cause beyond its control and for which it is not responsible which, if qualifying as such shall include, without limitation, an act of God or State or war (whether declared or not) or sabotage, fire, flood, riot, strike, lock-out, pandemic downtime of any third party communication (including telecommunication) infrastructure, governmental restriction, affecting the performance of such obligations, Bluekey Seidor shall –

24.1.1 As soon as it becomes aware of any such force majeure event, immediately give notice to the Customer (which shall be confirmed in writing as soon as possible thereafter as is possible) detailing the circumstances on which it relies and an estimate of the likely duration of such inability, where possible; and

24.1.2 Notify the Customer as soon as the event terminates, by giving notice thereof to Customer, which shall be confirmed in writing as soon thereafter as is possible;

24.2 the Parties shall co-operate together and use all reasonable efforts to overcome, or failing which, to minimise the effect of such inability;

24.3 Bluekey Seidor shall be excused and subsequently not obliged to perform any obligation hereunder not performed as a consequence of and during any such inability, and the duration of this Agreement shall not be extended as a consequence of any such inability.

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### 25. ASSIGNMENT AND SUB-CONTRACTING

25.1 **No Assignment.** the Customer shall not be entitled to cede, assign, delegate or otherwise transfer the benefit or burden of all or any part of this Agreement without the prior written consent of Bluekey Seidor, which consent shall not be unreasonably withheld or delayed.

25.2 **Sub-contractors.** Bluekey Seidor may sub-contract its obligations under this Agreement to third parties, provided that in such event Bluekey Seidor shall remain liable for the performance by such subcontractor of Bluekey Seidor obligations in terms of this Agreement.

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### 26. RELATIONSHIP AND DUTY OF GOOD FAITH

- 26.1 **Good Faith.** The Parties shall at all times owe each other a duty of good faith and shall, in all dealings with each other and in respect of the Services act according to such standard.
- 26.2 **No authority.** Nothing in this Agreement shall be construed as creating a legal partnership between the Parties and neither Party shall have any authority to incur any liability or obligation on behalf of the other or to pledge or bind the credit of the other Party.

### 27. INTERPRETATION

This Agreement shall be subject to the following rules of interpretation.

- 27.1 **Headings.** Headings and sub-headings are inserted for information purposes only and shall not be used in the interpretation of this Agreement.
- 27.2 **Enactments.** References to any enactment shall be deemed to include references to such enactment as re-enacted, amended or extended from time to time.
- 27.3 **References to persons.** References to: -
- 27.3.1 persons shall include companies, corporations and partnerships;
- 27.3.2 any Party shall, where relevant, be deemed to be references to, or to include, as appropriate, their respective successors or permitted assigns;
- 27.3.3 the singular shall include the plural and vice versa;
- 27.3.4 any one gender shall include a reference to all other genders.
- 27.3.5 days shall be deemed to be to calendar days, unless specifically stipulated as being business days.
- 27.4 **Survival of terms.** The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 27.5 **Substantive provisions.** If any provision in a definition is a substantive provision conferring rights or imposing duties 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 this Agreement.
- 27.6 **Calculation of days.** When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day which is not a business day, in which case the last day shall be the next business day.

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- 27.7 **Approvals and consents.** Where the approval or consent of any Party is required in terms of this Agreement, the Parties hereby agree that such approval or consent shall not, unless expressly provided to the contrary, be unreasonably withheld or delayed by the Party who is required to give same.
- 27.8 **Neutral construction.** The rule of construction that the Agreement shall be interpreted against the Party responsible for the drafting or preparation of the Agreement, shall not apply.
- 27.9 **The term "including".** The words "include", "includes", and "including" means "include without limitation", "includes without limitation", and "including without limitation". The use of the word "including" followed by a specific example shall not be construed as limiting the meaning of the general wording preceding it.
- 27.10 **Common meaning.** Terms other than those defined within the Agreement will be given their plain English meaning, and those terms, acronyms, and phrases known in general commercial or industry-specific practice, will be interpreted in accordance with their generally accepted meanings.

**28. GENERAL**

- 28.1 **Non-exclusivity.** Nothing in this Agreement shall be construed as precluding or limiting in any way the right of Bluekey Seidor from supplying services of whatsoever nature to other Customers.
- 28.2 **Entire Agreement.** This Agreement and the documents, records or attachments referred to herein or therein, constitute the entire agreement between the Customer and Bluekey Seidor in respect of the subject matter hereof, and supersedes all previous Agreements in respect thereof.
- 28.3 **Waiver.** No granting of time or forbearance shall be or be deemed to be a waiver of any term or condition of this Agreement and no waiver of any breach shall operate a waiver of any continuing or subsequent breach.
- 28.4 **Applicable Law.** This Agreement shall be governed and construed according to the laws of Zambia.
- 28.5 **Jurisdiction.** Subject to clause 22, the Parties hereto hereby consent and submit to the exclusive jurisdiction of the Zambian courts and to this end the Parties hereby consent to the jurisdiction of the Zambian courts.
- 28.6 **Certificate of indebtedness.** A certificate of indebtedness signed by any director or manager of Bluekey Seidor, whose authority or appointment shall not be necessary to prove, in respect of any indebtedness of the Customer in terms of this Agreement, shall be *prima facie* evidence of the Customer's indebtedness to Bluekey Seidor.
- 28.7 **Publicity.** Neither Party shall make or issue any formal or informal announcement, advertisement or statement to the press in connection with this Agreement or otherwise disclose the existence of this Agreement or the subject matter thereof to any other person, other than a professional advisor or its Staff involved in the provision of the Services, without the prior written consent of the other Party, provided that:-



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28.7.1 Bluekey Seidor may cite the Customer as one of its Customers in its accounting, marketing and associated material, and

28.7.2 the Customer may cite Bluekey Seidor as one of its service providers in its accounting, marketing and associated material.

28.8 **Costs.** Each Party shall bear and pay its own fees and costs of and incidental to the negotiation, drafting, preparation and execution of this Agreement.



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**Acceptance**

I the undersigned in a representative capacity for \_\_\_\_\_ warrant that I am duly authorized hereto, that I have read, understood and accept the Bluekey Seidor Zambia Limited terms and conditions contained in this document.

**Signatures:**

Duly Authorized Signatory for \_\_\_\_\_

_____ <b>Name</b>	_____ <b>Date</b>	_____ <b>Designation</b>
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\_\_\_\_\_  
**Signature of acceptance**

Duly Authorized Signatory for **Bluekey Seidor Zambia Limited**

_____ <b>Name</b>	_____ <b>Date</b>	_____ <b>Designation</b>
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\_\_\_\_\_  
**Signature of acceptance**