

STANDARD TERMS AND CONDITIONS

1 INTERPRETATION

1.1 In this Agreement, unless inconsistent with or otherwise indicated by the context –

1.1.1 “**the Agreement**” means your Application Form together with the terms and conditions as set out in this document;

1.1.2 “**Annual Package**” means the Executive Club Membership which endures for a period of 12 (twelve) months, subject to renewal in terms of clause 3.3;

1.1.3 “**Application Form**” means the application form completed by the Client in terms of which the Client purchased the Single Package, Monthly Package or Annual Package, as the case may be;

1.1.4 “**Business Day**” means any day that is not a Saturday, Sunday or South African public holiday;

1.1.5 “**the Client**” or “**you**” means the entity or person whose details are set out in the Application Form;

1.1.6 “**Commencement Date**” means the date indicated by MCA to the Client as the commencement of its access to the Programmes in terms of this Agreement, which shall be a date not later than 5 Business Days from the date on which MCA accepts the Client’s offer in terms of clause 2.2;

1.1.7 “**Executive Club Membership**” means the product offered by MCA which allows the purchasers thereof to access to all Programmes offered by MCA by means of the MCA Applications;

1.1.8 “**Fees**” means the fee payable by the Client to MCA for the Annual Package, the Monthly Package or the Single Package, as the case may be, as set out in the Application Form;

- 1.1.9 “**MCA**” or “**us**” or “**we**” means MCA Resources CC, with registration number 2000/072983/23, a close corporation duly established in terms of the laws of the Republic of South Africa trading as MCA Training International;
- 1.1.10 “**MCA Application**” means any web-based application from which the Programmes are made available by MCA;
- 1.1.11 “**MCA Bank Account**” means the bank account with the details set out below or such other bank account nominated by MCA in writing:
- Bank: First National Bank**
- Account Holder: MCA Resources**
- Branch: Willowbridge**
- Branch Code: 221526**
- Swift Code: FIRNZAJJ**
- 1.1.12 “**the Parties**” means MCA and the Client and “**Party**” means either one of them, as the context may indicate;
- 1.1.13 “**Programme Content**” means the content of a Programme, including but not limited to reading material and videos;
- 1.1.14 “**Programmes**” means the training programmes conducted by MCA by means of the MCA Application and “**Programme**” shall mean any of them as the context may indicate;
- 1.1.15 “**Renewal Date**” means each date on which this Agreement is renewed in accordance with clause 3.2.1 or 3.3.1, whichever is applicable;
- 1.1.16 “**Users**” means the users of the Application nominated by the Client to have access to the Programmes, the number of which shall be indicated in the Application Form;
- 1.1.17 words importing the singular shall include the plural and *vice versa*;

- 1.1.18 words importing natural persons includes legal persons and partnerships and *vice versa*;
- 1.1.19 words importing one gender includes the other genders;
- 1.1.20 any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;
- 1.1.21 where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 1.2 The clause headings in this Agreement have been inserted for reference purposes only and shall not affect the interpretation of any provision of this Agreement.
- 1.3 Words and expressions defined in any sub-clause shall, for the purpose of the clause of which the sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 1.4 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive clause in the body of the Agreement, notwithstanding that it is only contained in this interpretation clause.
- 1.5 If any period is referred to in this Agreement by way of reference to a number of days, the days 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 day shall be the next succeeding Business Day.
- 1.6 The rule of construction that the contract shall be interpreted against the Party responsible for the drafting or preparation of this Agreement, shall not apply.
- 1.7 This Agreement shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa.
- 1.8 Expressions defined in this Agreement shall bear the same meanings in any annexure hereto which does not contain its own definitions.

2 OFFER AND ACCEPTANCE

- 2.1 By the submission of the Application Form, the Client has made an offer to MCA to purchase the Single Package, Monthly Package or Annual Package, as set out in the Application Form and to conclude this Agreement.
- 2.2 The Client shall complete the offer to conclude this Agreement by making payment of the Fees, in accordance with clause 4. Upon receipt of the payment of the Fees, and provided that all information set out in the Application Form is duly completed and all such other information reasonably required by MCA has been submitted, MCA will provide the Client with written confirmation that it accepts its offer to conclude the Agreement.

3 PACKAGES AND DURATION

3.1 Selection of Package

- 3.1.1 Upon acceptance of this Agreement by MCA in accordance with clause 2, MCA will make the Programmes available to the Client with effect from the Commencement Date, on the terms and conditions set out in this Agreement.
- 3.1.2 The Application Form sets out the relevant package which the Client has purchased. Based on the package selected by the Client, the Client will have access to the Programmes as follows –
- 3.1.2.1 if the Client has selected the “Single Package”, the Client will have access to the Programmes selected in the Application Form as follows –
- 3.1.2.1.1 in the event that the Client has selected a Programme designated by MCA as a “Main Course”, the Client will have access to Programme Content for a period of 12 weeks from the Commencement Date; and
- 3.1.2.1.2 in the event that the Client has selected a Programme designated by MCA as a “Short Course”, the Client will have access to Programme Content for a period of 8 weeks from the Commencement Date; and

3.1.2.2 if the Client has selected the Executive Club Membership, the Client will have access to all Programmes for the duration of this Agreement.

3.2 Duration of Monthly Package

3.2.1 If the Client has purchased a Monthly Package, the Client's Executive Club Membership shall commence on the Commencement Date and shall endure for a period of 30 (thirty) days ("**the Initial Period**"), whereafter this Agreement shall be automatically renewed for consecutive periods of 30 (thirty) days ("**the Renewal Period**"), subject to clause 3.2.2.

3.2.2 If a Party does not wish to renew this Agreement for the next Renewal Period, it must give the other Party written notice not later than 7 (seven) days before the end of Initial Period or the Renewal Period, whichever is applicable.

3.3 Duration of Annual Package

3.3.1 If the Client has purchased an Annual Package, this Agreement shall commence on the Commencement Date and shall endure for a period of 12 (twelve) months ("**the Initial Period**"), whereafter this Agreement shall be automatically renewed for consecutive periods of 12 (twelve) months ("**the Renewal Period**"), subject to clause 3.3.2.

3.3.2 If a Party does not wish to renew this Agreement for the next Renewal Period, it must give the other Party written notice not later than 2 (two) months before the end of Initial Period or the Renewal Period, whichever is applicable.

4 FEES AND PAYMENT

4.1 The Client shall make payment to MCA of the Fees in accordance with this clause 3.3.

4.2 The Client shall make payment of the Fees in advance on the submission of the Application Form.

4.3 If this Agreement is to be renewed in terms of clause 3.2.2 or 3.3.1, the Client shall make payment of the Fees in advance on each Renewal Date. If the Client

does not make payment of the Fees on or before the Renewal Date, this Agreement will automatically terminate without further notice.

- 4.4 The Client must send proof of payment to MCA for record purposes, but the payment will only be accepted once the funds are cleared into the MCA Bank Account.
- 4.5 All payments must be made by way of electronic funds transfer of cleared funds into the MCA Bank Account without deduction or set-off.

5 CLIENT'S USERS

- 5.1 MCA shall issue passwords to the Users, provided that the Client has provided MCA with the following information in respect of each User –
 - 5.1.1 full name;
 - 5.1.2 job title; and
 - 5.1.3 email address.
- 5.2 The Client warrants that the information provided in accordance with clause 5.1 is true, accurate and complete and will ensure that the information is kept accurate and up to date at all times.
- 5.3 MCA will provide each User with a username and password to access the Programme Content.
- 5.4 The Client shall ensure that all usernames and passwords are kept confidential and must notify MCA immediately of any unauthorised use of any username or password issued to a User or if the Client believes that any such username and/or password is/are no longer confidential.
- 5.5 MCA reserves the right to restrict the use of any username or password and require a User to alter their issued username and password, if MCA is of the belief that the username and password are no longer secure or for routine security.

5.6 The Client shall be responsible for all actions and omissions of its Users and all actions of Users shall be attributed to the Client.

6 ACCESS TO PROGRAMME CONTENT

6.1 Subject to payment of the Fees, MCA will provide the Client with access to the Programme Content for the duration of this Agreement. The Programme Content will be accessible by means of the MCA Applications.

6.2 MCA shall be entitled to designate different MCA Applications for different Programmes or Programme Content.

6.3 The Client shall be responsible to ensure that the Client's computer is compatible with the minimum specification requirement that relates to the Programme Content.

6.4 The Client is responsible for making back-up copies of all data and taking appropriate precautions against viruses, hacking and other types of computer misuse.

6.5 MCA cannot guarantee uninterrupted or error free access to the MCA Applications and reserves the right to suspend access to the MCA Applications between the scheduled maintenance, of which MCA shall notify the Client.

6.6 In addition to the scheduled maintenance set out in clause 6.5, there may also be occasions when access to the MCA Applications is interrupted for emergency maintenance or repairs or to carry out upgrades to improve the performance or functionality of the MCA Applications and the services offered via the MCA Applications. Access to the MCA Applications may also be interrupted due to failures of telecommunications links and equipment, which are beyond the control of MCA.

6.7 The Client will not have a claim for breach of contract or otherwise in respect of any such period of unavailability and acknowledges that MCA shall not be held responsible for any delay or disruptions that are inherent in the operation of the Internet and the World Wide Web, including viruses.

6.8 The MCA Applications may provide links to third-party websites from time to time. This may include links to sites owned by associated companies of MCA. These

third-party links are provided for the Client's convenience only and are accessed at the Client's own risk. MCA is not responsible in any way for the content of any third-party website or for goods or services provided by the operators of such websites.

7 USE OF PROGRAMME CONTENT

7.1 With effect from the Commencement Date, MCA grants the Client a non-exclusive, non-transferable license to use the Programme Content for the sole purpose of personal user. As such Users may make copies of the Programme Content as necessary or incidental during a User's viewing of the Programme Content, and a User may print for his personal use so many pages of the Programme Content as are reasonable for private purposes.

7.2 Other than in accordance with clause 7.1, the Client warrants that the Client and its Users will –

7.2.1 use any skills or lessons acquired as a result of the participation in a Programme only in the furtherance of lawful purposes; and

7.2.2 not modify, copy, reproduce, re-publish, upload, post, transmit or distribute any of the Programme Content.

7.3 Any use of the Programme Content not expressly permitted in this Agreement is strictly prohibited and will constitute an infringement of MCA intellectual property rights as described in clause 9.

8 QUALITY OF SERVICES

8.1 The Programmes are made available to the Client for the purpose of general leadership training and development.

8.2 The Client acknowledges that MCA has not been given, agreed to or otherwise been made aware of any specific requirements or conditions relating to the use of the Programmes.

8.3 MCA does not warrant that -

- 8.3.1 any Programme will meet any specific requirements that the Client might have;
- 8.3.2 the Client will obtain any particular result from the Client's use of the Programme; or
- 8.3.3 the Client will obtain any particular qualification on completion of the Course.
- 8.4 Other than the stated minimum technical specification, MCA does not make any commitment that the MCA Applications will be compatible with or operate with the Client's software or hardware.
- 8.5 All representations, warranties and/or terms and/or commitments not expressly set out in this Agreement, whether implied by conduct or otherwise, are hereby excluded to the maximum extent permissible at law.

9 INTELLECTUAL PROPERTY

- 9.1 MCA is the owner or authorised licensee of all copyright, trademarks, trade names, brand names, signs, symbols, trade secrets and other intellectual property arising from or relating to the MCA Applications and the Programmes and any derivatives, modifications or alterations thereof ("**MCA Intellectual Property**").
- 9.2 The Client acknowledges that the Client has no rights, whatsoever, in and to MCA Intellectual Property and to use MCA Intellectual Property strictly in accordance with this Agreement and for no other purpose.
- 9.3 The Client shall not to reproduce, copy, post, upload, display, modify, alter or adapt MCA Intellectual Property, or any part thereof, without our prior consent.
- 9.4 For the avoidance of doubt, it is recorded that the Client will not be entitled to use MCA Intellectual Property, whether directly or indirectly, in any way whatsoever, for your own benefit, or the benefit of any other person, other than as specifically provided for in this Agreement.

10 LIMITATION OF LIABILITY

10.1 MCA shall not be liable for any damage or loss of data suffered on a User's computer system, network or server that results from the download or use of the MCA Applications or any materials made available via the MCA Applications.

10.2 MCA shall not be liable to the Client for any of the following types of loss or damage arising out of or in connection with your use of the MCA Applications or any content and/or facilities provided via the MCA Applications –

10.2.1 any loss of profits, loss of earnings, loss of anticipated savings, goodwill or revenue;

10.2.2 any loss or corruption of data; or

10.2.3 any indirect or consequential loss.

10.3 The exclusions and limitations of liability contained in this section do not apply to –

10.3.1 loss or damages arising from MCA's fraudulent misrepresentation; or

10.3.2 any other losses which may not be excluded or limited by law.

10.4 The maximum aggregate liability of MCA to the Client for any claim arising in terms of this Agreement shall be limited to the amount of the Fees already paid by the Client to MCA.

10.5 To the extent permissible in law, the Client hereby indemnifies MCA and holds MCA harmless for any and all claims, demands, loss and expenses suffered and incurred by MCA as a result of the use of the Programmes by the Client and its Users.

11 CLIENT'S RIGHT TO CANCEL THIS AGREEMENT

11.1 If a Client is a natural person who has purchased an Annual Package, the Client shall be entitled to terminate this Agreement at any time on 7 (seven) days'

written notice to MCA, provided that the Client shall be liable to MCA for payment of the following –

- 11.1.1 a portion of the Fees pro-rated to the number of months from the Commencement Date or the Renewal Date, as the case may be, to the date of cancellation; and
- 11.1.2 a cancellation fee equal to 10% of the Fees.
- 11.2 The cancellation of this Agreement shall become effective on the expiry of the cancellation notice delivered to MCA in terms of clause 11.1.
- 11.3 The balance of the Fees paid by the Client for the relevant period of this Agreement will be reimbursed after deduction of the amounts referred to in clause 11.1.

12 OUR RIGHT TO CANCEL THIS AGREEMENT

If you fail to comply with any of the provisions of this Agreement, without prejudice to any other rights which it may have, MCA will be entitled to –

- 12.1 suspend your access to the Programme Content and/or the MCA Applications immediately, with or without notice to you; and/or
- 12.2 terminate this Agreement, if you continue to fail to comply with this Agreement despite having received 7 (seven) days' written notice to do so.

13 CESSION AND ASSIGNMENT

No Party shall be entitled to cede, assign or delegate any of his rights and/or obligations in terms of or arising from this Agreement to any third party without the prior written consent of the other Party.

14 JURISDICTION

The Parties consent to the jurisdiction of the High Court of South Africa in respect of any legal proceedings in terms of this Agreement, provided that it shall be entirely within the discretion of MCA as to whether to institute proceedings in any other court of competent jurisdiction.