

Fraxion (Pty) Ltd

WEBSITE TERMS AND CONDITIONS

These Terms and Conditions are binding and enforceable against all persons that access the Fraxion (Pty) Ltd web site or any part thereof (the Fraxion (Pty) Ltd web site) in terms of section 11(3) of the Electronic Communications and Transactions (ECT) Act 26 of 2002.

If you do not agree to these terms and conditions you must leave the Fraxion (Pty) Ltd web site immediately, as further use will automatically bind you to these terms and conditions.

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DEFINITIONS AND INTERPRETATION

- a) "Fraxion (Pty) Ltd" means Fraxion (Pty) Ltd, a company duly registered in terms of the companies laws of South Africa;
- b) "Fraxion (Pty) Ltd web site" means the Fraxion (Pty) Ltd web site located at www.spendmanagement.com, www.fraxionsoftware.com, www.fraxion.co.za, www.fraxion.biz and www.fraxionsolutions.com.
- c) "User" means any person who enters or uses the Fraxion (Pty) Ltd web site, notwithstanding the fact that such a person only visited the home page of the Fraxion (Pty) Ltd web site;
- d) References herein to the singular include the plural and vice versa; and
- e) Notwithstanding the fact that hyperlinks in these terms and conditions to copyright notices and legislation should be deemed part of these terms and conditions in terms of section 11 of the ECT Act, the fact that some or all of the hyperlinks may be non-operational, shall not play a role in determination of the validity and interpretation of these terms and conditions.

1 GENERAL

1.1 Fraxion (Pty) Ltd is a software development, licensing and related professional services company.

2 ALLOWED USE AND LICENSE

2.1 Fraxion (Pty) Ltd licenses the User to view, download and print the content of the Fraxion (Pty) Ltd web site, provided that such content is used for personal, educational and/or non-commercial purposes only;

2.2 Content from the Fraxion (Pty) Ltd web site shall not be used or exploited by Users for any commercial and non-private purposes without the prior written consent of Fraxion (Pty) Ltd;

2.3 Users may only access and use the Fraxion (Pty) Ltd web site for legal purposes;

2.4 The caching of the Fraxion (Pty) Ltd web site shall only be allowed if:

2.4.1 The purpose of the caching is to make the onward transmission of the content from the Fraxion (Pty) Ltd web site more efficient;

2.4.2 The cached content is not modified in any manner whatsoever;

2.4.3 The cached content is updated at least every 12 (twelve) hours; and

2.4.4 The cached content is removed or updated when so required by Fraxion (Pty) Ltd;

2.5 If any User uses content from the Fraxion (Pty) Ltd web site in breach of the provisions detailed herein:

2.5.1 Fraxion (Pty) Ltd reserves the right to claim damages from the User;

2.5.2 Fraxion (Pty) Ltd reserves the right to institute criminal proceedings against the User; and

2.5.3 Fraxion (Pty) Ltd shall not be liable, in any manner whatsoever, for any damage, loss or liability that resulted from the use of such content by the User or any third party who obtained any content from the User;

2.6 Hyperlinks to the Fraxion (Pty) Ltd web site from any other source shall be directed at the home page of the Fraxion (Pty) Ltd web site. Fraxion (Pty) Ltd shall not be liable, in any manner whatsoever, for any damage, loss or liability that resulted from the use of content from the Fraxion (Pty) Ltd web site, if such content was accessed through a hyperlink not directed at the home page of the Fraxion (Pty) Ltd web site. Persons that wish to link to content beyond the home page of the Fraxion (Pty) Ltd web site shall do so at their own risk and indemnify Fraxion (Pty) Ltd against any loss, liability or damage that may result from the use of content from the Fraxion (Pty) Ltd web site, if such content was accessed through a hyperlink not directed at the home page of the Fraxion (Pty) Ltd web site;

2.7 No person may frame the Fraxion (Pty) Ltd web site, in any manner whatsoever, without the prior written consent of Fraxion (Pty) Ltd;

2.8 Apart from bona-fide search engine operators and use of the search facility provided on the Fraxion (Pty) Ltd web site by Users, no person may use or attempt to use any technology or applications (including web crawlers or web spiders) to search or copy content from the Fraxion (Pty) Ltd web site for any purposes, without the prior written consent of Fraxion (Pty) Ltd; and

2.9 All licenses and/or permissions granted in terms of this clause 2 are provided on a non-exclusive and non-transferable basis and may be terminated or cancelled by Fraxion (Pty) Ltd at any time without giving reasons therefore.

Access to the services, content, software and content downloads available from the Fraxion (Pty) Ltd web site is classified as "electronic transactions" in terms of the ECT Act and therefore Users have the rights detailed in Chapter 7 of the ECT Act and Fraxion (Pty) Ltd has the duty to disclose the following information:

3. INTELLECTUAL PROPERTY RIGHTS AND DOMAIN NAME USE

All intellectual property on the Fraxion (Pty) Ltd web site, including but not limited to content, trademarks, domain names, patents, design elements, software, databases, text, graphics, icons and hyperlinks are the property of or licensed to Fraxion (Pty) Ltd and as such, are protected from infringement by domestic and international legislation and treaties. Subject to the rights licensed to the User in clause 2, all other rights to intellectual property on the Fraxion (Pty) Ltd web site are expressly reserved.

4. SOFTWARE AND EQUIPMENT

It is the responsibility of the User to acquire and maintain, at his/her own expense, the computer hardware, software, lines and access accounts required to access the Internet and the Fraxion (Pty) Ltd web site and/or download content from this web site.

5. DISCLOSURES REQUIRED BY SECTION 43 OF THE ECT ACT

5.1 The full name and legal status of the web site owner: Fraxion (Pty) Ltd,

Reg. No. 2000/026408/07;

5.2 VAT registration number: 4900191257;

5.3 Street address:

5.3.1 102 Mariendahl House, Newlands on Main, Newlands, Cape Town, South Africa; and

5.3.2 Unit L3, Pinewood Square, Pinewood Office Square, 33 Riley Road, Woodmead, South Africa.

5.4 Postal address:

5.4.1 PO Box 23889, Claremont, 7735;

5.5 Physical address for receipt of legal service: see clause 5.3.1 above;

5.6 Main business: Fraxion (Pty) Ltd is a software development, licensing and related professional services company;

5.7 The web site address of the Fraxion (Pty) Ltd web site is: www.spendmanagement.com;

5.8 The official e-mail address of the Fraxion (Pty) Ltd web site is: info@fraxion.biz;

5.9 Membership of self-regulatory or accreditation bodies: Licencing Executives Society;

5.10 Codes of conduct to which the Fraxion (Pty) Ltd web site subscribes: Code of Conduct and Code of IT Ethics

5.12 Copies of the Manual published in terms of section 51 of the Promotion of Access to Information Act 2 of 2000

5.13 Management: Managing Director: Stanton Jandrell (SA);

5.14 The costs associated with the access and use of the Fraxion (Pty) Ltd web site are as follows: Free;

5.15 Alternative dispute resolution: Subject to urgent and/or interim relief, all disputes regarding:

5.15.1 access to the Fraxion (Pty) Ltd web site;

5.15.2 the inability to access the Fraxion (Pty) Ltd web site;

5.15.3 the services and content available from the Fraxion (Pty) Ltd web site; or

5.15.4 these terms and conditions,

shall be referred to arbitration in terms of the expedited rules of the Arbitration Foundation of South Africa and such arbitration proceedings shall be conducted in Cape Town in English. The arbitration ruling shall be final and the unsuccessful party shall pay the costs of the successful party on a scale as between attorney and own client.

5.16 Cooling-off period: In terms of the operation of section 42(1)(d) of the ECT Act, the cooling-off provisions of the ECT Act do not apply to this web site; and

5.17 Users may lodge complaints concerning the Fraxion (Pty) Ltd web site through the "Contact Us" service provided on this web site. Users hereby assign the copyright in such complaints to Fraxion (Pty) Ltd and understand that Fraxion (Pty) Ltd may use disclose and publish such complaints and is furthermore under no legal duty to answer, resolve or address such complaints.

6. CHANGES AND AMENDMENTS

Fraxion (Pty) Ltd expressly reserves the right, in its sole and absolute discretion, to do any of the following, at any time without prior notice:

6.1 change these terms and conditions;

6.2 change the content and/or services available from the Fraxion (Pty) Ltd web site;

6.3 discontinue any aspect of the Fraxion (Pty) Ltd web site or service(s) available from the Fraxion (Pty) Ltd web site; and/or

6.4 change the software and hardware required to access and use the Fraxion (Pty) Ltd web site.

7. PRIVACY

7.1 Fraxion (Pty) Ltd shall take all reasonable steps to protect the personal information of Users and for the purpose of this clause, "personal information" shall be defined as detailed in the Promotion of Access to Information Act 2 of 2000 (PAIA);

7.2 Fraxion (Pty) Ltd may electronically collect, store and use, amongst other, the following personal information of Users:

7.2.1 name and surname;

7.2.2 contact details;

7.2.3 non-personal browsing habits and click patterns;

7.2.4 e-mail address; and

7.2.5 IP address.

7.3 Fraxion (Pty) Ltd collects, stores and uses the abovementioned information for the following purposes:

7.3.1 communicate requested information to the User;

7.3.2 newsletter database;

7.3.3 registration and / or authentication of Users; and

7.3.4 to compile non-personal statistical information about browsing habits, click-patterns and access to the Fraxion (Pty) Ltd web site.

7.4 Information detailed above is collected either electronically by using cookies or is provided voluntarily by the User. Users may determine cookie use independently through their browser settings;

7.5 Fraxion (Pty) Ltd may collect, maintain, save, compile, share, disclose and sell any information collected from users, subject to the following provisions:

7.5.1 Fraxion (Pty) Ltd shall not disclose personal information from Users unless the User consents thereto;

7.5.2 Fraxion (Pty) Ltd shall disclose information without the User's consent only through due legal process; and

7.5.3 Fraxion (Pty) Ltd may compile, use and share any information that does not relate to any specific individual; and

7.6 Fraxion (Pty) Ltd owns and retains all rights to non-personal statistical information collected and compiled by Fraxion (Pty) Ltd

8. HYPERLINKS TO THIRD PARTY SITES

8.1 Fraxion (Pty) Ltd may provide hyperlinks to web sites not controlled by Fraxion (Pty) Ltd (target sites) and such links do not imply any endorsement, agreement on or support for the content of such target sites; and

8.2 Fraxion (Pty) Ltd does not editorially control the content on such target sites and shall not be liable, in any manner whatsoever, for the access to, inability to access or content available on or through such target sites.

9. SECURITY

9.1 Fraxion (Pty) Ltd shall take all reasonable steps to secure the content of the Fraxion (Pty) Ltd web site and the information provided by and collected from Users from unauthorised access and/or disclosure. However, Fraxion (Pty) Ltd does not make any warranties or representations that content shall be 100% safe and secure;

9.2 Fraxion (Pty) Ltd is under no legal duty to encrypt any content or communications from and to the Fraxion (Pty) Ltd web site and is also under no legal duty to provide digital authentication of any page on the Fraxion (Pty) Ltd web site;

9.3 Users may not deliver or attempt to deliver, whether on purpose or negligently, any damaging code, such as computer viruses, to the Fraxion (Pty) Ltd web site or the server and computer network that support the Fraxion (Pty) Ltd web site.

Notwithstanding criminal prosecution, any person who delivers any damaging code to the Fraxion (Pty) Ltd web site, whether on purpose or negligently, shall, without any limitation, indemnify and hold Fraxion (Pty) Ltd harmless against any and all liability, damages and losses Fraxion (Pty) Ltd and its partners / affiliates may suffer as a result of such damaging code;

9.4 Users may not develop, distribute or use any device to breach or overcome the security measures of the Fraxion (Pty) Ltd web site and Fraxion (Pty) Ltd reserves the right to claim damages any and all persons concerned with a security failure or breach; and

9.5 Any User who commits any of the offences detailed in sections 85 to 88 of the ECT Act shall, notwithstanding criminal prosecution, be liable for all resulting liability, loss or damages suffered and/or incurred by Fraxion (Pty) Ltd and its partners / affiliates.

10. DISCLAIMER AND LIMITATION OF LIABILITY

10.1 Subject to the provisions of sections 43(5) and 43(6) of the ECT Act, if applicable, and as far as allowed by law, Fraxion (Pty) Ltd (including its owners, directors, employees, suppliers, Internet service providers, partners, affiliates and agents) shall not be liable for any damage, loss or liability of any nature incurred by whomever and resulting from:

10.1.1 access to the Fraxion (Pty) Ltd web site;

10.1.2 access to web sites linked to the Fraxion (Pty) Ltd web site;

10.1.3 inability to access the Fraxion (Pty) Ltd web site;

10.1.4 inability to access web sites linked to the Fraxion (Pty) Ltd web site;

10.1.5 content available on the Fraxion (Pty) Ltd web site;

10.1.6 services available from the Fraxion (Pty) Ltd web site;

10.1.7 downloads and use of content from the Fraxion (Pty) Ltd web site;

10.1.8 any other reason not directly related to Fraxion (Pty) Ltd's gross negligence.

10.2 The Fraxion (Pty) Ltd web site is supplied on an "as is" basis and has not been compiled to meet the Users individual requirements. It is the responsibility of the User to satisfy himself or herself, prior to entering into this agreement with Fraxion (Pty) Ltd, that the content available from and through the Fraxion (Pty) Ltd web site meet the Users individual requirements and is compatible with the Users computer hardware and/or software;

10.3 Information, ideas and opinions expressed on the Fraxion (Pty) Ltd web site should not be regarded as professional advice or the official opinion of Fraxion (Pty) Ltd and Users are encouraged to seek professional advice before taking any course of action related to the information, ideas or opinions expressed on the Fraxion (Pty) Ltd web site;

10.4 Fraxion (Pty) Ltd does not make any warranties or representation that content and services available from the Fraxion (Pty) Ltd web site will in all cases be true, correct or free from any errors. Fraxion (Pty) Ltd shall take all reasonable steps to ensure the quality and accuracy of content available from the Fraxion (Pty) Ltd web site and encourage Users to report incorrect and untrue information subject to the right of Fraxion (Pty) Ltd to rely on its free expression rights and determine, in its sole and absolute discretion, the contents of this web site; and

10.5 Fraxion (Pty) Ltd does not make any warranties or representations that the Fraxion (Pty) Ltd web site shall be available at all times. Users acknowledge that the Fraxion (Pty) Ltd web site may be unavailable due to updates or other causes beyond the reasonable control of Fraxion (Pty) Ltd, including, but not limited to virus infection, unauthorised access, power failure or other "acts of God."

11. REMOVAL AND CORRECTION OF CONTENT

Users are encouraged to report untrue, inaccurate, defamatory, illegal, infringing and/or harmful content available from the Fraxion (Pty) Ltd web site to Fraxion (Pty) Ltd and Fraxion (Pty) Ltd undertakes to correct and/or remove such content or any part thereof if the person reporting such content provided reasonable grounds to prove the alleged nature of the content.

12. INTERCEPTION OF COMMUNICATIONS

12.1 Subject to the provisions of the Regulation of Interception of Communications (RIO) Act 70 of 2002, the User agrees to Fraxion (Pty) Ltd's right to intercept, block, filter, read, delete, disclose and use all communications sent or posted by the User to the Fraxion (Pty) Ltd web site, its staff and employees; and

12.2 The User agrees and acknowledges that the consent provided by the User in clause 12.1 satisfies the "writing" requirement as detailed in the ECT Act and the RIO Act.

13. ENTIRE AGREEMENT AND SEVERABILITY

13.1 These terms and conditions constitute the entire agreement between Fraxion (Pty) Ltd and the User and shall take precedent over any disclaimers and/or legal notices attached to any communications and/or postings received by Fraxion (Pty) Ltd from the User;

13.2 Any failure by Fraxion (Pty) Ltd to exercise or enforce any right or provision shall in no way constitute a waiver of such right or provision; and

13.3 In the event that any term or condition detailed herein is found unenforceable or invalid for any reason, such term(s) or condition(s) shall be severable from the remaining terms and conditions. The remaining terms and conditions shall remain enforceable and applicable.

14. AGREEMENT IN TERMS OF SECTION 21 OF THE ECT ACT

The User and Fraxion (Pty) Ltd agree that:

14.1 the User shall be bound to these term and conditions and such agreement is concluded in Cape Town (South Africa) at the time the User enters the Fraxion (Pty) Ltd web site for the first time;

14.2 data messages (as defined in the ECT Act) addressed by the User to Fraxion (Pty) Ltd shall only be deemed to have been received if and when responded to;

14.3 data messages (as defined in the ECT Act) addressed to the User by Fraxion (Pty) Ltd shall be deemed to be received by the User as detailed in section 23(b) of the ECT Act;

14.4 data messages (as defined in the ECT Act) addressed by the User to Fraxion (Pty) Ltd shall be deemed to have been created and sent by the User from within the geographical boundaries of South Africa;

14.5 electronic signatures, encryption and/or authentication is not required for valid electronic communications between the User and Fraxion (Pty) Ltd; and

14.6 The User agrees and warrants that data messages that are sent to Fraxion (Pty) Ltd from a computer, IP address or mobile device normally used by or owned by the User, was sent and/or authorised by the User personally.

15. APPLICABLE AND GOVERNING LAW

Subject to clause 5.15, the Fraxion (Pty) Ltd web site is hosted, controlled and operated from the Republic of South Africa and therefore the South African law enforced by the South African courts governs the use or inability to use the Fraxion (Pty) Ltd web site, its content, services and these terms and conditions.

16. LEGAL COSTS

Fraxion (Pty) Ltd shall not be liable for costs incurred by Users to obtain professional advice relating to these terms and conditions.

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