

MyOMinsure

GENERAL TERMS AND CONDITIONS

OLD MUTUAL INSURE LIMITED AND ABC CONTRACTING PARTY

DO GREAT THINGS



**OLD MUTUAL
INSURE**

WHEREBY THE PARTIES AGREE AS FOLLOWS:**1. INTERPRETATION**

In this Agreement and in the annexures to this Agreement, clause headings are for convenience only and are not to be used in its interpretation.

An expression which denotes:

- any gender includes the other genders;
- a natural person includes a juristic person and *vice versa*;
- the singular includes the plural and *vice versa*;

- 1.1 Any substantive provision conferring rights or imposing obligations on any party in the Interpretation clause shall be given effect to as if it were a substantive provision in the body of the Agreement.
- 1.2 Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.
- 1.3 “**MyOMinsure**” means the Old Mutual Insure web-based broker enquiry, quote, claims notification and processing system.
- 1.4 Reference to months or years shall be construed as calendar months or years.
- 1.5 No provision herein shall be construed against or interpreted to the disadvantage of any party by reason of such party having or being deemed to have structured, drafted or introduced such provision.
- 1.6 The eiusdem generis rule shall not apply and whenever the term "including" is used followed by specific examples, such examples shall not be construed so as to limit the meaning of that term.
- 1.7 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a Saturday, Sunday or public holiday, the next succeeding business day.
- 1.8 A reference to any statutory enactment shall be construed as a reference to that enactment as at the signature date and as amended or re-enacted from time to time.
- 1.9 Unless specifically otherwise provided, all amounts in this Agreement are inclusive of value-added tax.
- 1.10 This Agreement together with any documents, annexures or references to other terms and conditions referred to in this Agreement constitutes the entire Agreement (“the Agreement”) between the parties relating to the subject matter of this Agreement and supersedes all previous such Agreements.

2. DURATION AND TERM

This Agreement shall, notwithstanding the date of signature hereof, be deemed to commence on the effective date, where after the Agreement shall continue for 12 months, subject to the right of either party to terminate this Agreement on giving not less than 3 (three) months prior written notice of termination.

Such termination shall only be effected once policyholders have received the notice and disclosures required by legislation.

The effective date is _____.

3. AUDIT AND MONITORING

Old Mutual Insure will undertake audit and monitoring on an annual basis but may at any time, on reasonable notice to the Contracting Party, do an inspection (including, but not limited to complete access to all data, records and policies relating to this Agreement) should reasonable risk management require such intervention. The Contracting Party undertakes and agrees to provide promptly to Old Mutual Insure all files, information and documentation reasonably requested for auditing or monitoring purposes on any policy or service falling within the Agreement including SASRIA covers and allow Old Mutual Insure to have access to any information held relative to those files.

The Contracting Party shall make all documentation that relates to the services in terms of this Agreement available to the regulator where such request is received from the regulator.

4. ANTI-BRIBERY AND CORRUPTION

Old Mutual Insure (as part of the Old Mutual Group) and their Associates are required to comply with the UK Bribery Act 2010 (the Act). The Act defines Associates as “any person who performs services on behalf of Old Mutual Insure”. A ‘person’ can be an individual, incorporated or unincorporated body. The definition includes employees, as well as those external to the Group that perform work on Old Mutual Insure’s behalf including agents, brokers, intermediaries, advisers, lobbyists, consultants and suppliers. The Contracting Party is considered an Associate in terms of this Act.

In addition to compliance with local laws, rules and regulations the Contracting Party must comply with anti-bribery and anti-corruption laws, and must not cause Old Mutual Insure (including the parent company Old Mutual plc) to breach any of these laws.

Old Mutual Insure has adopted Anti-Bribery and Corruption Policy and a Code of Conduct that complies with the above Act. These prescribe the manner in which Old Mutual Insure conducts its business that is built on values and ethics. It is Old Mutual Insure’s responsibility to advise the Contracting Party of the contents of the Policy and Code.

In order to maintain healthy, sustainable business relationships and to ensure that Old Mutual Insure’s values and ethics are aligned, the Contracting Party is expected:

- 4.1 Not to engage in bribery and corruption practices;
- 4.2 To understand the exposure to bribery through risk assessments including the risk posed by the external environment;
- 4.3 To ensure that gifts, entertainment and corporate hospitality are reasonable in the context of the business relationship in question, not excessive and only provided to Old Mutual Insure staff members with the express written permission of Old Mutual Insure’s management;
- 4.4 To ensure that the FAIS conflicts of interest requirements set out in the FAIS General Code of Conduct are met and disclosed in appropriate registers and disclosures; and
- 4.5 To communicate these requirements to appropriate employees of the Contracting Party.

5. BUSINESS CONTINUITY

Data means all data, databases, documents, information, graphics, text or other material in an electronic or tangible medium which Old Mutual Insure generates, collects, processes, stores or transmits in relation to the business.

Disaster means an event which causes a material part of the services to be unavailable or which

prevents a material part of the services from being supplied in accordance with the service levels and other terms set out in this Agreement.

- 5.1 The Contracting Party will maintain and comply with a business Continuity Plan and procedures which adequately protect against the destruction, loss or alteration of Data, (including other materials and records used in the provision of the services), business rescue, curatorship or insolvency which adequately ensure the continuity of the services (the **Continuity Plan**);
- 5.2 In the event the Contracting Party does not have a business Continuity Plan it shall establish such a plan as soon as possible following the date of this Agreement;
- 5.3 The Contracting Party shall notify Old Mutual Insure if the Contracting Party believes a Disaster (an event that has the potential to compromise Old Mutual Insure's capacity to operate) has or is likely to occur. On the occurrence of a Disaster the Contracting Party shall immediately implement the continuity plan. The costs of rectifying any Disaster shall be borne solely by the Contracting Party;
- 5.4 The Contracting Party shall update and keep the Continuity Plan under review to ensure it continues to comply with all applicable codes of practice, standard operating codes, laws, regulations, regulatory requirements, statutory requirements and/or guidelines of any local regulatory authority or other body; and
- 5.5 The Contracting Party will permit Old Mutual Insure access to monitor the compliance with the Continuity Plan.

6. MEETINGS

Regular meetings will take place at a date and time suitable to both parties in order to review the performance of the Contracting Party and to reinforce the relationship between Old Mutual Insure and the Contracting Party. Performance reviews will take place at least annually at renewal stage.

7. RIGHTS, OBLIGATIONS AND SERVICE LEVELS OF THE PARTIES

- 7.1 The services agreed to are as follows:

SERVICE TYPE	ANNEXURE
Outsourced Policy Administration	B

- 7.2 Old Mutual Insure's best practice guidelines, parameters, prescribed formats and service levels form part of this Agreement.
- 7.3 The Contracting Party shall provide data in a format that is acceptable to Old Mutual Insure. Alignment to ACCORD Standards will be required. These requirements will be provided to the Contracting Party once these have been finalised at an industry level. The Contracting Party will be expected to implement these requirements within a reasonable timeframe as agreed to between the parties

8. FEES AND RENUMERATION

- 8.1 No fees are payable for the performance of the services in terms of this agreement.
- 8.2 All outsourced services must be disclosed by the Contracting Party to policyholders as follows: "The Financial Services Provider performs outsourced services on behalf of Old Mutual Insure. This does not increase the cost of your insurance".

9. PROPRIETARY RIGHTS

Copyright and all other Intellectual Property Rights embodied in **MYOMINSURE** and flowing from any further development thereof vests in Old Mutual Insure. Co-branding or use of any of the components of the Corporate Identity of Old Mutual Insure (including but not limited to the logo, strapline or colour) must be approved in writing by the Marketing Division of Old Mutual Insure and must be in line with the Corporate Identity guideline.

10. NON DISCLOSURE

The parties to the Agreement agree to the terms and conditions set out in the Non-Disclosure Agreement attached hereto called **ANNEXURE A**.

11. NON SOLICITATION

Neither of the parties shall, at any stage after the commencement of this Agreement and for a period of 2 (two) years after this Agreement has terminated, make any offers of employment to any staff member, who is or has been employed by the other and/or has been involved in the execution of this Agreement. This clause shall not be applicable where prior written approval to make such an offer has been obtained from the party who is or has been the employer of such staff member. For the purpose of this clause "staff member" shall include but not limited to permanent employees, part-time employees and independent contractors.

12. BREACH

Without prejudice to its rights which it may have under this Agreement or in law any party may immediately terminate this Agreement by notice in writing to the other if:

- 12.1 An order has been made by any Court of competent jurisdiction or effective resolution has been passed for business rescue or winding-up of a party or if a party has effected or offered to effect any compromise or arrangement with its creditors generally;
- 12.2 Execution in pursuance of any judgement of any competent Court shall have been levied or enforced upon the assets of a party and not paid or satisfied within 7 calendar days;
- 12.3 A party shall have ceased or threatened to cease to carry on business or sold the whole or major part of its undertaking;
- 12.4 The Contracting Party breaches the Underwriting Guidelines;
- 12.5 The Contracting Party breaches the provisions of the Non-disclosure Agreement; and
- 12.6 There has been a material breach of this Agreement by the other party.

13. DISPUTE RESOLUTION

- 13.1 The parties shall initially attempt in good faith to promptly resolve any dispute arising out of or relating to the Agreement through negotiations between their designated persons. The

designated persons (or their representatives) must meet and discuss the matter as soon as practicable after the matter is referred to them and, in any event, within 10 (ten) days of the referral.

- 13.2 If the parties should reach an Agreement then a memorandum setting forth such Agreement shall be prepared and signed by the parties, which shall be binding upon the parties.
- 13.3 If the dispute is not resolved within 10 (ten) days of the referral either party shall be entitled to take the appropriate legal action necessary to resolve the dispute.
- 13.4 Notwithstanding anything to the contrary contained in this clause, either party shall be entitled to apply for urgent relief from any court with competent jurisdiction.

14. GOVERNING LAW & JURISDICTION

All disputes between the parties arising out of the Agreement shall be governed by the Laws of the Republic of South Africa.

15. PUBLICITY

The Contracting Party shall not give any publicity to this Agreement or use Old Mutual Insure's name in publicity releases, advertising, and internet content or for other promotional purposes, without securing the prior written approval of Old Mutual Insure's Marketing Division.

16. INDEMNITY

The Contracting Party indemnifies Old Mutual Insure for any loss or damage of whatsoever nature arising out of or in connection with or as a consequence of the services provided by the Contracting Party or as a result of the Contracting Party exceeding its mandate or failing to carry out its obligations in terms of this Agreement.

1. PROFESSIONAL INDEMNITY INSURANCE

The Contracting Party shall at all times have valid and paid-up professional indemnity insurance in respect of any claim Old Mutual Insure may have against the Contracting Party for damages resulting from any breach of this Agreement. The Contracting Party shall furnish proof of such insurance on demand, as well as proof of the extent of professional indemnity cover.

2. RISK MANAGEMENT

The Contracting Party warrants that it has appropriate governance, risk management, internal controls and information technology systems in place to render the services under the Agreement and that it adheres to all applicable regulatory requirements. Old Mutual Insure shall be entitled to monitor adherence to such laws by the Contracting Party as far as it relates to the provision of contracted services.

3. GENERAL

- 19.1 No variation of the Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.
- 19.2 The failure to exercise or delay in exercising a right or remedy under the Agreement shall not constitute a waiver of the right or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

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- 19.3 Neither party shall cede, assign, delegate or transfer any of its rights or obligations under this Agreement without the prior written consent of the other party. Such consent shall not be unreasonably withheld or delayed.
 - 19.4 If any terms of this Agreement on the terms and conditions referred to in this Agreement are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining terms.
 - 19.5 The "mode of dispatch" selected for client communications will be adhered to unless it is not in the interest of fairness or protection of the client.
 - 19.6 Force Majeure: In the event that either party is unable to perform any obligation hereunder due to any circumstance beyond its control including the action, intervention or decree of any government and such circumstances are not caused by the fault of either party, and continue for a period of at least 60 (sixty) days, either party may terminate this Agreement by means of a written notice to the other party.
 - 19.7 The parties agree that the contents of this agreement shall be held confidential and save as required by law, neither party may make any disclosure in respect of this agreement or the terms and conditions contemplated herein, without the prior written consent of the other party.

4. DOMICILIUM

The parties hereto chose domicilia citandi et executandi for all purposes of and in connection with this Agreement as follows:

Old Mutual Insure: 75 President Street
 Johannesburg
 2001

The Contracting Party:
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.....

Either party hereto shall be entitled to change its domicilium from time to time, provided that any new domicilium selected by it shall be situated in the Republic of South Africa, shall be an address other than a box number and any such change shall only be effective upon receipt of notice in writing by the other party of such change.

A notice sent by one party to another party shall be deemed to be received:

- 20.1 On the same day, if delivered by hand;
- 20.2 On the same day, if sent by email or facsimile (provided the original is immediately posted by prepaid registered mail); and
- 20.3 On the seventh day after posting by prepaid registered mail.

SIGNED AT _____ ON _____ 20____

Witness

For and on behalf of

Old Mutual Insure

She/He being duly authorised

Delegated Authority Date:

Witness

Name:

Designation:

SIGNED AT _____ ON _____ 20____

Witness

For and on behalf of the **Contracting Party**

She/He being duly authorised

Witness

Name:

Designation:

ANNEXURE A - NON DISCLOSURE**1. GENERAL**

- 1.1 The parties are investigating the possibility of concluding a transaction, or have entered into an Agreement, and the parties envisage that as a consequence of same Confidential Information of each party will be disclosed to the other party. The disclosure of the Confidential Information is to be regulated by the terms and conditions below.
- 1.2 For the purposes of this Confidentiality Undertaking, Confidential Information shall mean and include:
information about hardware, software, screens, specifications, designs, plans, drawings, data, prototypes, discoveries, research, developments, methods, processes, procedures, improvements, "know-how", compilations, market research, marketing techniques and plans, business plans and strategies, customer names and other information related to the customer, price lists, pricing policies and financial information or other business and/or technical information and materials, in oral, demonstrative, written, graphic or machine-readable form and other material or information of whatever description in which either party has an interest in it being kept confidential which is unpublished, not available to the general public or trade, not known by others and which is maintained as confidential and proprietary information by the disclosing party for regulatory, customer relations, competitive and for any other valid reason. The parties to the Agreement shall hold in confidence all Confidential Information received from each other and not divulge the Confidential Information to any person or entity, including any of its employees, save for employees, sub-contractors, contractors and customers directly involved with the execution of any tasks assigned to such party.
- 1.3 The parties shall take all such steps that may be reasonably necessary to prevent the Confidential Information falling into the hands of an unauthorised third party.
- 1.4 The parties shall not make use of the Confidential Information other than for the purpose of delivering on the terms of the Agreement between the parties.
- 1.5 The parties shall not use or attempt to use the Confidential Information in any manner which will cause or be likely to cause injury or loss to either party.

The parties agree that they will, as far as it is reasonably possible, and upon request by the other party to take such steps as the other party may require to, enforce the Confidentiality executed pursuant to this Confidentiality Undertaking including without limitation, the initiation and prosecution of any legal proceedings and the enforcement of any judgment obtained. All such steps shall be taken as expeditiously as possible. The costs of such enforcement shall be borne by the party initiating such steps except where a Court of law or Arbitration tribunal holds otherwise.

1. EXCEPTIONS

It is recorded that the following will, for the purposes of this Undertaking, not be considered Confidential Information:

- 1.1 Information known to either the parties prior to the date that it was received from the other party;
- 1.2 Information known to the public or generally available to the public prior to that date that it was disclosed by either of the parties to the other;
- 1.3 Information which becomes known to the public or becomes generally available to the public subsequent to the date that it was disclosed by either of the parties to the other, through no act or failure to act on the part of the recipient of such information;

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- 1.4 Information which either of the parties, in writing, authorises the other to disclose;
 - 1.5 Information the parties are compelled to disclose in terms of a Court Order or in terms of any Legislation and or law;
 - 1.6 This Clause does not however create an obligation to disclose information in terms of the Access to Information Act, No. 2 of 2000, as amended in cases where the parties are in terms of the above Act entitled to withhold disclosure of information and or records;
 - 1.7 Information received from a third party having no obligation of Confidentiality to the party disclosing the information; and
 - 1.8 Information independently developed by one of the parties.

In the event that information is required to be disclosed pursuant to Clause 2.5, the party required to make disclosure shall notify the other to allow that party to assert whatever exclusions or exemptions may be available to it under any law or regulation.

2. INDEMNITY

The Contracting Party indemnifies Old Mutual Insure for any loss or damage of whatsoever nature arising out of or in connection with the services provided by the Contracting Party or as a result of the Contracting Party exceeding its mandate or failing to carry out its obligations in terms of this Agreement. The Contracting Party indemnifies Old Mutual Insure against all liability in respect of claims made against it in consequence of any such matter as referred to in this clause.

3. ENFORCEMENT, DURATION AND EXTENSION

Insofar as it may be necessary the parties agree to ensure that any other party, contractor, agent and employee who may have access to the Confidential Information will also be bound by the provisions of this Confidentiality Undertaking. Should any party ("Defaulting Party") commit a breach of any of the provisions of this Agreement, then the other party ("Aggrieved Party") shall be entitled to, in addition to any other common law or statutory remedies it may have:

- 1. Bring an application in any court of competent jurisdiction, whether on an urgent basis or not, for the granting of an interdict against the Defaulting Party to prevent any further breach of the terms of this Agreement;
- 2. Claim specific performance from the Defaulting Party of all the Defaulting Party's obligations whether or not the due date for performance has arrived; and
- 3. In either event and subject to clause 5.2, recover such damages as it may have sustained.

Upon termination of this Agreement for any reason whatsoever, or when the Confidential Information in question is no longer required the parties, when requested shall promptly return or destroy (or delete in the case of any Confidential Information contained in any electronic retrieval system or data base) all notes, memoranda, correspondence, documents or other records containing or comprising any part of the Confidential Information, including all copies thereof, then in such party's possession. Each party shall confirm in writing to the other party that it has complied with this clause.

The provisions of this Agreement shall survive termination of this Agreement and any task assigned to the parties.

4. DATA PROTECTION AND PRIVACY

- 4.1 The parties agree that the parties may obtain personal data during the duration of the Agreement and may further process it.
- 4.2 The parties agree that the parties will only further process data for the express purpose for which it was obtained.
- 4.3 The parties agree that the parties will destroy data after it has been processed so that it cannot be reconstructed to its original form.
- 4.4 The parties agree that they have appropriate security measures currently available to protect the information and have put in place those technical and organisational measures that it considers provide appropriate security.
- 4.5 The Contracting Party will:
 - 4.5.1 Ensure that all username and passwords is securely delivered to the relevant employee;
 - 4.5.2 Ensure that each of its employees maintains the security and confidentiality of their username and password and, in particular, does not allow any other person to use their username or password and does not commit their password to writing in any way; and
 - 4.5.3 The Contracting Party shall notify M&F immediately if it believes that any of its employees' user names or passwords have been misused or compromised in any manner and shall take all reasonable precautions to detect any unauthorised acquisition or use of the same.

5. ELECTRONIC COMMUNICATIONS AND DATA TRANSFERS

- 5.1 The Contracting Party shall use all reasonable endeavours to ensure that all its electronic communications are secure against being altered or tampered with in the course of transmission.
- 5.2 The Contracting Party undertakes:
 - 5.2.1 To obtain all necessary authorisation and consent and make all necessary registrations and notifications in the territories in which it operates for the transfer of personal data to, and the processing of personal data;
 - 5.2.2 that all information transferred by it will be true and correct in all material respects;
 - 5.2.3 that all information transferred will be kept up to date (and deleted upon its becoming obsolete); and
 - 5.2.4 that it applies the following principles:

Purpose limitation - Personal data must be processed and subsequently used or further communicated only for the specific purposes for which it was obtained. Data must not be kept longer than necessary for the purposes for which they are derived.

Data quality and proportionality - Personal data must be accurate and, where necessary, kept up to date. Personal data must be adequate, relevant and not excessive in relation to the purposes for which they are derived and otherwise processed.

Security and confidentiality - Technical and organisational security measures must be taken by the Contracting Party that are appropriate to the risks to the rights and freedoms of data subjects, such as unauthorised access, presented by the processing of personal data derived.

Rights of access, rectification, erasure and blocking of data - All data subjects whose personal data is processed by the Contracting Party must have a right of access to all personal data relating to them, the right to the rectification, erasure or blocking of their personal data n compelling legitimate grounds relating to their particular situation.

Direct marketing - The Participant may not process personal data for the purposes of direct marketing unless explicit consent has been obtained from the client. The Contracting Party parties acknowledge that by opting out of further marketing consent the client is also excluded from special offers, discounts and competitions.

ANNEXURE B – MyOMinsure ADMINISTRATION

1. GENERAL

The services of **MyOMinsure ADMINISTRATION** will be provided by The Contracting Party to Old Mutual Insure on an outsourced (non binding) basis subject to the terms and conditions below.

“Users” means the Contracting Party representatives who are authorised to have access to and use of **MyOMinsure**.

2. RESPONSIBILITIES OF OLD MUTUAL INSURE

Old Mutual Insure undertakes to:

- 2.1 Make **MyOMinsure** available from 07h00 to 19h00 Monday to Friday and 07h00 to 13h00 on Saturdays, subject to downtime resulting from scheduled and/or unscheduled maintenance and events of *force majeure*.
- 2.2 Provide prescribed formats for policy documents, use of Old Mutual Insure’s branding, policy wordings, proposal forms and statutory information formats.
- 2.3 Provide supporting best practice guidelines. These may be amended from time to time at Old Mutual Insure’s sole discretion.
- 2.4 Provide training to the Contracting Party and/or the Users on access to and use of **MyOMinsure**.
- 2.5 Provide reasonable telephonic support in order to resolve any problem experienced by the Contracting party and/or the Users regarding access to and use of **MyOMinsure**.

3. RESPONSIBILITIES OF THE CONTRACTING PARTY

The Contracting Party’s responsibilities include, *inter alia*, the following:

- Having and maintaining a fully operational and compatible computer system to enable the Contracting Party to perform in terms of this Agreement.
- Accurately capturing all policyholder data.
- Ensuring the integrity of all captured data.
- Ensuring the uploading of all supporting documentation onto **MYOMINSURE** including, *inter alia*:
 - proposal forms;
 - debit order authorisation forms; and
 - Declaration forms.
- Retaining policyholder records for the statutorily prescribed period and returning records that are required to be retained to Old Mutual Insure on termination of this Agreement.
- Issuing new policy schedules and adjusting schedules if and when applicable.
- Forwarding policy schedules and policy wordings to policyholders, together with all statutory information which Old Mutual Insure and the Contracting Party are obliged to provide to the policyholder in terms of all applicable legislation.
- Familiarising itself with the provisions of the Electronic Communications and Transactions Act insofar as they are applicable to the Contracting Party and ensuring compliance with the applicable provisions.
- Complying with the Short-Term Insurance Act, the Financial Advisory and Intermediary Services Act and all other applicable legislation insofar as they apply to the business of insurance and the conduct of the Contracting Party.

- Complying with the Service Level Parameters.
- Complying with the Underwriting Rules and Guidelines which may change from time to time.
- Ensuring that only policy wordings, proposals, cover notes, schedules, statutory notices and other statutory details (requiring disclosure in terms of FAIS and its regulations) that have been approved by Old Mutual Insure are utilised.
- Verifying on a 12 (twelve) monthly basis that the Contracting Party is in possession of the prescribed formats and supporting guidelines. Old Mutual Insure may update prescribed formats and guidelines at their sole discretion and the Contracting Party must implement the required changes within a reasonable period of time {30 (thirty) days to 60 (sixty) days}.
- Effecting and maintaining adequate security measures to safeguard passwords allocated to the Users by Old Mutual Insure and to prevent access or use of **MyOMinsure** by any unauthorised person.
- Ensuring that on termination of this Agreement for any reason whatsoever, access will automatically be terminated and the Contracting Party warrants that no further usage of the password will be made by it or the Users.
- Ensuring that all Users are aware of the terms and conditions of this Agreement insofar as they apply to them and that all Users sign an agreement based on substantially the same terms and conditions as this Agreement.