

WEBSITE TERMS AND CONDITIONS

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1 DEEMED ACCEPTANCE

- 1.1 By accessing and using the Website, the User agrees to be bound by the Terms and Conditions set out herein.
- 1.2 If the User does not wish to be bound by the Terms and Conditions, the User may not access, display, use, download, and/or otherwise copy or distribute any of the Content on the Website.

2 INTERPRETATION

- 2.1 In these Terms and Conditions, unless inconsistent with or otherwise indicated by the context –
 - 2.1.1 “**Business Day**” means any day which is not a Saturday, Sunday, or a public holiday;
 - 2.1.2 “**Content**” means any and all content displayed on the Website, or the Online Profiles at any given time, and shall include (but shall not be limited to) confidential information, client lists, literary works, marketing and business information, musical works, artistic works, sound recordings, cinematograph films, sounds and television broadcasts, program-carrying signals, proprietary works, published editions and computer programs, names, logos, trademarks, images, text, columns, graphics, photographs, illustrations and software;
 - 2.1.3 “**Emerge**” means Emerge Customer Flow Management (Pty) Ltd, registration number 2009/015933/07, a private company with limited liability duly registered in accordance with the laws of the Republic of South Africa, and shall include any related or inter-related parties, as contemplated in section 2 (read with section 3) of the Companies Act No. 71 of 2008;
 - 2.1.4 “**Intellectual Property**” means rights in and in relation to any patent, design, trade mark, trade or business name (including all goodwill associated with any trade mark, or any trade or business name), rights in

get-up, copyright (including rights to derivative works), database, domain name, circuit, design, and/or utility model, and including in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world, registered or unregistered;

- 2.1.5 “**Online Profiles**” means Emerge’s social media and other profiles, (including but not limited to its Facebook page, LinkedIn account, Twitter feed), and Content thereon;
- 2.1.6 “**Owner(s)**” means Emerge or any third party owner(s), as the case may be, of the proprietary rights in and to the Content;
- 2.1.7 “**Terms and Conditions**” means the terms and conditions applicable to the use of the Website as set out herein, which is constituted of these terms and conditions and the **Privacy Policy**, as amended from time to time;
- 2.1.8 “**User(s)**” means any person or entity using the Website; and
- 2.1.9 “**Website**” means the website owned and maintained by Emerge, or through which it makes information relating to its products and services available to Users, including but not limited to the website located at the domain name <http://www.emergequeue.co.za/> and any Online Profiles operated by or on behalf of Emerge in the future, including the Content thereon.
- 2.2 The clause headings in these Terms and Conditions have been inserted for reference purposes only and shall not affect the interpretation of any provision of these Terms and Conditions.
- 2.3 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.
- 2.4 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 Terms and Conditions, notwithstanding that it is only contained in this interpretation clause.

- 2.5 If any period is referred to in these Terms and Conditions 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.
- 2.6 The rule of construction that the contract shall be interpreted against the Party responsible for the drafting or preparation of these Terms and Conditions shall not apply.
- 2.7 These Terms and Conditions shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa.
- 2.8 Expressions defined in these Terms and Conditions shall bear the same meanings in any annexure hereto which does not contain its own definitions.

3 INTRODUCTION

This document sets out the Terms and Conditions of Emerge pertaining to the access and use of the Content, information, products, services, and functions provided on the Website.

4 CONTENT

- 4.1 Emerge reserves the right to –
 - 4.1.1 refuse services, suspend, or terminate a User’s access to the Website, and remove or edit the Content at its sole discretion;
 - 4.1.2 claim damages from any User who does not comply with these Terms and Conditions;
 - 4.1.3 make improvements, change, or discontinue, without notice, any aspect or feature of the Website and Content;

- 4.1.4 insofar as it is applicable, change and amend the products, prices, and rates quoted on the Website, from time to time without notice to the Users; and
- 4.1.5 use the services of third parties to provide information on the Website.

5 USAGE RESTRICTIONS

- 5.1 The User hereby agrees that it will not itself, nor through a third party –
 - 5.1.1 should the User be a minor (i.e. under the age of 18), be entitled to respond to or otherwise accept or act upon any invitations to do business on the Website;
 - 5.1.2 use the Website for any purposes other than in respect of obtaining further information in respect of Emerge or its affiliates;
 - 5.1.3 use the Website or any of the Content for or in conjunction with any illegal, unlawful, or immoral purpose or as prohibited by the provisions hereof;
 - 5.1.4 use the Website for any purpose other than personal, non-commercial, and information purposes;
 - 5.1.5 engage in any activity intended to entice, solicit or otherwise recruit Users to join an organisation, except where such activities are expressly authorised in writing by Emerge, or as permitted by law;
 - 5.1.6 take action aimed at deceiving or misleading any person, attempt to impersonate or misrepresent the User's affiliation to any person, or otherwise manipulate or disguise the origin of anything posted or transmitted electronically to Emerge, whether on or through its Website, or otherwise;
 - 5.1.7 engage in any abuse of electronic mail or spamming, including the posting or cross-posting of unsolicited articles with the same or substantially the same message to recipients that did not request to receive such messages;
 - 5.1.8 modify, access, or make available any Content other than as made available by Emerge;

- 5.1.9 remove any identification, trademark, copyright or other notice from the Website;
- 5.1.10 make available or upload files that contain software or any other material not owned or appropriately licensed by the User;
- 5.1.11 violate the privacy of any person, or attempt to gain unauthorised access to the products and/or services rendered by Emerge;
- 5.1.12 collect or use any listing, description, or information from the Website for the benefit of a competing merchant;
- 5.1.13 use, copy, adapt, redistribute or modify the Content or any part thereof or frame, "mirror", data-mine (by way of but not limited to, robots, crawlers or other similar programs) or cache the Website or reverse engineer, copy, modify, re-distribute, decompile, or create a derivative work of the Website or Emerge's software, or any part thereof without prior written authorisation from Emerge;
- 5.1.14 use the Website in a manner that may infringe the intellectual property rights or other proprietary rights of others, including the transmission of pirated software;
- 5.1.15 use the Website in any manner which could damage, impair, overburden, or disable the Website or interfere with any User's use or enjoyment of the Website;
- 5.1.16 use the Website to transmit anything which contains viruses or any other destructive features, regardless of whether or not damage is intended;
- 5.1.17 use the Website to post or transmit, by means of listings, reviews, comments, suggestions, ideas, question, or otherwise, anything which is unlawful, defamatory, discriminatory, obscene, offensive, vulgar, threatening, abusive, harassing, harmful, hateful, profane, sexuality explicit, or which carries child pornography, religious or racial slurs, which can be construed as racially, ethnically, or otherwise objectionable in any way, or threatens or encourages bodily harm or the like, or which may violate any person's personality rights;

- 5.1.18 use the Website, icons, site address, or other means to hyperlink other internet sites with any page in the Website;
- 5.1.19 frame, nor use framing technologies to enclose the Website, without the express written consent of Emerge (and the Owner where applicable);
- 5.1.20 gather electronic mail addresses and/or names for commercial, political, charity or like purposes or collect or attempt to collect personal information about third parties without their knowledge or consent; and
- 5.1.21 act in any way which may, could or does impose an unreasonable or unusually large load of traffic on the Website, or otherwise interferes with its proper and timely functioning.

6 LINKED SITES

- 6.1 The Website may contain links to other websites that are not controlled or maintained by Emerge.
- 6.2 While Emerge attempts to include only links to those sites which are in good taste and safe for Users, the User agrees that Emerge will not be responsible for the content, advertising, privacy policies, products, services, or other materials on or available from such linked websites.
- 6.3 The use of linked websites is at the User's own risk. Emerge encourages all Users to read the terms of use of such other websites. Any inclusion of such links on the Website does however not imply Emerge's endorsement of the linked site nor the content thereof.
- 6.4 Emerge reserves the right to disable links from third party sites to the Website, and *vice versa*.

7 COPYRIGHT AND INTELLECTUAL PROPERTY RIGHTS

- 7.1 The Content is provided by the Owners.
- 7.2 All right title and interest in and to the Content vests with the Owners or their licensors. Nothing in these Terms and Conditions shall be construed as granting

a User any right, title, or interest in the Content, other than to use the Content in accordance with these Terms and Conditions.

- 7.3 Except as specifically provided herein or elsewhere on the Website, no Content may be copied, reproduced, republished, downloaded, posted, transmitted, or distributed in any way, or otherwise used for any purpose, by any person or entity.
- 7.4 Emerge reserves the right (at its sole discretion) to make changes to the Website, or to products or services offered by it at any time, with or without notice to the User.
- 7.5 No User may add, delete, distort, or otherwise modify the Content. Any unauthorised attempt to modify any Content, to defeat or circumvent Emerge's security features, or to utilise the Website for any purpose other than its intended purpose is strictly prohibited.

8 LIMITATION OF LIABILITY AND DISCLAIMERS

- 8.1 Emerge does not warrant that the Website, Content, information, or downloads shall be error-free or that they shall meet any particular criteria, performance, or quality. Emerge expressly disclaims all implied warranties, including but not limited to, warranties of merchantability, fitness for a particular purpose, non-infringement, compatibility, security, and accuracy.
- 8.2 **Subject to section 43(5) and 43(6) of the Electronic Communications and Transactions Act No. 25 of 2002 ("ECTA"), if applicable, and to the extent permitted by law, the Content, including any current or future offer of products or services, are provided on an "as is" basis, and may include inaccuracies or typographical errors, and Emerge shall not be held liable for any damage, loss or liability of any nature whatsoever, howsoever caused.**
- 8.3 Emerge makes no warranties or representations as to the availability, accuracy or completeness of the Website, or any third-party content accessible via an internet website on the Website.

- 8.4 **Emerge shall not be held liable or responsible for any direct or indirect, special, consequential, or other damage of any kind whatsoever suffered or incurred by the User, related to the use of, or the inability to access or use, or reliance on the Website or the Content or any functionality thereof, or of any linked website, including any claims arising from negligence.**
- 8.5 **The User indemnifies, holds harmless and expressly exempts and releases Emerge from any and all liabilities and claims arising from any cause whatsoever, including those related (whether directly or indirectly) to the use of the Website.**
- 8.6 The User waives and abandons any and all liabilities and claims of any nature whatsoever, howsoever arising, which he might have against Emerge, and releases Emerge against any and all liability and claims that may arise or accrue to the User.
- 8.7 The use of the Content is at the User's sole risk.
- 8.8 The products and services advertised on the Website and other marketing material and documents are to be used as a guideline only and may be influenced or changed by variable and/or unforeseen factors.
- 8.9 Emerge shall not be held liable for any errors or omissions in any of its promotional material, publications and documentations (including any such material, information, publications and documentation made available in digital or electronic media format).

9 NON ENDORSEMENT

Reference to any specific company, products, processes, or services by trade name, trademark, manufacturer, or otherwise on the Website does not necessarily constitute or imply its endorsement, recommendation, or favouring by Emerge.

10 PRIVACY, ACCESS TO AND USE OF INFORMATION

- 10.1 It is possible for internet-based communications to be intercepted. Without the use of encryption, the internet is not a secure medium and privacy cannot be ensured. Email is vulnerable to interception and forging.

- 10.2 To ensure acquaintance with and awareness of the privacy measures and policies of Emerge, the User is urged to read and understand the **Privacy Policy**.

11 GENERAL

- 11.1 The Website is controlled, operated, and administered by Emerge from its offices as set out in clause 13.1.4 below.
- 11.2 Emerge makes no representation that the Website and the Content thereon are appropriate or available for use in other locations or countries. Access to the Website from territories or countries where the Content is illegal is prohibited. If the User accesses the Website from locations outside of the Republic of South Africa, that User is responsible for compliance with all such local laws.

12 DISPUTE RESOLUTION

- 12.1 Emerge may demand that a dispute be determined in terms of this clause 12 by written notice given to the other Party in accordance with the Expedited Rules (“**Rules**”) of the Arbitration Foundation of Southern Africa (“**AFSA**”).
- 12.2 This clause shall not prevent any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction, pending the decision of an arbitrator.
- 12.3 The User hereby consents to the arbitration being dealt with on an urgent basis in terms of the Rules of AFSA should either Party, by written notice, require the arbitration to be held on an urgent basis. In such event either Party may apply to the AFSA Secretariat as required in terms of the said Rules to facilitate such urgent arbitration.
- 12.4 The arbitration shall be held –
- 12.4.1 at Cape Town;
- 12.4.2 with only the legal and other representatives of the Parties to the dispute present thereat; and
- 12.4.3 otherwise in terms of the Rules, unless otherwise provided for herein.

- 12.5 The arbitrator shall be a practising advocate of the Cape Bar of at least ten years' standing, appointed by agreement between the Parties to the dispute, subject to clause 12.6.
- 12.6 Should the parties fail to agree on an arbitrator within 14 days after the giving of notice in terms of clause 12.1, the arbitrator shall be appointed by the chairperson of the cape bar council (or by AFSA if the cape bar council no longer exists), at the request of either party to the dispute.
- 12.7 The decision of the arbitrator shall be final and binding on the Parties to the dispute and may be made an order of the court at the instance of any of the parties to the dispute. The Parties hereby consent to the jurisdiction of the High Court of South Africa, Western Cape Division, Cape Town.
- 12.8 The Parties agree to keep the arbitration including the subject matter of the arbitration and the evidence heard during the arbitration confidential and not to disclose it to anyone except for purposes of obtaining an order as contemplated herein.
- 12.9 It is recorded that it is the intention of the Parties, that any dispute referred to arbitration in terms of clause 12.1 shall be resolved strictly in accordance with the provisions of this clause 12. The Parties accordingly agree and undertake as follows –
- 12.9.1 that it shall not make any application to Court as contemplated in terms of section 3(2) of the Arbitration Act No. 42 of 1965 ("**Arbitration Act**");
- 12.9.2 that it shall not make any application to court as contemplated in terms of section 20(1) of the Arbitration Act; and
- 12.9.3 the periods set out in section 23 of the Arbitration Act shall not be applicable to any arbitration proceedings arising out of this Agreement.

13 ECT REQUIREMENTS

- 13.1 In accordance with the disclosure requirements of ECTA and the Promotion of Access to Information Act 2 of 2000, Emerge makes the following information available to the User –

- 13.1.1 **Full name:** Emerge Customer Flow Management (Pty) Ltd
- 13.1.2 **Legal status:** private company
- 13.1.3 **Registration number:** 2009/015933/07
- 13.1.4 **Physical Address:** Unit D3, Carpe Diem, 26 Quantum Road Techno Park, Stellenbosch, 7600, Western Cape.
- 13.1.5 **Website Address:** <http://www.emergequeue.co.za/>
- 13.1.6 **Telephone number:** 021 880 1119
- 13.1.7 **Email address:** kevin@emergequeue.com
- 13.1.8 **Names of Directors:**
- 13.1.8.1 Eugene Theunis Swanepoel; and
- 13.1.8.2 Kevin James Stocks.
- 13.1.9 **Place of registration:** South Africa
- 13.1.10 **Description of the main characteristics of the goods or services offered by Emerge:** Provision of Qmatic Customer Journey Management Systems.

14 AMENDMENT OF THE TERMS AND CONDITIONS

- 14.1 The Owner reserves the right to, at its sole discretion, amend, modify, add to or remove any provisions (in whole or in part) of the Terms and Conditions from time to time.
- 14.2 Any changes to these Terms and Conditions will become effective upon such changes being posted on the Website.
- 14.3 The onus rests on the User to periodically check the Terms and Conditions on the Website for any changes or updates therein contained.

14.4 The User's continued use of the Website following the posting of any amendments by Emerge shall be considered notice of the User's acceptance to abide by, and be bound by the Terms and Conditions, including any amendments hereto.

We recommend that the user prints out a copy of these terms and conditions for future reference.