



VALUE- ADDED RESELLER AGREEMENT

between

WEBILL PROPRIETARY LIMITED

("WeBill")

Company Registration Number	2016/538436/07	
Physical Address	147 Northreef Road, Ekurhuleni	
Postal Address	147 North Reef Road, Bedfordview, Ekurhuleni	
Telephone Number		
Contact Person		
Email Address		
Signature(s) <i>(who warrants that s/he is duly authorised to Sign)</i>		
Name		
Title		
Date		

and

[INSERT]

("VAR")

Company Registration Number		
Physical Address		
Postal Address		
Telephone Number		
Contact Person		
Email Address		
Signature(s) <i>(who warrants that s/he is duly authorised to Sign)</i>		
Name		
Title		
Date		

This Agreement consists of (i) this cover sheet, (ii) the attached terms and conditions; and (iii) the schedules and annexures attached to this cover sheet ("Agreement"). By signing this cover sheet the Parties agree to be bound by this Agreement. The Parties shall not be bound prior to signature.

AGREEMENT REFERENCE NUMBER	
EFFECTIVE DATE	

1. INTRODUCTION

WeBill carries on the business of developing, marketing and licensing the Software. The Parties have agreed that, with effect from the Commencement Date, WeBill will appoint the VAR as its value-added reseller (i) for the purposes of marketing the Software to Customers and obtaining licenses for the Software and (ii) for providing the Services to Customers, as applicable, on the terms and conditions set out in this Agreement.

2. DEFINITIONS AND INTERPRETATION

2.1. **Definitions.** Unless a contrary intention appears, the following expressions shall have the indicated meanings –

- 2.1.1. **“Business Day”** means any day other than a Saturday, Sunday or gazetted public holiday in the Republic of South Africa;
- 2.1.2. **“Business Hours”** means 08h00 to 17h00 on a Business Day;
- 2.1.3. **“Commencement Date”** means the commencement date specified in the VAR Schedule;
- 2.1.4. **“Confidential Information”** shall mean information or data, whether disclosed orally or in writing, that is identified as being confidential or proprietary at the time of disclosure or has the necessary quality of confidence about it and includes, without limitation:
 - 2.1.4.1. any information relating to WeBill's business, business policies, business plans, pricing models, know-how, trade secrets, diagrams, blue prints, flow charts, potential customers, customer lists, sales, sales figures and products and, in respect of WeBill, the WeBill Technology; and
 - 2.1.4.2. technical and mechanical information and computer programs of the disclosing Party;
- 2.1.5. **“Customer”** means any person or entity who licences the Software from WeBill as a direct result of the efforts of the VAR and who obtains Services from the VAR in the Territory;
- 2.1.6. **“Effective Date”** means the effective date of this Agreement, as stipulated on the cover sheet of this Agreement;
- 2.1.7. **“Fees”** means the fees determined in accordance with the scales set out in the VAR Schedule;
- 2.1.8. **“Intellectual Property Rights”** means all present and future rights in and to the Software and/or any other WeBill products or any documentation and/or any other items or materials provided to the VAR by WeBill under this Agreement including, but not limited to, all copyrights, patents, trademarks (whether registered or unregistered), as well as other rights may in the future be based thereon, together with all trade secrets, trade names, know-how and other intellectual property rights in all parts of the world;
- 2.1.9. **“Licence Agreement”** means the terms and conditions in terms of which a Customer is granted a licence by WeBill to use the Software;
- 2.1.10. **“Party”** or **“Parties”** means WeBill, or the VAR or both of them, as the context requires;
- 2.1.11. **“Personnel”** means any director, employee, agent, consultant, contractor or other representatives;
- 2.1.12. **“Service Levels”** means the minimum levels of service according to which Services are to be provided as set out in the VAR Schedule and/or WeBill's Policies. In the event of a conflict between the VAR Schedule and any WeBill Policy, the relevant WeBill Policy will prevail;
- 2.1.13. **“Services”** means the implementation and support services and training to be given by the VAR to Customers in respect of the Software at the Service Levels as set out in the VAR Schedule, and as may otherwise be agreed by the Parties from time to time;
- 2.1.14. **“Software”** means WeBill's proprietary software applications which the VAR is permitted to market to and obtain licenses for on behalf of Customers and in respect of which it is permitted to provide the Services, as listed in the VAR Schedule, as amended, updated and enhanced from time to time;
- 2.1.15. **“Territory”** means the Territory described in the VAR

Schedule;

- 2.1.16. **“Trademarks”** means the trademarks, trade names, service marks, logos or other descriptive marks or designs used by WeBill (or its licensors or suppliers) in respect of the Software;
 - 2.1.17. **“VAR Portal”** means the portal made available to the VAR, on which the VAR is required to register and input certain information as set out in this Agreement;
 - 2.1.18. **“VAR Schedule”** means the schedule attached hereto as Annexure A;
 - 2.1.19. **“WeBill Policies”** means any policies, practices, codes of conduct and procedures (as amended from time to time) which may be of application to the WeBill Technology, the Software, and/or its resellers, as the case may be;
 - 2.1.20. **“WeBill Technology”** means any and all technology that WeBill has created, acquired or otherwise has rights in and may, in connection with the performance of WeBill's obligations under this Agreement, employ, provide, modify, create or otherwise acquire rights in and includes the Software and any and all concepts; ideas; methods; methodologies; procedures; processes; know-how; techniques; function, process, system and data models; templates; the generalised features of the structure, sequence and organisation of software, user interfaces and screen designs; general purpose consulting and software tools, utilities and routines; and logic, coherence and methods of operation of systems;
 - 2.2. **Headings.** Headings and sub-headings are inserted for information purposes only and shall not be used in the interpretation of this Agreement;
 - 2.3. **References.** Unless otherwise stated, references to clauses, sub-clauses, schedules or paragraphs are to be construed as references to clauses, sub-clauses, schedules or paragraphs of this Agreement;
 - 2.4. **References to persons.** References to persons shall include companies, corporations and partnerships and references to any Party shall, where relevant, be deemed to be references to, or to include, as appropriate, their respective successors or permitted assigns;
 - 2.5. **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;
 - 2.6. **Contra proferentum excluded.** 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;
 - 2.7. **Figures and numerals.** Where figures are referred to in numerals and in words, if there is a conflict between the two, the words shall prevail;
 - 2.8. **Expiration or termination.** The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement which 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.
- ## 3. APPOINTMENT OF THE VAR AND RIGHTS
- 3.1. **Appointment.** On and subject to the terms and conditions set out in this Agreement, WeBill hereby appoints the VAR as its non-exclusive reseller in the Territory to (i) promote and market the Software on the basis that Customers will licence the Software from WeBill and (ii) provide Services to Customers.
 - 3.2. **Licensing.** The VAR shall not be entitled to licence the Software to any Customer under any circumstances.
 - 3.3. **VAR not to appoint.** The VAR may not appoint, authorise or permit any other person, firm, company, partnership, association, agent or other legal entity of any nature whatsoever to promote, market or license the Software or to

provide the Services or any other services to Customers, unless the prior written consent of WeBill has been obtained.

- 3.4. **Direct supply.** Nothing in this Agreement will be construed as a limitation or restriction on WeBill's freedom to directly or indirectly market or distribute the Software or any other products or market or perform any other services whatsoever within the Territory by any means whatsoever.

4. DURATION

This Agreement shall commence on the Effective Date and shall continue thereafter indefinitely, subject to annual review by WeBill, until and unless either Party has terminated the Agreement in terms of clause 22 or otherwise in terms of this Agreement.

5. MARKETING AND PROMOTION OF SALES

- 5.1. **Marketing and promotion.** The VAR shall at all times during the currency of this Agreement use its best endeavours to develop a market for the Software in the Territory and to promote licenses for the Software in the Territory.

- 5.2. **Full details to be provided.** The VAR shall provide WeBill with the full details of all Customers in writing and in a format required by WeBill.

- 5.3. Marketing obligations. The VAR shall:

- 5.3.1. act consistently with WeBill's marketing, sales, services and maintenance policies as may be communicated to the VAR from time to time; and

- 5.3.2. immediately refer to WeBill all queries or orders relating to the Software received by the VAR from any person outside the Territory.

- 5.4. **Promotional material.** WeBill agrees to furnish the VAR with pre-approved artwork and templates, which shall be used by the VAR for the purposes of printing promotional material from time to time, at the VAR's own cost and expense, and in accordance with the terms of the VAR Schedule. In the event that the VAR develops its own promotional material in respect of the Software, such material shall first be approved by WeBill in writing, prior to publication.

- 5.5. **Visits.** A representative from WeBill shall be entitled to attend at the VAR's premises in each Territory upon reasonable notice to the VAR in order to ensure compliance by the VAR of its obligations under this Agreement.

- 5.6. **Training.** WeBill shall, in accordance with WeBill's current policies and procedures, provide reasonable training for the VAR and, where so required, for the VAR's Personnel on a train the trainer basis. The training will be held at a location of WeBill's choice within the Republic of South Africa. All travel and subsistence costs in respect of the training of the VAR and its Personnel shall be for the VAR's account.

6. THE SOFTWARE

- 6.1. **Licence Agreement.** Each Customer shall be required to conclude a Licence Agreement directly with WeBill and thereby licence the Software directly from WeBill. If requested to do so by WeBill, the VAR will ensure that a copy of the Licence Agreement is made available to Customers in a manner determined by WeBill.

- 6.2. **Intellectual Property rights to the Products.** The VAR shall use best endeavours to safeguard the Intellectual Property Rights of WeBill and to report promptly to WeBill any third party claim relating to the Intellectual Property Rights after such claim comes to the attention of the VAR, directly or indirectly. The VAR shall co-operate with WeBill in any enforcement or other protective action taken by WeBill and report to WeBill any breaches or suspected breaches of the Licence Agreement by Customers which could adversely affect WeBill's Intellectual Property Rights and the WeBill Technology.

- 6.3. **Restrictions.** The VAR shall not:

- 6.3.1. grant access to, or knowingly permit access to be granted to, any part of the Software to any person other than a duly authorised Customer;

- 6.3.2. copy, translate, modify, adapt, decompile, disassemble or reverse engineer the Software (whether in whole or in part); or

- 6.3.3. merge or combine the whole or any part of the Software with any other computer software or materials.

- 6.4. **Discontinuance.** WeBill may, without liability to the VAR, discontinue provision of the Software (either in whole or in part) according to WeBill's normal procedures. WeBill may in its discretion offer to substitute other WeBill products and/or services, as the case may be. Unless otherwise agreed by WeBill and the VAR in writing, the substituted products and/or services shall be sufficient under the terms of this Agreement.

- 6.5. **No lien.** The VAR has no rights to any lien or other right of retention or security interest in the Software (either in whole or in part).

7. SERVICES

- 7.1. **Provision of Services.** The VAR shall provide Services directly to Customers using its best endeavours and, in any event, at least at the Service Levels and to the reasonable satisfaction of WeBill. The VAR shall provide the Services in accordance with the specifications set out in the Service Levels and WeBill Policies, as applicable. It shall be a prerequisite to all engagements between VAR and Customer that Customer enters into the Licence Agreement with WeBill.

- 7.2. **Location of Services.** Where possible, the VAR may provide Services telephonically and/or via e-mail to the satisfaction of each Customer requiring it. Where the nature of the Services required by a given Customer is such that this is not possible or practicable, the VAR shall provide the Services at the Customer's premises in the Territory. All costs directly and indirectly incurred by the VAR in providing Services (including, without limitation, travel and telecommunication costs) shall be for the VAR's account.

- 7.3. **Training.** The VAR shall provide sufficient training to each Customer and its Personnel to enable the Customer to make productive use of the Software. Unless otherwise agreed by the Customer, the training will be held at the Customer's premises or online within the Territory. All travel and subsistence costs in respect of the training of the Customer and its Personnel shall be for the VAR's account.

- 7.4. **VAR terms.** VAR shall ensure that the terms and conditions on which it provides Services to Customers shall include at least the same terms and conditions and service levels contained in the Service Levels. Any failure by VAR to provide Services to its Customers in accordance with the Service Levels shall constitute a material breach of this Agreement.

8. RESTRICTIONS

The VAR and its Personnel shall not:

- 8.1. conclude any contract or order or sign any documentation on behalf of WeBill;

- 8.2. licence or purport to licence the Software to any Customers;

- 8.3. canvass or solicit orders for the Software or Services from any third party outside the Territory, however, if approved by WeBill in writing, the VAR will be entitled to generate leads outside of the Territory;

- 8.4. pledge or purport to pledge WeBill's credit in any way, or bind WeBill in any manner to any obligation or undertaking including, without limitation, to any terms of a warranty (whether related to workmanship, materials, quality, durability or fitness for any purpose) without the prior written consent of WeBill;

- 8.5. form any company or business incorporating in its name the name "WeBill" (or any like or similar name) or any of WeBill's Intellectual Property or in any other way use the same without obtaining the prior written consent of WeBill;

- 8.6. represent the Software as having different characteristics from those described by WeBill in its relevant literature, nor give any guarantee or warranty in respect of the Software;

- 8.7. provide quotations on WeBill's letterhead or in WeBill's name, in respect of any products or services;

- 8.8. provide quotations for or license the Software at a price other than as calculated on WeBill's then-current pricing model

and/or as indicated on WeBill's then-current price list without WeBill's prior express written approval; and

- 8.9. in addition to the restrictions contained in clause 20, for the duration of this Agreement and for a period of 24 (twenty-four) months thereafter, without the prior written consent of WeBill, directly or indirectly, represent, manufacture, sell, market, distribute or otherwise provide any products or services which compete with or are the same as or similar to the Software.

9. DEVELOPMENTS

- 9.1. **Request for development.** If, from time to time during the currency of this Agreement, the VAR is of the genuine and reasonable view that the business offering and service provided to Customers will be materially enhanced by a specific upgrade of, or specific enhancement to, the Software or new software, the VAR will be entitled and obliged to deliver a written notice to WeBill ("**Request Notice**") requesting WeBill to develop such upgrade or addition. On receipt of the Request Notice, WeBill shall:

- 9.1.1. decide, in its discretion, whether the request is for (i) a specific upgrade of, or specific enhancement to, the Software ("**Software Upgrade**"); or (ii) new software that is able to operate independently from the Software ("**Software Addition**"); and

- 9.1.2. be entitled, in its discretion, to elect to develop the Software Upgrade or Software Addition or to request a reputable third party selected by WeBill to develop the Software Upgrade or Software Addition.

- 9.2. **WeBill to elect.** WeBill shall be entitled, in its discretion, to notify the VAR within 20 (twenty) Business Days (or such longer period as the VAR agrees to) after receipt of the Request Notice that WeBill is willing to develop the Software Upgrade or Software Addition or to request a reputable third party selected by WeBill to develop the Software Upgrade or Software Addition.

- 9.3. **Software Upgrade.** If WeBill does not notify the VAR within 20 (twenty) Business Days (or such longer period as the VAR agrees to) after receipt of the Request Notice relating to a Software Upgrade that WeBill is willing to either develop, or to request a reputable third party selected by WeBill to develop, the Software Upgrade, then the Software Upgrade shall not be developed, whether by WeBill or any other person.

- 9.4. **Software Addition.** If WeBill does not notify the VAR within 20 (twenty) Business Days or such longer period as the VAR agrees to) after receipt of a Request Notice relating to a Software Addition that WeBill is willing to either develop, or to request a reputable third party selected by WeBill to develop, the Software Addition, the VAR shall be entitled, subject to compliance with the other provisions of this Agreement and any technical requirements provided by WeBill in this regard, to procure the Software Addition from another reputable third party software developer; provided that (i) the Software Addition does not in any way adversely affect the functionality of the WeBill Software, (ii) that the Software Addition shall be developed in accordance with WeBill's then-current technical requirements to ensure successful interfacing with the WeBill Software, and (iii) that there will be no obligation on WeBill to ensure successful interfacing between the relevant Software Addition and the WeBill Software.

- 9.5. **No recourse.** The VAR shall have no recourse against WeBill arising from WeBill's failure (or that of a third party selected by WeBill) to agree to develop a Software Upgrade or Software Addition, or arising from WeBill's failure (or that of a third party selected by WeBill) to develop the Software Upgrade or Software Addition.

- 9.6. **Payment.** The VAR shall remunerate WeBill, for developing the Software Upgrade or Software Addition, according to WeBill's standard software development terms and conditions from time to time. If the Software Upgrade or Software Addition is developed by a third party selected by WeBill, WeBill shall determine whether the VAR shall pay:

- 9.6.1. the third party directly; or

- 9.6.2. WeBill according to WeBill's standard software development terms and conditions from time to time, as if WeBill had developed the Software Upgrade or Software Addition, on the basis that WeBill will then pay the amount payable to the third party.

- 9.7. **Rights extended.** The rights and restrictions contained in this Agreement pertaining to the Software shall be extended to the Software Upgrades and/or Software Additions, including without limitation those contained in **clauses 6.2, 6.3, 6.4, 6.5, 8.6, 8.9, 14.2 and 14.3.**

10. OBLIGATIONS OF THE VAR

The VAR shall:

- 10.1. provide WeBill with a written business plan (incorporating an updated roll-out plan) on each anniversary of the Commencement Date or such other date as may be agreed to in writing between the Parties;
- 10.2. use its best efforts and facilities to establish, maintain and increase sales of licences of the Software in the Territory to the extent practicable by all usual, legal and ethical means, including, but not limited to, personal solicitation, demonstration of the Software and of the promotional materials;
- 10.3. furnish to WeBill, at quarterly intervals or at such less or more frequent intervals as WeBill may require in writing, forecasts in writing of expected orders of the Software during the period to which each such forecast relates;
- 10.4. ensure that it registers on the VAR Portal and submit all such information as required by WeBill from time to time, including without limitation all:
- 10.4.1. prospective leads and new or potential Customers; and
- 10.4.2. marketing activities with such lead or Customer,
- 10.5. in accordance with the WeBill Policies and WeBill's directions from time to time;
- 10.6. promptly respond to all enquiries and complaints from Customers and potential Customers and promptly process all orders;
- 10.7. procure the licensing of the Software from WeBill in the Territory with such names, Trademarks, copyright notices, labels and other markings supplied by WeBill or as directed by WeBill;
- 10.8. promptly bring to the notice of WeBill any information received by it which is likely to be of interest, use or benefit to WeBill in relation to the marketing of the Software in the Territory or elsewhere;
- 10.9. immediately bring to the attention of WeBill in writing any and all infringements, imitations, illegal use or misuse, improper use or wrongful use of the Software or of the patents, WeBill Intellectual Property Rights, WeBill Technology, emblems, designs, models or other proprietary rights of WeBill, its licensors or suppliers which come to the VAR's notice;
- 10.10. be required to register any opportunity in respect of any potential Customer in the Territory with WeBill before pursuing such opportunity. If neither WeBill nor any another value-added reseller appointed by WeBill have been engaging with such potential Customer, the VAR shall be permitted to pursue such opportunity on the terms and conditions of this Agreement. If WeBill has been engaging with such potential Customer, the VAR may not continue pursuing the opportunity, unless otherwise agreed by WeBill; and
- 10.11. if specifically requested by WeBill in writing, be required to engage with existing WeBill customers, and to perform such obligations in respect of such customers, as directed by WeBill on a case-by-case basis. For the avoidance of doubt, in such cases, the VAR shall, unless otherwise agreed, be entitled to the fees and charges agreed in writing between the Parties on a case by case basis.

11. SALES TARGETS

- 11.1. **Targets.** The VAR shall achieve the sales targets, if any, set out in the VAR Schedule.

11.2. **Agree and review.** Where sales targets apply to the VAR, the VAR shall, if so requested by WeBill, consult with WeBill on or before the last day of each 12 (twelve) month period of this Agreement to agree in writing on the sales targets to be obtained by the VAR for the following 12 (twelve) month period and to review the performance of the VAR with respect to such sales targets in the previous 6 (six) month period.

11.3. **Failure.** Should (i) the VAR fail to achieve the sales targets set out in the VAR Schedule, or sales targets as amended in terms of clause 11.2 above and/or (ii) the Parties fail to agree on the sales targets applicable for any 12 (twelve) month period under clause 11.2 above, then without prejudice to its rights, WeBill may terminate this Agreement in whole or in part on 30 (thirty) days' written notice to the VAR.

12. FEES AND PAYMENT

12.1. **Fees and fees.** In consideration for (i) appointing the VAR in the Territory on the basis set out in the VAR Schedule and (ii) the VAR procuring licences for the Software and providing Services to Customers and complying with its other obligations in terms of this Agreement, and (iii) services provided by WeBill to the VAR, if any, the Parties shall be entitled to the payments and fees set out in the VAR Schedule.

12.2. **Payment.** Payments shall be made in accordance with the terms set out in the VAR Schedule, failing which, within 30 (thirty) days of date of invoice.

12.3. **Only Software directly supplied.** WeBill will pay Fees to the VAR only for licences for the Software obtained as a direct result of the activities of the VAR in terms of this Agreement.

12.4. **Only liability.** The Fees payable by WeBill shall be the only liability of WeBill to the VAR. Any additional services not covered in this Agreement rendered by the VAR to WeBill shall be the subject of a separate written agreement with WeBill.

12.5. **No obligation to reimburse.** WeBill is under no obligation or requirement to reimburse the VAR for any amounts or expenses incurred by the VAR and/or its Personnel in performing its obligations under this Agreement, or arising out of its activities under this Agreement.

13. RECORDS AND STATEMENTS

13.1. **Up-to-date records.** The VAR will ensure that complete, accurate and up-to-date records of all its transactions concerning the Software are delivered to WeBill on a timely basis and as may be requested by WeBill from time to time.

13.2. **Right to audit.** The VAR shall allow WeBill and/or any auditors appointed by WeBill at any time on reasonable notice, to have access to the VAR's records in order to audit, for the purpose of verifying the truthfulness, correctness and accuracy of any of the information contained in them and any of the information provided to WeBill by the VAR in terms of this Agreement.

13.3. **Results.** If an audit carried out under clause 13.2 above reveals overpayment by WeBill of any Fees to the VAR, then the VAR (without prejudice to any other rights or remedies WeBill may have) shall:

13.3.1. immediately make good any such overpayment. All adjustment sums shall accrue interest at the rate of 2% (two percent) above the prime overdraft rate (percent, per annum) charged by WeBill's then-current bankers from time to time, as evidenced by any manager of the bank, whose authority it shall not be necessary to prove, and shall be calculated from the date after such payment was due until the date such payment is made; and

13.3.2. bear the costs in connection with the audit (including professional advisers' fees and expenses) if the audit reveals an overpayment of the fees by WeBill of 5% (five percent) or more in respect of the relevant period.

14. PROVISION OF ADDITIONAL SERVICES BY WEBILL

The VAR may from time to time request WeBill to provide services other than those services or obligations of WeBill as specifically set out in this Agreement ("**Additional Services**"). WeBill reserves the right not to provide such Additional Services.

If WeBill agrees to provide such Additional Services, it shall do so in accordance with the terms and conditions of its then-current services agreement applicable in the Territory and on a time-and-materials basis at its then-current rates, unless otherwise agreed between the Parties in writing.

15. INTELLECTUAL PROPERTY

15.1. **Existing material.** All right, title and ownership of any code, forms, algorithms or materials developed by or for WeBill or the VAR independently and outside of the Agreement and provided during the course of the Agreement ("**Existing Material**") shall remain the sole property of the Party providing the Existing Material.

15.2. **Developments and improvements.** All right, title and interest, including all rights under all copyright, patent and other intellectual property laws, in and to any developments, additions or improvements to the Software or the WeBill Technology arising from VAR providing Services shall vest exclusively in WeBill and the VAR shall take all steps and sign all documents (upon demand) to give effect to the provisions of this clause.

15.3. **Retention of rights.** WeBill has created, acquired or otherwise obtained rights in the WeBill Technology and notwithstanding anything contained in the Agreement, WeBill will own all right, title and interest, including all rights under all copyright, patent and other intellectual property laws, in and to the WeBill Technology. Nothing in this Agreement shall have the effect of transferring (in whole or in part) ownership of the Software or the WeBill Technology to the VAR or any third party.

16. USE OF TRADEMARKS

16.1. **Trademarks are property of WeBill.** The VAR acknowledges (i) WeBill's (or, as the case may be, its licensors' or suppliers') right, title and interest in the Trademarks; and (ii) that the Trademarks are therefore the property of WeBill (or, as the case may be, its licensors or suppliers); and (iii) that, in connection with any reference to the Trademarks, the VAR shall not in any manner represent that it possesses any ownership interest in the Trademarks or the registration thereof, nor shall any action taken by the VAR or on the VAR's behalf create in the VAR's favour any right, title or interest in and to the Trademarks. The VAR undertakes not to claim or to seek to obtain any right, title and interest in or in relation to any such Trademark other than such rights as are provided by this Agreement and shall not do, or cause to be done, any acts or things contesting or in any way impairing or threatening to impair any of WeBill's (or, as the case may be, its licensors' or suppliers') right, title and interest in and to the Trademarks. All goodwill arising from use of the Trademarks by the VAR will inure for the sole benefit of WeBill. If WeBill wishes to obtain or keep such Trademarks as registered Trademarks in the Territory, the VAR will, at WeBill's expense, do everything necessary to assist WeBill in so doing.

16.2. **Use.** WeBill may provide the VAR with the Trademark artwork for marketing purposes in terms of this Agreement. If the VAR is granted written permission from WeBill to use any Trademark, WeBill hereby grants to the VAR a non-exclusive, non-transferable, royalty-free, personal sub-license to use the Trademark only during the term of this Agreement, according to the specifications in Annexure B and other conditions herein, and solely in connection with this Agreement. All rights not expressly granted herein are reserved by WeBill. The VAR will not use the Trademarks in any manner that will diminish or otherwise damage WeBill's goodwill in the Trademarks. The VAR agrees to fully correct and remedy any deficiencies in its use of the Trademarks, upon receipt of notice from WeBill. The VAR agrees that it will comply with any and all applicable laws and regulations, WeBill's marketing and other requirements and corporate identity controls pertaining to the Trademarks. The VAR must not use the Trademarks, or any trademarks similar to the Trademarks, without the prior written approval from WeBill.

16.3. **Termination.** Upon termination for any reason of this Agreement or when requested by WeBill in writing, the VAR

shall forthwith cease to use all the Trademarks and shall forthwith return to WeBill all materials containing the same.

17. LIMITATION OF LIABILITY

- 17.1. **Maximum liability.** To the extent permitted by applicable law, regardless of the form (whether in contract, tort, delict or any other legal theory) in which any legal action may be brought, WeBill's maximum liability for direct damages for anything giving rise to any legal action shall be an amount equal to the total Fees already paid or due and payable in respect of this Agreement in the 12 (twelve) month period immediately preceding the date on which the damages arose.
- 17.2. **Consequential damages.** WeBill shall not be liable for any indirect or consequential loss or damages, including without limitation, loss of business, data, profits, revenue or anticipated savings howsoever arising, suffered by the VAR and arising in any way in connection with this Agreement or the termination of this Agreement or for any liability of VAR to any third party.
- 17.3. **Exclusions.** The limitation contained in this clause 17 shall not apply to any breach by a Party of the other Party's proprietary or confidential information or intellectual property, or damages arising from a Party's wilful misconduct (including theft, fraud or other criminal act) or gross negligence.
- 17.4. **WeBill not liable for default.** WeBill shall not be liable for any loss or damage of whatsoever nature suffered by the VAR arising out of or in connection with any breach of this Agreement by the VAR or any act, misrepresentation, error or omission made by or on behalf of the VAR or its Personnel.

18. WARRANTIES

- 18.1. **Software warranty.** The warranties, if any, that are provided in the WeBill Licence Agreement will apply to the Software.
- 18.2. **Disclaimer.** Except for the above warranties given in this clause 18, WeBill makes no warranties or conditions, whether express, implied or statutory regarding or relating to the Software or any other materials or services furnished or provided under this Agreement. WeBill specifically disclaims all implied warranties of merchantability and fitness for a particular purpose and use with respect to the Software, any other materials and services.
- 18.3. **Information only.** All brochures, booklets, catalogues, trade pamphlets, advertising material or other documentation issued by WeBill in respect of the Software are for information only, and do not constitute warranties, representations or undertakings in respect of the Software.
- 18.4. **VAR not to give additional warranties.** The VAR shall not make any representation or give any warranty in respect of the Software, other than those contained in the Licence Agreement.
- 18.5. **VAR warranties.** The VAR warrants and represents that it -
- 18.5.1. is free to enter into and perform its obligations in terms of this Agreement;
- 18.5.2. shall use its best efforts to market and sell the Software and the Services;
- 18.5.3. shall accurately represent the Software and the Services to Customers and potential Customers;
- 18.5.4. shall provide the Services in accordance with the terms and conditions of this Agreement; and
- 18.5.5. shall comply with all applicable laws, rules, regulations and court orders (including without limitation, data protection laws) relating to its appointment under this Agreement and the marketing of the Software and the Services.
- 18.6. **VAR Indemnification.** The VAR hereby indemnifies and holds harmless WeBill, its directors, officers and employees from and against any and all claims, damages, losses, liabilities, costs and expenses arising out of the breach of any warranty given by it to WeBill or a breach of any of the VAR's obligations under this Agreement.

19. CONFIDENTIALITY

- 19.1. **Hold in confidence.** The VAR shall hold in confidence all Confidential Information received from WeBill, and shall not divulge the Confidential Information to any person.

- 19.2. **Prevent disclosure.** The VAR shall prevent disclosure of the Confidential Information, except as may be required by law.
- 19.3. **Return or destroy.** Within 7 (seven) days after the termination of this Agreement for whatsoever cause and howsoever arising, the VAR shall return the Confidential Information, or at the discretion of WeBill, destroy such Confidential Information, and shall not retain copies, samples or excerpts thereof.
- 19.4. **Exclusions.** It is recorded that the following information will not, for the purpose of this Agreement, be considered to be Confidential Information –
- 19.4.1. information known to the VAR prior to the date that it was received from WeBill;
- 19.4.2. information known to the public or generally available to the public, prior to the date that it was disclosed by WeBill to the VAR;
- 19.4.3. information that becomes known to the public, or becomes generally available to the public subsequent to the date that it was disclosed by WeBill to the VAR, through no act or failure to act on the part of the VAR; and
- 19.4.4. information that WeBill authorises the VAR in writing to disclose.
- 19.5. **Other confidentiality and non-disclosure agreements.** The VAR's obligations in terms of this clause are in addition to any other obligations that the VAR may have in terms of other confidentiality and non-disclosure agreements with WeBill.
- 19.6. **Personnel.** The VAR shall ensure that its Personnel provide the same confidentiality undertakings as that provided by the VAR to WeBill under this clause 19.

20. NON-SOLICITATION

The VAR shall not during the currency of this Agreement nor for a period of 24 (twenty-four) months following the termination thereof, directly or indirectly solicit or offer employment to any Personnel of WeBill who are employed by WeBill during the currency of this Agreement or were employed by WeBill at the date of termination of this Agreement, and shall not employ or contract in any manner with any such Personnel of WeBill.

21. RELATIONSHIP OF THE PARTIES

This Agreement does not constitute the VAR as WeBill's employee or partner for any purpose whatsoever. The VAR shall be entitled to describe itself as an authorised VAR of the Software and the Services, subject to the provisions of this Agreement, but shall not in any way describe or hold itself out as the agent of WeBill or WeBill's licensors or suppliers for any other purpose and shall have no authority or right (whether express or implied) to bind, assume or create any obligations for, enter into any contract on behalf of, collect any money for or bring any action in a court of law on behalf of WeBill or its licensors or suppliers in any manner whatsoever.

22. TERMINATION

- 22.1. **Convenience.** Either Party may terminate this Agreement by giving the other Party 40 (forty) days' notice in writing of its intention to do so, without having to assign any reason therefor.
- 22.2. **Breach.** Either Party may on written notice terminate this Agreement forthwith if:
- 22.2.1. the other Party is in breach of any material term of this Agreement and has not remedied such breach within 7 (seven) days of the date of written notice requiring it to do so;
- 22.2.2. any order shall be made or resolution passed for the winding up of the other Party (except for the purposes of amalgamation or reconstruction); or
- 22.2.3. the other Party shall become insolvent, commit any act of insolvency or shall enter into any composition or arrangement with its creditors or shall cease or threaten to cease to carry on business.
- 22.3. **Immediate termination.** Notwithstanding anything to the contrary contained in this Agreement, WeBill shall be entitled to terminate this Agreement forthwith on notice to the VAR without liability to pay compensation therefor if:

- 22.3.1. the control or ownership of the VAR changes from that in effect at the commencement date of this Agreement;
- 22.3.2. the VAR assigns or sub-licenses its rights and obligations under this Agreement save as provided herein;
- 22.3.3. the VAR fails or ceases to comply with the requirements and conditions contained in the VAR Schedule, if any;
- 22.3.4. the VAR does or suffers to be done anything or undergoes any change which might prejudice WeBill's (or its licensors' or suppliers') rights under this Agreement, or which might cause WeBill to suffer any loss or damage; or
- 22.3.5. the VAR obtains or attempts to obtain, directly or indirectly, orders for the Software from Customers in any area not included in the Territory without WeBill's prior written agreement.
- 22.4. **Duties on termination.** Upon termination of this Agreement for whatever reason -
- 22.4.1. all unfulfilled orders of Customers will be furnished in writing to WeBill, who will be entitled, but not obliged, to fulfil such orders and WeBill will not be required to pay any Fees or fees to the VAR in regard thereto;
- 22.4.2. the VAR shall at its own expense forthwith, remove all signs whether from its premises, vehicles or elsewhere, which display or indicate any connection with the name of WeBill or which refer in any way to any of the Trademarks;
- 22.4.3. the VAR shall return all advertising and promotional matter, stationery, printed material or the like featuring any Trademark or description of any sort which it obtained from, or was authorised to use by WeBill;
- 22.4.4. the VAR shall not, by any act or omission, do anything which could prejudice WeBill's name, image, business prospects or interest in any way with any Customer and/or potential Customer; and
- 22.4.5. the VAR will forthwith deliver to WeBill any software and materials that are the property of WeBill and WeBill may enter any premises and recover possession of and remove such software and materials.
- 22.5. **Rights to damages.** The exercise by any Party of the rights of termination under this clause 22 will not prejudice any right of either Party to damages or other rights or remedies in respect of the default giving rise to such termination or in respect of any rights or obligations already accrued under this Agreement at the date of termination.
- 22.6. **No liability on termination.** WeBill will not be liable to the VAR for any compensation, reimbursement for investments or expenses, loss of profits, goodwill or otherwise arising as a result of the termination or expiration of this Agreement for any reason.

23. ARBITRATION AND DISPUTE RESOLUTION

- 23.1. **Arbitration.** Any dispute that may arise at any time between the Parties relating to any matter arising out of this Agreement or the interpretation thereof, shall be finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa or its successors in title by an arbitrator or arbitrators appointed by the Foundation.
- 23.2. **Demand for arbitration.** Either Party may demand that a dispute be referred to arbitration by giving written notice to that effect to the other Party.
- 23.3. **Interim relief.** This clause shall not preclude either Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- 23.4. **Location.** The arbitration referred to in clause 23.1 shall be held at Johannesburg in the English language, immediately and with a view to its being completed within 21 (twentyone) days after it is demanded.
- 23.5. **Decision binding.** The Parties irrevocably agree that the decision in arbitration proceedings shall be final and binding upon the Parties, shall be carried into effect and may be made an order of any court of competent jurisdiction.
- 23.6. **Survival.** This clause 23 is severable from the rest of this Agreement and shall remain valid and binding on the Parties

notwithstanding any termination or expiration of this Agreement.

24. NOTICES

- 24.1. **Addresses.** The Parties hereby choose *domicilia citandi et executandi* (referred to in this Agreement as a Party's "**domicilium**") for all purposes under this Agreement the physical addresses set out on the cover sheet.
- 24.2. **Change of Address.** Either Party may, on written notice to the other, change its domicilium to any other physical address and its e-mail address to any other number, provided that such change shall take effect 14 (fourteen) days after receipt or deemed receipt of such written notice.
- 24.3. **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 -
- 24.3.1. if addressed to the addressee at its postal address set out on the cover sheet and posted by pre-paid registered post on the 10th (tenth) day after the date of posting thereof, or
- 24.3.2. if delivered to the addressee's domicilium by hand during Business Hours on a Business Day, on the date of delivery thereof, or
- 24.3.3. if sent by e-mail to the addressee on the first Business Day following the date of sending thereof, subject to receipt of a read receipt or in the absence of any error message.
- 24.4. **Notice actually received.** Notwithstanding anything to the contrary stated above, if a notice or communication is actually received by a Party, adequate notice or communication shall have been given, even though it was not delivered in a manner described above.

25. FORCE MAJEURE

- 25.1. **Parties not liable for force majeure.** Neither Party shall be liable for any failure to fulfil its obligations under this Agreement if and to the extent that such failure is caused by any circumstances beyond its reasonable control, including, but not limited to flood, fire, earthquake, war, tempest, hurricane, industrial action, strikes, government restrictions, riots, interference by civil or military authorities, compliance with governmental, provincial or municipal laws, regulations, requests or policy, inability to secure governmental, provincial or municipal permission or acts of God.
- 25.2. **Party affected to notify other Party.** Should any event of force majeure arise, the affected Party shall notify the other Party without delay and the Parties shall meet within 7 (seven) days of such notice to negotiate in good faith alternative methods of fulfilling its obligations in terms of this Agreement.
- 25.3. **Right to terminate.** Should either Party be unable to fulfil a material part of its obligations under this Agreement for a period in excess of 60 (sixty) days due to circumstances of force majeure, the other Party may at its sole discretion cancel this Agreement forthwith by written notice delivered to the other.

26. ANTI-BRIBERY AND CORRUPT PRACTICES

Each Party hereby represents, covenants and warrants that it shall not:

- 26.1. violate any applicable laws including (without limitation) any laws relating to anti-corruption, anti-bribery and money laundering (any such violation being a material breach of this Agreement), and shall promptly notify the other Party in writing in the event of any actual or alleged violation of such laws;
- 26.2. violate any policies of a Party relating to anti-corruption, anti-bribery and money laundering (any such violation being a material breach of this Agreement), and shall promptly notify the other Party in writing in the event of any actual or alleged violation of such policies; and
- 26.3. during the term of this Agreement, nor shall any of its directors, officers or employees, engage (or cause another party to engage) in any activity that is, or is reasonably likely to be, in breach of clause 26.1 or clause 26.2.

27. GENERAL

- 27.1. **Entire Agreement.** This Agreement constitutes the entire Agreement between WeBill and the VAR in respect of the subject matter hereof.
- 27.2. **Variation.** No amendment or modification to this Agreement shall be effective unless in writing and signed by authorised signatories of both WeBill and the VAR.
- 27.3. **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 as a waiver of any continuing or subsequent breach.
- 27.4. **Applicable law.** This Agreement shall be governed and construed in accordance with the laws of the Republic of South Africa and the VAR agrees to submit to the jurisdiction of the Magistrates' Court in respect of any action or proceedings which may arise from or be brought in connection with this Agreement.
- 27.5. **Costs.** Each Party shall be responsible for its own legal and other costs relating to the negotiation of this Agreement.
- 27.6. **Publicity.** VAR will not make or issue any formal or informal announcement or statement to the media in connection with this Agreement without the prior written consent of WeBill.
- 27.7. **Assignment.** WeBill is entitled to cede, assign, transfer or otherwise make over (collectively "**Cession**"), without the consent of or notice to the VAR, all or any of WeBill's rights under this Agreement to any other person or entity. The VAR hereby undertakes to accept the Cession and to acknowledge the rights of the cessionary in terms of this clause and the terms and conditions of this Agreement. The VAR may not cede, assign, transfer or make over this Agreement, or any part thereof, without WeBill's prior written consent.
- 27.8. **Warranty of authority.** Each Party warrants to the other Party that it has the power, authority and legal right to sign and perform this Agreement and that this Agreement has been duly authorised by all the necessary actions of its directors and constitutes valid and binding obligations on it in accordance with the terms of this Agreement.
- 27.9. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be an original, and such counterparts together will constitute one and the same instrument. Execution may be effected by delivery of facsimiles of signature pages (and the Parties will follow such delivery by prompt delivery of originals of such pages).

**ANNEXURE A
VAR SCHEDULE**

1. COMMENCEMENT DATE

[Insert date]

2. SOFTWARE AND COMMISSION, FEES AND CHARGES

- 2.1. Subject to the terms and conditions of the Agreement, the VAR will be appointed as WeBill's VAR in respect of the following Software:

The Software
[Insert/detail – alternatively, state “Any software which WeBill makes available to the VAR for the purposes of this Agreement from time to time”]

- 2.2. The Parties will be entitled to the following, fees and payments:

- 2.2.1. The VAR will be entitled to a Fees in the form of **[a discount on the listed licence fees in respect of the Software OR a commission on the licence fees paid by Customer in respect of the Software - confirm]**, as follows:

[insert – once this has been determined, we suggest sending us the requisite information, in order to ensure this is properly incorporated into the agreement]

- 2.2.2. **Services:** **[insert]**

- 2.2.3. **Special Deals/arrangements:** There may be occasions where the VAR identifies unique opportunities for the Parties outside the scope, ambit and terms of this Agreement. Each of these will be discussed and agreed in writing between the Parties at the time.

- 2.3. Payment will be made in the following currency: **[insert]**

3. TERRITORY

[Insert]

4. PROMOTIONAL MATERIAL

- 4.1. VAR may, at its own cost and expense, print such brochures and other promotional material as made available by WeBill in soft copy to the VAR from time to time, provided that only the templates and artwork as provided by WeBill may be used by VAR for such purposes, the intention being that VAR shall not alter or modify any such templates or brochures prior to the printing thereof without WeBill's prior written consent.

- 4.2. If agreed to by WeBill in its absolute discretion, any additional promotional material required by the VAR will be made available to the VAR at WeBill's cost price, provided that WeBill shall not be obliged to produce promotional material and all promotional material shall be made available to the VAR at WeBill's offices for collection after receipt of payment in respect thereof.

5. SALES TARGETS [DELETE IF NOT APPLICABLE]

Period	Sales Target
[Insert/detail]	[Insert/detail]

- 5.1. Sales targets are to be reviewed periodically as per clause 11.2 of this Agreement.

6. REQUIREMENTS AND CONDITIONS

The following requirements and conditions will have to be maintained by VAR in order to maintain its appointment hereunder:

- 6.1. **[list requirements, e.g. minimum resource requirements, infrastructure requirements, certifications, etc]**

7. SERVICES AND SERVICE LEVELS

- 7.1. The Services provided by the VAR to the Customer in accordance with its VAR Status in terms of clause 2.2.1 will include the following:

- 7.1.1. **[list basic/essential services]**

- 7.2. The VAR shall respond to all first line Services requests from Customers within 24 (twenty-four) Business Hours of receipt thereof.

- 7.3. All Services requests from Customers that cannot be resolved to the Customer's satisfaction must be escalated to such person as WeBill may designate from time to time for such purposes no more than 24 (twenty-four) Business Hours after it becomes apparent that the VAR is unable to resolve such Services request.

- 7.4. The VAR shall forward all cancellation notices from Customers to such person as WeBill may designate from time to time for such purposes immediately upon receipt thereof from the Customer.

ANNEXURE B**TRADEMARK USE SPECIFICATIONS****1. MATERIALS RELATED TO THE SOFTWARE**

The Trademarks may be used solely on materials directly related to the Software and which are approved by WeBill. The VAR's name, trademarks, or trademark must also appear on any materials where the Trademarks are used. The Trademarks may not be used in any manner other than as contemplated by this Agreement.

2. THE TRADEMARKS MUST STAND ALONE

The Trademarks may not be included in any third party trademarks, trade names, business names, domain names, product or service name, trade dress, design, slogan or other mark. The Trademarks may not be combined with any other object, including, but not limited to, other trademarks, words, graphics, photos, slogans, numbers, design features, or symbols. A minimum amount of empty space must surround the Trademarks separating it from any other object, such as type, photography, borders, edges, and so on. The required area of empty space around the Trademarks must be at least 1 (one) centimetre. The VAR shall not use the Trademarks in association with any third party trademarks in a manner that suggests co-branding or otherwise creates potential confusion as to ownership of the Trademarks.

3. NO ALTERATION

The Trademarks (including without limitation the size, proportions, colours, elements of the Trademarks) may not be altered in any manner. The Trademarks may not be animated, morphed, or otherwise distorted in perspective or dimensional appearance.