

**AGREEMENT**

Made and entered into by and between

**GREEN GAIN CONSULTING (PTY) LTD t.a. Ariscu SA**

**(“Green Gain”)**

And

**THE CLIENT**

**(“the Client”)**

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## **AGREEMENT**

### **1. PREAMBLE**

1.1. Green Gain is the proprietor and distributor of Ariscu compliance registers (SHE Legal, Quality, Risk, Food Safety, Energy Management, Governance and POPI), compliance services (Legal opinions, consulting, audits etc.) strengthened by a Sustainability Management Compliance Software System and applications (“Apps”) (and additional compliance libraries and registers as released from time to time) (“Ariscu”).

### **2. DEFINITIONS**

In this Agreement the following words and phrases shall have the following meanings:

- 2.1. “Agreement” means this agreement as set out herein together with all annexes, schedules and appendices hereto;
- 2.2. “The Client” means the party to whom “The Proposal” is issued or who uses the software and is, with limited liability, duly registered and incorporated under the laws of South Africa, registration number [], with its business address located at [].
- 2.3. “The Client Data” means any data loaded by The Client or belonging exclusively to the client and excludes the Compliance Register and library.
- 2.4. “Ariscu Software”, or “Software” means the online legal compliance system software designed to assist users with *inter alia*, SHERQ management and legal compliance solutions and other content and functionality as released from time to time. Ariscu includes “apps” for use in conjunction with the web based application.
- 2.5. “Effective date” means the date of first invoice notwithstanding the date of signature of this agreement;
- 2.6. “Elected representative” means the representative appointed to act on behalf of The Client or Green Gain, as the case may be.
- 2.7. “Green Gain” a company with limited liability duly incorporated in terms of the laws of the Republic of South Africa with registration number 2002/019249/07.
- 2.8. “Parties” means collectively The Client and Green Gain and “party” shall mean any one of them as the context may require;

- 2.9. “The Proposal” means the documented proposal by Green Gain to The Client containing detail on the goods and services to be provided as well the cost and additional detail.
- 2.10. “Users” means the employees of The Client or any other person authorised by The Client to have access to Ariscu software and “user” shall mean any one of them as the context may require.
- 2.11. “Services” refers to the scope of work as agreed to in The Proposal as signed by The Client. Services may either be classified as license fee inclusive (to be provided without additional cost) or license fee exclusive (to be separately scoped, contracted and invoiced to the client at an additional fee)
- 2.12. “Total Setup Fee” refers to the the total cost of the items related to the initial setup of the Compliance Registers and other items related to the Ariscu Software, as set out in The Proposal.

### **3. INTERPRETATION**

- 3.1. Words importing the singular shall include the plural and vice versa, words importing the masculine gender shall include females and words importing a natural person shall include partnerships, bodies corporate and companies.
- 3.2. The head notes to the paragraphs to this Agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 3.3. This Agreement shall be governed by and be interpreted according to the laws of the Republic of South Africa in all respects.
- 3.4. The annexures and schedules to the Agreement shall be deemed to be incorporated in and form part of this Agreement.
- 3.5. This Agreement shall be binding on and enforceable by the administrators, trustees, permitted assigns or liquidators of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any Party

shall be deemed to include such Party's administrators, trustees, permitted assigns or liquidators, as the case may be.

- 3.6. If any provision in the preamble or in clause 2 is a substantive provision conferring rights or imposing obligations on either Party, then notwithstanding that such provision is contained therein, effect shall be given thereto as if such provision were a substantive provision in the body of the Agreement.
- 3.7. Where any term is defined within the context of any particular clause in this Agreement, the term so defined shall, unless it appears clearly from the clause in question that such term has limited application to the relevant clause, bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that such term has not been defined in clause 2 above.
- 3.8. When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day, as the case may be.
- 3.9. Should the day for the performance of any payment obligation in terms of this Agreement fall on a Saturday, Sunday or public holiday officially proclaimed as such in the Republic of South Africa, then such obligation shall be performed on the next date which is not a Saturday, Sunday or public holiday officially proclaimed as such in the Republic of South Africa.
- 3.10. Save where clearly indicated to the contrary, expressions defined in this Agreement shall bear the same meanings in any annexure hereto unless such annexure contains an alternative definition for the expression.
- 3.11. The rule of interpretation that an Agreement will be interpreted against the Party responsible for the drafting and any similar rules of interpretation shall not apply to this Agreement and the Parties waive any rights they have to rely on such rules.
- 3.12. Any provision of this Agreement that contemplates performance or observance subsequent to any termination or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect.
- 3.13. Any reference in this Agreement to legislation or subordinate legislation is to such legislation or subordinate legislation at the date of signature hereof, as amended, substituted and/or re-enacted from time to time.

#### **4. APPOINTMENT**

4.1. The Client hereby appoints Green Gain to provide access to, attend to the configuration and maintaining of the Ariscu Software and Green Gain hereby accepts such appointment upon the terms and conditions of this Agreement.

#### **5. WARRANTY AND LIABILITY**

5.1. Green Gain warrants that the undertakings hereunder shall be performed in good faith, in a professional and workmanlike manner and that it will provide the Services in accordance with this Agreement.

5.2. The Client warrants that it has the unrestricted right to make use of the Services for the term of this Agreement.

5.3. Except as otherwise set forth herein, neither Party shall be deemed negligent, at fault or liable in any respect to the other for any delay, interruption or failure in performance hereunder resulting from fire, flood, water, the elements, explosions, acts of God, war, accidents, labor disputes, strikes, shortages of equipment or suppliers, unavailability of transportation or other cause beyond the reasonable control of the Party delayed or prevented from performing.

5.4. The Client shall indemnify and hold harmless Green Gain, its agents, contractors and employees from and against any and all claims, liability, damage, loss, or expense (including attorney's fees) including injury or death to persons, or damages to property, both real and personal, which may arise out of the negligent or intentional acts or omissions of The Client, its agents, employees or contractors.

5.5. In no event shall either Party be liable to the other for any indirect, incidental, special or consequential damages, including loss of revenue and profits, even if aware of the possibility thereof.

5.6. No other warranties are expressed or implied

## **6. DURATION AND RENEWAL OF AGREEMENT**

- 6.1. The duration of this Agreement shall be 12 (twelve) months (the “Initial Period”) commencing on the month of the first invoice, or any other periods as provided for in The Proposal.
- 6.2. This Agreement will automatically renew after the initial period for further periods of 12 (twelve) months (the “Annual Period”) after expiry of the Initial Period or Annual Period/s, except if cancelled in terms of clause 7 below, or if otherwise provided for in The Proposal.
- 6.3. The Client has the right to use the Ariscu Software only whilst the monthly/annual license fee/s is paid. Green Gain has the right to suspend access to the Ariscu Software should payment not be received when due.

## **7. TERMINATION**

- 7.1. Either Party may terminate this Agreement by providing the other Party with 1 (one) month’s written notice of its intention to terminate this Agreement, after expiry of the Initial Period.

## **8. SCOPE OF WORK**

- 8.1. The scope of work will consist of the Ariscu Software and may include other products and services in the Environmental, Safety and Occupational Health legal compliance and management fields, or any other work or services as is agreed upon between the Parties. The scope of work will be more detailed in The Proposal to The Client and any subsequent proposals.

## **9. PRICE**

- 9.1. In consideration for the provision of the Ariscu Software, The Client shall pay to Green Gain the amounts as set out in The Proposal.
- 9.2. Escalation on the price will be applicable after 12 (twelve) months. Subsequent escalations will be calculated based on the average CPI escalation of the months leading up to the contract anniversary month. Thus, the contract anniversary

month's renewal fee will be based on the previous 11 months' average monthly CPI escalation rate.

9.3. All prices are exclusive of Value Added Tax and insofar as any Value Added Tax is payable on any such amounts, it shall be paid by the Party making the payment in question.

9.4. Travelling expenses, if any, will be for The Client's account as detailed in The Proposal.

## 10. PAYMENT

10.1. Upon receipt of acceptance of The Proposal or applicable contract (whichever is applicable), Green Gain shall present The Client with the first invoice which will be for an amount not less than the Total Setup Fee or as per The Proposal.

10.2. Upon delivery of the products or services to The Client once The Client's setup has been completed, Green Gain shall present The Client with a tax invoice for the remainder of the price quoted ie. "Annual Fee" for the first year, as per The Proposal.

10.3. The Client shall pay Green Gain within 30 days of date of the invoice.

10.4. Payment shall be rendered and The Client shall pay in terms of The Proposal, alternately payment shall be rendered once off annually in advance (preferred).

10.5. Payment shall be effected by way of electronic fund transfer to the following banking account or such other banking account as may be nominated in writing from time to time by Green Gain :

**GREEN GAIN**

**ABSA**

**Branch Code: 632005**

**Cheque account: 4057882289**

10.6. Late payments shall attract penalties as follows:

*2.5% (of the total amount due) interest per month that the payment is overdue.*  
As noted in clause 5.3 above - Green Gain has the right to suspend access to the Ariscu Software should payment not be received when due.

A reactivation fee of **R500.00** will be applicable in cases where The Client has been deactivated due to late payments.

## **11. BREACH**

If any Party breaches any provision of this Agreement and remains in breach for 5 (five) days after written notice to that Party requiring such Party to rectify the breach or if either Party repudiates this Agreement, the other Party shall be entitled at that Party's option:

- 11.1. to claim the immediate specific performance of any of the defaulting Party's obligations under this Agreement, whether or not such obligation is then due; or
- 11.2. to cancel this Agreement in either event, without prejudice to the aggrieved Party's right to claim damages.

## **12. DISPUTE**

- 12.1. Any dispute whatever arising out of or pursuant to this Agreement, or the interpretation hereof; or any matter arising out of the termination hereof or the rectification hereof shall be submitted to arbitration on the following basis:
  - 12.1.1. the Parties shall use their best endeavours to ensure that the arbitration is held and concluded and a decision handed down within 14 days after the arbitration has been demanded;
  - 12.1.2. the arbitrator shall be agreed upon between the Parties to the dispute, if the matter in dispute is principally:
    - 12.1.2.1.1. a legal matter, a practising Senior Counsel of Pretoria of at least fifteen (15) years standing
    - 12.1.2.1.2. an accounting matter, a practising Chartered Accountant of at least fifteen (15) years standing;
    - 12.1.2.1.3. any other matter, save for a technical dispute, any independent person;

If the Parties to the dispute fail within seven (7) days after the dispute has been declared to agree whether the dispute is principally a legal, accounting, other matter, or a technical dispute, or fail to agree upon the appointment of an arbitrator for any other reason, the arbitrator shall at the request of either Party to the dispute, be a person appointed by the Chairman of the Pretoria Bar Council.

- 12.2. The dispute in question will be declared by means of the Party raising the dispute giving to the other Party written notice thereof. The date upon which such notice is delivered to the addressee's domicilium address will be known as "the dispute date" and the written notice shall contain a summary of the issues in dispute and the contentions relative thereto of the Party raising the dispute.
- 12.3. The Party to whom the dispute notice has been given must within two (2) working days after the dispute date lodge with the arbitrator and the other Party to the dispute, their written representations setting out its version of the facts and contentions in regard to the dispute.
- 12.4. The person/s appointed in terms of this clause to determine the dispute ("the arbitrator") will be entitled to apply his own expert knowledge in determining the dispute.
- 12.5. Any hearing by the arbitrator will be at such venue or venues as mutually agreed by the Parties and the arbitrator. In the event of the Parties not reaching agreement, the arbitrator's selection and decision will be final.
- 12.6. The arbitrator will be vested with entire discretion as to the procedure and manner to be followed in arriving at his decision.
- 12.7. The Parties shall use their best endeavours to ensure that the dispute is determined by the arbitrator within a maximum period of fourteen (14) days after the dispute date.
- 12.8. The arbitrator's decision will be final and binding on the Parties affected thereby and shall be carried into effect and may be made an Order of any competent Court at the instance of any of the Parties.
- 12.9. The arbitrator may determine who shall be liable for his fees and may make such award as regards the legal costs incurred in the determination proceedings as he in his sole discretion might deem appropriate. If the arbitrator makes no such determination, his fees must be shared equally by the Parties to the dispute.

- 12.10. If the arbitrator requires his fees to be guaranteed the Parties to the dispute shall each be required to provide guarantees herefore acceptable to the arbitrator in such amounts and subject to such conditions as the arbitrator may reasonably require. If any Party (the defaulting Party) fails to provide such guarantee the remaining Party shall be entitled to do so and to claim from the defaulting Party any amount paid to the arbitrator in terms of the guarantee provided on behalf of the defaulting Party.
- 12.11. This clause constitutes an irrevocable consent by each of the Parties to any proceedings in terms hereof and none of the Parties will be entitled to withdraw there from or to claim at any such proceedings that he shall not be bound by this clause.
- 12.12. This clause is severable from the rest of this Agreement and will remain in effect even if this Agreement is terminated, lapses or is declared invalid, for any reason.
- 12.13. The provisions of this clause shall not preclude either Party from applying to a Court of competent jurisdiction for urgent interim relief.
- 12.14. Technical disputes:
- 12.14.1. An expert shall be a person having appropriate expertise with respect to, but no interest in the outcome of, any matter referred to it and shall be jointly appointed by the Parties or, in the absence of Agreement within 5 (five) days of either Party calling for resolution by the chairperson for the time being of the Computer Society of South Africa.
- 12.14.2. The expert shall be given terms of reference determined by the Parties acting in consultation with each other stating the reason for which the relevant referral is being made to the expert. If the Parties fail to reach Agreement on the formulation of the referral, each Party shall be entitled to submit its own referral to the expert, who shall combine the respective referrals into a wider reference of referral. The Parties may each provide the expert with a written argument and whatever supporting evidence they thin appropriate and shall provide the expert with such supporting evidence as is requested by the expert.
- 12.14.3. The expert shall be entitled to personally investigate the issues which are the subject of the referral, and to determine the procedure to be followed in arriving at a decision. This may include the hearing of oral evidence and submissions. Furthermore, the expert shall not be bound to choose the submission made by any Party, but shall be free to make his own determination of the point referred to him.

- 12.14.4. The expert shall act as an expert in determining the matter referred to him and not as an arbitrator.
- 12.14.5. The expert will be requested to give his decision as soon as practicable and, in any event, by no later than 10 (ten) days after the date of receipt of his terms and reference.
- 12.14.6. The expert's determination shall (save in the case of manifest error) be final and binding on the Parties. Either Party shall be entitled to have the decision made an order of court with competent jurisdiction.
- 12.14.7. The expert's determination shall be applied as at the date of which the circumstances giving rise to the dispute referred to the expert relates, not as at the date of the decision.

### **13. CONFIDENTIALITY**

- 13.1. For the purposes of this Agreement, "*Confidential Information*" shall mean all information of a confidential nature disclosed by either Party to the other of them in connection with this Agreement, including but not limited to all secret knowledge, technical information and specifications, manufacturing techniques, designs, circuit diagrams, instruction manuals, blue-prints, electronic artwork, samples, devices, demonstrations, formulae, know-how information concerning materials, marketing and business information generally, and other materials of whatever description in which the proprietor thereof has an interest in being kept confidential.
- 13.2. Confidential Information shall not include information which was in the public domain at the time of disclosure, or which falls into the public domain through no fault of the receiving Party.
- 13.3. The Parties acknowledge that;

During the course of the implementation of this Agreement, each of them shall be given access to and possession of Confidential Information in which the other Party may have proprietary rights or which has been or shall be entrusted in confidence to such Party by one or more third Parties,

- 13.4. The Parties each undertake to keep the Confidential Information in strict secrecy during the currency of this Agreement and at all times thereafter, provided that the receiving Party may disclose information pursuant to a duty imposed by law or the requirements by regulatory authority, but only to the extent so required,

or to give instructions to any professional adviser who is under an obligations to maintain the confidentiality of the Confidential Information.

13.5. The Parties undertake not to use or attempt to use the Confidential Information of the other of them for any purpose other than performing its contractual obligations in terms of this Agreement.

13.6. The Parties each undertake to take all such steps as may be reasonably necessary to prevent the confidential information falling into the hands of an unauthorized third party.

13.7. Each Party (Proprietor) may by written notice to the other of them (the covenantor) specify which of the covenantor's employees, offices or agents are required to sign a secrecy undertaking in a form specified by the proprietor from time to time and no such person may be employed in the conduct of the business of the covenantor until such secrecy undertaking has been signed.

13.8. All documentation furnished to the covenantor by the Proprietor for the purposes of this Agreement will remain the property of the Proprietor and upon the request of the Proprietor will be returned to the Proprietor. The covenantor may not make copies of any such documentation without having obtained the prior written consent of the proprietor.

#### **14. VARIATION, CANCELLATION AND WAIVER**

14.1. This Agreement, together with the attached proposals, constitutes the entire Agreement between the Parties and no alteration, variation or agreed cancellation of this Agreement and no waiver by either of the Parties of any of their rights under this Agreement shall be of any force or effect unless reduced to writing and signed by the Parties. The Parties acknowledge that there are no implied or tacit terms forming part of this Agreement.

#### **15. INDULGENCES**

15.1. The grant of any indulgence by a Party under this Agreement shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.

#### **16. APPLICABLE LAW**

16.1. This Agreement shall be interpreted and implemented in accordance with the laws of the Republic of South Africa.

**17. DOMICILIUM CITANDI ET EXECUTANDI**

17.1. The Parties hereby select as their respective *domicilium citandi et executandi* the following addresses to which all notices may be posted or delivered and at which all legal process may be served arising from this Agreement or the cancellation thereof:

Green Gain:                   5 Brecher Street  
                                  Sunnyside  
                                  PRETORIA

The Client: As per company registered address

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

17.2. A Party may at any time change its domicile by notice in writing, provided that the new domicile is within the Republic of South Africa and consists of, or includes a physical address at which process can be served.

17.3. Any notice given in connection with this Agreement shall:

17.3.1. be delivered by hand; or

17.3.2. be sent by pre-paid registered post; or

17.3.3. be sent by telefax if the domicile includes a telefax number.

17.4. A notice given as set out above shall be deemed to have been duly given:

17.4.1. if delivered by hand, on the date of delivery;

17.4.2. if sent by registered post, 8 (eight) days after posting;

17.4.3. if sent by telefax on the day that the telefax is transmitted.

## **18. COPYRIGHT**

- 18.1. The Client acknowledges that the Ariscu Software is subject to copyright, such copyright held by Green Gain. The Client will do all that is necessary to ensure that the copyright is respected and that it shall be stringently enforced.
- 18.2. All Ariscu Software Users as well as The Client are bound by the usual copyright limitations regarding the legal updates received the content and programming of the system.

## **19. DISCLAIMER**

- 19.1. The information contained in the Ariscu Software with specific reference to Compliance Registers is for general research and reference purposes only. Green Gain provides all information and endeavors to keep the information current and accurate without any representations or warranties, express or implied, regarding the completeness, accuracy, reliability, suitability or availability of the documents that make up the Compliance Registers.
- 19.2. In no event will Green Gain and its management, employees, sub-consultants or agents be liable for any loss or damage including without limitation, indirect or consequential loss or damage incurred by The Client due to any possible inaccuracies in the documents that make up the Software, or on the strength of work performed or advice or consultation provided.
- 19.3. Any reliance placed on the Compliance Register content is strictly at the user's own risk. Users should obtain specific legal advice from Green Gain prior to any significant action(s) based on the strength of the Compliance Register content.

## **20. CUSTOMIZATION OF COMPLIANCE REGISTER AFTER INSTALLATION**

- 20.1. It remains the responsibility of The Client to customise any Compliance Register provided after installation, by entering information into the The Client "Reference" text box in order to describe how the legal obligations pertain to their specific operations and sites, aspects and hazards.
- 20.2. It is also the responsibility of the Client to ensure that the Compliance Registers of every site are adequately customised.

## 21. SHEQ PROCEDURES: LEGAL REQUIREMENTS

21.1. It is responsibility of The Client to establish and maintain a procedure to identify and have access to legal and other SHEQ requirements applicable to the environmental aspects of The Client's activities, products or services and to ensure that the email updates received from Green Gain are disseminated to the relevant persons in The Client's organization and that the Users have easy access to relevant legislation.

## 22. REQUIREMENTS FOR INTERNET AND INTRANET USERS

22.1. It is The Client's responsibility to ensure that it meets the following system requirements prior to use or installation of the Ariscu Software:

<b>Prerequisite software</b>	Windows XP SP2 / Vista / 7 / 8 Adobe Acrobat Reader 8 or later Microsoft Outlook or alternative email client Spam filters on e-mail set so as to receive all the monthly updates and white list certain websites and e-mail
<b>Internet Browser Requirements</b>	Microsoft Internet Explorer 10 / 11 or <b>Google Chrome (preferred)</b> / Mozilla Firefox / Safari that is current and updated
<b>Bandwidth</b>	Broadband internet access for all users Spam filters on e-mail set so as to receive all the monthly updates and Ariscu system generated mail Whitelist the Ariscu.com domain

## 23. ACCESS TO THE CLIENT'S DATA

23.1. Green Gain guarantees that The Client will have access to Client Data stored on the Ariscu Software in the event that the service is terminated for whatever reason, and acknowledges that the Client Data provided by The Client belongs to The Client.

## **24. PROTECTION OF THE CLIENT'S DATA**

- 24.1. Green Gain guarantees it will take all reasonable measures to protect Client Data stored on the Ariscu Software.
- 24.2. It remains The Client responsibility to ensure as far as reasonably possible that The Client's employees, who are Users, do not divulge their usernames and passwords to third parties. Similarly, Green Gain undertakes not to disclose the usernames and passwords of The Client's Users to third parties.
- 24.3. The Client acknowledges the responsibility to manage its own users. The Client undertakes to add and remove Users on the Ariscu Software that are linked to their account.
- 24.4. Green Gain is committed to protecting the privacy and the confidentiality of the Client's personal information. More information on Green Gain's data protection policy can be found on the Ariscu website ([www.ariscu-africa.com](http://www.ariscu-africa.com)).

## **25. GENERAL**

- 25.1. Neither Party shall be entitled to assign any of their rights or obligations in terms of this Agreement to any other person without the prior written consent of the other Party, which consent shall not be unreasonably withheld.
- 25.2. The Data on the Ariscu Software is backed up daily to two separate locations. One daily backup is to the hosting service backup facility. The other backup is the software development house.
- 25.3. All the provisions of this Agreement shall be severable and no provisions shall be affected by the invalidity of any other provisions of this Agreement.
- 25.4. This Agreement cancels and supersedes all prior negotiations entered into between the Parties relating to the matter set forth herein. The Parties acknowledge that no representations, whether express, tacit or implied, have been made or given other than those contained in this Agreement.

**SIGNED BY THE PARTIES ON THE DATES AND AT THE PLACES AS SET OUT BELOW**

For and on behalf of **GREEN GAIN CONSULTING (PTY) LTD**

**AUTHORISED SIGNATORY:**

NAME: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_ PLACE: \_\_\_\_\_

WITNESS: \_\_\_\_\_

For and on behalf of **The Client**

**AUTHORISED SIGNATORY:**

NAME: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_ PLACE: \_\_\_\_\_

WITNESS: \_\_\_\_\_