

INGOMA Foundation Terms & Conditions

These terms and conditions are the contract between you and INGOMA Foundation Internet (Pty) Ltd (“us”, “we”, etc). By visiting or using Our Website, or signing up for our Services, you agree to be bound by them. We are INGOMA Foundation, a NPO registered in South Africa, number 166-619 NPO. Our address is 7 Fairview, Thornhill Polokwane, 0699. You are: Anyone who uses Our Website or buys Service from us. Please read this agreement carefully and save it. If you do not agree with it, you should leave our website immediately. These are the agreed terms.

1. Definitions

Content

means the textual, visual or aural content that is encountered as part of your experience on Our Website. It may include, among other things: text, images, sounds, videos and animations. It includes content Posted by you.

Intellectual Property

means intellectual property owned by us, of every sort, whether or not registered or registrable in any country, including intellectual property of all kinds coming into existence after today; and including, among others, patents, trademarks, unregistered marks, designs, copyrights, software, domain names, discoveries, creations and inventions, together with all rights which are derived from those rights.

Our Website

means any website or service designed for electronic access by mobile or fixed devices which is owned or operated by us or any member of the INGOMA Foundation or INGOMA, including but limited to INGOMA Foundation and INGOMA. It includes all web pages controlled by us.

Post

means place on or into Our Website any Content or material of any sort by any means.

Services

means all of the services available from Our Website, whether free or charged. We provide cloud software and applications for businesses, including associated offline and mobile applications ("Service" or "Services"). You may use the Services for your personal and business use or for internal business purpose in the organization that you represent. You may connect to the Services using any Internet browser supported by the Services. You are responsible for obtaining access to the Internet and the equipment necessary to use the Services. You can create and edit content with your user account and if you choose to do so, you can publish and share such content.

Visitor

means anyone who visits Our Website.

2. Interpretation

In this agreement unless the context otherwise requires:

2.1. a reference to a person includes a human individual, a corporate entity and any organisation which is managed or controlled as a unit.

2.2. a reference to a person includes reference to that person's successors, legal representatives, permitted assigns and any person to whom rights and obligations are transferred or pass as a result of a merger, division, reconstruction, or other re-organisation involving that person.

2.3. in the context of permission, "may not" in connection with an action of yours, means "must not".

2.4. the headings to the paragraphs and schedules (if any) to this agreement are inserted for convenience only and do not affect the interpretation.

2.5. any agreement by either party not to do or omit to do something includes an obligation not to allow some other person to do or omit to do that same thing.

2.6. except where stated otherwise, any obligation of any person arising from this agreement may be performed by any other person.

2.7. a reference to an act or regulation includes new law of substantially the same intent as the act or regulation referred to.

2.8. these terms and conditions apply to all supplies of Services by us. They prevail over any terms proposed by you.

2.9. this agreement is made only in the English language. If there is any conflict in meaning between the English language version of this agreement and any version or translation of this agreement in any other language, the English language version shall prevail.

3. Basis of Contract

3.1. In entering into this contract, you have not relied on any representation or information from any source except the definition and explanation of the Services given on Our Website.

3.2. Subject to these terms and conditions, we agree to provide to you some or all of the Services described on Our Website at the prices we charge from time to time.

3.3. You acknowledge that you understand exactly what is included in the Services and you are satisfied that the Services are suitable and satisfactory for your requirements.

3.4. So far as we allow use of our Intellectual Property, we grant a licence to you, limited to the terms set out in this agreement.

3.5. Our contract with you and licence to you lasts for the duration of the subscription term from the later of the date of subscription start or payment. Any continuation by us or by you after the expiry of the term is a new contract under

the terms then posted on Our Website. Your continued use of our Services after that shall be deemed acceptance by you of the changed Service, system and/or terms.

3.6. The contract between us comes into existence when we receive payment from you for a Service.

3.7. If you register for a free trial of one or more Services, we will make the applicable Services available to you on a trial free of charge until the earlier of (i) the end of the free trial period of the applicable Services (unless terminated earlier by you), (ii) the start date of the paid subscription period for the applicable Services, or (iii) termination by us in our sole discretion. Any data that you enter into the Services, and any customizations made to the Services during the free trial will be permanently lost unless you (i) purchase the corresponding paid subscription plan for the account, (ii) purchase applicable Service upgrades, or (iii) export such data before the end of the trial period. Notwithstanding anything contained in this Section, Services are offered as-is during the free trial, without any warranty, covenant, support, or liability whatsoever, to the extent permitted by law.

3.8. We may change this agreement and/or the way we provide the Services, at any time. If we do:

3.8.1 the change will take effect when we Post it on Our Website.

3.8.2 we will give you notice of the change. If you do not accept the change, we will refund the money you have paid for the Service to date.

3.8.3 if you make any payment for Services or goods in the future, you will do so under the terms Posted on Our Website at that time.

4. Your account and personal information

4.1. When you visit Our Website, you accept responsibility for any action done by any person using your name, account, or password.

4.2. You agree that you have provided accurate, up to date, and complete information about yourself. We are not responsible for any error made as a result of such information being inaccurate.

5. If you buy Services as a consumer

This paragraph applies if and only if, you are a consumer as defined in the Electronic Communications and Transactions Act 2002 (“the Act”).

5.1. For all purposes at law, the contract between us is not made until you have agreed these terms, and we have agreed in writing to provide the Service you want.

5.2. Whether or not you have paid any money to us at that time is neither relevant to the start of the contract nor to your right to cancel.

5.3. The contract is not made automatically at the point when you have agreed to these contract terms. That is merely your offer. The contract is made later when we accept and agree to provide the Service you want.

5.4. Before we agree to supply a Service, we therefore ask that you give up your right to cancel, as the law allow.

5.5. So far as our Service is continuing, you may cancel it at any time before we have completely provided it. If you do, we will return to you any money paid after deduction of an appropriate amount to cover any part of the Service we have supplied, including work we may not by then have told you about.

5.6. In the event of cancellation of an order by you in compliance with these terms, we will refund any money due to you within 30 days.

6. The price

6.1. The prices payable for Services are clearly set out on Our Website.

6.2. The price charged for any Services may differ from one country to another. You may not be entitled to the lowest price unless you reside in the qualifying country.

6.3. Prices are inclusive of any applicable value added tax or other sales tax.

7. How we handle your Content?

7.1. Our privacy policy is strong and precise. It complies fully with current privacy law which is at [\[link to privacy policy\]](#).

7.2. If you Post Content to any public area of Our Website, it becomes available in the public domains. We have no control over who sees it or what anyone does with it.

7.3. Even if access to your text is behind a user registration it remains effectively in the public domain because someone has only to register and log in, to access it. You should therefore avoid Posting unnecessary confidential information.

7.4. We need the freedom to be able to publicise our Services and your own use of them. You therefore now irrevocably grant us the right and licence to edit, copy, publish, distribute, translate, and otherwise use any Content that you place on Our Website, in public domains and in any medium. You represent and warrant that you are authorised to grant all such rights.

7.5. We will use that licence only for commercial purposes of the business of Our Website and will stop using it after a commercially reasonable period of time.

7.6. You agree to waive your right to claim authorship and your right to object to any distortion, mutilation or other modification of your work as provided in the Copyright Act 1978.

7.7. You now irrevocably authorise us to publish feedback, comments, and ratings about your activity through Our Website, even though it may be defamatory or critical.

7.8. Posting content of any sort does not change your ownership of the copyright in it. We have no claim over it and we will not protect your rights for you.

7.9. You understand that you are personally responsible for your breach of someone else's intellectual property rights, defamation, or any law, which may occur as a result of any Content having been Posted by you.

7.10. You accept all risk and responsibility for determining whether any Content is in the public domain and not confidential.

7.11. Please notify us of any security breach or unauthorised use of your account.

7.12. We do not solicit ideas or text for improvement of our Service, but if you do send to us material of any sort, you are deemed to have granted to us a licence to use it in the terms set out at sub paragraph five above.

8. Restrictions on what you may Post to Our Website

We invite you to Post Content to Our Website in several ways and for different purposes. We have to regulate your use of Our Website to protect our business and our staff, to protect other users of Our Website and to comply with the law. These provisions apply to all users of Our Website. We do not undertake to moderate or check every item Posted, but we do protect our business vigorously. If we believe Content Posted breaches the law, we shall co-operate fully with the law enforcement authorities in whatever way we can. You agree that you will not use or allow anyone else to use Our Website to Post Content or undertake any activity which is or may:

8.1. Be unlawful, or tend to incite another person to commit a crime.

8.2. Consist in commercial audio, video or music files.

8.3. Be obscene, offensive, threatening, violent, malicious or defamatory.

8.4. Be sexually explicit or pornographic.

8.5. Be likely to deceive any person or be used to impersonate any person, or to misrepresent your identity, age or affiliation with any person.

8.6. Request or collect passwords or other personal information from another user without his permission, nor Post any unnecessary personal information about yourself.

8.7. Be used to sell any goods or services or for any other commercial use not intended by us, for yourself or for any other person. Examples are: sending private messages with a commercial purpose, or collecting information with the intention of passing it to a third party for his commercial use.

8.8. Include anything other than words (i.e. you will not include any symbols or photographs) except for a photograph of yourself in your profile in such place as we designate.

8.9. Facilitate the provision of unauthorised copies of another person's copyright work;

8.10. Link to any of the material specified in this paragraph.

8.11. Post excessive or repeated off-topic messages to any forum or group.

8.12. Sending age-inappropriate communications or Content to anyone under the age of 18.

9. Your Posting: restricted content

In connection with the restrictions set out below, we may refuse or edit or remove a Posting which does not comply with these terms. In addition to the restrictions set out above, a Posting must not contain:

9.1. hyperlinks, other than those specifically authorized by us.

9.2. keywords or words repeated, which are irrelevant to the Content Posted.

9.3. the name, logo or trademark of any organisation other than that of you or your client.

9.4. inaccurate, false, or misleading information.

10. Removal of offensive Content

10.1. For the avoidance of doubt, this paragraph is addressed to any person who comes on Our Website for any purpose.

10.2. We are under no obligation to monitor or record the activity of any customer for any purpose, nor do we assume any responsibility to monitor or police Internet-related activities. However, we may do so without notice to you and without giving you a reason.

10.3. If you are offended by any Content, the following procedure applies:

10.3.1 your claim or complaint must be submitted to us in the form available on Our Website or contain the same information as that requested in our form. It must be sent to us by post or email.

10.3.2 we shall remove the offending Content as soon as we are reasonably able.

10.3.3 after we receive notice of a claim or complaint, we shall investigate so far as we alone decide.

10.3.4 we may re-instate the Content about which you have complained or not.

10.4. In respect of any complaint made by you or any person on your behalf, whether using our form of complaint or not, you now irrevocably grant to us a

licence to publish the complaint and all ensuing correspondence and communication, without limit.

10.5. You now agree that if any complaint is made by you frivolously or vexatiously you will repay us the cost of our investigation including legal fees, if any.

11. Security of Our Website

If you violate Our Website, we shall take legal action against you. You now agree that you will not, and will not allow any other person to:

11.1. modify, copy, or cause damage or unintended effect to any portion of Our Website, or any software used within it.

11.2. link to Our Website in any way that would cause the appearance or presentation of Our Website to be different from what would be seen by a user who accessed Our Website by typing the URL into a standard browser.

11.3. download any part of Our Website, without our express written consent.

11.4. collect or use any product listings, descriptions, or prices.

11.5. collect or use any information obtained from or about Our Website or the Content except as intended by this agreement.

11.6. aggregate, copy or duplicate in any manner any of the Content or information available from Our Website, other than as permitted by this agreement or as is reasonably necessary for your use of the Services.

11.7. share with a third party any login credentials to Our Website.

11.8. Despite the above terms, we now grant a licence to you to:

11.8.1 create a hyperlink to Our Website for the purpose of promoting an interest common to both of us. You can do this without specific permission. This licence is conditional upon your not portraying us or any product or service in a false, misleading, derogatory, or otherwise offensive manner. You may not use any logo or other proprietary graphic or trademark of ours as part of the link without our express written consent.

11.8.2 you may copy the text of any page for your personal use in connection with the purpose of Our Website or a Service we provide.

12. Uploading to our servers

12.1. You must not upload to, or store on our servers any material or Content which you are not permitted by this agreement to Post to Our Website.

12.2. You may not share, let or sub-license space on the servers. (except as an authorised re-seller).

12.3. You may not upload to any shared server, any of the following pages, namely those:

12.3.1 pages with banners, graphics or CGI scripts running from their domain being used on other domains. (e.g., hot-linking, imagesucking, load-spreading).

12.3.2 pages with very large graphic archives or galleries.

12.3.3 pages offering download archives or large media distribution (5GB), such as .zip, .tar, .sit, .ra, .avi, .mov, .asf and .GZ.

12.3.4 pages running large or busy chat rooms.

12.3.5 pages using more than 8% of system resources.

12.4. You may not send more than 500 email messages per hour.

13. Termination

This agreement may be terminated:

13.1. upon either of us giving the other 30 days notice in writing addressed by post to the last known land address or by e-mail to the last known email address of the other of us. For this and all purposed in connection with this agreement, our addresses are as at the head of this document. If your cancellation is to be effective, you must give us full information to enable us to identify:

13.1.1 who you are and;

13.1.2 that you have proper authority to cancel and;

13.1.3 the Services you wish to cancel.

13.2. when we terminate it, without notice, on account of your failure to comply with these terms.

13.3. immediately by either party if a trustee receiver administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other party or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other party or for the making of an administration or bankruptcy order (otherwise than for the purpose of an amalgamation or reconstruction).

13.4. Any termination of this agreement by this paragraph shall be without prejudice to any other rights or remedies to which a party may be entitled.

13.5. Termination by either party shall have the following effects:

13.5.1 your right to use the Services immediately ceases;

13.5.2 we are under no obligation to forward any unread or unsent messages to you or any third party;

13.5. Termination by either party shall have the following effects:

13.5.1 your right to use the Services immediately ceases;

13.6. In the event of such termination by us, we will within 14 days refund to you the balance of your cost outstanding for any Service, pro rata with time not elapsed;

13.7. There shall be no re-imbusement or credit if we decide in our absolute discretion that you have failed to comply with any of the terms of this agreement.

14. Interruption to Services.

14.1. If it is necessary for us to interrupt the Services, we will give you reasonable notice where this is possible and when we judge the down time is such as to justify telling you.

14.2. You acknowledge that the Services may also be interrupted for many reasons beyond our control.

14.3. You agree that we are not liable to you for any loss, foreseeable or not, arising from any interruption to the Services.

15. Intellectual Property

You agree that at all times you will:

15.1. not cause or permit anything which may damage or endanger our title to the Intellectual Property.

15.2. notify us of any suspected infringement of the Intellectual Property;

15.3. indemnify us for any loss or expense arising from your misuse of the Intellectual Property;

15.4. on the expiry or termination of this agreement immediately stop using the Intellectual Property except as expressly authorised by us in writing;

15.5. not use any name or mark similar to or capable of being confused with any name or mark of ours;

15.6. so far as concerns software provided or made accessible by us to you, you will not:

15.6.1 copy, or make any change to any part of its code;

15.6.2 use it in any way not anticipated by this agreement;

15.6.3 give access to it to any other person than you, the licensee in this agreement;

15.6.4 in any way provide any information about it to any other person or generally.

15.7. not use the Intellectual Property except directly in our interest.

16. Disclaimers and limitation of liability

16.1. The law differs from one country to another. This paragraph applies so far as the applicable law allows.

16.2. All implied conditions, warranties and terms are excluded from this agreement. If in any jurisdiction an implied condition, warrant or term cannot be

excluded, then this sub paragraph shall be deemed to be reduced in effect, only to the extent necessary to release that specific condition, warranty or term.

16.3. The Website and Services are provided “as is”. We make no representation or warranty that the Service will be:

16.3.1 useful to you;

16.3.2 of satisfactory quality;

16.3.3 fit for a particular purpose;

16.3.4 available or accessible, without interruption, or without error;

16.4. We claim no expert knowledge in any subject. We disclaim any obligation or liability to you arising directly or indirectly from information you take from Our Website.

16.5. We shall not be liable to you for any loss or expense arising out of or in connection with your use of Our Website, which is indirect or consequential loss, or economic loss or other loss of turnover, profits, business, or goodwill. This applies whether in an action of contract, negligence or otherwise, even if such loss was reasonably foreseeable or we knew you might incur it.

16.6. We make no representation or warranty and accept no responsibility in law for:

16.6.1 accuracy of any Content or the impression or effect it gives;

16.6.2 delivery of Content, material, or any message;

16.6.3 privacy of any transmission;

16.6.4 any act or omission of any person or the identity of any person who introduces himself to you through Our Website;

16.6.5 any aspect or characteristic of any goods or services advertised on Our Website;

16.7. Our Website includes Content Posted by third parties. We are not responsible for any such Content. If you come across any Content which offends you, please contact us via the “Contact us” page on Our Website.

16.8. We will do all we can to maintain access to Our Website, but it may be necessary for us to suspend all or part of our service for repairs, maintenance, or other good reasons. We may do so without telling you first.

16.9. You agree that in any circumstances when we may become liable to you, the limit of our liability is the amount you have paid us in the immediately preceding 12 month period for the Services concerned.

16.10. Our total liability under this agreement, however it arises, shall not exceed the sum of R25,000. This applies whether your case is based on contract, tort, or any other basis in law.

16.11. This paragraph (and any other paragraph which excludes or restricts our liability or provides an indemnity to us) applies to our directors, officers, employees, subcontractors, agents, and affiliated companies, as well as to us.

16.12. If you become aware of any breach of any term of this agreement by any person, please tell us by emailing info@ingoma.org.za . We welcome your input but do not guarantee to agree with your judgement.

16.13. Nothing in this agreement excludes liability for a party`s fraud.

17. You indemnify us.

You agree to indemnify us against all costs, claims and expense arising directly or indirectly from:

17.1. your failure to comply with the law of any country;

17.2. your breach of this agreement;

17.3. any act, neglect or default by any agent, employee, licensee, or customer of yours;

17.4. a contractual claim arising from your use of the Services;

17.5. a breach of the intellectual property rights of any person; For the purpose of this paragraph, you agree that the cost of our management and technical time is properly recoverable and can reasonably be valued at R750.00 per hour without further proof.

18. Miscellaneous matters

18.1. You undertake to provide to us your current land address, e-mail address and telephone numbers as often as they are changed together with all information that we may require to enable us to fulfil our obligations under this contract.

18.2. The schedules, if any, to this agreement are part of the agreement and have the same force and effect.

18.3. If any term or provision of this agreement is at any time held by any jurisdiction to be void, invalid or unenforceable, then it shall be treated as changed or reduced, only to the extent minimally necessary to bring it within the laws of that jurisdiction and to prevent it from being void and it shall be binding in that changed or reduced form. Subject to that, each provision shall be interpreted as severable and shall not in any way affect any other of these terms.

18.4. The rights and obligations of the parties set out in this agreement shall pass to any permitted successor in title.

18.5. If you are in breach of any term of this agreement, we may:

18.5.1 terminate your account and refuse access to Our Website;

18.5.2 remove or edit Content, or cancel any order at our discretion;

18.5.3 issue a claim in any court.

18.6. Any obligation in this agreement intended to continue to have effect after termination or completion shall so continue.

18.7. No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it nor indicate any intention to reduce that or any other right in the future.

18.8. Any communication to be served on either of the parties by the other shall be delivered by hand or sent by fastmail service or recorded delivery or by e-mail. It shall be deemed to have been delivered: if delivered by hand: on the day of delivery; if sent by post to the correct address: within 72 hours of posting; If sent by e-mail to the address from which the receiving party has last sent e-mail: within 24 hours if no notice of non-receipt has been received by the sender.

18.9. In the event of a dispute between the parties to this agreement, then they undertake to attempt to settle the dispute by engaging in good faith with the other in a process of mediation before commencing arbitration or litigation.

18.10. So far as the law permits, and unless otherwise stated, this agreement does not give any right to any third party.

18.11. Neither party shall be liable for any failure or delay in performance of this agreement, which is caused by circumstances beyond its reasonable control, including any labour dispute between a party and its employees.

18.12. In the event of any conflict between any term of this agreement and the provisions of the memorandum of incorporation of a limited company or any comparable document intended to regulate any other corporate or collective body, then the terms of this agreement shall prevail.

18.13. The validity, construction and performance of this agreement shall be governed by the laws of the Republic of South Africa, and you agree that any dispute arising from it shall be litigated only in that country.

Special additional provisions relating only to domain names

These terms apply when you instruct us to register, renew, transfer in or transfer out, a domain name and are in addition to the terms set out above. You agree to be bound by them.

19. Your undertakings

19.1. You acknowledge that it is your sole responsibility to supply accurate and reliable contact details and relevant information as well as name of servers. You undertake to supply such accurate, complete full records and as are required by any relevant registrar and/or registry and to ensure that such details are kept updated and complete at all times.

19.2. You warrant that to the best of your knowledge neither the registration nor the use of the domain name infringes the legal rights of any third party and that you are authorised to apply for or renew the domain name.

19.3. The registration of a domain name and its continued use is subject (in addition to these terms and conditions) to your continued compliance with the terms and conditions of the relevant registrar and/or registry. You agree to be bound by such terms and conditions, including all rules and policies.

20. Domain name disputes

You acknowledge that:

20.1. the registration or use of a domain name does not necessarily entitle us to use that name in a particular context;

20.2. your contract with a relevant registrar and/or registry may provide that the registrar and/or registry may take action which might include:

20.2.1 the suspension or revocation of your application for a domain name or

20.2.2 the registration of a domain name allocated to you to a third party.

20.3. we will have no responsibility or involvement in relation to any dispute between you and a registrar.

20.4. You now therefore agree to indemnify us against all costs, claims and expense, including the reasonable cost of management time, in respect of any event, act or omission we may be required to take by any third party with jurisdiction, including a domain name registrar and/or registry.

21. Action on your default

We may in our absolute discretion cancel, take ownership, dispose of and/or refuse to register, release, or renew any domain name if:

21.1. our fees in respect of that domain name are overdue;

21.2. we are required to do so by regulation or competent authority;

21.3. it is otherwise permitted under these terms and conditions.

22. Event ticket: cancellation & refunds

You are entitled to cancel your booked tickets that on the condition that they have not yet been issued to you. This cancellation may be done at any time prior to the day before the date of the event by sending a cancellation notice to info@ingoma.org.za

22.1. Once the details of your booking have been reinserted into the system, you will be refunded the face value paid for the relevant tickets. You may be liable for cancellation charges as determined either by us or by the Event Organiser which may be deducted from your refund. The following cancellation charges may apply:

22.1.1. If the cancellation occurs more than 30 days prior to the event a 25% cancellation fee will apply;

22.1.2. If the cancellation occurs less than 30 but more than 7 days prior to the event a 50% cancellation fee will apply;

22.1.3. If the cancellation occurs less than 7 days prior to the event a 75% cancellation fee will apply;

22.1.4. In the event that you can provide us with documentary proof that a person in whose name a ticket was booked will not be able to attend the event because of his / her death or incapacity, we will not levy a cancellation fee in respect of that person's ticket.

22.2. It falls exclusively in our domain to do the following:

22.2.1. refuse admission to events,

22.2.2. alter the program or seating arrangements for events, postpone or cancel events in certain circumstances.

22.2.3. postpone or cancel events in certain circumstances.

22.3. In each of the above instances, we may offer a full refund, a partial refund, or an exchange of tickets and we take no responsibility in respect of that process. Any refund will be at the discretion of the organiser and depending on the circumstance may deduct booking fees or reasonable costs incurred to date. No refund will apply if you are refused admission to the event because fail to qualify for attendance. If an event is cancelled or postponed, and depending on the circumstance listed above, we shall provide a notice on our website or contact you to inform you of the relevant refund or exchange procedures for that event. Refunds shall be issued using the same method of payment that was used to purchase the tickets. If a credit card was used to make the refunded purchase, then only that actual credit card will receive the credit for the refund.

INGOMA will not be liable for any indirect, special or consequential losses of any kind whatsoever arising from, or in connection with your use of the platform or our services. "Force Majeure" means, in relation to INGOMA, any circumstances beyond the reasonable control of INGOMA including (without limitation) any acts of war or public enemy, civil commotion or strife, political or civil disturbance, riot, insurrection, strikes, lock-out, interruption of transport, labour dispute, boycott, fire, explosion, flood, storm, infectious or contagious disease, epidemic, pandemic or natural or physical disaster, sabotage, terrorism, acts or omissions of any government, government agency, provincial or local or similar authority, laws or regulations or any acts of God or forces of nature. INGOMA shall not be liable a result of any delays or failures of performance of its obligations if and to the extent that such delay or failure is caused by a Force Majeure event.