

Guidance Note	Forms and Precedents	Checklists	Other Resources
<b>1. UNDERSTANDING IT AND DATA PROTECTION</b>			
1.1 Introduction to technology contracting			
1.1.1 Analysing technology contracts			
1.2 Regulatory considerations			
1.2.1 Overview of the regulatory considerations in South Africa			Draft Cybercrimes and Cybersecurity Bill
1.2.2 Data protection in South Africa			
1.2.3 Cybersecurity and cybercrime			Draft Cybercrimes and Cybersecurity Bill
1.2.4 Electronic communications laws			Draft Cybercrimes and Cybersecurity Bill

<b>2. INFORMATION TECHNOLOGY</b>			
2.1 Considerations for technology contracts			
2.1.1 Commercial business context			
2.1.2 Technology contracting norms			
2.1.3 Considerations for drafting from a supplier perspective			
2.1.4 Considerations for drafting from a customer perspective			
2.1.5 Common commercial and technical risks to be aware of			
2.1.6 Contracting for flexibility			
2.2 Cross-border contracts			
2.2.1 Cross-border contracting considerations			
2.2.2 Multi-jurisdiction contracting			
2.2.3 Models for contracting for global customers			
2.2.4 Proper and applicable law			
2.2.5 Addressing intellectual property rights in cross-border contracts			
2.2.6 Enforcement of contracts			

Guidance Note	Forms and Precedents	Checklists	Other Resources
2.3 How to protect IP rights in technology contracts			
2.3.1 Overview of the protection of intellectual property rights			
2.3.2 Intellectual property rights ownership			
2.3.3 Intellectual property rights licensing			
2.3.4 Contractual mechanisms for protecting intellectual property rights			
2.3.5 Database rights			
2.4 Common contractual provisions for technology contracts			
2.4.1 Introduction to contractual provisions for technology contracts			
2.4.2 Limitation of liability clauses			
2.4.3 Source code escrow arrangements			
2.4.4 Confidentiality agreements			
2.4.5 Software warranty provisions			
2.4.6 Excused performance clauses			
2.5 Acceptance testing			
2.5.1 Types of acceptance testing			
2.5.2 Contracting Options			
2.5.3 Test agreements			
2.5.4 Termination and consequences in relation to acceptance testing clauses			
2.5.5 Acceptance and payment relating to acceptance testing			
2.6 Open source software			
2.6.1 Types of open source licensing			Open Source Initiative's definition of open source
			Open Source Initiative's licenses by name

Guidance Note	Forms and Precedents	Checklists	Other Resources
2.6.2 Key considerations and risks relating to open source software			Open Source Initiative's licenses by name  gpl-violations.org (web)
<b>2.7 Change control and change management</b>			
2.7.1 Change control and management variations			
2.7.2 Changes to service scope, pricing and timelines			
2.7.3 Addressing technology project changes			
2.7.4 Addressing contract changes			

**3. SOFTWARE AGREEMENTS**

<b>3.1 Software licensing agreements</b>			
3.1.1 Types of software licences	Software license agreement		
3.1.2 Scope of licence rights	Sample clause for scope of licence grants for software licence agreements		
3.1.3 Key contractual terms for software licence agreements	Sample clause for source code escrow arrangements in software licensing agreements		
	Software license agreement		
	Sample clause for termination in software licence agreements		
	Sample clause for general intellectual property rights		
	Sample clause for Intellectual property rights indemnity		
	Sample clause for scope of licence grants for software licence agreements		
	Sample clause for general warranties in software licence agreements		
	Sample clause for limitation of liability in software licence agreements		

Guidance Note	Forms and Precedents	Checklists	Other Resources
3.1.4 Transferring software licences	Sample clause for scope of licence grants for software licence agreements		
<b>3.2 Software development agreement</b>			
3.2.1 Types of software development projects			
3.2.2 Agile versus waterfall project methodologies			Comparison of the waterfall and Agile methodologies  Advantages and disadvantages of the Agile methodology  Advantages and disadvantages of the waterfall methodology
3.2.3 Key contractual terms for software development agreements	Software development agreement		
	Sample clause for intellectual property rights in a software development agreement		
	Sample clause for charges and payment in a software development agreement		
	Sample clause for software warranties in a software development agreement		
	Sample clause for intellectual property rights indemnity in a software development agreement		
3.2.4 Intellectual property rights in software development arrangements	Software development agreement		
	Sample clause for intellectual property rights in a software development agreement		
	Sample clause for intellectual property rights indemnity in a software development agreement		
3.2.5 Addressing commercial and technical risks	Software development agreement		

Guidance Note	Forms and Precedents	Checklists	Other Resources
<b>3.3 Software support agreement</b>			
3.3.1 A contracting overview of software support services	Software support agreement		
3.3.2 Types of support services	Software support agreement		
			Example of a classification table
3.3.3 Contracting models for software support services agreements	Software support agreement		
3.3.4 Commercial and technical risks for software support services agreements	Software support agreement		
3.3.5 Key contractual terms for software support services agreements	Software support agreement		
	Sample clause for general intellectual property rights in a software support agreement		
	Sample clause for general intellectual property rights indemnity in a software support agreement		
	Sample clause for service exclusions in a software support agreement		
	Sample clause for limitation of liability in software support agreements		
	Sample clause for services in a software support agreement		
<b>3.4 Software maintenance agreement</b>			
3.4.1 Contracting guidelines for maintenance services	Software maintenance services agreement		
3.4.2 Types of software maintenance services agreements	Software maintenance services agreement		
3.4.3 Contracting models for maintenance services agreements	Software maintenance services agreement		

Guidance Note	Forms and Precedents	Checklists	Other Resources
3.4.4 Commercial and technical risks for software maintenance services agreements	Software maintenance services agreement		
3.4.5 Key contractual terms for software maintenance agreements	Software maintenance services agreement		
	Sample clause for excused performance in a software maintenance services agreement		
	Sample clause for services in a software maintenance services agreement		
<b>3.5 Distribution agreements</b>			
3.5.1 Types of software distribution agreements	Software distribution agreement		
3.5.2 Contractual considerations for software distribution agreements	Software distribution agreement		
3.5.3 Addressing commercial risk in software distribution agreements	Software distribution agreement		
<b>3.6 Escrow agreements</b>			
3.6.1 Source code escrow agreements	Source code escrow agreement		
3.6.2 Benefits of source code escrow arrangements	Source code escrow agreement		
3.6.3 Trigger and release events	Source code escrow agreement		
<b>3.7 Software integration and turnkey solutions</b>			
3.7.1 Software integration and turnkey solutions			
3.7.2 Contracting requirements for software turnkey agreements			
3.7.3 Intellectual property considerations in software turnkey arrangements			

Guidance Note	Forms and Precedents	Checklists	Other Resources
<b>4. HARDWARE AGREEMENTS</b>			
<b>4.1 Hardware supply agreement</b>			
4.1.1 Typical hardware supply arrangements and ownership rights	Hardware supply agreement		
4.1.2 Contracting models for hardware supply agreements	Hardware supply agreement		
4.1.3 Addressing commercial and technical risks in hardware supply agreements	Hardware supply agreement		
4.1.4 Key contractual terms for hardware supply agreements	Hardware supply agreement		
<b>4.2 Hardware leasing agreement</b>			
4.2.1 Hardware leasing rights and obligations	Hardware leasing agreement		
4.2.2 Contracting models for hardware leasing agreements	Hardware leasing agreement		
4.2.3 Addressing commercial and technical risks in hardware leasing agreements	Hardware leasing agreement		
4.2.4 Key contractual terms for hardware leasing agreements	Hardware leasing agreement		
	Sample clause for a lease period in a hardware leasing agreement		
	Sample clause for leasing of the hardware in a hardware leasing agreement		
	Sample clause for review and acceptance in a hardware leasing agreement		
	Sample clause for installations in a hardware leasing agreement		
	Sample clause for risk and ownership in hardware in a hardware leasing agreement		
	Sample clause for insurance in a hardware leasing agreement		
	Sample clause for defective hardware in a hardware leasing agreement		

Guidance Note	Forms and Precedents	Checklists	Other Resources
<b>4.3 Hardware maintenance</b>			
4.3.1 Types of hardware maintenance services arrangements	Hardware maintenance agreement		
4.3.2 Contracting models for hardware maintenance agreements	Hardware maintenance agreement		
4.3.3 Commercial and technical risks for hardware maintenance services arrangements	Hardware maintenance agreement		
4.3.4 Key contractual terms for maintenance agreements	Hardware maintenance agreement		
	Sample clause for planned maintenance services in a hardware maintenance agreement		
	Sample clause for excluded maintenance services in a hardware maintenance agreement		
	Sample clause for emergency maintenance services in a hardware maintenance agreement		
	Sample clause for spare parts in a hardware maintenance agreement		
	Sample clause for charges and payment in a hardware maintenance agreement		
	Sample clause for replacement in a hardware maintenance agreement		
<b>4.4 Hardware distribution</b>			
4.4.1 Types of hardware distribution agreements	Hardware distribution agreement		
4.4.2 Contractual considerations for hardware distribution agreements	Hardware distribution agreement		

Guidance Note	Forms and Precedents	Checklists	Other Resources
	Sample clause for confidentiality in hardware distribution agreements		
	Sample clause for description of products in hardware distribution agreements		
	Sample clause for general intellectual property rights in a software support agreement		
	Sample clause for orders, supply and delivery in hardware distribution agreements		
	Sample clause for reports and estimates in hardware distribution agreements		
	Sample clause for termination in hardware distribution agreements		
4.4.3 Addressing commercial and technical risks in hardware distribution agreements	Hardware distribution agreement		
4.4.4 Contractual terms for hardware distribution agreements	Hardware distribution agreement		
	Sample clause for confidentiality in hardware distribution agreements		
	Sample clause for description of products in hardware distribution agreements		
	Sample clause for general intellectual property rights in a software support agreement		
	Sample clause for orders, supply and delivery in hardware distribution agreements		

Guidance Note	Forms and Precedents	Checklists	Other Resources
	Sample clause for reports and estimates in hardware distribution agreements		
	Sample clause for termination in hardware distribution agreements		
	Sample clause for termination - PDF		
	Sample clause for termination-New		

## 5. CONSULTING SERVICES

### 5.1 Consulting services agreements

Guidance Note	Forms and Precedents	Checklists	Other Resources
5.1.1 Provisions of consulting service agreements	Consulting services agreement		
5.1.2 Types of consulting services agreements	Consulting services agreement		
5.1.3 Labour brokers	Consulting services agreement		
5.1.4 Service completion	Consulting services agreement		
5.1.5 Termination rights	Consulting services agreement		
5.1.6 Taxation considerations	Consulting services agreement		

## 6. SERVICE LEVELS

### 6.1 Service level agreements

Guidance Note	Forms and Precedents	Checklists	Other Resources
6.1.1 Contracting structures	Service level agreement	Items to include in drafting a service level agreement	
6.1.2 Benefits of service level arrangements	Service level agreement		
6.1.3 The practical application of the use of service levels	Service level agreement		
6.1.4 Service level methodologies	Service level agreement		
6.1.5 Service level measurement and monitoring	Service level agreement		
6.1.6 Service level compliance	Service level agreement		

Guidance Note	Forms and Precedents	Checklists	Other Resources
<b>7. OUTSOURCING SERVICES</b>			
<b>7.1 Outsourcing agreements</b>			
7.1.1 General considerations for outsourcing agreements	Outsourcing agreement		
7.1.2 Key risks and challenges with outsourcing arrangements	Outsourcing agreement		
7.1.3 Regulatory considerations	Outsourcing agreement		
7.1.4 Contracting models for outsourcing agreements	Outsourcing agreement		
7.1.5 Multi-supplier sourcing	Outsourcing agreement		
7.1.6 How to contract for achieving cost savings and technological benefits	Outsourcing agreement		
7.1.7 Key contractual provisions to manage risk	Outsourcing agreement		
7.1.8 Term and duration	Outsourcing agreement		
7.1.9 Termination considerations	Outsourcing agreement		
7.1.10 Benchmarking mechanisms	Outsourcing agreement		

<b>8. TECHNOLOGY TRANSFERS</b>			
<b>8.1 Technology transfer and assignment agreements</b>			
8.1.1 Addressing technology transfers and technology assignments			
8.1.2 How to contract for a transfer or assignment			

<b>9. ONLINE AND MOBILE ARRANGEMENTS</b>			
<b>9.1 Internet and website contracts</b>			
9.1.1 Important considerations for web and Internet contracts			
9.1.2 Website design	Website design agreement		
9.1.3 Website hosting and maintenance	Website design agreement		
9.1.4 Website disclaimers	Example of a general website disclaimer		

Guidance Note	Forms and Precedents	Checklists	Other Resources
	Example of a specific disclaimer for websites used for informational purposes		
9.1.5 Drafting website terms and conditions			
9.1.6 Regulatory and other considerations			
<b>9.2 Contracts relating to mobile applications</b>			
9.2.1 Introduction to mobile apps terms and conditions			
9.2.2 Key terms for mobile application terms and conditions			

<b>10. SOFTWARE AS A SERVICE</b>			
<b>10.1. SAAS, Data bureau and ASP services</b>			
10.1.1 Bureaux services, ASP services and software as a service			
10.1.2 Contractual considerations			
10.1.3 Key legal issues for application service provider contracts and SaaS services			

<b>11. CLOUD COMPUTING</b>			
<b>11.1 Cloud computing contracts</b>			
11.1.1 What are cloud services?			
11.1.2 Contracting considerations for cloud agreements			
11.1.3 Types of cloud services contracts			
11.1.4 Regulatory issues			
11.1.5 General legal risk issues			

<b>12. IT USE POLICIES</b>			
<b>12.1 Understanding IT use policies</b>			
12.1.1 The need for IT use policies			
12.1.2 How to protect your IT assets via use policies		Provisions to include in an acceptable use policy checklist	
12.1.3 Managing risks in BYOD policies			

Guidance Note	Forms and Precedents	Checklists	Other Resources
<b>13. DATA PROTECTION</b>			
<b>13.1 Introduction to data protection</b>			
13.1.1 Contextual overview of local and international data privacy laws			Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data
			OECD Guidelines Governing the Protection of Privacy and Transborder Data Flows of Personal Data
			General Data Protection Regulation 2016/679
			EU-US Privacy Shield factsheet
13.1.2 POPI legislation overview			
<b>13.2 Decoding the POPI legislation</b>			
13.2.1 Definitions of personal information and special personal information			
13.2.2 Exclusions to POPI			
13.2.3 Conditions		Conditions in terms of POPI checklist	
13.2.4 Accountability			
13.2.5 Processing limitation			
13.2.6 Purpose specification			
13.2.7 Further processing limitation			
13.2.8 Information quality			
13.2.9 Openness			
13.2.10 Security safeguards			
13.2.11 Data subject participation			
<b>13.3 Information regulator</b>			
13.3.1 The Information Regulator and the composition of office			
13.3.2 Powers and authority of the Information Regulator			
13.3.3 Procedures			

Guidance Note	Forms and Precedents	Checklists	Other Resources
<b>13.4 Operators</b>			
13.4.1 Role of operator			
13.4.2 Obligations of an operator			
<b>13.5 Cross-border data transfers</b>			
13.5.1 Requirements for cross-border transfers			
13.5.2 Risks and procedures			
<b>13.6 Enforcement and consequences</b>			
13.6.1 Enforcement procedures			
13.6.2 Warrants, searches and seizures			
13.6.3 Enforcement notices			
13.6.4 Rights of appeal			
13.6.5 Offences, penalties and administrative fines			
<b>13.7 Direct marketing</b>			
13.7.1 Requirements for direct marketing, business impact analysis and electronic communications			
13.7.2 Directories			
13.7.3 Automated decision making			
<b>13.8 Exemptions</b>			
13.8.1 Exemptions			
13.8.2 Prior authorisations			
<b>13.9 Information officer</b>			
13.9.1 Requirements for an Information Officer			
13.9.2 Duties and obligations for an Information Officer			
<b>13.10 Practical consequences for businesses</b>			
13.10.1 Compliance guidelines		Compliance Checklist	
	Example employee consent clauses/form		
13.10.2 Guidelines for setting up a compliance office		Checklist	
13.10.3 Guidelines for a privacy policy		Checklist	

Guidance Note	Forms and Precedents	Checklists	Other Resources
<b>14. INTERNATIONAL DATA PROTECTION</b>			
<b>14.1 The General Data Protection Regulation</b>			
14.1.1 Application and territorial scope			Transitioning to the GDPR training materials
			Guidelines on the right to data portability
			Data Portability FAQ's
			Guidelines on automated individual decision-making and profiling
			Guidelines on Data Protection Officers
			Data Protection Officer FAQ's
			ICO preparing for the GDPR 12 steps to take now
			Guidelines for identifying a controller or processor's lead supervisory authority
			Guidelines on data protection impact assessment
14.1.2 Data protection principles			
<b>14.2 Processing of information</b>			
14.2.1 Rights of data subjects	Data subject access request form		ICO Guidance on individual rights
	Response to data subject request—able to comply with request		Guidelines on transparency
	Response to data subject request—unable to comply with request		ICO Code of Practice on privacy notices, transparency and control

Guidance Note	Forms and Precedents	Checklists	Other Resources
	Response to data subject request— all rights— requiring further information		ICO Code of Practice on subject access
	GDPR data subject access requests policy		Guidelines on the right to data portability
			Data Portability FAQ's
			Guidelines on automated individual decision-making and profiling
			Information to be provided to data subjects
14.2.2 Lawfulness of processing			Opinion 2/2017 on data processing at work
14.2.3 Data protection impact assessments			
14.2.4 Data mapping			
<b>14.3 Non compliance</b>			
14.3.1 Personal data breaches			
14.3.2 Sanctions and enforcement			Lead supervisory FAQ's
			Guidelines for identifying a controller or processor's lead supervisory authority
			Guidelines on the application and setting of administrative fines