



South African Institute of Intellectual Property  
Law

**Domain Dispute**

**.ZA ALTERNATE DISPUTE  
RESOLUTION REGULATIONS**

(GG29405)

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**1 Summary**

**MAZIYA FUNERAL HOME CC  
476 MOSHOESHOE SECTION  
NATALSPRUIT  
KATLEHONG**

(Complainant)

-v-

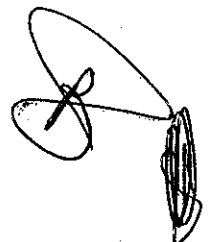
**DATA OPT  
2 MARINER STREET  
EAST VILLAGE  
SUNWARD PARK  
1459**

(Registrant)

**Disputed Domain  
Name[[www.maziya.co.za](http://www.maziya.co.za)]**

**2 Introduction**

- 2.1 This Dispute is hereby submitted for adjudication in accordance with the .ZA domain name Alternate Dispute Resolution Regulations (the Regulations) promulgated in terms of the Electronic Communications and Transactions (ECT) Act 25 of 2002, under Government Gazette 29405. This Dispute complies, in all material ways, with the provisions of the Regulations read together with the South African Institute of Intellectual Property Law's (SAIIPL) Supplementary Procedure.



### 3 The Parties

#### 3.1 The Complainant

3.1.1 The Complainant in this administrative proceeding is MAZIYA FUNERAL HOME CC, a close corporation duly incorporated in accordance with laws of the Republic of South Africa, with its registered address being at 44 Hatamburg Street, Glenvista, Johannesburg.

3.1.2 The Complainant's contact details are:

<b>Representative:</b>	SIPHO SIBEKO
<b>Physical Address:</b>	476 Moshoeshoe Section Nataalspruit Kattielong
<b>Postal Address:</b>	P.O.Box 6247 Mayersdal 1447
<b>Telephone:</b>	011-909 7221
<b>Fax:</b>	011-909 9166
<b>E-mail:</b>	sibeko@mothusi.co.za

3.1.3 The Complainant's authorized representative in this administrative proceeding, and domicilium citandi et executandi is:

<b>Representative:</b>	MOJALEFA MOTALANE
<b>firm / company:</b>	MOTALANE KGARIYA INC.
<b>physical address:</b>	1203-12 <sup>th</sup> Floor, Arcadia Centre 130 Beatrix Street, Arcadia, Pretoria
<b>Postal:</b>	P.O.Box 28921 Sunnyside 0132
<b>Telephone:</b>	012-323 8822
<b>Fax:</b>	086 694 7369
<b>E-mail:</b>	mmotalane@motalanekgariya.co.za



- 3.1.4 The Complainant's preferred method of transmission of material and communications directed to the Complainant in this administrative proceeding is:

Electronic-only material

**Method:** e-mail  
**Address:** mmotalane@motalanekgariya.co.za  
**Contact:** MOJALEFA MOTALANE

Material including hardcopy

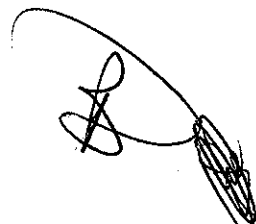
**Method:** courier  
**Address:** 1203-12<sup>th</sup> Floor, Arcadia Centre  
130 Beatrix Street, Arcadia, Pretoria  
**Contact:** MOJALEFA MOTALANE

**3.2 The Registrant**

- 3.2.1 According to the relevant 2<sup>nd</sup> Level Domain Administrator's Whois facility, the Registrant in these proceedings is the listed Registrant of the domain name in Dispute. In this regard the Registrant in these proceedings is DATA OPT, a close corporation duly incorporated in accordance with laws of the Republic of South Africa. A copy of the printout of the Whois search conducted on 29 July 2010 is provided as "**Annex 1**".

- 3.2.2 All information known to the Complainant regarding how to contact the Registrant is as follows:

**Physical:** 2 Mariner Street  
East Village  
Sunward Park  
1459



**Postal:** P.O.Box 3597

Benoni

1500

**Telephone:** 011-964 4300/1/2/3**Fax:** 086 516 8033**E-mail:** thabo@dataopt.co.za/info@dataopt.co.za

According to the 2<sup>nd</sup> Level Domain Administrator's Whois facility, the Registrant's postal address is listed as P.O.Box 3598 Benoni 1500, which address is different to that on the Registrant's business material being P.O Box 3597 Benoni 1500.

#### **4 The Domain Name and Administrator**

4.1 This Dispute concerns the domain name identified below:

www.maziya.co.za

4.2 The second level domain name administrator is: UniForum SA.

#### **5 Jurisdictional Basis for Dispute Resolution**

5.1 The domain name in Dispute is subject to Dispute Resolution in terms of the Regulations, and the SAIPL, as an accredited Dispute Resolution Provider, has jurisdiction to adjudicate the Dispute.

#### **6 Adjudicator Panel**

6.1 The Complainant elects that this Dispute to be adjudicated by:

☒ **Single (1) Adjudicator**

☐ **Three (3) Adjudicators**



**7 Jurisdiction of the High Court of the Republic of South Africa**

- 7.1 In accordance with Regulation 16(k), the Complainant will submit, with respect to any legal challenges that may be made by the Registrant to this procedure and/or a decision by the Adjudicator/s, to the jurisdiction of the High Court of the Republic of South Africa.

**8 Other Legal Proceedings**

- 8.1 Has any other legal proceedings been initiated or terminated relating to the Disputed domain name?

☐ **YES**

☒ **NO**

- 8.2 Have you ever obtained legal advice concerning your rights in and to the Disputed domain name?

☒ **YES**


☐ **NO**

- 8.3 If Yes, please identify the attorney and/or law firm who has provided this advice to you.

- Attorney: MOJALEFA MOTALANE
- Firm: MOTALANE KGARIYA INC.

**9 Communications**

- 9.1 This Dispute is submitted to the SAIPL in electronic form (except to the extent not available for annexes), and in triplicate, which includes the original.



**10 Payment**

10.1 As required by the Regulations, payment of the prescribed fee has been made by:

10.2 Electronic Fund Transfer [ **X** ]


10.3 Direct Deposit [ ]

10.4 Cheque [ ]



**11 Factual and Legal Grounds**

- a. On or about August/September 2009, the Registrant represented by Mr. Thabo Rapodile, submitted a proposal ("the proposal") to the Complainant proposing to provide the Complainant with a business software management solution known as Funeral Insurance Administration System ("FIAS") which software solution was inter-alia said to be aimed at assisting the Complainant with handling funeral benefit claims and management of the Complainant's client records.
- b. Although the software was installed on the Complainant's computers on a trial basis for a period of a month, the proposal was not accepted by the Complainant and thereby no agreement was reached between the parties for the Registrant to provide the Complainant with the service.
- c. During the course of discussions between the Registrant and the Complainant regarding the proposal referred to above, it was further proposed by the Registrant, albeit informally and without there being any contract entered into, that the Registrant assist the Complainant with improving and or upgrading its website [www.maziya.co.za](http://www.maziya.co.za) ("the disputed domain").
- d. This informal suggestion was welcomed by the Complainant and in the course of conducting such upgrade the Registrant also requested that the disputed domain be registered in its name as the Registrant. The Complainant acceded to this request, in view of making the Registrant's work of upgrading the website easier.
- e. According to the Complainant's current IT and software providers ("Unplugg it"), as per the arrangement between the Registrant and the Complainant; only an amount of three hundred Rand (R300.00) for domain hosting (which amount the Complainant is prepared to settle) is due and payable to the Registrant although an invoice for this amount has never been received from the Registrant. This notwithstanding and to the Complainant's shock and amazement, an amount of seventeen thousand one hundred and fifty seven Rand (R17,157.00) was at the Registrant's behest, and without prior authorisation by the Complainant debited from its account for apparently services related to the FIAS proposal referred to above. This transaction was subsequently reversed by the Complainant after instructing its bank to do so.
- f. Although unrelated to the upgrade and management of the disputed domain, as a result of the reversal of the amount referred to above, the Registrant suspended the disputed domain, refuses to transfer it to the Complainant and also refuses the Complainant to access the domain's e-mail addresses; according to the Registrant reason being the alleged amount owed by the Complainant to the Registrant for the FIAS proposal.





- g. Despite it being the Complainant's contention from the outset through various correspondence with the Registrant that there is no and has never been in place any agreement and or undertaking to enter into an agreement with the Registrant regarding the FIAS proposal or any other software as was proposed by the Registrant and that the amount of R17, 157. 00 was debited from the Complainant's bank account without any authority whatsoever, thereby constituting a criminal offence, the Registrant continues to persist with this as a condition for the transfer and granting of access to the Complainant's domain and email addresses.
- h. Through its attorneys, the Complainant further pointed out to the Registrant that the FIAS proposal, provided hereto as "**Annex 2**", states at page 6 that an amount of six thousand five hundred Rand (R6.500.00) is the payable price for the FIAS software and set up costs. This amount was never paid by the Complainant, therefore never purchased the FIAS software from the Registrant.
- i. In this regard, it is submitted that the facts of this complaint show a clear similarity to the case of *Henningsrefrigeration v Cheryl Katz*, case number ZA2010-0039 where it was found that "4.5 Even had the Complainant owed money to the Registrant, withholding ownership of the domain name from the rightful owner is not an acceptable remedy. A claim should have been made through the courts as is customary when one party owes money to another."
- j. No such claim as referred to above was ever made at any court of law by the Registrant against the Complainant.
- k. It was further pointed out to the Registrant's attorneys, "Selepe Attorneys" that the Registrant's alleged claim to "exercise a *lien*" over the Complainant's domain and e-mail addresses is baseless as this could only ever be in the event that the disputed domain was in terms of a contract a form of security for any money or debt owed to the Registrant for any work done on the disputed domain; and that as already indicated, the Complainant is willing and able to pay the R300.00 owed to the Registrant upon receipt of an invoice in this regard. The correspondence from the Registrant's attorneys dated 10 June 2010 and the Complainant's attorneys dated 7 July 2010 is provided hereto as "**Annex 3**" and "**Annex 4**" respectively.
- l. This above position was also confirmed in the case referred to supra where it was held that "There is no right in common law to withhold goods until payment therefor has been received, and the Registrant has not proved any contractual arrangement between the parties that varies this position".

**11.1 This Dispute is based on the following grounds:****11.1.1 The domain name is identical or similar to a name or mark in which the Complainant has rights [Regulation 3(1)(a)]**

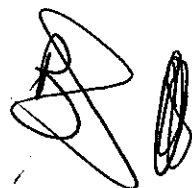
- a. The Complainant runs a funeral undertaking business incorporated in 1999 under the name, Maziya Funeral Home and has been in business since the 10<sup>th</sup> of May 1999.
- b. The Complainant has thus been trading and providing services to its clients under the name Mothusi Maziya Funeral Home for over ten (10) years thereby establishing itself as a household name among its clientele.
- c. Over the years, the Complainant has established five (5) branch offices in the Gauteng and Mpumalanga provinces situated in the following areas: Kathelong in the East Rand, Soweto in Johannesburg, Vosloorus in the East Rand, Leandra in Mpumalanga, Alberton and Secunda in Mpumalanga and has to date a clientele of over five thousand (5000) members.
- d. In keeping with technological advancements, the Complainant sought new ways of keeping in touch and communicating with its clientele and requested a certain adult male known only as Brian and whose full and further particulars are unknown to the Complainant to register a domain and develop a website for it under the domain name [www.maziya.co.za](http://www.maziya.co.za). The domain was registered on or about 6 October 2004.
- e. Since its registration, the Complainant and its staff have used "@maziya.co.za" as their email address and clients have used the website to join as members. Until the domain was suspended by the Registrant, the Complainant has always been the lawful owner of the domain.
- f. The Complainant has therefore through its name; Maziya Funeral Home established its brand name and the website [www.maziya.co.za](http://www.maziya.co.za) has become an important feature of its reputation and image.
- g. The Complainant spends annually, a considerable amount of resources on marketing and business communication tools and prints, business cards, pamphlets, promotional calendars, letter heads, fax covers and signwriting on a number of vehicles etc, to maintain a presence of its name in the market.
- h. Samples of the various marketing material and communication tools, some of which still provide the details of the disputed domain, are provided hereto as "Annex 5".

A handwritten signature in black ink, consisting of a stylized 'B' and 'R' followed by a flourish.

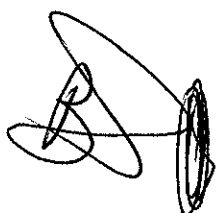
- i. In the light of the foregoing, the Complainant therefore contends that, it has over a sustained period of time, built an image, goodwill and reputation consistent with its name including an association with the domain name [www.maziya.co.za](http://www.maziya.co.za) and thus has rights in the domain name by virtue of its initial registration and also has common law rights which vest in the name Maziya Funeral Home which is identical or similar to the disputed domain name.

**11.1.2 The domain name in the hands of the Registrant is an abusive registration [Regulation 3(1)(a)]**

- j. The Complainant further contends that in terms Regulation 3(1) (a), the registration in the hands of the Registrant is an abusive registration. As already shown above, the Registrant has no legitimate interest in the disputed domain name, has no rights in and to the name Maziya Funeral Home and has no apparent right or reason for suspending the domain name or refusing its transfer to the Complainant as its rightful owner other than an unrelated claim which is in dispute.
- k. In accordance with Regulation 4(1) (iii) and (iv) it is clear from the facts as stated above that registration in the hands of the Registrant is an abusive registration in that:
  - i. The disputed domain, has to date of submission of this dispute, not been utilised in a commercial or any other way by the Registrant;
  - ii. Although it is clear from the facts that the Registrant is not known through the domain or uses the domain to provide any goods or services, the Registrant continues to hold onto it for no apparent *bona fide* reason other than to *mala fide* frustrate the business interests of the Complainant;
  - iii. Since May 2010 the Complainant has been unable to communicate through e-mails as a direct result of the suspension of the disputed domain by the Registrant and has had to expediently set up alternative means of communication which despite efforts to inform clients about, have proved not to be sufficient as most clients are still not familiar with the alternative domain and thus the status quo continues to disrupt the business of the Complainant;

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a smaller, circular mark.

- iv. As a result of the abusive registration, the Complainant stands to lose a considerable amount of costs and corporate identity spent on marketing and business communication material should the domain remain in the Registrant's hands;
  - v. The suspension of the website has taken focus and client traffic away from the Complainant's business as clients are no longer able to keep abreast with any changes to their funeral covers or join as new members thereby rendering the Complainant to lose out of a large number of possible new clients who could be joining through the website had it been live and active; and
  - vi. The Registrant's refusal to transfer the domain to the Complainant is a consistent and ongoing disruption of the business of the Complainant.
- i. Similar to the facts in the case of *Embassy Travel (Pty) Ltd v NU-COM Systems, case no ZA 2008-0024*, as is in this complaint, the Adjudicator agreed with the Complainant in that matter that "*suspension of the website.... is an abusive tactic by the Registrant, simply to try and exert pressure on... to agree to his unrelated demands relating to the cancellation of the agreement, and is further manifestation of this lack of good faith*".
- m. The Adjudicator found in that case that in those circumstances, the registration is abusive within the meaning of the Regulations.



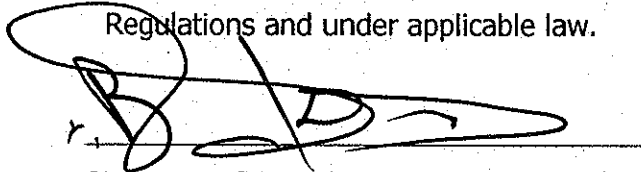
**12 Remedies Requested**

- 12.1 In accordance with Regulation 9(a), for the reasons described above, the Complainant requests that the Adjudicator issues a decision for the transfer of the domain name to the Complainant.



## 13 Commissioning and Certification

13.1 The Complainant certifies that the information contained in this Dispute is, to the best of Complainant's knowledge, both complete and accurate, that this Dispute is not being used for any improper purpose, such as to harass the registrant, and that the assertions in this Dispute are warranted under these Regulations and under applicable law.



Signature of Complainant in the presence of the Commissioner of Oaths

Date: 2010-08-11 Place: KATLEHONG

### COMMISSIONER OF OATHS (OR FOREIGN EQUIVALENT):

I certify that before administering the oath/affirmation I asked the deponent the following questions and wrote down her/his answers in his/her presence:

(i) Do you know and understand the contents of the declaration?

YES / NO

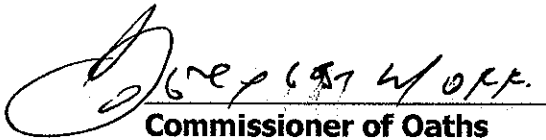
(ii) Do you have any objection to taking the prescribed oath or affirmation?

YES / NO

(iii) Do you consider the prescribed oath or affirmation to be binding on your conscience?

YES / NO

I certify that the deponent has acknowledged that she/he knows and understands the contents of this declaration. The deponent utters the following words: "I swear that the contents of this declaration are true, so help me God." / "I truly affirm that the contents of the declaration are true". **The signature/mark of the deponent is affixed to the declaration in my presence.**

  
Commissioner of Oaths

Full Name: P. Z. Bana  
Designation: W/OFFICER  
Area: KATLEHONG  
Office held ex officio:  
Business address:  
Date: 2010-08-11  
Place: KATLEHONG

SOUTH AFRICAN POLICE  
CLIENT SERVICE CENTRE  
KATLEHONG

2010-08-11

EAST RAND

SOUTH AFRICAN POLICE SERVICE

**SOUTH AFRICAN INSTITUTE OF INTELLECTUAL PROPERTY LAW**

**CASE NO:**

In the matter between:

**Maziya Funeral Home CC**

**Complainant**

and

**DATA OPT**

**Registrant**

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**The CO.ZA simple whois server**

© Copyright UniForum SA

Use of this facility subject to the terms of site usage

1 "ANNEX1"

Your query has generated the following reply:-

Search on maziya (.co.za)  
Match: One

**Domain: maziya.co.za**

## Accounting info....

Date	Type	Cost	Invoices are E-Mail to....	Paid Date	ICnt	TrkNo	Billing Info
2004-09-16	N	150.00	dns-billing@lantic.net	2004-10-06	2	389273	Atlantic Internet
2005-10-03	R	50.00	dns-billing@lantic.net	2005-10-07	1	493760	Atlantic Internet
2006-10-02	R	50.00	dns-billing@lantic.net	2006-10-09	1	651889	Atlantic Internet
2007-10-01	R	50.00	dns-billing@lantic.net	2007-10-04	1	837602	Atlantic Internet
2008-10-01	R	50.00	dns-billing@lantic.net	2008-10-03	1	1071590	Atlantic Internet
2009-07-01	U	0.00	hostmaster@hetzner.co.za	2009-07-01	0		0 Hetzner
2009-10-01	R	50.00	hostmaster@hetzner.co.za	2009-10-30	1	1377014	Hetzner

Flashing RED indicates that payment has not been received - please confirm with the UniForum SA accounting department, [accounts@co.za](mailto:accounts@co.za), should this not be according to your records. You have been sent 0 invoices/statements.

(Info:- Historical info exists - the oldest or 'original' is last) ...

maziya <-- The info shown below  
maziya.1

0a. lastupdate : 01/07/2009 13:00:01 SAST  
0b. emailsource : coza@goliath.cpt1.host-h.net  
0c. emailposted : Tue, 30 Jun 2009 12:55:44 +0200  
0d. emailsubject : Domain Registration Update: maziya.co.za  
0g. historycount : 2  
0h. invoiceno : 0  
0i. contracttype : NEW  
0j. rcsversion : \$Revision: 1.215 \$ \$Date: 2009/06/08 12:57:41 \$  
1a. domain : maziya.co.za  
1b. action : U  
2a. registrant : DataOpt  
2b. registrantpostaladdress: P O Box 3598, Benoni, 1500  
2c. registrantstreetaddress: P O Box 3598, Benoni, 1500  
2d. amount : 0.00  
2e. paymenttype : I  
2f. billingaccount : Hetzner  
2g. billingemail : hostmaster@hetzner.co.za  
2i. invoiceaddress : P.O. Box 3450, Durbanville, 7551  
2j. registrantphone : +27 86 123 4568  
2k. registrantfax : +27 86 516 8033  
2l. registrantemail : trapodile@dataopt.co.za  
2n. vat : 4630185538  
3a. operationaldate : 2009/07/01 13:00:01  
3b. cname :  
3c. cnamesub1 :  
3d. cnamesub2 :  
4a. admin : Rapodile, Thabo  
4b. admintitle : Mr  
4c. admincompany : DataOpt  
4d. adminpostaladdr : P O Box 3598  
4e. adminphone : +27 86 123 4568  
4f. adminfax : +27 86 516 8033  
4g. adminemail : thabo@b3funerals.co.za  
4h. adminnic :  
5a. tec : Administrator, Domain  
5b. tectitle : Domain Administrator  
5c. teccompany : Hetzner  
5d. tecpostaladdr : P.O. Box 3450, Durbanville, 7551  
5e. tecphone : 0861-0861-08  
5f. tecfax : 0861-0861-09  
5g. tecemail : info@hetzner.co.za  
5h. tecnic :



2

6a. primnsfqdn : ns1.host-h.net  
6b. primnsip :  
6c. primnsip6 :  
6e. secns1fqdn : ns2.host-h.net  
6f. secnsip :  
6g. secnsip6 :  
6i. secns2fqdn : ns1.dns-h.com  
6j. secns2ip :  
6k. secns2ip6 :  
6m. secns3fqdn :  
6n. secns3ip :  
6o. secns3ip6 :  
6q. secns4fqdn :  
6r. secns4ip :  
6s. secns4ip6 :  
8a. netblock1start :  
8b. netblock1end :  
8c. netblock2start :  
8d. netblock2end :  
8e. netblock3start :  
8f. netblock3end :  
9a. description1 : Commercial  
9b. description2 :  
9c. description3 :  
9d. description4 :  
9e. description5 :  
9f. description6 :

**Next Query - Domain name**

maziya

.co.za

Please refer to the CO.ZA [contact](#) details should you have any problems

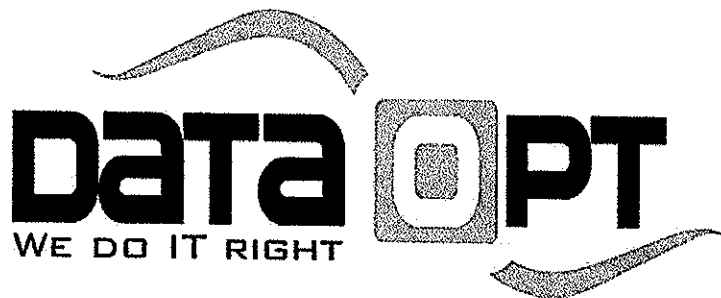
"ANNEX 2"

Proposal



**Mothusi Maziya Funerals**

**Quotation for Funeral Insurance Administration System (FIAS)**



**Contents:**

Quote valid for 30 days

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# 1. Introduction and Requirements

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In response to your request to submit a proposal to provide quality funeral insurance administration software, herewith please find our quotation and proposal for a system.

We understand that Mothusi-Maziya Funeral Home, a leading role player in the funeral services market providing quality yet affordable comprehensive funeral policies and services to its customers and located in Springs, requires the services of an IT company to provide a quality funeral administration system and support to achieve its goals.

Mothusi-Maziya requires a proposal to cover the specifications of providing a FIAS solution that covers the following requirements:

- Capture the funeral cover customers in a systematic manner;
- Segment/categorise policy holder information as per Mothusi-Maziya requirements;
- Be able to capture information for multiple underwriters;
- Ability to build their own products and manage these systematically;
- Handles dependants and extended family members registered under the main member;
- Provide capabilities to efficiently handle claims, refunds and or diverse payment methods;
- System able to automatically keep member date last paid (DLP) up-to-date;
- System capable to link with internal finance division for improved accounting;
- Manually receipt member payments;
- Capable to handle multi-branch connectivity and head office connectivity, IT security, collaboration enhancement, system maintenance and reporting capabilities;
- Provide quality management reports and analysis of data and payments;
- Send mass messages and generate correspondence for members (bulk SMS);
- Easy to use and user friendly system;
- Is affordable and has clear payment terms;

We are delighted to have been given the opportunity to provide this software to Mothusi-Maziya. DataOpt has quality software and continued to develop software that can meet our client's unique needs. We specialise in funeral undertaker and funeral administration system and solutions.

Our customers range from statutory bodies, government departments, financial service organisations, legal firms and other IT companies. Our team is vastly experienced and has a proven track record in providing support services to numerous organisations across the globe.

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## 2. Mothusi-Maziya Solution

### 2.1. Proposed solution

DataOpt proposes a comprehensive system aptly named "FIAS" or Funeral Insurance Administration System, to cater for all your requirements. The system is proprietary to DataOpt and is capable of catering for all the requirements as stipulated by Mothusi-Maziya. Over and above this, the proposed software FIAS has benefits for our clients in that it:

Providing comprehensive support, advice and services to Mothusi-Maziya can be done in five modular phases:

- is fully customizable and easy to use
- Manages members systematically
- Categorizes members by product, underwriter, payment method etc
- Tracks correspondence to and from members
- Has in-built document management and workflow
- Has a claims, refunds and payment receipting modules
- Generates policy documents for members automatically
- Sends mail to one or multiple contacts (SMS capability)
- Has search engine to locate members easily and keeps all their information
- Can be integrated to Outlook and Active Directory
- Can interface with your finance division and utilises authorisation procedures
- Has robust banking module to ensure branch/head office accounting for cash payments
- Provides internal and external tracking of correspondence
- Can be linked to the parlour system (separate module)
- Has outstanding reporting capabilities, especially management reports
- Has easy to understand licensing model and is affordable

FIAS is the ultimate Funeral Insurance Administration, Parlour Management and Document Management system rolled into one. No need to buy separate software to cater for these vital functions within your organisation.

The system is fully customisable to meet your needs. The FIAS system also has these features and benefits:

- Has robust cash receipting and banking module
- Manages Contacts and all their correspondence
- Handles claims and refunds effortlessly

- Allows for easy location of member and their benefits
- Enables easy amendment of member records
- Is networked, ensuring that everybody connects to one single database
- Manages all correspondence
- Allows for Scanning of files into system
- Is easy to use
- Has proven track record – it works!