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GENERAL TERMS AND CONDITIONS

(ECN AUTHORISED SERVICE PROVIDERS AND RESELLERS – ORDERS THROUGH ECN ELECTRONIC PORTAL)

1 APPLICABILITY, PRECEDENCE

- 1.1 These Terms and Conditions (as defined below) shall govern all Orders placed by the Subscriber on ECN through the ECN Electronic Portal.
- 1.2 Each Order shall constitute a separate agreement in each instance governed by these Terms and Conditions.
- 1.3 These Terms and Conditions:
 - 1.3.1 will only be amended or varied or cancelled or replaced or waived to the extent expressly agreed in writing and signed by the authorised representatives of each Party; and
 - 1.3.2 shall overrule any terms and conditions of contract of the Subscriber, unless specifically otherwise agreed between the Parties in writing.

2 INTERPRETATION, DEFINITIONS

In these Terms and Conditions and an Order:

- 2.1 clause headings are for reference purposes only and shall not influence the interpretation;
- 2.2 reference to one gender shall include the other genders;
- 2.3 reference to natural persons include juristic persons and vice versa;
- 2.4 reference to the singular shall include the plural and vice versa;
- 2.5 if any provision in a definition is a substantive provision conferring rights or imposing obligations on a Party, effect shall be given to it as if it were a substantive provision in the body of these Terms and Conditions;
- 2.6 where figures are referred to in numerals and in words, if there is any conflict, the words shall prevail;
- 2.7 all annexures shall be deemed to be incorporated therein and shall form an integral part thereof;
- 2.8 defined expressions shall bear the same meanings in annexures hereto;
- 2.9 reference to days, months or years shall be construed as Gregorian calendar days, months, or years;
- 2.10 durations shall be reckoned exclusively of the first and inclusively of the last day.
- 2.11 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings:
 - 2.11.1 **"Business Day"** means a day other than a Saturday, Sunday, or public holiday in South Africa;
 - 2.11.2 **"Business Hours"** means the hours between 08h00 and 16h30 on Business Days;
 - 2.11.3 **"Charges"** means Monthly Subscription Charges, Fixed Term Subscription Charges, Usage Charges, Top-up Charges and Hardware Charges;
 - 2.11.4 **"Corrupt Act"** means any offence in respect of corruption or corrupt activities contemplated in the Prevention and Combatting of Corrupt Activities Act, 2004 of South Africa;
 - 2.11.5 **"ECN Equipment"** means the ECN supplied End-User Premises equipment or electronic communications connections, or any other facility, that provides the End-User with access to the Services, as set out in an Order, including accessories, additions, or modifications thereto from time to time;
 - 2.11.6 **"ECN Electronic Portal"** means any electronic platform provided by ECN for purposes of ordering Services, Hardware, and Software Licenses;
 - 2.11.7 **"ECN Network"** means the electronic communications network operated by ECN;
 - 2.11.8 **"End-User"** means the end-user of the ECN Equipment, Hardware, Software Licenses or Services, as set out in the Order. For the avoidance of any doubt, if no end-user is specified in the Order, the Subscriber shall be deemed to be the end-user;
 - 2.11.9 **"End-User Premises"** means the premises of the End-User as notified to ECN by the Subscriber;
 - 2.11.10 **"EULA"** means the end-user license agreement of the original equipment manufacturer or software developer;
 - 2.11.11 **"Fixed Term Subscription"** means the Subscriber purchases Services or Software Licenses for the duration of a fixed term, as set out in the relevant Order;
 - 2.11.12 **"Fixed Term Subscription Charges"** means ECN's monthly charges for Fixed Terms Subscriptions, as set out in the relevant Order;
 - 2.11.13 **"Hardware"** means any hardware and accessories (including but not limited to SIM cards) to be supplied by ECN from time to time to the Subscriber for resale to End-Users, as set out in an Order;
 - 2.11.14 **"Hardware Charges"** means, ECN's Charges for Hardware procured by the Subscriber, as set out in an Order;
 - 2.11.15 **"Monthly Subscription"** means the Subscriber purchases Services or Software Licenses as set out in an Order, which Services or Software Licenses continues on a month to month basis, until terminated in accordance with the provisions of clause 4.2;
 - 2.11.16 **"Monthly Subscription Charges"** means ECN's charges for Monthly Subscriptions as set out in an Order;
 - 2.11.17 **"OEM"** means the Original Equipment Manufacturer, that originally manufactured, or supplied the Hardware, ECN Equipment or Software;
 - 2.11.18 **"Operator"** has the meaning ascribed to it in POPIA;
 - 2.11.19 **"Order"** means an official, written electronic Order in a format determined by ECN, for the supply of Hardware, Services, Software Licenses or Top-up completed and submitted by the Subscriber to ECN through the ECN Electronic Portal;
 - 2.11.20 **"Parties"** means the Subscriber and ECN and "Party" means either of them;
 - 2.11.21 **"Payment Method"** means the Subscriber's method of payment as approved by ECN in writing from time, which shall be either electronic funds transfer ("EFT") or debit order, into such account as nominated by ECN in writing, from time to time;
 - 2.11.22 **"Payment Terms"** means the Subscriber's payment terms as approved by ECN in writing from time to time, which shall be either Pre-Paid or Post-Paid;
 - 2.11.23 **"Personal Information"** has the meaning ascribed to it in POPIA;
 - 2.11.24 **"POPIA"** means the Protection of Personal Information Act No.4 of 2013;
 - 2.11.25 **"Post-paid"** means payment is made in arrears;
 - 2.11.26 **"Pre-paid"** means payment is made in advance;
 - 2.11.27 **"Responsible Party"** has the meaning ascribed to it in POPIA;
 - 2.11.28 **"RICA"** means the Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002;
 - 2.11.29 **"Sanctioned Entity"** means a person, country, or territory (and including any resident of such country or territory) appearing on a sanctions list of the (i) United Nations; (ii) European Union; (iii) government of the United States of America; (iv) government of the United Kingdom; or (v) government of South Africa;
 - 2.11.30 **"Services"** means the electronic communication services, or electronic communication network services, supplied by ECN to the Subscriber for the benefit of the End-User, as set out in an Order;
 - 2.11.31 **"Software"** means any software to be supplied by ECN to the Subscriber, as set out in an Order;
 - 2.11.32 **"Software License"** means the non-exclusive, non-transferrable and non-sublicensable licenses made available by ECN to the End-User, that permits the End-User the right to access and use the Software on a Monthly Subscription or Fixed Term Subscription basis, as set out in an Order;
 - 2.11.33 **"Subscription"** means Monthly Subscription or Fixed Term Subscription;
 - 2.11.34 **"Suppliers"** means any other network operators, or facilities providers, including but not limited to fixed line operators, cellular operators, wireless operators,



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facilities lessors, or any other provider of electronic communication services, infrastructure, or electronic communication network services used by ECN in the provisioning of the Services;

- 2.11.35 "Terms and Conditions" means the terms and conditions, contained in this document as the same may be amended from time to time; and
- 2.11.36 "Top-up" means in addition to Services included in the Subscriber's Subscription, further volumes of the subscribed Services, procured by the Subscriber and detailed in an Order;
- 2.11.37 "Top-up Charges" means ECN's charges for Services procured on a Top-up basis, as set out in an Order; and
- 2.11.38 "Usage Charges" means ECN's Charges for consumption based Services calculated in accordance with ECN's prevailing rates.

3 CHARGES AND PAYMENT

- 3.1 In consideration for the Services, Hardware and Software Licenses, the Subscriber shall effect payment of the Charges to ECN.
- 3.2 If the Subscriber's Payment Terms are Pre-paid:
- 3.2.1 Hardware and Top-up Charges shall be invoiced and payable on Order placement; and
- 3.2.2 Monthly Subscription Charges and Fixed Term Subscription Charges shall be invoiced and payable monthly in advance; and
- 3.2.3 Usage Charges shall be invoiced monthly in arrears and payable upon consumption.
- 3.3 If the Subscriber's Payment Terms are Post-paid:
- 3.3.1 Hardware and Top-up Charges shall be invoiced on Order placement;
- 3.3.2 Monthly Subscription Charges and Fixed Term Subscription Charges shall be invoiced monthly in advance;
- 3.3.3 Usage Charges shall be invoiced monthly in arrears; and
- 3.3.4 All Charges shall be payable within such a period as previously approved by ECN and indicated in the Subscriber's invoice.
- 3.4 All Charges, unless otherwise stated, are exclusive of value added tax, which shall be borne and paid for by the Subscriber together with the Charges in question.
- 3.5 Charges shall be paid in accordance with the Payment Method.
- 3.6 **In the event that the Subscriber consumes Services in excess of its Monthly Subscription, then the Subscriber shall be liable for Usage Charges in respect of such excess usage.**
- 3.7 **Failure by the Subscriber to pay ECN's Charges within the time period as set out in in this clause 3 shall constitute a material breach.**
- 3.8 ECN shall have the right to vary the Payment Terms, from time to time and communicate the amended Payment Terms to the Subscriber.
- 3.9 **ECN will submit statements to the Subscriber monthly. The Subscriber accepts responsibility to ensure that the statement is received and checked. The Subscriber shall advise ECN within 7 days from the date of statement, of any inaccuracies in the statement, failing which the statement shall be deemed to be correct.**
- 3.10 **ECN reserves the right to include and activate destination and Charges limits in respect of calls made by the Subscriber and/or End-User. ECN will make reasonable endeavours to notify the Subscriber of such limits and may review such limits from time to time.**
- 3.11 The Subscriber shall not be entitled to withhold payment of any undisputed Charges or any other amount legally due for any reason whatsoever, or as a result of the End-User not paying the Subscriber, nor shall the Subscriber be entitled to make any deduction from the Charges or any other amount due, or to set off any alleged claim against the amounts due by the Subscriber to ECN.
- 3.12 **Should any payment not be made on due date, ECN shall be entitled, without detracting from its other rights:**
- 3.12.1 **charge the Subscriber interest on such arrear payments from due date of such payments to date of actual payment thereof, at a rate equal to 4%**

above the annual prime bank overdraft rate charged by Nedbank Limited, from time to time; and recover any bank charges resulting from returned debit orders.

- 3.12.2
- 3.13 A certificate issued and signed by the Chief Financial Officer, or duly authorised manager of ECN, whose authority need not be proved, stating the amount owing and/or the amount of interest payable by the Subscriber, is prima facie proof of the facts stated therein and the amount of the indebtedness of the Subscriber to ECN. The certificate may be used in support of any application by ECN for default or summary judgment, provisional sentence, or any other legal proceedings.
- 3.14 ECN shall from time to time be entitled to adjust the Charges for Services on 30 days' written notice to the Subscriber. If a rate of increase is specified in the Order, increases shall be in line with such specification. If the rate of increase is not specified, the adjustment shall be based upon:
- 3.14.1 any change in the Consumer Price Index ("CPI for services") as published by Statistics South Africa in publication P0141, or its replacement from time to time; or
- 3.14.2 any increase in ECN's direct costs of rendering the Services, including, but not limited to increases in the charges charged by Suppliers.
- 3.15 **The Subscriber hereby acknowledges and agrees that information regarding its payment behaviour may be disclosed to any registered credit bureau and/or any other suppliers, but only if a payment default in excess of 45 (forty-five) days from presentation of ECN's tax invoice occurs.**
- ### 4 DURATION OF SERVICES OR SOFTWARE LICENSES
- 4.1 In the event that the Subscriber subscribes for a Fixed Term Subscription, ECN shall provide the Services or Software Licenses for the fixed duration as set out in the Order.
- 4.2 In the event that the Subscriber subscribes for a Monthly Subscription, ECN shall provide the Services or Software Licenses on a month to month basis, until terminated by either Party on 30 days' written notice.
- 4.3 Should the Subscriber (for any reason other than that provided for in clause 14) terminate a Fixed Term Subscription prior to expiry of the fixed term thereof, the Subscriber shall be liable to ECN for the payment of the Fixed Term Subscription Charges for the unexpired portion of the Fixed Term Subscription, which shall be payable on demand.
- 4.4 Should the Subscriber (for any reason other than that provided for in clause 14) terminate a Monthly Subscription without 30 days' notice to ECN, the Subscriber shall be liable to ECN for the payment of the Monthly Subscription Charges for one month (calculated from the effective date of termination of the Services), which shall be payable on demand.
- ### 5 PROVISION OF THE SERVICES
- 5.1 ECN undertakes to provide the Services to the Subscriber for the benefit of the End-User upon the terms as set out in these Terms and Conditions.
- 5.2 The Subscriber shall be responsible for obtaining all necessary approvals and consents that may be necessary for provisioning of the Services at the End-User Premises.
- 5.3 **The Subscriber acknowledges and accepts that the availability and/or quality of the Services may be affected by factors including, but not limited to, the ECN Equipment and accessories used with the ECN Equipment, End-User equipment (including Hardware), atmospheric conditions, radio frequency disturbances, Supplier facilities and networks and other factors beyond the control of ECN.**
- 5.4 **Whilst ECN will take all reasonable steps to ensure that the Services are provided in accordance with these Terms and Conditions, ECN cannot and does not guarantee or undertake that the Services will be provided at all times. Accordingly, ECN will, to the fullest extent permissible in law, not be liable for any direct or indirect loss or damage of any nature whatsoever or howsoever arising that may be sustained by the Subscriber and/or End-User as a result of any faults, delays, or interruptions in the provisioning of the Services.**
- 5.5 The Services are to be provided on the basis that the Subscriber and the End-User -



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- 5.5.1 will use the Services in accordance with these Terms and Conditions and the Order;
- 5.5.2 will use the Services in accordance with ECN's acceptable and fair use Policies as may be applicable from time to time;
- 5.5.3 will not utilise the Services, or allow others to do so, for any improper, immoral, or unlawful purpose;
- 5.5.4 will comply with all relevant legislation and regulations and all instructions issued by any governmental authority, or by ECN regarding the use of the Services; and
- 5.5.5 will not act or omit to act, or allow others to do so, in any way likely to damage, disrupt or interfere with the ECN Network or Supplier networks, or to injure or damage any person or property or to cause the quality of the Services to be impaired, or interrupted in any manner whatsoever.
- 5.6 ECN shall have the right to remove any content hosted by the Subscriber, or the End-User on the ECN Network, in the event that ECN considers such content illegal, or in respect of which ECN was served with a takedown notice.
- 5.7 **The Subscriber agrees to defend, indemnify, and hold ECN, its directors, employees, agents, and other members of its group of companies, as that term is defined in the Companies Act 71 of 2008, (each an "indemnified Party") harmless from any use of the Services by the End-User, and/or the Subscriber, that is not in accordance with the terms and conditions of these Terms and Conditions and the Order.**
- 5.8 **The Subscriber shall remain fully liable for payment of all Charges for Services to ECN incurred through the use of the Services regardless of whether such use is by the Subscriber, or End-User, or whether such use is with or without the authority, knowledge or consent of the Subscriber, or End-User.**

6 SOFTWARE

- 6.1 The Subscriber shall in terms of the Software License issued to the Subscriber, be licensed to use the Software, subject to the applicable EULA of the OEM.
- 6.2 The Subscriber shall strictly adhere to the terms and conditions of the EULA.

7 HARDWARE

- 7.1 The Hardware shall be delivered to the Subscriber at the ECN Warehouse or at whichever alternative location, as agreed between the Parties in writing.
- 7.2 The Subscriber shall immediately upon delivery check the content of the Hardware. On signature of the proof of delivery, the Subscriber is deemed to have received the Hardware referred to in the Order or any other delivery notice, without shortage or defect and the Subscriber shall have no claim against ECN for non-delivery of, or shortages in the Hardware. Should the Subscriber fail to sign the proof of delivery prior to the Shipping Agent's (as defined in clause 7.5 below) or Subscriber's vehicle leaving the point of delivery, the signature of a representative of ECN shall be prima facie proof that the Hardware were delivered without defect or shortage.
- 7.3 ECN cannot and does not guarantee or undertake that the Hardware will be delivered and (if applicable) installed on the specified delivery or installation date. Accordingly, ECN will, to the fullest extent permissible in law, not be liable for any direct or indirect loss or damage of any nature whatsoever or howsoever arising that may be sustained by the Subscriber and/or End-User as a result of any delay in Hardware delivery.
- 7.4 **Should delivery of any Hardware not be accepted by the Subscriber, consignee or party nominated by the Subscriber to accept delivery, then the Subscriber shall be liable for any wasted costs incurred by ECN as a result.**
- 7.5 Should ECN at the Subscriber's request, which request may be granted or refused at ECN's sole discretion, agree to engage a third party ("Shipping Agent") to supply courier or transport services in regard to the Hardware on behalf of the Subscriber, then:
- 7.5.1 ECN is authorised to engage a Shipping Agent as agent for the Subscriber on such terms and conditions as it deems fit; and
- 7.5.2 The Subscriber indemnifies ECN against all demands and claims which may be made against it by the Shipping Agent so engaged and all liability which ECN

may incur to the Shipping Agent or any third party arising out of the transportation of the Hardware.

- 7.6 Risk in the Hardware passes to the Subscriber upon delivery.
- 7.7 Notwithstanding the date of delivery and notwithstanding the date of passing of the risk, ownership in the Hardware only passes to the Subscriber on receipt by ECN of the full price in respect of the Hardware.

8 WARRANTY

- 8.1 The warranties made available by the OEM shall be the only warranties applicable to the Hardware, or Software.
- 8.2 **ECN shall not be liable on the ground of any common law warranty in respect of the Hardware, Software or Services, including without limitation against latent defects in, or relating to "fitness for purpose" of, the Hardware or Services.**
- 8.3 No Party has given any warranty or made any representation to the other Party, other than as expressly set out in this Agreement.

9 RICA COMPLIANCE

- 9.1 The Subscriber acknowledges that ECN will not be required to commence the provision of the Services or Hardware until ECN is satisfied that the Subscriber has met the requirements set forth under RICA.
- 9.2 The Subscriber warrants that it will at all times strictly comply with RICA, including but not limited to its obligation to provide ECN with the necessary documentation and information required by ECN to verify RICA compliance.

10 NUMBERS

- 10.1 Save as otherwise provided by legislation to the contrary, telephone numbers, codes and other identification numbers allocated by ECN to the Subscriber for the benefit of the End-User shall not become the property of the Subscriber or End-User and the use thereof shall be subject to the Numbering Plan Regulations.
- 10.2 ECN shall subject to applicable laws and regulations be entitled to withdraw or change any telephone Number allocated to the Subscriber or End-User.

11 EQUIPMENT

- 11.1 The ECN Equipment shall be delivered to the Subscriber at the ECN warehouse.
- 11.2 The Subscriber shall at all times, at its own cost and expense, ensure that the required communication services and facilities, including but not limited to telephone facilities and lines, installation areas, electrical outlets, connection requirements and access ways are suitable for the installation and electrical connection of the ECN Equipment and supply of the Services.
- 11.3 If mutually agreed, ECN will instruct contractors to install the ECN Equipment at the End-User's premises and further instruct contractors to maintain the ECN Equipment upon such terms as may be mutually agreed.
- 11.4 Where required by ECN, The Subscriber shall procure for ECN such permissions as may be necessary to ensure that ECN's representatives, employees, agents and contractors, may at all reasonable times, without giving rise to any claim or right of action on the part of the Subscriber, or End-User, enter the End-User's Premises to inspect the ECN Equipment, carry out necessary repairs, replacement of ECN Equipment, or to perform any other lawful function in the bona fide interest of ECN in respect of the ECN Equipment.
- 11.5 Ownership in the ECN Equipment shall at all times remain vested in ECN or its third party Supplier.
- 11.6 **All risk in and to the ECN Equipment shall pass to the Subscriber upon delivery thereof and the Subscriber shall be liable for any loss of, or damage to the ECN Equipment.**
- 11.7 The Subscriber shall adequately insure the ECN Equipment with a reputable insurer, at its replacement value. The Subscriber shall upon request from ECN provide adequate proof of such insurance.
- 11.8 The ECN Equipment shall at all times be used only in accordance with the terms and conditions of the OEM.
- 11.9 The Subscriber and the End-User may not make any alteration or modification of any nature whatsoever to the ECN Equipment.
- 11.10 The ECN Equipment will be returned to ECN on termination of its Subscription for any reason whatsoever.



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- 11.11 The Subscriber and End-User will not be entitled to give up possession of the ECN Equipment, in whole or in part to any third party and will not be entitled to remove and re-install the ECN Equipment at a different location.
- 11.12 The Subscriber shall notify ECN immediately in the event of the ECN Equipment being stolen or damaged.
- 11.13 The Subscriber acknowledges and agrees that the ECN Equipment is movable property and that it will not be installed with the intention that it remains or accedes to whatever housing it may be installed with or to.
- 11.14 The Subscriber must ensure that any equipment installed at the End-User Premises, which has not been leased, purchased from and/or installed by ECN, does not interfere with, or degrade the Services, the ECN Equipment, the ECN Network, or any Supplier network.
- 11.15 The Subscriber shall at all times keep the ECN Equipment in its possession and under its control and shall take reasonable care in the use of equipment and shall keep the ECN Equipment free from attachment, hypothec, or other legal charge or process.
- 12 UNAUTHORISED TRAFFIC**
- 12.1 **The Subscriber and End-User is responsible for the security of its own respective networks, and equipment, as well as the Hardware and ECN Equipment.**
- 12.2 **The Subscriber and End-User shall take the necessary steps to prevent unauthorized or fraudulent use of the Services perpetrated using the Subscriber and/or End-User's equipment, network, ECN Equipment, or the Hardware.**
- 12.3 **ECN shall not under any circumstances be liable for unauthorized or fraudulent use of the Services, the Hardware, ECN Equipment or any Subscriber, or End-User equipment or network, and disclaims all liability in respect thereof.**
- 12.4 **The Subscriber indemnifies ECN without limitation against all liability, claims, losses, costs, and expenses of any nature whatsoever, that ECN may incur as a result of unauthorised or fraudulent use of the Services, Hardware, ECN Equipment, Subscriber equipment, or network or the End-User equipment, or network.**
- 13 SUSPENSION OF SERVICES**
- 13.1 **ECN may at any time upon such notice as may be reasonable in the circumstances, suspend the Services, in whole or in part and without incurring any liability whatsoever -**
- 13.1.1 **should ECN be unable to provide the Services, in whole or in part, whether due to Force Majeure, or otherwise through no fault of its own; or**
- 13.1.2 **should ECN suspect that the Services are being used improperly under circumstances as detailed in clause 12; or**
- 13.1.3 **should an agreement in terms of which ECN derives its rights to provide the Services, be suspended, cancelled, or terminated; or**
- 13.1.4 **should such suspension of the Services be necessary in order to facilitate any repairs, modification, maintenance, improvements, or remedial works in respect of the ECN Network; or**
- 13.1.5 **should the End-User and/or the Subscriber not comply with ECN's acceptable or fair use policies; or**
- 13.1.6 **should the End-User and/or the Subscriber fail to comply with any provision of these Terms and Conditions.**
- 13.2 Should the Services, or Interim Services be suspended pursuant to 13.1.1, 13.1.3, or 13.1.4 ECN shall use its reasonable endeavours to provide an alternative service to the Subscriber, whether through another Supplier, or otherwise, all in ECN 's discretion. Should ECN fail to provide an alternative service within 14 days after the commencement of the suspension, either Party shall be entitled by written notice to the other, to terminate these Terms and Conditions with immediate effect. In such event, the Subscriber shall remain liable for all Charges accrued up to date of such termination, which Charges shall be payable on demand.
- 14 BREACH AND INSOLVENCY**
- 14.1 Should the Subscriber fail to remedy any breach of contract within 10 (ten) days of a written request by ECN to do so, then in such event ECN may, without prejudice to any of its rights in terms of these Terms and Conditions and the Order, or in law:
- 14.1.1 terminate the affected Order; by written notice with immediate effect, with or without claiming damages;
- 14.1.2 terminate the affected Order and claim from the Subscriber as liquidated damages, payment of the Fixed Term Subscription Charges for the unexpired portion of any Fixed Term Subscription and in respect of Monthly Subscriptions, and payment of the Monthly Subscription Charges for one month (calculated from the date of termination);
- 14.1.3 without terminating the affected order, claim immediate payment of all Charges, and any other charges, which are due and/or which would have fallen due in terms of these terms and conditions or an Order, all of which shall be immediately due and payable. ECN will, pending payment of these amounts be entitled to suspend the Services, in whole or in part to the Subscriber and without notice be possessed of the ECN Equipment and to retain possession thereof until all amounts due to ECN has been paid in full; or
- 14.1.4 claim specific performance with or without claiming damages.
- 14.2 Should ECN fail to remedy any breach of contract within 14 (fourteen) days of a written request by the Subscriber to do so, then in such event the Subscriber may, without prejudice to any of its rights in terms of these Terms and Conditions and the Order, or in law, cancel the affected Order by written notice with immediate effect, with or without claiming damages.
- 14.3 In the event of termination of an Order for any reason whatsoever, ECN shall be entitled to disconnect and retake possession of the ECN Equipment.
- 14.4 In the event that a Party
- 14.4.1 commits an act of insolvency;
- 14.4.2 is placed under a provisional or final winding-up, or is subject to business rescue proceedings;
- 14.4.3 suffers that its credit rating is downgraded or its credit facilities withdrawn or rejected by any financial institution or credit bureau, or
- 14.4.4 fails to satisfy or take steps to have set aside any judgment taken against it within 20 (twenty) days after such judgment has come to its notice;
- then the other Party may terminate all Orders on written notice with immediate effect.
- 14.5 Nothing in this clause 14 shall prevent a Party from claiming specific performance or damages for any breach, or from terminating the affected Order by written notice with immediate effect for any material breach of contract.
- 14.6 Termination of an Order for any reason whatsoever shall not affect any of the rights of the Parties that accrued prior to termination.
- 15 INTELLECTUAL PROPERTY**
- 15.1 Save as expressly provided in these Terms and Conditions, neither Party, or the End-User shall have any rights or licenses to the intellectual property of the other Party.
- 15.2 ECN and its licensors retain all intellectual property rights to, and in respect of, the ECN Equipment, Hardware, Services, Software, and related items. The Subscriber shall only use the ECN Equipment, Hardware, Services, Software, and related items subject to the Order, these Terms and Conditions, the EULA and further for the purposes for which they have been developed, manufactured, and supplied to the Subscriber.
- 15.3 Without limitation to the above, the Subscriber shall not have any right directly or indirectly to copy, reverse engineer or manufacture the ECN Equipment, Hardware, Software, and related items, or to license, lease, dispose of, distribute, disclose, or otherwise exploit any intellectual property whatsoever of the OEM, or ECN or its licensors, or any part thereof, or to attempt to do so, or to allow others to do so.
- 16 CONFIDENTIALITY**
- 16.1 Confidential information includes, without limitation:
- 16.1.1 information relating to the services and the products, intellectual property, know-how, methods, and techniques employed by a Party;
- 16.1.2 financial and commercial information regarding these an Order, Terms and Conditions, or a Party in relation to its obligations pursuant thereto;
- 16.1.3 information regarding the End-User, including, but not limited to and related information;



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- 16.2 Each Party shall not (and shall procure that its employees and agents shall not) for the duration of each Order, or at any time after the expiration or termination thereof for any reason, disclose to any person (other than to its professional advisers on a need to know basis, or in compliance with a court order) or otherwise make use of any confidential information of the other Party.
- 16.3 Nothing in this clause 16 shall restrict the rights of either Party to use such information or documents for the purposes of legal enforcement of these Terms and Conditions or an Order in accordance with its terms.

17 DATA AND PERSONAL INFORMATION

- 17.1 In performing its obligations under these Term and Conditions or an Order, each Party shall comply with the provisions of POPIA and any other applicable prevailing privacy and data protection legislation
- 17.2 To the extent that a Party acts as an Operator as defined in terms of POPIA, the Operator shall:
- 17.2.1 ensure that Personal Information is collected, used, and processed strictly in accordance with the provisions of the POPIA ;
- 17.2.2 not process Personal Information for any purpose other than to perform its obligations under these Terms and Conditions or an Order;
- 17.2.3 only act on the instructions of the Responsible Party in collecting, processing, and utilising the Personal Information;
- 17.2.4 not disclose or otherwise make available the Personal Information to any third party other than authorised staff or sub-contractors who require access to such Personal Information strictly on a need to know basis, in order for the Operator to carry out its obligations pursuant to these Term and Conditions or an Order and ensure that such staff and any other persons that have access to the Personal Information are bound by appropriate and legally binding confidentiality and non-use obligations in relation to the Personal Information;
- 17.2.5 take appropriate, reasonable technical and organisational measures to ensure that the integrity and confidentiality of the Personal Information in its possession or under its control is secure and that such Personal Information is protected against accidental loss, destruction, damage, unlawful access, or processing;
- 17.2.6 immediately notify the Responsible Party in case of possible infringement of POPIA any other applicable data protection legislation, the terms of this clause or other irregularities in relation to Personal Information; and
- 17.2.7 at the Responsible Party's option, return or destroy the Personal Information once it is no longer required for the purposes of performing obligations in terms of these Terms and Conditions or an Order or any directly related purpose.

18 LIMITATION OF LIABILITY AND INDEMNITY

- 18.1 **Neither Party shall be liable to the other for any loss of profit, loss of use, loss of production, loss of contracts or for any indirect or consequential damage that may be suffered by the other even if advised of the possibility of such damage and regardless of the form in which any action is brought.**
- 18.2 **Neither Party's aggregate liability to the other for any claim or claims for damages, out of or in connection with any cause arising from an Order, whether in contract or delict or any other cause of action, will in any event exceed 100% (one hundred percent) of the value of the Hardware and Services supplied to the Subscriber under such Order during the 12 (twelve) months immediately prior to the events leading to the cause of action.**
- 18.3 **Nothing contained in clauses 18.1 and 18.2 above shall limit either Party's liability to the other in respect of:**
- 18.3.1 **death or injury of any person, or damage to property;**
- 18.3.2 **infringement of intellectual property rights;**
- 18.3.3 **breach of confidentiality;**
- 18.3.4 **the indemnity in clause 12.4 or**
- 18.3.5 **intentional, fraudulent, or criminal acts.**
- 18.4 **Notwithstanding the provisions of clauses 18.1, 18.2 and 18.3 above, the Subscriber without limitation agrees to defend,**

indemnify and hold ECN, its directors, employees, agents and other members of its group of companies, as that term is defined in the Companies Act 71 of 2008 of South Africa, harmless from any and all End-User, or third party claims, damage, cost, liability and expense including reasonable attorney's fees, caused by, relating to or arising from the acts or omissions of the Subscriber, its directors, employees or agents;

19 NOTICES AND DOMICILIUM

- 19.1 For the purposes of giving of legal notices and the serving of legal process, the Parties choose their respective physical addresses as set out in the Service Provider or Reseller Agreement previously executed by ECN and the Subscriber.
- 19.2 Any notice addressed to a Party shall be in writing and delivered by hand during Business Hours to its physical address or sent by e-mail.
- 19.3 Any notice shall be deemed to be received (unless the contrary is proved):
- 19.3.1 if hand delivered, on the day of delivery; or
- 19.3.2 if sent by email during Business Hours, be presumed to have been received on the date of successful transmission of the email. Any email sent after Business Hours or on a day which is not a Business Day will be presumed to have been received on the following Business Day.
- 19.4 A Party may by written notice to the other Party change its address to another address which is not exclusively a post office box or poste restante. The change will become effective on the 5th (fifth) day following deemed receipt of the notice.
- 19.5 Any notice actually received by a Party will be deemed to have been given validly, even though the notice had not been delivered to an address stated in this clause.

20 DISPUTE RESOLUTION AND GOVERNING LAW

- 20.1 Subject to ECN's right, in each instance to elect or institute legal action in a Court of Law for payment of any arrear amounts due in terms of these Terms and Conditions or an affected Order and the Court's inherent jurisdiction at such instance to interpret these Terms and Conditions, the Parties agree to the dispute resolution procedure, provided for in this clause.
- 20.2 The non-payment of undisputed amounts due under an Order shall not be regarded as a dispute.
- 20.3 A dispute shall only be deemed to exist if either party gives written notice of its intention to declare same, which notice can only be dispatched prior to any legal action being instituted.
- 20.4 In the event of any disagreement ("dispute") arising out of or relating to these Terms and Conditions and an Order (including without limitation, as to its existence or validity), the senior executives of the Parties or their delegates designated in writing shall endeavour to settle the dispute through bona fide negotiations within 14 (fourteen) days of the dispute being referred to them by written notice from either Party.
- 20.5 Should the Parties be unable to settle the dispute by the means and within the timeframe stated above, either Party may refer the dispute for final decision by arbitration in accordance with the latest rules for the conduct of arbitrations ("rules") of the Association of Arbitrators (Southern Africa) NPC (<https://www.arbitrators.co.za>), by one or more arbitrator/s appointed in accordance with the rules.
- 20.6 Unless otherwise agreed in writing the arbitration shall be held in Sandton in the Republic of South Africa and conducted in the English language. Only the Parties and their legal representatives or persons agreed to shall attend the arbitration proceedings.
- 20.7 The decision of the arbitrator/s may be made an order of court. For these purposes and those of clause 21 the Parties irrevocably submit to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Division, Pretoria.
- 20.8 These Terms and Conditions and an Order shall in all respects be governed by the law of South Africa, without regard to its conflict of law provisions. The application of the United Nations Convention on Contracts for the International Sale of Hardware (CISG) of April 11, 1980, shall be excluded.
- 20.9 This clause 20 is severable from the rest of these Terms and Conditions and shall survive the expiry or termination for whatsoever reason of these Terms and Conditions.

21 URGENT RELIEF

The provisions of clause 20 shall not preclude any Party from access to a competent court of law for relief in the form of:

21.1 an interdict, including a mandatory interdict; or

21.2 an order for specific performance.

22 COMPLIANCE WITH LAWS AND ANTI-CORRUPTION

22.1 Each Party warrants that it shall for the duration of each Order:

22.1.1 in all matters arising from or relating to the fulfilment of these Term and Conditions or an Order conform at its own expense with all laws and legislation relevant thereto; and

22.1.2 ensure that it has in place and will maintain in place, all the necessary licenses, certificates, authorisations, permits, type approvals and consents that are required in terms of any applicable law to fulfil its obligations under these Term and Conditions or an Order.

22.2 The Parties shall not be entitled to claim or receive any benefits or rewards, other than specifically provided for in these Terms and Conditions or an Order.

22.3 Each Party warrants that neither it, nor any of its shareholders, employees, directors, associates, related parties, or agents have committed, or admitted to, or have been convicted of, any Corrupt Act and that it has ensured that all anti-corruption laws, internal processes, and anti-corruption preventative measures have been complied with, prior to signature of these Term and Conditions or an Order and will continue to be complied with for the duration hereof.

22.4 Each Party warrants to the other Party that neither it nor any of its Affiliates, employees, directors, or agents will during the term of each Order enter into any transaction that results in, or is likely to result in, a Sanctioned Entity gaining access (regardless whether during or at any time after the termination of these Terms and Conditions or an Order) to any Hardware, ECN Equipment or Services as well as any product manufactured by, or any intellectual property or Confidential Information of the other Party. Each Party (indemnifying Party) indemnifies the other Party against any breach of this clause by the indemnifying Party, its Affiliates, employees, directors, or agents.

22.5 Failure by a Party to comply with this clause 22 shall constitute a material breach of contract.

23 GENERAL

23.1 Validity and Severability

If any provision of these Terms and Conditions or an Order is found or held to be invalid or unenforceable, the validity of all the other provisions hereof will not be affected thereby and the Parties agree to meet and review the matter and if any valid and enforceable means is reasonably available to achieve the same objective as the invalid or unenforceable provision, to adopt such means by way of variation of these Terms and Conditions or the relevant Order.

23.2 Contra Proferentem

The rule of construction that in the event of any uncertainty in any provision in any agreement, such agreement shall, in construing/interpreting the uncertainty, be construed, or interpreted against the drafter of such agreement, shall not be applicable to these Terms and Conditions.

23.3 Variation

No variation of or addition to of these Terms and Conditions or the relevant Order will be of any force or effect unless reduced to writing and signed by the Parties.

23.4 Waiver

No waiver on the part of a Party of any rights arising from a breach of any provision of these Terms and Conditions or the relevant Order will constitute a waiver of rights in respect of any subsequent breach of the same or any other provision.

23.5 Force Majeure

23.5.1 Failure to comply with any of the terms and conditions of these Terms and Conditions or an Order if occasioned by or resulting from an act of nature or public enemy, fire, explosion, earthquake, perils of the sea, flood, storm or other adverse weather conditions, war declared or undeclared, civil war, revolution, civil commotion or other civil strife, riot, strikes, blockade, embargo, sanctions, epidemics, act of any government or other authority,

compliance with government orders, demands or regulations (including without limitation in respect of any permit, licence or authorisation), as well as shortages, interruptions, fluctuations or the unavailability of electrical power, water supply or means of communication or any circumstances of like or different nature beyond the reasonable control of the Party so failing ("Force Majeure"), will not be deemed to be a breach of these Terms and Conditions or an Order, nor will it subject either Party to any liability to the other.

23.5.2 Notwithstanding the provisions of clause 23.5.1, the inability to make payment of any amount due and payable under an Order shall not constitute Force Majeure.

23.5.3 Should a Party's performance of an obligation become temporarily impossible owing to Force Majeure, that Party shall:

23.5.3.1 as soon as reasonably possible after the Force Majeure sets in notify the other Party in writing of the incidence of Force Majeure;

23.5.3.2 be released from performance of the affected obligation for so long as the Force Majeure prevails;

23.5.3.3 use its best endeavours to recommence performance of the affected obligation, to whatever extent reasonably possible, without delay; and

23.5.3.4 co-operate with the other Party in implementing such contingency measures as the other Party may reasonably require.

23.6 Should the circumstances of Force Majeure continue for longer than 14 days, either Party shall be entitled to terminate the relevant Order, with immediate effect by written notice.

23.7 Cession and Delegation

23.7.1 ECN shall, without notice thereof, be entitled to cede, assign and delegate all or any of its rights and obligations in terms of these Terms and Conditions or an Order to a third party.

23.7.2 The Subscriber shall not be entitled to cede, assign or delegate any of its rights or obligations in terms of these terms and conditions or an Order without the prior written consent of ECN.

23.7.3 ECN shall be entitled, without prejudice to any of its other rights, to terminate the Agreement or an Order on 7 days written notice to the Subscriber in the event that the Subscriber shall purport to cede, assign or delegate any of its rights or obligations in terms of these terms and conditions or an Order without the prior written consent of ECN.

23.8 Warranties

No Party has given any warranty or made any representation to the other Party, other than as expressly set out in these Terms and Conditions or an Order.

23.9 No Agency

ECN is an independent contractor to the Subscriber and nothing in these Terms and Conditions or an Order constitutes a relationship of employment, agency, joint venture, or partnership between the Parties. A Party shall not hold itself out as being an agent or partner of the other Party, or as being in a joint venture with the other Party. A Party shall not assume or create or attempt to assume or create directly or indirectly any obligation on behalf of or in the name of the other Party.

23.10 Arrangements under section 37(2) of the OHSACT

Each Party is an employer in its own right, a specialist in its own field of operations, performs work using its own employees and/or agents and its activities, methodologies and work are not directly supervised by the other Party. Each Party shall comply with the OHSACT accordingly.

23.11 Co-operation and Support

Each Party undertakes at all times to use commercially reasonable efforts to co-operate, to perform all such actions and take such steps and to procure the cooperation, the performance of all such actions and taking of all such steps as may be open to it and necessary for and incidental to the putting into effect and maintenance of the provisions of these Terms and Conditions or an Order.

23.12 Non Solicitation



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A Party shall not without the prior written consent of the other Party, either during, or within 12 (twelve) months after termination or cancellation a of Order for whatsoever reason, engage, employ, or otherwise solicit for employment, whether directly or indirectly, any person who during the currency of the Order was engaged in the performance of thereof as an employee, or temporary employee of the other Party, or of the other Party's suppliers under the Order. A Party in breach of this clause shall pay to the other Party as liquidated damages an amount equal to the gross annual salary as calculated immediately prior to the breach (including any commissions and other payments) of the person so engaged, employed, or solicited.

23.13 Inclusion of electronic documents and signature

Any reference in these Terms and Conditions or an Order to "writing" or "signed" shall include any form of electronic communication, or electronic signature.

23.14 Entire Agreement

The terms contained in these Terms and Conditions and each Order constitute in each instance the entire agreement between the Parties with respect to the subject matter thereof, superseding all contemporaneous oral agreements and prior oral and written quotations, communications, agreements, and understanding of the Parties.

23.15 Costs

Each Party shall bear its own legal costs and disbursements of and incidental to the negotiation, preparation, settling, signing and implementation of each Order and these Terms and Conditions. Any legal costs incurred by a Party arising out of or in connection with a breach by the other Party, shall be borne by the Party in breach on a scale as between attorney and client.

23.16 Counterparts

These Terms and Conditions and an Order may be executed by the Parties in one or more counterparts, all of which taken together shall constitute one and the same instrument.

24 **CREDIT CONSENT**

The Subscriber unconditionally consents to ECN or its cessionary/ies making enquiries about the Subscriber's credit record with any credit reference agency and any other relevant party. ECN or its cessionary/ies may also provide credit reference agencies with regular updates regarding how the Subscriber manages its account, including the Subscriber's failure to meet agreed terms and conditions. The Subscriber further consents that credit reference agencies may, in turn, make the records and details available to other credit grantors. ECN or its cessionary/ies may also give this information to any person who, in its opinion, needs it to carry out any of ECN and/or its cessionary/ies rights or duties in terms of the Agreement or any law pertaining to the services and /or products the Subscriber has requested.

25 **CONSUMER PROTECTION ACT ACKNOWLEDGEMENT**

In the event that the Subscriber is a consumer as defined in the Consumer Protection Act 68 of 2008, ("the CPA") the Subscriber's attention is in terms of section 49 of the CPA, drawn to all provisions in this Agreement printed in **BOLD**.

Full Signature of duly authorised Subscriber signatory.	
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