

# Terms and Conditions

January 2019



These terms and conditions (the "Agreement") applies to your (we may refer to you as "you" or "the Customer") use of iConnect SA (Proprietary) Limited's ("iConnect", "us", "our", "we") website as well as our other services, including (among others) , Voice, Data, Cloud Services, internet services and any other products and services that we may make available from time to time. The terms and conditions contained in this document, as well as any other documents, orders and proposals that you conclude with iConnect, form part of the Agreement between iConnect and you.

## 1. DEFINITIONS AND INTERPRETATION

1.1. For purposes of this Agreement, the following terms shall have the following meanings -

- 1.1.1. "**Business Day**" means any day other than a Saturday, a Sunday or a gazetted public holiday in the Republic of South Africa;
- 1.1.2. "**Claim**" means a claim, action, demand, suit or proceeding;
- 1.1.3. "**Connection date**" means, in relation the date on which the Service provided by iConnect is connected;
- 1.1.4. "**Destructive Code**" means any "viruses", "trojan horses", computer code, malware, "ransomware", instructions, devices or other Materials that (i) are designed to disrupt, disable, harm or otherwise impede in any manner, including aesthetic disruptions or distortions, the operation or use of Infrastructure or Materials; or (ii) would disable the whole or any part of any Infrastructure or Materials or impair in any way their operation or Use based on the elapsing of a period of time, exceeding the authorised number of copies, advancement to a particular date or other numeral; or (iii) that would permit an unauthorised party to access the Infrastructure or Materials of iConnect to cause such disablement or impairment, or (iv) which contains any other similar harmful, malicious or hidden procedures, routines or mechanisms; or (iv) that can cause or allow damage to, or loss, theft, destruction or corruption of, Infrastructure or Materials, data, storage media, programs, equipment or communications, or otherwise interfere with operations thereof;
- 1.1.5. "**Dispute Notice**" means a written notice served by the aggrieved party on the defaulting party, setting out the nature of the dispute;
- 1.1.6. "**Effective Date**" means, in respect of each Services Proposal, the effective date stipulated in each Services Order or the Connection Date, whichever is the first to occur;
- 1.1.7. "**Emergency Changes**" means an urgent, mandatory change that may occur outside the Scheduled Downtime where critical changes impacting on iConnect' network infrastructure must be performed in order to (i) restore accessibility and functionality of; and/or (ii) sustain the availability of the iConnect network infrastructure;
- 1.1.8. "**Equipment**" means the router/gateway, modem and/or any other equipment or hardware that are required to be installed by the Customer at the Sites in order for iConnect to provide the Services, including, without limitation, the Equipment set out in a Services Proposal;
- 1.1.9. "**Fees**" means the fees and charges to be paid by the Customer to iConnect in respect of the Services as set out in the relevant Service Proposal;
- 1.1.10. "**Initial Term**" means a period of 24 months commencing on the Effective Date, unless a different period is stated in a Services Proposal;
- 1.1.11. "**Infrastructure**" means information technology and telecommunications infrastructure and systems, including computer and telecommunications networks, equipment, hardware, software, middleware, firmware, data, databases, peripherals, terminals and components;
- 1.1.12. "**Laws**" means all laws, statutes, regulations, by-laws, rules, directives and orders, including all other requirements of any government or any government agency, body, authority, tribunal, regulator or court of the Republic of South Africa;



- 1.1.13. "**Loss**" means any actual loss, liability, direct damages, penalty, fine, expense and cost (including legal costs on a scale as between attorney and client), including any indirect and consequential loss or damages of whatsoever nature;
- 1.1.14. "**Parties**" means iConnect and Customer and "**Party**" means either one of them;
- 1.1.15. "**Personnel**" means any shareholder, member, director, employee, agent, consultant, contractor or other representatives;
- 1.1.16. "**Policies**" means the policies, guidelines, procedures and practices published by iConnect on its Website relating to the Customer's use of the Services and Equipment, as amended from time to time;
- 1.1.17. "**Materials**" means all products, goods, software, software documentation, documentation, literature, materials, tools, data, information, databases, modules, components, compilations of data, methodologies, processes, policies, procedures, techniques, models, configurations, protocols, routines, interfaces (including Application Program Interfaces (APIs)), reports, plans, notes, files, diagrams, manuals, templates, schematics, correspondence, designs, circuit designs, algorithms, specifications, records, equipment, hardware, servers, computers, platforms, computer code, derivative works, and works of authorship, and irrespective of the form and format of the foregoing and whether tangible or intangible;
- 1.1.18. "**Scheduled Downtime**" means a maintenance period scheduled by iConnect for general maintenance operations, enhancements, upgrades or modifications to iConnect' network infrastructure;
- 1.1.19. "**Services**" means those services that will be provided by iConnect to the Customer in terms of a Services Proposal that has been concluded between iConnect and the Customer;
- 1.1.20. "**Service Levels**" means, in relation to each Service, the service levels, standards and specifications which are applicable to the Service and which have been published by iConnect on its Website, unless otherwise agreed by the Parties in writing;
- 1.1.21. "**Services Proposal**" means a Services Proposal which has been concluded between iConnect and the Customer, which Services Proposal shall incorporate the terms and conditions of this Agreement, as well as such other terms and conditions expressly agreed in the Services Proposal by the Parties;
- 1.1.22. "**Sites**" means the offices or premises designated in the Services Proposal at or to which the Services are to be provided by iConnect.;
- 1.1.23. "**Third Party Service Provider**" means, in respect of any goods and services, the contractor, supplier, vendor or licensor (as the case may be) of the goods or services which is not a party to this Agreement;
- 1.1.24. "**VAT**" means value-added tax levied in terms of the Value-added Tax Act, 89 of 1991, as amended;
- 1.1.25. "**Website**" means the website of iConnect, available at <http://www.iconnectsa.co.za/>.
- 1.2. In this Agreement and each Services Proposal, headings and sub-headings are inserted for information purposes only and shall not be used in the interpretation of this Agreement or a Services Proposal, and unless expressly stated otherwise:
- 1.2.1. the rule of construction that if general words or terms are used in association with specific words or terms which are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class (ie the *eiusdem generis* rule) shall not apply. The words "**include**" and "**including**" mean "**include without limitation**" and "**including without limitation**". The use of the words "**include**" and "**including**" followed by a specific example or examples, or the use of examples, shall not be construed as limiting the meaning of the general wording preceding it;
- 1.2.2. references to a statutory provision include any subordinate legislation made from time to time under that provision and include that provision as modified or re-enacted from time to time;
- 1.2.3. words importing any particular gender include the other genders (i.e. the masculine, feminine and neuter genders, as the case may be); the singular includes the plural and *vice versa*; and natural persons include artificial persons and *vice versa*;



- 1.2.4. references to a "person" or a "party" include a natural person, company, close corporation or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons;
- 1.2.5. technical terms that are not defined in this Agreement or in a Services Proposal (where such term is used in that Services Proposal) will have the generally understood meaning in the information communications and technology industry;
- 1.2.6. if a definition imposes substantive rights and obligations on a Party, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition;
- 1.2.7. any definition, wherever it appears in this Agreement or a Services Proposal, shall bear the same meaning and apply throughout this Agreement or that Services Proposal unless otherwise stated or inconsistent with the context in which it appears;
- 1.2.8. when any number of days is prescribed in this Agreement, the first day will be excluded and the last day included, unless the last calendar day falls on a calendar day that is not a Business Day, in which event the last calendar day shall be the next Business Day;
- 1.2.9. where the day upon or by which any act is required to be performed is not a Business Day, the Parties shall be deemed to have intended such act to be performed upon or by the next succeeding Business Day;
- 1.2.10. any provision in this Agreement or a Services Proposal which is or may become illegal, invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written (i.e. *pro non scripto*) and severed from the balance of this Agreement or the Services Proposal (as the case may be), without invalidating the remaining provisions of this Agreement or the Services Proposal (as the case may be) or affecting the validity or enforceability of such provision in any other jurisdiction;
- 1.2.11. references to any amount shall mean that amount exclusive of VAT, unless the references to the amount expressly state that it includes VAT;
- 1.2.12. the expiration or termination of this Agreement or a Services Proposal shall not affect such of the provisions of this Agreement or a Services Proposal which are expressly provided to operate after any such expiration or termination, or which implicitly or of necessity must continue to have effect after such expiration or termination, notwithstanding that the relevant provisions themselves do not provide for this; and
- 1.2.13. no provision herein shall be construed against or interpreted to the disadvantage of a Party by reason of such Party having or being deemed to have structured, drafted or introduced such provision.

## 2. SERVICES PROPOSAL

- 2.1. From time to time during the term of this Agreement, the Customer may submit a request for Services to be potentially undertaken by iConnect. Until a Services Proposal is formally agreed and signed by the Customer and iConnect, iConnect will be under no obligation in relation to such Services requested by the Customer.
- 2.2. This Agreement shall apply to each Services Proposal concluded between the Parties and the terms and conditions of this Agreement shall, unless otherwise stated or where inconsistent with the context, be deemed to be incorporated into each Services Proposal.
- 2.3. Each Services Proposal shall constitute a separate agreement between the Parties and shall be separate and independent to any other Services Proposal that may be signed by the Parties.
- 2.4. In the event of any conflict or inconsistency between the terms of this Agreement and a Services Proposal, the terms of the Agreement shall prevail to the extent of such conflict or inconsistency.

## 3. DURATION AND RIGHT OF EARLY CANCELLATION

- 3.1. This Agreement shall commence on the Effective Date of the first Services Proposal concluded by the Party and shall, subject to clause 1.2.12, endure until the termination or expiry (as the case may be) of every Services Proposal concluded between the Parties.



- 3.2. The Services shall, in respect of each Services Proposal, commence on their respective Connection Date, unless otherwise agreed to in writing, and shall continue for the initial term set out in the relevant Services Proposal in relation to each Service. Each Services Proposal shall endure until the expiry of the term of the last Service set out in such Service Order.
- 3.3. Subject to the further provisions of clause 11.3, either Party may terminate this Agreement or a Services Proposal on 90 days' written notice to the other Party. In instances where the Customer wishes to terminate the Agreement or a Services Proposal pursuant to this clause 3.3, the Customer shall send the written notice contemplated in this clause 3.3 on its company letterhead to [cancellations@iconnecttelecoms.com](mailto:cancellations@iconnecttelecoms.com) or such other address that iConnect may designate for this purpose from time to time.

#### 4. EQUIPMENT

- 4.1. The Customer shall either:
- 4.1.1. purchase the Equipment from iConnect in accordance with a separate sale agreement to be concluded between the Customer and iConnect; or
- 4.1.2. lease the Equipment in accordance with a separate lease agreement to be concluded by the Customer and (i) iConnect or (ii) a Third Party Service Provider.
- 4.2. Where the Equipment is purchased by the Customer from iConnect:
- 4.2.1. the Equipment will be supplied by and installed by iConnect or its nominated representative in terms of the agreement of sale in respect of the Equipment;
- 4.2.2. iConnect shall invoice the Customer for the cost of the Equipment and its installation, which invoices shall be payable by the Customer in accordance with the agreed terms of the agreement of sale;
- 4.2.3. the Customer will effect payment of such invoice by electronic fund transfer and provide iConnect with proof of payment before installation is scheduled and implemented by iConnect;
- 4.2.4. any Equipment supplied by iConnect to the Customer that functions incorrectly, is defective or is otherwise faulty as a consequence of its design, material or workmanship may be covered by a warranty provided by a Third Party Service Provider (including the manufacturer of the Equipment) or relevant legislation for such period stated by the Third Party Service Provider (including the manufacturer of the Equipment) or set out in the relevant legislation;
- 4.2.5. to the maximum extent permitted by law, iConnect gives no warranty in relation to the Equipment which has been damaged due to the neglect or misconduct of the Customer, including any water damage, lightning, power surges, alterations or combination with other equipment or property; and
- 4.2.6. while risk in and to the Equipment shall pass to the Customer upon delivery, iConnect shall retain ownership of the Equipment until such time as the Customer has made payment for the Equipment in full, whether it is installed or not;
- 4.3. Where the Equipment has been leased by the Customer from iConnect:
- 4.3.1. the Equipment will be supplied and installed by iConnect or its nominated representative in accordance with the agreed terms of the rental agreement in respect of the Equipment;
- 4.3.2. iConnect shall invoice the Customer for the rental in accordance with the agreed terms of the rental agreement in respect of the Equipment;
- 4.3.3. while risk in and to the Equipment shall pass to the Customer upon delivery, iConnect shall retain ownership of the Equipment until such time as the Customer has made payment for the Equipment in full, whether it is installed or not;
- 4.3.4. the Customer shall remain liable for the Fees under this Agreement notwithstanding the termination or expiry of a rental agreement, and/or the destruction of, or damage to, the Equipment;
- 4.3.5. the Customer shall inform their Landlord of the rental agreement in place in respect of the Equipment together with a schedule of the Equipment leased/rented; and
- 4.3.6. unless otherwise provided in the lease agreement, in the event that this Agreement is cancelled, in respect of rented/leased Equipment, and



- 4.3.6.1. the Customer refuses iConnect access to the Customer's premises in order to remove the Equipment, or
  - 4.3.6.2. if when attending to remove the Equipment, iConnect discover that the Equipment has been damaged or has otherwise been removed,
  - 4.3.6.3. iConnect shall be entitled to invoice the Customer for the full cost of all of the Equipment, plus the relevant installation charges thereof, and which the Customer hereby accepts liability for, and which shall be due and payable upon presentation of the invoice.
- 4.4. The Customer shall, at all times:
- 4.4.1. take all reasonable steps to prevent the Equipment from being damaged or tampered with, or otherwise modified either in configuration or setup;
  - 4.4.2. locate the Equipment in a safe place at the Site;
  - 4.4.3. maintain the Equipment in proper working order, ensuring that the Equipment is used with due skill and care and only in the manner and for the purpose for which it is designed and the intended in accordance with the business of the Customer;
  - 4.4.4. keep the Equipment insured against Loss, theft damage, or destruction; and
  - 4.4.5. allow any of its Personnel or a third party to make any modification or addition to any equipment, software or Materials provided by iConnect, without the prior written consent of iConnect.
- 4.5. Without limiting or derogating from the remainder of this clause 4, the Customer accepts the risk of damage to or destruction, Loss or theft of the Equipment and all business interruptions that are caused by or flow from such incidents, with effect from the date that the Equipment is delivered to the Customer.
- 4.6. When notified of the proposed installation of the Equipment, the Customer shall provide iConnect and/or its nominated representative with such access as may be required for purposes of installing the Equipment.
- 4.7. The Customer acknowledges and agrees that the Services may be interrupted, terminated or suspended should the Customer fail to provide the Equipment as required in terms of this Agreement, or should an Emergency Change be required at the instance of iConnect or a Third Party Service Provider, and iConnect shall not be liable to the Customer for any such suspension, interruption or failure of the Services in such an event.

## 5. THE SERVICES

- 5.1. iConnect will provide the Services to the Customer in accordance with the terms of the applicable Services Proposal (including any Service Levels applicable to the Services specified in the Services Proposal) and this Agreement.
- 5.2. iConnect shall:
- 5.2.1. provide the Services in accordance with the provisions of this Agreement;
  - 5.2.2. be responsible for obtaining any necessary permits, licences or consents from the relevant statutory authorities permitting iConnect to provide the Services;
- 5.3. provide the initial training it considers, in its sole and absolute discretion, to be necessary to the Customer's Personnel, unless otherwise agreed by the Parties in writing.
- 5.4. While iConnect undertakes to use its reasonable endeavours to cause the Services to be uninterrupted, the parties agree and understand that;
- 5.4.1. the continued and uninterrupted service is dependent on the utilisation, availability and functionality of equipment and resources provided by Third-Party Service Providers;
  - 5.4.2. iConnect shall not be liable directly or indirectly for any interruption in or failure of the Services (including, without limitation, the speed of any Services) as a result of any such failure;
  - 5.4.3. due to the nature of the Services, iConnect cannot guarantee that the Services will be uninterrupted; and
  - 5.4.4. iConnect shall provide the Services in accordance with the Service Levels.
  - 5.4.5. In certain circumstances, iConnect may recommend certain upgrades to resources, including those provided by Third Party Service Providers, in order to ensure a more reliable and efficient service, and that in the event that the Customer elects not to follow the recommendation of iConnect, the Customer shall not be entitled to rely on the quality of the services to cancel this



Agreement or to suspend or withhold any payments or fees due to iConnect or to a credit in respect of any such fees or payment, unless expressly agreed to by iConnect, which agreement must be set out in writing.

- 5.5. This Agreement shall remain valid and enforceable and the Customer shall continue paying the Fees during any period of interruption or suspension to the Services which is caused other than as a direct result of iConnect's fault.
- 5.6. The suspension or interruption of the Services by reason of the Customer's damage to or negligent or unlawful use of the Services and/or the Equipment and/or the provisions of 5.6 below, and/or the failure of the Customer to utilise the equipment and services properly and in accordance with the operational requirements thereof, shall not entitle the Customer to cancel this Agreement or to suspend or withhold any payments or fees due to iConnect or to a credit for any such fees or payment unless iConnect agrees thereto in writing. iConnect may, without limitation or derogating from its further rights under this Agreement, elect to charge the Customer a reconnection fee of R250,00 in the event that iConnect elects to cease the suspension of the Customer's Services.
- 5.7. Maintenance of, remedial works to, modification of and upgrading to the Equipment and Scheduled Downtime and Emergency Changes may take place from time to time which will bring about a suspension or interruption of the Services. In such an event iConnect shall endeavour to notify the Customer of any impending suspension or interruption and iConnect will make all reasonable efforts to keep such suspension or interruption to a minimum. The Customer shall not be entitled to cancel this Agreement or to suspend or withhold any payments or fees due to iConnect or to a credit in respect of any such fees or payment, as a result of a suspension or interruption of Services in such circumstances.
- 5.8. The Parties agree that the Customer will be responsible for providing the necessary Equipment to receive the Services, and iConnect will not be liable for the provision of any services or Equipment unless these are expressly specified in the Services Proposal. Subject to the full and timeous payment of the Fees by the Customer, iConnect hereby grants the Customer a non-exclusive and non-transferrable licence, to the extent required, to utilise and access the Services (where applicable) with the Equipment for the term of the relevant Services.
- 5.9. All material and software made available by iConnect for the purposes of providing the Services shall remain the exclusive property of iConnect or its licensors and nothing in this Agreement shall transfer or be deemed to transfer any rights to the Customer in respect of such Materials or software, save as specifically provided herein.
- 5.10. iConnect shall be entitled to employ any reasonable means necessary to protect its network, infrastructure and systems, including from spam or unsolicited/junk communications or any vulnerabilities caused by the Customer's conduct. Without limiting or derogating from the generality of this clause 5.9, iConnect may immediately suspend or terminate a Customer's use of the Services (whether in whole or in part) where iConnect, in its reasonable discretion, determines that such a suspension or termination is necessary to protect its network, infrastructure and/or systems.

## 6. CUSTOMER'S OBLIGATIONS

- 6.1. The Customer and its Personnel shall comply with iConnect's reasonable requests and directions necessary for the implementation and use of the Services.
- 6.2. With effect from the Signature Date, the Customer shall allow iConnect and its Personnel access (at all reasonable times) to the Sites strictly for the purposes of fulfilling iConnect's obligations under this Agreement.
- 6.3. The Customer shall be responsible to purchase or rent/lease the Equipment as required in terms of this Agreement.
- 6.4. The Customer shall, at all times,
  - 6.4.1. provide iConnect with all assistance, Materials and information reasonably requested by iConnect for the purposes of iConnect performing the Services or performing its other obligations under the Agreement; and
  - 6.4.2. comply with the Policies applicable to the Services.
- 6.5. The Customer and its Personnel shall not do or permit to be done anything in relation to the Services or the Equipment which may reasonably be expected to damage or adversely interfere in any way whatsoever with the proper or normal operation of iConnect's business.



6.6. To the fullest extent permitted by law, the Customer irrevocably agrees to indemnify and hold iConnect harmless from and against all Claims and all Loss arising out of or in connection with any Claim made or instituted against any of the Indemnified Parties by any third party (including, without limitation, for the infringement or misappropriation of any Intellectual Property Rights), where such Claim arises in relation to, or as a result of:

- 6.6.1.1. Materials provided, disclosed or made available by or on behalf of the Customer or any of the Customer's Personnel;
- 6.6.1.2. use of Materials provided, disclosed or made available by or on behalf of Customer or any of the Customer's Personnel;
- 6.6.1.3. any act or omission of the Customer or any of the Customer's Personnel;
- 6.6.1.4. any breach of, or non-compliance with, any of the obligations, representations, warranties or undertakings contained in clauses 4, 6 or 7; or
- 6.6.1.5. any prohibited or unlawful activities in relation to the Customers use of the Services and/or Equipment.

6.7. The Customer shall not

- 6.7.1. prevent or preclude iConnect from being able to provide or maintain its Services and/or Equipment;
- 6.7.2. abuse the Services and/or damage the Equipment or the Infrastructure of iConnect;
- 6.7.3. withhold any payment for any reason whatsoever;
- 6.7.4. be entitled to claim a remission of fees or charges unless such remission of fees or charges shall have been expressly agreed to in writing by iConnect;
- 6.7.5. remove or cause the equipment to be removed from the site without the prior written approval of iConnect;
- 6.7.6. alter or modify the equipment in whatsoever manner;
- 6.7.7. sell, assign, mortgage, encumber or otherwise dispose of, deal with or part with the Equipment or Services (or any interest in it) or attempt to do so without the prior written consent of iConnect.

## 7. WARRANTIES

7.1. The Customer represents, warrants and undertakes on the Signature Date and at all times thereafter that:

- 7.1.1. it will implement and maintain adequate procedures, policies, controls, systems, methodologies, and technology to prevent and avoid any unauthorised access to, alteration of, Loss, interference with, interception, or destruction of the Materials or Infrastructure of iConnect;
- 7.1.2. it will not intentionally or negligently introduce, or intentionally or negligently permit the introduction of, any Destructive Code into the Materials or Infrastructure of iConnect or any part of the foregoing, and it will implement and maintain adequate procedures, policies, controls, systems and technology to prevent the introduction of any Destructive Code into the Materials or Infrastructure of iConnect or any part of the foregoing;
- 7.1.3. it has the legal right and full power and authority to execute and deliver, and to exercise its rights and perform its obligations under this Agreement and all the documents which are to be executed or procured by it as envisaged by this Agreement;
- 7.1.4. it will use the Services and Equipment, and perform all of its obligations under this Agreement, in accordance with all applicable Laws.

7.2. Each of the warranties and undertakings set out in clause 7.1 above shall be read separately from and without prejudice to and without derogation from the others.

7.3. Except as expressly stated in this Agreement, neither Party makes any warranties, express or implied, written or oral, by operation of law or otherwise, under or in connection with this Agreement.

## 8. FEES AND PAYMENT

8.1. The Customer shall pay iConnect the Fees on the terms set out in the Services Proposal and this Agreement. The Customer may not:

- 8.1.1. without payment (or authorisation) of any invoice which details or relates to any amounts which are payable to iConnect; and



- 8.1.2. deduct, withhold or set-off from any payment any sums owed by the Customer to iConnect.
- 8.2. Unless otherwise agreed by the Parties in writing, the Customer shall pay 50% of the Fees set out in a Services Proposal to iConnect, as a non-refundable deposit, prior to iConnect commencing any of the Services contemplated under that Services Proposal (the "**Deposit**"). Without limiting or derogating from iConnect's rights under this Agreement or at law, iConnect may terminate a Services Proposal on immediate written notice in the event that the Customer fails to pay the Deposit within 30 days of the date on which the Proposal is signed by both Parties.
- 8.3. Where iConnect performs any services or other activities falling outside the scope of its obligations in this Agreement, including a Services Proposal, iConnect may charge a fee for such services or activities. The fee payable by the Customer will be determined by iConnect by applying the applicable rates set out its Website, as amended from time to time.
- 8.4. The Parties record that, in certain instances, iConnect's Third Party Service Providers may levy certain fees (the "**Third Party Fees**") in relation to the commencement of certain services and/or the provision of certain Equipment (including, without limitation, costs pertaining to the installation of a fibre network for the Customer) (the "**Third Party Services**"). iConnect will notify the Customer of Third Party Services that will be required for the purposes of the Customer receiving the Services contemplated in the Services Proposal, as well as the applicable Third Party Fees (once these have been determined by the applicable Third Party Service Provider). In the event that the Customer elects to receive the Third Party Services from the Third Party Service Provider identified by iConnect, it shall be solely liable to the Third Party Service Provider for the applicable Third Party Fees on the terms, and subject to the conditions, imposed by such Third Party Service Provider. In the event that the Customer elects not to receive the Third Party Services from the Third Party Service Provider identified by iConnect, the Customer may:
- 8.4.1. appoint an alternate Third Party Services Provider to provide the relevant Third Party Services, at the Customer's sole cost and expense; or
- 8.4.2. elect to terminate the relevant Services Proposal on 90 days' written notice to iConnect, subject to the remaining provisions of this Agreement (including, without limitation, the provisions of clauses 3.3 and 11.3).
- 8.5. Invoicing/billing periods for the Services will run from 0h00 on the 22nd of one month to 24h00 on the 21st of the following month, unless otherwise agreed by iConnect in writing.
- 8.6. iConnect will provide the Customer with an electronic invoice reflecting all of its applicable monthly fees and charges for the continuous connection to the Services, its line fees (if any) and all other applicable once off charges, and its banking details for payment purposes if payment is not made by debit order. The Customer shall pay the Fees set out in an invoice no later than 30 days after the date of such invoice.
- 8.7. Where any amount payable by the Customer to iConnect under this Agreement is not paid on the due date, it will bear interest at the prime interest rate as charged by iConnect's bankers plus 2%, from date of default to date of payment.
- 8.8. Notwithstanding any provision in this Agreement to the contrary, and without prejudice to any other rights and remedies which iConnect may have against the Customer, iConnect may suspend its performance of the Services and its other obligations (in whole or in part) in the event that any amount payable by the Customer to iConnect under this Agreement is not paid on the due date.
- 8.9. The Fees payable under each Services Proposal shall be renegotiated on the anniversary of the Effective Date of such Services Proposal. In the event that the Parties are unable to agree to an increase to the Fees within 5 days of the anniversary of the Effective Date of a Services Proposal, iConnect may, in its sole and absolute discretion, increase the Fees by no more than 10% per annum.
- 8.10. Without limiting or derogating from the provisions of clause 8.8 above, the Parties record that the Fees payable by the Customer for the Services are based on, subject to and linked to the fees charged to iConnect by its Third Party Service Providers. The Customer accordingly acknowledges and agrees that any increase of the fees payable by iConnect to those Third Party Service Provider, for whatsoever reason, may result in an adjustment the Fees payable by the Customer to iConnect under this Agreement. The Parties agree that iConnect may determine the extent of such increase to the Fees in its sole and absolute discretion.
- 8.11. All amounts due and payable by the Customer shall be paid to iConnect in South African Rands at an address and in a manner specified by iConnect in writing from time to time.
- 8.12. An account statement signed by the iConnect chief financial officer (or any other person designated by the chief financial officer for this purpose) shall constitute prima facie proof of the amount and extent of any



indebtedness by the Customer to iConnect for all purposes including summary judgement or provisional sentence proceedings.

- 8.13. All other taxes, duties, levies, insurance or any other statutorily imposed charges, to the extent that these are applicable, will be payable by the Customer.

## 9. CONFIDENTIAL INFORMATION

- 9.1. Each Party ("Receiving Party") must treat and hold as confidential all information which it may receive from the other Party ("Disclosing Party") or which becomes known to it during the currency of this Agreement.
- 9.2. The confidential information of the Disclosing Party shall include –
- 9.2.1. any information of a confidential and/or commercially sensitive nature, howsoever obtained or received and whether or not marked confidential
  - 9.2.2. all software and associated material and documentation, including the information contained therein;
  - 9.2.3. all information relating to
    - 9.2.3.1. the Disclosing Party's past, present and future research and development;
    - 9.2.3.2. the Disclosing Party's business activities, pricing, products, services, customers, as well as the Disclosing Party's technical knowledge and trade secrets; or
    - 9.2.3.3. the terms of this Agreement,whether in written, oral, magnetic, or machine-readable or other format.
- 9.3. The Receiving Party agrees that in order to protect the proprietary interests of the Disclosing Party in the Disclosing Party's confidential information -
- 9.3.1. it shall only use the confidential information for the purposes of complying with its obligations under this Agreement;
  - 9.3.2. it shall only make the confidential information available to those of the Receiving Party's Personnel who are actively involved in the execution of the Receiving Party's obligations under this Agreement and then only on a "need to know" basis;
  - 9.3.3. it shall initiate internal security procedures reasonably acceptable to the Disclosing Party to prevent unauthorised disclosure and obtain binding confidentiality undertakings from those Personnel who need to be given access to confidential information;
  - 9.3.4. subject to the right to make the confidential information available to its Personnel under clause 9.3.1, it shall not at any time use any confidential information of the Disclosing Party or directly or indirectly disclose any confidential information of the Disclosing Party to third parties;
  - 9.3.5. all written instructions, drawings, notes, memoranda and records of whatever nature relating to the confidential information of the Disclosing Party which have or shall come into the possession of the Receiving Party and its Personnel, shall be and shall at all times remain the sole and absolute property of the Disclosing Party and shall promptly be handed over to the Disclosing Party when no longer required for the purposes of this Agreement.
- 9.4. On termination or expiry of this Agreement, the Parties will deliver to each other or, at the other Party's option, destroy all originals and copies of confidential information in their possession, unless retention of such confidential information is required by Law, in which case the remaining provisions of this clause 9 shall continue to apply to such confidential information until such time that it may be destroyed or delivered to the other Party.
- 9.5. These obligations shall not apply to any information which -
- 9.5.1. is lawfully in the public domain at the time of disclosure;
  - 9.5.2. subsequently and lawfully becomes part of the public domain by publication or otherwise;
  - 9.5.3. subsequently becomes available to the Receiving Party from a source other than the Disclosing Party, which source is lawfully entitled without any restriction on disclosure to disclose the confidential information; or
  - 9.5.4. is disclosed pursuant to a requirement or request by operation of law, regulation or court order



- 9.6. This clause is severable from the remainder of this Agreement and shall remain valid and binding on the Parties, notwithstanding the expiry or termination of this Agreement (for any reason), for a period of 5 (five) years after the effective date of termination.

## 10. LIMITATION OF LIABILITY

- 10.1. To the fullest extent permitted by law and subject to the remainder of this clause 10, notwithstanding the form (whether in contract, delict, or otherwise) in which any legal action may be brought, iConnect's maximum liability under this Agreement shall be limited to the lesser of (i) an amount equal to the fees paid by the Customer to iConnect in respect of the subject matter of the claim for the period of 12 (twelve) months preceding the claim or (ii) **[insert amount]**.
- 10.2. To the fullest extent permitted by law and subject to clause 10.3, in no event will iConnect or any of its Personnel be liable to the Customer for:
- 10.2.1. any loss of profits, loss of revenue or savings, loss of goodwill, or loss of business opportunities, loss of data or software, loss of use or damages relating to downtime or costs of substitute products, whether direct or indirect; or
- 10.2.2. any indirect, incidental, special, punitive, exemplary or consequential losses of any kind.
- 10.3. Nothing in this Agreement shall limit or exclude the liability of the Parties for any matter to the extent to which such liability cannot be lawfully be excluded or limited.
- 10.4. Nothing in this clause 10 will be taken as in any way reducing or affecting a general duty to mitigate Loss suffered by a Party.

## 11. BREACH AND TERMINATION

- 11.1. Should either Party (the "**Defaulting Party**"):
- 11.1.1. commit a breach of this Agreement (including a Services Proposal), and fail to remedy the breach within 7 (seven) Business Days of having been called on in writing by the other Party (the "**Aggrieved Party**") to do so; or
- 11.1.2. effect or attempt to effect a compromise or composition with its creditors; or
- 11.1.3. be provisionally or finally liquidated or placed under judicial management; or
- 11.1.4. cease or threaten to cease to carry on business in the ordinary course; or
- 11.1.5. commit any act or omission which would, in the case of an individual, be an act of insolvency in terms of the Insolvency Act, 1936 (as amended),
- 11.1.6. then the Aggrieved Party may, in its discretion and without prejudice to its rights in this Agreement or in law, terminate the Agreement or the applicable Services Proposal on written notice to the Defaulting Party. Without limiting or derogating from the generality of the foregoing, where the Customer is the Defaulting Party, iConnect may:
- 11.1.7. terminate the Services (in whole or in part) and in the event of the Equipment being leased by the Customer from iConnect, remove the Equipment; and
- 11.1.8. terminate this Agreement and/or any Services Proposal on written notice to the Customer, in which event termination shall be without prejudice to, and shall not constitute a release or waiver of, any Claims which iConnect may have against the Customer occasioned by the termination of this Agreement and/or any Services Proposal.
- 11.2. In the event that this Agreement is terminated for any reason, all Service Proposals concluded under the Agreement shall automatically terminate with effect from the date that the termination of the Agreement becomes effective.
- 11.3. In the event that:
- 11.3.1. the Customer terminates the Agreement or a Services Proposal for a reason other than a breach contemplated in clause 11.1, or
- 11.3.2. the Customer terminates the Agreement or a Services Proposal in accordance with the provisions of clause 3.3;
- 11.3.3. the Customer terminates the Agreement or a Services Proposal in accordance with the provisions of clause 8.4;
- 11.3.4. iConnect's terminates the Agreement or a Services Proposal by reason of the Customer's non-payment or pursuant to clause 11.1,



- 11.3.5. then, without limiting or derogating from iConnect's further rights under the Agreement, iConnect shall be entitled (but not obliged) to impose, at iConnect's sole and absolute discretion, an amount (the "**Termination Fee**") to be paid by the Customer to iConnect in relation to the terminated Agreement and/or Services Proposal, which Termination Fee shall be calculated on the following basis:

$$\text{Termination Fee} = (A \times 24) - B$$

Where:

A= The average monthly Fees charged by iConnect to the Customer in the 12 month period preceding the termination of the Agreement and/or Services Order (or, in instances where the Agreement and/or Services Proposal endured for a term less than 12 months, the average monthly Fees charged by iConnect to the Customer during such term)

- 11.4. B = the Fees paid by the Customer to iConnect in the 12-month period preceding the termination of the Agreement.

## 12. CONVENTIONAL PENALTIES ACT

To the extent that any provision of this Agreement is considered to be, or qualifies as, a penalty stipulation in terms of the Conventional Penalties Act, 15 of 1962:

the terms of this Agreement shall not be construed or interpreted in such a way as entitling iConnect to recover both damages and the penalty;

- 12.1. iConnect shall be entitled to recover damages in lieu of the relevant penalty;
- 12.2. iConnect shall not be obliged to accept defective or delayed performance by the Customer; and
- 12.3. the Customer acknowledges and agrees, having taken account of the prejudice that will be suffered by iConnect, that the penalty stipulation is equitable in the circumstances.

## 13. DISPUTE RESOLUTION

- 13.1. separate, divisible agreement

- 13.2. This clause is a separate, divisible agreement from the rest of this Agreement and shall:

13.2.1. not be or become void, voidable or unenforceable by reason only of any alleged misrepresentation, mistake, duress, undue influence, impossibility (initial or supervening), illegality, immorality, absence of consensus, lack of authority or other cause relating in substance to the rest of the Agreement and not to this clause. The Parties intend that all disputes, including the issues set forth above, be and remain subject to arbitration in terms of this clause; and

13.2.2. remain in effect even if the Agreement expires or terminates for any reason whatsoever.

- 13.3. disputes subject to mediation and arbitration

13.3.1. Prior to any of the dispute resolution procedures as detailed below being enforceable, the Parties hereby irrevocably agree that any dispute raised by either/any Party shall be referred to a meeting between a director from each Party (or their duly appointed representative) with a view to resolving such dispute within 5 (five) days. Failing resolution of the dispute by the aforesaid persons, the further provisions of this clause 13 shall apply.

13.3.2. Save as may be expressly provided for elsewhere in this Agreement for the resolution of particular disputes, any dispute arising out of or in connection with this Agreement, or the subject matter of this Agreement, including without limitation, any dispute concerning:

13.3.2.1. the existence of the Agreement and/or a Services Proposal apart from this clause;

13.3.2.2. the interpretation, application and effect of any provisions in the Agreement and/or a Services Proposal;

13.3.2.3. the Parties' respective rights or obligations under the Agreement and/or a Services Proposal;

13.3.2.4. the rectification of the Agreement and/or a Services Proposal;

13.3.2.5. any alleged misrepresentation, mistake, duress, undue influence, impossibility (initial or supervening), illegality, immorality, absence of consensus, lack of authority or other



cause relating to or in any way connected with the Agreement, a Services Proposal and/or any part or portion thereof;

13.3.2.6. the breach, expiry, termination or cancellation of the Agreement, a Services Proposal and/or any matter arising out of the breach, expiry, termination or cancellation; and

13.3.2.7. any claims in delict, compensation for unjust enrichment or any other claim,

13.3.2.8. whether or not the rest of the Agreement and/or a Services Proposal apart from this clause is valid and enforceable, shall be referred to arbitration as set out in 13.3.

13.4. arbitration

All disputes shall be finally determined in accordance with the Commercial Arbitration Rules of the Arbitration Foundation of Southern Africa ("**AFSA**") without recourse to the ordinary courts of law, except as explicitly provided for in 13.8.

13.5. appointment of arbitrator

13.5.1. The Parties to the dispute shall agree on the arbitrator who shall be an attorney or senior advocate (with at least 20 years' experience in commercial legal practice) on the panel of arbitrators of AFSA. If agreement is not reached within 10 Business Days after any Party calls in writing for such agreement, the arbitrator shall be an attorney or senior advocate (with at least 20 years' experience in commercial legal practice) nominated by the Registrar of AFSA for the time being.

13.5.2. The request to nominate an arbitrator shall be in writing outlining the claim and any counterclaim of which the Party concerned is aware and, if desired, suggesting suitable nominees for appointment as arbitrator, and a copy shall be furnished to the other Parties who may, within 7 days, submit written comments on the request to the addressee of the request with a copy to the first Party.

13.6. venue and period for completion of arbitration

The arbitration shall be held in Johannesburg and the Parties shall endeavour to ensure that it is completed within 90 days after notice requiring the claim to be referred to arbitration is given.

13.7. binding nature of arbitration

The Parties irrevocably agree that, subject to 13.7, any decisions and awards of the arbitrator:

13.7.1. shall be binding on them;

13.7.2. shall be carried into effect; and

13.7.3. may be made an order of any court of competent jurisdiction.

13.8. appeal

The Parties agree that there shall be no appeal against the decision of the arbitrator, unless such decision was reached by the arbitrator as a result of an error in law and which appeal shall be conducted in accordance with Article 22 of the AFSA Commercial Rules and shall be limited to such question of law and those aspects of the decision impacted by the alleged error in law.

13.9. application to court for urgent interim relief

Nothing contained in this clause 13 shall prohibit a Party from approaching any court of competent jurisdiction for urgent interim relief pending the determination of the dispute by arbitration. In respect of such proceedings, each of the Parties specifically consents to the non-exclusive jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg).

14. NOTICES AND DOMICILE

14.1. All notices, authorisations and requests given or made in connection with this Agreement must be sent by either:

14.1.1. hand, or

14.1.2. pre-paid registered post; or

14.1.3. electronic mail.

to the addresses and numbers as set out in the Services Proposal.



- 14.2. Each Party chooses as its chosen address for service of all notices in terms of this Agreement, for all purposes under this Agreement the physical address specified for the Party set out in a Services Proposal.
- 14.3. Each Party may, by giving written notice to the other Party, change the addresses and numbers set out herein to any addresses and numbers in the Republic of South Africa, provided that the change shall only take effect 14 (fourteen) calendar days after delivery of the written notice.
- 14.4. Notice shall be deemed to be given
- 14.4.1. if delivered by hand to a responsible person during Business Hours to the designated physical address, on the date of delivery;
  - 14.4.2. if sent by pre-paid registered post in a correctly addressed envelope to the designated postal address, on the 7<sup>th</sup> (seventh) Business Day after the date of posting;
  - 14.4.3. if sent by e-mail to the addressee, on the 1<sup>st</sup> (first) Business Day following the date of sending thereof, in the absence of any administrator or mail server error messages.
- 14.5. If a notice or communication is actually received by a Party, adequate notice or communication shall have been given.

## 15. FORCE MAJEURE

- 15.1. Neither Party shall be liable for any failure to fulfil its obligations under this Agreement (other than its payment obligation) if and to the extent such failure is caused by any circumstances beyond its reasonable control, including flood, fire, earthquake, war, tempest, hurricane, industrial action, government restrictions, failure of third party service providers or acts of God.
- 15.2. Should any event of *force majeure* arise, the affected Party shall notify the other Party without delay and the Parties shall meet within 7 (seven) calendar days of the notice to negotiate in good faith alternative methods of fulfilling its obligations under this Agreement, if any. In addition, iConnect shall continue to provide and Customer shall continue to pay for those Services not affected by the event of *force majeure*.
- 15.3. Should either Party be unable to fulfil a material part of its obligations under this Agreement for a period in excess of 60 (sixty) calendar days due to circumstances beyond its control *or force majeure*, the other Party may at its sole discretion cancel this Agreement forthwith by written notice to that Party.

## 16. ASSIGNMENT AND SUB-CONTRACTING

- 16.1. iConnect may cede, assign, delegate or otherwise transfer the benefit or burden of any part of this Agreement without the prior written consent of the Customer. Without limiting the generality of the foregoing, iConnect may sub-contract its obligations under this Agreement to third party contractors, provided that iConnect shall remain liable for performance of the third party contractors. iConnect shall not be required to disclose the terms (including payment terms) of any sub-contract entered into with respect to iConnect's obligations under this Agreement.
- 16.2. Customer shall not be entitled to cede, assign, delegate or otherwise transfer the benefit or burden of any part of this Agreement without the prior written consent of iConnect.

## 17. GENERAL

- 17.1. This Agreement and each Services Proposal contains all the provisions agreed on by the Parties with regard to the subject matter of the Agreement and the relevant Services Proposal, and supersedes and novates in its entirety any previous understandings or agreements among the Parties in respect thereof; and the Parties waive the right to rely on any alleged provision not expressly contained in this Agreement or a Services Proposal.
- 17.2. A Party may not rely on any representation (whether or not made innocently, negligently or deliberately) which allegedly induced that Party to enter into this Agreement or a Services Order, unless the representation is recorded in this Agreement or the applicable Services Order.
- 17.3. No contract varying, adding to, deleting from or cancelling this Agreement or a Services Order, and no waiver of any right under this Agreement or a Services Order, shall be effective unless reduced to writing and signed by authorised signatories of both the Customer and iConnect.
- 17.4. The grant of any indulgence, extension of any time or relaxation of any provision by a Party under this Agreement or a Services Proposal (or under any other agreement or document issued or executed pursuant to this Agreement or a Services Proposal) shall not constitute be a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.



- 17.5. If the whole or any part of a term of this Agreement is void or voidable by either Party or unenforceable or illegal, the whole or that part (as the case may be) of that term, shall be severed, and the remainder of this Agreement shall have full force and effect, provided the severance does not alter the nature of the agreement between the Parties.
- 17.6. This Agreement shall be governed and construed according to the laws of the Republic of South Africa and, subject to the provisions of clause 13, the Parties agree to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg.
- 17.7. Save as is expressly provided for in this Agreement, no provision of this Agreement (including a Services Proposal) constitutes a stipulation for the benefit of a third person (i.e. a *stipulatio alteri*) which, if accepted by the person, would bind any Party in favour of that person.
- 17.8. The party who is not successful in any litigation between the parties will be liable to the successful party for the costs on the scale as between attorney and own client.
- 17.9. Each Party shall be responsible for its own legal and other costs relating to the drafting and negotiation of this Agreement. Except to the extent stated expressly to the contrary by this Agreement or a Services Order, this Agreement and a Services Order do not confer any benefits or rights on any other parties.

