

BY ACCEPTING THIS AGREEMENT THROUGH THE ACCEPTANCE OF A PROPOSAL, THE CUSTOMER AGREES TO FOLLOW AND BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THE TERMS AND CONDITIONS OF THIS AGREEMENT AND, IN SUCH EVENT, "YOU" AND "THE CUSTOMER" AS USED IN THIS AGREEMENT SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF THE CUSTOMER OR SUCH ENTITY DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU AND/OR THE CUSTOMER MAY NOT USE THE PRODUCTS OR SERVICES. THIS AGREEMENT SHALL BE READ WITH AND APPLY TO ALL PRODUCT ANNEXURES.

1. DEFINITIONS

In this Agreement the following terms shall have the meanings set out below:

- 1.1 **"ADSL"** means an asymmetric digital subscriber line, a technology for transmitting digital information over standard telephone lines which allows high speed transmission of signals from the telephone network to an individual subscriber;
- 1.2 **"Affiliates"** means any legal entity in which the Customer, directly or indirectly, holds more than fifty percent (50%) of the shares or voting rights. Any such legal entity shall be considered an Affiliate for only such time as such interest is maintained;
- 1.3 **"Agreement"** means these terms and conditions, the Product Annexures, the Proposal/Order Document and all other Customer specific annexures and addendums relating to the Services and Products ordered by the Customer;
- 1.4 **"Authorised Technical Contact"** means the Customer designated individual or department, who will be the primary point of contact for all technical matters pertaining to the Products and Services;
- 1.5 **"Best Effort"** means a network service in which the network provider does not provide any guarantees on when or how quickly data will be delivered or the quality of that data when it is delivered. These network services are excluded from service level warranties and undertakings and include FTTH, ADSL, EDGE, 3G, LTE, 5G, Unlicensed Wireless Connectivity and non-dedicated fibre or wireless connectivity;
- 1.6 **"Business Day"** means any day other than a Saturday, Sunday or public holiday within the meaning of the Public Holidays Act, 1994, in the Republic of South Africa;
- 1.7 **"Business Hours"** means from 08h00 to 17h00 on a Business Day;
- 1.8 **"Confidential Information"** means information or data, whether disclosed orally or in writing, that is identified as being confidential or proprietary at the time of disclosure or which by its nature would generally be deemed in the information technology or telecommunications industry to be of a confidential nature and includes, without limitation the terms and conditions of this Agreement and any information relating to a Party's:

- 1.8.1 Intellectual property, business, business policies, business plans, pricing models, rate cards, Proposal and other business and commercial information; and
- 1.8.2 know-how, trade secrets, specifications, drawings, sketches, models, samples, data, diagrams and flow charts, and
- 1.8.3 potential customers, customer lists, sales, sales figures and products; and
- 1.8.4 technical information, including use of technology, systems, hardware, software (and the incidence of any faults therein) and related material and documentation; and
- 1.8.5 past, present and future research and development.
- 1.9 **"Connectivity Medium"** means the medium used to carry Products and/or related Services being provided by the Supplier to the Customer from the Customer site to the Supplier data centre;
- 1.10 **"Contract Documents"** means all policies located at <https://saicom.io/>, as updated from time to time (provided that such updates do not change the salient terms of the Agreement and/or do not materially alter the Agreement), as well as any ECNS license and/or any third-party licenses applicable to the Products or Services;
- 1.11 **"Customer Data"** means all data furnished to the Supplier by the Customer, or generated in the course of the provision of the Products and Services, including voice recordings and data back-ups, but excludes any derivative data which is created by the Supplier for its own internal purposes or which is proprietary or confidential to the Supplier or its suppliers;
- 1.12 **"Customer Input"** means the inputs reasonably required of the Customer in order to enable the Supplier to provide the Products and Services to the Customer, as set out in clause 5 and expanded upon in the Proposal where necessary;
- 1.13 **"Destructive Element"** means any "back door", "time bomb", "time lock", "trojan horse", "worm", "drop dead device", "virus" or other computer software routine or code intended or designed to:
 - 1.13.1 permit access to or the use of a computer system by an unauthorised person, or
 - 1.13.2 disable, damage, erase, disrupt or impair the normal operation of a computer system;
 - 1.13.3 damage, erase or corrupt data, storage media, programmes, equipment or communications, or otherwise interfere with operations of a computer system;
- 1.14 **"Dispute Resolution Procedure"** means the procedure set out in clause 20;
- 1.15 **"Effective Date"** means the date on which the agreement between the Parties is signed or the date that the Products and Services or availability of the Products and Services are provided to the Customer, whichever is earlier;
- 1.16 **"ECNS"** means electronic communications network services;
- 1.17 **"Excusing Cause"** means:
 - 1.17.1 a force majeure event as contemplated in clause 22 hereof; or

1.17.2 a failure by the Customer, or its Staff, to provide Customer Input to the Supplier:

1.17.2.1 within the timeframes contemplated in this Agreement, or failing such contemplation within a reasonable period stipulated by the Supplier in any written request for such Customer Input or within any period agreed by the Parties in writing; or

1.17.2.2 which is not of the required accuracy, standard or quality, including, without limitation, where such Customer Input is defective, corrupted (in the case of data) or inaccurate;

1.17.3 where the Customer breaches any term of this Agreement; or

1.17.4 where any bona fide dispute arises between the Parties;

1.17.5 where an ECNS licensee or other third-party fault affects the Products and/or Services.

1.18 **"Fees"** means the fees and charges to be paid by the Customer to the Supplier from time to time for the use of the Products and Services in terms of the Agreement, together with and any other costs, third-party charges and expenses as set out in the Contract Documents that may be chargeable under the Agreement from time to time;

1.19 **"Fibre"** means a method of transmitting information from one place to another by sending pulses of light through an optical fibre;

1.20 **"Independent Expert"** means an independent expert appointed by written agreement between the Parties to resolve a dispute between them in terms of this Agreement;

1.21 **"Initial Term"** means, unless terminated earlier in accordance with the terms of the Agreement, the period commencing on the date of activation of the applicable Service or the date reflected in the relevant Proposal/Order Document as the commencement date, and continuing for the duration recorded in the relevant Proposal/Order Document;

1.22 **"Intellectual Property"** shall include, without limitation, any know-how, patent, copyright, registered design, trademark or other industrial or intellectual property rights, whether registered or not and whether or not capable of being registered;

1.23 **"Licensed Wireless Connectivity"** means technology for transmitting digital information using radio frequency spectrum which requires a radio frequency spectrum licence issued by the Independent Communications Authority of South Africa;

1.24 **"Line-item Service"** means the specific Products and/or Services to be provided by the Supplier pursuant to this Agreement, as set out in the relevant Proposal;

1.25 **"LTE"** means long term evolution, a standard for wireless broadband communication for mobile devices and data terminals, based on the GSM/EDGE and UMTS/HSPA technologies;

1.26 **"Maintenance"** means the planned or emergency upkeep, corrective or repair work on Supplier Equipment or update of any solutions provided to the Customer as agreed in the relevant Proposal or this Agreement;

- 1.27 **"Network Maintenance"** means planned repairs and improvements carried out from time to time to the Network by the Supplier;
- 1.28 **"Parties"** means, collectively, the Supplier and the Customer, and **"Party"** refers to either one of the Parties, as the context may require;
- 1.29 **"Prime Rate"** means the publicly quoted prime rate of interest (percent, per annum) from time to time charged by FirstRand Bank Limited, as certified by any manager of such bank, whose appointment and authority it shall not be necessary to prove, calculated daily and compounded monthly in arrears;
- 1.30 **"Product/s"** means any Supplier Equipment, hardware and/or software (including associated licences) supplied by the Supplier to the Customer in terms of this Agreement from time to time, whether for purchase, lease or other supply arrangement, as supplemented and updated by the Supplier from time to time;
- 1.31 **"Product Annexure"** means specific terms of use, which together with the Agreement, provide the legal framework for Customer's use of the Products and Services provided by or on behalf of the Supplier;
- 1.32 **"Proposal/Order Document"** means the document stipulating the specific Services and Products to be provided by the Supplier to the Customer in terms of this Agreement, together with the applicable Fees, Initial Term and other information relevant to the Products and Services, such Proposal may be amended or supplemented to from time to time by the Parties should the need for further and/or additional Products and/or Services arise;
- 1.33 **"Renewal Term"** means the period, commencing on the day proceeding the end of the Initial Term, or the end of the previous renewal term and enduring for a subsequent fixed term of the same length as the Initial Term, until renewed or terminated in accordance with clauses 2 and/or 15;
- 1.34 **"Supplier Network"** means the Supplier's core network;
- 1.35 **"Services"** means the electronic communications services, connectivity services, cloud-based services, managed services, professional services, support, maintenance, monitoring, configuration, management, implementation and any related activities provided by the Supplier to the Customer in terms of this Agreement from time to time, including but not limited to SIP Trunking, Cloud PBX, Fibre and licensed wireless connectivity, APN, SMS, Firewall services, Data Management, Anycloud Saicom Private Cloud, Physical Hosting, SD-WAN, Anycloud managed services, as supplemented and updated by the Supplier from time to time;
- 1.36 **"Site"** means the sites to or at which the Products and Services will be provided as set out in the Proposal;
- 1.37 **"Staff"** means any director, employee, agent, consultant, contractor or other representative of a Party involved in the provision or acquisition of the Products and Services;
- 1.38 **"Supplier"** means Saicom Voice Services (Pty) Limited, registration number 2000/000684/07, with its principal place of business at 52 Corlett Drive, Illovo;

- 1.39 **“Supplier Equipment”** means any equipment provided and/or installed by the Supplier at the Customer's premises on the basis of a loan, rental or otherwise, to enable Customer to utilise the Services, and shall include equipment purchased by the Customer and not yet fully paid for;
- 1.40 **“Supplier Materials”** means the various concepts, ideas, methods, methodologies, procedures, processes, know-how, and techniques; models (including, without limitation, function, process, system and data models); templates; general purpose consulting and software tools, utilities and routines; and logic, coherence and methods of operation of systems which the Supplier or any third-party has created, acquired or otherwise has rights in, including any improvements, enhancements, modifications or knowledge developed while performing the Services for the Customer and in any working papers and presentations compiled in connection with the Services but shall not extend to Customer Data reflected in such working papers;
- 1.41 **“Term”** means the Initial Term, any and all subsequent Renewal Terms, as the context may indicate;
- 1.42 **“Time and Material Basis”** means the method of billing based on actual time spent and materials used, based on The Supplier standard rates from time to time;
- 1.43 **“Truecaller Plan”** means a Truecaller subscription plan which shall have a fixed duration of either three months, six months or twelve months, as selected by the Customer and recorded in the Proposal;
- 1.44 **“Use”** means to activate the processing capabilities of the Products and/or Services or, load, execute, access, employ the software, or display information resulting from such capabilities; and
- 1.45 **“Variation Procedure”** means the Agreement variation procedure set out in clause 8.

2. DURATION

- 2.1 This Agreement shall, subject to the rights of termination contained in this Agreement or the relevant Product Annexure, continue for the Initial Term. Notwithstanding a termination of this Agreement, it shall remain in full force and effect for the duration of any active Proposal/Order Document, and shall terminate simultaneously with the last active Proposal/Order Document at the of such relevant Term.
- 2.2 Each Proposal/Order Document (along with its applicable Product Annexure) shall, subject to the rights of termination contained in this Agreement and/or the relevant Proposal (along with its Product Annexure), continue for the Initial Term. Thereafter each such Proposal (along with its applicable Product Annexure) shall automatically renew for successive Renewal Terms until or unless terminated on at least one calendar months written notice, prior to the end of the then current Term.
- 2.3 The Customer specifically acknowledges that the Services and Products ordered from the Supplier are subject to minimum time period commitments, in the event that the Customer wishes to terminate this Agreement or any Proposal prior to the expiry of that Proposal, the Initial Term or any Renewal Term, for any reason other than in accordance with clause 15, the

Customer shall be liable for all amounts and charges that the customer would've been liable for in terms of the relevant Proposal for the full remaining Term and the Customer shall be obliged to make payment of the amount so claimed on demand.

3. THE PRODCUTS AND SERVICES

- 3.1 The Supplier shall during the term of this Agreement provide the Products and make available the Services to the Customer in accordance with the terms of the Contract Documents.
- 3.2 The Customer shall not use the Products and/or Services to provide services to third parties (e.g. business process outsourcing, service bureau applications or third-party training) other than to Affiliates;
- 3.3 The Customer shall not lease, loan, resell, sublicense or otherwise distribute the Products and Services, or make any Use of or perform any acts with respect to the Products and Services other than as expressly permitted in accordance with the Contract Documents.
- 3.4 The Supplier agrees to provide, implement and support the Products and/or Services ordered, in accordance with any agreed service levels recorded in a Proposal.
- 3.5 The Supplier shall designate and maintain an account manager for the Customer who will liaise closely with the Customer and act as primary interface for the Customer with the Supplier.
- 3.6 The Supplier shall inform the Customer about new developments and modifications that may require changes to the Products and Services used by the Customer.
- 3.7 The Customer is not entitled to copy, translate, edit, modify, replicate, disassemble, decompile, adapt, reproduce nor reverse engineer the Products, Services, Supplier Equipment, or any component thereof, supplied to the Customer. The Customer must not create or attempt to create the source code from the object code of any Products, Services or Supplier Equipment provided to the Customer. The Customer is permitted to back up data in accordance with good information technology practice and for this purpose to create the necessary backup copies of the Products and Services. Backup copies on transportable discs or other data media must be marked as backup copies and bear the same copyright and authorship notice as the original discs or other data media, unless technically infeasible. The Customer must not change or remove the Supplier's or any of its licensors copyright and authorship notices.

3.8 *International Customers*

- 3.8.1 Where a customer is a South African holding company (the Customer) which has an international subsidiary who will be the service recipient (Service Recipient), the holding company and the subsidiary are jointly and severally liable under the Contract Documents. In the event of the termination of one or more of the Service(s) pursuant to a breach of the Contract Documents by the Service Recipient, the Customer shall repay to the Supplier on demand all reasonable costs, which the Supplier incurs as a result of the Service Recipient's failure to comply with the Contract Documents or any cancellation hereof.

- 3.8.2 For example, where the Customer's international subsidiary contracts for a connectivity service outside of South Africa and should the international subsidiary breach any contractual terms i.e. non-payment, the South African Holding Company as the Customer will be liable for the Service Recipient's contractual commitments.

3.9 Equipment

- 3.9.1 All Supplier Equipment shall be installed at the Customer Premises in accordance with the Supplier's installation and support procedures.
- 3.9.2 The Supplier shall ensure that the Supplier Equipment and, in the event where the Supplier Equipment consists of more than one component, that each component shall be delivered for installation at the Site/s on or before the estimated delivery date.
- 3.9.3 The Supplier shall maintain and repair the Supplier Equipment free of charge in accordance with the Supplier's warranty or underlying hardware Return Manufacturer Authorisation (RMA), provided that any damage that has been caused to the Supplier Equipment has not occurred as a result of the Customer's negligence. Should the Supplier be required to visit the Site/s to repair or re-configure the Supplier Equipment and should it transpire that there was nothing wrong with such Supplier Equipment or configuration, then, the Customer shall be liable for the Supplier's standard call out and travelling fees.
- 3.9.4 The Supplier's Maintenance and insurance of Supplier Equipment does not extend to damage caused by the Customer's negligence, lightening, electrical surges, water or theft.
- 3.9.5 The Customer shall obtain and maintain, for the entire Term of this Agreement and from a reputable insurance company, insurance on the Supplier Equipment, against all risks of physical loss or damage from any cause whatsoever, with broad form coverage, including but not limited to fire, theft, vandalism, and accidental damage.
- 3.9.6 The insurance policy obtained by the Customer shall provide coverage for the full replacement value of the Supplier Equipment. The Customer shall provide the Supplier with a certificate of insurance evidencing the coverage required under this clause at the Effective Date and thereafter upon renewal of the insurance policy. The certificate of insurance shall name the Supplier as an additional insured party and shall state that the insurance policy cannot be cancelled or materially modified without 30 days prior written notice to the Supplier.
- 3.9.7 Ownership of any Supplier Equipment installed at the Site/s, not purchased by the Customer, including but not limited to rented Supplier Equipment, shall remain solely and exclusively with the Supplier. All risks associated with the Customer's negligence, lightening, electrical surges, water or theft will pass to the Customer on delivery, as defined in clause 3.10 below.
- 3.9.8 The Customer shall identify that Supplier Equipment which it has not purchased from, and is still owned by the Supplier, on its lease agreement or lease agreement addendum with its landlord and ensure that it is not subject to any attachment or hypothec. The Supplier Equipment may not be encumbered by the Customer in any manner or form.

- 3.9.9 Should the Customer purchase equipment from the Supplier outright, all risks related to the equipment shall pass on delivery, as defined in clause 3.10 below, to the Customer and ownership shall pass on full payment of the equipment by the Customer.
- 3.9.10 The Customer shall allow the Supplier or its approved representative to carry out such work to the Supplier Equipment or purchased equipment as is necessary to effect configuration, installation and Maintenance, and indemnifies the Supplier its directors, employees, agents or approved representatives against all damages, costs and expenses incurred or suffered by such entities in doing so, as well as against any claims of whatsoever nature that the Customer might have against the Supplier as a result thereof.
- 3.9.11 The Supplier shall use its reasonable endeavours to ensure that the Products and Services are made available to the Customer throughout the subsistence of this Agreement and any Proposal, in so far as such elements are within the reasonable control of the Supplier.
- 3.9.12 Should the Customer require an interim solution, before the final solution is deployed that involves third-party connectivity or services, the Customer will incur costs as per the third-party agreement and will be quoted as such in a further Proposal.

3.10 **Delivery**

- 3.10.1 An email acknowledgement, or delivery note signed by the Customer, is proof that Supplier Equipment and/or purchased equipment has been received in good condition. In cases of electronic delivery of solutions, the Supplier makes the software available through the issuance or electronic activation of a license key, or by the provision of an active link for download of the software.
- 3.10.2 Receipt by the Customer of the software license key, the deployment of the software on Customer hardware, or an email to the Customer of an active download link constitutes delivery of software.
- 3.10.3 Licenses are granted on a non-exclusive, non-transferable fixed term or perpetual basis, subject to the Customer's Proposal, to Use the software and ownership does not pass to the Customer.
- 3.10.4 The Supplier's obligation to deliver Supplier Equipment, purchased equipment and Products is precedent on receipt of payment in full and the availability of the Products ordered. Similarly, the Supplier's obligation to deliver Services is precedent on timely payment for Services invoiced.
- 3.10.5 Project delivery dates will be mutually agreed to during the project kick-off meeting and will be adhered to, except for circumstances outside of the Supplier's reasonable control or as a result of change/addition to project scope.

3.11 **Setup of Products and Services.**

- 3.11.1 The Supplier shall commence activation of the Products and Services upon acceptance of the relevant Proposal by the Customer and payment of the Fees set out in the Proposal.

3.11.2 The lead time to install the Products and/or Services shall be set out in the relevant Proposal but shall be at a minimum of four to six weeks post the date that the relevant connectivity medium has been installed at the Customer's premises, or where no connectivity medium is required the standard lead time is four to six weeks from project initiation.

3.12 Technical Assistance

3.12.1 The Customer must appoint one or more, to a maximum of five, Authorised Technical Contacts to act as the liaison between the Supplier and the Customer for the purposes of any enquiries, Service related communications and technical service requests (Service Requests). In the event that the Customer requires more than five Authorised Technical Contacts, the Customer must obtain the prior written approval of the Chief Operations Officer of the Supplier.

3.12.2 The Customer must provide the Supplier with the list of Authorised Technical Contacts in order to receive support on Service Requests. All Service Requests must be sent to the Supplier by an Authorised Technical Contact. The Supplier shall not respond or act upon any Service Request from anyone not listed as an Authorised Technical Contact.

3.12.3 The Supplier reserves the right to verify the status of Authorised Technical Contacts provided to it by the Customer, however it is the Customer's responsibility to ensure that the Authorised Technical Contacts list remains up to date in order to avoid delays in support, increased security risks and Service disruptions.

4. ORDERING

4.1 To receive any Products and Services, the Customer must accept the Proposal provided by the Supplier by returning the accepted Proposal and all relevant signed Contract Documents to the authorised representative.

4.2 A Proposal shall be binding on both Parties on acceptance of the Proposal by the Customer and may only be terminated in accordance with the provisions of this Agreement. Acceptance of the Proposal may be done electronically or by means of physical signature of a Proposal.

4.3 The project management and implementation process can only begin once the Customer has accepted the Proposal and submitted all project related and required documentation to the Supplier. Further, the Products and Services to be supplied are subject to a survey by the Supplier to confirm the information provided and Customer requirements.

4.4 Notwithstanding clause 4.2 above, the Supplier shall have the right to cancel or alternatively, subject to clause 4.5, amend the details of a Proposal, if:

4.4.1 the cost of any third-party services required for that Service or a related Service change from those used in the Supplier's calculation of the Charges in a Service;

- 4.4.2 a change in the delivery time of any third-party services required for that Service or a related Service requires a change to the agreed activation date;
 - 4.4.3 that the survey reveals information that was unknown to the Supplier at the time of quoting and which could affect the availability, performance, delivery timeframes and/or Charges offered; or
 - 4.4.4 other changes are made to the terms upon which a third-party element of a Service is supplied or a third-party is unable or unwilling to provide such element.
- 4.5 If the Supplier amends the details of a Service as set out in a Proposal in accordance with Clause 4.4, The Supplier will notify Customer and provide Customer with a new Order Document (a “Revised Proposal”) for the affected Service(s).
- 4.5.1 If accepted by Customer, the Revised Proposal will replace the original Proposal and will be treated as a Proposal for the purposes of this Agreement.
 - 4.5.2 The Customer shall have five (5) Working Days to accept the changes by signing and returning the Revised Proposal or to cancel the affected Service by notice to that effect in writing.
 - 4.5.3 If Customer does not accept the Revised Proposal within five (5) Working Days of notification, the Supplier reserves the right to cancel the affected Service as described in the original Proposal or the entire Proposal by notice in writing to Customer and without the Supplier incurring any liability.
 - 4.5.4 If there are any products and/or Services on the Proposal other than those described in the Revised Proposal, these shall remain unaffected.

5. CUSTOMER RESPONSIBILITIES

- 5.1 The Customer shall use the Products and/or Services only for the purposes for which they are designed and provided, and shall be solely responsible for any fraudulent, unauthorised or improper use of a Service. Customer’s use of the Products and/or Services, and any equipment associated therewith, shall not to interrupt, interfere with or impair service over any of the facilities comprising the Supplier Network.
- 5.2 Customer shall be solely responsible for the following:
 - 5.2.1 content of information and communications transmitted using the Products and Services; and
 - 5.2.2 use and publication of communications and/or information using the Products and Services.
- 5.3 The Customer acknowledges and agrees that the Supplier is only an intermediary for the transmission of the Customer and third-party information, that the Supplier plays a passive role as a conduit of information for the Customer and third parties, and that the Supplier neither initiates the transmission of information, selects the receivers of the transmission, nor selects nor modifies the information contained in the transmission.

- 5.4 The Customer shall at its expense allow or secure the Supplier or its contractors access to the Customer Premises to the extent necessary (as reasonably determined by the Supplier) for the installation, inspection and Maintenance of Supplier Equipment relating to the Products and/or Services.
- 5.5 In the event of an emergency, the Customer shall, upon notice from the Supplier, allow access to the Customer Premises as soon as is reasonably practicable under the circumstances.
- 5.6 The Customer will be responsible for providing and maintaining, at its own expense, the level of power, heating, and air conditioning necessary to maintain the proper environment for the Supplier Equipment on the Customer Premises.
- 5.7 The Supplier will provide the Customer with a Local Area Network (LAN) checklist, which needs to be adhered to and a working LAN, before the Supplier can perform the installation.
- 5.8 The Customer will provide a safe place to work and comply with all laws and regulations regarding the working conditions on the Customer Premises.
- 5.9 The Customer will make available, sufficiently competent, and authorised resources, with appropriate access rights and permissions, to assist the Supplier and consider all requests by the Supplier for consent or authorisation without any delay, having regard to the nature of the request and the impact which any delay in such consent or authorisation may have on the provision of the Products and/or the performance of the Services pursuant to this Agreement.
- 5.10 The Customer will comply with all reasonable policies, procedures, and instructions of the Supplier in respect of the provision of the Products and Services pursuant to this Agreement.
- 5.11 The Customer shall provide all other assistance and support as may be contemplated in the Contract Documents.
- 5.12 The Customer shall not, and shall not permit others to, rearrange, disconnect, remove, attempt to repair, or otherwise tamper with the Supplier Network or any Supplier Equipment, without the prior written consent of the Supplier.
- 5.13 The Customer shall not take any action that causes the imposition of any lien or encumbrance on the Supplier Network or the Supplier Equipment. The Customer is fully responsible for its LAN onsite, and the Customer agrees (which agreement shall survive the expiration, termination, or cancellation of any this Agreement) to allow the Supplier to remove the Supplier Equipment from the Customer Premises should the Supplier be justified in doing so e.g., where the Customer has breached the Contract Documents and, despite notice, has failed to remedy the breach.

- 5.14 It is recorded and agreed that the Customer is aware and has the obligation at all times for the duration of this Agreement to remain aware of all statutory or other regulatory provisions relating to fixed line, data and wireless telegraphy and telecommunications services supplied from time to time. The Customer undertakes to comply at all times with all such statutory or other regulatory provisions. In addition, the Customer shall comply with any reasonable instructions issued by the Supplier which concern the Customer's use of the Products and/or Services, the Supplier Equipment or related matters, and provide the Supplier with all such necessary information that the Supplier may reasonably require.
- 5.15 In accordance with clause 3.9.4, the Supplier's Maintenance and insurance of Supplier Equipment does not extend to damage caused by the Customer's negligence, lightening, electrical surges, water or theft, it is the Customer's responsibility to insure the Supplier Equipment for the total value of replacement.
- 5.16 **Regulatory compliance.** The Customer has sole responsibility to ensure that the information it and its users transmit and receive over the network complies with all applicable laws and regulations. The Customer shall not participate in any practices which would be objectively considered illegal, deceptive, or misleading including, but not limited to, disparagement of the Service offering or the Supplier or its licensors or other practices which may be reasonably considered to be detrimental to the Supplier or its licensors or the public interest. The Customer hereby indemnifies the Supplier and holds it harmless against any claims by third parties in respect of prohibited activities conducted by the Customer or its users.
- 5.17 **Acceptable Use.** The Customer hereby agrees that in using the Products, Services and/or Supplier Equipment it shall at all times comply and where applicable, shall procure that its Staff at all times comply, with the Contract Documents applicable to the Products and/or Services.
- 5.18 **Security.** The Customer shall at all times adhere to all Supplier policies located at <https://saicom.io/> as well as to security and safety measures applicable to its Networks from time to time. In particular, the Customer shall not engage in any of the following:
- 5.18.1 misuse, unauthorised use, abuse of or interference with any Services or Products provided to the Customer, or any Supplier Equipment, or other property loaned by or under the supervision of the Supplier;
 - 5.18.2 the harassment of any person including Supplier personnel or authorised representatives, or personnel or representatives of any of the Supplier's other customers or suppliers or licensors;
 - 5.18.3 any unlawful activity or assisting therein, while using the Products and/or Services.
- 5.19 **General Customer obligations.** The Customer shall not take any steps or fail to take any steps which directly or indirectly:
- 5.19.1 damage the Supplier Equipment or any part thereof;
 - 5.19.2 impair or preclude the Supplier from being able to provide Products and Services in a professional manner;
 - 5.19.3 constitutes an abuse or malicious misuse of the Products and/or Services provided by the Supplier; or

5.19.4 is calculated to have one or more of the above-mentioned effects.

5.20 **Effect of non-compliance.** To the extent that the Customer is in breach of any provision of clauses 3 and 5, the Supplier reserves the right to suspend and/or terminate all Products and Services provided to the Customer until such time as the Customer remedies the non-compliance and if the Supplier incurs any expense in remedying the effects of any of the acts or omissions referred to above, the Customer shall reimburse the Supplier on demand in the amount necessary to cover such expense. In the event that the Customer fails to remedy its non-compliance after demand, the Supplier shall be entitled to terminate this Agreement and/or any relevant Order in accordance with clause 15.5.

6. PROTECTION OF PERSONAL INFORMATION

- 6.1 **Ownership.** Ownership in all Customer Data, whether under its control or not, shall continue to vest in the Customer and the Supplier shall not obtain any proprietary rights in such data. For the avoidance of doubt, the Parties agree that the Customer Data will at all times be the sole property of the Customer.
- 6.2 **Restricted use.** The Customer acknowledges that personal information (as defined in the Protection of Personal Information Act, 4 of 2013 ("POPIA") which, for purposes of this clause, includes special personal information, where applicable, as defined in POPIA) of the Customer and that of its employees, directors, consultants and third-party contractors will be processed by the Supplier. In providing the Products and performing the Services, the Supplier will comply with the Supplier Privacy Policy which is available at <https://saicom.io/> or on request, and incorporated herein by reference.
- 6.3 The Supplier Privacy Policy is subject to change at the Supplier's discretion, however, Supplier policy changes will not result in a material reduction in the level of protection provided for Customer Data provided as part of the Customer content during the Term.

7. EXCUSING CAUSES

In the event of an Excusing Cause arising:

- 7.1 the Supplier will notify the Customer, in writing, of the Excusing Cause within a reasonable period of becoming aware of such Excusing Cause;
- 7.2 the time/service levels for Supplier performance shall be extended on a reasonable basis in proportion to the prejudice caused by the Excusing Cause. Where a breach by the Customer has resulted in an Excusing Cause the Supplier may charge for any additional hours required to remedy the Excusing Cause on a Time and Materials Basis; and
- 7.3 the Supplier shall not be liable for any failure to provide any Products and/or Services in terms of the Contract Documents where such failure is a result of any Excusing Cause.

8. VARIATION PROCEDURES

- 8.1 **No Variation.** Subject to the provisions of this clause 8 and the price escalations recorded in clause 9, no variation, addition or consensual cancellation of this Agreement or Proposal or any component thereof shall be of any force or effect unless reduced to writing and signed by the Parties or their duly authorised representatives.
- 8.2 **Amendments to Line-Item Products/Services.** In the event that the Customer wishes to make amendments to any Proposal or Line Item Products/Services provided to the Customer, such amendments shall be implemented as follows:
- 8.2.1 once the Supplier has agreed to the proposed amendments and once the Parties have concluded and signed an updated Proposal;
- 8.2.2 An amendment to the Line-Item Products/Services that results in a reduction or termination of such Line-Item Products/Services may only be done, or will only take effect, at the end of the Initial Term or Renewal Term, by providing 30 days written notice to the Supplier of the Customer's desire to terminate/reduce such Line-Item Products/Services. The Customer may not reduce the number of subscription licenses beyond the minimums for the scheme/tier Customer is on, where applicable.

9. CONSIDERATION

- 9.1 The Customer shall be liable to the Supplier for all Fees set out in the Proposal. Each year, these Fees will be adjusted upwards by a minimum of the Consumer Price Index (CPI) to cater for the rising costs of providing the Products and performing the Services.
- 9.2 All monthly recurring Fees shall be billed in advance and all variable Fees will be billed in arrears.
- 9.3 The Supplier will ensure that invoicing will be processed and delivered monthly, all invoices must be settled by the Customer within 30 (thirty) days of the date of the invoice.
- 9.4 Any third-party fee/cost increases which are imposed on the Supplier, will be payable and passed onto the Customer as and when they arise. These increases shall be in addition to and not in place of the annual increase provided for in clause 9.1.
- 9.5 All courier fees will be passed onto the Customer at cost plus an administration fee for processing. These Fees will be billed to the Customer in arrears.
- 9.6 The Initial Term includes a 1-hour free training session per Site. Should the Customer need further training this will be billed separately on a Time and Materials basis.
- 9.7 A statement signed by a manager of the Supplier, whose appointment it shall not be necessary to prove, specifying the amounts due, owing, and payable by the Customer in terms of this Agreement, from time to time, shall be prima facie proof of its contents, and sufficient for all purposes, including obtaining judgment and provisional sentence against the Customer.

- 9.8 **VAT.** All amounts stipulated in this Agreement are, unless otherwise indicated, stipulated exclusive of Value-Added Tax, or other similar sales tax applicable to the Proposal, which shall be payable by the Customer at the applicable rate.
- 9.9 **Payments.** All payments by the Customer must be made in the currency reflected in the Proposal, free of set-off and bank charges.
- 9.10 **Overdue amounts.** If the Customer fails to make any payment on the due date, the Supplier may, without prejudice to any of its rights, charge the Customer interest on the overdue amounts at a rate of 2% (two percent) above the prime overdraft rate charged by FirstRand Bank Limited from time to time, plus any additional costs incurred by the Supplier related to collections as a result of Customer's failure to make any payment on the due date, including, *inter alia*, collection commission and attorney's fees on the attorney own client scale. All such default interest shall automatically accrue from the day following the date the relevant amount was due until it is paid in full and shall accrue both before and after judgment. Such interest shall be payable on demand.
- 9.11 **Suspension of Products and Services.** In addition, The Supplier shall be entitled, without liability, to suspend the use of the Products and Services for any period during which any Fees (including all interest thereon) are outstanding or in arrears, provided that the Supplier shall give the Customer no less than five Business Days written notice (which shall include by way of e-mail) of its intention to suspend the use of the Products and Services. The Supplier may require, and if required, Customer will pay an activation fee as a condition to changing or resuming a terminated or suspended account.
- 9.12 **Deletion of Data.** In the event that the Customer has failed to make payment in full for the use of the Services and Products by no later than 60 (sixty) days from date of invoice, the Supplier shall be entitled, without liability, to delete any Customer Data stored by the Supplier at the end of such 60-day period, and except as may be required by law, the Customer Data will be deleted or otherwise rendered inaccessible.
- 9.13 **No set-off.** The Customer will not be entitled to withhold payment of any amount payable in terms of this Agreement to satisfy any claim against the Supplier arising from this or any other agreement with the Supplier, nor will the Customer be entitled to set off any such amount payable in terms of this Agreement against any amount owing to it by the Supplier in terms of this or any other agreement.
- 9.14 **Credit Checks.** The Supplier reserves the right to conduct credit checks on the Customer from time to time and the Customer consents to such credit checks to be completed by any credit vetting agency that the Supplier appoints.

10. SAFETY AND SECURITY

- 10.1 Each Party agrees to comply with safety and security procedures notified to them by the other Party and with the requirements of any applicable health and safety legislation or any other applicable law.
- 10.2 The Parties shall each at their own cost and expense take whatever steps as are necessary to procure and discharge their respective obligations under this Agreement and applicable law to ensure the health and safety of the each party and/or their employees, agents, directors, sub-contractors and members of the public.

11. SUSPENSION OF PRODUCTS/SERVICES

- 11.1 The Supplier may lawfully suspend and withdraw all or part of the Products and Services at any time until further notice to Customer if:
- 11.1.1 The Supplier reasonably considers that the continued provision of the Products and Services may cause the Supplier to breach an applicable law or be in contravention of any operating licence or other authorisation;
 - 11.1.2 The Customer is in breach of or otherwise is not complying with any of the provisions of the Contract Documents, the Supplier having given the Customer five days written notice to remedy the breach; or
 - 11.1.3 Any payment or invoice delivered by the Supplier to Customer is not paid by the due date without valid dispute.
- 11.2 The exercise of the Supplier's right to suspend the Products and Services under clause 11 at its sole discretion is without prejudice to any other remedy available to the Supplier under this Agreement and does not constitute a waiver of the Supplier's right to subsequently terminate the Agreement. Suspension of the Products and Services under clause 11.1.2 11.1.3 shall be without prejudice to and shall not affect Customer's obligation to pay the charges related to the suspended Products and Services which shall continue during the period of suspension.
- 11.3 This clause 11.3 shall operate without prejudice to Clause 11.1 and subject to clause 11.2 where:
- 11.3.1 in the Supplier's sole discretion the circumstances giving rise to a suspension under clause 11.1 are lifted; and/or
 - 11.3.2 Customer makes payment of any overdue invoice triggering suspension under clause 11.1.3 together with applicable interest thereon; and/or
 - 11.3.3 Customer otherwise remedies a breach triggering suspension under clause 11.1.2 to the Supplier's reasonable satisfaction and provides acceptable assurances as to future performance.
- 11.4 Subject to clause 11.2 the Supplier shall reinstate the Products and Services and will require the Customer to pay a reconnection fee of R2 000 (Two Thousand Rand) in advance as a pre-condition to making the Products and Services available again and to cover any third-party costs that may be directly related to the reconnection of the Products and Services.
- 11.5 The Supplier is entitled, at its sole discretion, to suspend, terminate or change the Customer's use of the Products and Services with advance notice of not less than seven (7) Business Days, where reasonably possible, upon any misuse of the Products and/or Services in any way, Customer's breach of the Contract Documents, or immediately on suspected fraud or other activity by the Customer or a user that adversely affects the Products, Services, Supplier, Supplier's Network or another customer's use of the Services. A breach of the use terms relating to any Product or a breach of the Contract Documents shall constitute misuse of the Services.

11.6 The Supplier shall be entitled from time to time and with 7 (seven) days written notice (unless an emergency change is needed in which case written notice will be 24 hours) to suspend the Customer's use of the Products and/or Services (and in the Supplier's discretion disconnect the Supplier Equipment from the system) in any of the following circumstances:

11.6.1 during any technical failure, modification or Network Maintenance, provided that the Supplier will use its reasonable endeavours to procure the resumption of the Products and/or Services as soon as reasonably practicable and to ensure that any such planned Network Maintenance is performed outside the core Business hours; or

11.6.2 if the Customer fails to comply with any of the terms and conditions of the Contract Documents until the breach (if capable of remedy) is remedied, or

11.6.3 if the Customer does, or allows to be done, anything which in the Supplier's reasonable opinion may have affected or is likely to negatively affect the operation of the Products and/or Services, and fails to remedy such breach within 7 (seven) days of receipt of written demand to that effect from the Supplier.

11.7 In addition to what is recorded in this clause 11, the Supplier shall be entitled to suspend or disconnect the Customer's use of the Products and prevent use of the Services in the event that the Supplier receives a court order from a South African court or a direction from any lawfully-competent authority requiring the Supplier to suspend or disconnect the Customer's use of the Products and prevent use of the Services. If permitted to, under law, the Supplier shall advise the Customer of such order or direction in order to allow it to take such steps as may be required to protect its interests.

12. INTELLECTUAL PROPERTY

12.1 Each Party has created, acquired or otherwise obtained Intellectual Property Rights in various products, technology or methodology which it may employ, provide, modify, create, acquire or otherwise use during the currency of this Agreement. Each Party shall retain all right, title and interest in same and the other Party shall not have nor acquire any right, title or interest therein.

12.2 Neither Party shall acquire any rights, title, or interest of any kind in any brand name, logo, trademark or other Intellectual Property of the other. For the purposes of this clause both Parties hereby acknowledge such brand name, logo, trademarks or other Intellectual Property to be the sole and exclusive property of the other Party. Where a Party is granted certain rights to the use of the other Party's brand name, logo, trademarks or other Intellectual Property, it shall do all things necessary to protect the other Party's rights in respect of such brand name, logo, trademark or other Intellectual Property.

12.3 The Supplier Materials shall at all times remain the sole and exclusive Intellectual Property of the Supplier.

12.4 The Customer hereby grants to the Supplier and/or its relevant licensors a limited, non-exclusive, non-transferable, royalty free, non-sublicensable, non-assignable and revocable license to use its name, logo and trademark, where relevant for the proper and complete provision of the Products and Services ordered by the Customer.

- 12.5 Any Intellectual Property created by the Supplier solely for and/or at the request of the Customer, shall be owned by the Supplier until full payment for the Services is made whereafter it shall transfer to the Customer.
- 12.6 All the Supplier's or its licensors' Intellectual Property shall belong to the Supplier or its licensors, as the case may be, subject to any Use rights, expressly granted to the Customer in clause 3. Except for the rights set forth in clause 3 herein, the Customer is not permitted to modify or otherwise make derivative works of the Products and Services.

13. WARRANTIES AND INDEMNITIES

13.1 Warranties and Indemnities:

13.1.1 Subject to clause 16 (*Limitations of Liability*), the Supplier shall indemnify Customer against all direct losses suffered or incurred by the Customer, arising out of or in connection with any claim that Customer's authorized and unmodified use of the Products and Services as contemplated by the Contract Documents infringes the intellectual property rights of any third-party (an "**IP Claim**"), provided always that the Customer:-

13.1.1.1 gives prompt notice to the Supplier of such IP Claim and the Supplier has the election to control the defence thereof;

13.1.1.2 takes all reasonable steps to mitigate any loss or liability in respect of the IP Claim; and

13.1.1.3 does not compromise or settle the IP Claim in any way without the Supplier's prior written consent.

13.2 and provided further that the Supplier shall have no liability in connection with an IP Claim to the extent that it arises, or is increased, as a result of:

13.2.1 the Supplier's use (in accordance with the Agreement) of Customer property;

13.2.2 claims arising in respect of any risk that the Supplier has identified in connection with the Customer's use of the Products and Services and has expressly advised the Customer that it ought to mitigate or avoid, but which the Customer approves in writing or otherwise in respect of which the Customer elects to proceed;

13.2.3 Customer's failure to adhere to the terms of any applicable licence in respect of third-party materials; and/or

13.2.4 use of the applicable Services and Products outside the scope, purpose and/or country of use set out in the applicable Contract Documents.

13.2.5 Customer shall indemnify Supplier against all Losses suffered or incurred by Supplier, arising out of or in connection with (i) any fraudulent, illegal, or unauthorized use of the Products and/or Services by Customer or its end users including due to hacking or misuse of Customers' phone systems, (ii) Customer or its agents breach of Law applicable to its use of the Products and/or Services or breach of the Contract Documents, (iii) any loss or damage to Supplier Equipment or (iv) Customer or its agents gross negligence or wilful misconduct, provided always that Supplier:-

13.2.5.1 gives prompt notice to Customer of such claim (provided that a delay in providing notice does not excuse Customers' indemnity obligations unless Customer is prejudiced by such delay) and Customer has the election to control the defence thereof;

13.2.5.2 takes commercially reasonable steps to mitigate any loss or liability in respect of the claim; and

13.2.5.3 does not compromise or settle the claim in any way without the Customer's prior written consent.

13.3 Where the Supplier and the Customer are negligent or otherwise at fault or strictly liable without fault, then the obligations of indemnification under this clause shall continue, but the Supplier shall be liable only for the percentage of responsibility or the damage or injuries attributable to the Supplier.

13.4 **Service warranties.** The Supplier warrants that in relation to each Service provided in terms of this Agreement it will provide same in accordance with all applicable laws and regulations.

13.5 **Disclaimer of warranties.** The supplier does not guarantee that (a) the Services and Products will be available or error-free or uninterrupted, or that all errors will be corrected by the Supplier, (b) the Products or Services will operate in combination with Customer content or applications, or with any other hardware, software, systems, services or data not provided by the Supplier, (c) the Products and Services will meet Customer requirements, specifications or expectations. The Customer acknowledges that the Supplier does not control the transfer of data over communications facilities, including the internet, and that the Products and Services may be subject to limitations, delays, and other problems inherent in the use of such communications facilities. The Supplier is not responsible for any delays, delivery failures, or other damage resulting from such problems. The Supplier is not responsible for any issues related to the performance, operation or security of the Products and Services that arise from the Customer content, applications or third-party content. The Supplier does not make any representation or warranty regarding the reliability, accuracy, completeness, correctness, or usefulness of third-party content or products and services, and disclaims all liabilities arising from or related to third-party content or services.

13.6 To the extent not prohibited by law, these warranties are exclusive and there are no other express or implied warranties or conditions including for software, hardware, systems, networks or environments or for merchantability, satisfactory quality and fitness for a particular purpose.

13.7 This clause 13 will also apply for the benefit of the Supplier's licensors.

13.8 **No representations.** The Customer warrants that it has not been induced to enter into this Agreement by any prior representations, warranties or guarantees, whether oral or in writing, except as expressly contained in this clause 13.

13.9 **Survival.** This clause 13 shall survive termination of this Agreement and applies to the Supplier and its licensors.

14. CONFIDENTIAL INFORMATION

- 14.1 **Confidentiality obligation.** Each Party ("the Receiving Party") must treat and hold as confidential all Confidential Information of the other Party ("the Disclosing Party") to which they have access, or which otherwise becomes known to them during the currency of this Agreement.
- 14.2 **Exceptions.** The obligations of confidentiality contained herein shall not apply to any confidential information which the Receiving Party thereof can show (and it shall be for the Receiving Party to prove this by documentary evidence) -
- 14.2.1 is, at the time of disclosure to the Receiving Party by the Disclosing Party, within the public domain and could be obtained by any person with no more than reasonable diligence; or
- 14.2.2 comes into the public domain and could be obtained after such disclosure, otherwise than by reason of a breach of any of the undertakings contained in this Agreement; or
- 14.2.3 is, at the time of such disclosure, already within the possession of the Receiving Party, through no breach of any confidentiality, or it has been independently developed by the Receiving Party; or
- 14.2.4 is subsequently provided to the Receiving Party by a person who has not obtained such information from the Disclosing Party, provided that, in any such case, such information was not obtained illegally or disclosed by any person in breach of any undertaking or duty as to confidentiality, whether express or implied; or
- 14.2.5 is disclosed with the written approval of the Disclosing Party; or
- 14.2.6 is or becomes available to a third-party from the Disclosing Party on an unrestricted basis; or
- 14.2.7 is obliged to be reproduced under order of a court or government agency of competent jurisdiction or in satisfaction of the requirements of any stock exchange or other regulatory authority; OR
- 14.2.8 is disclosed as a result of a breach of security, provided that the Receiving Party was, at the time of the security breach, fully compliant with its obligations under the Protection of Personal Information Act.
- 14.3 **Duties of Parties.** The Receiving Party therefore agrees to hold such Confidential Information in the strictest confidence, not to make use thereof other than for the performance of the obligations under this Agreement, to release it only to Staff and professional advisors requiring such information on a need-to-know basis and not to release or disclose it to any other person.
- 14.4 **Survival.** The Parties agree that the provisions of this clause will survive the termination of this Agreement.
- 14.5 **Obligation prior to disclosure.** The Supplier shall procure that any party to whom it validly discloses the Confidential Information of the Customer, as contemplated in clause, 14.2 undertakes to respect the secret, confidential and proprietary nature thereof.

15. TERMINATION

- 15.1 Should the Customer wish to cancel the Agreement or any Product or Service prior to the expiry of the Initial Term or Renewal Term, for any reason other than legally provided for in this Agreement or the Proposal, the Customer shall be liable for all amounts that would have been owing should the Customer have fulfilled all of its obligations under this Agreement in accordance with clause 15.6.
- 15.2 Specific Products and Services may be terminated in accordance with the periods set out in the relevant Product Annexure.
- 15.3 Upon termination of this Agreement for any reason whatsoever, the Supplier shall disconnect and remove the Supplier Equipment. After disconnection of the Supplier Equipment consequent upon termination of this Agreement, the Customer shall pay, on demand, all Fees outstanding at the time of disconnection and fees relating to the balance of the contractual period.

15.4 *Termination for cause*

15.4.1 Without prejudice to any rights and remedies that may have accrued to a Party, either Party may terminate this Agreement or any Order with immediate effect by providing the other Party written notice of its intention to do so if the other Party:

15.4.1.1 ceases to trade (either in whole or as to any part involved in the performance of this Agreement or any Order);

15.4.1.2 becomes insolvent, is sequestrated, or placed under provisional liquidation, or finally liquidated, or placed into business rescue;

15.4.1.3 makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt, is unable to pay its debts under any Applicable Law relating to insolvency or bankruptcy or the relief of debtors.

15.4.2 The Supplier may terminate this Agreement and/or suspend the Customer's use of the Products and Services in accordance with clause 11 should the Customer fail to pay in full the Fees set out in the relevant Proposal.

15.5 *Breach*

15.5.1 The Supplier shall be entitled to terminate this Agreement and/or any relevant Proposal in the event that the Customer:

15.5.1.1 has failed to make payment of an overdue invoice, and has failed to remedy the non-payment within a period of 30 days following service of a notice requiring its remedy, and irrespective of the reason for such non-payment including in any case where Customer claims Force Majeure in respect of same;

15.5.1.2 has breached any of its obligations under clauses 3 and 5 and has failed to remedy the breach within a period of 30 days following service of a notice detailing the breach and requiring its remedy.

15.5.2 In the event that the Supplier commits a breach of its performance obligations in terms of the Products and/or Services provided under a Proposal or this Agreement, the Customer shall notify the Supplier in writing of such breach or failure in detail and the Supplier shall review the breach and provide the Customer with a remediation plan to rectify the breach.

15.5.3 Notwithstanding the provisions of this clause, the Customer shall not be entitled to cancel this Agreement and/or the relevant Proposal/Order Document unless:

15.5.3.1 the breach of the Agreement is a material breach which relates to the purpose of this Agreement as referred to in clause 15.5.3.2, and specific performance is or has become impossible and the breach is incapable of being remedied by payment in money, or if it is capable of being remedied by payment in money, the Supplier fails to pay the amount concerned within 10 Business Days after such amount has been finally determined.

15.5.3.2 For the purposes of this clause, a material breach which relates to the purpose of this Agreement shall refer to the Supplier failing to meet the material performance standards, specifications, or service levels as explicitly defined in the relevant Service Level Agreement, and such persistent performance failures substantially impact the Customer's use of the Products and Services.

15.6 Effects of Termination

15.6.1 Upon termination of any Proposal and/or this Agreement in accordance with clause 15.1 or 15.5.1 the Customer shall be liable for an early termination fee equal to the sum due under such Proposal for the remainder of such Term. The Parties record that the early termination charges are not a penalty, but a genuine estimate of the actual damages that the Supplier will suffer as a result of the early termination.

15.6.2 Upon termination of any Proposal and/or this Agreement all Fees and charges incurred (whether or not invoiced) shall be immediately due and payable, the Customer shall immediately cease to have any right of Use in terms of the relevant Products and Services and neither Party shall have any further obligation to the other in respect of the same save that such termination: (i) shall not operate as a waiver of any breach hereof nor affect a Party's accrued rights, liabilities and obligations as at the date of termination; or (ii) affect any provision which is expressly or by implication intended to come into force on, or continue in force after, termination, including without limitation Clauses 15.5.1, this Clause 15.6; and (iii) shall in no case give rise to an obligation on the part of the Supplier to refund any Fees or charges. The Customer acknowledges and agrees that this clause is reasonable in all respects and it is necessarily required by the Supplier to protect its interests.

15.6.3 Within 30 days after any termination, the Customer shall irretrievably destroy, delete and/or uninstall the Products and Services subject to the termination and Confidential Information in every form, except to the extent it is legally

required to keep it for a longer period in which case such return or destruction shall occur at the end of such period. The Customer must certify to the Supplier in writing that it has satisfied its obligations under this clause 15.6.3. The Customer agrees to certify in writing to the Supplier that it and each of its Affiliates have performed the foregoing.

15.6.4 Upon the termination of the Products and Services for any reason whatsoever, Customer data stored by the Supplier will be held for 30 days for the purposes of retrieval by the Customer. At the end of such 30-day period, and except as may be required by law, the Customer Data will be deleted or otherwise rendered inaccessible.

15.6.5 The Customer acknowledges that signature of the quotation constitutes a binding commitment and order placed by the Customer on the Supplier for the quoted Products and Services. In the event that the Customer requests to cancel the Products and/or Services ordered, subsequent to signature of the Proposal but prior to physical installation of the Products/ equipment or commencement of the Services (Activation date), the Customer will be liable to pay a reasonable penalty of 15% (Fifteen percent) of the total contractual value, which payment will be payable by the Customer immediately on demand.

16. LIMITATION OF LIABILITY

16.1 The Supplier shall have no liability under this Agreement and/or the Customer's use of the Products and Services in the event that:

16.1.1 the Products and/or Services are not used in accordance with the Contract Documents; or

16.1.2 the defect or liability is caused by the Customer or its Affiliates; or

16.1.3 the Products and/or Services are used in conjunction with any third-party software for which the Customer lacks sufficient rights from the third-party vendor for such use; or

16.1.4 for any Customer activities not permitted under any ECNS or similar license.

16.2 Under no circumstances and regardless of the nature of any claim will the Supplier, its licensors or the Customer be liable to each other or any other person or entity for any amount for special, incidental, consequential, or indirect damages, loss of good will or profits, work stoppage, data loss, computer failure or malfunction, attorneys' fees, court costs, interest or exemplary or punitive damages.

16.3 Subject to clauses 16.1 and 16.2 above, but notwithstanding any other provision of this Agreement, the Supplier's maximum aggregate liability to the Customer, whether in contract, delict (including negligence), breach of statutory duty or otherwise, arising under or in connection with the use or proposed use of the Products and Services, shall be limited to the lower of:-

16.3.1 a sum equal to six months of the total Fees paid or which would've been paid to the Supplier under this Agreement; or

16.3.2 that proportion of the loss or damage (including interest and costs) suffered by the Customer, which is ascribed to the Supplier by a court of competent jurisdiction or arbitrator allocating a proportionate responsibility to the Customer having regard to the contribution to the loss or damage in question by the Customer or any other person based upon relative degrees of fault.

16.4 The provisions of this Agreement allocate the risks between the Supplier and the Customer. The Fees paid by the Customer reflect this allocation of risk and the limitations of liability herein. It is expressly understood and agreed that each and every provision of this Agreement which provides for a limitation of liability, disclaimer of warranties or exclusion of damages, is intended by the Parties to be severable and independent of any other provision and to be enforced as such.

16.5 Any indemnities, limitations to the liability and obligations of the Supplier according to this clause 16 will also apply for the benefit of any Supplier licensors.

17. NON-SOLICITATION

17.1 Except as expressly authorized in writing in advance by both parties, neither party shall solicit, offer work to, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Staff during the term of this Agreement and for a period of 12 (twelve) months thereafter. In the event that either party solicits the other party's personnel in contravention of this clause, the soliciting party shall pay to the other party an amount equal to 100% (one hundred percent) of the solicited employee's annual cost to company whilst such employee was still employed by the aggrieved party, as a penalty. It being agreed that such amount represents a fair and reasonable estimate of the costs incurred in training, skilling and educating an employee.

18. ANTI-BRIBERY & CORRUPTION

18.1 The Parties hereby warrant that, prior to and for the duration of this Agreement, they will comply (and will procure that all their employees, directors, officers or agents comply) with all laws, regulations or policies relating to economic sanctions, trade sanctions and/or export controls and the prevention and combating of bribery, corruption and money laundering ("Anti-Corruption and Sanctions Regulations"), to which either Party or their affiliates are subject.

18.2 In particular, the Parties undertake not to, and will procure that all their employees, directors, officers or agents, do not:

18.2.1 pay, promise to pay or offer to pay, or authorise the payment of any commission, success fee, bribe, pay off or kickback related to the Products and/or Services that violates any anti-corruption regulations or sanctions or enter into any agreement pursuant to which any such commission, success fee, bribe, pay off or kickback may, or will at any time be paid; or

18.2.2 offer, promise or give any undue monetary or other advantage, whether directly or indirectly to any public official, with the intent of influencing the actions or decisions of such official in performance of his/her official duties, with the purpose of obtaining or retaining business or other improper benefit or advantage.

19. REGULATION OF INTERCEPTION OF COMMUNICATIONS ACT

- 19.1 The Supplier is obliged to comply with the provisions of The Regulation of Interception of Communications and Provision of Communications Related Information Act, 2003, as amended from time to time ("RICA") when providing any telecommunications services as defined in the Telecommunications Act 103 of 1996.
- 19.2 In the event that the Customer requires telecommunications services from the Supplier, the Customer will be required to provide the following documentation to the Supplier:
- 19.2.1 Full name, identity number, residential address and postal address of the director or authorised person representing the Customer;
 - 19.2.2 a certified photocopy of the director's identification document on which his or her photo, full names and identity number appear; and
 - 19.2.3 the COR 14.1 or similar business registration document of the Customer; and
 - 19.2.4 proof of residential address of the director representing the Customer; and
 - 19.2.5 a certified photocopy of the business letterhead
- 19.3 In the event that the Customer fails to provide the required documentation to the Supplier timeously or at all, the provision of the telecommunications services will be delayed or not provided until such time as the Customer has provided the required documentation to the Supplier and the Supplier has verified the required documentation in accordance with RICA.
- 19.4 **The Customer is obliged to comply with the practical verification and record-keeping provisions of RICA, and the Supplier hereby transfers this responsibility to the Customer, whenever the Customer issues or assigns telecommunication services procured from the Supplier, to its employees/assignees. The details of the verification and record keeping obligations are set out in the relevant product Annexures.**

20. DISPUTE RESOLUTION

- 20.1 **Committee.** The Parties shall initially attempt in good faith to promptly resolve any dispute arising out of or relating to this Agreement through negotiations between the respective Contact Persons and or Relationship Managers (or their duly authorised representatives) within 10 (ten) Business Days after the dispute was notified in writing by one to the other.
- 20.2 **Arbitration.** if the Parties are unable to resolve any dispute arising from this Agreement by means 20.1 the dispute shall be finally resolved by way of arbitration in accordance with the Rules of the Arbitration Foundation of Southern Africa ("AFSA") by an arbitrator appointed by AFSA, provided that there shall be no right of appeal.
- 20.3 The arbitration shall be held -
- 20.3.1 with only the Parties and their representatives present thereat; and
 - 20.3.2 at Sandton, South Africa, unless specifically provided otherwise in the Agreement.

- 20.4 The decision of the arbitrator shall be final and binding on the Parties, who shall summarily carry out that decision and either of the Parties shall be entitled to have the decision made an order of any court with competent jurisdiction.
- 20.5 This clause shall not be interpreted to mean that either of the Parties shall be precluded from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the outcome of the referral to the committee in accordance with clause 20.1 or the decision of the arbitrator, or in the event of any proceedings being brought as a result of an act of insolvency by either Party. In such event, the Parties consent to the jurisdiction of the Gauteng Local Division, Johannesburg.
- 20.6 **Severability.** Clause 20 is severable from the rest of this Agreement and shall remain valid and binding on the Parties notwithstanding any termination of this Agreement.

21. DOMICILIA AND NOTICES

- 21.1 **Addresses.** The Supplier selects as its *domicilia citandi et executandi* the physical addresses set out in clause 1.38. The Customer selects as its *domicilia citandi et executandi* the physical addresses set out the Proposal.
- 21.2 **Change of Address.** Either Party may give written notice to the other, change its domicile to any other physical address in the Republic of South Africa to any other South African number, provided that such change shall take effect fourteen days after delivery of such written notice.
- 21.3 **Deemed Receipt.** Any notice to be given by either Party to the other shall be deemed to have been duly received by the other Party -
- 21.3.1 if addressed to the addressee at its domicile and posted by pre-paid registered post on the 10th day after the date of posting thereof, or
- 21.3.2 if delivered to the addressee's domicile by hand to a responsible person apparently in charge of the addressee's premises, during Business Hours on a Business Day, on the date of delivery thereof, or
- 21.4 **Use of email.** The Parties record that formal notices required in terms of this Agreement, including a letter of demand, may be given via email.

22. FORCE MAJEURE

- 22.1 Performance of the obligations of the Supplier in terms of this Agreement shall be excused for as long as and to the extent that the Supplier is unable to deliver performance because of any cause beyond its control and for which it is not responsible which, if qualifying as such shall include, without limitation, an act of God or State or war (whether declared or not) or sabotage, fire, flood, riot, strike, lock-out, pandemic downtime of any third-party communication (including telecommunication) infrastructure, governmental restriction, affecting the performance of such obligations, The Supplier shall –

22.1.1 As soon as it becomes aware of any such force majeure event, immediately give notice to the Customer (which shall be confirmed in writing as soon as possible thereafter as is possible) detailing the circumstances on which it relies and an estimate of the likely duration of such inability, where possible; and

22.1.2 Notify the Customer as soon as the event terminates, by giving notice thereof to Customer, which shall be confirmed in writing as soon thereafter as is possible;

22.2 the Parties shall co-operate together and use all reasonable efforts to overcome, or failing which, to minimise the effect of such inability;

22.3 The Supplier shall be excused and subsequently not obliged to perform any obligation hereunder not performed as a consequence of and during any such inability, and the duration of this Agreement shall not be extended as a consequence of any such inability.

23. ASSIGNMENT AND SUB-CONTRACTING

23.1 **No Assignment.** the Customer shall not be entitled to cede, assign, delegate or otherwise transfer the benefit or burden of all or any part of this Agreement without the prior written consent of the Supplier, which consent shall not be unreasonably withheld or delayed.

23.2 **Sub-contractors.** The Supplier may sub-contract its obligations under this Agreement to third-parties, provided that in such event the Supplier shall remain liable for the performance by such subcontractor of the Supplier obligations in terms of this Agreement.

24. RELATIONSHIP AND DUTY OF GOOD FAITH

24.1 **Good Faith.** The Parties shall at all times owe each other a duty of good faith and shall, in all dealings with each other and in respect of the provision and use of the Products and/or Services, act according to such standard.

24.2 **No authority.** Nothing in this Agreement shall be construed as creating a legal partnership between the Parties and neither Party shall have any authority to incur any liability or obligation on behalf of the other or to pledge or bind the credit of the other Party.

25. INTERPRETATION

This Agreement shall be subject to the following rules of interpretation.

25.1 **Headings.** Headings and sub-headings are inserted for information purposes only and shall not be used in the interpretation of this Agreement.

25.2 **Enactments.** References to any enactment shall be deemed to include references to such enactment as re-enacted, amended or extended from time to time.

25.3 **References to persons.** References to: -

25.3.1 persons shall include companies, corporations and partnerships;

25.3.2 any Party shall, where relevant, be deemed to be references to, or to include, as appropriate, their respective successors or permitted assigns;

25.3.3 the singular shall include the plural and vice versa;

25.3.4 any one gender shall include a reference to all other genders.

25.3.5 days shall be deemed to be to calendar days, unless specifically stipulated as being business days.

25.4 **Survival of terms.** The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

25.5 **Substantive provisions.** If any provision in a definition is a substantive provision conferring rights or imposing duties on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in this Agreement.

25.6 **Calculation of days.** When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day which is not a business day, in which case the last day shall be the next business day.

25.7 **Approvals and consents.** Where the approval or consent of any Party is required in terms of this Agreement, the Parties hereby agree that such approval or consent shall not, unless expressly provided to the contrary, be unreasonably withheld or delayed by the Party who is required to give same.

25.8 **Neutral construction.** The rule of construction that the Agreement shall be interpreted against the Party responsible for the drafting or preparation of the Agreement, shall not apply.

25.9 **The term "including".** The words "include", "includes", and "including" means "include without limitation", "includes without limitation", and "including without limitation". The use of the word "including" followed by a specific example shall not be construed as limiting the meaning of the general wording preceding it.

25.10 **Common meaning.** Terms other than those defined within the Agreement will be given their plain English meaning, and those terms, acronyms, and phrases known in general commercial or industry-specific practice, will be interpreted in accordance with their generally accepted meanings.

26. GENERAL

26.1 **Non-exclusivity.** Nothing in this Agreement shall be construed as precluding or limiting in any way the right of the Supplier from supplying services of whatsoever nature to other customers.

- 26.2 **Entire Agreement.** The Contract Documents, records or attachments referred to herein or therein, constitute the entire agreement between the Customer and the Supplier in respect of the subject matter hereof, and supersedes all previous agreements in respect thereof.
- 26.3 **Waiver.** No granting of time or forbearance shall be or be deemed to be a waiver of any term or condition of this Agreement and no waiver of any breach shall operate a waiver of any continuing or subsequent breach.
- 26.4 **Applicable Law.** This Agreement shall be governed and construed according to the laws of the Republic of South Africa.
- 26.5 **Jurisdiction.** Subject to clause 20, the Parties hereto hereby consent and submit to the jurisdiction of Gauteng Local Division of the High Court of South Africa.
- 26.6 **Certificate of indebtedness.** A certificate of indebtedness signed by any director or manager of the Supplier, whose authority or appointment shall not be necessary to prove, in respect of any indebtedness of the Customer in terms of this Agreement and any Proposal, shall be *prima facie* evidence of the Customer's indebtedness to the Supplier.
- 26.7 **Publicity.** Neither Party shall make or issue any formal or informal announcement, advertisement or statement to the press in connection with this Agreement or otherwise disclose the existence of this Agreement or the subject matter thereof to any other person, other than a professional advisor or its Staff involved in the provision of the Products and/or Services, without the prior written consent of the other Party, provided that:-
- 26.7.1 The Supplier may cite the Customer as one of its Customers in its accounting, marketing and associated material, and
- 26.7.2 the Customer may cite the Supplier as one of its service providers in its accounting, marketing and associated material.
- 26.8 **Costs.** Each Party shall bear and pay its own fees and costs of and incidental to the negotiation, drafting, preparation and execution of this Agreement.