

GENERAL TERMS AND CONDITIONS

1. INTERPRETATION AND PRELIMINARY

1.1. Unless a contrary intention is clear –

1.2. The following terms have the following meanings :

1.2.1. “Agreement” means the General Terms and Conditions, and all addenda, if applicable, signed by the Customer and implemented in terms hereof, including, a written instruction to the Supplier to commence or cancel additional Services.

1.2.2. “Charges” or “rates” mean installation charges, monthly service charges, usage and other charges relating to the provision of services by the Supplier to the Customer.

1.2.3. “Commission Date” means the date on which the services are operational.

1.2.4. “Confidential Information” means any information or data in whatever form or medium whether tangible or intangible, oral or in writing including, but not limited to, documents, materials or data which by its nature or content is or ought reasonably to be identifiable as confidential and/or proprietary to the Disclosing Party or which is provided or disclosed in confidence or is designated as confidential information by the Disclosing Party whether or not owned or developed by the Disclosing Party, which is not generally known to the Receiving Party, to Receiving Party’s personnel and representatives, and of which the Receiving Party may obtain knowledge through or as a result of the relationship established hereunder with the Disclosing Party, access to the Disclosing Party, access to the Disclosing Party’s premises, or communications with the Disclosing Party’s employees, representatives or independent contractors. Without limiting the generality of the foregoing, “Confidential Information” shall include but is not limited to ideas, concepts, business plans, strategies, financial statements, pricing data, operations, inventions, discoveries, formulae, processes, designs, specifications, drawings, prototypes, sample, improvements, developments, applications, marketing data, customer names, projections, trademarks, trade names, and trade secrets, any commercial, financial, technical or strategic information, whether or not the same are or may be patented, registered, or otherwise publicly protected;

1.2.5. “CPA” means the Consumer Protection Act, 2008.

1.2.6. “CPA Regulations” means regulations promulgated under the CPA from time to time.

1.2.7. “Customer” means any person who has entered into an agreement with the Supplier for the provision of Services and/or use of the Equipment, or who has applied to the Supplier for the provision of Services and/or use of the Equipment and is used interchangeably with the term “Subscriber”.

1.2.8. “Customer Premises” shall mean the location or locations occupied by the Customer to which the Services are delivered.

1.2.9. “Equipment” means all devices including Software provided by the Supplier to the Customer to enable the provider to provide the services.

1.2.10. “Force Majeure” means any circumstances beyond the Parties’ reasonable control including, without limitation, war, national emergency, civil disturbance, theft, fire, flood, explosion, natural disaster, unusually severe weather conditions, prohibitive legislation or regulations and failure of power or utility supplies (including electronic communications).

1.2.11. “FTTB” means Fibre to the Business

1.2.12. “FTTH” means Fibre to the Home

1.2.13. “General Terms and Conditions of Service” means this document excluding all Proposals carried out in terms hereof but including annexures thereto.

1.2.14. “Initial period” means the period of the first agreement signed by the Customer in respect of the Services, as reflected in the Subscriber Agreement. The period will commence on the Commission Date.

1.2.15. “Initial Services” means the first services provided by the Supplier to the Customer in terms of the first agreement signed by the Customer in respect of the Services.

1.2.16. “Intellectual Property Rights” means and includes:

1.2.16.1. rights in and in relation to any patent, design, trade mark, trade or business name (including all goodwill associated with any trade mark, or any trade or business name), copyright, database, domain name, circuit topography design, and/or utility model, whether registered or not, and including the benefit of all registrations or applications to register and the right to apply for registration of any of the foregoing items and all rights in the nature of any of the foregoing items, each for their full term (including any extensions or renewals thereof) and wherever in the world enforceable; and

1.2.16.2. all other intellectual property rights and forms of protection of a similar nature or having equivalent or similar effect and which may subsist anywhere in the world;



1.2.17. "Installation" means the installation of Equipment at the Customer's Premises or at any other location as may be specified by the Customer.

1.2.18. "TPQ" means The Phoenix Quest II cc, registration number 1997/035398/23, a limited liability private company duly incorporated in the Republic of South Africa.

1.2.19. "month" means a calendar month beginning at 0h00 on the first day of the calendar month in question.

1.2.20. "Parties", means the parties to this Agreement and "Party" shall mean either one of them.

1.2.21. "Product" means any combination of Equipment and services provided by the Supplier to the Customer.

1.2.22. "Product-specific Terms and Conditions" means the specific terms and conditions applicable to the particular Product or Service as reflected in the Proposal.

1.2.23. "Proposal" means the order form or Proposal document submitted by the Supplier to the Customer and signed by the Customer in respect of the provision of Products and Services and which incorporates the Subscriber Agreement, the Product-specific Terms and Conditions and the terms of this Agreement.

1.2.24. "Renewal Period" means, unless otherwise specified in the Product-specific Terms and Conditions or Subscriber Agreement:

1.2.24.1. if the Customer is a juristic person, a period ending on the day immediately after the expiration of the initial term or any subsequent renewal period;

1.2.24.2. if the Customer is a natural person, the period specified in clause 3.4.3;

1.2.25. "Republic" means the Republic of South Africa.

1.2.26. "Services" means the Services, managed or otherwise, and/or Products provided by the Supplier to the Customer, as set out in the Proposal.

1.2.27. "Service Provider" means any Electronic Communications Network Licensee or Electronics Communications Licensee licensed under the Electronic Communications Act, 2005, or any duly authorised provider to an Electronic Communications Network Licensee or Electronics Communications Licensee.

1.2.28. "Signature Date" means the date on which this Agreement has been duly executed by both Parties.



1.2.29. "SLA" means Service Level Agreement

1.2.30. "Software" means any computer programme that either included or provided as a stand-alone application, or accessible via the Internet or other web browsing method.

1.2.31. "Subscriber Agreement" means the summary of the Agreement signed by the Customer for the delivery of Services by the Supplier to the Customer.

1.2.32. "Supplier" means TPQ.

1.2.33. "Traffic type" any particular type of calls carried out by the Supplier on the networks.

1.3. When any number of days specified in this agreement, are the same excluding the first and including the last day is not counted unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day will be the next succeeding day which is not a Saturday, Sunday or public holiday.

1.4. In circumstances when the CPA applies to the Agreement, the provisions of the CPA will prevail in the event of a conflict between any provision of the Agreement and the provisions of the CPA.

2. APPOINTMENT AND AUTHORISATION

2.1. The Customer appoints the Supplier to supply the Services to the Customer for the Initial Period in accordance with the terms and conditions set forth in the Agreement.

2.2. The Parties will be bound by the Agreement from the Signature Date.

2.3. The Customer hereby authorises the Supplier to:

2.3.1. Communicate with Service Providers to enable the Supplier to obtain all information that may be necessary in order for the Supplier to render the Services. If the Supplier requires it, the Customer will receive a separate letter authorising the Supplier to approach the Service Providers to request such information as aforesaid that may be furnished as proof that the Supplier has a mandate from the Customer to the Service Providers; and/or

2.3.2. Enter into agreements and arrangements with Service Providers as may be necessary for the Supplier to deliver the Services.



2.4. The Supplier shall provide the Services in accordance with the service levels set out in Annexure A to these General Terms and Conditions.

3. TERM

3.1. The Supplier undertakes to provide the Services to the Customer, subject to the further provisions of this Agreement, for the duration of the Initial Period and any Renewal Period as applicable.

3.2. If the Customer is a juristic person, at the expiration of the Initial Period, unless otherwise notified in writing to the Customer, the Services and the Agreement will automatically continue on the terms of this Agreement for an unlimited number of Renewal Periods, unless terminated by the Customer, at the expiration of the Initial Period or any Renewal Period, as the case may be, by giving the Supplier a written notice of termination not less than 30 and not more than 90 days before the expiration of the Initial period or Renewal period, as the case may be.

3.3. If the Customer is a natural person.

3.3.1. The Customer may terminate the Agreement:

3.3.1.1. on the expiry of the Initial Period, by notice in writing to the Supplier,

3.3.1.2. during the Initial Period, on 20 Business Days written notice to the Supplier, subject to the provisions of clause 3.8.

3.3.2. The Supplier can, during the Initial Period, terminate the Agreement 20 Business Days after the Customer receives written notice to remedy a material breach and the Customer fails to remedy such breach within the time period allowed to do so.

3.3.3. If the Agreement is not terminated during the Initial Period by either Party in accordance with the provisions of this clause 3.3 and where the Customer has not agreed to a renewal of the Agreement for a further fixed term, the Agreement will continue, after the expiry of the Initial Period, on a month-to-month basis (terminable by either the Supplier or the Customer on one month's written notice to the other), subject to any material changes of which the Supplier has given written notice given under clause 3.3.4.

Not more than 80 nor less than 40 Business Days before the expiry of the Initial Period, the Supplier will notify the Customer in writing of the impending expiry of the Agreement, which notice will include any significant changes that would apply if the Agreement were to



be renewed and will include the Customer's right to terminate or continue with the Agreement on the expiry of the Initial Period.

3.4. If the provision of any of the Products or Services by the Supplier on the basis of this Agreement is declared unlawful by an Act of Parliament, any regulatory body or court of law, the Supplier shall be entitled to cancel this Agreement upon written notice to the Customer.

3.5. If the Customer terminates this Agreement prior to the expiration of the Initial Period or any Renewal Period for any purpose other than expressly provided for in this Agreement, the Customer will be liable for all amounts due to the Supplier until the date of termination and the Supplier shall be entitled (unless the Customer is entitled to terminate the Agreement without penalty in accordance with the provisions of the CPA, if applicable), to a cancellation / early settlement fee provided for in the Proposal, provided that where the Customer is a natural person, the Supplier shall restrict such cancellation/early settlement fee to a reasonable fee determined to be in accordance with the guidelines set out in the CPA and, if applicable, the CPA Regulations.

3.6. Unless otherwise expressly stated in the Agreement, at the expiration of the Initial Period or any Renewal Period, the Supplier, in its sole discretion, but subject to clause 3.4.4, can remove or change any discounts that applied during the Initial Period or Renewal Period, as the case may be.

3.7. Any new or additional services or extension of the Initial Services provided by the Supplier to the Customer from time to time are subject to the terms contained in the Proposal or required to be agreed to by the Parties in writing in a new agreement (or in an addendum to the existing Proposal), and such new services will begin on the date on which such new services are Commissioned.

3.8. The Supplier may, in its sole and absolute discretion, change the routing of any Traffic at any time in the pursuit of the provision of Services, such as routing changes will not affect the validity of the Agreement.

3.9. The Services provided by the Supplier are subject to the government or relevant authority regulated limitations and transmission constraints, and may be temporarily and/or permanently interrupted or curtailed as necessary or appropriate for the proper functioning of the Services.

3.10. The Supplier shall be entitled to request, prior to the conclusion of this agreement, and prior to Commissioning the Services, information related to the Customer's creditworthiness. For the avoidance of doubt the Parties agree that the Supplier is



authorised to conduct all reasonable credit checks and searches and the Customer herewith expressly consents to the Supplier conducting the aforesaid credit searches in as much as it may be a requirement to obtain such consent in terms of relevant legislation.

3.11. If the conclusion of the Agreement is a result of direct marketing and the provisions of the CPA are applicable, the Customer has the right to terminate the Agreement without reason or penalty to the Supplier within 5 Business Days after the later of the date on which the Agreement was entered into or the Services or Equipment were delivered to the Customer. If the Customer has the original packaging of the Products opened for the return of the same to the Supplier on cancellation of this Agreement, the Supplier is entitled to deduct from any reimbursement or refund to the Customer in return, a reasonable amount for the use and/or depletion of the Products and/or Services.

4. SERVICES AND EQUIPMENT: DELIVERY AND INSTALLATION

4.1. The Supplier must deliver the Equipment and Services to the Customer at the address specified by the Customer on the Subscriber Agreement. The Customer will be obliged to pay the reasonable costs incurred by paying the Supplier for the delivery of the Equipment. If the Supplier cannot deliver the Equipment to such address through no fault of the Supplier, the Customer will be required to pay all reasonable costs incurred by the Supplier in making the effort to deliver. Subject always to the provisions of clause 11, the Supplier will use its reasonable efforts to comply with the stipulated dates and times for the delivery of Equipment and Services.

4.2. Unless the Customer proves otherwise, and without limiting the rights of the Customer under the CPA, if applicable, the signature by the Customer of any Acceptance Certificate by the Supplier and/or its Service Providers to install the Equipment or at the request of a Commissioned Service, will be deemed an admission by the Customer that it fully inspected and approved the Equipment and all its components, and that, the Equipment and components have been received to the full satisfaction of the Customer. Subject to the Customer's rights to return defective Products, repair or fees paid in respect thereof shall be refunded pursuant to the CPA, as far as the CPA is applicable to the Agreement. The Customer shall have no claim against the Supplier of any nature whatsoever should, after such acceptance by the Customer, it transpire that the Equipment and/or any component thereof is unacceptable to the Customer for any reason.

4.3. The Customer shall, at its own cost and expense, be responsible for:

4.3.1. ensuring that the address at which and the Premises on which Equipment is to be Installed and/or Services are to be Commissioned are in all respects ready for such



Installation and Commission, including but not limited to the provision of power, security and access;

4.3.2. obtaining and maintaining all the necessary approvals and authorities imposed by any competent authority and which is necessary for the purposes of the supply, delivery and/or Installation of the Equipment and Services, including land owner's consent where the Customer is not the property owner . The Customer indemnifies the Supplier against any claim or liability incurred by the Supplier as a result of such approval and authorities not being obtained or maintained.

4.4. Installation may be subject to feasibility to be confirmed by a physical site survey:

4.4.1. Additional Installation Charges may apply, subject to the results of the physical site survey. In such a case, the Customer will be informed before the Service is installed.

4.4.2. If a last mile access medium is not feasible, the Supplier has the right to cancel the Customer order.

4.5. After Installation is complete and accepted, unless there is a fault on the service or equipment, any subsequent callouts of engineers will be billed at the engineer's charge out rate, with a minimum charge of one hour plus travel expenses.

4.6. In the event that the Commissioning of the Initial Services is delayed as a result of the actions or omissions of the Customer, the Supplier has the right to recover from the Customer, the minimum monthly Charge as set out in the Proposal (or pro rata portion thereof) payable by the Customer for the period of delay, together with any reasonable wasted costs incurred by the Supplier and the Customer hereby indemnifies the Supplier accordingly.

5. SOFTWARE

5.1. The Customer will use any Software provided to it by the Supplier, only for the purposes for which it was intended and licensed hereunder.

5.2. The Customer will not, or allow anyone else to reverse engineer, decompile, modify, tamper with, enhance, copy, sell, lease, license, sub-license or otherwise deal with the Software or any part, variation, modification, release or improvement thereof, or any Software or any program written or developed for it based on the Software.

5.3. All rights of any kind in and to the Software and all upgrades, updates, modifications and variations thereto from time to time, rests with the Supplier, and no rights in and to the



Software, its upgrades, updates, modifications, and variations thereto are granted or assigned to the Customer. The Customer will not, at any time in any way, question or dispute the ownership of the Software and undertakes not to infringe or prejudice any rights of the Supplier in and to the Software.

5.4. The Supplier may upgrade any Software provided to the Customer at its sole discretion and will not be obligated to perform such upgrades at any time, unless a specific provision is included in the Agreement that requires the Supplier to perform such upgrades.

5.5. It is the Customer's responsibility to notify the Supplier of its requirement to renew Software licenses.

6. USE AND STORAGE OF INFORMATION

6.1. The Customer acknowledges that the Supplier has established general practices and limits concerning use of the Services (which it will be entitled to change from time to time in its sole discretion), including the period of time that the Customer's email messages and other content uploaded on the Supplier's servers is retained, the quantity and size of the content that may be sent from or received by the Customer and the available space on the hard drive to the Suppliers servers reserved on behalf of the Customer.

6.2. The Supplier shall not be obliged to delete, in any way, any messages and/or other electronic communication or exchange that the Supplier maintains or transmits.

6.3. The Supplier shall furthermore be entitled on written notice to the Customer to terminate the provision of the Services should the Customer fail to use the Services for a continuous period of more than 12 months, or at the termination of the Agreement.

6.4. Use of the Services shall be subject to the Supplier's Fair Use Policy as set out in Annexure B to these General Terms and Conditions of Service.

7. CUSTOMER'S OBLIGATIONS IN RESPECT OF EQUIPMENT

7.1. The Customer agrees to use the Equipment only for the purpose for which it is intended and to ensure that its employees, agents and/or sub-contractors comply with the instructions and recommendations of the Supplier.

7.2. At delivery or collection of the Equipment as the case may be, risk in the Equipment shall pass to the Customer who will be responsible for:



7.2.1. keeping the Equipment in its possession and control, protected against any material loss and damage from whatsoever cause; free from any judicial attachment, hypothec or any other legal process or Charge and will not encumber the Equipment;

7.2.2. providing clean power to the Equipment;

7.2.3. exercise due care and diligence in respect of the Equipment;

7.2.4. protect all Equipment against any form of lightning through the installation of a lightning protection, unless expressly provided by the Supplier to the Customer, and

7.2.5. obtaining adequate insurance for the Equipment for the full replacement value.

7.3. The Customer furthermore agrees to ensure that the Equipment is maintained in a clean, serviceable and good working order. At the expiration of this Agreement, the Customer will return all the Equipment in good working order and in the same condition as at the date of installation, fair wear and tear expected.

7.4. The Customer agrees that any Equipment provided by the Supplier and/or its Service Providers under this Agreement is moveable property and that despite any installation on the Customer's Premises, unless the Customer has bought the Equipment outright and paid in full for such Equipment, the Equipment remains at all times the property and under the ownership of the Supplier and/or its Service Providers. The Supplier and/or its Service Providers will have the right to inspect the Equipment at all reasonable times during the term of this Agreement and to remove the Equipment on termination of the Agreement for any reason. The Customer agrees that, upon Installation of the Equipment, it shall immediately notify in writing the owner of the Premises where the Equipment is Installed of the Supplier's and/or Service Provider's ownership of the Equipment.

7.5. The Customer will provide:

7.5.1. the Supplier with access to its Premises, equipment, software, phone ports and/or a network for the purposes of monitoring and connecting the Equipment and/or Software and monitoring the performance of the Customer's obligations hereunder;

7.5.2. the Supplier with plans, organizational charts, structural, architectural and block diagrams, user lists, company procedures, access policies and any other form of information that the Supplier considers necessary for the proper provision of services;

7.5.3. its own security procedures so as to ensure the integrity of its systems, it being specifically noted that, notwithstanding the provisions of 7.6 and 7.7, the Supplier will not be liable for any loss suffered in writing by the Customer due to the loss of the integrity of its systems unless such loss is directly attributable to the gross negligence or fraudulent intent of the Supplier.



7.6. In respect of any Equipment supplied to the Customer by the Supplier under a managed services agreement and in respect of Equipment supplied by the Supplier at the Supplier's cost to the Customer, where such Equipment is covered by the Supplier's insurance:

7.6.1. the Customer agrees to comply in full with the terms and conditions of the insurance obtained by the Supplier for all the Equipment supplied to it by the Supplier;

7.6.2. if the Equipment or any part thereof is lost, stolen or damaged for any reason whatsoever and howsoever arising, the Customer shall immediately inform the Supplier in writing of such loss, theft or damage;

7.6.3. In the case of Equipment that is damaged, and until such notice is received by the Supplier, the Customer will be fully liable for all costs and expenses related to such Equipment and to the provision of Services.

7.7. The Supplier shall, as soon as possible, after receipt of written notice of the theft, loss or damage to Equipment provided under a managed services agreement:

7.7.1. repair or replace Equipment (other than equipment that has not been provided by the Supplier, repair and/or replacement of which will be to the Customer's full responsibility);

7.7.2. bear the cost of such repairs or replacement unless such repair or replacement is needed as a result of an accident or Force Majeure event (as contemplated in clause 11) or by improper, malicious or negligent use by the Customer of the Equipment or use in breach of the terms and conditions hereof. The Supplier shall, in its sole discretion, using reasonable testing methods, determine whether such Equipment has been subjected to improper, malicious or negligent use.

7.8. In respect of any theft, loss or damage of Equipment purchased outright by the Customer from the Supplier, and notwithstanding the provisions of clause 8.10, the Customer will be fully liable for all costs and expenses related to the replacement of such Equipment. Such loss, theft or damage and/or the issue of replacement Equipment shall in no way be considered a termination of the Agreement which shall continue to be to of full force and effect.

7.9. The Customer will be required to ensure that the Equipment and all its components thereof remain on the site of the Installation at all times. If the Customer wants to relocate any fixed or movable component(s) of the Equipment to alternative premises, the Customer shall be precluded from doing so unless it has applied in writing to the Supplier to such effect giving no less than 1 months' notice, and the Supplier has approved such relocation in writing. The Customer will be charged for any site relocation requirement (whether within the Customer's existing Premises or to alternative premises) at the relevant prices stipulated by the Supplier and/or its Service Providers at the time of such site re-location.



7.10. The Supplier may at any time reconfigure, upgrade and/or exchange any Equipment at its sole and absolute discretion to meet its obligations to provide the services. The Supplier shall not be obliged to make any upgrades or improvements unless it determines to do so, in its sole and absolute discretion.

7.11. The Customer will not itself be entitled to, nor allow any other party to repair, maintain, modify, alter or add to the Equipment in any manner whatsoever without the Supplier's prior written consent.

8. FEES AND PAYMENT

8.1. Unless the Supplier has agreed in writing or as otherwise provided for in the Proposal or in the Product-specific Terms and Conditions, and subject to the provision of the services and Equipment by the Supplier to the Customer, the Customer shall effect payment to the Supplier, in full, without deduction or set off and free of bank charges, on date of invoice:

8.1.1. for the supply and delivery of services, Equipment and installation;

8.1.2. for the monthly service fee and/or all other maintenance Charges and insurance, if applicable, and any other relevant periodic Charges (including monthly and annual Charges) in advance, as specified in the Proposal;

8.1.3. for the usage Charges, in arrears, as specified in the Proposal;

8.1.4. at the Supplier's premises or at the Supplier's banker's premises.

8.2. It is expressly noted and agreed that the Supplier will be entitled to 30 days' written notice to the Customer, to increase the Charges payable by the Customer in circumstances of either such increases being specifically provided for in the Proposal or the direct costs to the Supplier in providing the services (including, without limitation, the costs charged by the network service provider(s) in respect of such services) is increased. In such a case, the increases to the Charges will be commensurate with the increased costs of providing the services. Furthermore, the Supplier shall be entitled to vary any savings and/or rates guaranteed or implied to the Customer in the event of a change in network rates or the regulatory environment which impacts on the services by giving 30 days written notice thereof to the Customer.

8.3. Unless the Customer notifies the Supplier in writing within 5 Business Days of receipt of an invoice to the contrary, the content of such invoice shall be deemed to be correct.

8.4. Unless stated otherwise, all amounts payable by the Customer to the Supplier in terms of this Agreement are exclusive of VAT and any other statutory levies, taxes and imposts as may be charged from time to time. The Customer must accordingly be liable for VAT and all taxes, government or statutory levies imposed in respect of the Services from time to time.



8.5. The Supplier shall be entitled to insist that payment of all amounts payable by the Customer is effected by debit order on the terms and conditions specified in the Proposal, and the Customer will be required to execute and deliver such further instruments, contracts, forms and other documents ("additional documentation") or perform such further acts as may be required by the Supplier for the purpose of obtaining such debit/s in favour of the Supplier, copies of which additional documentation has been made available to the Customer before the date of signature. Where payment is made by the Customer by means of a debit order, other electronic or any other intermediary, the Customer's bankers or other intermediaries will act as Customer agents and the Customer will have discharged its obligations only upon payment being received by the Supplier at the Suppliers' premises or by the bankers of the Supplier.

8.6. In terms of the debit order, the Customer is aware of a non-refundable setup fee, outright purchases and pro-rata amounts applicable to the services applied for, and accepts that these amounts will be debited be from their account immediately when the service is activated.

8.7. Any cancellation of such a debit order without the prior written consent of the Supplier constitutes a contravention by the Customer of this Agreement.

8.8. A certificate signed by a director of the Supplier as to the amount owing by the Customer to the Supplier at any time shall be sufficient proof for provisional sentence or summary judgment.

8.9. Unless otherwise specified in the Agreement, in the event of an outright purchase of the Equipment by the Customer, where the Customer cancels the order after the Supplier has ordered the Equipment from its Suppliers, the Supplier shall be entitled charge to the Customer an amount equal to 7% of the value of the ordered Equipment to the Supplier, which the parties acknowledge and agree constitutes a reasonable charge within the meaning of Section 17 of the CPA.

8.10. Where it is the Customer's responsibility to install lightning or surge protection equipment, and the equipment was damaged by lightning or electricity surge, the Customer's shall bear responsibility for the full amount of such repairs or replacement by the Supplier.

9. SUSPENSION

9.1. The Supplier may upon 5 days written notice to the Customer, suspend the Customer's use of services in the case:

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9.1.1. any alteration, maintenance or remedial work is required to be undertaken in relation to the services; and/or

9.1.2. the Customer fails to perform any of its obligations or breaches any term/s of this Agreement; and/or

9.1.3. the Customer at any time exceeds the credit limit which the Supplier, in its sole discretion, may set and notify to the Customer from time to time.

9.2. The Supplier may require the Customer to effect payment of any applicable reconnection Charges based on the recovery of the services suspended in the circumstances contemplated in clause 9.1.

9.3. The Customer remains liable for the applicable fees payable in terms of this Agreement during any period of suspension in the circumstances contemplated in clause 9.1.

10. DEFAULT

10.1. Except where otherwise provided in the Proposal or elsewhere herein, either party ("the defaulting party")

10.1.1. fails to pay any amount due under this Agreement within 7 days after receipt of a written demand requiring such payment;

10.1.2. commits a breach of any provision (other than a payment obligation) of this Agreement, and if such breach is capable of remedy, fails to remedy such breach within 14 days after receipt of a written demand from the other party requiring it to do so;

10.1.3. becomes the subject of business rescue proceedings, is placed under liquidation, judicial management or similar disabilities, whether provisional or final, and whether voluntary or compulsory;

10.1.4. commits any act which if committed by a natural person would constitute an act of insolvency or become insolvent;

10.1.5. compromises or attempt to compromise generally with any of its creditors;

10.1.6. suffers a final judgment to be taken against it that is not satisfied within 30 days after the granting of such a judgement,

then the other party ("the aggrieved party") shall be entitled, without prejudice to any of its other rights under this Agreement and/or in law and by giving written notice, cancel this Agreement immediately or demand specific performance of all the defaulting party's obligations whether or not due for performance, or in the case without prejudice to the aggrieved party's right to claim damages.

11. FORCE MAJEURE



11.1. If any Party is prevented or restricted from carrying out all or any of its obligations under this Agreement as a result of any event constituting Force Majeure (which any cause beyond the reasonable control of one of the parties, including without limitation adverse weather conditions, unpredictable delays caused by traffic congestion, diversion or road works, the unavailability of raw materials, strikes, power failures, industrial disputes, regulatory interference or the unavailability of any communication lines and/or network operator facilities), then that Party will be relieved of its obligations under this Agreement during the period that such event continues, and will not be liable for any delay and/or failure in the performance of such obligations during such period, provided that if the Force Majeure event continues for a period longer than 14 days, either party may cancel this Agreement by written notice.

12. MISUSE OF SERVICES

12.1. The Customer warrants and undertakes in favour of the Supplier that the Customer:

12.1.1. shall not use or permit the Services to be used for any improper, immoral or unlawful purpose, including, without limitation, trying to use the Service to route (or help another party to the route) transit traffic from other networks to the Supplier, nor in any way which may cause injury or damage to persons or property or cause impairment or interruption of the Services;

12.1.2. must comply with all applicable legislation and regulations by a competent authority and all directives issued by the Supplier with regard to the Services, including its Fair Use Policy (Annexure B to these General Terms and Conditions) as updated from time to time and available on the Supplier's website,

12.1.3. indemnifies the Supplier for any losses, expenses, damages, harm or amount for which the Supplier is liable arising from or relating to the use of the Services in any manner whatsoever to be in contravention of the terms of this Agreement, the Supplier's Fair Use Policy (Annexure B) or any law, legislation or regulations; and/or any claims by any third party arising out of the Customer's use of the services, unless such losses, expenses, damages, harm or liability directly attributable to the gross negligence or fraudulent intent of the Supplier.

13. OBLIGATIONS ON TERMINATION and/or SUSPENSION

13.1. The Customer is responsible for any liability accrued on the date of termination or suspension of the Services, including the payment of any costs or expenses incurred in connection with such termination (including, without limitation, the cancellation fees



referred to in clause 3.7) or suspension, and the payment of all outstanding fees for the use of the Services prior to said termination or suspension.

13.2. The payment obligations of the Customer under this Agreement are not suspended, stayed, delayed or otherwise affected by any suspension of access to the Services if such suspension results from the Customer's failure to comply with, or violation of, the terms and conditions of the Agreement or of any law or legal obligation of the Customer.

13.3. The Supplier is entitled to immediately deactivate the service on date of termination or cancellation, and further, has no obligation to the Customer after any termination or cancellation of this Agreement.

14. GUARANTEES, EXCLUSION AND LIMITATION OF LIABILITY

14.1. The Supplier shall make all reasonable efforts to ensure that the Equipment provided by it and/or its Service Providers is in accordance with the Agreement and correct in terms of the Customer's requirements. Subject to any warranties that may be implied by the CPA (to the extent that the CPA applies to the Agreement), the Supplier, does not, however make any representations nor, unless explicitly granted in writing, give any guarantee or warranty of any nature whatsoever, either express or implied, in respect of the services or the Equipment, including but not limited to the implied warranties of merchantability and fitness or suitability for any intended purpose other than as set out in the Agreement.

14.2. Subject to the provisions of the CPA (to the extent that the CPA is applicable to the Agreement), the Supplier will not be liable to the Customer or any third party for any loss or damage which the Customer or a third party may suffer or incur as a consequence of utilising the Services and/or Software and/or Equipment, whether such loss or damage is direct, special, incidental, consequential or otherwise, unless such loss or damage was directly attributable to the gross negligence or fraudulent intent of the Supplier.

14.3. Without limiting the generality of the foregoing, the Supplier (except in circumstances of the Supplier's gross negligence or fraudulent intent) shall not be liable for any damages or losses incurred by the Customer caused by and/or due to:

14.3.1. interruption, suspension or termination of the Services, for whatsoever reason; and/or

14.3.2. the Supplier's failure to suspend the Services to the Customer in terms of an Agreement between the Supplier and the Customer in terms of which the Customer has specifically requested the Supplier to do so in order to limit the applicable fees; and/or

14.3.3. communications not being sent and/or received and/or on time or for any reason whatsoever; and/or



14.3.4. circumstances which constitute a Force Majeure event (as in 11); and/or
14.3.5. the Customer's failure to perform its obligations under this Agreement; and/or
14.3.6. changes to the Customer's operating environment that is not communicated to the Supplier; and/or
14.3.7. power failure or power interruptions at any site where the services or any component of the services are rendered ; and/or
14.3.8. any failure or delay by Customer to report problems or queries to the Supplier's call center; and/or
14.3.9. the server and/or Equipment of any recipient party being non-functioning for any reason whatsoever; and/or
14.3.10. the failure of any hardware, Software, operating system, application/s, networks, telecommunication lines and/or any other computer system (or any component thereof) of any third party to whom the Supplier and/or the Customer relies (whether directly or indirectly) to provide and/or receive, as the case may be for the services;
14.3.11. the unavailability of the Supplier's website for any reason whatsoever; and/or
14.3.12. the Customer using the service for any illegal, improper or immoral purpose; and/or
14.3.13. illegal or fraudulent accessing by a third party of the Customer's telecommunications lines, PBX or other telecommunications Equipment. In such circumstances, the Customer will remain liable for all charges incurred pursuant to such illegal or fraudulent access and indemnifies the Supplier against any loss, liability, damage or expense which the Supplier may suffer as a result.

14.4. Notwithstanding any other provisions of this Agreement, the Supplier's liability to the Customer and/or any third party for any loss or damage of any kind whatsoever, including, without limitation, any damage or loss caused by the negligence (but excluding gross negligence) of the Supplier or the Customer, as the case may be, or that of its servants, agents and subcontractors, will be limited in any case and under all circumstances to an amount equal to the fixed monthly costs by the Customer payable during the Initial Period.

15. ASSIGNMENT, SUB-CONTRACTING AND CONTRACTING ON BEHALF OF THE CUSTOMER

15.1. The Customer may not assign any of its rights or obligations under this Agreement, nor pass any Equipment to any third party, or permit any third party to use the Equipment without the Supplier's prior written consent.

15.2. The Supplier shall, during the existence of the Agreement at any time be entitled to cede and/or assign and/or sub-contract any of its rights and obligations under the Agreement to any other party, provided that if the Customer is a consumer, as contemplated in regulation 44 (1) of the CPA Regulations such assignment of obligations is not to the Customer's disadvantage.



15.3. Subject to the restriction in clause 15.1 this Agreement shall be binding on the successors-in-title of the respective parties.

16. NOTICES

16.1. The Customer and the Supplier choose the addresses set out in the Agreement as their chosen address (“domicilium”) for all purposes under this Agreement, whether in respect of court process, notices or other documents or communication of any kind whatsoever.

16.2. Either party may change its domicilium by written notice to the other.

16.3. Any notice required or permitted to be given in terms of this Agreement shall be valid and effective only if given in writing, excluding notice in the form, either in whole or in part, of a data message as defined in the ECTA.

17. LAWS AND JURISDICTION

17.1. This Agreement is governed by the laws of the Republic of South Africa.

17.2. The Customer, by his signature hereto and in accordance with the provisions of Section 45 of the Magistrates Courts Act No. 32 of 1944, as amended, consents to the jurisdiction of the Magistrates Courts in connection with any action or proceeding instituted against the Customer in terms of, or arising out of the provisions of this Agreement, provided that the Supplier shall in its sole and absolute discretion be entitled to institute any such action or proceedings in any division of the High Court of South Africa that has the necessary jurisdiction.

17.3. In the case of any Party taking legal action against the other (“defaulting party”) to recover amounts due to or any other legal proceedings arising out of this Agreement, the defaulting party will be liable for the legal costs on the scale as between attorney and own client.

18. DISCLOSURE

18.1. The Customer hereby authorizes the Supplier to disclose Customer information to a third party where the Supplier may reasonably deem necessary to enable it to properly perform his functions or protect its interests (including, without limitation, for the purposes credit vetting the Customer), for the purpose of enabling the provision of emergency services or directory or repair services to the Customer.



19. AUTHORITY AND ACKNOWLEDGEMENTS

19.1. Each Party warrants that it has the necessary legal powers and authority to enter into this Agreement.

19.2. The signature and/or digital acceptance of a Party representative warrants that he/she is authorized to act for that Party.

19.3. The Customer acknowledges that:

19.3.1. it has been given sufficient opportunity to read and has read and understand the Agreement including but not limited to the Supplier's Fair Use Policy, and any Product-specific Terms and Conditions, where applicable; and

19.3.2. has read and is aware of all terms and conditions contained herein that are printed in bold and initialled by the Customer as confirmation of this.

19.4. Where the physical installation of Equipment is needed, the Customer warrants that it has obtained all necessary permissions from the owner, as the case may be.

20. AMENDMENTS TO THE GENERAL TERMS AND CONDITIONS

20.1. This Agreement constitutes the whole Agreement between the parties relating to the subject matter hereof, and shall not be modified except as expressly set out in this clause 20.

20.2. Subject always to the right of the Customer to terminate this Agreement in accordance with the provisions of clause 3, the Supplier – in order to give effect to improvements in the Services it offers – may occasionally require the Supplier to amend this Agreement. The Supplier shall in its sole discretion, have the right to amend this Agreement and to modify and/or discontinue any function or component of the Services, as it deems necessary. Any use by the Customer of the Services after any such amendment implemented and notified to the Customer in writing by the Supplier shall be deemed to be acceptance to the Customer of such amendment.

21. CONFIDENTIALITY

21.1. Subject to clauses 21.2 to 21.4, each Party must:

21.1.1. Protect the Confidential Information in the manner, and with the endeavour of a reasonable person protecting his own Confidential Information;

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21.1.2. Use the Disclosing Party's Confidential Information only for the purposes of this Agreement;

21.1.3. Take all practical steps, both before and after disclosure, to impress upon its employees who are given access to the Confidential Information the secret and confidential nature thereof; and

21.1.4. Not make any Announcement or issue press releases about the Agreement or the transactions related to it without the approval of the other Party.

21.2. Clause 21.1.1 does not apply to Confidential Information that is in the public domain other than such Confidential Information that has entered the public domain as a result of a breach of this Agreement or any other obligation of confidence.

21.3. A Receiving Party may disclose the Confidential Information of the Disclosing Party if that disclosure is to the employees, contractors or professional advisers of the Receiving Party or its affiliates who have a need to know that information in relation to provision of Interconnection services and who have agreed to keep it confidential.

21.4. A Party may disclose Confidential Information of the Disclosing Party or make an Announcement that is required in accordance with any applicable law provided that the Receiving Party has consulted with the Disclosing Party prior to making such disclosure and provided that the disclosure is confined to that which is absolutely necessary in terms of such legal duty and/or order.

21.5. The Parties acknowledge and agree that, for the purposes of Section 64(1) of the Promotion of Access to Information Act, No. 2 of 2000, the Confidential Information is provided in confidence by the Parties.

22. INTELLECTUAL PROPERTY RIGHTS

22.1. Nothing contained in this Agreement shall be construed to confer or be deemed to confer on either Party the Intellectual Property Rights of the other Party.

22.2. Each Party indemnifies the other Party against all claims, actions, damages, liabilities, costs and expenses, including reasonable attorney's fees and expenses, arising out of any claims of infringement, passing-off and/or unlawful competition in relation to any patent, trade secret, copyright, trademark, service mark, trade name or similar proprietary right of any third party, which claim arises directly or indirectly out of the unlawful and/or unauthorised use by a Party of the Intellectual Property Rights of the other Party.



23. GENERAL

23.1. Subject to clause 21 and any other provision herein to the contrary, no termination of this Agreement or settlement of disputes arising under this Agreement or extension of time, waiver or relaxation or suspension of any of the provisions of this Agreement shall be binding on the Parties unless reduced to writing and signed by the Parties. Any such extension, release, relaxation or suspension, if given, will be strictly interpreted as only relating to the matter in respect of which it is made or given.

23.2. To the extent permitted by law and subject always to the provisions of the CPA, as applicable, neither Party will be bound by any express or implied term, representation, warranty, promise not contained herein.

23.3. If any part of this Agreement is found invalid, the balance of the provisions shall remain enforceable.

23.4. The rule of construction that, in case of ambiguity, the Agreement shall be interpreted against the party responsible for the preparation thereof shall not be applicable.

23.5. The Customer is entitled to refer any dispute between itself and the Supplier with regard to the availability of services to the Independent Communications Authority of South Africa (ICASA) or any successor thereof or to refer any other regulatory body or consumer protection body.

23.6. Each Party shall bear its own costs in respect of the drafting, negotiation and finalisation of the Agreement.

ANNEXURE A: SERVICE LEVEL AGREEMENT

1. Overview

1.1. This Clause constitutes a Service Level Agreement ("SLA") between the Supplier and the Customer for the support and maintenance of the Services.

1.2. This Agreement outlines the parameters of all Services covered as they are mutually understood by both Parties. This Agreement does not supersede current processes and procedures unless explicitly stated herein.

2. Purpose & Objectives

2.1. The purpose of this SLA is to ensure that the proper elements and commitments are in place to provide consistent service support and delivery to the Customer.



2.2. The objectives of this SLA are to:

2.2.1. Provide clear reference to service ownership, accountability, roles and/or responsibilities.

2.2.2. Present a clear, concise and measurable description of Service provision to the Customer.

2.2.3. Match perceptions of expected service provision with actual service support & delivery.

2.3. Duration & Validity

2.3.1. This SLA shall commence on the date of the Agreement and continue for the duration of the Agreement..

2.3.2. This SLA shall remain valid until superseded by a revised SLA mutually agreed in writing between the Parties. The SLA shall be reviewed annually, or earlier as circumstances dictate.

2.4. Scope

2.4.1. This SLA covers the availability and support of the Services.

2.5. Services and Service Level Definition

2.5.1. Commitment

2.5.1.1. The Supplier will provide the Customer with a warranty for contracted Services provided by the Supplier to the Customer. This Service Level Agreement (SLA) defines specific representations and guarantees provided to the Customer for individual Services. The SLA clearly identifies available recourse to the Customer for any specific breaches of the SLA by the Supplier.

2.5.1.2. The Supplier is committed to providing a reliable, high quality network to support its FTTH and FTTB Services to the Customer.

2.5.2. Network Availability & Repair Times

2.5.2.1. FTTB PREMIUM – 10 Hours MTRS, 24x7 – 90% uptime guarantee

2.5.2.2. FTTH PREMIUM – 12 Hours MTRS, 24x7 – 90% uptime guarantee

2.5.2.3. FTTB BEST EFFORT SERVICE – 48 Hours MTRS, Monday to Friday (excluding Public Holidays) from 8:00am to 5:00pm – no uptime guarantee

2.5.2.4. FTTH BEST EFFORT SERVICE – 48 Hours MTRS, Monday to Friday (excluding Public Holidays) from 8:00am to 5:00pm – no uptime guarantee

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2.5.2.5. “Degraded Service” means the presence of anomalies or defects that cause a degradation in QoS, but not result in total failure of the service.

2.5.2.6. “MTRS” (Mean Time to Restore Service) means average time from the first detection or reporting of Service interruption to TPQ NOC by the Customer until the time when the service is restored.

2.5.2.7. “Network Unavailability” is defined as the time where the Service is unavailable or Degraded to such an extent that it is unusable, measured from the first detection or reporting of service interruption to the Supplier’s NOC by the Customer until the time when the Service is restored and excluding any Service interruption outside of the Supplier’s contracted services supplied to the Customer. Network Unavailability will not include scheduled Maintenance/Emergency Maintenance or any unavailability resulting from (a) Customer’s applications, Equipment or facilities, (c) acts or omissions of Customer or any use of the service authorised by Customer, (d) reasons of Force Majeure, or (e) power loss and/or interruptions at the Customer Premises.

2.5.2.8. “Uptime” means the total number of available minutes in a calendar month.

2.6. Customer Support

2.6.1. The Supplier will establish at its own cost and expense, a NOC and equipped with the necessary infrastructure to facilitate efficient communication in order to manage and support all user and or network-related issues reported by the Customer.

2.6.2. The Customer will escalate to the Supplier all Incidents, only after the necessary steps set out below, have been thoroughly checked and verified.

2.6.3. The Supplier’s NOC will be available to attend to all Incidents, telephonic and e-mail queries.

2.6.3.1. The Customer will supply TPQ with an email address to be used for access to TPQ’s Trouble Ticketing Portal. All queries logged on the system will fall within the repair times set out above in clause 2.5.2

2.6.3.2. The NOC can be contacted telephonically on 0100351351 for Premium Customers 24x7 and for Best Effort Customers during working hours only as indicated above.

2.6.3.3. If for any reason the NOC cannot be reached telephonically, the Customer shall follow the agreed escalation procedure.

2.6.4. All e-mail requests to the Supplier’s NOC (noc@tpqops.co.za) will be answered within an estimated 24 hours as a tertiary support medium.

2.7. Repairs & Maintenance

2.7.1. Scheduled maintenance of the Supplier’s network (or portion thereof) will not normally result in Service interruption or outage. However, in the event



scheduled maintenance should require a Service interruption or outage, TPQ will exercise commercially reasonable efforts to,

2.7.1.1. provide the Customer with seven (7) days' prior written notice of such scheduled maintenance,

2.7.1.2. work with the Customer in good faith to attempt to minimise any disruption to the Service that may be caused by such scheduled maintenance, and

2.7.1.3. to perform such scheduled maintenance during the non-peak hours between 0:00 (midnight) until 06:00 local time.

2.7.2. Emergency Maintenance of the network (or portion thereof) might result in Service interruption or outage. Depending on the severity of the fault, the Supplier will perform the Service-affecting repair, and will attempt, at best effort, to contact the Customer of the imminent impending outage and expected times to repair.

2.7.3. The Supplier will arrange for the necessary repairs arising in terms of this Agreement. TPQ will carry the costs for faults arising in/from the Supplier's Equipment. For faults arising in/from the Customer's Equipment, the Customer shall be liable for all costs incurred in effecting repairs.

2.8. Escalation Procedure

2.8.1. Should the Customer wish to escalate a problem, either because of the urgency of the problem, or because the Customer does not feel it is being given the priority it deserves, the Customer may contact the Supplier's NOC with the reference number and request that the problem be escalated.

2.8.2. The Supplier's NOC/Service Manager will take the necessary steps to ensure that the call receives the appropriate priority and/or attention.

2.9. Change Management Procedure

2.9.1. All planned changes or maintenance will be available to the Customer on request.

2.9.2. If the Customer requires that the planned changes or maintenance to be stalled, postponed or rescheduled because of business-affecting reasons, these reasons must be reported to the Supplier's NOC within 24 hours of receiving notification from TPQ. TPQ will endeavor to accommodate the request, however retains the prerogative to continue with the planned maintenance if deemed necessary within the bigger scope of the planned maintenance window.

2.9.3. Neither Party shall make changes to the network design or service, without prior approval of the other, which approval shall be in writing.

2.9.4. All changes are managed by the NOC. The start of the change is logged; the change is implemented by trained technical personnel and overseen by a Supplier supervisor. The end of the change is logged and the success thereof logged and recorded.



ANNEXURE B: ACCEPTABLE USE POLICY–

1. The purpose of this section is to provide an understanding of the TPQ Acceptable Use Policy (AUP). This policy serves to define the accepted behaviour of users on the TPQ network. This allows TPQ to:

- 1.1. Maintain the integrity and quality of their service.
- 1.2. Protect their Customers and infrastructure from abuse
- 1.3. Adhere to the current laws and regulations governing organizations and service providers in the countries that they operate in.
- 1.4. Co-exist within the global Internet community as a responsible service provider.

2. The Network

2.1. The user acknowledges that TPQ is unable to exercise control over the data passing over the infrastructure and the Internet, including but not limited to any websites, electronic mail transmissions, news groups or other material created or accessible over its infrastructure. Therefore, TPQ is not responsible for data transmitted over its infrastructure.

2.2. TPQ infrastructure may be used to link into other networks worldwide and the user agrees to conform to the acceptable use policies of these networks.

2.3. Users of the TPQ network include not only the TPQ Customers, but in the case of resellers of the TPQ services, the Customers of the resellers too. Resellers of TPQ services are responsible for the activities of their Customers.

2.4. The user may obtain and download any materials marked as available for download off the Internet, but is not permitted to use their Internet access to distribute any copyrighted materials unless the owner of the materials grants permission for such distribution to the user.

2.5. The user is prohibited from obtaining, disseminating or facilitating over TPQ network any unlawful materials, including but not limited to:

- 2.5.1. Copying or dealing in intellectual property without authorisation
- 2.5.2. Child pornography, and/or
- 2.5.3. Any unlawful hate-speech materials

2.6. To help ensure that all Customers have fair and equal use of the service and to protect the integrity of the network, TPQ reserves the right, and will take necessary steps, to prevent improper or excessive usage thereof.

2.7. The action that TPQ may take includes, but is not limited to:

2.7.1. This policy applies to and will be enforced for intended and unintended (e.g., viruses, worms, malicious code, or otherwise unknown causes) prohibited usage.

2.7.2. Limiting throughput

2.7.3. Preventing or limiting service through specific ports or communication protocols; and/or



2.7.4. Complete termination of service to Customers who grossly abuse the network through improper or excessive usage.

2.8. Online activity will be subject to the available bandwidth, data storage and other limitations of the service provided, which TPQ may, from time to time, revise at its own discretion and without prior notice to the Customer.

3. System and Network security

3.1. All references to systems and networks under this section include the Internet (and all those systems and/or networks to which user are granted access through TPQ and include but is not limited to the infrastructure of TPQ itself.

3.2. The user may not circumvent user authentication or security of any host, device, network, or account (referred to as “cracking” or “hacking”), nor interfere with service to any user, host, device, or network (referred to as “denial of service attacks”). The host, device, network or account shall also not be used for any illegal purpose, including phishing.

3.3. Violations of system or network security by the user are prohibited, and may result in civil or criminal liability. TPQ will investigate incidents involving such violations and will involve and co-operate with law enforcement officials if a criminal violation is suspected. Examples of system or network security violations include, without limitation, the following:

3.4. Unauthorised access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of any system or network or to breach security or authentication measures without the express authorisation of TPQ

3.5. Unauthorised monitoring of data or traffic on the network or systems without express authorisation of TPQ

3.6. Interference with service to any user, device, host or network including, without limitation, mail bombing, flooding, deliberate attempts to overload a system and broadcast attacks

3.7. Forging of any TCP-IP packet header (spoofing) or any part of the header information in an email or a newsgroup posting

4. Interception

4.1. The User acknowledges that TPQ is lawfully required to intercept communications in accordance with the provisions of the Regulation of Interception and Provision of Communication-related Information Act 70 of 2003 (“RICA”). Any interception of communications shall be strictly in accordance with the requirements of RICA, as and when required under RICA.

5. Managing Abuse



5.1. Upon receipt of a complaint, or having become aware of an incident, TPQ reserves the right to:

5.1.1. Inform the user's network administrator of the incident and require the network administrator or network owner to deal with the incident according to this Acceptable Use Policy.

5.1.2. In the case of individual users suspend the user's account and withdraw the user's network access privileges completely.

5.1.3. Charge the offending parties for administrative costs as well as for machine and human time lost due to the incident

5.1.4. In severe cases suspend access of the user's entire network until abuse can be prevented by appropriate means

5.1.5. Take such action as may be necessary to protect the integrity of the system, including, but not being limited to, system monitoring, as well as protocol management and shutting down of ports affected by viruses, worms or other malicious code.

5.1.6. Implement appropriate technical mechanisms in order to prevent usage patterns that violate this AUP

5.1.7. Share information concerning the incident with other Internet access providers, or publish the information, and/or make available the users' details to law enforcement agencies.

5.2. TPQ may take any one or more of the steps listed above, insofar as TPQ deems them necessary in its absolute and sole discretion, against the offending party.

6. Laws and Legislation

6.1. TPQ infrastructure may be used only for lawful purposes. Users may not violate any applicable laws or regulations of South Africa within the territory of South Africa. Should the user reside outside of South Africa, the laws of the country in which the user resides shall apply.

6.2. Transmission, distribution or storage of any material on or through the infrastructure in violation of any applicable law or regulation is prohibited. This includes, without limitation, material protected by copyright, trademark, trade secret or other intellectual property right used without proper authorisation, and material that is obscene, defamatory, constitutes an illegal threat, or violates export control laws.

6.3. The User undertakes to use TPQ services in accordance with any restrictions imposed under the following legislation:

6.3.1. Electronic Communications and Transactions Act 25 of 2002

6.3.2. Electronic Communications Act 36 of 2005

6.3.3. Films and Publications Act 65 of 1996 (as amended)

6.3.4. Regulation of Interception and Provision of Communication-related Information Act 70 of 2003



7. Legal Rights

7.1. Nothing contained in this policy shall be construed to limit TPQ's rights or remedies in any way with respect to any of the aforementioned activities, and TPQ reserves the right to take any action that it may deem appropriate with respect to such activities, including without limitation:

7.1.1. Investigating suspected violations of this AUP

7.1.2. Taking action to recover costs and expenses incurred in identifying and resolving abuse

7.1.3. Terminating users' access to and use of the TPQ service

7.1.4. Levying cancellation charges to cover TPQ's costs in the event of termination of the TPQ service.

7.2. In addition, TPQ reserves all available rights and remedies with respect to such activities at law or in equity.

8. General

8.1. This policy forms part of TPQ Standard Terms and Conditions of Service.

8.2. All cases of violation of the above Acceptable Use Policy should be reported to support@tpqops.co.za

