

TERMS AND CONDITIONS

1. INTRODUCTION

- 1.1. These terms and conditions will govern your use of all MQN services. By using the networks and services we provide, you agree to these terms and conditions.
- 1.2. This document is your offer to us to enter into an agreement, in which we will supply and render telecommunications-related goods and services to you.

2. DURATION

- 2.1. This agreement will commence on the day that it is signed by MQN, and shall last for 24 months ("the Initial Term"). You may not cancel the agreement during this Initial Term. At the end of the Initial Term, the Agreement will automatically renew and will operate on a month-to-month basis ("the Renewal Period") on the revised terms, including revised pricing applicable for the Renewal Period which we will notify you of prior to the expiry of the Initial Term.
- 2.2. You may terminate the Agreement during the Renewal Period by giving 1 (one) calendar month notice or notice as specified in the Product Terms or Application Form, which notice will take effect on the first day of the month immediately following the end of such notice period.
- 2.3. Certain provisions, like (but not limited to) those relating to confidentiality, warranty, indemnity and intellectual property shall survive termination of this agreement.

3. THE SERVICES, AND OUR RESPECTIVE RESPONSIBILITIES

- 3.1. We will provide the Services to you in accordance with this agreement and our Privacy Policy, which is available at our Website.
- 3.2. We will use reasonable endeavours to make the Services available to you, and to maintain the availability thereof for your use, subject to the rest of this Agreement.
- 3.3. We are committed to providing the Services to you without interruption. However, we cannot guarantee that the Services will always be available.
- 3.4. We will use our best endeavours to notify you in advance of any maintenance and repairs which may result in the disruption of the Services, but we cannot always guarantee this.
- 3.5. We shall be entitled to appoint a subcontractor or other third party to provide the Services, without notice to you.
- 3.6. In order for us to install, maintain, monitor, inspect or replace services or technology related thereto, or to otherwise provide our services to you, you must allow us, or our subcontractor or nominee, access to your premises at all reasonable times.
- 3.7. We shall be entitled to move you a new network operator at our sole discretion, for technical reasons. This may require you to sign a new agreement.
- 3.8. We shall be entitled in our sole discretion to alter telephone numbers or any other code, number, address or designation which has been allocated to you.
- 3.9. Sometimes, to conduct repair and/or improvement work on technical infrastructure and systems, it is necessary to suspend the Services from time to time. You agree that we may do so without notice to you, and you exempt us from all liability for any loss or damage (whether direct or consequential) and for any cost, claims or demands of any nature by you and by any third party, arising from such suspension.

- 3.10. You shall ensure that all persons who use Services under your account, or with your authorisation, comply with this Agreement, and you assume liability for the acts or omissions of all persons who use the Services under your account or with your authorisation as if they were your own acts or omissions.
- 3.11. You are liable for maintaining security of your systems, and anything that connects to or uses the Services, including the implementation of suitable anti-virus software; for ensuring your systems and devices update regularly, and for implementing measures to prevent cybercrime.
- 3.12. You are liable for all data accessed or used via the Services.
- 3.13. You agree to abide by our Acceptable Use Policy at all times, and acknowledge that failure to do so constitutes a material breach of this agreement.

4. DATA RETENTION

- 4.1. We will use reasonable endeavours to ensure the safekeeping of any data transmitted using the Services; however:
 - 4.1.1. it is your obligation to keep copies and back-ups of your data;
 - 4.1.2. we will not be liable for any direct or indirect loss or damages of any kind, which you may suffer as a result of the loss, corruption or unauthorised accessing of your data, or any part thereof, for any reason whatsoever; and
 - 4.1.3. we will, unless otherwise required by law, delete all your data from our servers upon termination of the Agreement and any other agreement between us.

5. PAYMENT FOR THE SERVICES

- 5.1. You agree to pay to us:
 - 5.1.1. upon commencement hereof: an initial connection charge, and all other introductory fees;
 - 5.1.2. monthly in advance, or as and when billing is passed on by the network operators: total call charges used and/or generated by you during each billing period;
 - 5.1.3. any other charges payable in respect of the Services;
 - 5.1.4. all other charges levied by us from time to time in respect of goods or services you have requested from us; and
 - 5.1.5. VAT at the applicable rate on all VAT-applicable charges and services.
- 5.2. You consent to a debit order instruction in our favour on the bank account whose details you provide to us.
- 5.3. All amounts owing to us, unless otherwise stated, include VAT.
- 5.4. All subscriptions shall be payable in advance.
- 5.5. The contents of any notice, directive, promotion or call tariff plan from us, including the charges stipulated therein, shall be deemed to be incorporated in this Agreement as if specially set out herein.
- 5.6. You agree that we shall be entitled from time to time to increase or vary the charges payable (as dictated by the network operators or by currency fluctuations) by you to us for the services.
- 5.7. A statement of account signed by any manager at MQN (whose status and authority shall not need not be proved) containing:
 - 5.7.1. the fact that the debt is payable;

- 5.7.2. the amount payable;
- 5.7.3. the applicable interest rate; and
- 5.7.4. the date from which such interest is calculated, shall be *prima facie* proof of all amount owing to us and to third parties, and of the other facts stated therein; and you shall bear the onus of proving that such statement is incorrect.

5.8. You agree that payment shall only have been made to us when it has been received into our bank account. Should any debit orders be return unpaid or stopped for whatsoever, then you shall pay an administration charge of R150 for each such non-payment or suspension. You shall not be entitled to withhold or set off amounts due to us, for any reason, including, but not limited to, "dropped" or discontinued calls and/or connections or temporarily unavailable services.

5.9. All amounts owing to us, in arrears in excess of 30 days, will attract interest at the maximum rate permitted by law.

6. TRANSFER OF RISK AND OWNERSHIP

- 6.1. Risk in any physical goods delivered to you or installed for you transfers upon arrival of the goods at such premises.
- 6.2. Ownership of any such goods above shall vest in us until such goods purchased have been paid for in full.
- 6.3. Ownership of all goods and services leased from us vests in us at all times.
- 6.4. You agree to be liable for the cost of repairs to, or replacement of, any goods or services lost or damaged, at our sole discretion.

7. CESSION AND DELEGATION

7.1. You may not sell, cede, assign, delegate or in any other way alienate or dispose of any of your rights and obligations in terms of this Agreement without our prior express written approval. We shall be entitled to sell, cede, assign, delegate, alienate, dispose of or transfer any or all of our rights and obligations in terms of this Agreement to any third party without your consent, and without notice to you.

8. AMENDMENT OF THE AGREEMENT

- 8.1. We reserve the right to amend our terms and conditions, prices and other policy documents from time to time on written notice to you, or by publishing any new version of the Agreement on our Website.
- 8.2. Any new version of this Agreement published on our website will become effective 30 days after the date on which it is first published. It is your obligation to visit our Website on a regular basis in order to determine whether any amendments have been made.
- 8.3. Any change in terms of this clause does not cancel your agreement with us.
- 8.4. If you do not agree to the amendments, you may cancel the Agreement subject to the cancellation provisions of this Agreement.
- 8.5. You may not change any provisions of this Agreement.

9. SECURITY AND PRIVACY

- 9.1. We shall be entitled to take whatever action we may deem necessary in our sole discretion to preserve the security and reliability of networks and the Services.
- 9.2. You may not use the Services in any way which may compromise their security, or tamper with the Services in any way.

9.3. We will deal with your personal information in accordance with the provisions of legislation and our Privacy Policy available on our website.

10. RICA AND INTERCEPTION OF COMMUNICATION

10.1. We and/or a third party may under the circumstances as prescribed in RICA, be required to intercept, lock, filter, read, delete, disclose and use communications sent via the Services. We shall not be liable to you for any losses, liabilities, damages and claims and for any related costs and expenses suffered by you as a result of our compliance with this and other laws and regulations.

11. YOUR CONSENTS

- 11.1. You consent in terms of the Protection of Personal Information Act to all use and processing of your personal information.
- 11.2. You further consent that we may obtain credit reports on you from the credit bureaus.
- 11.3. The Surety named in this and all other agreements with us, signs as surety and co-principal debtor for the due fulfilment of your obligations to MQN.

12. WARRANTIES

- 12.1. You warrant that all the information furnished to us by you or on your behalf is correct, and that you shall forthwith notify us in writing of any changes in this information.
- 12.2. You warrant that you will regularly check our website for any changes to our terms and conditions or other policies, and that you will not use the Services if you do not agree to the most recent version of our terms and conditions.
- 12.3. You warrant that it is not commercially insolvent, that its assets exceed its liabilities, that credit, if any, granted by MQN has not in any manner or form been extended recklessly, that it is not over indebted.
- 12.4. All natural persons contracting with MQN on behalf of a juristic person warrant that they are duly authorised to do so, and acknowledge that, in the event that they were not authorised to do so, then they shall be held jointly and severally liable for all amounts due to MQN by the juristic person.

13. INDEMNITY AND LIMITATION OF LIABILITY

- 13.1. Although we strive to provide a great service to you at all times, the Service is provided "as is". Sometimes, system downtime may occur for a variety of reasons, which may be unavoidable. We therefore do not guarantee that the Services will be always be safe, secure, accurate, free of errors or interruptions, available, fit for any purpose, not infringe any third party rights, be secure and reliable, that it will conform to your delivery timeline requirements, or correctly functioning at all times.
- 13.2. We also aren't responsible for services and features offered by third parties, even if you access them through our Service. We cannot guarantee that a service partner or third party service provider will provide their service to you accurately, timeously, expertly or fully. You agree to indemnify us fully in respect of services provided by third parties.
- 13.3. Our liability to you for any reason is limited to the full extent permitted by law. You agree to indemnify us for any lost profits, revenues, information or data; consequential, special, indirect, exemplary, punitive, or incidental damages arising out of or related to this Agreement.

- 13.4. We (including any third party for which we are responsible) will not be responsible for any loss resulting from, *inter alia*: any circumstances beyond our control, cybercrime, mistakes, omissions, uncontrollable natural forces in operation, strikes or labour disputes, riot, civil commotion or unrest, any type of restriction imposed (or action taken) by a government or statutory authority or any other third party; any Service interruption, delay, power cuts, failure or malfunction in any equipment, electronic data terminal, network or other system.
- 13.5. We do not warrant or guarantee the information transmitted by use of the Services will be preserved or sustained in its entirety, will be suitable for any intended purpose, will be free of inaccuracies or defects or bugs or viruses of any kind, and will not contravene the laws of a particular country.
- 13.6. To the fullest extent permitted by law, we also disclaim all warranties be they explicit or implied, including but not limited to implied warranties of fitness for a particular purpose, title, and non-infringement.
- 13.7. Our liability to you shall be limited to an amount equivalent to the proportionate fixed monthly charge you paid for the Services, during the month in which such liability arises.

14. CANCELLATION AND TERMINATION

- 14.1. We may suspend, cancel, vary or terminate this agreement or any part of this Agreement or the Services without liability to you if the services provided by third parties to us (or our access thereto) are affected, suspended or cancelled.
- 14.2. You may not cede or transfer any of your rights or obligations (duties) in this Agreement without our prior written consent.
- 14.3. We may close your Account by written notice to you.
- 14.4. We need not give you notice in the following circumstances and may close your Account immediately if we:
 - 14.5. believe or suspect it is being used fraudulently, negligently, unlawfully, or for money laundering activities, or the financing of terrorist and related activities;
 - 14.6. believe or suspect that your Operation of the Account directly or indirectly benefits a Sanctioned Entity;
 - 14.7. are notified that you are a Sanctioned Entity; or
 - 14.8. must do this for any other legal reasons.
- 14.9. If we close your Account, we may claim repayment of any money that you owe us. You must pay any amounts owing to us by the date in the Termination Notice.
- 14.10. Notwithstanding termination of this agreement, you shall be liable to pay for all good and services used until we disconnect them.
- 14.11. If you cancel this agreement before the end of the Initial Term, then you shall be liable to pay a cancellation fee equal to the sum of the number of months left before the end of the Initial Term, multiplied by the monthly fee, which you acknowledge to be a reasonable fee for early cancellation.

15. BREACH

- 15.1. Should either Party commit a breach of any provisions of this agreement and fail to remedy such breach within 5 days of receiving written notice from the aggrieved Party requiring it to remedy the breach, then the aggrieved Party shall be entitled, without prejudice to its other rights in law, to cancel this agreement or to claim specific performance without prejudice to its right to claim damages.

- 15.2. If you fail to pay any amount under this agreement on due date, then we shall be entitled without prejudice to any of our rights to suspend the Services in whole or in part, and to render the system providing the Services inoperable.

16. DEFINITIONS

- 16.1. **"Agreement"** – These terms and conditions are read together with the schedule of the face hereof;
- 16.2. **"Business Day"** means 08:00 to 17:00 on Monday to Friday, but excludes Saturday, Sunday and a day which is an official public holiday in South Africa;
- 16.3. **"Business Hours"** means the hours between 08:00 and 17:00 on a Business Day;
- 16.4. **"Call tariff"** - The tariffs charged by MQN in respect of local, national, international and mobile calls made and constituting part of the services;
- 16.5. **"CPA"** means the Consumer Protection Act, 2008;
- 16.6. **"Day"** means a calendar day;
- 16.7. **"ECT Act"** means the Electronic Communications and Transactions Act, 2002;
- 16.8. **"Equipment"** means any device, equipment or hardware used to access the services or used in conjunction with the services;
- 16.9. **"ICASA"** means the Independent Communications Authority of South Africa;
- 16.10. **"Juristic Person"** means a company or close corporation and includes a body corporate, partnership, association or trust;
- 16.11. **"MQN", "we", "us" and "our"** means Managed Quality Networks (Pty) Ltd, Registration Number;
- 16.12. **"NCA"** means the National Credit Act, 34 of 2005;
- 16.13. **"Network"** – Internet or telecommunications networks operated by network operators;
- 16.14. **"Network Operator"** – Refers to data and Voice carriers that MQN directly or indirectly interconnects with;
- 16.15. **"RICA"** means the Regulation of Interception of Communications and Provision of Communication Related Information Act, 2002;
- 16.16. **"Services"** – means the services we provide to you, including but not limited to services or products that provide (or include) internet services, including but not limited to, any service providing access to the internet or using internet protocols, any hosting services (data/content hosting, server hosting, web hosting, e-mail services, or any other services provided over our network or the internet, voice and data services);
- 16.17. **"Subscriber", "you" or "your"** means a user of any of our products or services, and includes the Surety;
- 16.18. **"Surety"** means the natural person who signs surety for the person contracting with us;
- 16.19. **"Website"** means www.mqn.co.za;
- 16.20. **"Written notice/in writing"** means notification in any tangible or electronic or printed form including email messages.
- 16.21. **"Uncontrollable Event"** means (including without limitation) any fire, flood, earthquake, elements of nature or acts of God, riots, civil disorders, rebellions or revolutions in any country or any other cause beyond the reasonable control of MQN including the termination or suspension of a service or product provided by a third party suppliers, that may result in a delay or a failure to provide any product or service; and
- 16.22. **"VAT"** means Value Added Tax as provided for in the Value Added Tax Act, 1991;

- 16.23. **“Voice traffic”** means all local, national, international and mobile voice or data calls routed through the Network;
- 16.24. **“VOIP”** means Voice Over Internet Protocol.

17. INTERPRETATION

- 17.1. The headings of the paragraphs are for the purposes of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this agreement or any paragraph hereof.
- 17.2. Unless a contrary intention clearly appears, words importing –
- 17.3. any one gender include the other gender;
- 17.4. the singular includes the plural and vice versa; and
- 17.5. natural persons include created entities (corporate or unincorporated) and the State and vice versa.
- 17.6. Unless the context clearly indicates otherwise, the terms defined herein shall throughout this agreement have the meanings assigned to them, and cognate expressions shall have corresponding meanings. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive provision of this agreement.
- 17.7. Where any term is defined within the context of any particular paragraph in this agreement, the term so defined, unless it is clear from the paragraph in question that the term so defined has limited application to the relevant paragraph, shall bear the same meaning as ascribed to it for all purposes in terms of this agreement.
- 17.8. A reference to “this/the agreement” includes all Annexures and Schedules. Except where the contrary is indicated, any reference in this agreement to this agreement or any other document shall be construed as a reference to this agreement or the relevant document as amended, varied, novated or supplemented.
- 17.9. Any reference in this agreement to “date of signature” shall be read as meaning a reference to the date of the last signature to this agreement.
- 17.10. The use of the word “including”, “include” or any derivative thereof followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 17.11. When any number of days are 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 Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
- 17.12. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail unless the context clearly indicates otherwise.
- 17.13. A reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any rules, regulations or notices issued under that legislation or legislative provision.
- 17.14. The parties agree that the validity, interpretation and/or enforcement of this agreement will be governed by the laws of the Republic of South Africa.
- 17.15. The rights, powers and remedies provided in this agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this agreement unless such rights, powers or remedies are expressly excluded.

- 17.16. 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 paragraphs themselves do not expressly provide for this.

17.17. The rule of construction that the contract shall be interpreted against the Party responsible for the drafting or preparation of the agreement, shall not apply.

17.18. Should any Annexures or Schedules attached to this agreement deviate from or be at variance with the provisions of the main part of the agreement, the latter shall prevail unless specific reference is made to such deviation on the said Annexure or Schedule citing the paragraph of the main part of the agreement that is amended by such deviation.

18. GENERAL

- 18.1. The Parties choose their respective *domicilium citandi et executandi* for all purposes in connection with this agreement at the physical addresses and email addresses set forth on the face hereof.
- 18.2. The agreement constitutes the entire agreement between the parties in regards to the subject matter thereof. Neither party shall be bound by any representation, express nor implied term, promise or the like not recorded herein or reduced to writing and signed by the parties or their representatives. No addition or variation of this agreement shall be of any force or effect unless in writing and signed by or on behalf of the parties.
- 18.3. No indulgence that we may grant to the subscriber shall constitute a waiver of any of our rights.
- 18.4. South African law shall apply to this Agreement.
- 18.5. Should any provision of this agreement, or part thereof, be invalid, then it shall be severable from the rest of the agreement, without invalidating the rest of this agreement.
- 18.6. The parties consent to the jurisdiction of the Magistrate’s Court in terms of section 28 of the Magistrates Court Act 32 of 1944, notwithstanding that any amount in dispute may exceed the monetary jurisdiction of said court; and provided that MQN shall be entitled to elect to proceed in the High Court at its sole discretion.
- 18.7. In the event that MQN institutes legal action in terms of this agreement, the Subscriber agrees to be liable for MQN’s legal costs on the attorney-and-own-client scale.
- 18.8. Neither party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.
- 18.9. No addition to, variation, or agreed cancellation of this agreement shall be of any force or effect unless in writing and signed by or on behalf of the parties.
- 18.10. The relevant Product/Service Specific Terms will apply if there is any conflict between them and the Terms in this agreement.
- 18.11. If MQN is prevented or restricted directly or indirectly from carrying out all or any of its obligations under this agreement due to any reason or cause beyond their control of MQN or by reason or *force majeure*, MQN shall be relieved of their obligations in terms of this agreement during such period.