

## 1 INTERPRETATION AND MEANINGS OF CERTAIN WORDS AND PHRASES

- 1.1 Words importing the singular shall include the plural and vice versa.
- 1.2 Words denoting persons shall include natural human beings, legal entities and unincorporated associations of persons, and vice versa.
- 1.3 The headings in these terms and conditions shall not affect their interpretation.
- 1.4 In this Agreement, unless inconsistent with the context or expressly stated otherwise, the following words and phrases, when used in the title case, shall have the following meaning and similar terms and expressions shall have equivalent meanings:
  - 1.4.1 “**Affiliate**” of a Party shall mean a company or other legal entity which controls, is controlled by, or is under common control with such Party, but any such company or other legal entity shall be deemed to be an Affiliate only as long as such control exists, and for the purposes of this definition, "control" shall mean direct or indirect ownership of more than fifty percent (50%) of the voting rights of the controlled or commonly controlled entity;
  - 1.4.2 “**Anticipatory Charges**” are charges levied to recover the amounts that Qwert would have billed for the duration of a Fixed Term Agreement if such agreement had run its full term;
  - 1.4.3 “**Activation Date**” means when a Service is configured and made available to the Customer;
  - 1.4.4 “**Applicable Law**” means any of the following to the extent that it applies to the provision of the Services:
    - a) any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time.
    - b) the common law;
    - c) any binding court order, judgment or decree;
    - d) any applicable industry code, policy or standard enforceable by law;
    - e) any relevant direction, rule, pronouncement, policy or order a regulator gives;
  - 1.4.5 “**Business Day**” means Monday to Friday, excluding Saturday, Sunday or a public holiday as defined under the Public Holidays Act, 36 of 1994;
  - 1.4.6 “**Consumer**” means a Customer who is a consumer as defined in the CPA. “**Individual Consumer**” means a Consumer who is a natural person;
  - 1.4.7 “**Contract**” means collectively, the documents with headings ‘Subscriber Agreement’, and ‘General Terms and Conditions’, together with any Product Terms concluded between Customer and Qwert;
  - 1.4.8 “**CPA**” means the Consumer Protection Act, 68 of 2008 and regulations published in terms thereof, as amended or replaced from time to time;
  - 1.4.9 “**Commencement date**” means the date when Qwert has accepted and processed the Subscriber Agreement or notified the Customer that it has agreed to provide the Customer with the Services set out in a Subscriber Agreement;
  - 1.4.10 “**Customer**” means the person described in the Subscriber Agreement;
  - 1.4.11 “**Customer Equipment**” means the equipment used with the Services but not managed by Qwert;
  - 1.4.12 “**Customer Portal**” any Qwert approved extranet(s) or system(s) with web-based access (or a combination thereof) where Customer and its authorised employees, agents and representatives may access to, amongst other things and where applicable:
    - a) view measurement data of selected Services;
    - b) have access to control panels and management interfaces to provision, upgrade, downgrade, increase, decrease (in general to manage) the Services;
    - c) process termination of Services;
  - 1.4.13 “**Due date**” means the date on which any amounts owed by Customer to Qwert in respect of the Services become due and payable, as reflected on Qwert’s invoice;
  - 1.4.14 “**Fixed Term Agreement**” refers to a Subscriber Agreement in terms of which the provision of Services is for a duration greater than one month;
  - 1.4.15 “**General Terms**” means these general terms and conditions without the Subscriber Agreement, or the Product Terms, but including any addendum to these terms;
  - 1.4.16 “**Initial Period**” means the number of months applicable to the Fixed Term Agreement, excluding any Renewal Period;
  - 1.4.17 “**Interest Rate**” means an annual rate equal to 5% above the prime lending rate charged by Qwert’s bankers, calculated daily and capitalised monthly;

- 1.4.18 “**Managed Service Equipment**” means equipment managed by Qwert in the provision of the Service;
  - 1.4.19 “**Office Hours**” means 8h00 to 17h00 on Business Days;
  - 1.4.20 “**Parties**” means Qwert and the Customer and “**Party**” means either Qwert or Customer, as the context requires;
  - 1.4.21 “**Personal Information**” shall have the meaning ascribed to it in POPIA;
  - 1.4.22 “**POPIA**” means the Protection of Personal Information Act, 4 of 2013;
  - 1.4.23 “**Processing**” shall have the meaning ascribed to it in POPIA and “**Process**” shall have an equivalent meaning;
  - 1.4.24 “**Product Terms**” means the specific terms and conditions applicable to Services provided to the Customer and incorporated into the relevant Subscriber Agreement;
  - 1.4.25 “**Renewal Period**” means a period of 12 (twelve) months, which period will start on the day following the last day of the Initial Period;
  - 1.4.26 “**Services**” means the Services as listed in a Subscriber Agreement, and where applicable, includes use of the Managed Service Equipment;
  - 1.4.27 “**Software**” means any computer program made available by Qwert for the Customer’s use, either through Qwert acting as a principal, agent or distributor of the Software licensor. Software may be embedded into Managed Service Equipment, supplied as a stand-alone application, or accessed via the internet or other web browsing method;
  - 1.4.28 “**Subscriber Agreement**” means the document describing the Customer, the Services to be provided, and other administrative data;
  - 1.4.29 “**Qwert**” means Qwert Telecommunications (Pty) Ltd, Registration number 2011/000797/07, a private company incorporated in terms of the laws of the Republic of South Africa; and
  - 1.4.30 “**Qwert Systems**” means electronic monitoring and management systems used by Qwert in the provision of the Services.
- 1.5 When several days are provided between the happening of one event and another, the number of days must be calculated by: -
- 1.5.1 excluding the day on which the first such event occurs;
  - 1.5.2 including the day on or by which the second event is to occur; and
  - 1.5.3 excluding any day that is not a Business Day.
- 1.6 In the event of a conflict between a Subscriber Agreement, Product Terms or the General Terms, the dispute shall be resolved by applying the following order of preference:
- 1.6.1 A Subscriber Agreement; thereafter
  - 1.6.2 Product Terms; thereafter
  - 1.6.3 General Terms.

## 2 NATURE OF THE GENERAL TERMS AND CONDITIONS

- 2.1 These General Terms govern the provision of the Services and the relationship between Customer and Qwert. They are supplemented by Subscriber Agreements and Product Terms applicable to the Services subscribed for by the Customer.
- 2.2 Each separate Subscriber Agreement entered into between the Parties, shall constitute a distinct and separate contract incorporating (i) these General Terms and (i) any associated Product Terms (collectively the “**Contract**”).
- 2.3 These General Terms shall apply from the date on which the Customer first subscribes for any Qwert Services and shall continue for as long as Qwert provides Services to the Customer in terms of any Contract.
- 2.4 If Qwert and Customer conclude multiple Subscriber Agreements but only one set of General Terms, then that set of General Terms will apply to all Subscriber Agreements, regardless of whether or not the system-generated contract numbers on the documents are the same.
- 2.5 If Qwert and Customer concludes multiple Subscriber Agreements, each with its version of General Terms, then the General Terms will apply only to the relevant Subscriber Agreement as evidenced by the system-generated contract number.
- 2.6 Notwithstanding the provisions of clauses 2.2 and 2.3, and any provisions relating to duration, suspension and/or termination contained in General Terms or a Subscriber Agreement, where any particular Subscriber Agreements are interlinked to such a degree that the termination or suspension of the one will result in fulfilment of the other becoming impaired or impossible, Qwert shall be entitled to terminate or suspend, as the case may be, such other Subscriber Agreement(s).

## 3 DURATION, RENEWAL AND TERMINATION FOR CONVENIENCE

### 3.1 Commencement and duration of Subscriber Agreements, billing start dates and renewal

- 3.1.1 Each Subscriber Agreement will become binding on the Parties on its Commencement date. It will continue to be binding on each Party until the end of the Initial Period or any Renewal Period unless the Subscriber Agreement is terminated earlier by either of the Parties for cause on the grounds set out in the Contract.
- 3.1.2 The Initial Period of each Subscriber Agreement will commence on the Activation Date of the Service.
- 3.1.3 If Customer is a juristic person, then Customer must:
  - a) give Qwerti written notice of its election not to renew the Fixed Term Contract at least 90 (ninety) days before the expiration of the Initial Period; or
  - b) conclude a revised Subscriber Agreement prior to the expiry of the Initial Period, failing which the agreement shall automatically renew for the Renewal Period.

### 3.2 Cancellation or variation of the Services before the Activation Date

- 3.2.1 Qwerti will have the right to charge the Customer Anticipatory Charges, which shall be payable by the Customer on demand, if prior to the Activation Date of a Subscriber Agreement:
  - a) the Customer cancels or varies any of the Services before the Activation Date for any reason other than a breach on the part of Qwerti; or
  - b) Qwerti terminates the Subscriber Agreement for cause.

### 3.3 Termination of a Fixed Term Agreement by an Individual Consumer for no cause

- 3.3.1 Where an Individual Consumer has concluded a Fixed Term Agreement, the Individual Consumer will have the right to terminate the Fixed Term Agreement, for no particular reason or cause, at any time, provided the Individual Consumer gives Qwerti at least 20 (twenty) Business days written notice of its election to terminate the Fixed Term Agreement (a "Termination Notice"). Such termination will be subject to payment of a reasonable cancellation fee that will be determined and calculated when the notice to terminate is given by the Individual Consumer, using the guidelines set out under section 14 and regulation 5(2) of the CPA. Unless otherwise determined in any relevant Product Terms, such cancellation fee shall equal the value of the Anticipatory Charges.
- 3.3.2 On receipt of a Termination Notice, Qwerti will advise the Individual Consumer of the amounts which are still owed to it, being all the arrear amounts owing to Qwerti in terms of the Fixed Term Agreement up to date of termination, and the cancellation fee. The Individual Consumer will pay Qwerti such amounts by the Due Date.

### 3.4 Early cancellation of the Services

- 3.4.1 Where the Customer cancels a Subscriber Agreement before the end of the Initial Period or any Renewal Period in progress, for any reason other than a breach on the part of Qwerti, or Qwerti terminates the Subscriber Agreement for cause, then Qwerti will have the right to charge the Customer Anticipatory Charges, which shall be payable by the Customer on demand.

## 4 INSTALLATIONS AND PROVISION OF THE QWERTI SERVICES

### 4.1 Installation of Services, Managed Service Equipment, Customer Equipment, and use of unauthorised devices

- 4.1.1 Unless agreed to the contrary in a Subscriber Agreement, the Services exclude any required Customer Equipment. The Managed Service Equipment and, where applicable, the Customer Equipment will be leased or sold to the Customer at the prices, fees or rates set out in the Subscriber Agreement.
- 4.1.2 Where Customer has agreed to purchase Customer Equipment from Qwerti, Customer shall not be entitled to withhold payment for the purchase of such Customer Equipment for trivial reasons.
- 4.1.3 If the Customer requests that an installation be attended to outside of Office Hours, Qwerti may, if it can perform such after-hours work, charge an after-hours maintenance charge on a time-and-material basis as determined by Qwerti from time to time.
- 4.1.4 If no conduit-pipes are available for Qwerti's use in any building where Qwerti must install Services requiring conduit pipes, Qwerti may, at its discretion:

- a) refuse to provide the Services in that building or any part thereof until such conduit pipes or other facilities have been so installed; or
  - b) quote an installation cost for the required conduit pipes, and if accepted by the Customer, install the required conduit pipes or other facilities at the Customer's expense.
- 4.1.5 Qwerti's duty to install the Managed Service Equipment or Customer Equipment will terminate once the Managed Service Equipment or Customer Equipment has been supplied and the Services are available to the Customer.
- 4.1.6 If the Customer is not the owner of the premises where the Qwerti the Managed Service Equipment is to be installed, the Customer must, at its own cost and expense, and before any installation by Qwerti, obtain written permission from the owner of such premises for any such installation. The Customer indemnifies Qwerti against any and all losses, damages or claims resulting directly or indirectly from the failure to obtain such permission.
- 4.1.7 The Customer must, at its own cost and expense, at all times provide the optimum environmental conditions required for the proper management and/or functioning of the Managed Service Equipment or Customer Equipment including but not limited to, adequate power supply, ventilation, lighting and wall/rack space.
- 4.2 Use of the Services, Managed Service Equipment, and related equipment**
- 4.2.1 The provision of any Services to the Customer does not confer on the Customer any right to resell the Services unless Customer has entered into a separate reseller agreement with Qwerti.
- 4.2.2 The Services may not be used to:
- a) knowingly create, store or disseminate any illegal content;
  - b) infringe on any third party's intellectual property rights; and
  - c) send unsolicited electronic communications.
- 4.2.3 For Qwerti to (i) ensure the provision of the Services, (ii) protect the integrity of the Qwerti Systems and (iii) manage emergencies, the Customer must for the duration of each Subscriber Agreement always:
- a) comply with any reasonable and lawful instructions issued by Qwerti concerning the Customer's use of the Services;
  - b) without delay provide Qwerti with all information relating to the Customer's use of the Services that Qwerti may reasonably require from time to time; and
  - c) allow Qwerti appropriate access to the Customer's premises during reasonable hours to install, inspect, maintain or remove Managed Service or Customer Equipment.
- 4.3 Failure and unavailability of the Services, Managed Service Equipment or Customer Equipment obtained from Qwerti**
- 4.3.1 Qwerti expressly discloses and the Customer explicitly acknowledges and accepts that:
- a) The Internet and data networks consist of multiple participating networks that are separately owned and not subject to Qwerti's control. Due to this, and to the extent that the Services require Internet connectivity, Qwerti does not warrant that the Services will be operational or uninterrupted on a 24 (twenty-four) hour 365 (three hundred and sixty-five) days per year;.
  - b) As the Customer Equipment is manufactured by third parties and not Qwerti, Qwerti will not be able to open, test or operate the Customer Equipment selected by the Customer, to ensure that it is fit for purpose and intact before being delivered to the Customer; and.
  - c) Except to the extent that the provisions of sections 54, 55 and/or 56 of the CPA apply, **Qwerti does not warrant or guarantee that the Services and/or the Customer Equipment will:**
    - be free of errors or interruptions;
    - be available;
    - be fit for any purpose;
    - not infringe on any third-party rights;
    - be secure and reliable; and
  - d) the Customer will not be allowed to withhold any amounts due and owing to Qwerti, deduct any monies, or allege a breach of contract in respect of any temporary unavailability of the Services.

4.3.2 Notwithstanding the provisions of clause 4.3.1, Qwerti will use its best endeavours where Qwerti can do so, to notify the Customer of any failure of, or interruption to the Services and, where applicable, any required maintenance and repairs which may result from such failure, interruption or unavailability.

4.3.3 Where the Managed Service Equipment or, where relevant, the Customer Equipment is defective, then in such an event, the Consumer's rights will be limited to those set out under clause 9.

#### 4.4 **Theft and Loss of Qwerti Managed Service Equipment and Customer Equipment provided by Qwerti**

4.4.1 Whenever any Managed Service Equipment or Customer Equipment purchased from Qwerti has been delivered but is not yet paid for in full is lost, stolen or destroyed, the Customer must immediately notify Qwerti in writing and report to a police station that the Managed Service Equipment and or any other Qwerti equipment has been lost, stolen, misplaced or destroyed.

4.4.2 Risk in the loss, theft or damage of the Managed Service Equipment and, where relevant, the Customer Equipment will pass to the Customer on the delivery date to the Customer's premises. Qwerti reserves the right to hold the Customer liable for the total replacement cost of the Managed Service Equipment or the relevant Customer Equipment and or any other Qwerti equipment (and where the same equipment has been discontinued, then the total replacement cost of the most comparable available equipment).

#### 4.5 **Maintenance of the Services and Managed Service Equipment**

4.5.1 Throughout the term of the relevant Subscriber Agreement, the Services, any Managed Service Equipment used by the Customer in terms of such Subscriber Agreement will be deemed to be in in good working order until Qwerti is advised otherwise.

4.5.2 Unless clauses 4.5.5 or 4.5.6 apply or expressly stated to the contrary, the costs for any repair and/or maintenance of the Services will be incurred and covered by Qwerti.

4.5.3 Qwerti will attend to faults reported by the Customer during Office hours and apply its reasonable endeavours to restore the affected Services quickly.

4.5.4 The Customer is responsible for maintaining all Customer Equipment.

4.5.5 If the Customer requests that a fault be attended to immediately and requires that repair work be carried out outside of Office Hours, Qwerti may, if it can perform such after-hours work, charge an after-hours maintenance charge on a time-and-material basis as determined by Qwerti from time to time.

4.5.6 If Qwerti determines that the fault reported by the Customer was caused by the Customer or by any Customer Equipment or by any other equipment that Qwerti has not agreed to cover, the Customer will be liable for payment of the applicable call-out charges, as determined by Qwerti from time to time.

## 5 **USE OF SOFTWARE**

5.1 The Customer shall use any Software only for its intended purposes.

5.2 The Customer shall not nor permit anyone else to reverse engineer, decompile, modify, tamper with, amend, enhance, copy, sell, lease, license, sub-license or otherwise deal with the Software or any part, variation, modification, release or enhancement thereof or have any software or any program written or developed for it based on the Software.

5.3 All rights of whatever nature in and to the Software and all upgrades, updates, modifications and variations to it from time to time shall vest in Qwerti or its licensors and no rights in and to the software, its upgrades, updates, modifications and variations to it are granted or assigned to the Customer. The Customer shall 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 Qwerti or its licensors in and to the Software.

5.4 Qwerti shall upgrade any Software provided to the Customer as stipulated in the Subscriber Agreement (and if not explicitly dealt with in the Subscriber Agreement, at its sole discretion).

## 6 **CUSTOMER PORTAL**

6.1 For the duration of the Contract, Qwerti grants to Customer a revocable, limited, non-exclusive, non-transferable right to access the Customer Portal(s).

6.2 Access to any such Customer Portal shall be through an approved User ID or other authentication mechanism provided by Qwerti to Customer ("User ID(s)).

- 6.3 Any adjustments made by Customer to Services on the Customer Portal are binding, and Customer assumes full responsibility for payment obligations arising out of any such adjustments.
- 6.4 Customer acknowledges that the documentation and information made available to the Customer through Customer Portal shall be classified as Confidential Information of Qwerti and, as such, disclosure and use of such documentation and information shall be governed by the terms of this Contract relating to Confidential Information.
- 6.5 The Customer shall take all necessary steps to maintain the security and integrity of all User IDs at all times.
- 6.6 Customer shall inform Qwerti if Customer has any reason to believe that a User ID has or is likely to become known to someone not authorised to use it or is being or is expected to be used in an unauthorised way.
- 6.7 Qwerti reserves the right to suspend a User ID if at any time Qwerti reasonably considers, after consulting with Customer whenever practicable, that there has been or is likely to be a breach of security in respect of a User ID. Qwerti may issue a replacement User ID or cease the suspension thereof when Qwerti is satisfied that the breach of security or threat of breach of security has been resolved.
- 6.8 Customer understands that Qwerti may replace User IDs periodically to prevent unauthorised access to Customer Portal, and Customer will appoint an employee to whom Qwerti may communicate any such replacement User IDs.

## 7 GENERAL OBLIGATIONS OF EACH PARTY

- 7.1 In addition to its obligations as set out in the rest of these General Terms, Qwerti undertakes to:
  - 7.1.1 adhere to the Applicable Law;
  - 7.1.2 deal with Customer employees and designated contractors in a courteous, respectful and professional manner and not in any manner act in an abusive way; and
  - 7.1.3 exercise the reasonable skill and care of a competent provider of the Services.
- 7.2 In addition to the Customer's specified obligations as set out in the rest of these General Terms, Customer undertakes that it, or where relevant, its employees will:
  - 7.2.1 adhere to the Applicable Law;
  - 7.2.2 deal with Qwerti employees and designated contractors in a courteous, respectful and professional manner and not in any manner act in an abusive way;
  - 7.2.3 allow Qwerti full access to all networks, Customer Equipment and Managed Service Equipment (the "Customer Environment");
  - 7.2.4 not make any changes to the Customer Environment; and
  - 7.2.5 raise any issues it is experiencing through a trouble ticket using the relevant telephonic, email or online facilities and provide Qwerti with any pertinent information it may require to resolve the trouble ticket.

## 8 CHARGES AND PAYMENT

- 8.1 In return for the supply of and access to the Services, the Customer agrees and undertakes to pay Qwerti the Charges.
- 8.2 **Billing**
  - 8.2.1 Qwerti will periodically provide the Customer, usually monthly, with a statement and an invoice for the amounts payable by the Customer. Statements and invoices will be sent to the Customer by email.
  - 8.2.2 Where there is an event which prevents an accurate determination of the number of units on which variable charges are determined for a billing period, the charges for the period in question shall be set as the average for the preceding 6 (six) billing periods (or lesser billing periods if the Services have been provided for a shorter time).
  - 8.2.3 Each invoice sent by Qwerti to the Customer shall on the face of it, and until the contrary is proven, be proof of the amount due by the Customer to Qwerti. The Customer is, however, entitled to query or dispute any part of the invoice per the provisions set out under clause 12. However, all undisputed portions of the invoice must be paid by the Due date.
  - 8.2.4 If Qwerti determines that the disputed amount is in error, Qwerti shall credit the amount incorrectly debited. Should Qwerti determine and inform the Customer that the disputed amount was billed correctly, such payment, together with interest at the Interest Rate, shall be paid by no later than the Due date of the next invoice.

## 8.3 Payments

- 8.3.1 Unless Qwerti expressly agrees to the contrary in writing, invoices are payable on presentation through a monthly debit order or using a credit card. The first Services invoice is issued upon the Activation Date and payable on presentation.
- 8.3.2 Invoices and statements are available for download on the Customer Portal. Non-receipt of an invoice by the Customer shall, therefore, not be considered a valid reason for late or non-payment.
- 8.3.3 The Customer shall be liable and responsible for payment until payment has been received into Qwerti's bank account.
- 8.3.4 The Customer shall be in breach of the relevant Subscriber Agreement by cancelling any debit order in respect of such Subscriber Agreement without the prior written consent of Qwerti or where any debit order is returned unpaid or stopped or should any charge card account or credit card account of the Customer be rejected. In such a case, Qwerti will have the right to suspend the Customer's account in respect of all Subscriber Agreements, until such arrears amounts and interest have been received and paid in full.

## 8.4 Changes to Charges

- 8.4.1 Qwerti shall be entitled to increase any of the amounts reflected in the Subscriber Agreement, which increase will be relative to the Consumer Price Index. Increases linked to the Consumer Price Index usually are done once per year between January and April.
- 8.4.2 If there is a price increase on components of the Services beyond the control of Qwerti (for example, foreign exchange fluctuations, increased pricing on third-party products or services like software license fees, surcharges, taxes, import duties, rates or levies, increased charges from other network operators or delay caused by any instruction of Customer), then Qwerti shall be entitled to increase the Charges of the affected Services in proportion to the increase in cost.
- 8.4.3 Notice of any increase per clauses 8.4.1 and 8.4.2 will be given to the Customer in writing.

## 8.5 Unpaid accounts – Suspension of Services

- 8.5.1 Where any amounts due to Qwerti by the Customer are not paid by the Due date, Qwerti shall give the Customer 7 (seven) days' notice to pay all arrears/outstanding amounts and start charging interest at the Interest Rate.
- 8.5.2 If the Customer's account remains unpaid or no written agreement is concluded to settle the arrears, Qwerti shall be entitled to suspend the Services. The suspension will stay in place until the Customer has paid all arrear amounts, interest and any applicable reconnection charges or the relevant Subscriber Agreement is terminated by Qwerti.
- 8.5.3 If the Customer's account is in arrears, Qwerti shall be entitled to suspend all Services linked to the Customer's account, regardless of whether the suspended Services are delivered according to multiple Subscriber Agreements or not.

## 8.6 Credit Limit and payment terms

- 8.6.1 Qwerti reserves the right to impose a monetary limit on the maximum value of Charges incurred by the Customer during each billing period, and Qwerti shall be entitled after the Customer has been given 20 (twenty) days' notice of such overspend to which the Customer has not responded, to suspend the Services should the Customer exceed the maximum amount.
- 8.6.2 Should Qwerti and Customer have agreed on payment terms that are different to those set out in clause 8.3 and Qwerti has had to provide Customer with a notice in terms of clause 8.5.1 twice or more in any rolling 12 (twelve) calendar month period, then Qwerti shall be entitled but not obliged to revert to the default payment terms set out in this clause 8 by giving notice to the Customer.

## 9 SUSPENSION, WITHDRAWAL OR TERMINATION OF THE SERVICES

- 9.1 Qwerti may from time to time, and on notice where this is possible, suspend the Services and the right to use any Managed Service Equipment, or in its discretion, disconnect the Managed Service Equipment from the Qwerti Systems in any of the following circumstances:
  - 9.1.1 for routine maintenance, modifications to, or unplanned maintenance of the Qwerti Systems and/or any other systems involved in the delivery of the Services;
  - 9.1.2 to mitigate against fraudulent or suspected fraudulent use of the Services;

- 9.1.3 per clause 8.5 or 8.6.1 above;
- 9.1.4 because of problems on third parties' infrastructure which are affecting or disrupting the Qwerti Service, or reasonably expected to do so;
- 9.1.5 where the Customer is abusing the Services or any portion thereof; and/or
- 9.1.6 where the Services or Managed Service Equipment is found to contain a security risk or shortcoming which does or might enable the Customer to exploit the Services to the detriment of Qwerti.
- 9.2 The Customer accepts that:
  - 9.2.1 Qwerti's right to suspend the Services is necessary to maintain the quality of Services, the integrity of the Qwerti Systems, and to protect the interests of both the Customer and Qwerti; and
  - 9.2.2 it will remain liable for all Charges which may be levied by Qwerti during the period of suspension.
- 9.3 Qwerti may, from time to time, on notice where this is possible, and without prejudice to any other claims or remedies which Qwerti may have in terms of the Contract or in law, discontinue and/or terminate any part of the Contract, or in its discretion disconnect the Managed Service Equipment from the Qwerti Systems in any of the following circumstances:
  - 9.3.1 where the Services or Managed Service Equipment has reached the end of its lifespan and is uneconomical to maintain or continue;
  - 9.3.2 where there has been an insignificant interest in the use of the Services or any part thereof;
  - 9.3.3 in response to an instruction from a law enforcement agency or any authority competent to issue such instruction;
  - 9.3.4 if the Customer has received the Services because of fraud or misrepresentation;
  - 9.3.5 if the Customer makes or offers to make any arrangement or composition with its creditors or commits any act of insolvency in terms of the Insolvency Act or any other applicable legislation;
  - 9.3.6 if the Customer is using or permitting the use of the Service or any element thereof for any illegal purpose or in contravention of Applicable Law;
  - 9.3.7 for any other reason incidental to 9.3.1 - 9.3.6 inclusive.

## 10 BREACH AND TERMINATION

- 10.1 Should the Customer breach:
  - 10.1.1 its payment obligations and have been suspended for non-payment for a period longer than 7 (seven) days; or
  - 10.1.2 any other term of a Subscriber Agreement, Product Terms or these General Terms and fail to rectify the breach within the notice period provided by Qwerti (which shall be a reasonable period given the circumstances of the breach);then Qwerti will have the right to either suspend or cancel the relevant Subscriber Agreement, and any other Subscriber Agreements contemplated in clause 2.6, without prejudice to any right or remedy it has in law, and without diminishing its right to claim damages, Anticipatory Charges or early termination penalties.
- 10.2 Should Qwerti breach any material term of any Subscriber Agreement(s), Product Terms or the General Terms, then the Customer will have the right to provide Qwerti with a letter notifying Qwerti of the breach and requiring that it be remedied within a period of 20 (twenty) Business Days (or such alternative period as the Parties may agree in writing). Should Qwerti neglect or fail to remedy such breach timeously, then the Customer may cancel the relevant Subscriber Agreement(s) without penalty.
- 10.3 The Customer shall be liable for all costs, including legal costs on an attorney and client scale, tracing cost and collection commission incurred by Qwerti in respect of the enforcement of any obligations of the Customer in terms of this Contract.
- 10.4 Without diminishing any other claims or remedies which Qwerti may have against the Customer in terms of this Contract or law, Qwerti may terminate a Subscriber Agreement if the Customer has delayed the installation of the Services for longer than 3 (three) months, and hold the Customer liable for Anticipatory Charges incurred by Qwerti in this regard.



## 11 SUPERVENING IMPOSSIBILITY

- 11.1 Except as expressly provided otherwise under the Contract, Qwerti shall not be liable to the Customer for failure to perform any obligation because of any acts of God, government restrictions or prohibitions or any other Government act or omission, any act or default of any supplier, industrial disputes, strikes, lockouts or work stoppages of any kind or any other similar or dissimilar cause, in so far as these were not foreseeable and beyond Qwerti's reasonable control. Should any event contemplated in this clause prevent uninterrupted Services for a period exceeding four weeks, the Customer shall be entitled to terminate the affected Subscriber Agreement(s) without penalty.

## 12 CUSTOMER ASSISTANCE, DISPUTES OR COMPLAINTS

- 12.1 Technical Complaints and Billing Queries
- 12.1.1 Qwerti can be contacted for technical support and account queries at the details provided at Technical - [support@qwerti.co.za](mailto:support@qwerti.co.za) and Account Queries – [accounts@qwerti.co.za](mailto:accounts@qwerti.co.za)
- 12.1.2 If the Customer experiences any trouble with any of the Services or with the Charges, it must bring the problem to Qwerti's attention by raising a trouble ticket with Qwerti by telephone, email or in the Customer Portal. The issue will then be logged and detailed, and the Customer will be provided with a reference number.
- 12.1.3 Qwerti will use its best endeavours to attend to the trouble tickets as soon as possible, depending on the problem's complexity, nature, and resource availability.

## 13 CONSEQUENCES OF TERMINATION

- 13.1 After termination of a Subscriber Agreement or the Contract as a whole, for whatever reason:
- 13.1.1 Qwerti may, on reasonable notice and in the Customer's presence, enter the Customer's premises to remove the Managed Service Equipment which is owned by Qwerti; and
- 13.1.2 Customer will remain liable for and will pay on demand all charges and/or costs outstanding at the time of termination or accrued after that because of the termination.

## 14 LIMITED LIABILITY AND INDEMNITY

- 14.1 The Customer is responsible for maintaining the security of its internal network from unauthorised access through the Internet. Qwerti shall not be liable for unauthorised access to the Customer's network or other breaches of the Customer's network security.
- 14.2 Qwerti assumes no responsibility for the integrity, correctness, retention, or content of electronic data transported via the Qwerti Systems.
- 14.3 Subject to the provisions of clause 14.6 below, Qwerti shall not be liable to the Customer or to any third party for claims that arise or occur because of the Customer's use of the Services, whether such claim, action or damage is direct or indirect, consequential or contingent. Except as required by law, Qwerti shall not be liable for any loss of life; injury; medical expenses; support; financial loss or financial support; loss of earnings; loss of profit and/or income; loss of revenue; loss of business or goodwill; any other special damages; or any general damages – regardless of whether it was foreseeable or flowed naturally from the use of the Services.
- 14.4 Qwerti's maximum liability to the Customer for any proven, direct damages caused solely by the negligence of Qwerti shall be limited to an amount equal to three (3) months of the most recent annuity billing.
- 14.5 Customer indemnifies Qwerti against any claim or action brought by any third party arising from Customer's use of the Services.
- 14.6 Where a Consumer suffers any loss or damages because of the use of the Qwerti Service, the Consumer, in this case, will be allowed to avail itself to the provisions housed under section 61 of the CPA but subject always to the defences and exceptions permissible and available to Qwerti and its service providers under section 61 of the CPA.
- 14.7 The limitation on liability set out above is in addition to any limitation of liability set out elsewhere under the Contract.

## 15 PROCESSING OF PERSONAL INFORMATION, RIGHTS TO PRIVACY

- 15.1 Qwerti reserves the right to make general credit reference enquiries about the Customer and to check the correctness of the information that has been supplied. Qwerti shall also be entitled to furnish any information relating to the Customer's account and compliance with the Contract to any registered credit bureau.
- 15.2 The Customer warrants and represents that all information it supplies is accurate, correct and complete.
- 15.3 The Customer acknowledges that Qwerti may share data, including but not limited to Personal Information of the Customer ("Customer Data"), with its Affiliates, subcontractors and the persons specified in its Privacy Policy ("Permitted Persons") to enable the performance of the Services ("Permitted Purpose").
- 15.4 Qwerti undertakes to and shall procure that its Permitted Persons Process the Customer Data for the Permitted Purpose only, or otherwise with written consent of the Customer, or as may be required or permitted by law.
- 15.5 If disclosure of the Customer Data is required by law, Qwerti shall notify the Customer before making any such disclosure unless such prior notification is not reasonably practicable or is not permitted by applicable laws.
- 15.6 In respect of any Customer Data, Qwerti warrants and undertakes that:
  - 15.6.1 it shall comply with Qwerti's Privacy Policy;
  - 15.6.2 it shall only Process the Customer Data for the Permitted Purpose (other than to comply with any applicable laws to which Qwerti is subject);
  - 15.6.3 it shall have in place appropriate technical and organisational security measures to protect the Customer Data and to prevent the damage to, unauthorised destruction to and unlawful Processing of Customer Data;
  - 15.6.4 it shall restrict access to Customer Data to employees, individuals, subcontractors or agents who are appropriately authorised to Process such Customer Data and who, by their office or binding contract, are subject to appropriate confidentiality obligations;
  - 15.6.5 it shall retain and delete Customer Data in the manner outlined in clauses 15.7 to 15.10;
  - 15.6.6 it shall not transfer or permit the transfer of Special Personal Information (as defined in POPIA) or Personal Information relating to children to, or access to from, a country or territory outside of South Africa, that does not have adequate data protection laws similar to the provisions of POPIA, without first obtaining prior authorisation from the relevant data protection authority, where required;
  - 15.6.7 it shall not transfer Customer Data outside of South Africa to recipients in locations that do not have adequate data protection laws, unless there is a justification under POPIA to do so and subject to obtaining prior authorisation from the Information Regulator in circumstances where required; and
  - 15.6.8 it shall comply with all applicable data protection laws in relation to the Personal Information.
- 15.7 It is recorded that Qwerti shall only subcontract its Processing of any Personal Information contained in the Customer Data to a Subcontractor by way of a written agreement with such Subcontractor which imposes the same obligations on the Subcontractor as are imposed on Qwerti in this Contract. Where the Subcontractor fails to fulfil its data protection obligations under such written agreement, Qwerti shall remain fully liable to Customer for performing the Subcontractor's obligations.
- 15.8 The Customer agrees that, unless otherwise requested by it in writing for Qwerti to delete the Customer Data, Qwerti shall retain Customer Data subject to appropriate security safeguards being implemented to safeguard the information from unauthorised access or destruction.
- 15.9 The Customer agrees that, apart from information being deleted by the written request contemplated in clause 15.8, the Customer Data may be retained by Qwerti.
- 15.10 Subject to applicable laws, Qwerti agrees that it shall delete, de-identify, or hand over any of the Customer Data in its possession or control by such date as specified in the written request by the Customer requesting the deletion or handing over of such information or a such later date which is reasonable and practicable in the circumstances, together with written confirmation that no copies of such information remain in its possession, unless Qwerti is required or permitted to retain the Customer Data by Applicable Law.

## 16 NON-SOLICITATION

- 16.1 From the Commencement Date up to twelve (12) months after termination of the last Subscriber Agreement under this Contract, the Customer shall not, directly or indirectly, solicit for employment or employ any employee of Qwerti, without obtaining Qwerti's prior written consent. The term "solicit for employment or employ" shall not – subject to the balance of the provisions of this clause 16 – include any general solicitation of employment not specifically directed towards employees of the Qwerti.
- 16.2 It is anticipated that during dealings between the Parties, Qwerti may reveal to Customer specific names of sub-contractors, networks, service providers etc. ("Designated Parties"), which is proprietary, confidential information. Customer agrees not to circumvent or permit any other party or persons on their respective behalf to circumvent Qwerti in any way, manner, or form regarding any transactions, agreement or arrangement, discussions or negotiations during the term of this Agreement.
- 16.3 Customer agrees to notify Qwerti in writing of all inquiries about proposed transactions, any agreement or arrangement, discussions or negotiations from such Designated Parties. Should a Designated Party attempt to make any introductions or approach Customer directly for any sales opportunity, marketing strategy, or business relationship, Customer hereby agrees to notify Qwerti in writing immediately.

## 17 GENERAL

### 17.1 Cession, delegation, assignment:

The Customer may not cede, delegate, assign, charge, transfer or otherwise dispose of this Contract or any rights or obligations therein in whole or in part, including any Subscriber Agreement, without the written consent of Qwerti. Such consent shall be reasonable and timely. Qwerti may assign some or all of its rights and obligations hereunder to any third party of its choice, in its sole discretion, and without the Customer's consent.

### 17.2 Applicable laws and Jurisdiction:

This Contract will be interpreted and governed by the laws of South Africa.

### 17.3 Variation and Amendment:

Subject to and save where the right to amend the Contract has been mentioned explicitly under the Contract, neither Party may vary the terms of the Contract unless the other Party agrees to such variation and the variation is reduced to writing and signed by both Parties.

### 17.4 Consumer status:

Certain rights have been granted to a Customer who is a Consumer. Qwerti reserves the right to withhold any of these rights and/or resultant benefits until the Customer can prove to Qwerti, which proof may be in the form of a set of financial statements or an identity document, that it is a Consumer (and in the case of a right which it wants to exercise under section 14 of the CPA, that it is an Individual Consumer). Where the Customer cannot show that it is a Consumer or Individual Consumer, Qwerti reserves the right to reverse or call for a refund of any rights or benefits permitted under the CPA and which the Customer has unlawfully taken advantage of.

### 17.5 Customer details and changes to them:

The Customer agrees to supply Qwerti with such information, documentation and signatures that Qwerti may reasonably require at the time that a Subscriber Agreement is concluded to give effect to the payment arrangements of the Subscriber Agreement. Any subsequent changes that affect the information supplied to Qwerti, such as bank account or legal service address, must be brought to the immediate attention of Qwerti in writing.

### 17.6 Whole Contract:

The Contract contains the sole and entire record of the agreement between the Parties. No Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded in writing and signed by both Parties.

### 17.7 Indulgences:

No indulgence, leniency or extension of time which either Party ("the grantor") may grant or show to the other shall in any way prejudice the grantor or preclude the grantor from exercising any of its rights in the future. Any indulgence or the relaxing of the Contract's provisions by the grantor shall not prejudice the

right of the grantor to insist on the strict compliance by the defaulting Party of its undertakings and obligations in terms of the Contract.

**17.8 Severability:**

If any of these terms and conditions are unenforceable, the offending clauses will be severed from the remainder of the Contract, which will continue to be binding and enforceable.

## **18 LEGAL ADDRESS FOR SERVICE**

18.1 The Parties choose the addresses set out below as their chosen place to receive legal notices:

18.1.1 Qwerti at 1 Scott Street, Rutherford Estate, Waverly, Johannesburg, 2090. Notices must also be emailed to [legalnotifications@qwerti.co.za](mailto:legalnotifications@qwerti.co.za).

18.1.2 the Customer at the physical or residential address specified in the Subscriber Agreement. Where the Customer has entered into multiple Subscriber Agreements, then the physical address specified in the Subscriber Agreement most recently signed by the Customer or its authorised representative.

18.2 All notices given in terms of this Contract shall be in writing. General notices that do not commence legal proceedings shall be sufficiently provided to either Party via email or, where applicable, by any other electronic messaging service.

## **19 CANCELLATION PROCESS**

19.1 Unless Qwerti expressly agrees to the contrary in writing, Customer must cancel a Subscriber Agreement by giving at least 90 (ninety) days' advance notice to take effect at the end of the Initial Period or the Renewal Period, failing which Qwerti may charge the Customer a cancellation fee.

19.2 Cancellations must be processed through the cancellation request form in the Customer Portal, or the Customer must send a cancellation request to [cancellations@qwerti.co.za](mailto:cancellations@qwerti.co.za). The online cancellation request form will reflect the duration left for each Service and the cancellation fee (if any) for each Service. Cancellations received by email will be followed up with a quote setting out the cancellation fee (if any) for each Service.

19.3 Email cancellations must contain at least the following information:

19.3.1 The Customer's account number; and

19.3.2 The Subscriber Agreement to be cancelled as described on the Customer's invoice.

19.4 Qwerti will only be deemed to have received a cancellation notice if it has issued the Customer with written confirmation of receipt and a unique reference number. If Customer is not furnished with a unique reference number within 48 hours of transmitting its cancellation notice, Customer must escalate to [info@qwerti.co.za](mailto:info@qwerti.co.za)

19.5 Qwerti's processing of a cancellation request shall be without prejudice to its right to any claim it may have in terms of this Contract. Customer acknowledges that in many instances, cancellation of a Subscriber Agreement is not reversible and may attract financial penalties, and therefore Qwerti may delay the actual termination of the Subscriber Agreement after acknowledging receipt of a cancellation notice to communicate to Customer the consequences of termination and to allow Customer to withdraw a cancellation notice.

19.6 Customer shall remain liable for any Charges raised by Qwerti against the Customer's account after the Customer has sent Qwerti a cancellation notice that is not processed in the manner set out herein.