

STANDARD TERMS AND CONDITIONS

1. Definitions and Interpretation

- 1.1. In this Agreement, the words hereunder will have the meanings assigned to them below:
- 1.1.1 **"Acceptable Usage Policy"** means those rules laid down by Echo in regard to the use of its equipment, services and / or materials;
- 1.1.2 **"Activation Date"** means, notwithstanding the date of signature of this Agreement, the date when the Service/s is commissioned by Echo for use by the Customer irrespective of whether or not the Customer uses the Service/s
- 1.1.3 **"Agreement"** means these Standard Terms and Conditions as may be amended by Echo from time to time, and any Application Form, Schedules, Service level Agreements, upgrade/downgrade/additional service letters, Annexures and attachments hereto, or to which this agreement is attached;
- 1.1.4 **"Business Day"** means any day other than Saturday, Sunday or a public holiday officially recognized as such in the Republic of South Africa;
- 1.1.5 **"Business Hours"** means those hours between 08h00 and 17h00 on a Business Day;
- 1.1.6 **"Commencement Date"** means the date the last signatory affixes its signature to these Standard Terms and Conditions;
- 1.1.7 **"Customer"** means the Party specified as Customer on the Application Form to which these Standard Terms and Conditions are attached;
- 1.1.8 **"Customer Support Schedule"** means the schedule containing customer support information which may be obtained from Echo on request;
- 1.1.9 **"Data"** means any data, including personal information as defined in the Electronic Communications and Transactions Act, 2002, and any other applicable legislation with regard to the Services which are to be provided, supplied, stored, collected, collated, accessed or processed on behalf of the Customer by Echo;
- 1.1.10 **"Echo"** means Echo Property Xchange (Pty) Ltd with registration number 2016/303503/07 trading as Echo Service Provider, the provider of Converged Communication and Telecommunication Services.
- 1.1.11 **"Initial Period"** means the initial contract term of the Service/s, as set out in the Service Schedule hereto;
- 1.1.12 **"MRC"** or **"Monthly Recurring Charge"** means the monthly charges for the Services as set out in the applicable Service Schedule;
- 1.1.13 **"Network"** means the physical wireless or wired Network operated and made available by Echo as well as a virtual Network (using Multi Packet Label Switching or related technologies) operated and made available by Echo over its own or other Network as well as the networks of additional providers utilised for the delivery of the Services;
- 1.1.14 **"NRC"** or **"Non-Recurring Charge"** means the installation fee for the Services as set out in the applicable Service Schedule;
- 1.1.15 **"Party"** means either of the signatories to these Standard Terms and Conditions and "Parties" means both of them collectively and shall be deemed to mean, and include, their respective successors and permitted assigns;
- 1.1.16 **"Proprietary Information"** means any, and all, trade secrets and data/information of a proprietary and/or confidential nature, including data/information that the parties should reasonably have known to be proprietary or confidential;
- 1.1.17 **"Product/s"** means the product(s) which the Customer contracts Echo to provide pursuant to this Agreement;
- 1.1.18 **"PSTS provider"** means any public switched telecommunications services provider licensed to provide such services in terms of the Electronic Communications Act of 2005 as amended;
- 1.1.19 **"Service/s"** means the service/s provided by Echo as specified in the Schedules to this Agreement, including all software and equipment necessary for the provision of the Service/s;
- 1.1.20 **"Service Level Agreement"** (SLA) means, if applicable, in respect of each Service which Echo provides to the Customer, an agreement concluded between the Parties setting out, inter alia, a description of each Service, the fees payable therefor, the service levels applicable thereto and any penalty and / or award clauses which will apply as set out in the relevant SLA;
- 1.1.21 **"Service Schedule"** means the Service Specification Schedule attached hereto wherein the details and costs of the Service/s are specified;
- 1.1.22 **"VAT"** means Value-Added Tax as defined in the Value-Added Tax Act 89 of 1991.
- 1.2. The clause headings contained in this Agreement are for reference purposes only and shall not be used in the interpretation of this Agreement. Words importing any one gender include the other gender, the singular includes the plural and vice versa, and natural persons include juristic entities and vice versa.

2. Activation Date and Duration

- 2.1. This agreement shall commence on the Commencement Date and the Service/s shall commence on the Activation Date. Should the Activation Date of a Service occur after the date of signature of this agreement, nothing herein contained shall be construed so as to give either Party the right to cancel or rescind this agreement or the relevant Service before the Activation Date.
- 2.2. If at any time during the currency of the Agreement, the Customer upgrades the Service/s, then the Activation Date in respect of the Service/s as upgraded shall be the date when the upgraded Service/s first commences.
- 2.3. The duration period of each of the Service/s shall be **24 (twenty-four)** months from the Activation Date (the Initial Period).
- 2.4. Either Party hereto shall be entitled to terminate the Service/s by way of **90 (ninety)** days prior written notice of termination to be effective at the end of the Initial Period. The duration of the Service shall thereafter automatically renew for successive periods of **12 (twelve)** months each on the terms and conditions set out in this agreement and any Schedules hereto, subject to **90 (ninety)** days prior written notice of termination effective at the end of the then current **12 (twelve)** month period, and subject to an escalation in fees per clause 3 below.

3. Charges and Payment

- 3.1. All Service/s provided are to be billed as of the Activation Date. In the event of a single Service consisting of a number of components, billing will commence for each respective component of that Service as and when each component of that Service goes live.
- 3.2. Customer is responsible for and agrees to pay to Echo all fees for the Service/s specified in the Service Schedule in South African currency, without deduction or set-off of any amount of whatsoever nature or for whatsoever reason.
- 3.3. All prices specified in the Service Schedule exclude:
- 3.3.1. VAT and any other any taxes and duties including any regulatory surcharge, which Customer becomes obligated to pay by virtue of this Agreement, and
- 3.3.2. Telecommunications provider service fees, for which Customer agrees to make payment directly to the said provider on such terms as are agreed between the said provider and Customer and shall at all times be the responsibility of the Customer.
- 3.4. Invoicing will be processed and delivered in advance, and all invoices for Services shall be settled monthly within **30 days** of the date of invoice ("**Due Date**").
- 3.5. In the event of any dispute arising as to the amount or calculation of any fee or charge to which Echo is entitled, the dispute shall be referred for determination to Echo' auditors. They shall act as experts and their decision shall be final and binding on Echo and Customer. The cost of the determination shall be paid on demand by the party against whom the determination is made, or as determined by the said auditors.
- 3.6. Should Customer fail to make payment of any amount on its Due Date:
- 3.6.1. the outstanding amount shall bear interest calculated from the Due Date until the date of payment, at a rate equal to the prime overdraft rate plus two percent (2%) charged by First National Bank from time to time, monthly in arrears;
- 3.6.2. Customer will forfeit any rights it may have, under the Agreement and/or any applicable SLA, to claim service credits during the period for which payment remains in arrears; and
- 3.6.3. unless otherwise stipulated by Echo, Echo's Customer Support and Escalation process shall not apply until such time as the arrears amount is settled in full.
- 3.7. Echo shall be entitled from time to time on **30 (thirty)** days prior written notice thereof to Customer to increase the monthly fees referred to in the Service Schedule, provided that:
- 3.7.1. Echo shall not be entitled to increase the monthly fees during the first **12 (twelve)** months of this Agreement; and
- 3.7.2. Echo shall not increase the fees on more than one occasion in any subsequent **12 (twelve)** month period of this Agreement.
- 3.7.3. Percentage increase in monthly fee is linked to the Consumer Price Index (CPI).
- 3.7.4. Notwithstanding the above, should there be any materially adverse changes resulting in price increases on components of the Services, and/or Products, beyond the control of Echo, Echo shall be entitled to increase the affected pricing accordingly, by the Rand value of the increase but in proportion to the Services and/or Products provided, after reasonable written notification to Customer.

4. Customer's Obligations

- 4.1. Customer shall comply strictly with all restrictions imposed on computer networks through which any information and/or data transmitted by Customer passes.
- 4.2. Customer shall not commit nor attempt to commit any act or omission which directly or indirectly:
 - 4.2.1. damages in any way Echo's technical infrastructure or any part thereof;
 - 4.2.2. impairs or precludes Echo from being able to provide the Service/s in a reasonable and business-like manner;
 - 4.2.3. constitutes an abuse or malicious misuse of the Service/s; or is calculated to have the abovementioned effect.In such an event, should Echo incur expenses to remedy the situation, Echo reserves the right to charge the Customer the amount necessary to cover Echo's additional expenditure. Notwithstanding the above, Echo reserves the right to take any other appropriate action it may deem necessary to remedy the situation.
- 4.3. Customer is prohibited from modifying any equipment (including but not limited to router equipment) utilised by Customer to receive any of the Service/s, in any way whatsoever, including the changing of any of the settings of such equipment.
- 4.4. Customer shall at all times adhere to and ensure compliance with the Customer Support Schedule.
- 4.5. Customer shall at all times, adhere to, and ensure compliance with Echo's Acceptable Usage Policy and any rules and policies applicable to the Service/s, which will be provided to Customer upon request.
- 4.6. Under no circumstances may Customer renege from this Agreement or withhold or defer payment or be entitled to a reduction in any charge or have any other right or remedy against Echo, its partners, its servants, its agents or any other persons for whom it may be liable in law (and in whose favour this provision constitutes a *stipulatio alteri*) if Echo interrupts the Service to Customer as it would be entitled to do if Customer is in default of any of its obligations under this Agreement to Echo or in the circumstances contemplated in clause 6.4 below.
- 4.7. Customer may not at any time use the Service in contravention of any South African law. In particular, Customer undertakes to familiarize itself and ensure that it is kept continuously apprised of all South African law in force from time-to-time, which has any bearing on the Service and/or its use. Customer acknowledges that Echo has no obligation to assist Customer in this regard.
- 4.8. Customer acknowledges that the installation, setup or implementation of the Service/s may require the prior written consent from the landlord of the premises where the Services are to be installed and/or set up. In this regard, the Customer undertakes that the sole responsibility to obtain such consent rests with Customer, and Customer's failure to procure such consent shall constitute a material breach of the Agreement. The Customer warrants that there are no contractual constraints and/or impediments which will prevent Customer from procuring the required landlord consent.
- 4.9. Echo and/or its agent shall provide Customer with copies of the landlord consent forms which are required to be completed.

5. Warranties

Save as expressly set out in this Agreement, Echo does not make any representations nor gives any warranties or guarantees of any nature whatsoever in respect of the Service/s and all warranties which are implied or residual at common law are hereby expressly excluded.

6. Limitation of Liability

- 6.1. Echo shall not be liable in any way (except to the extent of applicable service credits), for any loss or damage of whatsoever nature and/or howsoever arising (including consequential or incidental loss or damage which shall include but shall not be limited to loss of property or of profit, business, goodwill, revenue, data or anticipated savings) or for any costs, claims or demands of any nature whether asserted against Echo or against Customer by any Party, arising directly or indirectly out of the Service/s, their use, access, withdrawal or suspension or out of any information or materials provided or not provided, as the case may be.
- 6.2. Subject to clause 6.1 above, the entire liability of either Party for damages from any cause related to or arising out of the Agreement, regardless of the form of action, whether in contract or in delict, will not exceed the aggregate of the fees and charges paid by Customer under this Agreement for the period of **6 (six)** months preceding the relevant Party's written notice to the other in respect of such claim or an amount of R3,000,000.00 (three million Rand), whichever is the lesser.
- 6.3. Customer hereby indemnifies Echo against and holds Echo harmless from any claim by any third party arising directly or indirectly out of access to or use of the Service/s or information obtained through the use thereof or

in respect of any matter for which liability of Echo is excluded in terms of clause 6.1 above.

- 6.4. Due to the need to conduct maintenance, repair and/or improvement work from time to time on the technical infrastructure by means of which the Services are provided, the provision of the Services may be suspended from time to time, and all liability on the part of Echo or its partners, of any loss or damage (whether direct or consequential) thereby incurred or for any costs, claims, or demands of any nature arising therefrom, is excluded, and the provisions of clause 6.1 above shall apply mutatis mutandis to such exclusion. Should the provision of the Service/s be suspended by Echo for the purpose aforementioned for a period in excess of **48 (forty-eight)** consecutive hours, Echo shall give Customer credit in an amount which represents a pro rata portion of Customer's basic monthly subscription fee for the month during which the said suspension occurred.

7. Documentation

- 7.1. Any specifications, descriptive matter, drawings and other documents, which may be furnished by Echo to Customer from time to time:
- 7.2. do not form part of this Agreement and may not be relied upon, unless they are agreed in writing by both parties hereto to form part of this Agreement;
- 7.3. shall remain the property of Echo and shall be deemed to have been imparted by it in trust to Customer for the sole use of Customer. All copyright in such documents vests in Echo. Such documents shall be returned to Echo on demand.

8. Breach

- 8.1. In the event that Customer:
 - 8.1.1. breaches any of the terms or conditions of this Agreement and fails to remedy such breach within 30 (thirty) days after the receipt of written notice from Echo; and/or
 - 8.1.2. fails to make payment of any amount due to Echo on the Due Date thereof; and/or
 - 8.1.3. commits any act of insolvency; and/or
 - 8.1.4. endeavours to compromise generally with its creditors or does or causes anything to be done which may prejudice Echo Property Xchange's rights hereunder or at all; and/or
 - 8.1.5. allows any judgement against it to remain unsettled for more than 10 (ten) days without taking immediate steps to have it rescinded and successfully prosecuting the application for rescission to its final end; and/or
 - 8.1.6. is placed in liquidation (whether provisionally or finally) or initiates business rescue proceedings or, being an individual, his/her estate is sequestrated or voluntarily surrendered;

Echo shall have the right, without prejudice to any other right, which it may have against Customer, to:

- a) suspend or terminate the Services;
- b) treat as immediately due and payable all outstanding amounts which would otherwise become due and payable over the unexpired period of the Agreement, and to claim such amounts as well as any other amounts in arrears including interest and to cease performance of its obligations hereunder as well as under any other contract with the Customer until Customer has remedied the breach; and/or
- c) cancel this Agreement;

in any event without prejudice to Echo Property Xchange's right to claim damages.

- 8.1.7. Customer shall be liable for all costs incurred by Echo in the recovery of any amounts or the enforcement of any rights which it has hereunder, including collection charges and costs on an attorney and own client scale whether incurred prior to or during the institution of legal proceedings or if judgement has been granted, in connection with the satisfaction or enforcement of such judgement.
 - 8.2. The Customer shall be entitled to cancel the provision of any particular Services where Echo materially breaches this Agreement, which results in a complete disruption and non-delivery of the relevant Services for a prolonged period of time, factoring the nature of the Customer's business. Provided that the Customer has afforded Echo at least 30 (thirty) days prior written notice to remedy any such non-delivery.
- #### 9. Intellectual Property
- 9.1. Notwithstanding anything set out in Clause 10 below, all Echo intellectual property (including, without limitation, copyright, trademarks, designs and patents) relating to or used in connection with the Service/s provided

under this Agreement shall belong to Echo. Customer undertakes that it shall at no time, have any right, title or interest in the intellectual property and agrees that it shall not (or permit any third party to) reverse engineer, decompile, modify or tamper with the equipment or software owned by Echo, or any of its third-party suppliers. Echo shall notwithstanding anything to the contrary, have no right, title or interest in any intellectual property that belongs to the Customer and/or that the Customer has the lawful entitlement to.

- 9.2. Customer warrants that it shall not use the Service/s to produce, host or present any content in contravention of any person's intellectual property rights, and in particular warrants that it shall recognize, acknowledge and use any content in accordance with any third party's intellectual property rights. Customer furthermore warrants that it has received all necessary permissions to make use of any intellectual property relating to 3rd parties.

10. Protection of Proprietary Information

- 10.1. Each Party will keep in confidence and protect Proprietary Information from disclosure to third parties and restrict its use to that which is provided for in this Agreement. Either Party acknowledges that unauthorised disclosure or use of Proprietary Information may cause substantial economic loss.
- 10.2. Each Party shall reasonably ensure that its employees comply with its obligations under this section 10.
- 10.3. This clause 10 shall survive termination or cancellation of this Agreement.
- 10.4. This Agreement does not transfer to either Party title to any intellectual property contained in any Proprietary Information of the other Party.

11. Cession and assignment

Customer shall not be entitled to cede or assign any rights and/or obligations, which it may have in terms of this Agreement to any third party unless consented to in writing by Echo. Echo shall be entitled to cede or assign any rights which it may have under this Agreement without Customer's consent.

12. Force Majeure

- 12.1. Echo shall not be liable for non-performance under this Agreement to the extent to which the non-performance is caused by events or conditions beyond the control of Echo, provided that Echo makes all reasonable efforts to perform.
- 12.2. It is expressly recorded that for purposes of this clause the following shall be considered circumstances beyond the control of Echo and the force majeure provisions shall apply: -
- 12.2.1. acts or omissions of any government, government agency, provincial or local authority or similar authority, any laws or regulations having the force of law, civil strife, riots, insurrection, sabotage, acts of war or public enemy, illegal strikes, interruption of transport, lockouts, flood, storm or fire.

13. Governing Law and Jurisdiction

This Agreement will be governed by and construed in accordance with the laws of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with South African law by a South African court having jurisdiction.

14. Domicilium Citandi Et Executandi

- 14.1. For all purposes, including but not by way of limitation, the giving of any notice and serving of any process, Customer chooses its *domicilium citandi et executandi* ("domicilium") at the physical address appearing on the application form to which these Standard Terms and Conditions are attached. Echo chooses its *domicilium citandi et executandi* ("domicilium")

at **First floor, Block B, Monte Circle, 178 Monte Casino Boulevard, Magaliessig, Sandton, 2191**. Either Party shall be entitled from time to time to vary its *domicilium* and shall be obliged to give notice to the other within ten (10) days of the said change. Any notice which either Party may give to the other shall be posted by prepaid registered post or hand delivered to the other Party's *domicilium* and shall be presumed, unless the contrary is proved by the Party to whom it is addressed, to have been received by that Party on the 10th (tenth) day after the date of posting or on the day of delivery as the case may be.

- 14.2. In addition to the above, and unless otherwise agreed in writing, any communications or notices, other than legal notices, may be sent *via* electronic correspondence. For this purpose, the parties choose the email addresses as provided in the Customer Application to which these Standard Terms and Conditions are attached.

15. General

- 15.1. No variation, amendment or consensual cancellation of this Agreement or any provision or term thereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by a duly authorized representative from both Echo and Customer.
- 15.2. The Parties acknowledge having read and understood this Agreement and are not entering into this Agreement on the basis of any representations not expressly set forth in it.
- 15.3. Neither Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the Agreement between Customer and Echo or not.
- 15.4. No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against either Party hereto in respect of its right under this Agreement, nor shall it operate so as to preclude either of the parties thereafter from exercising its rights strictly in accordance with this Agreement.
- 15.5. In the event that any provision of this Agreement conflicts with any statute, ruling or order of any governmental or regulatory body from time to time, then such provision of this Agreement shall be controlled by the statute, ruling or order.
- 15.6. Should any of the provisions of this Agreement be held to be invalid, unlawful or unenforceable, such provisions will be severable from the remaining provisions, which will continue to be valid and enforceable.
- 15.7. In the event of any expiration, termination or cancellation of this Agreement, provisions hereof which are intended to continue and survive shall so continue and survive. In particular, termination or cancellation of this Agreement shall not affect any rights or duties arising under it with respect to Proprietary Information as set out in Clause 11 above.
- 15.8. The additional terms and conditions appearing in the Schedule(s) hereto are hereby incorporated into the Agreement. In the event of any conflict between these Standard Terms and Conditions and the provisions contained in any Schedule(s) hereto, these Standard Terms and Conditions shall prevail. In respect of any conflict in respect of pricing in the Agreement or the Schedules hereto, the costs set out in the Service Schedule shall prevail.
- 15.9. These Standard Terms and Conditions, together with the Schedule(s), Service Level Agreements, upgrade/downgrade/additional service letters, Annexures and attachments hereto, constitute the whole of the agreement between Echo and Customer relating to the subject matter hereof, notwithstanding anything in Customer's inquiry, specification, acceptance, order or other documentation or discussion to the contrary.
- 15.10. The Customer hereby warrants that the Customer's asset value and/or annual turnover exceeds the threshold value as is contemplated by section 4(a)(i) of the National Credit Act 34 of 2005.