

SKYWIRE GENERAL TERMS AND CONDITIONS

SKYWIRE (PTY) LTD	and	
Registration number 2017/533027/07		
Block C Palm Office Court		
624 Kudu Avenue		
Allen's Nek		
Roodepoort		
South Africa		

(Herein referred to as "SkyWire")

(Herein referred to as the "Customer")

1 APPLICABILITY, PRECEDENCE

- 1.1 These Terms and Conditions (as defined below):
 - 1.1.1 shall govern all Quotations issued by SkyWire to the Customer;
 - 1.1.2 shall govern each Services Agreement resulting from acceptance of a Quotation;
 - 1.1.3 will only be amended or varied or cancelled or replaced or waived to the extent expressly agreed to in writing and signed by the authorised representatives of each Party;
 - 1.1.4 shall overrule any terms and conditions of contract of the Customer, unless specifically otherwise agreed between the Parties in writing.
- 1.2 If there are any discrepancies or conflict between the provisions of:
 - 1.2.1 These Terms and Conditions and any annexure/s hereto, the provisions of the annexure/s shall prevail;
 - 1.2.2 annexures hereto, the annexure with the lower number shall prevail over an annexure with a higher number;
 - 1.2.3 these Terms and Conditions including annexures and any Quotation, the provisions of the Quotation shall prevail in respect of that specific Quotation only.

2 INTERPRETATION, DEFINITIONS

In these Terms and Conditions and a Services Agreement:

- 2.1 clause headings are for reference purposes only and shall not influence the interpretation;
- 2.2 reference to one gender shall include the other genders;
- 2.3 reference to natural persons include juristic persons and vice versa;
- 2.4 reference to the singular shall include the plural and vice versa;
- 2.5 if any provision in a definition is a substantive provision conferring rights or imposing obligations on a Party, effect shall be given to it as if it were a substantive provision in the body of the Services Agreement;
- 2.6 where figures are referred to in numerals and in words, if there is any conflict, the words shall prevail;
- 2.7 all annexures shall be deemed to be incorporated therein and shall form an integral part thereof;
- 2.8 expressions defined in the Services Agreement shall bear the same meanings in annexures hereto;
- 2.9 reference to days, months or years shall be construed as Gregorian calendar days, months or years;
- 2.10 durations shall be reckoned exclusively of the first and inclusively of the last day.
- 2.11 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings:
 - 2.11.1 "**Activation Date**" means in respect of each Services Agreement, the date that the Services have been provisioned on the SkyWire Network and made available for the Customer to access, as certified in the Service Handover Form;
 - 2.11.2 "**Charges**" means, collectively, the Installation Charges, Monthly Charges, Usage Based Charges, Purchased Equipment Charges and Site Survey Charges as specified in the Quotation and as the same may be amended from time to time;
 - 2.11.3 "**Corrupt Act**" means any offence in respect of corruption or corrupt activities contemplated in the Prevention and Combatting of Corrupt Activities Act, 2004 of South Africa;
 - 2.11.4 "**Customer**" means the Party to whom SkyWire supplies the Equipment and renders the Services;
 - 2.11.5 "**Customer Premises**" will mean the premises of the Customer where the Equipment must be installed as set out in the Quotation;
 - 2.11.6 "**Equipment**" means Rental Equipment and Purchased Equipment.
 - 2.11.7 "**Initial Term**" means the initial period, as set out in a Quotation, that Services will be rendered by SkyWire to the Customer;

- 2.11.8 "**Installation Charges**" means the charges for the installation of the Equipment and provisioning of the Services on the SkyWire Network, inclusive of setup, configuration, programming and ancillary charges in relation thereto;
- 2.11.9 "**Monthly Charges**" means Rental Charges and Services Charges;
- 2.11.10 "**Parties**" means the Customer and SkyWire and "Party" means either of them;
- 2.11.11 "**Purchased Equipment**" means equipment which is sold by SkyWire to the Customer, as more fully described in the Quotation.
- 2.11.12 "**Purchased Equipment Charges**" means the purchase price of the Purchased Equipment, as set out in the Quotation and payable by the Customer to SkyWire.
- 2.11.13 "**Quotation**" means an official, written duly authorised quotation issued by SkyWire and accepted by the Customer for the supply of Services and/or Equipment;
- 2.11.14 "**Rental Charges**" means the monthly rental charges payable by the Customer to SkyWire, in respect of the Rental Equipment.
- 2.11.15 "**Rental Equipment**" means SkyWire supplied electronic communications connections, or any other facility, or equipment that provides the Customer with access to the Services, as set out in a Quotation, including accessories, additions, or modifications thereto from time to time.
- 2.11.16 "**Services**" means the electronic communication services, or electronic communication network services, supplied by SkyWire to the Customer, as set out in a Quotation;
- 2.11.17 "**Services Agreement**" means following acceptance of the Quotation, the contract concluded between the Parties, incorporating these Terms and Conditions and the Quotation, as the same may be amended, modified or supplemented from time to time;
- 2.11.18 "**Services Charge**" means the monthly fees as set out in the Quotation, payable by the Customer to SkyWire for access to the Services;
- 2.11.19 "**Signature Date**" means the date of signature of the Quotation by the Customer;
- 2.11.20 "**Site Survey Charges**" means SkyWire's charges for conducting a site survey at the Customer Premises, calculated at its prevailing rates;
- 2.11.21 "**SkyWire**" means SkyWire (Pty) Ltd (registration number 2007/014694/07);
- 2.11.22 "**SkyWire Network**" means the electronic communications network operated by SkyWire;
- 2.11.23 "**Suppliers**" means any other network operators, or facilities providers, including but not limited to fixed line operators, cellular operators, wireless operators, facilities lessors, or any other provider of electronic communication services, infrastructure, or electronic communication network services used by SkyWire in the provisioning of the Services.
- 2.11.24 "**Service Handover Form**" means the form issued by SkyWire to the Customer on the Activation Date to certify that the Services had been provisioned on the SkyWire Network and made available for the Customer to access;
- 2.11.25 "**Terms and Conditions**" means the terms and conditions, contained in this document and incorporated into each Services Agreement;
- 2.11.26 "**Usage Based Charges**" means SkyWire's charges in accordance with the rates specified in the Quotation, for calls made and/or data utilised by the Customer over and above contractual bundles. For the avoidance of doubt, usage based charges includes charges for the unauthorised, or fraudulent use of the Services.

3 DURATION

- 3.1 Each Services Agreement shall commence on the Signature Date and unless terminated in accordance with any other provision of these Terms and Condition, shall endure:
 - 3.1.1 from the Signature Date until the Activation Date; and

- 3.1.2 after the Activation Date for the Initial Term and thereafter indefinitely until terminated by either Party by giving the other Party 30 days' written notice of termination.
- 3.2 Notwithstanding the provisions of clause 3.1, a Services Agreement shall terminate on e-mail notice from SkyWire, if in the reasonable opinion of SkyWire, it is not possible to activate Services as a result of line of sight limitations.
- 3.3 **Notice of termination by the Customer, shall be given in writing and addressed to telefax number 086 645 5587, or email address cancellations@SkyWire.co.za. Any notice of termination not given as aforesaid shall not be effective for any purposes whatsoever.**

4 CHARGES AND PAYMENT

- 4.1 In consideration for the Services and the Equipment the Customer shall effect payment of the Charges to SkyWire.
- 4.2 Charges shall be payable as follows:
- 4.2.1 Installation Charges and Site Survey Charges and shall be invoiced upon delivery and payable on presentation of invoice;
- 4.2.2 Purchased Equipment Charges shall be payable on presentation of invoice, as follows:
- 4.2.2.1 80% on acceptance of the Quotation;
- 4.2.2.2 10% on delivery; and
- 4.2.2.3 10% on completion of installation;
- 4.2.3 Monthly Charges shall be payable monthly in advance on the 1st day of each and every month. Should the Activation Date not fall on the 1st calendar day of the month, the Customer shall only be liable for the pro-rata Monthly Charges calculated from the Activation Date and payable on presentation of invoice;
- 4.2.4 Usage based charges shall be invoiced monthly and payable within 7 days from the date of SkyWire's invoice in respect thereof;
- 4.3 All Charges, are exclusive of VAT, which shall be borne and paid for by the Customer together with the Charges in question.
- 4.4 **SkyWire will submit statements to the Customer monthly. The Customer accepts responsibility to ensure that the statement is received and checked. The Customer shall advise SkyWire within 7 days from the date of and statement of any inaccuracies in the statement, failing which the statement shall be deemed to be correct.**
- 4.5 Any call and/or connection registered and recorded on the SkyWire Network as having emanated from the Equipment shall, until the contrary is proved, be deemed to have been made by means of, the Equipment.
- 4.6 For the purpose of calculating usage based charges payable by the Customer, the duration of each call and/or connection as recorded and registered on the applicable metering system used by SkyWire shall be final and binding on the Customer.
- 4.7 All Charges shall be paid by means of direct debit order, free of exchange and bank charges. The Customer accepts responsibility to ensure that the banking details provided to SkyWire are at all times current and correct.
- 4.8 The Customer shall not be entitled to withhold payment of the prices or any other amount legally due for any reason whatsoever, notwithstanding that a dispute may be pending between the Parties or as a retention or as a result of a third party not paying the Customer, nor shall the Customer be entitled to make any deduction from the Charges or any other amount due, or to set off any alleged claim against the amounts due by the Customer to SkyWire.
- 4.9 Should any payment not be made on due date, SkyWire shall be entitled, without detracting from its other rights:
- 4.9.1 charge the Customer interest on such arrear payments from due date of such payments to date of actual payment thereof, at a rate equal to 4% above the annual prime bank overdraft rate charged by Nedbank Limited, from time to time; and
- 4.9.2 recover any bank charges resulting from returned debit orders.
- 4.10 A certificate issued and signed by the Chief Financial Officer, or duly authorised Financial Manager of SkyWire, whose authority need not be proved, stating the amount owing and/or the amount of interest payable by the Customer, is prima facie proof of the facts stated therein and the amount of the indebtedness of the Customer to SkyWire. The certificate may be used in support of any application by SkyWire for default or summary judgment, provisional sentence, or any other legal proceedings.
- 4.11 SkyWire shall from time to time be entitled to adjust the Charges on 30 days' written notice to the Customer. In the event that a rate of increase is specified in the Quotation increases shall be in line with such specification. If the rate of increase is not specified, the adjustment shall be based upon:
- 4.11.1 any change in the Consumer Price Index ("CPI for services") as published by Statistics South Africa in publication P0141, or its replacement from time to time; or
- 4.11.2 any increase in SkyWire's direct costs of rendering the Services, including, but not limited to increases in the charges charged by Suppliers.
- 4.12 The Customer hereby acknowledges and agrees that information regarding its payment behaviour may be disclosed to any registered credit bureau and/or any other suppliers, but only if a payment default in excess of 45 (forty-five) days from presentation of SkyWire's tax invoice occurs.

5 PROVISION OF THE SERVICES

- 5.1 SkyWire undertakes to provide the Services to the Customer upon the terms as set out in the Services Agreement.
- 5.2 The Customer shall be responsible for obtaining all necessary approvals and consents that may be necessary for provisioning of the Services at the Customer Premises.
- 5.3 **The Customer acknowledges and accepts that the availability and/or quality of the Services be affected by factors including, but not limited to, the Equipment and accessories used with the Equipment, atmospheric conditions, radio frequency disturbances, Supplier facilities and networks and other factors beyond the control of SkyWire.**
- 5.4 **Whilst SkyWire will take all reasonable steps to ensure that the Services are provided in accordance with the Services Agreement, SkyWire cannot and does not guarantee or undertake that the Services will be provided at all times and that the Equipment will be delivered and installed on the specified installation date. Accordingly, SkyWire will, to the fullest extent permissible in law, not be liable for any direct or indirect loss or damage of any nature whatsoever or howsoever arising that may be sustained by the Customer as a result of any delay in Equipment delivery, Service activation, or faults, delays, or interruptions in the provisioning of the Services.**
- 5.5 The Services are to be provided on the basis that the Customer -
- 5.5.1 will use the Services in accordance with these Terms and Conditions and the Quotation;
- 5.5.2 will use the Services in accordance with SkyWire's acceptable and fair use Policies as may be applicable from time to time;
- 5.5.3 will not utilise the Services, or allow others to do so, for any improper, immoral, or unlawful purpose;
- 5.5.4 will comply with all relevant legislation and regulations and all instructions issued by any governmental authority, or by SkyWire regarding the use of the Services; and
- 5.5.5 will not act or omit to act, or allow others to do so, in any way likely to damage, disrupt or interfere with the SkyWire Network or Supplier networks, or to injure or damage any person or property or to cause the quality of the Services to be impaired, or interrupted in any manner whatsoever.
- 5.6 SkyWire shall have the right to remove any content hosted by the Customer on the SkyWire Network, in the event that SkyWire considers such content illegal, or in respect of which SkyWire was served with a takedown notice.
- 5.7 **The Customer agrees to defend, indemnify and hold SkyWire, its directors, employees, agents and other members of its group of companies, as that term is defined in the Companies Act 71 of 2008, (each an "indemnified Party") harmless from any use of the Services by the Customer, that is not in accordance with the terms and conditions of these Terms and Conditions and the Quotation.**
- 5.8 The Customer shall remain fully liable for payment of all Charges for Services to SkyWire incurred through the use of the Services regardless of whether such use is by the Customer or whether such use is with or without the authority, knowledge or consent of the Customer.
- 5.9 The Customer acknowledges that SkyWire will not be required to commence the provision of the Services until SkyWire is satisfied that the Customer has met the requirements set forth under RICA. The Customer agrees that it will provide SkyWire with the necessary documentation and information required by SkyWire to verify that the Customer has complied with RICA.

6 EQUIPMENT

- 6.1 Services shall be rendered and the Equipment shall be delivered at the Customer Premises.
- 6.2 If SkyWire cannot deliver the Equipment at the Customer Premises through no fault of SkyWire, the Customer shall be liable for all reasonable costs incurred by SkyWire as a result of the attempted delivery.
- 6.3 The Customer shall at all times, at its own cost and expense, ensure that the required communication services and facilities, including but not limited to telephone facilities and lines, installation areas, electrical outlets, connection requirements and access ways be suitable for the installation and electrical connection of the Equipment and supply of the Services.
- 6.4 SkyWire will instruct contractors to install the Rental Equipment at the Customer's premises and further instruct contractors to maintain the Rental Equipment for the duration of the Services Agreement.
- 6.5 If special lifting tackle or rigging operations are necessary for the installation of Equipment, all charges relating thereto shall be borne by the Customer.
- 6.6 SkyWire's representatives, employees, agents and contractors may at all reasonable times, without giving rise to any claim or right of action on the part of the Customer, enter the Customer's Premises to inspect the Rental Equipment, carry out necessary repairs, replacement of Rental Equipment, or to perform any other lawful function in the bona fide interest of SkyWire in respect of the Rental Equipment.
- 6.7 Ownership in the Rental Equipment shall at all times remain vested in SkyWire.
- 6.8 Notwithstanding the date of delivery and notwithstanding the date of passing of the risk, ownership in Purchased Equipment only passes to the Customer on receipt by SkyWire of the full price thereof.

- 6.9 **All risk in and to the Equipment shall pass to the Customer upon delivery thereof to the Customer and the Customer shall take reasonable steps to avoid damage to Rental Equipment and the Customer Premises where the Rental Equipment is installed.**
- 6.10 The Customer shall at all times use the Equipment in accordance with the instructions of the manufacturer. The Customer shall only use the Equipment for the intended purpose and shall keep the Equipment dry, clean, free from dust and extreme temperatures.
- 6.11 The Customer may not make any alteration or modification of any nature whatsoever to the Equipment.
- 6.12 The Rental Equipment will be returned to SkyWire on termination of the Services Agreement for any reason whatsoever.
- 6.13 The Customer will not be entitled to give up possession of the Rental Equipment, in whole or in part to any third party and will not be entitled to remove and re-install the Rental Equipment at a different location.
- 6.14 The Customer shall notify SkyWire immediately in the event of the Rental Equipment being stolen or damaged.
- 6.15 The Customer acknowledges and agrees that the Rental Equipment is movable property and that it will not be installed with the intention that it remains or accedes to whatever housing it may be installed with or to.
- 6.16 The Customer must ensure that any equipment installed at the Customer Premises, which has not been leased, purchased from and/or installed by SkyWire, does not interfere with or degrade the Services, the Equipment, the SkyWire Network, or any Supplier network.
- 6.17 The Customer will advise the landlord of the Customer's premises that ownership of the Rental Equipment vests in SkyWire. The Customer will advise SkyWire of the full name and address of its landlord.

7 WARRANTY

- 7.1 **SkyWire shall not be liable on the ground of any common law warranty in respect of the Equipment and Services, including without limitation against latent defects in, or relating to "fitness for purpose" of, the Equipment and Services.**
- 7.2 Subject to clause 7.1 SkyWire warrants that the Equipment will be free from defects in material and workmanship under normal use and service for a period of 12 (twelve) months after delivery.
- 7.3 SkyWire shall make good any defect, by repair or at its option replacement, which appears in the Equipment during the applicable warranty period above, provided that:
- 7.3.1 SkyWire is notified in writing within 7 (seven) days of the alleged defect occurring; and
- 7.3.2 the Customer has fulfilled all its obligations under this Agreement.
- 7.4 Transport of the defective Equipment to and from SkyWire's nominated premises shall be at the Customer's cost.

8 UNAUTHORISED TRAFFIC

- 8.1 **The Customer is responsible for the security of its network and the Equipment and for taking the necessary steps to prevent unauthorized or fraudulent use of the Services perpetrated using the Customer's equipment and network, or the Equipment. SkyWire shall not under any circumstances be liable for such unauthorized or fraudulent use of the Services, the Equipment, or any Customer equipment and disclaims all liability in respect thereof.**
- 8.2 **Notwithstanding the provisions of clause 14.2, the Customer indemnifies SkyWire without limitation against all liability and losses of any nature whatsoever, that SkyWire may suffer as a result of unauthorized or fraudulent use of the Services, the Equipment, or Customer equipment.**

9 EARLY TERMINATION

Without prejudice to any rights that SkyWire may have in terms of these Terms and Conditions, in the event that the Customer terminates a Services Agreement for any reason, other than the reasons for termination contemplated in clause 3.1.2, or breach by SkyWire, the Customer shall pay to SkyWire any arrear Charges, and other Charges that may be due and payable at that time. In addition, the Customer shall be liable for and shall pay the Monthly Charges for the remainder of the Initial Period if the Services Agreement is terminated by the Customer during the Initial Period. The Customer shall also be liable for all amounts payable under any agreement between SkyWire and a Supplier in order to offer the Services to the Customer. Such Monthly Charges and Supplier charges shall be paid to SkyWire on demand.

10 SUSPENSION OF SERVICES

- 10.1 SkyWire may at any time suspend the Services, in whole or in part and without incurring any liability whatsoever -
- 10.1.1 should SkyWire be unable to provide the Services, in whole or in part, whether due to vis major, or otherwise through no fault of its own; or
- 10.1.2 should SkyWire suspect that the Services are being used improperly under circumstances as detailed in clause 8.1; or
- 10.1.3 should an agreement in terms of which SkyWire derives its rights to provide the Services, be suspended, cancelled or terminated; or
- 10.1.4 should such suspension of the Services be necessary in order to facilitate any repairs, modification, maintenance, improvements or remedial works in respect of the SkyWire Network; or

- 10.1.5 should the Customer not comply with SkyWire's acceptable or fair use policies; or
- 10.1.6 should the Customer fail to comply with any provision of these Terms and Conditions.

- 10.2 Should the Services, or Interim Services be suspended pursuant to 10.1.1, 10.1.3, or 10.1.4 SkyWire shall use its reasonable endeavours to provide an alternative service to the Customer, whether through another Supplier, or otherwise, all in SkyWire's discretion. Should SkyWire fail to provide an alternative service within 14 days after the commencement of the suspension, either Party shall be entitled by written notice to the other, to terminate the Services Agreement with immediate effect. In such event, the Customer shall remain liable for all Charges accrued up to date of such termination, which Charges shall be payable on demand.

11 BREACH

- 11.1 Should the Customer breach any term of these Terms and Conditions and fail to remedy such breach notwithstanding 10 (ten) days' notice of breach, or should the Customer be provisionally or finally liquidated or declared insolvent or die, or attempt to compromise with any of its creditors, or allow any judgement against it to remain unsatisfied for a period of 14 (fourteen) days after the date of such judgement, SkyWire shall be entitled, but not obliged, and without detracting from any other rights that it may have in law or in terms of these Terms and Conditions to -
- 11.1.1 terminate the Services Agreement with or without claiming damages; or
- 11.1.2 terminate the Services Agreement and recover from the Customer as liquidated damages, the aggregate of the Monthly Charges for the unexpired portion (if any) of the Initial Period plus all amounts payable under any agreement between SkyWire and a Supplier in order to offer the Services to the Customer; or
- 11.1.3 claim specific performance with our without claiming damages.
- 11.2 Notwithstanding the provisions of clause 11.1, SkyWire shall have the right to terminate the Services Agreement with immediate effect for material breach, without prejudice to its right to claim damages.
- 11.3 **In the event of termination of the Services Agreement for any reason whatsoever SkyWire shall be entitled to disconnect and retake possession of the Rental Equipment.**
- 11.4 Termination of a Services Agreement for any reason whatsoever shall not affect any of the rights of the Parties that accrued prior to termination.

12 INTELLECTUAL PROPERTY RIGHTS

Nothing contained in this Agreement shall be construed to confer on either Party any rights or licenses to the intellectual property of the other Party.

13 CONFIDENTIALITY

- 13.1 Confidential information includes, without limitation:
- 13.1.1 information relating to the Equipment, Services and the intellectual property, know-how, methods and techniques employed by a Party;
- 13.1.2 financial and commercial information regarding the Services Agreement, or a Party in relation to its obligations pursuant to the Services Agreement.
- 13.2 Each Party shall not (and shall procure that its employees and agents shall not) for the duration of the Services Agreement, or at any time after the expiration or termination thereof for any reason, disclose to any person (other than to its professional advisers on a need to know basis, or in compliance with a court order) or otherwise make use of any confidential information of the other Party.
- 13.3 Nothing in this clause 13 shall restrict the rights of either Party to use such information or documents for the purposes of legal enforcement of the Services Agreement in accordance with its terms.

14 LIMITATION OF LIABILITY AND INDEMNITY

- 14.1 **Neither Party shall be liable to the other for any loss of profit, loss of use, interruption or reduction of operation, loss of data (including the recovery thereof), loss of production, loss of contracts or for any indirect or consequential damage that may be suffered by the other even if advised of the possibility of such damages and regardless of the form in which any action is brought.**
- 14.2 **Neither Party's aggregate liability to the other for any claim or claims for damages, out of or in connection with any cause arising from a specific Services Agreement, whether in contract or delict or any other cause of action, will in any event exceed 100% (one hundred percent) of the value of the Equipment and Services supplied to the Customer under such Services Agreement during the 12 (twelve) months immediately prior to the events leading to the cause of action.**
- 14.3 **Nothing contained in clauses 14.1 and 14.2 above shall limit either Party's liability to the other in respect of:**
- 14.3.1 death or injury of any person, or damage to property;
- 14.3.2 infringement of intellectual property rights;
- 14.3.3 breach of confidentiality;
- 14.3.4 the indemnity in clause; or
- 14.3.5 intentional, fraudulent or criminal acts.
- 14.4 **Subject to clauses 14.1, 14.2 and 14.3 above, each Party (the "indemnifying Party") agrees to defend, indemnify and hold the other Party, its directors, employees, agents and other members of its group of companies, as that term is defined in the Companies Act 71 of 2008 of South Africa, (each an "indemnified Party")**

harmless from any and all claims, damage, cost, liability and expense including reasonable attorney's fees caused by, relating to or arising from:

- 14.4.1 the acts or omissions of the indemnifying Party, its directors, employees or agents;
- 14.4.2 any alleged libel, defamation, slander, invasion of privacy or any similar delict, or breach of any contractual right of a third party, or infringement of any intellectual property right of a third party including rights under patents, trademarks, copyright, trade secret, or confidentiality obligations, or rights of privacy and publicity resulting from, relating to or arising out of the acts or omissions of the indemnifying Party, except where any such claim relates to or arises out of any material furnished by the indemnified Party.

14.5 The Parties will co-operate in the defence of any matter arising from the indemnity under clause 14.4. A Party has the right to participate in the conduct of the defence with legal counsel chosen by it.

15 NOTICES AND DOMICILIUM

- 15.1 For the purposes of a Services Agreement, including the giving of legal notices and the serving of legal process, the Parties choose their respective physical addresses as set out in the first page of these Terms and Conditions.
- 15.2 Any notice addressed to a Party shall be delivered by hand during office hours to its physical address, or sent by registered post to its postal address.
- 15.3 Any notice shall be deemed to be received (unless the contrary is proved):
 - 15.3.1 if hand delivered, on the day of delivery;
 - 15.3.2 and if posted by prepaid registered post, 14 days after the date of posting.
- 15.4 Although the Parties may correspond via electronic mail for operational purposes, no valid notice under, or amendment to the terms of, these Terms and Conditions may be given or concluded by way of a data message as defined in the Electronic Communications Act, 25 of 2002 of South Africa.
- 15.5 A Party may by written notice to the other Party change its domicilium to another address in South Africa which is not exclusively a post office box or poste restante. The change will become effective on the 5th (fifth) day following deemed receipt of the notice.
- 15.6 No provision of this domicilium clause shall be taken as affecting the validity of any notice which is actually received by a Party, whether at its domicilium or not and whether delivered in terms of the express provisions of this domicilium clause or not and any notice which is actually received by a Party shall be deemed to be notice validly given.

16 DISPUTE RESOLUTION AND GOVERNING LAW

- 16.1 Subject to SkyWire's right in each instance to elect to institute action for payment of the prices and any other amounts due under the Services Agreement in any court of competent jurisdiction, in the event of any disagreement or claim ("dispute") arising out of or relating to these Terms and Conditions (including without limitation, as to its existence or validity), the senior executives of the Parties or their delegates designated in writing shall endeavour to settle the dispute through bona fide negotiations within 14 (fourteen) days of the dispute being referred to them by written notice from either Party.
- 16.2 Should the Parties be unable to settle the dispute by the means and within the timeframe stated above, either Party may refer the dispute for final decision by arbitration in accordance with the rules for commercial arbitrations ("rules") of the Arbitration Foundation of Southern Africa ("AFSA"), by one or more arbitrator/s appointed in accordance with the rules.
- 16.3 Unless otherwise agreed in writing the arbitration shall be held in Sandton in the Republic of South Africa and conducted in the English language. Only the Parties and their legal representatives or persons agreed to shall attend the arbitration proceedings.
- 16.4 The decision of the arbitrator/s may be made an order of court. For these purposes and those of clause 17 the Parties irrevocably submit to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Division, Pretoria.
- 16.5 these Terms and Conditions shall in all respects be governed by the law of South Africa, without regard to its conflict of law provisions. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of April 11, 1980 shall be excluded.
- 16.6 This clause 16 is severable from the rest of these Terms and Conditions and shall survive the expiry or termination for whatsoever reason of the Services Agreement.

17 URGENT RELIEF

The provisions of clause 16 shall not preclude any Party from access to a competent court of law for relief in the form of:

- 17.1.1 an interdict, including a mandatory interdict; or
- 17.1.2 an order for specific performance.

18 COMPLIANCE WITH LAWS AND ANTI-CORRUPTION

- 18.1 Each Party shall in all matters arising from or relating to the fulfilment of these Terms and Conditions conform at its own expense with all laws and legislation relevant hereto.

18.2 The Parties shall not be entitled to claim or receive any benefits or rewards arising from the Services Agreement, other than specifically provided for in these Terms and Conditions.

18.3 Each Party warrants that neither it nor any of its employees, associates or agents have committed, or admitted to, or have been convicted of, any Corrupt Act in relation to the Services Agreement and that it has ensured that all anti-corruption laws, internal processes and anti-corruption preventative measures have been complied with, prior to signature of these Terms and Conditions and will continue to be complied with for the duration hereof.

18.4 Failure by a Party to comply with this clause 16 shall constitute a material breach of contract.

19 DISCLAIMERS

19.1 The Customer specifically accepts and acknowledges that SkyWire acts merely as a distributor of any data and the Customer accepts all liability, arising from any claims, inter alia claims relating to:

- 19.1.1 any intellectual property infringement contained in the information including copyright infringement (whether digital or otherwise), trade mark infringement, infringement of trade secrets and/or databases;
- 19.1.2 the distribution of any defamatory, discriminatory or obscene material, whether unacceptable or illegal; the distribution of any sexually explicit messages, images, cartoons or jokes, whether unacceptable or illegal; the distribution of offensive, disruptive, harmful or insulting material; the distribution of computer viruses; the distribution and/or disclosure of private information; and the Customer's breach of contract to a third party; or
- 19.1.3 non-compliance with any legislation and/or regulations, including but not limited to, regulations issued by the South African Revenue Services from time to time.

20 GENERAL

20.1 Validity and Severability

If any provision of these Terms and Conditions, or a Services Agreement is found or held to be invalid or unenforceable, the validity of all the other provisions thereof will not be affected thereby and the Parties agree to meet and review the matter and if any valid and enforceable means is reasonably available to achieve the same objective as the invalid or unenforceable provision, to adopt such means by way of variation of the Services Agreement.

20.2 Contra Proferentem

The rule of construction that in the event of any uncertainty in any provision in any agreement, such agreement shall, in construing/interpreting the uncertainty, be construed or interpreted against the drafter of such agreement, shall not be applicable to a Services Agreement.

20.3 Variation

No variation of or addition to a Services Agreement, will be of any force or effect unless reduced to writing and signed by the Parties.

20.4 Waiver

No waiver on the part of a Party of any rights arising from a breach of any provision of the Services Agreement will constitute a waiver of rights in respect of any subsequent breach of the same or any other provision.

20.5 Vis Major

20.5.1 Failure to comply with any of the terms and conditions of the Services Agreement if occasioned by or resulting from an act of nature or public enemy, fire, explosion, earthquake, perils of the sea, flood, storm or other adverse weather conditions, war declared or undeclared, civil war, revolution, civil commotion or other civil strife, riot, strikes, blockade, embargo, sanctions, epidemics, act of any government or other authority, compliance with government orders, demands or regulations (including without limitation in respect of any permit, licence or authorisation), as well as shortages, interruptions, fluctuations or the unavailability of electrical power, water supply or means of communication or any circumstances of like or different nature beyond the reasonable control of the Party so failing ("vis major"), will not be deemed to be a breach of the Services Agreement, nor will it subject either Party to any liability to the other.

20.5.2 Should a Party's performance of an obligation become temporarily impossible owing to vis major, that Party shall:

- 20.5.2.1 as soon as reasonably possible after the vis major sets in notify the other Party in writing of the incidence of vis major;
- 20.5.2.2 be released from performance of the affected obligation for so long as the vis major prevails;
- 20.5.2.3 use its best endeavours to recommence performance of the affected obligation, to whatever extent reasonably possible, without delay; and
- 20.5.2.4 co-operate with the other Party in implementing such contingency measures as the other Party may reasonably require.

20.6 Should the circumstances of vis major continue for longer than 14 days, either Party shall be entitled to terminate the relevant Services Agreement, with immediate effect by written notice.

20.7 Cession and Delegation

A Party cannot validly cede any right or delegate any obligation arising

under a Services Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the above, SkyWire may by written notice to the Customer cede and delegate the Services Agreement to any other company controlled by Reunert Limited 1913/004355/06.

20.8 Warranties

No Party has given any warranty or made any representation to the other Party, other than as expressly set out in the Services Agreement.

20.9 No Agency

SkyWire is an independent contractor to the Customer and nothing in the Services Agreement constitutes a relationship of employment, agency, joint venture or partnership between the Parties. A Party shall not hold itself out as being an agent or partner of the other Party, or as being in a joint venture with the other Party. A Party shall not assume or create or attempt to assume or create directly or indirectly any obligation on behalf of or in the name of the other Party.

20.10 Arrangements under section 37(2) of the OHSACT

Each Party is an employer in its own right, a specialist in its own field of operations, performs work using its own employees and/or agents and its activities, methodologies and work are not directly supervised by the other Party. Each Party shall comply with the OHSACT accordingly.

20.11 Co-operation and Support

Each Party undertakes at all times to use commercially reasonable efforts to co-operate, to perform all such actions and take such steps and to procure the cooperation, the performance of all such actions and taking of all such steps as may be open to it and necessary for and incidental to the putting into effect and maintenance of the provisions of the Services Agreement.

20.12 Non Solicitation

A Party shall not without the prior written consent of the other Party, either during, or within 12 (twelve) months after termination or cancellation of Services Agreement for whatsoever reason, engage, employ or otherwise solicit for employment, whether directly or indirectly, any person who during the currency of the Services Agreement was engaged in the performance of thereof as an employee, or temporary employee of the other Party, or of the other Party's suppliers under the Services Agreement. A Party in breach of this clause shall pay to the other Party as liquidated damages an amount equal to the gross annual salary as calculated immediately prior to the breach (including any commissions and other payments) of the person so engaged, employed or solicited.

20.13 Entire Agreement

The terms contained in these Terms and Conditions and the Quotation constitute the entire Services Agreement between the Parties with respect to the subject matter thereof, superseding all contemporaneous oral agreements and prior oral and written quotations, communications,

agreements, and understanding of the Parties.

20.14 Costs

Each Party shall bear its own legal costs and disbursements of and incidental to the negotiation, preparation, settling, signing and implementation of the Services Agreement. Any legal costs incurred by a Party arising out of or in connection with a breach by the other Party, shall be borne by the Party in breach on a scale as between attorney and client.

20.15 Counterparts

A Services Agreement may be executed by the Parties in one or more counterparts, all of which taken together shall constitute one and the same instrument.

21 UNDERTAKING AS SURETY AND CO-PRINCIPAL DEBTOR ON BEHALF OF THE SUBSCRIBER BY THE SIGNATORY

If the Customer as identified in the Quotation is any legal entity, including, but not limited to companies, close corporations and trusts, then the signatory hereto who signs on behalf of the Customer warrants that he/she is duly authorised to accept the Quotation sign These Terms and Conditions, enter into a Services Agreement and sign the debit authorisation on the Customer's bank account. By his/her signature, the signatory hereby binds him/herself as surety and co-principal debtor with the Customer unto and in favour of SkyWire for the due and punctual fulfilment of all the Customer's obligations to SkyWire arising out of a Services Agreement including the payment of all Charges, fees, penalties, and liquidated damages. The signatory as surety and co-principal debtor hereby renounces and waives the benefits of the legal defences excussion, division of cession of actions and hereby acknowledges that he/she understands the full meaning of such defences and the effect of such renunciation and waiver.

Full Signature of duly authorised Customer signatory.	
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22 CONSUMER PROTECTION ACT ACKNOWLEDGEMENT

In the event that the Customer is a consumer as defined in the Consumer Protection Act 68 of 2008, ("the CPA") the Customer's attention is in terms of section 49 of the CPA, drawn to all provisions in this Agreement printed in **BOLD**.

Full Signature of duly authorised Customer signatory.	
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23 SIGNATURES

Signed by the authorised signatories of the Parties, each signatory warranting his/her authority hereto.

For: SKYWIRE (PTY) LTD	For: CUSTOMER
(signature)	(signature)
(name)	(name)
(date and place)	(date and place)
(witness)	(witness)