

Annexure 1
GREENCOM ICT
PROPRIETARY LIMITED
Terms and Conditions of
Service for the distribution of
network related services

1. INTERPRETATION

- 1.1. Unless a contrary intention is clear from the context, the following words and phrases shall have the following meanings:
- 1.1.1. “the Act” means the Electronic Communications Act 36 of 2005 together with any regulations in terms of the Act, as amended from time to time;
 - 1.1.2. “Agreement” means this Framework Agreement together with all annexures and schedules hereto as amended from time to time;
 - 1.1.3. “Applicable Laws” means any national (or provincial) legislation, statutes, ordinances and other laws and regulations and any by-laws of any legally constituted public authority in the Republic of South Africa as may be issued and in force from time to time relating to any of the activities contemplated in this Agreement;
 - 1.1.4. “Authority” means the Independent Communications Authority of South Africa established in terms of the Independent Communications Authority of South Africa Act 13 of 2000 and its successors who oversee the telecommunications and electronics industry in the Republic of South Africa;
 - 1.1.5. “Business Day” means any day which is not a Saturday, Sunday or a day which is defined as a public holiday in terms of the Public Holidays Act, Act 36 of 1994;
 - 1.1.6. “Commencement Date” means the date of activation of the services;
 - 1.1.7. “Content” means any content, information, game, message or similar service that is supplied to any person by means of the Network or by means of a third party’s network in the form of data, graphics, pictures, text, video or any other relevant format, but excluding voice;
 - 1.1.8. “Cooling Off Period” means:
 - 1.1.8.1. 5 (five) Business Days from the date of conclusion of a transaction, as defined in terms of the CPA, if such transaction is governed by the CPA; or
 - 1.1.8.2. 7 (seven) Business days from the date of conclusion of a transaction, as defined in terms of the ECTA, if the transaction is governed by the ECTA;
 - 1.1.9. “CPA” means the Consumer Protection Act, Act 68 of 2008, together with any regulations in terms of the CPA, as amended from time to time;
 - 1.1.10. “Delivery Point” means a specific physical location, generally the Subscriber’s premises agreed between the Parties at which the Subscriber connects its Equipment to GREENCOM’s Equipment and to which the Subscriber delivers internet capacity or its services;
 - 1.1.11. “Direct Marketing” means, in accordance with the meaning ascribed to this term in the CPA, marketing through an approach to a Subscriber, either in person or by mail or electronic communication, for the direct or indirect purpose of promoting or offering to supply any goods or services to such Subscriber;
 - 1.1.12. “Electronic Communication” means electronic communication as defined in the ECTA;
 - 1.1.13. “ECTA” means the Electronic Communications and Transactions Act, Act 25 of 2002, as amended from time to time;
 - 1.1.14. “Equipment” means a device or equipment used to enable the Subscriber to access to the Subscriber Services;

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- 1.1.15. "Fault" means any disruption to or interference in the Subscriber Services as a result of service outage or the functionality, features, interfaces, availability and/ or quality of such services differing significantly from what is agreed to in this Agreement;
 - 1.1.16. "Fault Report" means the written notification of a Fault provided to GREENCOM by the Subscriber, which notification shall contain sufficient detail of the Fault and the reasons for the Fault to determine whether the Fault relates to the Services, the network or the Equipment;
 - 1.1.17. "Handover Point" means a network connection or port, with a specific capability, to which the Subscriber Services are delivered at the Subscriber's premises;
 - 1.1.18. "Licence" means the Electronic Communication Services licence issued to GREENCOM by the Authority in terms of the Act, as amended, renewed or replaced from time to time;
 - 1.1.19. "GREENCOM" means Greencom ICT (Proprietary) Limited, registration number 2010/134276/23, a company incorporated in terms of the laws of the Republic of South Africa;
 - 1.1.20. "Network" means the communications network used for the distribution of Subscriber Services which are provided by GREENCOM as envisaged in this Agreement;
 - 1.1.21. "Network Facility" means a physical component of the network and includes, but is not limited to, a circuit, cable and wireless antenna;
 - 1.1.22. "Network Services" means the services to be supplied by GREENCOM either to the Service Provider or directly to the Subscriber in terms of this Agreement;
 - 1.1.23. "Parties" means the parties to this Agreement, being GREENCOM and the Service Provider, and "Party" means either one of them;
 - 1.1.24. "Personal Information" means information falling within the definition of "personal information" in POPI;
 - 1.1.25. "POPI" means the Protection of Personal Information Act, Act 4 of 2013;
 - 1.1.26. "RICA" means the Regulation of Interception of Communication and Provision of Communication Regulated Information Act 70 of 2002, as amended/replaced from time to time, and its related provisions, which apply to GREENCOM, to the Subscriber and to the Subscriber;
 - 1.1.27. "the Service Provider" means Greencom ICT (Pty) Ltd, registration number 2010/134276/23, a company incorporated in terms of the laws of the Republic of South Africa;
 - 1.1.28. "Subscriber's Terms and Conditions" means the terms and conditions of the contract which the Subscriber is obliged to sign in order to access the Subscriber Services;
 - 1.1.29. "Subscriber" means the end user who has contracted for GREENCOM services
 - 1.1.30. "Subscriber Services" means the service or services which the Subscriber agrees with GREENCOM
 - 1.1.31. "Signature Date" means the date upon which this Agreement is signed by the party last signing same;
 - 1.1.32. "Subscriber" means any person who signs an agreement with the Subscriber for the delivery of the Subscriber Services which are intended to be distributed over the Network;
 - 1.1.33. "Termination Date" means the date of termination of this Agreement for any reason whatsoever;
 - 1.1.34. "Third Party" means any person who is not defined as a Party to this Agreement.
- 1.2. In this agreement, unless a contrary intention is clear from the context:
- 1.2.1. the singular includes the plural and vice versa;

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- 1.2.2. a reference to any gender includes the other genders and a reference to a person includes any individual, body corporate or unincorporated or any other entity recognised in law as having a separate legal existence;
 - 1.2.3. when any number of days is prescribed, this shall be calculated by excluding the first and including the last day, unless the last day is not a Business Day in which case the days shall be calculated up to the next Business Day;
 - 1.2.4. headings of clauses have been inserted for convenience only and shall not be taken into account in the interpretation of the agreement;
 - 1.2.5. any provision in a definition which imposes substantive rights and obligations on a Party shall be given effect to as if it were a substantive term in the body of the Agreement;
 - 1.2.6. the use of “including” or “includes” shall not be construed as limiting the general meaning of the word or words preceding them;
 - 1.2.7. recordals shall be binding on the Parties and are not merely for information purposes.
- 1.3. The terms of this Agreement are the result of negotiations between the Parties and the rule of legal construction that a contract shall be construed against the Party responsible for drafting or preparing same shall not apply.
 - 1.4. The expiration or termination of this Agreement shall not affect those provisions of the Agreement which expressly provide that they will operate after such termination, or of any provisions which of necessity must continue to operate after such termination, notwithstanding that the relevant provision does not expressly provide for this.

2. INTRODUCTION

- 2.1. GREENCOM is a network and communications operator which offers network-related services, including internet and data services, to end users and wishes to offer the Subscriber Services to Subscribers and potential Subscribers.
- 2.2. This Agreement sets out the terms and conditions in terms of which the Subscriber will utilise the Subscriber Services offered by Greencom.

3. TERM OF AGREEMENT

- 3.1. This Agreement shall commence upon the Commencement date and shall remain in force until terminated by either Party as provided for herein.
- 3.2. Either Party may terminate this Agreement by at least 30 (thirty) days written notice to the other Party. Nothing in this clause shall detract from the Subscriber’s right to give notice in the event of an increase in pricing or change in payment terms as provided for in clause

4. GREENCOM’S OBLIGATIONS AND RIGHTS RELATED THERETO

- 4.1. GREENCOM shall ensure that it complies with all applicable laws in relation to the provision of the Network to the Subscriber and the Subscribers.
- 4.2. GREENCOM shall grant a right to the Subscriber, during the term of this Agreement, to use the Network for the Subscriber Services.
- 4.3. GREENCOM shall connect the Subscriber to the Network and distribute Subscriber Services to the Subscriber’s addresses in the Network.
- 4.4. GREENCOM undertakes to maintain the service levels and comply with its obligations as set out in Annexures 2, 3 and 4.
- 4.5. GREENCOM is responsible for the service, maintenance, support, monitoring (Second Line Support) and administration of the Network from and including the Delivery Point to the respective Handover Point, either by itself or through a sub-contractor.
- 4.6. Unless the law provides otherwise, GREENCOM may refuse to supply any services or products specified in any order form, without giving any reasons for the refusal but shall provide written notice to the Subscriber of such refusal. Without limiting the generality of this right, GREENCOM may refuse to provide a service or product if a Subscriber does not meet

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the conditions of GREENCOM's credit referencing procedure and/or fails to meet GREENCOM's minimum credit standards.

- 4.7. In order to determine whether or not a Subscriber meets GREENCOM's credit criteria, GREENCOM may carry out a general credit check on a Subscriber before accepting a Subscriber's order at any time during the Subscriber's use of the Network services.
- 4.8. GREENCOM reserves the right to suspend services to the Subscriber should the Subscriber fail to make payment of any fees on due date. The Subscriber shall not be entitled to withhold payment of any fees.
- 4.9. In the event of the Subscriber determining that a Fault relates to the Network and/or Equipment, the Subscriber shall immediately log a trouble ticket with GREENCOM as outlined in Annexure 2. GREENCOM shall comply with the service levels provided for in Annexure 2 in dealing with any faults. Should GREENCOM determine that the fault does not relate exclusively to the Network and/or Equipment, it may notify the Subscriber in writing that the fault does not relate to the Network and/or Equipment, or;
 - 4.9.1. require the Subscriber to remedy the fault; or
 - 4.9.2. remedy the fault at the expense of the Subscriber for Subscriber caused damages; or
 - 4.9.3. if GREENCOM determines that a fault has been caused by any equipment or technology belonging to the Subscriber or installed at the Subscriber's premises, and which is not covered by the warranty provisions which are set out in this Agreement, then GREENCOM may remedy the fault and charge the Subscriber to repair the fault.
- 4.10. Equipment provided by GREENCOM shall be reasonably suitable for the purpose for which it was generally intended, of good quality, in good working order, free of defects and usable and durable for a reasonable period of time. In the event of any Equipment not functioning in accordance with the specifications detailed for such equipment, GREENCOM shall replace or repair such Equipment within 7 (seven) days of the date upon which the Equipment is installed at the Subscriber's premises, provided that GREENCOM shall not be obliged to replace or repair such equipment in the event that any damage to, or malfunction in, the Equipment is caused, directly or indirectly, by any conduct on the part of the Subscriber or the Subscriber.
- 4.11. In the event of an error in the Services which affects the ability of Subscribers to access the Network, the Subscriber shall log a trouble ticket with GREENCOM as outlined in Annexure 2, and GREENCOM shall attend to the error in accordance with the service levels provided for in Annexure 2.
- 4.12. For the purpose of this clause, conduct on the part of the Subscriber shall include, but not be limited to:
 - 4.12.1. any modification, alteration, variation or addition to the Equipment or the Services by any person other than GREENCOM;
 - 4.12.2. the incorrect use of the Equipment or Services;
 - 4.12.3. any abuse or corruption of the Equipment or Services;
 - 4.12.4. the use of the Equipment with other Equipment or software which is not approved by GREENCOM; or
 - 4.12.5. the use of the Services with Equipment or software which is incompatible.
- 4.13. Should GREENCOM determine that the Fault does not relate exclusively to the Network and/or the Equipment, GREENCOM may advise the Subscriber of this and require the Subscriber to repair the Fault to the extent that such Fault does not relate to the Network or the Equipment or GREENCOM may repair and charge the Subscriber for such repair.
- 4.14. Should GREENCOM determine that the Fault has been caused by any conduct on the part of the Subscriber or the Subscriber or is otherwise not covered by the warranty provisions, GREENCOM may repair the fault and charge the Subscriber for such repair.

5. SUBSCRIBER'S OBLIGATIONS

- 5.1. Unless otherwise provided for in this Agreement, the Subscriber shall be responsible for ensuring compliance with the Applicable Laws.

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- 5.2. The Subscriber must comply with any instructions issued by GREENCOM which concern the use by the Subscriber and/or the Subscriber of the Network Services, the Equipment, the Network Facilities or matters related thereto, and which may be required in order to ensure the satisfactory provision of the Network Services, to protect the integrity of the Network or to deal with any emergencies.
- 5.3. GREENCOM is required, in terms of its licence, to provide a directory service which will include Subscribers' personal details including the Subscriber's name, address and any number that has been assigned to each subscriber for the purpose of any service. Should a Subscriber not wish for his details to be included in the directory service, the Subscriber must notify GREENCOM of this in writing.
- 5.4. GREENCOM may, in its discretion, to the extent that it is a requirement for the type of Network Services contracted for, supply and/or install the Equipment which is purchased or leased by the Subscriber from GREENCOM. Where any item of Equipment is not provided by GREENCOM and/or delivery of the Subscriber Services requires additional equipment, the Subscriber shall supply this at its own cost.
- 5.5. The Subscriber undertakes to ensure that all the equipment that is not provided by GREENCOM and that is installed at the Subscriber's premises by the Subscriber has been approved by the Authority in terms of the Act. GREENCOM may suspend the provision of any Network Service to the Subscriber where the Equipment being used has not been approved by the Authority, until the Equipment has been properly approved or is removed and/or replaced.
- 5.6. The Subscriber shall ensure that any Equipment which it installs at the Subscriber's premises, which has not been purchased/leased from and/ or installed by GREENCOM, does not interfere with or degrade the operation of the Network or the Network Facilities.
- 5.7. The Subscriber may not resell capacity on any Network Facilities obtained from GREENCOM or cede or assign its rights to use a Network Facility, or sublet or otherwise part control of it, without GREENCOM's prior written consent.
- 5.8. The Subscriber shall be responsible for-
 - 5.8.1. the installing, maintenance and repair of its own Equipment and facilities (rented or owned) at the Delivery Point;
 - 5.8.2. all the costs associated with such installation, maintenance and repair, including costs of connecting its Equipment to the Delivery Point.

6. GENERAL OBLIGATIONS OF THE PARTIES

- 6.1. The Parties shall perform all obligations in terms of this Agreement in accordance with the Applicable Laws.
- 6.2. Each Party shall operate, maintain, repair and inspect and shall be fully responsible for their own facilities, infrastructure and equipment. Unless otherwise specifically agreed in writing, each Party's responsibility in this regard shall be for that part of the infrastructure and the equipment which is on their side of the Delivery Point.
- 6.3. GREENCOM shall not be responsible for the Equipment supplied to the Subscriber's premises after the initial warranty period of 6 (six) months calculated from date of installation of such Equipment. Risk in the Equipment shall pass to the Subscriber on installation.

7. PRICING AND PAYMENT TERMS

- 7.1. The Parties agree to the prices and conditions of supply and provisioning as set out in the Price List supplied via Greencom's website, marketing materials, emails and other communications.
- 7.2. GREENCOM shall be entitled to make changes to prices and conditions upon 3 (three) months written notice to the Subscriber of such revised price list or revised terms. The Subscriber has the right to terminate this Agreement, giving 30 days written notice before such changes to prices and/or terms would have taken effect between the Parties. During the notice period the ruling prices and conditions shall apply.

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- 7.3. Greencom shall invoice the subscriber immediately upon activation of services for any and all once-off fees relating to set-up and installation of services and the pro-rata portion of monthly subscribed services.
- 7.4. GREENCOM shall invoice the Subscriber monthly at the twenty fifth day of the month based on the services provided to the Subscriber.
- 7.5. Payment shall be made by the Subscriber within 7 (seven) days of invoice date to the Services Provider.
- 7.6. Either Party shall be entitled to charge default interest on any amounts due in terms of this Agreement at the published prime overdraft rate of that Party's bankers plus 2% (two per centum) and the Service Provider shall ensure that, in terms of its contract with the Subscriber, default interest at the same rate can be charged to the Subscriber for any amounts due by the Subscriber to either Party.
- 7.7. GREENCOM is entitled to charge its standard connectivity fee to the Subscriber for connecting the Subscriber to the Delivery Point.
- 7.8. All quoted prices and fees are exclusive of Value Added Tax ("VAT") and other taxes and are quoted in South African Rands ("ZAR") unless otherwise specified.
- 7.9. If at any time the Subscriber acting in good faith disputes all or any portion of the amount charged by GREENCOM on any invoice before payment of an invoice the Subscriber shall:
 - 7.9.1. notify GREENCOM within 7 (seven) days after the date of receipt of the disputed invoice, specifying in reasonable detail the reasons(s) for disputing the invoice;
 - 7.9.2. pay to GREENCOM within 7 (seven) days after the date of receipt of the relevant invoice all amounts not disputed by the Subscriber; and
 - 7.9.3. if the Parties are unable to resolve the dispute within 14 (fourteen) days of notice given in terms of 9.8.1, either Party may refer the matter for resolution in accordance with Clause 23.
- 7.10. Upon resolution of a dispute, any sum which the Subscriber agrees to pay (whether such agreed sum is in the amount originally invoiced, or reduced amount) shall be payable within seven (7) days of the resolution of the dispute in respect of a particular invoice, and any sum which GREENCOM agrees to pay or refund to the Subscriber shall be payable to an account within seven (7) days of the resolution of the dispute or, at the Subscriber's option, shall be set off against amounts payable by the Subscriber to GREENCOM.
- 7.11. Payment of an invoice shall not prevent the Subscriber from subsequently disputing all or any amounts paid in good faith whether during or after the term of the Agreement, on condition that such a dispute is raised no later than 6 (six) months after the invoice date of the disputed amount. Any amount which GREENCOM agrees to pay or refund to the Subscriber after resolution of a dispute shall be payable to an account within seven (7) days of the resolution of the dispute or, at the Subscriber's option, shall be set off against amounts payable by the Subscriber to GREENCOM.
- 7.12. GREENCOM shall not be obliged to pass on to the Service Provider any discounts or any commissions which GREENCOM may receive from a Third Party who provides product or services in relation to the Network.

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- 7.13. Apart from the fees, all other expenses or costs incurred by either Party in the execution and implementation of this Agreement shall be borne by the Party incurring such expenses or costs, unless the additional expenses or costs were agreed to and liability accepted in writing by the other Party.

8. OPERATIONAL LIAISON

The Parties shall together ensure the operation and implementation of this Agreement and shall use their respective reasonable endeavours to resolve any issues arising from such operation and implementation and/or are encountered by the Parties during the duration of this Agreement.

9. INDEMNITY

- 9.1. For the purposes of this clause 9.1, "liability" shall include any and all claims, losses, fines, damages, expenses and liabilities. The Subscriber hereby indemnifies GREENCOM, its officers, employees, agents and representatives, and holds them harmless against:
- 9.1.1. any liability arising as a result of any claims by any governmental authority or any other party for non-compliance by the Subscriber with any act of Parliament, law, ordinance, regulation or by-law made by a lawful authority provided that such compliance is required for the implementation of this Agreement;
 - 9.1.2. any liability arising out of intentional or negligent acts or omissions of the Service Provider;
 - 9.1.3. any liability arising out of the rendering of the Subscriber Services;
 - 9.1.4. any claims by the Subscriber and/or its Subscribers if the Network Services become unavailable as a result of-
 - 9.1.4.1. any person making unauthorised and/or improper use of the Network services and/or Subscriber Services with or without the Subscriber's or Subscriber's knowledge and/ or consent;
 - 9.1.4.2. any person causing damage to or stealing any element of the Network;
 - 9.1.4.3. any fault caused as a result of any equipment that was not supplied by GREENCOM;
 - 9.1.5. any liability arising from claims with regard to the death of, or injury to, the members or employees of the Subscriber or the death of, or injury to, Third Parties due to the Subscriber's negligence (excluding GREENCOM's employees in respect of whom GREENCOM holds the Subscriber harmless);
 - 9.1.6. any liability arising from any loss of, or damage to, property (including GREENCOM's property and/or equipment of the Subscriber);
 - 9.1.7. any liability for Content conveyed via the Network.
- 9.2. The Subscriber shall, at the Subscriber's own cost and expense, defend any action instituted by such Third Party against GREENCOM. GREENCOM shall assist the Subscriber by providing it with such information as the Subscriber may require in order to defend any of the proceedings instituted against GREENCOM.

10. INSURANCE

- 10.1. The Subscriber warrants that it has the appropriate insurance in effect for the duration of this Agreement to cover any reasonable and foreseeable claims that may arise with respect to any equipment placed on site by Greencom in order to render the services.
- 10.2. The Subscriber shall, if so requested by GREENCOM, produce a copy of the insurance policy, proof of payment of premiums and renewals
- 10.3. The Subscriber's indemnity obligations in clause 10 above shall not be limited in any way by the face value or other applicable limits of any insurance cover obtained by the Subscriber.

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11. DISCLAIMER

- 11.1. Notwithstanding any other provisions of this Agreement, the Greencom's liability under this Agreement will be limited to an amount not exceeding R 2,000,000.00 (two million rand) cumulative per year.
- 11.2. Greencom's liability is limited to direct damages and neither Party shall have any right to claim for indirect or consequential damages or losses, including but not limited to loss of revenue or profit. Neither Party shall be held accountable for the loss or corruption of data.
- 11.3. GREENCOM accepts no responsibility for the integrity, correctness, retention or content of the information transported via the Network and will not be liable in relation to such content.
- 11.4. GREENCOM only provides access to the Network and does not operate or control Content. Neither the Subscriber nor the Subscriber will have any claim against GREENCOM relating to any Content or to any information, product, service or software ordered through or provided over the internet. However, GREENCOM may, in GREENCOM's discretion, take measures to ensure security and continuity of the services on the Network, including the identification and blocking or filtering of internet traffic.
- 11.5. The Subscriber and the Subscriber are responsible for maintaining the security of their respective internal networks from unauthorised access through the internet. GREENCOM will not be held liable for unauthorised access to the Subscriber's or the Subscriber's network or other breaches of the network security.
- 11.6. GREENCOM does not own or control other Third Party networks outside of its Network. GREENCOM is not responsible for any filtering or access restrictions imposed by such networks or for the performance, or lack of performance, within such networks or within interconnection points between the Network and other Third Party networks

12. DAMAGE OR DESTRUCTION TO THE INFRASTRUCTURE

- 12.1. Should the Network or any part thereof be damaged or destroyed to the extent that the Subscriber is prevented from having the beneficial use thereof, the Subscriber will have no claim of any nature against GREENCOM and it is GREENCOM's sole obligation to the Subscriber will be to repair the damaged or destroyed section of the Network in accordance with the service level procedures set out in Annexure 2.
- 12.2. In the event that the Network or any part thereof is damaged or destroyed by a Third Party to the extent that the Subscriber is prevented from having beneficial use thereof, the Subscriber shall cede any rights, title or interest which it may have to claim and recover such losses and/ or damages caused by such Third Party, whereupon the Subscriber will be indemnified by GREENCOM against any counterclaim raised by such Third Party.
- 12.3. To the extent that any damage to the Network is so severe that such damages are not capable of being repaired under the service levels set out in Schedule 2, same will constitute a Force Majeure Event (as defined in clause 16) and be dealt with in terms of clause 13 and the Subscriber will not be liable for payments of the pro rata portion of the rental for so long as it is deprived of the beneficial use of the infrastructure or any particular optical fibre strands.

13. FORCE MAJEURE

- 13.1. "Force Majeure" means any event or circumstance, other than a lack of funds required for payment, which is not within the reasonable control of the affected Party, including, but not limited to, theft, war or civil war (whether declared or undeclared, including the serious threat of same) or armed conflict, invasion and acts of foreign enemies, riots, sabotage, blockades and embargos, civil unrest, commotion or rebellion, any act or credible threat of terrorism, any act of God, earthquake, flood, extraordinary storm, nuclear, chemical or biological contamination or explosion, plague, epidemic, any act of any authority, (including delaying or refusing of licences, and/or restrictions on construction work), explosion, fire, industrial unrest, strikes and/or lockouts ("Force Majeure Event").
- 13.2. If a Force Majeure Event prevents a Party ("the Affected Party") from performing any of its obligations under this Agreement, the Affected Party will be granted an extension of time to perform the relevant obligation.
- 13.3. The Affected Party is obliged to notify the other Party, as soon as reasonably possible, about the material adverse effect of a Force Majeure Event on the performance of its

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obligations under this Agreement to the reasonable satisfaction of the other Party, and furthermore advise what steps the Affected Party will take to rectify the situation and resume the performance of such obligations.

- 13.4. Upon the termination of the event of the Force Majeure Event, the Affected Party shall immediately notify the other Party of such termination and resume performance of its obligations.
- 13.5. If, as a result of a Force Majeure Event, the performance by the Affected Party of some but not all of its obligations under this Agreement is affected, the Affected Party shall remain liable for the performance of those obligations not adversely or materially affected by such Force Majeure Event.
- 13.6. If the Force Majeure Event continues for a period of 1 (one) month or longer, then either Party may, at the expiry of such period, provided that the Force Majeure Event is still subsisting, give notice in writing to the other Party terminating this Agreement or the applicable Area Specific Agreement.

14. INTELLECTUAL PROPERTY

- 14.1. GREENCOM is hereby given a non-exclusive, non-transferable, royalty-free licence to use and copy the intellectual property and know-how, including any upgrades, additions and new versions thereof (including, without limitation, patent copyright, design, software, including its source code, names and trademarks) provided to GREENCOM in accordance with this Agreement to the extent necessary to carry out its obligations in terms hereof. No other licence will be granted or deemed to be transferred by one Party to the other as a result of either Party providing information to the other in terms hereof.
- 14.2. A Party is only entitled to use the other Party's name, know-how, suppliers, customers, technical information, product pricing, methods, methodologies, formulae, logo, brand, product names, registered designs, patents or any other intellectual property related to the Network or the Network Facility or other similar registered or unregistered rights, having obtained prior written permission from the other Party.
- 14.3. Each Party shall promptly inform the other Party of actual or suspected infringement of its intellectual property as detailed in 16.2 above. Any Party wishing to defend its intellectual property rights shall bear any cost relating to such defence.
- 14.4. Each Party is responsible to ensure that meeting its obligations under this Agreement does not infringe the intellectual property rights of any Third Party and shall hold the other Party harmless for any damages that may arise from any infringement for which that Party is responsible.
- 14.5. After termination of this Agreement, neither Party may use the rights, as detailed in clause 14.2 above, of the other Party.

15. PERSONAL INFORMATION

- 15.1. The Service Provider is responsible for the handling of Personal Information of its Subscribers. GREENCOM and any person operating under GREENCOM's supervision may only handle Personal Information in accordance with the instructions set out in this Agreement or as from time to time directed by the Subscriber. In the event GREENCOM lacks instructions that GREENCOM deems necessary to carry out its obligations, GREENCOM shall, immediately upon becoming aware of this, inform the Subscriber of its position and await such instructions as the Subscriber deems necessary in the circumstances.
- 15.2. In the event that the Subscriber, to whom the Personal Information relates or other authorized Third party requests information from GREENCOM concerning the processing of Personal Information, GREENCOM will refer this request to the Subscriber. Unless required to do so by law, GREENCOM will not disclose Personal Information, or other information relating to the processing of Personal Information, without explicit instructions from the Subscriber.
- 15.3. When POPI comes into force, the Parties undertake to take such measures as are stipulated in POPI, which may be applicable, which means that-
 - 15.3.1. the Parties shall, to the extent that either of the Parties shall be processing Personal Information of the other party or of any Third Party, comply with the principles set

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out in POPI and all measures that give effect to those principles as contemplated in POPI;

- 15.3.2. the Parties agree that the Responsible Party (as defined in POPI) alone shall determine and be liable for, the purposes for which and the manner in which the Personal Information is, or is to be, processed in the performance of this Agreement;
 - 15.3.3. the relevant Operator (as defined in POPI) is technically capable and any additional costs incurred will be for the Responsible Party's account. The Operator agrees to deal promptly and properly with all reasonable inquiries from the Responsible Party relating to processing of Personal Information and to co-operate with any supervisory authority in the course of all its obligations.
- 15.4. The Parties agree that before the implementation of appropriate technical and organisation measures to be taken, or any substantial changes required by the above-mentioned implementation of POPI, practices, procedures, rules and regulations as well as the costs of the changes must be agreed to with the other Party.

16. CONFIDENTIALITY

- 16.1. All technical and commercial information, including pricing, provided under this Agreement or disclosed to or received from either Party shall be deemed to be confidential information. Confidential information shall be used by the receiving party solely for the purposes of meeting its obligations in terms of this Agreement and shall not be disclosed to Third Parties, except to the extent that this is bona fide necessary to carry out the receiving party's obligations under this Agreement, without the disclosing party's prior written consent.
- 16.2. Nothing in this Clause 16 shall prevent a party from disclosing information-
- 16.2.1. which is or becomes generally available to the public other than by the negligence or default of the receiving party or by the breach of this Agreement by the receiving party; which has lawfully become known by or come into the possession of the receiving party on a non-confidential basis from a source other than the disclosing party having the legal right to disclose same; or
 - 16.2.2. which is disclosed pursuant to a requirement or request by operation of law, regulation or court order, to the extent of compliance with such requirement or request only and not for any other purpose and in which event the Party required to disclose such information:
 - 16.2.3. shall advise the other Party in writing as soon as possible and, if possible, prior to the disclosure; and
 - 16.2.4. shall afford the other Party an opportunity to intervene in the proceedings to the extent that this is possible.
- 16.3. The obligations specified in this clause 19 shall remain in force throughout the term of this Agreement and for a period of 3 (three) years after termination of this Agreement. Upon termination of this Agreement, either Party shall be entitled to make written request the other Party to return any confidential information belonging to the first Party.

17. SUBCONTRACTORS

The Parties have the right to use subcontractors to meet their obligations under this Agreement. To the extent that a Party uses a subcontractor to fulfil any obligation, or any part of an obligation, in terms of this Agreement, such Party shall be responsible for their subcontractor's work as if it was their own. The Parties shall ensure that subcontractors are subject to the same undertakings in terms hereof, including but not limited to confidentiality undertakings, which the Parties themselves subject to.

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18. DEFAULT

- 18.1. A Party to this Agreement ("Defaulting Party") shall be in default if:
- 18.1.1. it fails to pay any amount due by it in terms of this Agreement, by the due date and fails to remedy such breach within 7(seven) days of written notice to do so; or
 - 18.1.2. it commits a material breach of any provision of this Agreement and, provided that such breach can be remedied, fails to remedy such breach within 10 (ten) days written notices to do so; or
 - 18.1.3. it commits an act of insolvency in terms of Section 8 of the Insolvency Act 24 of 1936, as amended or replaced from time to time, which would have constituted such an act of insolvency if it had been a natural person; or
 - 18.1.4. an Order of Court is made placing it under supervision and/ or commencing business rescue proceedings in respect of such Defaulting Party; or
 - 18.1.5. it is removed from the register of companies or is placed under provisional or final liquidation or sequestration; or
 - 18.1.6. notice is given of a meeting of shareholders or directors of the Defaulting Party, at which the voluntary liquidation of or the commencement of business rescue proceedings in respect of the Defaulting Party has been tabled; or
 - 18.1.7. the Defaulting Party's board of directors resolves that the Defaulting Party voluntarily begins business rescue proceedings and be placed under supervision; or
 - 18.1.8. the Defaulting Party is financially distressed, as contemplated in section 128 of the Companies Act 71 of 2008, as amended or replaced from time to time; or
 - 18.1.9. the Defaulting Party (i) is unable to pay its debts as and when they become payable in the ordinary course of business, (ii) suspends or threatens to suspend payment of all or a material part of its indebtedness to the other Party or any other creditors, (iii) commences negotiations and/or takes any other step with a view to the deferral , rescheduling or any adjustment if all or a particular type of its indebtedness to its other creditors, or (iv) proposes or makes a benefit of its creditors or a moratorium is agreed or declared in respect of or affecting all or a part of its indebtedness to the other Party or its other creditors; or
 - 18.1.10. the Defaulting Party fails to satisfy any final judgment taken against it or fails to apply to have such judgment set aside within seven (7) Business Days of becoming aware of it; or
 - 18.1.11. the Defaulting Party commits repeated breaches of its obligations under this Agreement and the cumulative effect if those repeated breaches is a material breach of this Agreement; or
 - 18.1.12. the Defaulting Party infringes any Intellectual Property rights of the other Party and, if capable of remedying, fails to remedy the breach within seven (7) days after the date on which the other Party delivered a written notice on the Defaulting Party calling upon it to remedy the breach; or
 - 18.1.13. the Defaulting Party breaches clause 19 and, if capable of remedying, fails to remedy the breach within seven (7) days after the date on which the other Party delivered a written notice on the Defaulting Party calling upon it to remedy the breach.
- 18.2. If either Party is in default, the other Party shall be entitled, in addition to all other remedies to which it may be entitled in law or in terms of this Agreement, to terminate this Agreement in writing without further notice.

19. TERMINATION

- 19.1. Notwithstanding the provisions of clause 0, GREENCOM may terminate this Agreement if:
- 19.1.1. the Subscriber has not paid all or any fees, provided that GREENCOM shall give the Subscriber at least seven (7) Business Days' advance written notice to make payment before terminating this Agreement;
 - 19.1.2. GREENCOM ceases to have rights in and to the Network due to any termination of such rights for whatever reason;

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- 19.1.3. the Subscriber has contravened any notices or rules communicated by GREENCOM to the Subscriber from time to time relating to the use of, access to or security measures relating to the Subscriber Services;
 - 19.1.4. the Subscriber has contravened any Applicable Laws;
 - 19.1.5. GREENCOM determines that the Subscriber has engaged in conduct that has caused or may cause damage to GREENCOM's facilities, the Network Facilities or any Third Parties;
 - 19.1.6. GREENCOM receives any direction, notification or instruction from any governmental authority to suspend or terminate the provision of the services to the Subscriber and/ or Subscribers or generally (where the reason for this is not due to any fault or negligence of GREENCOM).
- 19.2. A Party shall, in connection with the termination of this Agreement, return to the other Party all equipment, software, documentation, marketing materials, and other materials, and any other information in whatever so medium it sorted together with any copies thereof belonging to the other Party.

20. DOMICILIA AND NOTICES

- 20.1. The Parties select as their respective domicilia citandi et executandi for the purpose of giving or sending any notice provided for or required under this Agreement, the addresses shown as such in the contact list provided in Annexure 1.
- 20.2. A Party may change its domicilium address to another physical address in the Republic of South Africa or change its e-mail address for the purposes of notice to another valid e-mail address, by written notice to the other Party. Such change of address will be effective 5 (five) business days after receipt of such notice.
- 20.3. Any notice to a Party which-
 - 20.3.1. is delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its domicilium citandi et executandi shall be deemed to have been received on the day of delivery; or
 - 20.3.2. is sent by email to its chosen e-mail address stipulated in Annexure 1, and is acknowledged on receipt, and shall be deemed received when so acknowledged.
- 20.4. A written notice or communication actually received by a Party shall be an adequate written notice or communication to it for all purposes, notwithstanding that it was not sent to or delivered at its chosen domicilium citandi et executandi.

21. DISPUTE RESOLUTION

- 21.1. Should any dispute, disagreement or claim arise between the Parties concerning this Agreement and/or any payments due by one Party to the other pursuant to its provisions (the "Dispute"), the Parties shall endeavour to resolve the dispute by negotiation in accordance with clause 21.2
- 21.2. As required in terms of clause 21.1, representatives of the Parties shall meet and attempt to resolve the dispute within 10 (ten) Business Days from the date of written notice given by the one Party to the other setting out the nature of the Dispute and providing the all relevant details pertaining thereto (the "Dispute Notice").
- 21.3. If the dispute has not been resolved by such negotiation within 7 (seven) Business Days of the date of the Dispute Notice, the dispute may be dealt with, at the request of either Party, by mediation. Such mediation shall take place in Johannesburg by a mediator agreed to by the Parties. The mediator shall endeavour to assist the Parties to settle the dispute by agreement in such manner as the mediator determines.
- 21.4. If the Parties cannot agree upon a mediator or settlement of the dispute cannot be reached via mediation as contemplated above
 - 21.4.1. if the dispute was submitted to mediation, the submission of the dispute to mediation shall not prejudice any rights of the Parties; and
 - 21.4.2. either Party may refer the Dispute to arbitration by giving written notice to the other Party.

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- 21.5. In the event of the dispute being referred to arbitration, such dispute shall be resolved in accordance with the rules of the Arbitration Foundation of South Africa ("AFSA"). If the Parties be unable to agree on the identity of the arbitrator within 5 (five) Business Days of the written notice referred to in clause 21.4.2, then the arbitrator shall be such appointed by AFSA or by such other person or body as may be agreed to by the Parties. The arbitration shall be held in Johannesburg and either Party may appeal against the decision of the arbitrator to a panel of 3 (three) arbitrators, one being appointed by each Party and the third by agreement between the arbitrators appointed by each Party or, failing such agreement, by AFSA.
- 21.6. Notwithstanding anything to the contrary contained in this clause 21, either Party shall be entitled to apply for, and if successful, be granted, an interdict from any competent court having jurisdiction.
- 21.7. Save to the extent that this clause 21 provides to the contrary, no Party shall be entitled to institute any legal proceedings against the other in connection with any Dispute unless and until such Dispute has been submitted to arbitration in terms of this clause 23 and such arbitration proceedings have been concluded.
- 21.8. The decision of the arbitrators shall be final and binding on the Parties, and for the purposes of having any award made by the arbitrators being made an order of court, each of the Parties hereby submits itself to the High Court of South Africa, Gauteng Local Division, Johannesburg. The Parties hereby exclude all rights of appeal, which might otherwise be conferred upon them by law.
- 21.9. The Parties agree to keep the arbitration (including the subject matter of the arbitration and the evidence heard during the arbitration) confidential and not to disclose it to anyone except for purposes of obtaining an order of court as contemplated in this clause 21.
- 21.10. This clause 23 constitutes an irrevocable consent by each of the Parties to any proceedings in terms hereof, is severable from the rest of the Agreement and shall, notwithstanding the termination of this Agreement, remain in full force and effect.
- 21.11. The Parties agree that the written request or demand by a Party that the dispute be submitted to mediation or arbitration in terms of this clause 21, is to be deemed to be a legal process for the purpose of interrupting prescription in terms of the Prescription Act, No 68 of 1969.

22. APPLICABLE LAW AND JURISDICTION

This Agreement will in all respects be governed by and construed under the laws of the Republic of South Africa and subject to clause 23, the Parties hereby consent to the jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg, or its successor in title and all appeal courts therefrom.

23. GENERAL

- 23.1. This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on either of the Parties.
- 23.2. No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this Agreement, including this clause, will be of any force or effect unless reduced to writing and signed by the Parties.
- 23.3. No latitude, extension of time or other indulgence which may be given or allowed by either Party to the other Party in respect of the performance of any obligation, and no delay or forbearance in the enforcement of any right of either Party arising from this Agreement and no single or partial exercise of any right by either Party under this Agreement, shall in any circumstances be construed to be an implied consent or election by such Party or operate as a waiver or a novation of or otherwise affect any of the Party's rights in terms of or arising from this Agreement or estop or preclude such Party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof. Failure or delay on the part of either Party in exercising any right, power or privilege under this Agreement will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

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- 23.4. No waiver, suspension or postponement by either Party of any right arising out of or in connection with this Agreement shall be of any force or effect unless in writing and signed by such Party. Any such waiver, suspension or postponement will be effective only in the specific instance and for the purpose given.
- 23.5. If any provision of this Agreement, which is not material to its efficacy as a whole, is rendered void, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and the Parties shall endeavour in good faith to agree an alternative provision to the void, illegal or unenforceable provision.
- 23.6. Neither this Agreement nor any part, share or interest herein nor any rights or obligations hereunder may be ceded, delegated or assigned by either Party without the prior signed written consent of the other Party, save as otherwise provided herein.

24. COSTS

- 24.1. Each Party will bear and pay its own legal costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of this Agreement.
- 24.2. Save as otherwise in this Agreement, if either Party obtains its own independent advice in relation to any tax or regulatory issues pertaining to the transactions contemplated in this Agreement and/or negotiations, drafting, preparation and execution of this Agreement, such Party shall bear its own costs in relation to such advice.

25. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.

CONTACT DETAILS

Greencom ICT (Pty) Ltd

Domicilium Citandi et Executandi:

Unit 3, Capricorn Office Park

Capricorn Street, Paulshof

Johannesburg, 2191

E-mail Address: info@greencom.co.za

Subscriber

As provided in the Service Request Form

E-mail Address:

As provided in the Service Request Form

GREENCOM FTTH SERVICE LEVELS

1. Planned Network Availability

The GREENCOM FTTH Service is a Best Effort service which means the potential speed that can be obtained will depend on the load on the line and the speeds achieved via third party networks. The network is designed to provide an average availability of FTTH services of 95% per year, measured over a 12-month rolling window. GREENCOM does not give any guarantees with regards to the quality, speed and consistency of the Wi-Fi performance of the Equipment.

2. FTTH Service Hours

GREENCOM Operates a Network Operations Centre (NOC) specifically for its FTTH network. The following table indicates the FTTH NOC's operating hours.

FTTH Fault Reporting	Hours	
Telephonically 087 151 4000	Monday – Friday	08:00 - 20:00
	Saturday, Sunday	09:00 - 13:00
	Public holidays	Closed
Through GREENCOM Trouble Ticketing System at: http://www.greencom.co.za	24/7/365	
Via e-mail to support@greencom.co.za	24/7/365	
Serious and Minor Fault Repairs	Business hours only	

Critical fault repairs and network surveillance and monitoring will be performed 24/7/365.

3. FTTH Service Level Definitions

Service levels for the FTTH Network are divided into three levels based on the nature of the faults:

a. Critical Faults

Faults that cause service disruption that affects more than twenty (20) Subscribers on the same network in a specific area. i.e. same street or complex.

b. Serious Faults

Faults that cause a customer to still be completely offline after all TAC1 action and diagnostics have been completed. Force majeure, customer caused damage, as well as negligent or malicious damage by third parties, are excluded from the service levels for this type of fault.

c. Minor Faults

Faults that cause service impairment in the quality of the Subscriber's Services. With minor faults the Subscriber's Services remain connected, operational and usable, but materially lower than the agreed quality parameters on the fibre, after all TAC1 action and diagnostics have been completed. Wi-Fi issues are expressly excluded from the service levels for Minor Faults, due to the lack of control over customers' Wi-Fi use and physical environments.

Service Level	Critical Faults	Serious Faults	Minor Faults
Response Time	Within 4 hours	90% within 2 business days	90% within 3 business days
MTRR	24 Hours	90% within 3 business days	90% within 6 business days
Activation Time (after ONT installation)			
90% of activations will be done within 12 business days of receipt and acceptance of a complete and accurate order, provided that the fibre within the target complex has officially been handed over to GREENCOM Network Operations.			

Note that certain faults require escalation to the Fibre Infrastructure Provider and actual response and repair timeframes then lie outside of Greencom's control. The Subscriber will be notified of this event and advised of the time and ticket number of the escalation.

4. REPAIRS AND MAINTENANCE

- a. Scheduled maintenance of the GREENCOM network, or any portion thereof, will not normally result in Service interruption or outage.
- b. GREENCOM will arrange for any necessary repairs arising in terms of this Agreement. Unless specifically otherwise provided in the Agreement, GREENCOM will be responsible for the costs of any repairs arising from faults in GREENCOM's equipment, except where such fault was due to customer activity or negligence, which costs shall be for the Subscriber's account. The Customer shall also be liable for the cost incurred in effecting any repairs arising from equipment belonging to the Customer or any third party and which equipment is not provided in terms of the Agreement.