

STANDARD TERMS AND CONDITIONS

These Standard Terms and Conditions apply to all purchase and sale arrangements entered into with Elingo (Pty) Ltd or any of its legal successors or any juridical persons affiliated (Elingo), relating to the supply of Products and Services to any party who purchases the Products and Services (Customer, or where applicable, the Applicant). The applicability of the Customer or Applicant's standard terms and conditions is hereby expressly rejected. Any provisions that vary from these Standard Terms and Conditions only apply if and in so far as they are accepted by Elingo in writing.

1. DEFINITIONS

In this Agreement, the words detailed hereunder will have the meanings assigned to them unless the context clearly indicates or requires otherwise.

- 1.1 **"Agreement"** means these terms and conditions, the Application Form and any Order, Proposals, SLA, Schedules and / or annexures, as applicable;
- 1.2 **"Alterations"** include, without limitation to modifications, repairs, replacements or attempted modifications to Products; and the incorporation of components, boards and sub-assemblies which are not supplied by Elingo into Products;
- 1.3 **"Attachments"** include, but is not limited to, any Equipment, components or devices which are not supplied by Elingo which are physically connected or related to the Products.
- 1.4 **"Applicant"** means the entity that wishes to become a customer whose details are reflected in the Application Form;
- 1.5 **"Application Form"** means the official Elingo credit application document completed by the Applicant in writing, containing the Applicant's details, in terms of which the Applicant requests that Elingo provides it with the supplied Products and Services;
- 1.6 **"Business Day"** means any day other than a Saturday, Sunday or recognised South African public holiday;

- 1.7 **“Confidential Information”** means any information or data which by its nature or content is identifiable as confidential and/or proprietary to the Party disclosing the confidential information (“the Disclosing Party”) and/or any third party, or which is provided or disclosed in confidence; and which the Disclosing Party or any person acting on its behalf may disclose or provide to the Party receiving the confidential information (“the Receiving Party”) or which may come to the knowledge of the Receiving Party by whatsoever means. Confidential Information does not include information that:
- 1.7.1 is known to or in the possession of the Receiving Party prior to disclosure thereof by the Disclosing Party;
 - 1.7.2 is or becomes publicly known, other than pursuant to a breach of its confidentiality undertakings under this Agreement by the Receiving Party;
 - 1.7.3 is acquired or developed independently of the Disclosing Party by the Receiving Party other than pursuant to a breach of its confidentiality undertakings under this Agreement by the Receiving Party;
 - 1.7.4 is disclosed by the Receiving Party to satisfy the order of a court of competent jurisdiction or to comply with the provisions of any law or regulations in force from time to time, provided that the Receiving Party shall advise the Disclosing Party prior to such disclosure to enable the Disclosing Party to take whatever steps it deems necessary to protect its interest in this regard, provided further that the Receiving Party will disclose only that portion of the information which it is legally required to disclose and will use its reasonable endeavours to protect the confidentiality of such information to the widest extent possible in the circumstances;
- 1.8 **“Consumables”** means any commodities that may be depleted or worn out by use and which are intended to be used up and then replaced, including without limitation, ink cartridges, backup media / cartridges and compact disks;
- 1.9 **“Commencement Date”** means the date of Order or written acceptance by the Customer of the supplied Products, Services or SLA;
- 1.10 **“Customer”** means the Applicant or successful Applicant agreed and accepted by Elingo to supply Products and Services, who is liable for the payment of the Product and Service Charges and for compliance with terms of this Agreement;
- 1.11 **“CPA” means the Consumer Protection Act No. 68 of 2008;**

- 1.12 **"Effective Date"** means the date of issuance or signature of Order or written acceptance by the Customer of the supplied Products and Services;
- 1.13 **"Equipment"** means the hardware products listed in any Equipment Schedule in the Order;
- 1.14 **"Elingo"** means a company with registration number 2001/010436/07, VAT number 4190197667 and incorporated in terms of the Companies Act 71 of 2008, as amended, and/or any of its subsidiaries or affiliated companies, acting through their duly authorised representatives;
- 1.15 **"Firmware"** means software code embedded in non-volatile pre-programmed memory present in the system;
- 1.16 **"Functional Specification Document"** means a document setting out the configuration or development of the relevant system(s) in order to enable Elingo to implement the Customer's requirements;
- 1.17 **"Intellectual Property"** includes any intellectual property rights and is not limited to copyright, patents, trademarks, designs, inventions, brand names, know-how or technical data supplied to a Customer by Elingo in connection with any order whether registered or not.
- 1.18 **"Order"** means an order, signed and accepted proposal, executed SLA or successful acceptance of Application Form completed and signed by the Customer and approved by Elingo, or any written acceptance or similar document recording the agreed terms for the purchase and supply of Products or Services as contemplated in clause 7;
- 1.19 **"Parties"** means Elingo and Customer (or Applicant where applicable), and "Party" means either of the Parties;
- 1.20 **"Products"** means Equipment, Hardware, Software and Licenses, as determined by Elingo from time to time;
- 1.21 **"Product Manufacturer"** means the manufacturer and / or supplier of Products as well as support of Products to Elingo;

- 1.22 **“Product and Service Charges”** means the amounts payable for the Services as set out in this Agreement;
- 1.23 **“Project Management Plan”** means a document signed and approved by the Parties utilised to manage project execution;
- 1.24 **“Proposal”** means any plan, quotation, letter, offer or similar document made by the Elingo to the Customer to supply Products and Services;
- 1.25 **“Response”** means the initial acknowledgement by Elingo of a fault reported by Customer in terms of the relevant SLA or Order;
- 1.26 **“Services”** means, without limitation, the implementation, execution, customisation and integration of Products during projects and as recorded in the Order, subject to the exclusions in clause 24 or exclusions in any other SLA;
- 1.27 **“SLA”** means the relevant Support Level Agreement recording the terms of Service including without limitation on-going support, maintenance and upgrades conducted by Elingo for the Customer;
- 1.28 **Software** means the object code version of computer programs described in any SLA, including Firmware and any related documentation;
- 1.29 **“UAT Sign-Off”** means user acceptance testing Sign-Off as contemplated in clause 7.11;
- 1.30 **“Uptime”** means Elingo’s support and maintenance service, which includes support, troubleshooting and resolution services in respect of the Products listed in the relevant Product Schedules in the SLA and / or Application Form and as defined in the SLA or Order.

2. APPLICATION OF STANDARD TERMS AND CONDITIONS

- 2.1 These standard terms and conditions, as amended by Elingo from time to time, are applicable to the provision and use of all Products and Services provided by Elingo to the Customer.

- 2.2 The Parties accept and agree that these standard terms and conditions become binding upon Elingo receiving any of the following documentation: accepted, completed and / or signed Order as processed by Elingo and agreed and accepted by Elingo in writing to provide the Customer with the requested Products and Services.

3. APPLICATION FOR PRODUCTS AND SERVICES

- 3.1 The Customer is entitled to order Products and Services by either completing an Order.
- 3.2 Elingo is entitled to decline or refuse any Order, written documentation or Application if the Applicant has been blacklisted or has an adverse credit rating as contemplated in the National Credit Act 34 of 2005 or has omitted to provided or concealed relevant information.

4. AMENDMENT OF STANDARD TERMS AND CONDITIONS

- 4.1 Elingo reserves the right to amend its standard terms and conditions from time to time, with notification to the Customer.

5. CREDIT REFERENCING

- 5.1 The Applicant expressly consents to general and specific credit referencing enquiries. Elingo is entitled to check the correctness of any information provided by the Application when applying for any Elingo service.
- 5.2 The Applicant warrants that all information provided in applying for any Elingo Products and Services is complete, true and correct and indemnifies Elingo against all claims of whatsoever nature which arise directly or indirectly from the provisioning of such incorrect information.

6. COMMENCEMENT AND DURATION

- 6.1 This Agreement will commence on and with effect from the Commencement Date and will continue in effect until terminated in terms of this Agreement.

- 6.2 Subject to clause 6.3, either Party shall have the right to terminate this Agreement on 120 (one hundred and twenty) days written notice to the other at any time. In the event that the Customer terminates the Agreement, all amounts paid by the Customer shall be non-refundable and all amounts owing in terms of the Order supported by this Agreement shall become immediately due and payable.
- 6.3 Notwithstanding termination of the Agreement, this Agreement shall continue to apply to any Order still in existence at the time of termination of the Agreement. Any such Order will be terminated after expiry of its relevant term as set out in clause 6.4 and will not be renewed.
- 6.4 The term in respect of each Order will be a minimum of 12 (twelve) months from the Effective Date.
- 6.5 Thereafter each Order will be renewed for successive 12 (twelve) month terms unless and until such Order is terminated by either Party by giving the other not less than 120 (one hundred and twenty) days prior written notice of termination having effect at the expiry of the then current 12 (twelve) month term, or such other period as is agreed to between the Parties in writing.
- 6.6 In the event that the Customer terminates the Agreement, all amounts paid by the Customer shall be non-refundable and all amounts owing in terms of the Order supported by this Agreement shall become immediately due and payable.

7. ORDERING AND PROVISIONING OF SERVICES

- 7.1 The Customer may order the requested Products and Services by concluding an Order to the satisfaction of Elingo.
- 7.2 The Customer must notify Elingo of any planned environmental changes, including but not limited to changes to the Customer's systems and software or network architecture. In the event the Customer is unsure of whether such changes will impact the Products and Services, it must liaise with Elingo. In the event that the Customer fails to do so and the Products and Services are negatively impacted, Elingo shall not be held to nor required to fulfil its obligations in terms of this Agreement and shall not be liable for any direct and indirect losses or damages suffered by the Customer in this regard.

- 7.3 All proposals provided by Elingo to the Customer shall be valid for 10 (ten) days, unless otherwise specified in such proposal, and relevant forex rates, duties, levies, surcharges and taxes in effect shall be applied as of the date of quotation, but adjust to applicable forex rates, duties, levies surcharges and taxes on receipt of Order.
- 7.4 Elingo reserves the right to deliver Products and Services ordered as and when products are made available to Elingo by the Product Manufacturer. In the event that Elingo is unable to supply the requested Products and Services, it will notify the Customer in writing and the Order shall be regarded as cancelled. Elingo shall not be liable for any losses, damages or expenses direct or indirect of any nature whatsoever sustained or incurred by the Customer arising from Elingo's inability to provide the Services.
- 7.5 Elingo shall be entitled to execute delivery of Products and Services in part from time to time. If prior to the delivery the Products and Services is rendered obsolete or are superseded by new services, Elingo shall be entitled to cancel any contract for the sale / licensing of such Product and Services without liability or penalty to Customer.
- 7.6 After receipt of the Order or written acceptance or SLA, the Customer and Elingo shall meet to agree on the Functional Specification Document, Project Management Plan and the scope of work.
- 7.7 No supply of Products or Services shall commence until the Customer signs a Functional Specification Document, as per the dates and schedule agreed in the Project Management Plan. In the event that the Customer releases, instructs or causes to release any build or development into production, the Customer shall be deemed to have signed a Functional Specification Document.
- 7.8 No Order or written acceptance shall be processed by Elingo before payment is received in full as contemplated in clause 8.6.
- 7.9 Variation by the Customer of the Order after signature will incur a variation fee of the Product and Service Charges, as determined by Elingo from time to time.
- 7.10 Subject to clause 7.8 above, after Order, Elingo will proceed to deliver the requested Products and Services.

- 7.11 The Customer shall provide Elingo with UAT Sign-Off within 2 (two) Business Days after testing by Elingo to confirm that the supplied Products and Services is operational, or such longer period as agreed to in writing between the Parties. UAT Sign-Off is deemed to be successful when known exceptions are noted and agreed by both Parties and any outstanding issues do not affect the supplied Products and Service to the extent that it cannot be deployed in a live environment.
- 7.12 Although Elingo will endeavour to complete implementation of the requested Products and Services by the dates quoted, any such dates are estimates only and are not binding on Elingo.
- 7.13 No requested Products and Services shall be included in Live Production by Elingo without successful UAT Sign-Off. For purposes of this Agreement Live Production is defined as the moment when the Products, Services and total solution delivered to the Customer is fully operational and functional.
- 7.14 In the event that the Customer fails to initiate the supplied Products and Service into Production irrespective of UAT Sign-Off or fails to release the UAT Sign-Off and initiates the supplied Products and Service into production, Elingo will not be obliged to perform any of its obligations in terms of this Agreement any Order. For purposes of this Agreement into Production is defined as the process when the Products, Services and total solution delivered to the Customer is moving from build and into Live Production.
- 7.15 All risk in the requested Products shall pass to Customer upon delivery thereof, unless otherwise agreed in writing, delivery will occur as set out in this clause 7.
- 7.16 In the event that the Customer's systems / policies prohibit the use by Elingo of any necessary tools in order to deliver the requested Products, Services and / or SLA, Elingo shall not be held liable for any failure to perform its obligations in terms of this Agreement, Proposal and / or SLA.

8. CHARGES AND PAYMENTS

- 8.1 The Product and Service Charges is the pricing quoted and agreed upon in any Order as at the Effective Date and may be revised during the initial, or any renewal, term by written, approved and / or signed agreement between the Parties.

- 8.2 Notwithstanding the provisions of clause 8.1 above, the supplied Products and Services delivered, and the Product and Service Charges payable under this Agreement and any Order shall be reviewed by Elingo during the 60 (sixty) day period immediately preceding each anniversary of the Effective Date of the applicable SLA.
- 8.3 The requested Products and Services will be invoiced on Order, written acceptance and / or Application Form signed and approved. Invoices are payable immediately in full upon presentation and all payments shall be effected without deduction or set-off. Unless otherwise stated in the Order and / or agreed in writing by the Parties.
- 8.4 Changes in the Products and Service Charges payable by the Customer in respect of each Product and Service will become effective on the renewal date of such SLA. Any increases in the Product and Service Charges payable will be based on the Consumer Price Index (CPI) as published by Statistics South Africa at the time of review and / or SLA or Order renewal.
- 8.5 Charges for services not covered by this Agreement, services performed outside the specified periods of coverage and commercial travel and *per diem* expenses not included in the coverage will be invoiced separately at Elingo's then-current standard service rates.
- 8.6 All other charges payable in terms of this Agreement, if applicable, are payable on presentation of invoice, with a no later than 21 (twenty-one) days from the relevant invoice date.
- 8.7 Elingo shall be entitled to impose a late payment charge equal to the prime rate plus 2% (two percent) per annum (pro-rata for a portion of a month), as published by First National Bank Limited from time to time, of the overdue amount or the maximum interest rate payable in terms of the National Credit Act 24 of 2005, whichever is the lesser. Any such late payment charge shall be paid by Customer on notification by Elingo of the amount thereof and that Elingo has exercised its rights in terms hereof.
- 8.8 The Customer shall bear the cost of any increased Products and Services charges or any new, or increased, taxes imposed by the Government, which are payable in respect of the operation or existence of this Agreement, except for any tax amounts payable by Elingo in respect of Elingo's taxable income.

- 8.9 The Customer will pay any taxes, duties or levies (including Value Added Tax and, where applicable, withholding taxes) which Elingo becomes obligated to pay by virtue of this Agreement but excluding taxes based on the net income of Elingo. All charges referred to in this Agreement are exclusive of Value Added Tax, withholding taxes or other taxes.
- 8.10 Notwithstanding anything to the contrary in this clause 8 or in the Agreement, where applicable, charges for Products and Services quoted in foreign currency shall be subject to exchange rate fluctuations. Should a fluctuation occur in the rate of exchange, the new rate of exchange as per Elingo's invoice shall be applied.

9. CUSTOMER OPERATIONAL RESPONSIBILITIES

- 9.1 The Customer has the sole responsibility for use of the Products, including operating procedures, audit controls, accuracy and security of input and output data, restart and recovery routines, and other procedures necessary for Customer's intended use of the Products.
- 9.2 The Customer will ensure that its personnel are, at all times, educated and trained in the proper use and operation of the Products and that the Products are used in accordance with applicable manuals and instructions.
- 9.3 The Customer will maintain back-up data necessary to replace critical Customer data in the event of loss or damage to such data from any cause.
- 9.4 To enable Elingo properly to provide Services, the Customer will, in addition to any requirements or obligations specified in any SLA:
- 9.4.1 maintain the operating environment in accordance with specifications supplied by the Product Manufacturer;
 - 9.4.2 provide adequate working and storage space for use by Elingo's personnel near the Product;
 - 9.4.3 provide Elingo full access to the Products, subject only to the Customer's security rules;
 - 9.4.4 comply with Elingo's reasonable procedures for determining whether or not remedial service is required;
 - 9.4.5 comply with Elingo's reasonable instructions for obtaining off-site Uptime, if applicable;

- 9.4.6 keep such records relating to the use and performance of the Products as may reasonably be requested by Elingo from time to time and ensure that Elingo's personnel have access to such records at all reasonable times;
 - 9.4.7 provide Elingo with all reasonable assistance and information to assist Elingo to provide the Services; and
 - 9.4.8 supply all communication interfaces (except those kept by Elingo on the Customer site for use by Elingo in the provision of the Services) required by Elingo to enable it to provide any of the Services.
- 9.5 The Customer acknowledges that the Uptime materials located at Customer's facility are the property of and include Confidential Information of Elingo or its licensors. The Customer undertakes that such materials will be used only by Elingo's personnel. All Uptime materials are to be returned to Elingo upon termination of the Services.
- 9.6 Elingo shall be entitled to decline to provide Services in respect of Product which fails to meet the eligibility and pre-requisites for Services. To determine eligibility and pre-requisites for Services, Elingo may require inspection, at the Customer's expense, of Product which:
- 9.6.1 has not been maintained continuously by Elingo from the date of purchase or lease by the Customer; or
 - 9.6.2 has been relocated; or
 - 9.6.3 requires refurbishment; or
 - 9.6.4 has not been acquired from Elingo.
- 9.7 The Customer will ensure no third parties are permitted to access the Products, that no work is performed by such third parties on the Product, Services and total solution, that no equipment is brought to the site or removed from the site and that no additions, enhancements, improvements or any form of changes are effected to the Product, Services and total solution without prior written agreement with Elingo.
- 9.8 The Customer shall be obliged, at its own cost, to ensure any telecommunications (by telecom service provider) and customer's network systems (LAN or WAN) or services and International Open Standards SIP required to operate the Products and Services are in place.

10. SOFTWARE AND LICENSING

- 10.1 All Software delivered to Customer shall be licensed for use by the Customer strictly in accordance with the terms and conditions of the standard licence applicable to that Software.
- 10.2 Acceptance of delivery by Customer or any Order shall constitute acceptance by Customer of such licence terms and conditions, even if a written licence is not signed by the Customer.
- 10.3 A copy of the standard licence terms and conditions for each Software Product is available from Elingo upon request.

11. PRODUCT WARRANTY

- 11.1 Where the Product Manufacturer or licensor of Products sold or licensed to Customer gives warranties to Elingo, Elingo shall endeavour to pass on to the Customer the same warranties, with equivalent disclaimers and limitations of liability, in respect of said Products where possible and applicable.
- 11.2 Save as aforesaid, Elingo gives no warranties or undertakings to Customer whatsoever with regard to Products or Services, and all implied or residual warranties, including without limitation, the warranties of 'fitness for a particular purpose' and 'merchantability' are hereby disclaimed and excluded.

12. REPLACEMENT PARTS

- 12.1 Product parts which are removed for replacement by Elingo become the property of Elingo, upon replacement by Elingo.
- 12.2 Product parts replaced by Elingo become the property of Customer, upon implementation thereof by Elingo.

13. ALTERATIONS, ATTACHMENTS AND RELOCATIONS OF PRODUCTS

- 13.1 The Customer shall provide Elingo prior written notice of 60 (sixty) days of any proposed relocations, Alterations or Attachments. Elingo may, at its option, continue to provide Services for Products which have undergone relocation, Alteration or Attachment, subject to Customer agreement to adjusted charges and Response times.
- 13.2 Elingo is neither liable nor responsible for any malfunction, non-performance or degradation of performance of Products caused by or resulting directly or indirectly from any Alterations or Attachments not approved in writing by Elingo. The Customer will be solely responsible for resulting infringement, personal injury or damage to property and Products.
- 13.3 The Customer will be responsible for any relocation of Products and shall give Elingo 30 (thirty) days' prior written notice thereof. Product that is relocated to alternative premises may be subject to additional charges and modifications of Response times.

14. RETURN OF PRODUCTS

- 14.1 The Customer shall not be entitled to return any Products to Elingo without Elingo's express consent and provided Customer complies with the applicable provisions of this clause 14.
- 14.2 Elingo shall be entitled (in its discretion) to deny return of Products if it is not in original condition and complete with all manuals, accessories, cables, software distribution media and packaging, provided that in the case of Products, once the packaging has been opened and/or the seal has been broken, that Products is non-returnable unless returned under clause 14.3.
- 14.3 No claim in respect of shortages or damage to Products and Services supplied, sold or licensed shall be considered unless made in writing and received by Elingo within 5 (five) days from date of delivery of Product and Service. In the event of material defects or shortages in products proved to Elingo's satisfaction, and upon being properly notified, Elingo shall, at its option and provided that it is able to receive the same undertaking or commitment from the Product Manufacturer either -
- a. Recall and substitute the Products and Services with a product and service at similar standard quality and value;
 - b. Recall the Products and Services and refund Service Fee and Licence Fee.

- 14.4 Should the Product and Services be defective or not conform to specifications such Products and Services may be returned within 5 (five) days from the date of Order. Any Product and Service returned after 5 (five) days will be subject to a 35% (thirty-five percent) handling fee. Any Products

returned more than 7 (seven) days after the Order will not be accepted, substituted, exchanged or refunded under any circumstances. Any advance exchanges will be charged to Customer's account (and are therefore payable) and will only be credited (less handling fee if applicable) once defective Products are received. Customer will cover all outward and inward bound costs of Products and Services replaced under warranty.

14.5 No further claims of whatsoever nature shall be entertained in respect of damaged or defective Product, or Products which do not conform to specifications and in particular Elingo shall not be liable for any direct or consequential loss or damage of any nature.

14.6 If the provisions of the CPA are applicable to this Agreement, to the extent that Products and Services are supplied to the Customer who is a consumer as defined by the CPA, the Products and Services is warranted in respect of quality, suitability and durability for a period of 6 (six) months of the Effective Date in respect of the Product concerned. Provided the Customer is not in breach of the Agreement, the Customer may within this period return the Product to Elingo without penalty if the Product fails to satisfy the requirements and standards contemplated and Elingo shall repair or replace the failed, unsafe or defective Products and Services. If Customer elects to enforce the provisions of clause 14.1 and, within 3 (three) months of any repair undertaken by Elingo, the failure, defect or unsafe feature has not been remedied, or a further failure, defect or unsafe feature is discovered by Customer, Elingo shall, in its sole and absolute discretion:

- a. replace the Product; or
- b. refund to Customer the cost applicable thereto.

15. SUB-CONTRACTORS

15.1 Elingo shall have the right, subject to receiving the prior written consent of the Customer, which shall not be unreasonably withheld, to sub-contract such persons as Elingo in its reasonable discretion to enable Elingo to fulfil its obligations under this Agreement.

16. PROTECTION OF CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY RIGHTS

16.1 Subject to clause 16.2, the Receiving Party will keep in confidence and protect Confidential Information received from the Disclosing Party, including this Agreement and any Order, from

disclosure to third parties without the prior written consent of Elingo and restrict its use as provided in this Agreement.

- 16.2 No consent shall be required for disclosure of this Agreement, including any SLA's, to the auditor and professional advisors of Customer and employees of Customer, who Customer deems appropriate, or to any authorities who by law are entitled thereto.
- 16.3 The Receiving Party acknowledges that unauthorised disclosure of Confidential Information may cause substantial economic loss to the Disclosing Party or its licensors. Confidential Information shall not be copied by the Receiving Party, in whole or in part, without the Disclosing Party's prior written consent. Each copy, including its storage media, will be marked by the Receiving Party with all notices which appear on the original.
- 16.4 The Disclosing Party may, at any time by way of written notice to the Receiving Party, require the Receiving Party to return or destroy any material containing, pertaining to or relating to Confidential Information and to expunge such Confidential Information from any word processor, computer or similar device into which it was entered or programmed and may, in addition, require the Receiving Party to furnish a written statement to the effect that, upon such return, the Receiving Party has not retained in its possession or under its control any such material. The Receiving Party shall comply with all requirements in terms of this clause 16.4 within 5 (five) days of receipt of such written notice.
- 16.5 The Receiving Party will inform its auditors, professional advisers and employees of their obligations under this clause 16 and instruct them so as to ensure such obligations are met.
- 16.6 Save as provided for in clause 16.2 above, neither Party may publicise or disclose the contents of any Order or its existence without the prior written consent of the other Party first having been received.
- 16.7 Elingo shall not be entitled to include Customer in its published customer reference list, to issue a press release and to develop and publish a case study on its web-site, detailing the services provided by Elingo to Customer, without prior written consent by the Customer, which shall not be unreasonably withheld or delayed.
- 16.8 This Agreement does not transfer to the Receiving Party title to any Intellectual Property and all Intellectual Property generally developed in the provision of the Product and Services shall vest in Elingo.

16.9 Any Intellectual Property created prior to the Commencement Date shall vest exclusively with the Party or Parties who created same.

16.10 Upon termination or cancellation of any licence agreement relevant to the Software, the Customer will at Elingo's option destroy (and, in writing, certify destruction) or return to Elingo all copies of the Software, the licence for which has been so terminated or cancelled and any other related Intellectual Property in Customer's possession (including Intellectual Property incorporated in other software or writings).

16.11 This clause 16 will survive termination or cancellation of this Agreement and shall remain in force for a period of 60 (sixty) months after termination of this Agreement or any renewal period.

17. WARRANTIES AND DISCLAIMERS

Elingo warrants that:

17.1 It has full capacity and all necessary consents to enter into this Agreement.

17.2 The Services will be performed by appropriately experienced and suitably qualified personnel in a proper and professional manner, in accordance with good industry practice and its own established internal procedures.

17.3 Warranties for replacement parts are limited to the warranty applicable to the original part replaced and will in no event extend the warranty period or conditions that applied to the original part.

17.4 The warranty period on the Products will start on the date on which the Product Manufacturer's warranty period commences.

17.5 Elingo provides the Customer the same warranties in respect of Products which are to be afforded to Elingo by the Product Manufacturer of the Products.

17.6 Elingo will give the Customer all reasonable support in enforcing its rights in respect of any warranties given by any such Product Manufacturer. As a result of inability and impossibility to rectify all errors in

Software, Elingo does not warrant that all Software defects will be corrected. Similarly, Elingo does not warrant that the functions contained in the Software will meet Customer's requirements or that the Software will operate in all combinations selected for use by the Customer.

17.7 The Services, whether provided during any applicable warranty period in relation to the Products and Services or thereafter, do not cover repair or damage attributable to any matters or events referred to in clause 24.

17.8 Except as expressly stated in this Agreement, Elingo gives no warranties, express or implied, by operation of law or otherwise. Without derogating from the generality of the foregoing, the warranties of “fitness for a particular purpose” and “merchantability” are specifically excluded. Any warranties given by Elingo extend solely to the Customer.

18. LIMITATION OF LIABILITY

18.1 Elingo's maximum liability for any single or a number of claims arising out of the performance of a Products and Service will not exceed an amount equal to the amount paid to Elingo by the Customer in the 3 (three) consecutive months preceding the date on which the cause of action arose, in respect of the Product and Service giving rise to such claim.

18.2 In no event will Elingo be liable, whether claimed in breach of contract, delict or under statute for any incidental, indirect, special, punitive or consequential damages or loss, including, but not limited to, loss of use, revenues, profits or savings, claims, demands or actions against the Customer by any person, or payments made by or due from Customer to third parties; loss of or damage to Customer data from any cause or loss of funds contained in, dispensed by or associated with the Products.

19. SUSPENSION AND CANCELLATION

19.1 Elingo may suspend delivery of Products and Services on written notice to Customer if:

- a. any payment or portion of payment under this Agreement or any Order is overdue by more than 21 (twenty-one) days; or
- b. any applicable site configuration falls below the reasonable, minimum configuration required by Elingo, as communicated by Elingo to the Customer in writing from time to time.

19.2 Without prejudice to other remedies available to it in terms of this Agreement, Elingo may cancel this Agreement or any Order if Customer fails to:

- a. make any arrear payment within 21 (twenty-one) days; or
- b. resolve any other default within 21 (twenty-one) days, as the case may be, of receipt of written notice calling upon Customer to make payment or remedy the default in question.

19.3 Elingo shall be further be entitled to:

- a. terminate Services on 30 (thirty) days' prior written notice if Elingo reasonably determines that Customer's Software modification or failure to install a revision or update will interfere with the provision of such Products and Services, or
- b. in the event that any Products become obsolete and are no longer supported by the Product Manufacturer or licensor of such products (Obsolete Products) terminate this Agreement in relation to such Obsolete Products on 90 (ninety) days prior written notice to Customer. In this event:
 - i. this Agreement shall remain of full force and effect in respect of Products which are not obsolete; and
 - ii. if the Customer has paid Product and Service Charges in advance in respect of Obsolete Products, the Customer's account will be credited pro-rata for the period following termination.

19.4 Termination or cancellation of this Agreement will not affect any rights or duties arising under it with respect to Confidential Information, Intellectual Property or payment of charges.

20. BREACH

20.1 If a Party to this Agreement -

- c. fails to pay any amount due by it in terms of this Agreement or any Order by the due date, and fails to remedy such breach within 90 (ninety) days of written notice to do so; or
- d. commits a material breach of any other provision of this Agreement any Order and fails to remedy such breach within 90 (ninety) days of written notice to do so; or
- e. takes steps to place itself, or is placed in liquidation, whether voluntary or compulsory, or under judicial management, in either case whether provisionally or finally; or
- f. take steps to deregister itself or is deregistered; or

- g. fails to satisfy a substantial judgment against that Party within 21 (twenty-one) days after that Party becomes aware of the judgment, except if that Party provides evidence on an ongoing basis to the reasonable satisfaction of the other Party that steps have been initiated within the 21 (twenty-one) days to appeal, review or rescind the judgment and to procure suspension of execution of that judgment and that such steps are being expeditiously pursued. The period of 21 (twenty-one) days shall run from the date on which the judgment becomes final, or the date on which the attempts to procure the suspension of the execution fail; such Party shall be in default.

20.2 If a Party is in default, the aggrieved Party shall be entitled, in addition to all other remedies to which it may be entitled at law, or in terms of this Agreement, to cancel this Agreement any Order.

20.3 Upon the termination for any reason whatsoever of this Agreement any Order all amounts then owing by one Party to the other Party will become immediately due and payable.

21. NON-SOLICITATION AND NON-CIRCUMVENTION

For the duration of this Agreement and for 24 (twenty-four) months thereafter, neither Party shall –

21.1 directly or indirectly, employ, solicit or offer employment to any employee of the other Party who is or was employed or involved in the provision of the Services, nor shall it solicit, entice, encourage or persuade any such employee to terminate his / her employment with the other Party;

21.2 seek to by-pass, compete, avoid or circumvent the other Party in respect of any business opportunity that relates to the Product and Service by utilising any Confidential Information or by otherwise exploiting or deriving benefit from this Agreement or any Order.

22. NOTICES

22.1 The Parties choose as their *domicilia citandi et executandi* their respective addresses set out in this clause for all purposes arising out of or in connection with this Agreement, at which addresses all processes and notices arising out of or in connection with this Agreement, its breach or termination, may validly be served upon or delivered to either of the Parties.

22.2 For the purposes of this Agreement the Parties' respective addresses shall be:

Elingo -

Elingo (Pty) Ltd

Page 19 of 25

Standard Terms and Conditions

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Whitby Manor Office Estate
167 14th Road
Noordwyk
Midrand
Gauteng
Fax: +27 11 206 2922
E-mail: admin@elingo.co.za

The Customer -

The physical or residential address in in South Africa not being a post office box or poste restante, electronic mail and facsimile elected and specified in the Order or in a written notice with 14 (fourteen) days of completing an Order.

22.3 Any notice given or other document sent in terms of this Agreement or any Order shall be in writing and shall -

- a. if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;
- b. if posted by prepaid registered post be deemed to have been received by the addressee on the 10th (tenth) Business Day following the date of such posting;
- c. if transmitted by facsimile or electronic mail be deemed to have been received by the addressee on the 1st (first) Business Day after dispatch;

22.4 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by one of the Parties from another including by way of electronic mail or facsimile transmission shall be adequate written notice or communication to such Party.

23. DISPUTE RESOLUTION

NEGOTIATION

23.1 In the event of any dispute arising between the Parties relating to or arising out of this Agreement, Product, Services and / or SLA(s), including the implementation, execution, interpretation, rectification, termination or cancellation of this Agreement the dispute shall initially be referred for resolution to their designated representatives.

- 23.2 A dispute within the meaning of this clause arises as soon as one Party notifies the other in writing of the nature of the dispute and requires the resolution of the dispute in terms of this clause 23.1. The Parties shall continue to perform all undisputed obligations where possible whilst any dispute is being resolved.
- 23.3 Within 10 (ten) Business Days following the above-mentioned notification, the Parties shall seek an amicable resolution to such dispute by referring the dispute to the designated representatives of each of the Parties for their negotiation and resolution of the dispute. The representatives shall be authorised to resolve the dispute and their decision shall, in the absence of manifest error, be final and binding.
- 23.4 In the event of the negotiation between the designated representatives not resulting in an agreement signed by the Parties resolving the dispute within 15 (fifteen) Business Days thereafter, the Parties may seek legal redress through the courts or refer the matter for arbitration.

ARBITRATION

- 23.5 In the event that the Parties are unable to resolve the dispute in terms of the negotiation process discussed above, the Parties may refer it for arbitration.
- 23.6 The arbitration will be held as an expedited arbitration in Sandton, Johannesburg, Gauteng in accordance with the then current rules for expedited arbitration of Arbitration Foundation of South Africa by 1 (one) arbitrator appointed by agreement between the Parties. If the Parties cannot agree on the arbitrator within a period of 10 (ten) Business Days after the referral of the dispute to arbitration, the arbitrator shall be appointed by the Secretariat of AFSA.

INTERIM RELIEF

- 23.7 The provisions of clauses 23.1 and 23.2 shall not preclude any Party from access to an appropriate court of law for interim relief in respect of urgent matters by way of an interdict, or mandamus pending finalisation of this dispute resolution process for which purpose the Parties irrevocably consent to the jurisdiction of the Magistrates' Court, notwithstanding that such proceedings are otherwise beyond the court's monetary jurisdiction.

23.8 The provisions of this clause 23 shall continue to be binding on the Parties, notwithstanding any termination or cancellation of this Agreement or any Order.

24. EXCLUSIONS

In addition to any exclusions set out in any annexures to this Agreement or any Order to be provided in terms of this Agreement do not include the provision of services, nor repairs or replacements necessitated by or related to:

- 24.1 damage caused by accident, fire, water, lightning or other act of God;
- 24.2 damage caused by war (whether declared or not), riots, civil disorder, acts of violence, sabotage or similar acts;
- 24.3 damage caused by abnormal operating conditions such as high or low temperatures or humidity or dust levels which are beyond the published environmental specifications of the Product Manufacturer;
- 24.4 the connection of ancillary equipment, not supplied by Elingo, or not approved by the Product Manufacturer;
- 24.5 the negligent use, abuse or misuse of Products;
- 24.6 damage during any transportation of Products not carried out by Elingo;
- 24.7 electrical work, not performed by Elingo;
- 24.8 causes external to the Product such as failure or fluctuation of electrical power;
- 24.9 products that have become unserviceable or obsolete;
- 24.10 the relocation of Products;

24.11 modifications, repairs or replacements or attempted modifications, repairs or replacements not performed by Elingo or not approved by Elingo in writing prior to such modifications, repairs or replacements being performed or attempted by any other party, including Customer;

24.12 the refurbishment of any Product;

24.13 the restoration of lost data from any Product, or equipment connected to Products;

24.14 the provision of any accessories or Consumables; and / or

24.15 any changes or modifications to Products which are required as a consequence of any technical or regulatory changes introduced by the appropriate regulatory authorities.

25. GENERAL

25.1 All risk of loss or damage to Products will pass to Customer upon delivery to Customer's site.

25.2 Neither Party will be liable for failure to fulfil its obligations when due to causes beyond its reasonable control including, without limitation, the failure or delay of any supplier, Acts of God, strikes or lock outs ("Force Majeure").

25.3 If any Force Majeure event occurs in relation to either Party which affects or may affect the performance of any of its obligations under this Agreement, Product, Services and / or SLA(s), it shall forthwith notify the other Party as to the nature and extent of the circumstances in question. Neither Party shall be deemed to be in breach of this Agreement, or shall otherwise be liable to the other, by reason of any delay in performance, or the non-performance of any of its obligations under this Agreement to the extent that the delay or non-performance of that obligation is due to any Force Majeure of which it has notified the other Party and the time for performance shall be extended accordingly.

25.4 If the performance by either Party of any of its obligations under this Agreement is prevented or delayed by Force Majeure for a continuous period in excess of 60 (sixty) days, the other Party shall be entitled to terminate this Agreement by giving written notice to the Party so affected, whereupon all

money due up to the point of termination under this Agreement shall be paid immediately, and in particular Customer shall pay to Elingo all arrears of payment.

25.5 Any failure or delay by either Party in exercising any right or remedy will not constitute a waiver.

25.6 This Agreement will be governed in all respects by the laws of South Africa.

25.7 This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof. The terms and conditions of this Agreement will supersede all other terms and conditions submitted by Customer, and all and any written and oral communications between the Parties.

25.8 Elingo may cede its rights under this Agreement including, without limitation, the right to receive payments, without Customer's consent. Elingo will not assign its obligations under this Agreement without Customer's prior written consent, which consent may not be withheld unreasonably.

25.9 The Customer will not cede, assign or transfer its rights or obligations under this Agreement without prior written consent of Elingo, which consent may not be withheld unreasonably.

25.10 This Agreement may be modified or added to only by a written addendum signed by a duly authorised representative of each Party.

25.11 Each paragraph and provision of this Agreement is severable, and if one or more paragraphs or provisions are declared invalid, the remaining provisions of this Agreement will remain in full force and effect.

25.12 In the event of any conflict between the terms and conditions of this Agreement and those appearing in any SLA or annexure(s) hereto, as applicable, the terms and conditions of this Agreement shall prevail unless expressly stated otherwise in the relevant SLA or annexure concerned.

26. WARRANTY OF AUTHORITY

26.1 Each Party warrants to the other Party that it has the necessary rights, licences and authorities to conclude and perform its obligations in terms of this Agreement.

26.2 Each Party warrants that there is nothing contrary to the articles, memorandum of association or related founding documentation of their respective entities, which may influence or prevent any of the provisions of this Agreement from being enforced.

27. COMPLIANCE WITH RELEVANT LEGISLATION

27.1 In this Agreement CPA means the Consumer Protection Act 68 of 2008; ECTA means the Electronic Communications and Transactions Act 25 of 2002; and POPI means the Protection of Personal Information Act 4 of 2013.

27.2 The Parties acknowledge familiarity and understanding of CPA, ECTA and POPI and undertakes to treat all information and stakeholders in a manner compliant with CPA, ECTA and POPI.

27.3 The Parties acknowledge non-compliance with legislation relating to the processing of personal information, including the CPA, ECTA and POPI may result in penalties.

27.4 The Customer indemnifies and shall keep Elingo indemnified and hold it harmless from and against all and any claims, loss, demands, liability, penalties, costs and expenses of whatsoever nature resulting from non-compliance.