

## STANDARD TERMS AND CONDITIONS FOR RETAIL SERVICES

### 1. Definitions and Interpretation

- 1.1. In this Agreement the following terms and phrases shall have the following meaning, unless the context otherwise requires:
- 1.1.1. "**Agreement**" shall mean, as between INITIO NETWORKX and Customer, these Standard Terms and Conditions for Retail Services read together with the relevant Service Specific Terms and Conditions, as well as applicable quotations and the related Business Retail Services Order Form.
  - 1.1.2. "**Billing Start Date**" shall mean, in relation to a Service, the "Service Activation Date" or "Acceptance Date" or date of "Completion of Connection" as described in clause 3.2.
  - 1.1.3. "**Business Day**" shall mean, in respect of a Service, every day excluding Saturdays, Sundays and any national holidays.
  - 1.1.4. "**Business Retail Services Order Form/Order Form**" shall mean a request for a specific Service delivered by the Customer to INITIO NETWORKX and accepted by INITIO NETWORKX in accordance with clauses 2.1 and 2.2.
  - 1.1.5. "**Charges**" shall mean Call Charges, Usage Charges, Installation Charge, Start Up Charge, Rental Charges, Monthly Fees and any other charges or fees payable by the Customer to INITIO NETWORKX in respect of a Service, as set out or referred to in the Order Form and revised from time to time in accordance with clause **Error! Reference source not found.** and/or clause 4.7.
    - 1.1.5.1. "**Call Charges**" shall mean the charges for circuit or packet switched telecommunications services payable in accordance with clause 4.
    - 1.1.5.2. "**Installation Charge**" or "**Start Up Charge**" or "**Connection Charge**" shall mean a non-recurring charge for installation of a Service (including installation of any Service Equipment) payable in accordance with clause 4.
    - 1.1.5.3. "**Rental Charge**" or "**Monthly Fee**" shall mean monthly recurring charges for a Service payable in accordance with clause 4.
    - 1.1.5.4. "**Usage Charges**" shall mean the usage-based charges for Internet Services payable in accordance with clause 4.
  - 1.1.6. "**Confidential Information**" shall mean all information (in whatever format) which: (i) relates to the Agreement; (ii) is designated as confidential by either Party; or (iii) relates to the business, affairs, networks, customers, products, developments, trade secrets, know-how and personnel of either Party (including, in the case of the Customer, Customer Data) and which may reasonably be regarded as the confidential information of the disclosing Party.

## STANDARD TERMS AND CONDITIONS

- 1.1.7. **"Customer Data"** shall include, but not be limited to, data transmissions (including the originating and destination numbers and IP addresses, date, time and duration of voice or data transmissions, and other data necessary for the establishment, billing or maintenance of the transmission), data containing personal and/or private information of the Customer, its employees or authorised users of the Services, and other data provided to or obtained by INITIO NETWORKX and their respective agents in connection with the provision of Services. **"Regulated Customer Data"** is that Customer Data of which the use, processing or transfer is regulated by law or regulation as "personal data" where INITIO NETWORKX or their respective agents come into possession of such Customer Data.
- 1.1.8. **"Customer Equipment"** shall mean hardware, software, systems, cabling and facilities provided by the Customer and used in conjunction with the Service Equipment in order to receive the Service.
- 1.1.9. **"Customer Site"** shall mean a site or sites specified in the Order Form at which a Service is to be provided.
- 1.1.10. **"Effective Date"** shall mean, in relation to a Service, the date upon which the Order Form becomes binding in accordance with the provisions of clause 2.2 below.
- 1.1.11. **"Emergency Works"** mean works, the execution of which, at the time it is proposed to execute them, is required to put an end to, or prevent, the arising of circumstances then existing or imminent that are likely to cause: (i) danger to persons or property; (ii) the interruption of any service provided by the Network or the network generated by a third party; (iii) substantial loss to INITIO NETWORKX or any third party; and such other works as in all the circumstances it is reasonable to execute with those works.
- 1.1.12. **"Force Majeure Event"** shall mean any cause beyond a Party's reasonable control affecting the performance of its obligations, including, but not limited to, fire, flood, explosion, accident, war, acts of terrorism, power outages, strike, embargo, governmental requirement, civil or military authority, Act of God, changes to laws or regulations, inability to secure materials or services, industrial disputes and acts or omissions of other providers of telecommunications services.
- 1.1.13. **"Internet"** shall mean the international interconnected network of networks using the TCP/IP protocol to exchange data communications.
- 1.1.14. **"IP Network"** shall mean the points of presence, network hubs, and host computers owned, operated or used by INITIO NETWORKX in connection with the provision of a Service.

## STANDARD TERMS AND CONDITIONS

- 1.1.15. **"Party"** shall mean INITIO NETWORKX or the Customer (as the context requires), and **"Parties"** shall mean both INITIO NETWORKX and Customer.
- 1.1.16. **"Ready for Service Notification"** means a notification that may be provided in accordance with clause 3.1 that, with respect to INITIO NETWORKX obligations hereunder, the Service is ready for use.
- 1.1.17. **"Service"** shall mean the specific telecommunications service or Internet service provided by INITIO NETWORKX to the Customer, and as further described in the relevant Order Form and Service Specific Terms and Conditions.
- 1.1.18. **"Service Equipment"** shall mean the hardware, software, systems, cabling, and facilities provided by INITIO NETWORKX at the Customer Site in order to make available the Service to the Customer. Service Equipment shall not include the IP Network or any hardware or software that is the subject of a separate supply contract between INITIO NETWORKX and the Customer.
- 1.1.19. **"Service Specific Terms and Conditions"** in relation to the different service offerings made available by INITIO NETWORKX to its customers, shall mean the terms and conditions regulating the relationship between the Parties, as applicable and unique to the relevant specific service offering, which are in addition to those contained in this Agreement.
- 1.1.20. **"Service Term"**, in relation to each Order Form, shall mean the total period for which the Service is provided pursuant to an Order Form. The **"Initial Service Term"** shall mean the agreed term as stated on the Order Form commencing from the Billing Start Date or, if not stated, a minimum of one year from the Billing Start Date, unless the contrary is clearly indicated.
- 1.2. Unless the context otherwise requires, in this Agreement, a reference to:
- 1.2.1. a person includes a reference to a body corporate, association or partnership;
  - 1.2.2. a person includes a reference to that person's legal personal representatives, successors and permitted assigns;
  - 1.2.3. any statute or statutory provision includes references to that statute or provision as amended, modified or re-enacted; and
  - 1.2.4. a document is a reference to that document as supplemented or varied from time to time.
- 1.3. No provision of the Agreement is intended to contravene the applicable provisions of the Consumer Protection Act, and therefore all provisions of the Agreement to the extent that the Agreement or any goods and services provided under the Agreement documents are governed

by the Consumer Protection Act of 2008, must be treated as qualified, to the extent necessary, to ensure that the applicable provisions of the Consumer Protection Act are complied with.

## **2. Service**

- 2.1. The Customer may from time to time deliver to INITIO NETWORKX an Order Form on the terms of these Standard Terms and Conditions, read together with the relevant Service Specific Terms and Conditions. INITIO NETWORKX may accept an Order Form in its sole discretion.
- 2.2. An Order Form shall be binding on both Parties only after it is accepted by both Parties in written or electronic form, and:
  - 2.2.1. in the case of INITIO NETWORKX such acceptance to include the carrying out to INITIO NETWORKX's satisfaction of appropriate credit checks against the Customer, to which the Customer hereby consents.
  - 2.2.2. Each Order Form issued and accepted pursuant to the terms of these Standard Terms and Conditions shall create an individual contractual relationship between the Parties to provide and receive the Service for the Service Term. These Standard Terms and Conditions, together with the relevant Order Form, shall govern that contractual relationship and any specific terms contained in such Order Form(s), to which terms the Parties to such Order Form herewith agree.
  - 2.2.3. In addition to Agreement terms, the Services shall be subject to all mandatory legal requirements in the jurisdiction where the Service is to be provided, including but not limited to the regulatory and data protection requirements.
  - 2.2.4. In the event of any conflict between the terms of the Order Form and the terms of these Standard Terms and Conditions and/or the Service Specific Terms and Conditions, the terms of the Order Form shall take precedence, followed by the Specific Terms and Conditions and then these Standard Terms and Conditions.
- 2.3. Without releasing it from any of its obligations, INITIO NETWORKX shall be entitled at any time, and without notice, to use subcontractors to perform some or all of such obligations.
- 2.4. The terms and conditions of this Agreement and the Charges for a Service provided hereunder are agreed expressly on the condition that the Customer shall not resell, charge, transfer or otherwise dispose of the Service (or any part thereof) to any third party.
- 2.5. INITIO NETWORKX reserves the right from time to time to change the configuration of the IP Network or the Service Equipment, or to change any applicable access code for receipt of a Service, provided always that such change does not materially affect the relevant Service. INITIO

## STANDARD TERMS AND CONDITIONS

NETWORKX shall use reasonable endeavours to give the Customer a minimum of one calendar month notice of any such changes to access codes.

### 3. Service Activation

- 3.1. After installation of a Service, but prior to the activation of a Service, INITIO NETWORKX shall conduct such tests as it considers to be appropriate to determine that all necessary work has been done to provide the Service to the Customer and, upon successful completion of such tests, INITIO NETWORKX shall use reasonable endeavours to deliver a Ready for Service Notification to the Customer.
- 3.2. The Billing Start Date for a Service shall be:
  - 3.2.1. where the Service as set out in the Order Form can be implemented by means of a billing change and/or system configuration changes, the commencement date as indicated on the Order Form.
  - 3.2.2. where the Service is a new service and/or requires on-site installation to be performed, the event described below that occurs first in time:-
    - 3.2.2.1. The date on which the Customer delivers to INITIO NETWORKX a signed confirmation schedule, being the "Acceptance Date"; or
    - 3.2.2.2. The date the Customer first uses the Service, being the deemed "Acceptance Date" and "Service Activation Date"; or
    - 3.2.2.3. In the case where Customer through no fault of INITIO NETWORKX fails to deliver a confirmation schedule to INITIO NETWORKX, to use the Service or to complete its obligations necessary to use the Service, then the date on which INITIO NETWORKX delivers a ready for Service Notification (which shall also be the "Completion of Connection" or deemed "Service Activation" date);

### 4. Charges and Payment terms

- 4.1. The Customer shall pay the Charges in accordance with this clause 4.
- 4.2. Subject to the provisions of clauses **Error! Reference source not found.** and 4.7, the Charges shall not be increased during the Initial Service Term.
- 4.3. Charges shall accrue from the Billing Start Date and may be invoiced by INITIO NETWORKX for:
  - 4.3.1. Call Charges and/or Usage Charges monthly in arrears.
  - 4.3.2. Installation Charges and/or Start Up Charges INITIO NETWORKX on or at any time after the Effective Date.
  - 4.3.3. Rental Charges and/or Monthly Fees monthly in advance. Service(s) provided for part of a month will be charged on a pro-rata basis.

CONFIDENTIAL

- 4.4. Any invoice for Charges shall be due on issue of the invoice and shall be paid by the Customer within seven (7) days of delivery of a statement to the Customer.
- 4.5. Interest shall accrue on any overdue invoice from the due date until payment (whether before or after judgement) at the maximum rate permissible to be charged under the provisions of the National Credit Act in relation to incidental credit.
- 4.6. All Charges or other sums which may from time to time be due, owing or incurred to INITIO NETWORKX are stated exclusive of value added tax and any similar sales tax, levy or duty which shall be payable by the Customer and invoiced by INITIO NETWORKX at the then prevailing rate where the Service is provided.
- 4.7. The Customer agrees to comply with any obligation as to minimum usage and/or minimum payment as may be set out in the relevant Order Form, except to the extent that any non-compliance in this respect is the direct result of INITIO NETWORKX's negligence or breach of this Agreement. The Customer also agrees to comply with any Initial Service Term commitment. Any breach by the Customer of its obligations under this clause 4.7 shall, in addition to constituting a material breach of this Agreement, entitle INITIO NETWORKX to:
  - 4.7.1. in the case of a minimum usage or payment commitment, increase to no more than the then prevailing INITIO NETWORKX base rate applicable to the actual usage of the Customer, the Charges for the relevant Service with effect from the commencement of the period to which the breach relates; or
  - 4.7.2. in the case of early termination of a Service (or part of a Service) any time from acceptance of an Order Form by INITIO NETWORKX to the expiry of the Initial Service Term, levy an early termination charge upon the Customer (which the Customer hereby acknowledges to be reasonable and a genuine pre-estimate of INITIO NETWORKX's loss) equal to the amounts reflected in the relevant Service Specific Terms and Conditions as applicable to the Service being terminated.

## **5. INITIO NETWORKX Obligations**

- 5.1. In performing its obligations under this Agreement, INITIO NETWORKX shall at all times exercise the reasonable skill and care of a competent provider of Internet related services.
- 5.2. INITIO NETWORKX shall use reasonable endeavours to ensure that each Service will conform to any service descriptions and/or service levels as set out, or referred to, in the applicable Order Form and/or any applicable ancillary service level agreements and/or Service Specific Terms and Conditions.

- 5.3. Except as expressly set out in these Standard Terms and Conditions and applicable Service Specific Terms and Conditions, all warranties, representations or agreements, with respect to the provision of a Service or otherwise, whether oral or in writing and whether express or implied, either by operation of law, statute or otherwise, are excluded to the extent permitted by law.

## 6. Service Suspension

- 6.1. INITIO NETWORKX may, at its sole discretion and without prejudice to any right which it might have to terminate a Service and/or this Agreement, elect to immediately suspend the provision of a Service (or part thereof) in any of the following circumstances:
- 6.1.1. INITIO NETWORKX has reasonable grounds to consider it is entitled to terminate the Service and/or this Agreement pursuant to clause 7;
  - 6.1.2. INITIO NETWORKX is obliged to comply with an order, instruction or request of a court, government agency, emergency service organisation or other administrative or regulatory authority;
  - 6.1.3. INITIO NETWORKX needs to carry out Emergency Works to the IP Network or Service Equipment;
  - 6.1.4. INITIO NETWORKX has reasonable grounds to consider that the Service is being used fraudulently or illegally or in violation of clause 8.6;
  - 6.1.5. INITIO NETWORKX has reasonable grounds to consider that the Customer will not or is unable to make any payment which is due or is to fall due to INITIO NETWORKX hereunder;
- 6.2. If INITIO NETWORKX exercises its right to suspend the Service (or part thereof) pursuant to clauses 6.1.2 or 6.1.3 it shall, whenever reasonably practicable, give prior notice of such suspension to the Customer, such notice to state the grounds of such suspension and its expected duration. INITIO NETWORKX shall in such circumstances use all reasonable endeavours to resume the Service as soon as is practically possible.
- 6.3. If the Service (or part thereof) is suspended as a consequence of the breach, fault, act or omission of the Customer, the Customer shall pay to INITIO NETWORKX all reasonable costs and expenses incurred by the implementation of such suspension and/or recommencement of the provision of the Service.
- 6.4. INITIO NETWORKX shall not be liable for any loss, damage or inconvenience suffered by the Customer as a result of any suspension made pursuant to clause 6.1, except to the extent that such suspension is made pursuant to clause 6.1.3 and for reasons which are solely and directly attributable to the negligence of INITIO NETWORKX.

## 7. Term and Termination

## STANDARD TERMS AND CONDITIONS

- 7.1. These Standard Terms and Conditions shall apply to each accepted Order Form and in respect of each Service selected by the Customer on such Order Form, from the Effective Date of each Order Form.
- 7.2. Either Party may terminate a Service:
  - 7.2.1. Subject to the provisions of an Order Form, on at least 90 days written notice to take effect on or at any time after expiry of the relevant Initial Service Term;
  - 7.2.2. immediately by notice if, in relation to that Service, the other Party has committed a material breach which is incapable of remedy;
  - 7.2.3. immediately by notice if, in relation to that Service, the other Party has committed a material breach capable of remedy, but which it fails to remedy within ten (10) Business Days of having been notified of such breach; or
  - 7.2.4. immediately by notice if, in relation to that Service, a Force Majeure Event subsists for a continuous period exceeding three (3) months.
- 7.3. Either Party may terminate the Agreement immediately upon notice:
  - 7.3.1. in the event of a material breach by the other, which has application to all Services then provided under this Agreement, and which is incapable of remedy;
  - 7.3.2. in the event of a material breach by the other, which has application to all Services then provided under this Agreement, and which is capable of remedy, but which such other fails to remedy within ten (10) Business Days of having been notified of such breach;
  - 7.3.3. if the other has a receiver or an administrative receiver appointed over it or over any part of its undertaking or assets or passes a resolution for winding up (other than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect or if the other becomes subject to an administration order or enters into any voluntary arrangement with its creditors or ceases or threatens to cease to carry on business, or undergoes or is subject to any analogous acts or proceedings under any foreign law;
  - 7.3.4. in the event of a Force Majeure Event, which has application to all Services then provided hereunder, and which subsists for a continuous period exceeding three (3) months; or
  - 7.3.5. where, after expiry of any applicable Initial Service Term(s), no Services have been provided under this Agreement for a continuous period exceeding three (3) months.
- 7.4. INITIO NETWORKX may terminate the Agreement (or a specific Order Form) immediately by notice if a suspension of a Service pursuant to clauses 6.1.4 or 6.1.5 has continued for a period of at least two (2) consecutive months.
- 7.5. If INITIO NETWORKX has reasonable grounds to consider that there has been a violation of clause 8.6.2, INITIO NETWORKX may notify the Customer and require it to remedy the violation in the

CONFIDENTIAL



## STANDARD TERMS AND CONDITIONS

event of an incident involving a violation of public law or regulation or an imminent threat to the IP Network, immediately; or in all other cases, within forty-eight (48) hours. If the Customer fails to notify INITIO NETWORKX that such a remedy has been effected in accordance with this clause 7.5 or if INITIO NETWORKX reasonably determines that the violation is continuing or is likely to occur again, INITIO NETWORKX may terminate this Agreement (or relevant Service) immediately upon notice to the Customer.

- 7.6. Notwithstanding the provisions of clauses 7.2 and 7.3, INITIO NETWORKX may terminate the Agreement (or the relevant Order Form) on five (5) Business Days' notice if the Customer fails to make any payment, when due, in accordance with the terms of this Agreement.
- 7.7. Without prejudice to accrued rights or obligations, upon termination of the Agreement:
  - 7.7.1. all Order Forms and accompanying Services shall terminate immediately;
  - 7.7.2. notwithstanding the provisions of clause 4, all accrued Charges not yet invoiced shall become due and shall be paid by the Customer immediately on receipt of an invoice;
  - 7.7.3. where the termination is as a result of breach of the Customer, any applicable early termination charges will become due and payable immediately; and
  - 7.7.4. each Party shall promptly return to the other Party all copies of the other Party's Confidential Information and, if requested, verify to the other Party that it has done so.
- 7.8. Termination of this Agreement shall not affect a clause that necessarily or by its context requires survival of these Standard Terms and Conditions.

### 8. Customer Obligations

- 8.1. The Customer shall grant or shall procure the grant to INITIO NETWORKX or its authorised representatives of such rights of access to each Customer Site, including any necessary licences, waivers or consents to enable it to perform its obligations or exercise its rights under this Agreement. The Customer shall advise INITIO NETWORKX in writing of all health and safety rules and regulations and any other reasonable security requirements applicable at the Customer Site, and INITIO NETWORKX shall use all reasonable endeavours to observe and ensure that its employees and authorised representatives observe such regulations and requirements as advised whilst at the Customer Site.
- 8.2. The Customer shall provide INITIO NETWORKX with such facilities and information as INITIO NETWORKX may reasonably require, enabling it to perform its obligations or exercise its rights under the Agreement.
- 8.3. The Customer warrants and undertakes that it shall:

## STANDARD TERMS AND CONDITIONS

- 8.3.1. use the Service Equipment only for the purpose of receiving the Service and in accordance with INITIO NETWORKX's reasonable instructions from time to time and/or any software licence that may be provided with the Service Equipment;
  - 8.3.2. not move, modify, relocate, or in any way interfere with the Service Equipment (or any words or labels on the Service Equipment) or the Network;
  - 8.3.3. not cause the Service Equipment to be repaired or serviced except by an authorised representative of INITIO NETWORKX;
  - 8.3.4. insure and keep insured all Service Equipment installed at each Customer Site against theft and damage;
  - 8.3.5. not create or allow any charges, liens, pledges or other encumbrances to be created over the Service Equipment. Title to the Service Equipment shall at all times belong and remain with INITIO NETWORKX, an INITIO NETWORKX affiliate or their subcontractors;
  - 8.3.6. permit INITIO NETWORKX to inspect, test, maintain and replace the Service Equipment at all reasonable times;
  - 8.3.7. comply with INITIO NETWORKX's reasonable instructions in relation to the modification of the Customer Equipment to enable the Customer to receive the Service, at its own expense; and
  - 8.3.8. upon termination of a Service, allow INITIO NETWORKX access to each Customer Site to remove the Service Equipment. Should any construction or alteration to the Customer Site have occurred to facilitate any Service, INITIO NETWORKX is not obliged to restore the Customer Site to the same physical state as prior to Service delivery.
- 8.4. The Customer shall be liable for any and all damage to Service Equipment or the IP Network which is caused by:
  - 8.4.1. the act or omission of the Customer or the Customer's breach of the terms of this Agreement; or
  - 8.4.2. malfunction or failure of any equipment or facility provided by the Customer or its agents, employees, or suppliers, including but not limited to the Customer Equipment;
- 8.5. The Customer warrants that it holds and shall continue to hold such licences and/or other authorisations as may be required under any relevant legislation, regulation or administrative order, to receive the Services and to run and connect the Customer Equipment to the Network and Service Equipment. INITIO NETWORKX reserves the right to disconnect any Customer Equipment where the Customer has failed to comply with the provisions of this clause 8.5 and INITIO NETWORKX shall in no event be liable in respect of the Customer's failure to comply with this clause 8.5.
- 8.6. The Customer warrants and undertakes that it shall in its use of the Services comply with:
  - 8.6.1. any relevant legislative and regulatory provisions and shall not use the Services for any illegal or immoral purpose; and

## STANDARD TERMS AND CONDITIONS

8.6.2. the current version of the INITIO NETWORKX Acceptable Use Policy (the "Policy"). The applicable Policy shall be available on the INITIO NETWORKX website. The Customer shall, prior to commencing its use of the Service(s), read and understand the Policy. INITIO NETWORKX reserves the right to change the Policy from time to time, effective upon posting of the revised Policy on its website and by notice to the Customer;

and the Customer shall indemnify INITIO NETWORKX in respect of any and all losses, damages, costs or expenses resulting from or arising out of any breach of the warranties set out in this clause 8.6 and/or any third party claim or allegation arising out of or relating to the use of the Service, and which relates to any act or omission of the Customer which is, or if substantiated would be, a breach of this clause 8.6.

### 9. Liability

9.1. Subject to clauses 9.4 and 10 each Party's total liability to the other arising in connection with the Agreement shall be limited to:

9.1.1. For any event or series of connected events a value equal to six times the value of the average monthly billing of the affected Service(s); and

9.1.2. notwithstanding clause 9.1.1, a maximum amount in aggregate in any twelve (12) month period of twelve times the value of the average monthly billing of the affected Service(s);

the average being calculated using three months of billing prior to the aforementioned event or series of connected events..

9.2. Subject to clause 9.4 but otherwise notwithstanding anything else in this Agreement, neither Party shall in any event be liable to the other for indirect or consequential losses or otherwise for harm to business, loss of revenues, loss of anticipated savings or lost profits, whether or not reasonably foreseeable at the time when the Agreement was entered into.

9.3. The Customer acknowledges that INITIO NETWORKX is unable to exercise editorial or other control over any content placed on or accessible through the Customer's use of the Services and INITIO NETWORKX shall have no liability as to the quality, content or accuracy of information received through or as a result of the use of the Services.

9.4. Nothing in this Agreement shall serve to limit either Party's liability in respect of death or personal injury caused by or arising from its negligence, or any liability arising pursuant to the clauses 4, 8.5, 8.6, and 11.

### 10. Force Majeure

Notwithstanding anything herein to the contrary, neither Party shall be liable to the other for any delay, failure in performance of any part of this Agreement (other than for payment obligations set out in clause 4) or damages suffered to the extent that such delay or failure is attributable to a Force Majeure Event. Subject to clauses 7.2.4 and 7.3.4, any such delay or failure shall suspend the Agreement until the Force Majeure Event ceases and the length of the suspension shall extend the affected Initial Service Term(s).

## **11. Intellectual Property, IP Addresses and Domain Names**

11.1. The Customer acknowledges:

- 11.1.1. that any and all patents, registered and unregistered designs, copyrights, trademarks and all other intellectual property rights whatsoever and wherever enforceable, which are used in connection with the Service and/or Service Equipment, shall remain the sole property of INITIO NETWORKX, its contractors or suppliers; and
- 11.1.2. without limitation to the foregoing, that the Customer shall not be entitled to use the name, trademarks, trade names or other proprietary identifying marks or symbols of INITIO NETWORKX without INITIO NETWORKX's prior written consent.

## **12. Confidentiality**

12.1. Subject to clause 12.2, each Party hereunder, shall:

- 12.1.1. only use Confidential Information for the purposes of the Agreement;
- 12.1.2. only disclose Confidential Information to a third party with the prior written consent of the other Party (except that either Party may disclose Confidential Information to its employees, agents or contractors, including professional advisors or auditors; and
- 12.1.3. ensure that any third party to whom Confidential Information is disclosed executes a confidentiality undertaking substantially similar to the terms of this clause 12.

12.2. The provisions of clause 12.1 shall not apply to any Confidential Information which: (i) is in or comes into the public domain other than by breach of this clause 12; or (ii) is or has been independently generated by the recipient Party; or (iii) is properly disclosed pursuant to a separate written consent or a statutory obligation, the order of a court of competent jurisdiction or the requirement of a competent regulatory body.

## **13. Assignment**

Neither Party may assign, charge, transfer or otherwise dispose of the Standard Terms and Conditions, any Order Form, or any rights or obligations therein in whole or in part, without the written consent of the other Party (which consent shall not be unreasonably withheld or unduly delayed), except that INITIO NETWORKX may assign any and all of its rights and obligations hereunder: (i) to any INITIO NETWORKX affiliate; (ii) to a third party pursuant to any sale or transfer of substantially all the assets or business of

INITIO NETWORKX or an INITIO NETWORKX affiliate; or (iii) to a third party pursuant to any financing, merger, or reorganisation of INITIO NETWORKX or an INITIO NETWORKX affiliate.

#### **14. General**

- 14.1. Severability. If any provision of the Agreement, including any limitation, is held by a court or any governmental agency or authority to be invalid, void or unenforceable, the remainder of this Agreement shall nevertheless remain legal, valid, and enforceable.
- 14.2. No Waiver. Failure or delay by either Party to exercise or enforce any right or benefit conferred by the Agreement, including INITIO NETWORKX'S right to deliver invoices in accordance with clause 4, shall not be deemed to be a waiver of any such right or benefit nor operate so as to bar the exercise or enforcement thereof or of any other right or benefit on any later occasion.
- 14.3. Relationship. Nothing in this Agreement and no action taken by the Parties pursuant to this Agreement shall constitute or be deemed to constitute between the Parties a partnership, agency, association, joint venture or other co-operative entity.
- 14.4. Third Party Beneficiaries. Except as otherwise contemplated by this Agreement, nothing herein will create or confer any rights or other benefits in favour of any person other than the Parties.
- 14.5. Variation. INITIO NETWORKX may amend these Standard Terms and Conditions from time to time, where legislative change or market forces necessitate changes. Any amendment that materially increases the liabilities/responsibilities of the Customer will entitle the Customer to cancel any/all affected Service(s) without incurring any early termination charge as foreseen in clause 4.7.2.

#### **15. Notices**

- 15.1. Except as otherwise expressly provided for herein, any notice required or authorised to be given under the Agreement shall be delivered by hand, prepaid registered post, by facsimile transmission or by email to the address stated on the Order Form and shall be deemed to have been served (unless the contrary is proven):
  - 15.1.1. If delivered by hand, on the next Business Day;
  - 15.1.2. If sent by registered post, 10 Business Days after such posting;
  - 15.1.3. If sent by facsimile transmission, the next Business Day;
  - 15.1.4. If sent by email and the message is not returned, the next Business Day.
- 15.2. Notwithstanding the provisions of this clause, any legal notice that has been sent or transmitted and that have been received by the other party shall be deemed to have been delivered in accordance with the terms of this Agreement.

#### **16. Entire Agreement**

The Agreement (being this Standard Terms and Conditions and all terms under active Order Forms and Service Specific Terms and Conditions) sets out the entire agreement between INITIO NETWORKX and the

Customer, superseding all prior or contemporaneous representations, agreements or understandings concerning the subject matter addressed herein.

## **17. Dispute Resolution**

- 17.1. If the Customer wishes to dispute any invoice or part of an invoice falling due in accordance with clause 4.6, the Customer shall, before the invoice is due for payment, deliver a notice in writing to INITIO NETWORKX setting out the nature of its dispute, including: (i) date and number of disputed invoice; (ii) amount in dispute; (iii) reason for dispute; and (iv) supporting documentation, as appropriate. Any undisputed part of a disputed invoice shall be paid by the Customer in accordance with clause 4.6. The Parties shall use all reasonable endeavours to resolve such payment disputes as soon as is reasonably practicable.
- 17.2. In the event of there being any dispute or difference between the Parties arising out of this Agreement the said dispute or difference shall on written demand by INITIO NETWORKX be submitted to arbitration in Sandton in accordance with the AFSA rules, which arbitration shall be administered by AFSA.
- 17.3. Nothing herein contained shall be deemed to prevent or prohibit a Party to the arbitration from applying to the appropriate court for urgent relief or for judgment in relation to a liquidated claim.
- 17.4. The Parties agree that the commencement of arbitration proceedings shall be deemed to be a legal process for the purpose of interrupting extinctive prescription in terms of the Prescription Act, 1969.

## **18. Customer Data and Privacy**

- 18.1. The Customer acknowledges that INITIO NETWORKX and its respective contractors will, by virtue of the provision of Services, come into possession of Customer Data.
- 18.2. INITIO NETWORKX has implemented and maintains appropriate technical and organisational measures to protect Customer Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access and against other unlawful forms of processing. The Customer acknowledges that it has a right to access Regulated Customer Data upon written notice and have any agreed errors in such Regulated Customer Data rectified.
- 18.3. The Customer acknowledges and agrees that INITIO NETWORKX and its respective subcontractors may use or process Customer Data:
  - 18.3.1. in connection with the provision of Services;
  - 18.3.2. to incorporate Customer Data into databases controlled by INITIO NETWORKX for the purpose of administration, provisioning, billing and reconciliation, verification of

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## STANDARD TERMS AND CONDITIONS

Customer identity and solvency, maintenance, support and product development, fraud detection and prevention, sales, revenue and customer analysis and reporting, market and customer use analysis, and

- 18.3.3. to communicate to the Customer by voice, letter, fax or email regarding products and services of INITIO NETWORKX.

**The Customer may withdraw consent for such use, processing or transfer of Customer Data as set out above by sending a written notice to INITIO NETWORKX to such effect, unless it is required to (i) provision, manage, account and bill for the Services; (ii) carry out fraud detection; or (iii) comply with any statutory obligation, regulatory requirement or court or other public authority order.**

- 18.4. The Customer warrants that it has obtained and will obtain all legally required consents and permissions from relevant parties (including data subjects) for the use, processing and transfer of Customer Data as described in this clause 18.

### 19. Governing Law and Jurisdiction

This Agreement shall be governed and construed in accordance with South African law, and the Parties hereto irrevocably agree to the exclusive jurisdiction of the South African courts.