

## Standard Terms and Conditions

### 1. PREAMBLE

1.1. The following Terms and Conditions contain assumptions of risk and/or liability by you and limit and exclude liabilities, obligations and legal responsibilities which Q-KON will have towards you and other persons. These Terms and Conditions also limit and exclude your rights. It also remedies Q-KON and places various risks, liabilities, obligations and legal responsibilities on you. These Terms and Conditions may result in you being responsible for paying additional costs and amounts and Q-KON may also have claims and other rights against you.

1.2. To the extent that the Terms and Conditions or any goods or services provided under the Terms and Conditions are governed by the relevant national legislature <sup>[1]</sup>, no provision of the Terms are intended to contravene the applicable provisions of the relevant national legislature <sup>[1]</sup>, and therefore all provisions of the Terms and Conditions must be treated as being qualified, to the extent necessary, to ensure that the applicable provisions of the relevant national legislature <sup>[1]</sup> are complied with.

\*Refer to Attachment A to reference relevant legislature

1.3. Please read these Terms and Conditions carefully. Participation in this offer will constitute your agreement to comply with these Terms and Conditions. If you do not agree with these Terms and Conditions, please do not participate in this offer.

### 2. DEFINITIONS

Unless the context clearly indicates the contrary, the following words bear the meaning ascribed to them below:

- 2.1. **“Agreement”** means the agreement between Q-KON and the Customer comprising of these Standard Terms and Conditions, and any Service Product Specific Terms and the Application Form, collectively.
- 2.2. **“Application form”** means the application form completed by the Customer electronically, requesting a Service from Q-KON, together with any document generated by Q-KON agreeing to the provision of such Service(s) and which may set out the details, terms and/or Fees of such Service(s) and related Equipment.
- 2.3. **“Business Day”** means Monday to Fridays, excluding official national holidays, unless otherwise specified in this document.
- 2.4. **“Business Hours”** means 08:00 till 17:00 Standard Time, Monday to Friday, unless otherwise specified in this document.
- 2.5. **“Customer Equipment”** refers to only Equipment provided by Q-KON. Any 3<sup>rd</sup> Party equipment is expressly excluded from this Agreement.
- 2.6. **“Commissioning of the Services”** means the successful installation of Equipment at the Customer’s chosen premises and confirmation that the relevant Service(s) is operational and connectivity is established between two respective end points.
- 2.7. **“Customer”** means any party to whom Services are made available in terms of the Agreement.
- 2.8. **“Effective Date”** means, notwithstanding the date of signature of the Application form, the date of Commissioning of the Services.
- 2.9. **“EFT”** means Electronic Fund Transfer.
- 2.10. **“Fees”** means any connection fees, monthly Service fees, usage fees and any other fees pertaining to the provision of any Service/s provided to the Customer in terms of the Agreement.
- 2.11. **“Force Majeure”** means any acts of God, insurrection or civil disorder, war or military operations, partial or total strikes, either internal or external, lock-outs, epidemics, blockage of means of transport or of supplies, national or local emergency, earthquake, fire, storm, flood, water damage, legal restrictions, acts or omissions of persons for whom that party is not responsible.

- 2.12. **“FUP”** means the Q-KON Fair Use Policy, which all Customers are obliged to adhere to as legislated for safe and responsible use of the Q-KON network and services without interference, prejudice and/or harassment from others.
- 2.13. **“Initial Service term”** means the relevant term indicated on the Application form, commencing on the Effective Date.
- 2.14. **“Installation”** means the installation of Equipment at a designated location, as detailed in the Application Form, which allows the Customer to use the Services.
- 2.15. **“Licence”** means the Service Provision licence granted to Q-KON by the relevant communications Authority <sup>[1]</sup>.
- \*Refer to Attachment A to reference relevant legislature
- 2.16. **“Parties”** means Q-KON and the Customer and **“Party”** refers to either of them as so determined by the context.
- 2.17. **“Q-KON”** means Q-KON Service Provider (Pty) Ltd and Q-KON Telecom Namibia (Pty) Ltd;
- 2.18. **“Renewal Period”** means the additional number of months which the Parties have agreed to renew the Agreement for, as set out under the Application form and commencing on the day immediately following the expiration of the Initial Service term.
- 2.19. **“Services”** shall include Twoobii Fixed Fee Broadband or such other data provision services as Q-KON may offer from time to time.
- 2.20. **“Service Product Specific Terms”** means additional terms and conditions that apply to each individual type of Service, and which terms (i) are contained in an additional service level agreement attached hereto, and (ii) shall regulate and govern the provision of the relevant Service and related Equipment to the Customer in conjunction with these Standard Terms and Conditions and the Application form.

- 2.21. **“VAT”** means value-added tax in terms of the relevant national legislature <sup>[1]</sup>, or any similar tax which is imposed in place of or in addition to such tax.

\*Refer to Attachment A to reference relevant legislature

### 3. COMMENCEMENT AND DURATION

- 3.1. Subject to payment or credit approval, this Agreement shall commence on the Effective Date and shall subsist for the Initial Service term unless terminated earlier in accordance with any other terms of this Agreement. If the Customer does not cancel or renew this Agreement for a further term before expiration of the Initial Service term, this Agreement will automatically continue on a month-to-month basis subject to the Customer giving Q-KON 30 (thirty) calendar days' prior written notice that it wishes to renew the Agreement for a further term or cancel the Agreement.
- 3.2. The Customer may not cancel this Agreement and/or demand any reimbursement of Fees or claim any damages of whatsoever nature as a result of the Customer's relocation to an area outside of Service Provider's coverage area.
- 3.3. If the Customer cancels this Agreement prior to the expiry of the Initial Service term it will be liable to pay the following amounts to Q-KON:
- 3.3.1. all arrear Fees due and owing to Q-KON up to the date of termination of the Agreement;
- 3.3.2. all Fees due and owing to Q-KON in relation to Equipment supplied, installed or maintained by Q-KON in terms of this Agreement; and
- 3.3.3. all monthly Service Fees due for the remainder of the Initial Service term.

### 4. SUPPLY AND INSTALLATION OF EQUIPMENT

- 4.1. Q-KON's Service Partner shall install the Equipment at the Customer's premises, as detailed in the relevant Application form, or such other location as requested by the Customer, against Advance Payment or Credit Approval of the relevant Fees.

- 4.2. Q-KON shall make reasonable endeavours to comply with any supply and/or delivery requirements as recorded however gives no undertakings that it will be able to meet any supply or delivery date requested by the Customer or in any Application form.
- 4.3. Q-KON will, in its sole discretion, refer the Customer to a Service Partner who will undertake the installation of the Equipment.
- 4.4. The Customer shall be responsible for obtaining all necessary approvals and authorities imposed by any relevant third party or competent authority for the purpose of any supply and/or delivery and/or installation of Equipment, and the Customer hereby indemnifies Q-KON against any claim or liability suffered by Q-KON by reason of such approval and authorities not having been obtained.

## 5. USE OF EQUIPMENT AND SERVICES

- 5.1. The Customer must at all times comply with all statutory and regulatory provisions and requirements relating to the provision and use of the Equipment and/or Services.
- 5.2. The delivery of Equipment or provision of any Service to the Customer does not confer on the Customer any right to use the Equipment, the Service or any element thereof, or to make them available to other parties, for purposes for which a licence or licence exemption is required under any relevant legislation or regulation, unless the Customer where applicable, and required in terms of any relevant legislation or regulation, has been granted such a licence or licence exemption, and such a licence or licence exemption is in effect.

\*Refer to Attachment A to reference relevant legislature

- 5.3. Fair Use Policy: All Q-KON Customers will be subject to Q-KON's fair use policy, whereby Q-KON reserves the right, to take the necessary action to prevent improper, excessive or abusive use of the product and/or service. Such action includes but is not limited to throttling, suspension or deactivation of a Customer's usage, where usage is deemed excessive, fraudulent and/or in contravention of the law.

- 5.4. The Customer hereby warrants and undertakes in favour of Q-KON that it:

- 5.4.1. shall not use nor allow the Services to be used for any improper, immoral or unlawful purpose, nor in any way which may cause injury or damage to persons or property or an impairment or interruption to the Services;
- 5.4.2. shall not do anything or omit to do anything or allow anything to be done or omitted which infringes or may infringe on Q-KON's rights or its License conditions;
- 5.4.3. shall not, nor permit any third party to reverse engineer, decompile, modify or tamper with the software contained in or pertaining to any Equipment;
- 5.4.4. will comply with all instructions issued by Q-KON which concern the use of the Equipment, Services or any matters related thereto, and which may be required to ensure the satisfactory provision of the Services, to protect the integrity of Q-KON's network, or to deal with emergencies; and
- 5.4.5. will provide Q-KON with all information relating to its use of the Equipment, Services or matters related thereto that Q-KON may reasonably require from time to time.

## 6. RISK AND OWNERSHIP OF EQUIPMENT

- 6.1. The Customer acknowledges and agrees that all rights of ownership in and to any Equipment shall, at all times, remain vested in Q-KON.
- 6.2. All rights of ownership in/ to any Equipment:
  - 6.2.1. supplied by Q-KON on a rental basis shall remain vested in Q-KON;
  - 6.2.2. purchased at Q-KON's listed price shall remain vested in Q-KON until the Customer has made payment thereof in full to Q-KON.
- 6.3. Subject to clause 6.4, all risk regarding damage to or the loss, theft or destruction of Equipment, however arising, shall pass to the Customer on the earlier of:

- 6.3.1. the date of Installation thereof in/on/at the Customer's premises; and/or
- 6.3.2. upon delivery thereof to the Customer Customer's premises.
- 6.4. Q-KON accepts liability for the repair and/or replacement of any rental Equipment damaged, lost or destroyed due to an event of *Force Majeure*.
- 6.5. The Customer undertakes:
  - 6.5.1. to display in relation to the rental Equipment no lesser degree of care than it would have if same belonged to it and shall take all reasonably necessary precautions to avoid loss, theft or destruction of or damage to the Equipment;
  - 6.5.2. not to, in any manner, alienate, encumber or otherwise dispose of the rental Equipment;
  - 6.5.3. not to procure repair or maintenance of the rental Equipment by any third party without the prior written consent of Q-KON or in any other manner tamper with the Equipment.

## 7. INSTALLATION PREMISES

- 7.1. The Customer must allow Q-KON's designated Service Partner to access its premises to the extent required by the Service Partner in order to install, inspect, maintain and/or remove any Equipment being used to provide Services.
- 7.2. If the Customer is not the owner of the premises where the Service is required, the Customer must obtain permission from the owner of such premises for the Service Partner to install, inspect, maintain and/or remove any Equipment at/from such premises. The Customer indemnifies Q-KON's Service Partner against damages or other claims resulting from the Customer's failure to obtain such permission.
- 7.3. The Customer must ensure that there is a suitable electrical power supply as required for the proper functioning of the Services and/or the Equipment at its relevant premises. The cost of providing the power supply and all related fees for the Customer's use of power are for the Customer's account.

- 7.4. The Customer must ensure that its premises are safe for Q-KON's Service Partners, its employees, and subcontractors and must comply with all laws and regulations relating to occupational health and safety on the relevant premises.

## 8. PROVISION OF SERVICES

- 8.1. Subject to clause 8.6, Q-KON will make the Services available to the Customer in accordance with the Service levels detailed in the Service Product Specific Terms.
- 8.2. A Service will be deemed to be in good working order until such time as a fault is reported to Q-KON. Q-KON will attend to reported faults during business hours and will endeavour to restore the Service within the shortest possible time.
- 8.3. The location at which the Customer wishes to receive the Service must be in an area which has access to the Service. If the location at which the Customer wishes to receive the Service changes from the premises detailed in the relevant Application form, the Service may not function at the new location.
- 8.4. In the event that Q-KON determines that a fault in the Service has been caused by any act or negligence on the part of the Customer, its employees or agents or by any equipment belonging to the Customer or installed at the Customer's premises, Q-KON may hold the Customer liable for the costs incurred in repairing the relevant fault.
- 8.5. Q-KON reserves the right to utilise any technology which it has available and which it considers at its discretion as most suitable and reasonable to render Services to the Customer.
- 8.6. Interruption and/or cessation in the Services:
  - It is specifically recorded that Q-KON will not be liable for any interruption and/or cessation in the Services as a result of:
    - 8.6.1. any person making unauthorised and/or improper use of the Services with or without the Customer's knowledge and/or consent;

8.6.2.any person causing damage to or stealing any Equipment with or without the Customer's knowledge and/or consent;

8.6.3.any fault caused as a result of equipment that was not supplied by Q-KON; or

8.6.4.acts beyond its reasonable control ("*Force Majeure*").

## 9. FEES AND INVOICING

9.1. In return for the supply of and access to the Services and Equipment, the Customer agrees and undertakes to pay to Q-KON the applicable Service and Rental Fees as detailed in the Application form, irrespective whether or not the Services and Equipment have been, or are being, utilised by the Customer.

9.2. Unless specifically stated otherwise, all prices and Fees are exclusive of Value-Added Tax and exclusive of any other applicable tax or duty, the liability of which shall be on the Customer.

9.3. Q-KON may, by mutual agreement with the Customer, vary future Service and Rental Fees, either in whole or in part, with effect from the date specified in such said agreement.

9.4. Unless otherwise agreed to by Q-KON in writing, the Customer shall affect payment to Q-KON of:

9.4.1.Equipment once-off payment in advance by means of EFT prior to delivery of the Equipment

9.4.2.Equipment Rental advance payment equal to one (1) month's rental fee by means of EFT prior to delivery of the Equipment;

9.4.3.Equipment Rental Fees monthly in advance by means of debit order on or before the 1<sup>st</sup> day of each month

9.4.4.Service Fees, monthly in advance by means of debit order on or before the 1<sup>st</sup> day of each month.

9.5. All fees payable by the Customer to Q-KON shall be paid free of deduction or set-off.

9.6. Q-KON will periodically provide the Customer, usually on a monthly basis, with an invoice, which constitutes a statement in respect of the Services, for the amounts payable by the Customer for the use of the relevant Services. The invoice will be sent by electronic mail to the Customer to its email address detailed in its relevant Application form.

9.7. Notwithstanding the above, non-receipt of an invoice by the Customer shall not be considered as a valid reason for late or non-payment of due and payable Fees.

9.8. Any fees payable by the Customer in terms hereof which remains unpaid post the relevant due date shall accrue interest at the prevailing prime interest rate per month, calculated from the due date thereof until the date of final payment.

9.9. An invoice rendered by Q-KON to the Customer is on the face of it, and until the contrary is proved, proof of the amount due by the Customer to Q-KON.

9.10. Any migration from one Service to another shall be subject to Q-KON's approval and Q-KON shall be entitled to levy additional Fees for migrations, subject to the relevant maximum amounts approved or fixed by any relevant regulatory authority from time to time.

9.11. Notwithstanding any of the above, Q-KON reserves the right to amend and/or updated its relevant invoicing and/or billing processes upon reasonable prior notice thereof to the Customer.

## 10. ONSITE SERVICE LEVEL AGREEMENT

10.1. Should the Customer contract Support Services, the parties agree that Q-KON's obligations under this Agreement are to ensure that the provided Services comply with specified minimum service level commitments. Q-KON will endeavour to meet the following service level commitments:

10.1.1. Maximum-Time-To-Respond When the Customer reports a fault by email, the Q-KON Service Team will acknowledge receipt of the Trouble Ticket by return email within thirty (30) minutes for incidents logged during Business Hours and within the 1<sup>st</sup> hour of the next business day for incidents logged after hours;

10.1.2. Maximum-Time-To-investigate Within ninety (90) minutes of receiving the email Trouble Ticket the Q-KON Service Team will have completed all remote investigations, diagnostics and corrective action via remote access if possible. If the service cannot be restored a field technician will be tasked to visit the premises;

10.1.3. Maximum-Time-To-be-on-Site A Field Technician will be onsite at the Customer premises during the next business day;

10.1.4. Maximum-Time-To-Repair Service will be fully restored after four (4) hours from the time the Field Technician has reached the Customer premises.

10.2. All "Customer Time", defined as the time identified on Q-KON's Trouble Ticket (if any) attributable to or caused by reasons other than Q-KON's act or omission are excluded, including without limitation:

10.2.1. Incorrect or incomplete callout information provided by the Customer which prevents Q-KON's Service Partner from completing the trouble diagnosis and service restoration;

10.2.2. Denial of access to Q-KON's Service Partner to components at the Customer's premises;

10.2.3. No access or restricted access to Customer Equipment to restore or replace;

10.2.4. The Customer's failure or refusal to release Customer Equipment for testing;

10.2.5. Interruptions not reported by the Customer, or for which no Trouble Ticket was opened;

10.2.6. The Customer being unavailable to close a Trouble Ticket, or Q-KON unable to verify restoration of the Service with the Customer;

10.3. Q-KON will maintain warranted and rental Equipment in good working order and repair, or if necessary, substitute/replace the Equipment with equivalent or refurbished Equipment for as long as the Customer complies strictly with the Standard Terms and Conditions.

10.4. Notwithstanding Q-KON's maintenance obligations, the customer is responsible to protect the Equipment and ensure that it is used safely and is safe for use at all times. Any repairs or damage arising from or attributed to such improper or unsafe use shall be for the Customer's account.

## 11. SUSPENSION OF SERVICES

11.1. Q-KON reserves the right to, at any time, suspend the Services in the event that:

11.1.1. any modification, maintenance or remedial work is required to be undertaken pertaining, in any manner whatsoever, to the Services or the Equipment, subject to Q-KON's undertaking to inform the Customer timeously in the event of planned maintenance;

11.1.2. the Customer breaches any material term of this Agreement, excluding payment of relevant fees as per clause 9, and (if applicable) fails to rectify same within the relevant time period indicated in clause 11 below; or

11.1.3. the Customer fails to make full payment of any Fees, as per clause 9, on the due date thereof.

11.2. Q-KON reserves the right to levy a Reconnection Fee pursuant to the restoration of Services suspended in the circumstances contemplated in clause 10.1 above. In the event that the Customer's Services are suspended in terms of this clause 10, the Customer shall remain liable for the monthly Rental and Service Fees during any such period of suspension.

## 12. BREACH

12.1. Subject to clause 11.2, Q-KON reserves the right to terminate this Agreement in the event that:

12.1.1. the Customer breaches any provision, other than those referred to in the remainder of this clause 11.1, of this Agreement;

12.1.2. the Customer fails to pay any fees upon the relevant due date thereof;

12.1.3. the Customer has contravened:

12.1.3.1. any notices or rules communicated by Q-KON to the Customer from time to time relating to the use of, access to or security measures relating to the Services; or

12.1.3.2. any relevant legislation, regulations or policy of any governmental authority relating to the Services or to the Customer's use of the Services.

12.1.4. the Customer has engaged in conduct that has caused or may cause damage to Q-KON's facilities, network or any third parties;

12.1.5. the Customer commences or purports to commence any business rescue or liquidation proceeding or if any such proceedings and threatened and/or instituted against the Customer by any third party; or

12.1.6. Q-KON receives any direction, notification or instruction from any governmental authority to suspend or terminate the provision of the Services to the Customer or generally (where the reason for this is not due to any fault or negligence of Q-KON).

12.2. In the circumstances specified in clauses 11.1.1 above only, Q-KON will provide the Customer with 14 (fourteen) days prior written notice to remedy the breach before terminating the Agreement.

12.3. Any termination of this Agreement pursuant to the preceding provisions of this clause shall be without prejudice to any claim Q-KON may have against the Customer in respect of any prior breach of the terms and conditions of the Agreement by the Customer.

12.4. Without derogating from any other rights or remedies available to Q-KON in terms of the Agreement or at law, in the event of the Agreement being cancelled by the Customer (for whatsoever reason) prior to the expiration of the Initial Service term or any Renewal Period, or in the event of Q-KON electing to terminate the Agreement pursuant to any breach by the Customer which entitles Q-KON to terminate same:

12.4.1. the Customer shall be liable to Q-KON and hereby agrees to pay on demand, the full Fees payable to Q-KON for the remainder of the Initial Service term or Renewal Period, as the case may be.

## 13. LIMITATION OF LIABILITY

13.1. Q-KON assumes no responsibility for the integrity, correctness, retention or content of information transported *via* the Services.

13.2. Q-KON disclaims all liability for any loss or damages (direct or indirect) which the Customer or any other person whomsoever may suffer as a result of:

13.2.1. the use of, the provision of, or any interruption in the Services; or

13.2.2. the Installation, maintenance or removal of the Equipment

and the Customer indemnifies Q-KON against any claim or action, as described above, which may be brought by any person in this regard.

13.3. Q-KON only provides access to the internet and does not operate or control the information, services, opinions or other content of the internet, and Q-KON makes no warranties or representation regarding any such information, services, opinions or other content. The Customer agrees that it shall make no claim whatsoever against Q-KON relating to the content of the internet or respecting any information, product, service or software ordered through or provided by virtue of the internet.

13.4. Q-KON reserves the right to take measures as may be necessary, in its sole discretion, to ensure security and continuity of its Services including *inter alia*, identification and blocking or filtering of internet traffic sources which Q-KON deems to pose a security risk or operational risk or a violation of its fair use policy.

## 14. CONFIDENTIALITY

14.1. The Parties acknowledges that they will, in the course of performance and/or execution of this Agreement, gain access to or become acquainted with the techniques, methods and processes, trade secrets, data, information technology, software, business associates, clients and other private, sensitive and confidential information ("*Confidential Information*") of each other.

14.2. Both Parties accordingly agree and undertake:

14.2.1. except as permitted by this Agreement, not to disclose or publish any Confidential Information, including this Agreement, without the prior written consent of the other Party;

14.2.2. except as permitted by this Agreement, not to use the Confidential Information for any purpose whatsoever without the prior written consent of the other Party;

14.2.3. to restrict the dissemination of the Confidential Information to only those of its employees who are actively involved in activities for which use of the Confidential Information is authorised and then only on a 'need to know' basis and to take all practical steps, both before and after disclosure, to impress upon its employees who are given access to Confidential Information, the secret and confidential nature thereof.

14.3. The Confidential Information excludes information which is lawfully in the public domain at the time of disclosure or subsequently becomes lawfully part of the public domain; becomes available to the receiving Party from a source other than the disclosing Party or is disclosed pursuant to a requirement or request by operation of law, regulation, court order or as a consequence of any judicial proceedings to which a Party is a party.

14.4. The onus to establish whether the Confidential Information falls within the exclusions referred to in clause 13.2.3 shall rest on the receiving Party. The information disclosed in terms of this Agreement shall not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information in the public domain or in a Party's possession. Any combination of features will not be deemed to be within the foregoing exclusions merely because individual features are in the public domain or in a Party's possession but only if the combination itself is in the public domain or in a Party's possession.

14.5. The receiving Party shall protect the Confidential Information in the manner, and with the endeavour of a reasonable person protecting its own Confidential Information.

14.6. The Parties record that this clause 13 shall:

14.6.1. not be applicable where either Party discloses Confidential Information to its attorneys or auditors, provided that such disclosure is reasonably required by the Disclosing Party for the purposes of conducting its business activities; and

14.6.2. survive termination and/or expiration of this Agreement for a period of 5 (five) years post termination / expiration hereof.

## 15. INTELLECTUAL PROPERTY RIGHTS

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

15.2. Each Party indemnifies the other Party against all claims, actions, damages, liabilities, costs and expenses, including attorney's fees and expenses, arising out of any claims of infringement, passing-off and/or unlawful competition in relation to any patent, trade secret, copyright, trademark, service mark, trade name or similar proprietary right of any third party, which claim arises directly or indirectly.



## 16. INTERCEPTION AND MONITORING OF COMMUNICATIONS

16.1. Subject to the provisions of the relevant national legislature <sup>[1]</sup>, or any law, the Customer acknowledges Q-KON's right to intercept, block, filter, read, delete, disclose and use all communications sent or posted via Q-KON's network.

\*Refer to Attachment A to reference relevant legislature

16.2. In terms of the relevant national legislature <sup>[1]</sup>, you are obliged to provide proof of your full names, surname, Identity Document number (Certified Copy of Identity Document) and residential address when taking up Q-KON broadband services. This is necessary to activate you as a customer on the Q-KON network. Q-KON is obliged by law not to activate services on the Q-KON network if you have not complied with the legislative registration requirements. If you change ownership to a third party, the purchased Q-KON service(s) is not transferable.

\*Refer to Attachment A to reference relevant legislature

16.3. The Customer acknowledges and agrees that in the event that Q-KON, in its sole discretion or if obliged by any applicable law, determines that any content hosted by Q-KON, published by Q-KON on the Customer's behalf or transmitted by the Customer by means of the Service(s) ("*Content*") is in violation of any law or Q-KON's "fair use policy", Q-KON shall be entitled:

16.3.1. forthwith to request the Customer to remove such Content; and/or

16.3.2. forthwith to require the Customer to amend or modify such Content; and/or

16.3.3. without notice, to terminate access to any Service(s) and/or suspend or terminate any Service(s); and/or

16.3.4. without notice, to delete the offending Content.

16.4. The Customer acknowledges that any exercise by Q-KON of its rights in terms of clause 16.3 above shall not be construed as an assumption of liability by Q-KON for the Content and/or the publication thereof whether or not Q-KON has knowledge of such Content, having cognisance of the fact that Q-KON has no general obligation in law to monitor Content. The Customer hereby indemnifies Q-KON and holds it harmless against any liability, claims, fines or other penalties of whatsoever nature suffered or imposed by any person arising either directly or indirectly out of the Content or the publication or hosting or transmission thereof.

## 17. CONSENT/AUTHORITY

17.1. The Customer hereby consents/authorises Q-KON to:

17.1.1. at any time, obtain information about the Customer's credit and/or payment profile from any authorised and registered credit reference agency;

17.1.2. provide regular reports in respect of Customer's payment conduct to any authorised and registered credit reference agency; and

17.1.3. send it marketing material, promotional updates and client satisfaction surveys.

## 18. TERMINATION FOR CAUSE

Without prejudice to any other rights at law or set out in the Agreement, Q-KON reserves the right to terminate this Agreement upon written notice to the Customer in the event that the Licence is revoked, terminated or amended for any reason whatsoever. Should the Services be suspended or terminated due to the revocation of the licence, in terms of which the Services are provided, the Customer shall not be liable for any Fees, except for the Fees for Rental and Services already rendered to the Customer.

## 19. MISCELLANEOUS

### 19.1. Governing law

This Agreement will be governed by the applicable country's National Law. The Parties consent to the jurisdiction of the magistrate's court in respect of any dispute and/or claim arising between them, even if the claim or amount in dispute or the value of the matter in dispute exceeds the jurisdiction of such court.

### 19.2. Severability

Should any provision of the Agreement be held by a court to be invalid, void or unenforceable, the offending provision will be struck out of these standard terms and conditions but the remainder of these terms and conditions shall remain legal, valid and binding.

### 19.3. Waiver

The failure by Q-KON to exercise or enforce any right conferred by the Agreement will not be deemed to be a waiver of any such right not to operate so as to bar the exercise or enforcement of any such or other right at any later time.

### 19.4. Assignment

The Customer may not cede and delegate or assign its rights and obligations under the Agreement to a third party without first obtaining Q-KON's written consent. Q-KON reserves the right to cede, delegate or assign any of its rights in terms of this Agreement to any third party of its choosing without prior notice to the Customer.

### 19.5. Notices

Any notice or communication that is required or permitted to be given to the Customer in terms of the Agreement may be delivered by hand, sent by registered pre-paid post or e-mail at the addresses listed as such by the Customer in its relevant Application form. Any notices or communications will be deemed to have been received at the time of delivery (in the case of hand deliveries or transmissions e-mail) or within one week after the date of posting (in the case of postal deliveries).

### 19.6. Relationship of the Parties

The Agreement will not establish any partnership, joint venture, employment relationship, franchise, agency or any similar relationship between the Parties.

### 19.7. Entire agreement

This Agreement constitutes the sole agreement between the Parties relating to the subject matter hereof. All prior written or oral agreements, understandings, communications or practices between the Parties are superseded insofar as they relate to the subject matter of this Agreement.

### 19.8. Conflict of agreements

In the event of any conflict between the documents comprising the Agreement, precedence will be given to the documents in the following order:

- 19.8.1. the Application form;
- 19.8.2. the Service Product Specific Terms;  
and
- 19.8.3. these Standard Terms and Conditions.

## Attachment A – National Legislature References

### SOUTH AFRICA NATIONAL LEGISLATION:

1. To the extent that the Terms and Conditions or any goods or services provided under the Terms and Conditions are governed by the Consumer Protection Act, 2008 (the “Consumer Protection Act”), no provision of the Terms are intended to contravene the applicable provisions of the Consumer Protection Act, and therefore all provisions of the Terms and Conditions must be treated as being qualified, to the extent necessary, to ensure that the applicable provisions of the Consumer Protection Act are complied with.  
(Section 49 of the Consumer Protection Act Notice, the following Terms are important to note: 2, 3, 4, 5, 6, 7 and 8.)
2. “Licence” means the Service Provision licence granted to Q-KON by the Independent Communications Authority of South Africa, established in terms of section 3 of the Independent Communications Authority of South Africa Act 13 of 2000.
3. “VAT” means value-added tax in terms of the Value Added Tax Act 89 of 1991, or any similar tax which is imposed in place of or in addition to such tax.
4. Subject to the provisions of Regulation of Interception of Communications and Provision of Communication-related information Act (RICA), 70 of 2002 or any law, the Customer acknowledges Q-KON's right to intercept, block, filter, read, delete, disclose and use all communications sent or posted via Q-KON's network. RICA may be accessed from <http://www.info.gov.za/acts/2002/a70-2002>.
5. In terms of the Amended Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002 (“RICA”), you are obliged to provide proof of your full names, surname, Identity Document number (Certified Copy of Identity Document) and residential address to a RICA officer when taking up Q-KON broadband services. This is necessary to activate you as a customer on the Q-KON network. Q-KON is obliged by law not to activate services on the Q-KON network if you have not complied with the RICA registration requirements. If you change ownership to a third party, the purchased Q-KON service(s) is not transferable.

**NAMIBIA NATIONAL LEGISLATION:**

- 1 To the extent that the Terms and Conditions or any goods or services provided under the Terms and Conditions are governed by the Consumer Protection Act, 2009 (the "Consumer Protection Act"), no provision of the Terms are intended to contravene the applicable provisions of the Consumer Protection Act, and therefore all provisions of the Terms and Conditions must be treated as being qualified, to the extent necessary, to ensure that the applicable provisions of the Consumer Protection Act are complied with.
- 2 "Licence" means the Class Comprehensive Telecommunications Service Licence granted to Q-KON by the Communications Regulatory Authority of Namibia, established in terms of section 80 of the Communications Act 8 of 2009.
- 3 "VAT" means value-added tax in terms of the Value Added Tax Act 10 of 2000, or any similar tax which is imposed in place of or in addition to such tax.
- 4 Subject to the provisions of the Interception of Telecommunications regulated by Part 6 of Article 73 of the Communications Act 8 of 2009, or any law, the Customer acknowledges Q-KON's right to intercept, block, filter, read, delete, disclose and use all communications sent or posted via Q-KON's network.
- 5 In terms of Article 73 of the Communications Act 8 of 2009, you are obliged to provide proof of your full names, surname, Identity Document number (Certified Copy of Identity Document) and residential address to the telecommunication service provider when taking up Q-KON broadband services. This is necessary to activate you as a customer on the Q-KON network. Q-KON is obliged by law not to activate services on the Q-KON network if you have not complied with these registration requirements. If you change ownership to a third party, the purchased Q-KON service(s) is not transferable.