

## ECN VIRTUAL BOARDROOM TERMS AND CONDITIONS

### **1. APPLICABILITY, PRECEDENCE**

- 1.1. This Agreement (as defined below):
  - 1.1.1. shall govern all transactions between the Subscriber and ECN in respect of the subject matter thereof;
  - 1.1.2. will only be amended or varied or cancelled or replaced or waived to the extent expressly agreed to in writing and signed by the authorised representatives of each Party;
  - 1.1.3. shall overrule any terms and conditions of contract of the Subscriber, unless specifically otherwise agreed between the Parties in writing.

### **2. INTERPRETATION, DEFINITIONS**

- 2.1. In this Agreement the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings:
  - 2.1.1. **"Agreement"** means these terms and conditions and, as the same may be amended, modified or supplemented from time to time in accordance with the terms of this Agreement.
  - 2.1.2. **"Corrupt Act"** means any offence in respect of corruption or corrupt activities contemplated in the Prevention and Combatting of Corrupt Activities Act, 2004.
  - 2.1.3. **"ECN"** means Electronic Communications Network (Pty) Ltd, registration number 2007/014694/07;
  - 2.1.4. **"Parties"** means the Subscriber and ECN and Party means either of them.
  - 2.1.5. **"Services"** means the electronic communication services or electronic communication network services, rendered by ECN providing the ECN Virtual Boardroom teleconferencing services, to the Subscriber.
  - 2.1.6. **"Subscriber"** means the Party to whom ECN renders the Services.

### **3. CHARGES**

- 3.1. ECN does not charge a fee for the Services as defined in this Agreement.
- 3.2. Each participant of the teleconference, including the Subscriber, will be charged the prevailing charges for calls charged by the network operator on whose network the call originated.
- 3.3. No cancellations or booking charges will be charged by ECN.

### **4. RESTRICTIONS**

The Service will be subject to available capacity. ECN will endeavour to have the Service available at all times but ECN cannot and does not guarantee or undertake that the Services will be provided at all times and accordingly ECN will, to the fullest extent permissible in law, not be liable for any direct or indirect loss or damage of any nature whatsoever or howsoever arising that may be sustained by the Subscriber as a result of any faults or interruptions in the provision of the Services.

### **5. SUBSCRIBER'S OBLIGATIONS**

- 5.1. The Subscriber will receive username, password and account details upon completion of the registration process. The Subscriber is responsible for maintaining the confidentiality of usernames, passwords and any recordings made of teleconferences.
- 5.2. The Subscriber is fully responsible for all activities that occur under the Subscriber's password and/or during teleconferences. The Subscriber agrees to:
  - 5.2.1. immediately notify ECN of any unauthorised use of the Subscriber's password or account;
  - 5.2.2. any other breach of security; and
  - 5.2.3. any unauthorised use of the Services.

- 5.3. The Subscriber will not:
  - 5.3.1. utilise the Services, or allow others to do so, for any improper, immoral, or unlawful purpose; and
  - 5.3.2. will not act or omit to act, or allow others to do so, in any way likely to damage, disrupt or interfere with the ECN network, or to injure or damage any person or property or to cause the quality of the Services to be impaired or interrupted in any manner whatsoever.
- 5.4. The Subscriber will comply with all relevant legislation and regulations and all instructions issued by any governmental authority or by ECN regarding the use of the Services.
- 5.5. The Subscriber shall solely be liable for the content of all communications whilst making use of the Services and acknowledges that ECN shall not have any liability for the content of such communications.

### **6. UNAUTHORISED USE**

- 6.1. The Subscriber is responsible for the security of its network and Equipment and for taking the necessary steps to prevent unauthorised or fraudulent use of the Services perpetrated using the Subscriber's equipment and network, including, but not limited to, keeping all username and passwords used to access the Services secret.
- 6.2. ECN disclaims all liability and the Subscriber indemnifies ECN against all liability for unauthorised or fraudulent use of the Services that takes place outside of the ECN network.

### **7. SUSPENSION**

ECN may at any time suspend the Services, in whole or in part, and without incurring any liability whatsoever.

### **8. TERMINATION**

ECN shall be entitled to terminate this agreement at any time in its sole and absolute discretion.

### **9. LIMITATION OF LIABILITY**

- 9.1. ECN, its directors, employees and sub-contractors shall not be liable whether in contract, delict or under any other cause of action for:
  - 9.1.1. loss of profit, loss of use, interruption or reduction of operation, loss of data (including the recovery thereof), loss of production, loss of contracts or for any indirect or consequential damage;
  - 9.1.2. death, injury, or damage to property unless caused by ECN's gross negligence;
  - 9.1.3. any damage arising out of the infringement of any intellectual property rights, arising out of or in connection with this Agreement.
- 9.2. ECN's liability for any act or omission, whether in contract, delict or under any other cause of action, will in no single event or in aggregate exceed a maximum amount of R5 000-00 (five thousand Rand).

### **10. DATA PROTECTION**

In performing its obligations under this Agreement, ECN shall comply with the provisions of prevailing privacy and data protection legislation governing the collection, use and processing of personal information as defined in the relevant legislation.

### **11. NO WARRANTY**

ECN shall not be liable on the ground of any common law warranty in respect of the Services, including without limitation against latent defects in, or relating to "fitness for purpose" of, the Services.

## 12. INTELLECTUAL PROPERTY

- 12.1. ECN and its licensors retain all intellectual property rights to, and in respect of, the Goods, Services and related items. The Subscriber shall only use the Services subject to this Agreement and for the purposes for which it has been supplied to the Subscriber.
- 12.2. Without limitation to the above, the Subscriber shall not have any right directly or indirectly to disclose or otherwise exploit any intellectual property whatsoever of ECN and its licensors, or any part thereof, or allow others to do so.

## 13. CONFIDENTIALITY

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

## 14. DISPUTE RESOLUTION AND GOVERNING LAW

- 14.1. In the event of any disagreement or claim ("dispute") arising out of or relating to this Agreement, the senior executives of the Parties or their delegates designated in writing shall endeavour to settle the dispute through bona fide negotiations within 14 (fourteen) days of the dispute being referred to them by written notice from either Party.
- 14.2. Should the Parties be unable to settle the dispute by the means and within the timeframe stated above, either Party may refer the dispute for final decision by arbitration in accordance with the rules for commercial arbitrations ("rules") of the Arbitration Foundation of Southern Africa ("AFSA"), by one or more arbitrator/s appointed in accordance with the rules.
- 14.3. Unless otherwise agreed in writing the arbitration shall be held in Sandton in the Republic of South Africa and conducted in the English language. Only the Parties and their legal representatives or persons agreed to shall attend the arbitration proceedings.
- 14.4. The decision of the arbitrator/s may be made an order of court.
- 14.5. This Agreement shall in all respects be governed by the law of South Africa, without regard to its conflict of law provisions. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of April 11, 1980 shall be excluded.
- 14.6. This clause 14 is severable from the rest of the Agreement and shall survive the expiry or termination for whatsoever reason of the Agreement.

## 15. URGENT RELIEF

The provisions of clause 14 shall not preclude any party from access to a competent court of law for relief in the form of:

- 15.1. an interdict, including a mandatory interdict; or
- 15.2. an order for specific performance.

## 16. COMPLIANCE WITH LAWS AND ANTI-CORRUPTION

- 16.1. Each Party shall in all matters arising from or relating to the fulfilment of this Agreement conform at its own expense with all laws and legislation relevant hereto.
- 16.2. The Parties shall not be entitled to claim or receive any benefits or rewards arising from the Agreement, other than specifically provided for in this Agreement.

- 16.3. Each Party warrants that neither it nor any of its employees, associates or agents have committed, or admitted to, or have been convicted of, any Corrupt Act in relation to the Agreement and that it has ensured that all anti-corruption laws, internal processes and anti-corruption preventative measures have been complied with, prior to signature of this Agreement and will continue to be complied with for the duration hereof.
- 16.4. Failure by a Party to comply with this clause 16 shall constitute a material breach of contract.

## 17. GENERAL

- 17.1. Validity and Severability  
If any provision of this Agreement is found or held to be invalid or unenforceable, the validity of all the other provisions hereof will not be affected thereby and the Parties agree to meet and review the matter and if any valid and enforceable means is reasonably available to achieve the same objective as the invalid or unenforceable provision, to adopt such means by way of variation of this Agreement.
- 17.2. Contra Proferentem  
The rule of construction that in the event of any uncertainty in any provision in any agreement, such agreement shall, in construing/interpreting the uncertainty, be construed or interpreted against the drafter of such agreement, shall not be applicable to this Agreement.
- 17.3. Variation  
No variation of or addition to this Agreement will be of any force or effect unless reduced to writing and signed by the Parties.
- 17.4. Waiver  
No waiver on the part of a Party of any rights arising from a breach of any provision of this Agreement will constitute a waiver of rights in respect of any subsequent breach of the same or any other provision.
- 17.5. Vis Major
  - 17.5.1. Failure to comply with any of the terms and conditions of the Agreement if occasioned by or resulting from an act of nature or public enemy, fire, explosion, earthquake, perils of the sea, flood, storm or other adverse weather conditions, war declared or undeclared, civil war, revolution, civil commotion or other civil strife, riot, strikes, blockade, embargo, sanctions, epidemics, act of any government or other authority, compliance with government orders, demands or regulations, as well as shortages, interruptions, fluctuations or the unavailability of electrical power, water supply or means of communication or any circumstances of like or different nature beyond the reasonable control of the Party so failing ("vis major"), will not be deemed to be a breach of the Agreement, nor will it subject either Party to any liability to the other.
  - 17.5.2. Should a Party's performance of an obligation become temporarily impossible owing to vis major, that Party shall:
    - 17.5.2.1. as soon as reasonably possible after the vis major sets in notify the other Party in writing of the incidence of vis major;
    - 17.5.2.2. be released from performance of the affected obligation for so long as the vis major prevails;
    - 17.5.2.3. use its best endeavours to recommence performance of the affected obligation, to whatever extent reasonably possible, without delay; and
    - 17.5.2.4. co-operate with the other Party in implementing such contingency measures as the other Party may reasonably require.
- 17.6. Should the circumstances of vis major continue for longer than 30 (thirty) days, either Party shall be entitled to terminate the relevant PO, or if appropriate the Agreement, with immediate effect by written notice.

17.7. Cession and Delegation

A Party cannot validly cede any right or delegate any obligation arising under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the above, ECN may by written notice to the Subscriber cede and delegate this Agreement to any other company controlled by Reunert Limited 1913/004355/06.

17.8. Warranties

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

17.9. No Agency

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

17.10. Co-operation and Support

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

17.11. Entire Agreement

The terms contained in this Agreement constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all contemporaneous oral agreements and prior oral and written quotations, communications, agreements, and understanding of the Parties.

17.12. Counterparts

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