

## TERMS AND CONDITIONS

The services are provided by Pulse Communication, a trade brand of eNetworks (Pty) Ltd, having its primary place of business at Studio 34 Somerset Square, Highfield Road, Green Point, Cape Town, 8001, South Africa. The Service order submitted and accepted in accordance with this Agreement forms a contract which incorporates these terms and establishes the Terms and Conditions under which we shall provide the Services to you.

### 1. Definitions and interpretation

In this Agreement the following terms and phrases shall have the following meaning, unless the context otherwise requires:

- **Agreement** shall mean, as between you and eNetworks, the General & Service Terms read together with any terms as stated in the Application and any Service Order.
- **Application**: the online order form accessed on the Pulse Communication mobile App or portal ([www.pulsecommunication.co.za/Pinnacle](http://www.pulsecommunication.co.za/Pinnacle)) where you submitted your order for the Service; which when accepted by eNetworks becomes a binding Service Order.
- **Billing Start Date** will be from when the fibre provider hands over fibre services and your Service Equipment has been dispatched or delivered to you.
- **Business Day** is every day excluding Saturdays, Sundays and any public holidays.
- **Charges** such as the following charges and any other charges or fees payable by you to eNetworks in respect of a Service, as set out or referred to in a Service Order and revised from time to time.
  - **Once-Off Charges** include but are not limited to installation, connection fees and are non-recurring charges for the setup of a Service or purchase of Equipment;
  - **Monthly Fee**: monthly recurring charges for a Service.
- **Customer Data** means technical data (for example the date, time and duration of voice or data transmissions) that is necessary for the establishment, billing or maintenance of the transmission. Regulated Customer Data is that Customer Data of which the use, processing or transfer is regulated by law or regulation as personal data.
- **Domicile**: the physical address you provided in terms of an installation address, alternatively per your application form or Debit order authorisation, where you will receive any legal notice.
- **Effective Date** in relation to a Service, the date upon which eNetworks accepts your completed Application, which upon acceptance becomes a Service Order and you receive an e-mail to this effect.
- **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 eNetworks Network or the network generated by a third party; (iii) substantial loss to eNetworks or any third party; and such other works as in all the circumstances it is reasonable to execute with those works.
- **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.
- **FTTH** shall mean Fibre-To-The Home and is deemed to be a Broadband, best effort home service.
- **Network** shall mean the points of presence operated or used by eNetworks in connection with the provision of a Service.
- **Party** shall mean eNetworks or you (as the context requires), and Parties shall mean both you and eNetworks.
- **Product**: any product offered by eNetworks for Services, whether standalone or bundled with a value add-on product
- **Provider**: eNetworks partner last-mile fibre provider either operating in your area or who you select in your application. All hardware provided by any Provider will remain the property of the Provider indefinitely.
- **Service** shall mean the specific Service provided by eNetworks to you, and as may be further described in the relevant Service Order.

- **Service Order** shall mean an electronic request for a specific Service delivered by you to eNetworks and accepted by eNetworks.
- **Service Equipment** shall mean the hardware provided by eNetworks at your Site to make the Service available to you.
- **Service Term** for home fibre services shall mean a month-to-month or twenty-four(24) month term.
- **Uncapped** meaning as set out in the ISPA guideline on broadband terminology published at [ispa.org.za/code-of-conduct/terminology-guidelines](http://ispa.org.za/code-of-conduct/terminology-guidelines).
- **Unshaped**: eNetworks not prioritise or differentiate between different classes of traffic or protocols.
- **You / Your** refers to you, our valued customer whose details are as supplied to us in the Service Order.
- Unless the context otherwise requires, in this Agreement, a reference to:
- 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 order and activation

- The eNetworks service is a best effort service, and eNetworks shall not be held liable for temporary interruptions in the provisioning of the eNetworks service.
- The Fibre Service may be ordered from eNetworks in electronic format via the Pulse Communication mobile App or portal ([www.pulsecommunication.co.za/Pinnacle](http://www.pulsecommunication.co.za/Pinnacle)).
- Fibre is ordered by registering on the web portal or mobile application; selecting your preferred Service, submitting your details, completing the Debit Order Instruction and accepting the terms of the Service Order.
- You will there after receive an email with a copy of the Service Order and Debit Order Instruction.
- Once you have submitted your order eNetworks may carry out any appropriate checks on you, to which you hereby consent. Once eNetworks is satisfied and accepts your Service Order, it becomes binding on you.

## 3. Service terms

- Unless specified, eNetworks will provide you with uncapped, unshaped access to the Network via a fibre circuit (Access Circuit) and the Service Equipment at a Point of Presence (PoP).
- Access to, and across, the Network is at the maximum throughput rates set forth in the Service Order. Maximum throughput rates are not guaranteed. Throughput rates may also be reduced by eNetworks in accordance with its Fair Use Policy, a copy of which can be found at [www.Pulse Communication.co.za](http://www.Pulse Communication.co.za)
- Accuracy of Your Information: You will provide eNetworks with accurate and up to date information: (i) when completing the Application; and (ii) when you contact eNetworks to report a suspected fault and are asked a standard set of structured questions. eNetworks will not be liable for any loss suffered as a result of your failure to provide accurate information or any relevant facilities, which may lead to a delay in installation or Service repair.
- Maintenance: Scheduled maintenance on the Network will be performed from time to time, as necessary, and with advanced notice. eNetworks reserves the right to perform emergency maintenance without prior notice, but will nonetheless endeavour to provide such notice as is reasonably possible in the circumstances.
- Security: You acknowledge that the logical and physical security measures in relation to the Services are your sole responsibility and eNetworks will not be held liable for any losses arising out of security breaches of the Services.
- Disclaimer: eNetworks will in no event be liable for lost or interrupted data, messages, packets, or other information transmitted to or from third party networks.

#### **4. Service equipment**

- The Service Equipment will be provisioned with a standard configuration in respect of the ordered Service.
- All service equipment supplied by eNetworks and not paid in full, remain the property of eNetworks during and up until the first twelve months from the Billing Start Date.
- You accept liability for any costs incurred by eNetworks as a result of repair or replacement of Service Equipment where the Service Equipment failure was caused by your use, misuse or changes to the Service Equipment, other than as previously agreed to in writing by eNetworks.
- Service equipment is described to what's included with the product. Please Note: Any additional internal cabling or hardware required to facilitate connectivity to the service on the customer's behalf is not included. Should there be a requirement, please stipulate this up front and our sales team will quote on your requirements accordingly.

#### **5. Service support**

- Contact [support@pulsecommunication.co.za](mailto:support@pulsecommunication.co.za) or phone 021-741-0077, alternatively visit your estate portal or Mobile Application.
- Technician call-out services are available subject to availability and subject to initial telephonic fault finding. eNetworks reserves the right to levy a call out charge.

#### **6. Charges and payment terms**

- All Costs are inclusive of VAT.
- You will pay the Charges in accordance with this clause.
- Charges shall accrue from the Billing Start Date and may be invoiced by eNetworks for:
  - Installation Cost and/or Connection Fees will be charged upon Activation of service.
  - The Service offered by eNetworks may all be subject to a once-off setup, connection and installation fee. Should eNetworks offer to waive this fee and you terminate your subscription within twelve (12) months of Service Activation, eNetworks reserves the right to charge you the full setup, configuration or installation fee.
  - The penalty fees may be disregarded if the service is active with eNetworks for longer than twelve (12) consecutive months. Installation and connection fees may differ based on purchase date and line speed.
- Monthly Costs will be charged on a pro-rata basis.
- Any invoice for Charges shall be due on issue of the invoice and shall be paid by you by way of a debit order against the account details provided by you in the debit order instruction.
- If a debit order is not honoured, 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.
- If you wish to dispute any invoice or part of an invoice falling due you must deliver a notice in writing to eNetworks at [debtors@pulsecommunication.co.za](mailto:debtors@pulsecommunication.co.za) setting out the nature of the dispute, including: (i) date and number of disputed invoice; (ii) amount in dispute; (iii) reason for dispute; and (iv) supporting documentation, as appropriate.

#### **7. eNetworks obligations**

- In performing its obligations under this Agreement, eNetworks shall always exercise the reasonable skill and care of a competent provider of internet related services.
- eNetworks shall use reasonable endeavours to ensure that each Service will conform to its Service Terms.
- With respect to the provision of a Service or otherwise, except as expressly set out in the Agreement, all warranties, representations or undertakings, are excluded.

#### **8. Service suspension**

- eNetworks 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) if eNetworks:
  - has reasonable grounds to consider it is entitled to terminate the Service and/or this Agreement;
  - is obliged to comply with an order, instruction or request of a court, government agency, emergency service organisation or other administrative or regulatory authority;
  - needs to carry out Emergency Works to the eNetworks Network or Service Equipment;

- has reasonable grounds to consider that the Service is being used fraudulently or illegally or in violation of this agreement;
- If eNetworks exercises its right to suspend the Service (or part thereof), whenever reasonably practicable and give prior notice of such suspension to you, setting out the reasons for the suspension and the expected duration. eNetworks shall use all reasonable endeavours to resume the Service as soon as is practically possible.
- If the Service (or part thereof) is suspended because of your breach, fault, act or omission, you shall pay to eNetworks all reasonable costs and expenses incurred by the implementation of such suspension and/or recommencement of the provision of the Service.
- eNetworks shall not be liable for any loss, damage or inconvenience suffered by you because of any suspension.

## 9. Term and termination

- These General Terms shall take effect in respect of each Service, from the Effective Date of this Service Order.
- Either Party may terminate a Service:
  - on at least 1 (one) calendar months' written notice;
  - immediately by notice if the other Party has committed a material breach which is incapable of remedy;
  - immediately by notice if 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
  - immediately by notice if, in relation to that Service, a Force Majeure Event subsists for a continuous period exceeding three (3) months.
- If eNetworks has reasonable grounds to consider that there has been a violation of this agreement eNetworks may notify you and require you to remedy the violation in the event of an incident involving a violation of public law or regulation or an imminent threat to the eNetworks Network, immediately; or in all other cases, within forty-eight (48) hours. If you fail to notify eNetworks that such a remedy has been effected in accordance with this or if eNetworks reasonably determines that the violation is continuing or is likely to occur again, eNetworks may terminate this Agreement (or relevant Service) immediately upon notice to you.
- eNetworks may terminate the Agreement (or the relevant Service Order) on five (5) Business Days' notice if you fail to make any payment, when due, in accordance with the terms of this Agreement.
- If you terminate a month-to-month Agreement during the first twelve months from the Billing Start Date (or eNetworks terminates the Agreement due to your breach of the Agreement), you will be liable to eNetworks for the full or portion of the value of the Service Equipment (cancellation fee);
- If you terminate a 24 month Agreement (or eNetworks terminates the Agreement due to your breach of the Agreement), you will be liable to eNetworks for the value of the Service installation and cancellation fee.
- Upon termination of the Agreement all accrued Charges not yet invoiced shall become due and shall be paid by you immediately on receipt of an invoice.
- Prohibition on Resale: Customer may not sell, resell, sublease, assign, license, sublicense, share, provide, or otherwise utilize in conjunction with a third party (including, without limitation, in any joint venture or as part of any outsourcing activity) the Services or any component thereof.

## 10. Your obligations

- You will provide eNetworks with such facilities and information as eNetworks may reasonably require enabling it to perform its obligations or exercise its rights under the Agreement.
- You warrant and undertake that you will:
  - use the Service Equipment only for receiving the Service;
  - not move, modify, relocate, or in any way interfere with the Service Equipment;
  - insure and keep insured all Service Equipment installed at the Customer Site against theft and damage.
- You may not use the Services for any illegal or immoral purpose and you will abide by the current version of the eNetworks Acceptable Use Policy, available at [www.eNetworks.co.za/aup](http://www.eNetworks.co.za/aup)



#### **11. Liability**

- Neither Party shall be liable to the other for indirect or consequential losses or otherwise for harm to business, loss of revenues, and loss of anticipated savings or lost profits.
- eNetworks is unable to exercise editorial or other control over any content placed on or accessible through your use of the Services and eNetworks shall have no liability as to the quality, content or accuracy of information received through or because of the use of the Services.

#### **12. 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 6) or damages suffered to the extent that such delay or failure is attributable to a Force Majeure Event.

#### **13. Intellectual property**

- You acknowledge that 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 eNetworks, its contractors or suppliers.

#### **14. Dispute resolution**

- If you wish to dispute any invoice or part of an invoice falling due you must deliver a notice in writing to eNetworks setting out the nature of the dispute, including:
  - date and number of disputed invoice;
  - amount in dispute;
  - reason for dispute; and
  - supporting documentation, as appropriate.

#### **15. Customer data and privacy**

- You acknowledge that eNetworks and our respective sub-contractors will, by virtue of the provision of Services, come into possession of Customer Data.
- eNetworks 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.
- eNetworks and its respective sub-contractors may use or process Customer Data:
  - in connection with the provision of Services;
  - to incorporate Customer Data into databases controlled by eNetworks for administration, provisioning, billing and reconciliation, verification of 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
  - to communicate to you by voice, letter, fax or email regarding products and services of eNetworks.
- You may withdraw consent for the use, processing or transfer of Customer Data as set out above by sending a written notice to eNetworks to such effect, unless it is required to:
  - provision, manage, account and bill for the Services;
  - carry out fraud detection; or
  - comply with any statutory obligation, regulatory requirement or court or other public authority order.

#### **16. General**

- No Waiver: Failure or delay by either Party to exercise or enforce any right or benefit conferred by the Agreement shall not be deemed to be a waiver of any such right or benefit nor operate to bar the exercise or enforcement thereof or of any other right or benefit on any later occasion.
- Variation: This Agreement (or any part thereof) shall be modified only by the written agreement of the Parties.
- Entire Agreement: The Agreement (being these General Terms and all terms under active Service Order Forms) sets out the entire agreement between eNetworks and you,





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

- Survival: Termination of this Agreement shall not affect a clause that necessarily or by its context requires survival of these General Terms.

**Use of the Service is subject to eNetworks Acceptable Use Policy (AUP), located at [www.eNetworks.co.za/aup](http://www.eNetworks.co.za/aup), eNetworks Standard Terms and Conditions located at [www.eNetworks.co.za/terms](http://www.eNetworks.co.za/terms), which are also located at [www.pulsecommunication.co.za](http://www.pulsecommunication.co.za)**

You confirm that you have read and understood the information set out and incorporated by reference in these Service Terms.