

1. PREAMBLE

- 1.1. These Standard Terms and Conditions together with any Service Specific Terms and/or Master Services Agreement and the applicable Sales Order Form govern the relationship between the End User and Broadlink relating to the supply by Broadlink, and the use by the End User, of any Services or Equipment.
- 1.2. Broadlink reserves the right to amend these Standard Terms and Conditions from time to time, in its sole discretion, by way of updating the prevailing version hereof on its website (www.broadlink.co.za), which amendments shall take effect and become binding on the End User 30 (thirty) calendar days after same was updated on Broadlink's website and communicated to all End Users in writing.

2. DEFINITIONS

In the Standard Terms and Conditions, unless inconsistent or otherwise indicated by the context, the following terms shall bear the following meanings:

- 2.1. **"Agreement"** means the agreement between Broadlink and the End User comprising of (i) these Standard Terms and Conditions, (ii) any Service Specific Terms, (iii) the Sales Order Form, and (iv) the MSA (where applicable) collectively.
- 2.2. **"Sales Order Form"** means the Sales Order completed by the End User in writing or electronically, requesting a Service from Broadlink, together with any document generated by Broadlink agreeing to the provision of such Service(s) and which may set out the details, terms and/or Charges of such Service(s) and related Equipment.
- 2.3. **"Broadlink"** means Broadlink (Pty) Limited, with registration number: 2007/012580/07, a private company duly incorporated in terms of the company laws of South-Africa.
- 2.4. **"Charges"** means any connection charges, monthly Service charges, usage charges and any other charges pertaining to the provision of any Service/s provided to the End User in terms of the Agreement.
- 2.5. **"Commissioning of the Services"** means the successful installation of Equipment at the End User's chosen premises and confirmation that the relevant Service(s) is operational and functioning in accordance with the services offered.
- 2.6. **"Delegated Service Provider"** means any Reseller who has been appointed by the Service Provider and who performs credit vetting, approves and concludes Agreements and directly bills the End User for Services provided.
- 2.7. **"Effective Date"** means, notwithstanding the date of signature of the Sales Order, the date of Commissioning of the Services.
- 2.8. **"EFT"** means Electronic Fund Transfer.
- 2.9. **"End User"** means any party to whom Services are made available in terms of the Agreement, including a Delegated Service Provider who on-sells the Services and bills the end user directly.
- 2.10. **"Equipment"** means any electronic communications equipment provisioned and supplied, by Broadlink, to the End User in order to access the Services.
- 2.11. **"Initial Period"** means the relevant period indicated on the Sales Order, commencing on the Effective Date.
- 2.12. **"Installation"** means the installation of Equipment at a designated location or on a laptop/desktop or similar device, as detailed in the Sales Order, which allows the End User to use the Services.
- 2.13. **"Licence"** means the mobile data licence granted to the Upstream Provider 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.

- 2.14. **“MSA”** means the Master Services Agreement concluded between Broadlink and Delegated Service Provider setting out the agreed terms and conditions that will govern the specific business relationship between the Parties.
- 2.15. **“Mobile Access Numbers”** means the mobile access numbers, I.P address, unique user name or subscription numbers used to identify the End User having access to the Services.
- 2.16. **“Network Operator”** means any network operator which has granted Broadlink authorisation to make the Services available to the End User.
- 2.17. **“Sales Order”** means an order placed by a End User, in the form of a Sales Order Form, for the provision of the Services.
- 2.18. **“Parties”** means Broadlink and the End User or Delegated Service Provider and **“Party”** refers to either of them as so determined by the context.
- 2.19. **“Renewal Period”** means the additional number of months which the Parties have agreed to renew the Agreement for, as set out under the Sales Order Form and commencing on the day immediately following the expiration of the Initial Period.
- 2.20. **“Services”** shall include inter alia, FibreNet, MetroNet, BroadNet, Internet Access, IT Security, Voice, or such other services as Broadlink may offer from time to time.
- 2.21. **“Service 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 or MSA attached hereto, and (ii) shall regulate and govern the provision of the relevant Service and related Equipment to the End User in conjunction with these Standard Terms and Conditions and the Sales Order Form.
- 2.22. **“Upstream Provider”** means the specific provider of Services as defined that Broadlink in turn provides to its End Users.
- 2.23. **“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.

3. COMMENCEMENT, DURATION AND CANCELLATION

- 3.1 Subject to any alternative provisions contained in any related Service Specific Terms, this Agreement shall commence on the Effective Date and shall subsist for the Initial Period in accordance with any other terms of this Agreement. If the End User does not renew this Agreement for a further term before expiration of the Initial Period, this Agreement will automatically continue on a month-to-month basis subject to the End User giving Broadlink 90 calendar days’ prior written notice that it wishes to renew the Agreement for a further term or cancel the Agreement.
- 3.2. The End User may not cancel this Agreement and/or demand any reimbursement of Charges or claim any damages of whatsoever nature as a result of the End User’s relocation to an area outside of the Upstream Provider’s coverage or service availability area.
- 3.3. If the End User wishes to cancel this Agreement prior to the expiry of the Initial Period, it will be liable to pay the following amounts to Broadlink:**
- 3.3.1. all arrear Charges due and owing to Broadlink up to the date of termination of the Agreement;**
- 3.3.2. all Charges due and owing to Broadlink in relation to Equipment supplied, installed or maintained by Broadlink in terms of this Agreement; and**
- 3.3.3. all monthly Service Charges due for the remainder of the Initial Period.**

3.4. Failure by the End User to pay all Charges in relation to the Services provided will be construed as a material breach of the Agreement and Broadlink reserves the right to follow legal processes against the End User in order to recover all Charges.

4. SUPPLY AND INSTALLATION OF EQUIPMENT

4.1. Broadlink shall install the Equipment at the End User's premises, as detailed in the relevant Sales Order, or such other location as requested by the End User, against payment of the relevant Charges and deposit, if applicable.

4.2. Broadlink shall make reasonable endeavours to comply with any supply and/or delivery and/or installation requirements recorded in a Sales Order however gives no undertakings that it will be able to meet any supply, delivery or installation date requested by the End User or in any Sales Order.

4.3. Broadlink may, in its sole discretion, refer the End User to a third party whom may undertake the installation of the Equipment in its own name and not as an agent of Broadlink.

4.4. The End User 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 End User hereby indemnifies Broadlink against any claim or liability suffered by Broadlink by reason of such approval and authorities not having been obtained.

4.5. Broadlink reserves the right to utilise any spare transmission capacity in relation to any Equipment, provided that such use of spare capacity does not have an adverse effect on the provision of the Services to the End User.

5. USE OF EQUIPMENT AND SERVICES

5.1. The End User must at all times comply with all statutory and regulatory provisions and requirements relating to the provision and use of the Services and/or Equipment.

5.2. The provision of any Service to the End User does not confer on the End User any right to use the Service, the Equipment 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 End User 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.

5.3. The End User hereby warrants and undertakes in favour of Broadlink that it:

5.3.1. 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;

5.3.2. shall not do anything or omit to do anything or allow anything to be done or omitted which infringes or may infringe on Broadlink's rights or its License conditions;

5.3.3. shall not, nor permit any third party to reverse engineer, decompile, modify or tamper with the software contained in or pertaining to any Equipment;

5.3.4. will comply with all instructions issued by Broadlink which concern the use of the Services, Equipment or any matters related thereto, and which may be required to ensure the satisfactory provision of the Services, to protect the integrity of Broadlink's network, or to deal with emergencies; and

5.3.5. will provide Broadlink with all information relating to its use of the Services, Equipment or matters related thereto that Broadlink may reasonably require from time to time.

6. RISK AND OWNERSHIP OF EQUIPMENT

- 6.1. The End User acknowledges and agrees that all rights of ownership in and to any Equipment shall, at all times, remain vested in Broadlink.
- 6.2. All rights of ownership in and to any Equipment:
 - 6.2.1. supplied by Broadlink on a loan or rental basis shall remain vested in Broadlink;
 - 6.2.2. purchased by the End User from Broadlink and supplied by Broadlink, either free of charge or at a subsidised price, shall remain vested in Broadlink for the duration of the Initial Period; and
 - 6.2.3. purchased at Broadlink's listed price shall remain vested in Broadlink until the End User has made payment therefore in full to Broadlink.
- 6.3 Subject to clause 6.4, all risk regarding damage to or the loss, theft or destruction of Equipment, howsoever arising, shall pass to the End User on the earlier of:
 - 6.3.1 the date of Installation thereof in/on/at the End User's premises; and/or
 - 6.3.2 upon delivery thereof to the End User End User's premises.
- 6.4 Broadlink does not accept liability for the repair and/or replacement of any Equipment damaged, lost or destroyed due to an event of Force Majeure.
- 6.5 The End User undertakes:
 - 6.5.1 to display in relation to the 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 Equipment;
 - 6.5.3 not to procure repair or maintenance of the Equipment by any third party without the prior written consent of Broadlink or in any other manner tamper with the Equipment.

7. INSTALLATION PREMISES

- 7.1. The End User must allow Broadlink to access its premises to the extent required by Broadlink in order to Install, inspect, maintain and/or remove any Equipment being used to provide Services.
- 7.2. If the End User is not the owner of the premises where the Service is required, the End User must obtain permission from the owner of such premises for Broadlink to Install, inspect, maintain and/or remove any Equipment at/from such premises. The End User indemnifies Broadlink against damages or other claims resulting from the End User's failure to obtain such permission.
- 7.3. The End User 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 Charges for the End User's use of power are for the End User's account.
- 7.4. The End User must ensure that its premises are safe for Broadlink, employees, agents, 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, Broadlink will make the Services available to the End User in accordance with the Service levels detailed in the Service Specific Terms.
- 8.2. A Service will be deemed to be in good working order until such time as a fault is reported to Broadlink. Broadlink 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 End User wishes to receive the Service must be in an area which has access to the Service. If the location at which the End User wishes to receive the Service changes from the premises detailed in the relevant Sales Order, the Service may not function at the new location. Any relocation of equipment will be subject to Broadlink's ability to deliver the Service to the End User and any such relocation costs will be for the account of the End User as per 9.10 below.
- 8.4. In the event that Broadlink determines that a fault in the Service has been caused by any act or negligence on the part of the End User, its employees or agents or by any equipment belonging to the End User or installed at the End User's premises, Broadlink may hold the End User liable for the costs incurred in repairing the relevant fault.
- 8.5. Broadlink 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 End User.
- 8.6. Interruption and/or cessation in the Services:

It is specifically recorded that Broadlink 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 End User's knowledge and/or consent;
- 8.6.2. any person causing damage to or stealing any Equipment with or without the End User's knowledge and/or consent;
- 8.6.3. any fault caused as a result of equipment that was not supplied by Broadlink; or
- 8.6.4. acts beyond its reasonable control ("Force Majeure").

9. CHARGES AND INVOICING

- 9.1. In return for the supply of and access to the Services and Equipment, the End User agrees and undertakes to pay to Broadlink the applicable Charges as detailed in the Sales Order, irrespective whether or not the Services have been, or are being, utilised by the End User.
- 9.2. Unless specifically stated otherwise, all prices and Charges are exclusive of Value-Added Tax and exclusive of any other applicable tax or duty, the liability of which shall vest with the End User.
- 9.3. Broadlink may, by mutual agreement with the End User, vary future Service Charges, either in whole or in part, with effect from the date specified in such said agreement.
- 9.4. Unless otherwise agreed to by Broadlink in writing, the End User shall effect payment to Broadlink of:
 - 9.4.1. Equipment Installation Charges, as well as any other introductory Charges, within 30 (thirty) days of date of an invoice and against Commissioning of the Services; and
 - 8.3.2. relevant Service Charges, 30 (thirty) days from date of invoice. Broadlink will invoice the End User on a monthly basis in advance, the first invoice being dated on the Effective Date. Should the effective date not be the first of the month, then the End User shall be invoiced a pro rata proportion of the service until the start of the Initial Period.
- 9.5. All fees and/or Charges payable by the End User to Broadlink shall be paid (i) by way of Debit Order, (ii) timeously on or before the relevant due date as detailed in this clause 9 or in any relevant invoice, and (iii) free of deduction or set-off.
- 9.6. Broadlink will periodically provide the End User, on a monthly basis, with an invoice for the amounts payable by the End User for the use of the relevant Services. The invoice will be sent by electronic mail to the End User to its email address detailed in its relevant Sales Order, the correctness thereof being the ultimate responsibility of the End User and timeously communicated to Broadlink.

- 9.7. Notwithstanding the above, non-receipt of an invoice by the End User shall not be considered as a valid reason for late or non-payment of due and payable Charges.
- 9.8. Broadlink reserves the right, for any fees or Charges payable by the End User in terms hereof which remains unpaid post the relevant due date, to levy interest at a rate of 2% per month, calculated from the due date thereof until the date of final payment.
- 9.9. An invoice rendered by Broadlink to the End User is on the face of it, and until the contrary is proved, proof of the amount due by the End User to Broadlink.
- 9.10. Any migration upgrade or downgrade from one Service to another shall be subject to Broadlink's approval and Broadlink shall be entitled to levy additional Charges for migrations upgrades and downgrades.
- 9.11. In addition to any other relevant provisions contained herein, Broadlink reserves the right to charge a reasonable cancellation penalty in respect of any invoice and/or administration costs incurred by it in the event that this Agreement is terminated prior to expiration of the Initial Period.
- 9.12. Notwithstanding any of the above, Broadlink reserves the right to amend and/or updated its relevant invoicing and/or billing processes upon reasonable prior notice thereof to the End User.

10. SUSPENSION OF SERVICES

- 10.1 Broadlink reserves the right to, at any time, suspend the Services in the event that:
 - 10.1.1. any modification, maintenance or remedial work is required to be undertaken pertaining, in any manner whatsoever, to the Services or the Equipment, subject to Broadlink's undertaking to inform the End User timeously in the event of planned maintenance;
 - 10.1.2. the End User breaches any material term of this Agreement, excluding payment of relevant fees or Charges as per clause 9 and 10.1.3., and (if applicable) fails to rectify same within the relevant time period indicated in clause 11 below; or
 - 10.1.3. the End User fails to make full payment of any Charges, as per clause 9, on the due date thereof.
- 10.2. Broadlink reserves the right to levy a reconnection Charge pursuant to the restoration of Services suspended in the circumstances contemplated in clause 10.1 above. In the event that the End User's Services are suspended in terms of this clause 10, the End User shall remain liable for the monthly Service Charges during any such period of suspension.

11. BREACH

- 11.1 Subject to clauses 11.2, Broadlink reserves the right to terminate this Agreement in the event that:
 - 11.1.1. the End User breaches any provision, other than those referred to in the remainder of this clause 11.1, of this Agreement;
 - 11.1.2. the End User fails to pay any fees or Charges upon the relevant due date thereof;
 - 11.1.3. the End User has contravened:
 - 11.1.3.1. any notices or rules communicated by Broadlink to the End User from time to time relating to the use of, access to or security measures relating to the Services; or
 - 11.1.3.2. any relevant legislation, regulations or policy of any governmental authority relating to the Services or to the End User's use of the Services.
 - 11.1.4. the End User has engaged in conduct that has caused or may cause damage to Broadlink's facilities, network or any third parties;

- 11.1.5. the End User commences or purports to commence any business rescue or liquidation proceeding or if any such proceedings and threatened and/or instituted against the End User by any third party; or
- 11.1.6. Broadlink receives any direction, notification or instruction from any governmental authority to suspend or terminate the provision of the Services to the End User or generally (where the reason for this is not due to any fault or negligence of Broadlink).
- 11.2. In the circumstances specified in clauses 11.1.1 above only, Broadlink will provide the End User with 14 (fourteen) days prior written notice to remedy the breach before terminating the Agreement.
- 11.3. Any termination of this Agreement pursuant to the preceding provisions of this clause shall be without prejudice to any claim Broadlink may have against the End User in respect of any prior breach of the terms and conditions of the Agreement by the End User.
- 11.4. Without derogating from any other rights or remedies available to Broadlink in terms of the Agreement or at law, in the event of the Agreement being cancelled by the End User (for whatsoever reason) prior to the expiration of the Initial Period or any Renewal Period, or in the event of Broadlink electing to terminate the Agreement pursuant to any breach by the End User which entitles Broadlink to terminate same:
 - 11.4.1 the End User shall be liable to Broadlink and hereby agrees to pay on demand, the full Charges payable to Broadlink for the remainder of the Initial Period or Renewal Period, as the case may be.

12. LIMITATION OF LIABILITY

- 12.1. Broadlink assumes no responsibility for the integrity, correctness, retention or content of information transported via the Services.
- 12.2. Broadlink disclaims all liability for any loss or damages (direct or indirect) which the End User or any other person whomsoever may suffer as a result of:
 - 12.2.1. the use of, the provision of, or any interruption in the Services; or
 - 12.2.2. the Installation, maintenance or removal of the Equipmentand the End User indemnifies Broadlink against any claim or action, as described above, which may be brought by any person in this regard.
- 12.3. Broadlink only provides access to the internet and does not operate or control the information, services, opinions or other content of the internet, and Broadlink makes no warranties or representation regarding any such information, services, opinions or other content. The End User agrees that it shall make no claim whatsoever against Broadlink 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. INTELLECTUAL PROPERTY RIGHTS

- 13.1. 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.
- 13.2. 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.

14. INTERCEPTION AND MONITORING OF COMMUNICATIONS

- 14.1. 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 End User acknowledges Broadlink's right to intercept, block, filter, read, delete, disclose and use all communications sent or posted via Broadlink's network. RICA may be accessed from <http://www.info.gov.za/acts/2002/a70-2002>.
- 14.2. The End User acknowledges and agrees that in the event that Broadlink, in its sole discretion or if obliged by any applicable law, determines that any content hosted by Broadlink, published by Broadlink on the End User's behalf or transmitted by the End User by means of the Service(s) ("Content") is in violation of any law or Broadlink's "acceptable use policy", Broadlink shall be entitled:
 - 14.2.1. forthwith to request the End User to remove such Content; and/or
 - 14.2.2. forthwith to require the End User to amend or modify such Content; and/or
 - 14.2.3. without notice, to terminate access to any Service(s) and/or suspend or terminate any Service(s); and/or
 - 14.2.4. without notice, to delete the offending Content.
- 14.3. The End User acknowledges that any exercise by Broadlink of its rights in terms of clause 15.2 above shall not be construed as an assumption of liability by Broadlink for the Content and/or the publication thereof whether or not Broadlink has knowledge of such Content, having cognisance of the fact that Broadlink has no general obligation in law to monitor Content. The End User hereby indemnifies Broadlink 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.

15. CONSENT/AUTHORITY

- 15.1. The End User hereby consents/authorises Broadlink to:
 - 15.1.1. at any time, obtain information about the End User's credit and/or payment profile from any authorised and registered credit reference agency in the Republic of South Africa;
 - 15.1.2. provide regular reports in respect of End User's payment conduct to any authorised and registered credit reference agency in the Republic of South Africa; and
 - 15.1.3. send it marketing material, promotional updates and client satisfaction surveys.

16. TERMINATION FOR CAUSE

Without prejudice to any other rights at law or set out in the Agreement, Broadlink reserves the right to terminate this Agreement upon written notice to the End User 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 End User shall not be liable for any Charges, except for the Charges for Services already rendered to the End User.

17. MISCELLANEOUS

- 17.1. Governing law

This Agreement will be governed by South-African 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.

- 17.2. 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 general terms and conditions but the remainder of these terms and conditions shall remain legal, valid and binding.

17.3. Waiver

The failure by Broadlink 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.

17.4. Assignment

The End User may not cede and delegate or assign its rights and obligations under the Agreement to a third party without first obtaining Broadlink's written consent. Broadlink 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 End User.

17.5. Notices

Any notice or communication that is required or permitted to be given to the End User 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 End User in its relevant Sales Order. 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).

17.6. Relationship of the Parties

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

17.7. 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.

17.8. 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:

17.1.1. the Sales Order Form;

17.1.2. the Service Specific Terms; and

17.1.3. these Standard Terms and Conditions.