

## THE CLIENT

### 1. DEFINITIONS

“**the Solution Provider**” means Ecko Technologies (Pty) Ltd 2007/002278/07 with full rights of ownership regarding the Ecko Package;

“**the Client**” shall mean the Applicant of this agreement who / that purchases the Ecko Package from the Solution Provider;

“**Agreement**” means the agreement set out in this document together with any appendices hereto;

“**Activation date**” shall mean, notwithstanding the date of signature of acceptance of this agreement by the Solution Provider, the date upon which the client receives the Ecko package;

“**Confidential Information**” shall mean: information of whatever nature, which has been or may be obtained by either of the Parties from the other, whether in writing or in electronic form or pursuant to discussions between the Parties, or which can be obtained by examination, testing, visual inspection or analysis, including, without limitation, scientific, business or financial data, know-how, formulae, processes, designs, sketches, photographs, plans, drawings, specifications, sample reports, models, Client lists, price lists, studies, findings, computer software, inventions or ideas; analyses, concepts, compilations, studies and other material prepared by or in possession or control of the recipient which contain or otherwise reflect or are generated from any such information as is specified in this definition; any dispute between the Parties resulting from this Agreement;

“**Copyright**” shall mean all rights of Copyright whether existing now or in the future in and to the Ecko package including designs and operational concepts relating thereto;

“**Ecko package**” shall mean the Recorder/s and software used one in conjunction with the other to perform telephone call recording functions on the Client’s computer or network;

“**Documentation**” shall mean the written document/s containing detailed instructions pertaining to the use of the Ecko package and setting out the operation of the Ecko package;

“**Recorder**” shall mean any combination/s of (single or multiple channel) analog or digital extension-based or trunk-based or PABX-based recording device/s used in conjunction with telephony infrastructure and / or computer server/s and / or computer workstation/s and / or power protection device/s provided by the solution provider at its discretion where applicable.

“**Intellectual Property Rights**” shall mean all present and future rights in the Ecko package and other rights, which may in the future be based thereon, including but not limited to Copyright;

“**License**” shall mean a non-transferable and non-exclusive right granted to the Client to use the Ecko Software;

“**Notice**” shall mean a written document;

“**Software**” shall mean any software provided by the Solution Provider to manage and retrieve the recorded telephone calls made through the Recorder/s.

“**Use**” shall mean that the Client is entitled to allow the Ecko package to operate at its designated premises

“**the Territory**” means South Africa, Lesotho and Swaziland;

“**Documentation**” means the user manual and any other related paperwork supplied by the Solution Provider or its authorised dealer, which may or may not be related to the Ecko package;

“**Working hours**” means the hours of 08h00 to 17h00 on a Monday to Thursday and 08h00 to 16h00 on a Friday in South Africa, excluding official public holidays;

This agreement shall be construed and interpreted in accordance with the laws of South Africa and phrases and words defined here shall apply in the remainder of this agreement. By using the Ecko Package in any manner whatsoever, the Client will be signifying its / his / her acceptance of these terms and conditions of use, which is a binding agreement between the Solution Provider and the Client.

### 2. LICENCE

- 2.1 The Solution Provider hereby grants the Client a non-exclusive, non-transferable license to use the Ecko Software and documentation, during the existence of this agreement. All calls stored within the Ecko Software shall remain retrievable up to date of termination of this agreement.
- 2.2 The Client shall not copy nor permit any party to copy any or all parts of the Ecko software, except to make sufficient copies solely for backup or archival purposes.
- 2.3 The Client shall not modify, de-compile, disassemble or otherwise reverse-engineer the Ecko software, or attempt to do any of these provided that this stipulation shall not be applicable where de-compilation is permitted by law.
- 2.4 The Client shall allow the Solution Provider, upon reasonable notice, access to its premises to audit the Client’s compliance with the Agreement.

### 3. FEES AND PAYMENT

The Solution Provider shall have no liabilities or obligations to the client of any form, whatsoever, until such time as all amounts due by the client are paid in full;

Use of the Ecko Package, updates and warranties offered by the Solution provider, shall be in accordance with the Service Level Agreement (SLA) as signed between the parties;

### 4. SOLUTION PROVIDER OBLIGATIONS

The Solution Provider undertakes to use reasonable endeavours to support the Ecko package as per the conditions of the SLA as signed between the parties;

### 5. INTELLECTUAL PROPERTY

The Solution Provider retains the right, title and interest in respect of the copyright and all other intellectual property rights in the Ecko package and the documentation. The Client acknowledges that nothing contained in this agreement shall give the Client any right, title, or interest in the intellectual property. At all relevant times the parties acknowledge the intellectual property ownership rights of the copyright holder namely Ecko Technologies (Pty) Ltd.

### 6. LIMITATION OF LIABILITY

- 6.1 The Client acknowledges by his/her/it’s signature hereto that under no circumstances will the Solution Provider be liable to the Client, and thus the Client indemnifies the Solution Provider for loss of data or clientele or profits or incidental or special or consequential damages arising out of or in connection with:
  - 6.1.1 the Ecko package or the delivery, installation, servicing, performance or use of it;
  - 6.1.2 Missing, irretrievable or damaged recorded files in connection with use of the Ecko package

#### 7. THE CLIENT'S OBLIGATIONS

The Client undertakes to obtain professional advice with regards to its legal obligations (both internal and external) to record telephone calls within the territory.

The Client furthermore undertakes:

- 7.1 to comply with the registration requirements, including the initial registration, of the software, which requirements the Solution Provider will determine from time to time and in its absolute and sole discretion;
- 7.2 to keep backup/s of its recorded data of a standard and frequency to recover lost data timeously and effectively;
- 7.3 to consent to the Solution Provider, at its discretion, to obtain or submit information of the Client's business status and payment performance to or from Trans Union Credit Bureau or any other credit bureau of its choice.
- 7.4 to provide sufficient information on application form provided and other in order to comply with FICA and FAIS requirements in terms of law in concluding this agreement.
- 7.5 to comply with any reasonable request by the Solution Provider in terms of any obligations in the event that legislation in terms of law requires same.

#### 8. JURISDICTION

- 8.1 The Client, by its signature hereto and in terms of the provisions of Section 45 of the Magistrate's Court Act No 32 of 1944, as amended, consents to the jurisdiction of the Magistrate's Court in relation to any action or proceeding instituted against the Client in terms of, or arising out of provisions of this agreement, provided that the Solution Provider, in its sole and absolute discretion, shall be entitled to institute any such actions or proceedings, in any division of the High Court of South Africa possessed of the requisite jurisdiction.
- 8.2 In the event of the Solution Provider instituting legal proceedings against the Client to recover amounts due or take any other legal steps arising out of this agreement, the Client shall be liable for collection and legal costs on the scale as between attorney and client.

#### 9. INTERPRETATION

- 9.1 The clause headings in this Agreement have been inserted for convenience only and will not be taken into consideration in the interpretation of this Agreement.
- 9.2 Any reference in this Agreement to the singular includes the plural and vice versa.
- 9.3 Any reference in this Agreement to natural persons includes legal persons and references to any gender include references to the other genders and vice versa.

#### 10. VALIDITY

If any provision of this Agreement is found or held to be invalid or unenforceable, the validity and enforceability of all the other provisions of this Agreement will not be affected thereby.

#### 11. CONFIDENTIALITY

- 11.1 The Parties shall hold in confidence all Confidential Information received from each other and not divulge the Confidential Information to any person, including any of its employees, save for employees directly involved with the execution of this Agreement.
- 11.2 The Parties shall prevent disclosure of the Confidential Information, except as may be required by law.
- 11.3 Within six (6) months after the termination of this Agreement, for whatever reason, the recipient of Confidential Information shall return same or at the discretion of the original owner thereof, destroy such Confidential Information, and shall not retain copies, samples or excerpts thereof.
- 11.4 It is recorded that the following information will, for the purpose of this Agreement, not be considered to be Confidential Information:
  - 11.4.1 information known to either of the Parties prior to the date that it was received from the other party; or
  - 11.4.2 information known to the public or generally available to the public prior to the date that it was disclosed by either of the Parties to the other; or
  - 11.4.3 information which becomes known to the public or becomes generally available to the public subsequent to the date that it was disclosed by either of the Parties to the other, through no act or failure to act on the part of the recipient of such Information; or
  - 11.4.4 information which either of the Parties, in writing, authorises the other to disclose.

#### 12. RELATIONSHIP

This Agreement does not constitute either of the Parties an agent or legal representative of the other for any purposes whatsoever and neither of the Parties shall be entitled to act on behalf of, or to represent the other unless duly authorised thereto in writing.