

## ECSC E-LITIGATION PORTAL - GENERAL TERMS AND CONDITIONS

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These General Terms and Conditions (hereinafter referred to as "General T&Cs") shall govern the use of the services offered by Eastern Caribbean Supreme Court through the E-LITIGATION PORTAL. These General T&Cs contain terms and conditions of general application to the E-LITIGATION PORTAL. The specific service requested by you may be subject to additional terms and conditions that are set out in the registration process as an external user and which is available on the E-LITIGATION PORTAL. The General T&Cs shall be referred to as "Agreement".

Unless explicitly stated otherwise, any new feature or features that augment or enhance the current services, including the release of or migration to new services, shall be subject to this Agreement.

By completing and submitting the relevant application through the "Create Account" menu item on the Portal for registration to use the E-LITIGATION PORTAL, the Registered User acknowledges reading this Agreement and agrees to be bound by it.

### 1.0 TERMINOLOGY

In this Agreement, the following words and expressions have the meanings assigned to them except where the context otherwise requires:

- 1.1 "Recipient" of a Notification, or electronic record means a person who is intended by the Originator to receive the same, but does not include an intermediary like the Court who sends, receives, stores or provides other services with respect to the notification, or electronic record on behalf of the Originator or Addressee;
- 1.2 "Notification" means information generated sent, received or stored by electronic, optical, including but not limited to electronic data interchange (EDI) or electronic mail.
- 1.3 "Electronic Record" means a record generated in digital form by an Information System, which can be:
  - 1.3.1 Transmitted from an Information System or from one Information System to another; and
  - 1.3.2 Stored in an Information System or other medium.
- 1.4 "Information System" means a system for generating, sending, receiving, storing or otherwise processing Notifications or Electronic Records;
- 1.5 "Services" here means the service provided by the E-LITIGATION PORTAL over the Internet to the Registered User upon the Registered User's application for registration;
- 1.6 "Originator" of a notification or an Electronic Record means a person by whom, or on whose behalf, the Notification or Electronic Record purports to have been sent or generated prior to storage, if any, but does not include an intermediary like the ECSC who sends, receives, stores or provides other services with respect to the notification or Electronic Record on behalf of the Originator or Addressee;
- 1.7 "Registered User" means the party identified on the Registration form whose application is approved and accepted by the ECSC;
- 1.8 "Portal" refers to an application on the internet over which the Registered User may access for the purpose of using the E-LITIGATION PORTAL Services and which are specifically described in the Registration Form.

**2.0 REGISTRATION**

- 2.1 In order to use the E-LITIGATION PORTAL, you will need to become a Registered User by using the “Create Account” menu on the E-Litigation Portal and providing the application information.
- 2.2 Registration is open to Legal Practitioners practicing in the various Member States and Territories, whose names have been enrolled by the Registrar of the Supreme Court and also to Legal Secretaries and Clerks.
- 2.3 This Agreement shall commence on the date of the ECSC’s approval of your application to use the E-LITIGATION PORTAL.

**3.0 AMENDMENTS TO TERMS AND CONDITIONS**

- 3.1 The ECSC reserves the right to amend the terms and conditions of this Agreement from time to time. Amendments to the General T&Cs will be effective immediately after posting on the ECSC Website.
- 3.2 IT IS THE REGISTERED USERS’S RESPONSIBILITY TO CHECK THE ECSC WEBSITE FROM TIME TO TIME FOR AMENDMENTS TO THIS AGREEMENT. BY USING OR CONTINUING TO USE THE SERVICES AT ANY TIME AFTER THE DATE THAT ANY AMENDMENTS ARE POSTED ON THE WEBSITE, YOU ACKNOWLEDGE THAT YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT AS AMENDED.

**4.0 SCOPE OF SERVICES**

- 4.1 Subject to the acceptance of the properly completed Registration by the ECSC, and the further approval by the Law Firm /Legal Practitioner, the ECSC will provide the Registered User access to the Services, provided on the E-LITIGATION PORTAL and the ECSC reserves the right to modify or enhance the E-LITIGATION PORTAL Services, or any part thereof, at any time. The ECSC will advise the Registered User of the changes in advance where the changes will, in the ECSC’s opinion, significantly alter the E-LITIGATION PORTAL’s Services.
- 4.2 The ECSC may impose its own further terms and conditions and administrative charges for use of its services. The Registered User is responsible for ensuring that it has obtained all necessary approvals, consents and permissions for access to and use of the ECSC E-LITIGATION PORTAL’s services and facilities.

**5.0 REGISTERED USERS RESPONSIBILITIES**

- 5.1 The Registered User shall obtain, install and maintain such suitable equipment, software, and communication means as may be required to make connection to the World Wide Web and to use the E-LITIGATION PORTAL provided by a third party, including a computer, telecommunication facilities, Scanner or other access devices or other ancillary equipment.
- 5.2 The Registered User is responsible for the confidentiality of the password(s) associated with the account and user login ID assigned by the ECSC upon registration of the Registered User on the E-LITIGATION PORTAL. The Registered User shall ensure control of the password(s) and user login ID for authorized usage of the E-LITIGATION PORTAL. Unless the contrary is proved, all communications and activities occurring under the Registered User’s user account, user login ID or password shall be deemed to have been validly issued or authorized by the Registered User. The Registered User shall be liable for all costs, fees, and

## **ECSC E-LITIGATION PORTAL - GENERAL TERMS AND CONDITIONS**

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expenses arising from any communication and activity occurring under the Registered User's user account, user login ID or password.

- 5.3** The Registered User warrants and represents that the Registered User is duly authorized to upload, submit, transmit or otherwise deal with all content, information and data provided by the Registered User, and that all such content, information and data provided is true, accurate, current and complete.
- 5.4** The Registered User agrees not to submit, upload or transfer any unauthorized files, codes (including but not limited to viruses), documents and information, in the course of using the E-LITIGATION PORTAL.
- 5.5** The Registered User agrees that the use of this Portal will be for lawful purposes only. The Registered User undertakes not to use the E-LITIGATION PORTAL for or to carry out any activity that may be prohibited under the laws of the Member State or Territory where they have a right to practice or under any other applicable law, including but not limited to: the commission of a criminal offence, to gain unauthorized access to other computer systems, for the transmission of unlawful material or in breach of any copyright laws, whether of the Member States or Territories of the Eastern Caribbean Supreme Court or of any other country.
- 5.6** The Registered User hereby authorizes the ECSC to deal with any data or information submitted by or to the Registered User, in any manner, as the ECSC deems necessary to carry out the Services on the E-LITIGATION PORTAL.
- 5.7** The Registered User agrees to render all reasonable assistance to the ECSC, as may be requested from time to time.
- 5.8** The Registered User agrees to, at all times, indemnify and hold harmless the ECSC and its officers, employees and agents ("those indemnified") from and against any loss (including reasonable legal costs and expenses) or liability reasonably incurred or suffered by any of those indemnified arising from:
- 5.8.1** A breach by the Registered User or its employees, agents or contractors of the terms of this Agreement; or
- 5.8.2** Any willful, unlawful or negligent act or omission on the part of the Registered User or its employees, agents or contractors.
- 5.9** The Registered User shall provide to the ECSC the Registered User's contact details (e.g. address, telephone number, e-mail address) and shall promptly update the ECSC from time to time on any change in such contact details. Where the ECSC is to send any notification to the Registered User under this Agreement, the ECSC shall use reasonable efforts to do so at the User's contact details last provided. The ECSC shall not be liable if the Registered User cannot be contacted through any one of the contact details provided.
- 5.10** The Registered User agrees to access and use the E-LITIGATION PORTAL entirely at his own risk. The Registered User is further referred to the terms and conditions contained in the disclaimer (Section 9.0). In the event of a conflict, the terms and conditions in the disclaimer prevail.

### **6.0 NOTIFICATIONS AND ELECTRONIC RECORDS**

- 6.1** The Registered User agrees that all Notifications and Electronic Records to be sent through the E-LITIGATION PORTAL will comply with all applicable legal requirements and such message requirements as the ECSC may prescribe from time to time.

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## ECSC E-LITIGATION PORTAL - GENERAL TERMS AND CONDITIONS

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- 6.2 Unless otherwise specified by the ECSC, the dispatch of a Notification is for all purposes deemed to have occurred when the Notification enters an Information System outside the control of the Originator or of any person who sent the notification on behalf of the Originator.
- 6.3 Unless otherwise specified by the ECSC, the receipt of a Notification is for all purposes deemed to have occurred when the Notification enters an Information System or an electronic mailbox or similar system of the Recipient.
- 6.4 The ECSC will not be responsible for any trouble or loss caused by disputes (i) between the Registered User and a third party or (ii) between a Registered User and another Registered User relating to the dispatch or receipt of Notifications or Electronic Records.
- 6.5 The period between "dispatch" and "receipt", as specified in Clauses 6.2 and 6.3 above, is indispensable for the ECSC for the conversion of format and transference of Notification or Electronic Record etc. The ECSC will not be responsible for any damage or loss caused by such occurrence within the said period.
- 6.6 Unless otherwise specified by the ECSC, a Notification or an Electronic Record is deemed to be dispatched at the place where the Originator has specified the main address of his/her place of business and is deemed to be received at the place where the Recipient has specified the main address of his/her place of business. For the purpose of this paragraph Originator and Recipient will have to specify their e-mail addresses for further communication if Notification or an Electronic Record cannot be dispatched to the place where the Originator or Recipient has specified his/her main address.
- 6.7 If the Registered User receives any Notification or Electronic Record addressed to another Registered User or a third party which was wrongfully forwarded to him/her, he/she shall:
  - 6.7.1 Notify, and return the Notifications or Electronic Records to the Originator through the ECSC as soon as possible; and
  - 6.7.2 Keep the contents of the Notifications confidential and destroy all copies of the Notifications or Electronic Records after the return has been effected.

### 7.0 INTELLECTUAL PROPERTY RIGHTS

- 7.1 All intellectual property rights (including copyright and trade marks) contained in, relating to or in connection with the E-LITIGATION PORTAL (including judgment text, graphic, logos, icons, sound recordings and software) are owned by the ECSC.
- 7.2 No material provided through the E-LITIGATION PORTAL, including text, graphics, compilations, computer programs, code and/or software may be reproduced, modified, adapted, distributed, published, displayed, uploaded, broadcast, posted, transmitted or hyperlinked in any manner and in any form.

### 8.0 TERMS OF PAYMENT FOR USE OF SERVICES

- 8.1 In consideration of the provision of the E-LITIGATION PORTAL by the ECSC, the Registered User agrees as follows:
  - 8.1.1 The Registered User will be able to view and print its transaction receipt and check its account balance electronically as it is being part of the system. The ECSC will not be sending invoices to the Registered User for the payment of charges incurred in the use of the E-LITIGATION PORTAL; and

- 8.1.2** In the event that the ECSC is compelled to commence any legal action to recover unpaid Charges, the Registered User agrees that the ECSC shall be entitled to claim legal costs on a full indemnity basis from the Registered User.

**9.0 DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY**

- 9.1** THE E-LITIGATION PORTAL SERVICES AND ALL ANCILLARY SERVICES (INCLUDING BUT NOT LIMITED TO TRAINING AND TECHNICAL SUPPORT) ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. THE ECSC DISCLAIMS ALL WARRANTIES OR CONDITIONS OF ANY KIND, TO THE EXTENT PERMITTED BY LAW, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.
- 9.2** The ECSC does not warrant that the E-LITIGATION PORTAL will meet Registered User's requirements or that the E-LITIGATION PORTAL will be uninterrupted, timely, secure or error-free. The ECSC does not warrant the security of any information transmitted over the Internet as no data transmission over the Internet can be guaranteed as totally secure. Accordingly, any document or information which is transmitted by the Registered User, whether to the ECSC or to any other party, is transmitted at the Registered User's own risk.
- 9.3** The ECSC is not responsible for the availability, content or security of external websites or websites belonging to other third parties which may be linked or integrated with the E-LITIGATION PORTAL or the ECSC's website. The ECSC undertakes no liability, whether in contract, tort or otherwise for the acts, neglects and omissions of other third parties, including without limitation third party providers of telecommunication, computer or internet services or for faults in or failures of their apparatus, equipment or systems.
- 9.4** The ECSC shall not be liable to the Registered User or any other party for any damage, loss, cost or expense suffered by the Registered User or any other party as a result of:
- 9.4.1** An action brought by a third party even if such loss was reasonably foreseeable or the ECSC has been advised of the possibility of the Registered User or any other party suffering or incurring the same;
  - 9.4.2** The reliance on or use of any data, information, content or matter provided by the ECSC via the E-LITIGATION PORTAL or the accuracy, correctness or completeness thereof;
  - 9.4.3** Any error, interruption or other occurrence whatsoever arising out of any form of communications or other facilities not provided by the ECSC;
  - 9.4.4** Any data or other information input, sent or received by or to the Registered User or through the E-LITIGATION PORTAL;
  - 9.4.5** Any occurrence not due to the ECSC's direct default; or
  - 9.4.6** The ECSC shall have no liability to the Registered User for any loss, damage, cost or expense arising from or in connection with this Agreement unless the Registered User shall have served notice on the ECSC within one (1) year from the date the event giving rise to the cause of action arose.
- 9.5** In no event shall the ECSC be liable for any loss of business, profit, goodwill or any type of special, indirect or consequential loss to the Registered Users.

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## **ECSC E-LITIGATION PORTAL - GENERAL TERMS AND CONDITIONS**

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- 9.6** The Registered User shall indemnify and keep the ECSC harmless against any damage or claim by any parties which may arise out of this Agreement and agree to notify such parties in writing that the ECSC shall have no liability to them. In the event any claim is made by such parties against the ECSC, the Registered User shall take all steps to enforce its rights including but not limited to the institution of legal proceedings, if necessary, against such parties to restrain them from bringing such claims against the ECSC.
- 9.7** The ECSC shall not be responsible for any dealing (i) between the Registered User and third parties or (ii) between the Registered User and another Registered User whether or not such dealings are facilitated through the use of the E-LITIGATION PORTAL.
- 9.8** The Registered User agrees that it shall not bring any claim, action or proceeding whatsoever against the ECSC in respect of any damage, loss, cost and expense arising from the use or reliance on the data, information, content or matter provided by the ECSC via the ECSC's website or the E-LITIGATION PORTAL.
- 9.9** Neither party shall be responsible for failure to perform or fulfill its commitments under this Agreement if such failure is due to any other circumstance outside its control. Such circumstances comprise, but are not confined to, acts of God, war, riot and sabotage.
- 9.10** The ECSC shall not be held responsible for any failure to meet its obligations under this Agreement to the extent that such failure is attributable to the effects of any computer virus.

### **10.0 GOVERNING LAW**

- 10.1** This Agreement shall be governed by and construed in accordance with the laws of the Member State or Territory where the Registered User is licensed to practice, and a dispute may have arisen. The parties agree to submit to the exclusive jurisdiction of the courts of the Member States and Territories of the OECS.
- 10.2** Recognizing the global nature of the Internet, the Registered User agrees to comply with all local rules regarding online conduct, acceptable content and use of the ECSC's website and the E-LITIGATION PORTAL. Details contained on the ECSC's website have been prepared in accordance with laws of the Member States and Territories of the OECS and may not satisfy the laws of any other country. The ECSC does not warrant that the details on the ECSC's website will satisfy the laws of any country other than the Member States and Territories of the OECS.

### **11.0 CASE ACCEPTANCE RULE**

- 11.1** The Registered User hereby agrees to abide by the terms and conditions laid down for compliance by all registered users of the E-Litigation Portal.
- 11.2** The Registered User takes full liability for the contents of the documents uploaded in the system.
- 11.3** The Registered User undertakes to produce the original of any document uploaded in the system whenever a request is made by any interested party or the Court.
- 11.4** The court will be at liberty to impose sanctions upon a Registered User who abuses the system generated by the E-LITIGATION PORTAL.

**12.0 GENERAL**

- 12.1** The Registered User shall not, in any litigation proceeding, challenge the admissibility as evidence or the accuracy of a data log or electronic record provided by the ECSC in whatever form it may be presented.
- 12.2** Nothing in this Agreement shall constitute or be deemed to constitute a partnership between the ECSC and any Registered User, nor constitute the appointment of third parties as agent of any Registered User or the ECSC.
- 12.3** A waiver of breach or default under this Agreement by the ECSC must be in writing and shall not be a waiver of any other or subsequent default. Failure or delay by the ECSC to enforce compliance with any term or condition of this Agreement shall not constitute a waiver of such term or condition.
- 12.4** If any terms and conditions are held to be invalid, unenforceable or illegal for any reason, the remaining terms and conditions will nevertheless continue in full force.
- 12.5** The Registered User shall be deemed to have read this Agreement and shall agree to be bound by the terms hereof. This Agreement shall supersede all proposals, prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this Agreement.

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