



# GENERAL Terms and Conditions



## 1. INTERPRETATION AND PRELIMINARY

Unless a contrary intention clearly appears -

1.1. the following terms shall have the following meanings

1.1.1. "activation" means the enabling of a service at the supplier's premises to operate on one or more networks;

1.1.2. "addendum" means a supplementary agreement signed by both the supplier and the customer that expands or modifies a current agreement and

1.1.3. "agreement" means the general terms and conditions, the product specific terms and conditions, the proposal, the subscriber agreement and all addenda, if applicable, concluded by the customer and executed in terms hereof, including, in the case of Hosted Exchange services, a written instruction to the supplier to commence or cancel additional services;

1.1.4. "charges" or "rates" means the installation charges, monthly services charges, usage charges and any other charges pertaining to the provision of services by the supplier to the customer;

1.1.5. "commissioned" means the date on which the services are operational;

1.1.6. "CPA" means the Consumer Protection Act, 2008;

1.1.7. "CPA Regulations" means regulations promulgated pursuant to the CPA from time to time;

1.1.8. "customer" means any person who has entered into an agreement with the supplier for the provision of services and/or the use of the equipment, or who has applied to the supplier for the provision of services and/or the use of the equipment, and is used interchangeably with the term "subscriber";

1.1.9. "equipment" means all devices including software provided by the supplier to the customer in order to enable the supplier to provide the services;

1.1.10. "general terms and conditions" means this document excluding all proposals executed in terms hereof;

1.1.11. "initial period" means the duration of the first agreement signed by the customer in respect of the services as reflected in the subscriber agreement which period shall commence on the commissioned date

1.1.12. "initial services" means the first services that are provided by the supplier to the customer in terms of the first agreement signed by the customer in respect of the services

1.1.13. "installation" means the installation of equipment at the customer's premises or at such other location as may be specified by the customer

1.1.14. "managed services" means the on-going management and provision of services by the supplier in return for a monthly payment by the customer;

1.1.15. "month" shall mean a calendar month commencing at 0h00 on the relevant day of the relevant calendar month;

1.1.16. "monthly service charge" means the monthly fees levied by the supplier in consideration for the customer's access to and use of the network services or other services provided by the supplier;

1.1.17. "network provider" means any authorised supplier of telecommunications facilities;

1.1.18. "network services" means any services provided by any of the networks including but not limited to fixed line operators, cellular operators, wireless operators or any other operator that provides access and network services (including value added services) made accessible to the customer by the supplier in terms of this agreement

1.1.19. "product" means any combination of equipment and services provided by the supplier to the customer

1.1.20. "product specific terms and conditions" means the specific terms and conditions applicable to the specific product or services as reflected in the proposal

1.1.21. "proposal" means the order form or proposal document submitted by the supplier to the customer and signed by the customer in respect of the provision of the services and which incorporates the subscriber agreement, the product specific terms and conditions and the provisions of this agreement

1.1.22. "renewal period" means, unless otherwise provided for terms and conditions or subscriber agreement:

1.1.22.1. if the customer is a juristic person, a period of 24 successive months commencing on the day immediately following the expiration of the initial period or each successive renewal period;

1.1.22.2. if the customer is a natural person, the period specified in clause 3.3.3

1.1.23. "Republic" means the Republic of South Africa;

1.1.24. "services" means the services, managed or otherwise, and/or products provided by the supplier to the customer as set out in the proposal;

1.1.25. "service provider" means any Electronic Communications Networks Licensee or Electronics Communications Licensee licensed under the Electronic Communications Act, 2005, or any service provider of an Electronic Communications Networks Licensee or Electronics Communications Licensee;

1.1.26. "software" means any computer programme that is either embedded or provided as a stand-alone application, or accessed via the internet or other web browsing method;

1.1.27. "subscriber agreement" means the summary of the agreement signed by the customer for the provision of services by the supplier to the customer;

1.1.28. "supplier" means KIS Wireless – Klerksdorp Internet Services CC;

1.1.29. "traffic type" means any specific type of calls carried by the supplier over the networks;

1.1.30. "usage charges" means the charges charged by the supplier to the customer for recorded usage of the network services

- 1.2. when any number of days is prescribed in this agreement, same shall be reckoned exclusively of the first and inclusively unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 1.3. the terms of the agreement shall prevail in the event of a conflict between the proposal and this agreement; and
- 1.4. in circumstances of the CPA being applicable to the agreement, the provisions of the CPA shall prevail in the event of a conflict between any provision of the agreement and the provisions of the CPA.

## 2. APPOINTMENT AND AUTHORITY

2.1. The customer appoints the supplier to supply the services to the customer for the initial period in accordance with the terms and conditions set out in the agreement, although the parties will be bound by the terms and conditions of this agreement with effect from the date of signature hereof.

2.2. The customer hereby authorises the supplier to:

2.2.1. communicate with other service providers to enable the supplier to obtain all information which may be necessary in order for the supplier to render the services. Should the supplier so require, the customer shall sign a separate letter authorizing the supplier to approach the service providers to request such information as aforesaid which can be furnished as proof that the supplier has been mandated by the customer to approach the service providers for the purposes set out in clause 2.2; and/or

2.2.2. to enter into agreements and arrangements with third parties as may be necessary for the supplier to render the services.

## 3. TERM – WHERE APPLICABLE

3.1. The supplier undertakes to supply the services to the customer subject to the succeeding terms of this agreement, for the duration of the initial period; provided that in the event that the initial services do not become commissioned as a result of the actions or omissions of customer, the supplier shall have the right to recover from the customer, the minimum monthly charge stipulated in the proposal (or pro rata portion thereof) payable by the customer for the period of the delay together with any reasonable wasted costs incurred by the supplier and customer hereby indemnifies the supplier accordingly

3.2. If the customer is a juristic person, at the expiry of the initial period, unless otherwise notified in writing to the customer, the services and agreement shall continue automatically on the terms contained in this agreement for an unlimited number of renewal periods, unless terminated by the customer, on expiration of the initial period or a renewal period, as the case may be, by giving the supplier a written notice of termination not less than 30 and not more than 90 days before the expiration of the initial period or renewal period, as the case may be.

3.3. If the customer is a natural person:

3.3.1.1 on the expiry of the initial period, on written notice to the supplier

3.3.1.2 during the initial period, on 20 business days' written notice to the supplier, subject, however, to the provisions of clause 3.6;

3.3.2 the supplier may, during the initial period, terminate the agreement 20 business days after giving the customer written notice to remedy a material breach and the customer failing to remedy such breach within such period;

3.3.3 and the agreement is not terminated by either party in accordance with the foregoing during the initial period, unless the customer agrees to a renewal of the agreement for a further fixed term, the agreement will continue, after the initial period on a month to month basis (terminable by either the supplier or the customer on 1 month's written notice to the other), subject to any material changes of which the supplier has given written notice pursuant to clause 3.3.4;

3.3.4 not more than 80 nor less than 40 business days before the expiry of the initial period, the supplier shall notify the customer in writing of the impending expiry of the agreement, which notice will include any material changes that would apply if the agreement were to be renewed and the customer's right to terminate or continue with the agreement on the expiry of the initial period

**3.4. Notwithstanding the foregoing, during any automatic renewal period the discounts applicable to the services provided for in the agreement shall not be available to the customer until the customer concludes a new written agreement with the supplier in respect of the services provided by the supplier for the term of the renewal period.**

3.5. Unless the CPA applies to this agreement, the supplier shall furthermore be entitled to terminate this agreement at any time by giving 30 days' written notice to this effect to the customer. Should the provision of any of the products or services by the supplier on the basis provided for in this agreement be finally declared illegal by an Act of Parliament, any regulatory body or court of law, the supplier shall be entitled to cancel this agreement on written notice to the customer.

3.6. Should the customer terminate this agreement prior to the expiry of the initial period or any renewal period for any reason other than expressly provided for in this agreement, the customer shall remain liable for all amounts owing to the supplier up until the date of termination and the supplier shall be entitled (unless the customer is entitled to terminate the agreement without penalty in accordance with the provisions of the CPA, if applicable) to levy a cancellation/early settlement fee provided for in the proposal, provided that where the customer is a natural person, such cancellation fee shall be limited to a reasonable fee determined in

Initial

accordance with the guidelines set out in the CPA and, if applicable, the CPA Regulations.

3.7. Unless otherwise expressly stated in the agreement, upon expiry of the initial period or any renewal period, the supplier, in its sole discretion, but subject to clause 3.3.4, may remove or change any discounts that were applicable during the initial period or renewal period, as the case may be.

3.8. Any new or additional services or expansion of the initial services to be provided by the supplier to the customer from time to time shall be subject to the terms contained in the proposal or required to be agreed upon by the parties in writing in a new agreement (or in an addendum to the existing proposal) and such new services shall commence on the date on which such new services are commissioned.

3.9. The supplier may in its sole and absolute discretion after the routing of any traffic at any time in pursuit of the provision of services, such routing changes having no effect on the validity of the agreement.

3.10. The services provided by the supplier are subject to government or relevant authority regulated limitations and transmission limitations, and may be temporarily and/or permanently interrupted or curtailed as necessary or appropriate for the proper operation of the services.

3.11. If the conclusion of the agreement is the result of direct marketing and the provisions of the CPA are applicable hereto, the customer has the right to cancel the agreement without reason or penalty by written notice to the supplier within 5 business days after the later of the date on which the agreement was concluded or the services or equipment were delivered to the customer. Should the customer have opened the original packaging of the products prior to returning same to the supplier on cancellation of this agreement, the supplier shall be entitled to deduct from any reimbursement or refund which may be payable to the customer on cancellation, a reasonable amount for the use and/or depletion of the products.

#### 4. SERVICES AND EQUIPMENT: DELIVERY AND INSTALLATION

4.1. The supplier shall deliver the equipment and the services to the customer at the address nominated by the customer on the subscriber agreement. The customer shall be obliged to pay the reasonable costs incurred by the supplier in delivering the equipment. If the supplier cannot deliver the equipment to such address through no fault of the supplier, the customer shall be obliged to pay all reasonable costs incurred by the supplier in making the attempted delivery. Subject always to the provisions of clause 11, the supplier shall use its reasonable endeavours to meet the stipulated dates and times for delivery of the equipment and the services. The supplier shall not be liable in any manner whatsoever to the customer for any loss arising from any failure or delay in performance or providing services and/or equipment resulting from any of the force majeure events referred to in clause 11 nor for any other reason unless such failure or delay is directly attributable to the gross negligence or fraudulent intent of the supplier.

4.2. Unless the customer proves otherwise and without limiting the rights of the customer pursuant to the CPA, if applicable, signature by the customer on any acceptance certificate provided by the supplier and/or its service providers upon the installation of the equipment or at the instance of a commissioned service, shall be deemed to be an acknowledgement by the customer that it has fully inspected and approved the equipment and all of its components and that the equipment and components have been received to the full satisfaction of the customer. Subject to the customer's rights to have defective products returned, repaired or monies paid in respect thereof refunded pursuant to the CPA, insofar as the CPA is applicable to the agreement, the customer shall have no claim against the supplier of whatsoever nature should, after such acceptance by the customer, it transpire that the equipment and/or any component thereof is unacceptable to the customer for any reason.

4.3. The customer shall, at its own cost and expense, be responsible for:

4.3.1. ensuring that the communication services and facilities, including without limitation, telephone facilities and lines, installation area/s, electrical outlet/s, connection requirements and access way/s are suitable for the installation, passage and electrical connection of the equipment and services when they are delivered for installation and thereafter; and

4.3.2. obtaining all necessary approvals and authorities imposed by any competent authority and required for the purpose of the supply, delivery and/or installation of the equipment and the services, including landowners consent, where the customer is not the landowner. The customer hereby indemnifies the supplier against any claim or liability suffered by the supplier by reason of such approval and authorities not having been obtained

4.4. The installation of last mile access solutions may be subject to feasibility to be confirmed by a physical site survey, such survey only to be conducted after signature of the contract.

4.4.1. Additional installation charges may apply, subject to the results of the physical site survey in such an instance the customer will be notified before the service is installed.

4.4.2. Should a last mile access medium not be feasible to supply, the Supplier will endeavour to supply a similar and/or equal service, subject to the customers consent.

4.5. Once installation has been completed, any subsequent callouts of engineers shall be billed at the engineer's charge out rate, with a minimum charge out of one hour plus travel expenses.

#### 5. SOFTWARE

5.1. The customer shall use any software provided to it by the supplier, only for the purposes for which it is intended and licensed in terms hereof.

5.2. The customer shall not nor permit anyone else to reverse engineer, decompile, modify, tamper with, vary, enhance, copy, sell, lease, license, sub-license or otherwise deal with the software or any part, variation modification, release or enhancement thereof or have any software or any program written or developed for it based on the software

5.3. All rights of whatever nature in and to the software and all upgrades, updates, modifications and variations thereto from time to time, shall vest in the supplier and all rights in and to the software, its upgrades, updates, modifications and variations thereto are granted or assigned to the customer. The customer shall not, at any time in any way, question or dispute the ownership of the software and undertakes not to infringe or prejudice any rights of the supplier in and to the software.

5.4. The supplier shall upgrade any software provided to the customer at its sole discretion and shall not be obliged to perform such upgrades at any time unless a specific provision has been included in the agreement requiring that the supplier performs such upgrade

5.5. It is the customer's responsibility to notify the supplier of its requirement to renew software licenses.

#### 6. USE AND STORAGE OF INFORMATION

6.1. The customer acknowledges that the supplier may establish general practices and limits concerning the use of the services (which it shall be entitled to modify from time to time in accordance with industry standards), including, the period of time that the customer's email messages and other content uploaded on to the supplier's server is retained, the quantity and size of content that may be sent from or received by the customer and that available disk space that will be allocated to the supplier's servers on the customer's behalf.

6.2. The supplier shall not be obliged in any way to delete or store any messages and/or other electronic communications or exchanges that the supplier maintains or transmits.

6.3. The supplier shall furthermore be entitled on written notice to the customer to terminate the provision of the services should the customer fail to use the services for a continuous period exceeding 12 months, or on termination of the contract.

#### 7. CUSTOMER'S OBLIGATIONS IN RESPECT OF THE EQUIPMENT

7.1. The customer undertakes to use the equipment only for the purpose for which it is intended and to ensure that its employees, agents and/or sub-contractors comply with the instructions and recommendations of the supplier.

7.2. Upon delivery or collection of the equipment as the case may be, risk in the equipment shall pass to the customer who shall then be responsible for:

7.2.1. keeping the equipment in its possession and control, protected against loss and damage from whatsoever cause; free from any judicial attachment, hypothec or any other legal charge or process and shall not encumber the equipment;

7.2.2. providing clean power to the equipment;

7.2.3. exercising due care and diligence in respect of the equipment;

7.2.4. protecting all equipment against any form of lightning by means of installing a lightning protection, unless expressly provided by the supplier to the customer, and

7.2.5. obtaining adequate insurance for the equipment for the full replacement value thereof.

7.3. The customer furthermore agrees to ensure that the equipment is maintained in clean, serviceable and good working order. Upon the expiry of this agreement, the customer shall return all equipment in good working order and in the same condition as at the date of installation, fair wear and tear excepted.

7.4. The customer agrees that any equipment supplied by the supplier and/or its service providers pursuant to this agreement is movable property and that notwithstanding any installation thereof at the customer's premises, unless the customer has purchased the equipment outright and has paid in full for such equipment, the equipment shall at all times remain the property of the supplier and/ or its service providers, as the case may be, who shall have the right to inspect the equipment at all reasonable times during the currency of this agreement and to remove the equipment on termination of the agreement for any reason. Accordingly, the customer undertakes forthwith upon the installation of the equipment, to notify the landlord of the premises where the equipment is to be installed of the supplier's and/ or its service provider's ownership of the equipment.

7.5. The customer shall provide:

7.5.1. the supplier with access to its premises, the equipment, software, telephone ports and/or network for the purposes of monitoring and correcting the equipment and/or software and monitoring the performance of the customer's obligations hereunder;

7.5.2. the supplier with plans, organograms, structural, architectural and block diagrams, user lists, company procedures and any other form of information that the supplier deems necessary for the proper provision of the services;

7.5.3. its own security procedures so as to ensure the integrity of its systems, it being specifically recorded that, notwithstanding the provisions of 7.6 and 7.7, that the supplier shall not be liable for any loss suffered by the customer attributable to loss of integrity of its systems unless such loss is directly attributable to the gross negligence or fraudulent intent of the supplier.

7.6. In respect of any equipment provided to the customer by the supplier under a managed services agreement and in respect of equipment provided by the supplier at the supplier's cost to the customer, where such equipment is covered by the supplier's insurance:

7.6.1. the customer undertakes to comply fully with the terms and conditions of the insurance cover procured by the supplier, for all the equipment supplied to it by the supplier;

7.6.2. if the equipment or any part thereof is lost, stolen or damaged for any reason whatsoever and howsoever arising, the customer shall immediately notify the supplier in writing of such loss, theft or damage;

7.6.3. In the case of equipment that is damaged, and until such notification has been received by the supplier, the customer shall remain fully liable for all costs and charges pertaining to such equipment and to the services.

7.7. The supplier shall, as soon as reasonably possible after receipt of written notification of such theft, loss or damage for equipment supplied under a managed services agreement:

repair or replace equipment (other than equipment that has not been supplied by the supplier, the repair and/or replacement of which shall be for the customer's entire responsibility);

7.7.1. bear the costs of such repair or replacement except where such repair or replacement is necessary as a result of an accident or force majeure event (as contemplated in clause 11) or through improper, malicious or negligent use by the customer of the equipment or use in breach of the terms and conditions hereof. The supplier shall in its sole discretion, using reasonable testing methods, determine whether such equipment has been subjected to improper, malicious or negligent use.

7.8. In respect of any theft, loss or damage of equipment that has been purchased outright by the customer from the supplier, and notwithstanding the provisions of clause 8.10, the customer shall be fully liable for all costs and charges pertaining to the replacement of such equipment. Such loss, theft of, or damage to and/ or the issue of replacement equipment shall in no way be deemed to constitute a termination of the agreement which shall continue to be of full force and effect.

7.9. The customer shall be obliged to ensure that the equipment and all components thereof at all times remain at the site of installation thereof. Should the customer wish to relocate any fixed or moveable

Initial

component(s) of the equipment to alternative premises, the customer shall be precluded from doing so unless it has made written application on 4 months' notice to the supplier to such effect and the supplier has approved such relocation in writing. The customer will be charged for any site-relocation requirement (whether within the customer's existing premises or to alternative premises) at the relevant rates stipulated by the supplier and/or its service providers at the time of such site re-location.

7.10. The supplier may at any time re-configure, upgrade, and/or exchange any equipment at its sole and absolute discretion, to meet its obligations required to provide the services. The supplier shall not be obliged to effect any other upgrades or improvements unless it determines to do so in its sole and absolute discretion.

7.11. The customer shall not itself be entitled to nor permit any other party to repair, maintain, modify, alter or add to the equipment in any manner whatsoever without the supplier's prior written consent.

7.12. Unless the prior written approval of the supplier is obtained, the customer shall ensure that only equipment and services marketed and sold by the supplier may be installed on or connected to the equipment. Any component or accessory affixed or addition made to the equipment during the currency of this agreement shall become the property of the supplier without reimbursement or compensation to the customer.

## 8. CHARGES AND PAYMENT

8.1. Unless otherwise agreed to by the supplier in writing or provided for in the proposal or in the product specific terms and conditions, in consideration of the provision of the services and equipment by the supplier to the customer, the customer shall effect payment to the supplier, in full, without deduction or set off and free of bank charges, on date of invoice:

8.1.1. for the supply and delivery of services, equipment and installation;

8.1.2. for the monthly service charge and/or all other maintenance charges and insurance charges, if applicable, and of all other relevant periodic charges (including monthly and annual charges) in advance, as specified in the proposal;

8.1.3. for the usage of charges, in arrears, as specified in the proposal;

8.1.4. at the supplier's premises or at the supplier's banker's premises

8.2. It is expressly recorded and agreed that the supplier shall be entitled, on 30 days' written notice to the customer, to increase the charges payable by the customer in circumstances of either such increases being specifically provided for in the proposal or the direct costs to the supplier in providing the services (including, without limitation, the charges charged by the network provider(s) in respect of such services) being increased. In such event the increases to the charges shall be commensurate with the increased costs of providing the services. Furthermore, the supplier shall be entitled to vary any savings and/or rates guaranteed or implied to the customer in the event of a change in network tariffs or the regulatory environment which impacts on the services on the giving of 30 days' written notice thereof to the customer.

8.3. Unless the customer notifies the supplier in writing within 3 days of receipt of an invoice to the contrary, the contents of such invoice shall be deemed to be correct

8.4. Unless otherwise stipulated, all amounts payable by the customer to the supplier in terms of this agreement are exclusive of VAT and any other statutory levies, taxes and imposts as may be levied thereon from time to time. The customer shall accordingly be liable for VAT and all rates, taxes, government or statutory levies as may be imposed in respect of the services from time to time.

8.5. The supplier shall be entitled to insist that all amounts payable by the customer are made through a debit order on the terms and conditions stated in the proposal and the customer shall be obliged to execute and deliver such further instruments, contracts, forms and other documents ("additional documentation") or perform such further acts as may be required by the supplier for the purposes of securing such debit order/s in favour of the supplier, copies of which additional documentation shall have been made available to the customer prior to the date of signature hereof. Where payment is made by the customer through a debit order, other electronic means or any other intermediary, the customer's bankers or other intermediaries shall act as customer agents and the customer shall have discharged its obligations only upon payment being received by the supplier at the supplier's premises or by the bankers of the supplier.

8.6. In terms of the debit order, the customer is aware of non-refundable setup fee, outright purchases and pro-rata amounts applicable to the services applied for, and accepts that these amounts will be debited from their account immediately when the service is activated.

8.7. Any cancellation of such a debit order without the prior written consent of the supplier shall constitute a breach by the customer of this agreement.

8.8. The supplier shall be entitled to charge the customer the greater of a monthly administration fee of R35 a month (escalated on an annual basis in accordance with annual increases in CPI/X) and interest at an amount equal to prime plus 5% of any overdue sums from date of invoice.

8.9. A certificate by a director of the supplier as to the amount owing by the customer to the supplier at any time shall be sufficient proof thereof for provisional sentence or summary judgment.

8.10. In the event of an outright purchase of equipment, if such equipment has been delivered to the customer's premises and is subsequently lost or stolen from the customer's premises prior to it having been paid for either in part or in full, the customer shall be responsible for the full payment of such equipment to the supplier.

8.11. Unless otherwise specified in the agreement, in the case of an outright purchase of equipment, the customer shall pay the full amount of the total deal value upon delivery of the equipment to the customer's premises.

8.12. Unless otherwise specified in the agreement, in the case of an outright purchase of the equipment by the customer, where the customer cancels the order after the supplier has ordered the equipment from its suppliers, the supplier shall be entitled to charge the customer an amount equal to 7% of the value of such ordered equipment to the supplier, which the parties acknowledge and agree constitutes a reasonable charge within the meaning of section 17 of the CPA.

8.13. Where it is the customer's responsibility to install lightning protection equipment, and the equipment has been damaged by lightning, it is the customer's responsibility for the full payment of such repair or replacement to the supplier.

## 9. SUSPENSION

9.1. The supplier may upon 5 days' written notice to the customer, suspend the customer's use of the services in the event that –

9.1.1. any modification, maintenance or remedial work is required to be undertaken pertaining to the services; and/or

9.1.2. the customer fails to perform any of its obligations or breaches any term/s of this agreement; and/or

9.1.3. the customer at any time exceeds the credit limit which the supplier, in its absolute discretion, shall set and notify the customer of from time to time.

9.2. The supplier may require the customer to effect payment of any applicable reconnection charges pursuant to the restoration of the services suspended in the circumstances contemplated in clauses 9.1.

9.3. The customer remains liable for the applicable charges payable by it in terms of this agreement during any period of suspension in the circumstances contemplated in clauses 9.1.

## 10. DEFAULT

10.1. Save where otherwise provided for in the proposal or elsewhere herein, should either party ("the defaulting party") –

10.1.1. fail to pay any amount payable under this agreement within 7 days after receipt of written demand requiring such payment;

10.1.2. commit a breach of any provision (other than a payment obligation) of this agreement and, if such breach is capable of remedy, fail to remedy such breach within 14 days after receipt of written demand from the other party requiring it to do so;

10.1.3. becomes the subject of business rescue proceedings, is placed under liquidation, judicial management or any similar disability, whether provisionally or

10.1.4. commit any act which if committed by a natural person would constitute an act of insolvency or become insolvent;

10.1.5. compromise or attempt to compromise generally with any of its creditors;

10.1.6. have a final judgment taken against it which is not satisfied within 30 days after the granting of such judgment, then the other party ("the aggrieved party") shall be entitled, without prejudice to any of its other rights under this agreement and/or in law and by giving written notice, to immediately cancel this agreement or to claim immediate specific performance of all of the defaulting party's obligations whether or not due for performance, in either event without prejudice to the aggrieved party's right to claim damages.

Furthermore, and without prejudice to the supplier's rights pursuant to the foregoing, should the supplier have suffered any damages as a result of interconnect bypass, the supplier shall be entitled to recover from the customer an amount equal to the interconnect rate applicable to the supplier plus 10% thereof.

## 11. FORCE MAJEURE

If either party is prevented or restricted from carrying out all or any of its obligations under this agreement by reason of any event constituting force majeure (being any cause beyond the reasonable control of either party, including without limitation adverse weather conditions, unpredictable delays caused by traffic congestion diversion or road works, the unavailability of raw materials, strikes, power outages, industrial disputes, regulatory interference or the unavailability of any communications lines and/or network operator facilities), then that party shall be relieved of its obligations under this agreement during the period that such event continues, and shall not be liable for any delay and/or failure in the performance of such obligations during such period, provided that if the force majeure event continues for a period longer than 14 days, either party may cancel this agreement on written notice.

## 12. ABUSE OF SERVICES

The customer hereby warrants and undertakes in favour of the supplier that the customer –

12.1. shall not use nor allow the services to be used for any improper, immoral or unlawful purpose, including, without limitation, attempting to utilise the services to route (or assist another party to route?) transit traffic from other networks to the supplier, nor in any way which may cause injury or damage to persons or property or an impairment or interruption of the services;

12.2. shall comply with all relevant legislation and regulations imposed by any competent authority and all directives issued by the supplier relating to the services including its Acceptable Use Policy available on the supplier's website, and hereby indemnifies the supplier for any losses, expenses, damages, harm or amount for which the supplier may become liable arising from or relating to the use of the services in any manner whatsoever which violates the terms of this agreement, the supplier's Acceptable Use Policy or any law, legislation or regulations; and/or any claims made by any third party arising from the customer's use of the services unless such losses, expenses, damages, harm or liability were directly attributable to the gross negligence or fraudulent intent of the supplier.

## 13. OBLIGATIONS ON TERMINATION AND/OR SUSPENSION

13.1. The customer is liable for any obligation accrued at the date of termination or suspension of the services, including the payment of any costs or charges that may arise in connection with such termination (including, without limitation, the cancellation fees referred to in clause 3.6) or suspension, and the payment of all outstanding fees for the use of the services prior to said termination or suspension.

13.2. The payment obligations of the customer in terms of this agreement are not suspended, stayed, delayed or otherwise affected by any suspension of access to the services where such suspension arises from the customer's failure to comply with, or violation of, the terms and conditions of this agreement or any law or legal obligation of the customer.

13.3. The supplier shall be entitled to immediately deactivate the service on the date of termination or cancellation and further, has no obligation to the customer after any termination or cancellation of this agreement.

## 14. WARRANTIES, EXCLUSION AND LIMITATION OF LIABILITY

14.1. The supplier shall use all reasonable endeavours to ensure that the equipment supplied by it and/or its service providers is in accordance with the agreement and is otherwise correct in terms of the customer's requirements. Subject to any warranties that may be implied by the CPA to the extent that the CPA is applicable to the agreement, the supplier does not, however, make any representations nor, unless expressly given in writing, give any warranty or guarantee

Initial

of any nature whatsoever, whether express or implied, in respect of the services or the equipment including but not limited to implied warranties of merchantability and fitness or suitability for any intended purpose.

14.2. Subject to the provisions of the CPA to the extent that the CPA is applicable to the agreement, the supplier shall not be liable to the customer or any third party for any loss or damage which the customer or such third party may suffer or incur as a consequence of utilising the services and/or software and/or equipment, irrespective of whether such loss or damage is direct, special, incidental, consequential or otherwise unless such loss or damage was directly attributable to the gross negligence or fraudulent intent of the supplier.

14.3. Without limiting the generality of the foregoing, the supplier shall not (other than in circumstances of the supplier's gross negligence or fraudulent intent) be liable for any damage or loss suffered by the customer caused by and/or attributable to –

14.3.1. the services being interrupted, suspended or terminated, for whatsoever reason; and/or

14.3.2. the supplier's failure to suspend the provision of the services to the customer in terms of an arrangement between the supplier and the customer or after the customer has specifically requested the supplier to do so in order to limit the applicable charges; and/or

14.3.3. communications not being sent and/or received and/or transmitted timely or at all for any reason whatsoever; and/or

14.3.4. circumstances that constitute a force majeure event (as contemplated in 11); and/or

14.3.5. the customer's failure to perform its obligations under this agreement; and/or

14.3.6. changes made to the customer's operating environment which were not communicated to the supplier; and/or

14.3.7. a power failure or power interruptions at any site from where the services or any component of the services are rendered; and/or

14.3.8. any failure or delay by the customer to report problems or queries to the supplier; and/or

14.3.9. the server and/or equipment of any recipient party being non-functioning for any reason whatsoever; and/or

14.3.10. the failure of any hardware, software programme, operating system, application/s, networks, telecommunication lines and/or any other computer system (or any component thereof) of any third party on whom the supplier and/or the customer relies (whether directly or indirectly) to supply and/or receive, as the case may be the services;

14.3.11. the unavailability of the supplier's website for any reason whatever; and/or

14.3.12. the customer using the service for any unlawful, improper or immoral purpose; and/or

14.3.13. the unlawful or fraudulent accessing by a third party of the customer's telecommunication lines, PBX or other telecommunication equipment. In such circumstances, the customer shall remain liable for all charges incurred pursuant to such unlawful or fraudulent access and hereby indemnifies supplier against all loss, liability, damage or expense which the supplier may suffer as a result thereof.

14.4. Notwithstanding any other provisions of this agreement, the supplier's liability to the subscriber and/or any third party for any damages or loss of whatsoever nature, including without limitation any damages or loss caused by the negligence (but excluding gross negligence) of the supplier or the customer, as the case may be, or that of its servants, agents and sub-contractors, shall in any event and under all circumstances be limited to an amount equal to the fixed monthly charges payable by the subscriber during the initial period.

## 15. UNSOLICITED COMMERCIAL COMMUNICATIONS

15.1 The customer indemnifies the supplier and its directors against all loss, liability damage or expense (whether actual, contingent or otherwise and whether or not in the contemplation of the parties and including but not limited to loss of data, profits or goodwill) which the supplier or its directors may suffer as a result of or which may be attributable to the sending of unsolicited commercial communications ("SPAM").

15.2. The customer is solely responsible for compliance with all laws and regulations from time to time regulating SPAM including but not limited to the Electronic Communications and Transactions Act of 2002 ("ECTA") and the Independent Communications Authority of South Africa (ICASA) Code of Conduct.

## 16. ASSIGNMENT, SUB-CONTRACTING AND CONTRACTING ON BEHALF OF THE CUSTOMER

16.1. The customer may not assign any of its rights or obligations in terms of this agreement, nor pass any equipment to any third party, nor allow any third party to use the equipment, without the supplier's prior written consent.

16.2. The supplier shall be entitled at any time during the currency of the agreement to cede and/or assign and/or sub-contract any or all of its rights and obligations in terms of the agreement to any other party provided that if the customer is a consumer as contemplated in regulation 44(1) of the CPA Regulations such assignment of obligations is not to the customer's detriment.

16.3. Subject to the restriction in clause 16.1 this agreement shall be binding on the successors-in-title of the respective parties.

## 17. NOTICES

17.1. The customer and the supplier choose the addresses set out in the agreement as their chosen address ("domicilium") for all purposes under this agreement, whether in

respect of court process, notices or other documents or communications of whatsoever nature.

17.2. Either party may change its domicilium on written notice to the other.

17.3. Any notice required or permitted to be given in terms of this Agreement shall be valid and effective only if given in writing, excluding notice in the form, either wholly or partly, of a data message as defined in the ECTA

## 18. GOVERNING LAW AND JURISDICTION

18.1. This agreement shall be governed by the laws of the Republic.

18.2. The customer, by its signature hereto and in terms of the provisions of Section 45 of the Magistrates Court Act, No 32 of 1944, as amended, consents to the jurisdiction of the Magistrate's Courts in relation to any actions or proceedings instituted against the customer in terms of, or arising out of the provisions of this agreement, provided that either party 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.

18.3. In the event of either party instituting legal proceedings against the other ("defaulter party") to recover amounts due to or take any other legal steps arising out of this agreement, the defaulting party shall be liable for legal costs on the scale as between attorney and own client.

## 19. DISCLOSURE

19.1. The supplier undertakes not to disclose to any third party details of the customer's name, address or any third party ("customer details") except as set out in this clause 19.

19.2. The customer hereby authorises the supplier to disclose customer's details to a third party wherever the supplier deems this reasonably necessary to enable it to properly perform its functions or protect its interests (including, without limitation, for the purposes of credit vetting the customer), for the purpose of enabling the provision of emergency services or directory or repair services to the customer.

19.3. In addition, the supplier may disclose the customer's details if required to do so to any regulatory authorities or any court of law.

## 20. AUTHORITY AND ACKNOWLEDGEMENTS

20.1. The customer warrants that it has the necessary legal capacity and authority to conclude this agreement.

20.2. The signatory of the customer warrants that he/she is authorised to sign on behalf of the customer.

20.3. The customer confirms that:

20.3.1. it has been given an adequate opportunity to read and has read and understood the agreement together with the supplier's Acceptable Use Policy, and

20.3.2. it has read and is aware of all the terms and conditions contained herein that are printed in bold and which have been initialed by the customer as confirmation hereof.

20.4 Where the physical installation of equipment is required, the customer warrants that it has obtained all the necessary consents from the landlord or landowner, as the case may be.

## 21. AMENDMENTS TO THE GENERAL TERMS AND CONDITIONS

21.1 This agreement and any Product Specific Terms and Conditions where applicable, constitutes the whole agreement between the parties relating to the subject matter hereof, and shall not be modified except as expressly set out in this clause 21.

21.2. Subject always to the right of the customer to terminate this agreement in accordance with the provisions of clause 3, the supplier frequently modifies and seeks to improve the services which it provides to its customers, and such changes may from time to time require that the supplier amends the agreement. The supplier shall in its sole discretion have the right to amend the agreement and to change and/or discontinue any feature or component of the services, as it may deem necessary. Any use by the customer of the services after any such amendment has been implemented and notified in writing by the supplier, shall be deemed to constitute acceptance by the customer of such amendment.

## 22. NON-SOLICITATION

22.1. For the duration of this agreement, and for a period of 12 months thereafter, the customer may not, without the prior written permission of the supplier, directly or indirectly, employ, induce or solicit the employment of any employee of the supplier's personnel nor shall it solicit, entice, encourage or persuade any such employee to terminate his/her employment with the supplier. As a penalty, if the customer breaches clause 22.1, it will pay to the supplier an amount equal to the remuneration paid to that employee in the previous 24 months as a recruitment fee. Such amount shall be payable on 3 days' notice from the supplier.

## 23. GENERAL

23.1. Subject to clause 21 and any other provision herein to the contrary, no cancellation of this agreement and no settlement of disputes arising under this agreement and no extension of time, waiver or relaxation or suspension of any of the provisions of this agreement shall be binding unless recorded in writing and signed by the parties. Any such extension, waiver, relaxation or suspension, which is so given, shall be strictly construed as relating only to the matter in respect of which it was made or given.

23.2. To the extent permissible by law and subject always to the provisions of the CPA, if the CPA applies to the agreement, no party shall be bound by any express or implied term, representations, warranty, promise or the like not recorded herein.

23.3. Should any part of this agreement be found invalid, the balance of the provisions shall remain enforceable. The rule of construction that, in the event of ambiguity, the agreement shall be interpreted against the party responsible for the drafting thereof, shall not apply.

Initial