

# Standard Terms and Conditions: Digital Direct Voice Services

## 1. AGREEMENT

The Subscriber requests and the Provider ("Parties") accept and undertake to provide on an exclusive basis the Service ("Service") at the charges set out in the accepted Agreement ("Agreement").

1.1 The Service comprises of:

1.1.1 Rental of Goods -The Provider will provide: monthly connectivity ("Connectivity") to its Services, the Customer Premise Equipment ("CPE") required for The Service ("the Goods") and the Rental of Goods to the Subscriber for the duration of the Agreement ("Rental").

1.1.2 Usage -The Provider will provide licensed digital communication from and to communication destinations charged as a unit of time at agreed tariffs ("Usage"), and

1.1.3 Support -The Provider will provide technical and user support for the functioning of the Service ("Support"), and

1.1.4 Other Charges -The Provider will provide agreed services as offered or at agreed rates and Administration Fees ("Other charges").

1.2 The Provider will provide the Subscriber with monthly, itemised Usage reports.

1.3 The Subscriber consents to and authorises Skycall (a division of TeleMasters Holdings Ltd) the Provider, to port the Subscribers' telephony number ranges to the Geographic Number Porting Company (Pty) Ltd.

1.4 The Subscriber consents to the Provider vetting its creditworthiness and may at its sole discretion require pre-payments, sureties or other arrangements in order to extend service at a level determined by the Provider. The Provider may at its sole discretion elect not to fulfil the Agreement.

## 2. DURATION

2.1 The Agreement will commence on the date of acceptance by the Provider. The Service will commence on the Connection Date and endure for the period stated in the Agreement ("Duration").

2.2 The Service will continue after expiration of the initial period ("Duration"). Thereafter should the Subscriber wish to terminate the Agreement, 3 (three) months written notice of intention to terminate the Service is required.

2.3 The Provider is afforded a 'settling in' period of 60 days from Connection Date during which the Provider will rectify reported technical, connectivity, quality and reliability issues.

## 3. CHARGES

The Rental charges and Usage charges are agreed to in the Agreement. The Rental includes the cost of maintenance, service and support to keep the Goods operational for the duration of the Agreement. The Provider shall charge for call-outs to attend to Subscriber's issues that relate to non-Provider Service incidents.

## 4. PAYMENT OF CHARGES

4.1 The Subscriber shall make all payments in terms of the Agreement without set off, deduction free of bank or other Charges to the Provider's nominated account or address.

4.1.1 In advance: The monthly Rental one month's estimated Rental and Usage which may be adjusted, and

4.1.2 Other Charges.

4.1.3 In arrears: The Usage, and Support.

4.2 All payments for charges must be made by debit order or other pre-arrangement within three working days after the date of the invoice issued by the Provider in respect thereof. A Subscriber electing not to pay by debit order is subject to a monthly administration fee of R25 per site. The Provider reserves the right to require prepayment on the Service the Subscriber has defaulted on payment or when Subscriber's risk profile warrants this.

## 5. NO WITHOLDING

The Subscriber is not entitled to withhold any payment for any reason whatsoever.

6. **CHANGES IN TARIFFS AND CONNECTIVITY** Should the interconnect tariffs payable for Services by the Provider's Service Providers or Vendors or charges for Connectivity change, the Provider may adjust the Charges payable by

Subscriber giving reasonable notice in terms hereof accordingly. The international US\$ licence costs are charged in local Rand equivalent.

## 7. INSURANCE

7.1 The Subscriber shall insure the Goods for its replacement cost with a registered insurer for the duration of the Agreement. The Subscriber is to notify Provider in writing immediately if any of the Goods are lost, stolen or damaged.

7.2 If any of the Goods are lost or damaged, the Provider shall replace such Goods and its Standard Prices and Rates and the Agreement shall endure. The Subscriber shall claim its losses from its insurance at the agreed replacement value.

## 8. BREACH

The terms and charges in the Agreement remain confidential and may not be divulged without written request. If the Subscriber is in breach of the Agreement, the Provider has the right to without notice to the Subscriber and without affecting any of its other rights to:

8.1. Suspend the Service in part or terminate the Agreement in full and claim immediate payment of the remainder of the Agreement.

8.2 Any wilful interference, tampering or hindrance of the Service by the Subscriber, including but not be limited to, failure or incompatibility of Subscribers' own equipment or services to function in support of the Service or at all, incompatibility, refusal of entry of the Provider's authorised personnel to access its Goods, shall constitute a major breach.

8.3 Any failure to pay any amounts due to the Provider, or suspension or cancellation of debit orders without prior Agreement with the Provider, or making a false statement in connection with the Agreement or the Provider's ownership of the Goods, or allowing any judgment that has been granted against the Subscriber to remain unsatisfied for or becoming subject to a final or provisional order of liquidation or surrender, shall constitute a major breach.

8.4 Breaching confidentiality, or exclusivity by the addition of competing services' non-use of the Service, or Usage below the agreed monthly threshold, or alienation of the Goods shall constitute a major breach.

8.5 The Subscriber being sequestrated, or liquidated, or place under business rescue.

8.6 If either Party determines that there has been a breach by the other Party of this Clause 8, such breach shall be deemed a material breach of this agreement and the non-breaching Party shall have the right to terminate this Agreement without prejudice to its rights under this Agreement or at law.

8.7 Each Party hereby indemnifies the other and its directors, employees and agents against all losses which the other may suffer as a result of this Clause 8 by it.

## 9. INTEREST

The Provider shall be entitled to charge interest on overdue amounts at Prime rate of First National Bank of SA plus 3% per annum calculated from due date to date of receipt of payment.

## 10. CERTIFICATE

A written certificate issued and signed by any Director of the Provider shall constitute prima facie proof of the amount and extent of any indebtedness of the Subscriber to the Provider for purposes of Summary Judgement and/or Provisional Judgement proceedings as well as for purposes of proof of a claim in an insolvent or liquidated estate or in respect of business rescue proceedings. It is hereby agreed that, in the event of such certificate being issued, Subscriber shall carry the burden of proving, on a balance of probabilities, that such amount is not due and payable.

## 11. COSTS

Should the Subscriber be in breach, it shall be liable to pay all expenses incurred by the Provider to enforce its rights including collection charges and legal costs calculated on an attorney-own client scale.

## 12. JURISDICTION

The Subscriber agrees that the Provider will be entitled to proceed against Subscriber in any Magistrate's Court in terms of Section 29 of the Magistrate's

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Court Act or any High Court having jurisdiction subsequent to the competent jurisdiction of such Court, to which the Subscriber hereby consents.

### 13. OWNERSHIP

Ownership of the Goods shall vest in the Provider. The Subscriber admits that the Provider remains the owner of the goods and even in the event of a dispute between the parties, admits and acknowledges that the Provider will be entitled to take possession of the goods, pending resolution of any dispute.

### 14. SITE PREPARATIONS AND PROGRAMMING

The Subscriber undertakes to issue an order for and pay for all charges for programming, enhancements, additional Goods and set-up of Subscriber Equipment ("SE") and site to utilise the Service and for all costs of any delays arising from actions or inactions of its SE vendor or its staff in doing all necessary and requested actions to prepare and keep up the SE and site for operation with the Service. The Provider may, on behalf of the Subscriber authorise and contract for such SE and other vendors services for the continuation of the Service.

### 15. DELIVERY AND ACCEPTANCE

Signature under Subscriber's authority of the Provider's Installation Certificate shall be an acknowledgement that the Subscriber has accepted, inspected and approved the Goods and Service and that same are operational, connected and in every way satisfactory to the Subscriber ("Connection Date").

### 16. CHOICES

The Connectivity choices and quantity, types and models of Goods shall be solely determined by the Provider based on the analysis of Subscriber's needs and may be changed with Subscriber's written consent, as required from time to time.

### 17. DAMAGES

The Provider shall not be liable to the Subscriber for any damages of whatsoever nature, arising from any matter related to the Agreement whether indirect, consequential, loss of revenue or profit or savings other than by legal proven wilful damage.

### 18. WAIVER

The Subscriber agrees that no indulgence whatsoever by the Provider will affect the terms of the Agreement or any of the rights of the Provider and such indulgence shall not constitute a waiver by the Provider in respect of any of its rights herein. Under no circumstances will the Provider be estopped from exercising any of its rights in terms of the Agreement. Only a waiver that is in writing and signed by both parties shall be valid and binding.

### 19. VARIATION

The Parties agree that the Agreement and Standard Terms (a) represents the entire Agreement between the Parties and that no alterations or additions shall be effective or binding unless agreed to by both parties, reduced to writing and signed by duly authorised representatives of both Parties; (b) is applicable to all existing debts between the Parties; (c) is final and binding and is not subject to any suspensive or dissolutive conditions; and that (d) any conflicting conditions stipulated by the Subscriber are expressly excluded; (e) these terms supersede all previous conditions without prejudice to any securities or guarantees held by the Provider.

### 20. TERMINATION

20.1 Should the Subscriber terminate the agreement prior to the Connection Date (Clause 2.1) the Subscriber will incur a penalty charge equivalent to 3 (three) months Rental of Goods

20.2 Should the Subscriber terminate the Agreement after Connection Date or for any reason during the duration of the Agreement or should the Provider terminate the Agreement due to the Subscriber's breach, Subscriber will immediately pay to the Provider all outstanding amounts plus the Rental of Goods calculated from the Connection date, to the expiry of the Agreement as agreed pre-estimated liquidated damages. The Subscriber will not hinder Provider to take possession of the Rental Goods. Any termination must be in writing and signed by an authorised representative of the Subscriber and agreed to by the Provider.

### 21. CESSION

The Provider shall be entitled to cede, assign and transfer all or some of its rights in terms of the Agreement with prior notification.

### 22. NOTIFICATION TO LANDLORD

The Subscriber will notify its landlord that the Goods will be kept at the address stated on the Agreement and will notify the Provider in writing of the name and address of any other premises to which the Goods are moved and of the name and address of the owner of such premises. The Subscriber shall also notify the Provider immediately of any changes that may occur from time to time in the leasehold or ownership of the premises upon which the Goods may from time to time be installed or kept. The Subscriber is obliged to obtain the required permission for the installation of Goods on the premises referred to.

### 23. SUSPENSION

The Provider may suspend all or some of the Service at any time with notice to the Subscriber under the following conditions:

23.1 If it is necessary to facilitate any upgrades, maintenance or remedial works in respect of the Service or the Goods, or

23.2 If the Subscriber does not comply with or is in breach of any of the terms of the Agreement.

23.3 A R500 reconnection fee will be charged per site for a breach or non-compliance suspension.

23.4 While the Service is suspended the Subscriber will remain liable for all charges.

### 24. NOTICES

All notices in terms of this agreement shall be in writing and brought to the notice of the other party in by either to its domicilium address by hand delivery or prepaid registered post or by serving the notice per sheriff; or by email to Subscriber's email address

### 25. DOMICILIUM CITANDI ET EXECUTANDI

The parties each choose the physical addresses and email addresses shown on the proposal as respective addresses that will serve as each party's domicilium citandi et executandi. Any of these addresses may only be changed and/or amended through notice in writing to the other party.

### 26. RICA ACT 2002

The Subscriber shall provide all requested and sign all documentation required.

Signed at: \_\_\_\_\_ on: \_\_\_\_\_ 20 \_\_\_\_\_

Signed by: \_\_\_\_\_ Signed by: \_\_\_\_\_ Signed by: \_\_\_\_\_

On behalf of The Subscriber

On behalf of TeleMasters Partner

On behalf of TeleMasters

Position Title \_\_\_\_\_