

GENERAL TERMS AND CONDITIONS OF THE AGREEMENT

COMTEL COMMUNICATIONS (PTY) LTD

Reg. No: 2011/011968/07

Vat No: 4340268897

Unit G09, Corner of Bosmansdam & Ratanga Road,

Milnerton, Cape Province, 7441

("COMTEL")

1. Definitions

- 1.1 **"Parties"** means the parties involved in this Agreement
- 1.2 **"Comtel"** means Comtel Communications cc (Reg. No: 2006/205793/23)
- 1.3 **"Client"** means the client mentioned in the Client on the Application
- 1.4 **"Agreement"** means the Standard Terms and Conditions and any additional attached documents
- 1.5 **"Application Form"** means the application form to which these Terms and Conditions are attached
- 1.6 **"Effective Date"** means the Signature Date, the date on which the first of the Services have been commenced.
- 1.7 **"Equipment"** means equipment supplied by Comtel to the Client on the basis of a loan, rental or otherwise, to enable the Client to make use of the Services
- 1.8 **"Proprietary Information"** means any and all trade secrets and data/information of a proprietary and/or confidential nature, including data/information of a Party that the other Party should reasonably have known to be proprietary or confidential
- 1.9 **"Schedule/s"** means the attached documents that pertain to the Agreement.
- 1.10 **"Service/s"** means all the service/s provided by Comtel as specified in the Schedules to this Agreement
- 1.11 **"South African Law"** means all and any laws and regulations of the Republic of South Africa, including but not limited to applicable codes of conduct, as may be promulgated or amended from time to time
- 1.12 **"VAT"** means Value-Added Tax as defined in the Value-Added Tax Act 89 of 1991.

2 DURATION

- 2.1 The commencement date of the Agreement shall be from the date of service activation.
- 2.2 This Agreement shall commence on the commencement date and shall endure for the period specified on the service application form relevant to the specific service. If the service was added by use of an online signup tool or by means of an email, the agreement shall be as specified in the last signed contract or in the event of none it will be on a monthly basis.
- 2.3 Either COMTEL or the Subscriber shall be entitled to terminate this Agreement upon 3 (three) calendar months' written notice (in the event of a business service) or 1 (one) calendar months' notice (in the event of a consumer/residential service), provided that such notice may only be given so as to expire at the end of the initial period, or of any subsequent fixed period.

3 CHARGES

- 3.1 The Subscriber shall pay to COMTEL all fees and charges set out in the Contract, plus all Value Added Tax payable thereon, by electronic funds transfer, by a series of post-dated cheques or by debit order on due date (within 7 days from invoice), in South African currency, free of exchange, without deduction or set-off.
- 3.2 In the event that the Subscriber elects to pay the fees and charges due to COMTEL by way of a series of post-dated cheques, then delivery by the Subscriber and acceptance by COMTEL of such cheques shall not be construed or deemed to be a novation of any portion of the Subscriber's indebtedness and no cheque shall be considered a payment until duly honored.
- 3.3 It is recorded that some fees and charges are based on a Rand/US Dollar exchange rate and the Subscriber understands that such amounts shall be adjusted in accordance with the midrate average for that quarter, beginning on the date of commencement of the Agreement, as provided by the FirstRand Bank Economic unit or any bank nominated by COMTEL, at the sole discretion of COMTEL.
- 3.4 In addition to any increase in the monthly charges envisaged in 3.1, COMTEL shall be entitled from time to time on 30 (thirty) days prior written notice to the Subscriber to increase the monthly charges set out in the Contract, provided that:
 - 3.4.1 COMTEL shall not so increase the charges on more than one occasion in any 12-month period of this Agreement.
 - 3.4.2 any such increase shall not exceed an amount equal to the year on year percentage fluctuation in the Consumer Price Index excluding interest on mortgage bonds (CPIX) as published by the Central Statistical Service (or any other body authorized in its stead to publish same) for all income groups, relating to the year in which the increase is made.
- 3.5 Any amount which is due by the Subscriber but unpaid, shall bear interest at a rate of 2% per month, in terms of the Usury Act, calculated daily in advance from the date that payment was due until date of actual payment thereof, both days inclusive, and is payable on demand.
- 3.6 In the event of any dispute arising as to the amount or calculation of any fee or charge which is payable by the Subscriber, the dispute shall not be referred to arbitration in accordance with clause 8, but rather for determination to an independent auditor appointed by agreement between the parties or failing such agreement by the President for the time being of the South African Institute of Chartered Accountants. The said auditor shall be entitled to make a determination as to which party or parties shall bear the costs of the auditor and of the procedure. The said auditor shall act as expert and not

as an arbitrator and his decision shall be final and binding on COMTEL and the Subscriber. The determination whether Clause 3.6 or Clause 8 should be applicable, is in the sole discretion of COMTEL.

- 3.7 Under no circumstances may Subscriber resile from this Agreement or withhold or defer any payment or be entitled to a reduction in any charge or have any other right or remedy against COMTEL, its servants, its agents or any other persons for whom it may be liable in law (and in whose favor the provision constitutes a stipulatio alteri) if COMTEL interrupts the Services to the Subscriber as it would be entitled to do if the Subscriber is in default of any of its obligations under this Agreement to COMTEL or in the circumstances contemplated in clause 5 hereof.
- 3.8 This agreement will remain in full force and effect, until such time as all payment disputes have finally been adjudicated on in terms hereof and full payment has been made in terms of such adjudication or settlement reached between the parties.

4 WARRANTIES

- 4.1 Save as expressly set out in this Agreement or given in writing, COMTEL does not make any representations, warranties or guarantees of any nature whatsoever in respect of the Services and the Subscriber acknowledges that no warranties or representations have induced it to enter into this Agreement.
- 4.2 In particular, and without limiting the generality of the preceding, COMTEL does not warrant or guarantee that the Services or the information transmitted by or available to the Subscriber by way of the Services –
 - 4.2.1 will be preserved or sustained in their entirety;
 - 4.2.2 will be suitable for any purpose;
 - 4.2.3 will be free of inaccuracies or of defects or bugs or viruses of any kind;and COMTEL assumes no liability, responsibility or obligations in regard to any claim, loss, expense or damage. (whether consequential, incidental or actual) arising from any of the exclusions set forth in this clause.

5 EXCLUSIONS OF LIABILITY AND SUSPENSION OR WITHDRAWAL OF SERVICES

- 5.1 Except for any deliberate act or intentional omission on the part of COMTEL, its employees or agents, and except as otherwise expressly provided herein to the contrary, COMTEL shall not be liable to the Subscriber or to any third party for any loss or damage of whatsoever nature or howsoever arising (including consequential or incidental loss or damage) which the Subscriber (or any third party) may incur or suffer, or for any costs, claims or demands of whatsoever nature arising directly or indirectly out of the Services, their use, access, withdrawal or suspension or out of any information or materials provided or not provided, as the case may be, by or from the use of the Services.
- 5.2 Without in any way limiting or derogating from any of the provisions of the preceding, any damages or other amount for which COMTEL may be held to be liable to the Subscriber shall in no event exceed

the aggregate of the fees and charges paid by the Subscriber under this Agreement for the period of 60 (sixty) days preceding the date upon which any such cause of such loss or damage arose.

- 5.3 The Subscriber hereby indemnifies COMTEL against and holds COMTEL harmless from any claim by any third party arising directly or indirectly out of access to or use of the Services provided in terms of the Agreement or information obtained through the use thereof, or from the suspension or withdrawal of the Services, or in respect of any matter for which the liability of COMTEL is excluded in terms of this clause 5, or howsoever else arising.
- 5.4 The Subscriber acknowledges that from time to time the Services may be suspended for maintenance, repair and improvements. Notwithstanding that COMTEL does provide alternative options in terms of failover services with further options of Service Level Agreements as preventative failover measures. Comtel agrees, wherever possible, to give the Subscriber 24 (twenty-four) hours' notice of such suspension of the Services, COMTEL shall not be liable for any loss or damage (direct or consequential) which may be sustained as a result of the suspension of the Services, nor for any costs, claims or demands of any nature arising therefrom and the Subscriber's sole claim against COMTEL shall be for a pro rata credit in respect of the monthly charges payable by the Subscriber in respect of the period for which the Services are suspended.
- 5.5 The Subscriber further acknowledges that from time to time there may be a suspension of the Services from causes beyond the control of COMTEL (due to force majeure, conduct of third parties or otherwise) and in such event COMTEL shall not be liable to the Subscriber, or to any of the Subscriber's customers, employees or agents, or to any third party, for any loss, damage costs or claims of whatsoever nature incurred as a result of such suspension.
- 5.6 For the purpose of this Agreement "force majeure" shall include any cause beyond COMTEL's control, including, but not limited to, acts of God, labor stoppages, civil commotion, theft, fire, explosion, war, sabotage, national emergency, martial law, lightning, storms or other adverse weather conditions, power shortages, the action or inaction of any government or other competent authority including prohibition, intervention or direction by legislation, regulation or other legally enforceable order (including any order of Court), or any breakdown of plant, machinery or equipment, externally caused transmission interference or satellite failure, malfunction or downtime for any reason whatsoever, or any failure of any dedicated permanent digital line connection used by COMTEL or shortage of fuel, power, machinery, equipment or material.
- 5.7 In the event that a force majeure event exceeds fourteen (14) consecutive days and in the event that alternative services or facilities or both cannot be provided by COMTEL or its nominee, the parties agree to meet and negotiate the suspension, termination or restructuring of this Agreement. If the force majeure event exceeds thirty (30) consecutive days, and in the event that alternative services and/or facilities cannot be provided by COMTEL or its nominee, either party shall be entitled to terminate this Agreement upon written notice to the other. Upon the removal or cessation of the force majeure event, all obligations under this Agreement shall resume unless the parties have agreed to terminate or restructure this Agreement pursuant to this clause.
- 5.8 COMTEL shall not be liable for defamation, slander, or infringement of copyright arising from or in connection with the provision of the Services to the Subscriber, nor for infringement of patents or other intellectual property rights arising from the combination or use of the facilities of COMTEL with apparatus and systems of the Subscriber or arising from the provision of the Services, and the Subscriber hereby indemnifies COMTEL against any such liability.
- 5.9 The Subscriber hereby indemnifies COMTEL against any claim, loss or damage which COMTEL may incur arising from the provision of Domain Name Services by COMTEL, and, in particular, from any claim, loss or damage which might arise from the infringement of any intellectual property right of

any person in providing such Services or in registering or allocating any domain name or internet protocol address to the Subscriber. The Subscriber acknowledges that COMTEL does not represent, warrant or guarantee that any domain name or Internet protocol address requested by the Subscriber will be registered or available for use.

- 5.10 Without prejudice to any other rights accorded to COMTEL in terms of this Agreement, if the Subscriber fails to pay any amount on due date or breaches any of the other terms of this Agreement, COMTEL shall be entitled upon notice to Subscriber, without any liability or obligation whatsoever, to discontinue the Services to the Subscriber until such non-payment or breach is remedied to COMTEL's satisfaction. In the event of the discontinued Services being reconnected, the Subscriber shall be liable for a reconnection fee.

6 EQUIPMENT

- 6.1 Any equipment provided by COMTEL to the Subscriber in connection with the provision of the Services ("the equipment") shall be and remain the property of COMTEL until paid for in full and final settlement by the Subscriber.
- 6.2 Risk in and to the equipment shall pass to the Subscriber upon delivery of the equipment to the Subscriber, and the Subscriber shall not move the equipment to any location other than the physical address set out in the Contract without the prior written consent of COMTEL.
- 6.3 The Subscriber shall only use the equipment in strict accordance with any instructions for use set by COMTEL (and in accordance with the provisions of any license held by COMTEL, if applicable), and the Subscriber shall not in any manner tamper with or modify the equipment.
- 6.4 The Subscriber shall notify its Landlord in writing as well as any other persons who may be entitled to a lien, hypothec or any other right over the property of the Subscriber that the equipment is not the property of the Subscriber.
- 6.5 The Subscriber shall be responsible for ensuring that the equipment is adequately insured.
- 6.6 COMTEL shall only be liable for the costs associated with routine maintenance of the equipment, and any costs of repair or maintenance other than routine maintenance shall be for the account of the Subscriber, who shall pay same to COMTEL on demand.
- 6.7 COMTEL shall be allowed all reasonable access required by COMTEL to deliver, install and maintain the equipment and COMTEL shall at all times be afforded access to the equipment for the purposes of maintenance or inspection of the equipment.
- 6.8 Upon termination or cancellation of this agreement for any reason, COMTEL shall be entitled forthwith to remove the equipment from the premises of the Subscriber, and the Subscriber shall afford COMTEL all access necessary to do so. The equipment shall be returned to COMTEL in the same good order and condition as it was delivered to the Subscriber, fair wear and tear excepted.

7 DOCUMENTATION

Any specifications, descriptive matter, drawings and any other documents which may be furnished by COMTEL to the Subscriber from time to time:

- 7.1 do not form part of this Agreement and may not be relied upon, unless they are agreed in writing by both parties hereto to form part of this Agreement; and
- 7.2 shall be and remains the property of COMTEL and shall be deemed to have been imparted by COMTEL in trust to the Subscriber for the sole use of the Subscriber. All copyright in such documents vests in COMTEL. Such documents and all copies made thereof shall be returned to COMTEL on demand.

8 DISPUTES

- 8.1 Subject to clause 3.6 above and 8.6 below, in the event of any dispute or difference arising between the parties hereto relating to or arising out of this agreement, including the validity, implementation, execution, interpretation, rectification, termination or cancellation of this agreement, the parties shall forthwith meet to attempt to settle such dispute or difference, and failing such settlement within a period of 14 (fourteen) days, the said dispute or difference shall on written demand by any party to the dispute be submitted to arbitration in accordance with the rules of the Arbitration Foundation of Southern Africa ("the Foundation") by an arbitrator or arbitrators appointed by the Foundation and agreed to by the parties. Comtel will, in its sole discretion, nominate the head office or the appropriate local branch of the Foundation to administer the arbitration.
- 8.2 Should the parties fail to agree on an arbitrator within 10 (ten) days after arbitration has been demanded, the arbitrator shall be nominated at the request of any party to the dispute by the Foundation.
- 8.3 The parties irrevocably agree that the submission to arbitration in terms of this clause is subject to the parties' rights of appeal set out hereunder.
- 8.4 Any party to the arbitration may appeal the decision of the arbitrator within a period of 21 (twenty-one) days after the arbitrator's ruling has been handed down by giving written notice to that effect to the other party or parties to the arbitration. The appeal shall be dealt with in accordance with the rules of the Foundation by a panel of 3 (three) arbitrators appointed by the Foundation.
- 8.5 The decision of the arbitrator shall be final and binding on the parties to the arbitration after the expiry of the period of 20 (twenty) working days from the date of the arbitrator's ruling if no appeal has been lodged by any party. A decision that becomes final and binding in terms of this clause may be made an order of court at the instance of any party to the arbitration.
- 8.6 Nothing herein contained shall prevent or prohibit COMTEL in its sole discretion from applying to, issuing summons from or approaching the High Court or the Magistrates Court for any legal relief, finding, order or adjudication between Comtel and the Subscriber, and the Subscriber hereby irrevocably consents to the Jurisdiction of the Court so chosen.
- 8.7 The provisions of clause 8 will continue to be binding on the parties notwithstanding any termination or cancellation of the agreement.

9 BREACH

9.1 If the Subscriber:

- 9.1.1 fails to pay any amount payable to COMTEL in terms of the Agreement on due date; or
- 9.1.2 breaches any of the other terms or conditions of the Agreement and fails to remedy such breach within 7 (seven) days after the receipt of written notice from COMTEL; or
- 9.1.3 commits any act of insolvency, or is the subject of any order for liquidation, judicial management or sequestration (whether provisional or final); or
- 9.1.4 endeavors to compromise generally with its creditors or does or causes anything to be done, which may prejudice COMTEL's rights;
- 9.1.5 allows any judgment against it to remain unsettled for more than 10 (ten) days without taking steps to have it rescinded and thereafter diligently and successfully prosecutes the application for rescission; then, without prejudice to any other rights, which COMTEL may have in terms of the Agreement or according to law, COMTEL shall be entitled to forthwith cease to perform or provide the Services without incurring any liability of any nature to the Subscriber until the breach has been remedied to COMTEL's satisfaction, and to:
- 9.1.6 either claim its damages, or to treat as immediately due and payable all amounts which would otherwise become due and payable over the unexpired period of the Agreement as agreed and liquidated damages, and to claim such amounts as well as any other amounts due to it, including interest at the maximum rate allowed by the Usury Act.; or
- 9.1.7 apply for an order for specific performance, with or without claiming damages; or
- 9.1.8 cancel this Agreement with or without claiming damages.

9.2 In the event of any expiration, termination or cancellation of this Agreement, the provisions of clause 14 hereof and any other clause hereof which is intended to continue and survive such expiration, termination or cancellation shall so continue and survive.

9.3 The Subscriber shall be liable to COMTEL for all legal costs incurred by COMTEL in enforcing COMTEL's rights against the Subscriber in terms of this Agreement, on the attorney and own client scale, including collection commission.

9.4 COMTEL reserves the right to blacklist with any or all credit bureau agencies within the Republic of South Africa, any such Subscriber who fails to comply with the agreed payments. In addition, COMTEL will not be responsible or required to assist with the removing or rescinding of any such information, which may be recorded by a credit bureau agency.

10 CESSION AND ASSIGNMENT

The Subscriber shall not be entitled to cede its rights or assign its obligations in terms of this Agreement to any third party without the prior written consent of COMTEL, which consent may not be unreasonably withheld. COMTEL shall be entitled to cede and assign its rights and obligations hereunder to any third party.

11 HEADINGS AND INTERPRETATION

- 11.1 The clause headings contained herein are for reference purposes only and shall not be used in the interpretation of this Agreement.
- 11.2 If any one or more of the provisions contained in this Agreement or any document executed in connection herewith shall be invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired.
- 11.3 The Agreement shall be governed by and interpreted in accordance with the laws of South Africa.

12 DOMICILIUM CITANDI ET EXECUTANDI

- 12.1 For all purposes, including the giving of any notice, the making of any communication and the serving of any process, COMTEL and the Subscriber respectively choose their domicilium citandi et executandi (“domicilium”) at their respective physical addresses and telefax numbers set out on the face hereof in the case of COMTEL, and on the Contract in the case of the Subscriber. Either party shall be entitled from time to time to vary its domicilium provided that any address selected by it shall be situate in South Africa and any such variation shall only become effective 5 (five) days after receipt of notice in writing by the other party of such variation. Any notice which either party may give to the other shall be hand delivered or sent by telefax to the other party’s domicilium.
- 12.2 Any notice given in terms of this Agreement shall be deemed to have been received by the addressee -
 - 12.2.1 on the date upon which it is delivered by hand; or
 - 12.2.2 if sent by telefax, upon the first business day following the date of transmission of the telefax.

13 MAGISTRATES COURT JURISDICTION

For the purpose of all proceedings hereunder the Subscriber hereby consents to the jurisdiction of the Magistrates’ Court, notwithstanding that the amounts claimed are beyond such jurisdiction, provided that COMTEL shall have the right at its sole option and discretion to institute proceedings in the High Court or any other competent Court or Forum.

14 CONFIDENTIALITY

The parties agree as follows -

- 14.1 the Subscriber agrees and warrants to COMTEL that it shall at all times keep the terms and conditions of this Agreement confidential and shall not disclose the same to any other third party (save to its legal advisors and accountants solely for the purposes of obtaining professional advice thereon); and
- 14.2 each party acknowledges that it will exchange proprietary and confidential information with the other, as reasonably necessary for each to perform its obligations under this Agreement. All information relating to this Agreement provided by either party to the other, whether oral or written, shall be deemed to be confidential and proprietary information, unless indicated to the contrary in writing.

15 COMTEL's OBLIGATIONS & WARRANTIES

- 15.1 For so long as a service Agreement is in force, Comtel shall provide the Maintenance and Support Services to the Subscriber on the terms set forth service agreement. Standard/basic support services shall be provided free of charge, it being recorded that the cost thereof is absorbed into the rental payable by the Subscriber to Comtel.
- 15.2 If the Subscriber subscribes to a specific Service Level Agreement (SLA), Comtel shall provide the Maintenance and Support Services to the Subscriber which will be an additional Schedule.

16 SUBSCRIBERS OBLIGATIONS AND WARRANTIES

- 16.1 The Subscriber shall comply strictly with all laws, regulations or restrictions imposed on the users of computer networks or which relate to the provision and use of the Services. The Subscriber shall also comply with COMTEL's reasonable requirements and restrictions on the use of the Services which may be notified by COMTEL to the Subscriber from time to time.
- 16.2 The Subscriber shall not commit or attempt any act or omission which directly or indirectly:
- 16.2.1 may in any way damage the COMTEL technical infrastructure or any part thereof;
 - 16.2.2 may impair or preclude COMTEL from being able to provide the Services (or any services to any other subscriber) in a timeous or businesslike manner; or
 - 16.2.3 constitutes an abuse or malicious misuse of the Services;
- or is calculated to have the abovementioned effect. In such an event, should COMTEL incur any damages or expenses to remedy the situation, COMTEL shall be entitled to claim from the Subscriber such expenses or damages.
- 16.3 The Subscriber undertakes to familiarize itself and ensure that it is kept continuously apprised of all laws and regulations in force from time to time which have any bearing on the Services and their use. COMTEL is under no obligation to assist the Subscriber in this regard.
- 16.4 The Subscriber is prohibited from:
- 16.4.1 selling, reselling or otherwise dealing with the Services in any manner whatsoever. Without derogating from the preceding, any consideration which the Subscriber may receive whilst acting in breach of this prohibition shall be immediately forfeited to COMTEL; or
 - 16.4.2 allowing any other person access to the Services in any manner whatsoever.
- 16.5 The Subscriber agrees and warrants to COMTEL that it shall not use the Services in any manner contrary to the provision of the Telecommunications Act 103 of 1996, as amended, and the regulations promulgated thereunder, or any other applicable legislation or regulations, or so as to in any way contravene, or cause a contravention of, the provisions of any license/s issued to COMTEL. The Subscriber hereby indemnifies COMTEL against any loss, damage or expense, which COMTEL may suffer as a result of a breach by the Subscriber of the provisions of this clause.

17 GENERAL

- 17.1 It is recorded that the provision of Data and Internet Access Service by COMTEL to the Subscriber is a pre-requisite for the provision of any other service.

- 17.2 No amendment or consensual cancellation of this Agreement or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by a duly authorized representative from both COMTEL and the Subscriber.
- 17.3 No extension of time or waiver or relaxation of any of the provisions of this Agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against COMTEL, nor shall it operate so as to preclude COMTEL thereafter from exercising its rights strictly in accordance with this Agreement.
- 17.4 Neither party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.
- 17.5 The Agreement constitutes the whole of the agreement between COMTEL and the Subscriber relating to the subject matter hereof. No variation, addition, deletion, or cancellation will be of any force or effect unless reduced to writing and signed by the parties hereto or their duly authorized representatives.

18 WARRANTY OF AUTHORITY

The person signing this Agreement on behalf of the Subscriber expressly warrants his authority to do so.