

TERMS AND CONDITIONS

1. CONDITIONS APPLICABLE TO ALL TRANSACTIONS

The terms as contained on the instruction letter to which these terms and conditions are attached, as well as these terms and conditions and any additional annexures to the instruction letter (the terms of the instruction letter, these terms and conditions and any additional annexures shall be referred to as "the agreement") shall apply to all transactions concluded between Mesh Telecom (Pty) Ltd ("Mesh Telecom") and the customer as specified on the covering page to these terms and conditions ("you").

2. ACCEPTANCE TO TERMS AND CONDITIONS

Upon signature of the instruction letter to which these terms and conditions are attached, you agree to these terms and conditions and any additional annexures. You shall be bound by the terms and conditions of the instruction letter, these terms and conditions and any additional annexures upon signing the instruction letter.

3. APPOINTMENT

The customer hereby appoints Mesh Telecom to provide the services to it for the duration of this agreement. The parties agree that this appointment shall be on an exclusive basis such that the customer shall only be entitled to obtain the services from Mesh Telecom and no third party for the duration of this agreement.

4. SERVICES

4.1. The specific nature of the services which Mesh Telecom will provide to you in terms of this agreement are contained in the instruction letter to which these terms and conditions are attached. Should there be any special conditions or additional terms which are stipulated in the instruction letter, and should such special conditions or additional terms conflict with these terms and conditions, then the special conditions or additional terms shall apply.

4.2. The following terms and conditions shall apply in relation to Voice Over Internet Protocol services ("VoIP services") and in relation to other services provided by Mesh Telecom to you:

4.2.1. It is specifically recorded that Mesh Telecom is a reseller of VoIP services. In this regard, the services will be provided to you through a VoIP network which is controlled by a third party with whom Mesh Telecom has concluded an agreement. In concluding this agreement with Mesh Telecom you agree that Mesh Telecom shall provide you with VoIP services in terms of which you shall be able to make and receive voice calls on a transmission path. "Transmission path" shall mean a data path that a voice call follows from the goods which will be provided to you (such goods shall include but shall not be limited to some or all of the following: the PABX, analogue telephone adapters, routers, software phones and other voice hardware) to the network via the internet.

4.2.2. The costs of the calls will be dependent on factors such as the type, duration, manner and destination of the calls. The costs of the calls at the time of this agreement are specified in annexure "A" hereto. Mesh Telecom reserves the right to update the call charges from time to time provided that it first provides you with one month's written notice of any increase or decrease in the call charges.

4.2.3. Should there be any fault or damage in the equipment which is supplied to you in terms of this agreement, which fault or damage is caused by factors outside of Mesh Telecom's control, the parties agree that Mesh Telecom shall not be held liable for any loss, harm, damage or claims caused as a result of such fault or damage.

4.2.4. Mesh Telecom shall not be responsible for any loss, harm, damage or claims suffered by you which are caused by the services being terminated or changed due to any regulations issued by the Independent Communication Authority of South Africa in terms of the Electronic Communications Act No. 36 of 2005 and any other legislation. Mesh Telecom does, however, undertake to provide you with reasonable notice of such termination or of any legislative developments which would have a material effect on the provision by Mesh Telecom of the services to you in terms of this agreement, provided that such reasonable notice is possible.

4.2.5. Mesh Telecom cannot guarantee the provision of any specific numbers which you will require. It will, however, endeavour to obtain a number of your choice, provided that such number can be used on the network. You shall never become the owner of any number provided to you in terms of this agreement, unless otherwise recorded on the instruction letter. Accordingly, you shall not sell, resell, lease, transfer, assign, cede or otherwise alienate any rights which you may have in respect of the numbers to any third parties.

4.2.6. Should the service be suspended and / or terminated for any reason whatsoever, Mesh Telecom does not guarantee that the same numbers which were allocated previously will be allocated to you again.

4.2.7. Mesh Telecom does not make any representation of whatever nature that the numbers allocated to you in terms of this agreement will be reachable from all other validly licensed operators, or from any other voice communication platforms. Mesh Telecom shall not be liable for any loss, harm, damage or claims, whatsoever or howsoever arising, as a result of the numbers not being reachable. Notwithstanding this, Mesh Telecom shall make all reasonable endeavours to ensure that such numbers are reachable.

4.2.8. Because Mesh Telecom is reliant on the network of a third party to provide the services, it shall not be responsible for the unavailability, failure, delay, quality or interruption of the transmission of any calls and it shall not refund you for any failed, delayed or interrupted calls or any calls of a sub-standard quality. Notwithstanding this, Mesh Telecom make all reasonable endeavours to ensure that quality calls are consistently transmitted.

4.2.9. Mesh Telecom shall not be liable for any harm, losses, damages or claims which you might suffer as a result of any unauthorized calls which are made, any interception of a call by any third party or recordal of any call or any dissemination of any call to any person.

4.2.10. Although Mesh Telecom and its service providers shall use reasonable care and diligence to ensure that the services are available, accurate, error-free, secure and reliable, Mesh Telecom does not control various components of the transmission path of each call. Mesh Telecom does not, therefore, warrant that the services will be available, accurate, error-free, secure and reliable at all times, nor does it warrant that the services will be fit for a particular purpose.

4.2.11. In particular, and without limiting what is set out above, Mesh Telecom shall not be liable for any harm, damage, loss or claims caused as a result of the use of the service by third parties, any limitations on national or international bandwidth capacity, voice communication service operator failures, fixed line operator failures, mobile service operator and mobile network failures, technology failures and the quality of the calls.

5. GOODS

5.1. You shall keep any goods supplied to you by Mesh Telecom in terms of this agreement (which might include but might not be limited to the PBX, analogue telephone adapters, routers, software phones, microwave links and infrastructure and / or any other voice hardware) in safe place and in good working order and condition. The PBX shall be kept in well ventilated area and you undertake to comply with any instructions which Mesh Telecom shall give to you in relation to the upkeep and maintenance of all of the goods.

5.2. Unless otherwise specified in in the instruction letter, the ownership of the goods supplied by Mesh Telecom to you shall vest in Mesh Telecom or a third party financier as the case may be. In such circumstances upon the termination of the agreement for any reason whatsoever, you shall forthwith return the goods to Mesh Telecom in good working order, fair wear and tear permitted. The costs for delivering the goods to Mesh Telecom shall be for your account. In other circumstances, as the case may be, ownership of the goods shall be transferred by Mesh Telecom or any third party financier as the case may be to you within after you have paid the full purchase price in such goods, and any other costs in relation thereto.

5.3. Until such time as ownership is of the goods passes to you, you shall be liable for any harm caused to the goods as a result of your negligent and / or wilful conduct.

5.4. You shall be liable to pay for any damages or defects in the goods which are caused by you, whether by your omission to maintain the goods and adhere to your obligations in terms of this agreement, or otherwise. In this regard, Mesh Telecom shall be entitled to debit the amount for the repair or replacement of the goods from bank account in circumstances where a debit order authority is in place, or it shall include such costs on an invoice which shall be sent to you and which shall be payable by you to Mesh Telecom upon presentation.

6. PAYMENT FOR SERVICES

6.1. In consideration for the goods and services to be provided by Mesh Telecom to you as are specified in the instruction letter, you undertake to make payment to Mesh Telecom of all amounts that become due, owing and payable by you to Mesh Telecom in terms of this agreement, when such payments become due.

6.2. Should any payment due by you to Mesh Telecom not be paid in a timely manner, or in the event of that you are sequestrated or liquidated as the case may be, whether provisionally or finally, or in the event of a judgment being obtained against you and such judgment not being satisfied within 7 days of the date that judgment was granted, then the full amount owing by you to Mesh Telecom and any and all amounts owing by you to Mesh Telecom shall immediately become due, owing and payable.

6.3. You shall, in no circumstances, be entitled to withhold payment of any amount payable by you to Mesh Telecom in terms of this agreement for any reason whatsoever. You shall have no right to set off any amount which you allege is owed by Mesh Telecom to you from any amount which you are obliged to pay to Mesh Telecom.

7. CERTIFICATE BY MEMBER

A certificate provided by a director of Mesh Telecom, whose capacity shall not be required to be proved, that purports to certify any amount due or outstanding in terms of this agreement shall constitute prima facie proof of such indebtedness and shall have sufficient value to enable Mesh Telecom to institute legal proceedings against you on this agreement and obtain summary judgment or provisional sentence against you in any competent court for the amount stated in the certificate.

8. OVERDUE ACCOUNTS

Mesh Telecom shall be entitled to charge interest on all overdue amounts at the rate of 2% above the prime interest rate, which interest shall be calculated monthly in arrears on all overdue amounts. Any interest not paid shall be capitalised on the last day of each month.

9. LEGAL COSTS

In the event of Mesh Telecom taking any steps against you for the recovery of any amount owed by you to Mesh Telecom in terms of the agreement, you shall pay all of Mesh Telecom's legal costs, including all disbursements made by Mesh Telecom or its legal representatives on its behalf and tracing and collection costs, on the scale as between attorney and own client.

10. INVOICES AND / OR STATEMENTS

10.1. All invoices and / or statements rendered by Mesh Telecom shall be deemed to be correct and conclusive proof of all amounts owing by you to Mesh Telecom, unless challenged in writing by you within seven days after Mesh Telecom delivers (by hand, facsimile or e-mail) the invoices and / or statements to you. All invoices shall be paid within 7 days from the date that they are delivered to you, unless otherwise specified in the instruction letter.

10.2. Where applicable, call statements shall be rendered to you on a monthly basis at the end of each month. Such statements shall contain an itemised list of each call made by you during the previous month, the duration of each call and the unit cost per each call, and it shall reflect the total amount payable by you to Mesh Telecom.

11. EXPENSES AND DISBURSEMENTS

You shall be liable to compensate Mesh Telecom for any third party expenses and disbursements incurred by Mesh Telecom in fulfilling its obligations to you in terms of this agreement.

12. BREACH AND CANCELLATION

Should you breach any provision of this agreement and fail to remedy such breach within 7 days of receiving written notice from Mesh Telecom requiring you to do so, then Mesh Telecom shall be entitled, without prejudice to any other rights that it may have, whether under this agreement or in law, to cancel this agreement without notice or to claim immediate specific performance of all of your obligations, whether or not due for performance, in either event without prejudice to Mesh Telecom's right to claim damages.

13. WHOLE AGREEMENT

This agreement constitutes the sole record of the agreement between the parties and supersedes all previous agreements. Neither party shall be bound by any representation, express or implied term, warranty, promise or the like not recorded herein.

14. NO VARIATION

No addition to, variation of, novation, or agreed cancellation of this agreement shall be of any force or effect unless in writing and signed by or on behalf of the parties in a single document.

15. NO INDULGENCE

No indulgence which Mesh Telecom may grant to you shall constitute a waiver of any of the rights of Mesh Telecom.

16. SEVERABILITY

If any part of this agreement shall be determined to be invalid or unenforceable by a court of competent jurisdiction the remainder of this agreement shall remain in full force and effect.

17. ADDRESSES WHERE PARTIES AGREE TO ACCEPT NOTICES

The parties choose as their domicilium citandi et executandi the addresses as appear on the instruction letter for the service of any process and notice arising out of or in connection with this agreement.

18. NOTICES

Any notices to be served in terms of this agreement shall be in writing and shall be sufficiently served if sent to the party to be served at the addresses contained on the instruction letter, by hand, by prepaid registered post, by telefax or by e-mail. The date of delivery (if by hand, telefax or email) shall be deemed to be the date of service, transmission or sending thereof. The date of delivery shall be deemed to be 7 days after the date of posting, if mailed by registered mail.

19. WARRANTIES

- 19.1. You warrant that it is under no disability or restriction, whether contractual or otherwise, to conclude this agreement with Mesh Telecom and that it is duly authorized and legally entitled to enter into this agreement on the terms as contained herein.
- 19.2. You warrant further that all information provided by you to Mesh Telecom relating to your identity and details, as well as other information as provided on the instruction letter, are correct. The signatory to the agreement warrants that he / she is duly authorized to sign this agreement on your behalf.
- 19.3. You warrant that you have read the agreement and that you accept all of the terms and conditions as contained in the agreement.

20. APPLICABLE LAW AND JURISDICTION

- 20.1. This agreement shall be governed by the laws of the Republic of South Africa.
- 20.2. You hereby consent to the jurisdiction of the Magistrate's Courts to determine any action or proceeding arising out of this agreement, notwithstanding that the amount of any such claim or the value of the subject matter of such action or proceeding may otherwise be beyond the jurisdictional limit of the Magistrate's Courts.
- 20.3. Notwithstanding the above, Mesh Telecom shall be entitled to institute legal proceedings in the High Courts of South Africa or any other court with competent jurisdiction, in its discretion.

21. TERMINATION

You shall not be entitled to terminate this agreement without first giving Mesh Telecom 30 day's written notice of termination of the agreement, after the initial 24 month contract period. During the mentioned notice period, Mesh Telecom will continue to provide you with the services as set out in this agreement and you shall continue to make payment to Mesh Telecom of all amounts owed by you to Mesh Telecom until the expiry of the notice period.

22. RIGHT OF FIRST REFUSAL

If during the term of the agreement you decide to conclude an agreement with a third party on the basis that such third party offers you more favourable terms than the terms of this agreement, you shall, before terminating this agreement in accordance with the procedures set out above, afford Mesh Telecom an opportunity to match the offer made to you by the third party. In this regard, Mesh Telecom shall be entitled to match the offer within a period of 14 days from the date on which Mesh Telecom receives written notice from you affording Mesh Telecom the opportunity to match the offer. If Mesh Telecom elects not to match the offer, or if Mesh Telecom does not respond to you within the above 14 day period, then you shall be entitled to conclude the agreement with the third party on the same terms offered to Mesh Telecom, subject to you complying with the termination procedures as set out above.

23. PROOF OF CONCEPT

You acknowledge liability for all costs incurred within the POC period.