

TERMS AND CONDITIONS

1. INTERPRETATION

- 1.1 In this agreement unless clearly inconsistent with or otherwise indicated by the context –
- 1.2 "Centracom" means Centracom (Pty) Ltd (Registration Number 2004/016200/07)
- 1.2.1 "commencement date" means the date on which services commence as set out in the order schedule;
- 1.2.2 "charges" means all charges payable by the Customer to Centracom as set out in the order schedule;
- 1.2.3 "customer" means the customer as set out in the order schedule;
- 1.2.4 "order schedule" means the order schedule concluded with the Customer in respect of the services to which these terms and conditions apply;
- 1.2.5 "prime rate" means the prime overdraft rate of ABSA Limited from time to time. A certificate signed by a manager of any branch of ABSA Bank Limited shall constitute *prima facie* proof of such rate;
- 1.2.6 "services" means the services provided by Centracom to the customer by means of the system as more fully described in the order schedule;
- 1.2.7 "system" means the telecommunication system to which the customer will connect for the provision of the services;
- 1.2.8 any reference to the singular includes the plural and vice versa;
- 1.2.9 any reference to natural persons includes legal persons and vice versa;
- 1.2.10 any reference to a gender includes the other genders.
- 1.3 Where appropriate, meanings ascribed to defined words and expressions in clause 1.1, shall impose substantive obligations on the parties as provided for in the definition concerned.
- 1.4 The clause headings in this agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 1.5 Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 1.6 This agreement shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa.

2. APPOINTMENT

The customer hereby appoints Centracom 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 Centracom and no third party for the duration of this agreement.

3. USE OF THE EQUIPMENT

- 3.1 Centracom shall provide and install equipment at the premises of the customer ("the Equipment") required for the purpose of accessing the services. The Customer shall provide the necessary space, electricity supply and environmental conditions required for the Equipment.
- 3.2 Ownership in and to the Equipment shall remain vested in Centracom or its network operator and the customer shall be obliged to return the Equipment upon termination of this Agreement. All risk in and responsibility for the Equipment shall pass to the Customer on delivery of the Equipment.
- 3.3 The Customer shall permit Centracom to enter its premises to inspect the Equipment or perform any other lawful function in the *bona fide* interest of Centracom in respect of the Equipment, or to carry out any necessary repairs, replacement of Equipment or other maintenance work, in respect of the Equipment.
- 3.4 The Customer shall at all times keep the Equipment in its possession and control at the Customer Premises and shall not be entitled to give up possession of the Equipment, in whole or in part, to any third party or remove and / or re-install the Equipment at a different location.
- 3.5 The Customer shall in writing advise the landlord of the Customer Premises of Centracom's ownership of the Equipment.
- 3.6 Unless expressly authorised by Centracom, the Customer may not make any alteration or modification to the Equipment, including the software incorporated in the Equipment.
- 3.7 If the Equipment is lost, stolen or damaged, the Customer shall remain liable for the replacement and reinstallation thereof.
- 3.8 The cost of the equipment will be charged to the customer as a monthly rental which will be calculated as total cost price / 24. The rental amounts will increase annually by 10% (ten percent).

4. CONNECTION

- 4.1 Centracom shall use its best endeavours to provide the customer with access to the services by the commencement date and maintain such access in accordance with the provisions of this agreement. Centracom shall not be responsible for any consequences as a result of any delay in the connection of the services, including *inter alia* any damages suffered or any expenses incurred by the customer.

5. DURATION

- 5.1 Subject to the provisions of clause 11, this agreement shall commence on the date of service activation and shall continue for a period as stipulated in the order schedule ("the initial period").
- 5.2 Upon expiry of the initial period, this agreement shall automatically renew for successive periods equivalent to the initial period ("renewal period"), unless terminated by either party by means of providing the other party with at least 30 (thirty) days written notification prior to the expiry of the initial period or the renewal period, as the case may be.
- 5.3 Should this agreement be terminated prior to the expiry of the initial period or a renewal period for any reason whatsoever, then Centracom shall *inter alia* have the right to claim all fees payable for the balance of the initial period or renewal period, as the case may be, in respect of bandwidth and/or hardware required to provide the services as well as an amount of R3000.00 (three thousand Rand) per voice channel or such other amount agreed to by the parties in writing from time to time.

6. SUSPENSION OF SERVICES

- 6.1 Centracom shall be entitled to disconnect the services-
- 6.1.1 during any technical failure, modification or maintenance of the system; or
- 6.1.2 should the customer fail to comply with any of the terms and conditions of this agreement.
- 6.2 Notwithstanding any suspension of the provision of the services in terms of the provisions of clause 6.1, the customer shall remain liable to Centracom of all amounts charged in accordance with the provisions of this agreement.

7. PAYMENT

- 7.1 The customer shall be liable to make payment to Centracom in accordance with the charges set out in the order schedule in respect of the services, monthly in arrears.
- 7.2 Charges which appear on invoices must be paid by the customer to Centracom on the last working day of the month during which the charges are due. Failure to comply will result in immediate suspension of service and listing on the credit bureau.
- 7.3 Any amount due by the customer to Centracom, not paid on the due date thereof, shall at the discretion of Centracom, bear interest at a rate equal to 3% (three per centum) per annum above the prime rate, calculated from the date payment was due until date of actual payment thereof.
- 7.4 Centracom shall be entitled to demand, at any time after the signing of the agreement by the customer, full payment in advance of all charges to be levied by Centracom for the balance of the initial period of this agreement, excluding call charges which shall be invoiced monthly in arrears, should Centracom have a reasonable suspicion of any fraudulent act having been or about to be committed by the customer in respect of this agreement and the customer failing to rebut such suspicion.
- 7.5 The customer will not have the right to defer, adjust or withhold any payment due to Centracom in terms of or arising out of this agreement.
- 7.6 All prices quoted in this agreement are exclusive of Value Added Tax ("VAT").
- 7.7 Centracom may vary all or any rates referred to in the order schedule as a result of any changes made to the rates by any third party with whom Centracom has contracted for the provision of the services, upon 7 (seven) days written notification to the customer.
- 7.8 Notwithstanding anything contained herein, Centracom shall be entitled to impose a minimum fee per month upon the customer equal to 50% (fifty per centum) of the total monthly amount billed by Telkom to the Customer as stipulated in the Centracom proposal to which these terms and conditions are attached.
- 7.9 Maintenance charges will be charged at 3% of billing, or R 85 per site per month, whichever is the greater amount.

8. GUARANTEE

The customer shall upon written request by Centracom be required to provide Centracom with a guarantee in respect of any services provided to the customer from time to time, in the amount equivalent to the aggregate of 2 (two) month's billing of services.

9. LIMITATION OF LIABILITY

- 9.1 Whether or not advised of their possibility, Centracom will not be liable whether in contract, delict or otherwise for –
- 9.1.1 any cost of procurement of substitute goods, technology, services or rights;
- 9.1.2 loss of profits, contracts or goodwill;

9.1.3 any incidental or consequential damages, losses or expenses;

9.1.4 wasted management or staff time.

9.2 Without derogating from the generality of the provisions of clause 9.1, Centracom shall not be liable for any loss or damage suffered by the customer as a result of interruption in the provision of the services due to any technical problems experienced by the network operators nor shall the customer be entitled to a reduction in the fees payable by the customer to Centracom.

10. INDEMNITY

The customer hereby indemnifies Centracom and holds Centracom harmless against any loss or damage that the customer may sustain and any claims, costs or expenses of any nature as a result of the provision of or the failure to provide the services. For the purpose of this clause 10 any reference to Centracom shall include its employees, agents and contractors.

11. BREACH

- 11.1 In the event that–
 - 11.1.1 the customer fails to make payment to Centracom of any amount owing by the customer to Centracom in terms of this agreement and fails to make such payment within 7 (seven) days of receipt of written notice to that effect;
 - 11.1.2 the customer in any other manner breaches any of the provisions of this agreement and fails to remedy such breach within 7 (seven) days' written notice requiring it to do so;
 - 11.1.3 the customer fails to satisfy any judgment granted against it within 30 (thirty) days of such judgment having been granted against it and/or is provisionally or finally liquidated (save for the *bona fide* purpose of reconstruction or amalgamation) and/or is placed under judicial management or if either party enters into a compromise with any of its creditors;
 - 11.1.4 any license to operate or use the system is revoked, terminated or modified for any reason either in whole or in part;
 - 11.1.5 if, for any reason, any network operator ceases to make the system available to Centracom or any third party with whom Centracom has contracted in respect of the connection to the system;
- then Centracom shall, without prejudice to any other rights which it may have in law, be entitled to cancel this agreement.
- 11.2 Upon termination of this agreement for any reason whatsoever-
 - 11.2.1 The customer shall return the Equipment to Centracom;
 - 11.2.2 the customer shall pay all charges outstanding at the time of disconnection, including the balance of the monthly fees as described in clause 5.3.

12. FORCE MAJEURE

If *force majeure* causes delays in or failure or partial failure of performance by Centracom of all or any of its obligations hereunder, this agreement, or as the case may be, the affected portion thereof, shall be suspended for the period during which the *force majeure* prevails, but if the *force majeure* affects any material part of the agreement only for a maximum period of 60 (sixty) days, then Centracom shall be entitled on 7 (seven) days written notice to cancel this agreement. Written notice of the *force majeure* specifying the nature and date of commencement thereof shall be dispatched by Centracom to the customer as soon as reasonably possible after the commencement thereof. Written notice of the cessation of the *force majeure* shall be given by Centracom within 7 (seven) days of such cessation. No party shall subsequently be obliged to comply with the obligations suspended during such period. Centracom shall be entitled, provided that Centracom has given notice to the customer to that effect with the written notice of the *force majeure* as provided above, to extend the period of this agreement by a period equal to the time that this performance is so prevented. For the purpose hereof, *force majeure* includes acts or omissions of any government, government agency, provincial or local authority or similar authority, any laws or regulations having the force of law, civil strife, riots, insurrection, sabotage, acts of war or public enemy, illegal strikes, interruption of transport, lockouts, inability on the part of either party as a result of the *force majeure* of the nature contemplated in this clause to obtain any goods from a supplier or contemplated supplier thereof, combination of workmen, rationing of supplies, flood, storm, fire (or without limitation *eiusdem generis*) any other circumstances beyond the reasonable control of Centracom and comprehended in terms of *force majeure*.

13. ASSIGNMENT

- 13.1 The customer shall not assign or in any manner make over, or purport to assign or make over, this agreement or the customer's rights or obligations hereunder or any part hereof.
- 13.2 The customer hereby agrees that Centracom shall be entitled, at any time, to cede, assign, transfer, encumber or delegate any of its rights, title, interest or obligations in terms of this agreement to any third party.

14. WHOLE AGREEMENT, NO AMENDMENT

- 14.1 This agreement constitutes the whole agreement between the parties relating to the subject matter hereof.
- 14.2 No amendment or consensual cancellation of this agreement or any provision or term thereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this agreement and no settlement of any disputes arising under this agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of this agreement shall be binding unless recorded in a written document signed by the parties. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.

15. DOMICILIUM CITANDI ET EXECUTANDI

- 15.1 The parties choose as their domicilia citandi et executandi for all purposes under this agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses –
- 15.1.1 the customer as set out in the order schedule
- 15.1.2 Centracom at Centratel Building, Waterfall Park, Bekker Street, Midrand; Fax: (011) 695 9133
- 15.2 Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing but it shall be competent to give notice by telefax or by E-mail where a party has notified the other party of such a telefax number or an E-mail address.

16 ACCESS TO INFORMATION ACT

The Customer hereby acknowledges and agrees that Centracom and or its Cessionaries, as the Credit Grantor/s, perform a credit search on the Customer's record with one or more of the registered credit bureaus and obtain a bank report when assessing the Customer's application for credit;

- ii. monitor the Customer's payment behaviour by researching the Customer's record at one or more of the credit bureaus;
- iii. use new information and data obtained from credit bureaus in respect of the Customer's future credit applications;
- iv. record the existence of the Customer's account with any credit bureau;
- v. record and transmit details of how the Customer has performed and how their account is conducted by the Customer in meeting its obligations on the account;
- vi. the Customer acknowledges and agrees that any information regarding its credit worthiness, defaults in payment to the Supplier, and details of how its account with the Supplier is conducted, may be disclosed to any other creditor or potential creditor of the Customer or to one or more credit bureaus.