

Annexure E - Terms and Conditions (Please sign each page)

**1. Definitions**

In this agreement, unless inconsistent or otherwise indicated by the context, the following terms shall bear the following meanings: "Activation" means the date on which we permit you to use the services or the date on which you actually start to use the services over the Broadband service.

"Agreement" means the application form together with all annexure's and these standard terms and conditions;

"Application form" means the form completed by the subscriber indicating choices of service and equipment which constitutes an order;

"Capping limits or cap" means the limit which Service Provider may impose on usage or spend by a particular subscriber on a particular package in any one or more months; charges means the connection charges, monthly service charges, out-of package charges, sage charges and any other charges pertaining to the provision of the services and any other services provided to the subscriber, which will be provided to you in the application form or on the SP website, or otherwise by notice from time to time;

"CPE" means customer premises equipment including, modems, gateways, phones, communication cards installed on a subscriber's premises to provide the required services; Coverage area means the physical geographic area within which the services are provided by us;

"DTI" means the Department of Trade and Industry;

"Effective date" means notwithstanding the date of signature of the application form, the date of activation;

"force majeure" means an event which is beyond the Service Providers reasonable control for example civil riot, strikes, flood, storm, or fire, or faults or interruptions to any other network forming part of the SP network which is not owned and operated by the Service Provider;

"ICASA" means the Independent Communications Authority of South Africa;

"License" means the license/s granted to the Service Provider by ICASA to provide electronic communications services over an electronic communications network, and includes any codes of conduct or regulations also applying to the Service Provider;

"Monthly data allocation" means that amount of data in bits which the subscriber is permitted to access over the Service Provider network using CPE or otherwise as permitted by the Service Provider;

"Insurance" means the insurance which can be purchased at the subscriber's option to insure the CPE, in accordance with the insurer's policy terms and conditions;

"services" means any one or more of our Networking and Internet Access Services, value-added Internet Protocol (IP) services, virtual private network (VPN) services, VoIP, corporate managed data network services, closed user group and video conferencing services and any other services made available to the subscriber by the Service Provider;

"Service Provider numbers" means the mobile access numbers, IP address and unique user name or subscription numbers used to identify subscribers to the services;

"Service Provider or we" means In-Tech Business Solutions - IBS / Voizacom (Pty) Ltd, a company duly incorporated under the Laws of South Africa;

"Service Provider head office" means the SP's premises situated at 48 Ireland Avenue, Eldoraigne, Centurion, Gauteng.

"Service Provider network" means the network owned and operated by the Service Provider under its licence, or any network which is used by the SP in order to provide the services;

"Party/ies" means us and you or either of us;

"Renewal period" means 1 (one) or more periods of 1 (one) calendar month during which time services continue to be made available and you continue to be liable to pay for them;

"Subscriber or you" means the party to whom the services are made available;

"Services" means broadband services or internet services or data services, or any other services which we are authorized to provide to you under the licence;

"Top up" means the additional usage which the subscriber is permitted to purchase, over and above any monthly data allocation or capping limits that apply to the subscriber's package;

"Usage" means actual use of services by the subscriber resulting in the subscriber incurring charges; and

"VAT" means value added tax as provided for in the Value Added Tax Act 89 of 1991.

All the Service provider services as outlined in the agreement are excluding VAT.

"Out of Package" means the amount of data used over the subscribed amount of data signed for on the monthly subscription.

**2. Commencement and Termination**

2.1 The month to month agreement shall commence on the effective date and shall thereafter continue automatically for an unlimited number of renewal periods unless terminated:

2.1.1 by the subscriber, by giving to the Service Provider a written notice of termination of not less than 1 (one) calendar month; thus before or on the 1st of the month, for month to month services and/or

2.1.2 by the subscriber, within a period of 7 (seven) days from the effective date, if the subscriber does not find the service fit for use, provided that the subscriber shall return all CPE and make payment in full for all usage; and/or

2.1.3 By the Service Provider, on written notice to the subscriber as set out in this agreement; or

2.1.4 By the Service Provider without notice if for any reason the licenses are withdrawn, amended or suspended.

2.2 On termination for any reason, any outstanding instalments on CPE must be paid in full.

2.3 The Service Provider may accept or reject the application form in its discretion, and shall signify acceptance of the order placed by the subscriber in the application form by activation at the Service Providers head office, at which time the agreement shall become binding on the Service Provider. Activation will not take place until and unless the subscriber has provided all information required in the application form to the Service Provider, and any additional information that the Service Provider may require, for example, in order to obtain a credit reference for the subscriber.

2.4 Where there are contract periods applicable, 12, 18 or 24 months, the subscriber shall be liable for 70% of full contract period or costs in case of early termination of services, for the remainder of the contract period.

**3. Supply, Activation and use of CPE and services**

3.1 The Service Provider shall use reasonable endeavours to promptly comply with any supply and/or delivery and/or activation requirements recorded in the application form but shall not be liable to the subscriber if supply and/or delivery and/or activation is delayed or cancelled, for whatsoever reason.

3.2 The subscriber shall be responsible for obtaining all necessary approvals and authorities from any competent authority or body for the purpose of any such supply and/or delivery and/or activation, and the subscriber hereby indemnifies the Service Provider against any claim or liability suffered by the Service Provider by reason of such approval and authorities not having been obtained or maintained as the case may be.

3.3 All risk in and to the CPE shall pass to the subscriber on delivery. The CPE and all cabling shall remain the property of the Service Provider;

3.4 If any CPE is lost, stolen or damaged, the subscriber shall immediately notify the Service Provider in writing and until such notification, the subscriber shall remain liable for all costs and charges pertaining to such CPE. The Service Provider shall, as soon as is reasonably possible, replace the CPE. The subscriber shall be liable for the cost of this replacement CPE unless the subscriber has taken out insurance. Such loss, theft or damage and/or the replacement of the CPE and/or the allocation of a new mobile access number as a result, shall in no way be deemed to constitute a termination of the agreement which shall continue to be of full force and effect.

3.5 The subscriber hereby warrants and undertakes in favour of Service Provider that the subscriber:

3.5.1 shall not use nor allow the services to be used for any improper, immoral or unlawful purpose, nor in any way which may cause injury or damage to persons or property or an impairment or interruption to the services;

3.5.2 shall only use the CPE provided by the Service Provider, and comply with relevant legislation and regulations imposed by any competent authority and all directives issued by Service Provider relating to the use of CPE and the provision of the services;

3.5.3 Recognises that no right, title or interest in the CPE or the software contained in the CPE issued to the subscriber vests in the subscriber. and

3.5.4 Shall not, nor permit any third party to reverse engineer, decompile, modify or tamper with the software contained in or pertaining to any CPE.

3.5.5 Should the subscriber exceed the monthly data allocations, the subscriber is entitled to purchase top ups, subject to any capping limit imposed by the Service Provider.

3.6 CPE must be used in accordance with our or the manufacturer's instructions, as the case may be. Other Services provided to you by third parties are subject to their terms and conditions.

3.7 We are not liable to replace any CPE that is out of warranty, or that is not covered by insurance, or that is not working as a result of wear and tear, and even if the subscriber has not paid for it in full, payment of any remaining instalments must be made in the usual way.

3.8 Services can only be provided in the coverage area and it is the responsibility of the subscriber to check that their requirements are satisfied in this regard.

3.9 The Service Provider does not provide services guarantees for Telkom and other 3rd party service providers

3.10 The Service Provider may issue one or more Service Provider numbers to a subscriber, subject to payment of the charges for usage related to that Service Provider number. The Service Provider number may be withdrawn if payment is not made for usage. Where the Service Provider number constitutes a domain name, if this agreement is terminated for any reason, the Service Provider may retain the domain name if the subscriber:

48 Ireland avenue, Eldoraigne, Centurion. PO Box 54378, Wierdapark, 0149.

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- 3.10.1 Has not paid for usage associated with that Service Provider number, in full; and
- 3.10.2 Does not transfer that Service Provider number to another service provider and notify the Service Provider accordingly in writing.
- 3.11 You hereby consent to and authorize the Service Provider to:
  - 3.11.1 disclose your name, address and personal details to any party whenever it is reasonably necessary for Service Provider to properly perform its functions or protect its interests, or for the purpose of enabling the Service Provider to provide directory or repair services; and
  - 3.11.1.1 Contact you to inform you of new or different services which may interest you from time to time; and
  - 3.11.1.2 Send marketing, promotional updates and client satisfaction surveys to you from time to time.
- 3.12 Use of the Service SP's website is subject to the website's own terms and conditions of use, and may require you to use a password.

#### **4. Charges**

- 4.1 In consideration for the provision of the services, CPE and any other services supplied by the Service Provider to the subscriber, the subscriber shall make payment to the Service Provider of the applicable charges whether or not the services have been, or are being used by the subscriber, according to the invoice provided to the subscriber by the Service Provider by email (in which case the electronic version of the invoice is deemed to be the original invoice) or by post.
- 4.2 The Service Provider may, by written notice to the subscriber, vary future charges, its invoicing procedure, or its payment procedure, either in whole or in part, by written notice to the subscriber with effect from the date specified in that notice.
- 4.3 Unless otherwise agreed to by Service Provider in writing or unless clause applies, the subscriber shall make payment to the Service Provider:
  - 4.3.1 for the delivery, installation and maintenance of CPE on presentation of an invoice and against delivery;
  - 4.3.2 of monthly service charges and charges due under the instalment plan monthly in advance and of all other charges including usage, monthly in arrears, within 7 (seven) days of receiving an invoice; and
  - 4.3.3 At the Service Provider premises or at the bankers of the Service Provider in Johannesburg. Where payment is made by the subscriber through a debit order, other electronic means or any other intermediary, the subscriber's bankers or other intermediaries shall be deemed to act as the subscriber's agent and the subscriber shall have discharged its obligations only upon payment being finally received by Service Provider.
- 4.4 The rental CPE always remains the property of the Service Provider.
- 4.5 In the event that Service Provider requires payment for the services to be made by debit order, the subscriber will commit a material breach of the agreement if the subscriber:
  - 4.5.1 cancels the debit order without the written consent of the Service Provider;
  - 4.5.2 Changes his banking details without giving Service Provider prior notification of such change; and/or
  - 4.5.3 Provides the Service Provider with incorrect banking details.
- 4.6 The subscriber authorizes the Service Provider to debit any bank account or credit card held by the subscriber, the details of which are reflected on the application form, for the charges owed by the subscriber to the Service Provider in terms of this agreement, and if there are insufficient funds in one account then the subscriber specifically authorizes the Service Provider to debit any other account.
- 4.7 The Service Provider shall be entitled to levy an administration charge and the subscriber agrees to pay such a charge in the event that any debit order or other form of payment is returned unpaid from the account or credit card described in the application form.
- 4.8 The subscriber shall be liable to effect payment of interest to Service Provider on the amount so owing at the prime interest rate as published from time to time by Standard Bank Limited plus 2% (percent), from due date to date of payment.
- 4.9 The Service Provider's invoice shall be sent to the subscriber at the e-mail address supplied by the subscriber in the application form. It is the duty of the subscriber to check the invoice in order to ensure that the contents are correct. Unless a query is raised in respect of the contents of the statement within 7 (seven) days from the date of the invoice, the contents of it shall be deemed to be correct.
- 4.10 Any migration from one package option to another shall be subject to the Service Provider's approval in its discretion and Service Provider shall be entitled to levy fees for migrations.
- 4.11 The Service Provider may limit off-net (internet) and on-net (Service Provider to Service Provider) traffic in accordance with its capping limits from time to time. In the event of usage being capped, the Service Provider may charge the subscriber for usage above the cap at its then applicable standard rates which may exceed the rates otherwise applying to the subscriber's package or usage.
- 4.12 Unless specifically stated otherwise, all prices and charges set out in the agreement are excluding of VAT and any exclusive of any other applicable tax or duty, and the subscriber remains liable to pay all such taxes in addition to the charges.
- 4.13 A certificate under the hand of any Manager of the Service Provider (whose authority the SP does not have to prove) certifying the sum of any amount owing by the subscriber to Service Provider shall be prima facie proof of its contents and sufficient proof for the purposes of enabling Service Provider to obtain any judgment or order against the subscriber.
- 4.14 In the event of Service Provider having to institute legal proceedings against the subscriber to recover amounts due to Service Provider or for any other reason, the subscriber shall be liable for costs incurred by the Service Provider on the scale as between attorney and own client.
- 4.15 The subscriber hereby consents to and authorizes Service Provider to obtain information about the subscriber from any credit reference agency in the Republic of South Africa.
- 4.16 The Service Provider may, without prejudice to any other rights which it may have under the agreement or at law:
  - 4.16.1 Notify credit reference agencies of any default by the subscriber; and
  - 4.16.2 Blacklist the services to prevent the further use thereof.
- 4.17 The subscriber shall be liable for all out of package rates for the amounts of data used over the subscribed amount. Out of package rates may differ from contract versions.

#### **5. Suspension**

- 5.1 The Service Provider may at any time, without notice to the subscriber and in any manner whatsoever, suspend the subscriber's access to the services in the event that any emergency modification, maintenance or remedial work must be carried out in relation to the services or the Service Provider network.
- 5.2 The Service Provider may on notice to the subscriber as set out in clause 7, suspend the subscriber's access to the services in the event that the subscriber fails to perform any of his or her obligations, or breaches any terms of the agreement (in which event Service Provider may also suspend the subscribers use of the CPE services), and the Service Provider may charge a reconnection fee to connect the Service Provider to services and/or CPE once the breach has been remedied to the Service Provider „s reasonable satisfaction.
- 5.3 If either clause 5.1 or 5.2 applies, the subscriber will remain liable to pay all charges during any period of suspension.
- 5.4 Service Provider will use its reasonable endeavours to inform the subscriber beforehand in the event of planned maintenance.
- 5.5 Should the subscriber fail to keep his account up to date (failing to pay for 3 months) , will result in a direct breach of this agreement and the cancellation clause 2.4 (70% liability for agreement outstanding) will be invoiced and handed over for collection / blacklisting.

#### **6. Liability**

- 6.1 Without detracting from any of the other provisions of the agreement, Service Provider shall not be liable to the subscriber for any loss or damage suffered by the subscriber, whether the same is direct, indirect, contractual, delictual, or consequential (including loss of profit or loss of business), in the event that:
  - 6.1.1 Service Provider fails for any reason whatsoever to deliver and/or provide installation of any CPE either on the required date or at all (provided the subscriber has not made payment for it); and/or
  - 6.1.2 the services are interrupted, suspended or terminated for whatsoever reason beyond our reasonable control including force majeure; and/or
  - 6.1.3 Service Provider fails to suspend the provision of the services to the subscriber after the subscriber has specifically requested Service Provider; and/or such loss or damage was caused by any negligent act or omission on the part of Service Provider, its employees or its agents; and/or
  - 6.1.4 Such loss was caused by or was contributed to by the subscriber's actions or omissions, including but not limited to allowing services to be accessed by someone else other than the subscriber.
- 6.2 The subscriber indemnifies the Service Provider against any damage suffered by the Service Provider as a result of the subscriber's breach of this agreement.

#### **7. Breach**

- 7.1 If the subscriber commits a breach of any of the terms and conditions hereof and remains in default for a period of 7 (seven) days after delivery to the subscriber of a written notice from the Service Provider calling for such breach to be remedied, the Service Provider shall be entitled forthwith and without further notice to the subscriber to

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terminate the agreement and claim the immediate payment of all sums of money payable by the subscriber including all outstanding usage charges and all instalments still owing under the instalment plan, whether or not then due, in either event without prejudice to the Service Provider's right to claim such damages as it may have suffered by reason of such breach or failure.

7.2 Without prejudice to the provisions of clauses 2.1.3 and 7.1 above, the Service Provider may forthwith terminate the agreement at any time by giving the subscriber written notice of termination if (i) the subscriber fails to make payment of any charges on or before the due date for payment; and/or (ii) the subscriber within a twelve-month period calculated from a notice of breach, receives a further two notices of breach; or (iii) in the event that the subscriber is sequestrated, liquidated or placed under judicial management, irrespective of whether any of the aforesaid are provisional or final; or voluntary or compulsory.

#### 8. Insurance

8.1 Service Provider acts as a collection agent for insurance brokers and/or underwriters in respect of the insurance. Service Provider shall not be liable to the subscriber under any policy issued or claim declined pursuant to the subscriber's election to take insurance.

8.2 It shall be the responsibility of the subscriber to obtain and familiarise himself with the terms and conditions of the insurance policy applicable and the subscriber may request a copy from the Service Provider at any time.

8.3 It shall be the responsibility of the subscriber to ensure that the premiums in respect of the insurance policy are paid timeously and in full.

8.4 Save as provided herein, any queries which the subscriber may have regarding or arising from the insurance of the CPE and related risks, shall be directed to the insurance administrators or brokers, as the case may be whose particulars may be obtained by the subscriber from Service Provider.

#### 9. General

9.1 Cession and assignment: The rights and obligations of the subscriber in terms of the agreement may not be ceded or delegated to any third party. The rights and obligations of Service Provider in terms of the agreement may be ceded and delegated by it to any other party on written notice to the subscriber.

9.2 Passwords: It is the responsibility of the subscriber to keep all usernames and passwords confidential to prevent unauthorized access to the services and CPE.

9.3 Interception: Subject to the provisions of Regulation of Interception of Communications and Provision of Communication-Related information Act (RICA), 70 of 2002, the subscriber acknowledges the Service Provider may be obliged by law to intercept, block, filter, read, delete, disclose and use all communications sent or posted using the Service Provider network.

9.4 Notices: Any notice in connection with the agreement must be addressed:

9.4.1 in the case of Service Provider, Voizacom Telecommunications (Pty) Ltd, P O Box 12202, Elspark, 1418 Germiston, or by fax to + 27 (0) 865425023 marked for the attention of the Legal Department; or

9.4.2 In the case of the subscriber, to the physical address, e-mail address and fax number set out in the application form and marked for the attention of the subscriber.

9.5 The notice shall be deemed to have been duly given 7 (seven) days after posting, if posted by registered post; on delivery if delivered to the party's physical address ; on dispatch if sent to the party's then fax number and confirmed by registered letter posted no later than the next business day; or on dispatch if sent to the subscribers email address, unless the addressee is aware, at the time the notice would otherwise be deemed to have been given, that the notice is unlikely to have been received by the addressee through no act or omission of the addressee.

9.6 Either party may change its address for this purpose by notice in writing to the other party.

9.7 Entire contract: The Agreement contains all the express provisions agreed on by the parties with regard to the subject matter of the agreement and neither party may rely on any representation which allegedly induced that party to enter into the agreement, unless the representation is recorded in the agreement.

9.8 Amendment: The Service Provider may amend these terms and conditions from time to time as set out in clause 3.

9.9 Waiver: No failure, delay, relaxation, or indulgence on the part of the Service Provider in exercising any power or right conferred upon it in terms of this agreement shall operate as a waiver of such power or right, nor shall any such failure, delay, relaxation or indulgence be deemed to be a novation of any of the terms and conditions of this agreement.

9.10 Applicable law: The agreement shall be interpreted and implemented in accordance with the laws of the Republic of South Africa and the parties hereby submit to the exclusive jurisdiction of the Magistrates' Court of Johannesburg.

9.11 Disputes: Any dispute arising out of this agreement which is brought to the attention of the Service Provider by the subscriber, including a dispute about charges, shall be referred in the first instance to the legal department of the Service Provider at the address set out above for notices. The SP will use its reasonable endeavours to resolve the dispute within a period of 10 (ten) days, provided that it has all relevant information. If the subscriber is unhappy with the conduct or outcome of the dispute, then it may be referred to dti Consumer Affairs Committee, for attention Chief Director, Office of Consumer Protection, Private Bag X84, Pretoria, 0001, or tel: (012) 394 1542.

9.12 Customer call centre: Calls to our call centre may be recorded for training purposes and for the protection of the subscriber and the Service Provider.

9.13 If you require these terms and conditions in any other language, you may obtain them from the dti or ICASA.

9.14 RICA: You acknowledge that IBS / Voizacom or a third party Network Operator (as the case may be) may under the circumstances as prescribed in the Regulation of Interception of Communications and Provision of Communication Related Information Act, 2002 ("RICA"), be required to intercept, lock, filter, read, delete, disclose and use communications sent or posted via IBS / Voizacom's or the Network Operator's network and you hereby consent to the undertaking of such activities by IBS / Voizacom's and/or a third party Network Operator. IBS / Voizacom and/or a third party Network Operator shall not be liable to you for any losses, liabilities, damages and claims and for any related costs and expenses suffered by you as a result of IBS / Voizacom and/or a third party Network Operator performing any activity referred to in this clause. 9.15 A copy of RICA is available at <http://www.info.gov.za/acts/2002/a70-02>

#### 10. ELECTRONIC MAIL

10.1 Your service with IBS / Voizacom includes the ability to send electronic mail via the mail service. Misuse of the SMTP service may result in blacklisting of the user id. The following examples are non-exclusive and are provided for guidance to customers:

10.2 Use of your e-mail account to send unsolicited bulk (UBE) or commercial messages (UCE) is prohibited. This includes, but is not limited to, bulk-mailing of commercial advertising, informational announcements, charity requests, petitions for signatures, and political or religious tracts. Such material may only be sent to those who have explicitly requested it.

10.3 Using your e-mail account to collect responses from unsolicited bulk or commercial e-mail is prohibited.

10.4 Sending mass unsolicited mail or deliberately sending very large messages or files to one or more recipients ("mail bombing") is prohibited.

10.5 Forging or removing e-mail headers is prohibited.

10.6 Use of e-mail to harass or intimidate other users is prohibited. Harassment, whether through language, frequency of messages, or size of messages, is prohibited. Sending a single unwelcome message may be considered harassment. If a recipient asks to stop receiving e-mail from you, you must not send that person any further messages.

10.7 You may not forward or otherwise propagate chain letters, whether or not such messages solicit money or other items of value, and whether or not the recipient wishes to receive such mailings.

10.8 IBS / Voizacom services may not be used to collect replies to messages sent from another ISP, where those messages violate this Acceptable Use Policy or the Acceptable Use Policy of the other ISP.

10.9 IBS / Voizacom reserves the right to delete messages or files which have remained on its servers for excessive periods of time as determined by IBS / Voizacom, in its sole discretion.

#### 11. Technical assistance and Call out Fees

Call out Fee PTA – R450.00; Call out fee Midrand – R550.00; Call out fee JHB - R650.00; Call out fee (Over 60Km) – R450.00 plus R2.90 per kilometre.

Labour rates: Single Technician R280.00 per hour; Technical team (2 persons) R350.00 per hour. Labour Rates on server environment std R750.00 per hour. Rates may change without notice.

Date: \_\_\_\_\_ Signature (Subscriber) \_\_\_\_\_ Name (Print) \_\_\_\_\_

