

Standard Terms and Conditions (Revised 1 July 2014)

1. INTRODUCTION

- 1.1. Saicom Voice Services (Pty) Ltd (the Supplier) is a provider of managed Least Cost Routing (LCR) and Voice over Internet Protocol (VoIP) services (the services). The Customer, as described in the Order Form, wishes to contract with the Supplier on the terms and conditions set out herein.
- 1.2. The agreement between the parties shall consist of The Order Form and all of its attachments including the proposal. Together these documents shall be referred to as "the agreement". Should any inconsistency arise between any of these documents, the provisions of the Standard Terms and Conditions shall take precedence.
- 1.3. The Customer has elected to purchase the services described in the Order Form and the Proposal.
- 1.4. The Customer warrants that the Customer has been informed of the Pro's and Con's of each of the solutions proposed by the Supplier.

2. DURATION

- 2.1. This agreement shall commence on the activation of the services ("the activation date") and shall continue for an initial period of 30 (thirty) days and thereafter indefinitely until terminated by either party hereto giving not less than 30 (thirty) days written notice to the other of them, provided that the Customer shall not be entitled to give such notice within the initial period.
- 2.2. In the event of termination of this agreement prior to the expiry of the initial period of 30 days, for any reason, other than what has been stipulated in the agreement, The Supplier shall have the right to claim payment of all amounts and charges that the Customer would have been liable for in terms of this agreement in respect of the initial period, and the Customer shall be obliged to effect payment of the amount so claimed upon demand.
- 2.3. The Customer specifically acknowledges that the purchase of Bandwidth from Telkom, Neotel and some of the other Bandwidth providers are subject to a minimum 12 month commitment for which the Customer shall be liable.

3. THE SERVICES

- 3.1. The Supplier shall provide the Customer with the services at the rates/ tariffs set out in the Order Form.
- 3.2. Ownership of any equipment installed at the Customer's premises, not purchased by the Customer, including but not limited to rented equipment, shall remain the sole and exclusive property of the Supplier. Risk in the equipment shall pass to the Customer on installation and the Customer shall be liable for any loss or theft or misuse of and/or damage to the equipment. No ownership of the equipment shall pass to the Customer in any manner or form. The Customer shall identify such equipment on its lease agreement with its landlord and ensure that it is not subject to any attachment or hypothec. The equipment may not be encumbered by the Customer in any manner or form. The Customer may be required to insure the equipment in the amount that may be specified by the Supplier, from time to time.
- 3.3. Should the Customer purchase equipment from the Supplier, ownership of the equipment shall pass on payment.
- 3.4. The Customer shall be liable for the costs of the configuration of its PABX by its PABX vendor. Should an On-Site Gateway be required, and should the Cellular Network signal at the Customer's premises, where the equipment is to be installed, be insufficient, the Supplier shall provide a quotation to the Customer to install antennae, cabling and boosters at the Customer's premises. Should the Customer accept the quotation, the cost of the equipment and installation shall be for the Customer's account. Risk in and ownership of the antennae, cabling and booster shall pass to the Customer on the latter of installation and payment.
- 3.5. The Supplier shall maintain and repair the Supplier's equipment free of charge. Should the Supplier and/or Saicom Voice Services (Pty) Ltd be required to visit the premises of the Customer to repair or re-configure the equipment and should it transpire that there was nothing wrong with such equipment or configuration, then, the Customer shall be liable for the Supplier's standard call out and travelling fees.
- 3.6. The Customer shall allow the Supplier or its approved representative to carry out such work to the equipment as is necessary to effect configuration, installation, maintenance and repair and indemnifies the Supplier its directors, employees, agents or approved representatives against all damage, damages, costs and expenses incurred or suffered by such entities in doing so as well as against any claims of whatsoever nature that the Customer might have against the Supplier as a result thereof.
- 3.7. The Supplier shall use its reasonable endeavours to ensure that the services are made available to the Customer throughout the subsistence of this agreement, in so far as such elements are within the reasonable control of the Supplier.

4. FEES

- 4.1. The Customer shall be liable to the Supplier for its usage of telephony minutes at the rates stipulated in the proposal.
- 4.2. Premium numbers which attract charges above the standard Telkom or Cellular rates will be billed for separately, at the cost price thereof plus a premium for administration charges.
- 4.3. The Supplier will ensure that invoicing will be processed and delivered monthly in arrears, and all invoices for the Services shall be settled by the Customer within 15 days of receipt of the invoice.
- 4.4. Credit and payment terms agreed to between Saicom and the customer are subject to a full credit approval process to be completed by CGIC.
- 4.5. Any amount falling due for payment by the Customer to the Supplier in terms of or pursuant to this Agreement which is not paid on its due date shall bear interest calculated from the due date for payment thereof until date of payment, at a rate equal to three percentage points above the prime overdraft rate charged by Standard Bank Limited from time to time.
- 4.6. The Supplier shall be entitled, on 30 (thirty) days prior written notice thereof to the Customer, to increase the fees payable by the Customer to the Supplier set out in the proposal based on a combination of CPI, Cellular Network Provider price/rate adjustments, bandwidth pricing and MPLS pricing.

5. CUSTOMER ACKNOWLEDGEMENT

The Customer acknowledges and agrees that:

- 5.1. It is responsible for all telephony traffic that comes from its own IP address, regardless of whether the Customer has sent such traffic or whether the customer's system has been penetrated, abused or hacked.
- 5.2. It shall keep all of its systems secure and its passwords sufficiently complex to prevent hacking.
- 5.3. That the hacking of phone systems is a major problem and that third parties are continually attempting to hack into PBX and phone systems in order to transmit fraudulent traffic. The Customer acknowledges that it will take all necessary measures to protect its systems from such attacks and abuse and that it shall be liable to the Supplier for any traffic which emanates from its phone system and IP address.
- 5.4. It shall indemnify the Supplier against any loss suffered by the Supplier as a result of any use, hacking or mis-use of the Customers phone system.
- 5.5. The Supplier may attempt to limit such loss from hacking by blocking certain number ranges and/or country codes. Notwithstanding such attempts by the Supplier to prevent such fraud, it shall in no way be held liable should it fail to prevent any such fraud and the Customer remains solely and absolutely liable in respect of all traffic sent to the Supplier from its telephony system.
- 5.6. Service quality and coverage available to the Customer shall be limited to that provided by the Cellular Network Providers and the services may from time to time be adversely affected by physical features such as buildings and underpasses as well as atmospheric conditions, network congestion, network quality and other causes of interference.
- 5.7. It shall not hold the Supplier, any of its employees, directors or agents liable for any non-availability of the services or for any other reason.
- 5.8. The Supplier gives no warranties, representations, guarantees or undertakings express or implied, concerning the equipment and/or the services. Neither the Supplier, nor its directors, shareholders, any of its subsidiaries, sub-contractors, employees, affiliates or agents shall be liable or responsible for any loss or damage of whatsoever nature or howsoever arising in consequence of any act or omission by the Supplier, their directors, shareholders, its subsidiaries, sub-contractors, employees, affiliates or agents in the supply or failure of the equipment and/or the services or otherwise, irrespective of whether such loss or damage is attributable to the fault or negligence of the Supplier, its directors, shareholders, its subsidiaries, sub-contractors, employees, affiliates or agents.
- 5.9. The Customer hereby indemnifies the Supplier against any damage or loss of whatsoever nature suffered by the Customer and/or any other third party arising as a result of the installation and/or the provision of the services, including such damage or loss arising as a result of negligence.
- 5.10. Subject to the foregoing provisions of this clause, the liability of the Supplier whether in contract, delict or otherwise, shall not exceed a sum equal to one months billing payable by the Customer to the Supplier at the date of the claim.

- 5.11. The Customer hereby indemnifies the Supplier against any damage or loss of whatsoever nature suffered by the Customer and/or any other third party by reason of any illness or personal injury of whatever nature, whether foreseeable or not, suffered by the Customer and/or such third party as a result of the use of the equipment and or the services, including such damage or loss arising as a result of network or hardware manufacturer's negligence.
- 6. USE OF THE SERVICES**
It is recorded and agreed that the Customer is aware, and has the obligation at all times for the duration of this agreement to remain aware of all statutory or other regulatory provisions relating to fixed line, data and wireless telegraphy and telecommunications services applying to the provision and use of the services via the equipment supplied from time to time, and that the Customer undertakes to comply at all times with all such statutory or other regulatory provisions. In addition, the Customer shall comply with any reasonable instructions issued by the Supplier which concern the Customer's use of the services, the equipment or related matters, and provide the Supplier with all such necessary information that the Supplier may reasonably require.
- 7. SUSPENSION/DISCONNECTION**
- 7.1. The Supplier shall be entitled from time to time and with 7 (seven) days written notice suspend the services (and in the Supplier's discretion disconnect the equipment from the system) in any of the following circumstances:
during any technical failure, modification or maintenance of the system, provided that the Supplier will use its reasonable endeavours to procure the resumption of the services as soon as reasonably practicable; or
if the Customer fails to comply with any of the terms and conditions of this agreement (including failure to pay any charges due) until the breach (if capable of remedy) is remedied, or if the Customer does, or allows to be done, anything which in the Supplier's reasonable opinion may have negatively affected the operation of the services, and fails to remedy such breach within 7 (seven) days of receipt of written demand to that effect from the Supplier.
- 7.2. Notwithstanding any suspension of the services in terms of this clause, the Customer shall remain liable for all charges due hereunder throughout the period of suspension unless the Supplier in its sole discretion confirms otherwise, in writing.
- 8. TERMINATION**
- 8.1. In the event that the Customer breaches any term of this agreement or any warranty given by it hereunder or fails to fulfil any obligation resting upon it, then without prejudice to the Supplier's other rights in terms of this agreement or the common law, the Supplier may forthwith and after the expiry of the 7 (seven) days' notice period given to the Customer to remedy such breach, either terminate this agreement or call for specific performance of all the Customer's obligations and immediate payment of all sums payable by the Customer to the Supplier in terms of this agreement for the duration of this agreement, whether or not then due, in either event without prejudice to the Supplier's right to recover such damages as it may have suffered by reason of such breach or failure. Notwithstanding the foregoing and pending the Supplier's election in terms of this clause, the Supplier shall not be obliged to perform any of its obligations under this agreement and the Customer shall remain liable for the payment of all amounts owing by the Customer in terms of this agreement whether or not such amounts are then due.
- 8.2. The Supplier may, without notice, terminate this agreement immediately upon the happening of any of the following circumstances:
if the Customer fails to pay any amount owing to the Supplier on due date and fails to make such payment within 7 (seven) days of receipt of written demand thereof from the Supplier;
if the Customer makes or offers any arrangement or composition with its creditors or commits any act of insolvency in terms of the Insolvency Act, 1936, or any act which would have been an act of insolvency had it been committed by a natural person or if any petition or application for sequestration, liquidation, winding-up or judicial management is presented by or made against the Customer, or if any resolution to wind-up the Customer is passed or if a receiver, trustee or curator is appointed over the whole or any part of the Customer's assets or estate or if the Supplier anticipates that any of the events as set out in this clause, are imminent;
if the Customer does or allows to be done anything which in the Supplier's opinion will or may have the effect of negatively affecting the operation of the services, and fails to remedy such breach within 7 (seven) days of receipt of written demand to that effect from the Supplier.
- 8.3. Upon termination of this agreement for any reason whatsoever, the Supplier shall disconnect and remove the equipment. After disconnection of the equipment consequent upon termination of this agreement, the Customer shall pay on demand all charges outstanding at the time of disconnection.
- 8.4. Should the Customer cancel the agreement prior to the expiry of the initial contract term for any reason other than legally provided for in this agreement, the Customer shall be liable for all amounts that would have been owing should the Customer have fulfilled all of its obligations under this agreement as well as a disconnection fee of R5000.
- 9. ASSIGNMENT**
- 9.1. The Customer shall not be entitled to cede, assign, transfer, encumber or delegate any of its rights or obligations in terms of this agreement to any third party without the Supplier's prior written consent.
- 9.2. The Supplier 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 without the Customer's consent and if, for any reason whatsoever, the consent of the Customer may be required, the Customer shall be deemed to have consented thereto in terms of this agreement.
- 10. EXCUSABLE EVENTS**
- 10.1. Neither Party shall be liable to the other for non-performance under this Agreement to the extent to which the non-performance is caused by events or conditions beyond the control of such party, provided that each party makes all reasonable efforts to perform. It is expressly recorded that for purposes of this clause the following shall be considered circumstances beyond the control of the parties and the force majeure provisions shall apply:-
a Cellular Provider or Telkom fault that affects the Service/s; and/or
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, flood, storm or fire.
- 11. WHOLE AGREEMENT**
This agreement constitutes the whole agreement between the parties as to the subject matter hereof and no agreements, representations or warranties between the parties regarding the subject matter hereof other than those set out herein, the order form and the proposal from the Supplier to the Customer are binding on the parties. No agreement to vary, add to or cancel this Agreement shall be of any force or effect unless reduced to writing and signed on behalf of all the Parties to this Agreement. In the event of any conflict of these terms and conditions and any other contract, the terms of these Terms and Conditions shall prevail. Notwithstanding anything else contained in any other agreement between the parties, the Customer shall under no circumstances be entitled to withhold any payment for any reason whatsoever and any dispute as to the delivery of goods and/or the quality of service shall be dealt with in terms of the mediation clause below.
- 12. NOTICES AND DOMICILIA**
- 12.1. The Customer hereby chooses as its domicilium citandi et executandi the addresses recorded on the order form.
- 12.2. Unless otherwise agreed by the parties, any notice to be given to the Customer shall be valid and effective only if it is given in writing, provided that any notice given by e-mail or telefax shall be regarded for this purpose as having been given in writing.
- 12.3. Any notice which is delivered by the Supplier to the Customer at its domicilium citandi et executandi shall be deemed to have been received on the day of delivery, provided it was delivered to a responsible person during normal business hours.
- 12.4. Any notice which is sent by e-mail or telefax to the Customer at the e-mail or telefax number shall be deemed to have been received on the next business day following transmission.
- 13. CERTIFICATE & COSTS & SET-OFF**
- 13.1. A statement signed by a manager of the Supplier, whose appointment it shall not be necessary to prove, specifying the amounts due, owing and payable by the Customer in terms of this agreement, from time to time, shall be prima facie proof of its contents, and sufficient for all purposes, including obtaining judgment and provisional sentence against the Customer.
- 13.2. The Customer shall repay to the Supplier on demand all costs the Supplier actually incurs as a result of the Customer's failure to comply with the terms and conditions of this agreement and/or the cancellation hereof including all legal costs on an attorney and own client scale.
- 13.3. The Customer shall not be entitled to set off any amount/s that may be owing to it by the Supplier against any amount it owes or may owe the Supplier in terms of this agreement.
- 14. MEDIATION**
Any dispute arising out of or in terms of This Agreement, including, but not limited to, its implementation, execution, interpretation, rectification, termination or cancellation shall be settled by a mediator agreed between the Parties or failing such agreement appointed by the Chairperson of the Supplier's auditors, from time to time. The mediator's decision, including a decision as to the costs of the matter shall be final and binding upon the Parties. Notwithstanding any cancellation of the agreement, the provisions of this clause shall continue to be binding on the parties.
- 15. SEVERABILITY**
In the event of any one or more of these terms and conditions being unenforceable, it will be deemed to be severable from the remainder of this agreement, which will nevertheless be binding and enforceable.
- 16. CONSENT**

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The Customer consents to the Supplier or its cessionary making enquiries about the Customer's credit record with any credit reference agency and any other party to confirm the details on this application.

17. INTERNET & HOSTING SERVICES

- 17.1. By using our services you explicitly agree to not knowingly create, store or disseminate any illegal content
- 17.2. You agree to commit to lawful conduct in the use of the services, including copyright and intellectual property rights
- 17.3. You make an undertaking not to send or promote the sending of spam.
- 17.4. We reserve the right to remove any content hosted by you which we consider illegal or for which we have received a take-down notice.
- 17.5. We reserve the right to suspend or terminate the services of any customer that does not comply with these Terms and Conditions, Acceptable Use Policy or any other contractual obligations.