

Terms and Conditions

1. Definitions

In the Agreement, unless inconsistent or otherwise indicated by the context, the following terms shall bear the following meanings:

- 1.1 "Agreement" The Subscriber application form setting out the Subscriber's details, together with all annexures attached thereto, and the Subscriber terms and conditions.
- 1.2 "Application form" the Subscriber application that displays all the details of the Subscriber that will form part of this Agreement.
- 1.3 "Charges" The connection charges, monthly service charges, usage charges and any other charges pertaining to the provision of the Services and any other services provided to the Subscriber in terms of the Agreement.
- 1.4 "Commissioning of the Services" Completion of installation and tests by network installation technicians confirming that the service is operational and connectivity is provided between the two end points.
- 1.5 "Delegated Service Provider" Any Reseller who has been appointed by the Service Provider and who performs credit vetting, approves, concludes agreements, and directly bills the Subscriber or end user of the Services.
- 1.6 "Effective Date" Notwithstanding the date of signature of the application form, the date of commissioning of the Services.
- 1.7 "EFT" Electronic Fund Transfer.
- 1.8 "Initial Period" A period as indicated on the application form, commencing on the effective date.
- 1.9 "Installation" The installation of terminal equipment on a location or Subscriber laptop/desktop or similar device specified by the Subscriber in an order.
- 1.10 "Internet" The interconnected system of networks that connect computers around the world via the TCP/IP protocol.
- 1.11 "Licence" The national mobile data telecommunication licence granted to the Network Operator/Service Provider to provide a national mobile data telecommunication service by means of a mobile data network.
- 1.12 "Services" includes but not limited to: Voice Over Internet Protocol (VOIP), Worldwide Interoperability for Microwave Access (WiMAX), Internet Access, virtual private network services (VPN), Broadband and dedicated wireless access services, fixed line access services, corporate managed data network services, value-added Internet Protocol ("IP") services, closed user group and video conferencing services made accessible to the Subscriber by Service Provider in terms of the Agreement.
- 1.13 "Mobile Access Numbers" The mobile access numbers, IP address, unique user name or subscription numbers used to identify Subscribers having access to the Services.
- 1.14 "Network Operator" one or many of the licensed network operators contracted by Online Direct to deliver service which has granted Service Provider authorisation to make the Services available to the Subscriber.
- 1.15 "Order" An order placed by a Subscriber on Service Provider for the provision of the Services.
- 1.16 "Parties" Service Provider/Network Operator and Subscriber and "Party" refers to either of them as so determined by the context.
- 1.17 "Renewal Period" A period as indicated on the Subscriber application form, commencing on the day immediately following the expiration of the Initial Period, or an anniversary of the expiration period, as the case may be.
- 1.18 "Service Provider" Online Direct (Pty) Ltd.
- 1.19 "Subscriber" Any party to whom the Services are made available in terms of the Agreement, including a Delegated Service Provider who on-sells the Services service and bills the end user directly.

1.20 "Terminal Equipment" any equipment provisioned and supplied by the Service Provider.

1.21 "VAT" Value Added Tax has provided in the Value Added Tax act 89 of 1991.

Part 1: General Terms and Conditions

2. Commencement and termination

2.1 The Agreement shall commence on the effective date and shall, subject to the provisions of clause 7 and 8 below, continue for the Initial Period, and thereafter continue based on the Renewal Periods unless terminated:

2.1.2 By the Subscriber, on expiration of the Initial Period or a Renewal Period, as the case may be, by giving to the Service Provider a written notice of termination not less than one calendar month and not more than 90 days before the expiration of the Initial Period or the Renewal Period, as the case may be; and/or

2.1.3 By Service Provider, on written notice to the Subscriber in the event of the authorisation issued by the Network Operator in terms of which the Service Provider is authorised and empowered to give the Subscriber access to the Services is terminated for whatsoever reason.

2.2 Notwithstanding the use of agents or other intermediaries (Delegated Service Providers) by Service Provider, the order by the Subscriber is an offer made by the Subscriber to the Service Provider and will be considered once received by Service Provider. The Service Provider's acceptance of the offer shall consist of the commissioning of the Services as contemplated in clause 1.4, and upon which activation the Agreement shall become binding between the Service Provider and the Subscriber whether or not the Subscriber was notified of the acceptance of the offer. The Subscriber hereby expressly dispenses with notification of acceptance of the offer by the Service Provider.

2.3 The Subscriber may not cancel or terminate the Agreement and demand reimbursement for any damages of whatsoever nature as a result of the Subscriber's relocation to an area outside of Service Provider's coverage. In the event where the Subscriber terminates the Agreement, he or she shall be liable for the remainder of the Agreement.

2.4 At the time the Subscriber signs the Application form or Order for the provision of Services, the Subscriber agrees that he or she is entering into a legally binding Agreement.

3. Supply and installation of terminal equipment and Services

3.1 The order placed by the Subscriber on Service Provider or Delegated Service Provider is subject to Service Provider's approval in its sole discretion. If the Service Provider does not approve the order, it shall not be under any obligation to the Subscriber to give reasons for its decision.

3.2 The Service Provider shall utilise its best endeavours to promptly comply with any supply and/or delivery and/or installation requirements recorded in the order but shall not be liable to the Subscriber in the event that such supply and/or delivery and/or installation is delayed or cancelled, for whatsoever reason. The Service Provider may in its discretion refer the Subscriber to a third party who may undertake the installation of the terminal equipment in its own name and behalf and not as an agent of the Service Provider.

3.3 The Subscriber shall be responsible for obtaining all necessary approvals and authorities imposed by any competent authority and required for the purpose of any such supply and/or delivery and/or installation, and the Subscriber hereby indemnifies Service Provider against any claim or liability suffered by Service Provider by reason of such approval and authorities not having been obtained.

3.4 The Subscriber acknowledges that the Service Provider may change or alter the Terminal Equipment to keep up with technology evolution for the provision of the Services.

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 terminal equipment provided by 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 terminal equipment and the provision of Services.

3.5.3 Recognises that no right, title or interest in the software contained in the terminal equipment issued to the Subscriber vests in the Subscriber.

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 terminal equipment.

4. Charges

4.1 In consideration for the provision of the Services, terminal equipment and any other services supplied by Service Provider to the Subscriber, the Subscriber shall effect payment to Service Provider of the applicable charges, as detailed in the application form and whether or not the Services have been, or are being utilised by the Subscriber.

4.2 The Service Provider may, by mutual agreement, vary future charges, either in whole or in part, with effect from the date specified in such notice.

4.3 Unless otherwise agreed to by Service Provider in writing, the Subscriber shall effect payment to the Service Provider:

4.3.1 for the installation on presentation of invoice and against commissioning of the Services.

4.3.2 of monthly service charges monthly in advance within 21 days from date of the relevant invoice.

4.3.3 via an EFT and the Subscriber shall have discharged its obligations only upon payment being received by Service Provider.

4.4 Notwithstanding the provisions of clause 4.3, Service Provider may at any time on reasonable written notice to the Subscriber vary its invoicing and payment procedures and requirements.

4.5 In the event that Service Provider requires payment for the services provided to the Subscriber to be made by EFT, the Subscriber will commit a breach of the Agreement if the Subscriber:

4.5.1 Fails to honour the payment without the written consent of Service Provider.

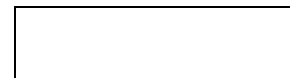
4.5.2 Provides the Service provider with incorrect payment amount.

4.6 The monthly statement shall be sent by Service Provider to the Subscriber at the e-mail address supplied by the Subscriber in the application form in writing to Service Provider. It shall be the duty of the Subscriber to check the statement in order to ensure that the contents thereof are correct. Unless a query is raised in respect of the contents of the statement within 30 days from the date thereof, the contents of the statement shall be deemed to be correct.

4.7 Any migration from one service to another shall for the duration of this agreement be subject to Service Provider's approval in its discretion and Service Provider shall be entitled to levy fees for migrations, but which fees may not exceed the amounts approved or fixed by the responsible regulatory authority from time to time.

4.8 The Service Provider reserves the right to charge a cancellation penalty.

4.9 The Subscriber shall ensure that the Equipment is installed to the Subscriber's satisfaction before commencement of billing and once the Subscriber has signed off, the Service Provider will accept that the Subscriber is satisfied with the aforesaid installation.



Terms and Conditions

5. Suspension

5.1 Service Provider may at any time, suspend the Subscriber's access to the Services in the event that:

5.1.1 Any modification, maintenance or remedial work is required to be undertaken pertaining in any manner whatsoever, to the Services or the Network. Service Provider will endeavour to inform the Subscriber timeously, in the event of planned maintenance.

5.1.2 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 Subscriber's use of the terminal equipment).

5.2 Service Provider reserves the right to require the Subscriber to effect payment of any applicable reconnection charges pursuant to the restoration of the Services suspended in the circumstances contemplated in clause 5.1.2. In the event that the Subscriber's access to the Network is suspended, the Subscriber shall still be liable for the monthly service charges during any such period of suspension.

5.3 Notwithstanding the provision of the Services to the Subscriber, the terminal equipment shall remain the property of the Service Provider.

5.4 The Service Provider shall be entitled to use the terminal equipment installed at any site for the provision of the Services to other Subscribers other than the Subscriber to this Agreement.

6. Limitation of 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 and whether the same is direct or consequential, in the event that:

6.1.1 Service Provider fails for any reason whatsoever to supply and/or deliver and/or provide installation of any terminal equipment either on the required date or at all; and/or

6.1.2 The Services are interrupted, suspended or terminated for whatsoever reason; and/or

6.1.3 Service Provider fails to suspend the provision of the Services to the Subscriber in terms of an arrangement between Service Provider and the Subscriber or after the Subscriber has specifically requested Service Provider to do so in order to limit the charges; and/or

6.1.4 Such loss or damage was caused by any negligent act or omission on the part of Service Provider, its employees or its agents.

6.1.5 The Service Provider shall not be responsible for any losses or damages caused by 3rd party suppliers.

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 ("notice of breach") 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 either terminate the Agreement or claim specific performance of all of the Subscriber's obligations, including the immediate payment of all sums of money payable by the Subscriber, 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 clause 7.1 above, the Service Provider may forthwith terminate the Agreement at any time by giving Subscriber written notice of such termination if (i) the Subscriber fails to make payment of any charges on or before the due date for payment thereof; and/or (ii) the Subscriber within a 12-month period calculated from a notice of breach, receives a further two notices of breach; or (iii) in the event that the Subscriber is sequestered, liquidated or placed under judicial management, irrespective of whether any of the aforesaid are provisional or final; or voluntary or compulsory.

7.3 Any termination pursuant to the preceding provisions

of this clause shall be without prejudice to any claim the Service Provider may have against the Subscriber in respect of any prior breach of the terms and conditions of the Agreement by the Subscriber.

7.4 Without derogating from any other rights or remedies available to the Service Provider in terms of the Agreement or at law, in the event of the Agreement being cancelled by the Subscriber (for whatsoever reason) prior to the expiry of the Initial Period or any Renewal Period, or in the event of the Service Provider electing to terminate the Agreement pursuant to any breach by the Subscriber which entitles the Service Provider to cancel:

7.4.1 The Subscriber shall be liable to the Service Provider and hereby agrees to pay on demand, the full charges payable to the Service Provider for the remainder of the Initial Period or Renewal Period, as the case may be.

8. General

8.1 In the event of the Subscriber failing to effect payment of any amount owing by them to Service Provider on due date, then without derogating from Service Provider rights in terms of clause 7, 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 Nedbank Limited plus 2% (percent), from due date to date of payment.

8.2 Unless specifically stated otherwise, all prices and charges set out in the Agreement and any price list are exclusive of Value-Added Tax and exclusive of any other applicable tax or duty, the liability of which shall vest with the Subscriber.

8.3 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.

8.4 Service Provider may change the terms and conditions of this agreement as a result of changes in taxes, laws, regulations, the terms and conditions of the licence issued to Network operators, the terms and conditions of any agreement between Network operator and Service Provider or any circumstances or events similar to the foregoing. Service Provider shall notify the Subscriber of any changes as contemplated herein in writing.

8.5 A certificate under the hand of any Manager of Service Provider 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.

8.6 In the event of either Party instituting legal proceedings against the other Party, the Party instituting legal action shall be liable for its own legal costs.

8.7 Should the Subscriber be placed under administration, sequestration or liquidation proceedings, or suffer any other legal disability which will negatively affect the Subscriber's ability to make payment to the Service provider, the Subscriber is required to notify the Service Provider, in writing within 7 (seven) days of occurrence of the afore-mentioned events.

8.8 The Service Provider shall not be liable for matters including but not limited to; any additional labour and equipment costs such as cabling, plug points.

9. Consent/Authority

9.1 The Subscriber hereby consents/authorises Service Provider to disclose the Subscriber's name, address and personal details to the Service Provider whenever it is reasonably necessary for Service Provider to properly perform its functions or protect its interests, or for the purpose of enabling the Network Operator or Service Provider to provide emergency Services to the Subscriber.

9.2 The Subscriber hereby consents/authorises Service Provider at any time, with written permission from the Subscriber to obtain information about the Subscriber's profile from any authorised and registered credit reference agency in the Republic of South Africa.

9.3 The Subscriber consents/authorises the Service Provider to provide regular reports in respect of Subscriber's payment conduct to any authorised and registered credit reference agency in the Republic of South Africa.

9.4 The Subscriber consents/authorises receiving marketing, promotional updates and client satisfaction surveys from the Service Provider.

10. Miscellaneous matters

10.1 Postal address:

10.1.1 Any written notice in connection with the Agreement must be addressed for the Attention of the LEGAL DEPARTMENT:

10.1.1.1 In the case of Service Provider to: Online Direct PTY Ltd PO Box 2258, Lonehill, 2062

10.1.1.2 In the case of the Subscriber to the postal address and fax number set out in the Subscriber details application form to which these standard terms and conditions apply, and marked for the attention of the Subscriber.

10.1.2 The notice shall be deemed to have been duly given 7 (seven) days after posting, if posted by registered post to the parties addressed in terms of this sub-clause.

10.1.3 On delivery if delivered to the party's physical address in terms of either this sub-clause or the next sub-clause dealing with service of legal documents.

10.1.4 On dispatch if sent to the party's then fax number and confirmed by registered letter posted no later than the next business day.

10.1.5 Unless the addresser 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.

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

10.2 Address for service of legal documents (notices and domicilia) The parties choose the following physical addresses and fax numbers at which documents and legal proceedings in connection with the Agreement may be served.

10.2.1.1 In the case of Service Provider, to: Online Direct (Pty) Ltd, Address: Block B, Pineslopes Office Park, Forest Road, Fourways marked for the attention of the Legal Department.

10.2.1.2 In the case of the Subscriber, to the physical address and fax number set out in the Subscriber details application form to which these standard terms and conditions are attached and marked for the attention of the Subscriber.

10.2.2 Either party may change its address for the purpose of the Agreement to another physical address in the Republic of South Africa by notice in writing to the other party.

10.2 Entire contract: The Agreement contains all the express provisions agreed on by the parties with regard to the subject matter of the Agreement and the parties waive the right to rely on any alleged express provision not contained in the Agreement.

10.4 No representations: 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.

10.5 Variation, cancellation and waiver: No contract varying, adding to, deleting from or cancelling the Agreement, and no waiver of any rights under the Agreement, shall be effective unless reduced to writing and signed by or on behalf of the parties.

10.6 Indulgences: If either party at any time breaches any of that party's obligations under the Agreement, the other party ("the aggrieved party"):

10.6.1 May at any time after that breach exercise any right that became exercisable directly or indirectly as a result of the breach, unless the aggrieved party has expressly elected in writing of a clear and unambiguous conduct, amounting to more than mere delay, not to exercise the right (if the aggrieved party

Terms and Conditions

is willing to relinquish that right, the aggrieved party will on request do so in writing). In particular, acceptance of late performance shall for a reasonable period after performance be provisional only, and the aggrieved party may still exercise that right during that period.

10.6.2 Shall not be stopped (i.e. prevented) from exercising the aggrieved party's rights arising out of the breach, despite the fact that the aggrieved party may have elected or agreed on one or more previous occasions not to exercise the rights arising out of any similar breach or breaches.

10.7 Applicable law: The Agreement shall be interpreted and implemented in accordance with the laws of the Republic of South Africa.

11. **Blacklisting Clause** The Service Provider may, without prejudice to any other rights which it may have under the Agreement or at law:

11.1 Notify credit bureaus of the Subscriber's default; and

11.2 Blacklist the equipment to prevent the further use thereof. Once the terminal has been blacklisted, the Service Provider shall be entitled to remove or recover the terminal equipment from the site where it is stationed without notice to the Subscriber.

12. **Acknowledgements** The Subscriber acknowledges having read and accepted the terms and conditions of the Acceptable Use Policy on the Online Direct website as well as the terms and conditions as set out herein.

13. **Termination without Cause** Without prejudice to any other rights at law or set out in the Agreement, the Service Provider may terminate the Agreement upon written notice to the Subscriber in the event that the Licence is revoked, terminated or amended for any reason whatsoever.

14.1 **Interception and monitoring of communications.** Subject to the provisions of Regulation of Interception of Communications and Provision of Communication-related information Act (RICA), 70 of 2002 or any law, the Subscriber acknowledges the Service Provider's right to intercept, block, filter, read, delete, disclose and use all communications sent or posted via the Service Provider's network. RICA may be accessed from <http://www.info.gov.za/acts/2002/a70-2002>.

14.2 The Subscriber acknowledges and agrees that in the event that Service Provider, in its sole discretion or if obliged by any applicable law, determines that any content hosted by Service Provider, published by Service Provider on the Subscriber's behalf or transmitted by the Subscriber by means of the Service(s) ("Content") is in violation of any law or the Acceptable Use Policy, Service Provider shall be entitled –

14.2.1 forthwith to request the Subscriber to remove such Content; and/or

14.2.2 forthwith to require the Subscriber to amend or modify such Content; and/or

14.2.3 without notice to terminate access to any Product(s) and/or Service(s) and/or suspend or terminate any Service(s); and/or

14.2.4 without notice to delete the offending Content.

14.3 The Subscriber acknowledges that any exercise by Service Provider of its rights in terms of clause 14.2 above shall not be construed as an assumption of liability by Service Provider for the Content and/or the publication thereof whether or not Service Provider has knowledge of such Content, having cognisance of the fact that Service Provider and Service Provider have no general obligation in law to monitor Content. The Subscriber hereby indemnifies Service Provider and hold it harmless against any liability, claims, fines or other penalties of whatsoever nature suffered or imposed by any person arising either directly or indirectly out of the Content or the publication or hosting or transmission thereof.

15. Security and Access

Service Provider, Service Provider's employees and/or any of Service Provider's subcontractors shall, at all times, adhere to the Subscriber's security management and site access policies and procedures

as notified to Service Provider in writing from time to time.

16. Confidential Information

16.1 For the duration of this Agreement and a period of 3 (three) years thereafter, each party hereby undertakes to the other to:

16.1.1 keep confidential all information (written or oral) concerning the business and affairs of the other that it shall have obtained or received as a result of the discussions leading up to or entering into or to performance of this Agreement ("the information");

16.1.2 not without the other party's written consent to disclose the information in whole or in part to any other person save those of its employees, agents and sub-contractors involved in the implementation, of this Agreement and who have a need to know the same; and

16.1.3 to use the information solely in connection with the implementation of this Agreement and not for its own or the benefit of any third party; and

16.1.4 protect the confidential information of the providing party using the same standard of care used to safeguard its own confidential information and agrees further to store and handle the confidential information in such a way as to prevent any unauthorised disclosure thereof.

16.2 The provisions of clause 16.1 shall not apply to the whole or any part of the information to the extent that it is:

16.2.1 trivial or obvious;

16.2.2 already in the other's possession other than as a result of a breach of this clause; or

16.2.3 independently developed by one party prior to the execution of this Agreement; or

16.2.4 in the public domain through no fault of the receiving party.

16.3 Each party hereby undertakes to the other to make all relevant employees, agents and sub-contractors aware of the confidentiality of the information and the provisions of this clause 16 and without prejudice to the generality of the foregoing to take all such steps as shall from time to time be necessary to ensure compliance by its employees, agents and sub-contractors with the provisions of this clause 16.

17 PROVISION OF THE SERVICE

Service Provider shall make the Services available to the Subscriber throughout the duration of this Agreement save and except in circumstances beyond the control of Service Provider and subject to the terms and conditions contained herein.

18. RISK AND OWNERSHIP

18.1 The Subscriber acknowledges and agrees that all rights of ownership in and to any Network Equipment shall, at all times, remain vested in Service Provider

18.2 All rights of ownership in and to any Equipment and/or Network Equipment –

18.2.1 supplied by Service Provider on a loan or rental basis, price shall remain vested in Service Provider;

18.2.2 purchased by the Subscriber from Service Provider and supplied by Service Provider either free of charge or at a subsidised price shall remain vested in Service Provider for the duration of the initial period of the Service Schedule in terms of which it is supplied; and

18.2.3 at Service Provider's listed price shall remain vested in Service Provider until the Subscriber has made payment therefore in full to Service Provider.

18.3 All risk in and to –

18.3.1 the Equipment and/or Network Equipment shall pass to the Subscriber on installation thereof in/on/at the Subscriber's premises;

18.3.2 the Equipment and/or Network Equipment shall pass to the Subscriber upon delivery thereof and the Subscriber shall be liable for any and all loss, theft or destruction of or damage thereto, howsoever arising.

18.4 In the event of damage to or the loss, theft or destruction of the Equipment and/or Network Equipment or any portion thereof, the Subscriber shall be obliged to pay to Service Provider the cost of replacing and/or making good the Equipment and/or Network Equipment so damaged, lost, stolen or destroyed.

18.5 The Subscriber undertakes –

18.5.1 to display in relation to the Equipment and/or Network Equipment no lesser degree of care than it would had same belonged to it and shall take all reasonably necessary precautions to avoid loss, theft or destruction of or damage to the Equipment and/or the Network Equipment;

18.5.2 not, in any manner, to alienate, encumber or otherwise dispose of the Equipment and/or the Network Equipment;

18.5.3 not to procure repair or maintenance of the Equipment and/or the Network Equipment by any third party without the prior written consent of Service Provider or in any other manner tamper with the Equipment and/or the Network Equipment.