

CONNECTNET

MASTER SERVICES AGREEMENT

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CONNECTNET BROADBAND WIRELESS (PTY) LIMITED

MASTER SERVICES AGREEMENT

1 INTERPRETATION

- 1.1 In this Agreement the following expressions shall have the following meanings respectively:
- 1.1.1 **“Activation Charge”** - the initial charge for initiating the Service as set out in the Charges;
 - 1.1.2 **“Agreement”** - the terms and conditions as set out herein (“Master Services Agreement”), together with the Service Order(s) and any Service Schedule(s) attached hereto, in terms of which ConnectNet will deliver the Service to the Customer;
 - 1.1.3 **“APN”** - the Access Point Name specifies a point of connectivity between the GSM data network and an external network. ConnectNet’s corporate APN is uniquely named, and access is restricted to only subscribers authorised by ConnectNet;
 - 1.1.4 **“Billing Date”** – the day on which billing for the Service shall commence, being the date of installation or activation of the Service or such other date as agreed to between the Parties;
 - 1.1.5 **“Business Day”** – a day not being a Saturday or Sunday or public holiday in the Republic of South Africa;
 - 1.1.6 **“Business Hours”** - hours that fall within 8 am and 5 pm on any Business Day;
 - 1.1.7 **“Charges”** - the various charges for the Service, including but not limited to the Activation Charge, Installation Charge and Subscription Charge as specified in the Service Order(s) as may be varied or amended in accordance with Clause 10 of this Master Services Agreement, and any other additional Charges for services/products as may be quoted or otherwise notified to the Customer from time to time by ConnectNet;
 - 1.1.8 **“ConnectNet”** - ConnectNet Broadband Wireless Proprietary Limited, Registration Number 2004/005721/07, with registered offices at Lakeside Office Park, 263 West Avenue, Centurion, 0157;
 - 1.1.9 **“Contract Period”** – the duration of the contractual period, in accordance with the tariff option as indicated in the Service Order(s), from the Billing Date applicable to each Service;
 - 1.1.10 **“Customer”** - the party who is named on the first page of this Agreement, Service Order and/or Service Delivery document;
 - 1.1.11 **“Customer Application”** - any hardware and/or software used by the Customer which is capable of a connection to ConnectNet’s Service;
 - 1.1.12 **“Customer Call Centre”** - telephone support provided to Customers by ConnectNet staff or any duly authorised entity on behalf of ConnectNet;

- 1.1.13 **“Customer's Address of Request”** - an address within South Africa specified by the Customer on the Service Order(s), where the Customer requires the installation and/or delivery of the Devices;
- 1.1.14 **“Device”** – the relevant equipment provided to Customer by ConnectNet under the terms and conditions of this Agreement in order to deliver the Service;
- 1.1.15 **“Effective Date”** - the date of last signature to this Agreement;
- 1.1.16 **“GB”** – Gigabytes;
- 1.1.17 **“In-Bundle”** means the minimum amount of data (GSM or Internet Data) that Customer shall be billed for per month in accordance with the Service Order;
- 1.1.18 **“Installation Charge”** - the initial charge for installing the Service and/or delivering the Devices as set out in the Charges;
- 1.1.19 **“KB”** – kilobytes;
- 1.1.20 **“kb/s”** – kilobits per second;
- 1.1.21 **“Out-of-Bundle”** mean all data (GSM or Internet Data) utilized by the Device and/or SIM that exceeds the In-Bundle data limit;
- 1.1.22 **“MB”** – megabyte;
- 1.1.23 **“Party”** - either ConnectNet or the Customer, as the case may be;
- 1.1.24 **“RICA”** - the Regulation of Interception of Communications and Provision of Communication related Information Act No 70 of 2002;
- 1.1.25 **“Service”** – where applicable, the relevant equipment and/or services and/or combination thereof provided to Customer by ConnectNet under the terms and conditions of this Agreement for the conveyance of telecommunication services, which shall include but not be limited to voice Internet access, Devices, SIMs, ConnectNet’s corporate APNs, reselling of 3rd Party Services and/or any other additional Services as may be published from time to time by ConnectNet;
- 1.1.26 **“Service Delivery”** - the document, signed by a duly authorised representative of the Customer, which forms part of this Agreement relating to the delivery, installation and/or provision of Services to the Customer;
- 1.1.27 **“Service Order”** - the document containing an order by the Customer for the provision of the Service, which forms part of this Agreement. A Service Order can be in the form of an instruction issued by a representative of the Customer via e-mail or facsimile;
- 1.1.28 **“Service Schedule”** – the annexure(s) attached to this Master Services Agreement setting out the terms and conditions applicable to the various Services requested by Customer in terms of the Service Order(s);
- 1.1.29 **“SIM (Subscriber Identity Module)”** - the security device which is an integral part of and used in conjunction with the Device which contains all the necessary information and algorithms to authenticate a Customer;

- 1.1.30 **“Subscription Charge”** – the monthly charge to the Customer for the use of the ConnectNet Service as set out in the Charges;
- 1.1.31 **“3rd Party Service”** – the services acquired by ConnectNet from upstream service providers (also referred to as third party service providers) and which is provided to the Customer in its original form or in a repackaged, bundled or linked form as specified in the Service Schedule.
- 1.2 If any provision in the definitions Clause is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definitions Clause, effect shall be given to it as if it were a substantive provision of this Agreement.
- 1.3 All expressions contained in the body of this Agreement shall have the same meaning in all of the Service Schedules and/or addenda attached hereto from time to time.
- 1.4 The headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 1.5 This Agreement shall, unless the context so requires, include any special terms and conditions agreed in writing between ConnectNet and the Customer.
- 1.6 Words importing the singular include the plural and vice versa.
- 1.7 Words importing a gender include any gender.

2 COMPONENTS OF THIS AGREEMENT

- 2.1 The Service Schedule(s) attached to this Agreement shall be deemed to be incorporated herein, and shall form part of this Agreement.
- 2.2 This Agreement shall operate as a severable and distinct agreement in respect of each Service Schedule attached hereto from time to time, and any additional conditions in any such Service Schedule contained shall be deemed to be incorporated herein, and shall form part of this Agreement.
- 2.3 In case of any conflict, unless specifically otherwise provided for, the provisions of this Agreement are to be read in the following order of precedence in relation to that conflict:
 - 2.3.1 In respect of provisions detailing the Services:
 - 2.3.1.1 The Service Schedule(s);
 - 2.3.1.2 The Service Order(s);
 - 2.3.1.3 This Master Services Agreement.
 - 2.3.2 In respect of any other provisions:
 - 2.3.2.1 This Master Services Agreement;
 - 2.3.2.2 The Service Schedule(s).

3 COMMENCEMENT AND DURATION

- 3.1 This Agreement shall commence on the Effective Date and endure indefinitely until terminated by either Party giving not less than 1 (one) calendar month's written notice, provided that such notice may not be given prior to the expiry of all the Contract Periods specified in Service Order(s).
- 3.2 Notwithstanding Clause 3.1, Customer shall have the right to cancel any newly acquired Service within 10 (ten) Business Days of such Service Delivery should the Customer not be satisfied with such Service excluding any 3rd Party Service(s). However, Customer shall be liable for all applicable charges and costs, including all charges that may have been waived by ConnectNet, up to and including the date of cancelation.

4 OBLIGATIONS

- 4.1 ConnectNet undertakes to provide the Service(s), as described in the relevant Service Schedule(s) and Service Order(s) beginning on the Effective Date and continuing for the duration of this Agreement as provided for in Clause 3 above.
- 4.2 Customer undertakes that they shall not nor shall they permit any other person to use the Services for purposes not agreed to between the Parties. Customer acknowledges and agrees that they shall be liable to ConnectNet for any reasonable additional charges levied by ConnectNet in such instances.
- 4.3 The Customer indemnifies ConnectNet against any claims, procedures and expenses arising from any infringement of Clause 4.2 of this Agreement.
- 4.4 Customer hereby agrees to adhere to generally acceptable etiquette when utilizing any of ConnectNet's Services and be bound by ConnectNet's Acceptable Use Policy available on ConnectNet's website www.connectnet.co.za.

5 RICA

- 5.1 Customer shall at its own cost observe and comply with the provisions of RICA concerning the fulfillment of its obligations in relation to this Agreement and comply with any directions issued by ConnectNet in so far as they relate to compliance with the provisions or regulatory conditions of RICA.
- 5.2 Customer does hereby indemnify, hold harmless and absolve ConnectNet against any claims instituted and/or loss suffered by ConnectNet, whether direct or consequential by virtue of the Customer's non-compliance with any regulatory or statutory requirements of RICA.

6 CONNECTNET CALL CENTRE

- 6.1 ConnectNet's Customer Call Centre shall operate during ConnectNet's normal Business Hours.
- 6.2 First line maintenance shall be provided free of charge telephonically. In those cases where the Customer is unwilling to co-operate with the Call

Centre with respect to first line maintenance, the Customer shall be liable for all costs incurred to provide on-site assistance where the maintenance required could have been provided telephonically, or where the fault was caused by any negligence or default on the part of the Customer.

7 BILLING AND PAYMENT

- 7.1 The billing in respect of the Service(s) shall commence on the Billing Date.
- 7.2 Customer hereby acknowledges and accepts that ConnectNet issues financial documents electronically and ConnectNet confirms that such electronically issued financial documents shall comply with the Value-Added Tax Act of 1991 as amended.
- 7.3 The Customer is responsible for the payment of all Charges indicated on the account rendered and shall pay ConnectNet the Charges as specified by ConnectNet without set-off or deduction.
- 7.4 All monies due to ConnectNet in accordance with this Agreement shall be affected by debit order unless otherwise agreed to in writing. Subscription Charges shall be due and payable in advance on the first Business Day of each month or as soon as possible thereafter. All other charges shall be due and payable with immediate effect.

8 PROOF OF INDEBTEDNESS

- 8.1 A certificate purporting to have been signed by a designated manager of ConnectNet, which manager's appointment need not be proved, shall be *prima facie* proof in any court of law of the Customer's indebtedness towards ConnectNet and any other fact referred to therein, including, but not limited to the recovery costs and the replacement cost of any equipment referred to in this agreement.
- 8.2 The invoices and/or statements rendered by ConnectNet and/or any entity on behalf of ConnectNet shall also be *prima facie* proof of the amount of the Customer's indebtedness to ConnectNet and shall be admissible evidence by mere production.

9 INTEREST

- 9.1 ConnectNet shall be entitled to charge interest if an account rendered to a Customer is not paid on or before the due date, up to and including the date of payment at the prevailing maximum interest rate prescribed in terms of the National Credit Act, 34 of 2005.

10 VARIATION OF CHARGES AND TERMS

- 10.1 ConnectNet reserves the right, at its reasonable discretion and without liability, to charge the Customer additional charges should the Customer use the Service otherwise than as specified in the Service Order(s).

- 10.2 ConnectNet may vary, in its reasonable discretion, all or any of its Charges payable hereunder or introduce new Charges from time to time (or otherwise in such a way as ConnectNet deems appropriate).
- 10.3 All Charges hereunder are subject to an annual tariff increases. Such increases shall be effective as of 01 March of each year unless otherwise agreed between the Parties in writing.
- 10.4 ConnectNet reserves the right, without liability, to vary the charges, terms and conditions of this Agreement, at its sole discretion, as a direct result of new legislation, statutory instruments, Government regulations or licenses, or similar events. ConnectNet shall notify Customer of any such variation in writing.
- 10.5 ConnectNet shall notify the Customer of any such escalation or variation in terms of Clauses 10.3 above, in writing in the event that such variation exceeds the annual consumer price index for the previous 12 (twelve) months leading up to the escalation.

11 REBATE OF CHARGES

- 11.1 Where the Service has been wholly and continuously unavailable for an uninterrupted period of 18 (eighteen) Business Hours or more after a failure in the Service has been reported to ConnectNet and such failure is not as a result of:
- 11.1.1 a fault or due to negligence of/by the Customer;
 - 11.1.2 a fault on the Customer Application;
 - 11.1.3 the interruption/unavailability of 3rd Party Service(s);
 - 11.1.4 the Customer being in breach of any of the provisions of the Agreement; and/or
 - 11.1.5 Force Majeure, as more particularly described in Clause 15 below,
- then the Customer may apply to ConnectNet in writing for a rebate of the monthly Subscription Charges appropriate to that period of unavailability and ConnectNet, upon approval, shall credit the Customer, by way of deduction from ConnectNet's next invoice, a pro rata rebate of the Subscription Charge.
- 11.2 Notwithstanding the provisions of Clause 11.1 and without prejudice to the generality of Clause 16, the Customer acknowledges that ConnectNet relies on infrastructure and services obtained from other electronic communications network service and electronic communications service licence holders, and that ConnectNet shall not be liable to the Customer in accordance with this Agreement for the use of such apparatus and/or services provided or leased from any such other licensed operators or any other person or entity, including without limitation voice or data communication services during any period of unavailability.

12 NOTICES AND DOMICILIA

- 12.1 The Parties chooses as their domicilium citandi et executandi, the addresses set out in Clause 12.4 below.

- 12.2 Either Party hereto shall be entitled to change its address from time to time, provided that the change shall only become effective on the 14th (fourteenth) day after receipt of the notice by the addressee.
- 12.3 Any notice or communication required or permitted to be given to a Party in terms of this Agreement shall be valid and effective only if in writing, but it shall be competent to give notice by facsimile transmitted to the facsimile number set out opposite the name of the Party so notified.
- 12.4 For the purpose of this Agreement the Parties' respective addresses shall be:
- 12.4.1 as regards to the **Customer** the address set out in the Service Order document, or at such other address of which the Customer may notify ConnectNet in writing not being a post office box or poste restante.
- 12.4.2 as regards to **ConnectNet**:
- ConnectNet Broadband Wireless,
1st Floor, Lakeside Office Park,
263 West Avenue, Centurion,
0157,
Facsimile number: (012) 663 5184
Contact person: The Managing Director
- 12.5 A notice sent by a Party contained in a correctly addressed envelope shall be deemed to have been received in the case of sub-Clause a) of this Clause on the 10th (tenth) day after posting (unless the contrary is proved) and in the case of sub-Clause b) of this Clause on the day of delivery provided that such notice is:
- 12.6 sent by prepaid registered post to it at its chosen postal address in terms of Clause 12.4; or
- 12.7 delivered by hand to a responsible person during ordinary Business Hours at its chosen physical address in terms of Clause 12.4.
- 12.8 Any notice by telefax to a Party at its telefax number shall be deemed to have been received on the first Business Day after the date of transmission.
- 12.9 Subject to any provision in this Agreement to the contrary, a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen address.

13 SUSPENSION / DISCONNECTION

- 13.1 ConnectNet may elect to suspend the Service(s), and if applicable, disconnect and/or recover the Devices in the event of:
- 13.1.1 failure by the Customer to pay the Charges within ten (10) Business Days after the due date as indicated on the account rendered to the Customer; and/or
- 13.1.2 ConnectNet being entitled to terminate this Agreement.

- 13.2 ConnectNet shall use its reasonable endeavours to ensure there is a minimum disruption to the Service(s) in the event of a technical fault and/or any required maintenance with respect to the Service(s).
- 13.3 Any exercise by ConnectNet of its rights of suspension in respect of an event referred to in Clause 13.1 shall not exclude ConnectNet's right subsequently to terminate this Agreement.
- 13.4 Notwithstanding any suspension of the service in accordance with this Clause the Customer shall remain liable for all charges due to ConnectNet throughout the period of suspension unless ConnectNet at its sole discretion determines otherwise or otherwise provided for in this Agreement.

14 TERMINATION

- 14.1 Without prejudice to any other rights which may accrue before or after any termination:
 - 14.1.1 ConnectNet may terminate this Agreement forthwith in the event that:
 - 14.1.1.1 The Customer hereto is in breach of any of its obligations in accordance with this Agreement and in the case of a remediable breach fails to remedy such breach within 30 (thirty) days of receiving written notice to do so;
 - 14.1.1.2 the Customer makes or offers to make any arrangement or composition with its creditors or commits any act of insolvency in terms of the Insolvency Act 24 of 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 in 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 ConnectNet anticipates that any of the events set out in this Clause are imminent; or
 - 14.1.1.3 the Customer does or allows to do anything which in ConnectNet's reasonable opinion shall or may have the effect of negatively affecting the operation of the Service.
 - 14.1.2 ConnectNet may, if Customer defaults in its payment obligations in accordance with this Agreement:
 - 14.1.2.1 notify credit bureaus of the Customer's default; and/or
 - 14.1.2.2 disconnect or recover the Devices or Services to prevent any further use thereof.
- 14.2 Upon termination of this Agreement ConnectNet shall disconnect the Service and Customer shall return all Devices to ConnectNet within 7 (seven) Business Days from date of such termination. Should Customer fail to return such Devices to ConnectNet, then Customer shall be liable to ConnectNet for the total replacement value of all Devices not returned.

- 14.3 Notwithstanding Clause 14.2 above, Customer may request ConnectNet to recover the Devices in which case Customer shall be liable to ConnectNet for all costs incurred by ConnectNet to recover such Devices.

15 FORCE MAJEURE

- 15.1 The Parties (except in respect of a failure by the Customer to pay any amounts due to ConnectNet) shall not be under any liability for any breach of any provision of the Agreement or any other failure hereunder if and to the extent that such breach or failure is as a result of Acts of God, war (whether declared or not), sabotage, riots, explosion, Government control, restrictions or prohibitions or any other Government act or omission whether local or national, act or default of any licenced electronic communication network service or electronic communication service operator, supplier, agent or subcontractor, industrial disputes of any kind, physical obstacles or atmospheric conditions or any other cause beyond the control of either Party.

16 INDEMNITY

- 16.1 Notwithstanding clause 17 of this Agreement, the Customer hereby unconditionally and irrevocably indemnifies ConnectNet and agrees to indemnify and hold ConnectNet harmless against all loss, damages, claims, liability and/or costs, of whatsoever nature, howsoever and whensoever arising, suffered or incurred by ConnectNet as a result of any claim instituted against ConnectNet by a third party as a result of (without limitation):
- 16.1.1 the Customer's use of ConnectNet's Services other than as allowed or prescribed in the Agreement;
- 16.1.2 any other cause whatsoever relating to the Agreement or the provision of Services to the Customer where her/she have acted wrongfully or failed to act when the Customer had a duty to so act.

17 LIABILITY

- 17.1 Save to the extent otherwise provided for in this Agreement or where the Customer is entitled to rely on or receive, by operation of law, any representations, warranties or guarantees, ConnectNet do not make or provide any express or implied representations, warranties or guarantees regarding the availability, accuracy, reliability, timeliness, quality or security of any product or Service.
- 17.2 ConnectNet shall perform its obligations hereunder with a reasonable degree of skill and care.
- 17.3 Neither Party shall incur any liability for any loss or damages to the property or injury to the other Party or a third party, arising out of the performance of this Agreement, whether direct or indirect, consequential or contingent, provided that any loss directly or indirectly attributable to the gross negligence of ConnectNet or any product liability provided for in the Consumer Protection Act 68 of 2008, is excluded.
- 17.4 In any event, to the extent that a competent court or tribunal or other competent dispute resolution body or authority finally determines,

notwithstanding the exclusion contained in this Clause, that ConnectNet is liable to the Customer for any damages, ConnectNet's liability to the Customer for any damages howsoever arising shall be limited to the amounts paid by the Customer under this Agreement in consideration for a Service during the immediately preceding 12 (twelve) month period in respect of the Service which gave rise to the liability in question, provided that in no instance will ConnectNet's liability exceed R 100 000.00.

- 17.5 ConnectNet shall not be liable for and the Customer will have no claim of whatsoever nature against ConnectNet as a result of:
- 17.5.1 any unavailability of, or interruption in the Service due to a Force Majeure event in accordance with Clause 15 of this Agreement;
 - 17.5.2 any damage, loss, cost or claim which the Customer may suffer or incur arising from any suspension or termination of the Service/s for any reason contemplated in this Agreement.
- 17.6 The provisions of this Clause shall continue to apply notwithstanding the termination or expiry of this Agreement.

18 ASSIGNMENT

- 18.1 The Customer may not cede, transfer, assign or delegate or otherwise deal with all or any of its rights and obligations in accordance with this Agreement except with ConnectNet's prior written consent, such consent not to be unreasonably withheld.
- 18.2 ConnectNet shall be entitled, at any time, to cede, transfer, assign or delegate or otherwise deal with all or any of its rights and obligations in accordance with this Agreement to any other juristic or natural person, without the Customer's consent.

19 REPRESENTATION

- 19.1 The Parties agree that this Agreement is the complete and exclusive statement of the Agreement between the Parties which supersedes all understandings or prior agreements oral or written, and all representations or other communications between the Parties relating to the subject matter of this Agreement.

20 SURETYSHIP

- 20.1 Where a company or closed corporation is the Customer, the person signing the Service Order document, in his/her capacity as a director of a company or a member of a closed corporation, accepts, acknowledges and agrees that he/she is liable in his/her personal capacity for all outstanding monies owed to ConnectNet in the event that the company or closed corporation (the Customer) fails, for whatever reason, to pay all the outstanding charges.

21 COST OF ACTION

- 21.1 Should either Party take legal action against the other Party in respect of this Agreement, the losing Party shall be responsible for payment of all legal

costs incurred by the successful Party on a scale as between attorney and own client.

22 LAW

- 22.1 This Agreement shall be governed by and construed in accordance with South African law and the Parties hereby consent to the jurisdiction of the South African Courts.