

HD Telecoms

Global Pact Trading 674(Pty) Ltd

Reg Nr: 2009/001533/07

VAT Nr: 4420255590

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Terms and conditions:

1. INTERPRETATION

To the extent that the Agreement or any goods and services provided under the Agreement Documents are governed by the Consumer Protection Act, 2008 no provision of the Agreement is intended to contravene the applicable provisions of the Consumer Protection Act, and therefore all provisions of the Agreement must be treated as qualified, to the extent necessary, to ensure that the applicable provisions of the Consumer Protection Act are complied with.

- 1.1 "Agreement" these terms and conditions as read together with the schedule on the face hereof.
- 1.2 "Call Tarrif" the tariffs charged by HD Telecoms in respect of local, national, international and mobile calls made constitute part of the services.
- 1.3 "Effective Date" the date on which HD Telecoms accepts the contract conditions and signs the subscriber agreement.
- 1.4 "HD Telecoms" is Global Pact Trading 674 (Pty) Ltd, with registration number 2009/001533/07 and includes its subsidiaries, partners, resellers and agents selling products and services.
- 1.5 "Network Operations" refers to iBurst, Sentek, Leadtek, Vodacom, MTN, Cell C or Telkom and/or other data and voice carriers that HD Telecoms directly or indirectly interconnects with.
- 1.6 "Network" the internet or telecommunications network operated by the Network Operators.
- 1.7 "Pop site" means utilizing the subscriber's site to install equipment to upgrade connectivity to the benefit of the subscriber.
- 1.8 "Services" the Voice and Data services which are selected and agreed upon on the face hereof and on the attached Subscriber Agreement/s and any ancillary services related thereto, which services are provided subject to the service level agreement entered into between the parties
- 1.9 "Subscriber" the Company, Close Corporation, Firm, Partnership, Persons or any Legal Entity contracting to receive the services from HD Telecoms Management in terms of this Agreement.
- 1.10 "Subscriber Agreement/s" means this agreement with the services selected by the subscriber.

2. APPOINTMENT AND TERM

- 2.1 With effect from the date of acceptance hereof by HD Telecoms the subscriber appoints HD Telecoms to provide the services referred to in clause 3 below to the Subscriber in accordance with provisions hereof.
- 2.2 The Subscriber agrees to be bound by the provisions contained in this Subscriber Agreement.
- 2.3 This agreement shall become binding on the effective date.
- 2.4 Termination of the agreement does not relieve the Subscriber of the liability to pay charges for all calls and data usage used by the Subscriber up until the services are disconnected by HD Telecoms.
- 2.5 Upon expiry of the fixed term agreement the parties agree that the agreement will continue on a month to month basis for an indefinite period terminable by either party with 30 days written notice.
- 2.6 If this Agreement is cancelled for any reason, including but not limited to situations where this Agreement is cancelled before the end of the Initial Contract Period upon the face hereof, then the Subscriber will be required to pay HD Telecoms all amounts which are unpaid and which are payable by the Subscriber in terms of this agreement up to the date this Agreement ends. This includes but is not limited to the Charges, the Monthly Services Charges, and the Usage Charges that the Subscriber have incurred up to and including the date that this Agreement ends. The Subscriber will also be required to pay a cancellation charge. This is in addition to the Subscriber's other payment obligation in clause 4 where applicable. The cancellation charges are clearly explained to you in clause 2.7 below.
- 2.7 CANCELLATION CHARGES: these charges will include and be in addition to other applicable charges which may arise, namely all monthly service charges that you should have paid HD Telecoms for the rest of the months of the Initial Contract Period or renewal period ("Early cancellation charges"). The Subscriber specifically agrees that if this Agreement is cancelled for any reason before the end of the Initial Contract Period or Contract Renewal Period, the Subscriber will be liable to pay HD Telecoms for the Early Cancellation Charges and/or lift of suspension/reconnection charges.
The Subscriber agrees that the Subscriber will have to pay all these amounts to HD Telecoms within 30 [Thirty] days of HD Telecoms' demand. The Subscriber confirms that these charges have been explained and that the Subscriber completely understands the consequences of early cancellation of this Agreement.

3. THE "HD TELECOMS" SERVICES

- 3.1 The services are to include the routing of voice and data traffic over the Network:
 - 3.1.1. Voice constitutes all local, national, international and mobile voice or data calls routed through the Network
 - 3.1.2 Data constitutes all data usage routed through the network
- 3.2 HD Telecoms will credit vet prospective customers.
- 3.3 The Subscriber agrees that if, for any reason any of the agreements between the Network Operators and HD Telecoms are terminated so as to have the effect of HD Telecoms not being entitled to or able to render the services, all of the rights and obligations of HD Telecoms

in terms of this agreement may be assigned to any third party service provider as may be approved of in writing by the relevant Network Operators, which approval will not be unreasonably withheld by the Subscriber.

- 3.4 The Subscriber shall be obliged to inform HD Telecoms in writing of any technical changes, personal changes and/or contract detail changes that may affect the operation of the services and updates of call tariff being offered.

4. CHARGES

4.1 The Subscriber shall pay HD Telecoms

4.1.1 Monthly in advance for data and in arrears for voice or as and when billing is passed on by the Network Operator, the total call charges used and/or generated by the Subscriber during each billing period and any other charges payable in respect of the service requested by the Subscriber or other charges levied by HD Telecoms from time to time, and/or

4.1.2 Value added tax at the applicable rate on all variable charges and services. All charges unless otherwise stated exclude value added tax.

4.2 The charges payable by the Subscriber to HD Telecoms for the provision of facilitation of the services shall be stipulated in a notice or applicable call Tariff plan issued by HD Telecoms from time to time and the contents of such notice or Call Tariff Plan including the charges stipulated therein shall be deemed to be incorporated in this agreement as is specifically set out herein.

4.3 The Subscriber agrees that HD Telecoms shall be entitled from time to time to increase or vary the charges payable (as dictated by the Network Operator or by currency fluctuations) by the Subscriber to HD Telecoms for the services. HD Telecoms shall give the Subscriber 30 days' written notice of any such increase or variations.

4.4 HD Telecoms monthly statement of charges shall be adequate proof of the amounts owed by the Subscriber in terms thereof and of the other facts stated therein, and should the Subscriber dispute the number, duration or amounts charged in respect of any call made or service rendered by HD Telecoms, then the Subscriber shall bear the onus of proving that HD Telecoms' statement is incorrect in such respect. Should the subscriber not notify the supplier within 30 days from date of invoice, the amount of the invoice will be deemed as correct.

5. PAYMENT

5.1 The Subscriber agrees that payment is made to HD Telecoms when the monies remitted by the Subscriber have been received into HD Telecoms' bank account. Should any debit order or cheque payment be returned unpaid or stopped or should any charged card account or credit card account of the Subscriber be rejected for whatsoever reason, then HD Telecoms can exercise its rights to suspend the provision of the services due to late or non-payment of any monies due in terms thereof by the Subscriber, then the Subscriber shall be charged interest calculated from the due date for payment thereof until date of payment, at a rate equal to 15.5% per annum, calculated monthly in arrears, as may be levied by HD Telecoms from time to time for each such non-payment, suspension or any other breach of this agreement which amount shall be liable upon demand and recoverable by HD Telecoms.

5.2 Payment for voice is due within 7 days of invoice date. Where payment is effected by debit order, then such payment must be reflected on HD Telecoms direct debit date.

5.3 Non-receipt of invoices by the Subscriber will not be considered as a valid basis for late or non-payments. The Subscriber agrees and acknowledges that a certificate given under the hand of a financial manager or controller of HD Telecoms whose status of authority need not be proved shall be considered adequate proof of the amount due and shall entitle HD Telecoms to apply for judgment against the Subscriber and to obtain summary judgment or provisional sentence, as the case may be.

6. LIMITATION OF RISK AND LIABILITY

6.1 The Subscriber shall allow HD Telecoms or its nominees, access to the Subscribers' premises, with prior notification to the Subscriber, at all reasonable times in order to install, maintain, monitor, inspect, replace or remove the services.

6.2 HD Telecoms undertakes that the services rendered will be provided and maintained during the contract period subject to the service level agreement entered into between the parties.

6.3 Due to the necessity of conduction repair and/or improvement work from time to time on the technical infrastructure by means of which the services are provided, the provision of the services may be suspended from time to time. The subscriber will receive written notification of any proposed suspension to carry out repairs/improvements. HD Telecoms will be exempted from all liability or damage (whether direct or consequential) and/or for any costs, claims or demands of any nature by the Subscriber and/or any third party arising from such suspension.

6.4 The Subscriber shall have no claim of whatsoever nature arising against HD Telecoms, including no right to cancel this agreement or to withhold payment of any monies due in terms hereof should the network temporarily or otherwise fail, malfunction, provide no or poor coverage or should any of the services or facilities provided by the Network Operators or HD Telecoms be temporarily unavailable.

6.5 The Subscriber must pay HD Telecoms for the replacement or repair of damages to HD Telecoms' equipment or facilities caused by the negligence or willful act of the subscriber or user, improper use of the service or any use of equipment or services provided by others.

6.6 This agreement is further subject to the service level agreement entered into between the parties and the provisions contained therein with regards to HD TELECOMS' liability and the rights of the Subscriber contained therein pertaining to the provision of the services must be read in conjunction with this agreement.

7. BREACH

- 7.1 In the event that either party does not comply with the obligations under this Agreement and the other party does not correct the failure to comply after receiving a notice requesting the other party to comply within 20 [Twenty] business days, then the other party may immediately terminate this Agreement.
- 7.2 The subscriber shall repay HD Telecoms on demand all costs which HD Telecoms incurs as a result of the Subscriber's failure to comply with the terms and conditions of this Agreements or any termination hereof, which may include:
 - 7.2.1 costs in connection with tracing you
 - 7.2.2 all legal costs on the attorney client scale
- 7.3 Collection commissions that may legally be recovered from you by HD Telecoms' attorneys or collection agents on amounts collected.
- 7.4 To the extent that is appropriate, the provisions of clause 7 will apply reciprocally to the Subscriber, read with the necessary changes.

8. DOMICILIUM AND GENERAL

- 8.1 The subscriber agrees that the physical address contained on the face on this agreement shall be its domicilium citandi et executandi;
- 8.2 This Agreement constitutes the sole record of the agreement between the parties in regard to the subject matter thereof. Neither party shall be bound by any representation, express nor implied term, promise or the like not recorded herein, and in the Subscriber Agreement/s or reduced to writing and signed by the parties or their representatives. No addition or variation of this Agreement shall be of any force or effect unless in writing and signed by or on behalf of the parties. No indulgence that HD Telecoms may grant to the subscriber shall constitute a waiver of any of HD Telecoms' rights. In this Agreement the singular shall include the plural.
- 8.3 This Agreement shall in all respect be governed and construed in accordance with the laws of the Republic of South Africa, and all disputes, actions and other matters in connection with this Agreement and the signed Subscriber Agreement/s shall be determined in accordance with such laws.
- 8.4 Should any provision of this Agreement be rendered unlawful then that unlawful provision only shall be invalid, without affecting or invalidating any of the remaining provisions of this Agreement, which shall continue to be in full force and effect.
- 8.5 HD Telecoms or the Subscriber is entitled to cede its rights and/or to delegate its obligations arising from these Agreements, wholly or partly to any third party with the prior written consent of the other party.
- 8.6 The subscriber warrants the accuracy of all information furnished by or on behalf of the subscriber in terms of or pursuant to this Agreement. The subscriber shall forthwith notify HD Telecoms in writing of any changes from time to time in the information set out in the schedule on the face hereof.
- 8.7 The parties hereby consent to the jurisdiction of any magistrate court which may exercise jurisdiction over any of the parties in terms of section 28 of the magistrate courts' act 32 of 1944, in respect of any dispute arising from or concerning this Agreement provided that should either party elect to proceed in the High Court it shall be entitled to do so.
- 8.8 HD Telecoms undertakes to treat all subscribers' information as confidential.

9. FORCE MAJEURE (ACTS OF GOD OR ACTS BEYOND THE CONTROL OF THE SUPPLIER)

- 9.1 If HD Telecoms is prevented from or restricted directly or indirectly from carrying on all or any of its obligations under this Agreement and the signed Subscriber Agreements/s due to any reason or cause beyond the control of HD Telecoms or by reason of force majeure, HD Telecoms shall be relieved of its obligations in terms of this Agreement and the relevant signed Subscriber Agreement/s during such period.