

## NASHUA MOBILE (PROPRIETARY) LIMITED (STANDARD TERMS AND CONDITIONS)

### 1. INTERPRETATION AND PRELIMINARY

The headings of the clauses in this agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of, nor modify nor amplify the terms of this agreement nor any clause hereof. Unless a contrary intention clearly appears -

- 1.1 words importing -
  - 1.1.1 any one gender include the other two genders;
  - 1.1.2 the singular include the plural and vice versa; and
  - 1.1.3 natural persons include created entities (corporate or unincorporated) and the state and vice versa;
- 1.2 the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely -
  - 1.2.1 "this agreement" means the agreement contained in this document together with the subscriber application form and all schedules and addenda to this agreement from time to time;
  - 1.2.2 "call charge" means the charge for each call, data transfer and/or short message service ("SMS") text message registered and recorded on the system as having emanated from the equipment / SIM card, calculated at the cost per unit of time utilised by the subscriber, as set out in the schedule of charges;
  - 1.2.3 "charges" means connection charges, monthly access charges, call charges and all other charges payable for the provision of the services published in the schedule of charges from time to time in respect of the services subscribed for by the subscriber;
  - 1.2.4 "charges limit" means the maximum amount of charges which the subscriber may incur in any month as set out in the subscriber application form, or as varied by Nashua Mobile from time to time in accordance with the provisions of Clause 4.8;
  - 1.2.5 "commencement date" means the date of activation of the SIM card(s) on the system; or the commencement date of the service in terms of non-SIM card services (e.g. Corporate APNs, direct connect, or any other wireless services etc)
  - 1.2.6 "connection charge" means the charge payable by the subscriber to Nashua Mobile for connecting the equipment to the system, or the charge for registering the subscriber for use of the services;
  - 1.2.7 "connection date" means the date on which Nashua Mobile connects the equipment to the system and/or allows the subscriber use of the services;
  - 1.2.8 "data services" means, inter alia, electronic document distribution ("EDD"), SmartMail services, internet messaging service ("IMS"), services, the user of the multi-protocol gateway ("MPG"), all technologies as set forth and supplied by the network operators and all such further technological services available from time to time for the communication of data;
  - 1.2.9 "deposit" means the deposit payable by the subscriber to Nashua Mobile as set out in the subscriber application form;
  - 1.2.10 "equipment" means cellular telephones, wireless telephony equipment, telemetry equipment, leased line connectivity, any device connected to the Global System for Mobile Communications ("GSM"), wireless hotspots or internet service providers; and in the event of LCR the equipment comprising a terminal connected to the subscriber's PABX system (where applicable), which in conjunction with the SIM card, and when activated by Nashua Mobile, permits the subscriber access to the services;
  - 1.2.11 "the global network operator(s)" means those operators who have been licensed to operate the system, currently Vodacom Group (Proprietary) Limited ("Vodacom"), Mobile Telephone Networks (Proprietary) Limited ("MTN"), Cell C (Proprietary) Limited ("Cell C") and all other such operators that might be licensed by the competent authorities from time to time;
  - 1.2.12 "initial period" means the initial period set out in the subscriber application form or, in relation to any additional SIM cards delivered to the subscriber after the commencement date, the initial period in respect thereof referred to in 2.2. Unless otherwise specified in the subscriber application form, the initial period is a period of 24 (twenty-four) months calculated from the commencement date;
  - 1.2.13 "LCR" means least cost routing, a mobile or fixed telecommunications solution whereby mobile terminating traffic is routed to a mobile device via the LCR equipment or a direct connection;
  - 1.2.14 "monthly access charge" means the monthly charge payable by the subscriber to Nashua Mobile in respect of each SIM card or solution so as to provide the subscriber access to the services;
  - 1.2.15 "Nashua Mobile" means Nashua Mobile (Proprietary) Limited, a private company duly registered in terms of the Companies Act of the Republic of South Africa under registration number: 1986/004789/07;
  - 1.2.16 "parties" means collectively Nashua Mobile and the subscriber, and "party" shall mean either one of them as the context requires;
  - 1.2.17 "port or porting" means the transfer of the subscriber's cellular telephone number to either another global network operator or to another service provider;
  - 1.2.18 "schedule of charges" means the standard list of charges, as published by Nashua Mobile from time to time, detailing the then current charges payable by the subscriber to Nashua Mobile;
  - 1.2.19 "the services" means the provision of mobile and/or wireless telecommunication services in terms of this agreement by means of the connection of the equipment and/or the SIM card(s) to the system, utilising technology that enables the subscriber to make and receive calls, transfer and receive data and send and receive short message service text messages together with such additional and ancillary services as may be made available by Nashua Mobile to the subscriber from time to time;
  - 1.2.20 "SIM card(s)" means the subscriber identification module(s), supplied or allocated by Nashua Mobile to the subscriber in terms of this agreement, which when activated by Nashua Mobile and/or used in conjunction with the equipment, permits the subscriber access to the services, and may include a virtual sim card (which refers to the connection to the system without a tangible sim card)
  - 1.2.21 "the subscriber" means the subscriber whose particulars are set out in the subscriber application form;
  - 1.2.22 "subscriber application form" means the subscriber application form which forms part of this agreement;
  - 1.2.23 "subscriber premises" will mean the premises of the subscriber where the equipment must be installed where applicable;
  - 1.2.24 "system" means the public digital cellular mobile telecommunication system operated by the global network operator(s) and, where applicable, fixed line or wireless network operators, through which the services are made available by Nashua Mobile to the subscriber;
  - 1.2.25 wireless network operators" shall mean any operator facilitating the reception and transmission of services that cannot be classified as GSM, for example Sentech, VBS (burst) and any other operator providing the aforesaid service;
- 1.3 When any number of days is prescribed in this agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 1.4 Expressions defined in this agreement shall bear the same meanings in schedules, addenda or annexures to this agreement which do not themselves contain their own definitions.
- 1.5 The expiration or termination of this agreement shall not affect such of the provisions of this agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 1.6 The rule of construction that this agreement shall be interpreted against the party responsible for the drafting or preparation of this agreement, shall not apply.
- 1.7 Where an expression has been defined and such definition contains a provision conferring rights or imposing obligations on any party, effect shall be given to that provision as if it were a substantive provision contained in the body of this agreement.

### 2. DURATION

- 2.1 This agreement shall commence on the commencement date, and, unless terminated in accordance with any other provision of this agreement, shall endure for the initial period and thereafter indefinitely until terminated by either party by giving the other party one calendar month's written notice of termination (with the exception of LCR services). Such notice of termination shall be effective from the first day of the next calendar month. For clarity purposes and by way of example, in the event of a subscriber, after the initial period, giving Nashua Mobile written notice of termination during a particular month (example 28th May), that notice of termination will only take effect on the 1st of the following month (example 1st June) and termination will occur at any time (at Nashua Mobile's sole discretion) on the last day of the latter month (example 30th June). The aforesaid termination notice period shall, however not be applicable to LCR services. In regard to LCR services, this agreement shall commence on the commencement date and, unless terminated in accordance with any other provision of this agreement, shall endure for an initial period and thereafter indefinitely until terminated by either party on not less than 90 (ninety) days' prior written notice of termination to the other party.
- 2.2 Subject to any written notice by Nashua Mobile to the contrary, each additional SIM card (if any) delivered to the subscriber after the commencement date shall be subject to the provisions of this agreement, save that in respect of each such SIM card, this agreement and the initial period shall commence on the date of delivery of such SIM card ("the deemed commencement date") and, subject to any other lawful termination thereof this agreement shall remain binding on the parties in respect of such SIM card until terminated by either party in terms of clause 2.1 after the expiry of the initial period as calculated from the deemed commencement date.

### 3. PROVISION OF THE SERVICES

- 3.1 Nashua Mobile undertakes to provide the services to the subscriber upon the terms and conditions set out in this agreement. The services may include the delivery of one or more SIM cards (as specified in the subscriber application form or in any subsequent addenda, schedules or purchase orders) to the subscriber and the connection of the SIM card(s) and the equipment to the system, and/or may include solely connection of the equipment to the system where SIM cards are not required
- 3.2 The subscriber acknowledges and accepts that:
  - 3.2.1 the system is not operated by Nashua Mobile;
  - 3.2.2 Nashua Mobile has no obligation of any nature whatsoever or howsoever arising in respect of the equipment or service; the availability and/or quality of the services may be affected by factors including, but not limited to, the system, the equipment and accessories used with the equipment, atmospheric conditions, radio frequency disturbances and other factors beyond the control of Nashua Mobile.
- 3.3 Whilst Nashua Mobile will take all reasonable steps to ensure that the services are provided in accordance with this agreement, Nashua Mobile cannot and does not guarantee or undertake that the provision of the services will be provided at all times and accordingly Nashua Mobile will not be liable for any direct or indirect loss or damage of any nature whatsoever or howsoever arising that may be sustained by the subscriber as a result of any faults or interruptions in the provision of the services.

3.4 Nashua Mobile shall be entitled from time to time to issue in writing such reasonable instructions as it may deem to be necessary in respect of the use of the services or to be in the interests of safety, quality of service or of other subscribers and the subscriber shall be bound by all such reasonable written instructions which shall be deemed to form part of this agreement.

3.5 The services are to be provided on the basis that the subscriber -

- 3.5.1 will not utilise the services, or allow others to do so, for any improper, immoral, or unlawful purpose;
- 3.5.2 will only use the equipment and the SIM card(s) in accordance with the manufacturer's instructions and for the purposes and in the manner for which they are intended;
- 3.5.3 will comply with all relevant legislation and regulations and all instructions issued by any governmental authority or by the global network operator(s) and/or wireless service operators, regarding the use of the system, the equipment and the SIM card(s); and will not act or omit to act, or allow others to do so, in any way likely to damage, disrupt or interfere with the system or to injure or damage any person or property or to cause the quality of the services to be impaired or interrupted in any manner whatsoever.
- 3.5.4

3.6 Nashua Mobile is entitled to convey any information about the subscriber to any credit bureau and such information so conveyed may be used by the relevant credit bureau in its normal course of its business and may be accessed by credit provider sand customers of the credit bureau for any purposes whatsoever

### 4. CHARGES

- 4.1 By its signature to the subscriber application form, the subscriber acknowledges that it is aware of and has agreed to be bound by all the terms of this agreement and to effect payment of the charges relating to the package/tariff plan selected by the subscriber in the subscriber application form, which charges shall be payable to Nashua Mobile as follows -
  - 4.1.1 the connection charge, the deposit, and the first monthly access charge shall be paid on the commencement date and/or the deemed commencement date referred to in Clause 2, as the case may be;
  - 4.1.2 subsequent monthly access charges shall be paid on or before the first day of each month following the commencement date dependant on which billing cycle is allocated to the subscriber by Nashua Mobile;
  - 4.1.3 the call charges and all other charges shall be paid, within 14 (fourteen) days after the date of Nashua Mobile's invoice in respect thereof. The timing, format and details of invoices shall be in the sole discretion of Nashua Mobile.
- 4.2 All charges, unless otherwise stated in the schedule of charges, are exclusive of value added tax, which shall be borne and paid for by the subscriber together with the charges in question.
- 4.3 The monthly access charge is a charge for permitting the subscriber continued access to the services and the subscriber will be liable for each and every monthly access charge irrespective of the use made of the equipment, SIM card(s) or the Services.
- 4.4 Any call and/or connection registered and recorded on the system as having emanated from the equipment and/or the SIM card(s) shall, until the contrary is proved, be deemed to have been made by or by means of, the equipment and/or the SIM card(s).
- 4.5 For the purpose of calculating call charges payable by the subscriber, the duration of each call and/or connection as recorded and registered on the applicable metering system used by the global network operator(s) and/or wireless network operators and/or internet service providers and/or service application providers shall be final and binding on the subscriber.
- 4.6 Nashua Mobile may at any time by written notice require the subscriber to furnish such security as Nashua Mobile may deem appropriate for the payment of the charges, and any failure by the subscriber to furnish such security to Nashua Mobile within 14 (fourteen) days after the date of such notice shall constitute a material breach of this agreement by the subscriber.
- 4.7 Nashua Mobile shall be entitled, in its sole and absolute discretion and by means of written notice to the subscriber, to increase the charges from time to time. Notwithstanding the date of any such notice, any increase in the charges arising from an increase in the global network operators' charges in respect of the services shall take effect as from the date upon which Nashua Mobile becomes liable to the global network operator(s) and/or wireless network operator(s) for such increased charges.
- 4.8 Nashua Mobile shall be entitled, in its sole and absolute discretion to determine the charges limit applicable to the subscriber and/or to vary the charges limit from time to time. Nashua Mobile shall further be entitled, if the charges for which the subscriber is then liable to Nashua Mobile exceed the charges limit, to suspend the services in whole or in part, without detracting from its other rights in terms of this agreement, and to demand settlement in full of all charges payable by the subscriber to Nashua Mobile at such time. Nashua Mobile shall not be liable to the subscriber for any loss or damage of any nature whatsoever, including loss of profit or any other special damages or indirect or consequential losses or damages which the subscriber or any other person may suffer as a result of the suspension of the services in terms of this clause.
- 4.9 The subscriber will be bound to the terms and conditions of the relevant global network operator(s) relating to the carry-over and expiry of inclusive minutes incorporated in tariff packages. In the event that the subscriber forfeits such inclusive minutes through expiry, Nashua Mobile will not be liable to the subscriber in any form or manner whatsoever.

### 4.10 CALL LIMITS

- 4.10.1 Nashua Mobile reserves the right to include and activate call limits in respect of any subscriber and/or SIM card(s) in accordance with Nashua Mobile's credit vetting policies and/or the subscriber's credit profile. Nashua Mobile will make all reasonable endeavours to notify the subscriber of such call limit and may review such call limit from time to time in Nashua Mobile's sole discretion.
- 4.10.2 The subscriber may elect to have a maximum call limit in respect of the subscriber's monthly airtime charges loaded on the subscriber's account.
- 4.10.3 Upon authorisation, Nashua Mobile will attempt to monitor the stipulated monthly call limit and is deemed to be authorised to suspend the services to the subscriber when such call limit is reached.
- 4.10.4 Nashua Mobile cannot and does not guarantee the call limit service and, notwithstanding the fact that the subscriber has paid for the service, the subscriber will continue to be liable for all charges incurred in respect of the services.

### 5. PAYMENT

- 5.1 All charges shall be paid, within 14 (fourteen) days after the date of Nashua Mobile's invoice in respect thereof.
- 5.2 All charges shall be paid by means of direct debit order, free of exchange and bank charges. The subscriber shall not for any reason whatsoever withhold payment of any charges and the subscriber accepts responsibility to ensure that the banking details provided to Nashua Mobile are at all times current and correct.
- 5.3 Should any payment not be made on due date, Nashua Mobile shall be entitled, without detracting from its other rights in terms of this agreement, to charge the subscriber interest on such arrear payments from due date of such payments to date of actual payment thereof, at a rate equal to 4% (four percentage points) above the annual prime bank overdraft rate charged by Nedbank Limited, from time to time.
- 5.4 All payments made by the subscriber shall be appropriated firstly towards the payment of legal costs incurred in the recovery thereof, thereafter towards the payment of interest accruing thereon and lastly in reduction of the capital sum due.
- 5.5 Nashua Mobile will submit statements to the subscriber monthly. The statement reflects all transactions until date thereof. The subscriber accepts responsibility to ensure that the statement is received and checked.
- 5.6 The subscriber agrees and acknowledges that Nashua Mobile will be entitled to make enquiries about its credit history and credit records with any authorised and registered credit reference agency in the Republic of South Africa.
- 5.7 The subscriber agrees and acknowledges that Nashua Mobile provides regular reports in respect of subscriber payment conduct to credit reference agencies in the Republic of South Africa.
- 5.8 Should the subscriber be placed under administration, sequestration or liquidation proceedings, or suffer any other legal disability which will affect the subscriber's ability to make payment to Nashua Mobile, the subscriber is required to immediately notify Nashua Mobile, in writing.
- 5.9 Nashua Mobile reserves the right to suspend all services and seek legal action against the subscriber in respect of non-payment of any line or account where the subscriber has multiple lines or accounts with Nashua Mobile.

### 6. THE SIM CARD

- 6.1 Notwithstanding delivery of the SIM card(s) to the subscriber, ownership of the SIM card(s) telephone numbers, codes and other identification numbers allocated to the subscriber and each SIM card delivered to the subscriber, including the software incorporated in each card and all intellectual property rights in and to such software, shall not pass to the subscriber who shall have no proprietary interest therein. Accordingly, each SIM card shall be returned to Nashua Mobile on termination of this agreement for any reason whatsoever. All risk in and liability in respect of each SIM card shall pass to the subscriber on delivery of such SIM card to the subscriber.
- 6.2 The subscriber shall not dispose of or otherwise transfer any SIM card to any third party without the prior written consent of Nashua Mobile, which consent, if granted, shall be subject to such terms and conditions as Nashua Mobile may deem fit. Until such time as Nashua Mobile grants its written consent, the subscriber shall remain liable for and shall continue to pay all the charges payable in terms of this agreement, including all charges incurred in respect of or through the use of such SIM card.
- 6.3 If any SIM card is lost, stolen or damaged, the subscriber shall immediately notify Nashua Mobile thereof in writing, and the subscriber shall remain liable to Nashua Mobile for all charges incurred in respect of or through the use of such SIM card until Nashua Mobile procures the suspension of such SIM card's access to the services. In addition, the subscriber shall remain liable for and shall continue to pay all the charges payable in terms of this agreement as and when they become due, including all charges in respect of the SIM card that is lost, stolen or damaged until such SIM card is replaced and the charges applicable for a replacement SIM card to be issued at the then applicable charge for the replacement of SIM cards has been paid by the subscriber. Nashua Mobile will, as soon as is reasonably possible, replace any SIM card that is lost, stolen or damaged at its then applicable charge for the replacement of SIM cards.
- 6.4 Save as otherwise provided by legislation to the contrary, telephone numbers, codes and other identification numbers allocated to the subscriber shall not become the property of the subscriber and the subscriber shall not modify or permit the modification of any SIM card or any such numbers or codes without the prior written consent of Nashua Mobile.
- 6.5 Save as otherwise provided by legislation to the contrary, Nashua Mobile shall be entitled to withdraw or change any telephone number, code or other identification number allocated to the subscriber in terms of this agreement.

### 7. EQUIPMENT

- 7.1 All equipment detailed in the subscriber application form (if any) shall be provided to the subscriber, on the basis that the subscriber shall, during the duration of this agreement be obligated to make use of not less than 80% (eighty percent) of the free minutes made available to it in terms of the package/tariff plan selected by it in the subscriber application form, failing which Nashua Mobile shall be entitled, on written notice to the subscriber to be given at any time thereafter, to terminate this agreement and to claim from the subscriber, as liquidated damages, an amount equal to the aggregate of the monthly access charges in respect of the unexpired portion of the initial period plus the amounts payable in terms of the agreements between Nashua Mobile and the global network operator(s) in respect of this agreement.

7.2 Ownership in the equipment will remain vested in Nashua Mobile for the 24 (twenty-four) month agreement period. Ownership of the equipment will pass to the subscriber (except LCR, mobile solutions and telemetry subscribers and wireless telephony equipment) upon due fulfillment of all its obligations in terms of this agreement. In the event of non-payment of its account, or its failure to perform its obligations in terms of this agreement, Nashua Mobile reserves the right to blacklist the equipment.

7.3 All risk in and to the equipment shall pass to the subscriber upon delivery thereof to the subscriber and the subscriber shall be obligated to maintain the equipment provided to it in terms of 7.1 in good working order and condition and will not modify or permit the modification of the equipment without the prior written consent of Nashua Mobile.

7.4 The subscriber shall ensure that the equipment is both suited to and compatible with the system and that it complies with all applicable standards prescribed by the relevant governmental authority.

7.5 In the event that the equipment or any other item of equipment used in conjunction with the SIM card(s) is lost, stolen or damaged beyond repair or is disposed of to a third party, the subscriber will immediately notify Nashua Mobile thereof in writing, and the subscriber shall remain liable to Nashua Mobile for all charges incurred in respect of or through the use of such equipment and/or the SIM card(s) used in conjunction with such equipment until Nashua Mobile procures the suspension of the service in respect of such equipment and/or SIM card(s). The subscriber shall remain liable for and shall continue to pay all the charges payable in terms of this agreement during the currency of this agreement as and when they become due, including all charges in respect of the SIM card(s) used in conjunction with such equipment that has been lost, stolen or damaged beyond repair or disposed of to a third party.

7.6 The subscriber shall notify Nashua Mobile in writing of the full particulars of the equipment from time to time to be used in conjunction with any SIM card(s) issued in terms of this agreement, including without limitation, make, model and service/serial number.

7.7 If the subscriber at any time during the currency of this agreement recovers equipment that has been lost, stolen or disposed of, or has replaced equipment, whether pursuant to the loss, theft, damage or disposal thereof or otherwise, Nashua Mobile will, at the request of the subscriber and provided that the subscriber is not in any breach of any term of this agreement, connect such equipment to the system at its then applicable connection charge.

7.8 The subscriber accepts and acknowledges that Nashua Mobile is not the equipment manufacturer and all equipment supplied to the subscriber will be subject to the relevant manufacturer's standard warranty terms and conditions if applicable.

7.9 In the event of equipment delivered to LCR, telemetry, and wireless telephony subscribers, including the software incorporated in the equipment and all intellectual property rights in and to the equipment, such equipment will not become the property of the subscriber and the equipment will be returned to Nashua Mobile on termination of this agreement, unless the subscriber has purchased the equipment from Nashua Mobile.

7.10 LCR, telemetry and wireless telephony subscribers will not be entitled to give up possession of the equipment, in whole or in part to any third party and will not be entitled to remove and re-install the equipment at a different location.

7.11 Nashua Mobile will instruct contractors to install the equipment at the LCR subscriber's premises and further instruct contractors to maintain the equipment for the duration of this agreement. Nashua Mobile's representatives, employees, agents and contractors may at all reasonable times, without giving rise to any claim or right of action on the part of the subscriber, enter the subscriber's premises to inspect the equipment, carry out necessary repairs, replacement of equipment, or to perform any other lawful function in the bona fide interest of Nashua Mobile in respect of the equipment.

7.12 LCR and telemetry subscribers acknowledge and agree that the equipment is movable property and that it will not be installed with the intention that it remains or accedes to whatever housing it may be installed with or to.

7.13 LCR, telemetry and wireless telephony subscribers will at all times keep the equipment in its possession and under its control at its premises. The subscriber may not make any alteration or modification to the equipment.

7.14 LCR subscribers will advise the landlord of the subscriber's premises that ownership of the equipment vests in Nashua Mobile. The LCR subscriber will advise Nashua Mobile of the full name and address of its landlord.

#### 8. LIMITATION OF LIABILITY AND INDEMNITY

8.1 Nashua Mobile shall not be liable to the subscriber in any circumstances whatsoever for any loss, injury or damage of any nature whatsoever or howsoever arising and whether in contract or in delict, including loss of profit or any other special damages, indirect or consequential loss or damages which the subscriber or any other person may sustain, whether as a result of any breach of this agreement by Nashua Mobile or the global network operator(s) or the wireless network operators, or their respective employees and contractors, or whether caused directly or indirectly by the equipment or the use thereof, and the subscriber hereby indemnifies Nashua Mobile and holds it harmless against any such claim by any other person.

8.2 Nashua Mobile shall not be held liable to the subscriber or any third party in regard to any porting request or porting activity;

8.3 Nashua Mobile may, without the consent of the subscriber, disclose any information of the subscriber to any third party as it may be required to do in terms of any legislation;

8.4 Any known or unknown risk attached to the use of the equipment and the connection thereof to the system, shall be deemed to have passed to the subscriber on the commencement date, and the subscriber hereby indemnifies Nashua Mobile and holds it harmless against any claim by any other person relating to the use of the equipment and/or the connection thereof to the system.

#### 9. SUSPENSION OF SERVICES AND TERMINATION

9.1 Nashua Mobile may at any time suspend the services, in whole or in part, without notice to the subscriber and without incurring any liability whatsoever -

- 9.1.1 should Nashua Mobile be unable to provide the services, in whole or in part, whether due to force majeure or otherwise through no fault of its own; or
- 9.1.2 should an agreement in terms of which Nashua Mobile derives its rights to provide the services, be suspended, cancelled or terminated; or
- 9.1.3 should such suspension of the services be necessary in order to facilitate any repairs, modification, maintenance, improvements or remedial works in respect of the system; or
- 9.1.4 should the subscriber fail to comply with any term of this agreement; or
- 9.1.5 should the subscriber use equipment that infringes or is alleged to infringe the intellectual property rights of any third party.

9.2 Should the services be suspended pursuant to 9.1.1 or 9.1.2, Nashua Mobile shall use its reasonable endeavours to provide an alternative service to the subscriber, whether through an alternative global network operator or service provider or otherwise, all in Nashua Mobile's discretion. Should Nashua Mobile fail to provide an alternative service within 60 (sixty) days after the commencement of the suspension, either party shall be entitled by written notice to the other, to terminate this agreement with immediate effect. In such event, the subscriber shall remain liable for all charges accrued up to date of such termination, which charges shall be payable on demand.

9.3 Should the services be suspended by reason of default of the subscriber, the subscriber shall be liable to Nashua Mobile for its then applicable connection charges, payable on cessation of the suspension.

#### 10. BREACH

10.1 Should the subscriber breach any term of this agreement and fail to remedy such breach within 10 (ten) days after despatch of written notice calling upon it to do so, or should any information furnished by the subscriber in the subscriber application form not be true and correct, or should the subscriber be provisionally or finally liquidated or declared insolvent or die, or attempt to commit a crime with any of its creditors, or allow any judgement against it to remain unsatisfied for a period of 14 (fourteen) days after the date of such judgement, or should the equipment be attached under any legal process issued against the subscriber if purchased or leased from Nashua Mobile or should the agreement in respect of the equipment be terminated by Nashua Mobile, Nashua Mobile shall be entitled, but not obliged, and without detracting from any other rights that it may have in law or in terms of this agreement -

- 10.1.1 to suspend the services, in whole or in part, and to disconnect the equipment; and/or
- 10.1.2 to terminate this agreement and recover from the subscriber as liquidated damages, the aggregate of the monthly access charges for the unexpired portion (if any) of the initial period plus all amounts payable under any agreement between Nashua Mobile and the global network operator(s) and/or wireless network operators in respect of this agreement; or
- 10.1.3 to claim specific performance of all of the subscriber's obligations in terms of this agreement.

10.2 Without prejudice to the generality of 10.1 it is agreed that should the subscriber for whatever reason and either with or without the consent of Nashua Mobile attempt to terminate this agreement at any time before the expiry of the initial period, then Nashua Mobile shall in its entire and absolute discretion and without prejudice to any other rights be entitled forthwith to claim immediate settlement of all outstanding amounts due and payable in respect of this agreement and any amounts payable under any agreement between Nashua Mobile and the global network operator(s) in respect of this agreement, whether or not such amounts are at such time due in terms of this agreement. Nashua Mobile shall further be entitled to suspend the connection of the equipment to the system and to give notice to any Credit or Information Bureau/s to list the subscriber as a defaulter. Porting will be considered to be termination of this agreement.

#### 11. CERTIFICATE

A certificate signed by any manager of Nashua Mobile (whose appointment and authority it shall not be necessary to prove) as to the existence of any facts and, in particular, without limiting the generality of the foregoing, as to the amount of any indebtedness of the subscriber to Nashua Mobile in terms of and pursuant to this agreement, shall constitute prime facie proof of such facts for any purpose and, more particularly, for the purposes of obtaining provisional sentence, default judgment or summary judgment or their equivalent in any court of competent jurisdiction.

#### 12. NO RELIANCE

The subscriber acknowledges and agrees that:-

- 12.1 it is not acting as an agent on behalf of any other party;
- 12.2 it has not relied on any representations or undertakings made by Nashua Mobile;
- 12.3 in entering into this agreement it has made its own judgment and has not relied on any view expressed by Nashua Mobile;
- 12.4 it has consulted with its own legal and tax advisers to the extent that it deems necessary; and
- 12.5 it is entering into this agreement with a full understanding of the terms, conditions and risks thereof and it is capable of and willing to assume those risks.

#### 13. MAGISTRATES' COURT JURISDICTION

For the purpose of all or any proceedings hereunder the parties consent to the jurisdiction of the magistrates' court having territorial jurisdiction, notwithstanding that such proceedings are otherwise beyond its jurisdiction. This clause shall be deemed to constitute the required written consent conferring jurisdiction upon the said court pursuant to section 45 of the Magistrates' Court Act, 1944, provided, nevertheless, that any party shall have the right at its sole option and discretion to institute proceedings in any other competent court.

#### 14. DOMICILIUM CITANDI ET EXECUTANDI

14.1. The parties choose as their domicilia citandi et executandi for all purposes this agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses:

14.1.1. Nashua Mobile -

42 James Crescent

Halfway House

Midrand.

Telefax:

(011) 207 9000

14.1.2. the subscriber; at its physical address and telefax number set out in the subscriber application form;

14.2 Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing but it shall be competent to give notice by telefax.

14.3 Any party may by notice to any other party change the physical address chosen as its domicilium citandi et executandi vis-à-vis that party to another physical address or its telefax number, provided that the change shall become effective vis-à-vis that addressee on the 10th business day after receipt of the notice by the addressee.

14.4 Any notice to a party -

- 14.4.1 delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its domicilium citandi et executandi shall be deemed to have been received on the day of delivery; or
- 14.4.2 sent by telefax to its chosen telefax number stipulated in clause 14.1, shall be deemed to have been received on the date of transmission (unless the contrary is proved).

14.5 Notwithstanding anything to the contrary herein contained 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 domicilium citandi et executandi.

#### 15. CESSION

15.1 Nashua Mobile shall be entitled to cede, assign and delegate all or any of its rights and obligations in terms of this agreement to a third party, in which event Nashua Mobile shall give the subscriber written notice thereof.

15.2 The subscriber shall not be entitled to cede, assign or delegate any of its rights or obligations in terms of this agreement without the prior written consent of Nashua Mobile.

15.3 Should the subscriber be a company, the transfer of more than 25 % (twenty five percent) of its issued share capital, and/or the issue of any of its unissued shares or any future increase in its share capital which results in a change in the effective control of the subscriber, shall be deemed to be a cession and assignment of the subscriber's rights which shall require Nashua Mobile's prior written consent.

15.4 The provisions of 15.3 shall apply mutatis mutandis if the subscriber is a close corporation.

15.5 Nashua Mobile shall be entitled, without prejudice to any of its other rights, to terminate this agreement on 7 (seven) days written notice to the subscriber in the event that the subscriber shall purport to cede, assign or delegate any of its rights or obligations in terms of this agreement without the prior written consent of Nashua Mobile.

#### 16. WHOLE AGREEMENT, NO AMENDMENT

16.1 No extension of time or waiver or relaxation of any of the provisions or terms of this agreement or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this agreement, shall operate as an estoppel against any party in respect of its rights in this agreement, nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with this agreement.

16.2 To the extent permissible by law no party shall be bound by any term, representation, warranty, promise or the like not recorded herein, whether or not it induced the contract.

16.3 This agreement together with all addenda and schedules signed by the parties constitutes the entire agreement between the parties.

16.4 Save as may be otherwise expressly provided in this agreement, no alteration, variation or consensual cancellation of this agreement and no addition to this agreement shall be of any force or effect unless reduced to writing and signed by the parties or their duly authorised representatives.

16.5 No failure, delay, relaxation or indulgence on the part of Nashua Mobile in exercising any power or right conferred upon it in terms of this agreement shall operate as a waiver of such power or right, nor shall any such failure, delay, relaxation or indulgence be deemed to be a novation of any of the terms and conditions of this agreement. The acceptance by Nashua Mobile of any payment by the subscriber after the termination of this contract shall not be deemed to be a waiver of Nashua Mobile's rights or be deemed to constitute a novation of this agreement.

#### 17. COSTS

17.1 The subscriber shall on demand pay all expenses incurred by Nashua Mobile either on behalf of the subscriber or as a result of the subscriber's failure to comply with any provision of this agreement, including tracing costs and all legal costs calculated on the scale as between attorney and own client.

#### 18. NSURANCE AND ADDITIONAL SERVICES

18.1 Should the subscriber request insurance cover or any additional services as set out in the subscriber application form or in any schedules or addenda to this agreement then Nashua Mobile shall be authorised to arrange the necessary insurance cover and/or additional services and recover from the subscriber the cost of such insurance and all charges from time to time in respect of the additional services subscribed for by the subscriber.

18.2 The subscriber will be responsible to request and ensure that it understands and acknowledges all terms and conditions of such insurance or additional services prior to accepting such insurance or additional services. Nashua Mobile accepts, in good faith, that the subscriber requesting such insurance or additional services is aware of and accepts all applicable terms and conditions.

#### 19. MIGRATION

The subscriber shall not be entitled during the initial period to vary the package/tariff plan subscribed to in terms of this agreement to a package/tariff plan which is less expensive than that selected by it in the subscriber application form, unless approved in writing by Nashua Mobile and upon payment of the applicable migration fees to Nashua Mobile.

#### 20. DEPOSIT

20.1 The subscriber undertakes that it shall, on the commencement date, pay to Nashua Mobile the deposit as set out in the subscriber application form.

20.2 Nashua Mobile shall be entitled, in its sole and absolute discretion to determine the amount of the deposit required by it.

20.3 The deposit paid by the subscriber shall be retained by Nashua Mobile until the termination of this agreement, free of any interest to the subscriber and as security for the payment by the subscriber of all amounts for which the subscriber shall be liable to pay to Nashua Mobile in terms of this agreement.

20.4 Nashua Mobile shall have the right to appropriate all or part of the deposit, upon termination of the contract, towards payment of any amount then owing to it in terms of this agreement.

20.5 Subject to the provisions of 20.3 and 20.4, Nashua Mobile will repay such deposit to the subscriber, or the balance thereof if any, within fourteen days after the termination of this agreement.

#### 21. DISCLAIMERS

21.1 Nashua Mobile has made no representations or warranties and disclaims liability in respect of any representations or warranties in respect of the system, the services, the availability and/or accuracy of the system or the services or the fitness of the services for a particular purpose.

21.2 The subscriber specifically accepts and acknowledges that Nashua Mobile acts merely as a distributor of any data and the subscriber accepts all liability arising from any claims, inter alia claims relating to:

- 21.2.1 any intellectual property infringement contained in the information including copyright infringement (whether digital or otherwise), trade mark infringement, infringement of trade secrets and/or databases;
- 21.2.2 the distribution of any defamatory, discriminatory or obscene material, whether unacceptable or illegal; the distribution of any sexually explicit messages, images, cartoons or jokes, whether unacceptable or illegal; the distribution of offensive, disruptive, harmful or insulting material; the distribution of computer viruses; the distribution and/or disclosure of private information; and the subscriber's breach of contract to a third party;
- 21.2.3 non-compliance with any legislation and/or regulations, including but not limited to, regulations issued by the South African Revenue Services from time to time.

21.3 Nashua Mobile will take reasonable actions to ensure the integrity and confidentiality of the subscriber's information furnished to Nashua Mobile.

#### 22. OVERRIDING PROVISIONS

Unless otherwise specifically stipulated in writing to the contrary, the terms and conditions herein contained shall supersede and prevail over any terms and conditions contained in any other document(s) signed or submitted by the subscriber.

#### 23. UPGRADES

23.1 The subscriber shall be entitled to make application to Nashua Mobile at the expiry of any initial period for an upgrade. All upgrades are in the sole and absolute discretion of Nashua Mobile.

23.2 In the event that an upgrade is granted, the subscriber will be bound to Nashua Mobile for a further 24 (twenty-four) month contract period calculated from the expiry of the prior initial period, or upgrade commencement date, whichever date is later. All upgrades are subject to Nashua Mobile's standard terms and conditions.

23.3 The subscriber acknowledges and accepts that if he/she/it is issued with new equipment in respect of the upgrade, acceptance or use of such equipment will provide sufficient proof of the subscriber's intention to be bound to Nashua Mobile in respect of the upgrade contract period.

#### 24. UNDERTAKING AS CO-PRINCIPAL DEBTOR ON BEHALF OF THE SUBSCRIBER BY THE SIGNATORY

If the subscriber as identified in the application form is any entity with a juristic personality (including trusts), then the signatory hereto who signs on behalf of the subscriber ("the signatory") warrants that he is duly authorised to enter into this agreement and sign the debit authorisation on the subscriber's bank account. By his/her signature, the signatory hereby binds himself as co-principal debtor for the subscriber unto and in favour of Nashua Mobile for the due and punctual fulfillment of all the subscriber's obligations to Nashua Mobile arising out of this agreement including the payment of all charges, fees, penalties, and liquidated damages. The signatory as co-principal debtor hereby renounces and waives the benefits of the legal defences, excussion, division of cession of actions and hereby acknowledges that he understands the full meaning of such defences and the effect of such renunciation and waiver.

#### 25. BLACKLISTING

25.1 In terms of the Blacklisting Agreement entered into by the global network operators, Nashua Mobile accepts blacklisting instructions in good faith and will not be liable to the subscriber or any third party for any damages whatsoever and howsoever arising from the blacklisting of equipment.

25.2 The subscriber must report and provide Nashua Mobile with particulars from the South African Police Services relating to the loss, theft or damage of the blacklisted handset within 24 (twenty-four) hours, failing which Nashua Mobile reserves the right to disregard the blacklisting instruction previously received.

25.3 Nashua Mobile reserves the right to blacklist any handset issued to a subscriber where a subscriber is in material breach of this agreement and fails to remedy such breach despite demand and/or request calling on it to do so.

#### Customer Acknowledgement