

INDIVIDUAL SUBSCRIBER AGREEMENT TERMS & CONDITIONS

PARTIES TO THIS AGREEMENT

This Subscriber Agreement (the "Agreement") is made and entered into this _____ day of _____

20____ ("Effective Date") by and between V&D Telecomms (Pty) Ltd. t/a Voice & Data; a limited liability company registered in terms of the laws of the republic of South Africa with registration number: 2008/008045/07, having its principal place of business at 134 Walton Rd. Midrand, Gauteng. (Hereinafter called "The Supplier") and

_____ having their principal place of residence / domicilium citandi exutandi at

(Hereinafter called "The Subscriber")

1. DEFINITIONS AND INTERPRETATION

- 1.1. In this Agreement the following expressions, words or phrases, shall bear the meanings assigned to them below:
 - 1.1.1. "Agreement" shall mean the agreement as set out herein together with the Individual Subscriber Agreement document completed by the Subscriber.
 - 1.1.2. "Agreement Term" shall mean the minimum contractual term, beginning on the Commencement Date, of this agreement as stipulated on the Individual Subscriber Agreement document as "Agreement Period".
 - 1.1.3. "Effective Date" shall mean the date of signature of this Agreement.
 - 1.1.4. "Services" shall mean the telecommunication service providing speech and/or data communication via the Connectivity. This also includes any other service that the Supplier may, at its discretion, choose to make available to the Subscriber.
 - 1.1.5. "Connectivity" shall mean the physical wireless, radio interface, fixed line, fibre line or any other means of connection as provided by the Supplier, via the Service Provider, by which the Subscriber is able to utilize the Services.
 - 1.1.6. "Commencement Date" shall mean the date of activation of the Services;
 - 1.1.7. "Service Provider" shall mean a proprietary or third party provider of wireless, radio interface, fixed line, fibre or any other means of infrastructure by which the Supplier facilitates the use of Services by the Subscriber.
 - 1.1.8. "USI" shall mean the unique subscriber identity, which identifies the Subscriber to the Supplier.
 - 1.1.9. "Equipment" shall mean all hardware, together with all additions, peripherals and/or accessories thereto including software and intellectual property which enables the Subscriber to connect to and utilise the Services; this may be specified in this Agreement and its schedules, if applicable.
 - 1.1.10. "Subscription" shall mean the monthly charge billed to the Subscriber by the Supplier for the use of the Services and/or Equipment.
 - 1.1.11. "Subscriber Cancellation Form" shall mean the document to be completed and submitted to the Supplier in the event of the Subscriber terminating the Agreement.
 - 1.1.12. Words that have not been defined in this Agreement but have a generally and commonly understood meaning and context in the Information Technology and Telecommunication sector will be interpreted as having that meaning and context.

2. CONNECTION AND PROVISIONS OF THE SERVICES

- 2.1. The Subscriber acknowledges and agrees that the Supplier can only guarantee the Service if all telecommunication equipment, not provided by the Supplier, is approved by the Supplier; including but not limited to telephone handsets, modems, routers, switches and network hubs.
- 2.2. The Subscriber hereby agrees that all necessary and adequate precautions will be taken to ensure that no unauthorised and/or fraudulent usage of the Services occurs. Pursuant to this clause; The Supplier shall not accept any liability of whatsoever nature or howsoever arising as a result of this clause not being fully adhered to by the Subscriber.

3. PAYMENT

- 3.1. The Subscriber acknowledges full liability for all charges related to the Services at the Subscription as specified by the Supplier.
- 3.2. In consideration of the provision of the Services, the Supplier shall debit the Subscriber for the amount in each invoice monthly in advance each month whether or not the Services have been, or are being utilised by the Subscriber.
- 3.3. Should any debit order be returned unpaid or stopped for whatsoever reason or should the Supplier exercise its right to suspend the provision of the services due to late or non-payment of any monies due in terms hereof by the Subscriber, then the Subscriber shall pay an administration charge as may be levied by the Supplier from time to time for each such non-payment, suspension or any other breach of this Agreement which amount shall be payable upon demand and recoverable by the Supplier.
- 3.4. Any and all applicable national and local taxes, fees, surcharges and all other related charges that may be imposed or levied on the Subscriber as a result of this agreement or by any appropriate statute or regulation which provides the authority for the imposition of taxes, fees, surcharges and all other charges (collectively, "Taxes") will be paid by the Subscriber.
- 3.5. The Subscriber shall not be entitled to set off or deduct any monies in respect of "dropped" or discontinued calls and/or connections or temporarily unavailable Services.
- 3.6. All payments and any interest due by the Subscriber in terms of this Agreement shall be made by the Subscriber to the Supplier whether by electronic funds transfer or otherwise, subject to the costs of transfer of funds, in Rand (ZAR), by payment directly into such bank account in South Africa, as notified to the Subscriber by the Supplier in writing from time to time, and otherwise in accordance with the written payment instructions from the Supplier from time to time.

4. DURATION

This Agreement shall commence on the commencement date and shall continue for a minimum of the Agreement Term; thereafter the Agreement shall continue on a month to month basis unless terminated by either party in accordance with the terms of clause 8 (Termination clause).

5. INSTALLATION, OWNERSHIP & RISK OF EQUIPMENT

- 5.1. All Equipment provided to the Subscriber shall remain at all times the property of the Supplier and nothing contained herein will give or convey to the Subscriber any right, title or interest whatsoever in such equipment, which will at all times be and remain personal property of The Supplier not withstanding that it may be or become attached to or embedded in realty.
- 5.2. The Subscriber shall allow the Supplier or its approved representative to carry out the installation of Equipment at the Subscriber's premises as is necessary to effect implementation of the Services and indemnifies the Supplier, its directors, employees, agents or approved representatives against all damages, costs and expenses incurred in performing such implementation.
- 5.3. Risk of loss or damage sustained to the Equipment transfers to the Subscriber once the Equipment has been delivered to the Subscriber's premises, regardless of whether or not it has been fully installed.
- 5.4. The Subscriber shall provide the necessary space, electricity supply and environmental conditions required for the equipment at the Subscriber's expense.
- 5.5. The Subscriber shall be liable for all damage sustained to the Equipment which is the result of:
 - 5.5.1 An act or omission on the part of the Subscriber, whether wilful or negligent;
 - 5.5.2 The Subscriber's breach of any of the terms of this Agreement; or
 - 5.5.3 A malfunction or failure of any equipment provided by the Supplier
- 5.6. As a result of the aforementioned liability, the Subscriber is required to obtain sufficient insurance coverage in respect of the Equipment.
- 5.7. Should the Equipment installed at the Subscriber's premises be damaged, lost, stolen, operational or undergoing repair, the Subscriber agrees that this Agreement is not conditional upon such availability or operation of the equipment and this Agreement shall continue in full force and effect and the Subscriber shall continue to pay all amounts due in terms hereof.
- 5.8. The Subscriber agrees that in the event of a termination of this agreement by either parties that the Supplier reserves the right to recover all Equipment from the Subscriber's premises. Furthermore;
- 5.9. The Subscriber agrees to facilitate and fully co-operate with the Supplier regarding the recovery of Equipment and that access to the Equipment will not be unreasonably withheld in the event of a termination of this Agreement.
- 5.10. The Supplier shall make a maximum of 3 (three) attempts to collect the Equipment from the Subscriber's premises. The first attempt will not attract any fee, whereas the Subscriber shall be liable for, and shall pay on demand, a call out fee (Plus VAT) for any second or third collection attempts, as applicable; and
- 5.11. In the event that the Supplier is unable to retrieve any or all of the Equipment from the Subscriber, after 3 (three) attempts, the Subscriber shall be liable for and shall pay on demand, the full market-related replacement cost of such Equipment together with the call out fees (plus VAT) for the second and third unsuccessful collection attempts.

6. LIMITATION OF LIABILITY

- 6.1. The Supplier gives no warranties, representations, guarantees or undertakings express or implied, concerning the Equipment and/or the Services. Neither the Supplier, any of its subsidiaries, sub-

contractors, employees, affiliates or agents shall be liable or responsible for any loss or damage of whatsoever nature or howsoever arising in consequence of any omission by The Supplier, its subsidiaries, subcontractors, employees, affiliates or agents in the supply or failure of the equipment and/or the services or otherwise, irrespective of whether such loss or damage is attributable to the fault or negligence of the Supplier, its subsidiaries, sub-contractors, employees, affiliates or agents.

- 6.2. The Supplier shall not be under any liability (including liability for negligence) for any loss or damage or injury to the Subscriber whatsoever, no matter when or how, arising out to the provision of the services or otherwise, whether direct or in direct, consequential or contingent and whether foreseeable or not and in particular not be liable for financial loss of profits, contract, business anticipated, savings use or goodwill.
 - 6.3. The Subscriber acknowledges and agrees that the services' quality and coverage available to the Subscriber shall be limited to that provided by the Service Provider and the Services may from time to time be adversely affected by physical features such as buildings and underpass as well as atmospheric conditions and any other causes of interference.
 - 6.4. The service provided by The Supplier expressly excludes problems caused by any misuse or unauthorized tampering with hardware or software; electrical malfunction; any misuse, wilful act or default attributable to the Subscriber, its agents, employees or sub-contractors; force majeure; or irregular or fluctuating electrical power supply.
 - 6.5. Although all reasonable effort is made, The Supplier makes no guarantee that services will be rendered and transmitted error free or without virus, and further that the services are secure from unlawful access.
- ## 7. USE OF THE SERVICE, STATUTORY AND REGULATORY PROVISIONS OF EQUIPMENT
- 7.1. The Subscriber shall at all times comply with all statutory or other regulatory provisions relating to wireless telegraphy and telecommunications services applying to the provision and use of the services, from time to time. In addition, the Subscriber shall:
 - 7.2. Comply with any instructions issued by The Supplier which concern the Subscriber's use of the services or connected matters; and provide The Supplier with all such necessary information that The Supplier may reasonably require; and
 - 7.3. Only use Equipment which is approved for use with the Connectivity by The Supplier in writing.
 - 7.4. The Supplier warrants that it is licensed with the relevant South African authorities to render all the services as outlined in this Agreement.

8. TERMINATION

- 8.1. The Supplier may terminate this Agreement by notice if;
 - 8.2. Any license to operate or use the Connectivity is revoked, terminated or modified for any reason either in whole or in part; or
 - 8.3. The Subscriber is in breach of any of the terms of this Agreement and has failed to remedy the breach within 7 (seven) days of written notice by The Supplier; or
 - 8.4. A receiver or liquidator is appointed in relation to the Subscriber or an application for the sequestration or the winding-up of the Subscriber is made or any warrant of execution is issued against the Subscriber. In this case The Supplier may terminate the Agreement with immediate effect.
- 8.5. If any license to operate or use the Connectivity is revoked, terminated or modified for any reason either in whole or in part.
 - 8.6. It is agreed that the Subscriber may cancel this Agreement by giving 7 (seven) days prior written notice if The Supplier can no longer perform its duties under this Agreement by way of Legislation being passed by an Act of Parliament or a court ruling, after final appeals have been heard ordering the termination of the services;
 - 8.7. Either party may terminate the Agreement by serving the other party with 1 (one) calendar month written notice provided that this right may only be exercised so that the Subscription ends on or after the expiry of the Agreement Term.
 - 8.8. Pursuant to clause 4 (Duration Clause), should the Subscriber terminate this agreement for any reason other than default by the Supplier or should The Supplier terminate this agreement for default by the Subscriber, then the Subscriber will pay the Supplier: (a) all unpaid amounts for the terminated Services/ outstanding purchase price of equipment. (b) the total outstanding Subscription amounts as calculated to the date of expiry of the Agreement Term; (c) all outstanding installation costs; (d) any special build costs.
 - 8.9. The Subscriber agrees to pay the Supplier any Service Provider charges associated with terminating this agreement. These may include early settlement values or charges pertaining to the cancellation notice enforced by the Service Provider.
 - 8.10. A termination request will only be actioned by the Supplier once a Subscriber Cancellation Form has been received from the Subscriber. All termination notices to be strictly sent via email to cancellations@voicedata.co.za without exception.

9. ASSIGNMENT AND CESSION

The Subscriber shall not cede, assign, transfer, encumber or delegate any of its rights or obligations in terms of this Agreement to any third party without the Supplier's approval.

10. VARIATION OF CHARGES

The Supplier may vary all or any of its charges (including but not limited to the charges described in the Subscriber Agreement of this Agreement, any charges in respect of benefits provided to Subscribers and in respect of value added services) by publishing an amended pricing, such variation to take effect after 30 (thirty) days written notice.

11. FORCE MAJEURE

- 11.1. A party shall not be deemed in default of any of its obligations under this agreement, if, and to the extent that performance of such obligation is prevented or delayed by an event of force majeure, meaning an event that can include but is not limited to fire, flood, lightning, explosion, power outages, war, acts of terrorism, strike, embargo, governmental requirement, civil or military authority, acts of God, epidemic, pandemic, quarantine, changes to laws or regulations, inability to secure materials or services, industrial disputes and acts or omissions of third party providers of telecommunications services; provided that such event is not caused by the negligence of that party, and that party has notified the other in writing of the event of force majeure. The notifying party shall use all reasonable endeavours to avoid or minimise the effects of these event(s).
 - 11.2. The Subscriber's failure and/or inability to continue to pay for Services does not amount to a force majeure event. In such circumstances, the subscriber is required to cancel the Agreement and pay early cancellation charges and/or other charges as applicable under this Agreement; failure therewith will be in breach of its obligations.
- ## 13. USE OF PERSONAL INFORMATION
- 13.1. The Subscriber hereby gives the Supplier permission to collect and process the Personal Information and acknowledge that it understands the purpose for which it is required and for which it will be used.
 - 13.2. The Subscriber agrees that The Supplier may process personal information provided for purposes of providing the services provided in terms of the agreement;
 - 13.3. The Subscriber agrees that The Supplier may process and disclose the Subscriber's personal information for purposes of the prevention, detection and reporting of fraud and criminal activities, the identification of the proceeds of unlawful activities and the combating of money laundering activities;
 - 13.4. The Subscriber agrees that The Supplier may process and report on the Subscriber's personal information to comply with an obligation imposed by any applicable laws;
 - 13.5. The Subscriber agrees that the provided personal information may be utilised by The Supplier for the purposes of marketing, service related notifications and/or referring potential business opportunities.

12. NOTICES

All notices required to be given under this Agreement will be deemed to have been properly served if sent by pre-paid registered post or delivery to the parties principle place of residence, or to any address either party has given to the other for this purpose from time to time.

13. ENTIRE AGREEMENT

- 13.1. No relaxation or indulgence granted by The Supplier to the Subscriber shall be regarded as a renunciation of any of the Subscriber's rights and shall not in any way prevent the Subscriber from enforcing such rights. This agreement is the entire and complete agreement between the parties. No agreement differing from the terms and conditions of this agreement shall be of any force or effect unless it is in writing and signed by the parties of this agreement.
- 13.2. Should certain identification details not be known on the signature date, the Supplier is authorised to complete the schedule/s when such details become known and the Subscriber agrees that details so completed shall be binding on the Subscriber.

Client Initial: _____