

# MASTER AGREEMENT

between

**SWIFTNET PTY LIMITED T/A FastNet**

Vat No: **4320151972**

Registration number: **1994/09541/07**

(hereinafter referred to as "SWIFTNET")

herein represented by

in his capacity as

with address Building No. 22, Cambridge Office Park, No. 5 Bauhinia Road

Highveld Technopark

Centurion

and

Vat No:

Registration No:

Trading as:

(hereinafter referred to as "the CUSTOMER")

herein represented by:

in his capacity as

(who is authorised as such to enter into this agreement)

with address at

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## SWIFTNET T/A FASTNET STANDARD TERMS AND CONDITIONS

### 1 INTRODUCTION

1.1 In this Agreement the following expressions shall have the following meanings respectively:

- a "Agreement" - the terms and conditions as set out herein, in terms of which Swiftnet will deliver the service to the Customer;
- b "Application for Service" – the document containing an order by the Customer for the provision of the Service, which shall form an integral part of this Agreement;
- c "Associated Company" - any subsidiary or ultimate holding company of Swiftnet or any subsidiary of such holding company ("holding company" and "subsidiary" having the meanings as defined by the Companies Act 61 of 1973);
- d "BER (Beyond Economical Repair) Maintenance Charge" - the monthly charge for replacing Swiftnet equipment, which is Swiftnet owned and is uneconomical to repair as set out in the Tariffs;
- e "Call Charge" - the charge per transaction as set out in the Tariff;
- f "Cellular Network" – the networks as operated by Vodacom and MTN as service provider;
- g "Commencement Date" - the date from which the Swiftnet Terminal/s is installed and/or delivered at the Customer's Delivery Address and/or the Customer has taken delivery of the Swiftnet Terminal/s and/or the Service is provided to the Customer and/or the Customer is connected to the WDN;
- h "Connection Charge" - the initial charge for connection to the WDN as set out in the Tariff.
- i "Customer" - the party who is named on the Application for Service document;
- j "Customer's Delivery Address" - an address within South Africa specified by the Customer on the Application for Service document, to which the Customer requires Swiftnet to install and/or deliver the Swiftnet Terminal/s;
- k "Customer Help Line" - telephone support provided to Customers by Swiftnet staff;
- l "Customer Terminal Equipment" - any apparatus used by the Customer which is approved under any legislation concerning the same and which is capable of connection to the WDN by means of a Swiftnet Terminal/s;
- m "DualConnect Modem" – a cellular modem that is a radio apparatus which forms an integral part of the network services, and connects Customer Terminal Equipment to the cellular networks, which includes the power supply, antennae and interface cables/s, accompanying the Swiftnet equipment.
- n "Swiftnet Network User Address or 'Swiftnet NUA" - such number as may be allocated by Swiftnet to be used by the Customer for the purpose of obtaining the Service;
- o "Installation and/or Proof of Delivery" – the document which shall form an integral part of this Agreement pertaining to the installation and/or delivery of the Swiftnet Terminal/s to the Customer;
- p "Installation Charge" - the initial/additional charge for installing the Swiftnet Terminal/s as set out in the Tariff's;
- q "Licences" - means the licences granted to Swiftnet under the Electronic Communications Act 36 of 2005;
- r "Network User Address (NUA) Charge" - the monthly charge that uniquely identifies the Customer as set out in the Tariff, applicable to the FastNet equipment using X.25technology;
- s "Swiftnet Terminal/s" - equipment being a X.25 Radio Pad, DualConnect GPRS Modem, Router which is an integral part of the WDN and connects Customer Terminal Equipment to the WDN, which includes the power supply, antennae and interface cable/s, accompanying the equipment;
- t "Standard Maintenance Charge" - the monthly charge for maintaining the Swiftnet owned and/or purchased Swiftnet Terminal/s as set out in the Tariffs;
- u "Service" - the telecommunications services consisting of conveyance of data messages using either packet radio technology or General Packet Radio Service (GPRS) for local access and delivery, as described by Swiftnet from time to time;
- v "Service Area X.25" - the approximate area indicated by Swiftnet from time to time;
- w "Service Area GPRS" – the approximate area indicated by Vodacom and MTN from time to time;
- x "Site" – any premises where Swiftnet equipment may be held or used by a Customer;
- y "Stock Issue Form/Delivery Note" - the supporting documentation used to issue and/or deliver Swiftnet Terminal/s to a Customer;
- z " Subscription Charge " – the monthly charge to the Customer for the usage of the Swiftnet owned terminal/s, as for the X.25 Radio Pad as set out in the Tariff or DualConnect modems as published;

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- 1.2 "Swiftnet" - Swiftnet Proprietary Limited, with registered offices at Building No. 22 Cambridge Office Park No. 5 Bauhinia Road Highveld Technopark CENTURION, 0157, trading as FastNet;
- a "Tariff" – the charges for the Service, the Swiftnet Terminal/s and any other additional service/products as may be published from time to time by Swiftnet pursuant to its rights under Condition 15 herein;
  - b "Terminating Point or 'TP" - a point of connection enabling Customer Terminal Equipment access to the WDN;
  - c "Transaction" – a transaction is defined as a small amount of data less than one kilobyte in size transmitted between a terminal a host or a terminal and another terminal over the Swiftnet network.
  - d "WDN" – the Wireless Data Network operated by Swiftnet and the Wireless Data Network as operated by Vodacom and MTN.
- 1.3 The headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 1.4 This Agreement shall, unless the context so requires, include any special terms and conditions agreed in writing between Swiftnet and the Customer.

## **2 CONNECTION AND INSTALLATION OF THE SYSTEM AND PROVISION OF THE SERVICE**

- 2.1 Subject to the terms and conditions of this Agreement, Swiftnet shall use all reasonable endeavours to connect the Customer via the FastNet equipment to the WDN and commence with the Service on the date specified in the Installation and/or Proof of Delivery document or such other date as may be agreed by the parties and thereafter to provide and maintain the Service throughout the duration of this Agreement. The Service shall endeavour to be available 24 hours in every day on every day of the year.
- 2.2 Installation of the Swiftnet Terminal/s shall be effected by Swiftnet or a person duly authorised by Swiftnet and shall be in accordance with the installation procedures which shall be made available, upon request by the Customer, by Swiftnet from time to time. Any such procedures shall, whilst they are in force, form part of this Agreement. All Installation Charges shall be for the Customer's account if Swiftnet is requested and responsible for the installation.

## **3 COMMENCEMENT AND DURATION**

- 3.1 This Agreement shall commence on the Commencement Date and shall endure for a period of twenty four (24) months after which the Agreement may be terminated by the Customer giving not less than two (2) months written notice of termination.
- 3.2 Swiftnet shall only be bound by the Agreement when it has been signed by the Customer and accepted by Swiftnet.

## **4 SWIFTNET'S OBLIGATION**

Subject to the terms and conditions of this Agreement, Swiftnet shall:

- 4.1 Install and/or deliver such quantity of FastNet terminal/s and other equipment as may be required.
- 4.2 Use all reasonable endeavours to meet any agreed installation and/or delivery date which shall be provisional only and Swiftnet shall not be responsible for any consequence of delay or damages if delivery is not met.

## **5 OWNERSHIP OF SWIFTNET TERMINALS**

- 5.1 The ownership of Swiftnet Terminal/s, except where the customer has purchased the Swiftnet Terminal/s, and associated Swiftnet NUA's allocated to the Customer shall remain vested with Swiftnet and all Swiftnet Terminal/s, except where the customer has purchased the Swiftnet Terminal/s, must be returned to Swiftnet after termination of the Service under Conditions 3 and 14 herein within a reasonable time and in any event no later than thirty (30) days after termination of this Agreement.

- 5.2 The risk of damage to and loss of the Swiftnet Terminal/s, which is Swiftnet owned or purchased, shall pass to the Customer upon its installation and/or delivery by Swiftnet to the Customer's Delivery Address and/or the Customer has taken delivery of the Swiftnet Terminal/s until such time as the Swiftnet owned Swiftnet Terminal/s is returned in good and satisfactory working order, by the Customer to Swiftnet at its registered office or such other address as Swiftnet may specify in writing.
- 5.3 Failure, for any reason, to return the Swiftnet owned Swiftnet Terminal/s to Swiftnet's address in accordance with Condition 5.2 (above) shall cause the Customer to be liable for the recovery costs of such Swiftnet Terminal/s as well as the replacement costs as shall apply from time to time. This condition is not applicable where a Swiftnet Terminal/s is purchased by the Customer and is the property of the customer.
- 5.4 Further to Condition 5.3 (above), failure, for any reason by the Customer to return the Swiftnet owned Swiftnet Terminal/s, which was used for temporary purposes, after expiry of the temporary period, to Swiftnet's address, shall cause the customer to become a normal Customer and be liable and responsible for the payment of all charges in accordance with Condition 11.3 and 19.6.

## **6 CUSTOMER OBLIGATIONS**

- 6.1 The Customer undertakes that he/she/it shall use, or permit any other person to use the Service, the Swiftnet Terminal/s and Swiftnet NUA's only:
- 6.1.1 in accordance with such reasonable operating instructions as may be notified in writing to the Customer by Swiftnet from time to time; and
- 6.1.2 for the purpose for which the Service is provided.
- 6.2 The Customer shall not, or permit any person to:
- 6.2.1 carry out or try to carry out any repairs or alterations to Swiftnet owned Swiftnet Terminal/s; and/or
- 6.2.2 sell, charge, hire or otherwise prejudice Swiftnet's title in the Swiftnet Terminal/s; and/or
- 6.2.3 use the Service, the Swiftnet owned Swiftnet Terminal/s or Swiftnet NUA's in such a manner which constitutes a violation or infringement of the rights of any person, firm or company (including but not limited to rights of copyright or confidentiality) or a violation or infringement of any statutory duty or obligation or any duty or obligation in contract delict or otherwise, to any third party; and/or
- 6.2.4 use the Service, the Swiftnet owned Swiftnet Terminal/s or Swiftnet NUA's for the transmission of any material which is defamatory, offensive or of an obscene or menacing character.
- 6.3 The Customer shall indemnify Swiftnet against any claims, procedures and expenses arising from any infringement of Conditions 6.1 and 6.2 of this Agreement.
- 6.4 The Customer, who subscribes to the Swiftnet owned Swiftnet Terminal/s, shall provide Swiftnet with all such necessary information and co-operation that Swiftnet may reasonably require from time to time to enable it to proceed uninterruptedly with the performance of its obligations under this Agreement. This shall include:
- 6.4.1 the provision of a suitable environment for the Swiftnet owned Swiftnet Terminal/s;
- 6.4.2 full and convenient access to the Customer's and other premises for the purpose of delivery of the Swiftnet owned Swiftnet Terminal/s, or of any additional visits to site made either at the Customer's request or which may be necessary from time to time in order to maintain Service;
- 6.4.3 a prompt report by the Customer to Swiftnet of any loss or damage to the Swiftnet owned Swiftnet Terminal/s whilst at the Customer's risk
- 6.5 The Customer shall at all times ensure that the Customer Terminal Equipment shall be approved, to the extent and manner necessary, for use with the Swiftnet Terminal/s and the Customer shall at all times

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comply with the conditions of such approval. Swiftnet reserves the right to disconnect any Customer Terminal Equipment, and shall incur no liability whatsoever in so doing, if the Customer does not fulfil its obligations under this Condition, or if in the opinion of Swiftnet it may cause the death of, or personal injury to, or damage to the property of Swiftnet or any person engaged in the running of the System or materially to impair the quality of the Service.

- 6.6 The customer shall, in the event that the premises are leased, notify the landlord to the fact that the Swiftnet equipment is the property of Swiftnet and that it does not form part of any attachable assets that the customer might have. Swiftnet may insist that proof of such notification be submitted.
- 6.7 The Customer shall not, or permit any person to:
- 6.7.1 carry out or try to carry out any repairs or alterations to Swiftnet owned Swiftnet Terminal/s; and/or
  - 6.7.2 sell, charge, hire or otherwise prejudice Swiftnet's title in the Swiftnet Terminal/s; and/or
  - 6.7.3 use the Service, the Swiftnet owned Swiftnet Terminal/s or Swiftnet NUA's in such a manner which constitutes a violation or infringement of the rights of any person, firm or company (including but not limited to rights of copyright or confidentiality) or a violation or infringement of any statutory duty or obligation or any duty or obligation in contract delict or otherwise, to any third party; and/or
  - 6.7.4 use the Service, the Swiftnet owned Swiftnet Terminal/s or Swiftnet NUA's for the transmission of any material which is defamatory, offensive or of an obscene or menacing character.
- 6.8 The Customer shall indemnify Swiftnet against any claims, procedures and expenses arising from any infringement of Conditions 6.1 and 6.2 of this Agreement.
- 6.9 The Customer, who subscribes to the Swiftnet owned Swiftnet Terminal/s, shall provide Swiftnet with all such necessary information and co-operation that Swiftnet may reasonably require from time to time to enable it to proceed uninterruptedly with the performance of its obligations under this Agreement. This shall include:
- 6.9.1 the provision of a suitable environment for the Swiftnet owned Swiftnet Terminal/s;
  - 6.9.2 full and convenient access to the Customer's and other premises for the purpose of delivery of the Swiftnet owned Swiftnet Terminal/s, or of any additional visits to site made either at the Customer's request or which may be necessary from time to time in order to maintain Service;
  - 6.9.3 a prompt report by the Customer to Swiftnet of any loss or damage to the Swiftnet owned Swiftnet Terminal/s whilst at the Customer's risk
- 6.10 The Customer shall at all times ensure that the Customer Terminal Equipment shall be approved, to the extent and manner necessary, for use with the Swiftnet Terminal/s and the Customer shall at all times comply with the conditions of such approval. Swiftnet reserves the right to disconnect any Customer Terminal Equipment, and shall incur no liability whatsoever in so doing, if the Customer does not fulfil its obligations under this Condition, or if in the opinion of Swiftnet it may cause the death of, or personal injury to, or damage to the property of Swiftnet or any person engaged in the running of the System or materially to impair the quality of the Service.
- 6.11 The customer shall, in the event that the premises are leased, notify the landlord to the fact that the Swiftnet equipment is the property of Swiftnet and that it does not form part of any attachable assets that the customer might have. Swiftnet may insist that proof of such notification be submitted.

## **7 MAINTENANCE, REPAIR AND REPLACEMENT OF FAULTY SWIFTNET TERMINAL/S**

- 7.1 A defective Swiftnet Terminal/s which is the property of Swiftnet shall be maintained, repaired and/or replaced by Swiftnet free of charge or otherwise as agreed by the parties, provided always that faults are the result of fair wear and tear, and not caused by any negligence or default on the part of the Customer.

In the case of faults caused by negligence or default on the part of the Customer, the Customer shall pay, on demand, such repair or replacement charges as applicable from time to time.

- 7.2 Swiftnet Terminal/s incorporate no field serviceable parts and whether to repair or replace faulty units in the field shall be the sole discretion of Swiftnet.
- 7.3 Defective Swiftnet Terminal/s, which has been removed from field operation, should be returned forthwith to Swiftnet for repair or replacement. Shipment costs of Swiftnet Terminal/s to Swiftnet shall be made for the Customer's account, while return shipment of repaired or replaced Swiftnet Terminal/s shall be made for Swiftnet's account.
- 7.4 A defective Swiftnet Terminal/s which is the property of Swiftnet and uneconomical to repair, shall be replaced by Swiftnet free of charge or otherwise as agreed by the parties, provided always that defects are the result of conditions beyond the Customer's control, and not caused by any negligence or default on the part of the Customer. In the case of defects caused by negligence or default on the part of the Customer, the Customer shall pay, on demand, such replacement charges as applicable from time to time.

## **8 CUSTOMER ASSISTANCE**

- 8.1 Swiftnet's Customer Help Line shall operate during Swiftnet's normal working hours and messages recorded outside such hours shall be responded to during normal working hours.
- 8.2 Any on-site assistance, such as but not limited to routine installation and/or maintenance, provided at the Customer's instance and special request, shall be done at, additional charges which shall be raised in accordance with Swiftnet's quoted Tariff.

## **9 ALTERATIONS TO THE WDN**

- 9.1 Swiftnet reserves the right, without liability, to improve, expand, maintain, repair or otherwise alter, as it deems appropriate, the WDN or the Service, provided such changes do not substantially change the nature of the Service. Furthermore, Swiftnet reserves the right to suspend the operation of the WDN or the Service for the purposes of remedial or preventative maintenance or improvement of the WDN or the Service provided that Swiftnet shall use all its reasonable endeavours to keep such suspension to a minimum and to provide the Customer with reasonable notice in these circumstances.

## **10 SUSPENSION / DISCONNECTION**

- 10.1 Swiftnet may elect to suspend and or terminate the Service (and at Swiftnet's discretion disconnect the Swiftnet Terminal/s from the System) in the event of:
  - 10.1.1 Failure by the Customer to pay the charges within fourteen (14) days after the due date as indicated on the account rendered to the Customer; and/or
  - 10.1.2 Swiftnet being entitled to terminate this Agreement; and/or
  - 10.1.3 Any technical failure, modification or maintenance of the WDN, in which event Swiftnet shall use its reasonable endeavours to ensure there is a minimum disruption to the Service.
- 10.2 Any exercise by Swiftnet of its rights of suspension in respect of an event referred to in Condition 10.1 shall not exclude Swiftnet's right subsequently to terminate this Agreement.
- 10.3 Notwithstanding any suspension of the service under this clause the Customer shall remain liable for all charges, which shall include the purchase price, as published from time to time, of the Swiftnet owned Swiftnet Terminal/s, due throughout the period of suspension unless Swiftnet at its sole discretion determines otherwise.

## 11 BILLING AND PAYMENT

- 11.1 Billing for the Swiftnet owned and purchased Swiftnet Terminal/s shall commence on the installation and/or delivery date.
- 11.2 Billing for the Service shall commence with the connection of the Customer Terminal Equipment to the WDN.
- 11.3 The Customer is responsible for the payment of all charges indicated on the account rendered and shall pay Swiftnet, or a person duly authorised by Swiftnet, an Installation Charge (if applicable), a Connection Charge, a NUA Charge (if applicable), Call Charges, a Standard Maintenance Charge, a BER Maintenance Charges (if applicable) and a Subscription Charge (if applicable) unless otherwise specified by Swiftnet:
- 11.3.1 Call Charges shall be invoiced by Swiftnet monthly in arrears.
- 11.3.2 NUA Charges, Standard Maintenance Charges, BER Maintenance Charges and Subscription Charges shall be invoiced by Swiftnet monthly in advance. NUA Charges, Standard Maintenance Charges, BER Maintenance Charges and Subscription Charges shall become chargeable from the beginning of the month after which the Swiftnet NUA was connected to the WDN and shall continue for the duration of this Agreement and the Swiftnet Terminal/s is returned to Swiftnet in accordance with Condition 3 and 5 hereof. Should any connection date be any date other than the first day of the month, the amounts owing for the initial month will be pro-rated from the date of connection to the end of the initial month and shall be added to the first monthly statement.
- 11.3.3 Installation Charges (if applicable) and Connection Charges, which are non-refundable, shall be invoiced by Swiftnet upon delivery of the Swiftnet Terminal/s to the Customer.
- 11.3.4 Any other applicable charges shall be invoiced by Swiftnet in accordance with its Tariff.
- 11.4 Swiftnet may charge additional charges:
- 11.4.1 where on-site assistance has been provided at the Customer's request, such charges shall be calculated in accordance with a quoted Tariff;
- 11.4.2 where on-site assistance has been requested and has not been carried out due to the Customer's fault and / or negligence;
- 11.4.3 in the event of abortive installation (i.e. where the Customer has confirmed the time and date for the installation and it is found that the site is not ready for installation); reasonable costs of field agents call out shall be recoverable from the Customer;
- 11.4.4 where it has been necessary for Swiftnet to use non-standard apparatus in order to provide the Service, Swiftnet shall notify the Customer in advance of any such additional charge(s) which may be levied, and the Customer may elect to cancel this Agreement by written notice within thirty (30) days;
- 11.5 All payments due hereunder shall be paid together with VAT or any other relevant charge or levy at the appropriate rate, on or before the due date indicated on the account.
- 11.6 Upon receiving a query by the Customer regarding the Customer's usage that constantly exceed the normal transaction size as defined in 1 (dd), Swiftnet shall investigate and may, in its own reasonable discretion, suggest to the Customer an alternative price plan.
- 11.7 Should the negotiations in 11.6 not be mutually agreeable, Swiftnet reserves the right to terminate the Service with three month's written notice.
- 11.8 Swiftnet will provide the customer with a monthly statement. The statement will be provided in writing and posted to the address as stipulated in the Service and Order form. Non receipt of a statement will not be cause to withhold any payment due.

## **12 INTEREST**

- 12.1 Swiftnet shall be entitled to charge interest at the rate of 2% above the then existing Standard Bank of SA Prime Rate if an account rendered to a Customer is not paid on or before the due date indicated on the account, up to and including the date of payment.

## **13 REBATE OF CHARGES**

- 13.1 Where the Service has been wholly and continuously unavailable for a continuous period of twenty four (24) hours or more after a failure in the Service has been reported to Swiftnet, by reason of some fault in any part of the WDN and not as a result of:
- 13.1.1 the fault or negligence of the Customer; and/or
  - 13.1.2 failure of the Customer to comply with all of the provisions of the Agreement; and/or
  - 13.1.3 force majeure, as more particularly described in Condition 17 below; and/or
- 13.2 The Customer may apply to Swiftnet for a rebate at the discretion of Swiftnet (Pty) Ltd of the Maintenance Charges, Service Charges and Call Charges appropriate to that period and Swiftnet shall allow the Customer, by way of deduction from Swiftnet's next invoice, a pro rata rebate of the Maintenance Charge and Service Charge, and a daily rebate of 10% of the Call Charges, provided always that the maximum rebate entitlement shall be equivalent to the monthly Maintenance Charge, Service Charge and Call Charge appropriate to the period.
- 13.3 Without prejudice to the generality of Condition 16, Swiftnet shall not be liable to the Customer under this Agreement for the use of telecommunications apparatus and lines provided or leased from Telkom SA Limited, Vodacom or MTN or any other person or entity, including without limitation telephone, telegraph, telex or data communication services during any period of unavailability.

## **14 TERMINATION**

- 14.1 Notwithstanding the provisions in Paragraph 3.1 the Customer shall have the right to terminate this Agreement within fifteen (15) days after the Commencement Date. However, the Customer shall still be held liable for all applicable charges and costs up and until the date of termination.
- 14.2 Without prejudice to any other rights which may accrue before or after any termination:
- 14.2.1 either party may further terminate this Agreement forthwith in the event that:
    - 14.2.1.1 the party hereto is in breach of any of its obligations under this Agreement and in the case of a remediable breach fails to remedy such breach within thirty (30) days of receiving written notice to do so; or
    - 14.2.1.2 if 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 Swiftnet anticipates that any of the events set out in this clause are imminent; or
    - 14.2.1.3 if the Customer does or allows to be done anything which in Swiftnet's opinion shall or may have the effect of negatively affecting the operation of the Service.
- 14.3 Upon termination of this Agreement for any reason Swiftnet shall disconnect the Swiftnet Terminal/s from the WDN and the Customer who subscribed to the Swiftnet owned Swiftnet Terminal/s, must return all such Swiftnet Terminal/s to Swiftnet at the Customer's sole expense and shall further, upon demand, pay Swiftnet all amounts due hereunder at the date of such termination.

## **15 VARIATION OF CHARGES AND TERMS**

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- 15.1 Swiftnet may vary all or any of its charges payable hereunder or introduce new charges from time to time (or otherwise in such a way as Swiftnet deems appropriate).
- 15.1.1 The monthly service rental charges will be subject to SWIFTNET's annual service adjustment which is based on the percentage change in the year on year (December on December) Consumer Price Index (CPI) as published by Statistics South Africa Headline Inflation Rate - or if the publication of such Index is discontinued, the most similar Index as compiled and published monthly by Statistics South Africa in a statistical news release or any body authorised in its stead, in terms of the Statistics Act 1976 as amended (or any statute replacing such Act).
- 15.2 Swiftnet reserves the right, without liability, to vary the terms and conditions of this Agreement, at its sole discretion, whether or not as a direct result of new legislation, statutory instruments, Government regulations or licenses, or similar events, provided that such variation shall be limited to the extent necessary for these purposes. Swiftnet at its sole discretion may elect to notify the Customer of any such variation in writing or by publishing such variation at Swiftnet's principal place of business.
- 15.3 Notwithstanding the provisions of Condition 14, the Customer shall have the right to terminate this Agreement forthwith by giving written notice to Swiftnet within fourteen (14) days of receiving notice of:
- 15.3.1 any increase in any charge above the change in the headline CPI for all goods as published by the Department of Statistics South Africa. plus 5% without refund save that the Customer shall not have the right to terminate where an additional charge is introduced for an optional enhancement.

## **16 LIABILITIES**

- 16.1 Swiftnet shall be liable to the Customer as expressly provided in this Agreement, but shall have no other obligation, duty or liability whatsoever in contract, delict or otherwise including any liability for negligence to the Customer and to the extent permitted by law. Swiftnet excludes any warranties whether expressed or implied by any statute including but not limited to any implied warranty of merchantability or fitness for a particular purpose.
- 16.2 Swiftnet shall perform its obligations hereunder with a reasonable degree of skill and care.
- 16.3 Swiftnet shall not be liable to the Customer hereunder in the contract, delict or otherwise for any loss of revenue, business contracts, anticipated savings, or profits or for any other indirect or consequential loss whatsoever.
- 16.4 The provisions of this Condition shall continue to apply notwithstanding the termination or expiry of this Agreement.

## **17 FORCE MAJEURE**

- 17.1 Neither Swiftnet nor the Customer (except in respect of a failure by the Customer to pay any amounts due to Swiftnet) shall 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, requirement to act in accordance with the Licences, act or default of any public telecommunications 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.

## **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 under this Agreement except with Swiftnet's prior written consent, such consent not to be unreasonably withheld.
- 18.2 Swiftnet shall be entitled, at any time, to cede, transfer, assign or delegate or otherwise deal with all or any of its rights and obligations under this Agreement to any Associated Company or other person, without the Customer's consent.

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**19 MISCELLANEOUS**

19.1 Representation

The Customer agrees 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.

19.2 Notices and Domicilia

19.2.1 The Customer chooses, as its domicilium citandi et executandi, the address set out in the Application for Service document, or at such other address as set out below, of which the Customer may notify Swiftnet not being a post office box or poste restante.

.....  
.....  
.....

19.2.2 All notices given in terms of this Agreement shall be in writing.

19.2.3 Swiftnet's address for the service of any notice by the Customer under this Agreement shall be such address as is shown on the last invoice rendered to the Customer or such address as Swiftnet may prescribe for that purpose

19.2.4 Any such communication shall be deemed to have been made to the other party on the day on which such communication ought to have been received in due course of post, telex or facsimile transmission.

19.3 Cost of action

Should Swiftnet exercise any of its rights arising out of breach of the customer's obligations in terms of this agreement, the customer shall be responsible for payment of all such costs. Any tracing fees incurred will be recovered from the Customer. All attorneys and registered debt collectors costs will be recovered from the customer on a scale as between attorney and own client.

19.4 Law

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.

19.5 Directors of a Company (Private or Public) or Member of a Closed Corporation

Where a company or closed corporation is the Customer, the person signing the Application for Service 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 Swiftnet in the event that the company or closed corporation (the Customer) fails, for whatever reason, to pay the outstanding charges.

19.6 Proof of indebtedness

19.6.1 A certificate purporting to have been signed by a designated manager of Swiftnet, which manager's appointment need not be proved, shall be *prima facie* proof in any court of law of the Customer's indebtedness towards Swiftnet and any other fact referred to therein, including, but

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not limited to the recovery costs and the replacement cost of any equipment referred to in this agreement.

- 19.6.2 The statements rendered by Swiftnet and/or Telkom SA Limited on behalf of Swiftnet shall also be *prima facie* proof of the amount of the Customer's indebtedness to Swiftnet and shall be admissible evidence by mere production.
20. The customer acknowledges and agrees that Swiftnet (Pty) Ltd has the right to verify the information supplied on the Service Order Form. Swiftnet (Pty) Ltd may obtain and disclose to any credit bureau, South African Fraud Prevention Services or any other agent the customer has dealt with any information with regard to the customer's profile and credit history. Any incorrect or false information will be reported to the South African Fraud Prevention Services.
21. The customer acknowledges and agrees that Swiftnet (Pty) Ltd has the right to verify the information supplied on the Service. Swiftnet (Pty) may obtain and disclose to any credit bureau, South African Fraud prevention Services or any other agent the customer may have dealt with any information with regard to the customer's profile and credit history. Any incorrect or false information will be reported to the South African Fraud Prevention Services.

## Acceptance of this agreement

SIGNED at ..... on this the..... day of .....2010

### AS WITNESSES:

1. ....  
.....  
Duly authorised representative  
On behalf of
2. ....  
.....  
.....  
Name in print and capacity

SIGNED at.....on this the..... day of.....2010

### AS WITNESSES:

1. ....  
.....  
Duly authorised representative  
On behalf of **SWIFTNET (PTY) LTD**
2. ....  
.....  
.....  
Name in print and capacity