

NIMBOUS TELECOMS (PTY) LTD STANDARD TERMS AND CONDITIONS

1 Definitions and Interpretation

- 1.1 In this Agreement, the words hereunder will have the meanings assigned to them below:
- 1.1.1 **"Agreement"** means the agreement entered into between Nimbus Telecom and the Customer for the supply of the Services, the terms of which agreement are contained in these Standard Terms and Conditions, the Application Form, the Service Schedule/s, the Customer Support Schedule and any additional annexures and attachments hereto;
- 1.1.2 **"Application Form"** means the application form which is completed and signed by the Customer and Nimbus Telecom;
- 1.1.3 **"Commencement Date"** means the date on which Nimbus Telecom commences rendering the Services to the Customer, as specified in the Service Schedule, on which date the Services are commissioned by Nimbus Telecom for use by the Customer irrespective of whether or not the Customer uses the Services;
- 1.1.4 **"CPA"** means the Consumer Protection Act 68 of 2008, as amended from time to time;
- 1.1.5 **"Customer"** means the party specified as the Customer on the Application Form;
- 1.1.6 **"Customer Support Schedule"** means the schedule containing customer support information which schedule may be obtained from Nimbus Telecom on request;
- 1.1.7 **"Effective Date"** means the date on which the Application Form and the Service Schedule are signed by both parties;
- 1.1.8 **"Films and Publications Act"** means the Films and Publications Act 65 of 1996, as amended from time to time;
- 1.1.9 **"Initial Period"** means the initial contract term of the Services during which period Nimbus Telecom shall supply the Services to the Customer, as set out in the Service Schedule;
- 1.1.10 **"Intellectual Property"** means all copyright, trademarks, designs, patents and the like recognised as a class of intellectual property in South Africa;
- 1.1.11 **"Licence"** means any licence to utilise the Software, granted by Nimbus Telecom to the Customer for the duration of the Agreement as more fully detailed in clause 9 below;
- 1.1.12 **"Nimbus Telecom"** means Nimbus Telecom (Pty) Limited, a private company duly incorporated in terms of the laws of South Africa, with registration number 2008/011068/07, which is a provider of converged communication and telecommunication services;
- 1.1.13 **"Personal Information"** bears the meaning assigned to the term in the POPI Act;
- 1.1.14 **"POPI Act"** means the Protection of Personal Information Act 4 of 2013, including any regulations and codes of conduct issued in terms thereof;
- 1.1.15 **"PSTS Provider"** means any public switched telecommunications services provider licensed to provide such services in terms of the Electronic Communications Act of 2005 as amended;
- 1.1.16 **"Service/s"** means the service/s which shall be provided by Nimbus Telecom to the Customer as specified in the Service Schedule comprising of ICT (information and communication technologies) services including all Software and equipment necessary to be provided by Nimbus Telecom to the Customer to enable the provision of the Service/s to the Customer;
- 1.1.17 **"Service Schedule"** means the Service Specification Schedule wherein the full details and costs of the Service/s to be rendered by Nimbus Telecom to the Customer are specified and expressly agreed to by the parties, together with all other terms specific to the parties' Agreement and which schedule shall be signed by both parties;
- 1.1.18 **"Software"** means the software licensed by Nimbus Telecom to the Customer in terms of clause 10 below, to enable the provision of the Services to the Customer where applicable and as detailed in the Service Schedule;
- 1.1.19 **"VAT"** means Value-Added Tax as defined in the Value-Added Tax Act 89 of 1991 as amended from time to time.
- 1.2 The clause headings contained in this Agreement are for reference purposes only and shall not be used in the interpretation of this Agreement. Words importing any one gender include the other gender, the singular includes the plural and *vice versa*, and natural persons include juristic entities and *vice versa*.

2 Commencement Date, Duration and Termination

- 2.1 Nimbus Telecom shall commence rendering the Services to the Customer on the Commencement Date.
- 2.2 If at any time during the currency of the Agreement, the Customer upgrades the Services, then the Initial Period shall cease and shall be replaced with a further fixed period, which period shall be recorded in an additional Service Schedule which shall be signed by both Parties, save as where expressly agreed to the contrary between the parties.
- 2.3 The Initial Period is specified in the Service Schedule.
- 2.4 In the event that either party wishes for this Agreement to terminate upon the expiry of the Initial Period, then such party shall be required to provide the other party with written notice of its election in this regard, which notice shall be provided no later than 90 (ninety) days prior to the expiry of the Initial Period and in which event this Agreement shall terminate upon the expiry of the Initial Period;
- 2.5 In the event that neither party gives timeous written notice to cancel this Agreement as provided for in clause 2.4 above, this Agreement shall continue to operate on a month to month basis, or for such further fixed term as is expressly agreed by the parties in writing, and the terms of which agreement shall be governed by the terms as contained in this Agreement subject to any written amendments thereto effected by the parties and subject to any increase in the fees payable as determined by Nimbus Telecom in terms of clause 3.8 below.

3 Charges and Payment

- 3.1 All Services provided shall be charged for by Nimbus Telecom with effect from the Commencement Date in accordance with the amounts specified in the Service Schedule. In the event of a single Service consisting of a number of components, billing will commence for each respective component of that Service as and when each component of that Service goes live.
- 3.2 The Customer is responsible for and agrees to effect payment to Nimbus Telecom of all fees charged for the Service/s as specified in the Service Schedule in South African currency, without demand, deduction or set-off of any amount of whatsoever nature or for whatsoever reason.
- 3.3 All prices specified in the Service Schedule exclude:
- 3.3.1 VAT and any other any taxes and duties including any regulatory surcharge, which the Customer becomes obligated to pay by virtue of this Agreement, and

- 3.3.2 PSTS Provider service fees charged in respect of any services rendered by a PSTS Provider directly to the Customer, which fees shall be paid by the Customer directly to the PSTS Provider in accordance with the terms as are agreed between the PSTS Provider and the Customer, the payment of which fees shall at all times be the responsibility of the Customer. The Customer indemnifies and holds Nimbus Telecom harmless against any claims, costs and/or damages, which may be incurred by the Customer or the PSTS Provider as a result of a failure by the Customer to pay the PSTS Provider's fees, or any part thereof, as the case may be.
- 3.4 Nimbus Telecom shall be liable to effect payment of any fees charged by a PSTS Provider in respect of services rendered by the PSTS Provider to Nimbus Telecom for purposes of enabling Nimbus Telecom to render the Services to the Customer.
- 3.5 In the event of any dispute arising as to the amount or calculation of any fee or charge to which Nimbus Telecom is entitled, the dispute shall be referred for determination to mutually appointed auditors. In the event that the parties are unable to agree which auditors to appoint for this purpose, either party may request the South African Institute of Chartered Accountants to appoint the auditor required. The auditor so appointed shall act as an expert and their decision shall be final and binding on Nimbus Telecom and Customer. The cost of the determination by the auditor shall be paid on demand by the party against whom the determination is made, or as determined by the said auditors.
- 3.6 All invoices issued by Nimbus Telecom shall be payable by the Customer within no later than 15 (fifteen) days following date of the applicable invoice.
- 3.7 Any amount falling due for payment by the Customer to Nimbus Telecom in terms of or pursuant to this Agreement and which is not paid on its due date shall bear interest calculated from the due date for payment thereof until date of payment, at a rate equal to the prime overdraft rate plus two percent (2%) charged by First National Bank from time to time, monthly in arrears.
- 3.8 Nimbus Telecom shall be entitled from time to time on 30 (thirty) days prior written notice thereof to Customer to increase its fees as specified in the Service Schedule, provided that:
- 3.8.1 Nimbus Telecom shall not be entitled to increase the fees during the first 12 (twelve) months of this Agreement; and
- 3.8.2 Nimbus Telecom shall not increase the fees on more than one occasion in any subsequent 12 (twelve) month period of this Agreement; and
- 3.8.3 Percentage increase in monthly fee is linked to the Consumer Price Index (CPI).

4 Customer's Obligations

- 4.1 The Customer shall comply strictly with all restrictions imposed on computer networks through which any information and/or data transmitted by the Customer passes.
- 4.2 The Customer shall not commit nor attempt to commit any act or omission which directly or indirectly:
- 4.2.1 damages Nimbus Telecom's technical infrastructure or any part thereof in any way whatsoever;
- 4.2.2 impairs or precludes Nimbus Telecom from being able to provide the Service/s in a reasonable and business-like manner;
- 4.2.3 constitutes an abuse or malicious misuse of the Service/s, or of any Software and/or equipment provided by Nimbus Telecom;
- or is calculated to have the abovementioned effect. In such an event, should Nimbus Telecom incur expenses to remedy the situation, Nimbus Telecom reserves the right to charge the Customer the amount necessary to cover Nimbus Telecom's additional expenditure. Notwithstanding the above, Nimbus Telecom reserves the right to take any other appropriate action it may deem necessary to remedy the situation.
- 4.3 The Customer is responsible to ensure that all equipment supplied to it by Nimbus Telecom on an OPEX (operational expenditure) model as detailed in the Service Schedule, shall be fully insured by the Customer;
- 4.4 The Customer is prohibited from modifying any equipment (including but not limited to router equipment) provided to it by Nimbus Telecom and utilised by the Customer to receive any of the Service/s, in any way whatsoever, including the changing of any of the settings of such equipment.
- 4.5 The Customer shall at all times adhere to and ensure compliance with the Customer Support Schedule.
- 4.6 Under no circumstances may the Customer resile from this Agreement or withhold or defer payment or be entitled to a reduction in any charge payable by it to Nimbus Telecom in terms of this Agreement, or have any other right or remedy against Nimbus Telecom, its partners, its servants, its agents or any other persons for whom it may be liable in law (and in whose favour this provision constitutes a *stipulatio alteri*) if Nimbus Telecom interrupts the Service to Customer as it would be entitled to do if the Customer is in default of any of its obligations under this Agreement to Nimbus Telecom or in the circumstances contemplated in clause 6 below.
- 4.7 The Customer may not at any time use the Service in contravention of any South African law. In particular, the Customer undertakes to familiarize itself and ensure that it is kept continuously apprised of all South African law in force from time-to-time, which has any bearing on the Service and/or its use and to ensure that its use of the Services is lawful at all times. The Customer acknowledges that Nimbus Telecom has no obligation to assist the Customer in this regard. The Customer expressly acknowledges, to the extent that the provisions of the Films and Publications Act find application in this Agreement, that Mesh Telcom shall be compelled in certain circumstances and in terms of the said act, to furnish information regarding the identity of the Customer and to make certain reports to the necessary authorities regarding the Customer's use of the Services as prescribed in the act.

5 Early Termination Fee

- 5.1 Subject to anything stated in the Service Schedule to the contrary, the Customer agrees that should it terminate the Agreement at any point between the Effective Date and the Commencement Date, the Customer shall be held liable for any wasted costs incurred by Nimbus Telecom in anticipation of the Commencement Date and of the Services to be rendered by it to the Customer in terms of the Agreement, including any damages incurred by Nimbus Telecom occasioned by the Customer's termination of the Agreement;
- 5.2 Subject to anything stated to the contrary in the Service Schedule, the Customer agrees that should it terminate the Agreement after the Commencement Date and prior to the expiry of the Initial Period, that the following amounts shall become immediately due and payable by it to Nimbus Telecom:
- 5.2.1 All amounts due in terms of the Agreement which are in arrears at the date of termination by the Customer; and
- 5.2.2 The total amount which would have become payable to Nimbus Telecom had it continued to render the Services to the Customer for the duration of the Initial Period (or of such extended period as agreed to between Nimbus Telecom and the Customer), which amount shall comprise the pre-estimated liquidated damages incurred by Nimbus Telecom as a result of the Customer's early termination of the Agreement;

5.3 The provisions of clauses 5.1 and 5.2 above shall not preclude Nimbus Telecom from exercising its rights in terms of clause 11 below and it is expressly recorded that Nimbus Telecom may elect to recover any damages incurred by it from the Customer in terms of the provisions of clause 11 below *in lieu* of the claim specified in clause 5.2.2 above.

6 Accessibility to the Services

6.1 From the Commencement Date, access to the Services shall be uninterrupted, save for interruptions occasioned by scheduled maintenance, power outages, upgrades and/or the like, disruptions attributable to third party dependencies, security issues, virus attacks, spam issues and/or attacks and other *force majeure* events.

6.2 Nimbus Telecom undertakes to implement all reasonable measures (to the extent that it is within its power to do so) to ensure that any scheduled interruptions for purposes of maintenance, upgrades and the like occur during off peak times, specifically outside of business hours wherever possible. Notification of scheduled interruptions to the Service will be provided by Nimbus Telecom to the Customer to the extent possible and as soon as Nimbus Telecom is reasonably able to provide such notification.

6.3 The Customer acknowledges that Nimbus Telecom has certain dependencies on third parties and that it will attempt to ensure continuous access to the Service, however from time to time the Service may be temporarily unavailable or inaccessible for reasons beyond the control of Nimbus Telecom.

6.4 Because of the need to conduct maintenance, repair and/or improvement work from time to time on the technical infrastructure by means of which the Services are provided, the provision of the Services may be suspended from time to time, and all liability on the part of Nimbus Telecom or its partners, of any loss or damage (whether direct or consequential) thereby incurred or for any costs, claims, or demands of any nature arising therefrom, is excluded, and the provisions of clause 8.1 below shall apply mutatis mutandis to such exclusion.

6.5 Should the provision of the Service/s be suspended by Nimbus Telecom for the purpose mentioned in clause 6.2 above for a period in excess of 48 (forty-eight) consecutive hours, Nimbus Telecom shall give the Customer a credit in an amount which represents a pro rata portion of Customer's basic monthly subscription fee for the month during which the said suspension occurred.

6.6 In addition to the remedies available to Nimbus Telecom in terms of clause 11 below, Nimbus Telecom shall be entitled to immediately suspend and deactivate all Services to the Customer in the event that:

6.6.1 The Customer fails to effect payment of any amount payable by it to Nimbus Telecom in terms of this Agreement, by the due date; or

6.6.2 The Customer breaches any other term of this Agreement and fails to remedy that breach within 14 (fourteen) days of receipt of written notice from Nimbus Telecom calling for the breach to be remedied.

7 Limited Warranty

7.1 Nimbus Telecom's warranty under this Agreement is limited to the provision of the Services and the supply of any Software and/or equipment as specified in the Service Schedule, if applicable, in good operating condition and working order in accordance with the application specifications for the Software and/or equipment supplied if applicable.

7.2 Except as expressly set forth in clause 7.1 above and elsewhere in the Agreement, or as provided to the contrary in the CPA (only to the extent that the provisions of the CPA are applicable to the Agreement), Nimbus Telecom makes no warranties of any kind, including any implied warranty of merchantability or of fitness for a particular purpose with respect to the Services and any Software and/or equipment provided by it to the Customer in terms of this Agreement and all such warranties are expressly disclaimed.

8 Exclusion of Liability and Indemnity

8.1 Except as otherwise expressly provided herein to the contrary, Nimbus Telecom shall not be liable to the Customer or any third party for any loss or damage of whatsoever nature and/or howsoever arising (including consequential or incidental loss or damage which shall include but shall not be limited to loss of property or of profit, business, goodwill, revenue, data or anticipated savings) or for any costs, claims or demands of any nature whether asserted against Nimbus Telecom or against the Customer by any party, arising directly or indirectly out of the Service/s, their use, access, withdrawal or suspension or out of any information or materials provided or not provided, as the case may be, save in the event that the aforesaid damage, or loss was directly or indirectly attributable to the gross negligence of Nimbus Telecom.

8.2 Subject to clause 8.1 above, the entire liability of Nimbus Telecom and the Customer's exclusive remedy for damages from any cause related to or arising out of this Agreement, regardless of the form of action, whether in contract or in delict, will not exceed the aggregate of the fees and charges paid by the Customer in terms of this Agreement to Nimbus Telecom for the period of 12 (twelve) months preceding the Customer's written notice to Nimbus Telecom in respect of such claim.

8.3 The Customer hereby indemnifies Nimbus Telecom against and holds Nimbus Telecom harmless from any claim by any third party arising directly or indirectly out of access to or use of the Service/s or information obtained through the use thereof or in respect of any matter for which liability of Nimbus Telecom is excluded in terms of clause 8.1 above.

9 Documentation

9.1 Any specifications, descriptive matter, drawings and other documents, which may be furnished by Nimbus Telecom to the Customer from time to time:

9.1.1 do not form part of the terms of this Agreement and may not be relied upon, unless they are agreed in writing by both parties hereto to form part of this Agreement;

9.1.2 shall remain the property of Nimbus Telecom and shall be deemed to have been imparted by it in trust to the Customer for the sole use of the Customer. All copyright in such documents vests in Nimbus Telecom. Such documents shall be returned to Nimbus Telecom on demand.

10 Software

10.1 To the extent applicable the use of the Software as detailed in the Service Schedule (if applicable) is provided to the Customer under the terms of the Licence as recorded in this clause 10 and in terms of the further provisions of the Agreement.

10.2 To the extent applicable, the Customer accepts and agrees to be bound by the terms of this Licence.

10.3 The Software is protected by copyright and other intellectual property laws and any use of the Software other than as authorised under this Licence or in terms of copyright law is prohibited.

10.4 Nimbus Telecom grants the Customer, a non-exclusive, non-transferable, non-sub-licensable, limited, revocable, royalty free, worldwide licence to use the Software in accordance with the terms of the Agreement and as detailed in the Service Schedule. Nimbus Telecom shall retain all title, copyright, and other intellectual property rights in the Software. For avoidance of doubt the parties agree that any Software provided by Nimbus Telecom to the Customer is being licensed, not sold, to the Customer.

10.5 Nimbus Telecom reserves all rights in the Software not explicitly granted to the Customer herein.

10.6 To the best of Nimbus Telecom's knowledge any Software provided by it to the Customer does not infringe upon the intellectual property rights of any third party and Nimbus Telecom has not received any notice regarding any alleged infringement thereof.

10.7 With the exclusion of warranties explicitly mentioned herein, and subject to the provisions of clause 6.1 above, the Software and its related materials are (to the extent applicable) provided "as is" and without warranty of any kind. Nimbus Telecom expressly disclaims all other warranties, expressed or implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose, the absence of latent or other defects, accuracy, or the absence of errors, whether or not discoverable, save to the extent provided to the contrary in the CPA, to the extent applicable.

11 Breach

11.1 If either party breaches a term of this Agreement and fails to remedy that breach within 14 (fourteen) days of receipt of written notice from the other party calling for the breach to be remedied, then that party shall be entitled, without prejudice to any other rights that it may have, whether under this Agreement or in law, to cancel this Agreement without notice, or to claim immediate specific performance of all the defaulting party's obligations, whether or not due for performance, in either event without prejudice to the aggrieved party's right to claim damages.

11.2 In addition to what is stated in 11.1 above if the Customer:

11.2.1 commits any act of insolvency;

11.2.2 endeavours to compromise generally with its creditors or does or causes anything to be done which may prejudice Nimbus Telecom's rights hereunder or at all;

11.2.3 allows any judgement against it to remain unsettled for more than 10 (ten) days without taking immediate steps to have it rescinded and successfully prosecuting the application for rescission to its final end; or

11.2.4 is placed in liquidation or business rescue (in either case, whether provisionally or finally) or, being an individual, his estate is sequestered or voluntarily surrendered;

Nimbus Telecom shall have the right, without prejudice to any other right, which it may have against Customer, to:

11.2.5 terminate the Services and cancel the Agreement; and

11.2.6 treat as immediately due and payable all outstanding amounts, as well as all future amounts which would otherwise become due and payable over the unexpired period of the Agreement, and to claim such amounts including interest on arrear amounts and to cease performance of its obligations hereunder;

in any event without prejudice to Nimbus Telecom's right to claim damages.

11.3 The Customer shall be liable for all costs incurred by Nimbus Telecom in the recovery of any amounts or the enforcement of any rights which it has hereunder, including collection charges and costs on an attorney and own client scale whether incurred prior to or during the institution of legal proceedings or if judgement has been granted, in connection with the satisfaction or enforcement of such judgement.

12 Intellectual Property

12.1 All Intellectual Property relating to or used in connection with the Service/s provided under this Agreement shall belong to Nimbus Telecom. The Customer undertakes that it shall at no time, have any right, title or interest in the aforesaid Intellectual Property and agrees that it shall not (nor shall it permit any third party to) reverse engineer, decompile, modify or tamper with the equipment or Software provided to it by Nimbus Telecom, or any of its third-party suppliers.

12.2 Nimbus Telecom shall have no right, title or interest in any Intellectual Property that belongs to the Customer and/or that the Customer has the lawful entitlement to.

12.3 The Customer warrants that it shall not use the Service/s to produce, host or present any content in contravention of any person's intellectual property rights, and in particular warrants that it shall recognize, acknowledge and use any content in accordance with any third party's intellectual property rights. The Customer furthermore warrants that it has received all necessary permissions to make use of any Intellectual Property relating to third parties.

13 Confidentiality

13.1 The parties agree that the terms of the Agreement and all confidential and proprietary information of the Customer and Nimbus Telecom communicated between them in connection with the Agreement shall be received in strict confidence and be used only for the purposes of exercising their rights and fulfilling their obligations in terms of the Agreement. Each party shall use the same means as it uses to protect its own confidential information, but in no event less than reasonable means, to prevent the disclosure and to protect the confidentiality of such information. No such information shall be disclosed by the recipient party, its agents, representatives or employees to any third party without the prior written consent of the other party.

13.2 Each party shall advise its employees, consultants and agents, who receive any of the other party's confidential information, of the confidential nature of such information and shall be responsible to ensure that such person/s adhere/s to the provisions of this clause 13.

13.3 The provisions of this clause do not apply to information which is:

13.3.1 Publicly known or becomes publicly known through no unauthorised act of the recipient party;

13.3.2 Rightfully received by the recipient party from a third party;

13.3.3 Independently developed by the recipient party without use of the other party's information;

13.3.4 Required to be disclosed pursuant to a requirement of a governmental agency or any applicable law, so long as the party required to disclose the information gives the other party prior notice of such disclosure; or

13.3.5 Publicly disclosed with the other party's written consent in terms of 13.1.

13.4 This clause shall survive the expiration or termination of this Agreement for whatsoever reason.

14 Protection of Personal Information

- 14.1 Nimbous Telecom shall ensure that it adheres to all applicable provisions of the POPI Act and specifically that it secures the confidentiality and integrity of all Personal Information obtained and/or processed by it in accordance with the provisions of the POPI Act to the extent required by the POPI Act.
- 14.2 Nimbous Telecom shall use the Personal Information received by it from the Customer for no other purposes other than as required to comply with its duties and as required to enable it to exercise its rights under the Agreement.
- 14.3 Nimbous Telecom hereby indemnifies the Customer from any liability or loss incurred by the Customer of whatsoever nature as a result of Nimbous Telecom's breach of the obligations bestowed on it in terms of the POPI Act.
- 14.4 The Customer shall ensure that it adheres to all applicable provisions of the POPI Act and specifically that it secures the confidentiality and integrity of all Personal Information obtained and/or processed by it in accordance with the provisions of the POPI Act to the extent required by the POPI Act.
- 14.5 The Customer shall use any Personal Information received by it from Nimbous Telecom for no other purposes other than as required to comply with its duties and as required to enable it to exercise its rights under the Agreement.
- 14.6 The Customer hereby indemnifies Nimbous Telecom from any liability or loss incurred by Nimbous Telecom of whatsoever nature as a result of the Customer's breach of the obligations bestowed on it in terms of the POPI Act.

15 Cession

The Customer shall not be entitled to cede or assign any rights and/or obligations, which it may have in terms of this Agreement to any third party unless consented to in writing prior thereto by Nimbous Telecom.

16 Force Majeure

- 16.1 Neither Party shall be liable to the other for any default or delay in the performance of its obligations under the Agreement:
 - 16.1.1 If and to the extent that such default or delay is caused by any act of God, war or civil disturbance, court order, any delay in any performance due from the other party, or any other circumstance beyond its reasonable control, including without limitation, failures and fluctuations in electrical power or communications or internet services, or by any act of any authority (including delaying or refusing of licenses, wayleaves and/or restrictions on construction work); and
 - 16.1.2 Provided the non-performing party is without fault in causing such default or delay, and such default or delay could not have been prevented by the non-performing party through the use of alternative sources, workaround plans or other means.
- 16.2 Following any circumstance of force majeure, the non-performing party shall:
 - 16.2.1 Notify the other party as soon as possible;
 - 16.2.2 Be excused from further performance or observance of its obligation(s) so affected for so long as such circumstances prevail and such party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay; and
 - 16.2.3 Co-operate with the other party in implementing such contingency measures as that other party may reasonably require.

17 General

- 17.1 No addition to, variation of, or agreed cancellation of this Agreement (including the provisions of this clause, the Application Form, Service Schedule and Customer Support

Schedule) shall be of any force or effect unless in writing and signed by or on behalf of the parties, save as expressly provided to the contrary in this Agreement.

- 17.2 The parties acknowledge having read and understood this Agreement and are not entering into this Agreement on the basis of any representations not expressly set forth in it.
- 17.3 Neither party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the Agreement between the Customer and Nimbous Telecom or not.
- 17.4 No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against either party hereto in respect of its right under this Agreement, nor shall it operate so as to preclude either of the parties thereafter from exercising its rights strictly in accordance with this Agreement.
- 17.5 In the event that any provision of this Agreement conflicts with any statute, ruling or order of any governmental or regulatory body from time to time, then such provision of this Agreement shall be controlled by the statute, ruling or order.
- 17.6 Should any of the terms and conditions of this Agreement be held to be invalid, unlawful or unenforceable, such terms and conditions will be severable from the remaining terms and conditions, which will continue to be valid and enforceable.
- 17.7 In the event of any expiration, termination or cancellation of this Agreement, provisions hereof which are intended to continue and survive shall so continue and survive. In particular, termination or cancellation of this Agreement shall not affect any rights or duties arising in terms of clause 13 above.
- 17.8 This Agreement will be governed by and construed in accordance with the laws of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with South African law by a South African court having jurisdiction.
- 17.9 In the event of any conflict between these Standard Terms and Conditions and those appearing in the Application Form and/or the Service Schedule, these Standard Terms and Conditions shall prevail.
- 17.10 These Standard Terms and Conditions, the Application Form, the Service Schedule, the Customer Support Schedule and any additional annexures and attachments hereto, constitute the whole of the agreement between Nimbous Telecom and the Customer relating to the subject matter hereof, notwithstanding anything in the Customer's inquiry, specification, acceptance, order or other documentation or discussion to the contrary. Neither party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded in the Agreement.

18 Right of First Refusal

If following the termination of this Agreement, the Customer decides to conclude an agreement with a third party on the basis that such third party offers the Customer more favourable terms than the terms of the Agreement, the Customer shall afford Nimbous Telecom an opportunity to match the offer made to it by the third party. In this regard, Nimbous Telecom shall be entitled to match the offer within a period of 14 days from the date on which Nimbous Telecom receives written notice from the Customer affording Nimbous Telecom the opportunity to match the offer. If Nimbous Telecom elects not to match the offer, or if Nimbous Telecom does not respond to the Customer within the above 14 day period, then the Customer shall be entitled to conclude the agreement with the third party on the same terms offered to Nimbous Telecom, subject to the Customer complying with any applicable provisions in the Service Schedule regulating its right to terminate the Agreement.