

NASHUA MOBILE (PTY) LIMITED STANDARD TERMS AND CONDITIONS

1. THE AGREEMENT

- 1.1. Nashua Mobile (Pty) Limited ("we", "us", "our") has agreed to provide you with the services ("the **Services**") and/or products (e.g. handset, laptop, modem, SIM card) ("the **Products**") for the fixed term ("**Fixed Term**") and any other items you have chosen on the subscriber application form ("**Application form**") (attached hereto) for the applicable fees and charges ("**Charges**") (as amended from time to time). These documents together constitute the entire agreement between us unless amended in writing.
- 1.2. You agree to be bound to the **Application form** and these standard terms and conditions ("**the Agreement**"), which govern our legal relationship.

2. DURATION

- 2.1. This Agreement will start on the date we activate your **Service(s)**, and will continue for the **Fixed Term** as shown on the **Application form**.
- 2.2. After the **Fixed Term**, this **Agreement** will continue automatically on a month-to-month basis, subject to any changes we make of which we have given you notice, unless you have expressly in writing directed us to terminate the **Agreement** on the expiry date; or you agree to a renewal or update of the **Agreement** for a further **Fixed Term**.
- 2.3. We can give you 20 (twenty) business days written notice to cancel the **Agreement** as a result of a material failure by you to comply with the **Agreement**, unless you have rectified the failure within that time. You are entitled to cancel this **Agreement** by giving us 20 (twenty) business days written notice; however there will be an early cancellation penalty as set out in clause 4.4 below.

3. THE SERVICES

- 3.1. The **Services** that we provide to you in this **Agreement** are shown on the **Application form** and may include connection to a third party network provider (e.g. Vodacom, MTN, Cell C or Telkom) in order to make and receive calls, send smses and/or use the Internet.
- 3.2. We will provide the **Services** in a professional and diligent manner and will respond to your requests for on-site maintenance and support, if applicable to the **Services** you have requested. Should you request any additional or different **Services** other than those in the **Application form** then such **Services** will be subject to these terms and conditions and any additional terms and conditions which may apply to such **Services**.
- 3.3. We will make the **Services** available to you as soon as we can but, because the **Services** are not provided to you directly by us, your connection or access to the **Services** may be delayed, interrupted or diminished not of our doing and beyond our control. You agree that we are not liable for such delay, interruption or diminution. You agree to comply with all usage restrictions, laws and limitations applicable to such **Services**, or any portion thereof.
- 3.4. You hereby agree that this **Agreement** and/or the **Services** are not conditional upon the continued operation or use of any **Products** purchased, hired or acquired from us or a third party for use in conjunction with and/or to access the **Services**. This means that even though we have one agreement for the **Services** and the **Products** and may give you one statement for the two, if you are, for instance not satisfied with the **Product** (E.g. a handset/modem) for any reason or the **Product** is lost or stolen or in for repair, you still have to pay us the **Charges** for the **Services** (example subscription and Value Added Services costs) and may also still have to pay the costs of the **Product** that we are charging you for.
- 3.5. You accept that a third party network (for example Vodacom or Cell C or MTN) provides the **Services** to you. You are responsible for the SIM card and accept that a report received from the network operator reflecting the amount of data downloaded or calls made from your SIM card as valid and that we may charge you for it.

- 3.6. You undertake that:
- 3.6.1 You will not use the **Services** to knowingly create, store or disseminate any illegal content or for any unlawful purpose;
 - 3.6.2 You will at all times use the **Services** in a lawful manner and not infringe in any parties copyright or intellectual property law, whether registered or not;
 - 3.6.3 You will not use the **Services** to send spam messages (I.e. a message that was not requested by the receiver).
- 3.7. You agree to our Acceptable Use Policy, the WASPA (Wireless Application Service Providers' Association) and ISPA (Internet Services Provider Association) Code of Conduct (if applicable to your **Services**). These Policy and Codes can be viewed on www.nashuaisp.co.za or sent to you upon written request.
- 3.8. Your failure to adhere to any of the above Policy's and Codes and/ or the undertakings set out in Clause 3.6 above, shall constitute a material breach of this Agreement and we shall have the right to suspend and or terminate the **Services** immediately upon written notice to you. We shall in this event be entitled to claim the **Agreement** for the remainder of the contract period from you as well as any discounts offered to you.

4. CREDIT, CHARGES AND PAYMENT

- 4.1. The **Charges** you agree to pay are on the **Application form** and are dependent on the tariff plan you have chosen, and these may be increased by us from time to time. You agree that there will be pro-rata charges in regards to subscription (excluding Pre Paid packages) depending on what day your **Services** were activated. You agree, and hereby authorise us to deduct the **Charges** by means of debit order from your bank account that appears on the **Application form** within 14 days from the date of our invoice, free of deduction or set-off, the amounts stated in our invoice, calculated in accordance with the **Charges** for the **Services** and/or **Products**, including monthly access or subscription **Charges**, value added services charges, initial and reconnection charges, migration and other charges applicable to the **Services** and/or **Products** or any "package" or mix thereof for your use or availability. Should we not receive the payment we may charge interest on any overdue amount at a rate equal to 4 % (four percentage points) above the annual prime bank overdraft rate charged by Nedbank Limited, from time to time.
- 4.2. The inclusive minutes/ rand value that may form part of the **Services** are dependant on the tariff/package chosen by you and are subject to the relevant network rules regarding the carry over and expiry of inclusive minutes/ rand value. This means that if the allocated free minutes/ rand value are not used within a certain time, it will expire and you will not be able to use it and will not receive any credit on your account for it.
- 4.3. You agree that we may assess your credit history through the use of any credit bureau (e.g. ITC) to decide whether we are prepared to provide you with the **Services** and that we may report on your payment profile to such bureaus. It is at our sole election to approve you as a Subscriber.
- 4.4. If the **Services** and/or this **Agreement** is cancelled for whatever reason before the end of the **Fixed Term**, upon the cancellation of the **Agreement**, you remain liable to us for any amounts owed to us in terms of the **Agreement** up to the date of cancellation as well as a cancellation penalty in contemplation of the **Agreement** enduring for its intended **Fixed Term** which will include the monthly subscription or access charges payable for the remainder of this **Agreement** or the amount that we owe the relevant Network Operator as a cancellation penalty, whichever amount is the lesser thereof. This amount must be paid in full immediately upon demand. Any discounts granted to you during the **Fixed Term** may also be claimed back from you.
- 4.5. In the event of you wishing to port (transfer) your cellphone number to another Service Provider and cancel the **Agreement** with us, the cancellation fees must be paid by you before such port will be allowed.
- 4.6. You may not change your package or tariff plan during the **Fixed Term** to a less expensive package or tariff unless we agree to it and upon payment of the applicable migration fees.

- 4.7. We will invoice you on a monthly basis to the billing address you have provided on the **Application form**. We manage your account with us as one account even though you may have subscribed to more than one service with us. You agree that if you do not adhere to your obligations in terms of this **Agreement** or any other agreement with us then we may (at our election) suspend all your **Services** with notice and/or terminate your **Services**, on the whole account if we choose to do so, and claim the full amount owed from you.
- 4.8. You also agree that a certificate signed by one of our managers as to the amount that you owe us will constitute *prima facie* proof of such amount owed. This means that if you disagree with the amount owed as shown on the invoice, then you have to prove that it is not owed. All **Charges** include VAT, unless stated to the contrary.
- 4.9. We may request a deposit from you on the **Application form**. We shall keep the deposit, free of interest, as security for payment until termination of our **Agreement**. We may offset the deposit towards any amount then owed by you in terms of this **Agreement**.
- 4.10. If there are any queries or errors on your invoice, you must inform us within 30 (thirty) days from date of our invoice so that we may fix it (if incorrect) or answer your concerns. After the 30 (thirty) day period from date of our invoice you agree that the amount shown on the invoice is the correct amount that you owe us.
- 4.11. You accept that there might be a delay in receiving billing information from the Network Operators and that we may bill you (and you will pay us) for use of the **Services** up to 6 (six) months after such use has occurred. Even though there might be this delay, you will still be liable for these **Charges** because you used the **Services**.
- 4.12. You remain liable for all **Charges** registered on the SIM card connected to your account and confirmed by the relevant Network Operator.

5. CALL LIMITS

- 5.1. We may place a call limit on your account based on your credit record, and/or you may request us to put a call limit on your account in order to monitor your own cellular spend. You accept that such a call limit is not a guaranteed service and there may be delays in the activation of the call limit or a delay in receiving the usage data from the Networks. Call limits does not work whilst you are using the **Services** overseas as there is a delay in receiving the usage information from the Network Operators overseas. You understand that even if the call limit does not lock your account or notify you that you are over the limit, you will still have to pay for the **Charges** that get billed to your account due to you using the **Services** over the call limit.
- 5.2. A call limit only activates and records on our System the moment the **Services** are ended by you. E.g. on a 3G/ data service, the call limit will only register once you have disconnected your SIM card from your laptop. You will be liable for all or any **Charges** incurred whilst your SIM card is connected.
- 5.3. You accept that you are responsible for the necessary virus protection on your laptop and cellphone and will ensure that no automatic downloads or erroneous call diverts run from your equipment which could result in costly downloads.

6. PRODUCTS WE SUPPLY YOU

- 6.1. Delivery of all **Products** is dependent upon stock availability and other factors. Upon delivery of the **Product** to you, all risk in and to the **Products** will pass to you. This means that you take full responsibility for the **Product** and we will not replace the **Product** (unless insured by us) if it is stolen or lost. We remain the owners of the **Product** for the **Fixed Term** and therefore we may also compel you to insure the **Product** and provide us with proof of such insurance cover. You agree to comply with the manufacturer's instructions and all licensing terms where software is supplied for use with the **Products** and all other use restrictions. Your sign-off of our delivery advice/note, timesheets or other means of acknowledgement (for example by utilising the service or product) that you are satisfied that we have performed the **Services** and/or delivered the **Products** and that we may charge you accordingly.

- 6.2. All of our **Products** supplied to you are warranted in accordance with industry norms against defective workmanship and components, but the terms of our warranty are subject to the manufacturer's and/or supplier's terms of warranty as to duration, "Out of Box failures", returns and handling procedures and any charges. To the extent such warranty terms do not accompany the **Product** packaging then, upon request, we will provide you with specific applicable terms. The terms of such warranty will prevail over all other warranties and guarantees.
- 6.3. If we should loan any **Product** to you then you bear all risk of theft, loss, damage or destruction and, subject to our terms of warranty, you will be responsible for maintenance and support of such **Product**. In the event of any damage and or loss to such loan unit you shall be liable to us for the replacement thereof.
- 6.4. In the event that you make use of the **Products** for our Least cost routing or VoIP (Voice over Internet Protocol) **Services**, any routers or equipment that is provided to you as part of a package or bundle can only be used by you in conjunction with the specific Network which offered the package. The LCR or VoIP equipment remains the property of Nashua Mobile. Nashua Mobile shall have the right to remove the equipment upon termination of this Agreement (for whatever reason). You undertake upon installation of the equipment to notify the owner of the premises that Nashua Mobile is the rightful owner of the equipment. If the equipment is stolen, lost, damaged, or becomes inoperable, you undertake to notify Nashua Mobile immediately. In the event that the equipment is damaged due to your (or any of your employees) malicious or wilful conduct, Nashua Mobile may charge you the reasonable replacement value of such equipment. Should you or the legal entity whom you represent be placed under sequestration or liquidation, you will immediately inform the liquidator that the ownership of the equipment is that of Nashua Mobile and that you have no right, title or interest in the equipment.
- 6.5. If any **Product** is stolen, lost, or destroyed you agree to immediately notify us to lock the **Product** on our system. You will also open a case at the Police station in order for us to blacklist the **Product**. You agree that you will pay for all **Charges** incurred until such time that the **Product** is locked on our System. Any **Charges** incurred as a result of your delay in notifying us will be charged to your account. We will replace any sim card that is lost or stolen or damage at its then applicable replacement card.
- 6.6. We may blacklist any **Product** issued to you in the event that you are in breach of **this Agreement** and fail to remedy such breach.

7. UPGRADES

- 7.1. You shall be entitled to apply at the expiry of your **Fixed Term** for an upgrade. All upgrades are in our sole and absolute discretion.
- 7.2. In the event that an upgrade is granted, you accept to be bound to us for a further fixed term contract period calculated from the expiry of the prior **Fixed Term** period, or upgrade commencement date, whichever date is later. All upgrades are subject to our standard terms and conditions applicable at the time.
- 7.3. You acknowledge and accept that if you are issued with a new **Product** in respect of the upgrade, that the acceptance or use of such **Product** will provide sufficient proof of your intention to be bound to Nashua Mobile in respect of the upgrade contract period.

8. INSURANCE

- 8.1. Should you elect insurance on the application form, you will be liable for all such charges from time to time. The Insurance is subject to the terms and conditions of the insurance policy which you accept.

9. LEGALITIES

- 9.1. Our chosen address for any notices is at no. 42 James Crescent, Halfway House, Midrand and yours will be as stated on the **Application form**. You can notify us in writing should you wish to change your address.

- 9.2. If you are signing on behalf of a legal entity (Company, CC or Trust) you warrant that you are authorised to enter into this **Agreement** and accept that you bind yourself as personal surety with the legal entity for the fulfilment of the terms set out herein as well as the amount owed by the legal entity. Therefore, in the event that the legal entity fails to comply with the terms of this **Agreement** and/ or fails to pay the account, we may take action against you personally.
- 9.3. We may assign (transfer) this **Agreement** to another Service Provider without your consent. If you want to transfer this **Agreement** to someone else (so that they take over your obligations to us) you have to first get our consent as we need to approve the new subscriber.
- 9.4. In the event that you fail to perform your obligations or fail to pay monies due in terms of the **Agreement**, we may proceed with legal action against you. You agree to pay all of our legal and collection costs on the scale as between attorney and client.
- 9.5. If our authority to procure the **Services** for you from third party service providers is terminated for whatever reason, we may transfer this Agreement to a third party; alternatively, to suspend or cancel the provision of the **Services** or this **Agreement**. You will not be liable for payments in respect of suspended **Services** in such circumstances.
- 9.6. We will use all reasonable efforts not to disclose, in any manner whatever, any of your or your customers' confidential information that may be disclosed to us during the course of providing the **Services** unless obligated in terms of any Law/ Regulation.
- 9.7. You may refer any disputes related to the provision of our **Services** and/or **Products** to ICASA (Independent Communications Authority of South Africa) at www.icasa.org.za.
- 9.8. You agree that we retain all rights in and to any methodologies and all other know-how that we possessed or that are created when providing our **Services**. Unless otherwise provided by legislation to the contrary, telephone numbers, codes and other identification numbers allocated to you shall not become your property and you shall not modify or permit the modification of any SIM card or any such numbers or codes without our prior written consent. Save as otherwise provided by legislation to the contrary, we shall be entitled to withdraw or change any telephone number, code or other identification number allocated to you in terms of this **Agreement**.
- 9.9. You agree that, unless your losses arise from our fraudulent conduct, you use the **Services** and **Products** at your own risk and neither us nor the Network Operators will be liable to you or any other third party for any direct or consequential losses of whatsoever nature and however arising and you indemnify us and the Network Operators against any such loss or damage suffered by such third party. In any event, the maximum extent of our liability to you will be equal to the amount you have paid to us for the **Services** over the 24 month period. We will not be liable to you in the event of any delay in the **Services** which may result in you losing business or revenue.
- 9.10. You agree that an electronically scanned and stored version of this document shall constitute sufficient evidence of its content and signature by you and us.
- 9.11. You agree that we are entitled to terminate this **Agreement** with you if:-
- 9.11.1. you do not comply with any of the terms set out in this **Agreement**;
 - 9.11.2. you or the entity which you represent enter into any compromise (settlement) with any of your/ its creditors;
 - 9.11.3. you are sequestrated or the legal entity which you represent is liquidated.
- 9.12. You agree to comply with any notice, directive or policy that governs and/or restricts the use of the **Services** and/or **Products** that apply to all Subscribers/users of the **Services** (or categories thereof) and/or the **Products**.
- 9.13. This **Agreement** is Governed by the Law of the Republic of South Africa.
- 9.14. In the event that any part of this **Agreement** is found to be partially or fully unenforceable, for whatever reason, this shall not affect the application or enforceability of the remainder of the **Agreement**.