

Abacus Telecomm TERMS AND CONDITIONS – VoIP and PABX

1. INTRODUCTION

- 1.1 With effect from the date of acceptance hereof by Abacus Telecomm ("Abacus") the subscriber identified on the face hereof ("the subscriber") appoints Abacus to provide Voice Over Internet Protocol ("VoIP") and those related services requested by the subscriber on the face page and from time to time to and/or on behalf of the subscriber in accordance with the provisions hereof.
- 1.2 The subscriber agrees to be bound by the provisions contained in any notice, directive or applicable tariff plan issued or derived by Abacus from time to time.
- 1.3 The subscriber acknowledges that this document constitutes an offer by the subscriber, which may be accepted or refused by Abacus in its sole discretion. The offer will be considered once received by Abacus at Abacus's premises, which premises will be the offices of Abacus at the address as set out on top of the face page hereof. Connection of the subscriber shall be deemed to constitute acceptance of the offer, by Abacus and commencement of this agreement. This agreement shall become binding between Abacus and the subscriber whether or not the subscriber was notified of the acceptance of the offer. The subscriber herewith expressly dispenses with notification of acceptance of the offer by Abacus.

2. DURATION

- 2.1 This agreement will continue on a month to month basis reckoned from the date of acceptance hereof by Abacus until terminated by either party by giving 1 (one) calendar month written notice of termination, which notice will be effective from the last day of the calendar month following receipt of such notice.
- 2.2 On the event of death of the subscriber or in the event that either party is provisionally or finally liquidated, wound up or declared insolvent or in the event that either party enters into a scheme of arrangement or compromise with its creditors or allows a judgement to be entered against the name of the party and does not take steps for the rescission thereof within a period of 21 (twenty one) business days after the date of the judgement then the other party shall be entitled immediately to terminate this agreement.
- 2.3 Termination of this agreement does not relieve the subscriber from the liability to pay charges for any outstanding monies that might still be due in terms of services rendered for any period preceding the termination hereof.

3. PROVISION OF SERVICES

- 3.1 The subscriber acknowledges that Abacus is a service provider of VoIP services which operates and manages for and on behalf of VoIP operators.
- 3.2 The subscriber acknowledges that the provision of VoIP services is dependent on a broadband internet connection and as such the subscriber agrees that the onus is on the subscriber to provide such broadband internet connection at the subscribers own cost. This includes any monthly subscription required by the subscribers' internet service provider.
- 3.3 The subscriber shall have no claim of whatsoever nature and however arising against Abacus including no right to cancel this agreement or to withhold payment of any monies due in terms hereof should the internet connectivity fail, malfunction provide no port or poor connectivity or should any of the services or facilities provided by the internet service provider or Abacus be temporarily unavailable.
- 3.4 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 including facsimile and other services.
- 3.5 Abacus shall be entitled in its sole discretion to suspend, cancel vary or terminate this agreement or any part thereof, without Abacus incurring any liability whatsoever in the event of non-availability of the services or if any agreement giving Abacus the right to render the service, or any part thereof, of giving Abacus access to anything relating to the service is suspended, cancelled, varied or terminated.
- 3.6 The subscriber agrees that if for any reason any of the agreements between the VoIP operators and Abacus are terminated so as to have the effect of Abacus not being entitled to render the services, all of the rights and obligations of Abacus in terms of this agreement may be assigned to any third party service provider as may be approved of in writing by the relevant VoIP operator, which approval will not be unreasonably withheld or delayed forthwith upon the termination for whatever reason.
- 3.7 The subscriber shall be entitled to refer disputes related to the provision by Abacus of the VoIP services to any telecommunications representative who may be appointed as such by the postmaster general as provided for in the license granted to the VoIP operator to operate voice over internet protocol service.
- 3.8 The subscriber further acknowledges that all power requirements are to be met by the subscriber. The subscriber further acknowledges that Abacus is not responsible for loss of power, power surges, power outages, load shedding or any power issues or lack thereof and as such Abacus is in no way liable for any loss or damage caused by any power issue of whatsoever nature.
- 3.9 Unless otherwise stated any computer network or network infrastructure is the sole responsibility of the subscriber. This includes, but is not limited to network architecture, software, antivirus and access to the network. Abacus accepts no liability of whatsoever nature arising from the subscribers' network or any security issues relating to the subscribers' network.

4. CHARGES

- 4.1 The subscriber shall pay Abacus:
 - 4.1.1 Upon commencement hereof, the initial connection charge and any other introductory or commencement charge; and
 - 4.1.2 Monthly in advance, the line rental charge; and
 - 4.1.3 Monthly in arrears, or as and when billing is passed, the total call charges used and/or generated by the subscriber in conjunction with or by means of the connection provided by Abacus during each billing period and any other charges payable in respect of the services requested by the subscriber or other charges levied by Abacus from time to time; and
 - 4.1.4 Upon demand, a deposit of an amount determined by Abacus in its sole discretion which shall not bear interest; and
 - 4.1.5 Value Added Tax at the applicable rate on all vatiable charges and services. All charges, unless otherwise stated, exclude Value Added Tax; and
 - 4.1.6 The charges for monthly itemised billing and any other charges that will be incurred during the course that the provision of VoIP services are rendered.
- 4.2 The charges payable by the subscriber to Abacus for the provision or facilitation of the service shall be stipulated in any notice, directive, promotion or applicable tariff plan issued or derived by Abacus from time to time and the contents of such notice, directive, promotion or tariff plan including charges stipulated therein shall be deemed to be incorporated in this agreement as if specifically set out herein.
- 4.3 The subscriber agrees that Abacus shall be entitled to from time to time to increase or vary the charges payable by the subscriber to Abacus for the services. Abacus shall endeavour to give the subscriber prior notice of any such increase or variation, but gives no undertaking in this regard.
- 4.4 The subscriber acknowledges that all call rates are initially calculated in Euros and as such call costs for specific destination will vary accordingly as the current economic indicators fluctuate.
- 4.5 The subscriber acknowledges that call charges and other services are rendered to the subscriber by means of the VOIP gateway which is issued to the subscriber personally and which facilitates access to the VoIP network and services. The subscriber will be liable for all call charges applicable to a VoIP solution issued to the subscriber, irrespective of whether or not such solution has been used by the subscriber.
- 4.6 Abacus's monthly statement of charges shall be prima facie proof of the amounts owed by the subscriber to Abacus in terms hereof and of the other facts stated therein and should the subscriber dispute the number, duration or amount charged in respect of any calls made or services rendered by Abacus and/or by means of the VoIP solution, then the subscriber shall bear the onus of proving that Abacus's statement is incorrect in such a respect. In all instances this must be done within 45 (forty five) days of statement, thereafter which the subscriber shall have no claim against Abacus and the statement shall be deemed to have been correct.

5. PAYMENT

- 5.1 Should the subscriber send any monies, cheques, money orders or bills by means of the postal services, then the postal authority shall be deemed to be the agent of the subscriber and the subscriber shall bear all risk of loss, theft and delay in and to any such monies, cheques, postal orders or bills send by post and, without derogating from the aforesaid, the subscriber shall draw all cheques, postal orders and bills payable to "Abacus Telecomm CC" and marked "Not Transferrable".
- 5.2 The subscriber agrees that the payment shall only have been made to Abacus when the monies remitted by the subscriber have been received into Abacus's bank account.
- 5.3 Should any debit order or cheque payment be returned unpaid or stopped or should any charge account or credit card account of the subscriber be rejected for whatsoever reason or should Abacus 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 Abacus 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 Abacus.
- 5.4 All monies payable by the subscriber to Abacus in terms hereof shall be paid timeously on due date, free of deductions or set-off to Abacus's principle place of business.
- 5.5 All payments must be effected 7 (seven) days of invoice date or where payment is effected by debit order then such payment must be effected on Abacus's direct debit date. Non-receipt of invoices by the subscriber will not be considered as a valid basis for late or non-payment.
- 5.6 All arrear payments shall attract interest at the rate of 19% (nineteen per centum) per annum, calculated from due date of payment.
- 5.7 Abacus shall be entitled to apply the deposit as per clause 4.1.4 or any portion thereof towards monies which are due by the subscriber. The subscriber shall on demand, reinstate the deposit.
- 5.8 The subscriber shall not be entitled to change the method of payment for the duration of this agreement unless agreed to in writing by both parties and in addition to any payment method agreed to be the subscriber, the subscriber agrees that Abacus may effect deductions by way of debit entry ("entries") on the subscriber's charge card account or credit card account or other account the details of which appear on the face hereof.
- 5.9 The subscriber agrees and acknowledges that a certificate given under the hand of a financial manager or controller of Abacus whose status need not be proved shall be considered prima facie proof of the amount due and shall entitle Abacus to apply for judgement against the subscriber and to obtain summary judgement or provisional sentence, as the case may be.

6. Maintenance Contract

- 6.1 Unless otherwise stated maintenance of the installed equipment is not included and maintenance costs are applicable as follows:
 - 6.1.1 Annually at a rate of R3000.00 ex VAT per annum renewable on the anniversary from installation date or;
 - 6.1.2 Monthly at a rate of R350.00 per month ex VAT or;
 - 6.1.3 Per exception at a call out rate of R325.00 per hour or any part thereof

7. CREDIT LIMIT

- 7.1 Abacus shall be entitled in its sole and absolute discretion from time to time to determine and amend the maximum amount of fees and charges ("credit limit") which may be used and/or accumulated by the subscriber during each billing period and Abacus shall be entitled to suspend the services should the subscriber exceed such maximum amount.

8. EQUIPMENT

- 8.1 Notwithstanding that the subscriber purchased or leased the VOIP solution ("the equipment") from Abacus or from any third party, should the equipment be damaged, lost, stolen un-operational or undergoing repair, the subscriber agrees that this agreement is not conditional upon such purchase, lease, availability or operation and this agreement shall continue in full force and effect and the subscriber shall continue to pay all amounts due in terms hereof.
- 8.2 The subscriber agrees and acknowledged that the subscriber will be liable to pay in full the replacement cost plus Value Added Tax of the equipment in the event that the equipment is rendered un-operational for any insurable cause whatsoever.
- 8.3 Abacus acknowledges and agrees that should the equipment be rendered un-operational for any other reason other than an insurable risk, then Abacus will replace the equipment at the subscribers' cost.
- 8.4 The subscriber acknowledges that, in event of a rental, for the duration of this agreement, the equipment is rented to the subscriber and the subscriber shall have no legal right to ownership of the equipment whatsoever.

9. LIMITATION OF LIABILITY

Abacus shall not be liable under any circumstances whatsoever for any loss or damage of any nature whatsoever (including loss of profit or any other special damages or indirect or consequential loss or damage) which the subscriber or any other person may suffer whether as a result of any breach by Abacus of any of its obligations to the subscriber, or whether caused directly or indirectly by the subscriber's equipment or the use thereof.

10. BREACH

- 10.1 Should the subscriber breach any provisions of this agreement including failing to pay Abacus any monies due in terms hereof on due date, then Abacus shall be entitled without prejudice to any of its other rights arising out of this agreement forthwith and without any liability towards the subscriber to suspend its provision to the subscriber of the services in whole or in part and/or to disconnect the VoIP solution from the network and/or to render the solution inoperable by whatever means.
- 10.2 Any breach will entitle Abacus to recover from the subscriber on demand as liquidated damages hereby agreed to by the subscriber, the equipment and/or the monetary value thereof.

11. LEGAL COSTS

Should Abacus instruct its attorneys to enforce any of Abacus's rights arising from this agreement or to institute action against the subscriber, then the subscriber shall be liable for all legal costs on attorney and own client scale including any collection commission incurred by Abacus and the subscriber shall upon demand pay such costs.

12. DOMICILIUM

12.1 The parties choose domicilium citandi et executandi ("domicilium") the addresses set out below:

11.1.1 Abacus Telecomm at: 18 Ruskin Road
Parklands
Western Cape
7441

11.1.2 The subscriber at the physical or residential address specified on the face hereof.

- 11.2 Either party shall be entitled from time to time, by written notice to the other, to vary its domicilium to any other address within the Republic of South Africa which is not a post office box or poste restante.
- 11.3 The subscriber hereby acknowledges and agrees that the acceptance of this agreement, the service provided by Abacus to the subscriber in terms hereof and payment of all monies due to Abacus by the subscriber in terms hereof takes place at and/or are rendered from Abacus's chosen domicilium. The subscriber hereby waives any right that he may have to deny, question or dispute that the whole cause of any action which Abacus may have instituted against the subscriber arose within the jurisdiction of the Magistrates Court which has jurisdiction in respect of Abacus's said chosen domicilium.

13. UNDERTAKING AS CO-PRINCIPAL DEBTOR FOR THE SUBSCRIBER BY SIGNATORY

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

14. GENERAL

- 14.1 The subscriber hereby consents to Abacus conducting an investigation into the creditworthiness of the subscriber utilising the information contained on the face page hereof, which information the subscriber warrants is true and correct, and such information forms the basis of this agreement. The subscriber agrees that should such information turn out not to be correct in all aspects, Abacus shall be entitled immediately and without prejudice to any other rights that Abacus may have to terminate this agreement and the subscriber agrees to hold Abacus harmless in such an event.
- 14.2 The subscriber agrees to supply Abacus with such information, documentation and signatures that Abacus may reasonably require at the time this agreement is concluded, in order to give effect to the payment arrangements of this agreement. Any subsequent changes that affect the information supplied to Abacus such as bank account and credit card details must be brought to the immediate attention of Abacus. The subscriber agrees to hold Abacus harmless in the event of an error being made on any information handed to Abacus by the subscriber.
- 14.3 The subscriber hereby agrees that Abacus may, in addition to any of its rights in terms of this agreement or otherwise, list any default information on the subscriber with any credit information bureau, and the subscriber agrees to the disclosure by Abacus to any third party, of any information pertaining to the subscriber or this agreement, to the extent that such disclosure is necessary for the conduct of Abacus's business, or is required by any relevant statute, regulation or license.
- 14.4 Abacus shall be entitled to cede its rights and/or to delegate its obligations arising from this agreement and/or assign this agreement, in whole or in part, to any third party. The subscriber shall not be entitled to cede or delegate his obligations arising out of this contract, unless accepted in writing by Abacus.
- 14.5 No alteration, variation or addition to this agreement or this clause shall be of any force or effect unless reduced to in writing and signed by the subscriber and Abacus. This document contains the sole and entire record of the agreement between the parties. No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein or otherwise created by operation of law and no indulgence, leniency or extension of time which either party ("the grantor") may grant or show to the other, shall in any way prejudice the grantor or preclude the grantor from exercising any of its rights in the future.
- 14.6 Where Abacus is represented by any duly authorized representative, his authority need not be proved.
- 14.7 The subscriber agrees that this agreement, in particular the face page thereof may be scanned and the paper version destroyed, and hereby agrees to the scanned version and waives his right to dispute the authenticity of the scanned version.
- 14.8 The subscriber understands that, the subscriber has, in terms of section 45 of the Electronic Communications and Transactions Act 25 of 2002, the option to cancel his subscription to the mailing list for unsolicited commercial and/or marketing communications by Abacus.

This agreed to and signed by the subscriber, duly authorised to do so on this, the _____ day of _____ 20_____.

Signed: _____ Full Names: _____
For and on behalf of the subscriber