

STANDARD SOUTH AFRICAN CONSUMER COMMUNICATIONS SERVICES TERMS

The following is a statement of the current standard terms of business under which Connection Telecom (Pty) Ltd provides communications services to its South African consumer customers. Consumer customers are all customers that are natural persons or juristic persons with an annual turnover or asset value less than R 2,000,000 (two million rand). All our service proposals to consumer customers are subject to these terms. These terms may be replaced or amended from time to time. Such changes will take effect as and when published. Consumer customers should review these terms prior to accepting our service proposals since the then valid version of these terms will apply to such proposal.

1. DEFINITIONS

Capitalised terms have specific meanings in this document as described in this section.

1.1 **Definitions.** For purposes hereof, the following terms shall have the following meanings -

- 1.1.1 “**Affiliate**” means, with respect to any entity, any other entity Controlling, Controlled by or under common Control with such entity;
- 1.1.2 “**AFSA**” means the Arbitration Foundation of Southern Africa, or its successors in title;
- 1.1.3 “**Authorised User**” means a Personnel Member of CUSTOMER that is provided with a Handset by CUSTOMER enabling such person to access the Communication Services;
- 1.1.4 “**Authority**” means any national, municipal, provincial, other local or administrative government, authority or department, or any agency, tribunal, commission, regulator or other similar body having jurisdiction by Law over the assets, resources, activities or operations of any of the Parties in any territory that is applicable to a Service Order;
- 1.1.5 “**Business Day**” means any day other than a Saturday, a Sunday or a public holiday in the Republic of South Africa;
- 1.1.6 “**Business Hours**” means the hours from 09h00 to 17h00 (Central African Time) on Business Days;
- 1.1.7 “**Communication Data**” means the communications of Authorised Users that are transmitted via the CTEL System and the information specifically relating to such communications;
- 1.1.8 “**Communication Services**” means the Services provided via the CTEL System as described in the Service Order, the Schedule and the relevant Manuals;
- 1.1.9 “**Confidential Information**” means any information of whatever nature, which has been, or may be obtained directly or indirectly by one Party hereto from the other Party hereto, whether in writing or in electronic format, or pursuant to discussions held between the Parties, or which can be obtained by examination, testing, visual inspection or analyses, including, without limitation a Party’s Know-How, all program code (including of the CTEL Software) and associated material and manuals (including the Manuals) and the information contained therein, all information relating to a Party’s past, present and future research and development or to a Party’s business activities, products, services, clients, or to a Party’s technical knowledge, including, without limitation, all such Party’s trade secrets, as well as the terms and conditions hereof and of any Service Order, any information identified as confidential, and any other material which contain or otherwise reflect, or are generated or derived from any such information as is specified in this definition;
- 1.1.10 “**Connectivity**” means the physical and logical interconnection to the CTEL System (including via third party data telecommunications networks) as may be specified by CTEL to access and use the Communication Services, including the type and bandwidth of the relevant access circuit;
- 1.1.11 “**Contract Year**” means, in respect of a Service Order, each successive 12 (twelve) month period during the term of such Service Order, as measured from the Effective Date of such Service Order;
- 1.1.12 “**Control**” and its derivatives shall mean that an entity holds more than a fifty percent (50%) equity interest in the other entity in question;
- 1.1.13 “**CTEL**” means Connection Telecom (Pty) Ltd, a company incorporated in South Africa, with registration number

2007/014820/07 currently having its principal place of business at No 5 IBIS Park, Bell Crescent, Westlake Business Park, Tokai;

- 1.1.14 “**CTEL Software**” means the computer software programs that are made available to CUSTOMER by CTEL pursuant hereto, including as may be installed on the Customer Systems and Handsets;
- 1.1.15 “**CTEL System**” means any equipment, software and communications links used by CTEL to provide the Communication Services, but excluding all Customer Systems;
- 1.1.16 “**CUSTOMER**” means the entity or person that is entitled to receive Communications Services pursuant to a duly executed and binding Service Order;
- 1.1.17 “**Customer Material**” means all data, reports, documentation, software or materials provided or made available by or on behalf of CUSTOMER to CTEL, irrespective of the media on which they occur;
- 1.1.18 “**Customer Site**” means any location within the Territory at which Licensed Technology (other than Handsets) is agreed to be implemented by CTEL for the benefit of CUSTOMER pursuant to the Service Order;
- 1.1.19 “**Customer System**” means any computer system used by CUSTOMER or an Authorised User for the purposes of accessing and using the Communication Services, comprising the hardware, network connections, database management system software, application software and operating system software, including the Connectivity and the Equipment;
- 1.1.20 “**Designated Account**” means CTEL’s designated bank account for payment that has been duly notified to CUSTOMER in writing;’
- 1.1.21 “**Effective Date**” means in respect of the Service Order, the date of acceptance of the relevant quotation, or the effective date stipulated on the cover sheet of such Service Order as the case may be, and failing such stipulation the date of such Service Order becoming binding in terms thereof;
- 1.1.22 “**Equipment**” means Handsets, routing devices and other hardware provided by CTEL for the purposes of making available the Communication Services to CUSTOMER, including the software implemented thereon;
- 1.1.23 “**Error**” means a failure by the Communication Services or Licensed Technology to conform in all material respects to the Manuals relevant thereto, but shall exclude all Excluded Defects;
- 1.1.24 “**Excluded Defect**” means a defect in the Communications Services or Licensed Technology caused by any of the following:
 - (a) the Connectivity or any equipment or software not provided by CTEL;
 - (b) accident, misuse, operator error, negligence or abuse or an operator’s failure to comply with the Manuals;
 - (c) a modification, adjustment or alteration of the Equipment or CTEL Software by persons other than CTEL employees or a duly appointed contractor of CTEL;
 - (d) the failure by CUSTOMER to implement promptly any upgrade or any recommendation in respect of or as solution to faults advised by CTEL;
 - (e) any breach by CUSTOMER of any of its obligations hereunder or under the relevant Service Order; or
 - (f) Force Majeure Events, including fire, flood, earthquake, storm, hurricane or other natural disaster, war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalisation, government sanction, blockage, embargo, labor dispute, strike,

- lockout or interruption or failure of electricity or telephone infrastructure services;
- 1.1.25 “**Fees**” means the fees and charges to be paid by CUSTOMER to CTEL in respect of the Services and Equipment procured pursuant to a Service Order;
- 1.1.26 “**Handset**” means a telephone provided by CTEL to CUSTOMER pursuant to a Service Order to enable access and use of the Communications Services;
- 1.1.27 “**Intellectual Property Rights**” means patents, registered designs, trademarks (whether registered or otherwise), copyright, trade secret rights, database rights, design rights, service marks and other intellectual property rights and rights to claim something as its confidential information, including in other jurisdictions, that grant similar rights as the foregoing;
- 1.1.28 “**Know-How**” means any and all concepts, ideas, methods, methodologies, procedures, processes, know-how, formulae, techniques, models (including, without limitation, function, process, system and data models); templates; the generalised features of the structure, sequence and organisation of software, user interfaces and screen designs; general purpose consulting and software tools, utilities and routines; and logic, coherence and methods of operation of computer systems that a Party has created, acquired or otherwise has rights in and may, in connection with the performance of its obligations in terms of a Service Order, employ, provide, modify, create or otherwise acquire rights in;
- 1.1.29 “**Law**” means:
- any statute, regulation, by law, ordinance or subordinate legislation in force from time to time to which a party is subject;
 - the common law as applicable to the Parties from time to time;
 - any binding court order, judgement or decree;
 - any applicable industry code, policy or standard enforceable by law; or
 - any applicable direction, policy, rule or order that is binding on a party and that is made or given by any Authority;
- 1.1.30 in any territory that is applicable to the Service Order;
- 1.1.31 “**Licensed Technology**” means the Equipment, CTEL Software and Manuals made available by or on behalf of CTEL pursuant to the Service Order;
- 1.1.32 “**Loss**” means all losses, liabilities, damages and claims, and all related costs and expenses (including legal fees at an attorney and own client scale and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties);
- 1.1.33 “**Minimum Term**” means the minimum specified period of the Service Order commencing on the date of first invoice for the monthly Fees pertaining to the Communication Services under the Service Order, provide such term may not exceed 2 (two) years from the Effective Date thereof;
- 1.1.34 “**Manuals**” means the operating and reference manuals provided by CTEL specifying the procedures, standards, rules and requirements applicable to users of the Communication Services (as may be amended by CTEL from time to time);
- 1.1.35 “**Material Defect**” means an Error that can be classified as Severity Level 1 or 2 in terms of Section A of the Schedule;
- 1.1.36 “**Parties**” means CTEL and CUSTOMER and “**Party**” means either one of them;
- 1.1.37 “**Performance Data**” means all data relating to the performance of the Communication Services as implemented for CUSTOMER, including without limitation all test and performance data, as well as usability feedback data generated during the use of the Communication Services;
- 1.1.38 “**Personnel**” means any director, employee, agent, consultant, contractor or other representative of an entity;
- 1.1.39 “**Personal Information**” means information relating to an identifiable, living natural person or, where it is applicable, an identifiable, existing juristic person, as the case may be, including but not limited to the name of the person, any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier or other particular assignment to the person;
- 1.1.40 “**Professional Services**” means all services rendered by CTEL outside the scope of the Communication Services and Support Services, including without limitation, consultancy, installation,

- configuration, training, project management and support other than for Errors;
- 1.1.41 “**Professional Services Fees**” means the fees payable by CUSTOMER as consideration for the rendering of Professional Services by CTEL, which fees will be payable on a Time and Materials basis;
- 1.1.42 “**Service Desk**” means CTEL’s helpdesk in respect of the Communication Services described in the Schedule;
- 1.1.43 “**Service Order**” means the proposal by CTEL for the implementation and provision of the Communication Services for one or more Customer Sites that has been duly accepted and signed by the CUSTOMER in accordance with the terms thereof;
- 1.1.44 “**Services**” means any and all services to be provided by CTEL to CUSTOMER, pursuant to the Service Order, including Communication Services, Support Services and Professional Services;
- 1.1.45 “**Support Services**” means the support services provided by CTEL to CUSTOMER in respect of the Communication Services as specified in the Schedule and the relevant Manuals;
- 1.1.46 “**Territory**” means the Republic of South Africa;
- 1.1.47 “**Third Party Software**” means any software forming part of the Licensed Technology that is proprietary to a third party;
- 1.1.48 “**Time and Materials**” means a basis for calculation of Fees based on the time actually spent by CTEL resources in delivering a service which are to be charged at CTEL’s prevailing standard fee rates and which also includes payment by CUSTOMER for all expenses reasonably incurred by CTEL in delivering such service, including for materials, travel, accommodation and subsistence;
- 1.1.49 “**Usage Rights**” means the rights of CUSTOMER to use the Licensed Technology as described in clause 5 hereof;
- 1.1.50 “**User Data**” means all data regarding the Authorised Users that may be required by CTEL, including the details of the Handsets allocated to the Authorised Users and such other data as CTEL may be required to hold by Law;
- 1.1.51 “**VAT**” means value added tax payable in terms of the Value-Added Tax Act, No 89 of 1991, as amended;
- 1.2 **Definitions.** Where any term is defined within the context of any particular clause in these terms, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in these terms, notwithstanding that the term has not been defined in this clause 1.
- 1.3 **Calculation of Days.** Unless expressly otherwise stated, when any number of days is prescribed in these terms or the Service Order, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day that is not a Business Day, in which case the last day shall be the next Business Day.
- 1.4 **Contra proferentum excluded.** No rule of construction that an agreement shall be interpreted against the Party responsible for its drafting or preparation shall apply to these terms or to the Service Order.
2. **APPLICATION**
- The terms in this document apply to our supply to you of communications services if this document is valid on the day on which you concluded your order with us and you are a consumer in terms of South African law. The terms of your order will override the terms in this document if they conflict. Quotations become service orders on acceptance.**
- 2.1 **Application.** Unless otherwise agreed, the prevailing version of these terms will apply to each Service Order concluded with CTEL by a consumer as defined in the South African Consumer Protection Act 68 of 2008. These terms will be incorporated into and form part of each such Service Order while these terms remain valid. Unless otherwise provided in a Service Order, the terms and conditions of any one Service Order shall not apply to any other Service Order and, specifically, these terms will not apply to any Service Order of our customers that are juristic persons with an annual turnover or asset value in excess of R2,000,000 (two million rand).
- 2.2 **Offer & Acceptance.** A quotation rendered by CTEL to the CUSTOMER, in electronic form or otherwise, constitutes an offer by CTEL to the CUSTOMER and will constitute a Service Order

if accepted within the stipulated period, subject to any other conditions set out in the proposal.

- 2.3 **Replacement.** These terms shall be valid as from the date of signature hereof, or the date of acceptance of the quotation as the case may be, until replaced by agreement with amended or new standard terms or as imposed by law. Such replacement will affect the terms of all Service Orders concluded prior to the date on which the replacement terms are specified by to take effect.
- 2.4 **Conflicts.** Insofar as any term and condition in a Service Order conflicts with these terms, the Service Order shall prevail.

3. **TERM**

You may cancel our supply of communications services to you upon 20 business days' written notice, provided that if you do so before expiry of the Minimum Term you will be charged a cancellation charge of 10% of the fees that you would have paid to us for such supply over the remainder of the Minimum Term. All fees already owing to us upon cancellation have to be fully paid. Advance service payments can be refunded, but purchase costs cannot be refunded.

- 3.1 **Term of Service Orders.** The Service Order shall commence on its Effective Date and be of force and effect until terminated in accordance with such Service Order or these terms.
- 3.2 **Termination of Service Orders.** The Service Order may be terminated by either Party by giving the other Party at least 20 (twenty) Business Days prior written notice thereto, which termination will take effect as of the date specified in the notice of termination, provided that if such notice of termination is given by CUSTOMER prior to expiry of the Minimum Term, an early cancellation charge will be payable by CUSTOMER immediately upon the date of termination of the Service Order. Such cancellation charge will equal 10% (ten percent) of the Fees that would have fallen due to CTEL during the unexpired remainder of the Minimum Term in respect of the Services if such termination did not occur. Item purchases may not be cancelled hereunder.
- 3.3 **Fees Due or Paid.** Termination pursuant to clause 3.2 will be without prejudice to CUSTOMER's obligations to pay Fees that have already fallen due as at the date of termination. Such Fees must be paid in full by CUSTOMER notwithstanding termination and will not be refunded, provided that if such Fees were paid in advance by CUSTOMER in respect of a period after the date on which the supply terminates, such Fees will be refunded after deduction of the cancellation charge and any other amounts due to CTEL under the Service Order. Fees paid to purchase items are non-refundable.

4. **DELIVERY AND IMPLEMENTATION**

Although we try to deliver and implement on pre-arranged delivery times this may not always be achievable. You are responsible for providing a suitable environment for the implementation of our technology. You must thoroughly test the items you buy and our service implementation and inform us of problems. If any standard item you purchased from us is unsuitable for your specific purposes you may return it within 10 business days for a full refund.

- 4.1 **Delivery and Implementation.** In return for payment of the relevant Fees, CTEL will deliver to CUSTOMER and implement such Equipment and CTEL Software as may be required to make available the Communication Services at the agreed Customer Sites. CTEL will endeavour to perform such delivery and implementation within a reasonable time of concluding the Service Order. However, all such times as may be arranged in the Service Order are estimates only and CUSTOMER should not rely on such times. CTEL will notify CUSTOMER of unavoidable delays, but CTEL will not be liable for failing to perform delivery or implementation at or within a pre-arranged time and CUSTOMER will not be entitled to cancel the Order for such failure. The terms implied by law pertaining to such delivery and implementation are hereby expressly excluded to the maximum extent permitted. CUSTOMER will reimburse CTEL for costs incurred in respect of the transport of Equipment.
- 4.2 **Risk.** The risk of loss or damage in respect of all components of the Licensed Technology provided to CUSTOMER shall transfer to CUSTOMER upon delivery thereof.

- 4.3 **Assistance.** CUSTOMER will provide CTEL with such assistance as may be required by CTEL to implement the Equipment and CTEL Software at the agreed Customer Sites, including by providing access to the relevant Customer Sites and Customer Systems, and making available such Personnel and Customer Material as may be required by CTEL for such purpose.

- 4.4 **Customer System.** CUSTOMER shall, at its own expense, procure, install at the relevant Customer Sites and maintain all components of the Customer Systems specified by CTEL to be required to receive the Communication Services (other than the Equipment and the CTEL Software that are provided by CTEL). CUSTOMER may request CTEL to assist in the installation of such components and if CTEL agrees thereto CTEL will be entitled to charge Professional Services Fees for providing such assistance.

- 4.5 **Site Readiness.** CUSTOMER will ensure that a Customer System compliant with CTEL's minimum specifications is installed and fully operational at each Customer Site prior to the planned date for commencement of the implementation of the Communication Services at such Customer Site. If CTEL's implementation of Communication Services is delayed by reason of CUSTOMER's failure to ensure same, CUSTOMER will pay all reasonable wasted costs of CTEL attributable to such delay, including, without limitation, the costs of accommodation, subsistence, travel, costs of sub-contractors and costs of time wasted in abortive site visits.

- 4.6 **Testing.** CUSTOMER will be responsible for testing the Communication Services as implemented to ensure that it meets with the requirements of CUSTOMER and CUSTOMER will notify CTEL's Service Desk of any Errors that it detects during such testing and CTEL will provide Support Services in respect of such Errors.

- 4.7 **Return of Unfit Items.** CUSTOMER should thoroughly evaluate all Equipment and CTEL Software provided to it. If any purchased item is unfit for CUSTOMER's specific purposes, the CUSTOMER may return such item within 10 (ten) Business Days of receipt thereof and CTEL will refund CUSTOMER any Fees paid to purchase such item. This will not apply to items that have been modified by CUSTOMER or for CUSTOMER or at its request.

5. **LICENSING**

You may only permit the use of the CTEL technology for your own business at your premises. Some components of the technology we provide may be subject to additional terms.

- 5.1 **Licence Terms.** With effect from the Effective Date of the Service Order and in return for payment of the relevant Fees and for the duration of the Service Order only, C-Tel grants to CUSTOMER a non-exclusive, non-transferable licence to permit the use of the Licensed Technology as provided and implemented by C-Tel pursuant to the Service Order to access the Communication Services using the Handsets provided solely by the Authorised Users of CUSTOMER conducting business at the Customer Sites specified in the Service Order. CUSTOMER acknowledges that its rights to permit use of the Third Party Software are further specified in the licence terms of the relevant supplier of such Third Party Software.

- 5.2 **Restrictions.** CUSTOMER shall not, and shall not permit, whether directly or indirectly, any third party, to-

- 5.2.1 modify, adapt, translate, reproduce, distribute, use, rent, lease, share, sell, assign, sub-license or otherwise transfer any part of the Licensed Technology;
- 5.2.2 remove, alter or conceal any proprietary notices or labels on the Licensed Technology; or
- 5.2.3 reverse assemble, decompile or reverse engineer any CTEL Software, whether in whole or in part, or otherwise attempt to derive the source code of any CTEL Software.

6. **APPOINTMENT**

We provide professional services to support your use of our technology as described in the rest of the terms. Although we try to accommodate your requests, neither of us can insist on changing these services once they are agreed.

- 6.1 **Appointment.** CTEL is appointed on the terms and conditions hereof and of the Service Order to provide the Services to

CUSTOMER and CTEL accepts such appointment. CTEL will perform such Services in a professional and workmanlike manner.

Changes. Neither CUSTOMER nor CTEL shall be entitled to require the implementation of any change to agreed Services, until such change and all matters relating to such change have been agreed in writing between them.

7. SUPPORT SERVICES

For as long as you use our service we provide support to assist with problems and an upgrade service with respect to our system. The scope and delivery of such support are described at the end of these terms.

7.1 **Scope.** In return for payment of the relevant Fees CTEL will provide Support Services in respect of Errors with the Communication Services in accordance with the terms of the Schedule.

7.2 **Term.** The Support Services will be provided in respect of Licensed Technology only for as long as Authorised Users remain entitled to receive Communication Services using the relevant Licensed Technology under the Service Order.

8. PROFESSIONAL SERVICES

We may agree to render professional services other than the support and upgrade services as described at the end of these terms, such as training and development of new functions. We charge extra for such services.

CUSTOMER may request, and CTEL may provide, certain Professional Services to CUSTOMER during the term of the Service Order. Unless otherwise agreed in writing, CTEL may charge Professional Services Fees in respect of all Professional Services rendered hereunder.

9. FEES AND PAYMENT

Fees are payable in the amounts and on the basis as described in your order. These terms apply to the extent that your order does make provision for the timing of payments. We may escalate our recurring fees from time to time to compensate for increases in the costs of conducting business. We may charge you for taxes and expenses, as well as for interest on overdue amounts at 1½% per month. We may also temporarily suspend services if you do not pay on time.

9.1 **Fees.** CUSTOMER shall be liable for and shall pay the Fees in respect of Services supplied pursuant to the Service Order on the basis set out below (unless otherwise stated in the Service Order):

9.1.1 All upfront Fees applicable to the procurement and installation of Licensed Technology may be invoiced immediately upon the ordering thereof;

9.1.2 All Fees applicable to the rental of Equipment may be invoiced monthly in advance as from the date of delivery thereof;

9.1.3 All Fees applicable to the rendering of the Communication Services and Support Services may be invoiced by CTEL on a monthly basis in advance as from the date of delivery of the Licensed Technology;

9.1.4 All Professional Services Fees may be invoiced monthly in arrears for all Professional Services rendered during the month.

9.1.5 CTEL may adjust the Fees on an annual basis, provided that the Fees will not be increased by a higher percentage than the percentage increase made by CTEL to its published standard rates generally offered to its customers. CTEL will provide CUSTOMER with written notice of any adjustments to the Fees, which notice will specify the date on which such adjustments are to take effect.

9.2 **Expenses.** CUSTOMER shall reimburse all reasonable expenses incurred by CTEL or CTEL's Personnel in fulfilling CTEL's obligations pursuant to a Service Order. Such expenses include, but are not limited to, for travelling, accommodation, subsistence, and goods or services purchased on CUSTOMER's behalf. Travelling, accommodation and subsistence expenses may be charged in accordance with CTEL's standard policies in respect of such matters from time to time.

9.3 **Taxes.** The Fees shall exclude all taxes (including without limitation VAT, sales tax, withholding tax, (and any other similar

taxes levied in any jurisdiction), duties (including without limitation stamp duties and customs and excise duties), tariffs, rates, levies and other governmental charges or expenses payable in respect of the Services, all of which shall be payable by CUSTOMER in addition to the Fees.

9.4 **Invoices.** All invoices shall be paid by CUSTOMER within 7 (seven) calendar days of the date of CTEL's invoice. Save to the extent that it may be agreed otherwise in writing, no payment obligation undertaken pursuant to a Service Order will be cancellable and no payment made under a Service Order will be refundable.

9.5 **Mode and method of payment.** All amounts due and payable by CUSTOMER shall be paid to CTEL in South African Rand without withholding, deduction or set-off for whatever reason at an address and by way of deposit into the Designated Account or such other manner nominated by CTEL in writing from time to time.

9.6 **Remedies for non-payment.** Where payment of any amount due is not made on due date, CTEL shall be entitled, without prejudice to any other right or remedy it may have, to -

9.6.1 charge interest on the outstanding amount at a rate of 1½ (one and a half percent) per month. Such interest shall be calculated from the due date for payment to the date of actual payment, both days inclusive, compounded monthly in arrears and CUSTOMER agrees and undertakes to pay such interest, which it hereby accepts as fair and reasonable, on demand; and

9.6.2 suspend the provision of Services or such portion thereof as CTEL in CTEL's sole discretion chooses (including by rendering Licensed Technology temporarily inoperable) until all payments in arrears have been paid in full.

9.7 **Allocation.** CTEL may allocate all amounts received from CUSTOMER as follows: Firstly towards interest and reimbursement of expenses, secondly to Fees payable for Services, and thirdly to Fees payable to rental or purchase of Equipment.

10. CUSTOMER COOPERATION

We need your help to efficiently render the services to you. Accordingly we expect you to reasonably cooperate with us.

In order to enable CTEL to provide the Services, CUSTOMER agrees to provide assistance, input, support and co-operation and shall, to the extent required by CTEL -

10.1 **provision of office and working space.** provide CTEL and its Personnel with access to adequate working space, facilities and parking at the Customer Sites to enable such Personnel to fulfil its obligations at the Customer Sites;

10.2 **liaise regularly.** liaise regularly with CTEL to ensure that CTEL is in a position to provide the Services;

10.3 **decisions and approvals.** render all decisions and approvals required as soon as is reasonably possible, so as not to delay or impede the performance of the Services;

10.4 **suitable infrastructure.** to the extent necessary, provide a suitable infrastructure for the components, software or deliverables that are to be implemented, including without limitation, the Customer System environment and infrastructure, in accordance with any specification requirements issued by CTEL to CUSTOMER;

10.5 **access.** provide CTEL with reasonable access to the Customer Material and CUSTOMER's computer systems to enable CTEL to comply with its obligations under the Service Order, including remote network access and direct physical access;

10.6 **notifications.** notify CTEL as soon as reasonably possible of any issues, concerns or disputes with respect to the Services;

10.7 **Customer Material.** be responsible for the accuracy and completeness of all Customer Material and other data and information, provided to CTEL for the purposes of CTEL providing the Services;

10.8 **supply of infrastructure.** provide electricity services, telephone services and other connectivity (including access to computer networks and the Internet) at each Customer Site; and

10.9 **dependent functions.** make available sufficiently qualified and authorised CUSTOMER Personnel, with appropriate access rights and permissions, to assist CTEL if required.

11. COMPLIANCE WITH LAW

You must comply with applicable laws when using our services.

CUSTOMER will at all times comply with and ensure that the Authorised Users comply with applicable Law in using the Communication Services. CUSTOMER shall ensure that all licences, authorisations, permissions and consents that may be required to permit the Authorised Users and CUSTOMER to access and use the Communication Services is duly obtained, including as may be required in Law to submit the Communications Data to the CTEL System and to allocate telephone numbers to Authorised Users.

12. DATA

We need access to certain data in order to provide the services. You are responsible for providing the consents we may legally require to access and use such data.

12.1 **Reporting.** For the duration of the Service Order, CUSTOMER shall monitor and keep a complete up-to-date and accurate record of all User Data and Performance Data and CUSTOMER will provide CTEL with such portions of the User Data and Performance Data as CTEL may from time to time reasonably request. The User Data and Performance Data may be used by CTEL for its internal business purposes, including for determination of Fees and complying with its Service obligations and generally for improving the services rendered by it.

12.2 **Consents.** CUSTOMER shall ensure that all licences, authorisations, permissions and consents that may be required by Law to provide the Communications Data, User Data and Performance Data to CTEL and to authorise CTEL to process and use such Communications Data, User Data and Performance Data (including the Personal Information contained therein) for the purposes as contemplated in these terms has been duly obtained and CUSTOMER hereby consents to such processing and use and will ensure that all Authorised Users consent to such processing and use.

13. AUDITS

We may from time to time audit your compliance with these terms.

13.1 **Audit Rights.** CUSTOMER shall provide to CTEL, its auditors (including internal audit staff and external auditors), inspectors, regulators and other representatives as CTEL may from time to time designate in writing (“Auditors”) access at all reasonable times (and in the case of regulators, at any time required by such regulator) to the Customer Sites and Customer Systems, and to the relevant CUSTOMER Personnel and Customer Materials for the purpose of performing audits and inspections (“Audits”) to verify CUSTOMER’s compliance with the terms hereof and of the Service Order including, to the extent applicable to the Services, performing audits of general controls and compliance with licensing limitations.

14. SECURITY

You are responsible for securing and looking after the technology we provide to you and must insure the equipment against damage. Nobody may tamper with such technology and you alone may hold and use it.

14.1 **Preservation of Licensed Technology.** CUSTOMER shall be responsible to ensure that the integrity of the Licensed Technology as provided to CUSTOMER is preserved and will procure that all reasonable precautions and security measures are implemented to prevent any unauthorised access, use or alteration of the Licensed Technology. Without limiting the generality of the aforesaid CUSTOMER shall:

- 14.1.1 not allow anyone other than Authorised Users to access or use the Licensed Technology or Communication Services;
- 14.1.2 provide adequate redundancy, backup and disaster recovery measures for the Licensed Technology as implemented for it as well as for all related data; and
- 14.1.3 comply with the security requirements and processes described in the Manuals.

14.2 **Notification of Breaches.** If CUSTOMER becomes aware of any unauthorised access to the Licensed Technology or

Communication Services, CUSTOMER will promptly report the incident to CTEL describing in detail the scope and nature of the incident.

14.3 **CTEL Equipment.** In respect of all Equipment made available to CUSTOMER that is not owned by CUSTOMER, CUSTOMER shall ensure that:

- 14.3.1 the Equipment is used with care and that reasonable precautions are taken to avoid accidents and to safeguard it from loss or damage and excessive wear and tear;
- 14.3.2 CTEL is notified immediately of any loss of, or damage to, the Equipment or part thereof or any failure of the Equipment to function;
- 14.3.3 the Equipment is not repaired by anyone other than CTEL or its authorised subcontractors, save as may be expressly authorised by CTEL in writing;
- 14.3.4 no part or component for the Equipment is implemented which has not been supplied by CTEL or its designated suppliers;
- 14.3.5 CTEL or anyone authorised by CTEL is allowed to inspect and examine the Equipment at all reasonable times;
- 14.3.6 CTEL is provided with all such information as it may reasonably require to protect its right of ownership in the Equipment;
- 14.3.7 the Equipment is not sub-let, does not leave its possession, and no person or entity other than Authorised Users is permitted to use the Equipment;
- 14.3.8 the Equipment is used only for the purpose for which it has been designed, and in accordance with CTEL’s reasonable instructions; and
- 14.3.9 the Equipment is covered by a comprehensive all-risks insurance policy in which the interest of CTEL or its designated subcontractor has been noted, which will insure the replacement value of the Equipment.

15. WARRANTIES

You must use products provided to you in accordance with their instructions to avoid damage to health and property. We expect you to test the system components thoroughly before using it in your business to ensure that it is suitable for your specific needs. System components may have some defects. We provide you with a helpdesk to resolve software problems. We will provide at least a 6 month defects warranty on new equipment purchased and a 3 month warranty on spare parts. We are not aware of anything preventing us from providing the system components to you, but if we do become aware of a problem in this respect, we may take certain steps to avoid or limit the problem. If a claim is made against you in this regard we will pay the damages a court may award against you if you comply with the conditions.

15.1 **CTEL’S ROLE.** CTEL MAKES AVAILABLE STANDARD PRODUCTS WITH STANDARD FUNCTIONALITY. CTEL DOES NOT ORDINARILY OFFER OR SUPPLY PRODUCT FOR ANY PARTICULAR PURPOSE AND DOES NOT PROFESS TO BE KNOWLEDGEABLE ABOUT THE CUSTOMERS SPECIFIC USAGE REQUIREMENTS FOR THE EQUIPMENT OR CTEL SOFTWARE.

15.2 **CUSTOMER RESPONSIBILITY.** CUSTOMER MUST TEST THE LICENSED TECHNOLOGY THOROUGHLY BEFORE THE USE THEREOF IN ITS BUSINESS SO AS TO ENSURE THAT IT IS SUITABLE FOR ITS SPECIFIC NEEDS. CUSTOMER MUST USE THE LICENSED TECHNOLOGY IN ACCORDANCE WITH THE INSTRUCTIONS PROVIDED TO AVOID DAMAGE TO HEALTH AND PROPERTY.

15.3 **SOFTWARE.** CTEL SOFTWARE CONTAIN DEFECTS AND ARE PROVIDED ON AN “AS IS” BASIS WITH SUCH DEFECTS. IF CUSTOMER HAS PAID THE SUPPORT FEES DUE, CUSTOMER MAY REPORT ANY DEFECT IN THE CTEL SOFTWARE TO CTEL AND CTEL WILL ATTEND TO SUCH DEFECT PURSUANT TO THE TERMS OF SECTION A OF THE SCHEDULE.

15.4 **New Equipment Warranty.** CTEL warrants that any new Equipment as sold and provided by it will operate in accordance with its manufacturer’s specifications in all material respects if used in accordance with the relevant Manuals for the Warranty

Period. If any item of purchased Equipment exhibits a Material Defect during the Warranty Period, CTEL shall, at CUSTOMER request and as CUSTOMER's sole and exclusive remedy, either procure the correction of such defect or replace the defective item, or CUSTOMER may return the defective Equipment and CTEL will refund the purchase price paid in respect of such Equipment. If CTEL is unable to correct a Material Defect in Equipment notified to it hereunder within 3 (three) months of CUSTOMER's request or a further Material Defect is found during the Warranty Period, CUSTOMER may require that the Equipment be replaced or return the Equipment and CTEL will refund the Equipment purchase price paid in respect of such Equipment. This warranty will be voided and the CUSTOMER's rights hereunder will not apply if the Equipment has been modified or damaged in any way.

15.5 **Spares Warranty.** CTEL warrants that spare parts for Equipment newly installed by it will operate in accordance with its specifications in all material respects if the Equipment is used in accordance with the relevant Manuals for the Spares Warranty Period. If any spare part is found to have a Material Defect during the Spares Warranty Period, CTEL shall, at CUSTOMER request and as CUSTOMER's sole and exclusive remedy, either procure the correction of the defect or replace the defective part, or CUSTOMER may return the defective part and CTEL will refund the purchase price paid in respect of such spare part. The warranty and CUSTOMER's rights hereunder will not apply to spare parts that have been consumed in the ordinary course of their use or to spare parts that has been modified or damaged in any way.

15.6 **Default Warranty Periods.** Unless otherwise agreed in the Service Order, (i) the "Warranty Period" for Equipment will be 6 (six) months from delivery thereof; and (ii) the "Spares Warranty Period" for spare parts for the Equipment will be 3 (three) months from the implementation thereof in the Equipment.

15.7 **Intellectual Property Claims.** CTEL warrants that to the best of its knowledge and belief it is entitled to supply the Licensed Technology set out in the Service Order. CUSTOMER should, however, note that such Licensed Technology or CUSTOMER's use thereof may infringe upon third party rights of which CTEL may not be aware. If CTEL becomes aware that such Licensed Technology or CUSTOMER's use thereof may amount to an infringement or potential infringement of the rights, including the Intellectual Property Rights, of any third party, CTEL may temporarily suspend CUSTOMER's use of the infringing item and at its own expense and option:

- 15.7.1 obtain the right for CUSTOMER to continue using such item; or
- 15.7.2 amend, modify and/or adjust the item in such a manner so as to ensure that they no longer infringe the rights of the third party; or
- 15.7.3 replace the item with a non-infringing substitute; or,
- 15.7.4 if none of the aforesaid is reasonably possible, terminate the CUSTOMER's rights to use the item by giving notice thereof to CUSTOMER and require return of such item.

In the event of withdrawal of an item hereunder CTEL will refund CUSTOMER any Fees paid in advance the use of such item for the period after the date of termination.

15.8 **Indemnity.** CTEL hereby indemnifies CUSTOMER against and undertakes to pay all damages, if any, finally awarded against the CUSTOMER in any action which is attributable to a claim that the Licensed Technology was provided to CUSTOMER without the authority of the legal owner thereof or CUSTOMER's licensed use thereof infringes the Intellectual Property Rights of any third party ("a Claim"), and CTEL will reimburse the CUSTOMER with all costs (including any legal fees) reasonably incurred by the CUSTOMER in connection with any such action, provided that Customer:

- 15.8.1 notifies CTEL of any such Claim as soon as reasonably possible after becoming aware thereof;
- 15.8.2 agrees that CTEL may undertake, at its option, the defence of any such Claim, including all settlement negotiations;
- 15.8.3 does not, at any time, admit liability or otherwise settle or compromise the Claim, without the prior written consent and instruction of CTEL; and
- 15.8.4 provides such assistance to CTEL as it shall reasonably require in the defence of the Claim including, but not limited to, the provision of all relevant documentation.

15.9 **DISCLAIMER. THE EXPRESS WARRANTIES DESCRIBED IN THESE TERMS AND THE REMEDIES PROVIDED HEREIN ARE EXCLUSIVE AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. APART FROM THE EXPRESS WARRANTIES STATED IN THESE TERMS, CTEL AND ITS LICENSORS AND SUPPLIERS DISCLAIM ALL OTHER EXPRESS, IMPLIED OR TACIT WARRANTIES WITH RESPECT TO THE LICENSED TECHNOLOGY, SERVICES AND CTEL SYSTEM.**

16. **FORCE MAJEURE**

Sometimes we may be prevented from performing our duties by events outside of our control. In these cases we will try to perform again when we are able.

16.1 **CTEL not liable for force majeure.** CTEL shall not be liable for any failure to fulfil its obligations under the Service Order if and to the extent such failure is caused by any circumstances beyond its reasonable control, including but not limited to acts of God, natural disasters, earthquakes, fire, explosions, floods, hurricanes, extreme weather, riots, wars, (whether declared or not), hostilities, revolutions, civil disturbance or usurped authority, accidents, embargo or requisition, unforeseeable acts (including failure to act) of any governmental authority (*de jure* or *de facto*), sabotage, nuclear incidents, epidemics, strikes over which the affected Party have no control, or the failure of any institution whose consent is required for the performance of any obligation hereunder to provide such consent, or delays in the performance of its sub-contractor caused by any such circumstances as referred to in this clause. The right of relief shall apply irrespective of whether the cause of prevention or delay occurs before or after the agreed due time for such obligations.

17. **PROPRIETARY RIGHTS**

We remain owners of our technology. You may only use for the purposes expressly authorised herein. You only become owner of equipment you buy after you paid the full purchased price and you must inform your landlord of all our equipment you may have and ask for it to acknowledge of our ownership.

17.1 **Retention of Rights.** CTEL reserves all rights not expressly granted in these terms or the Service Order. CUSTOMER acknowledges that the rights granted to it in respect of the CTEL Software and Manuals are limited to the Usage Rights and that CTEL and its suppliers shall, remain solely entitled to all ownership rights in the CTEL Software and Manuals, including all Intellectual Property Rights therein and all Know-How represented by or incorporated therein. Furthermore, CTEL and/or its suppliers shall retain ownership of all Equipment supplied by them notwithstanding the delivery thereof to CUSTOMER, save for such Equipment as may be purchased by CUSTOMER and in respect of which the full agreed purchase price has been paid to CTEL.

17.2 **CUSTOMER Representations.** CUSTOMER undertakes that it shall not in any manner whatsoever represent that it is the owner or has any interest, other than as licensee in terms hereof, in the CTEL Software and Manuals and shall not take any action to impute any right, title or interest of CTEL in and to the CTEL Software or Manuals.

17.3 **Landlord Notices.** In the event that the Customer Site is leased by CUSTOMER, CUSTOMER will ensure that the landlord of such Customer Site is promptly notified of all Equipment that is located at such Customer Site that is owned by CTEL and/or its suppliers. The notice will conform to any standard format that may be prescribed by CTEL from time to time and CUSTOMER will use all reasonable endeavours to obtain an acknowledgement of receipt of such notice from the landlord and will provide a copy of the notice containing the receipt acknowledgement to CTEL. CUSTOMER will repeat the aforesaid process promptly following any change of landlord.

17.4 **CTEL Know-How.** To the extent that CTEL utilises any of its Know-How in connection with the performance of its obligations pursuant to the Service Order, same shall remain the property of CTEL and CUSTOMER shall acquire no right, title or interest in such Know-How.

18. **CONFIDENTIAL INFORMATION**

You must treat our technology and our business information provided to you as confidential and you may not use or disclose it without our consent or permit anyone else to do so.

- 18.1 **Obligations.** CUSTOMER shall, treat as confidential any Confidential Information relating to the Licensed Technology or CTEL's business, and specifically CUSTOMER undertakes that:
- 1.1.1 It will not without CTEL's prior written consent disclose any such Confidential Information to any third party and will use all reasonable endeavours to prevent the unauthorised publication or disclosure of the same and will implement suitable security measures in this regard, which is at least the same as those used for its own information of a similar nature;
- 1.1.2 It will divulge such Confidential Information only to those of its staff who need to know it and are directly concerned with the implementation and operation of the CTEL System;
- 1.1.3 It will ensure that its staff are aware of and comply with the confidentiality and non-disclosure obligations contained herein and CUSTOMER indemnifies CTEL against any loss or damage which it may sustain or incur as a result of any breach of confidence by any of CUSTOMER's staff;
- 1.1.4 It will not use such Confidential Information for any purpose other than for the implementation and operation of the CTEL System;
- 1.1.5 It will notify CTEL promptly upon becoming aware of any unauthorised use or disclosure of CTEL's Confidential Information and assist CTEL to regain control of the Confidential Information and prevent further unauthorised use or disclosure thereof; and
- 1.1.6 It will return or otherwise dispose of all documented Confidential Information furnished to it by CTEL as CTEL may from time to time direct.
- 1.2 The foregoing provisions shall not prevent the disclosure or use by CUSTOMER of any Confidential Information of CTEL which is or hereafter, through no fault of CUSTOMER, become public knowledge or to the extent required by law, provided that CUSTOMER gives CTEL as much notice of such impending disclosure as is reasonably possible and provides all reasonable assistance to CTEL in preventing or limiting such disclosure to the maximum extent possible.

19. **LIMITATION OF LIABILITY**

You should insure against losses suffered by your business. We do not accept liability for such losses. You cannot claim damages from us in excess of the fees you paid for the services over the year in which the claim arose.

- 19.1 **DIRECT DAMAGES LIMITED.** EXCEPT TO THE EXTENT THAT SUCH LIMITATION IS NOT PERMITTED BY APPLICABLE LAW, CTEL'S MAXIMUM AGGREGATE LIABILITY FOR ANY LOSSES WHATSOEVER CLAIMED IN CONNECTION WITH THE SERVICE ORDER DURING ANY CONTRACT YEAR SHALL BE THE TOTAL FEES ALREADY PAID BY CUSTOMER TO CTEL IN TERMS OF THE SERVICE ORDER DURING SUCH CONTRACT YEAR, IRRESPECTIVE OF THE FORM (WHETHER IN CONTRACT, DELICT (INCLUDING NEGLIGENCE), STATUTE OR OTHERWISE) OF SUCH LEGAL ACTION.
- 19.2 **INDIRECT DAMAGES EXCLUDED.** IN NO EVENT SHALL CTEL OR ITS PERSONNEL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, EXTRINSIC, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOSSES (WHETHER FORESEEABLE OR UNFORESEEABLE) OF ANY KIND (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF INCOME, LOSS OF GOODWILL, LOSS OR CORRUPTION OF DATA OR BUSINESS INFORMATION, LOSS OF USE, BUSINESS INTERRUPTION, OR ANY OTHER PECUNIARY LOSS ARISING OUT OF A DELAY IN DELIVERY OR RELIANCE ON THE SERVICES) ARISING IN CONNECTION WITH THE SERVICE ORDER OR THESE TERMS, WHETHER BASED ON CONTRACT, DELICT,

STATUTE OR OTHERWISE, EXCEPT TO THE EXTENT THAT THE LIMITATION OF LIABILITY CONTAINED HEREIN IS NOT PERMITTED BY APPLICABLE LAW.

20. **BREACH AND TERMINATION**

Your rights to use our system and services may be ended if you do not comply with the agreed terms or if you become insolvent. We will give you notice if we want to stop your use our system or services.

- 20.1 **Termination for Breach.** Should -
- 20.1.1 the terms of a Service Order be materially breached, and such breach is not remedied within 20 (twenty) Business Days of written notice thereof; or
- 20.1.2 any amount due under a Service Order that is more than 60 (sixty) calendar days outstanding not be paid;
- then, without prejudice to any other rights it may have in Law, the Party entitled to require performance of the relevant obligation may, in its discretion, terminate the Service Order on written notice to the other Party, such termination to take effect on the date specified in the notice.
- 20.2 **Termination for Insolvency.** Should CUSTOMER-
- 20.2.1 commit an act which is an act of insolvency; or
- 20.2.2 defer or suspend payment of all or substantially all of its debts or is unable to pay its debts as and when they fall due; or
- 20.2.3 effect or attempt to effect a compromise or composition with its creditors; or
- 20.2.4 commence business rescue proceedings, take steps for its voluntary winding up or be provisionally or finally liquidated or be placed in judicial management, whether provisionally or final or ceases to conduct business;
- then, without prejudice to any other rights it may have in Law, CTEL ("**Innocent Party**") may, in its discretion, terminate the Service Order on written notice to the CUSTOMER, such termination to take effect on the date specified in the notice.
- 20.3 **Effect of termination of Service Orders.** The termination or expiry of any one Service Order will not affect the validity of any other Service Order.
- 20.4 **Duties upon termination.** Upon termination, cancellation or expiry of a Service Order -
- 20.4.1 CUSTOMER will cease using all the Licensed Technology acquired in terms of the affected Service Order and promptly return to CTEL any and all tangible elements of such Licensed Technology, save for the Equipment in respect of which ownership passed to CUSTOMER;
- 20.4.2 the provision of all Services under such Service Order may be terminated forthwith including by rendering the relevant Licensed Technology inoperable; and
- 20.4.3 CUSTOMER will deliver to CTEL, or at CTEL's option destroy all originals and copies of CTEL's Confidential Information and proprietary materials in its possession or under its control.
- 20.5 **Accrued Rights.** The expiry or termination of the Service Order shall be without prejudice to any rights of the Parties accrued as at the date of such expiry or termination.
- 20.6 **Survival.** Termination of a Service Order shall not affect the enforceability of the provisions which have been specified or are by their nature required to operate after such expiry or termination, including without limitation, the following provisions contained herein: Clause 1 (Definitions), clause 17 (Proprietary Rights), clause 18 (Confidential Information), clause 19 (Limitation of Liability), clause 20 (Breach and Termination), clause 21 (Assignment), clause 22 (Non-Exclusivity), clause 23 (Non-Solicitation), clause **Error! Reference source not found.** (Non-Competition), clause 24 (Severability), clause 25 (Notices and Domicilia), clause 26 (Relationship) and clause 27 (General).
21. **ASSIGNMENT**
- CUSTOMER may not cede, assign, delegate or otherwise transfer any of its rights or obligations under the Service Order without the prior written consent of CTEL. CTEL shall be entitled to cede, assign, delegate and transfer all or some of its rights and obligations

in terms of the Service Order to any third party and CUSTOMER agrees to such cession, assignment, delegation and transfer

22. **NON-EXCLUSIVITY**

Nothing in these terms or a Service Order shall be construed as precluding or limiting in any way the right of CTEL to license any technology or to provide products or services of any kind or nature whatsoever to any person or entity as CTEL in its sole discretion deems appropriate.

23. **NON-SOLICITATION**

Neither Party shall during the currency of the Service Order or for a period of 12 (twelve) months following the termination thereof directly or indirectly solicit or offer employment to any of the Personnel of the other Party, and shall not employ or contract in any manner with any Personnel of the other Party.

24. **SEVERABILITY**

24.1 **Reading Down.** If a provision herein or in the Service Order is reasonably capable of an interpretation which would make that provision valid and enforceable and an alternative interpretation that would make it void, illegal, invalid or otherwise unenforceable, then that provision shall be interpreted, so far as is possible, to be limited and read down to the extent necessary to make it valid and enforceable.

24.2 **Severability.** If the whole or any part of a provision of a Service Order is void or voidable by either Party or unenforceable or illegal, the whole or that part (as the case may be) of that provision, shall be severed, and the remainder of the Service Order shall have full force and effect, provided such severance does not alter the nature of the Service Order.

25. **NOTICES AND DOMICILIA**

25.1 **Addresses.** The Parties hereby choose domicilium citandi et executandi ("**Domicilium**") for all purposes their physical addresses set out in the Service Order.

25.2 **Change of Address.** Either Party may give written notice to the other, change its Domicilium to any other physical address in the Republic of South Africa and its telefax number to any other South African number, provided that such change shall take effect 14 (fourteen) calendar days after delivery of such written notice.

25.3 **Deemed Delivery.** Notice will be deemed given –

- 25.3.1 if delivered by hand to a responsible person during Business Hours to the designated physical address, on the date of delivery;
- 25.3.2 if sent by an express courier with a system for tracking delivery, when received; and
- 25.3.3 if sent by fax during Business Hours, upon production of a satisfactory transmission report by the fax machine which sent

the fax and if outside such Business Hours then at the beginning of the next Business Day.

25.4 **Notice actually received.** Notwithstanding anything to the contrary stated above, if a notice or communication is actually received by a Party, adequate notice or communication shall have been given, even though it was not delivered in a manner described above.

26. **RELATIONSHIP**

26.1 **No temporary employment service.** Nothing in a Service Order shall be construed as constituting a temporary employment service as contemplated in section 198 of the Labour Relations Act, 1995.

26.2 **No agency or partnership.** Nothing in a Service Order shall be construed as creating any form of agency or partnership between the Parties and neither Party shall have any authority to bind, make representations or incur any liability on behalf of the other.

27. **GENERAL**

27.1 **Entire Agreement.** The Service Order and these terms constitute the entire agreement between CUSTOMER and CTEL in respect of the subject matter of such Service Order and no agreements, representations or warranties between the Parties other than those set out therein are binding on the Parties.

27.2 **Variation.** No amendment or modification to a Service Order shall be effective unless in writing and signed by authorised signatories of both CUSTOMER and CTEL.

27.3 **Waiver.** No latitude, granting of time or forbearance of a Party hereto regarding the performance of the other Party shall be or be deemed to be a waiver of any term or condition hereof or of a Service Order and no waiver of any breach shall operate a waiver of any continuing or subsequent breach. No waiver shall be effective unless it is expressly stated in writing and signed by the Party giving it.

27.4 **Governing Law and jurisdiction.** Service Orders shall be governed and construed according to the laws of the Republic of South Africa and the Parties agree to submit to the exclusive jurisdiction of the Western Cape High Court, Cape Town regarding any and all disputes arising in connection therewith.

27.5 **Costs.** Each Party shall be responsible for its own legal and other costs relating to the negotiation of the Service Order.

27.6 **Publicity.** Neither Party will make or issue any formal or informal announcement or statement to the press in connection with the Service Order without the prior written consent of the other Party, provided that either Party may name the other of them as a customer or supplier, as applicable, and disclose the general nature of the overall arrangement between the Parties.

THE SCHEDULE

SECTION A: SERVICES

1. GENERAL

1.1 The following services will be provided by CTEL in return for payment of the Fees. Professional Services Fees will be chargeable to CUSTOMER for all services that are not included in CTEL's responsibilities hereunder

2. COMMUNICATION SERVICES

2.1 **Scope of Service.** CTEL will make available the CTEL System and Licensed Technology in order to transmit and receive Communications Data for Authorised Users using Handsets. The Communication Services are further described in the Manuals. All Communications Data must be submitted in compliance with the requirements specified for same in the Manuals, including with respect to the format and process for submission.

2.2 **Authorisation.** CUSTOMER will permit only Authorised Users using Handsets provided by CTEL to receive and submit Communications Data via the CTEL System and Licensed Technology. CUSTOMER will procure that all access to the Communications Services are controlled by way of suitable access controls, including by allocating a unique telephone number to each Handset as obtained from CTEL and not permitting any Communications Data to be received or submitted other than by way of such Handsets.

3. SUPPORT SERVICES

3.1 **Scope of Support.** The support services provided by CTEL hereunder will only include services in respect of "Errors". CTEL may, upon the request of CUSTOMER, provide support in respect of any problem that is not an "Error", but may charge Professional Service Fees in respect of such support. CTEL may also charge Professional Services Fees for all time reasonably spent and all expenses reasonably incurred by it in order to verify that a problem reported to it by CUSTOMER is not an Error.

3.2 **CUSTOMER Responsibilities.** CUSTOMER shall be responsible for the maintenance of all components of the Customer Systems that are not provided by CTEL and for providing a suitable operating environment for such Customer Systems and for providing first and second line support in respect of the Licensed Technology and Communication Services, including by using suitably trained and skilled staff to perform the following functions:

- 3.2.1 provide support to Authorised Users;
- 3.2.2 assist Authorised Users with the use and operation of the Licensed Technology and Communication Services;
- 3.2.3 identify problems with the Customer Systems, Licensed Technology and Communication Services;
- 3.2.4 resolve all such problems that are not "Errors";
- 3.2.5 log all Errors with CTEL.

3.3 **CTEL Responsibilities.** In consideration for payment of the relevant Fees, CTEL undertakes to provide second line support services in respect of all Errors logged with CTEL. Such second line support will be limited to assisting with the resolution of Errors in the Licensed Technology, including by providing workarounds and coding fixes where reasonably possible.

3.4 **Support Time Limits.** If a maximum support time entitlement is agreed to apply to the Licensed Technology, CTEL will not be obliged to provide any support in excess of such entitlement. If CTEL does provide such additional support, CTEL will be entitled to charge Professional Services Fees for any time spent providing such additional support. Any price estimates provided by CTEL for such services where such services are not rendered on a fixed price basis are to be treated as estimates only and, where applicable, CUSTOMER authorises CTEL to charge at its standard rates for the time actually spent in rendering such services up to double the amount of such estimate.

3.5 **Severity.** When reporting an Error, CUSTOMER in consultation with CTEL will reasonably allocate a Severity Level to its support requests in accordance with the table below.

Severity Level	Definition of Severity
Severity 1	The Communications Service at a Customer Site is unavailable.
Severity 2	The Communications Service at a Customer Site is available but severely degraded or a Handset fails.
Severity 3	The Communications Service at a Customer Site is available but moderately impaired or the problem can be circumvented

3.6 **Logging.** All problems logged by CUSTOMER must be reported to CTEL as follows:

3.6.1 All problems must be reported at CTEL's Service Desk. CTEL will provide support during Support Hours only. All after hours support must be pre-arranged with CTEL and will be chargeable at CTEL's prevailing after hour rates. CTEL's "Support Hours" are the hours from 08h00 to 17h00 (GMT+2 hours) on Business Days. Problems can be logged with CTEL as follows:

- (a) via email to support@connection-telecom.com;
- (b) or on 0-878 200 400;
- (c) or online via the CTEL web based support portal.

3.6.2 At the time of first reporting the problem to CTEL, CUSTOMER will provide CTEL with the complete chronological history of the problem from the moment it was first reported, as well as the steps taken and results obtained from first and second line support efforts and CUSTOMER will also to ensure that the appropriate support engineer is assigned by it and remains available to assist CTEL in resolving the problem.

3.6.3 CTEL and CUSTOMER shall over the term of the Service Order jointly endeavour to draw up a FAQ list to assist CUSTOMER to render support in respect of the Licensed Technology.

3.7 **Network Access.** CUSTOMER will give CTEL and its authorised representatives controlled remote and direct network access to the Customer Systems to resolve problems.

3.8 **On-Site Support.** The Parties will endeavour to attend to all problems by way of remote support. Should support be provided by CTEL on-site at any Customer Site, CUSTOMER will refund all CTEL's reasonable expenses in providing such support on-site at a Customer Site, including for travel, accommodation and subsistence.

3.9 **Escalation.** CUSTOMER will provide a list of at least three responsible persons and contact numbers that CTEL may contact in the sequence as set out in the list to escalate any Error logged to CTEL in respect of which CUSTOMER is required to provide assistance to CTEL.

- 3.10 **Response.** Depending on the severity level of the reported problem, CTEL will commercially reasonable endeavours to respond to CUSTOMER in respect of all problems reported and to provide a workaround or solution for Errors within the following time frames:

Severity Level of Problem	Response Time	Resolution Time
Severity 1	2 Support Hours	6 Support Hours
Severity 2	4 Support Hours	12 Support Hours
Severity 3	8 Support Hours	N/A

- 3.11 **Credits.** If the Communication Services are unavailable to CUSTOMER during any calendar month in excess of a thresholds specified in the table below because of CTEL's inability to provide a workaround or solution for one or more Severity Level 1 Errors affecting it, CTEL will credit CUSTOMER the corresponding portion of the Fees payable for the particular month to receive the Communication Services as specified in the table. Downtime will be measured from the moment a Severity Level 1 Error problem is reported to CTEL until such time as CTEL provides a suitable workaround or coding solution for the Error. Reasonable travelling time will be deducted from downtime as will any wasted time resulting from circumstances outside of CTEL's control or CUSTOMER's failure to provide the necessary information and assistance.

Aggregate Arch System Downtime	Credit
12 hours - 24 hours	2.5% of Fees
24 hours – 48 hours	5% of Fees
48 hours or more	10% of Fees

- 3.12 **Handsets.** All replacement parts (except consumable parts) and replacement Handsets provided for purchased Handsets that are under warranty are inclusive of the Fees (save for replacement parts and replacement Handsets necessitated by any Excluded Defect), but all replacement parts and replacement Handsets provided to CUSTOMER in respect of purchased Handsets after the expiry of the applicable warranty will be chargeable at the standard prevailing price. All replacement parts and replacement Handsets necessitated by any Excluded Defect are chargeable at the standard prevailing price.
- 3.13 **Runways.** The Runway Gateway (“Runway”) has a one (1) year warranty. Unless otherwise agreed in the Service Order, all replacement parts and replacement equipment provided for purchased Runways that are under warranty are inclusive of the Fees (save for replacement parts and replacement equipment necessitated by any Excluded Defect), but all replacement parts and replacement equipment provided to CUSTOMER after the expiry of the applicable warranty will be for chargeable at the standard prevailing price. All replacement parts for leased Runways where the need for such parts result from normal wear and tear are inclusive of the applicable Fees, but replacement parts necessitated by any Excluded Defect will be chargeable at the standard prevailing price.
- 3.14 **Parts Ownership.** All parts furnished free of charge by CTEL in respect of CUSTOMER owned Equipment under warranty, will be provided on an exchange basis and all parts being replaced will thus become the property of CTEL upon replacement. If replacement parts are charged to CUSTOMER's account, the parts being replaced will remain CUSTOMER's property and will be left with or returned to CUSTOMER in a suitable container unless otherwise instructed by CUSTOMER.
- 3.15 **Upgrades.** CTEL may from time to time release upgrades, updates or error corrections for the Licensed Technology (“Upgrades”). CUSTOMER will enable CTEL to install such Upgrades on the Customer Systems remotely from CTEL's premises by procuring that CTEL is provided with the required controlled remote and direct network access in this regard. CUSTOMER will install all Upgrades that cannot be installed by CTEL as soon as reasonably possible, but in any event by the date specified for implementation by CTEL in the release, or failing such specification, within 1 (one) month of the date of being notified in writing of the release. If an Upgrade is not implemented within the specified period, and provided that CTEL has given CUSTOMER at least 30 (thirty) days written notice of its intention to do so, then, until such time as the relevant Upgrade is installed, CTEL shall be entitled to suspend its provision of Support Services to CUSTOMER in respect of the relevant Licensed Technology.