

## 1. PARTIES

1.1. The Parties to this Agreement are –

1.1.1. **DMB Data**, a private company duly registered under the company laws of the Republic of South Africa with registration number **2016/267998/07** and having its principal place of business at 70 Niven Ave, Sandton, 2191 ("**DMB Data (Pty) Ltd**") & ("**Customer**").

1.2. The Parties hereby agree as set out below.

## 2. DEFINITIONS AND INTERPRETATION

2.1. Unless the context otherwise indicates, the following expressions shall have the meanings given to them hereunder and cognate expressions shall have corresponding meanings:

2.1.1. "**Act**" means the Electronic Communications Act No. 36 of 2005;

2.1.2. "**Addressee**" means the Party to whom any notice is given and/or any payment is made;

2.1.3. "**Affiliate**" means, with respect to either Party, any other entity which is a subsidiary or a holding company or a subsidiary of the holding company of such Party. In regard to this definition the terms "subsidiary" and "holding company" shall have the meaning assigned thereto in Section 1 of the Companies Act No. 71 of 2008, but shall include any foreign entity which, had it been registered in terms of that Act, would fall within the ambit of such term;

2.1.4. "**Agreement**" means this master services agreement and includes a reference to all schedules and annexures hereto, which are appended to this agreement from time to time;

2.1.5. "**Announcement**" means any press or other public announcements about the Services, the Agreement or the transactions related to it;

2.1.6. "**Business Day**" means any day other than Saturday, Sunday or a public holiday officially recognized as such in the Republic of South Africa;

2.1.7. "**Charges**" means MRC, NRC, usage fees and any other charges payable under this Agreement;

2.1.8. "**Confidential Information**" means any information or data in whatever form or medium whether tangible or intangible, oral or in writing including, but not limited to, documents, materials or data which by its nature or content is or ought reasonably to be identifiable as confidential and/or proprietary to the Disclosing Party or which is provided or disclosed in confidence or is designated as confidential information by the Disclosing Party whether or not owned or developed by the Disclosing Party, which is not generally known to the receiving Party, to receiving Party's personnel and representatives, and of which the receiving Party may obtain knowledge through or as a result of the relationship established hereunder with the Disclosing Party, access to the Disclosing Party, access to the Disclosing Party's premises, or communications with the Disclosing Party's employees, representatives or independent contractors. Without limiting the generality of the foregoing, "Confidential Information" shall include but is not limited to ideas, concepts, business plans, strategies, financial statements, pricing data, operations, inventions, discoveries, formulae, processes, designs, specifications, drawings, prototypes, sample, improvements, developments, applications, marketing data, customer names, projections, trademarks, trade names, and trade secrets, any commercial, financial, technical or strategic information, whether or not the same are or may be patented, registered, or otherwise publicly protected;

2.1.9. "**Contract Term**" means the term of the applicable Services as set out in applicable SA;

2.1.10. "**Customer Device**" means equipment which is either leased or purchased from DMB Data by the Customer and used in order to access the Service/s;

2.1.11. "**Data**" means any information, including Personal Information disclosed to DMB Data by the Customer for the purpose of providing the Services;

2.1.12. "**Disclosing Party**" means either DMB Data or the Customer, as the case may be;



Levels of the applicable Service;

- 2.1.31. “**Services**” means any DMB Data services provided to the Customer under a Subscriber Agreement;
  - 2.1.32. “**Service Commencement Date**” means the date of the Service Handover Form;
  - 2.1.33. “**Service Handover Form**” or “**SHF**” means the form provided by DMB Data to the Customer after DMB Data has completed installation and testing of the Service;
  - 2.1.34. “**Service Levels**” means the levels of service required in relation to the provision by DMB Data of the Services;
  - 2.1.35. “**Terminating Services**” means those Services that are terminated in accordance with clause 18.1.3; and
  - 2.1.36. “**Termination Date**” means the date upon which this Agreement, or the applicable Terminating Services, as the case may be, terminates for any reason whatsoever.
- 2.2. Unless the context indicates a contrary intention, an expression which denotes: (i) any gender includes the other gender; (ii) a natural person includes a juristic person and vice versa; and (iii) the singular includes the plural and vice versa.
  - 2.3. Headings are for convenience only and do not affect the interpretation of this Agreement.
  - 2.4. In the event of ambiguity or conflict between any of the constituent parts of the Agreement, and unless stated explicitly to the contrary in the relevant clause, the order of precedence in the interpretation of the Agreement shall be:
    - 2.4.1. this Agreement;
    - 2.4.2. the Service Schedule/s; and
    - 2.4.3. the SA/s.
  - 2.5. The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
  - 2.6. The rule of construction that this Agreement shall be interpreted against the party responsible for the drafting or preparation of this Agreement, shall not apply.
  - 2.7. Any reference to a law is to that law as at the Effective Date and as amended or re-enacted from time to time.
  - 2.8. When any number of days is prescribed in this Agreement, same shall be reckoned exclusive of the first day and inclusive of the last day unless the last day does not fall on a Business Day, in which case the last day shall be the next succeeding Business Day.
  - 2.9. Reference to calendar day/s, month/s or year/s shall be construed as Gregorian calendar day/s, month/s or year/s.
  - 2.10. A law shall be construed as any law (including common law) or statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any legislative measure of any government, local government, statutory or regulatory body or court.

### 3. INTRODUCTION

- 3.1. The Customer hereby appoints DMB Data to provide the Services, subject to the terms and conditions contained in this Agreement, which appointment DMB Data hereby accepts.
- 3.2. DMB Data shall be entitled to appoint any of its Affiliates to provide the Services on written notice to the Customer to such effect, provided that DMB Data shall be and remain liable with such appointee for the due and proper performance by it of all of its duties, functions and obligations under this Agreement.

#### **4. COMMENCEMENT DATE AND DURATION**

- 4.1. This Agreement shall commence on the Effective Date and shall thereafter remain in force indefinitely, subject to the remaining provisions of this Agreement.
- 4.2. The commencement of the Services to be provided shall be in terms of each individual SA that is completed by the Customer and will be effective from the Service Commencement Date for the Contract Term specified in the SA.
- 4.3. Upon the expiration of such Contract Term, the applicable Services will continue indefinitely, subject to either Party providing thirty (30) calendar day's written notice of termination to the other Party and subject further to the right of DMB Data to increase the Charges for such Services by twenty percent (20%) for each month that the Services continue in accordance with this clause 4.3.

#### **5. RESOLUTIVE CONDITION**

- 5.1. In the event that the Customer is a legal entity that is not registered in South Africa and/or any SA being contemplated at the time of signing this Agreement involves payment to DMB Data in a currency other than South African Rand, this Agreement shall be subject to the Resolutive Condition that DMB Data obtains the necessary approval from South African Reserve Bank by no later than 17h00 on a date which is six (6) months after the Effective Date.
- 5.2. The cessation of the Agreement in terms of clause 5.1 shall, unless the Parties otherwise agree in writing, not affect any liability incurred by the Parties prior to the date of cessation hereof.
- 5.3. The Parties will co-operate in good faith to procure the fulfillment of the Resolutive Condition as soon as reasonably possible after the Effective Date.
- 5.4. The Resolutive Condition may not be waived, in whole or in part, by the Parties. The Parties may however, extend the relevant date for fulfillment thereof set out in clause 5.1 to such later date as may be agreed in writing between the Parties.
- 5.5. Neither of the Parties will, subject to clause 5.2, have any claim against the other in terms hereof or arising from the failure of the Resolutive Condition, save for any claims arising from a breach of clause 5.3.

#### **6. PROVISION OF SERVICES**

- 6.1. DMB Data hereby agrees that it will as from the Effective Date, and thereafter continue throughout the duration of this Agreement to, supply the Services as requested by the Customer from time to time, in accordance with the terms and conditions of this Agreement.
- 6.2. For the duration of this Agreement, the Customer shall obtain the Services as it requires from DMB Data in terms of this Agreement, the Service Schedule and the SAs concluded from time to time.
- 6.3. DMB Data shall not be committed to supply any Services to the Customer until a SA in respect of the required Services has been signed by the Customer.
- 6.4. In providing the Services to the Customer pursuant to each of the SA, DMB Data reserves the right to utilize any technology which it has available and which it considers at its discretion as most suitable and reasonable to render Services unless the applicable service Schedule expressly states that specific technology will be used.
- 6.5. Unless the applicable Service Schedule expressly states that the applicable Service is provided on a dedicated or exclusive basis, DMB Data reserves the right to utilize any spare transmission capacity that it has installed for the Customer for the purpose of providing services to other DMB Data customers, provided that such use of spare capacity does not (i) have an adverse effect on the provision of the Services to the Customer; and (ii) such use of spare capacity does not result in DMB Data's failure to comply with all the Service Levels.
- 6.6. The Services shall be used by the Customer in accordance with the terms and conditions of this Agreement.
- 6.7. Each SA shall constitute an agreement between the Parties subject to and regulated by this Agreement.

## 7. FEES AND CHARGES

- 7.1. The Customer shall pay to DMB Data the fees and/or charges agreed between the Parties in terms of each SA on or before the Due Date without any set off or other deduction, including, without derogating from the generality of the foregoing, all and any taxes as may be imposed on the Customer.
- 7.2. Unless expressly stated to the contrary, all fees and/or charges specified in any SA shall be exclusive of value added tax calculated and levied in terms of the Value-added Tax Act No. 89 of 1991 and any other tax which the Customer becomes obligated to pay arising out of this Agreement.
- 7.3. Charges or fees for the provision of the Service shall be paid to DMB Data in accordance with the SA.

### 7.4. Taxes

- 7.4.1. The following shall be for the account of the Customer:
  - 7.4.1.1. Value Added Tax;
  - 7.4.1.2. Any other tax (including withholding taxes in terms of clause 7.4.2, penalties and interest on tax where applicable) which DMB Data becomes obligated to pay arising directly out of this Agreement, exclusive of taxes based on the gross income of DMB Data. The Customer agrees that if any such taxes, penalties and interest are applicable, the amount to be paid to DMB Data shall be grossed up so that DMB Data receives a net amount equal to that to which it would have been entitled to under this Agreement prior to the imposition of such taxes, penalties or interest; and
  - 7.4.1.3. import or customs duties and charges including extraordinary duties and charges which are in excess of, or are subsequently imposed on, those then current duties and charges which are already included in the Charges as reflected in any SA or Service Schedule.
- 7.4.2. Should the Customer be required to pay any withholding taxes directly to the relevant government, statutory or regulatory body in the country that the Customer receives the Services, the Customer shall submit to DMB Data copies of all and any documentation submitted to, and received from, such government, statutory or regulatory body, in relation to each payment made by the Customer in terms of this Agreement in order to enable DMB Data to apply for a foreign tax credit, in relation to each payment by the Customer under this clause 7.4.2, from DMB Data's relevant government, statutory or regulatory body.
- 7.4.3. In the event that DMB Data's relevant government, statutory or regulatory body refuses any claim from DMB Data for foreign tax credits to which DMB Data is entitled under this Agreement, as a result of the foreign tax credit not being claimable or the failure by the Customer to comply with the terms of clause 7.4.2, DMB Data shall invoice the Customer for the full value of the relevant claim and the Customer shall be obliged to make payment thereof to DMB Data.
- 7.4.4. The benefit of any reduction in any of the taxes or duties specified in clause 7.4.2 shall be passed on to the Customer.

### 7.5. Fixed charges

- 7.5.1. Subject to clauses 7.5.2 and 7.5.3, the monthly fees and charges set out in each applicable SA shall be fixed for duration of the Contract Term thereof.
- 7.5.2. DMB Data shall be entitled to adjust the monthly fees and charges in the event that any regulatory, or government imposed factors impact on such fees and charges.
- 7.5.3. DMB Data shall be entitled to review the monthly fees and charges for Session Initiation Protocol (SIP), Primary Rate Interface (PRI) and/or any other Telco voice carrier-class Services from time to time and will provide the Customer with thirty (30) calendar days

written notice to effect any fee adjustments as may be applicable. However any applicable fee increases in terms of this clause 7.5.3 shall be lodged with ICASA in accordance with the standard terms and conditions prescribed by ICASA in terms of the Act.

#### **7.6. Exchange Rate Fluctuations**

- 7.6.1. Where any fees or charges in this Agreement are based on an exchange rate, that rate shall be quoted in the relevant Schedule to this Agreement.
- 7.6.2. The Customer agrees to bear the risk in any variation in the exchange rate of the South African Rand against the applicable Foreign Currency in relation to the applicable Service, and DMB Data shall be entitled to increase or reduce the amount due by the Customer in respect of the Service accordingly.
- 7.6.3. For the purpose of determining any variance in the exchange rate, the South African Rand/Foreign Currency exchange rate as published by Reuters on the invoice generation date shall be utilized.

### **8. INVOICING**

- 8.1. DMB Data will invoice the Customer for each Service provided under this Agreement from the Service Commencement Date.
- 8.2. DMB Data shall, in relation to all fees due under this Agreement, provide the Customer with a detailed monthly statement of account (together with all related tax invoices) setting out the amount due and payable by the Customer.
- 8.3. DMB Data may include on any invoice any amount not previously billed for calendar months prior to the current month.
- 8.4. All tax invoices shall be payable by the Customer by the Due Date by cheque or by electronic funds transfer into a banking account specified by DMB Data in writing.
- 8.5. If any amount is overdue, and is not paid into escrow in accordance with clause 22.1, the Customer shall pay interest on the overdue amount at FNB's prevailing prime overdraft rate of interest plus two percent (2%), compounded monthly in arrears and calculated on a three hundred and sixty five (365) calendar day year irrespective of whether or not the year is a leap year, and as certified by any representative of that bank whose appointment and designation it will not be necessary to prove, such interest to run from the date upon which payment of the relevant amount became due until payment thereof has been made in full (together with interest).

### **9. DMB DATA'S OBLIGATIONS**

- 9.1. DMB Data shall not do, or permit to be done, anything in relation to the Services which may reasonably be expected to damage or materially interfere in any way whatsoever with the proper normal operation of the Customer's network.
- 9.2. In providing the Services, DMB Data shall comply with this Agreement and any applicable law.
- 9.3. DMB Data warrants that it has obtained all necessary approvals and licenses required in relation to provision of the Services and shall provide a copy of same upon request.
- 9.4. Where DMB Data is or becomes aware that there is any violation or contravention contemplated in this clause 9, it will co-operate to the extent reasonably necessary and provide the Customer with the necessary information to assist in identifying, preventing or remedying or rectifying such violation or contravention.

### **10. THE CUSTOMER'S OBLIGATIONS**

- 10.1. In making use of the Services, the Customer shall:
  - 10.1.1. comply with this Agreement and any applicable law;
  - 10.1.2. and to the extent applicable, comply with the site requirements communicated to the Customer prior to the installation of any Customer Device or DMB Data Equipment at a

Customer site.

10.2. The Customer warrants that:

10.2.1. It has obtained all necessary approvals required in relation to receipt of the Services and shall provide a copy of same upon request.

10.2.2. in the event that it procures Services, defined as “electronic communications network services” in the Act, for use by parties other than the Customer, it has obtained a license under the Act to supply same or is exempted from the licensing requirement, and shall provide a copy thereof upon request.

10.3. The Customer shall use reasonable efforts to ensure that it, its employees, customers and/or any other persons permitted by the Customer to make use of the Services, do not by any act, or omission, damage, interfere with or impede the operation of the Service or Network provided by DMB Data.

10.4. Where the Customer is or becomes aware that there is any violation or contravention contemplated in this clause 10, it will co-operate to the extent reasonably necessary and provide DMB Data with the necessary information to assist in identifying, preventing or remedying or rectifying such violation or contravention.

10.5. The Customer shall provide DMB Data with adequate access to such Customer premises, facilities and equipment, including office space, data processing and communication facilities reasonably required for performance of the Services.

## 11. DATA PRIVACY AND PROTECTION

11.1. DMB Data shall-

11.1.1. use its best efforts to keep Personal Information confidential and shall not disclose any Personal Information to any other person except as required by law, save to the extent set out herein. The Customer grants DMB Data the right to disclose Personal Information to its Affiliates for the purposes of providing the Services;

11.1.2. utilize security technologies and techniques in accordance with best industry practice for the purpose of complying with its obligations in terms of clause 11.1.1;

11.1.3. at all times strictly comply with any applicable laws, regulation or code relating to data protection in South Africa, or other requirements enforced by any relevant industry or self-regulatory body within the Republic of South Africa in the provision of the Services; and

11.1.4. not, at any time copy, compile, collect, collate, process, mine, store, transfer, alter, delete, interfere with or in any other manner use Data for any purpose other than providing the Services to the Customer other than with the express prior written consent of the Customer.

11.2. The Parties record that all Data, in whatever form, is the Customer’s Intellectual Property. Accordingly, the Customer retains all right, title and interest in and to the Data.

11.3. The Customer acknowledges that it is primarily responsible for complying with any data protection obligations imposed in terms of any law, including the common law, in relation to any Personal Information and shall obtain any consents necessary for the disclosure of Personal Information to DMB Data for the purposes of this Agreement.

11.4. The Customer shall separate any Personal Information from any other Data provided to DMB Data for the purpose of providing the Service and shall designate the Personal Information as such before disclosing or otherwise making it available to DMB Data.

## 12. EQUIPMENT

12.1. The Customer is responsible for ensuring that all equipment or devices, including Customer Devices, used by the Customer to access the Services on the Network are kept in a secure location and taking all practical steps to restrict access to the security and configuration parameters of all such equipment or devices to only those individuals who are actively involved in activities for which use of the information is required.

### 12.2. Customer Devices

- 12.2.1. In the event that DMB Data provides the Customer with a Customer Device, it will be provided on either a purchase or lease basis, as further set out in the relevant Service Schedule.
- 12.2.2. In relation to such relevant Customer Devices, the Customer undertakes to ensure, at all times, that-
  - 12.2.2.1. they are kept physically secure and limited to access only by authorized representatives from either DMB Data or the Customer's organization;
  - 12.2.2.2. and until such time as the full purchase price of such Customer Device has been paid by the Customer, the provisions of clause 12.3.2 apply and are complied with in relation to the Customer Device;
  - 12.2.2.3. it and its authorized representatives shall ensure that the correct configurations of the Customer Devices and other devices used to access the Network, are done; and
  - 12.2.2.4. the configuration parameters as provided to the Customer on the Service Handover Form are kept confidential.

### **12.3. DMB Data Equipment**

- 12.3.1. All DMB Data Equipment shall be and remain the property of DMB Data.
- 12.3.2. Accordingly, where DMB Data Equipment is in the possession, or under the control, of the Customer, the Customer agrees:
  - 12.3.2.1. not to remove or allow the DMB Data Equipment to be removed from the site without DMB Data's consent;
  - 12.3.2.2. to keep the DMB Data Equipment in good condition and complete;
  - 12.3.2.3. not to allow the DMB Data Equipment to be encumbered by operation of law or otherwise;
  - 12.3.2.4. to allow DMB Data to inspect the DMB Data Equipment at reasonable times;
  - 12.3.2.5. to accept all risk in the DMB Data Equipment, taking reasonable steps to protect the DMB Data Equipment from loss and/or damage; and
  - 12.3.2.6. to return such DMB Data Equipment to DMB Data on the termination of the Contract Term of the applicable Services, alternatively, replace such DMB Data Equipment with new equipment of the same standard, quality and specification.

### **13. RETAINED RESPONSIBILITIES**

- 13.1. In connection with the Services provided by DMB Data under this Agreement and any SA, the Customer undertakes to provide to DMB Data or retain responsibility for, as applicable, the functions and requirements listed in clause 10 and in the relevant Service Description, if applicable.
- 13.2. DMB Data's non-performance of any particular obligation under this Agreement shall be excused if and to the extent such DMB Data non-performance results from the Customer failing to perform its retained responsibilities.

### **14. SAFETY AND SECURITY**

- 14.1. Each Party agrees to comply with safety and security procedures notified to them by the other Party and with the requirements of the Occupational Health and Safety Act No. 85 of 1993.
- 14.2. All access to the Customer sites by DMB Data and its employees, agents and contractors shall be in terms of the Customer's safety and security procedures, as amended from time to time.
- 14.3. The Parties shall each at their own cost and expense take whatever steps as are necessary to



procure and discharge their respective obligation and rights in terms of this Agreement and applicable laws to ensure the health and safety of the other Party's employees, agents, directors, sub-contractors and members of the public.

- 14.4. The Customer shall be entitled to request DMB Data to remove any employee, agent or contractor from its team if it is of the reasonable opinion that such person is a security or safety risk. Any such request shall be in writing and shall stipulate the reasons why the Customer believes the requested removal is necessary.

## 15. FORCE MAJEURE

- 15.1. A Party shall not be liable for a failure to perform any of its obligations in terms of this Agreement in so far as it is able to prove that:
  - 15.1.1. such failure was due to an impediment beyond its reasonable control;
  - 15.1.2. it could not reasonably have been expected to have taken such impediment and its effects upon such Party's ability to perform into account at the time of conclusion of this Agreement; and
  - 15.1.3. it could not reasonably have avoided or overcome the impediment or at least its effects and, for purposes of this clause 15, the following events (which enumeration is not exhaustive) shall be deemed to be impediments beyond the control of each of the Parties, namely:
    - 15.1.3.1. war, whether declared or not, civil war, civil violence, riots and revolutions, acts of piracy, acts of sabotage;
    - 15.1.3.2. natural disasters such as violent storms, cyclones, earthquakes, floods and destruction by lightning;
    - 15.1.3.3. acts of authority, whether lawful or unlawful, apart from acts for which the Party seeking relief has assumed risk; and
    - 15.1.3.4. acts and omissions of any other electronic communications provider or any utility provider.
- 15.2. Relief from liability for non-performance by reason of the provisions of this clause shall commence on the date on which the Party seeking relief gives notice of the impediment relied upon and shall terminate upon the date on which such impediment ceases to exist, provided that if the impediment continues for a period of more than sixty (60) consecutive calendar days, the other Party shall be entitled to terminate those Services affected by such event by written notice to the Party seeking relief.

## 16. LIMITATION OF LIABILITY

- 16.1. The Parties agree that any liability to the other Party for Losses hereunder shall be limited to direct damages.
- 16.2. Without in any way limiting or derogating from the provisions of clause 16.1, the Parties agree that the total amount of either Party's liability arising out of the performance of its obligations under and in terms of this Agreement and whether in contract, delict, breach of statutory duty or otherwise, shall be limited to the aggregate fees paid by the other Party under this Agreement in respect of a twelve (12) month period.
- 16.3. Notwithstanding anything to the contrary in this Agreement, the Parties agree that they shall not under any circumstances unless prohibited by law, be liable to one another for any Losses which are regarded in law as indirect, special, incidental, consequential, punitive or exemplary damages and which damages arise out of or in connection with this Agreement.

- 16.4. Without limiting the provisions of this clause 16 in any way, DMB Data shall not be liable to the Customer for:
- 16.4.1. the failure of DMB Data for any reason whatsoever to supply and/or deliver any Services and/or provide installation of any equipment on a specified date; and/or
  - 16.4.2. the interruption, suspension or termination of the Services for whatever reason save for the Service Credits set out in the applicable Service Description schedule;
  - 16.4.3. any costs arising from unauthorized access to and/or use of any equipment or devices, including Customer Devices, used by the Customer to access the Services on the Network; and/or
  - 16.4.4. loss or damage arising as a result of lost, damaged or corrupted data.
- 16.5. Nothing contained in this clause 16 shall limit the Customer's liability in respect of charges incurred for Services.
- 16.6. These limitations on liability apply to the benefit of DMB Data, its Affiliates and third parties whose networks are connected to the Network.

## 17. **SUSPENSION OF SERVICES**

- 17.1. DMB Data may, on seven (7) calendar days prior written notice, lawfully suspend, withdraw all or part of any Service under any Service at any time until further notice to the Customer if, in DMB Data's reasonable discretion:
- 17.1.1. the continued provision of the Service will cause DMB Data to breach an applicable law or be in contravention of its Licenses;
  - 17.1.2. the Customer is in breach of any material provision of this Agreement and such breach remains unremedied notwithstanding prior written notice of breach from DMB Data; or
  - 17.1.3. any overdue tax invoice for charges billed by DMB Data to the Customer remains unpaid and is not paid into escrow in accordance with clause 22.1.
- 17.2. The exercise of DMB Data's right to suspend the Services under this clause 17 is without prejudice to any other remedy available to DMB Data under the Agreement and does not constitute a waiver of DMB Data's right to subsequently terminate the Agreement.
- 17.3. Where DMB Data has suspended the Services in terms of clause 17.1.2 or 17.1.3, and the Customer has remedied the applicable breach to the reasonable satisfaction of DMB Data, DMB Data may not unreasonably refuse to reconnect the Services but may require the Customer to pay a reconnection fee in advance as well as such other conditions that DMB Data considers reasonable in the circumstances, as a pre-condition to making the Services available again.

## 18. **TERMINATION**

### 18.1. **Termination for convenience**

- 18.1.1. Either Party shall be entitled to terminate the Agreement by providing the other Party with sixty (60) Calendar days prior written notice to that effect.
- 18.1.2. Termination in accordance with clause 18.1.1 shall not affect the term of any SA, which shall continue, in full force and effect, in accordance with the terms and conditions of this Agreement as if this Agreement had not been terminated, until the end of the term thereof.
- 18.1.3. Notwithstanding the Contract Term set out in the SA, the Customer shall be entitled in its sole discretion and without cause, to terminate one or more SA's by giving DMB Data thirty (30) Calendar days prior written notice. The termination of these Terminating Services shall be subject to the early termination charges set out in clause 20.

### 18.2. **Termination for cause**

Without prejudice to any rights and remedies that may have accrued, either Party may terminate this Agreement with immediate effect upon written notice if the other Party:

- 18.2.1. ceases to trade (either in whole, or as to any part involved in the performance of this

18.2.2. has a court order issued against it placing it under final liquidation. For the avoidance of doubt, where a Party is undergoing the business rescue process in accordance with the Companies Act No. 71 of 2008, and for so long as that Party is still complying with its obligations under this Agreement, subject to clause 17.1.3, the other Party may not terminate the Agreement in accordance with this clause 18.2.

### 18.3. Breach

Either Party shall be entitled to terminate this Agreement in the event of the other Party committing a material breach of any of the terms of the Agreement and failing to remedy such breach within a period of thirty (30) calendar days after receipt of written notice drawing its attention to the breach and demanding that it be remedied.

## 19. SERVICE VARIATIONS

If either of the Parties wishes to make a change, modification or adjustment to any element of any Service, the following procedure will apply:

- 19.1. The Party who requests the change will forward a change request to the other Party, setting out the details of the change request;
- 19.2. DMB Data will investigate the feasibility, cost implications and impact of the change request on the Services and notify the Customer of the results of this Impact Study;
- 19.3. If the Customer makes a decision to proceed with the change request after considering the Impact Study, the Customer shall give DMB Data a written instruction to proceed with that change on the basis set out in the Impact Study. That instruction shall be binding on the Parties and the Agreement shall be deemed to be amended accordingly; and
- 19.4. If the Parties cannot agree upon the necessary amendments, the change request will not be implemented.

## 20. TERMINATIONS

- 20.1. Unless stated to the contrary in the relevant Service Schedule, the termination fee shall be calculated on the outstanding fees and charges for each of the Terminating Services as at the Termination Date and will be determined as follows:
  - 20.1.1. In the event that the Terminating Services are terminated prior to the Service Commencement Date thereof, the Customer shall be liable for an amount equal to the NRC, plus six (6) months of the MRC;
  - 20.1.2. In the event that the Terminating Services are terminated subsequent to the Service Commencement Date thereof and the Contract Term for the Terminating Services is twelve (12) months or less; 100% of the MRC for the remainder of the Contract Term of the Terminating Services;
  - 20.1.3. In the event that the Terminating Services are terminated subsequent to the Service Commencement Date thereof and the Contract Term for the Terminating Services is greater than twelve (12) months; 100% of the MRC for the Terminating Services for the remainder of the first twelve (12) months (if any), and 50% of the MRC for the Terminating Services for each ~~month~~ month;
- 20.2. The amounts referred to in clause 20.1 shall be in addition to all fees and charges payable in the ordinary course in respect of the applicable SA for the Terminating Services, plus any other Services that continue unchanged, as at the Termination Date.

## 21. DISPUTE RESOLUTION

- 21.1. In the event of any dispute arising between the Parties under this Agreement or any Service, the

Parties will act in good faith to attempt to settle the dispute through discussions between senior representatives (which may include the respective CEO's or their nominees) of the Parties within thirty (30) calendar days of a Party giving the other Party notice of the issue in dispute.

- 21.2. Any dispute which cannot be resolved by the Parties within the thirty (30) calendar day period, as provided in clause 21.1, shall be resolved by arbitration in the English language by a single arbitrator appointed by the Arbitration Foundation of South Africa and in accordance with the Rules of the Arbitration Foundation of South Africa. The arbitration shall be held in Johannesburg.
- 21.3. Each Party expressly consents to any arbitration in terms of the aforesaid rules being conducted as a matter of urgency, and irrevocably authorizes the other to apply, on behalf of the Parties, in writing, to the secretariat of AFSA in terms of article 23(1) of the aforesaid rules for any such arbitration to be conducted on an urgent basis.
- 21.4. The Parties agree that the submission to arbitration in terms of this clause is subject to the Parties' rights of appeal set out hereunder-
  - 21.4.1. either Party may appeal the decision of the arbitrator within a period of 10 (ten) Business Days after the arbitrator's ruling has been handed down by giving written notice to that effect to the other Party. The appeal shall be dealt with in accordance with the rules of the Foundation by a panel of 3 (three) arbitrators appointed by the Foundation; and
  - 21.4.2. the arbitrator's decision shall be final and binding on the Parties after the expiry of the 10 (ten) Business Day period from the date of the arbitrator's ruling, if no appeal has been lodged by any Party, and may be made an order of court at the instance of and by either Party.
- 21.5. Notwithstanding the provisions of clauses 21.1 to 21.3, either Party shall have the right to seek relief by way of interim relief from any court of competent jurisdiction, pending the outcome of the arbitration or at any time.
- 21.6. Any arbitration in terms of clause 21.2 (including any appeal proceedings) shall be conducted in camera and the Parties shall treat as confidential details of the dispute submitted to arbitration, the conduct of the arbitration proceedings and the outcome of the arbitration.
- 21.7. This clause 21 will continue to be binding on the Parties notwithstanding any termination or cancellation of the Agreement.

## 22. ESCROW

- 22.1. In the event that any dispute arises regarding this Agreement pursuant to which either Party in good faith believes it is entitled to withhold payment, or for which either Party in good faith believes payment is due, such Party shall notify the other Party in writing of the specific items in dispute, describe in detail the reason for disputing each such disputed amount and deposit such disputed amount into an escrow account, which shall be an interest-bearing bank account held in the bank or depository specified by such other Party on the date upon which any of the fees payable under this Agreement are required to be made and furnish evidence of such deposit to the other Party.
- 22.2. The dispute shall be dealt with in accordance with clause 21.
- 22.3. For as long as such other Party makes such escrow deposits during the pendency of such dispute, the other Party shall continue to provide the Services or otherwise perform its obligations.
- 22.4. Upon resolution of the dispute, the Parties shall allocate the money in the escrow account and any fees relating to opening and maintaining the escrow account, plus any interest earned on such money, according to the resolution of the dispute.

## 23. CONFIDENTIALITY

- 23.1. Subject to clauses 23.2 to 23.4, each Party must:
  - 23.1.1. protect the Confidential Information in the manner, and with the endeavour of a reasonable person protecting his own Confidential Information;
  - 23.1.2. use the Disclosing Party's Confidential Information only for the purposes of this Agreement;
  - 23.1.3. take all practical steps, both before and after disclosure, to impress upon its employees who

are given access to the Confidential Information the secret and confidential nature thereof;  
and

23.1.4. not make any Announcement or issue press releases about the Agreement or the transactions related to it without the approval of the other Party.

23.2. Clause 23.1.1 does not apply to Confidential Information that is in the public domain other than such Confidential Information that has entered the public domain as a result of a breach of this Agreement or any other obligation of confidence.

23.3. A Receiving Party may disclose the Confidential Information of the Disclosing Party if that disclosure is to the employees, contractors or professional advisers of the Receiving Party or its affiliates who have a need to know that information in relation to provision of Interconnection services and who have agreed to keep it confidential.

23.4. A Party may disclose Confidential Information of the Disclosing Party or make an Announcement that is required in accordance with any applicable law provided that the Receiving Party has consulted with the Disclosing Party prior to making such disclosure and provided that the disclosure is confined to that which is absolutely necessary in terms of such legal duty and/or order.

23.5. The Parties acknowledge and agree that, for the purposes of Section 64(1) of the Promotion of Access to Information Act, No. 2 of 2000, the Confidential Information is provided in confidence by the Parties.

## 24. INTELLECTUAL PROPERTY RIGHTS

24.1. Nothing contained in this Agreement shall be construed to confer or be deemed to confer on either Party the Intellectual Property Rights of the other Party.

24.2. Each Party indemnifies the other Party against all claims, actions, damages, liabilities, costs and expenses, including reasonable attorney's fees and expenses, arising out of any claims of infringement, passing-off and/or unlawful competition in relation to any patent, trade secret, copyright, trademark, service mark, trade name or similar proprietary right of any third party, which claim arises directly or indirectly out of the unlawful and/or unauthorized use by a Party of the Intellectual Property Rights of the other Party.

## 25. CESSION AND ASSIGNMENT

25.1. Subject to clause 25.2, no rights, duties or liabilities under this Agreement may be ceded, assigned, transferred, conveyed or otherwise disposed of by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

25.2. DMB Data is entitled to cede, transfer and make over its right, title and interest in and to any and all debts and receivables due and/or payable to DMB Data under this Agreement, both future and present arising under this Agreement, as security or otherwise. The Customer hereby recognizes and consents to such cession and/or transfer (including any splitting of claims that may arise) and agrees that the prohibitions of clause 25.1 shall not apply to any such cession and/or transfer.

## 26. DOMICILIA AND NOTICES

26.1. Each of the Parties choose as their domicilia citandi et executandi (domicilium) for the purposes of giving any notice, the serving of any process or for any other purpose arising from this Agreement at:

**Name**

DMB Data

**Physical Address**

70 Niven Ave Sandton 2191

**Tel/fax**

For legal notices, for the attention of the General Manager - Legal and Contracts For all other notices, for the attention of General Manager – Service Management

<u>Name</u>	<u>Physical Address</u>	<u>Telef</u>
[•]	[•]	[•]
	[•]	
	[•]	

Marked for the attention of: [•]

- 26.2. Each of the Parties 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.
- 26.3. Any notice given and any payment made by any Party to the other which:
- 26.3.1. is delivered by hand during the normal business hours of the Addressee at the Addressee's domicilium for the time being shall be presumed, until the contrary is proved by the Addressee, to have been received by the Addressee at the time of delivery;
- 26.3.2. is posted by prepaid registered post from an address within the Republic of South Africa to the Addressee at the Addressee's domicilium for the time being shall be presumed, until the contrary is proved by the addressee, to have been received by the Addressee on the eighth day after the date of posting.
- 26.4. Any communication required to be in writing in terms of this Agreement shall only be valid if either written or printed in a paper based form. No data message (as defined in the Electronic Communications and Transactions Act 25 of 2002), including an email, SMS and recorded voice message, sent by either party shall amend this Agreement or the rights and duties of the Parties in any manner, unless such a data message is reduced to paper and signed by the Parties.
- 26.5. Data messages (as defined above) sent by either Party to the other shall be deemed to be received by the receiving Party only when the receiving Party responds thereto, and for the purpose of this clause an auto-response shall not be a response by the receiving Party.

## 27. GENERAL

- 27.1. The Parties shall co-operate and consult with each other in good faith regarding the implementation of this Agreement with a view to achieving the aims and objectives of this Agreement.
- 27.2. No Party shall be regarded as having waived, or be precluded in any way from exercising any right under or arising from this Agreement by reason of any Party having at any time granted an extension of time for, or having shown any indulgence to the other Parties with reference to any payment or performance hereunder, or having failed to enforce, or delayed in the enforcement of any right of action against the other Parties.
- 27.3. Neither Party relies in entering into this Agreement upon any warranties, representations, disclosures or expressions of opinion which have not been incorporated into this Agreement as warranties or undertakings.
- 27.4. This Agreement, together with all Schedules and other attachments referenced herein, constitutes the entire agreement between the parties on this subject.
- 27.5. No variation, modification or consensual cancellation of this Agreement shall be of any force or effect unless reduced to writing and signed by both Parties.
- 27.6. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.
- 27.7. If any provision of this Agreement is construed to be illegal or invalid, it will not affect the legality, validity and enforceability of the other provisions of this Agreement. The illegal or invalid provisions will be treated as being deleted from this Agreement and no longer incorporated, but all other provisions of this Agreement will continue to be binding on the Parties.

27.8. The validity of this Agreement, its interpretation, respective rights and obligations of the Parties and all other matters arising out of it or its termination, for any reason whatsoever shall be determined in accordance with the laws of the Republic of South Africa.

27.9. Any provision of this Agreement that contemplates performance or observance subsequent to any termination or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect.

27.10. Each Party will bear and pay its own legal costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of this Agreement.

27.11. Each signatory hereto warrants that he/she has due authority to do so.

## 1. APPLICABILITY

This Service Schedule is applicable only to the SA signed and submitted by the Customer and accepted by DMB Data in accordance with the general terms and conditions for delivery of services.

## 2. DEFINITIONS

2.1. Terms used herein but not otherwise defined shall have the same meanings ascribed to them in the Master Services Agreement.

2.2. Furthermore, except where the context indicates otherwise the words, terms and definition shall have the following meaning:

2.2.1. "**Contract Term**" means the term of the applicable services as set out in the SA.

2.2.2. "**Customer**" means a duly authorized person requesting the service.

2.2.3. "**MRC**" or "Monthly Recurring Charge" means the monthly charges for the services as set out in the SA.

2.2.4. "**NRC**" or "Non- Recurring Charge" means the one-time non-recurring charges to be paid by the Customer for installing, commissioning and provisioning of the Service as set out in the SA.

2.2.5. "**NLD**" means National Long Distance.

2.2.6. "**PoP**" means Point of Presence.

2.2.7. "**SA**" or "Subscriber Agreement" means the form through which the Customer accepts a quotation for services, setting out the details of the Services requested such as quantities, fees, service levels and charges payable.

2.2.8. "**Services**" means any DMB Data services provided to the Customer under a Subscriber Agreement.

2.2.9. "**Service Credits**" means service credits due to the Customer for unscheduled Service Downtime.

2.2.10. "**Service Downtime**" means that period of time for which the Service was unavailable to the Customer.

2.2.11. "**Terminating Services**" means those Services that are terminated.

2.2.12. "**Termination Date**" means the date upon which this Agreement, or the applicable Terminating Services, as the case may be, terminates for any reason whatsoever.

## 3. SERVICE DESCRIPTION

3.1. Premium Fiber Link is offered as a dedicated, point-to-point and point-to-multi point (E-LINE), fully converged solution, offering connectivity between Customer sites within the same metropolitan area as well as access to DMB Data's IP based services.

3.2. Premium Fiber Link creates Ethernet Virtual Connections (EVC), connecting two or more Users to Network Interfaces (UNI) via point-to-point and point-to-multipoint circuits.

3.3. The service is suited to hub-and-spoke type communications where branch data traffic has to flow through head office or a regional control centre.

3.4. The service is offered with the following options:

- a) Option 1: Point-to-point or point-to-multi point connection between sites.
- b) Option 2: Access to DMB Data's IP service ports, such as DMB Data Internet, Hosting, Hosted Contact Centre, etc.

Circuit	
Bandwidth	Increments
2 – 10 Mbps	2 Mbps
>10 – 100 Mbps	10 Mbps
>100 – 1,000 Mbps	100 Mbps

3.5. The service is subject to the following conditions:

- a) Maximum distance of fifty (50) kilometers between the Customer sites.
- b) Both sites need to be within the same metropolitan area.
- c) Premium Fiber Link ports offered in 10BT, 100 BaseT or GbE options.
- d) Fifty (50) circuits allowed per port.
- e) Service connection only allowed to DMB Data IP services.

#### 4. REQUEST AND ORDERING PROCEDURE

4.1. Any request for quotation for services by the Customer shall be directed in writing to the DMB Data Representative and shall contain at least the following information:

- a) the name(s) and telephone number(s) of the Customer contact person(s) for each site;
- b) the number and type of services required;
- c) the physical addresses of the points between which each service is required, including the stand numbers or street numbers, street name as well as the longitude and latitude co-ordinates of such points, indicated in degrees, minutes and seconds;
- d) the Service Levels required for each service;
- e) the Scheduled Occupation Date that the Customer sites shall be ready for occupation by DMB Data in order to install the service for each end of each service.
- f) where an upgrade or downgrade for an existing service is required, the current Service Identity number.

4.2. Each request for quotation shall state the name and contact details of the Customer person dealing with such request, shall be signed by a duly authorized signatory of the Customer and shall reflect the date on which it is submitted to DMB Data and shall be delivered in writing to the DMB Data Representative.

4.3. Upon receipt of the Customer's request for quotation, the DMB Data Representative shall provide a written quotation to the Customer together with the necessary Subscriber Agreement.

4.4. Should the Customer accept the quotation, the Customer shall submit a completed and duly signed Subscriber Agreement to the DMB Data Representative.

#### 5. DELIVERY PROCESS FOR SERVICES

5.1. The Customer shall be responsible for making available, at no cost to DMB Data, accommodation, power, space, ducting and other facilities as more fully set out in the CSRS document for each site, for the duration of the contract term of the applicable SA, for the purposes of housing DMB Data transmission equipment required for the provision of the Services to the Customer.



- 5.2. The Customer shall be responsible for obtaining all approvals and consents necessary for installation and use of the services.
- 5.3. The Customer shall ensure that the sites at either end of a service for which the request has been made are available, at all reasonable times, for access by DMB Data for purposes of swap out and changes.
- 5.4. Within seventy two (72) hours of completing the installation for the applicable service, DMB Data shall provide a Service Handover Form containing service identity number, date, A-end position, B-end position and start bill date to the Customer.
- 5.5. The Customer shall then conduct acceptance tests on the newly provided service for a period of two (2) business days following receipt of the Service Handover Form.
- 5.6. Should Customer detect a fault on the service during its acceptance tests, then the Customer shall notify DMB Data of such fault, in writing and await a revised Service Handover Form before re-commencing such tests.
- 5.7. If the Customer has not contacted DMB Data within two (2) business days of receiving the Service Handover Form, then the service shall be considered to be accepted by Customer and the date of the Service Handover Form shall be considered the Service Commencement Date.
- 5.8. The billing cycle for each service shall be from the Service Commencement Date of that service.

## **6. SERVICE DOWNTIME**

- 6.1. A service shall be considered unavailable in the event of any unscheduled Service Downtime due to equipment failure. Unavailability of the Customer service and shall be calculated on a monthly basis.
- 6.2. Service Downtime shall not include any unavailability resulting from:
  - a) Scheduled Downtime for scheduled maintenance;
  - b) interruptions or delays resulting from any third party services;
  - c) supplies, power or equipment provided by the Customer or their suppliers, which is required in the provision of the services;
  - d) any incident that affects the availability during any period when the Customer elects not to allow Scheduled Maintenance on the service at the request of DMB Data, acting reasonably;
  - e) the Customer's applications, equipment or facilities;
  - f) interruptions due to the failure of equipment provided by the Customer or other third party on behalf of the Customer;
  - g) acts or omissions of the Customer, including the provision of inaccurate information knowingly or unknowingly, or user of the service or Customer-caused outages or disruptions;
  - h) suspensions due to non-payment of any amount payable by the Customer to DMB Data under this Agreement; or
  - i) force majeure.

## **7. SCHEDULED MAINTENANCE SCOPE**

- 7.1. Downtime which falls outside the Scheduled Maintenance Window will be arranged with the Customer at least forty eight (48) hours before the Scheduled Downtime commences.
- 7.2. Maintenance on the service or its components unavoidably leads to down time. This Scheduled Downtime shall be arranged with the Customer in such a way that it shall cause minimum disruption to the Customer.

**8. SERVICE LEVEL AGREEMENT**

The service level options offered are Economy, Business and Premium:

Service Level	Parameters	Network		Building Entry	
	Availability	Local	Core	Single	Dual
Economy	99.0%	No	Yes	Yes	No
Business	99.5%	Yes	Yes	No	Yes
Premium	Customer Specific Solution				

**9. SERVICE AVAILABILITY GUARANTEE**

- 9.1 DMB Data shall guarantee service availability on the DMB Data network between the Customer sites. The service shall be considered unavailable in the event of any unscheduled service outage.
- 9.2 Service down time shall not include any unavailability resulting from:
  - a) Outage due to negotiated and agreed scheduled maintenance;
  - b) force majeure;
  - c) an interruption during any period when the Customer elects not to release the service for testing or repair and continues using the service on an impaired basis;
  - d) an interruption during any period when the Customer has not released the service to DMB Data for maintenance or for implementation;
  - e) interruptions due to the failure of facilities, equipment or applications provided by the Customer or a third party acting on behalf of the Customer;
  - f) acts or omissions of the Customer, including the provision of inaccurate information knowingly or unknowingly, by any use or user of the service authorized by the Customer, or outages or disruptions caused by the Customer; or
  - g) disconnection due to non-payment of any amount payable by the Customer to DMB Data.
- 9.3 For maintenance on linear services of non-redundant customer premise equipment the outage times shall be negotiated.
- 9.4 In case of services provisioned with protection the services shall be switched to the protection path prior to maintenance. Any outage as a result of this maintenance shall be included in the service downtime.
- 9.5 For each service, a timer is implemented that accumulates the total time to restore all breaks recorded for the specific service for each day over a period of a month. All the faults that occur on the service during the month shall be finalized at the time the service is handed back to the Customer. The timer shall be restarted at the beginning of each month.
- 9.6 Service down time is that period of time for which the service was unavailable to the Customer and penalties for down time shall be paid to the Customer in the form of Service Credits.

**10. SERVICE CREDITS**

- 10.1 The Customer shall be eligible for service credits unless the Customer is indebted to DMB Data for amounts that remain due and unpaid.
- 10.2 Service credits shall be exclusive of any applicable taxes charged to the Customer or collected by DMB Data.

10.3 Service Credit with the **Economy** SLA:

Link Availability %	MRC)
99.0%	0%
< 99.0% - 98.0%	5%
< 98.0% - 97.0%	10%
< 97.0% - 96.0%	15%
< 96.0% - 95.0%	20%
< 95.0%	25%

10.4 Service Credit with the **Business** SLA:

Link Availability %	Service Credit (Percentage of MRC)
99.5%	0%
< 99.5% - 98.5%	5%
< 98.5% - 97.5%	10%
< 97.5% - 96.5%	15%
< 96.5% - 95.5%	20%
< 95.5 %	25%

## 11. EARLY TERMINATION COSTS

- 11.1 The termination fee shall be calculated on the outstanding fees and charges for each of the Terminating Services as at the Termination Date and shall be determined as follows:
- a) In the event that the Terminating Services are terminated prior to the Service Commencement Date thereof, the Customer shall be liable for an amount equal to the NRC, plus six (6) months of the MRC;
  - b) In the event that the Terminating Services are terminated subsequent to the Service Commencement Date thereof and the Contract Term for the Terminating Services is twelve (12) months or less; 100% of the MRC for the remainder of the Contract Term of the Terminating Services;
  - c) In the event that the Terminating Services are terminated subsequent to the Service Commencement Date thereof and the Contract Term for the Terminating Services is greater than twelve (12) months; 100% of the MRC for the Terminating Services for the remainder of the first twelve (12) months (if any), and 50% of the MRC for the Terminating Services for each month thereafter.
- 11.2 The amounts referred to in clause 11.1 shall be in addition to all fees and charges payable in the ordinary course in respect of the applicable SA for the Terminating Services, plus any other Services that continue unchanged, as at the Termination Date.
-

## GENERAL TERMS AND CONDITIONS OF SUBSCRIBER AGREEMENT

### Service Application and Subscriber Agreement

#### 1. DEFINITIONS AND INTERPRETATION

- 1.1. In this Agreement the following expressions, words or phrases, shall bear the meanings assigned to them below:
- 1.1.1. **“Activation Date”** shall mean the date of commencement of the services;
  - 1.1.2. **“Bandwith”** shall mean the process of supplying data at the prescribed speeds measured in bits per second
  - 1.1.3. **“System”** shall mean the radio interface, fixed line, or any other means by which telecommunication services are provided by DMB Data;
  - 1.1.4. **“Services”** shall mean the wireless data service providing bandwidth and data communication via the system and any other such service DMB Data may at its option choose to make available to the Subscriber.
  - 1.1.5. **“USI”** shall mean the unique subscriber identity, which identifies the subscriber to the system and allows access to the system and services.
  - 1.1.6. **“Tariff”** shall mean the charges as published and amended from time to time by DMB Data at its sole discretion;
  - 1.1.7. **“Equipment”** shall mean the voice and/or data apparatus, together with all additions or accessories thereto including hardware, software and intellectual property, as specified in this Agreement and its schedules, if applicable.
  - 1.1.8. **“Monthly Port Fee”** shall mean the monthly charge for being connected to the system as specified in the tariffs.
  - 1.1.9. **“Technical handover”** Shall mean the date on which the solution provided has been fully installed, handed over and data traffic is being carried across the DMB Data network
  - 1.1.10. **“Trial Period”** shall mean a duration of 7 days from the service activation
  - 1.1.11. Words that have not been defined in this Agreement but have a generally and commonly understood meaning and context in the Information Technology and Telecommunication sector will be interpreted as having that meaning and context.

#### 2. CONNECTION TO THE SYSTEM AND PROVISIONS OF THE SERVICE

- 2.1. DMB Data shall allocate a USI to the Subscriber and connect the Subscriber to the system and DMB Data shall use its best endeavors to make the services available to the Subscriber throughout the duration of this Agreement.
- 2.2. Subscriber acknowledges that he will be liable for all charges for the services rendered through the system uniquely identified by said USI at the agreed tariff.
- 2.3. The Subscriber acknowledges and agrees that DMB Data can only guarantee the service if the other telecommunication equipment, including but not limited to telephone sets, modems, radios, routers, switches and hubs, connected to the system is approved by DMB Data.

#### 3. PAYMENT

- 3.1. DMB Data reserves the right to require a deposit from the Subscriber before activation of the service or extending the service. Such deposit may be detained and appropriated in whole or in part by DMB Data at its sole and absolute discretion towards payment of any sums whatsoever due to DMB Data by the Subscriber.
- 3.2. DMB Data will invoice Subscriber every month between the 20th and the 25th and the Subscriber agrees to pay DMB Data all invoiced charges for services within 10 (ten) days of the date of invoice and payments shall be made by means of debit order or means agreed to by DMB Data.
- 3.3. Subscriber further agrees and accepts that the service will automatically be suspended on non-payment of any monies due.

- 3.4. The Subscriber agrees that payment shall only have been made to DMB Data when the monies remitted by the Subscriber have been received into DMB Data's bank account and that DMB Data requires a 24 hour administration period to re-activate the service.
- 3.5. Subject to clause 7 hereunder the Subscriber shall be liable for all charges for the service provided to the Subscriber whether the Subscriber uses the services or not.
- 3.6. The Subscriber shall not be entitled to claim any deduction, set off, exchange or counterclaim howsoever arising in respect of goods supplied and/or services rendered.
- 3.7. The subscriber will be liable for all fees incurred with respect to the following
  - 3.7.1. Unpaid or Rejected debit order
  - 3.7.2. Redirected debit order
  - 3.7.3. No debit order signed

#### **4. DURATION**

- 4.1. Should the 7 day trial period expire, the contract will automatically proceed as in point 4.2
- 4.2. Subject at all times to the provisions of clause 9 (termination clause), this Agreement shall commence on the Activation Date. The duration of this Agreement will be a period of 24 (TWENTY FOUR) months as from the Activation Date and will thereafter be automatically renewed every 12 (Twelve) months, unless the User notifies DMB Data in writing of its intention to terminate this Agreement 30 days prior to the termination of the 12 (TWELVE) month period.

#### **5. INSTALLATION OF EQUIPMENT**

- 5.1. The Subscriber shall allow DMB Data or its approved representative to carry out such work at the Subscriber's premises as is necessary to effect implementation of the service and indemnifies, DMB Data, its directors, employees, agents or approved representatives against all damages, costs and expenses incurred in performing such implementation and as a result of such implementation. DMB Data shall not in any matter whatsoever be liable for the acts or omissions of whatever nature of its approved representatives / agents or any other party.
- 5.2. Nothing in the Agreement confers, or shall be deemed to confer, on the Subscriber any rights in, or license to use, any intellectual property of DMB Data. The Subscriber shall make no copies of manuals, documentation, computer programs etc. without the prior written consent of DMB Data.

#### **6. LIMITATION OF LIABILITY**

- 6.1. DMB Data gives no warranties, representations, guarantees or undertakings express or implied, concerning the equipment and/or the services.
- 6.2. DMB Data shall not be liable whether in contract or delict or otherwise for any loss or damage (whether direct, indirect, consequential, financial or otherwise) caused to the Subscriber though any breach of this agreement by DMB Data or any matters arising under it or any defect, failure or suspension in the service, the system or the Subscriber equipment or any change in the Subscriber's service(s), phone system(s) or phone number(s).
- 6.3. The Subscriber acknowledges and agrees that the service quality and coverage available to the Subscriber shall be limited to that provided by the data, fixed line, wireless or ISP, Network Providers and the services may from time to time be adversely affected by physical features as well as atmospheric conditions and other causes of interference.
- 6.4. The service provided by DMB Data expressly excludes problems caused by: any misuse or unauthorized tampering with hardware or software; electrical malfunction; any misuse, willful act or default attributable to the Subscriber, its agents, employees or sub-contractors; force majeure; or irregular or fluctuating electrical power supply.
- 6.5. Although all reasonable effort is made, DMB Data makes no guarantee that services will be

rendered and transmitted error free or without virus, and further that the services are secure from unlawful access.

## **7. USE OF THE SERVICE, STATUTORY AND REGULATORY PROVISIONS AND SUBSCRIBER APPARATUS**

The Subscriber shall at all times comply with all statutory or other regulatory provisions relating to wireless telegraphy and telecommunications services applying to the provision and use of the services, from time to time. In addition, the Subscriber shall:

- 7.1. Comply with any instructions issued by DMB Data which concern the Subscriber's use of the services or connected matters; and
- 7.2. Provide DMB Data with all such necessary information that DMB Data may reasonably require; and
- 7.3. Only use apparatus which is approved for use with the system by DMB Data in writing.

## **8. TERMINATION**

8.1. DMB Data may terminate this Agreement by notice if;

- 8.1.1. Any license to operate or use the system is revoked, terminated or modified for any reason either in whole or in part; or
- 8.1.2. The Subscriber is in breach of any of the terms of this Agreement and has failed to remedy the breach within 7 (seven) days of written notice by DMB Data; or

8.2 DMB Data may claim for full settlement of the contract term from the subscriber, should the subscriber terminate the agreement before the full term of the agreement has expired

## **9. VARIATION OF TARIFF**

DMB Data may vary all or any of the tariffs of this Agreement by publishing the amended tariffs, such variation to take effect after 30 (thirty) days written notice.

## **10. NOTICES**

All notices required to be given under this Agreement will be deemed to have been properly served if sent by pre-paid registered post or delivery to the party's principle place of business, or to any address either party has given to the other for this purpose from time to time.

## **11. FULL AGREEMENT**

These terms and conditions constitute the whole agreement between the parties, except where the contrary is indicated. No additions, amendment or variation of these terms and conditions shall be of effect unless reduced to writing and signed by both parties.

## **12. CESSION**

The subscriber hereby agrees that DMB Data shall be entitled to cede its rights in terms of the cession as security for any third party in respect of borrowings or other liabilities of DMB Data and that, in such event:

- 12.1 such third party shall be entitled to enforce all the rights in terms of the cession as if it were DMB Data;
- 12.2 Upon such rights being enforced; the indebtedness of the subscriber to DMB Data in terms of this agreement shall be reduced by an amount equal to the rights taken over by such third party.

The subscriber hereby consents to any splitting of claims which may arise as a result of a cession of its rights.