

NEOTEL' S GENERAL TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES TO CUSTOMERS

The *agreement* which governs the relationship between the *customer*, and *NEOTEL* comprises (a) these *general terms and conditions*, (b) any *product specific terms*, (c) the *order form*, (d) the *privacy policy* and (e) the *acceptable use policy*.

These *general terms and conditions* are applicable to the supply by *NEOTEL* and the use by *customers* of all *services, facilities, equipment and products*.

Updated copies of these *general terms and conditions* are available on *NEOTEL's website* or from *NEOTEL's* head office or branch offices during business hours. *NEOTEL* will notify *customers* in advance when these *general terms and conditions* change and of the date on which the new *general terms and conditions* will come into effect. If a *customer* does not wish to be bound by these *general terms and conditions*, the *customer* must not contract with *NEOTEL* for *services*.

1. DEFINITIONS

In these *general terms and conditions*, the following terms will have the meanings given to them below unless the context clearly shows that a different meaning was intended, and similar words and expressions will have similar corresponding meanings:

- 1.1 “**acceptable use policy**” means the policy located at http://www.neotel.co.za/wps/portal/neotel_legal, which specifies to *customers* and users of the *services* and *NEOTEL's website* what activities and online behaviour are considered an unacceptable use of the *services/website*;
- 1.2 “**Act**” means the Electronic Communications Act 36 of 2005, as amended or replaced from time to time;
- 1.3 “**affiliate**” means any entity that now or in the future, directly or indirectly, controls, is controlled by or is under common control with a party. For the purposes of this definition, “control” shall mean:
 - 1.3.1 ability to elect more than 50% of the board of directors, or similar management structure, of such entity; or
 - 1.3.2 50% equity or ownership interest in such entity;
- 1.4 “**combined fee**” means the *installation fee, reconnection fee, equipment fee, service fee and usage fee* and any other charges relating to the *services, access to NEOTEL's network, equipment* and any other services provided by *NEOTEL*;
- 1.5 “**agreement**” means the agreement between *NEOTEL* and the *customer* comprising these *general terms and conditions, the product specific terms, the order form, the privacy policy and the acceptable use policy*, collectively;
- 1.6 “**Authority**” means the Independent Communications Authority of South Africa, established in terms of section 3 of the Independent Communications Authority of South Africa Act 13 of 2000, or its successor in title and includes any body which assumes its functions;
- 1.7 “**business day**” means any day other than Saturday, Sunday or a public holiday officially recognized as such in the Republic of South Africa;
- 1.8 “**call centre**” means *NEOTEL's* customer contact centre which can be accessed by dialling 243 or 0800 333 636;
- 1.9 “**Consumer Protection Act**” or “**CPA**” means the Consumer Protection Act 68 of 2008, as amended or replaced from time to time;
- 1.10 “**content**” means any content, information, game, message or similar service that is supplied to any person by means of *NEOTEL's network* or by means of a third party's network (whether generated by *NEOTEL* or any third party) in the format of text, data, graphics, pictures, video or any other relevant format (other than voice) but excludes the *services*;
- 1.11 “**customer**” means the person who has ordered *services*, whose name appears on the *order form* and who is liable for the payment of the *combined fees* and for compliance with the *agreement* and any successors or assignees;
- 1.12 “**customer premises**” means the location or locations specified by the *customer* in the *order form* and to which the *services* are delivered;
- 1.13 “**direct marketing**” has the same meaning given in the *CPA* and, accordingly, means marketing through an approach, either in person or by mail or electronic communication, for the direct or indirect purpose of promoting or offering to supply any goods or services to a *customer*;
- 1.14 “**Electronic Communications and Transactions Act**” or “**ECTA**” means the Electronic Communications and Transactions Act 25 of 2002, as amended or replaced from time to time;
- 1.15 “**electronic communications service**” means any communications service, including any voice or data service, that is provided to a *customer* by *NEOTEL* and/or over *NEOTEL's network*;
- 1.16 “**equipment**” means a device used by the *customer* to access the *services*;
- 1.17 “**equipment fee**” means the purchase price of any items of *equipment* payable, in a lump sum or in instalments, by the *customer* to *NEOTEL*;
- 1.18 “**facility**” means a physical component of *NEOTEL's network* and includes, but is not limited to, a circuit, cable, and wireless antenna;
- 1.19 “**force majeure event**” means any cause beyond a *party's* reasonable control, including, without limitation, acts of war, acts of God, earthquake, hurricanes, flood, fire or other similar casualty, embargo, riot, sabotage, strikes, governmental act, insurrections, epidemics, quarantines, inability to procure materials or transportation facilities, failure of power, restrictive governmental laws or *regulations*, court orders, failure of the Internet or any other reason of a like nature not resulting from

the actions or inactions of a party;

- 1.20 “**general terms and conditions**” means this document, which sets out the standard terms and conditions applicable to the supply of *services, products and equipment* by *NEOTEL* to its customers;
- 1.21 “**governmental authority**” means any institution or functionary exercising public power or performing a public function in terms of legislation;
- 1.22 “**installation fee**” means the once-off fee payable, in a lump sum or in instalments, as stipulated by *NEOTEL* and in line with the *price list*, by the *customer* to *NEOTEL* for installing a new *service* on behalf of the *customer*, for transferring an existing *service* from the *customer* to another customer or from one location to another location, or for installing any item of *equipment*, as and when applicable;
- 1.23 “**licence**” means the *electronic communications service* licence issued to *NEOTEL* by the *Authority* in terms of the *Act*, as amended, renewed or replaced from time to time;
- 1.24 “**NEOTEL**” means *NEOTEL (Proprietary) Limited*, a company incorporated under South African law with registration number 2004/004619/07;
- 1.25 “**NEOTEL’s network**” means the communication network and network components owned and/or operated by *NEOTEL*;
- 1.26 “**NEOTEL’s website**” means the website accessed at www.neotel.co.za;
- 1.27 “**order form**” means the form (including any attachments thereto) made available by *NEOTEL* for the purpose of ordering a *service, product or equipment* from *NEOTEL*, or a written request for a *service, product or equipment* in any other form acceptable to *NEOTEL*, setting out the *product specific terms* in force at the relevant time;
- 1.28 “**parties**” means *NEOTEL* and the *customer* and “**party**” means either one of them;
- 1.29 “**personal information**” has the same meaning given in the *privacy policy*;
- 1.30 “**post-paid customer**” means a *customer* who pays the *service fee* and *usage fee* periodically in arrears;
- 1.31 “**pre-paid customer**” means a *customer* who pays the *service fee* and *usage fee*, where applicable, in advance;
- 1.32 “**price list**” means the list, as amended by *NEOTEL* from time to time, of *combined fees* that *NEOTEL* charges *customers*, which is available on *NEOTEL’s website*;
- 1.33 “**privacy policy**” means the policy located at www.neotel.co.za/wps/portal/privacypolicy, which can also be obtained by contacting *NEOTEL’s* call centre, which sets out the basis on which *NEOTEL* collects, stores and otherwise deals with *customers’ personal information*;
- 1.34 “**product**” means any product package made available to the *customer* under *NEOTEL’s* brand through the bundling of any one or more *services or equipment* either alone or together with any voice and/or data minutes, *content, network access, other services, facilities, equipment and/or products*;
- 1.35 “**product specific terms**” means the standard terms and conditions applicable to the supply of any particular *service or product* by *NEOTEL* to its customers, as amended from time to time;
- 1.36 “**reconnection fee**” means the once-off fee payable by the *customer* to *NEOTEL* for reconnecting any *service* or element of any *service* that has been suspended in terms of clause 12.1;
- 1.37 “**regulations**” means all and any regulations promulgated or deemed to be in effect in terms of the *Act*;
- 1.38 “**rental fee**” means the *fee* payable by a *customer* to *NEOTEL* in respect of *equipment* rented from *NEOTEL*;
- 1.39 “**service commencement date**” means, in respect of each *service* ordered by the *customer*, the date that *NEOTEL* starts supplying the *service* and the *customer* begins using the relevant *service* other than for testing purposes;
- 1.40 “**service fee**” means the fixed charge for access to *NEOTEL’s network* and/or using the *services*, as the case may be, charged by *NEOTEL* to the *customer* at the rates determined by *NEOTEL* and as set out in the *price list*;
- 1.41 “**service levels**” means the service levels for the provision of the *services* as stipulated by the *Authority* by way of regulation from time to time;
- 1.42 “**services**” means any and all *EC services* stipulated by the *customer* in an *order form* and which *NEOTEL* agrees to provide to the *customer* in terms of these *general terms and conditions*, but excludes the supply, installation, and maintenance of *equipment*;
- 1.43 “**term**” means the period of time stipulated in the *order form*, during which the *parties* must perform under these *general terms and conditions*; and
- 1.44 “**usage fee**” means the fees charged by *NEOTEL* to *customers* for the use of the *services* once the limit for *services* included in a particular *product* has been reached.

2. INTERPRETATION

In these *general terms and conditions*: -

- 2.1 an expression which denotes:- (i) any gender includes the other genders; (ii) a natural person includes a juristic person and vice versa; (iii) the singular includes the plural and vice versa;
- 2.2 any reference to the date of signature shall mean the date of signing of the *order form* by the last *party* to sign;

- 2.3 where figures are referred to in numerals and in words, if there is any conflict between the two, the words will prevail;
- 2.4 any reference to "days" is a reference to calendar days unless qualified by the word "business" in which case, a "business day" is as defined in clause 1. Any reference to "business hours" means the hours between 08h00 and 17h00 on any *business day*;
- 2.5 terms other than those defined in these *general terms and conditions* will be given their plain English meaning, and those terms, acronyms, and phrases known in the information and communication technology industry will be interpreted in accordance with their generally accepted meanings;
- 2.6 where any provision of these *general terms and conditions* requires either *party* to perform any act in writing, this requirement will only be satisfied if such performance is made in a written printed-paper based form or in an electronic form (such as email) accompanied by an electronic signature, as this term is used in the *ECTA*; and
- 2.7 clause headings are included for convenience only and are not to be used in the interpretation of these *general terms and conditions*.

3. PROCESS FOR ORDERING SERVICES

- 3.1 A *customer* who wishes to order a *service* or *product* from *NEOTEL* must submit a completed *order form* to *NEOTEL*.
- 3.2 Any order for a *service* or *product* will be governed by these *general terms and conditions* and any applicable *product specific terms*.
- 3.3 Except where the law provides otherwise, *NEOTEL* may refuse to supply any *service* or *product* specified in any *order form* without giving any reasons for the refusal. Without limiting the generality of this, *NEOTEL* may refuse to provide a *service* or *product* if a *customer* does not meet the conditions of *NEOTEL*'s credit referencing procedure and/or fails to meet *NEOTEL*'s minimum credit standards.
- 3.4 *NEOTEL* may carry out a general credit check on a *customer* at any time before accepting the *customer's order form* or at any time during the *customer's* use of the *services*. The purpose of the credit check is to determine whether or not the *customer* meets *NEOTEL*'s credit criteria and to confirm the information supplied in the *order form*. *NEOTEL* may also furnish any information relating to the conduct of a *customer's* account or supplied to it for the purposes of any credit check to any registered credit bureau. By signing the *order form* the *customer* gives *NEOTEL* permission to register this information with any registered credit bureau.
- 3.5 In undertaking such credit check, and using the information obtained both from the *customer* and from the relevant credit bureau, *Neotel* will allocate a credit rating to the *customer* in order to set the *customer's* credit limit. In the event that the *customer* reaches or exceeds this credit limit at any time during his, her or its use of the *services*, *Neotel* may suspend the *services* provided to the *customer* until payment of all outstanding amounts has been received. *NEOTEL* may also amend this credit limit from time to time in keeping with the *customer's* average rate of usage of the *services*.

4. INSTALLATION OF THE SERVICES

- 4.1 *NEOTEL* undertakes to commence providing a new *service* within a reasonable time after receipt of the *customer's* signed *order form*.
- 4.2 *NEOTEL* may require the *customer* to pay an *installation fee* and/or a deposit prior to installing the *service* or commencing a new *service*.

5. PROVISION AND MAINTENANCE OF THE SERVICES

- 5.1 Subject to clause 18.4, *NEOTEL* will make the *services* available to the *customer* in accordance with the *service levels*.
- 5.2 A *service* will be deemed to be in good working order until such time as a fault is reported to *NEOTEL*.
- 5.3 *NEOTEL* will attend to reported faults during business hours. *NEOTEL* will endeavour to restore the *service* within the shortest possible time.
- 5.4 If *NEOTEL* determines that a fault has been caused by any *equipment* belonging to the *customer* or installed at the *customer* not covered by the warranty provisions, which are set out in the *product specific terms*, *NEOTEL* may charge the *customer* to repair the fault.
- 5.5 ***NEOTEL WILL NOT BE LIABLE IF THE SERVICE BECOMES UNAVAILABLE AS A RESULT OF:***
 - 5.5.1 ***ANY PERSON MAKING UNAUTHORISED AND/OR IMPROPER USE OF THE SERVICES WITH OR WITHOUT THE CUSTOMER'S KNOWLEDGE AND/OR CONSENT;***
 - 5.5.2 ***ANY PERSON CAUSING DAMAGE TO OR STEALING ANY ELEMENT OF NEOTEL'S NETWORK WITH OR WITHOUT THE CUSTOMER'S KNOWLEDGE AND/OR CONSENT;***
 - 5.5.3 ***ANY FAULT CAUSED AS A RESULT OF EQUIPMENT THAT WAS NOT SUPPLIED BY NEOTEL; OR***
 - 5.5.4 ***THE OCCURRENCE OF ANY OF THE CIRCUMSTANCES REFERRED TO IN CLAUSES 12.1 OR 14.2.***

6. EQUIPMENT

- 6.1 *NEOTEL* may, at its discretion, and to the extent that it is a requirement for the type of *services* contracted for, supply and/or install *equipment* which is purchased from *NEOTEL* where the *customer* requests this.
- 6.2 Where any item of *equipment* is not provided by *NEOTEL*, the *customer* must supply prior to any installation and/or use on

the *NEOTEL* Network, a Network report from Neotel directly.

- 6.3 *NEOTEL* will be responsible for the maintenance and repair of *equipment* which is purchased from *NEOTEL* only if the *equipment* has been supplied with the *services* contracted for. In all other circumstances, the *customer* will be responsible for the operation, maintenance and repair of any *equipment*.
- 6.4 The *customer* must ensure that all *equipment* that is not provided by *NEOTEL* and that is installed at the *customer premises* has been approved by the *Authority* in terms of the *Act*. *NEOTEL* may suspend the provision of any *service* to the *customer* where *equipment* is being used that has not been approved by the *Authority*, until such time as the *equipment* has been properly approved or is removed or replaced.
- 6.5 The *customer's* must ensure that any *equipment* installed at the *customer premises*, which has not been purchased from and/or installed by *NEOTEL*, does not interfere with or degrade the operation of *NEOTEL's facilities* and/or *NEOTEL's network*.
- 6.6 Unless the *equipment* purchased by the *customer* is altered or tampered with in any way without the consent of *NEOTEL*, such *equipment* shall be reasonably suitable for the purpose for which it was generally intended, of good quality, in good working order, free of defects and usable and durable for a reasonable period of time.
- 6.7 If the *equipment* fails to meet the standards set out in clause 6.6 within 6 months of the *customer* receiving the *equipment*, the *customer* may return the *equipment* to *NEOTEL* and request *NEOTEL* to repair or replace the *equipment* or refund the *customer* the *equipment fee* in question.

7. CUSTOMER PREMISES

- 7.1 The location at which the *customer* wishes to receive the *service* must be in an area which has access to the *service*. If the location at which the *customer* wishes to receive the *service* changes from the *customer premises*, the *service* may not work at the new location.
- 7.2 The *customer* must allow *NEOTEL* to access and use the *customer premises* to the extent required by *NEOTEL* in order to install, inspect, maintain and/or remove any *facilities* or *equipment* which are necessary to provide *services*.
- 7.3 If the *customer* is not the owner of the *customer premises* where the *service* is required, the *customer* must obtain any permission which may be required from the owner of such premises for *NEOTEL* to install, inspect, maintain and/or remove any *facilities* or *equipment* at/from such premises. **THE CUSTOMER INDEMNIFIES NEOTEL AGAINST DAMAGES OR OTHER CLAIMS RESULTING FROM THE CUSTOMER'S FAILURE TO OBTAIN SUCH PERMISSION.**
- 7.4 The *customer* must ensure that there is a suitable electrical power supply as required for the proper functioning of the *services* and/or the *equipment*. The cost of providing the power supply and all charges for the *customer's* use of power are for the *customer's* account.
- 7.5 If, in any building where *NEOTEL* has agreed to install a *service*, no conduit-pipes are available to install the *facilities* necessary to provide the *service*, *NEOTEL* may at its discretion:
 - 7.5.1 refuse to provide the *service* in that building or in any part thereof until such conduit-pipes or other *facilities* have been so installed; or
 - 7.5.2 provide the *service* and charge the *customer* an *installation fee* for any additional costs incurred in installing the *service*, which in *NEOTEL's* opinion would not have been incurred if conduit-pipes or other facilities had been installed in the building in question.
- 7.6 The *customer* must ensure that the *customer premises* are safe for *NEOTEL*, its directors, officers, employees, agents, sub-contractors, successors-in-title and affiliates and must comply with all laws and *regulations* relating to occupational health and safety on the *customer premises*.
- 7.7 If the *customer* breaches any of the provisions of this clause 7, and if *NEOTEL* is unable to install or continue to provide *services* as a result, the *customer* must pay *NEOTEL*:
 - 7.7.1 all *combined fees* for the time that the *services* are unavailable, even though the *services* were not provided during that time; and
 - 7.7.2 any wasted costs incurred by *NEOTEL*.
- 7.8 Except for emergency repairs, which require no advance notice, *NEOTEL* will notify the *customer* at least five (5) days in advance of any regularly scheduled maintenance that will require *NEOTEL* to have access to the *customer premises*.

8. USE OF THE SERVICES

- 8.1 The *customer* must comply at all times with all statutory and regulatory provisions and requirements relating to the provision and use of the *services*.
- 8.2 The *customer* may not resell capacity on any *facility* obtained from *NEOTEL* or cede or assign its rights to use a *facility*, or sublet or otherwise part control of it, without *NEOTEL's* written consent.
- 8.3 **NEOTEL WILL NOT BE LIABLE TO THE CUSTOMER OR ANY OTHER PERSON FOR INTERRUPTION OF A SERVICE OR FOR ANY OTHER LOSS, COST OR DAMAGE CAUSED OR RELATED TO IMPROPER USE OR MAINTENANCE OF THE FACILITIES BY THE CUSTOMER, OR THIRD PARTIES TO WHOM THE CUSTOMER HAS PROVIDED ACCESS TO THE FACILITIES.**
- 8.4 **THE RISK OF LOSS OR DAMAGE TO ANY EQUIPMENT, FACILITIES OR OTHER EQUIPMENT PURCHASED OR**

RENTED FROM NEOTEL BY THE CUSTOMER IN CONNECTION WITH THE SERVICES, PASSES TO THE CUSTOMER UPON ITS DELIVERY OR INSTALLATION AND WILL AT ALL TIMES REST ONLY WITH THE CUSTOMER. ALTHOUGH THE CUSTOMER WILL BE RESPONSIBLE FOR ANY RISK OR DAMAGE, NEOTEL WILL REMAIN THE OWNER OF ANY FACILITIES OR EQUIPMENT THAT THE CUSTOMER HAS RENTED FROM NEOTEL.

8.5 The customer must:

8.5.1 comply with any instructions issued by NEOTEL which concern the customer's use of the services, equipment, facilities or matters related thereto, and which may be required to ensure the satisfactory provision of the services, to protect the integrity of NEOTEL's network, or to deal with emergencies; and

8.5.2 provide NEOTEL with all information relating to the customer's use of the services, equipment, facilities or matters related thereto that NEOTEL may reasonably require from time to time.

8.6 NEOTEL is required, in terms of its licence, to provide a directory service which will include customers' personal details including the customer's name, address and any number that has been assigned to the customer for the purpose of any service. In the event that a customer does not wish his, her or its details to be included in the directory service, the customer must notify NEOTEL in writing.

9. **NUMBERING**

9.1 NEOTEL reserves the right to change any number within the requirements stipulated in terms of the numbering plan regulations, code, password, user identity or name allocated to a customer by NEOTEL from time to time for use in connection with the services and **NEOTEL IS NOT LIABLE FOR ANY LOSS OR DAMAGE (INCLUDING CONSEQUENTIAL DAMAGES) ARISING FROM ANY SUCH CHANGE.**

10. **CHARGING AND BILLING**

10.1 **Fees**

10.1.1 NEOTEL will send the customer a monthly account in respect of all the combined fees that the customer has incurred during the month in question. The account will be sent to the physical and/or electronic address stipulated in the order form.

10.1.2 Upon request, NEOTEL will provide an itemised bill setting out: the services used by the customer in any month and the associated usage charges, if any for those services. NEOTEL may charge a fee to prepare itemised bills.

10.1.3 NEOTEL may charge any or all of the following fees:

10.1.3.1 the installation fee;

10.1.3.2 the reconnection fee;

10.1.3.3 the equipment fee;

10.1.3.4 the rental fee;

10.1.3.5 the service fee;

10.1.3.6 the usage fee.

10.1.4 In addition, NEOTEL may charge the customer a fee for rendering any other miscellaneous services requested by the customer, as agreed between the parties from time to time.

10.1.5 NEOTEL may also, at its discretion, charge the customer for any wasted costs associated with a technician visiting the customer premises at an agreed time and not being able to again access.

10.1.6 Unless the customer disputes an account, as provided for in clause 10.4, the customer must pay NEOTEL, by the date specified in the account, the combined fees set out in the account sent to the customer.

10.1.7 The rates at which the combined fees that are applicable at any time are levied are listed in the price list that can be obtained from NEOTEL's offices or from NEOTEL's website. The rates at which the usage fees that are applicable at any time are levied can also be obtained from the Authority.

10.1.8 Any amount which is due and payable by the customer to NEOTEL which is not paid on or before the due date indicated on the account, will bear interest up to a maximum of prime +5%, or the maximum amount that is legally permissible, if it is lower, compounded monthly, calculated from the date of issue of the account until the date of actual payment of the outstanding amount.

10.2 **Deposit**

10.2.1 NEOTEL may request the customer to pay a deposit in the form and manner specified by NEOTEL:

10.2.1.1 before NEOTEL will accept the order form submitted by the customer;

10.2.1.2 in order for NEOTEL to continue to supply any services to the customer if the customer has not complied with the payment terms set out in these general terms and conditions; or

10.2.1.3 in order for NEOTEL to restore any services that have been suspended or terminated in terms of these general terms and conditions.

- 10.2.2 The deposit will be held by *NEOTEL* as security for payment of the *combined fees*. Only *NEOTEL* may draw upon the deposit at any time to recover any amounts in respect of *combined fees* which are due and unpaid. Where this happens, the *customer* will be required immediately to pay the amount deducted from the deposit. If the *customer* does not do so, *NEOTEL* may suspend the provision of *services* until the *customer* pays the amount deducted. *NEOTEL* shall not be deemed to have given up (waived) any of its rights or remedies by drawing on the *deposit* to recover overdue or unpaid amounts.
- 10.2.3 Where the *customer* has paid a deposit, *NEOTEL* may credit the *customer's* account with interest in respect of the deposit held at a rate to be determined by *NEOTEL* from time to time.
- 10.2.4 If any *service* for which the *customer* has paid a deposit is terminated, the amount of the deposit will be credited to the *customer's* account and any remaining credit balance will be refunded within ninety (90) days of such termination.
- 10.2.5 If the *customer* does not comply with clause 10.2.1 or 10.2.2, the *customer* will have committed a material breach of the *agreement*.

10.3 **Taxes and regulatory fees**

All *combined fees* are exclusive of applicable taxes and regulatory fees levied on *NEOTEL* by any governmental authority, unless otherwise stipulated by *NEOTEL*.

10.4 **Disputed accounts**

The *customer* shall take all reasonable steps to ensure that the account submitted to them by Neotel is correct and in the event of inaccurate information the Customer undertakes to notify Neotel within a reasonable time of the error.

11. **OBLIGATIONS OF THE PARTIES**

11.1 **Customer's Obligations**

The *customer* must:

- 11.1.1 use the *services* in accordance with:
- 11.1.1.1 these *general terms and conditions*;
- 11.1.1.2 the *product specific terms*; and
- 11.1.1.3 the *acceptable use policy*.
- 11.1.2 not violate the *Act* or any other applicable law, rule or regulation or any applicable manufacturer's specifications in relation to *equipment* or otherwise unreasonably interfere with the use of the *services* or *NEOTEL's network* by any other customer of *NEOTEL*.

11.2 **Obligations of NEOTEL**

NEOTEL must:

- 11.2.1 provide the *services* and perform its obligations in terms of these *general terms and conditions*;
- 11.2.2 not violate the *Act* or any other applicable law, rule or regulation.

12. **START AND DURATION OF THE AGREEMENT**

- 12.1 The *agreement* between the *customer* and *NEOTEL*, in respect of any particular *services* ordered by the *customer* and which *NEOTEL* has agreed to provide, will start on the *service commencement date* and will continue, subject to clause 14 below -
- 12.1.1 if the *term* is specified in the *order form*, for the *term* specified in the *order form*;
- 12.1.2 if there is no fixed term stipulated in the *order form*, indefinitely on a month-to-month basis, subject to the *customer* giving *NEOTEL* thirty (30) days' written notice to cancel the *agreement*.
- 12.2 In the event that there is a fixed *term* specified in the *order form*, *NEOTEL* will notify the *customer* in writing, within eighty (80) business days, but not less than forty (40) business days before the expiry of the *agreement* of
- 12.2.1.1 the pending expiry date;
- 12.2.1.2 any material changes to the *general terms and conditions* or the *product specific terms* if the *customer* elects to renew the *agreement* or not terminate it; and
- 12.2.1.3 any option available to the *customer* in relation to the relevant *services*, including termination or renewal.
- 12.3 If the *customer* enters into the *agreement* for particular *service* or *product* for a fixed term as provided for in clause 12.1.1, and does not cancel or renew the *agreement* for a further *term* before the *term* has ended, then the *agreement* in respect of the *service/s* will continue indefinitely, subject to the *customer* giving *NEOTEL* thirty (30) days' written notice that he, she or it wishes to renew the *agreement* for a further *term* or cancel the *agreement*.

13. **SUSPENSION**

13.1 *NEOTEL* may suspend the *services*

- 13.1.1 in order to perform modifications to, or maintenance of, *NEOTEL's network*. *NEOTEL* will use its reasonable endeavours

to inform the *customer* and other customers of any planned interruption to *services*, and to restore the *services* as soon as is practicable.

13.1.2 if the *customer* fails to pay any *combined fees* to *NEOTEL* by the date on which an amount becomes due and payable, in which case *NEOTEL* may only suspend the particular *service* to which the non-payment relates, except if the *customer* has failed to make payment in respect of any *service* by the due date on three (3) occasions in any period of three (3) consecutive months and/or in the case of fraud, in which case *NEOTEL* may suspend any or all of the other *services* being provided to the *customer*, and not only the *service* for which payment has not been made; or

13.2 If the *customer* has not paid any *combined fees*, *NEOTEL* will give the *customer* at least twenty (20) business days written notice to pay the outstanding amount/s before suspending the *service* or *product* for which the *combined fees* have not been paid.

14. TERMINATION

14.1 Termination by the *customer*

14.1.1 The *customer* may terminate the *agreement* in respect of a particular *service*, *services* or *product* if:

14.1.1.1 *NEOTEL* breaches a material provision of these *general terms and conditions* and/or any *product specific terms* and, if such breach is capable of remedy, *NEOTEL* fails to remedy the breach within twenty (20) business days after receipt of written notice from the *customer* asking *NEOTEL* to do so;

14.1.1.2 the *customer* no longer wishes to receive the *service* or *product* in question by giving *NEOTEL* twenty (20) business days' written notice; or

14.1.1.3 any bankruptcy, insolvency, administration, liquidation, receivership or winding-up proceedings are commenced in respect of *NEOTEL*.

14.1.2 If the *customer* enters into an *agreement* with *NEOTEL*, for a particular *service* or *product* as a result of *direct marketing* by *NEOTEL*, the *customer* may cancel the *agreement* in relation to that *service* or *product* by giving *NEOTEL* written notice within five (5) business days after the date on which the *customer* signed the *order form*.

14.1.3 If the *customer* cancels the *agreement* in terms of clause 14.1.2, *NEOTEL* will return any payment received from the *customer* for such *service* or *product* within fifteen (15) business days after receiving notice of the cancellation or after the *customer* has returned any *equipment* that was supplied in terms of the *agreement*, whichever is the later.

14.2 Termination by *NEOTEL*

14.2.1 Subject to clauses 14.2.2 and 14.2.3, *NEOTEL* may terminate the *agreement* in respect of a particular *service*, *services* or *product* if:

14.2.1.1 the *customer* breaches any of these *general terms and conditions* and/or any *product specific terms*;

14.2.1.2 the *customer* has not paid all or any *combined fees*; or

14.2.1.3 the *customer* has contravened:

14.2.1.3.1 any notices or rules communicated by *NEOTEL* to the *customer* from time to time relating to the use of, access to or security measures relating to the *services*;

14.2.1.3.2 the *Act*, any regulation or any other law, rule, regulation or policy of any *governmental authority* relating to the *services* or to the *customer's* use of the *services*;

14.2.1.4 *NEOTEL* determines that the *customer* has engaged in conduct that has caused or may cause damage to *NEOTEL's facilities*, *NEOTEL's* network or any third parties;

14.2.1.5 any bankruptcy, insolvency, administration, liquidation, receivership or winding-up proceeding are commenced against the *customer* or any of its affiliates; or

14.2.1.6 *NEOTEL* receives any direction, notification or instruction from any governmental authority to suspend or terminate the provision of the *services* to the *customer* or generally (where the reason for this is not due to any fault or negligence of *NEOTEL*).

14.2.2 In the circumstances specified in clauses 14.2.1.1, 14.2.1.2 and 14.2.1.3 above only, *NEOTEL* will give the *customer* at least twenty (20) business days' advance written notice to remedy the breach before terminating the *agreement* in respect of any particular *service* in terms of this clause 14.2.

14.2.3 If the reason for the termination relates to non-payment in terms of clause 14.2.1.1, then *NEOTEL* must give the *customer* at least twenty (20) business days' advance written notice to make payment before terminating the *agreement* in respect of a particular *service*. *NEOTEL* will only terminate the particular *service* to which the non-payment relates, where applicable, except if the *customer* has failed to make payment by the due date on three (3) occasions in any period of three (3) consecutive months and/or except in the case of fraud, then *NEOTEL* may terminate the *agreement* in relation to any or all of the other *services* being provided to the *customer*, and not only the *service* to which the non-payment relates.

15. CONSEQUENCES OF TERMINATION

15.1 If the *customer* has entered into an agreement for a particular *service* for a fixed term, and the *customer* cancels the *agreement* prior to the expiry of the fixed term or *NEOTEL* terminates the *agreement* in respect of a particular *service* prior to the expiry of the term in terms of these *general terms and conditions* the *customer* will be required to pay any or all of the

following amounts to *NEOTEL*, as applicable:

- 15.1.1 the *combined fees* payable for any *service* or *product* provided to the *customer* up to the date of termination of the *agreement* in respect of that *service* or *product*, including the balance of the *equipment fee*, if any, for any *equipment* purchased from *NEOTEL*;
- 15.1.2 any fees or charges relating to any *equipment* supplied, installed or maintained by *NEOTEL* that are due and payable as at the date of termination of the *agreement* in respect of that *service* or product; and
- 15.1.3 any additional expenses not specified in this clause which have been incurred by *NEOTEL* in connection with the provision of the *services* or *product* up to and including the date when the *services* were suspended or the *agreement* in respect of the *services* was terminated.
- 15.2 If the *customer* is a *pre-paid customer*, any pre-paid voucher will not expire until three (3) years after the date on which it was issued or until its full value has been redeemed. Any credit remaining on a pre-paid voucher remains the property of the *pre-paid customer*, even after the termination of the *agreement*. In the event that the *agreement* in respect of any particular *service* is terminated for any reason in terms of these *general terms and conditions*, any credits on the pre-paid customer's pre-paid voucher will be paid out to *the customer* by *NEOTEL* once it has been returned to *NEOTEL*.
- 15.3 If the *customer* is a *post-paid customer* and the *agreement* in respect of any particular *service* is terminated for any reason, the *customer* must pay the outstanding balance of the *account and equipment fee*, if any, for any equipment purchased from *NEOTEL*.
- 15.4 After termination of the *agreement* in relation to a particular *service* for whatever reason:
 - 15.4.1 *NEOTEL* may enter the *customer premises* to remove its *facilities*; and
 - 15.4.2 the *customer* must pay on demand all charges and/or costs outstanding at the date of termination, or accrued thereafter as a result of the termination.

16. LIABILITY AND INDEMNITY

16.1 Liability

- 16.1.1 In the course of performing its obligations under these *general terms and conditions*, *NEOTEL* will take all reasonable precautions to ensure the safety of the *customer*, and the *customer's* property against damage as a result of the provision of the *services*, and/or installation or maintenance of facilities and/or *equipment*.
- 16.1.2 Any work in connection with the provision, installation or maintenance of any *facility* or *equipment* will be carried out by *NEOTEL* in such a way as to avoid, as far as reasonably possible, loss or inconvenience to the *customer* or the public, and, on completion of such work, any property of the *customer* or land which may have been disturbed will be restored to the same condition that it was in before the provision of the *services* or installation or maintenance of *facilities* or *equipment*.
- 16.1.3 **LIABILITY AND INDEMNITY WILL BE SUBJECT TO THE PROVISIONS OF THE SECTION 61 OF THE CPA.**
- 16.1.4 **NEOTEL ASSUMES NO RESPONSIBILITY FOR THE INTEGRITY, CORRECTNESS, RETENTION OR CONTENT OF THE INFORMATION TRANSPORTED VIA NEOTEL'S NETWORK AND WILL NOT BE LIABLE IN RELATION TO SUCH CONTENT WHERE IT WAS NOT FORSEEN OR COULD NOT HAVE BEEN REASONABLY FORSEEN BY NEOTEL.**
- 16.1.5 *NEOTEL* will use its best endeavours to notify the *customer* of any changes to *NEOTEL's network* which could have an effect on the *customer*.

17. CUSTOMER CARE AND DISPUTE RESOLUTION

17.1 Customer centre and complaints desk

- 17.1.1 The *customer* may direct any queries and/or problems in connection with the *services*, a *product* or any item of *equipment* that has been supplied, installed or maintained by *NEOTEL* or report any faults to *NEOTEL* by contacting the *NEOTEL* contact centre, during the hours of 08:00 to 22:00 Monday to Friday; 08:00 to 16h00 on Saturdays; and 08:00 to 14:00 on Sundays & Public Holidays by
 - 17.1.1.1 dialling 243; or 0800 333 636 or
 - 17.1.1.2 sending an e-mail to consumers@neotel.co.za.
- 17.1.2 If the *customer* has called or e-mailed in accordance with clause 17.1.1 above, and has not been assisted or received a response to an e-mail within twenty-four (24) hours of sending it, the *customer* can contact the *NEOTEL* complaints desk during the hours of 08:00 and 17:00 on any business day, by
 - 17.1.2.1 dialling 243; or 0800 333 636; or
 - 17.1.2.2 sending an e-mail to complaints@neotel.co.za.
- 17.1.3 The *NEOTEL* complaints desk has fourteen (14) business days to resolve the case depending on the nature of the case.
- 17.1.4 If *NEOTEL* does not resolve a complaint to the *customer's* satisfaction within the period referred to in clause 17.1.3, then the *customer* may refer a complaint to the *Authority* any other body that has the power in terms of any law, including the CPA, to mediate or decide consumer disputes, or the *customer* may refer the dispute to arbitration in terms of clause 17.2.

17.2 Arbitration

- 17.2.1 If the *customer* has referred a complaint to *NEOTEL* and is not satisfied with the manner in which the complaint has been resolved, or if *NEOTEL* has a dispute with the *customer* other than a payment dispute, where:
- 17.2.1.1 the matter in dispute does not involve a complicated issue of law;
- 17.2.1.2 does not involve a sum greater than that determined by the *Authority* from time to time; and
- 17.2.1.3 the *parties* wish to resolve the matter by means of a low cost procedure,
- then either *party* may declare a dispute by delivering the details of the dispute to the other *party*, and may request that the dispute be referred by the *parties*, with or without legal representation, to arbitration by a single arbitrator within the jurisdiction of the magistrates court where the *service* is provided, upon the agreement of both the *parties*.
- 17.2.2 Where a matter is referred to arbitration, the arbitration will be conducted by a single arbitrator who must be:
- 17.2.2.1 selected by mutual agreement between the *parties* or, failing such agreement;
- 17.2.2.2 nominated on the application of either *party* by the chairperson of the law society within that area.
- 17.2.3 Every reasonable effort will be made to ensure that the arbitrator has the necessary skills to enable him or her to adjudicate the dispute in a satisfactory manner.
- 17.2.4 The arbitration will be held in accordance with procedures, and at a date and time to be determined by the arbitrator. The arbitration must be conducted in an informal and summary manner and must be held as quickly as possible with a view to this being completed within twenty (20) days of the appointment of the arbitrator.
- 17.2.5 The award of the arbitrator will be final and binding on the *parties*.
- 17.2.6 This clause 17.2 constitutes the irrevocable consent of the *parties* to the arbitration proceedings, and neither *party* may withdraw from it or claim at any such arbitration proceedings that it is not bound by the arbitration provisions. This is subject to any statutory rights that the *customer* has, including in terms of the *Act* or the *CPA*, to resolve disputes by other means.

18. MISCELLANEOUS

18.1 Privacy

- 18.1.1 *NEOTEL* will collect, store and process any *personal information* relating to the *customer* in a secure place and using appropriate technology in accordance with its *privacy policy*.
- 18.1.2 *NEOTEL* may need to disclose certain *personal information* to *NEOTEL's* service providers, including credit card verification providers and credit bureaux (in order to perform credit checks), banks (to process transactions), consumer research companies (that assist *NEOTEL* to understand consumer interests by conducting surveys), and collection agencies (if the *customer* has not paid any account on time) and as set out in the *privacy policy*. By entering into the *agreement* for the *service, services* or *product* the *customer* consents to the disclosure of his or her *personal information* for these purposes.
- 18.1.3 *NEOTEL* may also be required to disclose a *customer's personal information* by law, including to law enforcement agencies (as provided for in any legislation that is applicable to *NEOTEL*). Where this happens, *NEOTEL* will only disclose the personal information to the extent required by any third party receiving the *personal information*, unless the *customer* consents to *NEOTEL* disclosing it for any other reason.
- 18.1.4 The *customer* must notify *NEOTEL* in writing immediately if there is any change to any *personal information*, or to correct any errors in the *customer's* account or *customer* information.

18.2 Content on the Internet and on *NEOTEL's* network

- 18.2.1 *NEOTEL* only provides access to the Internet. *NEOTEL* does not operate or control *content* on the Internet. The *customer* will have no claim against *NEOTEL* relating to any *content* on the Internet or relating to any information, *product, services* or software ordered through or provided over the Internet.
- 18.2.2 *NEOTEL* is not responsible for monitoring *content* on *NEOTEL's* network or on the Internet. However, *NEOTEL* may take measures to ensure security and continuity of the *services* on *NEOTEL's* network within *NEOTEL's* discretion, including the identification and blocking or filtering of Internet traffic.
- 18.2.3 The *customer* is responsible for maintaining the security of its internal network from unauthorised access through the Internet. **NEOTEL WILL NOT BE LIABLE FOR UNAUTHORISED ACCESS TO THE CUSTOMER'S NETWORK OR OTHER BREACHES OF NETWORK SECURITY.**

18.3 Third party networks

NEOTEL does not own or control other third party networks outside of *NEOTEL's* network. *NEOTEL* is not responsible for any filtering or access restrictions imposed by such networks or for the performance (or non-performance) within such networks or within interconnection points between *NEOTEL's* network and other third party networks.

18.4 Force majeure events

Except for the *customer's* payment obligations under the *agreement*, neither *party* will be liable in any way to the other *party* for any performance in terms of the *agreement* that is prevented or hindered due to a *force majeure event*. If *NEOTEL* is unable to provide the *services* for a period of more than thirty (30) consecutive days on account of a *force majeure event*,

then either *party* may cancel the affected *agreement* upon written notice to the other *party*, and both *parties* shall be released from any further future liability under that *agreement*.

18.5 Governing law

The *agreement* will be governed by South African law. Other than in the circumstances specified in clause 16, the *parties* consent to the jurisdiction of the magistrate's court in respect of any dispute and/or claim arising between them, even if the claim or amount in dispute or the value of the matter in dispute exceeds the jurisdiction of such court.

18.6 Severability

Should any provision of these *general terms and conditions* be held by a court to be invalid, void or unenforceable, the offending provision will be struck out of these *general terms and conditions* but the remainder of these *general terms and conditions* shall remain legal, valid and binding.

18.7 Waiver

The failure by either *party* to exercise or enforce any right conferred by these *general terms and conditions* will not be deemed to be a waiver (giving up) of any such right not to operate so as to bar the exercise or enforcement of any such or other right at any later time.

18.8 Assignment

The *customer* may not cede and delegate or assign its rights and obligations under the *agreement* to a third party without first obtaining *NEOTEL's* written consent. If *Neotel* assigns the *agreement* to a third party it will notify the *customer* in advance. If the *customer* does not accept such cession, the *customer* may terminate the *agreement* by giving *NEOTEL* notice in writing within thirty (30) days of being informed of the cession.

18.9 Notices

Any notice or communication that is required or permitted to be given in terms of these *general terms and conditions* may be delivered by hand or sent by registered pre-paid post, or facsimile or e-mail (with confirmation of delivery) at the addresses given in the *order form* or at any other address stipulated, at a later stage. Any notices or communications will be deemed to have been received at the time of delivery (in the case of hand deliveries or transmissions by facsimile or e-mail) or within one week after the date of posting (in the case of postal deliveries).

18.10 Relationship of the parties

These *general terms and conditions* will not establish any partnership, joint venture, employment relationship, franchise, agency or any similar relationship between the *parties*.

18.11 Language

Unless otherwise reasonably requested by the *customer*, these *general terms and conditions* and all documents, notices, correspondence and legal proceedings arising from or relating to it will be drawn up in English, Afrikaans and Zulu. If there is a conflict between different versions of these *general terms and conditions*, the English version will prevail.

18.12 Entire agreement

The *agreement* constitutes the only agreement of the *parties* relating to its subject matter. All prior written or oral agreements, understandings, communications or practices between the *parties* are superseded insofar as they relate to the subject matter of the *agreement*.

18.13 Modifications to the agreement

18.13.1 *NEOTEL* can amend or replace these *general terms and conditions* and/or any *product specific terms* or amend any of the fees charged from time to time. *Customers* will be given at least thirty (30) days' notice of any proposed changes before they come into effect.

18.13.2 If the *customer* does not accept any amendments or changes made by *NEOTEL* to the *general terms and conditions* and/or any *product specific terms*, the *customer* may terminate the *agreement* by giving *NEOTEL* notice in writing within thirty (30) days of being informed of the amendments or changes. If the *customer* does not cancel *the agreement* in such a manner, the *customer* will be deemed to have accepted the changes or amendments.

18.13.3 Any amendments to the *order form/s* must be agreed to in writing and signed by both the *parties*.

18.14 Conflict of agreements

In the event of any conflict between the documents comprising the *agreement*, precedence will be given to the documents in the following order:

18.14.1 the *order form*;

18.14.2 the *product specific terms*;

18.14.3 these *general terms and conditions*;

18.14.4 *privacy policy*; and

18.14.5 *acceptable use policy*.