

## **TERMS AND CONDITIONS OF SUBSCRIBER AGREEMENT**

### **1. DEFINITIONS AND INTERPRETATION**

In this Agreement the following expressions, words or phrases, shall bear the meanings assigned to them below:

- 1.1.1. **"Activation Date"** upon signing the proposed deal, the deal automatically becomes a binding contract and the activation date shall mean the date of commencement of the services;
- 1.1.2. **"Least Cost Routing"** LCR shall mean the process of supplying and or initiating telephone calls through the most cost effective available route;
- 1.1.3. **"System"** shall mean the radio interface, fixed line, or any other means by which telecommunication services are provided by 123mnds Pty (Ltd)
- 1.1.4. **"Services"** shall mean any IT related service providing speech and data communication via the system/ hardware and any other such service offered by 123mnds (Pty) Ltd 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 123mnds (Pty) Ltd at its sole discretion;
- 1.1.7. **"Equipment"** shall mean the voice, data apparatus and/or printing equipment, together with all additions or accessories thereto including hardware, software and 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. Words that have not been defined in this Agreement but have a generally and commonly understood meaning and context in the Information within the IT sector will be interpreted as having that meaning and context.

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

- 2.1 123mnds (Pty) Ltd shall allocate a Photocopier, telephones and other equipment to the Subscriber and connect the Subscriber to the system and 123mnds (Pty) Ltd 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 123mnds Pty (Ltd) at the agreed tariff.
- 2.3 The Subscriber acknowledges and agrees that 123mnds (Pty) Ltd can only guarantee the service if the other telecommunication equipment, photo copiers, including but not limited to telephone sets, modems, radios, routers, switches and hubs, connected to the system is approved by 123mnds (Pty) Ltd.

### **3. PAYMENT**

- 3.1 123mnds (Pty) Ltd requires a 50% a deposit from the Subscriber is required with any cash purchase before activation of the service/extending the service or delivering any hardware. Such deposit will be allocated to the subscribers account.
- 3.2 123mnds (Pty) Ltd will invoice Subscriber every month between the 25th and the last day of the month and the Subscriber agrees to pay 123mnds (Pty) Ltd all invoiced charges for services within 7 days of the date of invoice and payments shall be made by means of debit order or means agreed to by 123mnds (Pty) Ltd.
- 3.3 Subscriber further agrees and accepts that the service will automatically be suspended on non-payment by the 15th of the month.
- 3.4 The Subscriber agrees that payment shall only have been made to 123mnds (Pty) Ltd when the monies remitted by the Subscriber have been received into 123mnds (Pty) Ltd's bank account and that 123mnds (Pty) Ltd 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 & TERMINATION**

- 4.1 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 for the period in the form of months from the Activation Date and will thereafter be automatically renewed every 12 (Twelve) months, unless the User notifies 123mnds (Pty) Ltd in writing of its intention to terminate this Agreement 30 days prior to the termination of the agreed monthly period. In the event that the customer requires termination of the agreement before the initial expiry date, then the customer will be liable to pay a settlement the provisional of the 'USI' unique user identity, VolP subscriptions, wireless, adsl account. The settlement calculated is based on the agreed monthly billing schedule of charges multiplied by the outstanding contractual period (expiry date). In the event of the customer not terminating this agreement in terms of the provision of this clause. The customer shall continue to be bound by the terms of this agreement, which will remain in full force and effect until so terminated by the customer in terms hereof.

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

- 5.1 The Subscriber shall allow 123mnds (Pty) Ltd 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, 123mnds (Pty) Ltd, 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. 123mnds (Pty) Ltd 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 123mnds (Pty) Ltd. The Subscriber shall make no copies of manuals, documentation, computer programs etc. without the prior written consent of 123 mds (Pty) Ltd.

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

- 6.1 123mnds (Pty) Ltd gives no warranties, representations, guarantees or undertakings express or implied, concerning the equipment and/or the services.
- 6.2 123mnds (Pty) Ltd 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 through any breach of this agreement by 123mnds (Pty) Ltd 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 GSM Network photocopiers 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 123mnds (Pty) Ltd 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, 123mnds (Pty) Ltd 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 123mnds (Pty) Ltd which concern the Subscriber's use of the services or connected matters; and provide 123mnds (Pty) Ltd with all such necessary information that 123mnds (Pty) Ltd may reasonably require; and Only use apparatus which is approved for use with the system by 123mnds (Pty) Ltd in writing.

### **8. TERMINATION**

- 8.1 123mnds(Pty) Ltd 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 123mnds (Pty) Ltd; or
- 8.2 It is agreed that the Subscriber may cancel this Agreement by giving 7 (seven) days prior written notice if 123mnds (PTY) LTD can no longer perform its duties under this Agreement by way of Legislation being passed by an Act of Parliament or a court ruling.

### **9. VARIATION OF TARIFF**

123mnds (Pty) Ltd 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.

#### **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.

### **11. CESSION**

The subscriber hereby agrees that 123mnds (Pty) Ltd 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 123mnds (Pty) Ltd and that, in such event: such third party shall be entitled to enforce all the rights in terms of the cession as if it were 123mnds (Pty) Ltd; 12.1 upon such rights being enforced; the indebtedness of the subscriber to 123mnds (Pty) Ltd 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.