

Terms and Conditions

1. PARTIES

The parties in the agreement are:
The Service Provider; and
The Subscriber, as described in this agreement.

2. DEFINITIONS

In the agreement, unless the context indicates the contrary intension, the following words and expressions will have the following meanings:
The agreement means the terms and conditions contained in the agreement and any price or list or subscription form attached hereto.

"Connection" means the activation of the Subscriber's account to the system.

"Equipment" means the Equipment of the Service Provider, comprising of a connection to the Subscriber's analogue telephone line or a GSM connection. Once activated by the Service Provider, permits the Subscriber access to the Services, with the Service Provider retaining at all times, the sole ownership in and to such Equipment if a rental agreement.

"Network" means the telecommunication network(s) indicated.

"Initial Period" means the period, commencing on the date of signature of this agreement by the Service Provider; continuing thereafter for a period of thirty six calendar months, during which this agreement cannot be cancelled by the Subscriber.

"Reconnect Charge" means the charge payable by the Subscriber to the Service Provider for re-connecting the Equipment to the system.

"TeleCare Solutions" means TeleCare Solutions (Pty) Ltd (Reg. nr. 2008/001660/07), a company which limited liability, duly incorporated and registered as such in terms of the company laws of the Republic of South Africa having principal place of business and head office at 06 Janaville Building, Durbanville, Cape Town.

"BuddyBand" means BuddyBand (Pty) Ltd (Reg. nr. 2007/006359/07) a company with limited liability, duly incorporated and registered as such in terms of the company laws of the Republic of South Africa having principal place of business and head office at 06 Janaville Building, Durbanville, Cape Town.

"Commencement date" means date of signature of this agreement by the Service Provider.

2.10 "Services" mean the Services rendered by the Service Provider as defined in the attached application form.

2.11 "Subscriber" means the customer named on this agreement who is the user of the service.

2.12 "Service Provider" means either BuddyBand and/or TeleCare solutions as the case may be.

2.13 "System" means public telecommunications system(s) operated by the global network operator(s) through which the Services are made available by the Service Provider to the Subscriber upon connection.

2.14 "Package" means the published tariff of charges made by the Service Provider for ongoing connection to the Network(s); as revised from time to time.

2.15 "Monthly Subscription" means the monthly charges payable in respect of Equipment supplied and Services rendered which shall comprise a monthly fee and a once-off admin fee payable by debit order in advance.

3 ACCEPTANCE OF APPLICATION

Acceptance of the Subscriber's application will only take place if the Subscriber complies with the Service Provider's credit criteria in their sole discretion.

4 TERM

Subject to clause 5.1 and 6 hereunder, this agreement shall commence on the commencement date and shall continue for the initial period. After the initial period has passed, this agreement shall continue indefinitely unless cancelled by a party in terms of this agreement. If the Subscriber wishes to terminate the agreement, effective immediately upon the expiry of the initial period, then the Subscriber shall do this by giving the Service Provider 90 days written notification.

5 CONNECTION OF THE SYSTEM AND PROVISION OF SERVICE

5.1 Upon acceptance of this Agreement by the Service Provider, such acceptance to be at the Service Provider's sole discretion the Service Provider, shall render the Service to the Subscriber and connect the Subscriber to the system as soon as is reasonably practicable, against payment of the Monthly Subscription and compliance by the Subscriber of the terms and conditions of this agreement.

5.2 The Service Provider shall use all reasonable endeavours to maintain the Service while the Subscriber abides by the terms and condition of this Agreement.

6 PAYMENT AND BILLING

6.1 The Subscriber shall pay the Monthly Subscription to the Service Provider in advance or per debit order by the Service Provider Services or Equipment rendered.

6.2 Payment for these Services shall be debit order only, unless an agreement to the contrary is given in writing by the Service Provider to the Subscriber, and the Service Provider reserves the right to require any deposit it deems fit in advance of providing or extending the service.

6.3 Where applicable VAT is payable on all charges at the rate applicable at the time.

6.4 The Service Provider reserves the right to set, withhold or adjust credit limits at its sole discretion without notice to the Subscriber. The Subscriber authorises the Service Provider to make any and all inquiries necessary in order to access such credit rating.

6.5 Subject to clause 8 hereunder the Subscriber shall be liable for all charges for the service provided to the Subscriber whether the Subscriber uses the service or not.

6.6 The Subscriber shall not be entitled to withhold and/or claim any deduction, set off, exchange or counterclaim howsoever arising in respect of goods supplied and/or services rendered.

6.7 The price of the service provided by the Service Provider to the Subscriber upon the Subscriber's order therefore, shall be at the tariff rate applicable when the Services was provided to the Subscriber, the Service Provider has the right, from time to time, for any reason and without notice for the Subscriber, to change the tariff for its Services without prior notification.

6.8 Interest will be charged on all overdue amounts at the prime rate quoted by the Service Provider's bankers from time to time.

6.9 The Service Provider reserves the right to vary or amend monthly subscription fee sent to the Subscriber on thirty (30) days written notice to the Subscriber.

6.10 The Subscriber accepts liability for any Government levy, tax or tariff imposed on the Service Provider as a result of providing Services to the Subscriber and same shall be paid in terms of 6.1.

7 OWNERSHIP OF EQUIPMENT

7.1 The Equipment will be provided by the Service Provider, and will remain at all times the sole and absolute property of the Service Provider, if a rental agreement, and the Subscriber shall not acquire ownership of the Equipment in any way nor shall the Subscriber be entitled to sell, give, loan, encumber, dispose of or subject the Equipment to any landlord's hypothec in any manner or remove and/or re-install Equipment at a different location, without the Service Provider's prior written consent thereto, and:

7.1.1 The Equipment must be returned to the Service Provider at the expiration of this contract at the cost of the Subscriber.

7.1.2 The Subscriber shall immediately notify the Service Provider in writing, if the Equipment is lost, stolen or damaged.

7.1.3 The Subscriber shall be liable for and pay all charges as when they become due in respect of the replacement or the repair of any damage to the of the Equipment, and its then applicable charge for the replacement of the Equipment if applicable.

8 OBLIGATIONS OF THE SUBSCRIBER

8.1 The Subscriber acknowledges that the system is operated under license from the regulatory authorities and that the service is provided by agreement with the network(s) and the Subscriber hereby undertakes:

8.1.1 Not to use to permit the use of the system for any unlawful, improper or immoral purpose.

8.1.2 To comply with all reasonable instructions by the Service Provider relating to the system and use of the service.

8.1.3 To use only the Equipment duly approved to the standards set down by ICASA (the Independent Communications Authority of South Africa) and approved by the Service Provider.

8.1.4 Not to act or omit to act in any way which would injure or damage any persons, property or the system or cause the quality of service to be impaired.

8.2 The Subscriber acknowledges that the system and the service:

8.2.1 Are only a general aid to communication and must be used in conjunction with any and all instructions relating thereto issued by the Service Provider and/ or manufacturers of Subscriber Equipment and/ or the service operators, and

8.2.2 May be subject to interference and quality of his/her telecommunication network supplier;

8.3 The Subscriber hereby indemnifies the Service Provider in respect of any claim, cost, damages and losses (including loss of profit and legal fees as between attorney and own client) sustained by the Service Provider as a result of breach of this agreement by the Subscriber; and

8.4 The Subscriber shall at its own expense insure the Equipment with a registered insurer of the Subscriber's choice. The Subscriber hereby assigns, cedes and makes over the right, title and interest in any insurance policy effected in terms of this agreement to the Service Provider.

9 LIMITATION OF LIABILITY

9.1 Subject to clause 8.3 the Service Provider shall not be liable whether in contract, delict or otherwise for any loss or damage (whether direct, indirect, consequential, financial or otherwise) caused to the Subscriber through any negligence and/or breach of agreement by the Service Provider 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.

9.2 The Service Provider shall not in any manner whatsoever be liable for the unlawful acts or omissions of whatsoever nature of its employees, dealers/ agents or any other party which may cause damage, injury or loss of life.

9.3 Even though the Service Provider will endeavour to reasonably comply with all his obligations in terms of the agreement, the Subscriber acknowledges that the Services may not be sufficient in all circumstances and the Service Provider will not be liable for any consequences in respect of insufficiencies of such Services.

9.4 Any additional Services rendered by contractors or the Services provider's sub-contractors or any other person such as but not limited to ER24 shall be rendered by such contractors, sub-contractors and any other party outside the ambit of this agreement and the Services provider shall not be liable for the failure and/or breach of contract by such contractor or other parties.

10. TERMINATION AND SUSPENSION OF SERVICE

- 10.1 The Service Provider shall have without prejudice to any other claims or remedies which it may have in law against the Subscriber the right to either insist on specific performance of the terms and conditions hereof (as the case may be) or to terminate this agreement and the connection in terms of the agreement without liability upon the happening of any of the following:
- 10.1.1 if the Service Provider for whatever reason is unable to provide the service;
 - 10.1.2 or if any information supplied by the Subscriber to the Service Provider is found by the Service Provider to be false or misleading;
 - 10.1.2 if payment of the charges to the Service Provider is not made on the due date;
 - 10.1.3 if the Subscriber commits a breach of this agreement or in the case of a breach capable of rectification other than in 10.1.2 fails to rectify the same within 7 days of the Service Provider delivering written notice requiring rectification of it;
 - 10.1.4 If the Subscriber commits any act of insolvency, or if any application or order of sequestration/ liquidation (whether temporary or final) is made against the Subscriber, or in the case of a Subscriber being a limited company, the Subscriber is unable to pay its debts as they fall due within the meaning of Companies Act or if any application or resolution to wind up the Subscriber is passed or presented otherwise than for reconstruction or amalgamation or if an Subscriber assets property or if any power of such appointment arises; and/or
 - 10.1.5 death of the Subscriber or cancellation whereby the Subscriber is liable for the payment of three months subscription fee with the last debit order payment.
- 10.2 The Service Provider may from time to time without notice or liability on its part notwithstanding a foregoing provisions of this clause at its absolute discretion suspend or disconnect or suffer the suspension or disconnection of the connection and/ or service to the Subscriber and the Equipment referred to herein or any other Equipment used by the Subscriber in any of the following circumstances:
- 10.2.1 during any technical failure, improvement, modification, change to or maintenance of the service or;
 - 10.2.2 if the Subscriber fails to comply with any terms and conditions contained herein (including failure to pay charges on the due date) until the breach (if capable of remedy) is remedied; or
 - 10.2.3 if the Subscriber does or allows to be done anything this in the Service Provider's reasonable opinion may have the effect of jeopardising the operation of the service.
- 10.3 The Service Provider may terminate the connection and/or effect a block on the Service and the Equipment from use on any network(s) if the Subscriber fails to comply with the provisions of clause 10.1.2 to 10.1.5 in the event of such failure, the Subscriber shall be liable to pay the Service Provider monthly access charge calculated from the date of cancellation to date when the agreement would have run its term, as provided for in terms of clause 4, but for cancellation, such access charged to constitute damages which the parties hereto accept will reasonably have been incurred by the Service Provider.
- 10.4 Upon disconnection as hereinbefore referred to, the Subscriber shall pay on demand all charges outstanding or arising at the time of disconnection whether due for payment or not and including any reasonable charges and reasonable disconnection fee which the Service Provider may at its sole discretion levy, which amount shall be immediately due and payable.
- 10.5 The Service Provider may refuse to deactivate connection(s) to the network(s) under the agreement, until the Subscriber has paid all charges owing and complied with all obligations in terms of this agreement.
- 10.6 The Service Provider shall be entitled to recover as a debit upon invoice thereof addressed to the Subscriber at the Subscribers last known address, alternatively domicillium address, all costs including attorney and client cost and collection commission incurred by the Service Provider in or about the enforcement of any obligation of the Subscribers hereunder including but not limited to all costs the Service Provider may incur as a result of the Subscribers failure at any time to provide accurate information as and when required hereunder or in connection therewith.
- 10.7 The Service Provider shall have the right without prejudice to any other right that it may have in terms of this agreement or at law, at any time and without notice to the Subscriber to suspend the service or any part thereof, and/ or to discontinue the use of the Equipment by electronic or any of the following circumstances without prejudice to its rights concerning the liability of the Subscriber to continue to effect payment of the monthly access fee –
- 10.7.1 for as long as the Subscriber remains in breach of its obligation in terms of this agreement; and/ or
 - 10.7.2 for as long as the Subscriber acts contrary contained in this agreement; and/ or
 - 10.7.3 if the quality of the service or the operation of the system is adversely affected due to any act or omission on the part of the Subscriber; and/ or
 - 10.7.4 if the Subscriber contravenes any legislation including the Electronic Communications and Transactions Act.

11. SURETY

I/we the said surety/ies herby bind and interpose myself/ourselves to and in favour of TeleCare Solutions (Pty) Ltd or BuddyBand (Pty) Ltd as surety for and co-principal debtor/s with the Subscriber for due and punctual payment by the Subscriber to the Service Provider of the amount which is now or which may hereafter become owing by and for the due and faithful performance of any obligation of any nature whatsoever nature which it may now or in the future owe to the Service Provider. The Subscriber's indebtedness to the Service Provider which is secured by this clause shall include any damages for which the Subscriber as the principal debtor may become liable to the Service Provider for breach in this agreement or otherwise howsoever arising. This suretyship and undertaking shall be a continuing covering security for any present of future indebtedness of the Subscriber to the Service Provider and shall remain in full force and effect notwithstanding any fluctuation in or even temporary extinction of such indebtedness.

No alteration or variation of any present or future agreement between the Subscriber and the Service Provider shall in any way release me/us from my/our liability of the clause.

For the purpose of any debt arising out of this suretyship a certificate issued under the hand of a credit controller of the Service Provider as to the amount owing by the Subscriber to the Service Provider and with the fact that the due date of payment of the same has arrived, shall be sufficient and satisfactory proof of the facts therein stated until the contrary shall have been proved.

I/we herby renounce the benefits of the legal exceptions of excussion, division, cession, no value received and revision of accounts, the full force, meaning and effected of which declare myself/ ourselves to be fully acquainted.

I/we accept all the terms and conditions contained in this entire agreement, which are reasonable in every respect and that I/we have read and understand same.

12. FORCE MAJEURE

The Service Provider shall not be liable for any breach of this agreement if and to the extent that such breach arises as a result of any act of God, government or any administrative act of omission, sabotage, riot, explosion controls, restrictions, prohibition or other acts of any local or national government (including any requirement connected to the licensing arrangements under which the Service Provider operates) or industrial disputes of any kind.

13. VARIATION

The Service Provider shall be entitled from time to time at its absolute discretion to:

- 13.1 to vary or amend these terms and conditions from time to time upon notice to the Subscriber and failing any objection thereto of ant such amendment and any such amended or varied terms and conditions shall be binding on the Subscriber from the time that thereof. Any subsequent provision of service by the Service Provider to the Subscriber shall be on the Service Provider's amended terms and conditions
- 13.2 make such variations to the tariff as it deems appropriate and upon notice to the Subscriber;
- 13.3 make such modification to the service and make, or agree to, such changes to the system as it may reasonably consider necessary.
- 13.4 delegate, cede, assign or transfer all or any part of its right, title and interest in and to this agreement without notice to the Subscriber.

14. SUBSCRIBER CHANGES

- 14.1 The Subscriber is entirely and totally prohibited, in any manner, whatsoever, from ceding and transferring the Service over to any third party without written permission from a Director or General Manager of the Service Provider.
- 14.2 Without written permission from a General Manager/ Director of the Service Provider the Subscriber will remain personally liable in terms of this Agreement.

15. ENFORCEMENT

The failure to enforce or to require the performance at any time of the provisions of this agreement will not be construed to be a waiver of such provisions, and will not affect the validity of this agreement or any part thereof or the right of any party to enforce the provisions agreement.

16. ENTIRE AGREEMENT

This agreement contains the entire agreement of the parties with respect to the subject matter of this agreement and supersedes all prior agreement between the parties, whether written or oral, with respect to the subject matter of this agreement.

17. GOVERNING LAW

This agreement and the relationship of the parties in connection with the subject matter of this agreement will be governed in accordance with laws of South Africa.

18. AUTHORITY

The signatory warrants that he/ she has the authority necessary to enter into this agreement and to do all things necessary to procure the fulfilment of the Subscriber's obligations in terms of this agreement .

19. NOTICES

Any notice acquired herein shall be sent by telefax to the party's telefax number as set out in the subscription form to which this agreement is attached and signed by the Subscriber, or by prepaid registered post to the addresses of the parties as it appears in the subscription form, which addresses are chosen by the parties as their respective domicillium citandi et executandi for all purposes of this agreement and the delivery of documents and court process. All notices sent by telefax or by registered post as aforesaid shall be deemed to have been received by the addressee (unless the contrary is proven, one day and seven days after transmission and posting respectively.

20. PRINT

Upon the request by the Subscriber the Service Provider undertakes to supply the terms and conditions in larger print.