

THE DIGITAL MESSAGE NETWORK (PTY) LTD

MEMORANDUM OF AGREEMENT - TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this agreement, unless inconsistent with the context, words referring to:
- 1.1.1 any one gender includes a reference to the other genders;
 - 1.1.2 the singular includes the plural and vice versa;
 - 1.1.3 natural persons include juristic persons and vice versa.
 - 1.1.4 Network affiliate includes any and all natural and juristic persons involved with operations and services rendered under this agreement.
 - 1.1.5 Client/s includes Network Affiliates and vice versa.
 - 1.1.6 Network affiliates may also be referred to as agents or resellers.
- 1.2 The following expressions shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and cognate expressions shall bear corresponding meanings:
- 1.2.1 "this agreement" shall mean the terms, conditions and provisions set out in this agreement, the schedules and annexures hereto;
 - 1.2.2 "THE DIGITAL MESSAGE NETWORK (PTY) LTD" means The Digital Message Network (Pty) Ltd. a company incorporated in accordance with the Company Laws of the republic of South Africa with registration number 2009/000735/07;

- 1.2.3 "THE DIGITAL MESSAGE NETWORK (PTY) LTD code of conduct" means the code of practice, rules of procedure, guidelines, directions and other requirements as stipulated therein from time to time;
- 1.2.4 "the commencement date" means the date of acceptance of the terms and conditions hereto;
- 1.2.5 "customer" means the person whose name appears on the application next to the caption "Registered/Full name of the Customer";
- 1.2.6 "information" means all information and associated messages, including without limitation, text and graphic information provided by the customer;
- 1.2.7 "operator" means any telecommunication network operator, including without limitation, The Digital Message Network (Pty) Ltd, Mobile Telephone Networks (Proprietary) Limited, Cell C(Proprietary) Limited and Telkom Limited, Neotel Limited, Vodacom Service Provider Company (Pty) Ltd or Vodacom SA (Pty) Ltd ;
- 1.2.8 The "service" means the service as set out in Annexure "A" hereto.
- 1.3 The headings in this agreement are for reference purposes only and shall not affect interpretation.
- 1.4 Any reference in this agreement to "date of signature hereof" shall be read as meaning a reference to the date of acceptance of the terms and conditions;
- 1.5 Any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;
- 1.6 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the agreement;
- 1.7 When any number of days is prescribed in this agreement, same shall be reckoned exclusively of the first and inclusively of the last day;

- 1.8 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.9 Where any term is defined within the context of any particular clause in this agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this agreement, notwithstanding that that term has not been defined in this interpretation clause;
- 1.10 The expiration or termination of this agreement shall not affect such of the provisions of this agreement as expressly provide that they shall 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;
- 1.11 In the event of a conflict arising between the terms and conditions of this agreement as those contained in any other agreement or arrangement, the provisions of this agreement shall prevail.

2. DURATION

- 2.1 This agreement shall be of full force and effect until either The Digital Message Network (Pty) Limited cancels the agreement in terms of clause 11 hereof, alternatively, the customer cancels the agreement by giving 30(thirty) days' written notice to The Digital Message Network (Pty) Limited and effecting payment of all outstanding amounts to The Digital Message Network (Pty) Limited. The agreement may only be cancelled by the customer when all outstanding amounts have been paid.
- 2.2 In the event of early cancellation and the ATA unit not having been paid for by the customer, then the customer will either :
- 2.2.1 return the ATA unit to The Digital Message Network (Pty) Limited within 20 (twenty) days of notice of cancelation, at the customer's cost. The customer will forfeit any amounts paid to date thereof in terms of the ATA unit. Or
- 2.2.2 pay the balance outstanding for the ATA unit as determined by The Digital Message Network (Pty) Limited.

3. CUSTOMER'S OBLIGATIONS

- 3.1 The customer shall advise THE DIGITAL MESSAGE NETWORK (PTY) LTD in writing of all relevant information in order to enable THE DIGITAL MESSAGE NETWORK (PTY) LTD to render the service.
- 3.2 The customer shall at all times throughout the duration of this agreement:
- 3.2.1 Comply with THE DIGITAL MESSAGE NETWORK (PTY) LTD's Code of Conduct and AUP in all respects and not bring THE DIGITAL MESSAGE NETWORK (PTY) LTD into disrepute.
 - 3.2.2 Enable THE DIGITAL MESSAGE NETWORK (PTY) LTD to comply with all or any requirements and conditions at any time and from time to time imposed by any law in the Republic of South Africa or by any license in terms of any enactment which is or may be applicable to or affect the service.
- 3.3 The customer shall at all times:
- 3.3.1 use the service strictly in accordance with:
 - 3.3.1.1 such conditions as may be notified in writing by THE DIGITAL MESSAGE NETWORK (PTY) LTD to the customer from time to time;
 - 3.3.1.2 the relevant provisions of any enactment, or other competent authority;
 - 3.3.1.3 any license granted thereunder which governs the operating of a telecommunications system by the customer; and
 - 3.3.1.4 any code of practice regulating the provisions of the service contemplated in terms of this agreement.
 - 3.3.2 ensure that all marketing and/or promotional material issued by it or on its behalf in respect of or in connection with the service in terms of this agreement complies in all respects with THE DIGITAL MESSAGE NETWORK (PTY) LTD's code of conduct or order of court.

- 3.3.3 ensure that in any publicity, marketing or other promotional activity, it does not in any way refer to THE DIGITAL MESSAGE NETWORK (PTY) LTD (or any of its associated and/or subsidiary companies) without the express written approval of a duly authorised representative of THE DIGITAL MESSAGE NETWORK (PTY) LTD.
- 3.3.4 The customer shall at all times throughout the duration of this agreement, to the extent necessary, maintain in full force and effect all such rights, authorisations, licenses, consents and permissions necessary for THE DIGITAL MESSAGE NETWORK (PTY) LTD to render the service.
- 3.3.5 The client agrees to complete full training prior to marketing or on-selling the services of THE DIGITAL MESSAGE NETWORK (PTY) LTD in any manner whatsoever. Upon completion of such training, THE DIGITAL MESSAGE NETWORK (PTY) LTD will issue client with relevant system access and materials, THE DIGITAL MESSAGE NETWORK (PTY) LTD may, at its sole discretion, from time to time, alter these products and marketing materials.
- 3.3.6 For a period of 24 months after termination of this agreement, the customer/affiliate will hold in confidence any trade secrets, formulas, sales and distribution systems, business information and literature which were acquired during the term of this agreement.
- 3.3.7 The customer/affiliate undertakes not to use such items directly or indirectly in anyway. For such period the customer/affiliate also agrees not to enter or participate in similar and/or competing business activities.**
- 3.3.8 The customer or Affiliate may signup Sub-Network affiliates only via the provided referral link and may under no circumstances "Sell" these signups or present them as exclusive distribution rights of this business opportunity. THE DIGITAL MESSAGE NETWORK (PTY) LTD reserves the right to immediately terminate this agreement and revoke all the client access should the customer or affiliate be found to be in breach of the afore mentioned.

4. INDEMNITY

- 4.1 The customer shall indemnify and hold harmless THE DIGITAL MESSAGE NETWORK (PTY) LTD and all members, officers, servants and agents of THE DIGITAL MESSAGE NETWORK (PTY) LTD against all liabilities (including damages, expenses and all legal fees incurred on the attorney and own client scale) actions, proceedings, claims and demands and all alleged claims and demands howsoever arising, directly or indirectly, out of or in consequence of:
- 4.1.1 the service provided by THE DIGITAL MESSAGE NETWORK (PTY) LTD to the customer;
 - 4.1.2 any claim of whatsoever nature made by whomsoever against THE DIGITAL MESSAGE NETWORK (PTY) LTD;
 - 4.1.3 any falsehood or misrepresentation of fact by the customer (or a person acting upon instructions from anyone authorised by the customer);
 - 4.1.4 any failure by the customer to disclose a material fact, if the misrepresentation or omission was made innocently, negligently or with intent to deceive THE DIGITAL MESSAGE NETWORK (PTY) LTD, or any person relying on the service;
- 4.2 THE DIGITAL MESSAGE NETWORK (PTY) LTD shall give notice of a breach in accordance with clause 10 of this agreement.
- 4.3 When any information is furnished at the request of the customer or the customer's agent, both the agent and the customer shall jointly and severally indemnify THE DIGITAL MESSAGE NETWORK (PTY) LTD, and their agents and contractors pursuant to this sub-clause. The customer has a continuing duty to immediately notify THE DIGITAL MESSAGE NETWORK (PTY) LTD of any misrepresentations and omissions made by an agent.

5. THE DIGITAL MESSAGE NETWORK (PTY) LTD'S OBLIGATIONS

- 5.1. THE DIGITAL MESSAGE NETWORK (PTY) LTD shall use all reasonable endeavors to maintain the service 24 (twenty four) hours a day.

- 5.2. THE DIGITAL MESSAGE NETWORK (PTY) LTD reserves the right to:
 - 5.2.1. improve or alter the service as it deems fit, in its sole discretion appropriate, provided that such changes do not substantially change the nature of the service.

 - 5.2.2. suspend the operation of the service with notice of 48 hours at any time.

- 5.3. THE DIGITAL MESSAGE NETWORK (PTY) LTD may withdraw, terminate or suspend the service to any customer if required by any network operator or by any statutory or regulatory authority or order of court. Any determination made by THE DIGITAL MESSAGE NETWORK (PTY) LTD pursuant hereto, shall be without liability of any nature whatsoever and howsoever arising.

- 5.4. THE DIGITAL MESSAGE NETWORK (PTY) LTD shall have no obligation, whether under this agreement or otherwise, to comply with its obligations in terms of this agreement until such time as the customer has complied with all its obligations in terms of this agreement.

6. AUTHORIZATION

The customer hereby authorises THE DIGITAL MESSAGE NETWORK (PTY) LTD to disclose all information received by it to any regulatory or other competent authority that may require same.

7. WARRANTIES

The customer warrants to THE DIGITAL MESSAGE NETWORK (PTY) LTD that:

- 7.1 It has obtained the prior authorisations, consents and permissions in order to enable THE DIGITAL MESSAGE NETWORK (PTY) LTD to render the service;
- 7.2 It will make available to its customers procedures to lodge and resolve complaints in respect of the service. Such procedures shall be agreed to between THE DIGITAL MESSAGE NETWORK (PTY) LTD and the customer or affiliate prior to disclosure to the customers of the customer;
- 7.3 it will develop, publish and enforce guidelines for the use by its personnel relating to the handling of enquiries and/or complaints from its customers.

8. PAYMENT

The customer agrees to the payment terms in respect of the service as set out on the subscription page in the customers online account.

9. FORCE MAJEURE

- 9.1 THE DIGITAL MESSAGE NETWORK (PTY) LTD shall not be responsible for any breach of warranty, delay or failure in performance under this agreement that results from events beyond its control, including without limitation, such as acts of God, acts of war, epidemics, power outages, fire, earthquakes, and other disasters.
- 9.2 In the event of any delay or failure in performance by THE DIGITAL MESSAGE NETWORK (PTY) LTD due to any cause arising from or attributable to acts, events, non-happenings, omissions, accidents or acts beyond the control of THE DIGITAL MESSAGE NETWORK (PTY) LTD, THE DIGITAL MESSAGE NETWORK (PTY) LTD shall be under no liability for loss or injury suffered by the customer as a result thereof.
- 9.3 The customer acknowledges that due to factors beyond the control of THE DIGITAL MESSAGE NETWORK (PTY) LTD, the service may fail, in whole or in part and/or the service may be withdrawn, terminated or suspended by any operator or by any statutory or regulatory authority and that notwithstanding, THE DIGITAL MESSAGE NETWORK (PTY) LTD will be charged for the service by the operator. In such an event, the customer shall be obliged to pay the fees and/or charges due to THE DIGITAL MESSAGE NETWORK (PTY) LTD, without deduction or set off. THE DIGITAL MESSAGE NETWORK (PTY) LTD shall take all reasonable measures to obtain such credit or refund from the Operator and until and upon actual receipt from the Operator of the credit or refund, as the case may be, the customer shall not be entitled to take any action against THE DIGITAL MESSAGE NETWORK (PTY) LTD for the recovery of such credit or refund as the case may be.

10. BREACH

- 10.1 Should the customer commit a breach of any of the provisions of this agreement, then THE DIGITAL MESSAGE NETWORK (PTY) LTD shall be obliged to give the customer 20 (TWENTY) days written notice to remedy the breach. If the customer fails to comply with such notice, THE DIGITAL MESSAGE NETWORK (PTY) LTD shall be entitled to cancel this agreement with the customer and to claim immediate payment and/or specific performance by the customer of all the customer's obligations whether or not the due date for payment and/or performance shall have arrived, in either event without prejudice to THE DIGITAL MESSAGE NETWORK (PTY) LTD's rights to claim damages. The foregoing is without prejudice to such other rights that THE DIGITAL MESSAGE NETWORK (PTY) LTD may have at law. Should a breach occur and be rectified in time a repetition for such a breach will result in immediate termination of this agreement by THE DIGITAL MESSAGE NETWORK (PTY) LTD.
- 10.2 The customer hereby agrees consents that, notwithstanding the provisions of the Magistrate's Court Act, No 32 of 1944, with regard to jurisdiction in connection with cause of action and the amount claimed, a competent Magistrate's Court shall have jurisdiction in respect of any legal action which THE DIGITAL MESSAGE NETWORK (PTY) LTD may institute against the customer arising from this agreement. THE DIGITAL MESSAGE NETWORK (PTY) LTD will, however, have the right, notwithstanding the foregoing and in its own discretion, to institute any legal action which exceeds the jurisdiction of the Magistrate's Court against the customer in a competent division of the High Court.
- 10.3 The customer shall be liable for all costs incurred by THE DIGITAL MESSAGE NETWORK (PTY) LTD in the recovery of any amounts or the enforcement of any rights which it has hereunder, including collection charges and costs on an attorney and own client scale and costs of counsel as on brief whether incurred prior to or during the institution of legal proceedings or if judgment has been granted, in connection with the satisfaction or enforcement of such judgment.
- 10.4 Any breach of the Code of conduct or Acceptable use policy as amended from time to time by THE DIGITAL MESSAGE NETWORK (PTY) LTD constitutes a breach of this agreement.

11. TERMINATION, SUSPENSION AND REMOVAL

- 11.1 THE DIGITAL MESSAGE NETWORK (PTY) LTD shall be entitled at any time and with immediate effect to temporarily or permanently suspend the service, or part thereof and/or terminate this agreement, in all cases without liability, in the event that:
- 11.1.1 any licenses or any permission or authorisation necessary for the operation of the service is revoked, temporarily or permanently suspended or;
 - 11.1.2 this agreement or anything contemplated hereunder is alleged or determined to be in contravention of any licenses, permissions, authorisations, relevant legislation or the rights of any third party.
 - 11.1.4 the customer causes anything to be done which in THE DIGITAL MESSAGE NETWORK (PTY) LTD's sole discretion is unlawful and/or brings THE DIGITAL MESSAGE NETWORK (PTY) LTD's reputation into disrepute and/or is or may be prejudicial to THE DIGITAL MESSAGE NETWORK (PTY) LTD's commercial interests; or
 - 11.1.5 it is requested or directed to do so as a result of a determination, adjudication or other decision or requirement of the office of any relevant competent body or authority or order of court.
- 11.2 Upon expiration or termination of this Agreement for any reason
- 11.2.1 THE DIGITAL MESSAGE NETWORK (PTY) LTD shall as soon as is practical prevent access by the customer to the service; and
 - 11.2.2 The customer shall pay to THE DIGITAL MESSAGE NETWORK (PTY) LTD all amounts owing, without deduction or set off until date of expiration or termination of this agreement.

12. EXCLUSION OF DAMAGES AND LIMITATION OF LIABILITY

- 12.1 This limitation on damages applies to loss and damages of all types, including but not limited to direct, compensatory, indirect, special, consequential, exemplary, or incidental damages incurred by any person. This limitation on damages applies as well to liability under contract, delict, and any other form of liability claim.
- 12.2 THE DIGITAL MESSAGE NETWORK (PTY) LTD shall not be liable for any consequential, indirect, special, punitive or incidental damages, whether foreseeable or unforeseeable, based on claims of the customer (including, but not limited to, claims for loss of data, goodwill, profits, use of money or use of the software programs, interruption in use or availability of data or the software programs, stoppage of other work or impairment of other assets), arising out of breach or failure of express or implied warranty, breach of contract, misrepresentation, negligence, strict liability in delict or otherwise, whether based on this agreement, any commitment performed or undertaken under or in connection with this agreement, or otherwise.
- 12.3 THE DIGITAL MESSAGE NETWORK (PTY) LTD does not warrant the accuracy, authenticity, reliability, completeness, currentness, merchantability, or fitness of the service customer and shall not incur liability for representations of information made by the customer. THE DIGITAL MESSAGE NETWORK (PTY) LTD does not warrant any software used in respect of the service provided.
- 12.5 Neither party shall be liable to the other in respect of any breach of this agreement caused by revocation or alteration of any license, permission or authorization governing the operation of the service.
- 12.6 THE DIGITAL MESSAGE NETWORK (PTY) LTD shall not be liable for any technical or other failure in the service.
- 12.7 THE DIGITAL MESSAGE NETWORK (PTY) LTD does not warrant that the service shall be fault free or free of interruptions.
- 12.8 THE DIGITAL MESSAGE NETWORK (PTY) LTD shall not be liable to the customer for suspending access to the service or any part thereof.
- 12.9 THE DIGITAL MESSAGE NETWORK (PTY) LTD makes no warranty or representation that the service in whole or in part is permitted under any license, permission, authorisation or legislation.

- 12.10 The customer shall indemnify and hold harmless THE DIGITAL MESSAGE NETWORK (PTY) LTD and all members, officers, servants, agents and duly authorised representatives of THE DIGITAL MESSAGE NETWORK (PTY) LTD against all liabilities (including damages whether direct, indirect or consequential, expenses, costs and legal fees on an attorney and own client scale) actions, proceedings, claims and demands on all alleged claims and demands howsoever arising.

13. ACKNOWLEDGEMENTS

The customer acknowledges and agrees that the operation of the service may depend on factors beyond THE DIGITAL MESSAGE NETWORK (PTY) LTD's control.

14. NO FIDUCIARY RELATIONSHIP

The customer or affiliate is an independent contractor and shall not represent itself as having any power to bind THE DIGITAL MESSAGE NETWORK (PTY) LTD or to assume or to create any obligation or responsibility, express or implied, on behalf of THE DIGITAL MESSAGE NETWORK (PTY) LTD in terms of this agreement. Nothing contained in this agreement shall be deemed to establish a relationship of principal and agent between THE DIGITAL MESSAGE NETWORK (PTY) LTD and the customer, or with any of their agents or employees, for any purpose whatsoever. This agreement shall not be construed as constituting the customer and THE DIGITAL MESSAGE NETWORK (PTY) LTD as partners, or to create any other form of legal association or arrangement which would impose liability upon one party for the act or failure to act of any other party.

15. INTEREST

- 15.1 The customer shall pay interest at the publicly quoted basic rate per annum ruling from time to time at which First National Bank Limited lend on overdraft plus 2%, which rate shall be proved by way of a certificate signed by any employee of such Bank whose authority need not be proved, compounded monthly in arrear, on all amounts owing by the customer to THE DIGITAL MESSAGE NETWORK (PTY) LTD which have not been paid on the due date thereof, reckoned from the due date thereof until date of payment.
- 15.2 THE DIGITAL MESSAGE NETWORK (PTY) LTD shall have discretion on whether to charge interest on any overdue amounts owing in respect of this agreement. Should THE DIGITAL MESSAGE NETWORK (PTY) LTD decide not to charge interest as in clause 15.1 hereof, legal interest will apply from date of service of any summons on the customer.

16. SEVERABILITY

In the event of any of the provisions or terms of this agreement are found to be unenforceable or void for any reason whatsoever, each provision or term shall be deemed to be severable from the remaining provisions of this agreement, which agreement shall remain in full force and effect but for these terms and conditions.

17. CESSION

The customer shall not without the written consent of THE DIGITAL MESSAGE NETWORK (PTY) LTD, be entitled to cede, assign or otherwise transfer all its right, title and interest in and to this agreement to any other entity, natural or juristic. THE DIGITAL MESSAGE NETWORK (PTY) LTD shall be entitled to cede, assign or otherwise transfer all its right, title and interest in and to this agreement to any other entity, natural or juristic.

18. WARRANTY OF AUTHORITY

- 18.1 **The signatory warrants, as a material warranty which the signatory relies on in entering into this agreement, that he is duly authorised to represent and bind the customer or affiliate to this agreement, and that he has read and understood each term and condition of this agreement and accepts them as binding on him and the customer or affiliate.**
- 18.2 The signatory and the customer hereby warrant that the signatory to any tax invoice, delivery note or other documentation of THE DIGITAL MESSAGE NETWORK (PTY) LTD made out in the name of, or to the customer is duly authorised to bind the customer in respect of the relevant transaction.
- 18.3 In the event that the signatory to this agreement does not have the authority to represent and bind the customer to this agreement then the signatory shall be bound by the provisions of this agreement as if he were the customer, mutatis mutandis, particularly, but without limitation thereto, insofar as the agreement provides for proof of facts, costs of proceedings, service of process, limitations of defenses and jurisdiction.

19. NOTICES AND DOMICILIUM

- 19.1 The customer or affiliate chooses as its address for the purposes of the giving of any notice or the serving of any process and for any other purpose arising from this agreement (“domicilium citandi et executandi”) at the physical address or delivery address or registered email address as provided by the customer from time to time.
- 19.2 The customer shall be entitled from time to time, by written notice to THE DIGITAL MESSAGE NETWORK (PTY) LTD, to vary its physical address or delivery address or registered email address to any other address which is not a post office box or poste restante, provided that such address is within the Republic of South Africa.
- 19.3 Any notice given shall be in writing and if
- 19.3.1 delivered by hand during the normal business hours of the customer at the physical or delivery address for the time being, shall be presumed, until the contrary is proved by the addressee, to have been received by the customer at the time of delivery; or
 - 19.3.2 delivered by prepaid courier to the customer at the its physical or delivery address for the time being, shall be presumed, until the contrary is proved by the customer, to have been received by the customer on the 3rd (third) day following dispatch by THE DIGITAL MESSAGE NETWORK (PTY) LTD to the courier company; or
 - 19.3.3 delivery by email to the customer at the customer’s email address for the time being, shall be presumed, until the contrary is proved by the customer, to have been received by the customer on the first business day after the date of transmission.

20. WHOLE AGREEMENT

This agreement constitutes the whole agreement between the parties as to the subject matter hereof and no agreements, representations or warranties between the parties other than those set out herein are binding on the parties.

21. VARIATION

- 21.1 Subject to the provisions of clause 23, no addition to or variation, consensual cancellation or novation of this agreement or any term hereof and no waiver of any right arising from this agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by both the parties or their duly authorized representatives.
- 21.2 No person other than a senior manager or director of THE DIGITAL MESSAGE NETWORK (PTY) LTD has any authority to delete, amend or in any respect vary any of these conditions or accept any other conditions or agree to a consensual cancellation hereof.

22. AMENDMENTS GENERALLY

- 22.1 Notwithstanding anything contained to the contrary in this agreement, THE DIGITAL MESSAGE NETWORK (PTY) LTD shall be entitled, in its sole discretion, to amend this agreement from time to time (prospectively and not retroactively), on 7 (seven) days notice to the customer on their online account.
- 22.2 Should the customer object to the proposed amendments, it shall do so in writing within 7 (seven) days of such written notice, failing which the amendment shall be deemed to be effective after expiry of such period.
- 22.3 Should the customer object to the proposed amendment, THE DIGITAL MESSAGE NETWORK (PTY) LTD reserves the right to suspend the service and/or cancel this agreement without incurring any liability of any nature whatsoever.

23. RELAXATION

No latitude, extension of time or other indulgence which may be given or allowed by either party to any other party in respect of the performance of any obligation hereunder or the enforcement of any right arising from this agreement and no single or partial exercise of any right by any party shall under any circumstances be construed to be an implied consent by such party or operate as a waiver or a novation of, or otherwise affect any of that party's rights in terms of or arising from this agreement or estop such party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

ACCEPTABLE USE POLICY

This policy applies to all messages transmitted via the The Digital Message Network System

- 1 You agree to conform to generally acceptable Internet etiquette ("netiquette") and to abide by The DIGITAL MESSAGE NETWORK (PTY) LTD 's operating policies, which may be amended from time to time at The DIGITAL MESSAGE NETWORK (PTY) LTD 's sole discretion, and you hereby indemnify and hold The DIGITAL MESSAGE NETWORK (PTY) LTD free from liability in respect of any loss or damage of whatever nature caused as a result your using our services including but not limited to breach of our acceptable use policies, which policies include but are not limited to the guidelines set out below:
 - 1.1 not to send messages to any person who does not wish to receive it;
 - 1.2 not to engage in any spamming, and which shall include, but is not limited to, the posting or cross-posting of unsolicited articles with the same message (or substantially the same message) to an unacceptably high number of messages and newsgroup recipients that did not request to receive such messages;
 - 1.3 not to forward or propagate chain letters or malicious messages, or messages that solicit the performance of any illegal activity or other activity that infringes on the rights of others;
 - 1.4 create a false identity or forged address or header, or otherwise attempt to mislead others as to the identity of the sender or the origin of the message;
 - 1.5 not to post or transmit any message, data, image or programme which is defamatory, or violates any other personality rights;
 - 1.6 not to post or transmit any message, data, image or programme which is illegal, indecent, obscene, pornographic, offensive, threatening, abusive, harassing, harmful or hateful data, image or programme;
 - 1.7 not to post or transmit any message, data, image or programme which violates the intellectual property rights of others, including but not limited to unauthorized copyrighted text, images or programs, trade secrets or other confidential proprietary information and trademarks;
 - 1.8 not to interfere with use of the Internet by any other The DIGITAL MESSAGE NETWORK (PTY) LTD subscribers or other users;
 - 1.9 not to post or transmit any file which contains viruses, worms, "Trojan horses" or any other destructive or contaminating features, regardless of whether or not damage is intended by you;
 - 1.10 not to cancel The DIGITAL MESSAGE NETWORK (PTY) LTD messages other than your own;
 - 1.11 not to repeatedly post gratuitous off-the-topic postings;
 - 1.12 not to gather addresses and/or names and/or cell phone numbers and/or fax numbers or otherwise collect information about others without their express written consent; and
 - 1.13 not to violate the privacy of any person, which shall include but shall not be limited to hacking.
- 2 The DIGITAL MESSAGE NETWORK (PTY) LTD reserves the absolute right not to deliver any message unless and until the identification of the originator thereof, or its authorised representative, is known and understood.
- 3 In the event that you should engage in any one or more of the above practices, which shall be determined in The DIGITAL MESSAGE NETWORK (PTY) LTD 's sole discretion and which decision shall be final, then The DIGITAL MESSAGE NETWORK (PTY) LTD shall be entitled to:
 - 3.1 terminate, without notice, your account and/or access to The DIGITAL MESSAGE NETWORK (PTY) LTD services;
 - 3.2 remove any material or data or to block the use of the network when your use does not meet the acceptable use policy;
 - 3.3 bill you for any costs incurred by The Digital Message Network (Pty) Ltd, including, but not limited to, bandwidth, administration costs, downtime, usage of The DIGITAL MESSAGE NETWORK (PTY) LTD name or registered domain names or trademarks, and CPU cycles.

- 4 No Refunds shall be considered should you be in breach of any of the above causing your access to the systems and services to be revoked. Refunds will only be considered at the full and final discretion of The DIGITAL MESSAGE NETWORK (PTY) LTD based on pre-paid funds actually paid by yourself to The Digital Message Network for services that has not been used or appropriated to a specific service and only in cases where substantial proof can be given as to why services can under no circumstances be used in future.

I hereby accept the Terms and Conditions and Acceptable use policy relating to this application. In the event of the customer being a juristic person, I accept the Terms and Conditions contained herein on behalf of the abovementioned customer and warrant that I am duly authorised thereto by the said customer and that I have read and understood the said Terms and Conditions. In addition, I warrant and certify that all the information furnished by me from time to time is true and correct.