

# Cloud PBX Rental Agreement

## 1. AGREEMENT

1.1 The User hereby hires from the Provider, which hereby rents the goods described in the proposal for the rentals payable as set out in the schedule. The conditions of this agreement shall apply mutatis mutandis to additions agreed to subsequently. The additions shall create a separate and independent agreement.

1.2 The User consents to the Provider vetting its creditworthiness. Should the credit of the User not meet the Provider's criteria, the Provider may at its sole discretion terminate the Agreement.

## 2. DURATION

This Agreement will commence on the date of signature and first billing will commence on actual connection ("the Connection Date") and will endure as per the agreed Proposal.

## 3. SUPPORT COSTS

The Service is inclusive of reasonable cost of maintenance, service and support to keep the Service operational for the duration of the agreement. Call-outs to attend issues that relate to non-Provider equipment will be charged at the prevailing rates, available on request.

## 4. PAYMENTS

4.1. All payments in terms of this Agreement shall be made without set off or deduction or withholding of any nature, free of bank or other charges at the Provider's address or at such other place as the Provider or its cessionary may direct in writing.

4.2. The User shall not be entitled to withhold payment of any Rentals for any reason whatsoever or to claim any remission in any circumstances.

4.3. The User shall pay the rental portion of the accepted proposal for the period specified in the proposal and shall pay the fees for services on an on-going basis as long as the goods are used in conjunction with the Provider Digital Direct service

4.4. All payments by debit order or other pre-arrangement within three working days after the date of the invoice issued by the Provider in respect thereof. Users not paying by debit order are subject to an administration fee of R25 per site. TeleMasters reserves the right to require prepayment on the Service when the Customer has defaulted on payment.

## 5. NO WITHOLDING

The User is not entitled to withhold any payment for any reason whatsoever and neither shall the User be entitled to claim a remission of Connectivity charges unless the Provider fails to maintain the Services.

## 6. VARIATION IN RENTALS

6.1. The Rental is linked to the Prime rate as charged by FNB South Africa and the rental amount will vary accordingly.

6.2. In the event of any change in any law or regulation or in the interpretation thereof, resulting in a mandatory increase to the Provider of any costs in providing or maintaining this agreement, the Provider shall be entitled to charge such cost in the rental payments.

## 7. INSURANCE

7.1 The User shall take all necessary care to protect the Provider's equipment against theft, damage and unauthorised use in compliance with the Provider's insurance for the duration of its ownership the Agreement. Thereafter the User may insure the goods.

7.2 User shall notify the Provider immediately in writing if the goods or any part thereof are lost, stolen or damaged and shall do all that is reasonably required for the successful submission of a claim to the insurers.

## 8. BREACH

8.1. If the User fails to make payment of any amount payable on due date, the Provider shall be entitled, immediately and without prior notice, to either cancel this agreement or claim specific performance, without prejudice to its rights to claim damages.

8.2. If a party breaches any other term or condition of this agreement and fails to remedy such breach within 14 (fourteen) days of notice by the aggrieved party by registered mail requiring it to remedy such breach, the aggrieved party shall be entitled without further notice to cancel this agreement or claim specific performance without prejudice to its rights to claim damages.

## 9. INTEREST

The Provider shall be entitled to charge interest on overdue amounts at Prime plus 3% per annum calculated from due date to date of receipt of payment in full.

## 10. CERTIFICATE

A written certificate issued and signed by any Director of the Provider shall constitute prima facie proof of the amount and extent of any indebtedness of the User to the Provider for purposes of Summary Judgement and/or Provisional Judgement proceedings. It is hereby agreed that, in the event of such certificate being issued, the User will carry the burden of proving, on a balance of probabilities, that such amount is not due and payable.

## 11. COST

Should the User be in default, it will be liable to pay all expenses actually incurred by the Provider either on behalf of the User or as a result of the Users non-compliance with any provision of the Agreement including collection charges and legal costs calculated on an attorney-own client scale.

## 12. JURISDICTION

The User agrees to the jurisdiction of the Magistrate's Court in terms of Section 45 of the Magistrate's Courts Act or by the Provider sole choice, it may refer any dispute arising from or in connection with this Agreement to be finally resolved in accordance with the Rules of Arbitration Foundation of Southern Africa by an arbitrator appointed by the Foundation.

## 13. OWNERSHIP

Ownership of the goods shall vest in the Provider for the duration of the agreement or the last outstanding payment, whichever occurs last after which the equipment shall either be subject to a new agreement or be reclaimed by the Provider.

## 14. SITE PREPARATIONS AND PROGRAMMING

The User undertakes to issue an order for and pay all charges for cabling, access points, POE equipment, testing and commissioning and set-up of its own CPE and site to utilise the Service and for costs of any delays arising from actions or inactions of its CPE vendor or its staff in doing all necessary and requested actions to prepare the CPE and site for operation with the Service. The Provider may, on behalf on the User, authorise and contract for such CPE and other vendors for the continuation of service.

## 15. DELIVERY AND ACCEPTANCE

15.1. Signature by user of the installation certificate shall be deemed to be an acknowledgement that the user has accepted, inspected and approved the goods and that same are in every way satisfactory to the user.

15.2. It is recorded that this agreement applies only to the hiring of the goods and that the rentals stipulated in the schedule do not include any payment in respect of maintenance. The parties specifically agree that any maintenance agreement in respect of the goods is a separate and distinct agreement from this agreement and the renewal or cancellation of such maintenance agreement shall not affect the terms of this agreement. User shall not be entitled to withhold compliance with its obligations under this agreement because of any dispute in relation to the maintenance agreement and/or because of any non-performance in terms of the maintenance agreement.

## 16. USE OF THE GOODS

User shall enjoy the Manufacturers warrantee on all equipment provided and at all times. User shall keep the goods in its possession and under its control and shall take reasonable care in the use of goods. User shall at its own expense maintain the goods in proper working order and keep the goods free from attachment, hypothec, or other legal charge or process. User shall not sell, let, loan, pledge, transfer or otherwise encumber or alienate the goods in any way or permit any lien to arise in respect of the goods, and shall not cede, assign or delegate any of its rights or obligations in terms of this agreement. The goods shall be operated at User's cost. User shall comply with the specification, instructions and recommendations of the manufacturer for the operation, service, maintenance and/or repair of the goods or any part thereof.

16.1. User may not materially alter or modify the goods. Any part or accessory added to the goods shall become the Provider's property without any compensation.

16.2. User shall at reasonable times permit the Provider or its representative to inspect or service the goods.

16.3. User admits and agrees that the goods are movable and are installed with the purpose that the goods shall remain movable and that they shall under no circumstances accede to any property.

16.4. User shall have the rights to upgrade the goods or any part thereof, subject to the Provider's or its Cessionary prior written consent thereto.

## 17. DAMAGES

The Provider shall not be liable to the User for any damages of whatsoever nature, arising from any matter related to this Agreement whether indirect, consequential, loss of revenue or profit or savings other than wilful damage.

## 18. WAIVER

The User agrees that no indulgence whatsoever by the Provider will affect the terms of this agreement or any of the rights of the Provider and such indulgence shall not constitute a waiver by the Provider in respect of any of its rights herein. Under no circumstances will the Provider be stopped from exercising any of its rights in terms of this Agreement.

## 19. VARIATION

The parties agree that this Agreement (a) represents the entire Agreement between the User and the Provider and that no alterations or additions to this Agreement shall be effective or binding unless agreed to by both parties, reduced to writing and signed by the User and a duly authorised representative of the Provider; (c) is applicable to all existing debts between the parties; (d) is final and binding and is not subject to any suspensive or dissolutive conditions; and that (e) any conflicting conditions stipulated by the User are expressly excluded; (f) these terms supersede all previous conditions without prejudice to any securities or guarantees held by the Provider.

## 20. TERMINATION

Should the User terminate the Agreement for any reason other than breach as per 8.2 or should the Provider terminate this Agreement because of the User's non-payment or breach, the full remaining rental portion up to the contracted termination date becomes due and payable immediately.

## 21. CESSION

The Provider shall be entitled to cede, assign and transfer or make over all or some of its rights in terms of this Agreement with prior notification.

## 22. NOTIFICATION TO LANDLORD

The User will notify its landlord that the goods will be kept at the address stated on this agreement and will notify the Provider in writing the name and address of any other premises to which the goods are moved and of the name and address of the owner of such premises. User shall also notify the Provider immediately of any changes that may occur from time to time in the leasehold or ownership of the premises upon which the goods may from time to time be installed or kept. User is obliged to obtain the required permission for the installation of goods on the premises referred to.