

## **Active Fibre - VoIP Terms and Conditions**

### **1 INTERPRETATION**

- 1.1 "B2E" – Beginning 2 End Technologies registration number "Reg. No. 2003/001397/07".
- 1.2 "Services" – Voice and Data Services which are selected and agreed upon on the face hereof and any ancillary Services related thereto.
- 1.3 "Subscriber" – Company, Closed Corporation, Firm, Partnership or Persons contracting to receive the Services from B2E in terms of this Agreement.
- 1.4 "Agreement" – these terms and conditions as read together with the schedule on the face hereof.
- 1.5 "Connection Date" – the date on which B2E accepts the contract.
- 1.6 "Network Operators" – refers to other data and voice carriers that B2E directly or indirectly interconnects with.
- 1.7 "Network" – internet or telecommunications networks operated by Network Operators.
- 1.8 "Call Tariff" – the tariffs charged by B2E in respect of local, national, international and mobile calls made and constituting part of the Services.

### **2 APPOINTMENT AND TERM**

- 2.1 With effect from date of acceptance by B2E, the Subscriber identified on the face hereof appoints B2E to provide to and / or on behalf of the Subscriber in accordance with the provisions hereof.
- 2.2 The Subscriber agrees to be bound by the provisions contained in the notice, directive, or applicable Call Tariff plan issued by B2E and / or their Service Provider from time to time.
- 2.3 The Subscriber acknowledges that this document or other documents as agreed in writing between the parties constitutes an offer by the Subscriber, which may be accepted or refused by B2E in its sole discretion. The offer will be considered once received by B2E at their premises. Connection of the Subscriber shall be deemed to constitute acceptance of the offer, by B2E and commencement of this Agreement. This Agreement shall become binding between B2E and the Subscriber whether or not the Subscriber was notified of the acceptance of the offer.
- 2.4 Termination of Agreement does not relieve the Subscriber from liability to pay charges for all calls and data usage by the Subscriber up until the Services are disconnected by B2E.

### **3 THE B2E SERVICES**

- 3.1 The Services are to include the routing of voice traffic over the Network: Voice constitutes all local, national, international and mobile voice or data calls routed through the Network.
- 3.2 The Subscriber shall allow B2E or its nominee, access to the Subscriber's premises, with prior notification to the Subscriber, at all reasonable times in order to, install, maintain, monitor, inspect, replace or Services.
- 3.3 B2E endeavours that the Services rendered will be provided and maintained during the contract period.
- 3.4 Due to the necessity of conducting repair and / or improvement work from time to time on technical infrastructure by means of which the Services are provided, the provision of the Services may be suspended from time to time without notice by B2E, and B2E, is exempted from all liability for any loss or damage (whether direct or consequential) and / or for any costs, claims or demands of any nature to Subscriber and / or any third party arising from such suspension.
- 3.5 The Subscriber shall have no claim of whatsoever nature and however rising against B2E including no right to cancel this Agreement or to withhold payment of any monies due in terms hereof should the Network temporarily or otherwise fail, malfunction, provide no or poor coverage or should any of the Services of facilities provided by the Network Operators of B2E be temporarily unavailable.
- 3.6 The Subscriber shall not be entitled to set off or deduct any monies in respect of "dropped" or discontinued call and / or connections or temporarily unavailable Services including facsimile and other Services. B2E does not make any representation or give any warranty or guarantee of any nature whatsoever in respect of the Services.
- 3.7 B2E does not warrant or guarantee that information transmitted by use of the Services will be preserved or sustained in its entirety, will be suitable for an intended purpose, will be free of inaccuracies or defects or bugs or viruses of any kind, and will not contravene the laws of particular.
- 3.8 B2E shall be entitled in its sole discretion to alter telephone numbers or any other code or Number, which has been allocated to the Subscriber.
- 3.9 B2E shall be entitled in its sole discretion to suspend, cancel, vary or terminate this Agreement or any part thereof, without B2E incurring any liability whatsoever in the event of non-availability of the Services or if any Agreement whatsoever in the event of non-availability of the Services or if any Agreement giving of the Service or if any Agreement giving B2E access to anything relating to , cancelled, varies or terminated.
- 3.1 The Subscriber shall be obliged to inform B2E in writing of any technical changes, personnel changes and / or contract detail changes that may affect the operation of the Service and updates of Cal Tariffs being offered.
- 3.11 B2E has the right to move the Subscriber to a new Network Operator only when this move will ensure more benefits for the Subscriber. This decision to move will be offered to the Subscriber in writing and may lead to a new Subscriber Agreement as a whole.

### **4 CHARGES**

- 4.1 The Subscriber shall pay to B2E:
  - 4.1.1 Upon commencement hereof, initial connection charge and all other introductory fees;
  - 4.1.2 Monthly in advance or as and when billing is passed on by the Network Operators, total call charges used and / or generated by the Subscriber during each billing period and any other charges payable in respect of the Services requested by the Subscriber or other charges levied by B2E from time to time; and
  - 4.1.3 Value added tax at the applicable rate on all vat able charges and services. All charges unless otherwise stated, includes value added tax

4.2 Charges payable by the Subscriber to B2E for the provision or facilitation of the Services shall be stipulated in any notice, directive, promotion or applicable Call Tariff plan issued or derived by B2E from time to time and the contents of such notice, directive, promotion or Call Tariff plan including the charges stipulated therein shall be deemed to be incorporated in this agreement as if specially set out herein.

4.3 The Subscriber agrees that B2E shall be entitled from time to time to increase or vary the charges payable (as dictated by the Network Operators or by currency fluctuations) by the Subscriber to B2E for the Services.

4.4 B2E monthly statement of charges shall be prima facie proof of the amounts owed by the Subscriber to B2E terms thereof and of the other facts stated therein and should therein and should respect of any call made or Services rendered by B2E, then the Subscriber shall bear the onus of proving that B2E's statement is incorrect in such respect.

## **5 PAYMENT**

5.1 The Subscriber agrees that payment shall only have been made to B2E when the monies remitted by the Subscriber have been received into B2E bank account. Should any debit order be returned unpaid or stopped for whatsoever reason or should B2E exercise its right to suspend the provision of the Services due to late or non-payment of any monies due in terms thereof by the Subscriber, then the Subscriber shall pay an administration charge of R80.00 for each such non-payment, suspension or any other breach of this Agreement which amount shall be liable upon demand and by B2E.

5.2 The Subscriber agrees and acknowledges that a certificate given under the hand of a financial manager or controller of B2E whose status and authority need not be proved shall be considered prima facie proof of the amount due and shall entitle B2E to apply for judgment against the Subscriber and to obtain summary judgment or provisional sentence, as the case may be.

5.3 All subscriptions will be billed on a daily base. Airtime, unless otherwise stated, will be pre-paid.

## **6 LIMITATION OF LIABILITY**

6.1 The Subscriber hereby indemnifies B2E and holds B2E harmless against any claim by any third party arising directly or indirectly out of the Subscriber's access to our use of the Services or information obtained through the use of it, including without limitation of any claim due to the use of the Services for unlawful purposes.

6.2 B2E shall not be liable for any loss or damages arising out of mistakes, omissions, interruptions, delays, errors or defects in the service, the transmission of the Services, or failures or defects in facilities furnished by B2E. Services shall in no event exceed an amount equivalent to the proportionate fixed monthly charge to B2E for Services, during the period of time in which such mistakes, omissions, interruptions, delays, errors, defects in the service, its transmission or failure or defect in facilities furnished by B2E occurred, unless the Commission orders otherwise.

6.3 The Subscriber must pay B2E for the replacement or repair of damage to B2E equipment or facilities caused by the negligence or wilful act of the subscriber or users, improper use of the Services, or any use of equipment or services provided by others.

6.4 The Subscriber must insure B2E equipment or facilities installed at the Subscriber's premises for the theft or mishandling of equipment or the Subscriber shall be liable for the replacement equipment.

6.5 Equipment installed at the Subscriber's premises remains the property of B2E unless the Subscriber paid the equipment in full.

6.6 The Subscriber is liable for all calls made, once the solution has been installed and activated.

## **7 BREACH**

7.1 If the Subscriber:

7.1.1 Fails to pay any amount under this Agreement on due date, then B2E shall be Entitled without prejudice to any of its other rights arising out of this agreement forthwith and Without any liability towards the Subscriber to suspend its provision to the Subscriber of the Services in whole or in part and / or disconnect the Subscriber from the network and/or render the equipment inoperable by whatever means.

7.1.2 Commits, suffers or permits a breach of any terms of this Agreement.

## **8 DOMICILIUM AND NOTICE**

8.1 The Subscriber and B2E hereby choose domicilium citandi et executandi for all purposes of and in connection with this Agreement at the physical address and telefax as set forth on the face hereof. B2E shall be entitled to give any notice in terms of this Agreement by telefax and / or e-mail.

## **9 GENERAL**

9.1 The Agreement constitutes the sole record of the agreement between the parties in regards to the subject matter thereof. Neither party shall be bound by any representation the subject matter thereof. Neither party shall be bound by any representation, express or implied term, promise or the like not recorded herein or reduced to writing and signed by the parties or their representatives. No addition or variation of this Agreement shall be of any force or effect unless in writing and signed by or on behalf of the parties. No indulgence that B2E may grant to the Subscriber shall constitute a waiver of any of B2E rights. In this agreement the singular shall include the plural.

9.2 This Agreement shall in all respects be governed by and construed in accordance with the law of the Republic of South Africa, and all disputes, actions and other matters in connection with this Agreement shall be determined in accordance with such laws.

9.3 Should any provision of this Agreement be rendered unlawful then that unlawful provision only shall be invalid, without effecting or invalidating any of the remaining provisions of this Agreement, which shall continue to be full force effect.



9.4 B2E is entitled to cede its rights and /or the delegates its obligations arising from this Agreement and / or assigned this Agreement, wholly or partly, to any third party. The Subscriber shall not be entitled to cede or delegate his rights and / or obligations arising out of this contract, unless accepted in writing by the Credit Control Manager or a Director of B2E.

9.5 The Subscriber warrants the accuracy of all information furnished by or on behalf of the Subscriber in terms of or pursuant to this Agreement. The Subscriber shall forthwith notify B2E in writing of any changes from time to time in the information set out in the schedule on the face hereof.

9.6 The parties hereby consent to the jurisdiction of any Magistrate Court which may exercise Jurisdiction over any of the parties in terms of Section 28 of the Magistrates Courts' Act 32 of 1944 in respect of any dispute arising from or concerning this Agreement, provided that should the Service Provider elect to proceed in the Supreme Court they shall be entitled to do so in the Witwatersrand Local Division, to which jurisdiction the Subscriber hereby submits.

9.7 The Subscriber undertakes to abide by B2E' acceptable use policy.

9.8 B2E undertakes to treat all Subscribers' information as confidential.

#### 10 FORCE MAJEURE

10.1 If B2E is prevented from or restricted directly or indirectly from carrying out all or any of its obligations under this Agreement due to any reason or cause beyond the control of B2E or by reason of force majeure, B2E shall be relieved of its obligations in terms of this Agreement during such period.

Date: \_\_\_\_\_

Full Name: \_\_\_\_\_

Customers Signature: \_\_\_\_\_

Designation: \_\_\_\_\_