

# Terms and Conditions

## 1. BINDING AGREEMENT

a) Customer agrees to be bound by this agreement and to use the services in compliance with the terms of this agreement and with Comtel's acceptable usage policy which can be found at [http://www.comtel.co.za/index.php?option=com\\_content&view=article&id=126&Itemid=116](http://www.comtel.co.za/index.php?option=com_content&view=article&id=126&Itemid=116) and which may be modified from time to time.

b) The details recorded on the sales order, together with these conditions of contract shall form the basis of a binding contract between the parties.

## 2. THE CUSTOMER

a) Customer warrants that it is legally able to enter into this agreement and Customer shall pay all fees, taxes, charges and other expenses incurred in connection with the service.

## 3. CUSTOMER ACKNOWLEDGEMENTS REGARDING THE SERVICE

a) While Comtel will undertake all reasonable commercial efforts to deliver the stated services, the customer acknowledges that service speed can vary depending on internet traffic and other factors beyond the control of Comtel.

b) The services may grant access to material that is unsuitable for minors and customer acknowledges that Comtel does not and can not filter content.

c) Customer acknowledges that in order to provide the services, Comtel will base their decision if feasible via a technical site survey and business case, and may contract with 3rd party communications and network operators for last mile Internet access if not possible from Comtel's core network. Customer further acknowledges that Comtel will only provide uninterrupted continuous services to customer pursuant to this agreement to the extent which Comtel receives such services from linked communications and network operators.

d) Customer acknowledges that the services operate in a license-exempt frequency spectrum on non-interference to other systems; there is no legal protection from interference from other systems or service operators operating within this spectrum. Comtel will make all reasonable commercial efforts to liaise with other operators to minimize any interference to customer; however such interference if present may have an impact on the availability and quality of service received. Similarly Comtel is obliged to and hereby reserves the right to terminate services to customer where interference is caused to other systems. Customer may terminate this agreement where Comtel is unable to rectify or eliminate interference or frequency spectrum related issues within 30 days of notification of said issues.

e) Customer acknowledges and agrees that from time to time Comtel may be required to temporarily suspend the services to customer to verify compliance with applicable licenses, authorizations, and compliance with the technical and operating parameters of the network. Under such circumstances Comtel will use all reasonable commercial efforts to minimize

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disruption to the services including making reasonable efforts that any such suspension take place out of normal business hours.

f) Customer accepts that Comtel may change or withdraw any element of the services from time to time and will use all reasonable efforts to notify customer of any necessary change in the services.

g) Customer acknowledges that the services are an 'always open' connection to the internet while the equipment is powered on and that it is customers **SOLE RESPONSIBILITY** to install, configure and maintain suitable security measures to protect customers computer and equipment from unauthorised or malicious access from the internet. Any advice or equipment provided by Comtel 'as is' and Comtel accepts no responsibility or liability for the security of customers systems.

h) Customer acknowledges that the bit rates quoted in respect of the services are maximum burst rates attainable and the services are provided as a variably contended connection.

## 4. EQUIPMENT.

a) During installation certain cabling, mounts, poles and fixings may be used to complete the installation. These become the property and responsibility of customer once installation is completed, and it is customer's responsibility to ensure they are maintained in operational and safe conditions.

b) Customer agrees to use the equipment in accordance with Comtel's instructions and to restrict access to the equipment to only those representatives and agents authorized by Comtel.

c) Save for the warrant below, all risk in and to the equipment (including without limitation the risk of damage, loss, theft, malfunction, breakage or breakdown) shall pass to and remain with customer once installation is completed. Accordingly it is Customer's responsibility to ensure that the equipment is maintained in operational and safe condition. Customers agree to take reasonable steps to protect the equipment from damage, loss or theft.

d) Customer agrees to notify Comtel as soon as reasonably possible once he becomes aware of any damage to the equipment or defect in the operation of the equipment by telephoning or emailing Comtel at the numbers or addresses published from time to time, or [support@comtel.co.za](mailto:support@comtel.co.za).

e) If, within a period of twelve months following the date of installation, the equipment fails due to any malfunction which is attributed to an error in the manufacture or programming of the equipment. Comtel shall repair or, at its option, replace the equipment free of charge to customer as soon as reasonably practicable upon being notified in writing of such malfunction by customer. The cost of all and any other repairs to or replacement of the equipment for any reason shall be for the account of the customer. The rates and charges charged by Comtel for repairs, replacements, maintenances or other services shall be its rates applicable at the time.

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f) Customer agrees not to, nor allows any other party to, move, dispose of, modify, or adjust the equipment, nor allow liens to be placed on the equipment.

## 5. TERM

a) This agreement shall continue until terminated in accordance with this agreement. Customer may terminate this agreement upon 1 calendar month's written notice to Comtel. Comtel may in its sole discretion terminate this agreement at any time. In the event that Comtel terminates this agreement for reasons other than breach of this agreement by customer, then Comtel shall endeavour to the extent reasonably possible provide 1 calendar month's notice to customer. Customer is liable under this agreement for all fees and charges until such time as the agreement has been terminated. **CUSTOMER UNDERSTANDS THAT UNLESS WRITTEN NOTIFICATION IS RECEIVED BY Comtel, THE SERVICE SHALL CONTINUE AND CUSTOMER WILL CONTINUE TO BE RESPONSIBLE FOR PAYMENT OF APPLICABLE SERVICE FEES.**

## 6. TERMINATION

a) If customer is dissatisfied with the services or any related terms, conditions, rules, policies, guidelines, or practices; Customer's sole remedy is to discontinue using the services and to terminate this agreement.

b) Upon cancelation or otherwise upon termination of this agreement, related email and hosting services will be terminated and all customer files and information stored on Comtel servers may be deleted. Comtel may terminate this agreement, customer password, customer account, or customer use of the services for any reason, including, without limitation, if Comtel, in its sole discretion, believes customer has violated this agreement or if customer fails to pay any charges when due.

c) Comtel may terminate this agreement immediately if customer is subject to insolvency, receivership, liquidation or any similar proceedings, or in Comtel's exclusive opinion is unable to pay fees due to Comtel.

## 7. FEES AND PAYMENT

a) Customer shall pay a monthly service fee and all other applicable fees, charges, taxes and other amounts for the services at the rates in effect for the current billing period. Comtel may increase or decrease the monthly service fees. Comtel will use all reasonable efforts to provide customer thirty (30) days or more notice of same. If such changes to the basic monthly service fee are to customer's detriment, customer may terminate this agreement by giving thirty (30) days written notice, and customer will remain liable only for any balance on the account.

b) Payment is due in full by debit order or internet transfer at the start of each billing month, except where annual prepayment has been selected. All charges are considered valid unless disputed in writing within thirty (30) days of the billing date. Adjustments will not be made for charges that are more than 30 days old. If any payment is more than 7 days overdue or is returned by the bank unpaid, the services may be suspended with immediate effect and remain suspended until the due amounts are paid in full. The Customer is not relieved of the obligation to pay the monthly service fee while an account is suspended. A reactivation fee

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or deposit may be required before services are reactivated after suspensions or termination. Credit account balances shall not accrue interest. Customer agrees to pay the reasonable costs of any collection agency, solicitor or court used by Comtel to collect past due amounts or to enforce this agreement. Returned cheques or direct debits will incur R50 administration fee.

c) Monthly charges during where the services are provided for less than a full month shall be pro-rated.

## 8. FAIR ACCESS POLICY

a) To ensure equal internet access for all customers, Comtel operates a fair access policy. Fair access establishes an equitable balance in internet access across high speed internet services for all customers. To ensure this equity, heavy usage may experience temporary throughput limitations during peak usage hours. Comtel provides the services on a “best effort” basis and does not guarantee upload or download speeds.

## 9. SOFTWARE LICENSE

a) Comtel grants to customer a non-explosive, non-assignable and non-transferable license to use and display the software provided by or on behalf of Comtel only for purposes of accessing the services. Unauthorized copying of the software is extremely forbidden. Customer may not sublicense, assign or transfer the license or the software.

## 10. INSTALLATION

a) The installation, use, inspection, maintenance, repair, and removal of the equipment may result in service outage or potential damage to customer’s computer(s). Customer is solely responsible for backing up all existing computer files and data. Comtel and its employees, agents, contractors, and representatives shall have no liability whatsoever for any damage to or loss or destruction of any of customers hardware, software, files, data, or peripherals.

b) Comtel will endeavour to provide the services to all eligible applicants, subject to technical and commercial feasibility. Comtel may in its sole discretion determine that it can not or will not service a particular site or customer, and reserves the right to cancel the installation process and refund any money that customer has paid.

c) The installer will need to work internally and externally at customers premises for which the installer will require access. Customer acknowledges responsibility for securing, including any associated costs, the following:

i) Obtaining all necessary consents including planning permission if needed, landlord. Occupier and other building consents for both access and installation and maintenance of the equipment; and

ii) full, free and safe access to relevant premises at agreed times for maintenances, replacement, or equipment removal.

## 11. COPYRIGHT AND LICENSES

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a) The Content on the services is protected under applicable copyright law. Any copying, modification, distribution, publication or other use by customer, or by any user of customers account, of any such content is prohibited, except as expressly permitted by the holder of the applicable copyrights.

## **12. NO ENDORSEMENT**

a) Comtel does not endorse or in any way vouch for the accuracy or completeness of any content made available through the services. Comtel does not recommend that such content be relieved on by customer without appropriate verification.

## **13. CUSTOMER CONDUCT**

a) Customer shall comply with all laws, rules, regulations and legal obligations related to the services and with all acceptable use policies and procedures established from time to time by Comtel.

## **14. THIRD PARTY ACCESS**

a) Customer shall not resell, share, lease, hire or otherwise permit access to the services to any third party, including but not limited to the connection of any third party to the services through use of direct cable connection, network connection, wireless networking, or any other means.

b) Comtel reserves the right to suspend the services pending investigation where it reasonably suspects the above clause is breached by customer and reserves the right to terminate with immediate effect the services and this agreement where such breach has taken place.

## **15. CUSTOMER EQUIPMENT**

a) Customer shall maintain and operate suitable and fully compatible terminal equipment and communication devices required to access the service. Comtel makes no representation of warranties, either express or implied, regarding such customer equipment.

## **16. DISCALIAMER OF WARRANTIES**

a) Access to the service is not guaranteed. The service is distributed on an “as is” and “as available” basis without warranties of any kind, either express or implied, including but not limited to warranties of title or implied warranties of merchantability or fitness for a particular purpose or otherwise.

## **17. LIMITATION OF LIABILITY**

a) Neither Comtel nor any of its information or content providers, service providers, licensors, employees or agents shall be liable for any direct, indirect, incidental, special, punitive or consequential damages arising out of customers use of the services or inability to use the service or any breach of any representative or warranty or any termination of the service for any reason.

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## 18. INDEMNITY

a) Customer assumes all risk and liability for any use of the services. Customer agrees to indemnify Comtel against all claims, liability, damages, costs and expenses, including but not limited to reasonable legal fees, arising out of or related to customers use of the services.

## 19. SUPPORT SERVICES

a) Customer shall direct all enquiries and service related issues to Comtel customer sales and support contact points, as defined on Comtel's website from time to time or directly by email to [support@comtel.co.za](mailto:support@comtel.co.za) .

## 20. APPLICABLE LAWS

a) This agreement shall be governed by the laws of South Africa. Any cause of action of customer, or by users of customers account, with respect to the services or this agreement must be instituted within six (6) months after the claim or cause of action has arisen or be barred. It is acknowledged that this is a service contract and not a contract for the sale of goods.

## 21. GENERAL

a) ENTIRE AGREEMENT constitutes the entire agreement between the parties relating to the subject matter hereunder, and supersedes any and all oral and/or written statements, discussions; representations and agreements made by either party to the other, and may not be assigned without the express written consent of Comtel. No modification of this agreement shall be binding on either party unless it is in writing and signed by both parties. Failure on the part of Comtel to enforce any provision of this agreement shall not be construed as a general waiver or relinquishment of the right to enforce such provision.

## 22. Competitor Quotes

a) Competitor quotations are not only price based, but also solution based. The Comtel Account manager will provide their best endeavours in clarifying quotations, on an "apple vs apple" basis, distinguishing the difference in hardware, service, service level and business model.

b)The Competitor original quotation is required to be sent to the Comtel Account Manager hand delivered, by email or faxed.

c)The competitor quotes need to indicate the same or similar type or criteria of services required by the end user, not excluding;

a. Date of quotation must be within the calendar and current month and year that the end user is being quoted.

b. Hardware which is equivalent in date, quality, model or if second hand or not

c. Same Warranty Period on Hardware

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- d. Similar business model
  - e. Term of agreement proposal, being month to month, Twelve (12) Months , Twenty Four (24) Months or Thirty Six Months
  - f. Labour required.
  - g. Service type, not excluding;
  - i. Bandwidth Contention
  - ii. Bandwidth Speed
  - iii. Bandwidth Distance
  - iv. Rate Limit or Acceptable User Policy
  - v. Type of Bandwidth being GSM, ADSL, Wireless or Fibre
  - vi. Exact comparative solution
  - vii. Quality of Service
  - viii. Applies to industry standard
  - ix. Is sustainable
  - x. Applies to applicable compliancy and laws of the Electronic Communications Act, Internet Service Providers Association and or The Wireless Access Providers Association. No unlawful solutions will be challenged, as per Comtel's Code of Conduct.
- d) In some cases Comtel only provides a specific solution, which has been tried and tested, apart from conforming to industry standard, the solution is best practice for Comtel, and Comtel will not create, attempt to, or change it's stance in terms of the solution it provides.
- e) Comtel is by no means obligated or to be forced to provide a competitive quotation based on the above criteria
- f) Comtel indemnifies itself and any representatives, agents of , of any act of fraud, negligence, misrepresentation as per our Comtel's Terms & Conditions as published [here](#)