

TERMS AND CONDITIONS

1. INTERPRETATION

In this Outlet Agreement:

- 1.1 Clause headings are for convenience and shall not be used in its interpretation
- 1.2 Unless the context clearly indicates a contrary intention, an expression which denotes-
- 1.3 "Activation" means the enabling of a SIM Card on the Network in terms of this Agreement
- 1.4 "**Datalinx**" means **Datalinx** Technologies (Pty) Ltd registration number 2003/019324/07
- 1.5 "gender" includes the other gender
- 1.6 "natural person" includes an artificial person and vice versa
- 1.7 "singular" includes the plural and vice versa
- 1.8 "GPRS equipment" the Communication Equipment (SIM card) used in the POS terminal
- 1.9 "Connection Charge" the initial charged payable by the Outlet for the connection to the GSM Network
- 1.10 "Data Charges" the charge of transactions as set out in the Tariff sheet
- 1.11 "Days" includes all days with the exception of Saturdays, Sundays and Public Holidays and when a number of days are prescribed, that number shall include the first and the last day
- 1.12 "Disable" means that the Outlet is unable to access the GSM Network
- 1.13 "GSM" means Global System for Mobile Communications as defined in the European Technical Standards Institute structure of specifications
- 1.14 "Network" means the cellular system operator as operated by the Operator
- 1.15 "Network Services" means the GSM Telecommunications network services, including, inter alia Value added Services made accessible to the Subscriber in terms of this Agreement
- 1.16 "Operating Procedures" the procedures as prescribed and amended by **Datalinx** from time to time relating to the **Datalinx** Operational procedures
- 1.17 "Outlet Agreement" includes any Annexure hereto
- 1.18 "Outlet" means merchant using **Datalinx** products and/or services
- 1.19 "POS" means EFT banking terminal or client device as prescribed by **Datalinx**, located at the Outlet.
- 1.20 "Replacement Cost" is the cost to replace either the Communications equipment (SIM card) or any components as advised by the manufacturer
- 1.21 "Responsible Person" is the person responsible for the operation and safeguarding of the **Datalinx** Communications equipment.
- 1.22 "Subscriber" means the Outlet whose particulars appear on the Outlet Agreement to which these terms and conditions apply.
- 1.23 "Usage Charge" the monthly charge levied to the Outlet for the usage of the Communications equipment.
- 1.24 "Tariff" the charges for the Service or Communications equipment and any other additional service/products as may be published from time to time by **Datalinx**

2. PERIOD OF OUTLET AGREEMENT

- 2.1 This Outlet Agreement shall commence on the date of installation of the POS device or as appears on the Delivery Note / Site sheet or Outlet agreement at the outlet and shall be for a minimum period as stated in the Outlet Agreement. The Outlet Agreement shall continue indefinitely until terminated by either party as stipulated by clause 11.
- 2.2 Penalty Clause - refer to clause 11.4.5

3. TERMS AND CONDITIONS

- 3.1 **Datalinx** shall at all time act in good faith in the exercise of its rights and powers under this Outlet Agreement and shall do its utmost to avoid bringing the name of the Outlet into disrepute.
- 3.2 **Datalinx** shall provide a customer care number (0861 112 655) for the purpose of technical related queries. This facility is operational between 08H30 and 17H00 Mondays to Fridays, excluding public holidays.
- 3.3 A stand-by number is available to deal with any technical related queries that may occur outside these hours. 0861 112 655

4. DEBIT AUTHORISATION

- 4.1 The Outlet hereby authorizes **Datalinx** to debit the Outlet's designated bank account with:
- 4.1.1 Refer to clause 6.1, and the pro-rata and/or full monthly rental, refer to clause 6.2 and/or any data usage charges, refer to clause 6.3
- 4.2 **Datalinx** reserves the right to cancel any services in the event that the debit instruction initiated by **Datalinx** on an Outlet's designated bank account is returned unpaid for whatsoever reason.
- 4.3 Any calls made by the Outlet via the Communications Equipment shall be deemed to be duly authorized and valid.
- 4.4 In the event of the Communications Equipment being damaged as a result of gross negligence and/or malicious damage and/or human error, the Outlet will be liable for any costs incurred by **Datalinx** to repair and/or replace such Communications equipment. Such charges will be debited to the Outlets account via normal debit order.
- 4.5 Interest
- 4.5.1 **Datalinx** shall be entitled to charge interest at the rate of 2% above the then existing First National Bank, or as nominated, Prime Rate if an account rendered to an Outlet is not paid in full on or before the due date as indicated in clause 6.2 and 6.3 of this agreement.

5. OBLIGATIONS OF OUTLET

- 5.1 The Outlet shall at all times act in good faith in the exercise of its rights and powers under this Outlet Agreement and shall do its utmost to avoid bringing the name of **Datalinx** into disrepute.
- 5.2 Notification of change of bank account details shall be provided to **Datalinx** in writing with immediate effect of the change being actioned.
- 5.3 It may be required from time to time to affect an upgrade of existing software whereby **Datalinx** requires the assistance and co-operation of the Outlet.
- 5.4 You hereby agree that **Datalinx** shall be entitled to charge you all legal costs and disbursements incurred by **Datalinx** in connection with the appointment of any agents and / or attorneys to recover any amounts owing by you to **Datalinx**. (as defined in the Debt Collectors Act 114 of 1998 and Attorneys Act 53 of 1979)

5.5 Insurance

- 5.5.1 The Outlet must insure the Communications Equipment at the current market related price as supplied by **Datalinx**.
- 5.5 The outlet shall co-operate with **Datalinx** Call Centre Agents and Field Support Staff to assist with any problem solving that may be required whether via telephone or on-site visitation.
- 5.5 The Communications equipment and all components remain the property of **Datalinx** and the Outlet is to ensure they are maintained in good condition at all times.
- 5.5 In the event of a cancellation the Outlet is liable for the safe return of all **Datalinx** equipment in good working condition. Should any of these components be damaged and/or missing, the Outlet will be liable for any replacement and/or repair costs that **Datalinx** may incur.

6. CONSIDERATION – DATALINX SUBSCRIPTION & OTHER FEES

- 6.1 The Outlet shall be responsible for the cost of all the normal use, abnormal use and/or Fraudulent use of the Communications Equipment (SIM card).
- 6.2 The Outlet shall be charged a monthly rental, which includes the subscription fee to the GSM Network (or pro-rata from the date of installation and activation) on or around the 27th day of every month in advance for the provision of **Datalinx** Communications equipment).
- 6.3 The Outlet shall be charged for data usage on or around the 27th day of every month in arrears for the provision of **Datalinx** services.
- 6.4 **Datalinx** will charge the Outlet a debit transaction fee (as stipulated by First National Bank, or as nominated) EXCL VAT on every debit made by **Datalinx** against the Outlet's bank account, to recover bank charges incurred by **Datalinx**.
- 6.5 The Outlets shall be responsible for the cost of all the Communications Equipment consumables, jacks, leads, antennas, etc as supplied and installed by **Datalinx** .

- 6.6 It is further noted that the Outlet shall be responsible for any bank charges incurred on its own Bank Account.
- 6.7 **Datalinx** is continuously developing enhancements to the Communications equipment and any such enhancements will be made available to the Outlet as and when released. The Outlet is required to co-operate with **Datalinx** Call Centre Agents and Field Support Staff to assist with any enhancements/upgrades that may be required whether via telephone or on-site visitation
- 6.8 Rentals and/or data costs may be subject to an annual increase. **Datalinx** reserves the right to advise the Outlet of any such increase by providing one (1) months written notification.
- 6.9 **Datalinx** will charge the Outlet a fee for Time and Travel for all service calls. Service calls will be charged out as per the **Datalinx** Tariff sheet.
- 6.10 Time and Travel costs may be subject to an increase. **Datalinx** reserves the right to advise the Outlet of any such increase by providing one (1) months written notification.

7. LIMITATION OF LIABILITY

- 7.1 Without detracting from any of the other provisions of the Outlet Agreement, **Datalinx** shall not be liable to the Outlet for any loss or damage suffered by the outlet, and whether same is direct or consequential, in the event that: -
 - 7.1.1 **Datalinx** fails for any reason whatsoever to supply and / or deliver any Communications Equipment related equipment, either on the required date, or at all, and /or
 - 7.1.2 The Network services are interrupted, suspended or terminated, for whatever reason, and /or
 - 7.1.3 **Datalinx** fails to suspend the provisions to the Network Service to the Outlet in terms of arrangements between **Datalinx** and the outlet or after the Outlet has specifically requested **Datalinx** to do so, in writing, in order to limit usage charges; and/ or
 - 7.1.4 Such loss or damage was caused by a negligent act or omission on the part of **Datalinx**, or its representatives.

8. CONFIDENTIALITY

- 8.1 The parties agree that neither party shall disclose any statement or divulge any information whatsoever regarding this Outlet Agreement to any third party without the written consent of the other party, except where disclosure is necessary for financial, legal or governmental proceedings.

9. CESSIONS AND ASSIGNMENT

- 9.1 The Outlet shall not be entitled to cede or assign or in any way dispose of or encumber any of its rights or obligations under this Outlet Agreement without the prior written approval of **Datalinx**, the granting or refusal of which shall be in the sole and absolute discretion of **Datalinx**.

10. MAINTENANCE, REPAIR AND/OR REPLACEMENT OF GPRS EQUIPMENT

- 10.1 Communications Equipment is the property of **Datalinx** on which an Outlet pays a monthly maintenance fee shall be repaired and/or replaced by **Datalinx** free of charge or otherwise as agreed by the parties concerned, provided that the faults are as a result of general and fair wear and tear and not caused as a result of any negligence or default on the part of the Outlet.
- 10.2 Where a fault is caused by negligence or default on the part of the Outlet, the Outlet shall be liable to pay for any such repairs and or replacements that may be required.
- 10.3 Defective Communications Equipment are to be returned to **Datalinx** for repair and/or replacement. Shipment costs shall be made for the Outlets account in the case of negligence and/or default on the part of the Outlet.
- 10.4 In the event of a **Datalinx** technician being called to the site to assist with a fault, a call out charge will be levied to the outlet.

11. TERMINATION AND BREACH

11.1 Termination

Datalinx reserves the right to terminate this contract as provided for in subparagraphs 11 (and the subparagraphs therein) and disable all services with immediate effect:

- 11.1.1 should the Outlet be placed under provisional or final liquidation, sequestration or judicial management; or
- 11.1.2 should the Outlet suffer any final judgment to be entered against him and fails to satisfy that judgment within 14 (fourteen) days thereof, provided that the Outlet has not noted an appeal or applied for rescission of judgment; or
- 11.1.3 should the Outlet commit any other act of insolvency.
- 11.1.4 Should any party be in breach of any term or condition of the Outlet Agreement, the non-defaulting party shall be entitled to give the defaulting party 14 (fourteen) days notice in writing to remedy such a breach, failing which the non-defaulting party may without prejudice to any rights that it may have in terms of this Outlet Agreement cancel this Outlet Agreement;
- 11.1.5 Subject the Communications Equipment to repeated mishandling or maliciously damage it.
- 11.2 The Parties agree that neither party shall be entitled to terminate this Outlet Agreement on account of breach due to;
 - 11.2.1 temporary interruptions and suspensions of data line transmissions caused by malfunctions
 - 11.2.2 temporary failures of the Networks GSM infrastructure.
 - 11.2.3 temporary malfunctions of the equipment and its associated ancillaries and/or the material and/or the computerised management system;
 - 11.2.4 other temporary occurrences of a like nature with similar effect.

11.3 Breach

- 11.3.1 In the event that the Outlet's bankers fail to honour any debit order instruction processed by **Datalinx** against the Outlet's bank account, **Datalinx** reserves the right to disable the service applicable to the Communications equipment.
- 11.3.2 To re-instate the service as a result of clause 11.3.1, the Outlet is required to furnish **Datalinx** with suitable proof of deposit for any monies outstanding.
- 11.4 Cancellation
 - 11.4.1 If **Datalinx** deems that the Communications Equipment has been subjected to repeated mishandling and thus maliciously damaged.
 - 11.4.2 **Datalinx** reserves the right to cancel this Outlet Agreement unilaterally, by providing the Outlet with 48 hours notice of such termination.
 - 11.4.3 The Outlet may cancel this Outlet Agreement after the contract period has expired by providing **Datalinx** with 90 days written notice of such termination prior to the renewal date of such Agreement.
 - 11.4.4 **Datalinx** will levy a reconnection penalty fee of R100-00 EXCL VAT should a service be disabled, due to conditions brought about by clause 11.3.1
 - 11.4.5 Penalty Clause: where **Datalinx** has provided acceptable service in terms of this Outlet Agreement and the outlet elects to terminate this Outlet Agreement within the contract period, all remaining fees in respect of rental (subscription) for the agreed period will be due and payable.
 - 11.4.6 Should the Outlet cancel during the contracted term, the Outlet will be held liable for the return cost of the Communications Equipment and/or outstanding rentals and/or outstanding data charges.
- 11.5 In the event that Datalinx is unable to comply with its obligations in terms of this agreement in respect of the supply of SIM cards then all the rights and obligations arising from the supply of such SIM cards shall revert to the service provider being the supplier of the SIM cards who shall be entitled to direct and full payment of the monthly subscription and all charges incurred by the use of the SIM card. The Service Provider by its signature at the end of this agreement accepts the benefits and obligations arising from this provision.

12. GENERAL

- 12.1 This Outlet Agreement together with any annexure constitutes the sole record of the Outlet Agreement between the parties in regard to its subject matter.
- 12.2 Neither party shall be bound to any representation, express or implied term, warranty, promise or the like not recorded in this Outlet Agreement or reduced to writing and signed by the parties or their representatives.
- 12.3 No addition to, variation, or agreed cancellation of this Outlet Agreement or any of its Annexure, shall be of any force or effect unless in writing and signed by or on behalf of the parties.
- 12.4 No indulgence, which either party may grant to the other, shall constitute a waiver of any of the rights.
- 12.5 In the event of any dispute arising out of this Outlet Agreement or interpretation by the partners of their respective rights and obligations under it or the cancellation thereof, shall be submitted to & decided by an arbitrator.
- 12.6 In the event that such arbitration is required this shall be conducted in the province of the Western Cape.
- 12.7 The Outlet is also required to ensure that the Communications Equipment is kept in good working order and in the same condition in which it was received at the time of installation. **Datalinx** reserves the right to charge the Outlet for any misuse of such Communications equipment.