

Terms & Conditions

PINDROP (PTY) LTD MASTER SERVICES AGREEMENT TERMS & CONDITIONS

1. INTERPRETATION

- 1.1. In this Agreement unless clearly inconsistent with or otherwise indicated by the context:
 - 1.1.1. **"Act"** means the Electronic Communications Act 36 of 2005, as amended from time to time, which Act, amongst other things, regulates the telecommunications industry and related sectors and the provision by them of certain electronic communications network services and electronic communication services, which Act and related content can be viewed on the ICASA Website; <http://www.icasa.org.za/> ;
 - 1.1.2. **"Agreement"** means this Master Services Agreement and/or Subscriber Agreement together with any and all Customer Order Form/s, schedules and annexures thereto, which are appended to this Agreement from time to time;
 - 1.1.3. **"Authority"** means the Independent Communications Authority of South Africa established in terms of section 3 of the Independent Communications Authority of South Africa Act, 2000 and its successors who govern and oversee the telecommunications and electronic communications industry;
 - 1.1.4. **"Business Day"** means the hours between 8:00am to 5:00pm from Monday to Friday, excluding South African public holidays;
 - 1.1.5. **"Charges"** means all charges payable by the Customer to Pindrop;
 - 1.1.6. **"Connectivity"** is the medium used to transmit data;
 - 1.1.7. **"Connectivity Mediums"** may include ADSL, Diginet, Fibre, Fixed Wireless and Mobile Wireless;
 - 1.1.8. **"Contract Term"** means the term/ period/duration of the Agreement as indicated on the Customer Order Form, Subscriber Agreement, or Master Services Agreement as the case may be;
 - 1.1.9. **"Consumer"** means a Customer who is a "Consumer" as defined under Chapter 1 of the CPA;
 - 1.1.10. **"CPA"** means "CPA" means the Consumer Protection Act, 68 of 2008, as amended, from time to time, together with its regulations, as amended or replaced from time to time;
 - 1.1.11. **"Customer"** means the Customer as set out in the Agreement;
 - 1.1.12. **"Customer Order Form"** or **"COF"** means the form through which the Customer accepts a quotation for services, setting out the details of the Services requested such as quantities, fees, Service Levels and charges payable;
 - 1.1.13. **"Data"** refers to the quantities, characters, or symbols on which operations are performed by a computer, which may be stored and transmitted in the form of electrical signals and recorded on magnetic, optical, or mechanical recording media;
 - 1.1.14. **"Data network"** is a system that transfers data between network access points (nodes) through data switching, system control and interconnection transmission lines;
 - 1.1.15. **"Equipment"** means any Customer premise equipment supplied, installed owned & maintained by Pindrop to deliver the service/s;
 - 1.1.16. **"ICT"** stands for 'Information and Communication Technologies'. ICT refers to technologies that provide access to information through telecommunications. This includes the Internet, wireless networks, mobile phones and devices, and other connectivity communication mediums.
 - 1.1.17. **"MRC" or "Monthly Recurring Charge"** means the monthly charges for the Services as set out in applicable COF;
 - 1.1.18. **"NRC" or "Non-Recurring Charge"** means the installation fee for the Services as set out in applicable COF;
 - 1.1.19. **"Network"** means the communication network and network components either owned and/or operated, by Pindrop which it uses to render services, including points of presence ("PoP"), but does not include customer premises equipment (modems, routers etc), or any networks or network equipment not owned or controlled by Pindrop;
 - 1.1.20. **"Party/Parties"** means Pindrop and the Customer, or either or both of them as may be appropriate in the context;
 - 1.1.21. **"Pindrop"** means Pindrop (Pty) Ltd a company duly registered under the company laws of the Republic of South Africa with registration number 2002/022604/07 and having its principal place of business at Building 9, 1 Woodmead Drive, Woodmead Office Park;
 - 1.1.22. **"Prime rate"** means the prime overdraft rate of Nedbank Limited from time to time according to a certificate signed by a manager of any branch of Nedbank Bank Limited shall constitute prima facie proof of such rate;
 - 1.1.23. **"Renewal Period"** means the term that the Agreement is extended by, after the expiry of the Contract Term;
 - 1.1.24. **"Services"** means the services provided by Pindrop to the Customer by means of the Pindrop Network;
 - 1.1.25. **"Service Activation"** means the date upon which the services first commence;
 - 1.1.26. **"Signature Date"** means the date upon which the last party signs the Agreement;
 - 1.1.27. **"Wholesale Supplier"** is a company which through its wholesale Agreement with Pindrop supplies access services to the Customer;
 - 1.1.28. **"Wireless Connectivity Line-of-Sight"** is where the installing party conducts a final feasibility site visit for a wireless solution which forms part of the acceptance process of a wireless solution by Pindrop.
- 1.2. In this Agreement, unless clearly inconsistent with or otherwise indicated by the context, (i) any reference to the singular includes the plural and vice versa; (ii) any reference to natural persons includes legal persons and vice versa; (iii) any reference to a gender includes the other genders; and (iv) references to any enactment will include references to such enactment as it may, after the Signature Date, and from time to time, be amended, supplemented or re-enacted.
- 1.3. The clause headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 1.4. Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 1.5. Schedules and attachments to this Agreement are incorporated herein and form an integral part of this Agreement and

expressions defined in this Agreement bear the same meanings in such Schedules or attachments.

- 1.6. A reference to Pindrop or the Customer in a document includes either Party's successors-in-title and permitted assigns.
 - 1.7. Where the day on or by which anything is to be done is not a Business Day, it will be done on or by the first Business Day thereafter.
 - 1.8. When any number of days is prescribed in this Agreement, same are to be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day which is not a Business Day, in which case, the last day will be the next Business Day.
 - 1.9. The rule of construction that, in the event of ambiguity, the Agreement will be interpreted against the Party responsible for the drafting thereof, will not apply.
 - 1.10. The expiration or termination of this Agreement will not affect such of the provisions of this Agreement which expressly provide that they will 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. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa.
- ### 2. APPOINTMENT
- 2.1. The Customer hereby appoints Pindrop to provide the services to it for the Contract Term subject to these terms and conditions. The parties agree that this appointment shall be on an exclusive basis such that the Customer shall only be entitled to obtain the services from Pindrop and no third party for the duration of this Agreement.
 - 2.2. Pindrop shall be entitled to appoint any of its Wholesale Suppliers and/or third-party suppliers ("Appointee") to provide the Services to the Customer. The Customer agrees that in this event, Pindrop will enter into back to back agreements with the Appointee/s and will thus be and remain liable with such Appointee for the due and proper performance by it of all of its duties, functions and obligations under this Agreement.
- ### 3. DURATION
- 3.1. This Agreement shall commence on the date of Service Activation and shall be ongoing for the Contract Term and/or any Renewal Period thereafter.
 - 3.2. After expiry of the Contract Term, the Agreement will renew annually for a further twelve month period, subject to the right of the Customer or Pindrop to terminate the agreement upon not less than three months written notice given to the other party.
- ### 4. CANCELLATION
- 4.1. Should the Customer vary and/or terminate the Services as agreed to in the Agreement for any reason whatsoever before the Service Activation date, in whole or in part, Pindrop will have the right to charge the Customer all costs which Pindrop has incurred, or will incur as a result of the cancellation or variation which amount shall be payable by the Customer on demand. These costs are the costs in relation to the provision or maintenance of services and include without limitation:
 - 4.1.1 the recovery of costs including costs relating to the de-installation of the Service/s, or any part thereof, that may result from changes to the Agreement before the Service is provided; and/or
 - 4.1.2 All costs charged to Pindrop by its Wholesale Suppliers or third-party suppliers; and/or
 - 4.1.3 An amount equal to the Installation Charge (NRC) together with the balance of the Contract Term of the Agreement in respect of the Monthly Charge (MRC).
 - 4.2. Should the Customer postpone or delay the services which have been agreed to in the Agreement, for any reason whatsoever, for more than 30 (Thirty) days after Signature Date, the Customer agrees that it will nevertheless be liable for all amounts as per the Agreement which includes but is not limited to the Monthly Recurring Charge and Non-Recurring Charge. The Customer agrees that this is fair and reasonable as Pindrop has entered into back to back agreements with its Wholesale Suppliers and/or third party suppliers who, regardless of the postponement or delay, continue to bill Pindrop for such services.
 - 4.3. Should this Agreement be terminated prior to the expiry of the Contract Term and/or Renewal Period for any reason whatsoever, then Pindrop shall *inter alia* have the right to claim all fees and charges payable for the balance of the Contract Term or Renewal Period, as the case may be, in respect of Services and/or hardware required to provide the Services as well as an amount of R3000.00 (Three Thousand Rand) or such other amount agreed to by the parties in writing from time to time.
 - 4.4. The Customer agrees that Services provided by Pindrop are reliant on other services provided by Pindrop's Wholesale Suppliers and/or third-party suppliers, and the term/period of these agreements will be identical to the Contract Term of this Agreement. It is for this reason that Pindrop's claim for payment of the balance of the Contract Term, or Renewal Period, as the case may be (as in clause 4.1, 4.2, 4.3 above), is a genuine pre-estimate of liquidated damages due to Pindrop.
 - 4.5. In the event that Pindrop's Wholesale Suppliers and/or third-party suppliers have applied a cancellation fee for their services, the cancellation fee levied by such supplier plus 10% will be passed to the Customer. The Customer agrees that this is fair and reasonable as Pindrop cannot be held liable to pay its suppliers a cancellation fee for early termination of the Agreement by the Customer.
 - 4.6. Where a Customer is found to fall under the Consumer Protection Act (referred to as a Consumer), the Consumer will have the right to terminate a concluded Agreement, for no particular reason or cause, at any time, provided the Consumer gives Pindrop at least Twenty (20) Business days written notice of its election to terminate the Agreement, which termination will be subject to payment of a reasonable cancellation fee, which will be determined and calculated by Pindrop at the time when the notice to terminate is given by the Consumer, using the guidelines set out under section 14 of the CPA.

- 4.7. Should the Consumer elect to terminate this Agreement earlier than anticipated, as envisaged and permitted under clause 4.6, i.e. before the expiration of the Contract Term, or Renewal Period, then on receipt of the termination notice, Pindrop will advise the Consumer within 15 (fifteen) Business days of receipt of the termination notice of the amounts which are still owed to it, namely all the arrears amounts owing to Pindrop in terms of the Agreement up to date of termination; and the cancellation fee, as determined by Pindrop as per the provisions of clause 4.6.
 - 4.8. The Consumer will pay Pindrop the amounts referred to under clause 4.6 within five (5) days of receipt of the final invoice setting out the arrear amounts and the cancellation fee. On receipt of these amounts, Pindrop will then accept and confirm the termination.
 - 4.9. Cancellations are to be emailed to accounts@pindrop.co.za, and must be on the Customers letterhead, and signed by a duly authorised person.
- ### 5. USE OF THE EQUIPMENT
- 5.1. If required Pindrop shall provide and install Customer premise equipment at the premises of the Customer ("equipment") required for the purpose of accessing the services which shall be charged for on a monthly basis more clearly defined in the COF.
 - 5.2. The cost of the equipment will be charged to the Customer as a monthly rental which will be collected over the duration of the contract.
 - 5.3. The Customer will remain liable for the monthly rental for the Contract Term stipulated on each COF, or for the Renewal Period, whichever is the greater, and shall continue thereafter on a monthly basis until cancellation of the Agreement in terms of clause 0.
 - 5.3.1. Equipment rentals will increase by 10% (ten percent) annually.
 - 5.4. The Customer shall provide the necessary space, electricity supply and environmental conditions required for the equipment.
 - 5.5. The Customer is obliged to obtain the required permission for the installation of the equipment on the premises. Upon signing this Agreement, the Customer agrees that it has obtained the necessary consent/permission to install the equipment. Should it be found that the Customer hasn't obtained consent/permission, Pindrop may terminate this Agreement and the Customer agrees will be liable for all costs and/or charges stated in clause 4.1 together with the costs for damages associated therewith.
 - 5.6. Ownership in and to the equipment shall remain vested in Pindrop or its Wholesale Supplier. Upon termination of this Agreement the Customer shall be obliged to return the equipment in the same working order as delivered.
 - 5.7. All risk and responsibility for the equipment shall pass to the Customer on delivery of the equipment.
 - 5.8. The Customer acknowledges that it is responsible for the insurance of the equipment for the duration of this Agreement.
 - 5.9. The Customer shall permit Pindrop to enter its premises to inspect the equipment or perform any other lawful function in the bona fide interest of Pindrop in respect of the equipment, or to carry out any necessary repairs, replacement of equipment or other maintenance work, in respect of the equipment.
 - 5.10. The Customer shall at all times keep the equipment in its possession and control at the Customer Premises and shall not be entitled to give up possession of the equipment, in whole or in part, to any third party or remove and / or re-install the equipment at a different location.
 - 5.11. The Customer shall in writing advise the landlord of the Customer premises of Pindrop's ownership of the equipment and make sure the relevant landlord waiver is signed and submitted to Pindrop.
 - 5.12. If the equipment is repossessed by the landlord for any reason and the landlord waiver has not been received by Pindrop, the Customer shall be liable for the cost of the equipment.
 - 5.13. Unless expressly authorised by Pindrop, the Customer and any 3rd party may not make any alteration or modification to the equipment, including the software incorporated in the equipment, nor may they move the equipment nor transfer it to another location.
 - 5.14. If the equipment is lost, stolen or damaged, the Customer shall remain liable for the replacement and reinstallation thereof.
 - 5.15. The Customer is liable for any and all calls made from the Pindrop SIP Accounts provided, regardless of the whether these calls are legitimate or have been made as a result of hackers gaining access to the Customer's SIP accounts.
 - 5.16. Pindrop is not responsible for the supply and commissioning of Open Source IP PBX systems, such as Asterisk platforms and other PBX systems. If the Customer has installed such a system and wishes to access the Pindrop service by means of such system, the Customer acknowledges that such systems are vulnerable to hacking and other fraudulent misuse, and therefore warrants that it has adequate security measures in place to protect its system from such attacks.
 - 5.17. Without limiting the generality of these Terms and Conditions, Pindrop shall not (other than in circumstances of its gross negligence or fraudulent intent) be liable for any damage or loss suffered by the Customer caused by and/or attributable to the unlawful or fraudulent accessing by a third party of the Customer's telecommunication lines, PBX, data networks, wireless links or other links or equipment. In such circumstances, the Customer shall remain liable for all charges incurred pursuant to such unlawful or fraudulent access and hereby indemnifies Pindrop against all loss, liability, damage or expense which Pindrop or the Customer may suffer as a result thereof.
- ### 6. USE OF CONNECTIVITY SERVICE
- 6.1. The Customer agrees to only use the Services approved by the Authority and to comply with all relevant legislation applicable to the use of the Services, including the Act, its Regulations and any notices or directives issued by the Authority from time to time.
 - 6.2. The Customer must ensure and hereby warrants that the Services will not be used for improper, immoral or unlawful purposes.

- 6.3. Certain connectivity services from Pindrop are subject to a Fair Usage Policy (FUP). Pindrop's Fair Usage Policy (FUP) is available on its website www.pindrop.co.za. The Customer agrees that it has read and understood the FUP, and will adhere to such policy, the Act, and any other Rules, Regulations, Policies, or Laws communicated to the Customer from time to time.
- 6.4. If required, Pindrop shall apply for and arrange installation of connectivity required for the purpose of accessing the Services.
- 6.5. The Customer shall provide the necessary space, electricity supply and environmental conditions required for the connectivity service.
- 6.6. For Wireless Connectivity line-of-sight's a line-of-sight fee of R1 500 (One Thousand Five Hundred Rand) is charged for successful line-of-sights that are then cancelled. This fee is waived on successful order. No fee is charged for unsuccessful line-of-sights. This fee may be increased by Pindrop at any time with notice to the Customer.
- 6.7. Connectivity supplied by Pindrop is supplied through its Wholesale Suppliers. Pindrop's liability for links supplied via these Wholesale Suppliers is limited, specifically pertaining to link downtime. The Customer agrees to the following:
- 6.7.1. Each Wholesale Supplier has its own Fair Usage Policy which Pindrop is bound to, and in turn Pindrop's Customers are bound to the FUP of the service provided.
- 6.7.2. Level 1 and Level 2 tickets will be handled by the Pindrop Service Desk and/or Pindrop Networks Department, with Level 3 tickets being handed to the Wholesale Suppliers. Pindrop is not liable for closure times of Level 3 tickets and/or when tickets are escalated to the Wholesale Suppliers.
- 6.7.3. Pindrop's Service Level Agreements ("SLA") will be back-to-back with the Wholesale Supplier's SLA with Pindrop.
- 6.7.4. All connectivity services are subject to the Wholesale Suppliers infrastructure availability at a Customer's location, and existing lead times with specific reference to fibre installations. Pindrop will not be held liable for its Wholesale Supplier's failure to adhere to indicated times for delivery or installation, nor will Pindrop be held liable for consequential damages due to delays on connectivity installations. Pindrop may provide the Customer with estimated times for delivery of installation however the Customer agrees that these times are not guaranteed and are merely an indication of times which have been provided to Pindrop by its Wholesale Suppliers.
- 6.7.5. Certain Wholesale Suppliers may request that additional Terms and Conditions, as well as timetables and other documentation, specific to their services, be required for the supply of these services through Pindrop. In order to comply with their specific requirements, these will be incorporated into this Agreement by means of an Addendum hereto, signed by both the Customer and Pindrop.
- 6.8. The Customer shall permit Pindrop to enter its premises to inspect the connectivity service or perform any other lawful function in the bona fide interest of Pindrop in respect of the service, or to carry out any necessary repairs, replacement of equipment, infrastructure or other maintenance work, in respect of the connectivity service.
- 6.9. All SLA's are dependent on the Wholesale Supplier solution implemented.
- 6.10. The access fee quoted is an estimate according to call traffic. Pindrop will carry out a pre-installation site audit which will provide the necessary information to more accurately cost the bandwidth requirement. This may affect the fees quoted on. Any amendments will be made accordingly.
- 6.11. Connectivity service charges will be increased by 10% annually or by the amount increased by Pindrop's Wholesale Suppliers, or by the Consumer Price Index ("CPI"), whichever is the greater.
- 7. UPGRADES & DOWNGRADES**
- 7.1. In the event of an upgrade the Customer agrees to pay a once off installation charge as determined by Pindrop's Wholesale Supplier for the service. The upgraded connectivity service will be charged to the Customer as set out in the COF.
- 7.2. In the event of a downgrade, the Customer agrees that a penalty might be charged as determined by the Wholesale Supplier for the service. The connectivity service will be charged to the Customer as set out in the Agreement.
- 8. CUSTOMER'S OBLIGATIONS**
- 8.1. The Customer shall not commit nor attempt to commit any act or omission which directly or indirectly:
- 8.1.1. Damages in any way Pindrop's technical infrastructure or any part thereof;
- 8.1.2. impairs or precludes Pindrop from being able to provide the Service/s in a reasonable and business-like manner;
- 8.1.3. constitutes an abuse or malicious misuse of the Service/s;
- 8.2. or is calculated to have the abovementioned effect. In such an event, should Pindrop incur expenses to remedy the situation, Pindrop reserves the right to charge the Customer the amount necessary to cover Pindrop's additional expenditure which includes all legal costs incurred on an attorney and own client scale. Notwithstanding the above, Pindrop reserves the right to take any other appropriate action it may deem necessary to remedy the situation.
- 8.3. The Customer is prohibited from modifying any equipment (including but not limited to router equipment) utilised by Customer to receive any of the Service/s, in any way whatsoever, including the changing of any of the settings of such equipment, or moving the equipment.
- 8.4. The Customer acknowledges that it does not own the number that is allocated to it. This number is owned by the Authority and has been allocated to Pindrop as per the provisions of the Act.
- 8.5. Pindrop may alter the number or any code which has been allocated to the Customer, as necessitated by the Authority or the network provider who owns the number range. Pindrop will provide the Customer with notice of the number change, after receiving instructions from the Authority or the network provider to change such number or code.
- 9. CONNECTION**
- 9.1. Pindrop shall use its best endeavours to provide the Customer with access to the Services and maintain such access in accordance with the provisions of this Agreement.
- 9.2. The Customer agrees that it is aware and acknowledges that Pindrop's Services are reliant on services provided by other service and network providers who provide separate but interrelated and connected services which allows the Pindrop Network to function. These service providers operate as independent service providers who are not controlled by and not necessarily contracted by Pindrop.
- 9.3. Pindrop will use its best endeavours to ensure that the Services are operational, however it does not warrant that the Services will be operational 24/7 as the Services are dependent on independent service providers whom Pindrop has no control over.
- 9.4. Pindrop shall not be responsible for any consequences as a result of any delay or interruption in the connection of the Services, including, inter alia, any consequential damages for loss of income or any expenses incurred by the Customer as further detailed in clause 23.
- 9.5. Where usage limits are reached for interconnects via Pindrop, Pindrop are not accountable for the containment of the interconnection partner's debt with Pindrop resulting from traffic forwarded to Pindrop by the partner. The interconnection partner remains solely responsible for the security of their network, the monitoring of traffic volumes and financial implications of the traffic volumes. It should be noted that Pindrop will endeavor to suspend ASAP when limits are reached; however, the partner will remain fully responsible for any traffic and its associated cost, beyond the 100% limit point.
- 10. FIRST RIGHT OF REFUSAL**
- 10.1. At the expiration of the Contract Term, the Customer agrees to give Pindrop the first right of refusal if another service provider can deliver a more cost-effective solution than the one supplied by Pindrop.
- 10.2. If Pindrop is able to provide a greater cost savings to the Customer compared to an alternative service provider, then the Customer agrees to remain bound to the terms set out in clause 7.
- 11. TEMPORARY SUSPENSION**
- 11.1. Pindrop shall be entitled to temporarily suspend the services-
- 11.1.1. during any technical failure, modification or maintenance of the Pindrop Network;
- 11.1.2. Should the Customer fail to make payment on time for the services as per their monthly invoice;
- 11.1.3. Should the Customer fail to comply with any of the terms and conditions of the Agreement;
- 11.1.4. Suspension or discontinuation of the Services by third party suppliers or the network providers due to problems on their infrastructure;
- 11.1.5. Non-compliance of the provisions detailed in clause 31.
- 11.1.6. In response to an instruction given to Pindrop from the Authority or in terms of the Act or some other law or body.
- 11.2. Notwithstanding any suspension of the provision of the Services the Customer shall remain liable to Pindrop for all amounts charged in accordance with the provisions of this Agreement and the Customer agrees that it may not:
- 11.2.1. withhold any amounts which are owed or may become due and owing to Pindrop;
- 11.2.2. deduct any monies from the charges to the Customer;
- 11.2.3. demand any refund or bring any action for damages or otherwise against Pindrop in respect of discontinued Services.
- 11.3. Should the Customer's services be suspended for the reasons set out in clauses 11.1.2, 11.1.3, and 11.1.5, a suspension fee of R1 000.00 will be charged per service to the Customer's account. This fee must be paid prior to any reconnection of the services.
- 12. PROOF OF CONCEPT**
- 12.1. The Customer acknowledges liability for all costs incurred within the Proof of Concept period, including all call, installation, hardware and bandwidth charges.
- 13. PAYMENT**
- 13.1. The Customer acknowledges that it has requested to receive the monthly invoice setting out all charges due and payable by the user to Pindrop by way of electronic mail.
- 13.2. In the event of the Customer not obtaining the monthly invoice from Pindrop for any reason in any one month, the onus is in the Customer to contact Pindrop and obtain such invoice and accordingly, in the event of the Customer not making payment due to not receiving the invoice, Pindrop shall be entitled to temporarily suspend the service until such invoice has been paid in full.
- 13.3. All Service/s provided are to be billed as of the Service Activation date in respect of each Service. In the event of a single Service consisting of a number of components, billing will commence for each respective component of that Service as and when each component of that Service is activated.
- 13.4. Billing for Connectivity services commence on the official date of handover of the service to Pindrop by the network provider, and will be billed as follows:
- 13.4.1. Pro-rata billing from handover date;
- 13.4.2. Current month's billing;
- 13.4.3. Advanced billing for next month
- 13.5. The Customer shall be liable to make payment to Pindrop in accordance with the charges set out in the Agreement in respect of the services, monthly in arrears.
- 13.6. Charges which appear on invoices must be paid by the Customer to Pindrop by no later than the last working day of the month during which the charges are incurred. All monies payable by the Customer to Pindrop must be paid by way of monthly debit order, or by electronic transfer, free of deduction or set off.
- 13.7. The Customer is in breach of this Agreement by cancelling the debit order without the prior written consent of Pindrop.
- 13.8. Where any amounts due to Pindrop are not paid in full by the due date, Pindrop will have the right, without prejudice to any of its rights, to immediately suspend the Services and list the Customer on the credit bureau.
- 13.9. In the event that Services are suspended, the Customer agrees to payment of a reconnection charge as determined by Pindrop for restoring the Services.
- 13.10. Any amount due by the Customer to Pindrop, not paid on the due date thereof, shall at the discretion of Pindrop, bear interest at a rate equal to 3% (three per centum) per annum above the prime rate, calculated from the date payment was due until date of actual payment thereof.
- 13.11. Pindrop shall be entitled to demand, at any time after the signing of the Agreement by the Customer, full payment in advance of all charges to be levied by Pindrop for the balance of the Contract Term, or the Renewal Period, excluding call charges which shall be invoiced monthly in arrears, should Pindrop have a reasonable suspicion of any fraudulent act having been or about to be committed by the Customer in respect of this Agreement and the Customer failing to rebut such suspicion.
- 13.12. The Customer will not have the right to defer, adjust, deduct, set off, or withhold any payment due to Pindrop in terms of or arising out of this Agreement.
- 13.13. Should the Customer's debit order be rejected by their bank, Pindrop will charge a Rejection Fee of R50 for the first rejection, and R100 for any subsequent rejections.
- 13.14. All prices quoted in this Agreement are exclusive of Value Added Tax ("VAT")
- 13.15. Pindrop may vary all or any rates referred to in the Agreement as a result of any changes made to the rates by any third party with whom Pindrop has contracted for the provision of the services, upon 7 (seven) days written notification to the Customer.
- 13.16. Call rates are quoted in line with projected billing. Pindrop reserves the right to revise the rates on a quarterly basis to bring them in line with the rate appropriate to actual average usage. Such revision may result in either an increased or decreased rate to the Customer.
- 13.17. In the event that the Customer defaults on the payment terms which have been granted by Pindrop, Pindrop reserves the right at its discretion to vary the payment terms and may review the payment method granted to the Customer.
- 14. MAINTENANCE**
- 14.1. All Pindrop related on-site maintenance call outs of Pindrop's equipment will be provided free of charge, provided that the Customer has a current maintenance contract and their account is up to date.
- 14.2. Maintenance of equipment not provided by Pindrop will be charged at the current published rate. Pindrop reserves the right to increase this amount from time to time at its sole discretion.
- 14.3. Pindrop will charge a monthly maintenance fee of 7% of call usage, or R 150 per site per month, whichever is the greater amount for on-going network maintenance.
- 14.4. These fees are subject to an annual increase.
- 14.5. The Customer will remain liable for the monthly maintenance fee for the duration of the Agreement regardless of the airtime contractual obligation stipulated in the Agreement.
- 15. GUARANTEE**
- The Customer shall upon written request by Pindrop be required to provide Pindrop with a guarantee in respect of any services provided to the Customer from time to time, in the amount equivalent to the aggregate of 2 (two) month's billing of services or such other amount as Pindrop may require from time to time.
- 16. WARRANTIES**
- 16.1. Pindrop makes no warranties and representations to the Customer save as may be specifically provided herein or as notified in writing by Pindrop to the Customer from time to time. The Customer acknowledges that Pindrop is not in any way bound by any oral statement, representation, guarantee, promise, undertaking, inducement or otherwise which may have been made at any time by any salesman, employee, representative or any person acting or purporting to act for or on behalf of Pindrop, whether negligently or otherwise unless such statements, representations, guarantees, promises, undertakings, warranties or inducements are supplied or made in writing by an employee duly authorised thereto by the Board of Directors.
- 16.2. Pindrop warrants and represents that:
- 16.2.1. it has full capacity and authority and all the necessary licenses, permits and consents to enter into and perform in terms of this Agreement and to provide the Services to the Customer;
- 16.2.2. it is the owner of or has the right to use under licenses any intellectual property employed by it during or as part of the Services;
- 16.2.3. the Services shall be provided in accordance with the provisions of this Agreement.
- 16.3. Save as expressly set out in this Agreement, Pindrop does not make any representations nor give any warranties or guarantees of any nature whatsoever in respect of the Service/s and all warranties which are implied or residual at common law are hereby expressly excluded.
- 16.4. Without limitation to the generality above, Pindrop expressly stipulates and the Customer acknowledges that Pindrop cannot warrant or guarantee that the Services and information transmitted to the Customer will at all times -
- 16.4.1. be free of errors or interruptions;
- 16.4.2. always be available;
- 16.4.3. not infringe on any third parties' rights;
- 16.4.4. be preserved or sustained in its entirety;
- 16.4.5. be delivered to any or all of the intended recipients;
- 16.4.6. be suitable for any purpose
- 16.4.7. be free of inaccuracies or defects or bugs or viruses of any kind; or
- 16.4.8. be secured against intrusion by unauthorised third parties.
- 16.5. Pindrop assumes no liability, responsibility or obligations in regard to any of the exclusions set forth in this clause.
- 16.6. In light of the above disclosures, the Customer acknowledges that it will not be allowed to:
- 16.6.1. withhold any amounts due and owing to Pindrop; or
- 16.6.2. deduct any monies as a result of any of the aforementioned events.
- 17. CREDIT LIMIT**
- 17.1. Pindrop will set a credit limit in accordance with the Customer's existing telecommunications spend. This service will automatically email the Customer notifications when 80% of credit limit has been used.
- 17.2. The Customer will be required to respond to this communication in writing informing Pindrop of the preferred credit limit. Should the client not respond to this email, Pindrop shall re-evaluate the call usage and set a credit limit according to the historical usage.
- 17.3. Where Pindrop notices that there is a significant increase in usage charges since the Customer's previous month's invoice, Pindrop may, at its election, invoice the Customer outside the normal billing cycle and/or demand immediate payment of amounts due by the Customer, and Pindrop will be entitled to suspend the Services until the Customer has paid the invoice in full.
- 18. BREACH**
- 18.1. In the event that-
- 18.1.1. the Customer fails to make payment to Pindrop of any amount owing by the Customer to Pindrop in terms of this Agreement and fails to make such payment within 7 (seven) days of receipt of written notice to that effect;
- 18.1.2. The Customer in any other manner breaches any of the provisions of this Agreement and fails to remedy such breach within 7 (seven) days' after written notice requiring it to do so;
- 18.1.3. The Customer fails to satisfy any judgment granted against it within 30 (thirty) days of such judgment having been granted against it and/or is provisionally or finally liquidated or sequestrated (save for the bona fide purpose of reconstruction

- or amalgamation)and/or is placed under judicial management or business rescue, or if either party enters into a compromise with any of its creditors;
- 18.1.4. The Customer makes an untrue statement or representation in connection with this Agreement or its financial affairs or particulars relevant thereto;
- 18.1.5. Any license to operate or use the Pindrop Network is revoked, terminated or modified for any reason either in whole or in part;
- 18.1.6. For any reason, any network operator ceases to make the Pindrop Network available to Pindrop or any third party with whom Pindrop has contracted in respect of the connection to the Pindrop Network;
- Then Pindrop shall, without prejudice to any other rights which it may have in law, be entitled to immediately terminate this Agreement and the Customer agrees to:
- 18.1.7. immediately pay of all amounts which would have been payable in terms of this Agreement;
- 18.1.8. return the equipment to Pindrop;
- 18.1.9. pay all charges outstanding at the time of disconnection, including the balance of the monthly fees as per clause 0.
- 18.2. Should the Customer breach any of the terms of this Agreement, Pindrop will give the Customer 7 (Seven) Business Days' notice to rectify the breach. Should the Customer fail to rectify the breach within the 7 (Seven) Business Days' notice period, then Pindrop will have the right to terminate this Agreement, without prejudice to Pindrop's rights to claim all and any damages which Pindrop may have incurred in consequence of such breach.
- 18.3. The Customer agrees that Pindrop may register the details of the manner in which payments have been conducted by the Customer with any registered credit bureau.
- 18.4. The Customer shall be liable for all costs, including legal costs on an attorney and own client scale, tracing costs, collection commission, and other disbursements in connection therewith incurred by Pindrop in respect of the enforcement of any obligations of the Customer in terms of this Agreement, irrespective of whether legal action has been instituted against the Customer.
- 19. INTELLECTUAL PROPERTY**
- 19.1. Notwithstanding anything set out in clause 20 below, all intellectual property (including, without limitation, copyright, trademarks, designs and patents) relating to or used in connection with the Service/s provided under this Agreement shall belong to Pindrop. The Customer undertakes that it shall at no time, have any right, title or interest in the intellectual property and agrees that it shall not (or permit any third party to) reverse engineer, decompile, modify or tamper with the equipment or software owned by Pindrop, or any of its third party suppliers
- 19.2. The Customer warrants that it shall not use the Service/s to produce, host or present any content in contravention of any person's intellectual property rights, and in particular warrants that it shall recognize, acknowledge and use any content in accordance with any third party's intellectual property rights.
- 19.3. The Customer furthermore warrants that it has received all necessary permissions to make use of any intellectual property relating to 3rd parties.
- 20. PROTECTION OF PROPRIETARY INFORMATION**
- 20.1. Each party will keep in confidence and protect its Proprietary Information, as defined in the Protection of Personal Information Act 4 of 2013 ("POPI Act"), from disclosure to third parties and restrict its use to that which is provided for in this Agreement. Either party acknowledges that unauthorised disclosure or use of Proprietary Information may cause substantial economic loss. All printed materials, containing Proprietary Information will be marked with "Proprietary" or "Confidential", or in a manner which gives notice of its proprietary nature. Proprietary Information shall not be copied, in whole or in part, except when essential for correcting, generating or modifying Proprietary Information for either party's authorized use. Each such copy, including its storage media, will be marked with all notices, which appear on the original.
- 20.1.1. Each party shall ensure that its employees comply with its obligations under this clause 20;
- 20.1.2. This clause 20 shall survive termination or cancellation of this Agreement;
- 20.1.3. This Agreement does not transfer to either party title to any intellectual property contained in any Proprietary Information of the other party.
- 21. CESSION AND ASSIGNMENT**
- 21.1. Pindrop shall be entitled to cede, assign and transfer some or all of its rights in terms of this Agreement
- 21.2. The Customer requires Pindrop's approval in writing before it is able to cede, assign, encumber, delegate, or transfer some or all of its rights in terms of this Agreement.
- 22. NO SOLICITATION**
- Neither Party shall during the currency of the Agreement or for a period of 12 (twelve) months following the termination thereof directly or indirectly solicit or offer employment to any employees of the other Party who were involved in the implementation or execution of this Agreement, and shall not employ or contract in any manner with any such employees of the other Party without the written consent of the other Party.
- 23. LIMITATION OF LIABILITY**
- 23.1. Whether or not advised of their possibility, Pindrop will not be liable to the Customer or any other person whomsoever, under any circumstances whatsoever, or incur any liability for any loss, consequential loss, or damages to the Customer or any other person, which arises or occurs as a result of the use of, or arising out of the provision of the connections, the Services, the installation, maintenance, or the removal of the Services, and whether such claim, action or damages is direct or indirect, consequential, or contingent and in particular Pindrop shall not be liable for any:
- 23.1.1. Cost of procurement of substitute goods, technology, services or rights;
- 23.1.2. Loss of life, injury, or medical expenses;
- 23.1.3. Loss of profits, income, or revenue;
- 23.1.4. Loss of business, contracts, or goodwill;
- 23.1.5. Financial loss or financial support;
- 23.1.6. Loss of earnings;
- 23.1.7. Any incidental or consequential damages, losses or expenses; and/or
- 23.1.8. Wasted client management or staff time.

- 23.2. Pindrop shall not be liable for any loss or damage suffered by the Customer as a result of interruption in the provision of the services due to any technical problems experienced by the network or equipment through load shedding or by any other means, nor shall the Customer be entitled to a reduction in the fees payable by the Customer to Pindrop.
- 24. INDEMNITY**
- 24.1. The Customer hereby indemnifies Pindrop and holds Pindrop harmless against any loss, including consequential losses, damage, costs, claims or expenses of any nature, as a result of the installation, provision, or failure of provision, or failure to provide services to the Customer. For the purpose of this clause any reference to Pindrop shall include its employees, agents, dealers, resellers, and contractors.
- 25. FORCE MAJEURE**
- 25.1. If force majeure causes delays in or failure or partial failure of performance by Pindrop of all or any of its obligations hereunder, this Agreement, or as the case may be, the affected portion thereof, shall be suspended for the period during which the force majeure prevails, but if the force majeure affects any material part of the Agreement only for a maximum period of 60 (sixty) days, then Pindrop shall be entitled on 7 (seven) days written notice to cancel this Agreement. Written notice of the force majeure specifying the nature and date of commencement thereof shall be dispatched by Pindrop to the Customer as soon as reasonably possible after the commencement thereof. Written notice of the cessation of the force majeure shall be given by Pindrop within 7 (seven) days of such cessation. No party shall subsequently be obliged to comply with the obligations suspended during such period. Pindrop shall be entitled, provided that Pindrop has given notice to the Customer to that effect with the written notice of the force majeure as provided above, to extend the period of this Agreement by a period equal to the time that this performance is so prevented. For the purpose hereof, *force majeure* includes acts or omissions of any government, government agency, provincial or local authority or similar authority, any laws or regulations having the force of law, civil strife, riots, insurrection, sabotage, acts of war or public enemy, illegal strikes, interruption of transport, lockouts, inability on the part of either party as a result of the force majeure of the nature contemplated in this clause to obtain any goods from a supplier or contemplated supplier thereof, combination of workmen, rationing of supplies, flood, storm, fire (or without limitation *eiusdem generis*) any other circumstances beyond the reasonable control of Pindrop and comprehended in terms of force majeure.
- 26. WHOLE AGREEMENT, NO AMENDMENT**
- 26.1. This Agreement constitutes the whole agreement between the parties relating to the subject matter hereof.
- 26.2. No amendment or consensual cancellation of this Agreement or any provision or term thereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this Agreement or of any Agreement, bill of exchange or other document issued pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by the parties duly authorised representatives, or by an electronic document electronically signed by the parties duly authorised representatives. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.
- 27. ACCESS TO INFORMATION ACT**
- 27.1. The Customer hereby acknowledges and agrees that Pindrop and or its Cessionaries, as the Credit Grantor/s may;
- 27.1.1. Perform a credit search on the Customer's record with one or more of the registered credit bureaus and obtain a bank report when assessing the Customer's application for credit;
- 27.1.2. Monitor the Customer's payment behaviour by researching the Customer's record at one or more of the credit bureaus;
- 27.1.3. Use new information and data obtained from credit bureaus in respect of the Customer's future credit applications;
- 27.1.4. Record the existence of the Customer's account with any credit bureau;
- 27.1.5. Record and transmit details of how the Customer has performed and how their account is conducted by the Customer in meeting its obligations on the account;
- 27.1.6. The Customer acknowledges and agrees that any information regarding its credit worthiness, defaults in payment to the Supplier, and details of how its account with the Supplier is conducted, may be disclosed to any other creditor or potential creditor of the Customer or to one or more credit bureau/s.
- 28. LOADSHEDDING**
- 28.1. Due to the extent and frequency of Load Shedding, Customers are likely to suffer degradation of certain services as power outages often last longer than the created back-up power.
- 28.2. All of Pindrop's network equipment is secured in fully redundant Teraco sites, and should be unaffected by power issues. That being said, however, should there be a national failure of diesel supply or other related shortages, this may impact even those sites.
- 28.3. Pindrop cannot guarantee its connectivity providers will have similar backup facilities at their POP's and high sites. These sites may be adversely affected if they sustain prolonged and frequent power outages.
- 28.4. Pindrop limits its liability as covered in this Agreement, specifically clause 23.
- 29. DOMICILIUM CITANDI ET EXECUTANDI**
- 29.1. The parties choose as their *domicilia citandi et executandi* for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses-
- 29.1.1. Customer: as set out in the Master Services Agreement, Subscriber Agreement or the Customer Order Form, as the case may be;
- 29.1.2. Pindrop: Building 9, Woodmead Estate, 1 Woodmead Drive, Woodmead Fax: (086) 506 0049, info@Pindrop.co.za
- 29.2. Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by telefax or by

E-mail where a party has notified the other party of such a telefax number or an E-mail address.

- 29.3. Either party may change their domicile by written notice delivered by hand or sent by prepaid registered post to the other party.

30. GENERAL

- 30.1. Pindrop may change the terms and conditions of this Agreement as a result of changes in taxes, laws, regulations, the terms and conditions of the Authority's Licence issued to Pindrop or any circumstances or events similar to the foregoing.
- 30.2. Any increases as a result of fluctuating exchange rates shall be for the account of the Customer.
- 30.3. Notwithstanding anything to the contrary contained herein, the Agreement will endure for the benefit of and be binding on the successors in title and permitted assigns of the Parties. Accordingly, the rights and obligations of any Party arising out of or pursuant to the Agreement or its termination or cancellation will devolve upon and bind its legal representatives, successors in title and permitted assigns.
- 30.4. Termination of the Agreement for any cause will not release the Customer from any liability which, at the time of termination had already accrued to Pindrop and/or the Customer, or which thereafter may accrue in respect of any act or omission prior to such termination.
- 30.5. Except for the warranties contained in this Agreement, none of the Parties will be bound by any other representation, warranty, promise or the like pertaining to the subject matter hereof which is not recorded herein.
- 30.6. No addition to, variation, modification or consensual cancellation of this Agreement will be of any force or effect unless in writing and signed by or on behalf of the Parties by their duly authorised representatives.
- 30.7. No indulgence which any Party ("Grantor") may grant to the other Party ("Grantee") will constitute a waiver of any of the rights of the Grantor which will not thereby be precluded from exercising any rights against the Grantee which might have arisen in the past or might arise in the future.
- 30.8. The Agreement may be executed in one or more counterparts and in separate counterparts, each of which when executed will be deemed to be an original but when taken together will constitute one and the same Agreement.