

# Brand Ambassador Agreement Terms and Conditions



## 1 DEFINITIONS AND INTERPRETATION

- 1.1 In the Agreement, unless a contrary intention clearly appears, the following terms and expressions, when capitalised herein, shall have the meanings assigned to them hereunder and similar expressions shall have corresponding meanings, namely:
- 1.1.1 **"Agreement"** means the Brand Ambassador Agreement, these Terms and Conditions, the Product Notice(s) and, if applicable, the Business Rules;
  - 1.1.2 **"Brand Ambassador Agreement"** means the document identifying the Brand Ambassador, which incorporates these Terms and Conditions;
  - 1.1.3 **"Business Day"** means any day that is not a Saturday, Sunday or official public holiday in the Republic of South Africa;
  - 1.1.4 **"Business Rules"** means the business rules and policies and procedures determined, from time to time, by Vox to be applicable to the Agent's appointment in terms of this Agreement, as notified by Vox to the Agent from time to time;
  - 1.1.5 **"Commencement Date"** means the date of signature of the Brand Ambassador Agreement by the Party signing last;
  - 1.1.6 **"Contract Approval"** means when:
    - 1.1.6.1 the RICA details of a Potential Customer have been uploaded onto Vox's system; and
    - 1.1.6.2 the Potential Customer is flagged on Vox's system via a commission report;
  - 1.1.7 **"Customer"** means any third party, excluding existing Vox Customers, in the Territory to whom one or more Products is sold as contemplated in this Agreement through the instrumentality of the Agent, and **"Potential Customer"** shall have the meaning ascribed to it in clause 1.1.9;
  - 1.1.8 **"Excluded Person"** means any natural or juristic person that is:
    - 1.1.8.1 appointed as contractor to Frogfoot Networks (Pty) Ltd;
    - 1.1.8.2 a board member or trustee of a governing body of a multi-dwelling development;
    - 1.1.8.3 a director or shareholder of a person referred to in 1.1.8.1 above
    - 1.1.8.4 a holding company or a subsidiary of a person referred to in 1.1.8.1 above;
  - 1.1.9 **"First Notice"** means the notice issued by Vox in terms of clause 5.1;
  - 1.1.10 **"Parties"** means Vox and the Agent, and **"Party"** shall mean either one of them as the context requires;
  - 1.1.11 **"Potential Customer"** means a person referred by the Agent to Vox for the purpose of purchasing Products from Vox;
  - 1.1.12 **"Product Notices"** means the First Notice together with any Subsequent Notice(s);
  - 1.1.13 **"Products"** means those specific telecommunications products and services sold by Vox and identified in the First Notice and Subsequent Notice(s);
  - 1.1.14 **"Sale(s)"** means the sales of Product(s) concluded by Vox with Customers;
  - 1.1.15 **"Subsequent Notice(s)"** means any notice(s) issued by Vox in terms of clause 5.3;
  - 1.1.16 **"Terms and Conditions"** means this document entitled Brand Ambassador Agreement: Terms and Conditions, together with its annexures and appendices; and
  - 1.1.17 **"Territory"** means the Republic of South Africa.
- 1.2 In this Agreement, unless expressly stated otherwise or a contrary intention clearly appears from the context:
- 1.2.1 The headings of the clauses in the Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of the Agreement nor any clause hereof;
  - 1.2.2 words importing:
    - 1.2.2.1 the singular, include the plural and *vice versa*; and
    - 1.2.2.2 natural persons, include created entities (corporate or unincorporate) and the state, and *vice versa*;
  - 1.2.3 A reference to one gender shall include the other genders;
  - 1.2.4 Any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;

- 1.2.5 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement;
- 1.2.6 When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day that is not a Business Day, in which case the last day shall be the next succeeding Business Day;
- 1.2.7 Expressions defined in this Agreement shall bear the same meanings in schedules or Annexures to this Agreement which do not themselves contain their own conflicting definitions;
- 1.2.8 Reference to “day(s)”, “month(s)” or “year(s)” shall be construed as Gregorian calendar day(s), month(s) or year(s);
- 1.2.9 Where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause;
- 1.2.10 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as 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;
- 1.2.11 Any reference in this Agreement to a Party shall, if such Party is liquidated or sequestrated, be applicable also to and binding upon that Party’s liquidator or trustee, as the case may be; and
- 1.2.12 The rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply.

## 2 AGENT’S WARRANTY

The Agent warrants and guarantees to Vox that at the Commencement Date, he/she/it is not an Excluded Person, and should he/she/it become an Excluded Person during the term of this Agreement, he/she/it will immediately terminate this Agreement with immediate effect.

## 3 APPOINTMENT OF AGENT

- 3.1 Subject to clause 2 above, Vox appoints the Agent as a non-exclusive agent in the Territory to identify opportunities for Vox to sell the Products and the Agent accepts such appointment on the terms and conditions set out hereunder.
- 3.2 As from the Commencement Date, this Agreement shall supersede any existing agency or brand ambassador agreement concluded between the Parties.

## 4 DURATION

The appointment of the Agent shall commence on the Commencement Date and shall continue indefinitely unless and until it is terminated either:

- 4.1 in terms of either of clauses 2 or 11; or
- 4.2 by either Party without cause by giving the other 30 (thirty) days’ written notice to that effect.

## 5 PRODUCTS

- 5.1 On or before the Commencement Date, Vox shall issue and deliver a written notice to the Agent, setting out the Products that shall form the subject-matter of this Agreement with effect from the Commencement Date, together with the commission structure associated with each such Product (the “**First Notice**”).
- 5.2 It is recorded that, while the Agent’s online shop may advertise many of Vox’s products and services, the Agent shall only be entitled to earn commission on those Products listed in the First Notice and in respect of which the Agent has received any Subsequent Notice(s) in terms of clause 5.3.
- 5.3 Vox may unilaterally add more Products (“**New Products**”) to or remove Products previously included under this Agreement (“**Excluded Products**”) by giving written notice to the Agent, which notice shall include, where relevant:
  - 5.3.1 a description of the New Product(s);
  - 5.3.2 the date from which such New Product(s) will included in this Agreement;
  - 5.3.3 the commission payable to the Agent in respect of Sales of such New Product(s); and/or
  - 5.3.4 a description of the Excluded Product(s); and
  - 5.3.5 the date from which such Excluded products will be excluded from this Agreement (the “**Removal Date**”).
- 5.4 For the avoidance of doubt:
  - 5.4.1 should Customers referred by the Agent have purchased New Products prior to such New Products being added as contemplated in clause 5.3, no commission shall be payable by Vox to the Agent in respect of those prior sales; and

- 5.4.2 in respect of Excluded Products being removed from the Agreement as contemplated in clause 5.3, commission shall be payable on sales of such Excluded Products that are recorded up to, but excluding, the Removal Date.

## **6 THE AGENT'S DUTIES AND OBLIGATIONS**

The Agent shall:

### Procurement of Orders for the Products

- 6.1 actively identify Potential Customers for the Products in the Territory, although no minimum Sales are required;
- 6.2 provide Product information to Potential Customers in the Territory;
- 6.3 only use marketing material, being any kind of branded element or material used to promote the Products, that is supplied or approved in writing, in advance by Vox, and then strictly in accordance with Vox's instructions;
- 6.4 refrain from using any trademark or logo of Vox for any purpose, including, without limitation, to design its own marketing material, without the prior, written consent and approval of Vox;
- 6.5 ensure that in relation to the identification and referral of opportunities he/she/it shall act in accordance with all or any conditions which may be stipulated by any competent authority and in accordance with all laws, statutes, regulations and other legal enactments applicable to such sales from time to time;
- 6.6 without limiting the generality of clause 6.5 above, comply with the provisions of Annexures A and B hereto.

### Generally

- 6.7 observe all directions and instructions given to it by Vox in relation to its appointment in terms of this Agreement;
- 6.8 act in all respects with due care and diligence and with good faith towards Vox and promote and safeguard the interests of Vox in regard to the product as if they were its own interests;
- 6.9 immediately disclose to Vox all such facts and circumstances as the Agent may suspect or might come to its notice which might affect the interests of Vox in regard to the Products or the Customers and Potential Customers;
- 6.10 not incur, save as expressly provided in this Agreement, any liability on behalf of Vox nor in any way pledge or purport to pledge the credit of Vox nor accept any order nor make any contract binding upon Vox;
- 6.11 save to give effect to this Agreement, not hold itself out as the legal agent, representative or employee of Vox;
- 6.12 not make any promises, representations, warranties or guarantees in regard to the Products except as expressly authorised in writing by Vox;
- 6.13 advise Vox from time to time of direct and indirect competition in respect of the sale of the Products in the Territory;

### Impartiality – no conflict of interest

- 6.14 ensure that the Agent shall always remain objective and unbiased, and shall not refer business from persons where the Agent:
    - 6.14.1 is an employee or contractor of the Potential Customer;
    - 6.14.2 is, or is employed by, a supplier, distributor or entity that has a business relationship with the Potential Customer;
    - 6.14.3 is an officer, trustee or director of a body corporate, owners' association or governing body of a Potential Customer; or
    - 6.14.4 is in a position of authority or otherwise has a conflict of interest in respect of the Potential Customer;
  - 6.15 during the tenure of this Agreement, not engage, either directly or indirectly, in any activity which might result in a conflict of interest, including:
    - 6.15.1 ownership of a material interest in any supplier, contractor, distributor, subcontractor, Customer, Vox customer or other entity with which Vox does business; or
    - 6.15.2 accepting any material payment, service, loan, gift, trip, entertainment, or other favour from a supplier, contractor, distributor, subcontractor, Customer, Vox customer or other entity with which Vox does business;
- and the Agent will promptly inform Vox as to each offer received to engage in any such activity;
- 6.16 disclose to Vox any other facts of which the Agent becomes aware which might in the Agent's good faith judgment reasonably be expected to involve or give rise to a conflict of interest.

## **7 VOX'S OBLIGATIONS**

Vox shall:

- 7.1 upon the request of the Agent, engage with the Potential Customer lead provided and supply the Potential Customer with all relevant information;
- 7.2 at its cost provide any sales literature and technical/marketing information in regard to the Product(s) as Vox considers is reasonably necessary to assist the Agent to procure orders for the Product(s); and

7.3 keep the Agent advised in writing of all developments made from time to time regarding the Product(s).

## 8 COMMISSION

8.1 Subject to the Agent identifying opportunities and referring Potential Customers for the Sales of the Products strictly in accordance with Vox's Business Rules and the terms of this Agreement, the Agent will earn the commission specified in the Product Notices.

8.2 Should the Agent succeed in referring Customers who, during a specified period of time (the "Calculation Period") subscribe for a certain minimum number of Products determined in the Product Notices (the "Threshold Value"), the commission payable per Product may change as detailed in such Product Notices, which change will apply from the first product sold at the Threshold Value for the relevant Calculation Period.

8.3 Notwithstanding the rate of commission and any Threshold Value and/or Calculation Period determined in the Product Notices, Vox shall be entitled from time to time to amend any or all of the following items specified in any or all Product Notices by giving notice via email to the Agent, which amendments shall take effect from the date specified in such notice:

8.3.1 the Calculation Period;

8.3.2 the Threshold Value;

8.3.3 the rate of pre-Threshold Value commission; and/or

8.3.4 the rate of Threshold Value and post-Threshold commission.

8.4 Should the Agent disagree with any amendment made by Vox in terms of clause 8.3, the sole remedy of the Agent will be to terminate this Agreement by giving notice in terms of clause 4.2.

8.5 Commission shall become due on Contract Approval and:

8.5.1 Vox shall furnish the Agent with a commission schedule reflecting the commission payable by Vox to the Agent, which schedule shall be final and binding on the Parties;

8.5.2 all commission due in respect of Sales in the current month, up until the last Business Day (the "Invoice Month"), will be included for payment on the self-invoicing platform referred to in clause 8.7; and

8.5.3 such commission will be paid on the last Business Day of the following Invoice Month.

8.6 In any 1 (one) invoice Month, should any Product(s) for whatever reason not be installed and the Sale is cancelled, then the Agent's account will be debited with the commission amount paid in respect of such Sale and set off against any other commission payable to the Agent in the same Invoice Month. Any amount in debit upon termination of this Agreement, shall, at the sole discretion of Vox, either be written off by Vox or paid by the Agent to Vox immediately on demand.

8.7 The Agent must complete the compulsory Vox self-invoicing consent appended to the Brand Ambassador Agreement. Vox shall render an invoice to itself on behalf of the Agent for the commissions owing to it in terms of this Agreement, together with the applicable VAT thereon, which commissions shall be paid by Vox as stipulated in clause 8.5.

## 9 THE CUSTOMERS

All Sales of the Products affected pursuant to this Agreement shall, for the avoidance of doubt, be regarded as sales directly between Vox and the Customer concerned and the Agent shall not be entitled to receive for its own account any amounts payable by the Customer arising from such Sales.

## 10 ASSIGNMENT

The Agent shall not be entitled to cede its rights or assign its obligations hereunder to any third party. Vox shall be entitled to cede its rights or assign its obligations hereunder to any third party on written notice to the Agent.

## 11 BREACH AND TERMINATION

11.1 If any Party breaches any provision or term of this Agreement and fails to remedy such breach within seven (7) days of receipt of written notice requiring it to do so (or in the time and manner specified in any other clause that contains its own remedies for non-compliance with that specific clause), then the aggrieved Party shall be entitled without notice, in addition to any other remedy available to it at law or under this Agreement, including obtaining an interdict, to cancel this Agreement or to claim specific performance of any obligation whether or not the due date for performance has arrived, in either event without prejudice to the aggrieved Party's right to claim damages.

11.2 Vox shall be entitled to terminate this Agreement immediately and without notice if:

11.2.1 the Agent suffers a judgment which is not satisfied in full or appealed against (provided that such appeal is timeously and successfully prosecuted) or in respect of which an application to set it aside or rescind it is not made within 14 (fourteen) days after it becomes known to the Agent;

11.2.2 the Agent commits any act of insolvency as contemplated in the Insolvency Act, 1936;

11.2.3 the Agent is placed in provisional or final liquidation, under judicial management or subject to business rescue proceedings.

- 11.3 Given that the Agent is appointed as a brand ambassador for Vox, Vox shall be entitled to terminate this Agreement immediately should it, in good faith, believe that damage or harm is occurring or may occur to its reputation or good will by reason of its association with the Agent (the "Reputational Risk"). In such event Vox shall give written notice of termination to the Agent citing, in broad terms, the nature of the Reputational Risk, which may include but not be limited to, the Agent:
- 11.3.1 publishing or posting on social media or any other public channel, any material which, in the sole opinion of Vox, could potentially damage the reputation of Vox, its products, services and/or brand;
  - 11.3.2 becoming involved in any political, racial or similar controversy which, in the sole opinion of Vox, could potentially damage the reputation of Vox, its products, services and/or brand;
  - 11.3.3 having allegedly committed or being found guilty of a criminal act; or
  - 11.3.4 having committed any action that, in the sole opinion of Vox, places the company at risk from having a complaint lodged against it by a regulatory body such as the Independent Communications Authority of South Africa (ICASA), or could pose a threat to its right to operate under any of its commercial licences.

## 12 RESTRAINT OF TRADE

- 12.1 It is agreed that in the course of his duties the Agent:
- 12.1.1 has acquired and/or will acquire considerable know-how in and will learn of Vox's techniques relating to Vox's business;
  - 12.1.2 will have access to names of customers and suppliers with whom Vox does business whether embodied in written form or otherwise;
  - 12.1.3 will have the opportunity of forging personal links with customers and suppliers of Vox; and
  - 12.1.4 generally, will have the opportunity of learning and acquiring the trade secrets, business connections and other confidential information pertaining to Vox's business, all of which are collectively referred to in this Agreement as "**the Trade Secrets**".
- 12.2 It is acknowledged that the only effective and reasonable manner in which Vox's rights in respect of the Trade Secrets can be protected is the confidentiality obligations imposed upon the Agent in terms of this clause 12.
- 12.3 The Agent irrevocably and unconditionally undertakes in favour of Vox that in order to protect the proprietary interests of Vox in the Trade Secrets, it will not during the existence of this Agreement or at any time thereafter either use or directly or indirectly divulge or disclose to others (except as required by the terms of this Agreement) any of the Trade Secrets, and shall not, during the existence of this Agreement or at any time thereafter disclose to any third party any of the Trade Secrets.
- 12.4 The Agent shall not for the duration of this Agreement and for a period of 1 (one) year from its termination, whether as proprietor, partner, director, shareholder, member, agent, consultant, contractor, financier, agent, representative, assistant, trustee or beneficiary of a trust or otherwise and whether for reward or not, directly or indirectly influence or otherwise try to persuade any customer of Vox to purchase products from a competitor of Vox or to cancel a subscription agreement.
- 12.5 The Agent acknowledges and agrees that the confidentiality and restraint obligations referred to above are reasonably required for the protection of Vox and are generally fair and reasonable.

## 13 DOMICILIUM CITANDI ET EXECUTANDI

- 13.1 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 addresses on the cover page of this Agreement.
- 13.2 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 e-mail.
- 13.3 Either Party may by notice to the other Party change the physical address chosen as its *domicilium citandi et executandi* to another physical address in the Republic of South Africa where postal delivery occurs or its postal address or its e-mail address, provided that the change shall become effective on the 5<sup>th</sup> Business Day from the deemed receipt of the notice by the other Party.
- 13.4 Any notice to a Party:
- 13.4.1 delivered by hand to a responsible person during ordinary business hours on a Business Day at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or
  - 13.4.2 sent to its chosen email address, shall be deemed to have been received on the first Business Day following the date of transmission (unless the contrary is proved).
- 13.5 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

## **14 WHOLE AGREEMENT, NO AMENDMENT**

- 14.1 This Agreement constitutes the whole agreement between the Parties relating to the subject matter hereof and supersedes all previous agreements between the Parties relating to the subject matter hereof.
- 14.2 No amendment or consensual cancellation of this Agreement or any provision or term hereof shall valid or binding unless made in writing and signed by both Parties.
- 14.3 No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement, shall operate as an estoppel against any Party in respect of its rights under this Agreement, nor shall it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with this Agreement.
- 14.4 To the extent permissible by law no Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

## ANNEXURE A TO BRAND AMBASSADOR AGREEMENT

1. Agent and its employees, agents, consultants, contractors, and subcontractors shall:
  - 1.1. acquaint itself with and comply with all applicable law relating to:
    - 1.1.1. the provision of electronic communications services, including, but not limited to, the Electronic Communications Act, all regulations applicable to ECNS or ECS licensees or license exempt persons, the Regulation of Interception of Communications and Related Matters Act, the Films and Publications Act and the Electronic Communications and Transactions Act;
    - 1.1.2. consumer protection, including the Consumer Protection Act and the National Credit Act;
    - 1.1.3. bribery and corruption, including but not limited to, the SA Prevention and Combating of Corrupt Practices Act
    - 1.1.4. Protection of Personal Information Act;collectively referred to as "**Applicable Law**".
  - 1.2. not do or omit to do anything likely to cause Vox to be in breach of any such Applicable Law;
  - 1.3. allow Vox, whether itself or through an agent, to conduct an audit of records and information held by the Agent or its sub-contractors or any other relevant person in relation to the performance by the Agent of its obligations under this Agreement;
  - 1.4. if requested and at Vox's reasonable cost, provide Vox sufficient reasonable assistance to enable Vox to perform any actions required by any government or agency in any jurisdiction for the purpose of compliance with any Applicable Law or in connection with any investigation relating to the Applicable Law;
  - 1.5. maintain adequate internal accounting controls and reasonably detailed books, records, and accounts in respect of the supply of products or performance of services to Vox;
  - 1.6. in respect of this Agreement, only be paid by Vox by wire transfer or other traceable instrument to a bank account in the Agent's name;
  - 1.7. promptly notify Vox of any allegation of fraud, bribery or corrupt or unlawful practices made against Agent in court, arbitration or administrative proceedings, or any investigation is commenced in respect of such allegations; at any time during the term of this Agreement;
  - 1.8. ensure that any natural or legal person external to agent who is performing services in connection with this Agreement does so only on the basis of a written contract which secures from such persons, terms equivalent to those imposed on agent in this clause. agent shall be responsible for the observance and performance by such persons of these terms and shall be directly liable to Vox for any breach.
2. If Vox (acting in good faith) determines that there has been a breach by agent of this clause, such a breach shall be deemed a material breach of this Agreement, and Vox shall have the right to immediately terminate this Agreement without prejudice to Vox's rights under this Agreement or at law.

## ANNEXURE B TO BRAND AMBASSADOR AGREEMENT PROCESSING OF PERSONAL INFORMATION

### 1 Interpretation

- 1.1 In addition to already defined terms, the terms set out below shall have the following meaning ascribed to it –
- 1.1.1 **"Annexure"** means this addendum relating to the Protection of Personal Information;
  - 1.1.2 **"Data Subjects"** means Vox's affiliates, customers, Staff and any other Person/s to whom Personal Information relates;
  - 1.1.3 **"Disclosing Party"** means the Party disclosing Personal Information relating to Data Subjects, irrespective as to whether this Party is the agent or Vox;
  - 1.1.4 **"Electronic Communication"** means any text, voice, sound or image message sent over an electronic communications network which is stored in the network or in the recipient's terminal equipment until it is collected by the recipient;
  - 1.1.5 **"Information Officer"** means Vox's Information Officer from time to time, as referred to in the Nedbank Group Access to Information Manual, compiled in terms of Section 51 of the Promotion of Access to Information Act 2 of 2002;
  - 1.1.6 **"Operator"** means a person who processes Personal Information for the Responsible Party in terms of a contract or mandate, without coming under the direct authority of the Responsible Party;
  - 1.1.7 **"Person"** means an identifiable natural or juristic person or any other person who is not a natural or juristic person;
  - 1.1.8 **"Personal Information"** means information relating to any Person, including but not limited to information relating to such Person's:
    - 1.1.8.1 race, sex, gender, sexual orientation, pregnancy, marital status, nationality, ethnic or social origin, colour, age, physical or mental health, well-being, disability, religion, conscience, belief, cultural affiliation, language and birth;
    - 1.1.8.2 education, medical, financial, criminal or employment history;
    - 1.1.8.3 any identifying number, account or client number, password, pin code, customer or Data Subject code or number, numeric, alpha, or alpha-numeric design or configuration of any nature, symbol, e-mail address, domain name or IP address, physical address, cellular phone number, telephone number or other particular assignment;
    - 1.1.8.4 blood type, fingerprint or any other biometric information;
    - 1.1.8.5 personal opinions, views or preferences;
    - 1.1.8.6 correspondence that is implicitly or expressly of a personal, private or confidential nature (or further correspondence that would reveal the contents of the original correspondence);
    - 1.1.8.7 views or opinions of another individual about the Person;
    - 1.1.8.8 the name of the Data Subject, if it appears with other Personal Information relating to such Person, or if the disclosure of the name itself would reveal information about the Person;
    - 1.1.8.9 all information linked to any juristic person, including details relating to its corporate structure, composition and business operations irrespective of whether such information is in the public domain or not.
  - 1.1.9 **"Processing"** means any operation or activity or any set of operations, whether or not by automatic means, concerning Personal Information, including—
    - 1.1.9.1 the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation, system testing or use;
    - 1.1.9.2 dissemination by means of transmission, distribution or making available in any other form by electronic communications or other means; or
    - 1.1.9.3 merging, linking, blocking, degradation, erasure or destruction;
    - 1.1.9.4 and "Process" has a corresponding meaning.
  - 1.1.10 **"Regulator"** means the appropriate Regulator as defined in applicable Personal Information protection legislation;
  - 1.1.11 **"Relationship"** means the ongoing relationship between the Parties relating to, *inter alia*, the provision of repairs and maintenance services on Printers;
  - 1.1.12 **"Responsible Party"** means the person who, alone or in conjunction with others, determines the purpose of and means for processing Personal Information, and who is also Vox;
  - 1.1.13 **Receiving Party** being the Party, other than the Disclosing Party, that receives disclosure of any of the Confidential Information or Personal Information relating to Data Subjects, as determined by the context;



- 1.1.14 **"Staff"** means permanent, fixed term and temporary employees as well as subcontractors, agents, consultants, independent contractors and visiting students to the agent and Vox who process Personal Information on behalf of the agent or Vox, as applicable.

## 2 Effective Date and Term

- 2.1 The Agent agrees that the terms and conditions of this Annexure shall apply as of the Effective Date.
- 2.2 This Annexure shall survive termination of the Agreement in perpetuity.

## 3 Obligations of the Agent with respect to Personal Information

The Agent shall:

- 3.1 only Process Personal Information in accordance with applicable laws, in terms of this Annexure and in accordance with any instructions, requirements or specific directions of Vox;
- 3.2 treat the Personal Information as strictly confidential;
- 3.3 not disclose or otherwise make available the Personal Information to any third party (including sub-contractors and Staff) other than authorised Staff who require access to such Personal Information strictly in order for the agent to carry out its obligations pursuant to the Relationship, unless:
- 3.3.1 Vox has provided its prior written permission to do so to the agent, and
- 3.3.2 the agent has submitted a copy of a written contract to Vox, to the satisfaction of Vox, that the agent has entered into with a third party for the protection of Personal Information of the Data Subjects;
- 3.4 ensure that all Staff and any other persons that have access to the Personal Information are bound by appropriate and legally binding confidentiality and non-use obligations in relation to the Personal Information on substantially the same terms and conditions as set forth in the Non-Disclosure Annexure;
- 3.5 take appropriate, reasonable technical and organisational measures to ensure that the integrity of the Personal Information in its possession or under its control is secure and that such Personal Information is protected against unauthorised or unlawful processing, accidental loss, destruction or damage, alteration, disclosure or access by:
- 3.5.1 having regard to:
- 3.5.1.1 any requirement set forth in law, stipulated in industry rules or in codes of conduct or by a professional body; and
- 3.5.1.2 generally accepted information security practices and procedures which apply to (i) the agent's business; and (ii) to Vox;
- 3.5.2 identifying all reasonably foreseeable internal and external risks and, at least once in every 12 (twelve) month period and, subject to the provisions of clauses 4.4 and 4.5, take all necessary steps at its own cost to -
- 3.5.2.1 identify all reasonably foreseeable internal and external risks to Personal Information in its possession or under its control and provide Vox with a detailed written report using generally accepted auditing methodologies, within 30 (thirty) days of having completed its investigations, regardless as to whether the frequency of such investigations is 12 (twelve) monthly or more frequently;
- 3.5.2.2 with Vox's prior written approval, implement and maintain appropriate safeguards against the risks identified by the agent;
- 3.5.2.3 regularly verify that the safeguards which the agent has in place have been effectively implemented and provide Vox with a written report within 30 (thirty) days of having completed each such verification exercise; and
- 3.5.2.4 ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards, with all upgrades, which may have an impact on any Personal Information within the possession of the agent as a result of the Relationship, to be reported to Vox in writing;
- 3.5.3 complying with the auditing requirements set forth in this Annexure; and
- 3.5.4 agreeing to reasonable amendments to this Annexure from time to time, to the extent that data protection legislation or the law generally requires such amendments for the benefit of Data Subjects.

## 4 Notification of a Personal Information Security Breach

The Agent shall:

- 4.1 notify the Information Officer of Vox in writing at [legalnotices@voxtelcom.co.za](mailto:legalnotices@voxtelcom.co.za), immediately, if possible, but no later than 5 (five) days of the agent becoming aware of or suspecting any unauthorised or unlawful use, disclosure or processing of Personal Information and comply with the following:
- 4.1.1 at its own cost, take all necessary steps to mitigate the extent of the loss or compromise of Personal Information and to restore the integrity of the affected information systems as quickly as possible;

- 4.1.2 furnish Vox with details of the Data Subjects affected by the compromise and the nature and extent of the compromise, and if known, include details of the identity of the unauthorised person who may have accessed or acquired the Personal Information;
  - 4.1.3 provide Vox through its Information Officer with a report on its progress in resolving the compromise at reasonable intervals but at least once per business day following the initial notification to Vox, until such time as the compromise is resolved to Vox's satisfaction;
  - 4.1.4 In consultation with Vox and where required by law notify the South African Police Service; and/or the National Intelligence Agency; and
  - 4.1.5 only upon request by Vox, or otherwise if required by law, notify the Regulator and/or the affected Data Subjects. Any such notification shall be in a form prescribed by Vox or the Regulator, as the case may be, if applicable, and contain such information as is specified by Vox and or the Regulator. Notwithstanding the foregoing, a notification to a Data Subject shall always include sufficient information to allow the Data Subject to take protective measures against the potential consequences of the compromise;
- 4.2 assist Vox to comply with any requests for access to Personal Information received by Vox from Data Subjects and, at the request of Vox, the agent shall promptly provide Vox with a copy of any Personal Information held by the agent in relation to a specified Data Subject. the agent agrees that notwithstanding the confidentiality provisions of this Annexure, Vox may disclose to a Data Subject that the agent has been or is involved in Processing such Data Subject's Personal Information;
  - 4.3 provide reasonable evidence of the agent's compliance with its obligations under this clause 4 to Vox on reasonable notice and request;
  - 4.4 under instruction and authority of Vox, and at no extra cost to Vox, provide it with all assistance required for Vox to discharge its duties as Responsible Party relating to a requirement by the Regulator (a) for Vox as Responsible Party to submit an independent auditor's report or other information relating to interference by the Responsible Party with the Personal Information of a Data Subject, (b) that Vox is processing Personal Information in accordance with legislation, or (c) that Vox is otherwise compliant with any other relevant legislation;
  - 4.5 at the request and option of Vox, and to its satisfaction, promptly return or destroy all Personal Information in the possession or control of the agent, including in accordance with any specific retention, destruction and purging requirements as may be prescribed by Vox; and
  - 4.6 not Process the Personal Information otherwise than in accordance with clause 5.

## **5 Permitted Processing of Personal Information**

The Agent shall only Process the Personal Information of Data Subjects:

- 5.1 for a specific, lawful purpose strictly in accordance with Vox's express written instructions or as is necessary to give effect to this Agreement and shall not carry out any related or further processing activities for any other reason whatsoever (including any related processing functions or processing which would otherwise be a normal extension of the Processing which the agent is entitled to undertake in accordance with Vox's instructions) without the express prior written consent of Vox through its Information Officer, save that the agent may carry out reasonable further Processing strictly in order to comply with an obligation which is imposed on it by law and in such circumstances, the provisions of clause 6 shall apply;
- 5.2 in a manner that does not infringe the privacy of the Data Subject, in accordance with relevant legislation relating to the Processing of Personal Information; and
- 5.3 subject to the provisions of this clause 5 and the provisions of the Promotion of Access to Information Act 2 of 2002, by engaging and communicating solely with Vox, and is not permitted to disclose to any Data Subject that it is Processing, has Processed or intends to Process the Personal Information of such Data Subject unless it has obtained the prior written consent of Vox through its Information Officer in this regard.

## **6 Disclosure or Processing required by law, regulation or court order**

In the event that the agent is required to disclose or Process any Personal Information required by law, regulation or court order, or if the Processing of such Personal Information is required to enable a public body to properly perform a public law duty to carry out actions for the conclusion or performance of a contract to which the Data Subject is a party, is necessary for pursuing the legitimate interests of Vox, a third party to whom the information is supplied, or a Data Subject, or complies with an obligation imposed by law on Vox, the Agent:

- 6.1 will advise Vox thereof prior to disclosure, if possible. If prior disclosure is not possible, the agent shall advise Vox immediately after such disclosure;
- 6.2 will take such steps to limit the extent of the disclosure or Processing insofar as it reasonably practically and legally can;
- 6.3 will afford Vox a reasonable opportunity, if possible and permitted, to intervene in the proceedings; and
- 6.4 will comply with Vox's requests as to the manner and terms of any such disclosure or Processing, if possible and permitted.

## 7 Separation of Personal Information

Unless otherwise specifically recorded in this Annexure or any other agreement concluded between the Parties, any Processing of Personal Information shall be conducted separately from Personal Information, data and property relating to the agent or any third party, and may not be combined or merged with information of another party unless such combination or merging takes place for credit vetting purposes.

## 8 Transfer of Personal Information

- 8.1 The Agent shall ensure that no Personal Information is transferred outside of the Republic of South Africa unless:
- 8.1.1 Vox provides its prior written consent to the transfer;
  - 8.1.2 the recipient is subject to a law, code of conduct or contract which provides comparable protection for the Personal Information as the protections contained in this Annexure, including similar provisions relating to the further transfer of the Personal Information;
  - 8.1.3 the transfer is necessary for the performance of a contract between the Data Subject and Vox, or a contract between Vox and the agent which is in the interest of the Data Subject; or
  - 8.1.4 the transfer is for the benefit of the Data Subject and it is not reasonably practicable to obtain the consent of the Data Subject, and if it were reasonably practicable to obtain such consent, the Data Subject would be likely to give it.
- 8.2 Even in circumstances where Vox has consented to any such cross-border transfer, the Agent agrees to comply strictly with Vox's express instructions for such cross-border transfers.

## 9 Audit Rights of Vox

- 9.1 Vox or its agent shall have the right to audit the agent at any time, with reasonable notice, in order to determine whether the agent complies with the terms and conditions of this Annexure regarding the protection of Personal Information and the security exercised by the agent relating thereto. Such audit rights shall include but not be limited to the right of access to systems, procedures and software, and inspection of the physical security of the agent's premises. The agent shall offer reasonable assistance and co-operation to Vox and/or its auditors or inspectors in the carrying out of such auditing exercise.
- 9.2 To the extent that the agent engages an independent auditor in relation to the provisions of applicable data protection legislation to carry out an audit of its operations, the agent agrees to provide Vox with copies of the audit reports of all such audit exercises.
- 9.3 Should any audit exercise reveal any non-compliance with the terms of this Annexure, or any other Vox policies, the agent shall be required to take all necessary steps to rectify such non-compliance immediately.

## 10 Confidentiality

- 10.1 **Acknowledgement of importance of Confidential information:** The Receiving Party acknowledges the great importance of the Confidential Information to the Disclosing Party and, where applicable, third party proprietors of such information, and recognises that the Disclosing Party and/or third party proprietors may suffer irreparable harm or loss in the event of such information being disclosed or used otherwise than in accordance with this Annexure.
- 10.2 **Receiving Party's undertaking:** The Receiving Party agrees and undertakes:
- 10.2.1 **No publication of Confidential Information:** Except as permitted by this Annexure, not to disclose or publish any Confidential Information in any manner for any reason or purpose whatsoever without the prior written consent of the Disclosing Party and provided that in the event of the Confidential Information being proprietary to a third party, it shall also be incumbent on the Receiving Party to obtain the consent of such third party;
  - 10.2.2 **No exploitation of Confidential Information:** Except as permitted by this Annexure, not to utilise, employ, exploit or in any other manner whatsoever use the Confidential Information for any purpose whatsoever without the prior written consent of the Disclosing Party and provided that in the event of the Confidential Information being proprietary to a third party, it shall also be incumbent on the Receiving Party to obtain the consent of such third party;
  - 10.2.3 **Restricting dissemination of Confidential Information:** To restrict the dissemination of the Confidential Information to only those of its Staff who are actively involved in activities for which use of Confidential Information is authorised and then only on a "need to know" basis and the Receiving Party shall initiate, maintain and monitor internal security procedures reasonably acceptable to the Disclosing Party to prevent unauthorised disclosure by its Staff; and
  - 10.2.4 **Obligations with regard to Staff:** To take all practical steps, both before and after disclosure, to impress upon its Staff who are given access to Confidential Information the secret and confidential nature thereof.
- 10.3 **Further acknowledgements:** All Confidential Information disclosed by the Disclosing Party to the Receiving Party or which otherwise comes to the knowledge of the Receiving Party, is acknowledged by the Receiving Party to be proprietary to the Receiving Party.
- 10.4 **Standard of care:** The Receiving Party shall protect the Confidential Information in the manner, and with the endeavour, of a reasonable person protecting his/her own Confidential Information. In no event shall the Receiving Party use less than reasonable efforts to protect the confidentiality of the Confidential Information.

- 10.5 **Return of Confidential Information:** The Disclosing Party may at any time on written request to the Receiving Party, require that the Receiving Party immediately return to the Disclosing Party any Confidential Information and may, in addition, require that the Receiving Party furnish a written statement to the effect that upon such return, it has not retained in its possession or under its control, whether directly or indirectly, any such Confidential Information or material. Alternatively, the Receiving Party shall, as and when required by the Disclosing Party on written request to the Receiving Party, destroy all such Confidential Information and material and furnish the Disclosing Party with a written statement to the effect that the same has been destroyed. The Receiving Party shall comply with any request in terms of this clause 10.5 within 7 (seven) days of receipt of such request.
- 10.6 **Retention of Confidential Information:** the agent may retain Confidential Information to the extent required by, and for the duration of, any Services performed for Vox in terms of agreements between the Parties, provided that Vox has not waived performance of such Services and subject to the right of Vox to recover the Confidential Information at any time in terms of clause 10.5.
- 10.7 **Procure undertakings from Staff:** the agent shall procure that the agent's Staff who have access to Confidential Information, give a written undertaking in favour of Vox in regard to the Confidential Information on substantially the same terms and conditions contained within this Annexure in a form prescribed by Vox. Vox shall be entitled to deny a the agent Staff member access to its premises or prevent such member conducting any work in relation to the Services or under Vox's direct control, should Vox not be in receipt of a signed undertaking from such member on such terms and conditions as determined by Vox. Vox's failure to obtain receipt of the undertaking referred to in this clause 10.7 shall in no way detract from the agent's obligations in terms of this Annexure.
- 10.8 **Exceptions to this clause 10:** Clause 10 shall not be applicable where the Receiving Party discloses Confidential Information to attorneys or auditors, provided that such disclosure is reasonably required by the Receiving Party for the purposes of conducting its business activities.
- 10.9 **Disclosure required by law, regulation or court order:** In the event that the Receiving Party is required to disclose the Confidential Information pursuant to clause 6, the Receiving Party:
- 10.9.1 will advise the Disclosing Party thereof prior to disclosure, if possible;
  - 10.9.2 will take such steps to limit the extent of the disclosure to the extent that it lawfully and reasonably practically can;
  - 10.9.3 will afford the Disclosing Party a reasonable opportunity, if possible, to intervene in the proceedings; and
  - 10.9.4 will comply with the Disclosing Party's requests as to the manner and terms of any such disclosure.

## 11 Personal Information Indemnity

The agent hereby indemnifies and holds harmless Vox and its respective staff, successors, cessionaries delegateses and assigns, from any and all losses of a patrimonial and non-patrimonial nature, costs, expenses and damage, including consequential losses and damage as well penalties and fines arising from the agent's non-compliance with the provision of any relevant legislation applicable to Personal Information/data protection, as well as damage to Vox's reputation and costs of compliance as directed by the Regulator, including but not limited to publication of the data breach and call centre costs for support to affected Data Subjects.

## 12 Subcontractors

The agent acknowledges that:

- 12.1 Other than as expressly permitted in this Agreement, it may not sub-contract its obligations under this Annexure without the prior written consent of Vox.
- 12.2 Vox has the right to audit any sub-contractor to ensure that it is capable of complying with the obligations imposed with respect to the Protection of Personal Information.
- 12.3 the provisions of this Annexure shall *mutatis mutandis* apply to all subcontractors authorised by Vox who process Personal Information of Data Subjects.

## 13 Retention and Destruction Requirements

- 13.1 The agent shall be required to comply with best practice destruction and retention policies of. In particular, the agent shall store all Personal Information which it Processes for the minimum time periods as are stipulated by Vox in the aforementioned policies and shall be required to destroy all Personal Information relating to the Data Subjects in compliance with the destruction time periods stipulated in the aforementioned policies and in accordance with Vox's specified destruction procedures and methodology.
- 13.2 the agent shall be required to timeously obtain written instructions from Vox for the return and/or destruction of all such Personal Information in its possession.

## 14 Transmission of Data

The agent shall ensure that all Personal Information communicated, including, without limitation, any digital communication or any Personal Information stored in digital form shall be secured against being accessed or read by unauthorised parties, using appropriate security safeguards, having due regard to generally accepted information security practices and procedures which may apply to it generally or be required in terms of specific industry or professional rules and regulations.