



Co. Reg. 2017/122859/07,
Address: 147 West Road North, Morningside Sandton, Johannesburg Gauteng 2196
Tel. +27 11 326 5900, Fax: +27 86 661 5222, Email: info@trillcom.co.za, Web: www.trillcom.co.za

TrillCom Propriety Limited General Terms and Conditions

1. INTERPRETATION AND DEFINITIONS

1.1. Word importing:

- 1.1.1. any one gender includes the other gender;
- 1.1.2. the singular includes the plural and vice versa; and
- 1.1.3. the singular includes created entities (corporate and unincorporated) and the state and vice versa

1.2. Unless the context otherwise indicates, the following expressions shall have the meanings given to them hereunder and cognate expressions shall have corresponding meanings:

- 1.2.1. “**Affiliate**” means, the holding company, subsidiary, associated and/or related company of TrillCom, including their successors, permitted assigns, employees and agents as the case may be;
- 1.2.2. “**Agreement**” means this master services agreement and includes a reference to all schedules and annexures hereto;
- 1.2.3. “**Business Day**” means any day other than Saturday, Sunday or a public holiday officially recognized as such in the Republic of South Africa;
- 1.2.4. “**Purchase Order**” or “**PO**” means the form through which the Customer makes application for Services, setting out the details of the Services requested such as quantities, fees and charges payable thereto.;
- 1.2.5. “**Due Date**” means the date specified in the relevant invoice, or if no such date is specified, the date of payment which is thirty (30) Days from Invoice.
- 1.2.6. “**Effective Date**” means the date of signature of this Agreement by the Party signing last in time;
- 1.2.7. “**Intellectual Property Rights**” means and includes:
 - 1.2.7.1. rights in and in relation to any patent, design, trade mark, trade or business name (including all goodwill associated with any trade mark, or any trade or business name), copyright, database, domain name, circuit topography design, and/or utility model, and including the benefit of all registrations or applications to register and the right to apply for registration of any of the foregoing items and all rights in the nature of any of the foregoing items, each for their full term (including any extensions or renewals thereof) and wherever in the world enforceable;



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- 1.2.7.2. all other intellectual property rights and forms of protection of a similar nature or having equivalent or similar effect and which may subsist anywhere in the world;
- 1.2.8. “**Licences**” the various software licenses as issued by the equipment vendor;
- 1.2.9. “**MRC**” or “**Monthly Recurring Charge**” means the monthly charges for the Services as set out in applicable PO;
- 1.2.10. “**TrillCom**” means TrillCom (Pty) Limited, a company duly registered under the company laws of the Republic of South Africa with registration number 2017/122859/07 and having its principal place of business at 147 West Road North, Morningside, Sandton Johannesburg;
- 1.2.11. “**Network**” means the communication network and network components utilised in the provisioning of the Solution;
- 1.2.12. “**NRC**” or “**Non-Recurring Charge**” means installation fee for the Services as set out in applicable PO;
- 1.2.13. “**Party**” means either of the signatories to this Agreement and “**Parties**” means both of them collectively and shall be deemed to mean and include their respective successors and permitted assigns;
- 1.2.14. “**Service Description**” means a schedule containing the detailed description of the nature and type of each different Service requested by the Customer, which is provided by TrillCom, listed in Schedule 1, in annexure D of this Agreement;
- 1.2.15. “**Services**” means the product and solution and related services described in the Service Description;
- 1.2.16. “**Service Commencement Date**” means the date on the Service Handover Form;
- 1.2.17. “**Service Handover Form**” means the form provided by TrillCom to the Customer after TrillCom has completed installation and testing of the Service;
- 1.2.18. “**Service Levels**” means the levels of service required in relation to the provision by TrillCom of the Services as fully set out in the Service Descriptions listed in Schedule 1 annexed to this Agreement
- 1.2.19. “**Service Level Agreement**” means the comprehensive service level agreement in respect of the provision of the Services and all or any other service level agreement in respect of additional services as contained in the Service Descriptions; and
- 1.2.20. “**Terminating Services**” means those Services that are terminated in accordance with clause 14.1.3 below;
- 1.2.21. “**Termination Date**” means the date upon which this Agreement terminates for any reason whatsoever.



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- 1.3. headings are for convenience only and do not affect the interpretation of this Agreement.
- 1.4. in the event of ambiguity or conflict between any of the constituent parts of the Agreement, the order of precedence in the interpretation of the Agreement shall be:
 - 1.4.1. The Master Services Agreement; and
 - 1.4.2. The Schedules.
- 1.5. 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.
- 1.6. any reference to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time.
- 1.7. if any provision in a definition is a substantive provision imposing rights or obligations on any Party effect shall be given to it as if it were a substantive provision in the body of the Agreement.
- 1.8. when any number of days is prescribed in this Agreement, same shall be reckoned exclusive of the first day and inclusive of the last day unless the last day does not fall on a Business Day, in which case the last day shall be the next succeeding Business Day.
- 1.9. reference to day/s, month/s or year/s shall be construed as Gregorian calendar day/s, month/s or year/s.
- 1.10. a law shall be construed as any law (including common law) or statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any legislative measure of any government, local government, statutory or regulatory body or court.

2. INTRODUCTION

- 2.1. The Customer hereby appoints TrillCom to provide the Services, subject to the terms and conditions contained in this Agreement, which appointment TrillCom hereby accepts.
- 2.2. TrillCom shall be entitled to appoint any of its Affiliates to provide the Services on written notice to the Customer to such effect, provided that TrillCom shall 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. COMMENCEMENT DATE AND DURATION

- 3.1. This Agreement shall commence on the Effective Date and shall thereafter remain in force indefinitely, subject to the remaining provisions of this Agreement.



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- 3.2. The commencement of the Services to be provided shall be in terms of each individual PO that is completed by the Customer and will be effective from the Service Commencement Date for the duration specified in the PO.

4. PROVISION OF SERVICES

- 4.1. TrillCom hereby agrees that it will as from the Effective Date, and thereafter continue throughout the duration of this Agreement to, supply the Services as listed in Schedule 1 (Annexure D), in accordance with the terms and conditions of this Agreement.
- 4.2. For the duration of this Agreement, the Customer shall obtain the Services as it requires from TrillCom in terms of this Agreement and the PO's concluded from time to time.
- 4.3. TrillCom shall not be committed to supply any Services to the Customer until a Service PO in respect of the required Services has been signed by the Customer
- 4.4. In providing the Services to the Customer pursuant to each of the PO, TrillCom reserves the right to utilise any technology which it has available and which it considers at its discretion as most suitable and reasonable to render Services.
- 4.5. The Services shall be used by the Customer in accordance with the terms and conditions of this Agreement.
- 4.6. The Customer shall endeavour to ensure that the Services are not used in a manner which constitutes an infringement of any rights of TrillCom or any third party, or for any illegal, fraudulent or unauthorised activities.
- 4.7. The Customer shall further endeavour to ensure that it and its customers or contractors do not by any act or omission, damage, interfere with or impede the operation of the Service or Network provided by TrillCom.
- 4.8. Where the Customer is aware that there is any violation or contravention contemplated in this clause 4, it will co-operate and provide TrillCom with the necessary information to assist in identifying, preventing or remedying or rectifying such violation or contravention.
- 4.9. Where the Customer has a service requirement that is not covered by an existing Purchase Order, the additional or alternate requirement will be addressed on a case by case basis, provided that this requirement is brought to the attention of TrillCom promptly.
- 4.10. Each PO shall constitute an agreement between the Parties subject to and regulated by this Agreement.

5. FEES AND CHARGES

- 5.1. The Customer shall pay to TrillCom the fees and/or charges agreed between the Parties in terms of each PO on or before the Due Date without any set off or other



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deduction, including, without derogating from the generality of the foregoing, all and any taxes as may be imposed on the Customer.

- 5.2. Charges or fees for the provision of the Service shall be paid to TrillCom in accordance with the PO.
- 5.3. Subject to clauses 5.4 and **Error! Reference source not found.** below, the monthly fees and charges set out in each applicable PO shall be fixed for duration of the Contract Term thereof.
- 5.4. TrillCom shall be entitled to adjust the monthly fees and charges as a result of any regulatory, economical, or government-imposed factors that impact on such fees and charges.

6. INVOICING

- 6.1. TrillCom will invoice the Customer for each Service provided under this Agreement from the Service Commencement Date.
- 6.2. TrillCom shall, in relation to all fees due under this Agreement, provide the Customer with a detailed monthly statement of account (together with all related tax invoices) setting the amount due and payable by the Customer.
- 6.3. TrillCom may include on any invoice any amount not previously billed for calendar months prior to the current month.
- 6.4. All tax invoices shall be payable by the Customer within 30 (thirty) days of the date of receipt by cheque or by electronic funds transfer into a banking account specified by TrillCom in writing.
- 6.5. If any amount is overdue, the Customer shall pay interest on the overdue amount at prime rate plus 5% (five percent), such interest to run from the date upon which payment of the relevant amount became due until payment thereof has been made in full (together with interest).
- 6.6. Invoices shall be provided electronically to the Customer by no later than 3 (three) days after the invoice date.

7. THE CUSTOMER'S OBLIGATIONS

The Customer shall procure that, in making use of the Services, it shall:

- 7.1. comply with this Agreement and such other terms and conditions as TrillCom may notify the Customer for the purpose of continuous and secure provision of the Services or to comply with any applicable law;
- 7.2. procure that the Customer's customers do not infringe the rights of any person, including but not limited to, intellectual property rights and rights of confidentiality;
- 7.3. not do anything which is unauthorised or illegal under any applicable law; and



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- 7.4. adhere to applicable laws and obtain such permissions and approvals necessary for the Customer to use the Services thereunder.

8. Retained Responsibilities

- 8.1. In connection with the Services provided by TrillCom under this Agreement and any PO, the Customer undertakes to provide to TrillCom or retain responsibility for, as applicable, the functions and requirements listed in the relevant Service Description.
- 8.2. TrillCom's non-performance of any particular obligation under this Agreement shall be excused if and to the extent such TrillCom non-performance results from the Customer failing to perform its retained responsibilities.

9. TRILLCOM'S OBLIGATIONS

Trillcom shall not do, or permit to be done, anything in relation to the Services which may reasonably be expected to damage or materially interfere in any way whatsoever with the proper normal operation of the Customer's Information Communications Technology Network.

10. SAFETY AND SECURITY

- 10.1. Each Party agrees to comply with safety and security procedures notified to them by the other Party and with the requirements of the Occupational Health and Safety Act.
- 10.2. All access to the Customer sites by TrillCom and its employees, agents and contractors shall be in terms of the Customer's safety and security procedures, as amended from time to time.
- 10.3. The Parties shall each at their own cost and expense take whatever steps as are necessary to procure and discharge their respective obligation and rights in terms of this Agreement and applicable laws to ensure the health and safety of the other Parties' employees, agents, directors, sub-contractors and members of the public.
- 10.4. The Customer shall be entitled to request TrillCom to remove any employee, agent or contractor from its team if it is of the reasonable opinion that such person is a security or safety risk. Any such request shall be in writing and shall stipulate the reasons why the Customer believes the requested removal is necessary.

11. FORCE MAJEURE

- 11.1. A Party shall not be liable for a failure to perform any of its obligations in terms of this Agreement in so far as it is able to prove that:
- 11.1.1. such failure was due to an impediment beyond its reasonable control;



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- 11.1.2. it could not reasonably have been expected to have taken such impediment and its effects upon such Party's ability to perform into account at the time of conclusion of this Agreement; and
- 11.1.3. it could not reasonable have avoided or overcome the impediment or at least its effects and, for purposes of this clause 11, the following events (which enumeration is not exhaustive) shall be deemed to be impediments beyond the control of each of the Parties, namely:
 - 11.1.3.1. war, whether declared or not, civil war, civil violence, riots and revolutions, acts of piracy, acts of sabotage;
 - 11.1.3.2. natural disasters such as violent storms, cyclones, earthquakes, floods and destruction by lightning;
 - 11.1.3.3. acts of authority, whether lawful or unlawful, apart from acts for which the Party seeking relief has assumed risk; and
 - 11.1.3.4. acts and omissions of any telecommunications provider or any utility.
- 11.2. Relief from liability for non-performance by reason of the provisions of this clause shall commence on the date on which the Party seeking relief gives notice of the impediment relied upon and shall terminate upon the date on which such impediment ceases to exist, provided that if the impediment continues for a period of more than 30 (thirty) consecutive days, the other Party shall be entitled to terminate this Agreement by written notice to the Party seeking relief.

12. LIMITATION OF LIABILITY

- 12.1. TrillCom shall not be liable to the Customer, its employees, agents or sub-contractors or any third party for any loss or damage of whatsoever nature and howsoever arising (including consequential, indirect, punitive, special or incidental loss or damage which shall include but shall not be limited to loss of property or loss of profit, business, goodwill, revenue or anticipated savings) or any costs, claims or demands of whatsoever nature and howsoever arising, whether out of breach of express or implied warranty, breach of contract, misrepresentation, negligence, strict liability, in delict or otherwise, whether asserted against TrillCom or against the Customer by any third party and whether based on or in relation to this Agreement, any Services performed or undertaken under or in connection with this Agreement, the rendering or non-rendering of the Services, their withdrawal or suspension, or otherwise.
- 12.2. Without limiting the provisions of clause 12.1 in any way, TrillCom shall not be liable to the Customer for:
 - 12.2.1. the failure of TrillCom for any reason whatsoever to supply and/or deliver and/or provide installation of any terminal equipment either on the required date or at all; and/or



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- 12.2.2. the interruption, suspension or termination of the Services for whatever reason; and/or
- 12.2.3. loss or damage arising as a result of lost data, damaged or corrupted data or a delay in transmissions.
- 12.3. TrillCom's liability to the Customer for death or injury resulting from TrillCom's negligence or the negligence of its employees, agents or sub-contractors shall be limited to the extent of the proceeds paid in terms of any insurance policy held by TrillCom. TrillCom shall investigate each claim on its own merits prior to the insurance company which holds the insurance policy paying the amount claimed. Payment shall be based on the merits of the claim and shall not be determined by the amount covered by the insurance policy. TrillCom shall not be liable to the Customer for any failure or refusal on the part of the relevant insurance company to pay a claim.
- 12.4. Without in any way limiting or derogating from the above provisions, the Parties agree that the total amount of TrillCom's liability arising out of the performance of its obligations under and in terms of this Agreement and whether in contract, delict, breach of statutory duty or otherwise, shall, during the term of this Agreement, be limited to the fees paid by the Customer in respect of a 12 (twelve) month period.
- 12.5. Nothing contained in this clause 12 shall limit the Customer's liability in respect of charges incurred for Services.

13. SUSPENSION OF SERVICES

- 13.1. TrillCom may lawfully suspend, withdraw all or part of any Service under any Service at any time until further notice to the Customer if, in TrillCom's reasonable discretion:
 - 13.1.1. the Customer is in breach of or otherwise is not complying with any of the provisions of this Agreement; and
 - 13.1.2. Any overdue tax invoice for charges billed by TrillCom to the Customer remains unpaid.
- 13.2. The exercise of TrillCom's right to suspend the Services under this clause 13 is without prejudice to any other remedy available to TrillCom under the Agreement and does not constitute a waiver of TrillCom's right to subsequently terminate the Agreement.
- 13.3. Where TrillCom has suspended the Services in terms of clause 13.1, TrillCom may:
 - 13.3.1. refuse to reconnect the Services unless precluded by any law or order of court; and



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14. TERMINATION

14.1. Termination for convenience

- 14.1.1. Either Party shall be entitled to terminate the Agreement by providing the other Party with 60 (sixty) days' prior written notice to that effect.
- 14.1.2. Termination in accordance with clause 14.1.1 above shall not affect the term of any PO, which shall continue, in full force and effect, in accordance with the terms and conditions of this Agreement as if this Agreement had not been terminated, until the end of the term thereof.
- 14.1.3. Notwithstanding the Contract Term set out in the PO, the Customer shall be entitled in its sole discretion and without cause, to terminate one or more PO's (the "Terminating Services") by giving TrillCom 30 (thirty) days' prior written notice, which termination shall be subject to the early termination charges set out in clause 16 below.

14.2. Termination for cause

Without prejudice to any rights and remedies that may have accrued, Either Party may terminate this Agreement by providing the other Party with 30 (thirty) days written notice of its intention to do so if the other Party:

- 14.2.1. ceases to trade (either in whole, or as to any part involved in the performance of this Agreement);
- 14.2.2. becomes insolvent, has a receiver, administrative receiver, administrator or manager appointed of the whole or any part of its assets or business; or
- 14.2.3. makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt, is unable to pay its debts under any applicable law relating to bankruptcy or the relief of debtors.

14.3. Breach

- 14.3.1. In the event that there is a breach by any Party of any of the terms of this Agreement, either Party shall be entitled to provide the Party in breach with a written notice of 7 (seven) days to remedy such breach.
- 14.3.2. Either Party shall be entitled to terminate this Agreement, where either Party:
 - 14.3.2.1. commits a material breach of any of its obligations under this Agreement which is incapable of remedy; or
 - 14.3.2.2. fails to remedy, where it is capable of remedy, or persists in, any breach of any of its obligations under this Agreement after having been required in writing to remedy or desist from such breach within a period of 30 (thirty) days.



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15. SERVICE Variations

If either of the Parties wishes to make a change, modification or adjustment to any element of any Service, the following procedure will apply:

- 15.1. The Party who requests the change will forward a change request to the other Party, setting out the details of the change request;
- 15.2. TrillCom will investigate the feasibility, cost implications and impact of the change request on the Services and notify the Customer thereof (“Impact Study”);
- 15.3. If the Customer makes a decision to proceed with the change request after considering the Impact Study, the Customer shall give Trillcom a written instruction to proceed with that change on the basis set out in the Impact Study. That instruction shall be binding on the Parties and the Agreement shall be deemed to be amended accordingly;
- 15.4. If the Parties cannot agree upon the necessary amendments, the change request will not be implemented.

16. EARLY TERMINATION COSTS

- 16.1. The termination fee shall be calculated on the outstanding fees and charges for each of the Terminating Services as at the Termination Date and will be determined as follows:
 - 16.1.1. In the event that the Terminating Services are terminated prior to the Service Commencement Date thereof, the Customer shall be liable for the lower of the actual costs incurred by TrillCom in implementing the Service or the “NRC”, plus and 6 (six) months of the MRC;
 - 16.1.2. In the event that the Terminating Services are terminated subsequent to the Service Commencement Date thereof and the Contract Term for the Terminating Services is 12 (twelve) months or less; 100% of the fees and charges for the remainder of the Contract Term of the Terminating Services;
 - 16.1.3. In the event that the Terminating Services are terminated subsequent to the Commencement Date thereof and the Contract Term for the Terminating Services is greater than 12 (twelve) months; 100% of the fees and charges for the Terminating Services for the remainder of the first 12 (twelve) months (if any) and 50% of the fees and charges for the Terminating Services for each month thereafter.
- 16.2. The amounts referred to in clause 16.1 above shall be in addition to all fees and charges payable in the ordinary course in respect of the applicable PO for the Terminating Services, plus any other Services that continue unchanged, as at the Termination Date.



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17. DISPUTE RESOLUTION

- 17.1. In the event of any Dispute arising between the Parties under this Agreement or any Service, the Parties will act in good faith to attempt to settle the Dispute through discussions between senior representatives (which may include the respective CEO's) of the Parties within 30 (thirty) days of a Party giving the other Party notice of the issue in dispute.
- 17.2. Any Dispute which cannot be resolved by the Parties within the 30 (thirty) days period, as provided in this clause 17, shall be resolved by arbitration in the English language by a single arbitrator appointed by the Arbitration Foundation of South Africa and in accordance with the Rules of the Arbitration Foundation of South Africa.
- 17.3. Notwithstanding the provisions of this clause 17, either Party shall have the right to seek relief by way of interim relief from any court of competent jurisdiction.

18. CONFIDENTIALITY

- 18.1. Subject to clauses 18.2 to 18.4, each Party must:
 - 18.1.1. use the other Party's confidential information only for the purposes of this Agreement and must keep confidential and not disclose to any person the other Party's confidential information; and
 - 18.1.2. not make press or other public announcements or issue press releases about the Services, the Agreement or the transactions related to it without the approval of the other Party ("Announcement").
- 18.2. Clause 18.1.1 does not apply to confidential information that is in the public domain other than such information that has entered the public domain as a result of a breach of this Agreement or any other obligation of confidence.
- 18.3. A Party may disclose the confidential information of the other Party if that disclosure is to the employees, contractors or professional advisers of that Party or its affiliates who have a need to know that information in relation to provision of the Services and who have agreed to keep it confidential.
- 18.4. A Party may disclose confidential information of the other Party or make an Announcement that is required in accordance with any applicable law.

19. INTELLECTUAL PROPERTY RIGHTS

Nothing contained in this Agreement shall be construed to confer or be deemed to confer on either Party the Intellectual Property Rights of the other Party.



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20. CESSION and ASSIGNMENT

20.1. Subject to clause 20.2, no rights, duties or liabilities under this Agreement may be ceded, assigned, transferred, conveyed or otherwise disposed of by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

20.2. The Customer acknowledges that Trillcom may enter into financing arrangements with finance parties and that, in connection therewith, the finance parties may require a cession and assignment of the Customer's rights and obligations under this Agreement. Trillcom may, in connection with such financing arrangements, grant a cession and/or assignment of its rights and/or obligations under this Agreement to any such financing parties, their nominees or any other party involved in such financing. The Customer hereby recognises and consents to such cession and/or assignment (including any splitting of claims that may arise) and agrees that the prohibitions of clause 20.1 shall not apply to any such cession and/or assignment and/or the exercise of the rights contained therein. The Customer further undertakes to do all such things and execute all such documents as may be requested by Trillcom to give effect to such cession and/or assignment.

21. CO-OPERATION

The Parties shall co-operate and consult with each other in good faith regarding the implementation of this Agreement with a view to achieving the aims and objectives of this Agreement.

22. NON-WAIVER

No Party shall be regarded as having waived, or be precluded in any way from exercising any right under or arising from this Agreement by reason of any Party having at any time granted an extension of time for, or having shown any indulgence to the other Parties with reference to any payment or performance hereunder, or having failed to enforce, or delayed in the enforcement of any right of action against the other Parties.

23. WHOLE AGREEMENT

23.1. Neither Party relies in entering into this Agreement upon any warranties, representations, disclosures or expressions of opinion which have not been incorporated into this Agreement as warranties or undertakings.

23.2. No variation, modification or consensual cancellation of this Agreement shall be of any force or effect unless reduced to writing and signed by both Parties.



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24. SEVERABILITY

If any provision of this Agreement is construed to be illegal or invalid, it will not affect the legality, validity and enforceability of the other provisions of this Agreement. The illegal or invalid provisions will be treated as being deleted from this Agreement and no longer incorporated, but all other provisions of this Agreement will continue to be binding on the Parties.

25. GOVERNING LAW AND JURISDICTION

The validity of this Agreement, its interpretation, respective rights and obligations of the Parties and all other matters arising out of it or its termination, for any reason whatsoever shall be determined in accordance with the laws of the Republic of South Africa.



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Terms and Conditions of use of TrillCom (Pty) LTD Website.

By using this website you agree to be bound by these Terms and Conditions. You may not use this website if you do not agree with the Terms and Conditions.

TrillCom's website Terms and Conditions of use create a legally binding agreement between you ("the User") and TrillCom.

Conditions of Use

Any person may use this website. Unauthorised attempts to modify any information stored on this website, to defeat or circumvent security features, or to utilise this website for purposes other than its intended purpose are prohibited.

The User warrants that the site will be used for lawful purposes only.

The use of any information on this website creates no legal obligation, affiliation or association with TrillCom or with third parties arising as a consequence of using information provided by this service.

Disclaimer

TrillCom makes no representations or warranties of any kind, express or implied, as to the operation of the website, the information, content, materials or products included on this site.

TrillCom's directors or employees accept no liability (including negligence), and take no responsibility for any loss or damage which a user of this website or any other third party may suffer or incur as a result of reliance on material found on this website, and in particular for:

- Any errors, omissions, or inaccuracy of information or data on this website;
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