



Direct Fax Solutions

APPLICATION FORM

Full particulars of Client

Name of company or close corporation or partnership or individual			
Registration No. or ID No.			
Admin Contact Name:		Job Title	
e-mail address		Work number	
Cell number		Fax number	
Technical Contact Name:		Job Title	
e-mail address		Work number	
Cell number		Fax number	
Physical address			
Postal address			
Contract Details	Type of D2D Service:	<input type="checkbox"/> Direct Fax Solutions <input type="checkbox"/> Content on Demand	
	Payment Method:	<input type="checkbox"/> Debit Order <input type="checkbox"/> Direct Transfer....	



Debit Order Details

Data 2 Data (Pty) Ltd is hereby authorised to arrange with my (the Client's) bank or building society to collect the monthly subscription and usage rate against my bank or transmission account (wherever it may be) in terms of a debit order.

Date of first withdrawal		Bank and Branch	
Account Name			
Account Number		Branch Code	
	Data 2 Data (Pty) Ltd – Banking Details Standard Bank Bank Acc number: 08119 0824 Branch Code: 050021		
Signature of payer or authorised official			

THE CLIENT HEREBY AGREES THAT ALL SERVICE/S PROVIDED PURSUANT TO D2D's ACCEPTANCE OF THIS APPLICATION FORM WILL BE SUBJECT TO THE TERMS AND CONDITIONS ATTACHED HERETO, WHICH TERMS AND CONDITIONS ARE EXPLICITLY INCORPORATED INTO AND FORM AN INTEGRAL PART OF THE AGREEMENT BETWEEN D2D AND THE CLIENT.

Signed on behalf of Client, duly authorised		Signatory's Name	Signatory's Designation (Director/Member/Partner)	Date
D2D Director- Signature		D2D Director- Name		Date





SCHEDULE A COST SCHEDULE

D2D SERVICES REQUIRED

Pricing for D2D Direct Fax Solutions

D2D Service Description	Once off Charge	Monthly Subscription Charges
Set-up-fee	R 250	Minimum Subscription Charge: R 100
Email to Fax, Fax to Email		R 4
Receiving traffic on 0866x numbers.		Free
Traffic : Out-bound		As per our D2D Rate Sheet below
Archiving:		Free
Electronic Billing:		Free
Printer Driver		Free
D2D Rate Sheet		Per minute
Anywhere in SA		R 1.20
To other 0866x fax services		R 2.35

Notes

1. D2D will charge a maximum of R2,000 per company per month for subscription fees.
2. The above costs are the initial and annual costs for the D2D Services. In respect of certain of the D2D Services (as indicated in the respective D2D Service Schedules) additional costs shall be incurred in arrears and shall be dependent, inter alia, on usage of the D2D Service. Client shall be invoiced for such additional costs together with the fixed monthly costs indicated above.
3. Should Client upgrade the D2D Service/s and/or subscribe to D2D Service/s in addition to those specified in the Schedules, an amended Schedule will replace this Cost Schedule.



STANDARD TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, the words hereunder will have the meanings assigned to them below:-
- 1.1.1 "**Agreement**" means these Standard Terms and Conditions and any Application Form, Schedules, Annexures and attachments hereto;
 - 1.1.2 "**Cost Schedule**" means Schedule A attached hereto wherein the costs and service specifications of the D2D Service/s are specified;
 - 1.1.3 "**Client**" means the Party specified as Client on the Application Form to which these Standard Terms and Conditions are attached;
 - 1.1.4 "**Client Support Schedule**" means Schedule B attached hereto containing customer support information;
 - 1.1.5 "**Effective Date**" means, notwithstanding the date of signature of this Agreement, the date of activation of the D2D Service/s by D2D, whether or not the Client uses the D2D Service/s;
 - 1.1.6 "**D2D**" means Data 2 Data (Pty) Limited, registration number 2004/019542/07;
 - 1.1.7 "**D2D Services**" means all the service/s provided by D2D as specified in the Cost Schedule including all software and equipment necessary for the provision of the D2D Service/s;
 - 1.1.8 "**Initial Period**" means a period of 12 (twelve) months commencing on and with effect from the Effective date;
 - 1.1.9 "**Proprietary Information**" means any and all trade secrets and data/information of a proprietary and/or confidential nature, including data/information that the parties should reasonably have known to be proprietary or confidential;
 - 1.1.10 "**PSTS provider**" means the public switched telecommunications services provider licensed to provide such services in terms of section 36 of the Telecommunications Act 103 of 1996 as amended;
 - 1.1.11 "**Standard Terms and Conditions**" means these Standard Terms and Conditions;
 - 1.1.12 "**VAT**" means Value-Added Tax as defined in the Value-Added Tax Act 89 of 1991;
 - 1.1.13 "**Party**" means the Client or D2D.
- 1.2 The clause headings contained in this Agreement are for reference purposes only and shall not be used in the interpretation of this Agreement. Words importing any one gender includes the other gender, the singular includes the plural and vice versa, and natural persons includes juristic entities and vice versa. Where figures are referred to in numerals and in words, if there is a conflict between the two, the words shall prevail. This Agreement shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa. The rule of construction that the contract shall be interpreted against the Party responsible for the drafting and preparation of the Agreement, shall not apply.

2. COMMENCEMENT AND DURATION

- 2.1 The Agreement shall commence upon the Effective Date of the first D2D Service to be provided in terms of the Agreement and shall endure for the Initial Period. In the event of a single D2D Service consisting of a number of components, billing will commence for each respective component of that D2D Service as and when each component of that D2D Service is activated.
- 2.2 Should the Effective Date occur after the signature date of this Agreement, nothing contained in the Agreement shall be construed so as to give either Party the right to cancel or rescind the Agreement before the Effective Date.





- 2.3 Either Party shall be entitled to terminate this Agreement by giving 90 (ninety) days prior written notice of termination to be effective at the end of the Initial Period. Should such notice not be given, the duration of the D2D Services shall after the expiry of the Initial Period automatically renew for successive periods of 12 (twelve) months each on the terms and conditions as set out in this Agreement, subject to 90 (ninety) days prior written notice of termination effective at the end of the then-current 12 (twelve) month period and subject to an escalation in fees as per clause 3 of the Standard Terms and Conditions.

3 CHARGES AND PAYMENT

- 3.1 All D2D Service/s provided are to be billed as of the Effective Date in respect of each D2D Service.
- 3.2 Client is responsible for and agrees to pay to D2D all fees for the D2D Service/s specified in the Cost Schedule in South African currency, without deduction or set-off of any amount of whatsoever nature or for whatsoever reason.
- 3.3 All prices specified in the Cost Schedule exclude:
- 3.3.1 VAT and any other any taxes and duties including any regulatory surcharge, which Client becomes obligated to pay by virtue of this Agreement, and
- 3.3.2 PSTS provider service fees, for which Client agrees to make payment directly to the PSTS provider on such terms as are agreed between the PSTS provider and Client, and shall at all times be the responsibility of the Client.
- 3.4 Invoicing will be processed and delivered in arrears, and all invoices for D2D Services shall be settled monthly within 30 days of the date of invoice.
- 3.5 In the event of any dispute arising as to the amount or calculation of any fee or charge to which D2D is entitled, the dispute shall be referred for determination to D2D's auditors. They shall act as experts and their decision shall be final and binding on D2D and Client. The cost of the determination shall be paid on demand by the Party against whom the determination is made, or as determined by the said auditors.
- 3.6 Any amount falling due for payment by Client to D2D in terms of or pursuant to this Agreement which is not paid on its due date shall bear interest calculated from the due date for payment thereof until date of payment, at a rate equal to the prime overdraft rate plus two percent (2%) charged by Standard Bank Limited from time to time, monthly in arrears.
- 3.7 D2D shall be entitled from time to time on 30 (thirty) days prior written notice thereof to Client to increase the monthly fees referred to in the Cost Schedule, provided that:
- 3.7.1 D2D shall not be entitled to increase the monthly fees during the Initial Period of this Agreement; and
- 3.7.2 D2D shall not increase the fees on more than one occasion in any subsequent 12 (twelve) month period of this Agreement.

4 CLIENT'S OBLIGATIONS

- 4.1 Client shall comply strictly with all restrictions imposed on computer networks through which any information and/or data transmitted by Client passes.
- 4.2 Client shall not commit nor attempt to commit any act or omission which directly or indirectly:
- 4.2.1 damages in any way D2D's technical infrastructure or any part thereof;
- 4.2.2 impairs or precludes D2D from being able to provide the D2D Service/s in a reasonable and businesslike manner;
- 4.2.3 constitutes an abuse or malicious misuse of the D2D Service/s;
- or is calculated to have the abovementioned effect.





In such an event, should D2D incur expenses to remedy the situation, D2D reserves the right to charge the Client the amount necessary to cover D2D's additional expenditure. Notwithstanding the above, D2D reserves the right to take any other appropriate action it may deem necessary to remedy the situation.

- 4.3 Client is prohibited from selling, reselling or otherwise dealing with the D2D Service/s in any manner whatsoever. Without limitation to the foregoing, any consideration which Client may receive whilst acting in breach of this prohibition shall be forfeited to D2D.
- 4.4 Client is prohibited from allowing any person other than its employees or other authorised parties, access to the D2D Service/s through any of Client's equipment, personnel and/or address.
- 4.5 Under no circumstances may Client resile from this Agreement or withhold or defer payment or be entitled to a reduction in any charge or have any other right or remedy against D2D, its servants, its agents or any other persons for whom it may be liable in law (and in whose favour this provision constitutes a stipulation alteri) if D2D interrupts the D2D Service to Client as it would be entitled to do if Client is in default of any of its obligations under this Agreement to D2D or in the circumstances contemplated in clause 6.4 below.
- 4.6 Client may not at any time use the D2D Service in contravention of any South African law. In particular, Client undertakes to familiarize itself and ensure that it is kept continuously appraised of all South African law in force from time to time which has any bearing on the D2D Service and/or its use. Client acknowledges that D2D has no obligation to assist Client in this regard.

5 WARRANTIES

- 5.1 Save as expressly set out in this Agreement, D2D does not make any representations nor gives any warranties or guarantees of any nature whatsoever in respect of the D2D Service/s and all warranties which are implied or residual at common law are hereby expressly excluded.
- 5.2 Without limitation to the generality of 5.1 above, D2D does not warrant or guarantee that the information transmitted by or available to Client by way of the D2D Service/s:
 - 5.2.1 will be preserved or sustained in its entirety;
 - 5.2.2 will be delivered to any or all of the intended recipients;
 - 5.2.3 will be suitable for any purpose;
 - 5.2.4 will be free of inaccuracies or defects or bugs or viruses of any kind; or
 - 5.2.5 will be secured against intrusion by unauthorised third parties;

and D2D assumes no liability, responsibility or obligations in regard to any of the exclusions set forth in this clause 5.

6 EXCLUSION OF LIABILITY

- 6.1 Except as otherwise expressly provided herein to the contrary, D2D shall not be liable to Client or any third Party for any loss or damage of whatsoever nature and/or howsoever arising (including consequential or incidental loss or damage which shall include but shall not be limited to loss of property or of profit, business, goodwill, revenue, data or anticipated savings) or for any costs, claims or demands of any nature whether asserted against D2D or against Client by any Party, arising directly or indirectly out of the D2D Service/s, their use, access, withdrawal or suspension or out of any information or materials provided or not provided, as the case may be.
- 6.2 Further to 6.1 above, it is specifically agreed that the D2D shall not be liable to Client for any loss or damage suffered by the Client due to the D2D Services being lost or interrupted as a direct or indirect result of Client modifying any equipment utilised by Client to receive any of D2D Services, in any way whatsoever, including the changing of any of the settings of such equipment.





- 6.3 Subject to clauses 6.1 and 6.2 above, the entire liability of D2D and Client's exclusive remedy for damages from any cause related to or arising out of this Agreement, regardless of the form of action, whether in contract or in delict, will not exceed the aggregate of the fees and charges paid by Client under this Agreement for the period of 12 (twelve) months preceding Client's written notice to D2D in respect of such claim.
- 6.4 Client hereby indemnifies D2D against and holds D2D harmless from any claim by any third Party arising directly or indirectly out of access to or use of the D2D Service/s or information obtained through the use thereof or in respect of any matter for which liability of D2D is excluded in terms of clauses 6.1 and 6.2 above.
- 6.5 Because of the need to conduct maintenance, repair and/or improvement work from time to time on the technical infrastructure by means of which the D2D Services are provided, the provision of the D2D Services may be suspended from time to time, and all liability on the part of D2D of any loss or damage (whether direct or consequential) thereby incurred or for any costs, claims, or demands of any nature arising there from, is excluded, and the provisions of clause 6.1 above shall apply mutatis mutandis to such exclusion. Should the provision of the D2D Service/s be suspended by D2D for the purpose aforementioned for a period in excess of 48 (forty eight) consecutive hours, D2D shall give Client credit in an amount which represents a pro rata portion of Client's basic monthly subscription fee for the month during which the said suspension occurred.
- 6.6 D2D reserves the right to, at any time, suspend the provision of the D2D Service/s for the purposes of maintenance, modification or remedial work. In the event of any such suspension, D2D shall provide the Client with 5 (five) days prior written notice in respect thereof.

7 DOCUMENTATION

Any specifications, descriptive matter, drawings and other documents which may be furnished by D2D to Client from time to time:

- 7.1 do not form part of this Agreement and may not be relied upon, unless they are agreed in writing by both parties hereto to form part of this Agreement;
- 7.2 shall remain the property of D2D and shall be deemed to have been imparted by it in trust to Client for the sole use of Client. All copyright in such documents vests in D2D. Such documents shall be returned to D2D on demand.

8 BREACH

- 8.1 Subject to the provisions of clause 8.2 to the contrary, if Client hereto:
- 8.1.1 breaches any of the terms or conditions of this Agreement and fails to remedy such breach or pay such amount, as the case may be, within 7 (seven) days after the receipt of written notice from D2D;
 - 8.1.2 commits any act of insolvency;
 - 8.1.3 endeavours to compromise generally with its creditors or does or causes anything to be done which may prejudice D2D rights hereunder or at all;
 - 8.1.4 allows any judgement against it to remain unsettled for more than 10 (ten) days without taking immediate steps to have it rescinded and successfully prosecuting the application for rescission to its final end; or
 - 8.1.5 is placed in liquidation or under judicial management (in either case, whether provisionally or finally) or, being an individual, his estate is sequestrated or voluntarily surrendered;

D2D shall have the right, without prejudice to any other right which it may have against Client, to:

- a) suspend or terminate the D2D Services;
- a) treat as immediately due and payable all outstanding amounts which would otherwise become due and payable over the unexpired period of the Agreement, and to claim such amounts as well as any other amounts in arrears including interest calculated as per clause 3.6 above and to cease





performance of its obligations hereunder as well as under any other contract with the Client until Client has remedied the breach; and/or

b) cancel this Agreement;

in any event without prejudice to D2D's right to claim damages.

- 8.2 Client shall be liable for all costs incurred by D2D in the recovery of any amounts or the enforcement of any rights which it has hereunder, including collection charges and costs on an attorney and own client scale whether incurred prior to or during the institution of legal proceedings or if judgement has been granted, in connection with the satisfaction or enforcement of such judgement.
- 8.3 Subject to what is set out in Clause 8.1.1 above, D2D shall be entitled to suspend the provision of the D2D Services where Client breaches any provision of this Agreement or where any payment to D2D is overdue by more than 30 (thirty) days.

9 INTELLECTUAL PROPERTY

- 9.1 Notwithstanding anything set out in Clause 10 below, all intellectual property (including, without limitation, copyright, trade marks, designs and patents) relating to or used in connection with the D2D Service/s provided under this Agreement shall belong to D2D. Client 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 D2D, or any of its third party suppliers.
- 9.2 Client warrants that it shall not use the D2D 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. Client furthermore warrants that it has received all necessary permissions to make use of any intellectual property relating to 3rd parties.

10 PROTECTION OF PROPRIETARY INFORMATION

- 10.1 Each Party will keep in confidence and protect Proprietary Information 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.
- 10.2 Each Party shall ensure that its employees comply with its obligations under this section 10.
- 10.3 This section 10 shall survive termination or cancellation of this Agreement.
- 10.4 This Agreement does not transfer to either Party title to any intellectual property contained in any Proprietary Information of the other Party.

11 CESSION

Client shall not be entitled to cede or assign any rights and/or obligations which it may have in terms of this Agreement to any third party unless consented to in writing by D2D.

12 SURETYSHIP

The signatory to this Agreement, as the authorized representative of the Client, hereby binds himself/herself to D2D as personal surety and as co-principle debtor in solidum with Client for the due, punctual and proper fulfilment and performance by Client of all its obligations in terms of this Agreement. The aforementioned signatory hereby renounces all benefits arising from the legal exceptions of non numeratae pecuniae, non causa debiti (that no just cause for debt exists), errore calculi (wrong calculation of debt) and beneficio excussionis et divisionis (that co-principal debtors shall





first be excused and that there shall be a division of the debt between co-principal debtors), with the force and effect of which he/she hereby declares himself/herself to be fully acquainted.

13 LIEN

The parties agree that in the event of a breach of this Agreement by Client which causes D2D to suffer damages of any nature whatsoever, D2D shall not be required to attach any of Client's hardware in execution, and shall be entitled to retain a lien over such hardware in reduction of any debt due by Client to D2D.

14 FORCE MAJEURE

14.1 D2D shall not be liable for non-performance under this Agreement to the extent to which the non-performance is caused by events or conditions beyond the control of D2D, provided that D2D makes all reasonable efforts to perform.

14.2 It is expressly recorded that for purposes of this clause the following shall be considered circumstances beyond the control of D2D and the force majeure provisions shall apply:-

14.2.1 a PSTS provider fault that affects the D2D Service/s; and/or

14.2.2 the non-performance, inability to perform or delay in performance by the PSTS provider relating to the provisioning of equipment, services and/or facilities to D2D that affects the D2D Service/s; and/or

14.2.3 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 or war or public enemy, illegal strikes, interruption of transport, lockouts, flood, storm or fire.

15 DOMICILIUM CITANDI ET EXECUTANDI

For all purposes, including but not by way of limitation, the giving of any notice, the making of any communication and the serving of any process, Client chooses its domicilium citandi et executandi ("domicilium") at the physical address appearing on the application form to which these Standard Terms and Conditions are attached. D2D chooses its domicilium citandi et executandi ("domicilium") at Real People Views, 12 Esplanade Road, Quigney, East London, South Africa. Either Party shall be entitled from time to time to vary its domicilium and shall be obliged to give notice to the other within seven (7) days of the said change. Any notice which either Party may give to the other shall be posted by prepaid registered post or hand delivered to the other Party's domicilium and shall be presumed, unless the contrary is proved by the Party to whom it is addressed, to have been received by that Party on the seventh (7th) day after the date of posting or on the day of delivery as the case may be.

16 GENERAL

16.1 VARIATION AND CANCELLATION

No variation varying or cancelling this Agreement shall be effective unless reduced to writing and signed by or on behalf of both Parties.

16.2 ENTIRE CONTRACT

This Agreement contains all the express provisions agreed on by the Parties relating to the subject matter of the Agreement and the Parties waive the right to rely on any express provisions not contained herein.

16.3 WAIVER

No waiver by a Party of any right under this Agreement shall be effective unless reduced to writing and signed by or on behalf of such Party

16.4 INDULGENCES





No indulgences granted by a Party shall constitute a waiver or abandonment of any of the Party's rights under this Agreement; accordingly, that Party shall not be precluded, as a consequence of having granted such indulgence, from exercising any rights against any other Party which may have arisen in the past or which may arise in the future.

16.5 NO REPRESENTATIONS

Neither Party may rely on any representations which allegedly induced that Party to enter into this Agreement, unless the representation is recorded in this Agreement.

16.6 JURISDICTION

Any Party shall be entitled to institute any legal proceedings which may arise out of or in connection with this Agreement in the Witwatersrand Local Division of the High Court of South Africa to which jurisdiction the Parties hereto consent.

16.7 SEVERABILITY

Should any of the terms and conditions of this Agreement be held to be invalid, unlawful or unenforceable, such terms and conditions will be severable from the remaining terms and conditions which will continue to be valid and enforceable.

16.8 CONFLICT OF PROVISIONS

The terms and conditions appearing in the Schedule(s) hereto, are hereby incorporated into the Agreement. In the event of any conflict between the Standard Terms and Conditions of this Agreement and those appearing in any Schedule/s hereto, these Standard Terms and Conditions shall prevail. In respect of any conflict in respect of pricing in the Agreement or the Schedules hereto, the costs set out in the Cost Schedule shall prevail.

16.9 SCHEDULES AND ANNEXURES

These terms and conditions, together with the Schedule(s), Annexures and attachments hereto, constitute the whole of the agreement between D2D and Client relating to the subject matter hereof.

FOR OFFICE USE ONLY

AGENT NAME:

DATE:





Customer Support Schedule B

- 1 Customer Care environment is available during office hours only. This team is responsible for client authentication and logging service requests and providing updates.
- 2 All calls are logged and managed centrally from D2D's Control Centre in East London. Subscriber can log a call via:
 - 1.1. Electronic Mail: support@data2data.co.za
 - 1.2. Share Call: 043-702 4628
2. The following information will be required from Customer:
 - 2.1. Customer Name
 - 2.2. Customer Contact
 - 2.3. Customer Telephone Number
 - 2.4. E-mail address
 - 2.5. Description of problem
3. D2D will keep Customer updated on a regular basis until such time as the Service is restored.
4. Customer's internal escalation procedures will be executed prior to contacting D2D for support.
5. Only Customer's listed Technical Contacts (TC's) may place service calls to D2D for support. Customer must provide D2D with the following information for call logging systems.

	TC1	TC2
CONTACT		
WORK NUMBER		
MOBILE		
EMAIL ADDRESS		

6. The escalation procedures are as follows:-
 - 6.1 Customer and the Control Centre will agree on the severity and respective priority of the call. Depending on this, the system will automatically escalate within predefined time periods.
 - 6.2 The escalation is effective for problems that are solely the responsibility of D2D. Should D2D determine that the problem is in fact a Telkom problem on D2D's side or another third party, D2D will log a call with Telkom and manage the problem on Subscriber's behalf.
 - 6.3 D2D shall not be responsible to support problems arising from Customer's network systems or software.