

NUGEN COMMUNICATION
 72 Macdougall str
 Royaldene
 Kimberley
 8300

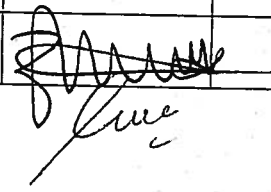
Lydia
 Hein


SERVICE AGREEMENT

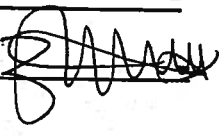
Site Details


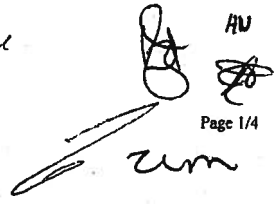
| | |
|----------------------|------------------|
| Commencement Date: | Contract Number: |
| Customer Information | |
| Name: | |
| | Postal Address: |
| | |
| Kimberley | |
| Tel: | Fax: |
| Contact Person: | |

Schedule of Equipment

| Equipment | Signature MM and CFO | Monthly Payment over 36 Months |
|-----------|--|---|
| |  | |

MM Full Names G.H. Arachawaray **ID Number** 5607255146⁰⁸³ **and Signature** 

CFO Full Names ZL Maklolo **ID Number** 740901064800 **and Signature** 

  **AV**
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- EQUIPMENT** caused by radio waves, induction or any other source;
- 4.1.8 those operator or extension user functions which should be carried out by the **CUSTOMER** in terms of the operator and user manuals;
- 4.1.9 repair of damage or increase in service time resulting from force majeure, fire, water, accident, transportation, neglect, misuse or use other than that for which the **EQUIPMENT** is designed, failure of electrical power, air conditioning or humidity control;
- 4.1.10 service due to malicious damage;
- 4.1.11 service of any cables external to the **EQUIPMENT**;
- 4.1.12 service to underground cables/reticulation, where the **CUSTOMER** does not supply sufficient protection for the cables/reticulation in the form of pipes;
- 4.1.13 maintenance of **EQUIPMENT** located in an unsuitable place as determined by **NUGEN**;
- 4.1.14 the painting or refurbishing of the **EQUIPMENT** or supplying materials;
- 4.1.15 the supply and installation of replacement batteries;
- 4.1.16 software upgrades, excluding software patches;
- 4.1.17 any services or changes required by the **PSTN** or **ICASA**.
- 4.2 Any **SERVICE** consequent upon the causes listed in this clause may be carried out by **NUGEN** at the **CUSTOMER'S** written request at **NUGEN'** rates, prices and terms as applicable.
- 5** **ACCESS TO EQUIPMENT:**
NUGEN shall have full and free access at all reasonable times to the **EQUIPMENT** in order to provide the **SERVICES**. The **CUSTOMER** agrees that failure to provide such access shall constitute a breach of this Agreement and the **CUSTOMER** shall not be entitled to deduct any monies from any amounts payable to **NUGEN** in terms of this Agreement because **NUGEN** was unable to render the **SERVICE** due to lack of access. A minimum of one (1) metre access around the **EQUIPMENT** must be made available to **NUGEN**.
- 6** **LIABILITY:**
- 6.1 Neither **NUGEN**, nor any of its directors, employees, associates or sub-contractors shall be liable, whether in contract, delict or any other legal or equitable theory, for any damage to or loss of property, business interruption or lost revenue, profits or sales, loss of information and data, for any special, incidental, indirect or consequential damages or for any damages arising out of the infringement of any intellectual property rights, without limitation of the scope thereof, where such damages or losses have resulted from, or are in connection with any of the services rendered by **NUGEN** or any of its sub-contractors in terms of this Agreement.
- 6.2 **NUGEN'** liability for any act or omission, whether in contract, delict (including negligence or strict liability) or any other legal or equitable theory, will in no single event or in aggregate exceed a maximum amount of one hundred thousand Rand (R100 000-00).
- 7** **FAILURE TO PAY**
NUGEN reserves its rights not to render the **SERVICE** should the **CUSTOMER** have failed to pay any charges due to **NUGEN** in terms of this Agreement.
- 8** **PSTN'S (PUBLIC SWITCHING TELECOMMUNICATION NETWORKS) OBLIGATIONS**
- 8.1 Notwithstanding **NUGEN'S** intention to use its best endeavours in ensuring proper service by the **PSTN** to the **CUSTOMER**, it is recorded that no **PSTN** is party to this Agreement.
- 8.2 A **PSTN** provides public network access and maintains these facilities (i.e. tie lines and data lines).
- 8.3 **NUGEN** is not responsible for any services to be delivered by any **PSTN** nor is it responsible to ensure that those services are delivered to the **CUSTOMER**.
- 9** **FAULT HANDLING PROCEDURE**
- 9.1 The **CUSTOMER** shall report all difficulties and faults of the **EQUIPMENT** to **NUGEN** by means of a fax sent to 0538328006, Email or office number 0538028900. A fault reference number will be allocated and given to the **CUSTOMER**. **NUGEN** will then attend

NUGEN COMMUNICATION

to the fault as per this Agreement within a reasonable time.

- 9.2 If guarantee response times are required, a separate service level agreement can be quoted for upon request.
- 10** **FORCE MAJEURE**
- 10.1 Neither Party shall be considered to be in default or in breach of its obligation under this Agreement to the extent that performance of such obligation is prevented by any circumstances of *force majeure*.
- 10.2 *Force majeure* is defined as any circumstances beyond the control of the Parties, including but not limited to war and other hostilities (whether declared or not), invasion, acts of foreign enemies, mobilisation, fire, floods, lock out, strikes, requisition or embargoes, ionising, radiation or contamination by radio activity from any nuclear waste, from the combustion of nuclear fuel, radio active toxic explosives or hazardous properties of any explosives nuclear assembly or nuclear components thereof, strikes, riots, civil disturbance or any other causes beyond their control
- 11** **ARBITRATION:**
- 11.1 Subject to clause 11.3, should any dispute, disagreement, or claim arise between the Parties (called hereafter the dispute) concerning this Agreement, the Parties shall try to resolve the dispute by negotiation. This entails that the one Party invites the other in writing to meet and to attempt to resolve the dispute within 7 (seven) days from the date of the written invitation.
- If the dispute has not been resolved by such negotiation, the Parties shall submit the dispute to Arbitration Foundation of Southern Africa administered mediation, upon the terms set by the Arbitration Foundation of Southern Africa Secretariat. Failing such a resolution, the dispute, if arbitral in law, shall be finally resolved in accordance with the Rules of the Arbitration Foundation of Southern Africa by an arbitrator or arbitrators appointed by the Foundation.
- 11.2 The Seat of the arbitration shall be **KIMBERLEY** and the award of the arbitrator may be made an order of a court with the appropriate jurisdiction.
- 11.3 **NUGEN** may at its option and with the consent of the **CUSTOMER**, which is hereby irrevocably given, institute any legal proceedings which may arise out of or are in connection with this Agreement in any Magistrate's Court having jurisdiction in terms of Section 28 of the Magistrate's Court Act No. 32 of 1944 notwithstanding that the amount of such claim may otherwise be beyond such jurisdiction.
- 12** **DOMICILIUM CITANDI ET EXECUTANDI**
Both Parties choose their respective *domicilium citandi et executandi* at the address referred to under their name on the **SCHEDULE** to this Agreement Either Party must inform the other by registered mail of any change of such address, which address may only be situated within the Republic of South Africa.
- 13** **VOIP LINES FOR LEAST COST ROUTING**
It is the responsibility of **NUGEN** to offer the cheapest rates available to the customer. **NUGEN** will also ensure that when the **INTERCONNECT** rate changes a rate adjustment will be done by the end of the current billing month. **NUGEN** will invoice the monthly usage and line rental separate to the rental amount.
- 14** **CONSENT CLAUSE:**
- 14.1 The Credit Grantor may:
- 14.1.1 perform a credit search;
- 14.1.2 monitor the credit applicants payment behaviour by researching his/her record at one or more of the Credit Bureaux;
- 14.1.3 use new information and data obtained from Credit Bureaux in respect of the applicant's future credit applications;
- 14.1.4 record the existence of the applicant's account with any Credit bureaux;

- 14.1.5 record and transmit details of how the applicant has performed, and how the account is conducted by the applicant in meeting his/her obligations on the account.
- 14.2 Use Information obtained from one or more Credit Bureaux to assess future credit applications by the applicant and members of his/her family;
- 14.3 The Credit Applicant acknowledges and agrees that any information regarding his/her credit worthiness, defaults in payment to the credit grantor, and details of how his/her account with the Credit Grantor is conducted may be disclosed to any other creditor of the Applicant or to one or more Credit Bureaux.

15 GENERAL
CUSTOMER's rights shall not be capable of being so ceded or assigned without the prior written consent of **NUGEN**. This Agreement together with the **SCHEDULE** constitutes the sole record of this Agreement and no amendment of this Agreement shall be of any force or effect unless reduced to writing and signed by the Parties. No Indulgence which either Party may grant to the other shall constitute a waiver of any of rights of the granting Party.

THUS DONE and SIGNED by **NUGEN** at _____

THUS DONE and SIGNED by the **CUSTOMER** at CIVIC CENTRE

On this the _____ day of _____ 200 ,

On this the 12th day of APRIL 2002,

In the presence of the undersigned witnesses.

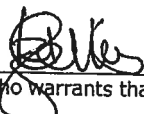
In the presence of the undersigned witnesses.

For and on behalf of:

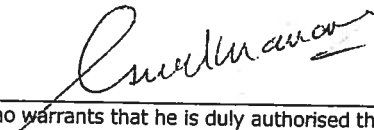
For and on behalf of:

NUGEN COMMUNICATION

SOL PLATDE LOCAL MUNICIPALITY



 Who warrants that he is duly authorised thereto




 Who warrants that he is duly authorised thereto

Name (Printed) G.H. Acharwaray

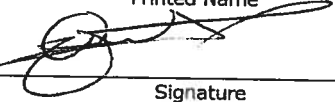
Designation MUNICIPAL MANAGER

AS WITNESSES

AS WITNESSES


1. 

 Signature
Gideon Celliers


 Printed Name


 Signature
Anton Els

 Printed Name

1. 

 Signature
ZL Mahlolo

 Printed Name
 2. 

 Signature
H. Nieman

 Printed Name

