

**AGREEMENT OF SETTLEMENT AND CESSION**

Entered into between:-

**SETCOM (PROPRIETARY) LIMITED**  
("Setcom")

Physical Address: Sandhaven Office Park  
14 Pongola Crescent  
Eastgate Ext. 17, Sandton  
South Africa, 2199  
Postal Address: P.O. Box 5803  
Rivonia, 2128

And

\_\_\_\_\_  
("the Merchant")  
  
Physical Address: \_\_\_\_\_  
\_\_\_\_\_  
Postal Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**1 BACKGROUND**

- 1.1 Setcom and the Merchant have entered into a Subscription Agreement in terms of which Setcom offers e.commerce services to the Merchant.
- 1.2 In respect of the transaction referred to in Annexure "A" hereto, the Merchant received notification via the e.commerce services, that the Customer had effected payment to it, however, the monies were not transferred from the Customer's bank account into the Merchant's nominated bank account.
- 1.3 Notwithstanding that Setcom has not provided the Merchant with any warranties or representations regarding its use of the e.commerce services and has not accepted liability for any loss or damage suffered by the Merchant relating to the e.commerce services, Setcom, in this particular instance, is prepared to pay the Merchant the amount that should have been transferred from the Customer's bank account to the Merchant's bank account in respect of the transaction ("the Transaction Amount") on condition that the Merchant cedes all its rights, title and interest in its claim against the Customer for payment of the Transaction Amount to Setcom.
- 1.4 The parties have recorded the terms and conditions applicable to the above in this Agreement.

**2 SETTLEMENT**

- 2.1 Within 45 days from the date of signature of this Agreement by the last signing party, Setcom shall pay the Merchant the Transaction Amount.
- 2.2 Such payment shall be in full and final settlement of all claims that the Merchant may have against Setcom arising from or relating to the use of the e.commerce services in respect of the transaction or against the Customer arising from or relating to the transaction.

2.3 The Merchant hereby acknowledges that Setcom's payment to it in terms of this Agreement is not a waiver or a novation of any of Setcom's rights in terms of the Subscription Agreement or of any of the provisions of the Subscription Agreement and, more particularly, by this settlement Setcom shall not be construed as having made any representations or given any warranties to the Merchant regarding the e.commerce services or undertaken any liability for any other loss or damages that the Merchant may sustain as a result of its use or implementation of the e.commerce services.

### 3 **CESSION**

3.1 The Merchant hereby cedes, assigns and transfers to and in favour of Setcom all of its rights, title and interest in and to its claim against the Customer for payment of the Transaction Amount.

3.2 The Merchant hereby grants to Setcom, with full power of substitution, the power and authority to recover from the Customer in its name or in Setcom's own name the Transaction Amount and, if so determined by Setcom, to institute action in the Merchant's name or in Setcom's own name against the Customer for recovery of the Transaction Amount and to retain the proceeds recovered in the exercise of such powers on account of and in reduction of the settlement amount that Setcom paid to the Merchant and all costs and expenses incurred by Setcom in the exercise of such powers.

3.3 In the event that the Customer effects payment of the Transaction Amount to the Merchant after Setcom has paid the settlement amount to the Merchant, the Merchant shall immediately: -

3.3.1 notify Setcom in writing of such payment; and

3.3.2 pay the Transaction Amount to Setcom.

3.4 The Merchant warrants that: -

3.4.1 prior to signing this Agreement, it has not disposed of its rights, title and interest in and to its claim against the Customer in respect of the transaction;

3.4.2 the Merchant is entitled without notice to the Customer to cede its claim against the Customer to Setcom;

3.4.3 the Merchant will deliver all contracts and documents relating to the transaction to Setcom on date of signature hereof;

3.4.4 the Merchant has not made any representations, warranties or undertakings to the Customer other than those specifically contained in the contracts and documents relating to the transaction;

3.4.5 the transaction was in all respects valid and complied fully with any law applicable to the goods that were sold and delivered or the services that were rendered by the Merchant to the Customer in terms of the transaction;

3.4.6 the goods or the services that are the subject matter of the transaction have been properly sold and delivered or properly rendered by the Merchant to the Customer;

3.4.7 at the date of signature hereof, the Merchant will not be in breach of any of its obligations in terms of the transaction; and

3.4.8 prior to signing this Agreement, the Merchant will have disclosed to Setcom in full all information relating to the Customer and the transaction.

**4 INDEMNITIES BY THE MERCHANT**

- 4.1 The Merchant hereby indemnifies Setcom for any loss that Setcom may incur and/or for any claim that may be made against Setcom in respect of any dispute raised by the Customer relating to the transaction.
- 4.2 The Merchant hereby indemnifies Setcom and holds it harmless against any claim, loss or expense arising out of or in connection with or which may be sustained or incurred by Setcom as a direct or indirect consequence of any breach by the Merchant of any of the terms, conditions, warranties, representations or undertakings of the Merchant in terms of this Agreement.

**5 GENERAL**

- 5.1 The laws of the Republic of South Africa shall govern the validity, interpretation and performance of this Agreement. This Agreement constitutes the whole agreement between the parties relating to the subject matter hereof and no alteration or addition to or variation or waiver or cancellation hereof shall be of any force or effect unless reduced to writing and signed by those parties.
- 5.2 The parties hereby choose their *domicilium citandi et executandi* at their addresses set out on the first page hereof where all notices or processes may be validly delivered to or served upon it. Any party may change its *domicilium* by notice in writing to the other party and such change shall take effect on the 7<sup>th</sup> day after the addressee has received such notice.
- 5.3 No latitude, indulgence or failure to act in terms of this Agreement at any time by any party shall prejudice in any way the rights of that party, nor shall it create new rights nor be construed as a waiver.
- 5.4 Any provision in this Agreement, which is or may become illegal, invalid or unenforceable shall be treated *pro non scripto* and severed from the balance of this Agreement so that the remaining provisions of this Agreement remain valid and enforceable.

SIGNED BY SETCOM AT \_\_\_\_\_ ON THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_: -

**AS WITNESSES:**

- 1. \_\_\_\_\_  
For and on behalf of **Setcom (Proprietary) Limited**, he being duly authorised hereto
- 2. \_\_\_\_\_

SIGNED BY THE MERCHANT AT \_\_\_\_\_ ON THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_: -

**AS WITNESSES:**

- 1. \_\_\_\_\_  
For and on behalf of \_\_\_\_\_, he being duly authorised hereto
- 2. \_\_\_\_\_

**ANNEXURE A**

**DETAILS OF THE TRANSACTION: -**

Full name of the Customer	
Physical Address of the Customer	
Postal Address of the Customer	
Telephone number of the Customer	
Cellphone number of the Customer	
ID Number or Company registration number of the Customer	
Contact person of Customer	
Bank account details of the Customer	Account Number: Branch Code:
Details of the goods or services that were sold and delivered by the Merchant to the Customer	
The date/s on which the goods were sold and delivered or the services were rendered to the Customer	
The amount that Customer agreed to pay the Merchant in respect of the goods or services ("the Transaction Amount")	
The date on which the Transaction Amount was payable	
Details of all attempts that the Merchant has made to collect payment of the transaction amount from the Customer	
A list of all documents that relate to the sale and delivery of the goods or the services rendered	

Documents that must accompany this Agreement: -

1. copies of all documents that relate to the sale and delivery of the goods or the services rendered by the Merchant to the Customer;
2. the notification that the Merchant received via the e.commerce services reflecting that the Customer had effected payment to the Merchant;
3. proof that the Merchant has not received this payment.