

AMADWALA TRADING 5 CC AND WISTEC DATA & TELECOMS (PTY) LTD
T/A WISTEC

TERMS AND CONDITIONS

INTERPRETATION

- 1 Headings to clauses in the agreement are for ease of reference only and do not affect the interpretation of this agreement
- 2 The word "include" will not be interpreted restrictively;
- 3 References to legislation in the contract is not to be deemed as changed versions of applicable legislation, but rather indications of the legislation in force at the time of the agreement;
- 4 This agreement shall include this document as well as all annexures hereto, and any variations or amendments, which may from time to time be entered into between the parties;

DEFINITIONS

- 5 In this agreement, unless the context clearly indicates a contrary intention, the words herein below defined shall have the meanings assigned to them, and similar expressions shall bear corresponding meanings:
 - 5.1 "Wistec" - Wistec Data & Telecoms (Pty) Lt.
 - 5.2 "Services" - the Voice, fax and other Services which are selected and agreed upon on the face hereof and on the attached Product Addendum/s and any ancillary services related thereto.
 - 5.3 "Subscriber" - the Company, Close Corporation, Firm, Partnership or Person contracting to receive the Services from Wistec in terms of this Agreement.
 - 5.4 "Duration of the Contract" - the number of months the Service specified upon on the face hereof and or the applicable attached Product Addendum/s is contracted for.
 - 5.5 "Network Operator" – refers to Vox Telecom, Telkom and or all other data and voice carriers that Wistec interconnects with.
 - 5.6 "Agreement" – these terms and conditions are read together with the schedule on the face hereof and the applicable attached Product Addendum/s 1.6.
 - 5.7 "Connection date" - the date on which Wistec accepts the contract to commence.
 - 5.8 "Product Addendum/s" - each service offered by Wistec has its own standard terms and conditions stipulating contract duration and package information. The Subscriber Agreement is not deemed complete without the relevant product addendum/s attached and signed by the subscriber. The Subscriber Agreement and the relevant product addendum/s are deemed as one legally binding document.

APPOINTMENT AND TERM

- 6 With effect from the date of acceptance hereof by Wistec the subscriber identified on the face hereof and on the Product Addendum/s or any other document as agreed in writing between the parties appoints Wistec to provide to and/or on behalf of the subscriber in accordance with the provisions hereof.
- 7 The subscriber agrees to be bound by the provisions contained in the notice, directive, or applicable tariff plan issued or derived by Wistec and/or the service provider from time to time.
- 8 The subscriber acknowledges that this document or such other document as agreed in writing between the parties constitutes an offer by the subscriber, which may be accepted or refused by Wistec in its sole discretion. The offer will be considered once received by Wistec at Wistec's premises. Connection of the subscriber shall be deemed to constitute acceptance of the offer, by Wistec and commencement of this agreement. This agreement shall become binding between Wistec and the subscriber whether or not the subscriber was notified of the acceptance of the offer.

- 9 This Agreement shall continue for successive 1 (one) month periods of the agreed contract after the Initial Term at the then prevailing monthly subscription fee of Wistec, unless either party serves written notice of termination on the other not less than 1 (one) month prior to the end of the Initial Term or such successive agreed contract period.
- 10 Termination of the agreement does not relieve the subscriber from the liability to pay charges for all services and data usage used by the subscriber up until the service is disconnected by Wistec.

THE Wistec SERVICES

- 11 The services are to include the routing of all data services over the Wistec network.
- 12 Data services constitute all local, national, international and data routed through the Wistec network.
- 13 The subscriber shall allow Wistec access to the subscriber's premises, with prior notification to the subscriber, at all reasonable times in order to install, maintain, monitor, inspect, replace or remove the services.
- 14 Wistec endeavours that the services rendered will be provided and maintained during the contract period.
- 15 Because of the need to conduct repair and/or improvement work from time to time on the technical infrastructure by means of which the Services are provided, the provision of the Services may be suspended from time to time without notice by Wistec, and Wistec is exempted from all liability for any loss or damage (whether direct or consequential) and/or for any costs, claims or demands of any nature to the Subscriber and/or any third party arising from such suspension.
- 16 The subscriber shall have no claim of whatsoever nature and howsoever rising against Wistec including no right to cancel this agreement or to withhold payment of any monies due in terms hereof should the network temporarily or otherwise fail, malfunction, provide no or poor coverage or should any of the services or facilities provided by the network operator or Wistec be temporarily unavailable.
- 17 The subscriber shall not be entitled to set off or deduct any monies in respect of 'dropped' or discontinued calls and/or connections or temporarily unavailable services. Wistec does not make any representations nor, give any warranty or guarantee of any nature whatsoever in respect of the Service.
- 18 Wistec does not warrant or guarantee that the information transmitted by the use of the Service will be preserved or sustained in its entirety, will be suitable for any intended purpose, will be free of inaccuracies or defects or bugs or viruses of any kind, and will not contravene the laws of a particular country.
- 19 Wistec shall be entitled in its sole discretion to alter the contract number or any other code or number or username or password, which has been allocated to the subscriber for the subscriber equipment.
- 20 Wistec shall be entitled in its sole discretion to suspend, cancel, vary or terminate this agreement or any part thereof, without Wistec incurring any liability whatsoever in the event of non-availability of the service or if any agreement giving Wistec access to anything relating to the service, is suspended, cancelled, varied or terminated.
- 21 Wistec at its discretion will credit vet prospective customers. Wistec reserves the right to request a deposit in advance should the credit vetting process prove to be unsatisfactory.
- 22 The subscriber agrees that if for any reason any of the agreements between the network operators and Wistec are terminated so as to have the effect of Wistec not being entitled to render the services, all of the rights and obligations of Wistec in terms of this agreement
- 23 may be assigned to any third-party service provider as may be approved of in writing by the relevant network operator, which approval will not be unreasonably withheld or delayed forthwith upon the termination for whatever reason.
- 24 Any migration from one package to another will be subject to the discretion of the Subscriber and any migration charges where applicable will be as per the applicable Wistec tariff plan.

CHARGES

- 25 The subscriber shall pay to Wistec:
- 26 Upon commencement hereof, the initial connection charge and all other introductory or
- 27 Commencement charges stipulated on the attached product addendum/s; and
- 28 Monthly in arrears or as and when billing is passed on by the network operator, the total cap charges used and/or generated by the subscriber during each billing period and any other charges payable in respect of the services requested by the subscriber or other charges levied by Wistec from time to time; and
- 29 Value added tax at the applicable rate on all VAT able charges and services. All charges, unless otherwise stated, exclude value added tax.
- 30 The charges payable by the subscriber to Wistec for the provision or facilitation of the services shall be stipulated in any notice, directive, promotion or applicable tariff plan issued or derived by Wistec from time to time and the contents of such notice, directive promotion or tariff plan including the charges stipulated therein shall be deemed to be incorporated in this agreement as if specifically set out herein.
- 31 A monthly administration fee of R50.00 will be levied in the event that invoices and statements are posted to the subscriber.
- 32 The subscriber agrees that Wistec shall be entitled from time to time to increase or vary the charges payable (as dictated by the networks or by extreme currency fluctuations) by the subscriber to Wistec for the services. Wistec shall endeavour to give the subscriber prior notice of any such increase or variation but gives no undertaking in this regard.
- 33 Wistec's monthly statement of charges shall be prima facie proof of the amounts owed by the subscriber to Wistec in terms hereof and of the other facts stated therein and should the subscriber dispute the number, duration or amount charged in respect of any cap used or services rendered by Wistec, then the subscriber shall bear the onus of proving that Wistec's statement is incorrect in such respect.

PAYMENT

- 34 The subscriber agrees that payment shall only have been made to Wistec when the monies remitted by the subscriber have been received into Wistec's bank account.
- 35 Should any debit order be returned unpaid or stopped of the subscriber or be rejected for whatsoever reason or should Wistec exercise its right to suspend the provision of the services due to late or non-payment of any monies due in terms hereof by the subscriber, then the subscriber shall pay an administration charge as may be levied by Wistec from time to time for each such non-payment, suspension or any other breach of this agreement which amount shall be liable upon demand and recoverable by Wistec.
- 36 The monthly statement ("bill") shall be sent by Wistec to the Subscriber at the email address supplied by the Subscriber in the Schedule or in writing to Wistec. It shall be the duty of the Subscriber to check the bill in order to ensure that the contents thereof are correct. Unless a query is raised in respect of the contents of a bill within thirty days from date thereof the contents shall be deemed as correct.
- 37 Payment is due within ten days of invoice date and is affected by debit order. Such payment must be affected on Wistec's direct debit date. Non-receipt of invoices by the subscriber will not be considered as a valid basis for late or non-payment.
- 38 The subscriber agrees and acknowledges that a certificate given under the hand of a financial manager or controller of Wistec whose status and authority need not be proved shall be considered prima facie proof of the amount due and shall entitle Wistec to apply for judgment against the subscriber and to obtain summary judgment or provisional sentence, as the case may be.

LIMITATION OF LIABILITY

- 39 The Subscriber hereby indemnifies Wistec and holds Wistec harmless against any claim by any third party arising directly or indirectly out of the Subscriber's access to or use of the Service or information obtained through the use of it, including without limitation of any claim due to the use of the Services for unlawful purposes.
- 40 Wistec shall not be liable for any loss or damages arising out of mistakes, omissions, interruptions, delays, errors or defects in the service, the transmission of the service, or failures or defects in facilities furnished by Wistec, occurring in the course of furnishing service shall in no event exceed an amount equivalent to the proportionate fixed monthly charge to Wistec for service, during the period of time in which such mistakes, omissions, interruptions, delays, errors or defects in the service, its transmission or failure or defect in facilities furnished by Wistec occurred.
- 41 The Subscriber must pay Wistec for the replacement or repair of damage to Wistec's equipment or facilities cause by the negligence or will full act of the customer or users; improper use of service; or any use of equipment or service provided by others.
- 42 The Subscriber must insure Wistec's equipment or facilities installed at the subscriber's premises for the theft or mishandling or damages of equipment, or the subscriber shall be liable for the replacement equipment.
- 43 The indoor equipment installed at the Subscribers premises remains the property of Wistec's unless the subscriber has purchased the equipment. It is seen as not part of contract.
- 44 The outdoor equipment installed at the Subscribers premises remains the property of Wistec and is seen as Wistec's intellectual property.
- 45 The Subscriber is liable for all callouts made, once the solution has been installed and activated, unless it is found that the service interruption was caused on the Wistec side of the network.

BREACH

- 46 If the Subscriber:
- 46.1 Fails to pay any amount under this Agreement on due date, then Wistec shall be entitled without prejudice to any of its other rights arising out of this agreement forthwith and without any liability towards the subscriber to suspend its provision to the Subscriber of the services in whole or in part and/or disconnect the Subscriber from the network and/or to render the equipment inoperable by whatever means.
- 46.2 Commits, suffers or permits a breach of any term of this Agreement; or
- 46.3 Termination of the contract by the Subscriber before the specified date of termination for breach of contract will result in the Subscriber being liable for the full payment of the remaining subscription fee for the applicable term signed upon in the terms of this Agreement and the terms stipulated and signed upon in the Product Addendum/s.

ADDRESSES AND NOTICES

- 47 Each Party chooses the addresses set out on the cover page of this Agreement as its address and Domicillium to which all notices and other communications must be delivered for the purposes of this Agreement.
- 48 Any notice or communication required or permitted to be given to a Party pursuant to the provisions of this Agreement will be valid and effective only if in writing and delivered to a Party's chosen address or email address in accordance with the provisions of this clause.
- 49 Any Party may, by written notice to the other Party, change its chosen address to another address, provided that the change will become effective on the 10th Business Day after the receipt or deemed receipt of the notice by the addressee.
- 50 Any notice to a Party contained in a correctly addressed envelope and delivered by hand to a responsible person during ordinary business hours at its chosen address will be deemed to have been received on the day of delivery.
- 51 Any notice by email to a Party at its email address will be deemed, unless the contrary is proved, to have been received on the first Business Day after the date of transmission.

- 52 Notwithstanding anything to the contrary contained in this clause, a written notice or communication received by a Party will be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen address.

GENERAL

- 53 This Agreement in conjunction with the signed Product Addendum/s constitutes the sole record of the Agreement between the parties in regard to the subject matter thereof. Neither party shall be bound by any representation, express or implied term, promise or the like not recorded herein and in the Product Addendum/s or reduced to writing and signed by the parties or their representatives. No addition or variation of this Agreement and the attached Product Addendum/s shall be of any force or effect unless in writing and signed by or on behalf of the parties. No indulgence that Wistec may grant to the Subscriber shall constitute a waiver of any of Wistec's rights. In this agreement the singular shall include the plural.
- 54 This Agreement and the signed Product Addendum/s shall in all respects be governed by and construed in accordance with the law of the Republic of South Africa, and all disputes, actions and other matters in connection with this Agreement and the signed Product Addendum/s shall be determined in accordance with such laws.
- 55 Should any provision of this Agreement and the signed Product Addendum/s be rendered unlawful then that unlawful provision only shall be invalid, without effecting or invalidating any of the remaining provisions of this Agreement and the signed Product Addendum/s, which shall continue to be of full force and effect.
- 56 Wistec is entitled to cede its rights and / or to delegate its obligations arising from this agreement and/or assign this agreement, wholly or partly, to any third party. The subscriber shall not be entitled to cede or delegate his rights and/or obligations arising out of this contract, unless accepted in writing by the credit control manager or a director of Wistec.
- 57 The Subscriber warrants the accuracy of all information furnished by or on behalf of the Subscriber in terms of or pursuant to this Agreement and the signed Product Addendum/s. The Subscriber shall forthwith notify Wistec in writing of any changes from time to time in the information set out in the schedule on the face hereof and on the signed Product Addendum/s.
- 58 The parties hereby consent to the jurisdiction of any Magistrates Court which may exercise jurisdiction over any of the parties in terms of Section 28 of the Magistrates Courts' Act 32 of 1944 in respect of any dispute arising from or concerning this Agreement, provided that should the Service Provider elect to proceed in the Supreme Court it shall be entitled to do so in the Witwatersrand Local Division, to which jurisdiction the Subscriber hereby submits.
- 59 The Subscriber undertakes to abide by Wistec's acceptable use policy.
- 60 Wistec undertakes to treat all subscribers' information as confidential.
- 61 The Subscriber shall not be entitled to migrate to a lower tariff plan as offered by the Network Operators during the stipulated contract stated on the face hereof and or on the Product Addendum/as unless recommended by PF.

FORCE MAJEURE

- 62 If PF is prevented from or restricted directly or indirectly from carrying out all or any of its obligations under this Agreement and the signed Product Addendum/s due to any reason or cause beyond the control of Wistec or by reason of force majeure.
- 63 Wistec shall be relieved of its obligations in terms of this Agreement and the relevant signed Product Addendum/s during such period.

CONFIDENTIALITY AND NON-DISCLOSURE

- 64 The Party receiving the Confidential Information will:
- 65 Not disclose or communicate the Confidential Information to any person other than its employees, agents or contractors who will be directly involved in work in respect of the integration, services and who have been made aware of the confidential nature of the Confidential Information and

- have agreed to act in accordance with the terms of this undertaking. The receiving party will seek permission from the disclosing party prior to disclosing the Confidential Information to any third party who needs to know the Confidential Information
- 66 Act on or use the Confidential Information only for this Agreement and will not make any copies or otherwise duplicate the Confidential Information. The receiving party will seek permission from the disclosing party prior to using the Confidential Information for any other purpose; and
- 67 Protect the Confidential Information with the same degree of care with which it protects its own confidential information of like importance, but in any event not less than with a reasonable degree of care.
- 68 The above undertakings will not apply to the extent that:
- 69 The receiving party is required by law to make disclosure of the Confidential Information. If a receiving party is required to disclose the Confidential Information pursuant to law, judicial or arbitration process, or by governmental authorities, the receiving party will advise the disclosing party thereof prior to disclosure, if possible, and will further to the extent that it is lawfully able to take such steps to limit the extent of the disclosure, afford the disclosing party a reasonable opportunity to intervene in the proceedings; and comply with the disclosing party's requests as to the manner and terms of any such disclosure;
- 70 The Confidential Information is or becomes generally available to the public other than because of a breach of the above by the receiving party or any of its employees, agents or contractors;
- 71 Any Confidential Information is received by the receiving party from a third party who did not acquire the Confidential Information subject to any duty of confidentiality to the disclosing party;
- 72 The Confidential Information is already known to the receiving party or in its possession before the disclosure hereunder free of any obligation to keep it confidential;
- 73 The Confidential Information is already possessed or independently developed by the receiving party; or
- 74 The Confidential Information is approved for release by prior written authorisation from the disclosing party.
- 75 Each Party's Confidential Information will be and remain the property of that Party.
- 76 Neither Party will possess or assert any lien or other right against or to the other Party's Confidential Information, or sell, assign, lease or otherwise dispose of the other Party's Confidential Information, or any part thereof, to third parties.

LIMITATION OF LIABILITY

- 77 Each Party's liability to the other for all claims, losses, damages or expenses from any causes whatsoever will be limited to direct damages proven.
- 78 In no event will a Party be liable to the other for any special, incidental, consequential, or any other indirect loss or damage (including but not limited to lost profits or revenues, loss of data). These limitations of liability will apply regardless of the form of action, whether in contract, delict, strict liability, or otherwise and regardless of whether a Party has been advised as to the possibility of such damages and/or losses.

DISPUTE RESOLUTION

- 79 In the event of a dispute between the Parties of any kind or nature relating to this Agreement, upon the written request of a Party, each of the Parties will appoint a senior representative whose task will be to meet to resolve such dispute. Such representatives will discuss the matter in dispute and negotiate in good faith, to resolve the dispute on mutually agreeable terms.
- 80 No formal proceedings may be commenced until any or all designated representatives conclude in good faith, that amicable resolution through continued negotiation of the matter is not likely to occur.

- 81 Any dispute that might arise between the Parties that cannot be resolved by the above will be submitted to and decided by arbitration.
- 82 Both Parties will continue to comply with all the provisions of this Agreement with all due diligence during the determination of such dispute, should the dispute arise during this Agreement.

ARBITRATION

- 83 The Parties agree to subject themselves to resolve any disputes that could not be resolved between themselves, by means of arbitration in English through AFSA (Arbitration Foundation of Southern Africa) or any other mutually agreed upon institution.

VARIATION

- 84 No amendment or variation to this Agreement will be of any force or effect unless reduced to writing on paper and signed by or on behalf of the duly authorised representatives of both Parties in pen. The provisions of the Electronic Communications and Transactions Act, 2002 (25 of 2002) are expressly excluded from this clause.

COUNTERPART

- 85 This Agreement may be signed in counterparts and the copies signed in counterpart will form the Agreement. This will include scanned copies of this document.

GOVERNING LAW

- 86 All the provisions of this Agreement will be governed by and interpreted in accordance with the laws of the Republic of South Africa. Furthermore, the Parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Division, Pretoria or Magistrate Court regarding all matters arising from this Agreement.