



## SUBSCRIBER AGREEMENT

BETWEEN

WTTX Communications PTY LTD

, Registration Number: 2017/094196/07

AND

### SUBSCRIBER DETAILS

Subscriber Name:

Identity/Company Registration Number:

Tel:

Mobile:

Physical Address:

E-mail:

Suburb:

Postal Address:

City:

Suburb:

City:

Postal Code:

### SERVICE

Description:

Service Term:

Monthly:

Fixed-Term:

Monthly Service Fee: (tick)

R\_\_\_\_\_ over 12 Months

R\_\_\_\_\_ over 24 Months

### EQUIPMENT

Serial Number:

Service Start Date:

Installation Fee (including Equipment): R\_\_\_\_\_

Full Payment:

Rental:

Extended Payment:

Initial: \_\_\_\_\_

# CONFIRMATION

I/We hereby confirm that I/we authorized to enter into this Agreement. The information provided is true and correct

## For Subscriber

Signed at \_\_\_\_\_ this \_\_\_\_ of \_\_\_\_\_ 20\_\_\_\_\_

Signed: \_\_\_\_\_

(Authorized Signatory)

Subscriber Full Name: \_\_\_\_\_

## For the Service Provider

Signed at \_\_\_\_\_ this \_\_\_\_ of \_\_\_\_\_ 20\_\_\_\_\_

Signed: \_\_\_\_\_

(Authorized Signatory)

Name: \_\_\_\_\_

# TERMS AND CONDITIONS

## 1. Definitions

**1.1 “Agreement”** means the Subscriber Agreement and the Terms and Conditions;

**1.2 “Business Day”** means Monday to Friday excluding weekends and public holidays;

**1.3 “CPE”** means Customer Premises Equipment, including the antennas and communication cards, all cabling, gateways and modems installed at a Subscriber’s Premises to send and / or receive a signal via a radio link and may include any other special equipment provided by the Service Provider to facilitate any future enhanced services to the Subscriber.

**1.4 “Installation Date”** means the date on which the Service provider and/or its authorised representative(s) installs the Equipment at the premises of the Subscriber;

**1.5 “Juristic Person”** means a company or close corporation and includes a body corporate, partnership, association or trust;

**1.6 “Service”** means the service provided by the Service Provider as detailed in the Subscriber Agreement; and

## 2. Introduction

2.1 The Subscriber agrees to be bound by the terms and conditions contained herein.

2.2 This Agreement will commence on the Installation Date and will continue for an uninterrupted period as selected by the Subscriber on page 1 of the Subscriber Agreement.

## 3. Supply, use and installation of CPE and services

3.1 The Subscriber shall be responsible for obtaining all necessary approvals and authorisations from any competent authority or body and required for the purpose of any such supply and/or delivery and/or installation and the Subscriber hereby indemnifies the Service Provider against any claim or liability suffered by the Service Provider by reason of such approval and authorisation not having been obtained.

3.2 All risk of loss, theft, destruction or damage due to negligence to the equipment shall vest in the subscriber. If any CPE is lost, stolen or damaged due to negligence, the Subscriber shall immediately notify the Service Provider in writing and shall at all times remain liable for all/any costs and charges pertaining to such CPE. The Service Provider shall as soon as reasonably possible replace the CPE.

3.3 The cost of this replacement equipment shall be for the Subscriber’s account.

3.4 Notwithstanding the terms of clause 3.2 above, the Services provider bears the risk of any operational failure in relation to the CPE and/or any damage or loss suffered thereto which is attributable to Force Majeure (“act of God”) and shall repair and / or replace such CPE at its sole discretion. The client may be charged a service fee in relation to services rendered regarding the damaged equipment.

3.5 The CPE shall remain the property of the Service Provider and will be collected upon cancellation of this Agreement.

3.6 Where the subscriber purchased equipment from the Service Provider then the manufactures warranty will apply to such equipment. Such warranty is normally for a period of 12 (twelve) months from the date of purchase and normally covers defective equipment as a result of faulty design, manufacture of workmanship provided that such equipment has

not been misused, over-loaded, modified or repaired by an unauthorised party. The Service Provider may require the subscriber to make available the equipment to the Service Provider or its nominee for inspection of the equipment at a time and place to be arranged by the Services Provider. Should the Services Provider accept the equipment for repairs and maintenance it shall be deemed to do so as an agent on behalf of the manufacturer or local supplier of the equipment and the Services Provider shall not be liable for any loss, damage, destruction, theft or negligent workmanship howsoever or by whomsoever caused.

3.7 Any of the stipulations as in Clause 3.4 shall in no way be deemed to constitute a termination of this Agreement which shall continue to be of full force and effect.

3.6 The Subscriber hereby warrants and undertakes in favour of the Service Provider that:

3.6.1. it shall not use or allow the Services to be used for any improper, immoral or unlawful purpose, nor in any way which may cause injury or damage to persons or property or an impairment or interruption to the Services;

3.6.2. it will only use the CPE provided by the Service Provider and in doing so shall comply with any applicable legislative and/or regulatory obligations which may, from time to time be imposed, in relation to the use of CPE's and the provision of Services, in addition to any directives issued to this extent by the Service Provider itself;

3.6.3. it recognises that no right, title or interest in the software contained in the CPE, issued to the Subscriber, vests in the Subscriber;

3.6.4. it shall not, nor permit any third party, to reverse engineer, decompile, modify or tamper with the software contained in or pertaining to any CPE.

3.8 The CPE must be used in accordance with the Service Provider or the manufacturer's instructions, as the case may be.

3.9 The Service Provider shall, for the duration of the Agreement and at its sole discretion, upgrade and/or replace CPE installed at the Subscriber's premises from time to time.

#### **4. Payment Terms**

4.1 Unless otherwise agreed to in writing, billing for the Service, and where applicable the Installation and Equipment, will commence on the Installation Date.

4.2 The Subscriber agrees to pay timeously all amounts due in terms of the Agreement.

4.3 To the fullest extent permitted by law, all amounts due and payable, in terms of the Agreement, shall be paid free of exchange, and without deduction or set-off, and shall be paid by way of a direct debit order in favour of the Service Provider (drawn against an existing banking account nominated by the Subscriber), or in such other manner as the Service Provider may from time to time determine.

4.4 The Subscriber agrees that the Service Provider will be entitled and authorised to draw all amounts payable in terms of the Agreement from the account specified by the Subscriber (or any other bank or branch to which it may be transferred).

4.5 Unless otherwise agreed to in writing, the debit order authorisation will commence on the Installation Date and will continue, and not be revoked, until termination of the Agreement or until such time as all amounts due and owing to the Service Provider have been fully and finally discharged. Furthermore, the debit order authorisation will be collected at the end of the first month and each subsequent month, to collect any amounts due.

Initial: \_\_\_\_\_

4.6 The Subscriber agrees to sign all such forms and to do all such things as may be necessary to give effect to the debit order as contemplated in clause 4.5 above or otherwise.

4.7 Should the Subscriber fail to pay any amount on the due date stipulated for payment then the Service Provider may, without prejudice to any of its other rights and remedies:

4.7.1 Take all such further steps as may be necessary to recover the outstanding amount from the Subscriber, including without limitation the use of debt collection mechanisms; or

4.7.2 Subject to clause 5, terminate this Agreement with immediate effect

## **5. Termination of Fixed Term Service Agreement**

5.1 Where the Subscriber is a natural person, the Subscriber may cancel the Agreement on a minimum of 20 Business Days written notice to the Service Provider at any time prior to the expiry of the selected fixed-month period, subject to clause 5.3.2 hereof.

5.2 Where the Subscriber is a Juristic Person, the Subscriber may not cancel the Agreement during the selected fixed-month term of the Agreement save for a material unremedied breach committed by the Service Provider.

5.3 The Service Provider may cancel the Agreement –

5.3.1 Where the Subscriber is a natural person - 20 Business Days after giving the Subscriber written notice to remedy a material breach of the Agreement and the Subscriber fails to remedy that breach within such time period;

5.3.2 In the case where the Subscriber cancels this Agreement as contemplated in clause 5.1 the Subscriber will remain liable for all outstanding amounts due and owing up to the date of cancellation; and

5.3.3 In the event of termination, the Subscriber shall remain liable for the outstanding portion of the Installation Fee, which amount will immediately become payable upon notification by either party of such termination.

5.4 Any notice to the Service Provider by the Subscriber for cancellation in terms of the Agreement shall be made in writing.

5.5 The Service Provider reserves the right to remove the CPE when the contract is terminated and/or temporarily suspended.

## **6. Indemnity**

6.1 The Subscriber hereby unconditionally and irrevocably indemnifies the Service Provider and agrees to hold the Service Provider harmless against all loss, damages, claims, liability and/or costs, of whatsoever nature, howsoever and whomsoever arising, suffered or incurred by the Service Provider as a result of any claim instituted against the Service Provider by a third party (other than the Subscriber) as a result of (without limitation):

6.1.1 The Subscriber's use of the Equipment for a purpose other than that permitted and/or prescribed in terms of the Agreement;

6.2.2 Any other cause, whatsoever, relating to the Agreement where the Subscriber has acted wrongfully, negligently or failed to act when he/she/it had a legal duty to do so.

## **7. Limitation of liability**

7.1 Save to the extent otherwise provided for in the Agreement or where the Subscriber is entitled to rely on or receive, by operation of law, any representations, warranties or guarantees, the Service Provider does not make or provide any express or implied representations, warranties or guarantees regarding the availability, accuracy, reliability, timeliness, quality or security of any product or service.

7.2 In addition to, and without prejudice to any other limitations of liability provided for in the Agreement and to the fullest extent permitted by applicable law, the Service Provider shall not be liable to the Subscriber for any direct damages howsoever arising and neither party shall be liable to the other for any special, indirect, incidental, consequential or punitive damages arising out of or relating to the Agreement, whether resulting from negligence, breach or any other cause. To the extent that a competent court or tribunal or other competent dispute resolution body or authority finally determines, notwithstanding the exclusion contained in this clause, that the Service Provider is liable to the Subscriber for any damages, the Service Provider's liability to the Subscriber for such damage, howsoever arising, shall be limited to the amounts paid by the Subscriber under the Agreement in consideration for a service or product during the immediate preceding 12-month period in respect of the service or product which gave rise to the liability in question.

## **8. Cession and Delegation**

The Subscriber may not sell, cede, assign, delegate or in any other way alienate or dispose of any or all of their rights and obligations, under and in terms, of the Agreement without the prior written approval of the Service Provider. The Service Provider shall be entitled to sell, cede, assign, delegate, alienate, dispose of or transfer any or all of its rights and obligations, under and in terms, of the Agreement to any of its Affiliates or to any third party without the Subscriber's consent and without notice to the Subscriber. "Affiliates" for this purpose includes the Service Provider's holding company, the holding company(ies) of the Service Provider's holding company (collectively "its holding companies"), its subsidiaries, subsidiaries of its holding companies and any other companies which are directly or indirectly controlled by the Service Provider or are under common control with the Service Provider.

## **9. Jurisdiction**

The parties hereby consent to the jurisdiction of the Magistrate's Court in the Republic of South Africa in respect of any proceedings that may arise out of the Agreement, provided that the Service Provider shall be entitled, in its reasonable discretion, to institute such proceedings in the High Court of South Africa and, in such event, the Subscriber consents to the jurisdiction of such court. The jurisdiction of the Small Claims Court is specifically excluded.

## **10. Amendment of the Agreement**

The Service Provider reserves the right to amend the Agreement, including its charges, from time to time on written notice to the Subscriber, which notice may be sent by email to the Subscriber and/or which notice may be effected by publishing any new version of the Agreement on our the Service Provider's website together with the date on which it will become effective, which will (save as otherwise provided for herein) if reasonably possible, at least be 30 days after the date on which it is first published.

## **11. General**

11.1 Subject to the Service Provider's right to amend the Agreement described elsewhere in this Agreement, the parties acknowledge and agree that the Agreement constitutes the whole of the agreement between them and that no other agreements, guarantees, undertakings or representations, either verbal or in writing, relating to the subject matter of the Agreement not incorporated in the Agreement shall be binding on the parties. Unless otherwise provided herein, no changes or cancellation of the Agreement by the Subscriber will be binding on any of the parties unless recorded in writing and signed by both parties.

11.2 The Subscriber agrees that any notices the Service Provider sends to the Subscriber in terms of any agreement concluded between the parties may be sent via email unless otherwise prescribed by law.

11.3 No indulgence, leniency or extension of time which the Service Provider may grant or show to the Subscriber shall in any way prejudice the Service Provider or preclude the Service Provider from exercising any of its rights in the future.

11.3 The Subscriber warrants that as at the date of signature of the Subscriber Agreement, all the details furnished by the Subscriber to the Service Provider are true and correct and that the Subscriber will notify the Service Provider in the event of any change to such details.