

## NoWire Technologies Standard Terms and Conditions (iBurst & HSDPA)

### NOWIRE TECHNOLOGIES (PTY) LIMITED - STANDARD TERMS AND CONDITIONS

#### 1. INTERPRETATION

- 1.1 In this Agreement the following expressions shall have the following meanings respectively:
- (a) **"Activation Charge"** - the initial charge for initiating the Wireless Equipment as set out in the Charges And Tariff Options;
  - (b) **"Administration Charge"** - means the charge for processing the Customers application as set out in the Charges And Tariff Options;
  - (c) **"Agreement"** - the terms and conditions as set out herein, in terms of which NoWire will deliver the Service to the Customer;
  - (d) **"Associated Company"** - any subsidiary or ultimate holding company of NoWire or any subsidiary of such holding company ("holding company" and "subsidiary" having the meanings as defined by the Companies Act 61 of 1973);
  - (e) **"Business Day"** - a day not being a Saturday or Sunday or public holiday in the Republic of South Africa;
  - (f) **"Business Hours"** - hours that fall within 8 am and 5 pm on any Business Day;
  - (g) **"Charges And Tariff Options"** - the charges for the Service, the Wireless Equipment and any other additional services/products/devices as may be published from time to time by NoWire pursuant to its rights under Clause 14 herein;
  - (h) **"Commencement Date"** - the date on which the Wireless Equipment is installed and/or the Customer has taken delivery of the Wireless Equipment and/or the Service is provided to the Customer and/or the Customer is connected to the network.
  - (i) **"Contractual Service Offering"** - a Service offering where the Customer is obliged to remain a Customer for the duration of the contract period applicable to that Service offering.
  - (j) **"Customer"** - the party who is named on the Service Order and/or Service Installation document;
  - (k) **"Customer Application"** - any hardware and/or software used by the Customer which is approved under any legislation concerning the same and which is capable of a connection to the wireless network by means of Wireless Equipment;
  - (l) **"Customer Call Centre"** - telephone support provided to Customers by NoWire staff or any duly authorised entity on behalf of NoWire;
  - (m) **"Customer's Address of Request"** - an address within South Africa specified by the Customer on the Service Order, where the Customer requires the installation and/or delivery of the Wireless Equipment;
  - (n) **"Delivery Charge"** - the charge for physically delivering the Wireless Equipment at the Customer's Address of Request as set out in the Charges And Tariff Options;
  - (o) **"Installation Charge"** - the initial charge for installing the Wireless Equipment at the Customer's Address of Request as set out in the Charges And Tariff Options;
  - (p) **"NoWire"** - means NoWire Technologies Proprietary Limited, Registration Number 2002/013010/07, with registered offices at Momentum Office Park, 488 Fehrsen Street, Brooklyn, 0181;
  - (q) **"Service"** - the telecommunications services including but not limited to the conveyance of telecommunication messages and/or voice and/or data for local and/or international access and delivery, as described by NoWire from time to time;
  - (r) **"Service Area"** - the approximate area indicated by NoWire from time to time;
  - (s) **"Service Charge"** - the monthly charge to the Customer for the use of the NoWire Wireless Equipment and the SIM as set out in the Charges And Tariff Options;
  - (t) **"Service Installation"** - the document which forms part of this Agreement relating to the installation of the Wireless Equipment at the Customer's Address of Request;
  - (u) **"Service Order"** - the document containing an order by the Customer for the provision of the Service, which forms part of this Agreement;
  - (v) **"Wireless Equipment"** - the relevant telecommunications equipment (currently an USB modem and/or PCMCIA card) connecting the Customer Application to the network to provide the Service, which could include a SIM, a power supply, an antenna and/or interface cable/s.
- 1.2 The headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 1.3 This Agreement shall, unless the context so requires, include any special terms and conditions agreed in writing between NoWire and the Customer.
- 1.4 Words importing the singular include the plural and vice versa.
- 1.5 Words importing a gender include any gender.

#### 2. COMMENCEMENT AND DURATION

2.1 This Agreement shall commence on the Commencement Date and shall continue in accordance with the minimum term linked to the Contractual Service Offering and applicable Charges And Tariff Options selected by the Customer, where after it will continue indefinitely until terminated by

either party giving 1 (one) month's calendar written notice to the other to terminate the Agreement.

#### 3. CONNECTION AND INSTALLATION OF THE SYSTEM AND PROVISION OF THE SERVICE

- 3.1 Subject to the terms and conditions of this Agreement, NoWire shall use all reasonable endeavours to connect the Customer via the Wireless Equipment to the network to commence with the Service on the date specified in the Service Order document or such other date as may be agreed in writing by the parties and thereafter to provide and maintain the Service throughout the duration of this Agreement.
- 3.2 Installation of the Wireless Equipment shall be effected by NoWire or a person duly authorised by NoWire, upon request by the Customer and as indicated on the Service Order. Any such procedures shall, while they are in force, form part of this Agreement. All Installation Charges shall be for the Customer's account unless otherwise agreed to in writing.
- #### 4. TERMINATION
- 4.1 Notwithstanding the provisions in Clause 2.1 the Customer shall have the right to terminate this Agreement within 7 (seven) days after the Commencement Date, should the customer not be satisfied with the Service. However, the Customer shall be liable for all applicable charges and costs, including all charges that were waived by NoWire, up to and including the date of termination.
- 4.2 Without prejudice to any other rights which may accrue before or after any termination, either party may further terminate this Agreement forthwith in the event that:
- (i) the party hereto is in breach of any of its obligations under this Agreement and in the case of a remediable breach fails to remedy such breach within 10 (ten) days of receiving written notice to do so; or
  - (ii) the Customer makes or offers to make any arrangement or composition with its creditors or commits any act of insolvency in terms of the Insolvency Act 24 of 1936, or any act which would have been an act of insolvency had it been committed by a natural person or if any petition or application in sequestration, liquidation, winding-up or judicial management is presented by or made against the Customer, or if any resolution to wind-up the Customer is passed or if a receiver, trustee or curator is appointed over the whole or any part of the Customer's assets or estate or if NoWire anticipates that any of the events set out in this clause are imminent; or
  - (iii) the Customer does or allows to do anything which in NoWire's opinion shall or may have the effect of negatively affecting the operation of the Service.
- 4.3 Upon termination of this Agreement NoWire shall disconnect the Wireless Equipment.

#### 5. NOWIRE'S OBLIGATION

Subject to the terms and conditions of this Agreement NoWire shall:

- 5.1 If requested by the Customer, install at and/or deliver to the Customer's Address of Request such quantity of Wireless Equipment and/or other equipment as may be ordered by the Customer.
- 5.2 Allow the Customer access to the wireless network by way of the Wireless Equipment and shall use all reasonable endeavours to maintain such connection.
- 5.3 Use all reasonable endeavours to meet any agreed installation and/or delivery date, which shall be provisional only, and NoWire shall not be responsible for any consequence of delay or damages if installation and/or delivery and/or connection to the network are not met.
- #### 6. CUSTOMER OBLIGATIONS
- 6.1 The Customer undertakes that he/she/it shall use, or permit any other person to use the Service, the Wireless Equipment only:
- (a) in accordance with such reasonable operating instructions as may be notified in writing to the Customer by NoWire from time to time; and
  - (b) for the purpose for which the Service is provided.
- 6.2 The Customer shall not, or permit any unauthorised person to:
- (a) carry out or try to carry out any repairs and/or alterations and/or perform reverse engineering to NoWire owned Wireless Equipment; and/or
  - (b) perform reverse engineering to Wireless Equipment purchased from NoWire; and/or
  - (c) sell, charge, hire or otherwise prejudice NoWire's title in the Wireless Equipment; and/or
  - (d) use the Service and/or the Wireless Equipment in such a manner which constitutes a violation or infringement of the rights of any person, the wireless network, firm or company (including but not limited to rights of copyright or confidentiality) or a violation or infringement of any statutory duty or obligation or any duty or obligation in contract delegate or otherwise, to a third party; and/or
  - (e) use the Service and/or the Wireless Equipment for the transmission of any material which is defamatory, offensive or of an obscene or menacing character.
- 6.3 The Customer shall indemnify NoWire against any

claims, procedures and expenses arising from any infringement of Clause 6.1 and 6.2 of this Agreement.

- 6.4 The Customer, who subscribes to the NoWire Service, shall provide NoWire with all such necessary information and co-operation that NoWire may reasonably require from time to time to enable it to proceed uninterrupted with the performance of its obligations under this Agreement. This shall include, if applicable:
- (a) the provision of a suitable environment for the NoWire owned Wireless Equipment;
  - (b) full and convenient access to the Customer's and other premises for the purpose of installing and/or delivery of the Wireless Equipment, or of any additional visits to these premises made either at the Customer's request or which may be necessary from time to time in order to maintain the Service;
  - (c) a prompt report by the Customer to NoWire of any loss or damage to the NoWire owned Wireless Equipment while at the Customer's premises.
- 6.5 The Customer shall at all times ensure that the Customer Application shall be approved, to the extent and manner necessary, for use with the Wireless Equipment and the Customer shall at all times comply with the conditions of such approval. NoWire reserves the right to disconnect any Customer Application, and shall incur no liability whatsoever in so doing, if the Customer does not fulfil its obligations under this Condition, or if in the opinion of NoWire it may cause the death of, or personal injury to, or damage to the property of NoWire or any person engaged in the running of the System or to materially impair the quality of the Service.
- #### 7. OWNERSHIP OF THE WIRELESS EQUIPMENT
- 7.1 The ownership of Wireless Equipment, except where the customer has purchased the Wireless Equipment and paid for it in full and/or the minimum duration period of the Contractual Service Offering has expired, shall remain vested in NoWire and all NoWire owned Wireless Equipment shall be returned to NoWire after termination of the Service under Clauses 2 and 4 within 7 (seven) days from the date of termination at the Customer's sole expense and shall further, upon demand, pay NoWire all amounts due hereunder at the date of such termination.
- 7.2 The risk of damage to and loss of the NoWire owned Wireless Equipment shall pass to the Customer upon its delivery to the Customer and/or installation and/or delivery by NoWire to the Customer's Address of Request until such time as the NoWire owned Wireless Equipment is returned in good and satisfactory working order, by the Customer to NoWire at its registered office or such other address as NoWire may specify in writing.
- 7.3 Failure, for any reason, to return the NoWire owned Wireless Equipment to NoWire's address in accordance with Clauses 7.1 shall cause the Customer to be liable for the recovery costs of such Wireless Equipment as well as the replacement costs as shall apply from time to time. This condition is not applicable where the Wireless Equipment is owned by the Customer and the Customer has paid for the Wireless Equipment in full and/or the minimum duration period of the Contractual Service Offering has expired.
- #### 8. BILLING AND PAYMENT
- 8.1 The billing for the Service shall commence on the Commencement Date.
- 8.2 The Customer is responsible for the payment of all charges indicated on the account rendered and shall pay NoWire, or a person duly authorised by NoWire, a once-off Installation Charge (if applicable), a once-off Activation Charge (if applicable), a once-off Administration Charge and a monthly Service Charge unless otherwise specified by NoWire.
- 8.3 Service Charges shall be invoiced by NoWire monthly in advance and shall continue for the duration of this Agreement until the Wireless Equipment are returned to NoWire in accordance with Clauses 2, 4 and 7.
- 8.4 Installation Charges (if applicable), Activation Charges (if applicable) and Administration Charges, which are non-refundable, shall be invoiced by NoWire upon installation and/or delivery and/or activation of the Wireless Equipment to the Customer.
- 8.5 Any other applicable charges shall be invoiced by NoWire in accordance with its Charges And Tariff Options.
- 8.6 NoWire may charge additional charges in the following cases:
- (a) where on-site assistance has been provided at the Customer's request, such charges shall be calculated in accordance with a written quote;
  - (b) where it has been necessary for NoWire to use non-standard apparatus and/or equipment in order to provide the Service;
  - (c) where the Customer reported a problem and NoWire attends to the problem and finds that the problem is not NoWire related;
  - (d) in accordance with Clause 12.2.
- 8.7 Should the Customer exceed his/her monthly selected data limit associated with the applicable Service Charge being billed, then NoWire shall have

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- the sole right, without any liability, to amend the Customer's Service Charge to either the Charges And Tariff Options applicable for excess data usage or the next higher applicable Service Charge category in accordance to the Customer's data usage.
- 8.8. Should the Customer exceed and/or abuse his/her monthly selected bandwidth associated with the applicable Service Charge being billed, then NoWire shall have the sole right, without any liability, to amend the Customer's Service Charge to twice (2x) the applicable charge.
- 8.9. All monies due to NoWire in accordance with this Agreement shall be affected by debit order unless otherwise agreed to in writing. Service Charges shall be due and payable in advance on the last working day of each month. All other charges shall be due and payable with immediate effect.
- 8.10. In the event of a Customer's debit order being returned by the bank as unpaid for whatever reason, the Customer hereby agrees and authorise NoWire to recover all outstanding monies and costs due from his credit card.
- 9. REBATE OF CHARGES**
- 9.1 Where the Service has been wholly and continuously unavailable for an uninterrupted period of 40 (forty) Business Hours or more after a failure in the Service has been reported to NoWire, by reason of some fault in any part of the Network and not as a result of:
- (a) the fault or negligence of the Customer; and/or
- (b) a fault on the Customer Application; and/or
- (c) failure of the Customer to comply with all of the provisions of the Agreement; and/or
- (d) excusable events, as more particularly described in Clause 16 below;
- then the Customer may apply to NoWire in writing for a rebate of the monthly Service Charges appropriate to that period of unavailability and NoWire, upon approval, shall credit the Customer, by way of deduction from NoWire's next invoice, a pro rata rebate of the Service Charge.
- 9.2 Notwithstanding the provisions of Clause 0 and without prejudice to the generality of Clause 15, NoWire shall not be liable to the Customer under this Agreement for the use of telecommunications apparatus and lines provided or leased from any other licensed telecommunications operator or any other person or entity, including without limitation voice or data communication services during any period of unavailability.
- 10. INTEREST**
- NoWire shall be entitled to charge interest at the rate of 4% per annum above the then existing ABSA Bank Prime Rate if an account rendered to a Customer is not paid on or before the due date, up to and including the date of payment.
- 11. MAINTENANCE, REPAIR AND REPLACEMENT OF WIRELESS EQUIPMENT**
- 11.1 Wireless Equipment which is under warranty and/or the property of NoWire shall be maintained, repaired and/or replaced by NoWire free of charge or otherwise agreed to by the parties, provided always that faults are the result of fair wear and tear, and not caused by any negligence or default on the part of the Customer. In the event of faults caused by negligence or default on the part of the Customer, the Customer shall pay, on demand, such repair or replacement charges as applicable from time to time. Wireless Equipment which is not the property of NoWire shall not be repaired and/or replaced by NoWire free of charge.
- 11.2 Wireless Equipment currently incorporates no field serviceable parts and whether to repair or replace faulty units in the field shall be at the sole discretion of NoWire.
- 11.3 Defective Wireless Equipment which is the property of NoWire that has been removed from field operation should be returned forthwith to NoWire for repair or replacement. Shipment costs of Wireless Equipment to NoWire shall be made for the Customer's account, while return shipment of repaired or replaced Wireless Equipment shall be made for NoWire's account.
- 11.4 Defective Wireless Equipment which is the property of NoWire and uneconomical to repair shall, at NoWire's sole discretion, be replaced by NoWire free of charge or otherwise agreed by the parties, provided always that faults are the result of fair wear and tear, and not caused by any negligence or default on the part of the Customer. In the case of faults caused by negligence or default on the part of the Customer, the Customer shall pay, on demand, such repair or replacement charges as applicable from time to time.
- 12. CUSTOMER CALL CENTRE**
- 12.1 NoWire's Customer Call Centre shall operate during NoWire's normal Business Hours.
- 12.2 First line maintenance shall be provided free of charge telephonically. In those cases where the customer is unwilling to co-operate with the Call Centre with respect to first line maintenance, the customer shall be liable for all costs incurred to provide on-site assistance irrespective if the maintenance required is as a direct result of NoWire's negligence.
- 13. SUSPENSION / DISCONNECTION**
- 13.1 NoWire may elect to suspend the Service (and at NoWire's discretion disconnect the Wireless Equipment from the System) in the event of:
- (a) Customer's debit order being returned by the bank as unpaid due to insufficient and/or unavailable funds.
- (b) Failure by the Customer to pay the Charges within ten (10) working days after the due date as indicated on the account rendered to the Customer; and/or
- (c) NoWire being entitled to terminate this Agreement; and/or
- (d) Any technical failure, modification or maintenance of the respective telecommunication networks NoWire are connected to, in which event NoWire shall use its reasonable endeavours to ensure there is a minimum disruption to the Service.
- 13.2 Any exercise by NoWire of its rights of suspension in respect of an event referred to in Clause 13.1 shall not exclude NoWire's right subsequently to terminate this Agreement.
- 13.3 Notwithstanding any suspension of the service under this clause the Customer shall remain liable for all charges due, which shall include the purchase price, as published from time to time, of the NoWire owned Wireless Equipment, throughout the period of suspension unless NoWire at its sole discretion determines otherwise.
- 14. VARIATION OF CHARGES AND TERMS**
- 14.1 NoWire may vary all or any of its Charges payable hereunder or introduce new Charges from time to time (or otherwise in such a way as NoWire deems appropriate).
- 14.2 NoWire reserves the right, without liability, to vary the charges, terms and conditions of this Agreement, at its sole discretion, whether or not as a direct result of new legislation, statutory instruments, Government regulations or licenses, or similar events, provided that such variation shall be limited to the extent necessary for these purposes. NoWire at its sole discretion may elect to notify the Customer of any such variation in writing or by publishing such variation at NoWire's principal place of business.
- 15. LIABILITIES**
- 15.1 NoWire shall be liable to the Customer as expressly provided in this Agreement, but shall have no other obligation, duty or liability whatsoever in contract, delict or otherwise including any liability for negligence to the Customer and to the extent permitted by law. NoWire excludes any warranties whether expressed or implied by any statute including but not limited to any implied warranty of merchantability or fitness for a particular purpose.
- 15.2 NoWire shall perform its obligations hereunder with a reasonable degree of skill and care.
- 15.3 NoWire shall not be liable to the Customer hereunder in contract, delict or otherwise for any loss of revenue, business contracts, anticipated savings, or profits or for any other indirect or consequential loss whatsoever.
- 15.4 The provisions of this Clause shall continue to apply notwithstanding the termination or expiry of this Agreement.
- 16. EXCUSABLE EVENTS**
- The parties (except in respect of a failure by the Customer to pay any amounts due to NoWire) shall not be under any liability for any breach of any provision of the Agreement or any other failure hereunder if and to the extent that such breach or failure is as a result of Acts of God, war (whether declared or not), sabotage, riots, explosion, Government control, restrictions or prohibitions or any other Government act or omission whether local or national, requirement to act in accordance with the Licences, act or default of any public telecommunications operator, supplier, agent or subcontractor, industrial disputes of any kind, physical obstacles or atmospheric conditions or any other cause beyond the control of either party.
- 17. ASSIGNMENT**
- 17.1 The Customer may not cede, transfer, assign or delegate or otherwise deal with all or any of its rights and obligations under this Agreement except with NoWire's prior written consent, such consent not to be unreasonably withheld.
- 17.2 NoWire shall be entitled, at any time, to cede, transfer, assign or delegate or otherwise deal with all or any of its rights and obligations under this Agreement to any Associated Company or other person, without the Customer's consent.
- 18. REPRESENTATION**
- The parties agree that this Agreement is the complete and exclusive statement of the Agreement between the parties which supersedes all understandings or prior agreements oral or written, and all representations or other communications between the parties relating to the subject matter of this Agreement.
- 19. NOTICES AND DOMICILIA**
- 19.1 The Customer chooses, as its domicilium citandi et executandi, the address set out in the Service Order document, or at such other address of which the Customer may notify NoWire in writing not being a post office box or poste restante.
- 19.2 All notices given in terms of this Agreement shall be in writing.
- 19.3 NoWire's address for the service of any notice by the Customer under this Agreement shall be such address as is shown on the last invoice rendered to the Customer or such address as NoWire may prescribe for that purpose.
- 19.4 Any such communication shall be deemed to have been made to the other party on the day on which such communication ought to have been received in due course of post, telex or facsimile transmission.
- 20. COST OF ACTION**
- Should NoWire take legal action against the Customer in respect of this Agreement, the Customer shall be responsible for payment of all legal costs on a scale as between attorney and own client.
- 21. LAW**
- This Agreement shall be governed by and construed in accordance with South African law and the parties hereby consent to the jurisdiction of the South African Courts.
- 22. SURETY BY DIRECTORS OF A COMPANY (PUBLIC OR PRIVATE) OR MEMBERS OF A CLOSED CORPORATION**
- 22.1 The person signing this agreement on behalf of the Customer hereby binds himself as surety for and co-principal debtor with the Customer for the due compliance by the Customer of all his/her obligations in terms of this agreement, as well as for all obligations of the Customer towards NoWire from whatever cause arising both present and future.
- 22.2 The terms and conditions of the surety ship agreement will be those incorporated in this clause, and in the remainder of the terms of the condition contained in this document, where it expressly or by necessary implication refers to the Surety.
- 22.3 The Surety hereby renounces the benefits of the exceptions of division, excursion and cession of actions, the meaning of which the Surety declares himself to be fully acquainted with.
- 22.5 This agreement of surety ship shall not be cancelled save with the written consent of NoWire.
- 22.6 No extension of time or other indulgence in respect of any payment or performance, no delay or omission in demanding or enforcing any payment or performance, no whole or partial release from liability and no compromise or other arrangement in respect of the extent, amount, duration, reduction or postponement of liability, granted or allowed by NoWire to the Customer or to the Surety or to any other surety/ies for and/or co-principal debtors with the customer, and no realisation, release or abandonment (wholly or partially) of any security for any indebtedness covered hereby, shall discharge the Surety from liability hereunder.
- 23. PROOF OF INDEBTEDNESS**
- 23.1 A certificate purporting to have been signed by a designated manager of NoWire, which manager's appointment need not be proved, shall be *prima facie* proof in any court of law of the Customer's indebtedness towards NoWire and any other fact referred to therein, including, but not limited to the recovery costs and the replacement cost of any equipment referred to in this agreement.
- 23.2 The invoices and/or statements rendered by NoWire and/or any entity on behalf of NoWire shall also be *prima facie* proof of the amount of the Customer's indebtedness to NoWire and shall be admissible evidence by mere production.
- 24. BLACKLISTING**
- 24.1 If a Customer defaults in payment obligations during this Agreement, NoWire may, without prejudice to any other rights which it may have under this Agreement or at law:
- (a) notify credit bureaus of the Customer's default; and
- (b) blacklist the Customer's Wireless Equipment to prevent any further use thereof.
- 24.2 The Customer indemnifies NoWire in respect of any claim whatsoever or howsoever arising, including 3<sup>rd</sup> party claims, from NoWire exercising these rights.