

## **YOLO TELECOMS: TERMS AND CONDITIONS**

### **1. DEFINITIONS**

In this Agreement, unless clearly inconsistent with or otherwise indicated by the context –

- 1.1. "Business Day" means any day other than a Saturday, Sunday or gazetted public holiday in the RSA;
- 1.2. "Client" means the Party enrolled in receiving services and/or products from YOLO Telecoms (Pty) Ltd.
- 1.3. "Effective Date" means the date the IT Infrastructure is delivered to the Client at its request or the Signature Date, whichever occurs first;
- 1.4. "Fees" means the total monthly sum payable by the Client to the Supplier for the Services
- 1.5. "Interest" means the rate of 15,5% per annum from the day after the due date of payment of the Agreement, if unpaid in part or full;
- 1.6. "Parties" means the Supplier and the Client or any combination of them as the context may indicate and "Party" means any one of them as the context may indicate;
- 1.7. In these terms and conditions, we refer to ourselves as "YOLO", "us" or "we" and the customer as "you".
- 1.8. "RSA" means the Republic of South Africa;
- 1.9. "Agreement" means these terms and conditions, the annexures to them, the schedules, and your order (but these terms and conditions will take precedence in the event of any conflict in interpretation);
- 1.10. "Services" means any and all maintenance and support services provided by the Supplier to the Client in terms of this Agreement
- 1.11. "Signature Date" means the date upon which this Agreement is signed by the Party signing last in time;
- 1.12. "Supplier" means Yolo telecoms (Pty) Ltd (registration number 2017/047016/07) with its chosen domicilium citandi et executandi at Yolo Telecoms Block B - Pavilion Office Park, 12 Wessel Road, Rivonia, 2128;

### **2. INTERPRETATION**

In this Agreement, unless clearly inconsistent with or otherwise indicated by the context –

- 2.1. any reference to the singular (including in the expressions defined in 1.1) includes the plural and vice versa, any reference to natural persons includes legal persons (corporate or unincorporated) and vice versa and any reference to a gender includes the other genders;
- 2.2. any reference to a number of days shall be a reference to calendar days, unless it is specifically stated that such reference is a reference to Business Days;
- 2.3. when a number of days is prescribed, the days shall be reckoned exclusively of the first day and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding Business Day;
- 2.4. a reference to any agreement or other document (including this Agreement) shall include references to such agreements and documents as they may, after the Effective Date, be amended;
- 2.5. The expiry or termination of this Agreement shall not affect such provisions as expressly provide that they will operate after any such expiration or termination, or which of

necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;

### **3. INTRODUCTION TO THESE TERMS AND CONDITIONS**

- 3.1. YOLO provides Managed IT Services and associated support to the client. These terms and conditions govern the supply of networks and services by YOLO.
- 3.2. You should check or complete the schedules that apply to your relationship with YOLO and note that the relevant terms and conditions that will apply are set out in sections below.
- 3.3. Unless otherwise indicated, all of the terms and conditions are binding on you when you place an order with YOLO which is accepted by us.

### **4. DURATION AND TERMINATION**

- 4.1. Our agreement will endure from the effective date until the latest of the end dates stipulated on the relevant schedule, unless terminated by you or us in terms of this clause 3, or unless renewed by agreement with YOLO.
- 4.2. The supplier undertakes: to supply the services to the customer subject to the succeeding terms of this agreement, for the duration of the initial period; provided that in the event that the initial services do not become commissioned as a result of the actions or omissions of customer, the supplier shall have the right to recover from the customer, the minimum monthly charge stipulated in the proposal (or pro rata portion thereof) payable by the customer for the period of the delay together with any reasonable wasted costs incurred by the supplier and customer hereby indemnifies the supplier accordingly.
- 4.3. The Client may cancel any Agreement at any time upon 90 (Ninety) Business Days' written notice to the Supplier, subject to returning any goods or parts delivered by the Supplier as part of its Services to the Supplier in the same condition as at date of delivery and to paying the Supplier a cancellation penalty of the sum of 50% of the total Fees that would have been payable to the Supplier in terms of this Agreement, if not for its cancellation.
- 4.4. The Supplier further retains the right to pursue any other legal remedy and/or claim available to it in law as a result of such cancellation
- 4.5. Either of us may terminate this agreement without notice if the other party fails to comply with a material obligation under this agreement or any schedule. Termination will take place when the party not at fault has addressed a notice to the other party describing the breach in detail and demanding that it be remedied within no less than 15 (fifteen) business days, and that party has not remedied the breach within that period.
- 4.6. We may also terminate the agreement:
  - 4.6.1. if our agreement with our supplier/s is terminated for any reason; or
  - 4.6.2. if you breach the terms of this agreement or any schedule or schedules on 3 (three) occasions within any period of 12 (twelve) months, whether or not you have remedied those breaches.
  - 4.6.3. On termination, we will cease to provide services under the relevant schedule under this agreement. You will be liable for all charges that are still due and payable at the date of termination of this agreement and you may also be liable for additional charges for early termination as set out below.
  - 4.6.4. After the initial term, every schedule will automatically renew subject to ongoing payment of the relevant charges by you on a month to month basis, and after the initial term, either of us may terminate any schedule on 1 (one) calendar months'

notice to the other in writing. Should the agreement initiate on a month to month basis, the schedule will automatically renew subject to ongoing payment, and a 1 (one) calendar months' notice for cancellation.

4.6.5. YOLO shall be entitled to cancel this agreement immediately and without notice to you, in the event you are sequestered, placed into liquidation (provisional or final) or go into business rescue, as applicable.

4.6.6. If you wish to terminate a service/s schedule prior to the end date, you will be liable for cancellation charges as per clause 4.1

## **5. SERVICES**

5.1. The customer appoints the supplier to supply the services to the customer for the initial period in accordance with the terms and conditions set out in the agreement, although the parties will be bound by the terms and conditions of this agreement with effect from the date of signature hereof.

5.2. If the services are to be provided to a specific location, then you may not change that location without written notice to YOLO.

5.3. Signature by the customer on any acceptance certificate provided by the supplier and/or its service providers upon the installation of the equipment or at the instance of a commissioned service, shall be deemed to be an acknowledgement by the customer that it has fully inspected and approved the equipment and all of its components and that the equipment and components have been received to the full satisfaction of the customer

5.4. Our services and network are provided in some cases by other licensees or third parties who we depend on. You acknowledge and accept that although we will exercise all our rights under our agreements with those parties to ensure that they continue to provide us with services, as the case may be, we may not be able to continue to render services to you in the same way or at all.

5.5. The installation of last mile access solutions may be subject to feasibility to be confirmed by a physical site survey, such survey only to be conducted after signature of the contract

4.4.1.

5.5.1. Additional installation charges may apply, subject to the results of the physical site survey. In such an instance the customer will be notified before the service is installed.

5.5.2. Should a last mile access medium not be feasible to supply, the Supplier will endeavour to supply a similar and/or equal service, subject to the customers consent.

5.6. If we are supplying any service that involves the licensing of software to you, you may not:

5.6.1. disassemble, decompile, reverse engineer, copy, or distribute that software;

5.6.2. use the software in any manner that does or would tend to contravene the terms of any licence agreement that we provide you with;

5.6.3. use the software for any purpose other than that which it is provided for; or

5.6.4. use the software with any other software or in any other service or in relation to any other equipment than that which is supplied by us specifically for that software, or for a number of persons in excess of the approved number of users;

## **6. USE AND STORAGE OF INFORMATION**

6.1. The customer acknowledges that the supplier may establish general practices and limits concerning the use of the services (which it shall be entitled to modify from time to time in accordance with industry standards), including, the period of time that the customer's

email messages and other content uploaded on to the supplier's server is retained, the quantity and size of content that may be sent from or received by the customer and that available disk space that will be allocated to the supplier's servers on the customer's behalf.

- 6.2. The supplier shall not be obliged in any way to delete or store any messages and/or other electronic communications or exchanges that the supplier maintains or transmits.
- 6.3. The supplier shall furthermore be entitled on written notice to the customer to terminate the provision of the services should the customer fail to use the services for a continuous period exceeding 12 months, or on termination of the contract.

## **7. EQUIPMENT SOLD**

- 7.1. In the event that we have sold equipment to you, ownership shall not pass to you until such time as you have paid in full for that equipment. You may not permit any liens to be taken over the equipment, nor may you offer it up as security for any debt.
- 7.2. Risk in the equipment will pass to you on delivery whether or not you have paid for the equipment in full.

## **8. EQUIPMENT RENTAL**

- 8.1. Upon expiry of this Agreement the Lessee shall return all the IT infrastructure to the Supplier in good order, including any agreed enhancements, alterations or additions thereto.
- 8.2. Upon expiry of this Agreement and prior to the return of the IT Infrastructure to the Supplier, the Lessee shall have the option to purchase the IT Infrastructure or to renew this Agreement as agreed in writing with the Supplier and on agreed terms and conditions.
- 8.3. The Supplier reserves the right, without prior notice to the Lessee, to suspend the IT Infrastructure or any of its services in terms of this Agreement, should the Rental or any portion thereof not be paid on due date and in full.
- 8.4. The Lessee may cancel this Agreement at any time upon 20 (twenty) Business Days' written notice to the Supplier, subject to returning the IT Infrastructure to the Supplier in the same condition as at date of delivery and to paying the Supplier the remainder of the total Rental that would have been payable to the Supplier in terms of this Agreement, if not for its cancellation. The Supplier further retains the right to pursue any other legal remedy and/or claim available to it in law as a result of such cancellation.

## **9. LIABILITY**

- 9.1. As we have set out in this document, we will not be liable for:
  - 9.1.1. your misuse of the equipment or services or for any damages or losses you may suffer as a result;
  - 9.1.2. any issues with equipment or products that are not covered by warranty; and delay in delivery for any reason.
- 9.2. In addition, we will not be liable for loss or damage suffered by you by reason of the termination of our agreement or any schedule under either clause 3.4 or clause 3.5.
- 9.3. We will not be liable for your compliance with any laws that may govern your purchase or use of the equipment and/or services.
- 9.4. If for any reason we are held to be liable for any damage or loss suffered by you we will only be liable for direct damage or loss and not consequential or indirect damage or loss, or loss

of profit. Our total liability in any event will not exceed the amount of the charges paid by you to us in the immediately preceding 6 (six)-month period. You indemnify us and our suppliers against any loss, cost, damage or expense resulting from any claim against us or our suppliers by virtue of your breach of any of the terms and conditions of this agreement.

## **10. CHARGES AND PAYMENT**

- 10.1. You are liable for the charges set out in the agreement. The amounts may appear as prices per item of equipment and rates per unit of time or per service.
- 10.2. We shall issue an invoice to you at the end of every month which contains the charges due by you.
- 10.3. You shall continue to make payment of the charges as they fall due even if any dispute arises concerning the charges or any other matter.
- 10.4. Invoices will be emailed to you and you shall ensure that you have provided YOLO with a valid email address for this purpose, and you accept electronic invoices as valid invoices.
- 10.5. All agreement amounts payable must be paid within 30 (thirty) days of the date of our invoice. All voice usage charges are billed monthly in arrears and must be paid within 30 (thirty) days of the date of our invoice.
- 10.6. If you fail to make any payment on the due date, YOLO may, without prejudice to any of its other rights, suspend the performance of its obligations in terms of the agreement and any schedule, and shall be entitled to charge you interest on the overdue amount, plus any additional costs incurred by us as a result of your failure to make payment on the due date.
- 10.7. The charges are subject to ad hoc increases in the charges for services which may result from increases in the price charged by the suppliers, and/or inflation, and/or any other reasonable cause such as an increase in the price of travel or transport. The charges may also be increased once per annum in line with the consumer price index.
- 10.8. You will be liable for additional charges for any support services that are required as a result of damage to the equipment or network where it is caused by your negligence or misuse and “your” in this case includes your staff, contractors, and any other parties that have access to the equipment or the network.

## **11. SUSPENSION**

- 11.1. The supplier may upon 5 days’ written notice to the customer, suspend the customer’s use of the services in the event that –
  - 11.1.1. any modification, maintenance or remedial work is required to be undertaken pertaining to the services; and/or
  - 11.1.2. the customer fails to perform any of its obligations or breaches any term/s of this agreement; and/or
  - 11.1.3. the customer at any time exceeds the credit limit which the supplier, in its absolute discretion, shall set and notify the customer of from time to time.
  - 11.1.4. The supplier may require the customer to effect payment of any applicable reconnection charges pursuant to the restoration of the services suspended in the circumstances contemplated in clauses

- 11.2. The customer remains liable for the applicable charges payable by it in terms of this agreement during any period of suspension in the circumstances contemplated in clauses 9.1.

## **12. FORCE MAJEURE**

- 12.1. If either party is prevented or restricted from carrying out all or any of its obligations under this agreement by reason of any event constituting force majeure (being any cause beyond the reasonable control of either party), then that party shall be relieved of its obligations under this agreement during the period that such event continues, and shall not be liable for any delay and/or failure in the performance of such obligations during such period, provided that if the force majeure event continues for a period longer than 14 days, either party may cancel this agreement on written notice.

## **13. NOTICES**

- 13.1. The customer and the supplier choose the addresses set out in the agreement as their chosen address (“domicilium”) for all purposes under this agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature.
- 13.2. Either party may change its domicilium on written notice to the other.
- 13.3. Any notice required or permitted to be given in terms of this Agreement shall be valid and effective only if given in writing

## **14. DISPUTE RESOLUTION**

- 14.1. Should a dispute arise between the Parties in regard to any matter arising out of this Agreement or its interpretation or their respective rights and obligations under this Agreement, any Party shall be entitled to convene a meeting for the purposes of resolving the dispute upon written notice thereof to all the other Parties (the “Meeting”). The Party requesting the Meeting shall prepare an agenda for the meeting and provide the other parties with a copy thereof 1 (one) Business Day prior to the Meeting and the Meeting shall be convened on not less than 4 (four) Business Days written notice;
- 14.2. The Parties undertake to co-operate during the Meeting and the Parties undertake to use reasonable endeavours to reach consensus and attempt to resolve the issues or disputes raised in the Meeting;
- 14.3. In the event that the Parties cannot successfully reach consensus or agreement in the Meeting, the dispute may be submitted to and decided by arbitration, by way of a written referral to arbitration by either Party on notice to all the Parties (the “referral to arbitration”);
- 14.4. Such arbitration will be held:
- 14.4.1. at Johannesburg;
  - 14.4.2. with only the Parties and their legal representatives; and
  - 14.4.3. in terms of the Arbitration Act, Number 42 of 1965, it being the intention that the arbitration will, where possible, be held and concluded within 21 (Twenty-One) Business Days after it has been demanded;
- 14.5. The appointment of an arbitrator or arbitrators will be agreed between the Parties, but failing agreement between them within a period of 5 (five) Business Days after the

referral to arbitration or within 5 (five) Business Days of receipt of notice that the arbitrator or arbitrators are unable to act, then the arbitrator or arbitrators will be nominated by the president for the time being of the Law Society of the Northern Provinces (incorporating the Law Society of the Transvaal) or its successors in title;

- 14.6. The decision of the arbitrators may be made an order of any Court of competent jurisdiction and the parties have the right to appeal the arbitrators' award in any Court of competent jurisdiction;
- 14.7. The arbitrators will have the fullest and freest discretion with regarding to the proceedings, and their award shall be binding on the parties to the dispute, subject to the Parties' right to an appeal. Furthermore, the arbitrators:
  - 14.7.1. may dispense wholly or in part with formal submissions or pleadings;
  - 14.7.2. will determine the applicable procedure, taking into account the fact that it is intended that the dispute will be determined as quickly as possible and shall not be bound by strict rules of evidence and shall be entitled to take equity into account;
  - 14.7.3. will include such order as to costs as they deem just.
- 14.8. The Parties by signing this Agreement consent to any dispute between them being determined as provided for in this clause;
- 14.9. This clause shall not preclude either Party from approaching a Court of competent jurisdiction for relief as an alternative to arbitration, if arbitration proceedings have not commenced in terms of 5.3 above. Further, in the event of arbitration, this clause does not preclude either Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrators;
- 14.10. Notwithstanding any dispute, which may exist between the Parties and be subject to resolution in accordance with the foregoing, neither Party shall, pending the outcome of the dispute, delay the payment of any monies or delay any of their obligations in accordance with this Agreement.

## **15. CONFIDENTIALITY**

- 15.1. The Supplier and the Client agree, in favour of each other, to protect and honour and not to infringe each other's data integrity and company confidentiality in any way whatsoever, including but not limited to all customer information, business information, intellectual property, trade marks, data bases and each Party's respective business activities.

## **16. GOVERNING LAW AND JURISDICTION**

- 16.1. This agreement shall be governed by the laws of the Republic.
- 16.2. The customer, by its signature hereto and in terms of the provisions of Section 45 of the Magistrates Court Act. No 32 of 1944, as amended, consents to the jurisdiction of the Magistrate's Courts in relation to any actions or proceedings instituted against the customer in terms of, or arising out of the provisions of this agreement, provided that either party in its sole and absolute discretion shall be entitled to institute any such actions or proceedings, in any division of the High Court of South Africa possessed of the requisite jurisdiction.
- 16.3. In the event of either party instituting legal proceedings against the other ("defaulting party") to recover amounts due to or take any other legal steps arising out of

this agreement, the defaulting party shall be liable for legal costs on the scale as between attorney and own client.

## **17. SIGNATURE AND COUNTERPARTS**

- 17.1. The Client understands that it could at any time prior to the Signature Date request further time from the Supplier to comprehend this Agreement, query any provision of this Agreement with the Supplier and/or seek advice to comprehend this Agreement. The Client agrees that as at the Signature Date, it has been given sufficient time to receive and comprehend this Agreement and each and every provision of this Agreement has been drawn to the Client attention and is understood by the Client in its entirety;

## **18. AUTHORITY AND ACKNOWLEDGEMENTS**

- 18.1. The customer warrants that it has the necessary legal capacity and authority to conclude this agreement.
- 18.2. The signatory of the customer warrants that he/she is authorised to sign on behalf of the customer.
- 18.3. The customer confirms that:
- 18.3.1. it has been given an adequate opportunity to read and has read and understood the agreement together with the supplier's Acceptable Use Policy, and any Product Specific Terms and Conditions, where applicable; and
- 18.3.2. it has read and is aware of all the terms and conditions contained herein that are printed in bold and which have been initialled by the customer as confirmation hereof.
- 18.3.3. Where the physical installation of equipment is required, the customer warrants that it has obtained all the necessary consents from the landlord or landowner, as the case may be.

## **19. SEVERABILITY**

- 19.1. To the extent that the Consumer Protection Act 68 of 2008 applies to this Agreement, any provisions contained herein which is in conflict with this Act shall be read as being pro non scripto (not applicable) and shall not be binding as between the Parties herein;
- 19.2. In the event that any of the provisions of this Agreement are found to be invalid, unlawful, or unenforceable such terms shall be severable from the remaining terms, which shall continue to be valid and enforceable.

## **20. RESTRAINT**

- 20.1. For the duration of the agreement and for a period of 1 (one) year following the termination of it, you may not directly or indirectly either for yourself or as agent for another party, persuade, induce, solicit, encourage or procure any employee or representative of YOLO to terminate his or her employment or relationship with YOLO or to furnish to any third party any information concerning any employee or representative of YOLO that may result in that employee or representative being employed by you or such third party.

20.2. Non-Solicitation: Our staff are not to be solicited or employed by our clients. We are heavily invested in their training and certifications. If a client wants to employ any of our staff then they must engage directly with our management and we will consider the request and circumstances around the request. This must be done in good faith at all times.