



**FTTH TERMS AND CONDITIONS
HOME OWNERS' ASSOCIATION**

1. DEFINITIONS

- 1.1. **"Agreement"** means the agreement set out herein together with any annexures hereto;
- 1.2. **"Business Day"** means all days, excluding Saturdays, Sundays and proclaimed public holidays in the Republic of South Africa;
- 1.3. **"Business Hours"** means the hours between 08:00 and 17:00 on any Business Day;
- 1.4. **"Confidential Information"** means any and all information relating to, *inter alia*, ideas, concepts, designs, drawings, specifications, proposals, the **Agreement**, general know-how, intellectual property and trade secrets;
- 1.5. **"Customer"** means the Resident that subscribes for Services directly with SADV or via an **ISP**;
- 1.6. **"CPE"** means customer premises equipment, being an active fibre termination device installed in or at Premises;
- 1.7. **"HOA"** means the governing body of the **Property** which is responsible for the oversight and management thereof;
- 1.8. **"Infrastructure"** means all passive and active equipment installed by SADV at or on the Property and the Premises which is required to deliver Services to Customers, further detail of which is set out in clause 8;
- 1.9. **"ISP"** means an internet service provider and in the context of this Agreement, specifically an internet service provider approved and authorised by SADV to provide Services to Residents over the Infrastructure;
- 1.10. **"Parties"** refers collectively to SADV and the HOA;

- 1.11. **"Premises"** means the houses or dwelling units situated on the **Property** and occupied by the Residents;
- 1.12. **"Property"** means the residential estate known as: _____,

and a physical address of: _____,

_____ , and a total number of houses or dwelling units of: _____;
- 1.13. **"Resident(s)"** means the occupier(s) of the Premises, whether by lease, ownership or otherwise;
- 1.14. **"SADV"** means SA Digital Villages (Pty) Ltd, Registration Number 2007/008930/07, a company with limited liability duly incorporated in accordance with the Laws of the Republic of South Africa with its registered address at 2nd Floor, 20 The Piazza, Melrose Arch Precinct, Johannesburg;
- 1.15. **"Services"** means voice, data and/or other electronic communications services provided by SADV or by the ISPs; and
- 1.16. **"Signature Date"** means the date of signature of this Agreement by the Party signing it last in time.

2. PREAMBLE

- 2.1. SADV is in the business of the installation of physical network infrastructure that is made available to internet service providers on a carrier-neutral, open access basis to provide communication services to consumers.
- 2.2. SADV wishes to install the Infrastructure at the Property and Premises and the HOA is willing to grant SADV the right to do so, further to which the Parties agree as set out herein.

3. COMMENCEMENT AND DURATION

- 3.1. This Agreement shall come into operation on, and be effective from, the Signature Date. Subject to clause 4.1 below and any other provision of this Agreement providing for its termination, it shall thereafter endure for an indefinite period of time.

4. CONDITIONS PRECEDENT

- 4.1. By no later than 60 days after the Signature Date, SADV shall conclude a feasibility study (the

"Feasibility Study") to determine, in its sole discretion, whether or not it wishes to proceed with the installation of the Infrastructure at the Property and the Premises.

- 4.2. If the aforementioned conditions precedent are not fulfilled or waived, as the case may be, the Agreement shall cease to be of any force and effect.

5. RIGHTS AND PERMISSIONS

- 5.1. The HOA grants SADV the right to install, utilise, repair, maintain and/or remove the Infrastructure at or on the Property.
- 5.2. The HOA grants SADV permission to install relevant components of the Infrastructure into sleeves and conduits ("sleeve network") existing on the Property and which are owned or controlled by the HOA. If there is no existing sleeve network on the Property or if the existing sleeve network is not accessible, available or sufficient, SADV may, at its cost and subject to consultation with the HOA with respect to the placement of the sleeve network, install a new sleeve network on the Property, and install therein relevant components of the Infrastructure.
- 5.3. The HOA shall, for purposes of the installation, utilisation, repair, maintenance and/or removal of the Infrastructure, grant SADV access to the Property at all reasonable times. SADV acknowledges that it may be required to give the HOA reasonable notice of its intention to access the Property and that access shall be subject to the HOA's operational access control policies. It is recorded that an unreasonable refusal of access by the HOA shall be deemed to be a material breach of this Agreement.
- 5.4. For the avoidance of doubt, it is recorded that the right to install, utilise, repair, maintain and/or remove Infrastructure at or in the Premises, as well as access to the Premises, shall be arranged by SADV with the relevant Residents.

6. CONFIDENTIAL INFORMATION

- 6.1. The HOA agrees not to share, disclose or distribute Confidential Information provided to it by SADV unless authorised in writing to do so by SADV or if required to do so by law.

7. INSTALLATION

- 7.1. SADV shall, at its cost, install all the required components of the Infrastructure at or on the Property and the Premises, specifically including the following:
 - 7.1.1. the passive fibre network (i.e. the internal fibre backbone network within the Property, also known as the inside plant), including all civil works;
 - 7.1.2. a sleeve network, where there is no existing sleeve network, or additional sleeve network, where the existing sleeve network is inaccessible, unavailable or insufficient;
 - 7.1.3. dedicated passive infrastructure to each Premises (upon order); and
 - 7.1.4. CPE devices in or at the Premises (upon order).
- 7.2. Any additional internal cabling, routers, switches or other equipment required to distribute Services from the CPE device further into the Premises shall be for the specific Customer's account.

8. DAMAGE TO PROPERTY OR PREMISES

- 8.1. Should the Feasibility Study referred to in clause 4 or the installation, utilisation, repair, maintenance and/or removal of the Infrastructure result in any damage to the Property and/or Premises, cosmetic or otherwise, SADV shall restore the Property and/or Premises to the state that the Property and/or Premises was/were in immediately prior to such damage being caused. In this regard SADV shall during the term of this Agreement maintain public liability insurance in an amount not less than R1,000,000.00 (one million Rand), to cover any damages that might be caused.

9. MAINTENANCE

- 9.1. SADV's off-site network operations centre facility will securely monitor the Infrastructure.
- 9.2. SADV will maintain the Infrastructure to the standards agreed to with the ISPs.

10. OWNERSHIP AND RISK

- 10.1. All the components of the Infrastructure installed by SADV at or on the Property and the Premises shall be and remain the property of SADV and

shall at all times be regarded as movable property, despite the manner in which the components may be annexed to the Property or the Premises. SADV shall, at its cost at the termination of this Agreement, for whatever cause, be entitled to remove all such components.

- 10.2. SADV shall bear all risks and benefits associated with the Infrastructure. Unless otherwise agreed in writing between the Parties, the HOA acknowledges that it shall have no beneficial use of, or any rights in and/or to the Infrastructure, of any nature whatsoever.
- 10.3. Should SADV decide to sell the Infrastructure to a third party, it shall only do so to a person licensed in terms of the Electronic Communications Act, 2005 (Act No. 36 of 2005).

11. SERVICES

- 11.1. SADV shall liaise directly with the Residents regarding the scheduling of the installation of dedicated passive infrastructure and the CPE in or at the Premises.
- 11.2. The provision of Services to Residents shall be the subject matter of separate agreements to be concluded by SADV and/or ISPs with Residents. As regards the provision of Services by ISPs, it is recorded that SADV shall allow the ISPs, on fair, reasonable and non-discriminatory terms to be agreed between SADV and such ISPs, to utilise the Infrastructure, or applicable parts thereof.
- 11.3. The pricing and specifications of the Services shall be published electronically and are subject to change from time to time at the sole discretion of SADV and/or the ISPs.
- 11.4. SADV shall make a telephonic residential customer support service available to Customers between 07:00 and 22:00 daily. The support service shall endeavour to attend to a fault within 2 (two) to 8 (eight) hours, depending on the severity or priority of the fault as well as the response and resolution times agreed between SADV and the Customer and/or the ISPs.
- 11.5. The HOA agrees to reasonably assist SADV with communications to Residents regarding the Infrastructure and the marketing of Services.
- 11.6. The HOA agrees to allow SADV to display signage in the Property advertising the presence of the Infrastructure and availability of Services at the Property. Such signage will be paid for by SADV.

- 11.7. In the event of a termination of this Agreement, for any cause other than a default by SADV, SADV shall be entitled to leave the Infrastructure in place and to continue providing Services to Customers, either directly or via ISPs.

12. INDEMNIFICATION AND LIMITATION OF LIABILITY

- 12.1. Each Party (the "Indemnifying Party") hereby indemnifies the other (the "Innocent Party") against all liability, damages or loss, including any civil or criminal fines imposed by any relevant government or regulatory authority, arising directly from (and any reasonable cost, charge or expense incurred in connection with) any action, claim, suit or demand by any person against the Innocent Party pursuant to
- 12.1.1. any unlawful act or omission of the Indemnifying Party or its employees, sub-contractors, directors or agents in connection with this Agreement; or
- 12.1.2. a breach by the Indemnifying Party of any of the terms of this Agreement.
- 12.2. If any action, claim, suit or demand ("Claim") is made by any person against the Innocent Party which, if satisfied or paid by the Innocent Party, would result in any liability of the Indemnifying Party pursuant to the provisions of clause 12.1, the Innocent Party shall give written notice of the Claim to the Indemnifying Party as soon as practical of becoming aware thereof.
- 12.3. Neither Party shall be obliged to indemnify the other Party according to the provisions of this clause 12 to the extent that the loss, liability, cost, charge or expense suffered or sustained by such other Party is the direct result of any breach, act or omission by such other Party of any of its obligations in terms of this Agreement.
- 12.4. Notwithstanding the provisions of this clause 12, neither Party shall, under any circumstances, be liable for any indirect, special and/or consequential damages, including loss of profits, suffered by the other Party.
- 12.5. Any liability for damages by either Party in terms of this clause 12 shall be limited to R2,000,000.00 (two million Rand).

13. FORCE MAJEURE

- 13.1. Force Majeure in respect of any Party means an event beyond the reasonable control of that Party,

its contractors or sub-contractors without the fault or negligence of that Party and was not reasonably foreseeable and providing that such event materially and adversely affects the ability of such Party to perform its obligations under this Agreement, including but not limited to, war or civil war (whether declared or undeclared and including the serious threat of same) or armed conflict, invasion and acts of foreign enemies, riots, sabotage, blockage and embargos, civil unrest, commotion or rebellion, or any act or credible threat of terrorism, any act of God, earthquake, flood, extraordinary storm, nuclear, chemical or biological contamination or explosion, plague, epidemic, theft, damage not caused by that Party, its contractors or sub-contractors, strikes not caused by that Party, its contractors or sub-contractors, lock-outs or other industrial action of general application; any act of any authority (including delaying or refusing of licenses, wayleaves and/or restriction on construction work), explosion and fire (each a "Force Majeure Event").

- 13.2. If a Force Majeure Event prevents a Party (the "Affected Party") from performing any of its obligations under the Agreement, the affected Party will be granted an extension to perform the relevant obligation.
- 13.3. The Affected Party is obliged to notify the other Party about the material adverse effect of a Force Majeure Event on the performance of obligations under the Agreement to the reasonable satisfaction of the other Party.
- 13.4. Upon the cessation of the Force Majeure Event, the Affected Party shall immediately notify the other Party of such cessation and resume performance of the affected obligations.
- 13.5. If, as a result of a Force Majeure Event, the performance by the Affected Party of some but not all of its obligations under the Agreement are affected, the Affected Party shall nevertheless remain liable for the performance of those obligations not affected by Force Majeure Event.

14. BREACH

- 14.1. Should either Party (the "Defaulting Party") commit any breach of any term of this Agreement, whether such breach goes the root of this Agreement or not, and fail to remedy that breach within a period of 20 (twenty) Business Days after receipt of written notice to that effect from the

other Party (the "Non-Defaulting Party"), then the Non-Defaulting Party shall be entitled, without prejudice to any other rights or remedies to which it may be entitled at law or in terms of this Agreement to either terminate this Agreement, demand specific performance or to remedy such breach and recover the total cost incurred in doing so from the Defaulting Party, who shall be obliged to pay the amount forthwith.

15. DISPUTE RESOLUTION

- 15.1. If any dispute arises between the Parties in regard to this Agreement or its termination or purported termination, the Parties agree to negotiate with each other in a bona fide manner and use their best endeavours to resolve such dispute. Such negotiations shall, if the dispute cannot be resolved at operational level, involve both Parties' senior management.
- 15.2. If the Parties fail to resolve a dispute amicably between them via negotiation within a period of 10 (ten) Business Days after notification of the dispute by one Party to the other, such dispute shall be referred and finally determined by arbitration as provided for in this clause 15.
- 15.3. The arbitrator shall be a practising senior advocate or attorney of at least 15 (fifteen) years standing or a retired judge of the High Court of South Africa (including the Supreme Court of Appeal and the Constitutional Court) agreed to between the Parties or, failing agreement within 7 (seven) Business Days after the matter was referred to arbitration in terms of clause 15.2, appointed, at the request of either Party, by the Chairperson for the time being of the Pretoria Society of Advocates or its successor body.
- 15.4. The arbitration shall be held
 - 15.4.1. at Pretoria, or such other place as the Parties may agree;
 - 15.4.2. with only the legal and other representatives of the Parties present; and
 - 15.4.3. in accordance with such rules as agreed to between the Parties or, failing agreement, mutatis mutandis in accordance with the provisions of the Supreme Court Act, 1959 (Act No. 59 of 1959), the rules made in terms of such Act and otherwise in terms of the Arbitration Act, 1965 (Act No. 42 of 1965), it being the intention that the

arbitration shall be held and completed as soon as possible.

- 15.5. The decision of the arbitrator may be made an order of court at the instance of either of the Parties.
- 15.6. Either Party is entitled to lodge an appeal against the decision of the arbitrator, subject to the following:
 - 15.6.1. a notice of appeal must be served by the appealing Party within 15 (fifteen) Business Days after the arbitrator delivered his award;
 - 15.6.2. within 5 (five) Business Days after service of the notice of appeal, the Parties shall each nominate 1 (one) appeal arbitrator and jointly nominate a third appeal arbitrator. If the Parties fail to reach agreement on the third appeal arbitrator within the said period (or such extended period as the Parties may agree to) then the two appeal arbitrators nominated by each of the Parties shall be requested to nominate the third appeal arbitrator; and
 - 15.6.3. the appeal procedure shall be determined by the panel of 3 (three) appeal arbitrators in consultation with the Parties.
- 15.7. The Parties agree to keep the arbitration including the subject matter of the arbitration and the evidence heard during the arbitration confidential and not to disclose it to anyone except for purposes of an order to be made in terms of clause 15.5.
- 15.8. This clause 15 shall not preclude either Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- 15.9. The provisions of this clause 15
 - 15.9.1. constitute an irrevocable consent by the Parties to any proceedings in terms hereof and neither Party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions; and
 - 15.9.2. are severable from the rest of this Agreement and shall remain in effect despite the termination of or invalidity for any reason of this Agreement.

16. PARTNERSHIP

- 16.1. Save as specifically provided for herein, nothing in this Agreement shall be construed as constituting a partnership, joint venture, agency or employment agreement between the Parties, and neither Party shall have the authority or power to bind, or contract in the name of, or to create a liability against, the other in any way for any purpose.

17. NOTICES AND DOMICILIA

- 17.1. The Parties select as their respective domicilia citandi et executandi the following physical addresses, and for the purposes of giving or sending any notice provided for or required under this Agreement, the said physical addresses

17.1.1. The HOA

Physical Address:

Email Address:

Attention:

17.1.2. SADV

Physical Address:

2nd Floor, The Piazza
Melrose Arch Precinct
Johannesburg

Email Address:

shaun@sadv.co.za

Attention:

Mr. Shaun Barkhuizen

provided that a Party may change its domicilium address for the purposes of notices to any other physical address by written notice to the other Party to that effect. Such changes of address will be effective 5 (five) Business Days after receipt of the notice of the change.

- 17.2. All notices to be given in terms of this Agreement will be given in writing and will if delivered by hand during Business Hours be presumed to have been received on the date of delivery. Any notice

delivered after Business Hours or on a day which is not a Business Day, will be presumed to have been received on the following Business Day.

- 17.3. Notwithstanding the above, any notice given in writing, and actually received by the Party to whom the notice is addressed will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause 17.

18. GENERAL

- 18.1. This Agreement will be governed by the laws of the Republic of South Africa.
- 18.2. Each Party will act in good faith in the performance of its respective duties and responsibilities and will not unreasonably delay or withhold the giving of consent or approval required by the other Party under this Agreement. Each Party will provide an acceptable standard of care in its dealings with the other Party and its employees.
- 18.3. This Agreement constitutes the entire agreement between the Parties as to the subject matter and supersedes all previous agreements between the Parties, whether oral or written.
- 18.4. No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any right arising from this Agreement, or its breach or termination shall be of any force or effect unless reduced to writing and signed by the Parties or their duly authorised representatives.
- 18.5. No latitude, extension of time or other indulgence which may be given of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any Party arising from this Agreement and no single or partial exercise of any right by any Party under this Agreement, shall in any circumstances be construed to be an implied consent or election by such Party or operate as a waiver or a novation of or otherwise affect any of the Party's rights in terms of or arising from this Agreement or estop or preclude any such Party from enforcing at any time, and without notice, strict and punctual compliance with each and every provision or term hereof.
- 18.6. All provisions and the various clauses of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Agreement which is or becomes unenforceable in any jurisdiction,

whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatsoever, shall, in such jurisdiction only, and only to the extent that it is so unenforceable, be treated as pro non scripto and the remaining provisions and clauses of this Agreement shall remain of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

- 18.7. If any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in the definitions clause.
- 18.8. The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement 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.
- 18.9. Any reference in this Agreement to any other agreement or document shall be construed as a reference to such other agreement or document as same may have been, or may from time to time be amended, varied, novated or supplemented.

19. RESIDENTS' CONTACT DETAILS

- 19.1. The HOA agrees to provide the contact details, including telephone number and email address, of the Residents to SADV, in order for the Parties to carry out their obligations in terms of this Agreement.

20. SIGNATURE

FOR OFFICE USE ONLY	
AKAM	
Partner code	
Project manager	

For: The HOA

Director 1 name : _____

Signature : _____
Duly authorised

Date : _____

Witness name : _____

Witness signature : _____

Director 2 name : _____

Signature : _____
Duly authorised

Date : _____

Witness name : _____

Witness signature : _____

For: SADV

Name : Anton Strauss

Designation : Director

Signature : _____
Duly authorised

Date : _____

Witness name : _____

Witness signature : _____