



## SUBSCRIBER STANDARD TERMS AND CONDITIONS

Version 5.3 – May 2020

### Subscriber Details

"the subscriber"	
Registered name of company:	
Company registration No:	
VAT registration No:	
Physical Address: (chosen <i>domicilium citandi et executandi</i> for all purposes arising)	
Authorised Representative: Contact details:	

### 1. INTRODUCTION

- 1.1. With effect from the date of acceptance hereof by BitCo Telecoms (Pty) Ltd t/a BitCo ("BitCo"), the subscriber appoints BitCo to provide telecommunication and related services from time to time in accordance with the provisions hereof ("the services").
- 1.2. The subscriber and signatory irrevocably acknowledge that this document constitutes an offer which may only be accepted or rejected by BitCo. The offer will be considered by BitCo at its premises situated at Block A, Wedgewood Office Park, 3 Muswell Road, Bryanston.
- 1.3. Activation of the services and/or a fully counter-signed quotation and/or a fully counter-signed contract application shall constitute acceptance of the said offer. The subscriber hereby expressly dispenses with the need to be notified of acceptance of the offer.
- 1.4. Date of successful application, for purposes of estimating installation dates, shall be a reference to the date after which all approvals and/or wayleaves and/or any other prerequisites required by BitCo in its sole, absolute and binding discretion for installation have been obtained by BitCo to its complete satisfaction. The Subscriber shall do everything required to provide BitCo with all approvals necessary to activate services and the subscriber shall not be able to rely upon an alleged failure to do so on its part as a reason to escape its obligations in terms hereof. The Subscriber indemnifies BitCo against any claims and/or damages directly or indirectly resulting from a delayed installation which is wholly or partially attributable to outstanding approvals and/or wayleaves and/or any other prerequisites required by BitCo for the installation. Should the subscriber elect to cancel the Agreement prior to installation, as a result of delayed installation, clause 3.1 shall apply.

### 2. DURATION

- 2.1. This agreement shall continue for the period specified in the most recent quotation/contract application signed by the subscriber and accepted by BitCo reckoned from the date of activation of the services by BitCo ("the initial period") and shall continue indefinitely on the same terms and conditions for further periods of equal duration ("subsequent periods") unless and until terminated by either party giving unto the other at least three calendar month's written notice of termination as envisaged by 2.6.

- 2.2. Unless expressly stated in writing to the contrary in a document signed by both the subscriber and by BitCo, and then only to the extent, if any, so stated, each subsequent signed quotation/contract application shall constitute an agreement between the Parties that in all respects remains subject to the terms and conditions of this Agreement.
- 2.3. If the subscriber is a wholesaler and/or reseller, it agrees to incorporate the terms of this agreement in all and any wholesaler and reseller agreements.
- 2.4. Any and all notices to BitCo by the subscriber in terms of this agreement shall be in writing on the subscriber's letterhead, signed by a duly authorised representative and delivered by email to [notices@bitco.co.za](mailto:notices@bitco.co.za) and marked for the attention of the "Customer Relations Manager".
- 2.5. In the event that the subscriber is a natural person and dies or is sequestrated, or in the event that the subscriber is a juristic person and is wound up and/or placed under business rescue and/or in the event that the subscriber enters into a scheme of arrangement or compromise with its creditors or allows a judgment to be taken against it then and in any such event BitCo may (but shall not be obliged) to terminate this agreement summarily and without notice. Should BitCo so terminate this agreement the subscriber shall remain liable for all and any cancellation charges, including *inter alia* all other charges as set out in this Agreement.
- 2.6. The subscriber may discontinue a service before the end of the initial period/ applicable subsequent period as the case may be by giving BitCo three calendar months' written notice in advance of such discontinuation whereupon such service shall be discontinued at the end of the applicable period in accordance with this agreement and the subscriber shall pay to BitCo an early cancellation charge calculated in accordance with 2.7 and 2.8 ("the early cancellation charge") within 7 (seven) calendar days of notification of same, provided that if the early cancellation charge is not paid strictly on or before the due date for payment then and in such event the discontinuation notice will be null and void and this agreement shall remain in full force and effect as if the said notice had not been given and all and any discounts, if any, previously afforded to the subscriber shall be forfeited and be added back to the early cancellation charge.
- 2.7. The early cancellation charge is calculated as follows:  

$$C = (N \times R) - A + (RC+D)$$

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#### 2.8. Where:

2.8.1. C is the Cancellation Charge

2.8.2. N is the New Period, being the revised total number of months calculated in either 12 (twelve) and/or 24 (twenty-four) and/or 36 (thirty-six) and/or 48 (forty-eight) and/or 60 (sixty) month increments (based on the contract term with BitCo and/or any third party provider) and reckoned to the end of the next contract period after the cancellation date.

2.8.3. R is the service rate applicable to the revised shorter period as per the current ruling BitCo price list.

2.8.4. A is the actual payment received to date from the subscriber related to the service being cancelled.

2.8.5. RC are the reasonable costs that BitCo may incur to terminate this agreement.

2.8.6. D is the total discount provided and would provide to the subscriber over the term of the agreement.

So, for example: for a 36-month contract cancelled after 16 months. If the 36-month Price is R100 per month and the 24-month price is R120 per month, the total over 24-months would be R2880 less the amount paid to date for the 16-months of R1600. The early cancellation charge is then therefore  $(R120 \times 24) - (R100 \times 16) + R0 + R0$  gives the subscriber an early cancellation charge of R1280.00.

2.9 Upon any termination of this Agreement, the subscriber agrees and acknowledges to return to BitCo the loaned Equipment (read together with clause 8 of this Agreement); failure therewith agrees to be liable to pay to BitCo the replacement value thereof upon demand by BitCo, including the replacement value of missing and/or damaged parts thereof.

2.10 The subscriber acknowledges and confirms for all purposes arising that the costing of BitCo's product offering and the services has been spread over the period of the contract and that a change in the subscriber's circumstances cannot in any way be relied upon by the subscriber to seek or be granted a variation or modification of the costs of the services.

### 3. CANCELLATION PRIOR TO INSTALLATION OF EQUIPMENT

3.1. The subscriber hereby acknowledges that acceptance of any BitCo quotation and/or contract application is a binding commitment and constitutes an order placed on BitCo for the quoted services. The subscriber acknowledges, accepts and confirms that a cancellation requested by the subscriber of BitCo's services, subsequent to the signing thereof, but prior to the physical installation of the equipment/services, will result in a penalty fee of twenty-five percent (25%) of the total contract value, which payment shall be due and payable by the subscriber immediately upon demand.

3.2. Notwithstanding the above, BitCo reserves the right to recover from the subscriber who agrees to pay to BitCo, in addition to clause 3.1 above, any charges rendered to BitCo by subcontractors, as a result of the early cancellation, which portion thereof exceed 25% of the total contract value, which payment shall be due and payable by the subscriber immediately upon demand.

### 4. PROVISION OF SERVICES

#### 4.1. Connectivity Services:

4.1.1. The subscriber acknowledges that BitCo is a service provider that operates and manages the network and the functioning, operation, regulation and coverage area of the network and

certain related services provided to the subscriber. The subscriber acknowledges that BitCo depends upon third party service providers and/or suppliers and that the delivery of services by BitCo may be affected by circumstances beyond BitCo's control. BitCo will use its reasonable endeavours to ensure a reliable service is provided to the subscriber backed up by a 99% (ninety nine percent) uptime Service Level Guarantee on connectivity services.

4.1.2. Should the connectivity service result in less than 99% (ninety nine percent) uptime when measured over a calendar month, the subscriber shall have 30 (thirty) calendar days from the time of the incident to apply to BitCo in writing for a pro-rata credit. Upon approval of the subscriber's application for a credit in terms hereof (delivered as described in clause 2.2), BitCo will raise a pro-rata credit for the time that the services were unavailable based on the monthly fixed billing period that was affected.

4.1.3. The 99% (ninety nine percent) Service Level Guarantee does not apply to the following connectivity services:

- ADSL, VDSL and/or any other form of DSL connectivity.
- Mobile and satellite connectivity (LTE, 3G, 4G, etc.).
- Any form of residential connectivity which includes but is not limited to Fibre to the home (FTTH).
- Any other form of connectivity that is not Business Grade Fibre, Wireless or Metro Ethernet connectivity procured from BitCo.

4.1.4. BitCo does not guarantee any services listed in 4.1.3 In the event the subscriber uses any of the services mentioned in 4.1.3 for either Internet connectivity and/or Voice related services, BitCo will not be responsible for the quality of the service.

4.1.5. BitCo's Connectivity SLA services are linked to the term of the connectivity services. i.e. should the subscriber sign for a 36-month fibre service and add a connectivity SLA, then the term of the SLA will be linked to the 36-month fibre contract.

#### 4.2. Backup Services:

4.2.1. The subscriber agrees that neither BitCo, nor its directors, staff, agents and or partners shall incur any liability whatsoever in the event of any loss of data including but not limited to call recordings, configuration and any data stored on any of the following devices (including but not limited to) servers, PBX servers, PBX backup servers, VPBX server or virtual and/or hosted servers. it is the responsibility of the subscriber to make sure their data and information is adequately backed up and recoverable.

4.2.2. BitCo PBX restoration and configuration is included in the monthly PBX backup service fee. However, if any hardware is damaged and the server/hardware is out of warranty it will be the responsibility of the subscriber to cover the cost of the replacement parts/hardware and/or server (as quoted by BitCo) before any restoration can take place. All BitCo PBX backups are run daily afterhours.



- 4.2.3. The subscriber will receive a daily automated e-mail to a specified e-mail address with confirmation that the PBX backup was successful, in the event the subscriber does not receive this confirmation the subscriber would need to raise a support ticket as per clause 15.
- 4.2.4. The BitCo PBX backup service is solely a replication of information to the hosted storage device and each day the old data will be written over with the new data. The backup will not have multiple restore points and the most recent backup will be the only available backup.
- 4.2.5. When BitCo backup services are utilised in conjunction with BitCo connectivity (limited to BitCo business fibre and wireless services), BitCo will use its reasonable best endeavours to provide the bandwidth needed to complete the daily backups, in the event that the subscriber utilises any other form of connectivity (as defined in clause 4.1.3 and 4.1.4) it is the responsibility of the subscriber to manage the connectivity and backups. BitCo will not be held liable for any backups taking place on any other form of connectivity (as defined in clause 4.1.3 and 4.1.4).
- 4.3. Voice and PBX Services:
- 4.3.1. Virtual PBX services are monitored within the Virtual PBX hosting facility 24 (twenty-four) hours per day, 7 (seven) days a week.
- 4.3.2. BitCo undertakes to respond to events arising within the Virtual PBX hosting facility during Business Hours.
- 4.3.3. BitCo is entitled to perform emergency maintenance on the Virtual PBX hosting facility should BitCo determine at its sole discretion that it is necessary to do so and even if doing so causes downtime of the service. Where possible BitCo will use its reasonable best endeavours to provide the subscriber with notice if any downtime is expected.
- 4.3.4. Where possible BitCo shall provide the subscriber with 24 (twenty-four) hours' notice ahead of performing any planned maintenance on the Virtual PBX hosted facility that may result in downtime that will affect the subscribers use of the service. BitCo however may perform any emergency maintenance on the hosted PBX facility without prior notice to the subscriber.
- 4.3.5. The standard virtual PBX service does not cover the costs of onsite or afterhours support to the subscriber. Any problems not due to a fault with the service, including, but not limited to hardware (out of warranty) faults and any other fault experienced on the subscriber's local area network (not supplied by BitCo) shall be assessed and billed separately.
- 4.3.6. The subscriber agrees that under no circumstances can BitCo be held responsible for any costs or damages (including, but not limited to, call costs, call fraud and theft) incurred by the subscriber due to unauthorised and/or authorised use of any Voice and/or PBX and/or Virtual PBX related service that the subscriber makes use of.
- 4.3.7. The subscriber may be provided (on request) limited access to the PBX system in order to manage and control certain aspects of the virtual/hosted/onsite PBX. The subscriber agrees that under no circumstances can BitCo be held responsible for any costs or damages (including, but not limited to, call costs, call fraud and theft) incurred by the subscriber due to the subscriber incorrectly configuring the PBX management system.
- 4.3.8. The subscriber agrees that under no circumstances may BitCo be held responsible for difficulties with any Voice service if the subscriber's usage of the service exceeds the maximum call capacity specified by BitCo.
- 4.3.9. Any uncapped voice services exclude all international telephone calls and/or premium rated telephone calls unless explicitly agreed to in writing and signed by both parties. Should the subscriber choose to call the excluded telephone numbers they will be billed for this according to our prevailing voice rates which can be requested from BitCo at any time.
- 4.3.10. Should the subscriber make use of any softphones (a piece of software that allows the user to make telephone calls over the internet without using a desk IP phone) BitCo will not support any request that relates to softphones. The subscriber hereby acknowledges and understands that BitCo does not provide any call quality guarantees over any softphones and that the subscriber is fully responsible for any items relating to softphones.
- 4.3.11. Notwithstanding anything else contained in the agreement BitCo may change the voice rates of this agreement on 14 (fourteen) calendar days written notice of any changes. If the subscriber does not agree with the changes in voice rates, it must stop using the services. If the subscriber continues to use the services following notification of a change to the voice rates, the changed rates will apply to the subscriber's Agreement and the subscriber will be deemed to have accepted such terms and bound thereby.
- 4.4. Managed Services:  
BitCo endeavours to provide reasonable security on its services however should the subscriber make use of any BitCo managed router (either hosted or onsite) and/or managed firewall (either hosted or onsite) the subscriber agrees that should an attempt be made to gain unauthorised and/or authorised access (including, but not limited to) a hacking attempt, BitCo will not be liable for any damages suffered, whatsoever, should the subscriber's systems become compromised.
- 4.5. General Services Terms:
- 4.5.1. The subscriber shall not be entitled to set-off or deduct any monies in respect of unavailable connectivity services and/or any other services.
- 4.5.2. Service uptime is measured by BitCo and it is the subscriber's responsibility to provide evidence contrary to BitCo's report.
- 4.5.3. BitCo shall be entitled in its sole discretion to immediately suspend, cancel, vary or terminate this agreement or any part thereof, without BitCo incurring any liability whatsoever in the event of non-availability of the service or if any agreement giving BitCo the right to render the service, or any part thereof, or giving BitCo



- access to anything relating to the service, is suspended, cancelled, varied or terminated.
- 4.5.4. Should BitCo breach any material provisions of an SLA agreement between the parties then the subscriber shall have 15 (fifteen) calendar days from the time of the breach to apply to BitCo in writing for a full or pro-rata credit (which value will always be based on the value of the SLA). Upon approval of the subscriber's application for a credit in terms hereof (delivered as described in clause 2.2), BitCo will either raise a full or pro-rata credit based on the severity of the breach.
- 4.5.5. Save for clause 9. In no event, whatsoever, shall BitCo, including but not limited to, its consultants and/or third party contractors and/or employees be liable to the subscriber for loss of profits and/or for incidental, special and/or consequential damages arising out of and/or in connection with, services rendered by BitCo in terms of this Agreement or the delivery, installation, servicing, performance or use of software.
- 4.6. The subscriber acknowledges that BitCo shall provide the agreed services at the premises declared upon activation of the Agreement. In the event that the subscriber elects to move premises, the subscriber acknowledges that BitCo shall be required to uninstall the equipment and to establish whether services are feasible and commercially viable at the new premises including but not limited to clear line of sight for microwave connectivity and/or fibre availability at the new premises necessary for re-installation. In the event that it is established that services are not feasible at the new premises, the parties may agree to terminate the Agreement prior to completion of the full contractual period whereby the subscriber acknowledges and agrees to pay BitCo an early cancellation fee as per clause 2.7 and 2.8 above. The parties may also consider BitCo to provide alternative services in the circumstances, whereby the parties must counter-sign a new quotation and/or contract application. The subscriber acknowledges that its request to relocate BitCo's services shall be at its own risk and shall under no circumstances amount to breach on BitCo's part.

## 5. CHARGES

- 5.1. The subscriber shall pay to BitCo:
- 5.1.1. upon receipt by BitCo, of the fully counter signed contract application and/or quotation, the initial installation and set-up charge and any other introductory or commencement charges; and
- 5.1.2. monthly in advance, the monthly subscription and/or services charges; and
- 5.1.3. monthly in arrears, or as and when billing is passed on, the total usage charges and/or generated by the subscriber in conjunction with each billing period and any other charges payable in respect of the services requested by the subscriber or other charges levied by BitCo from time to time; and
- 5.1.4. upon demand, a deposit of an amount determined by BitCo in its sole discretion which shall not bear interest; and
- 5.1.5. Value Added Tax at the applicable rate on all VAT charges and services. All charges, unless otherwise stated exclude Value Added Tax.

- 5.2. The charges payable by the subscriber to BitCo for the provision or facilitation of the services shall be stipulated in any notice, directive, promotion or applicable tariff plan issued by BitCo.
- 5.3. The subscriber agrees that BitCo shall be entitled, by mutual agreement, to from time to time vary the charges payable by the subscriber to BitCo for the services providing the subscriber with 30 (thirty) calendar days written notice. Any changes in voice rates will however be managed based on clause 4.3.11.
- 5.4. The subscriber acknowledges that data and other services are rendered to the subscriber by means of the hardware which are issued to the subscriber and which facilitates access to the network and the services. The subscriber will be liable for all charges applicable to hardware issued to the subscriber, irrespective of whether or not such hardware has been used by the subscriber or whether any other has been requested by the subscriber. Until BitCo has received notification in writing (as described in clause 2.2) from the subscriber and confirmed such notification that the equipment has been returned, stolen or destroyed, the subscriber shall be liable for all data and other charges howsoever and by whomsoever for the replacement costs thereof.
- 5.5. BitCo's monthly statement of charges shall prima facie proof of the amounts owed by the subscriber to BitCo in terms hereof and of the other facts stated therein and should the subscriber dispute the number, duration or amount charged in respect of any services rendered by BitCo, then the subscriber shall bear the onus of proving that the BitCo statement is incorrect in respect of such charges.
- 5.6. Notwithstanding anything else contained in this agreement. Should BitCo incur a price escalation from its suppliers then it is agreed that BitCo may escalate its charges to the subscriber at the same rate of escalation. Any escalations will be communicated to the subscriber on 14 (fourteen) days' notice.
- 5.7. A reconnection fee will be levied, where the subscriber's right to use the services is suspended due to non-payment. This fee is in respect of any restoration of the services. This fee is payable in advance, together with any outstanding amounts which are due to BitCo and any deposit which BitCo requests to be paid.
- 5.8. The reconnection fee for residential services is R150 exclusive of VAT.
- 5.9. The reconnection fee for business services is R500 exclusive of VAT.
- 5.10. A de-installation fee of R 1850.00 exclusive of VAT will be due upon termination of the Agreement and return of equipment to BitCo and/or upon the subscriber's request to move the installed equipment to other premises for reinstallation.
- 5.11. These fees are subject to change with 30 (thirty) calendar days written notice.

## 6. PAYMENT

- 6.1. Should the subscriber send any monies, cheques, orders or bills by means of the postal services, then the postal authority shall be deemed to be the agent of the subscriber and the subscriber shall bear all risk of loss, theft and delay in and to any such monies, cheques, orders or bills sent by post and, without derogating from the aforesaid, the subscriber shall draw all cheques, postal orders and bills payable to " BitCo Telecoms (Pty) Ltd " and marked "not transferable".



- 6.2. The subscriber agrees that payment shall only have been made to BitCo when the monies remitted by the subscriber have been received into BitCo's bank account.
  - 6.3. Should any debit order and/or cheque payment be returned unpaid or stopped and/or should any charge card account and/or credit card account of the subscriber be rejected for whatsoever reason or should BitCo exercise its right to suspend the provision of the services due to late or non-payment of any monies due in terms hereof by the subscriber, then the subscriber shall pay an administration charge, including but not limited to reconnection fees, bank charges, debit order fees, as may be levied by BitCo from time to time for each such non-payment, suspension or any other breach of this agreement which amount shall be payable upon demand and recoverable by BitCo.
  - 6.4. All monies payable by the subscriber to BitCo in terms hereof shall be paid timeously on due date, free of deduction or set-off to BitCo's principal place of business.
  - 6.5. All payments must be affected within 7 (seven) calendar days of invoice date or where payment is affected by debit order then such payment must be affected on BitCo's direct debit date. Non-receipt of invoices by the subscriber will not be considered as a valid basis for late or non-payment.
  - 6.6. All arrear payments shall attract interest at the rate of the prime lending rate of First Rand Bank Limited plus and additional 3% (three percent) as it may be from time to time, calculated from due date to date of payment.
  - 6.7. BitCo shall be entitled to apply the deposit as per clause 5.1.4 or any portion thereof towards any monies which are owing by the subscriber. The subscriber shall upon demand reinstate the deposit, failure to reinstate the deposit within 7 (seven) calendar days may cause the services to be suspended.
  - 6.8. The subscriber agrees and acknowledges that a certificate given under the hand of a financial manager or credit controller of BitCo whose status and authority need not be proved shall be considered prima facie proof of the amount due and shall entitle BitCo to apply for judgement against the subscriber and to obtain summary judgment or provisional sentence, as the case may be.
- 8.1. All BitCo Equipment shall be and remain the property of BitCo.
  - 8.2. Accordingly, where BitCo's Equipment is in the possession, or under the control of the subscriber the subscriber agrees:
    - 8.2.1. not to remove or allow the BitCo Equipment to be removed from the site without BitCo's consent;
    - 8.2.2. to keep the BitCo Equipment in good condition and complete;
    - 8.2.3. not to allow the BitCo Equipment to be encumbered by operation of law or otherwise;
    - 8.2.4. to allow BitCo to inspect the BitCo Equipment at reasonable times;
    - 8.2.5. take reasonable steps to protect the BitCo Equipment from loss and/or damage and/or theft; and
    - 8.2.6. to return such BitCo Equipment to BitCo on the termination of the applicable Services.
  - 8.3. All risk of loss, theft, destruction or damage to the equipment, being the property of BitCo, and which is provided to the subscriber, shall vest in the subscriber.
  - 8.4. Where the subscriber purchased equipment from BitCo then the manufacturer's warranty will apply to such equipment. Such warranty is limited to 12 months from date of purchase and normally covers defective equipment as a result of faulty design, manufacture or workmanship provided that such equipment has not been misused, over-loaded, modified or repaired by an unauthorised party. BitCo may require the subscriber to make available the equipment to BitCo or its nominee for inspection of the equipment at a time and place to be arranged by BitCo or its nominee.
  - 8.5. Should BitCo accept the equipment for repairs and maintenance it shall be deemed to do so as agent on behalf of the manufacturer or local supplier of the equipment and BitCo shall not be liable for any loss, damage, destruction, theft or negligent workmanship howsoever or by whomsoever caused.
  - 8.6. Should the subscriber not pay any monies due in respect of equipment or accessories purchased, leased or loaned from BitCo then BitCo shall be entitled without prejudice to any other rights it may have at law forthwith and without notice to suspend, interrupt or disconnect the services or any part thereof and reclaim possession of its equipment.
  - 8.7. Should BitCo loan equipment to the subscriber whilst the subscriber's owned or leased equipment is being repaired then the subscriber shall upon demand return the equipment to BitCo and all risk in and to such loaned equipment shall vest in the subscriber until the subscriber returns it to BitCo at the subscriber's own cost. Should the subscriber fail to return any BitCo owned equipment to BitCo when asked to, then BitCo shall be entitled to charge and recover from the subscriber (who shall pay such charges upon demand) a rental fee of R1 000 (one thousand rand) excluding VAT per day reckoned from the due date of return or demand, whichever is the earlier, until the equipment is returned to BitCo. The provisions of this agreement shall apply *mutatis mutandis* to such loaned equipment and its use.
  - 8.8. Should the subscriber fail to return any BitCo owned equipment to BitCo upon termination of the Agreement and upon BitCo's demand and/or upon the subscriber's breach, then BitCo shall be entitled to charge and recover from the subscriber (who shall pay such charges upon demand) the replacement value of the equipment, including the replacement value of any missing and/or damaged parts thereof.

## 7. CREDIT LIMIT

- 7.1. BitCo may in its sole, absolute and binding discretion from time to time to determine and amend the maximum aggregate amount of fees and charges ("credit limit") which may be used and/or accumulated by the subscriber during each billing period and BitCo shall be entitled to suspend the services should the subscriber exceed such maximum amount.
- 7.2. BitCo may demand that the subscriber pay a deposit in an amount determined at BitCo's sole, absolute and binding discretion. Any portion of such deposit not consumed shall be credited towards the subscriber's future liabilities for amounts owed in terms of this agreement.
- 7.3. The subscriber agrees and undertakes that upon signature by the subscriber of the quotation and/or contract application, in so doing it irrevocably declares that it can afford to pay the monthly charges over the full length of the contractual period and confirms that the monthly charges, including any and all charges enforceable under this Agreement, are sustainable for the subscriber.

## 8. EQUIPMENT



## 9. LIMITATION OF LIABILITY

- 9.1. Neither BitCo, nor its directors, staff, agents and or partners shall be liable for any claim by the subscriber from whatsoever cause and howsoever arising.
- 9.2. Notwithstanding 9.1 above, BitCo shall nevertheless be liable for damages directly occasioned by its wilful default or gross negligence but then limited to a maximum of an aggregate of 3 (three) months' subscription and/or service fees paid by the subscriber to BitCo.

## 10. BREACH

- 10.1. Should the subscriber breach any provision of this Agreement including failing to pay BitCo any monies due in terms hereof on due date, then BitCo shall be entitled, without prejudice to any of its other rights arising out of this Agreement forthwith and without any liability towards the subscriber, to suspend its provision to the subscriber of the services in whole or in part and/or to disconnect the subscriber and/or the equipment from the network and/or to render the equipment inoperable by whatever means having provided the subscriber with 24 (twenty-four) hours written notice of such suspension.
- 10.2. The subscriber shall be afforded 15 (fifteen) calendar days to rectify its breach. Should the subscriber fail to rectify its breach within the above time, BitCo shall be entitled to terminate the Agreement and claim all charges and damages entitled by law against the subscriber.

## 11. LEGAL COSTS

- 11.1. Should BitCo instruct its attorneys to enforce any of BitCo's rights arising from this agreement or to institute action against the subscriber, then the subscriber shall be liable for all legal costs incurred on an attorney and own client scale including *inter alia* any collection commission incurred by BitCo and the subscriber shall upon demand pay such costs.

## 12. DOMICILIUM

- 12.1. BitCo hereby chooses as it's domicilium citandi et executandi ("domicilium") the address set out as follows: BitCo, Block A, Wedgewood Office Park, 3 Muswell Road, Bryanston.
- 12.2. The subscriber hereby chooses as it's domicilium citandi et executandi ("domicilium") the physical address specified at the commencement of this document.
- 12.3. The signatory hereby chooses as it's domicilium citandi et executandi ("domicilium") the same address as chosen by the subscriber in 12.2;
- 12.4. Either party and/or the signatory shall be entitled from time to time, by written notice to the other (delivered as described in clause 2.4)), to vary its domicilium to any other address within the Republic of South Africa which is not a post office box or poste restante.

## 13. UNDERTAKING AS CO-PRINCIPAL DEBTOR ON BEHALF OF THE SUBSCRIBER BY THE SIGNATORY

- 13.1. If the subscriber as identified on the face page hereof is a company, close corporation, the trustee(s) of a trust or a juristic person, then the signatory hereto who signs on behalf of the subscriber ("the signatory") warrants that

he/she is duly authorised to enter into this agreement on behalf of the subscriber and, if required, to sign the debit authorization against the subscriber's bank account. By his signature hereto, the signatory hereby binds himself as co-principal debtor for the subscriber unto and in favour of BitCo for the due and punctual fulfilment of all of the subscriber's obligations to BitCo arising out of this agreement including the payment of all charges, fees, penalties and liquidated damages. The signatory as co-principal debtor hereby renounces and waives the benefits of the legal defences of excussion, division and cession of actions and hereby acknowledges that he understands the full meaning of such defences and the effect of such renunciation and waiver.

## 14. GENERAL

- 14.1. The subscriber hereby consents to BitCo conducting an investigation into the creditworthiness of the subscriber and the signatory (where necessary) utilising the information contained on the face page and identity information supplied with the contract application, which information the subscriber and signatory warrants is true and correct, and such information forms the basis of this agreement. The subscriber agrees that should such information turn out not to be correct in all respects, BitCo shall be entitled to, immediately and without prejudice to any other rights that BitCo may have, terminate this agreement in terms of clause 2.
- 14.2. Termination of this agreement as described in clause 14.1 by BitCo does not relieve the subscriber from the liability to pay any applicable early cancellation charges and all charges contained in this Agreement resulting from the subscriber's breach.
- 14.3. Any subsequent changes that affect the information supplied to BitCo such as bank account details must be brought to the immediate attention of BitCo.
- 14.4. The subscriber hereby agrees to abide by BitCo's acceptable and fair usage policy, which is made available on BitCo's website and can be supplied on request to the subscriber. Should BitCo suspect or find evidence of violation of the acceptable and fair usage policy or network traffic and/or voice traffic that interferes with BitCo's network, the subscriber hereby agrees to be immediately disconnected without notice until the violation and/or interfering network traffic is removed.
- 14.5. The subscriber and signatory hereby agrees that BitCo and its Attorney may, in addition to any of its other rights in terms of this agreement or otherwise, list any default information of the subscriber with any credit information bureau, and the subscriber agrees to the disclosure by BitCo to any third party, of any information pertaining to the subscriber or this agreement, to the extent that such disclosure is necessary for the conduct of BitCo's business, or is required by any relevant statute, regulation or license.
- 14.6. The subscriber and signatory consent to BitCo and/or its Attorney to conduct a tracing enquiry with any credit information bureau.
- 14.7. Either party shall be entitled to cede its rights and/or to delegate its obligations arising from this agreement and/or assign this agreement, wholly or partly, to any other third party. The subscriber however shall not be entitled to cede or delegate his rights and/or obligations arising out of this contract, unless accepted in writing by a director of BitCo. The Quotation and/or contract application, together with Terms and Conditions are required to be counter-signed by both BitCo and Cessionary, in order for cession to be completed; failure



of which the Agreement shall remain binding and enforceable against the Cedent, as subscriber. The subscriber, as Cedent, shall be liable to ensure that the Cessionary complies with all requirements necessary to effect cession of its obligations under this agreement. BitCo reserves its rights to terminate the agreement and claim early cancellation charges and/or all damages as entitled by law against the Cedent, as subscriber and signatory, in the event that cession fails.

- 14.8. Any alteration, variation, schedule, or addition to this agreement or this clause shall be of no force or effect unless reduced to writing and placed as an addendum and/or a schedule and signed by a director of BitCo and by a duly authorised representative of the subscriber. This document and any signed addenda and/or schedule contains the sole and entire record of the agreement between the parties.

14.8.1. Schedule's, quotations and/or contract applications may be signed by a duly authorised representative of BitCo (not only a Director) and a duly authorised representative of the subscriber.

- 14.9. No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein or otherwise created by operation of law and no indulgence, leniency or extension of time which either party ("the grantor") may grant or show to the other, shall in any way prejudice the grantor or preclude the grantor from exercising any of its rights in the future.
- 14.10. Where BitCo is represented by any duly authorised representative, his authority need not be proved.
- 14.11. The subscriber agrees that this agreement and any addenda and/or schedule, in particular the face page hereof, may be scanned and the paper version destroyed, and hereby agrees to the scanned version.
- 14.12. BitCo may change the terms of this agreement at any time and where this affects the subscriber's rights and obligations, BitCo will notify the subscriber with 30 (thirty) days written notice of any changes. If the subscriber does not agree with the change the subscriber must stop using the services. If the subscriber continues to use the services following notification of a change to the terms, the changed terms will apply to the subscriber and the subscriber will be deemed to have accepted such terms.
- 14.13. The parties agree that notices shall be in writing and signed by or on behalf of the party giving such notice (notices sent to BitCo shall be sent as described in clause 2.2). The onus of proving receipt shall rest on the party giving the notice.
- 14.14. Clause headings are inserted for convenience only and shall not be used in interpreting this agreement.
- 14.15. This agreement together with any annexures and/or schedules supersede any previously signed subscriber standard terms and conditions and/or annexures and/or schedules.
- 14.16. All costs are subject to change based on the global exchange rates. The subscriber hereby expressly agrees that should the global exchange rate increase where the rate increase is R1.50 (one rand fifty cents) to (including but not limited to the following currencies) US\$1 (One United States Dollar) and/or GBP1 (One Great British Pound) and/or EUR1 (One Euro) or more BitCo may (at its sole discretion) impose an immediate price adjustment on all services and equipment that are related to foreign purchases.

## 15. SUPPORT

- 15.1. BitCo provides full remote support during the following times: Weekdays from 08:00 – 17:00 and limited remote support is provided on Saturday from 09:00 – 13:00. These times may vary, please review the BitCo website ([www.bitco.co.za](http://www.bitco.co.za)) to find the most updated support times.
- 15.2. 24 (twenty-four) hour support is available on request, additional charges will apply.
- 15.3. All support queries need to be sent via email to [support@bitco.co.za](mailto:support@bitco.co.za) or logged via our support call centre on 087 135 0000.
- 15.4. Onsite support is available; however, additional charges may apply for onsite support if the fault experienced was caused by the subscriber. In the event the fault was not caused by the subscriber then no charges will be applied. All charges need to be accepted upfront before a technician is dispatched.

## 16. FORCE MAJEURE

- 16.1. A party shall not be deemed in default of any of its obligations under this agreement, if, and to the extent that, performance of such obligation is prevented or delayed by an event of force majeure, provided that such event is not caused by the negligence of that party, and that party has notified the other in writing of the event of force majeure. The notifying party shall use all reasonable endeavours to avoid or minimise the effects and if an event of force majeure continues for a continuous period of more than 45 (forty-five) calendar days, the other party shall be entitled to terminate this agreement.
- 16.2. The subscriber's failure and/or inability to continue to pay for BitCo's services does not amount to a force majeure event. In such circumstances, the subscriber is required to cancel the Agreement and pay early cancellation charges and/or other charges as applicable under this Agreement; failure therewith will be in breach of its obligations.

## 17. CONFIDENTIALITY

- 17.1. During the course of this agreement, each party may disclose to the other party certain proprietary information (including trade secrets, know-how, software, techniques, product plans, marketing plans, customers, inventions, improvements and research data) ("Confidential Information") of a character regarded by the disclosing party as confidential. Each party and each of its Associates, directors, officers, employees, representatives, agents or professional advisers to whom disclosure is made shall hold all Confidential Information and the terms of this agreement in confidence and shall not disclose such information to any third party or apply it to uses other than the recipient's performance of this agreement.

## 18. NON-SOLICITATION

- 18.1. The subscriber shall not, during the continuance of this agreement and for a period of 2 (two) years immediately following the date of termination of this agreement, directly or indirectly offer employment or solicit any other



form of contract for services to BitCo employees, or to the employees of an Associate of another party.

Signed at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

\_\_\_\_\_  
Full Name of the subscriber representative who warrants that he/she is duly authorised to act on behalf of the subscriber

\_\_\_\_\_  
Designation

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Date

\_\_\_\_\_  
The Subscriber Witness

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Date

\_\_\_\_\_  
BitCo Authorised Representative

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Date

\_\_\_\_\_  
BitCo Witness

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Date