



## SUBSCRIBER STANDARD TERMS AND CONDITIONS

Version 6 – July 2022

### 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 Commencement Date, the Subscriber appoints BitCo to render the services agreed to between the Parties as more fully set out in the contract application signed by both Parties as attached hereto from time to time ("Services") and BitCo accepts such appointment.
- 1.2. The Quotation signed by the Subscriber, together with terms as described the Standard Subscriber Terms and Conditions, including any Addendum and SLA Product signed by the parties, shall be accepted, and regarded as the binding Agreement between the parties. Any reference to the term "Quotation" or "Contract-application" found in the Standard Subscribers Terms and Conditions shall mean the Quotation signed by the Subscriber, together with the with terms as described the Standard Subscriber Terms and Conditions, including any Addendum and SLA Product signed by the parties ("The Agreement"). BitCo will not be bound by any handwritten remarks, notes and/or comments written on the face of or incorporated in any margin, footer or header of the Agreement, or any part thereof, by the Subscriber, unless approved by the Director of BitCo in writing and signed by both parties alongside the mark and/or note and/or comment.
- 1.3. BitCo undertakes to install the Services within the estimated time frame as indicated on the contract application signed by both Parties and attached hereto; provided all approvals to be obtained by the Subscriber for the installation of the Services have been obtained by the Subscriber as required. 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, because of delayed installation, clause 3.1 shall apply.
- 1.4. BitCo confirms that its services provided are in line with the Product Specific Rules and Terms of Service ("Product Rules") as published on BitCo's website from time to time. The Subscriber hereby agrees to, at all times, abide by these Product Rules. This clause is read together with clause 15.5 of this Agreement.

#### 2. DURATION

- 2.1. This agreement shall continue for the period specified in the most recent quotation signed by the Subscriber and accepted by BitCo reckoned from the date of activation of the services by BitCo ("the initial period") and continue from time to time ("the subsequent period") until terminated by either party giving unto the other at least 3 (three) calendar months written notice of termination during the Initial Period and/or 1 (one) calendar months' notice during the Subsequent Period thereafter as envisaged in clause 2.6. For clarity purposes the following definitions will apply: -  
**Commencement date:** the date upon which both parties sign the Agreement, and a binding commitment is placed by both parties. **Activation date:** the date upon which BitCo's equipment/services have been physically installed and telecommunication services are activated and utilized by the Subscriber, whereafter BitCo commences billing the monthly charges for the full duration of the initial period.
- 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 shall supersede and replace the current Order and 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 end user, 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 either party is wound up and/or placed under business rescue and/or enters into a scheme of arrangement or compromise with its creditors, then and in any such event the other non-defaulting party may (but shall not be obliged) to terminate this agreement summarily and without notice. Should BitCo consequently 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 in fulfilment of the remainder of the full contractual period.

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- 2.6. The Subscriber may discontinue a service before the end of the Initial Period by giving BitCo at least 3 (three) calendar months written notice or before the end of the applicable subsequent period by giving BitCo at least 1 (one) calendar month written notice, as the case may be, 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 clauses 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:  
 $C = (N \times R) - A + (RC+D)$
- 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 service 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 by Third Party Service Providers.
- 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 9.2.6 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.
- 2.11 The Subscriber understands and accepts that upon early cancellation it will be liable to pay BitCo's calculated early cancellation charge as set out in clauses 2.6 to 2.8 above, together with any cancellation charges levied by any Third Party Service Provider.

### 3. CANCELLATION PRIOR TO INSTALLATION OF EQUIPMENT

- 3.1. The Subscriber hereby acknowledges that signature of the Quotation by both parties constitutes a binding commitment and order placed by the Subscriber on BitCo for the quoted services. In the event that the Subscriber requests to cancel BitCo's services (read together with clause 2.4) subsequent to both parties' signature (commencement date), but prior to the physical installation of the equipment/services (activation date) will result in the Subscriber being liable to pay a reasonable 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 Third Party Service Providers, 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 ("Standard BitCo Service Offering"). 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.
- 4.1.2. The Subscriber acknowledges that it has read and understood BitCo's SLA Product ("SLA Product"), offered to BitCo Enterprise, Direct and Reseller Subscribers to purchase as part of the BitCo Service Offering.
- 4.1.3. The Subscriber agrees that should it opt not to purchase an SLA tier, it will receive our standard service level commitments as part of our standard Terms and Conditions.
- 4.1.4. The Subscriber agrees to comply with the guidelines as set out in the SLA Product, setting out BitCo's ability to resolve any faults or issues that sit within these stipulated guidelines and priority levels.
- 4.1.5. The Subscriber acknowledges and accepts the standard exceptions and service exclusions applied to the respective tier opted by the Subscriber.
- 4.1.6. 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 17.3.
- 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.

#### 4.3. 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 within the stipulated guidelines and priority levels as set out in the SLA Product opted by the Subscriber.
- 4.3.3. 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, providing the Subscriber with as much prior notice as reasonably possibly under the circumstances.
- 4.3.4. 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.
- 4.3.5. 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, save for gross negligence or willful misconduct.

- 4.3.6. 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.
- 4.3.7. 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.
- 4.3.8. 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.
- 4.3.9. 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.
- 4.3.10. 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 may opt to cancel the Agreement read together with clauses 2.6– 2.8 above. 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:

- 4.4.1 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, save for gross negligence or willful misconduct.

#### 5. General Services Terms:

- 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.
- 5.2. Service uptime is measured by BitCo, and it is the Subscriber's responsibility to provide evidence contrary to BitCo's report.



- 5.3. BitCo shall be entitled 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, providing the Subscriber with as much notice as reasonably possible under the circumstances.
  - 5.4. Save for clause 10. In no event, whatsoever, shall BitCo, including but not limited to, its consultants and/or third-party service provider 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.
  - 5.5. 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 clauses 2.6 – 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 further that relocation to new premises does not waive, abandon and/or cancel any arrears owing (if any) and all other charges applicable and due in respect of the initial contract of services rendered prior to its relocation. 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.
- 6. CHARGES**
- 6.1. The Subscriber shall pay to BitCo:
    - 6.1.1. 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 (if applicable); and
    - 6.1.2. monthly in advance, the monthly subscription and/or services charges; and
    - 6.1.3. 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
    - 6.1.4. upon demand, a deposit of an amount determined by BitCo in its sole discretion which shall not bear interest; and
    - 6.1.5. Value Added Tax at the applicable rate on all VAT charges and services. All charges, unless otherwise stated exclude Value Added Tax.
  - 6.2. The charges payable by the Subscriber to BitCo for the provision or facilitation of the services shall be stipulated in the Quotation and/or any notice issued by BitCo.
  - 6.3. BitCo shall be entitled, 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 4.3.10. Notwithstanding the above, BitCo shall not be entitled to vary any charges payable by the Subscriber for connectivity services during the Initial Period without the Subscriber's consent, which consent be unreasonably withheld. Furthermore, and notwithstanding the above, the parties acknowledge and agree that the monthly charges may automatically vary upon invoicing for the purposes of VAT charged and/or VAT rate variances of which BitCo shall not be required to send formal notification to the Subscriber.
  - 6.4. 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 2.4) 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.
  - 6.5. 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.
  - 6.6. 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 30 (thirty) days' notice.
  - 6.7. A reasonable reconnection fee will be levied on all residential and business services respectively, 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.
  - 6.8. A de-installation fee (equivalent to the once-off Installation/Configuration Fee as quoted) will be due upon termination of the Agreement and upon return of BitCo's equipment to BitCo and/or upon the Subscriber's request to move the installed equipment to other premises for reinstallation.
- 7. PAYMENT**
- 7.1. 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.
  - 7.2. Payments shall be made via debit order. The Subscriber may apply for a change in payment method to Electronic Funds Transfer (EFT) no sooner after 6 months during the Initial Period, which application requires written approval by the Director of BitCo together with the Subscriber's



good standing of account. BitCo reserves the right to revert back to its standard debit order payment policy, in the event that the Subscriber fails to make payment in accordance with Clause 7.5.

- 7.3. Should any debit order return unpaid or stopped and/or should any charge card account and/or credit card account of the Subscriber be rejected for whatsoever reason and 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, arrear charges and interest, 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.
- 7.4. 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.
- 7.5. 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. The Subscriber may apply for an extended payment term, no sooner after 6 months during the Initial Period, which extension requires written approval by the Director of BitCo together with the Subscriber's good standing of account. BitCo reserves the right to revert back to its standard 7-day payment policy in the event that the Subscriber fails to make payment timeously. Non-receipt of invoices by the Subscriber will not be considered as a valid basis for late or non-payment.
- 7.6. All arrear payments shall attract interest at the rate of the prime lending rate of First Rand Bank Limited plus an additional 3% (three percent) as it may be from time to time, calculated from due date to date of payment.

## 8. CREDIT LIMIT

- 8.1. 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.
- 8.2. BitCo may request that the Subscriber pay a deposit in an amount determined at BitCo's sole, absolute, and binding discretion. Any portion of such deposit shall be applied as per clause 6.1.4 and/or towards any monies which are owing by the Subscriber and/or may be allocated by BitCo and credited towards the Subscriber's future liabilities for amounts owed in terms of this agreement.
- 8.3. 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.

## 9. EQUIPMENT

- 9.1. All BitCo Equipment shall be and remain the property of BitCo.
- 9.2. Accordingly, where BitCo's Equipment is in the possession, or under the control of the Subscriber the Subscriber agrees:
  - 9.2.1. not to remove or allow the BitCo Equipment to be removed from the site without BitCo's consent;

9.2.2. to keep the BitCo Equipment in good condition and complete;

9.2.3. not to allow the BitCo Equipment to be encumbered by operation of law or otherwise;

9.2.4. to allow BitCo to inspect the BitCo Equipment at reasonable times;

9.2.5. take reasonable steps to protect the BitCo Equipment from loss and/or damage and/or theft; and

9.2.6. to return such BitCo Equipment to BitCo on the termination of the applicable Services.

- 9.3. Upon installation at the Subscriber's nominated premises, 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.
- 9.4. In the event of theft or loss of an LTE router and/or SIM card, the Subscriber has a statutory obligation to report such loss or theft to the South African Police Services immediately, and to request BitCo to suspend such SIM Card. The Subscriber shall be liable to pay the replacement cost thereof.
- 9.5. 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.
- 9.6. 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.
- 9.7. 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.
- 9.8. 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.
- 9.9. 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.



## 10. LIMITATION OF LIABILITY

- 10.1. **Direct damages limited.** To the extent permitted by applicable law, regardless of the form (whether in contract, delict or any other legal theory) in which any legal action may be brought, BitCo's maximum liability to the Subscriber for direct damages for anything giving rise to any legal action will be an aggregate amount equal to the total fees payable under the fixed contractual period, unless determined otherwise by a court of competent jurisdiction.
- 10.2. **Indirect damages excluded.** To the extent permitted by applicable law, in no event will we (or our personnel) be liable for any indirect, incidental, special or consequential damages or losses (whether foreseeable or unforeseeable) of any kind (including loss of profits, loss of goodwill, damages relating to lost or damaged data or software, loss of use, damages relating to downtime or costs of substitute products) arising from this agreement.
- 10.3. **Exclusions.** The limitation contained in this clause will not apply to any breach by a party of the other party's proprietary or confidential information or intellectual property or damages arising from a party's gross negligence. BitCo will not be liable for any loss or damage suffered by you arising out of or in connection with any breach of this agreement by the Subscriber or any act, misrepresentation, error or omission made by or on behalf of the Subscriber or the Subscriber's agent and/or personnel. BitCo is not liable for any other deliverable, including website, goods, or service provided by any third party.

## 11. BREACH

- 11.1. Should the Subscriber breach any provision of this Agreement including, product specific rules and terms of service as published on BitCo website from time to time and/or 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.
- 11.2. 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, including fulfilment of the full contractual period.
- 11.3. It is understood and accepted by the Subscriber that "downtime" does not constitute breach. In the event, however, of BitCo committing a material breach of its obligations and upon it being unable to rectify such breach within fifteen (15) calendar days of receipt of the Subscriber's notice (or within a reasonable period), resulting in services no longer being available to the Subscriber, the Subscriber shall be entitled to terminate this agreement.

## 12. LEGAL COSTS

- 12.1. Should the Aggrieved Party instruct its attorneys to enforce any of its rights arising from this agreement or to institute action against the Defaulting Party, then the Defaulting Party shall be liable for all legal costs incurred on an attorney and own client scale including inter alia

any collection commission incurred by the Aggrieved Party and the Defaulting Party shall upon demand pay such costs.

## 13. DOMICILIUM

- 13.1. BitCo hereby chooses as its domicilium citandi et executandi ("domicilium") the address set out as follows: 29 Grosvenor Road, Bryanston.
- 13.2. The Subscriber hereby chooses as its domicilium citandi et executandi ("domicilium") the physical address specified at the commencement of this document.
- 13.3. The signatory hereby chooses as its domicilium citandi et executandi ("domicilium") the same address as chosen by the Subscriber in 13.2;
- 13.4. 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.

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

- 14.1. 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.

## 15. GENERAL

- 15.1. The Subscriber hereby consents to BitCo conducting an assessment into the creditworthiness of the Subscriber 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.
- 15.2. The Subscriber must comply with the Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002 ("RICA") registration process prior to services being activated and furnish to BitCo all compliance documentation.
- 15.3. Termination of this agreement 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.
- 15.4. Any subsequent changes that affect the information supplied to BitCo such as bank account details must be brought to the immediate attention of BitCo.
- 15.5. The Subscriber hereby agrees to abide by BitCo's product specific rules, terms of service and 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 its product specific rules, terms of service, 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.
- 15.6. 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.
- 15.7. The Subscriber and signatory consent to BitCo and/or its Attorney to conduct a tracing enquiry with any credit information bureau.
- 15.8. 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, novate and/or transfer his rights and/or obligations arising out of this contract, unless accepted in writing by a director of BitCo which consent shall not be unreasonable withheld. The Quotation, together with Terms and Conditions and any applicable SLA Agreement, are required to be counter-signed by both BitCo and Cessionary, 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. Should the cession fail for any reason whatsoever, the Agreement will remain in place between Parties to this Addendum.
- 15.9. 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 addendum and/or schedule contains the sole and entire record of the agreement between the parties.
- 15.9.1. 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.
- 15.10. 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.
- 15.11. Where BitCo is represented by any duly authorised representative, his authority need not be proved.
- 15.12. 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.
- 15.13. 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 continues to use the services following notification of a change to the terms but fails and/or neglects to raise any objection thereto with BitCo, the changed terms will apply to the Subscriber and the Subscriber will be deemed to have accepted such terms. In the event that the Subscriber expressly raises an objection to the intended changes, it shall not be entitled to abandon its obligations in terms of this agreement, including payment of an early cancellation fee, but the parties shall mediate and record any revised terms in the form of an Addendum, which terms shall be incorporated into this Agreement.
- 15.14. 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.
- 15.15. Clause headings are inserted for convenience only and shall not be used in interpreting this agreement.
- 15.16. This agreement together with any annexures and/or schedules supersede any previously signed Subscriber standard terms and conditions and/or annexures and/or schedules.
- 15.17. BitCo may impose an immediate price adjustment (linked to global exchange rates) on all services and equipment that are related to foreign purchases.
- ## 16. PROTECTION OF PERSONAL INFORMATION
- 16.1. The parties agree and shall ensure that the conditions for the lawful processing of Personal information as set out in Chapter 3 of POPIA (The Protection of Personal Information Act 4 of 2013), and all the measures that give effect to such conditions, are complied with.
- 16.2. The Subscriber hereby consents to BitCo and its subsidiary/ies to collecting, holding, organising, storing, using, and administering personal information of the Subscriber and/or signatory for the purpose of executing this Agreement.
- 16.3. Both parties agree to process personal information lawfully and in a reasonable manner that does not infringe upon the Subscriber's rights to privacy and within the lawful bounds prescribed by the Act.
- 16.4. BitCo's Privacy Policy is made available on BitCo's website and can further be supplied to the Subscriber upon request. The Subscriber acknowledges that it has read the Policy and agreed to be bound by the terms therein as if specially incorporated herein.
- 16.5. Should either party suspect or find evidence of violation of this Privacy Policy, it shall notify the defaulting party of the data breach, investigate the data breach, and take all reasonable steps to mitigate the effects and to minimise any damage resulting therefrom.
- ## 17. SUPPORT
- 17.1. 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.
- 17.2. 24 (twenty-four) hour support is available on request, additional charges will apply.
- 17.3. 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.
- 17.4. 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.

**18. FORCE MAJEURE**

- 18.1. 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.
- 18.2. 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.
- 18.3. The Subscriber agrees and acknowledges that Loadshedding enforced and carried out in the Republic of South Africa remains out of BitCo’s and/or all Third Party Service Provider’s control; and which power failure and/or the restriction of power and/or the failure or inability of

generators to recharge, remains out of BitCo’s Control and any downtime caused as a result thereof will be regarded as a Force Majeure event out of BitCo’s control and BitCo will not be in breach of its obligations held under this agreement.

**19. CONFIDENTIALITY**

- 19.1. 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.

**20. NON-SOLICITATION**

- 20.1. Neither party shall, during the continuance of this agreement and for a period of 1 (one) year immediately following the date of termination of this agreement, directly or indirectly offer employment or solicit any other form of contract for services to the other parties’ employees, or to the employees of an Associate of the other 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 \_\_\_\_\_