

## Subscriber Terms and Conditions

**Note:**

*The below is the Subscriber Terms & Conditions for ESA Partner customers using Bitco Internet services. By signing our Master Rental Agreement – Voice & Data Connectivity & Hosted PBX contract you agree to the below terms and conditions. By signing this agreement the customer agrees and acknowledges that they have been made aware of the Bitco Subscriber Terms & Conditions. The Bitco Subscriber Terms & Conditions should also be considered as if specifically incorporated herewith and also remains in force and applicable towards the customer. All queries related to payments, disputes or cancellations for Bitco Internet needs to be directed to ESA Partner by contacting us on 021 552 5233 or [info@esapartner.co.za](mailto:info@esapartner.co.za).*

### 1. INTRODUCTION

1.1. With effect from the date of acceptance hereof by Rose Courtz Trading (Pty) Ltd T/A BitCo (“BitCo”), (“the subscriber”) identified on the face page hereof appoints BitCo to provide telecommunications and related services requested by the subscriber and from time to time (“the services”) to and/or on behalf of the subscriber in accordance for the provisions hereof.

1.2. The subscriber agrees to be bound by the provisions contained in any notice, directive or applicable tariff plan issued or derived by BitCo from time to time.

1.3. The subscriber acknowledges that this document constitutes an offer by the subscriber, which may be accepted or refused by BitCo in its sole discretion. The offer will be considered once received by Rose Courtz Trading Pty Ltd at BitCo’s premises, which premises will be the offices of BitCo at Block A, Wedgewood Office Park, 3 Muswell Road, Bryanston. Activation of the services of the subscriber shall be deemed to constitute acceptance of the offer by BitCo and commencement of this agreement. This agreement shall become binding between BitCo and the subscriber whether or not the subscriber was notified of the acceptance of the offer. The subscriber herewith expressly dispenses with notification of acceptance of the offer by BitCo.



## 2. DURATION

2.1. This agreement shall continue for the contract period as defined in the most recent approved contract application and reckoned from the date of acceptance hereof by BitCo (“the initial period”) and thereafter shall continue unless terminated by either party by the giving of at least one calendar month’s written notice of termination as set out in clause 2.5.

2.2. Any notice of termination or any other notice whatsoever by the subscriber to BitCo shall be in writing on a letter head, signed by a duly authorised representative of the subscriber and delivered via email as an attachment to ESA Partner at [info@esapartner.co.za](mailto:info@esapartner.co.za).

2.3. In the event of the death of the subscriber or in the event that either party is provisionally or finally liquidated, wound up or declared insolvent or in the event that either party enters into a scheme of arrangement or compromise with its creditors or allows a judgment to be entered against the name of the party and does not take steps for the rescission thereof within a period of 21 (twenty-one) business days after the date of the judgment then the other party shall be entitled immediately to terminate this agreement.

2.4. Termination of this agreement does not relieve the subscriber from the liability to pay charges for the initial period plus notice period.

2.5. The subscriber may discontinue a service before the relevant initial period has expired by advising BitCo of such discontinuation with at least one calendar month’s notice in writing in which event such service shall be discontinued on the required termination date specified in the said notice. In such event BitCo shall invoice and the subscriber shall pay to BitCo an early cancellation charge (“the early cancellation charge”) calculated as set out in 2.6 below.

2.6. The early cancellation charge is calculated as follows:  $C = N \times R - A$

2.7. Where:

2.7.1. C is the Cancellation Charge

2.7.2. N is the New Period, being the revised total number of months calculated in 12 (twelve) month increments and reckoned to the end of the next full twelve-month period after the cancellation date.

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



2.7.4. A is the actual payment received to date from the Subscriber related to the service being cancelled.

2.8. Then for example: for a 36-month contract cancelled after 16 months. If the 36-month Price is R100 per month and the 24month 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 R1280.00

### **3. CANCELLATION PRIOR TO INSTALLATION OF EQUIPMENT**

3.1. The subscriber hereby understands and agrees that this clause applies exclusively to the set out circumstances as contained in this clause and which clause shall not detract and/or affect any other clause contained herein this agreement. The subscriber hereby acknowledges that acceptance of any Bitco quotation confirms a binding commitment and an order placed on Bitco for the quoted services. The subscriber further acknowledges, accepts and confirms that any cancellation requested by the subscriber of BitCo's services, subsequent to the signing thereof, but prior to the physical installation of the equipment, 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.

### **4. PROVISION OF SERVICES**

4.1. 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 in terms hereof. The subscriber further acknowledges that to enable BitCo to provide certain services, BitCo is dependent on third party service providers and the delivery of these services may be affected by circumstances beyond either the supplier or BitCo's control. BitCo will use all reasonable endeavours to ensure a reliable service is provided to the subscriber backed up by a 99% uptime Service Level Guarantee.

4.2. Should the service have less than 99% uptime when measured over a calendar month. The subscriber shall have 30 (thirty) days from the time of the incident within which to apply to BitCo for a pro-rata credit. Upon application by the subscriber, BitCo will raise a pro-rata credit for time that the services were unavailable based on the month's fixed billing.



4.3. The subscriber shall not be entitled to set-off or deduct any monies in respect of temporarily unavailable services and other services.

4.4. Service uptime is measured by BitCo and it is the subscriber's responsibility to provide evidence contrary to BitCo's report.

4.5. BitCo shall be entitled in its sole discretion to 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.

## **5. CHARGES**

5.1. The subscriber shall pay to BitCo:

5.1.1. upon receipt by BitCo, of the contract application, the initial installation and set-up charge and any other introductory or commencement charges; and

5.1.2. monthly in advance, the monthly subscription 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 or derived 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) days written notice.

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 personally 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 from the subscriber and confirmed such notification that the equipment has been 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 be 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 to the contrary contained in this agreement, the subscriber shall be entitled to cancel an order prior to the provision of a particular service by BitCo, the subscriber will still be liable for any cost as set out in clause 3.

5.7. A reconnection fee will be levied, where the subscriber's right to use the services is suspended due to nonpayment. 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. These fees are subject to change with 30 (thirty) 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 " Rose Courtz Trading (Pty) Ltd T/A BitCo " 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 or cheque payment be returned unpaid or stopped or should any charge card account 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 nonpayment 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, 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 effected within 7 (seven) days of invoice date or where payment is effected by debit order then such payment must be effected 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 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.

6.8. The subscriber agrees and acknowledges that a certificate given under the hand of a financial manager or 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.

## **7. CREDIT LIMIT**

7.1. BitCo shall be entitled in its sole and absolute discretion from time to time to determine and amend the maximum 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 shall be entitled to demand that the subscriber pay a deposit in an amount determined at BitCo's sole 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.



## 8. EQUIPMENT

8.1. All BitCo Equipment shall be and remain the property of BitCo.

8.2. Accordingly, where BitCo 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 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

8.2.6. to return such BitCo Equipment to BitCo on the termination of the Contract Term of the applicable Services.

8.3. All risk of loss, theft, destruction or damage to or malfunction of 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 normally for 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 fail to 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.

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 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 mutatis mutandis apply to such loaned equipment and its use.

## **9. LIMITATION OF LIABILITY**

9.1. BitCo shall not be liable under any circumstances whatsoever for any loss or damage of any nature whatsoever (including loss of profit or any other special damages or indirect or consequential loss or damages) which the subscriber or any other person may suffer, whether caused directly or indirectly by the subscriber's equipment or the use thereof, or any other circumstance whether caused by any person, animal or naturally occurring event, which causes any of the networks to temporarily or otherwise fail, malfunction, provide no or poor coverage, or should any of the services or facilities provided by any network operator or BitCo be temporarily unavailable for any reason beyond BitCo's control.

## **10. BREACH**

10.1. Should the subscriber breach any provision of this agreement including failing to pay BitCo any monies due in terms of 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 hours written notice of such suspension.

## **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 on attorney and own client scale including any collection commission incurred by BitCo and the subscriber shall upon demand pay such costs.

## **12. DOMICILIUM**

12.1. BitCo 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 appoints their physical or residential address specified on the face hereof.

12.3. The signatory hereby appoints the same address as chosen by the subscriber as specified on the face hereof;

12.4. Either party shall be entitled from time to time, by written notice to the other, 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, trust or a division or entity thereof or any other entity with juristic personality, then the signatory hereto who signs on behalf of the subscriber ("the signatory") warrants that he is duly authorised to enter into this agreement on behalf of the subscriber and, if applicable, to sign the debit authorization on the subscriber's bank account. By his signature hereto, the signatory hereby binds himself as coprincipal 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 utilising the information contained on the face page, which information the subscriber 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 2.1

14.2. Any subsequent changes that affect the information supplied to BitCo such as bank account details must be brought to the immediate attention of BitCo.

14.3. 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 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.

14.4. The subscriber hereby agrees that BitCo 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.

14.5. BitCo 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 shall not be entitled to cede or delegate his rights and/or obligations arising out of this contract, unless accepted in writing by the credit control manager or a director of BitCo.

14.6. Any alteration, variation, 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 signed by a director of BitCo and by a duly authorised representative of the subscriber. This document and any signed addenda contains the sole and entire record of the agreement between the parties.

14.7. 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.

14.8. Where BitCo is represented by any duly authorised representative, his authority need not be proved.



14.9. The subscriber agrees that this agreement, in particular the face page hereof, may be scanned and the paper version destroyed, and hereby agrees to the scanned version.

14.10. BitCo may change the terms at any time and where this affects your rights and obligations, we will notify you with 30 (thirty) days written notice of any changes. If you do not agree with the change you must stop using the services. If you continue to use the services following notification of a change to the terms, the changed terms will apply to you and you will be deemed to have accepted such terms.

14.11. The parties agree that notices shall be in writing meaning the reproduction of information or data in physical form (includes handwritten documents, hard copy printouts and fax transmissions) or any mode of reproducing information or data in electronic form that the parties agree to use (such as pdf), but excludes information or data in the form of email.

14.12. Clause headings are inserted for convenience only and shall not be used in interpreting this agreement.

## **15. FORCE MAJEURE**

15.1. 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 days, the other party shall be entitled to terminate this agreement.

## **16. CONFIDENTIALITY**

16.1. During the course of this agreement, each party may disclose to the other party certain proprietary information (including trade secrets, knowhow, 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.

## **17. NON-SOLICITATION**



17.1. No party shall, during the continuance of this agreement and for a period of 2 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 another party's employees, or to the employees of an Associate of another party