

TERMS AND CONDITIONS

1 DEFINITIONS AND INTERPRETATION

- 1.1 For purposes of this Agreement, the following terms shall have the following meanings—
- 1.1.1 "Customer" means the entity described under Client Details in the Subscriber Agreement;
- 1.1.2 "Emergency Changes" means an urgent, mandatory change that may occur outside the Scheduled Downtime where critical changes impacting on Ditrronics' network infrastructure must be performed in order to restore accessibility and functionality, and/or sustain the Availability, of the Ditrronics network infrastructure;
- 1.1.3 "Equipment" means the router/gateway, modem and/or any other Equipment or hardware that Ditrronics requires at the Customer premises to provide the Services as set out the schedule;
- 1.1.4 "Sites" means the offices or premises at or to which the Services are to be provided, as set out in the Services Form and "Site" means one of them. The Customer must complete a Services Form per site.
- 1.1.5 "Subscriber Agreement" means the document indicated as such and signed by one or more parties hereto, and which may include details of *inter alia* (among others) the nature and respective fees of certain Services requested by the Customer and the Customer's contact and other details;
- 1.1.6 "Surely" means the natural person who, in the case of the Customer being a Juristic Entity, signs this Agreement for and on behalf of the Customer and as surely for and co-principal debtor with the Customer in accordance with clause 14.
- 1.2 In this Agreement, unless the contrary intention appears:
- 1.2.1 any reference to (i) the singular includes the plural and vice versa, (ii) any gender includes the other genders and (iii) a natural person includes a juristic person and vice versa;
- 1.2.2 the clause headings have been inserted for purposes of convenience only and will not be taken into consideration in its interpretation;
- 1.2.3 the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply to this Agreement and the Parties waive any rights they have to rely on such rules;

2 DURATION

- 2.1 This Agreement shall commence on the Effective date and the Services shall commence on the Connection Date, as set out in the Subscriber Agreement, and shall continue for the Initial Fixed Period;
- 2.2 The Agreement shall automatically renew for a further period equivalent to that of the initial period, unless either party gives the other written notice to the contrary, no less than ninety days prior to the expiration of the Initial Period, or any successive period of this Agreement.

3 EQUIPMENT

- 3.1 Where the Equipment is purchased by the Customer:
- 3.1.1 The Equipment will be supplied by and installed by Ditrronics or its nominated representative;
- 3.1.2 The cost of the Equipment and the cost of its installation will be paid by the Customer at Ditrronics' usual rates;
- 3.1.3 Any equipment purchased shall only be delivered and/or installed upon receipt by Ditrronics of payment in an amount equal to 50% of the purchase price;
- 3.1.4 Any Equipment purchased by the Customer shall remain the property of Ditrronics until paid for in full;
- 3.1.5 Despite paragraph 3.1.4, on delivery risk shall pass to the Customer who shall be obliged, until the Equipment is paid for in full, to adequately insure the Equipment at all times;
- 3.1.6 All Equipment is purchased *voetsaets* and without any warranties from Ditrronics whatsoever.
- 3.2 Where the Equipment is rented/leased by the Customer:
- 3.2.1 The Equipment will be supplied and installed by Ditrronics or its nominated representative;
- 3.2.2 The Customer shall at all times take all reasonable steps to prevent any damage to, or tampering with, the Equipment, and insure the Equipment comprehensively for at least the replacement value of the Equipment.
- 3.3 When notified of the proposed installation of the Equipment, the Customer shall provide Ditrronics/its nominated representative with such access as may be required for purposes of installing the Equipment.

4 THE SERVICES

- 4.1 Ditrronics shall:
- 4.1.1 provide the Services in accordance with the provisions of this Agreement and in accordance with generally accepted industry standards and practices;
- 4.1.2 provide the necessary initial training to the Customer's Personnel;
- 4.2 Whereas Ditrronics undertakes to use its reasonable endeavors to cause the Services to be uninterrupted, the parties agree and understand that:
- 4.2.1 The continued and uninterrupted service is dependent on the utilisation, availability and functionality of equipment and resources provided by Third-Party Service Providers;
- 4.2.2 Ditrronics shall not be liable, directly or indirectly, for any interruption in or failure of the Services (including, without limitation, the speed of any Services as a result of any such failure);
- 4.2.3 This Agreement shall remain valid and enforceable during any period of interruption or suspension to the Services;
- 4.2.4 Any period of suspension or interruption of the Services, whether by reason of (i) the Customer's damage to the Equipment or unlawful use of the Services and/or Equipment; (ii) any event provided for in terms of clause 4.2.5 and/or clause 9; or any other cause whatsoever, shall not entitle the Customer, to cancel this Agreement, or to suspend or withhold any payment due to Ditrronics, or to a credit for any such payment, unless Ditrronics specifically agrees thereto in writing;
- 4.2.5 Maintenance of, remedial works to, modification of, and upgrading to the Equipment, along with Scheduled Downtime and Emergency Changes, may take place from time to time and may bring about a suspension or interruption of the Services. In such an event Ditrronics shall endeavour to notify the Customer of any impending suspension or interruption and shall further take all reasonable steps to keep such suspension or interruption to a minimum;
- 4.2.6 Any software developed by Ditrronics, or commissioned by Ditrronics, that is installed on any Equipment delivered to the Customer shall remain the intellectual property of Ditrronics and, in the event of this Agreement Ditrronics shall be entitled to uninstall any such software on termination. This clause shall apply even in the event that such software was developed at the request of the Customer.

5 LIMITATION OF LIABILITY

- 5.1 The Customer agrees that Ditrronics shall not be liable in respect of any loss or damage caused by or arising from the provisions of this agreement, for any reason. This exclusion of Ditrronics' liability for loss or damage will include, without limitation:
- 5.2 loss or damage caused by negligent acts of Ditrronics and any acts of Ditrronics' Personnel;
- 5.3 any direct, consequential, incidental, indirect or special loss or damage flowing from business interruption, loss of business information, loss of data or any other cause;
- 5.4 any loss or damage, regardless of whether a claim for loss or damage is based on breach of contract, delict, breach of implied warranties or otherwise; and
- 5.5 any loss or damage, whether it could have been foreseen or not.

6 CUSTOMER'S OBLIGATIONS

- 6.1 The Customer and its personnel shall comply with Ditrronics' reasonable requests and directions necessary for the implementation and use of the Services.
- 6.2 With effect from the signature of this agreement, the Customer shall allow Ditrronics and its personnel access (at all reasonable times) to the Sites strictly for the purposes of fulfilling Ditrronics' obligations under this Agreement.
- 6.3 The Customer shall be responsible to purchase or rent/lease the Equipment as required in terms of this Agreement and to have it installed and shall maintain the same in proper working order.
- 6.4 The Customer:
- 6.4.1 shall at all times: (i) be obliged to use the Services lawfully in compliance with all applicable laws; (ii) ensure that the equipment is used with due skill and care and only in the manner and for the purpose for which it is designed; (iii) maintain the equipment; (iv) insure the equipment with a registered insurer against such risks of loss, theft, damage or destruction as Ditrronics may stipulate from time to time; (v) warrants the integrity of the equipment its network and its internal systems particularly with regard to the usage of passwords and access codes that are supplied by Ditrronics;
- 6.4.2 indemnifies Ditrronics (and any third party service provider/s) and holds it harmless against any claims by third parties and/or the customer: (i) in respect of prohibited or unlawful activities in relation to the Customers use of the Services and/or Equipment; (ii) arising from the unlawful access and or the usage of the equipment and or services and all security breaches in relation to its network;
- 6.4.3 shall not (i) prevent or preclude Ditrronics from being able to provide or maintain its Services and/or Equipment; (ii) abuse the Services and/or damage the Equipment or the Ditrronics network; (iii) withhold any payment for any reason whatsoever; (iv) be entitled to claim a remission of fees; (v) remove or cause the equipment to be removed from the site without the prior written approval of Ditrronics; (vi) alter or modify the equipment in whatsoever manner; (vii) sell, assign, mortgage, encumber or otherwise dispose of, deal with or part with the equipment (or any interest in it) or attempt to do so without the prior written consent of Ditrronics.
- 6.4.4 warrants that it has inspected the Equipment and is satisfied that it is suitable for the Customer's intended purpose.
- 6.4.5 warrants that its turnover as at the time of signature of this agreement exceeds R2,000,000.00 per annum,

7 FEES AND PAYMENT

- 7.1 In consideration for the provision of the Services, the Customer shall pay the associated costs detailed in the schedule(s).
- 7.2 Invoicing periods for the Services will run from the first day of each month, unless otherwise agreed by Ditrronics in writing.
- 7.3 Ditrronics will provide the Customer with an electronic invoice.
- 7.4 Payment shall be made within 7 (seven) days of date of invoice, alternatively by monthly debit order.
- 7.5 All arrear payments will be subject to the payment of interest at the rate of prime plus 5% per annum expressed as a percentage per annum from date of default to date of payment.
- 7.6 All fees and charges for the Services are based on and subject to and linked to those of Ditrronics' Third Party Service Providers. The Customer accordingly acknowledges and agrees that any increase of those Third Party Service Provider charges for whatsoever reason will bring about an automatic and simultaneous adjustment of Ditrronics' fees and charges under this Agreement in a commensurate amount to the increase of the Third Party Service Provider charges.
- 7.7 All amounts due and payable by the Customer shall be paid to Ditrronics in South African Rands at an address and in a manner specified by Ditrronics in writing from time to time. The Customer shall not be entitled to withhold payment of any amounts due and payable to Ditrronics, nor claim any deduction or set off.
- 7.8 A certificate signed by any Ditrronics director, whose authority need not be proven, shall constitute prima facie proof of the amount and extent of any indebtedness by the Customer to Ditrronics.

8 DEPOSIT

- 8.1 Ditrronics will be entitled, but not obliged, to insist on a payment of a deposit by the Customer equal to two months of anticipated payments to be made by the Customer to Ditrronics, as calculated by Ditrronics.
- 8.2 In the event of the deposit being depleted below 50% of the initial amount, Ditrronics will be entitled to demand from the Customer such amount as is required to restore the deposit amount to an amount equal to two months of anticipated payments, which amount the Customer shall be obliged to make payment of within seven days from date of demand.

9 UPGRADES

- 9.1 Any upgrades performed, whether necessary or requested, shall be subject to a further quotation by Ditrronics.
- 9.2 The terms of this agreement shall apply to any new Equipment installed as part of any upgrade during the currency of the agreement.
- 9.3 The cost of any upgrades shall be quoted for at Ditrronics usual prices from time to time.

10 BREACH AND TERMINATION

- 10.1 Should the Customer ("Defaulting Party") –
- 10.1.1 commit a material breach of this Agreement, and fail to remedy the breach within 7 (seven) days of having been called on in writing by Ditrronics to do so; or
- 10.1.2 effect or attempt to effect a compromise or composition with its creditors; or
- 10.1.3 be provisionally or finally liquidated or placed under judicial management; or
- 10.1.4 cease or threaten to cease to carry on the Defaulting Party's normal line of business or commit any act or omission which would, in the case of an individual, be an act of insolvency in terms of the Insolvency Act, 1936 (as amended);
- then Ditrronics may, in its discretion and without prejudice to its rights in this Agreement or in law, terminate the Services and in the event of the equipment being rented by the customer, remove the equipment and cancel this Agreement on written notice to the Customer, in which event termination shall be without prejudice to, and shall not constitute a release or waiver of, any claims which Ditrronics may have for damages against the Customer occasioned by the termination of this Agreement.
- 10.2 In the event of the Customer failing to remedy its breach within the 7 (seven) day notice period detailed above, Ditrronics will be entitled to suspend all services to the Customer until such time as the breach is remedied.
- 10.3 The Customer will further be liable for any banking fees incurred by Ditrronics as a result of any default of the terms of this agreement by the Customer.

11 NOTICES AND DOMICILE

- 11.1 All notices, authorizations and requests given or made in connection with this Agreement must be delivered by hand, pre-paid registered post or facsimile to the addresses and numbers set out in the Subscriber Agreement. By providing contact information, each Party consents to its use for purposes of administering this Agreement by the other Party and other parties that help a Party administer this Agreement.
- 11.2 The Customer chooses as its *domicilium citandi et executandi* (its domicile for the purpose of being served any notice or legal process) for all purposes related to this Agreement the street address stated in the Subscriber Agreement.
- 11.3 The Surety chooses the address indicated adjacent to his signature on the Subscriber Agreement as his *domicilium citandi et executandi* for all purposes related to this Agreement.

12 FORCE MAJEURE

- 12.1 Neither Party shall be liable for any failure to fulfil its obligations under this Agreement (other than payment obligation) if and to the extent that such failure is caused by any circumstances beyond its reasonable control, including flood, fire, earthquake, war, tempest, hurricane, industrial action, government restrictions, failure of any third party service providers or acts of God.
- 12.2 Should any event of force majeure arise, the affected Party shall notify the other Party without delay and the Parties shall meet within 7 (seven) calendar days of the notice to negotiate in good faith alternative methods of fulfilling its obligations under this Agreement, if any. In addition Ditrronics shall continue to provide and the Customer shall continue to pay for those Services not affected by such event of force majeure.
- 12.3 Should either Party be unable to fulfil a material part of its obligations under this Agreement for a continuous period in excess of 60 (sixty) calendar days due to circumstances or force majeure, the other Party may at its sole discretion cancel this Agreement forthwith by written notice.

13 ASSIGNMENT AND SUB-CONTRACTING

- 13.1 Ditrronics may sub-contract or delegate its obligations under this Agreement to third party contractors, provided that Ditrronics shall remain liable for performance of such obligations. Ditrronics shall not be required to disclose the terms (including payment terms) of any sub-contract entered into with respect to Ditrronics' obligations under this Agreement.
- 13.2 The Customer shall not be entitled to cede, assign, delegate or otherwise transfer the benefit or burden of any part of this Agreement without the prior written consent of Ditrronics.

14 SURETY

- Should the Customer be a juristic entity then in such event the signatory to the Subscriber Agreement, (who signs on behalf of the Customer) hereby binds himself as surely for and co-principal debtor jointly and severally with the Customer in favour of Ditrronics for the due and punctual performance by the Customer of all its obligations to Ditrronics whether presently due, owing and payable or becoming due, owing and payable in the future.**

15 GENERAL

- 15.1 This Agreement, together with the schedules herewith, constitutes the entire agreement between Customer and Ditrronics in respect of the subject matter of this Agreement.
- 15.2 No amendment or modification to this Agreement shall be effective unless in writing and signed by the Parties.
- 15.3 No granting of time or forbearance shall be, or be deemed to be, a waiver of any term of this Agreement and no waiver of any breach shall operate as a waiver of any continuing or subsequent breach.
- 15.4 If the whole or any part of a term of this Agreement is void or voidable by either Party or unenforceable or illegal, the whole or that part (as the case may be) of that term, shall be severed, and the remainder of this Agreement shall have full force and effect, provided the severance does not alter the nature of the agreement between the Parties.

INITIALS _____