

Terms and Conditions of Gironet Broadband Wireless and Fibre Internet access Service

In this Agreement, unless inconsistent with context, words defined on the face hereof shall bear the meanings so assigned to them and the following words and expressions shall bear the meanings assigned to them below:

1. DEFINITIONS:

- 1.1. "Gironet" Trading as **Gironet**
- 1.2. "Services" – the Broadband Wireless Internet Service which are selected and agreed upon on the face hereof. See Broadband Wireless Internet Service below.
- 1.3. "Subscriber" – the Company, Close Corporation, Firm, Partnership or Persons contracting to receive the Service from Gironet in terms of this Agreement;
- 1.4. "Agreement" – these terms and conditions as read with the schedule on the face hereof;
- 1.5. "Connection Date" – the date on which the contract begins;
- 1.6. "Duration of the Contract" – the number of months the Service specified upon on the face hereof is contracted for.
- 1.7. "Broadband Wireless Internet Service" - An 'always-on' data connection that is able to support interactive services including Internet access and has the capability of the minimum download speed of 256 kilobits per second (kbps) to an individual subscriber from the Point Of Presence (POP) of the service provider intending to provide Broadband Internet service where multiple such individual Broadband connections are aggregated and the subscriber is able to access these interactive services including the Internet through this POP. The interactive services will exclude any services for which a separate license is specifically required, for example, real-time voice transmission, except to the extent that it is presently permitted under ISP license with Internet Telephony."
- 1.8. "Initial period" – The contract term as agreed upon registration or after any changes made to the service.

2. APPOINTMENT AND TERM

- 2.1. The Subscriber hereby appoints Gironet, which hereby agrees, to provide the Services to the Subscriber on the terms and conditions of this Agreement.
- 2.2. Subject to the provisions of this Agreement, this Agreement shall take effect from the Connection Date and continue for the Duration of the Contract ("the Initial Term")
- 2.3. At the expiry of the initial period, the services and the agreement shall continue on a Month to Month basis, unless terminated by either party, by giving of a minimum of one calendar months written notice
- 2.4. Gironet endeavours that the Services rendered will be provided and maintained during the contract period;
- 2.5. The Subscriber hereby indemnifies Gironet and holds Gironet harmless against any claim by any third party arising directly or indirectly out of the Subscriber's access to or use of the Service or information obtained through the use of it, including without limitation any claim due to the use of the Services for unlawful purposes.

3. MAINTENANCE

- 3.1. Because of the need to conduct maintenance, repair and/or improvement work from time to time on the technical infrastructure by means of which the Service is provided, the provision of the Service may be suspended from time to time without notice by Gironet, and Gironet, its servants, agents and sub-contractors is exempted from all liability for any loss or damage (whether direct or consequential) and/or for any costs, claims or demands of any nature to the Subscriber and/or any third party arising from such suspension.
- 3.2. GIRONET will endeavour to do any maintenance between 4am and 6am. Where this is not possible maintenance will be done as and when required.

4. WARRANTIES AND THE EXCLUSION OF LIABILITY

- 4.1. Gironet shall be exempted from and not be liable to the Subscriber and/or any third party under any circumstances whatsoever for any indirect or consequential damages of any kind or any loss of profit or special damages of any kind, whether in the contemplation of the parties or not, which the Subscriber and/or any third party may suffer as a result of any act or omission of Gironet, its servants, agents and sub-contractors and/or any breach of Gironet's obligations in terms of this Agreement. Gironet its servants, agents and sub-contractors shall not be liable to the Subscriber and/or any third party in any manner whatsoever for the failure of the Internet Censorship Software provided and operated by Gironet Notwithstanding any other provisions of this Agreement, Gironet's liability to the Subscriber and/or any third party for any damages or loss of whatsoever nature, including without limitation any damages or loss caused by the negligence of Gironet or that of its servants, agents and sub-contractors, shall in any event and under all circumstances be limited to an amount equal to the subscription fee payable by the Subscriber in the Initial Term.
- 4.2. Gironet endeavours that the Services rendered will be provided and maintained during the contract period;
- 4.3. Because of the need to conduct maintenance, repair and/or improvement work from time to time on the technical infrastructure by means of which the Service is provided, the provision of the Service may be suspended from time to time without notice by Gironet, and Gironet, its servants, agents and sub-contractors is exempted from all liability for any loss or damage (whether direct or consequential) and/or for any costs, claims or demands of any nature to the Subscriber and/or any third party arising from such suspension.
- 4.4. Gironet does not undertake to reinstate the Service within a specific period, and will be exempted from any liability whatsoever, if the nature of the failure is caused by Gironet's upstream service providers failure to deliver their service and if the failure is due to a reason out of the direct control of Gironet.
- 4.5. The Subscriber will be responsible for all communication services and facilities, including without limitation telephone facilities and lines, required for the Services to be rendered by Gironet. Gironet shall not be responsible or liable in any manner whatsoever to the Subscriber and/or any third party for any failure of such service or facility, including without limitation the services offered by any upstream provider. Gironet will Endeavour to aid the Subscriber if such an event happens.
- 4.6. Gironet does not make any representations nor, unless expressly given in writing, give any warranty or guarantee of any nature whatsoever in respect of the Service or its suitability for any intended purpose, whether that purpose is notified to Gironet or not. Without derogating from the generality of the foregoing, Gironet does not warrant or guarantee that the information transmitted by the use of the Service will be preserved or sustained in its entirety, will be suitable for any intended purpose, will be exempt of inaccuracies or defects or bugs or viruses of any kind, and will not contravene the laws of a particular country.

- 4.7.** The Subscriber hereby indemnifies Gironet and holds Gironet harmless against any claim by any third party arising directly or indirectly out of the Subscriber's access to or use of the Service or information obtained through the use of it, including without limitation any claim due to the use of the Services for unlawful purposes.

5. CUSTOMERS OBLIGATION IN RELATION TO THE EQUIPMENT

- 5.1.** Upon delivery or collection of the equipment as the case may be, and if applicable, the customer shall assume the risk and responsibility:
- 5.1.1. For keeping the equipment in its possession and control protected against loss and damage whatsoever cause, free from any judicial attachment, hypothetic of any other legal charge or process and shall not encumber or in any way deal with the equipment; and
 - 5.1.2. for exercising due care and diligence in respect of the equipment in its possession and control
- 5.2.** If the equipment or any part thereof is lost, or damaged as per clause 5.1 above:
- 5.2.1. The customer shall immediately notify the supplier in writing and until such notification has been received by the supplier the customer shall remain liable for all costs and charges pertaining to such equipment;
 - 5.2.2. The supplier shall as soon as reasonably possible issue replacement equipment to the customer to effect payment of a reasonable charge in respect of the cost of the cost of issuing such equipment;
 - 5.2.3. Such loss, theft of, or damage to and/or the issue of replacement equipment shall in no way be deemed to constitute a termination of this agreement which shall continue to be of full force and effect.
- 5.3.** It is the customer's responsibility to protect the equipment against any form of lightning by means of installing a lightning protection device. Should the equipment be damaged in any way whatsoever as a result of lightning, the supplier will require the customer to effect payment in respect of the cost of issuing a replacement.
- 5.4.** The customer agrees that any equipment supplied by the supplier pursuant to this agreement is movable property and that notwithstanding installation thereof at the customer's premises, it is the clear and expressed intention that the equipment at all times remain the property of the supplier who has the right to remove the equipment on termination of this agreement for any reason. Accordingly the customer undertakes forthwith upon the installation of the equipment to notify the landlord of the premises where the equipment is to be installed of the suppliers' ownership of the equipment.

6. FORCE MAJEURE

- 6.1.** If Gironet is prevented from or restricted directly or indirectly from carrying out all or any of its obligations under this Agreement due to any reason and/or cause beyond the control of Gironet or by reason of force majeure, Gironet shall be relieved of its obligations in terms of this Agreement during such period.

7. BREACH

If the Subscriber;

- 7.1.** Fails to pay any amount under this Agreement on due date; or
- 7.2.** Commits, suffers or permits a breach of any term of this Agreement;
- 7.3.** in Gironet's opinion jeopardizes Gironet by abusing or misusing the Service in any manner whatsoever; or uses the Service for any unlawful purpose; then and in any such event Gironet shall be entitled, without prejudice to its other rights in law, to immediately suspend its obligations under this Agreement and/or terminate this Agreement without notice to the Subscriber. Upon termination of this Agreement in terms of this clause or for any other reason whatsoever all amounts payable by the Subscriber to Gironet shall immediately become due and payable and Gironet shall be entitled to recover all such amounts from the Subscriber forthwith.

8. DOMICILIUM AND NOTICES

The Subscriber hereby chooses domicilium citandi et executandi for all purposes of and in connection with this Agreement at the Subscriber's physical address and telefax as set forth on the face hereof. Gironet shall be entitled to give any notice in terms of this Agreement by telefax.

9. PAYMENT

The customer shall pay Gironet on a monthly basis for subscription services in advance, the amount set out in each invoice, by no later than 7 (seven) days from date of invoice.

10. GENERAL

- 10.1.** This Agreement constitutes the sole record of the Agreement between the parties in regard to the subject matter thereof. Neither party shall be bound by any representation, or express or implied term, promise or the like not be recorded herein or reduced to writing and signed by the parties or their representatives. No addition or variation of this Agreement shall be of any force or effect unless in writing and signed by or on behalf of the parties. No indulgence that Gironet may grant to the Subscriber shall constitute a waiver of any of Gironet's rights. In this agreement the singular shall include the plural.
- 10.2.** This Agreement shall in all respects be governed by and construed in accordance with the law of the Republic of South Africa, and all disputes, actions and other matters in connection with this Agreement shall be determined in accordance with such laws.
- 10.3.** Should any provision of this Agreement be rendered unlawful then that unlawful provision only shall be invalid, without effecting or invalidating any of the remaining provisions of this Agreement that shall continue to be of full force effect.
- 10.4.** Gironet is entitled to cede this agreement.
- 10.5.** The Subscriber warrants the accuracy of all information furnished by or on behalf of the Subscriber in terms of or pursuant to this Agreement. The Subscriber shall forthwith notify Gironet in writing of any changes from time to time in the information set out in the schedule on the face hereof.
- 10.6.** The parties hereby consent to the jurisdiction of any Magistrates Court which may exercise jurisdiction over any of the parties in terms of Section 28 of the Magistrates Courts' Act 32 of 1944 in respect of any dispute arising from or concerning this Agreement, provided that should the Service Provider elect to proceed in the Supreme Court it shall be entitled to do so in the Witwatersrand Local Division, to which jurisdiction the Subscriber hereby submits.
- 10.7.** Under take to abide by Gironet's acceptable use policy. Gironet undertakes to treat all subscribers' information as confidential.