

## TERMS & CONDITIONS

### 1. DEFINITIONS

In this Agreement, the following expressions will have the following meanings, unless inconsistent with the context:

- 1.1 **"Acceptable Use Policy"** is the acceptable use policy found at <https://www.faircom.co.za/>
- 1.2 **"Agreement"** is the agreement between Faircom and the Subscriber for the provision of Services formed by these Conditions, the Acceptable Use Policy, Application Form, and any other policies that Faircom makes available on its website;
- 1.3 **"Application Form"** means the Application Form found at <https://faircom.co.za/resapp/>;
- 1.4 **"Business Day"** is a day which is not a Saturday or Sunday or public holiday;
- 1.5 **"Business Hours"** means 8am to 5pm on each Business Day;
- 1.6 **"Commencement Date"** means the date of signature of this Agreement by the last party signing hereto, alternatively, for online applications, the date upon which the Subscriber submits the Application Form online;
- 1.7 **"Conditions"** refer to these terms and conditions to be read in conjunction with the Acceptable Use Policy;
- 1.8 **"Fault"** means any failure of the Services to function properly;
- 1.9 **"Fees"** means the charges due to Faircom by the Subscriber under this Agreement in relation to the Services;
- 1.10 **"Intellectual Property Rights"** means any and all patents, trademarks, service marks, copyright, rights in design, knowhow, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration;
- 1.11 **"Monthly Service Fee"** means the monthly charges due to Faircom by the Subscriber under this Agreement in relation to the Services and equipment, excluding any once-off charges;
- 1.12 **"Network"** means the fibre optic networks, last mile and infrastructure installed, owned and/or operated by Faircom over which the Services are provided, including all active switching equipment;
- 1.13 **"Services"** means such implementation, hosting and other services (if any) provided to the Subscriber pursuant to the selected Package Details, together with any Support Services;
- 1.14 **"Subscriber"** is the individual or entity as identified on the Application Form to which these Conditions are attached;
- 1.15 **"Subscriber Content"** means all data, text, images, graphics, videos, logos and other content displayed or otherwise used by the Subscriber in connection with the Services;
- 1.16 **"Subscriber System"** is the Subscriber's computer system used and/or owned by the Subscriber in connection with the Services;

- 1.17 **"Support Hours"** means the hours during which Faircom will provide the Support Services, namely 8am to 9pm every day of the week.
- 1.18 **"Support Services"** means those support and maintenance services that may be provided to the Subscriber pursuant to the Agreement.

## **2. COMMENCEMENT AND DURATION**

This Agreement shall commence and be of full force and effect between the parties on the Commencement Date and shall endure and shall endure on a month to month basis until such time as it is terminated in accordance with this Agreement.

## **3. SERVICES**

Faircom agrees to supply the Services to the Subscriber on the following conditions. These conditions are not an offer to provide Services but merely a statement of the terms on which Faircom would provide them:

- 3.1 Faircom reserves the right at any time and from time to time, to improve, correct, add to, delete, terminate, or otherwise modify all or any of the Services without notice;
- 3.2 Without prejudice to its other rights and remedies, Faircom may at any time in its sole discretion suspend the provision of the whole or any part of the Services (temporarily or permanently) with or without notice and will have no liability to provide the Services on the occurrence of any of the following events, as determined by Faircom in its sole discretion:
  - 3.2.1 the upgrade, repair, scheduled or emergency maintenance of Faircom's IT systems;
  - 3.2.2 if the Subscriber fails to pay any Fees or any other sums owing to Faircom by the Subscriber when they fall due;
  - 3.2.3 if an event occurs and Faircom deems it to be appropriate to terminate the Agreement;
  - 3.2.4 if the bandwidth used by the Subscriber in relation to the Services exceeds any agreed or stipulated level and Faircom determines in its sole discretion that suspension is necessary to protect all and any internet solutions provided by Faircom from time to time;
  - 3.2.5 failure or deficiencies in the Subscriber System relating but not limited to hardware, server corruption and security breaches; or
  - 3.2.6 failure by the Subscriber to adhere to any of the provisions of the Agreement, including without limitation the terms of Faircom's Acceptable Use Policy.
- 3.3 Where Faircom suspends provision of the Services in accordance with the Agreement, any recommencement of the Services shall only occur after the Subscriber has paid all relevant outstanding amounts together with any relevant reinstatement fee and has accepted any revised payment terms as requested by Faircom (such as pre-payment).

## **4. FAULT HANDLING**

In the event that Faircom dispatch a technician to the Subscriber to resolve a fault, a R250.00 (two hundred and fifty rand) call-out fee will be payable upfront. Should it later be determined by the technician that the fault was due to the malfunctioning of Faircom equipment or network elements, the call-out fee will be refunded to the Subscriber in full.

## 5. NO WARRANTY

- 5.1 The Subscriber acknowledges that, given the nature of such services, Faircom cannot guarantee that the Services, when delivered via the Internet, will be uninterrupted or error free.
- 5.2 To the fullest extent permitted by law, the Services are provided by Faircom to the Subscriber on an "as is" and "as available" basis and no warranty or representation (express or implied) of any kind are given in connection with the Agreement including without limitation as to satisfactory quality and fitness for a particular purpose. In particular, Faircom gives no warranty or representation that:
- 5.2.1 the Services will meet the Subscriber's requirements;
  - 5.2.2 the Services will be provided on an uninterrupted, timely, secure or error-free basis; or
  - 5.2.3 any results obtained from use of the Services will be accurate, complete or current.
- 5.3 The Subscriber's only recourse in the event of a failure by Faircom to provide and deliver the Services will be a refund of any Fees paid during a period that Services related to such Fees were not provided. Any such refund shall be at the sole and absolute discretion of Faircom.

## 6. SUBSCRIBER'S OBLIGATIONS

- 6.1 The Subscriber agrees that it shall:
- 6.1.1 immediately notify Faircom on becoming aware of any unauthorised use of all or any of the Services;
  - 6.1.2 promptly reporting any incident or fault in the Services to Faircom;
  - 6.1.3 ensure that it has all necessary consents, permissions, waivers, and licenses to make use of the Services;
  - 6.1.4 be entirely liable for all activities conducted and charges incurred under its passwords and usernames whether authorised by it or not and the Subscriber acknowledges that Faircom shall not be liable for any loss of confidentiality or for any damages arising from the Subscriber's inability to comply with these Conditions;
  - 6.1.5 comply with any security policy notified to it from time to time by Faircom and, in particular, ensure that all passwords and usernames provided to it by Faircom are at all times kept confidential, used properly and not disclosed to unauthorised people. If the Subscriber has any reason to believe that any password or username has become known to someone not authorised to use it or is being or is likely to be used in an unauthorised way or of any other breach of security then the Subscriber will change all such passwords and inform Faircom immediately;
  - 6.1.6 provide to Faircom accurate and up to date contact information, including full legal name, mailing address, telephone number, and e-mail address, and ensure that all such contact information which it provides to Faircom are at all times true, current, accurate and complete. The Subscriber will promptly notify Faircom of any change to such details and acknowledges that

Faircom will not be liable for any loss suffered or incurred by the Subscriber as a result of its failure to notify such changes to Faircom; and

- 6.1.7 promptly provide to Faircom and/or its consultants, employees and agents such information and assistance as they may reasonably require in order to be able to carry out the Services and any other obligations under the Agreement and will appoint a representative who is fully empowered and authorised to provide same;
- 6.2 The Subscriber agrees that it shall not:
  - 6.2.1 use the Services or allow them to be used for any unlawful purpose or for the publication, linking to, issue or display of any unlawful material (including any pirated software or any material which is obscene, pornographic, threatening, malicious, harmful, abusive, defamatory or which breaches the rights including Intellectual Property Rights of any third party or which is or encourages criminal acts or contains any virus, worm, trojan horse or other harmful code);
  - 6.2.2 use the Services or allow them to be used for the publication, linking to, issue or display of any material which in the absolute discretion of Faircom may harm Faircom or any of its associated companies or Subscribers or bring Faircom into disrepute;
  - 6.2.3 use the Services and/or Subscriber System or allow them to be used to send spam;
  - 6.2.4 do anything which may be dangerous or a nuisance or inconvenience or to disturb, threaten or abuse any Faircom personnel or other Faircom Subscribers.

## **7. PAYMENT TERMS AND FEES**

- 7.1 The Monthly Service Fee is payable 30 (thirty) days in advance via debit order and will not be refundable in whole or part if the Agreement or any relevant part is terminated during the period to which the payment relates, unless it is terminated by Faircom without cause.
- 7.2 In the event that the date upon which the Subscriber first connects to the Network falls prior to the last 7 days of the month, the debit order will be processed on the 1<sup>st</sup> business day of the following month. However, should this date fall within the last 7 (seven) days of the month, the debit order will be processed on the 7<sup>th</sup> business day of the following month. The debit order shall include:
  - 7.2.1 a pro-rata charge of the Monthly Service Fee calculated from the Commencement Date up until the last day of the preceding month;
  - 7.2.2 the full Monthly Service Fee for the month in which the debit order is processed;
  - 7.2.3 the total cost of the router (if applicable).
- 7.3 Any sums payable by the Subscriber to Faircom under this Agreement are inclusive of any applicable taxes, levies or duties payable by the Subscriber at the appropriate rate.
- 7.4 If Fees are not paid when due, the Subscriber will be liable to pay interest on any sum outstanding from the due date for payment accruing at the prime rate plus 2% per

month until paid, without prejudice to Faircom's other rights and remedies (including the right to suspend the Services).

- 7.5 All accounts that have overdue balances may be subject to suspension and collection activities, and may be submitted to a third party collection company. If a further payment falls due during the suspension of the Subscriber's account then this will be added to outstanding balance owed by the Subscriber. In the event that the Services are suspended due to unpaid Fee's, the Subscriber shall be liable for a reconnection fee of R50.00 (Fifty Rand).
- 7.6 All sums payable to Faircom under the Agreement must be paid in full without set off or deduction.
- 7.7 Faircom reserves the right to increase the Fees at any time.
- 7.8 Special offers sent via email shall only be valid for 30 (thirty) days from the date of the email advertising the special offer.
- 7.9 The Subscriber acknowledges that Faircom will be required to initiate a connection from the building infrastructure to the Subscriber and that such connection will incur a cost of R3,000.00 (Three Thousand Rand) which shall be paid for by Faircom. Faircom shall offset the installation cost from the Monthly Service Fees received by the Subscriber over an initial 12 (twelve) month period. In the event that the Subscriber terminates this Agreement within the first 12 (twelve) months in accordance with clause 15 below, the Subscriber shall be liable for repayment of the installation cost or a prorata portion thereof.

## **8. CONFIDENTIAL INFORMATION**

- 8.1 The Subscriber shall:
  - 8.1.1 keep confidential all information obtained from Faircom under or in connection with the Agreement ("Information");
  - 8.1.2 not disclose any Information to any third party without the prior written consent of Faircom except to such persons and to such extent as may be strictly necessary for the performance of the Agreement, in which case the Subscriber shall provide prompt notice of such mandated disclosure to Faircom;
  - 8.1.3 not use any Information otherwise than for the purposes of the Agreement.
- 8.2 The provisions of clause 8.1 do not apply to Information which:
  - 8.2.1 is or becomes public knowledge (otherwise than by breach of this clause); or
  - 8.2.2 was in the possession of the party concerned without restriction as to its disclosure before receiving it from the disclosing party; or
  - 8.2.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure.
- 8.3 The provisions of this clause 8 will continue to apply notwithstanding termination of the Agreement.

## **9. INTELLECTUAL PROPERTY**

- 9.1 The Subscriber acknowledges and agrees that it will not own or acquire any rights under this Agreement in any Intellectual Property in or relating to the Services or

created in performing the Services and that it will have no other rights in or to the Services other than the rights expressly granted by the Agreement.

- 9.2 The Subscriber will indemnify Faircom from and against any and all costs, expenses (including without limitation) reasonable attorney fees, liabilities, injuries, losses, damages, claims, demands, and judgments that Faircom incurs or suffers as a result of any actual or alleged infringement of any Intellectual Property Right of any third party arising directly or indirectly from:
- 9.2.1 the provision by Faircom of Services making use of information or specifications supplied by the Subscriber;
  - 9.2.2 the Subscriber's failure to procure all necessary rights from third parties which are from time to time required in order for Faircom to be able legally to provide the Services; or
  - 9.2.3 the use by Faircom in connection with the Agreement of the Subscriber System and the Subscriber Content.

## 10. LIMITATION OF LIABILITY

- 10.1 The Subscriber expressly understands and agrees that, to the fullest extent under applicable law, Faircom shall not be liable for:
- 10.1.1 any direct, indirect, incidental, punitive, special, consequential, exemplary or other damages or losses sustained by the Subscriber, including without limitation, for loss of profits, goodwill, use, data, business or other intangible losses (even if Faircom has been advised of the possibility of the corresponding liability), resulting from:
    - 10.1.1.1 the use of or the inability to use the Services;
    - 10.1.1.2 the cost of procurement of substitute goods and services resulting from any goods, data, information, or services purchased or obtained or messages received or transactions entered into through or from the Services provided hereunder;
    - 10.1.1.3 unauthorised access to or alteration of your transmissions, data, user configured settings, or upload content;
    - 10.1.1.4 statements or conduct of any third party on the service; or
    - 10.1.1.5 any other matter relating to the Agreement or the Services.

## 11. FORCE MAJEURE

Other than with respect to the Subscriber's payment obligations, neither party shall be liable to the other party for any failure to meet its obligations under the Agreement arising by reason of force majeure, which means, in relation to either party, circumstances beyond the reasonable control of that party including acts of God, acts of any governmental authority, war or national emergency, riots, civil commotion, fire, network failure, systems fault, unauthorised use or access to the IT systems of Faircom or the Subscriber, explosion, flood, epidemic, lock outs (whether or not by that party), strikes and other industrial disputes (in each case, whether or not relating to that party's workforce), restraints or delays affecting shipping or carriers, inability or delay in obtaining supplies of adequate or suitable materials and currency restrictions, to the extent outside of its reasonable control.

## 12. BREACH

Should the Subscriber commit a breach of any of the provisions of this Agreement and fail to remedy such breach within seven (7) days after receiving written notice from Faircom requiring it to do so then Faircom shall be entitled, without prejudice to its other rights in law, to cancel this Agreement or to claim specific performance, in either event, without prejudice to Faircom's rights to claim damages.

### **13. LEGAL COSTS**

- 13.1 The Subscriber shall be responsible and liable for all and / or any legal costs on an attorney and own client scale, incurred by Faircom to recover any monies due by the Subscriber and / or occasioned by a breach of any of the terms and conditions contained herein by the Subscriber, which legal costs shall include tracing costs, collection commission and any related cost or expenses.
- 13.2 The parties hereby agree that this agreement is subject to the Law of South Africa and consent to the jurisdiction of the Magistrate's Court should any claim arising out of the terms and conditions of this Agreement be beyond the jurisdiction of the Magistrate's Court. Notwithstanding the aforesaid, Faircom shall have the right to take legal action against the Subscriber in any other Court of competent jurisdiction.

### **14. NOTICES AND DOMICILIA**

- 14.1 All notices to be given to Faircom in terms of this Agreement shall be given in writing and shall be addressed and delivered as follows:-
- 14.1.1 either by electronic mail to [info@faircom.co.za](mailto:info@faircom.co.za); or
- 14.1.2 by hand delivery to 6th floor, 25 Protea Road, Claremont Terraces, Claremont, 7780.
- 14.2 The Subscriber hereby chooses the email address and billing address inserted on the Application Form as its domicilium citandi et executandi for all purposes.

### **15. TERMINATION**

- 15.1 Subject to clause 7.9 above, either party may terminate this Agreement at its convenience by serving 20 (twenty) business days prior written notice to the other party;
- 15.2 Notwithstanding any provision contained in this Agreement and any payments made in terms thereof, the Parties acknowledge that upon termination of this Agreement for whatsoever reason, ownership of the fibre optic networks, last mile and infrastructure shall remain the sole property of Faircom.

### **16. ASSIGNMENT**

- 16.1 The rights and obligations of the Subscriber may not be assigned, charged, delegated or transferred in any manner without the prior written consent of Faircom.
- 16.2 Faircom shall have the right to assign, in whole or part, its rights and obligations under the Agreement.

### **17. VARIATION**

This Agreement constitutes the entire agreement between Faircom and the Subscriber and supersedes all prior agreements between Faircom and the Subscriber. Faircom reserves the right to amend this Agreement from time to time, which may be effected by publishing any new version of the Agreement on <https://faircom.co.za/>. The Subscriber is required to visit

<https://faircom.co.za/> on a regular basis in order to determine whether any amendments have been made.

## **18. WAIVER**

No relaxation which either party may give in regard to the performance of the other party's obligations in terms of this Agreement shall constitute a waiver of rights unless reduced to writing and signed by such party.

## **19. SEVERABILITY**

Any provision which in any way contravenes applicable laws or regulations shall be deemed severable to the extent of such contravention, and the legality, validity or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

## **20. SIGNATURE**

- 20.1 This Agreement is signed by the parties on the dates and at the places indicated below.
- 20.2 This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.
- 20.3 The persons signing this Agreement in a representative capacity warrant their authority to do so.

## **21. CONSENT TO MARKET**

Faircom and/or any of its subsidiaries shall at all times be entitled to communicate with and market its products and services to the Subscriber by way of flyers, email and/or SMS campaigns. The Subscriber consents to receiving correspondence and marketing material and shall have the right to opt-out of such communication and marketing at any time and shall provide Faircom with written notice to this effect.

## **22. ROUTERS**

- 22.1. In the event that the Subscriber elects to make use of his/her own router, he/she shall ensure that:
  - 22.1.1. the router is compatible with Faircom's network;
  - 22.1.2. the router is configured; and
  - 22.1.3. the Subscriber accepts that Faircom will not provide any support or troubleshooting for the router.
- 22.2. In the event that the Subscriber purchases the router from Faircom, the Subscriber agrees:-
  - 22.2.1. to pay to Faircom the Monthly Service Fee's or once-off charge in respect of the router (if applicable);
  - 22.2.2. that ownership of the router shall vest in Faircom until such time as the Subscriber has settled the cost of the router in full;
  - 22.2.3. that in the event of failure of the router, Faircom shall in its sole discretion, repair or replace the router where such failure is covered by the warranty of



the manufacturer of the router. Where the router is replaced, the Subscriber must return the original router to Faircom;

- 22.2.4. to accept liability for any costs incurred by Faircom as a result of the repair or replacement of the router where the router failure was caused by the Subscriber's use, misuse or changes to the router other than as previously agreed to in writing by Faircom.
- 22.3. Where the Subscriber has opted to pay for the router by way of monthly instalments and the Services are subsequently suspended and/or terminated, Faircom shall be entitled to compensation for the balance owing in respect of the router as at the date of the termination or suspension, which amount shall be paid via debit order and the Subscriber hereby consents to his/her account being debited for this purpose.
- 22.4. Where a free router has been provided to a Subscriber and the Services are subsequently terminated or suspended:-
- 22.4.1. The Subscriber shall within 2 (two) calendar days from the date of termination or suspension, return the router to Faircom with its original packaging provided that the router is in a good working condition; or
- 22.4.2. Faircom shall be entitled to compensation for the full retail price of the router as at the Commencement Date of the Agreement, which amount shall be paid via debit order and the Subscriber hereby consents to his/her account being debited for this purpose.