



Terms and Conditions of Use

1. INTRODUCTION

These terms and conditions of use shall constitute the entire agreement between IronTree and the Customer relating to the subject matter hereof.

2. THE SERVICE

- IronTree will provide the Customer with an online data backup service comprising of a client program installed on the Customer's computer / server and an online storage platform where the Customer's data is backed up to on a scheduled basis.
- IronTree reserves the right, at any time, to modify or discontinue, temporarily or permanently, the Service or parts thereof with or without notice.
- The ownership and all rights to the software remain vested in IronTree and Attix5, the customer has the right to use the software provided the customer has paid the required fees.

3. FEES AND CHARGES

- The fees and charges payable by the Customer to IronTree for the Service will be determined in accordance with the schedule of fees and charges/Customer proposal as published from time to time by IronTree.
- IronTree shall be entitled to increase the fees and charges from time to time.

4. PAYMENT PROVISIONS

- The Customer undertakes to effect payment of all amounts due to IronTree arising out of this agreement monthly in advance and without deduction or set-off for whatsoever reason.
- The monthly amount payable by the Customer to IronTree will be paid by means of debit order, stop-order or direct transfer.

5. TERM

- This agreement shall commence on the effective date as defined in point 6 below.
- Should the Customer decide to terminate the usage of the service, IronTree requires written (emailed) notification and a one month calendar notice period applies.

6. EFFECTIVE DATE

- The effective date shall be the date on which this agreement is signed or the date as stated in the Schedule of Services.
- The Service will commence with free usage for the first 14 days after confirmation of registration, thereafter the service will continue after receipt by facsimile transmission of a signed Schedule of Services/Debit order mandate document.

7. OBLIGATIONS OF THE CUSTOMER

- The Customer agrees to abide by all applicable local, state, national and international laws and regulations and is solely responsible for all acts or omissions that occur. By way of example, and not as a limitation, the Customer agrees not to interfere with or attempt to disrupt the Service or otherwise disrupt or tamper or attempt to de-compile the binary code of the Service;
- The Customer warrants that the contact information in the Schedule of Services/Customer Proposal is true and accurate and undertakes to inform IronTree of any changes thereto as and when they occur.

8. WARRANTIES

- The Customer hereby warrants to and in favour of IronTree that it –
 - Will, at all times whilst using the Service, act in the utmost good faith;
 - Has the necessary legal title, legal capacity and right to utilize the Service; and
 - Will have no action against IronTree or its shareholders, directors or employees arising either directly or indirectly out of the use of the Service and, to the extent necessary, the Customer hereby waives and abandons such claims.
- IronTree hereby warrants that it will at all times endeavour to act in accordance with best practice and in good faith in terms of the storage and management of their customer's data on their remote backup servers and networks.

9. DISCLAIMERS / LIMITATION OF LIABILITY

- IronTree does not represent or warrant that the Service or the Customer's use thereof will be uninterrupted or error-free, that defects will be corrected, or that the Service or the server that makes it available are free of viruses or other harmful components.
- IronTree Accepts NO responsibility for data loss of any kind where the Customer or one of our agents assisting the Customer does NOT select the correct data to back up. The Customer is solely and exclusively responsible for the selection of data to backup and for verifying that the correct data is being backed up on an ongoing basis. Any actions of our agents in selecting data will be deemed to have been on instruction from the Customer and in providing assistance to the Customer in setting up a valid back up selection.
- IronTree does not warrant or represent that the use or the results of the use of the Service or the materials made available, as part of the Service will be correct, accurate, timely, or otherwise reliable.
- IronTree shall not be responsible for unauthorized access to or alteration of transmissions or data, any material or data sent or received or not sent or received, or any transactions or agreements entered into through the use of the Service.
- The Customer specifically agrees that IronTree is not responsible for any content or data sent using and/or included in the Service.
- IronTree and/or its suppliers, shareholders, directors and employees make no representations about the suitability, reliability, availability, timeliness, security and accuracy of the Service for any purpose. The Service is provided "as is" and without warranty of any kind. IronTree hereby disclaims all warranties and conditions with regard to the Service, including all implied warranties, fitness for a particular purpose, title and non-infringement.
- In no event shall IronTree and/or its suppliers, shareholders, directors and employees be liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the use or performance of the Service, with the delay or inability to use the Service, the provision of or failure to provide the Service, whether based on contract, delict, negligence, strict liability or otherwise, even if IronTree have been advised of the possibility of such damages. The Customer's sole and exclusive remedy is to discontinue using the Service as provided for in clause 5 above.

10. INDEMNIFICATION

The Customer agrees to indemnify and hold IronTree and its shareholders, directors and employees harmless from any claim, demand or damage, including reasonable attorneys' fees, asserted by any third party due to or arising out of the Customer's use of the Service.

11. PROPRIETARY RIGHTS TO CONTENT

The Customer acknowledges that the content, including but not limited to text, software, photographs, graphics, manuals or other material contained or made available to the Customer via the Service is protected by copyrights, trademarks, patents or other proprietary rights and laws and the Customer undertakes not to infringe such rights.

12. TERMINATION OF SERVICE

IronTree may, at its sole discretion, terminate the Service provided to the Customer, for any reason, including, without limitation, if the Customer has acted inconsistently with the letter or spirit of this agreement.

13. GENERAL

- This agreement shall be governed by and interpreted in accordance with the laws of South Africa.
- The Customer agrees that no joint venture, partnership, employment, or agency relationship exists between the Customer and IronTree as a result of this agreement or use of the Service.
- IronTree's performance of this agreement is subject to existing laws and legal process and nothing contained in this agreement is in derogation of IronTree' right to comply with governmental, court and law enforcement requests.
- If any part of this agreement is determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and liability limitations set forth above, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of the agreement shall continue in effect.
- Unless otherwise specified herein, this agreement constitutes the entire agreement between the parties with respect to the Service and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral or written, between the parties with respect to the Service.
- The Customer hereby appoints its address as set out in this license agreement as the Customer's domicilium citandi et executandi for all purposes relating to this agreement.
- This agreement may not be ceded by the Customer to any other party.
- The clause headings in this agreement are solely used for the convenience of the parties and have no legal or contractual significance.