

General Terms and Conditions

1. Definitions

- 1.1. **"Acceptance Date"** means the date on which you accepted the Agreement, be that in writing or by way of electronic medium, for example by clicking "I agree" on a web page or via your mobile phone, or telephonic acceptance;
- 1.2. **"Activation Date"** means the date on which The Company will give you access to and/or enable you to use a product or service;
- 1.3. **"Agreement"** means the agreement concluded between you and The Company in respect of the product or service contemplated in the Application Form which agreement will be exclusively governed by these general terms and conditions and the product specific terms and conditions applicable to the relevant product or service ("**Product Terms**") read together with the Application Form;
- 1.4. **"Application Form"** means the document (including any electronic document) on which (inter alia) you selected your service or product of choice;
- 1.5. **"AUP"** means our Acceptable Use Policy (including our FUP) attached hereto as part of the Agreement, and which policy all Customers must adhere to and which policy was made by us to ensure: that we honour our commitment to comply with legislation; that all Customers use our network and services in a safe and responsible manner and without interference or harassment from others; that we protect our network against security threats; and that we ensure that the conduct of no one Customer prejudices the user experience of other Customers.
- 1.6. **"Business Day"** means Monday to Friday, but excludes Saturday, Sunday and a day which is an official public holiday in the Republic of South Africa;
- 1.7. **"Business Hours"** means the hours between 08h00 and 17h00 on a Business Day;
- 1.8. **"CPA"** means the Consumer Protection Act, 2008;
- 1.9. **"Electronic Communications Act"** means the Electronic Communications Act, 2005;
- 1.10. **"ECT Act"** means the Electronic Communications and Transactions Act, 2002;
- 1.11. **"Equipment"** means any device, equipment or hardware used to access the services or used in conjunction with the services;
- 1.12. **"FUP"** means the Fair Use Policy forming part of our AUP;
- 1.13. **"ICASA"** means the Independent Communications Authority of South Africa;
- 1.14. **"Intellectual Property Rights"** means the copyright in any work in terms of the Copyright Act, No. 98 of 1978, and includes without limitation the right to reproduce that work, the rights in respect of a trade mark conferred by the Trade Marks Act, No. 194 of 1993, the rights in respect of a design conferred by the Designs Act, No. 195 of 1993, and the rights in respect of a patent conferred by the Patents Act, No. 57 of 1978 including any applications for the foregoing and any names, licenses, know how, trade secrets and data associated with the foregoing;
- 1.15. **"Juristic Person"** means a company or close corporation and includes a body corporate, partnership, association or trust;
- 1.16. **"Legal Notices Website"** means <http://www.ispafrika.co.za/legal>;
- 1.17. **"Marks"** means any trademarks, logos, brand names, trade names domain names or other names or marks of The Company whether registered or not;
- 1.18. **"The Company", "we", "us" and "our"** means ISP Afrika (Pty) Ltd The Company, Registration Number 2017/141961/07, its affiliates and subsidiaries;
- 1.19. **"NCA"** means the National Credit Act, 34 of 2005;
- 1.20. **"Network" or "network" or "our network"** means any network, electronic communications network, system, server, hardware or technology infrastructure, or the like, including without limitation third party networks and/or Network Operator networks, owned or used by us or provided by us or our third party suppliers or the Network Operators, for purposes of providing any The Company service or product to Subscribers or providing access thereto;
- 1.21. **"Network Coverage"** means the geographical area within which the service can be accessed and used by you, as determined at the time coverage was established including any line of sight restrictions;
- 1.22. **"Network Operator"** means a company that owns or operates an electronic communications network, and which makes such network and the electronic communications services conveyed over such network available to other industry players for commercial purposes (e.g. Vodacom, MTN, Cell C, and Telkom);
- 1.23. **"Website"** means www.ispafrika.co.za.
- 1.24. **"Subscriber", "you" or "Customer"** means a user of any of our products or services;
- 1.25. **"Uncontrollable Event"** means (including without limitation) any fire, flood, earthquake, elements of nature or acts of God, riots, civil disorders, rebellions or revolutions in any country or any other cause beyond the reasonable control of The Company including the termination or suspension of a service or product provided by a Network Operator and/or third party suppliers, that may result in a delay or a failure to provide any product or service; and
- 1.26. **"VAT"** means Value Added Tax as provided for in the Value Added Tax Act, 1991.

2. **Commencement, Duration, Termination and Cooling-off**

2.1. The Agreement will commence on the Acceptance Date and endure indefinitely until it is cancelled as provided for in this clause 2, or otherwise provided in the Agreement.

2.2. Fixed Term Agreements

2.2.1. Where the Subscriber is a natural person, you may cancel the Agreement either on the expiry of the fixed period ("**Initial Fixed Period**") selected in the Application Form (such Initial Fixed Period calculated from the Activation Date) or on at least 20 (twenty) Business Days written notice to The Company at any time prior to the expiry of the Initial Fixed Period. If the Agreement is not cancelled by you or by us prior to or on the expiry of the Initial Fixed Period, it will automatically continue on a monthly basis. We will notify you not more than 80 (eighty) Business Days and not less than 40 (forty) Business Days prior to the expiry of the Initial Fixed Period of the impending expiry date any material changes to the Agreement that will apply to such automatic renewal and you retain your right to cancel. If you cancel the Agreement during the Initial Fixed Period, you will remain liable for all amounts owing up to the date of cancellation and in addition The Company will be entitled to impose a reasonable cancellation penalty in contemplation of the Agreement enduring for its intended fixed term.

2.2.2. Where the Subscriber is a Juristic Person, you may not cancel the agreement during the Initial Fixed Term of the Agreement (such Initial Fixed Period calculated from the Activation Date) save for a material unremedied breach committed by The Company. At the expiry of the Initial Fixed Period, the Agreement will automatically renew and will continue on a monthly basis ("**Renewal Period**") on the revised terms including revised pricing applicable for such Renewal Period which The Company will notify you of prior to the expiry of the Initial Fixed Period. You may terminate the Agreement during the Renewal Period by giving 1 (one) calendar month notice or notice as specified in the Product Terms or Application Form.

2.2.3. The Company may cancel the Agreement –

2.2.3.1. in the case of a fixed term agreement concluded with natural persons – 20 (twenty) Business Days after giving you written notice to remedy a

material breach of the Agreement and you have failed to remedy that breach within such time; and

2.2.3.2. in the case of any other fixed term agreement or any month to month agreement, on the expiry of the reasonable notice period given to you to remedy a material breach and you have failed to remedy that breach within such reasonable period, or otherwise as provided for in the Product Terms or these general terms and conditions.

2.3. Save as specifically provided for in clause 2.2 above, termination of the Agreement shall be governed this Agreement. Month to month agreements (other than fixed term agreements contemplated in clause 2.2.1 and clause 2.2.2) may be terminated by either The Company or you on 1 (one) calendar months' notice, save to the extent provided otherwise in the Product Terms.

2.4. Notwithstanding the termination of the Agreement, if you continue to use the products or services despite the termination of the Agreement, you will remain liable for and promptly pay on demand all amounts that would have been due to The Company because of the use of or access to the product or service and the Agreement shall be deemed to continue to apply until all amounts due to The Company have been paid in full.

2.5. If the Agreement results from any direct approach to you by The Company or is an electronic transaction as contemplated in the ECT Act, you will be entitled to cancel the Agreement on written notice to The Company without reason or penalty within 5 (five) Business Days of –

2.5.1. in the case of services only being provided in terms of the Agreement - the Acceptance Date; and

2.5.2. in the case where goods are provided and constitute the subject of the Agreement, whether in conjunction with services or on its own – the date of delivery of such goods.

2.6. For purposes of clause 2.5.2, goods include any literature, music, photograph, motion picture, game, information, data software, code or other intangible product or any license to use such intangible product. Where the Agreement relates to the provision of services and you are provided with Equipment or goods to which clause 9 applies then clause 2.5.1 and not clause 2.5.2 will apply.

2.7. Any notice to The Company by you for cancellation in terms of the Agreement shall be made in writing and unless otherwise prescribed by law, such notice must be made in accordance with the The Company

provisioned cancellation procedures which are published on our Website from time to time.

3. NCA and ECT Act

- 3.1. Although the Agreement is not a credit agreement as contemplated in the NCA, your application for a service or product may be subject to a credit referencing or risk assessment process. This means that The Company may utilize the information provided by you including your personal information and request and receive information about you and your credit record (“**Assessment Information**”) from registered credit bureaus to determine whether you will be able to meet your obligations under the intended Agreement. The Company will be entitled to decline to activate a product or service that you apply for if The Company reasonably determines that you may not be able to meet your commitments under the Agreement.
- 3.2. The Company is entitled to perform these assessments each time you apply for a service or product.
- 3.3. The consumer protection provisions of the ECT Act, apply to transactions and communications that are executed electronically by a natural person. It also does not apply to paper based transactions, e.g. where you apply for a service or product by completing an Application Form in writing.

4. Conditions of access

- 4.1. The Company will, unless it declines to activate the service as contemplated in clause 3.1, make the service available to you on the Activation Date.
- 4.2. The Company will, where relevant, issue a username and password to you prior to the Activation Date to enable you to gain access to and/or use a service. In such instance, you will not be able to access and/or use a service without a username and password.
- 4.3. You agree that:
 - 4.3.1. you will use your username and password for your own personal use only;
 - 4.3.2. you will not disclose your username and password to any other person for any reason whatsoever and that you will maintain the confidentiality thereof;
 - 4.3.3. if your password is compromised, you will immediately notify The Company and change your password;
 - 4.3.4. **you, as the holder of the username and password, acknowledge you are solely responsible for all payments in respect of a service charged to your account, irrespective of whether the service has been utilized or is being utilized by you or not and accordingly the entire amount outstanding on your account will be deemed to have arisen from (or**

relate to) your access to and/or use of a service;

- 4.3.5. **you agree to cause all persons who use any products or services under your account or with your authorization to comply with the Agreement. All acts or omissions of all persons who use services under your account or with your authorization will be treated for all purposes as your acts or omissions;**

- 4.3.6. unless such right is specifically and expressly provided to you in terms of any applicable Product Terms you will not, at any time, permit and/or initiate a simultaneous network log-in; and

- 4.3.7. you will not attempt to circumvent The Company 's user authentication processes or engage in attempts to access The Company 's network where not expressly authorised to do so.

- 4.4. **You hereby agree to adhere to generally acceptable Internet and e-mail etiquette. You will be expected to have read and familiarized yourself with our AUP attached hereto.**

5. Service Delivery, Service Availability

- 5.1. The Company will make all its services and products available to you in accordance with the provisions of its Code of Conduct and Service Charter, and Service Level Agreement which are available on our Website and on request.

- 5.2. The Company **will use reasonable endeavours to make its services available to its Subscribers, and to maintain the availability thereof for use by its Subscribers. However, we provide the services “as is” and “as available” and we do not make any express or implied representations or warrant or guarantee the quality or security of the services or that the services will at all times be free of errors or interruptions, be always available, fit for any purpose, not infringe any third party rights, be secure and reliable, or will conform to your delivery timeline requirements subject always to the provisions of the CPA where applicable.**

- 5.3. The Company will use its best endeavours to notify you in advance of any maintenance and repairs which may result in the unavailability of a service, but cannot always guarantee this. We are committed to provide you with uninterrupted services. However, we cannot guarantee that service and the allocated capacity will always be available.

- 5.4. We can terminate the service at any time if we decide to discontinue the service offering for any reason whatsoever, without any further liability to you.

6. Data Retention

- 6.1. **We will use reasonable endeavours to ensure the safekeeping of any data or content which you may receive or upload to our servers**

from time to time. However, it is your obligation to keep copies and back-ups of your data, as:

- 6.1.1. we will not be liable for any direct or indirect loss or damages of any kind, which you may suffer because of the loss of your data, or any part thereof, for any reason whatsoever; and
- 6.1.2. we will, unless otherwise required by law, delete all your data from our servers upon termination of the Agreement and any other agreement between us.

7. Communication, Complaints Handling and Dispute Resolution

- 7.1. You agree that The Company may from time to time send you communications regarding (without being limited to) special offers or discounts and/or new services or products launched. All communications will abide by our Privacy Policy and applicable law. You will always be entitled to notify us in writing that you do not wish to receive or continue to receive such communications and if you are a consumer as contemplated in the CPA, to preemptively block the receipt of such communications.
- 7.2. Complaints must be submitted to The Company and will be dealt with by The Company in accordance with the provisions of this clause 7.
- 7.3. Any payment default by you arising from, or about, any service or product rendered or provided by The Company, will be excluded from the provisions of this clause, and The Company will be entitled to proceed to institute legal action against you.
- 7.4. Without prejudice to your rights in law, you are required, to first approach us with any complaint or dispute and afford us an opportunity to resolve a complaint before you approach ICASA or any other relevant authority, court or other dispute resolution body or refer the matter to arbitration as contemplated in clause 7.11 below.
- 7.5. Please direct all complaints to complaints@ispafrika.co.za with escalations to escalations@ispafrika.co.za.
- 7.6. Your complaint should include the following:
 - 7.6.1. your name and surname;
 - 7.6.2. your account number;
 - 7.6.3. the date on which the complaint arose; and
 - 7.6.4. a brief description of what gave rise to the complaint.
- 7.7. In the event of a billing complaint you should also include the following:
 - 7.7.1. a copy of the bill concerned;
 - 7.7.2. the reason for the dispute;
 - 7.7.3. the amount in dispute; and
 - 7.7.4. supporting information or documentation, if any.

7.8. The Company will acknowledge receipt of your complaint within 3 (three) working days of receipt thereof.

7.9. The Company will formally respond with a view to proposing a resolution of your complaint in writing within 14 (fourteen) working days of receipt thereof, or within such longer period as we reasonably require under circumstances where the resolution of the complaint is for example (but without limitation) in the hands of a supplier or third party service provider.

7.10. You may approach ICASA or any other relevant authority, court or dispute resolution body or refer the matter to arbitration as set out in clause 7.11 below, for resolution of the dispute, should you not be satisfied with the proposed resolution of the dispute by The Company.

7.11. Any dispute between the parties may be referred to arbitration and finally resolved in accordance with the rules of the arbitration Foundation of Southern Africa. Such arbitration shall be held either in Cape Town or Johannesburg, and conducted in the English language before one arbitrator appointed in accordance with the said rules. Any award will be final and not subject to appeal. This agreement to arbitrate shall be enforceable in, and judgement upon any award may be entered in any court of any country having appropriate jurisdiction. A dispute shall be deemed to have arisen when either party notifies the other party in writing to that effect.

7.12. The arbitrator shall have the power to give default judgement if any party fails to make submissions on due date and/or fails to appear at the arbitration.

7.13. The provisions set out above shall not prevent either party from approaching any court of competent jurisdiction to obtain interim or other relief in cases of urgency.

8. Payment

8.1. Unless otherwise agreed in the Application Form or Product Terms, billing will commence on the Activation Date. Notwithstanding the aforesaid The Company may bill you for any non-subscription charges e.g. installation fees prior to the Activation Date.

8.2. You agree to pay all amounts due under the Agreement in consideration for a service or product in accordance with the Application Form or Product Terms under which that service is rendered or that product is offered.

8.3. **All amounts due and payable in terms of the Agreement shall be paid free of exchange and without deduction or set-off, by way of a direct debit order in favor of The Company (drawn against an existing banking account nominated by you), or in such other manner as The Company may from time to time determine. You agree that:**

- 8.3.1. **The Company will be entitled and authorized to draw all amounts payable in terms of the Agreement from the account specified by you (or any other bank or branch to which it may be transferred);**
- 8.3.2. **Unless otherwise agreed in the Application Form or Product Terms the debit order authorisation will commence on the Activation Date (although the first debit may - depending on the debit order run - only go off towards the end of the month or subsequent month thereto) and will continue and not be revoked until termination of the Agreement or until all amounts due and owing to The Company have been fully and finally discharged;**
- 8.3.3. **you will sign all such forms and do all such things as may be necessary to give effect to the debit order as contemplated in this clause 8.3.**
- 8.4. Your first bill may be for part of a month and you may be charged for the number of days left in the month or the full month (depending on the product or Product Terms e.g. software license fees normally not pro-rated) in which you signed up or switched over, plus the subscription for the next month and any once off charges that may be applicable.
- 8.5. Should you fail to pay any amount on the due date for payment then The Company may, without prejudice to any of its other rights and remedies:
- 8.5.1. take all such further steps as may be necessary to recover the outstanding amount from you, including without limitation the use of debt collection mechanisms;
- 8.5.2. suspend your access to the service or the use of any product without notice to you until the outstanding amount has been paid in full; or
- 8.5.3. subject to clause 2, terminate this Agreement with immediate effect.
- 8.6. In the event of The Company suspending your access to the service, The Company reserves the right to continue to charge you the minimum required to keep your account activated for the period of suspension, unless terminated by you in terms of the Agreement.
- 8.7. If any changes are proposed to any terms of an agreement between The Company and a Network Operator and/or any third party supplier, which impacts on the provision of any services or products in terms of the Agreement, or if any changes to this Agreement are necessary because of new and/or amended legislation and/or changes to The Company's license conditions and/or any changes to our products and services and/or fees and charges relating thereto, The Company shall subject to clause 2 above, be entitled to amend the terms, fees or charges for its services or products at any time on 30 (thirty) days' notice to you as provided for in clause 18 below. However, should the Network Operator and/or third party supplier not provide The Company with timeous written notice, or should any other circumstances beyond the reasonable control of The Company occurs which does not enable The Company to reasonably have the opportunity to give 30 (thirty) days' notice, then The Company will only be able to provide written notice to you within a reasonable period after The Company is so notified, and in such event the notice period may be shorter than the aforesaid 30 (thirty) day notice period. The amendment will take effect on the date indicated in the notice.
- 8.8. The Company will use reasonable endeavours to inform you well in advance, and in any event prior to disconnection, about the possibility of disconnection in the case of non-payment.
- 8.9. To the extent that The Company incurs any additional expenditure relating to the tracing and/or collection of unpaid amounts, those costs shall be for your account to the extent permitted by law.
9. **Equipment and Software**
- 9.1. Except for Equipment that you have fully paid for, all Equipment installed or provided by us remains our property and you agree that:
- 9.1.1. you will take reasonable care with such Equipment;
- 9.1.2. you may not sell, lease, mortgage, transfer, assign or encumber such Equipment;
- 9.1.3. you may not re-locate such Equipment without our knowledge and permission;
- 9.1.4. you will inform any landlord that such Equipment is owned by The Company and therefore not subject to any landlord's hypothec; and
- 9.1.5. you will return such Equipment to us at your own expense upon termination of the services to which the Equipment relates.
- 9.2. If such Equipment is lost, stolen or damaged or sold, leased, mortgaged, transferred, assigned, encumbered or not returned, you agree to pay us the reasonable value of such Equipment, together with any costs incurred by us in seeking possession of such Equipment.
- 9.3. You authorise us and our representatives to enter or have access to your premises as reasonably necessary, at mutually agreed upon times, to install, maintain, inspect, repair or remove the Equipment or to maintain, investigate, protect, modify or improve the operation of our services or our facilities.

- 9.4. Equipment and related software may have to meet certain minimum requirements and be maintained in certain ways and in certain locations to access the services or for the proper operation of the services (e.g. 112 emergency services). Such requirements may be changed from time to time as we may reasonably require. Unless otherwise specified by us, you are solely responsible for updating or maintaining your Equipment and software as necessary to meet such requirements, and you may not be entitled to customer support from us if you fail to do so.
 - 9.5. You must immediately notify us, if your Equipment is lost, stolen or destroyed. Should you then wish to terminate the services, your obligations under the Agreement will continue to apply save as provided for in clause 2.
 - 9.6. Any software and accompanying documentation we provide to you remains our property or that of our licensors. You will take all reasonable steps to protect such software or documentation from theft, loss or damage. You will be obliged to review and agree to the applicable end user license agreement before installing or using the software or documentation. Unless otherwise provided in the applicable end user license agreement, all end user license agreements will terminate upon termination of the Agreement.
- 10. Return, Exchange and Refunds**
- 10.1. The Company's policy in respect of exchanges, returns and refunds depends on, inter alia, the type goods and the policy of the manufacturer or supplier thereof. Where the CPA applies to you, The Company's policy in this regard will comply with the requirements of the CPA in relation to exchanges, returns and refunds.
 - 10.2. Warranties, if any, will ordinarily be included in the hardware packaging.
 - 10.3. Where the CPA applies to you and/or the product or service in question, The Company will provide, the warranties, undertakings and assurances as required under the CPA but subject to any limitations and restrictions as allowed under the CPA.
- 11. Security and Privacy**
- 11.1. The Company will be entitled to take whatever action The Company may deem necessary and reasonable to preserve the security and reliability of its network.
 - 11.2. You may not utilize any service in any manner which may compromise the security of The Company's network, or any other network connected to The Company's network, or tamper with a service or such a network in any manner whatsoever.
 - 11.3. The Company takes reasonable steps to secure your payment information. The Company uses a payment system that is in The Company's reasonable opinion, sufficiently secure regarding accepted technological standards at the time of the electronic transaction and the type of the transaction concerned.
- 11.4.** The Company will deal with your personal information in accordance with the provisions of our Privacy Policy which is available on our Website and in compliance with all relevant laws.
- 12. RICA and Interception of Communications**
- 12.1. The Company and/or a third party Network Operator (as the case may be) may under the circumstances as prescribed in RICA, be required to intercept, lock, filter, read, delete, disclose and use communications sent or posted via The Company's or the Network Operator's network. The Company and/or a third party Network Operator shall not be liable to you for any losses, liabilities, damages and claims and for any related costs and expenses suffered by you as a result of The Company and/or a third party Network Operator performing any activity referred to in this clause where The Company is obliged by operation of law to perform such acts.
- 13. Intellectual Property Rights**
- 13.1. You agree to comply with all laws applicable to any Intellectual Property Rights in respect of any data accessed, retrieved or stored by you through your use of any of our services and/products.
 - 13.2. You are prohibited from using any Marks without the prior written approval of The Company.
 - 13.3. Other than as specifically provided in the Product Terms, The Company will wholly and exclusively retain all existing Intellectual Property Rights and become the exclusive and unencumbered owner of all Intellectual Property Right(s) employed in or otherwise related to software used by The Company, its network infrastructure, e-commerce network infrastructure, business and the provision of any of the services in terms of the Product Terms.
- 14. Emergency Calls**
- 14.1. Should you make use of the 112 emergency service number while using any applicable service, The Company may disclose the caller line identity either to the 112 emergency centre or to the third party that may carry the call to the 112 emergency centre.
 - 14.2. The 112 emergency service number will become the exclusive national public emergency number; Subscribers are therefore urged to use the 112 emergency service number instead of the 10111, 10177 and 107 emergency service numbers.
- 15. Breach**
- 15.1. Subject to any other provisions set out in these general terms and conditions or the Product Terms and without prejudice to any of these provisions, should you be in breach of any provision of this Agreement, then The Company shall be entitled, without prejudice

to any other rights that it may have and to the extent required or permitted by law, to forthwith:

- 15.1.1. afford you a reasonable opportunity to remedy the breach, considering the nature of the breach in question; or
 - 15.1.2. suspend your access to a service; or
 - 15.1.3. cancel all agreements concluded between us; or
 - 15.1.4. claim immediate performance and/or payment of all your obligations in terms hereof.
- 15.2. Should The Company suspend, disconnect or terminate your service, The Company will be entitled to, charge you a fee for reconnecting your service.

16. Indemnity

16.1. You hereby unconditionally and irrevocably indemnify The Company and agree to indemnify and hold The Company harmless against all loss, damages, claims, liability and/or costs, of whatsoever nature, howsoever and whensoever arising, suffered or incurred by The Company because of any claim instituted against The Company by a third party (other than you) because of (without limitation):

- 16.1.1. your use of our services or products other than as allowed or prescribed in the Agreement;
- 16.1.2. any other cause whatsoever relating to the Agreement or the provision of services or products to you where you have acted wrongfully or failed to act when you had a duty to so act.

17. Limitation of liability

17.1. Save to the extent otherwise provided for in the Agreement or where you are entitled to rely on or receive, by operation of law, any representations, warranties or guarantees, we do not make or provide any express or implied representations, warranties or guarantees regarding the availability, accuracy, reliability, timeliness, quality or security of any product or service.

17.2. Without limiting the generality of the provisions of clause 17.3, The Company shall not be liable for and you will have no claim of whatsoever nature against The Company because of -

- 17.2.1. your use of the password reminder service which you acknowledge you are not obliged to use and have voluntarily elected to make use of;
- 17.2.2. the loss of or access to any usernames and passwords which you are required to safeguard and not allow unauthorized access on the understanding that we will be entitled to assume that you are the person so using or gaining access to any service or account where your username and password is used; or as a result of any

unauthorized third party accessing or using your service howsoever, whether fraudulently or as a result of your negligence, including without limitation your failure to have reasonable security measures and/or strong passwords in place;

- 17.2.3. any unavailability of, or interruption in the service due to an Uncontrolled Event;
- 17.2.4. any damage, loss, cost or claim which you may suffer or incur arising from any suspension or termination of the service/s for any reason contemplated in the Agreement.

17.3. In addition to and without prejudice to any other limitations of liability provided for in the Agreement and fully permitted by applicable law, The Company shall not be liable to you for any direct damages howsoever arising and neither party shall be liable to the other for any special, indirect, incidental, consequential or punitive damages arising out of or relating to the Agreement, whether resulting from negligence, breach or any other cause. To the extent that a competent court or tribunal or other competent dispute resolution body or authority finally determines, notwithstanding the exclusion contained in this clause, that The Company is liable to you for any damages, The Company's liability to you for any damages howsoever arising shall be limited to the amounts paid by you under the Agreement in consideration for a service or product during the immediately preceding 12 (twelve) month period in respect of the service or product which gave rise to the liability in question.

18. **Cession and Delegation.** You may not sell, cede, assign, delegate or in any other way alienate or dispose of any or all your rights and obligations under and in terms of the Agreement without the prior written approval of The Company. The Company shall be entitled to sell, cede, assign, delegate, alienate, dispose of or transfer any or all its rights and obligations under and in terms of the Agreement to any of its affiliates or to any third party without your consent and without notice to you.

19. **Jurisdiction.** Notwithstanding clause 7 above, you hereby consent to the jurisdiction of the Magistrate's Court in the Republic of South Africa in respect of any proceedings that may be initiated by The Company arising out of the Agreement, provided that The Company shall be entitled, in its reasonable discretion, to institute such proceedings in the High Court of South Africa and, in such event, you consent to the jurisdiction of such court. The jurisdiction of the Small Claims Court is specifically excluded, as the parties agreed to follow the arbitration process set out in clause 7 above.

20. **Amendment of the Agreement**

20.1. Subject to your right to cancel as provided in clause 20.2 below, The Company reserves the right to amend the Agreement, including its charges, from time to time on written notice to you, which notice may be sent by email to you and/or which notice may be effected by publishing any new version of the Agreement on our Website together with the date on which it will become effective, which will (save as otherwise provided for herein) if reasonably possible, at least be 30 (thirty) days after the date on which it is first published. It is your obligation to visit our Website on a regular basis to determine whether any amendments have been made.

20.2. If you do not agree to the amendments, you may cancel the Agreement subject to the cancellation provisions of this Agreement, including those referred to in clause 2, provided that written notice of cancellation must be given to us within 30 (thirty) calendar days of the date of notification to you of any such amendments.

21. General

21.1. Subject to The Company's right to amend the Agreement described elsewhere in this Agreement, the parties acknowledge and agree that the Agreement constitutes the whole of the agreement between them and that no other agreements, guarantees, undertakings or representations, either verbal or in writing, relating to the subject matter of the Agreement not incorporated in the Agreement shall be binding on the parties. Unless otherwise provided herein, no changes or cancellation of the Agreement by you, including any changes to the Application Form will be binding on any of the parties unless recorded in writing and signed by both parties, notwithstanding activation of the service.

21.2. The Company is in terms of section 43 of the ECT Act required to make its contact details and certain other information available to its Subscribers who enter into electronic transactions with The Company. This information is available on our Website.

21.3. You agree that any notices we send to you in terms of any agreement concluded between us may be sent via e-mail unless otherwise prescribed by law.

21.4. No indulgence, leniency or extension of time which The Company may grant or show to you shall in any way prejudice The Company or preclude The Company from exercising any of its rights in the future.

21.5. In the event of a discrepancy between these general terms and conditions and the Product Terms, the Product Terms will take precedence.

21.6. You warrant that as at the date of signature of the Application Form, all the details furnished by you to The Company are true and correct

and that you will notify The Company in the event of any change to such details.

21.7. All our terms and conditions can be accessed, stored, and reproduced electronically by you.

21.8. The physical address where The Company will receive legal service of documents is the following: 172 Main Road, Claremont 7708.

ACCEPTABLE USE POLICY

The Company is committed to complying with legislation and ensuring all its Customers have the ability to use its network and the Internet without interference or harassment from other users. By using any of our services, You agree to comply with this AUP. The Company reserves the right to change or modify the terms of the AUP at any time, by posting an updated version on its Website. Your use of our services after changes to the AUP are posted will be viewed as deemed acceptance of the new AUP.

The AUP applies to all The Company services.

1. **General Prohibitions:** The Company prohibits use of the services in any way that is: i) unlawful, incitement to commit criminal acts, harmful to or interferes with use of The Company's network or systems, or the network of any other provider; ii) interferes with the use or enjoyment of services received by others; iii) infringes Intellectual Property Rights; iv) results in the publication of threatening or offensive material which is harmful, obscene, discriminatory, defamatory, constitutes hate speech; or v) constitutes abuse, a security risk or a violation of privacy.
2. **Unlawful Activities:** Services shall not be used for any criminal, civil or administrative violation of any applicable local, provincial, national or international law, treaty, court orders, ordinance, regulation or administrative rules.
3. **Violation of Intellectual Property Rights:** Service(s) shall not be used to publish, submit/receive upload/download, post, use, copy or otherwise reproduce, transmit, re-transmit, distribute or store any content/material or to engage in any activity that infringes, misappropriates or otherwise violates the Intellectual Property Rights or privacy or publicity rights of The Company or any individual, group or entity, including but not limited to any rights protected by any copyright, patent, trademark laws, trade secret, trade dress, right of privacy, right of publicity, moral rights or other Intellectual Property Right now known or later recognized by statute, judicial decision or regulation.
4. **Threatening Material or Content:** Services shall not be used to host, post, transmit, or re-transmit any content or material (or to create a domain name or operate from a domain name), that harasses, or threatens the health or safety of others.
5. **Inappropriate Interaction with Minors:** Services should not be used to commit an offence against a child or in way that would constitute or promote unlawful interaction with children.
6. **Child Pornography:** Services shall not be used to publish, submit/receive, upload/download, post, use, copy or otherwise produce, transmit, distribute or store child pornography. Suspected violations of this prohibition may be reported to The Company at the following e-mail address: legal@ispafrika.co.za.

The Company will report any discovered violation of this prohibition to the South African Police Services and take steps to remove child pornography (or otherwise block access to the content determined to contain child pornography) from its servers.

7. **Spam/E-mail Abuse:** Spam/E-mail abuse is prohibited using IP Services. Spam/E-mail abuse shall include, but are not limited to, the following activities:
 - 7.1. sending multiple unsolicited electronic mail messages or "mail-bombing" to one or more recipient;
 - 7.2. sending unsolicited commercial e-mail, or unsolicited electronic messages directed primarily at the advertising or promotion of products or services;
 - 7.3. sending unsolicited electronic messages with petitions for signatures or requests for charitable donations, or sending any chain mail related materials;
 - 7.4. sending bulk electronic messages without identifying, within the message, a reasonable means of opting out from receiving additional messages from the sender;
 - 7.5. sending electronic messages, files or other transmissions that exceed contracted for capacity or that create the potential for disruption of the The Company network or of the networks with which The Company interconnects, by quantity, size or otherwise;
 - 7.6. using another site's mail server to relay mail without the express permission of that site;
 - 7.7. using another computer, without authorization, to send multiple e-mail messages or to retransmit e-mail messages for misleading recipients as to the origin or to conduct any of the activities prohibited by this AUP;
 - 7.8. using IP addresses that You do not have a right to use;
 - 7.9. collecting the responses from unsolicited electronic messages;
 - 7.10. maintaining a site that is advertised via unsolicited electronic messages, regardless of the origin of the unsolicited electronic messages;
 - 7.11. sending messages that are harassing or malicious, or otherwise could reasonably be predicted to interfere with another party's quiet enjoyment of the services or the Internet (e.g. through language, frequency, size or otherwise);
 - 7.12. using distribution lists containing addresses that include those who have opted out;
 - 7.13. sending electronic messages that do not accurately identify the sender, the sender's return address, the e-mail address of origin, or other information contained in the subject line or header;
 - 7.14. falsifying packet header, sender, or user information whether in whole or in part to mask the identity of the sender, originator or point of origin;

- 7.15. using redirect links in unsolicited commercial e-mail to advertise a website or service;
 - 7.16. posting a message to more than ten (10) online forums or newsgroups, that could reasonably be expected to generate complaints;
 - 7.17. intercepting, redirecting or otherwise interfering or attempting to interfere with e-mail intended for third parties;
 - 7.18. knowingly deleting any author attributions, legal notices or proprietary designations or labels in a file that the user mails or sends;
 - 7.19. using, distributing, advertising, transmitting, or otherwise making available any software program, product, or service that is designed to violate this AUP or the acceptable use policy of any other Internet Service Provider, including, but not limited to, the facilitation of the means to spam.
8. **Fair Use Policy (FUP)**
- 8.1. We reserve the right to establish policies, rules and limitations, from time to time, concerning the use of any service. You must comply with any bandwidth, data storage and other limitations we may impose, in our reasonable discretion. Failure to comply with these rules may result in your service being restricted, suspended or terminated, in our reasonable discretion.
 - 8.2. We reserve the right to manage our network and any services and/or network services, for security purposes, and to optimize its efficiency for the benefit of all our Subscribers, including, without limitation, by way of the following: rate limiting (speed), rejection or removal of spam or otherwise unsolicited bulk e-mail, anti-virus mechanisms, protocol filtering and imposing restrictions on your use. We may take any other action we deem appropriate to help ensure the security of our network and IP Services and to help ensure the integrity of the network experience for all Subscribers, including limiting your data traffic by controlling your network and/or bandwidth usage.
 - 8.3. We will manage bandwidth usage to the best of our ability during peak periods, however, it remains a best effort service.
 - 8.4. We reserve the right to limit the number of emails that you may send in any given period or to limit the total message volume (amount of data) sent per hour.
 - 8.5. You may not restrict, inhibit or interfere with the ability of any person to access, use or enjoy the Internet or any services, or create an unusually large burden on our network, including, without limitation, continuously uploading or downloading streaming video or audio; continuous FTP uploading or downloading, or otherwise generating levels of traffic sufficient to impede others' ability to send or retrieve information, or to use the services in an abusive manner in connection with any unlimited or uncapped packages, options or promotions.
- 8.6. You may not use the service for unattended automated operation, unless otherwise agreed. You may stay connected if you are actively using that connection. You further agree not to use Internet applications for simulating network activity to avoid session inactivity disconnection.
- 8.7. Unless you subscribe to a business packages and you are permitted in terms of such business package, you may not use any services for anything other than your own personal use and you may not resell any services, receive any charge or benefit for the use of any services or provide Internet access or any other feature of the services to any third party or in any other way exploit the service for any commercial purposes. You may not provide network services to others via the services. In addition, you are prohibited from running servers for mail, http, ftp, irc and multi-user interactive forums. You may not share your services.
9. **Security Violations**
- 9.1. Customers are responsible for ensuring and maintaining security of their systems and the machines that connect to and use service(s), including implementation of necessary patches and operating system updates.
 - 9.2. Our services may not be used to interfere with, gain unauthorized access to, or otherwise violate the security of The Company's (or another party's) server, network, network access, personal computer or control devices, software or data, or other system, or to attempt to do any of the foregoing. System or network security violations shall include, but are not limited to:
 - 9.2.1. unauthorized monitoring, scanning or probing of network or system or any other action aimed at the unauthorized interception of data or harvesting of e-mail addresses;
 - 9.2.2. hacking, attacking, gaining access to, breaching, circumventing or testing the vulnerability of the user authentication or security of any host, network, server, personal computer, network access and control devices, software or data without express authorization of the owner of the system or network;
 - 9.2.3. impersonating others or secretly or deceptively obtaining personal information of third parties (phishing, etc.);
 - 9.2.4. using any program, file, script, command or transmission of any message or content of any kind, designed to interfere with a terminal session, the access to or use of the Internet or any other means of communication;

- 9.2.5. distributing or using tools designed to compromise security (including but not limited to SNMP tools), including cracking tools, password guessing programs, packet sniffers or network probing tools (except in the case of authorized legitimate network security operations);
- 9.2.6. knowingly uploading or distributing files that contain viruses, spyware, Trojan horses, worms, time bombs, cancel bots, corrupted files, root kits or any other similar software or programs that may damage the operation of another's computer, network system or other property, or be used to engage in modem or system hi-jacking;
- 9.2.7. engaging in the transmission of pirated software;
- 9.2.8. using manual or automated means to avoid any use limitations placed on the services;
- 9.2.9. providing guidance, information or assistance with respect to causing damage or security breach to our network or systems, or to the network of any other service provider;
- 9.2.10. failure to take reasonable security precautions to help prevent violation(s) of this AUP.

10. Customer Responsibilities

- 10.1. Customers remain solely and fully responsible for the content of any material posted, hosted, downloaded/uploaded, created, accessed or transmitted using the services. The Company has no responsibility for any material created on The Company's network or accessible using the services.
- 10.2. Customers are responsible for taking prompt corrective action(s) to remedy a violation of the AUP and to help prevent similar future violations.

11. AUP Enforcement and Notice

- 11.1. The Customer's failure to observe the guidelines in this AUP will be regarded as a material breach and may result in The Company taking actions, which may either be a warning, a suspension or termination of the Customer's services.
- 11.2. If the services are used in a way that we, in our reasonable discretion, believe violates this AUP, we may take any responsive actions we deem appropriate.

- 12. Should you engage in any one or more of the above activities, which shall be determined in our reasonable discretion and which decision shall be final, then The Company shall be entitled, without prejudice to any other rights it may have, to take any responsive action we deem appropriate, such actions may include, without limitation:

- 12.1. without notice, temporary or permanent limitation, restriction or suspension of your access to the service concerned;

- 12.2. terminate all agreements with you with immediate effect;
- 12.3. bill you for any costs incurred by The Company because of the offending activity; and
- 12.4. disclose information relating to the offending activity as may be required under the circumstances.
- 12.5. The Company has no obligation to monitor content of any materials distributed or accessed using the services. However, The Company may monitor content of any such materials as necessary to comply with applicable laws, regulations or other governmental or judicial requests; or to protect The Company's network and its Customers.

13. Complaints

Any complaints (other than claims of copyright or trademark infringement which should be directed to legal@ispafrika.co.za) regarding violation of this AUP by a Customer (or its user) should be directed to complaints@ispafrika.co.za.