

Subscriber Standard Terms and Conditions

1. Definitions

In the Agreement, unless inconsistent or otherwise indicated by the context, the following terms shall bear the following meanings:

- 1.1 "Agreement" The subscriber application form setting out the subscriber's details, together with all annexures attached thereto, and the subscriber terms and conditions.
- 1.2 "Charges" The connection charges, monthly service charges, usage charges and any other charges pertaining to the provision of the MDN services and any other services provided to the subscriber in terms of the Agreement.
- 1.3 "Effective Date" Notwithstanding the date of signature of the application form, the date of activation of terminal equipment.
- 1.4 "Initial Period" A period as indicated on the application form, commencing on the effective date.
- 1.5 "Installation" The installation of terminal equipment on a location or subscriber laptop/desktop or similar device specified by the subscriber in an order.
- 1.6 "Internet" The interconnected system of networks that connect computers around the world via the TCP/IP protocol.
- 1.7 "Licence" The national mobile data telecommunication licence granted to the Network Operator/Service Provider to provide a national mobile data telecommunication service by means of a mobile data network.
- 1.8 "MDN" The mobile data network established and operated by the Network Operator in terms of the licence.
- 1.9 "MDN Services" Broadband wireless Internet access services, value-added Internet Protocol ("IP") services, virtual private network ("VPN") services, corporate managed data network services, closed user group and video conferencing services made accessible to the subscriber by Service Provider in terms of the Agreement.
- 1.10 "Mobile Access Numbers" The mobile access numbers, IP address, unique user name or subscription numbers used to identify subscribers having access to the MDN.
- 1.11 "Network Operator" or "WBS" Wireless Business Solutions (Proprietary) Limited which has granted Service Provider authorisation to make the MDN services available to the subscriber.
- 1.12 "Order" An order placed by a subscriber on Service Provider for the provision of the MDN services.
- 1.13 "Parties" Service Provider/Network Operator and Subscriber and "Party" refers to either of them as so determined by the context.
- 1.14 "Renewal Period" A period as indicated on the subscriber application form, commencing on the day immediately following the expiration of the Initial Period, or an anniversary of the expiration period, as the case may be.
- 1.15 "Service Provider" iBurst (Pty) Ltd.
- 1.16 "Subscriber" Any party to whom the MDN services are made available in terms of the Agreement.
- 1.17 "Terminal Equipment" The type approved iBurst or other applicable user terminals, including the antennas and communication cards used by a subscriber to send and/or receive any data signal via an MDN radio link and may include any other special equipment provided by the Network Operator in order to facilitate any future enhanced services to subscribers.
- 1.18 "VAS" The Value Added Services offered by iBurst from time to time.
- 1.19 "VAT" Value Added Tax has provided in the Value Added Tax act 89 of 1991.

Part 1: General Terms and Conditions

2. Commencement and termination

- 2.1 The Agreement shall commence on the effective date and shall, subject to the provisions of clause 7 and 9 below, continue for the Initial Period, and thereafter continue automatically for an unlimited number of Renewal Periods unless terminated:
 - 2.1.1 By the subscriber, on expiration of the Initial Period or a Renewal Period, as the case may be, by giving to the Service Provider a written notice of termination not less than one calendar month and not more than 90 days before the expiration of the Initial Period or the Renewal Period, as the case may be; and/or
 - 2.1.2 By the subscriber, within a period of 7 (seven) days from the effective date, should the subscriber not find the service fit for use, subject to a written explanation accepted by the management of the Service Provider; and/or
 - 2.1.3 By Service Provider, on written notice to the subscriber in the event of the authorisation issued by the Network Operator in terms of which the Service Provider is authorised and empowered to give the subscriber access to the MDN services is terminated for whatsoever reason.
- 2.2 Notwithstanding the use of agents or other intermediaries

(Delegated Service Providers) by Service Provider, the order by the subscriber is an offer made by the subscriber to Service Provider and will be considered once received by Service Provider. Service Provider's acceptance of the offer shall consist of the activation of the terminal equipment as contemplated in clause 2.1, and upon which activation the Agreement shall become binding between the Service Provider and the subscriber whether or not the subscriber was notified of the acceptance of the offer. The subscriber hereby expressly dispenses with notification of acceptance of the offer by the Service Provider.

- 2.3 The Subscriber may not cancel or terminate the Agreement and demand reimbursement for terminal equipment or any damages of whatsoever nature as a result of the Subscriber's relocation to an area outside of iBurst's coverage.

3. Supply and installation of terminal equipment and MDN services

- 3.1 The order placed by the subscriber on Service Provider is subject to Service Provider's approval in its sole discretion. If the Service Provider does not approve the order, it shall not be under any obligation to the subscriber to give reasons for its decision.
- 3.2 The Service Provider shall utilise its best endeavours to promptly comply with any supply and/or delivery and/or installation requirements recorded in the order but shall not be liable to the subscriber in the event that such supply and/or delivery and/or installation is delayed or cancelled, for whatsoever reason. The Service Provider may in its discretion refer the subscriber to a third party who may undertake the installation of the terminal equipment in its own name and behalf and not as an agent of the Service Provider.
- 3.3 The subscriber shall be responsible for obtaining all necessary approvals and authorities imposed by any competent authority and required for the purpose of any such supply and/or delivery and/or installation, and the subscriber hereby indemnifies Service Provider against any claim or liability suffered by Service Provider by reason of such approval and authorities not having been obtained.
- 3.4 All risk in and to the terminal equipment supplied and delivered by Service Provider to the subscriber shall pass to the subscriber on delivery.
- 3.5 If any terminal equipment is lost, stolen or damaged, the subscriber shall immediately notify the Service Provider in writing and until such notification, the subscriber shall remain liable for all costs and charges pertaining to such terminal equipment. The Service Provider shall as soon as reasonably possible replace the terminal equipment. The cost of this replacement equipment shall be for the subscriber's account. Such loss, theft or damage and/or the replacement of the terminal equipment and/or the allocation of a new mobile access number for any reason, shall in no way be deemed to constitute a termination of the Agreement which shall continue to be of full force and effect.
- 3.6 The subscriber hereby warrants and undertakes in favour of Service Provider that the subscriber:
 - 3.6.1 Shall not use nor allow the MDN Services to be used for any improper, immoral or unlawful purpose, nor in any way which may cause injury or damage to persons or property or an impairment or interruption to the MDN Services.
 - 3.6.2 Shall only use the terminal equipment provided by Service Provider, and comply with relevant legislation and regulations imposed by any competent authority and all directives issued by Service Provider relating to the use of terminal equipment and the provision of MDN services.
 - 3.6.3 Recognises that no right, title or interest in the software contained in the terminal equipment issued to the subscriber vests in the subscriber.
 - 3.6.4 Shall not, nor permit any third party to reverse engineer, decompile, modify or tamper with the software contained in or pertaining to any terminal equipment.
- 3.7 Should the subscriber exceed the monthly data allocations to the subscriber's account, the subscriber is entitled to purchase top up data, however, the Service Provider reserves its right to limit the subscriber's top up data.

4. Charges

- 4.1 In consideration for the provision of the MDN Services, terminal equipment and any other services supplied by Service Provider to the subscriber, the subscriber shall effect payment to Service Provider of the applicable charges, as detailed in the application form and whether or not the MDN Services have been, or are being utilised by the subscriber.
- 4.2 The Service Provider may, by written notice to the subscriber, vary future charges, either in whole or in part, with effect from the date specified in such notice.
- 4.3 Unless otherwise agreed to by Service Provider in writing, the subscriber shall effect payment to the Service Provider:
 - 4.3.1 for the supply and delivery of terminal equipment and installation on presentation of invoice and against such delivery.
 - 4.3.2 of monthly service charges monthly in advance and of all other charges, monthly in arrears, in either event in full, within 21 days from date of the relevant invoice.
 - 4.3.3 at Service Provider's premises or at the bankers of Service Provider in Johannesburg. Where payment is made by the

subscriber through a debit order, other electronic means or any other intermediary, the subscriber's bankers or other intermediaries shall act as the subscriber's agent and the subscriber shall have discharged its obligations only upon payment being received by Service Provider.

- 4.4 Notwithstanding the provisions of clause 4.3, Service Provider may at any time on reasonable written notice to the subscriber vary its invoicing and payment procedures and requirements.
- 4.5 In the event that Service Provider requires payment for the services provided to the subscriber to be made by debit order, the subscriber will commit a breach of the Agreement if the subscriber:
 - 4.5.1 Cancels such debit order without the written consent of Service Provider.
 - 4.5.2 Changes his banking details upon which the debit order relies, without giving Service Provider prior notification of such change and providing Service Provider with the subscriber's new banking details.
 - 4.5.3 Provides the Service provider with incorrect banking details.
- 4.6 The subscriber authorises the Service Provider to debit any bank account held by the subscriber for the costs owed by the subscriber to the Service Provider in terms of this agreement.
- 4.7 The monthly statement shall be sent by Service Provider to the subscriber at the e-mail address supplied by the subscriber in the application form in writing to Service Provider. It shall be the duty of the subscriber to check the statement in order to ensure that the contents thereof are correct. Unless a query is raised in respect of the contents of the statement within 30 days from the date thereof, the contents of the statement shall be deemed to be correct.
- 4.8 Any migration from one package option to another shall for the duration of this agreement be subject to Service Provider's approval in its discretion and Service Provider shall be entitled to levy fees for migrations, but which fees may not exceed the amounts approved or fixed by the responsible regulatory authority from time to time.
- 4.9 The Service Provider reserves the right to charge a cancellation penalty.
- 4.10 The Service Provider reserves its right to cap off-net (internet) and on-net (Service Provider to Service Provider) traffic as per its capping limits applicable from time to time. In the event of the subscriber account being capped, the Service Provider reserves the right to charge the subscriber for every megabyte utilised above the cap limit.
- 4.11 The subscriber indemnifies and holds the Service Provider harmless for any loss suffered as a result of incorrect amounts being debited in respect of applicable charges.

5. Suspension

- 5.1 Service Provider may at any time, without notice to the subscriber and in any manner whatsoever, suspend the subscriber's access to the MDN Services in the event that:
 - 5.1.1 Any modification, maintenance or remedial work is required to be undertaken pertaining in any manner whatsoever, to the MDN Services or the Network. Service Provider will endeavour to inform the subscriber timeously, in the event of planned maintenance.
 - 5.1.2 The subscriber fails to perform any of his or her obligations, or breaches any terms of the Agreement (in which event Service Provider may also suspend the subscriber's use of the terminal equipment).
- 5.2 Service Provider reserves the right to require the subscriber to effect payment of any applicable reconnection charges pursuant to the restoration of the MDN Services suspended in the circumstances contemplated in clause 5.1.2. In the event that the subscriber's access to the Network is suspended, the subscriber shall still be liable for the monthly service charges during any such period of suspension.

6. Limitation of liability

- 6.1 Without detracting from any of the other provisions of the Agreement, Service Provider shall not be liable to the subscriber for any loss or damage suffered by the subscriber and whether the same is direct or consequential, in the event that:
 - 6.1.1 Service Provider fails for any reason whatsoever to supply and/or deliver and/or provide installation of any terminal equipment either on the required date or at all; and/or
 - 6.1.2 The MDN Services are interrupted, suspended or terminated for whatsoever reason; and/or
 - 6.1.3 Service Provider fails to suspend the provision of the MDN Services to the subscriber in terms of an arrangement between Service Provider and the subscriber or after the subscriber has specifically requested Service Provider to do so in order to limit the charges; and/or
 - 6.1.4 Such loss or damage was caused by any negligent act or omission on the part of Service Provider, its employees or its agents.

7. Breach

- 7.1 If the subscriber commits a breach of any of the terms and conditions hereof and remains in default for a period of 7 (seven) days after delivery to the subscriber of a written notice ("notice of breach") from the Service Provider calling for such breach to be remedied, the Service Provider shall be entitled forthwith and without further notice to the subscriber to either terminate the Agreement or claim specific performance of all of the subscriber's obligations, including the immediate payment of all sums of money payable by the subscriber, whether or not then due, in either event without prejudice to the Service Provider's right to claim such damages as it may have suffered by reason of such breach or failure.
- 7.2 Without prejudice to the provisions of clause 7.1 above, the Service Provider may forthwith terminate the Agreement at any time by giving subscriber written notice of such termination if (i) the subscriber fails to make payment of any charges on or before the due date for payment thereof; and/or (ii) the subscriber within a 12-month period calculated from a notice of breach, receives a further two notices of breach; or (iii) in the event that the subscriber is sequestrated, liquidated or placed under judicial management, irrespective of whether any of the aforesaid are provisional or final; or voluntary or compulsory.
- 7.3 Any termination pursuant to the preceding provisions of this clause shall be without prejudice to any claim the Service Provider may have against the subscriber in respect of any prior breach of the terms and conditions of the Agreement by the subscriber.
- 7.4 Without derogating from any other rights or remedies available to the Service Provider in terms of the Agreement or at law, in the event of the Agreement being cancelled by the subscriber (for whatsoever reason) prior to the expiry of the Initial Period or any Renewal Period, or in the event of the Service Provider electing to terminate the Agreement pursuant to any breach by the subscriber which entitles the Service Provider to cancel:
- 7.4.1 The subscriber shall be liable to the Service Provider and hereby agrees to pay on demand, the full charges payable to the Service Provider for the remainder of the Initial Period or Renewal Period, as the case may be.

8. Insurance

- 8.1 Service Provider acts as a collection agent for insurance brokers and/or underwriters in respect of the optional insurance of the terminal equipment and related risks as referred to the schedule or application form. Service Provider shall not be liable to the subscriber under any policy issued or claim declined pursuant to the subscriber's election to take insurance as provided in the schedule.
- 8.2 Unless the subscriber specifically elects to take insurance for the terminal equipment and related risks or in accordance with the procedures introduced by Service Provider from time to time, the subscriber shall not be covered in respect of the terminal equipment and related risks.
- 8.3 If at any stage before or after the subscriber elects to take insurance, the subscriber requests from Service Provider a summary of the terms and conditions of the applicable insurance policy, Service Provider shall use its best endeavours to furnish same to the subscriber as requested. It shall be the responsibility of the subscriber to obtain and familiarise himself with the terms and conditions of the insurance policy applicable.
- 8.4 It shall be the responsibility of the subscriber to ensure that the premiums in respect of the insurance policy are paid timeously and in full, and, if for any reason Service Provider omits to include insurance charges in a statement to the subscriber, the subscriber shall forthwith notify Service Provider of such omission. Service Provider may rectify the omission by debiting the subscriber's account with any amounts in arrears, subject to any terms and conditions which may be applicable under the relevant policy.
- 8.5 Save as provided herein, any queries which the subscriber may have regarding or arising from the insurance of the terminal equipment and related risks, shall be directed to the insurance administrators or brokers, as the case may be whose particulars may be obtained by the subscriber from Service Provider.

9. General

- 9.1 In the event of the subscriber failing to effect payment of any amount owing by them to Service Provider on due date, then without derogating from Service Provider rights in terms of clause 7, the subscriber shall be liable to effect payment of interest to Service Provider on the amount so owing at the prime interest rate as published from time to time by ABSA Bank Limited plus 2% (percent), from due date to date of payment.
- 9.2 Unless specifically stated otherwise, all prices and charges set out in the Agreement and any price list are inclusive of Value-Added Tax and exclusive any other applicable tax or duty, the liability of which shall vest with the subscriber.
- 9.3 The rights and obligations of the subscriber in terms of the Agreement may not be ceded or delegated to any third party. The rights and obligations of Service Provider in terms of the Agreement may be ceded and delegated by it to any other party on written notice to the subscriber.
- 9.4 Service Provider may change the terms and conditions of this agreement as a result of changes in taxes, laws, regulations, the terms and conditions of the licence issued to WBS, the terms and conditions of any agreement between WBS and Service Provider or any circumstances or events similar to the foregoing. Service Provider shall notify the subscriber of any changes as

contemplated herein in writing.

- 9.5 A certificate under the hand of any Manager of Service Provider certifying the sum of any amount owing by the subscriber to Service Provider shall be prima facie proof of its contents and sufficient proof for the purposes of enabling Service Provider to obtain any judgment or order against the subscriber.
- 9.6 In addition to these terms and conditions the subscriber shall be bound by the terms and conditions applicable to the VAS offered by iBurst. The subscriber may be required to subscribe to an iBurst VAS which forms part of a mandatory subscription. The subscriber shall, however, have a right to request to be exempted from such a subscription, which exemption shall be provided at the sole discretion of iBurst.
- 9.7 In the event of Service Provider instituting legal proceedings against the subscriber to recover amounts due to Service Provider or take any other legal steps arising out of the Agreement, the subscriber shall be liable for legal costs on the scale as between attorney and own client.
- 9.8 Should the subscriber be placed under administration, sequestration or liquidation proceedings, or suffer any other legal disability which will negatively affect the subscriber's ability to make payment to the Service provider, the subscriber is required to notify the Service Provider, in writing within 7 (seven) days of occurrence of the afore-mentioned events.

10. Consent/Authority

- 10.1 The subscriber hereby consents/authorises Service Provider to disclose the subscriber's name, address and personal details to any party whenever it is reasonably necessary for Service Provider to properly perform its functions or protect its interests, or for the purpose of enabling the Network Operator or Service Provider to provide emergency MDN Services to the subscriber, or directory or repair services and information to Network users generally. In addition, the subscriber consents to the Service Provider using any information supplied by the subscriber for the purposes of informing subscribers of the Service Provider's services which may interest the subscriber from time to time.
- 10.2 The subscriber hereby consents/authorises Service Provider at any time, without notice to the subscriber to obtain information about the subscriber's profile from any authorised and registered credit reference agency in the Republic of South Africa.
- 10.3 The subscriber consents/authorises the Service Provider to provide regular reports in respect of subscriber's payment conduct to any authorised and registered credit reference agency in the Republic of South Africa.
- 10.4 The subscriber consents/authorises receiving marketing, promotional updates and client satisfaction surveys from the Service Provider.

Part 2: Conditions for sale of terminal equipment

11. Sale of terminal equipment and conditions applicable
- 11.1 The sale of terminal equipment by Service Provider to the subscriber at a subsidised price as set out in the Schedule and application form shall be subject to the following terms and conditions:
- 11.1.1 In the event of early termination of the Agreement for whatsoever reason, the Subscriber shall be obliged to effect payment to the Service Provider of the amount claimed by, or any amount that it is legally bound to pay to the Service Provider in terms of this Agreement.
- 11.1.2 All risk in and to the terminal equipment supplied and delivered by Service Provider to the subscriber shall pass to the subscriber on delivery.
- 11.1.3 Service Provider obligations in terms of any warranties pertaining to the terminal equipment shall be limited to the warranty provided by the manufacturer of the terminal equipment. All delivery costs shall be for the subscriber's account.
- 11.2 Should the subscriber, upon purchase of the terminal equipment discover any fault or defect in the terminal equipment, the subscriber shall within 3 days of purchase return the terminal equipment to Service Provider in the same condition and packaging as the terminal equipment was purchased along with the proof of purchase. Service Provider shall replace the damaged or faulty terminal equipment. In the event of the subscriber not returning the terminal equipment packaging to Service Provider, Service Provider may charge the subscriber a packaging fee.
- 11.3 The Service Provider reserves its right to limit the number of terminal equipment that may be linked to a subscriber account. The subscriber may only log onto the network once from each account and may not establish multiple logon sessions simultaneously from the same account. The Service Provider reserves its right to charge an additional subscription amount to allow multiple simultaneous logons to the network from the same account.
- 11.4 If the subscriber migrates from one package option to another, Service Provider may vary the amount of the subsidy applied at the time of the sale of the terminal equipment to the subscriber. If the subsidy amount is reduced, Service Provider shall be entitled to require the subscriber to pay to Service Provider the amount by which the subsidy has been reduced. It being understood that this charge does not constitute a migration fee, but enables Service Provider to adjust the subsidy amount to the amount that would have been applicable at the time of sale of the terminal equipment if the subscriber had first chosen the package option to which the subscriber is changing.

12. Miscellaneous matters

- 12.1 Postal address:
- 12.1.1 Any written notice in connection with the Agreement must be addressed for the Attention of the LEGAL DEPARTMENT:
- 12.1.1.1 In the case of Service Provider to: iBurst (Pty) Ltd PO Box 651921, Benmore, 2010
- 12.1.1.2 In the case of the subscriber to the postal address and fax number set out in the subscriber details application form to which these standard terms and conditions apply, and marked for the attention of the subscriber.
- 12.1.2 The notice shall be deemed to have been duly given 7 (seven) days after posting, if posted by registered post to the parties addressed in terms of this sub-clause.
- 12.1.3 On delivery if delivered to the party's physical address in terms of either this sub-clause or the next sub-clause dealing with service of legal documents.
- 12.1.4 On dispatch if sent to the party's then fax number and confirmed by registered letter posted no later than the next business day.
- 12.1.5 Unless the addresser is aware, at the time the notice would otherwise be deemed to have been given, that the notice is unlikely to have been received by the addressee through no act or omission of the addressee.
- 12.1.6 Either party may change its Postal address for this purpose by notice in writing to the other party.
- 12.2 Address for service of legal documents (notices and domicilia) The parties choose the following physical addresses and fax numbers at which documents and legal proceedings in connection with the Agreement may be served.
- 12.2.1.1 In the case of Service Provider, to: iBurst (Pty) Ltd, Address: 66 Park Lane, Sandton, 2196; Fax No: 086 503 9111 marked for the attention of the Legal Department.
- 12.2.1.2 In the case of the subscriber, to the physical address and fax number set out in the subscriber details application form to which these standard terms and conditions are attached and marked for the attention of the subscriber.
- 12.2.2 Either party may change its address for the purpose of the Agreement to another physical address in the Republic of South Africa by notice in writing to the other party.
- 12.3 **Entire contract:** The Agreement contains all the express provisions agreed on by the parties with regard to the subject matter of the Agreement and the parties waive the right to rely on any alleged express provision not contained in the Agreement.
- 12.4 **No representations:** Neither party may rely on any representation which allegedly induced that party to enter into the Agreement, unless the representation is recorded in the Agreement.
- 12.5 **Variation, cancellation and waiver:** No contract varying, adding to, deleting from or cancelling the Agreement, and no waiver of any rights under the Agreement, shall be effective unless reduced to writing and signed by or on behalf of the parties.
- 12.6 **Indulgences:** If either party at any time breaches any of that party's obligations under the Agreement, the other party ("the aggrieved party"):
- 12.6.1 May at any time after that breach exercise any right that became exercisable directly or indirectly as a result of the breach, unless the aggrieved party has expressly elected in writing of a clear and unambiguous conduct, amounting to more than mere delay, not to exercise the right (if the aggrieved party is willing to relinquish that right, the aggrieved party will on request do so in writing). In particular, acceptance of late performance shall for a reasonable period after performance be provisional only, and the aggrieved party may still exercise that right during that period.
- 12.6.2 Shall not be stopped (i.e. prevented) from exercising the aggrieved party's rights arising out of the breach, despite the fact that the aggrieved party may have elected or agreed on one or more previous occasions not to exercise the rights arising out of any similar breach or breaches.
- 12.7 **Applicable law:** The Agreement shall be interpreted and implemented in accordance with the laws of the Republic of South Africa.
13. **Blacklisting Clause:** The Service Provider may, without prejudice to any other rights which it may have under the Agreement or at law:
- 13.1 Notify credit bureaus of the subscriber's default; and
- 13.2 Blacklist the equipment to prevent the further use thereof.
14. **Acknowledgements:** The subscriber acknowledges having read and accepted the terms and conditions of the Acceptable Use Policy on the iBurst website as well as the terms and conditions as set out herein.
15. **Termination without Cause:** Without prejudice to any other rights at law or set out in the Agreement, the Service Provider may terminate the Agreement upon written notice to the subscriber in the event that the Licence is revoked, terminated or amended for any reason whatsoever.