

## **STANDARD TERMS AND CONDITIONS OF SERVICE**

These standard terms and conditions of service (the "Agreement") contain the general terms and conditions which govern your subscription or procurement of any services or products ("Services" or "Service") provided by Nexus Internet Service Provider cc ("Nexus ISP"). As used in this Agreement, "Client", "Customer", "you", "your" or "yourself" means you the subscriber.

This Agreement entered into between Nexus ISP and yourself is intended to govern and facilitate the provision of Services and consists of this document, and the relevant Service Terms and Service Orders entered into between the parties and the schedules to this document.

By subscribing to or making use of any Services you will be required to agree and be bound to this Agreement at the outset, and then to any other relevant product or Service specific terms and conditions when you decide to subscribe to a Service or procure a product. A separate agreement may in each instance be concluded between Nexus ISP and yourself wherever necessary. In the event of a discrepancy between this Agreement and the product or Service specific terms and conditions, the product or Service specific terms and conditions will take precedence.

### **1. Conclusion of the Agreement**

1.1 You warrant that you have the contractual capacity to enter into this Agreement.

1.2 In accordance with the Regulation of Interception of Communications and Provision of Communication-Related Information Act (RICA), when you apply for a Service or product from Nexus ISP you will be required to provide Nexus ISP with a certified copy of your identity document, proof of residential address as well as any other documentation as required by law. In the event of a juristic person, you will be required to provide Nexus ISP with the aforementioned documentation for your authorised representative, together with a certified copy of the company letterhead, and a company resolution authorising the application and the representative's capacity to enter into the Agreement, as well as any other documentation as required by law.

1.3 Your application for a Service or product may be subject to a credit referencing or risk assessment process. This means that Nexus ISP may request and receive your Confidential Information, Consumer Credit Information and Prescribed Information (as defined in the National Credit Act) ("Assessment Information") from registered credit bureaux in order to perform a financial means test to determine whether you will be in a position to meet your obligations under the intended agreement.

1.4 Nexus ISP is entitled to perform a financial means test each time you apply for a Service.

1.5 No agreement shall come into effect in the event of a negative credit reference or risk assessment, unless at the discretion of Nexus ISP to waive this clause. Nexus ISP may choose to waive this clause on a case by case basis and any such waiver shall not constitute a permanent or overall waiver of this clause for all Services.

1.6 In this regard you consent to Nexus ISP requesting, receiving and reporting your Assessment Information from and to registered credit bureaux in accordance with the provisions and for the purposes of the National Credit Act; and the sharing of such Information by registered credit bureaux and such other persons as contemplated in the National Credit Act, for the prescribed purposes of the National Credit Act.

1.7 This Agreement will apply to all Service agreements for the terms thereof, and you will be bound thereby for as long as you use any Service or product offered by Nexus ISP. This Agreement will terminate simultaneously with the termination for any reason of all specific

Service or product offerings, as provided for in the Service and product specific terms and conditions.

## **2. Acceptable Use Policy (“AUP”)**

Nexus ISP and its upstream providers enforce specific AUPs, you must read and agree to these AUPs which are updated from time to time and located at the URL: <http://www.nexus.co.za/legal/AUP.pdf>. Failure to abide with these AUPs may result in your Service being suspended or terminated.

## **3. Exceeding Data Allocation**

Where any Service is provided to you with a predefined maximum allowable amount of bandwidth, traffic usage, data, or data cap (“Data Allocation”) during a predefined period or term as applicable to the particular Service, such Data Allocation may not be exceeded. Nexus ISP shall provide a mechanism to enable you to monitor any usage of such Data Allocation through the Nexus ISP Customer Control Panel located at the URL: <http://www.nexus.co.za/billing> and Nexus ISP shall not be held responsible for any over usage of the Data Allocation of any Service. In the event of such Data Allocation being exceeded by you, Nexus ISP shall charge you for such overage as applicable to the particular Service and at the prevailing overage rate for that Service. Alternatively Nexus ISP may elect to deduct the amount exceeding the original Data Allocation from the following Data Allocation as applicable to the specific Service.

## **4. Intellectual Property**

4.1 You agree to only make use of properly licensed third party software in connection with your use of the Services.

4.2 You agree to indemnify Nexus ISP entirely from any third party claims relating to your involvement in any copyright infringement or alleged copyright infringement.

4.3 Any specifications, descriptive matter, drawings and other documents which may be furnished by Nexus ISP to you from time to time:

4.3.1 do not form part of this Agreement and may not be relied upon, unless they are agreed to in writing by both parties hereto, to form part of this Agreement;

4.3.2 shall remain the property of Nexus ISP and shall be deemed to have been imparted by Nexus ISP in trust to you for the sole use by you. All copyright in such documents vests in Nexus ISP. Such documents shall be returned to Nexus ISP on demand.

4.4 All Nexus ISP intellectual property (including, without limitation, copyright, trademarks, designs and patents) relating to or used in connection with the Service/s provided under this Agreement shall belong to Nexus ISP. You undertake that you shall at no time have any right, title or interest in the intellectual property and agree that you shall not (or permit any third party to) reverse engineer, decompile, modify or tamper with the equipment or software owned by Nexus ISP, or any of its third party suppliers. Nexus ISP shall notwithstanding anything to the contrary, have no right, title or interest in any intellectual property that belongs to you and/or that to which you have the lawful entitlement to.

4.5 You warrant that you shall not use the Service/s to produce, host or present any content in contravention of any person’s intellectual property rights, and in particular warrant that you shall recognize, acknowledge and use any content in accordance with any third party’s intellectual property rights. You furthermore warrant that you have received all necessary permissions to make use of any intellectual property relating to third parties.

## **5. Nominated Agent for Take-Down Notifications**

Nexus ISP is a member of the Internet Service Providers' Association ("ISPA") and has nominated ISPA as its agent for all take-down notifications. As such any request for take-down notifications must be directed to ISPA in writing to the following address:

Internet Service Providers' Association (ISPA)  
Address: PO Box 518, Noordwyk, 1687  
Telephone: +27 10 500 1200  
Email: [takedown@ispa.org.za](mailto:takedown@ispa.org.za)

## **6. ADSL Line Rental Services**

Nexus ISP may provide you with ADSL line rental Services as part of a bundled Service or as a stand-alone Service. Service fees for ADSL line rentals shall depend on the Service being subscribed to. Where Nexus ISP provides such ADSL line rental Service to you, Nexus ISP shall make use of Telkom SA Limited (Pty) Ltd ("Telkom") as a third party to provide, manage and maintain the ADSL line rental Service, however Nexus ISP shall manage the administrative portions of the ADSL line rental Service such as applications, billing and fault reporting.

When you report a suspected ADSL line fault to Nexus ISP, this fault will be reported to Telkom, by Nexus ISP on your behalf. Should Telkom dispatch a technician to the premises and/or to the local exchange where the reported ADSL line is connected and subsequently determine that no fault exists on the ADSL line, Telkom will charge an "Unnecessary Call-Out Fee" at their prevailing rates, this fee will be passed directly onto you and you thus acknowledge and agree to pay for this fee upon invoice by Nexus ISP. To avoid being charged any unnecessary call-out fees it is of vital importance that you first determine with certainty that your equipment is not faulty and that your equipment is in fact correctly configured, prior to reporting any suspected ADSL line faults to Nexus ISP.

You acknowledge that it is a prerequisite of Telkom that an active standard copper voice line service that supports the use of ADSL must be subscribed to from Telkom directly and remain active, in order for ADSL Services to function. You must therefore obtain such voice service from Telkom directly and you are responsible for this service entirely. You agree to indemnify Nexus ISP from any and all charges relating to the voice service and further agree to indemnify Nexus ISP entirely for any damages that may occur to any infrastructure provided by Telkom to you.

ADSL line rental Services are provided on a best effort premise by Telkom and as such Nexus ISP cannot make guarantees of any kind for throughput (speeds) or uptime on these Services. You acknowledge that certain Telkom exchanges only support limited speeds and some exchanges do not support ADSL at all, Nexus ISP thus cannot guarantee the success of any applications for ADSL line rental Services or requested speeds thereof.

## **7. Uncapped ADSL Fair Usage Policy**

In order to maintain a fair service to all customers every uncapped service is subject to a Fair Usage Policy (FUP) which is managed by our backbone provider, Internet Solutions. This policy ensures that every customer is provided an equal opportunity to use the service fully, without being hampered by network degradation caused by a small portion of high-end users. For a detailed explanation on the FUP and how it is implemented the following document is available on our website, [www.nexus.co.za/legal/ISUCFUP.pdf](http://www.nexus.co.za/legal/ISUCFUP.pdf)

## **8. Data Retention**

Nexus ISP will use reasonable endeavours to ensure the safekeeping of any data or content which may be uploaded to the Nexus ISP servers from time to time, such as and without

being limited to, photographs, websites, videos and e-mail messages (hereinafter collectively referred to as "your data"). However, due to the nature of the Service and third party technologies and hardware that must be used in order to provide the Service, Nexus ISP cannot guarantee against data loss, and as such you agree to retain your own backups of your data and indemnify and hold harmless Nexus ISP from any claims as a result of your data being lost for whatsoever reason.

8.1 Nexus ISP shall immediately delete all of your data from the Nexus ISP servers upon termination of the Service or termination of this Agreement. It is thus your responsibility to ensure that you have made local copies of all of your data prior to the termination of the Service. Nexus ISP shall not retain backups of any kind once the Service is terminated.

## **9. Payment**

### **9.1 Collection**

Where you have elected to provide payment through debit order instruction or credit card payment, Nexus ISP shall collect any Service fees or any other applicable charges from the aforementioned within the first week of each month. Nexus ISP at its own discretion may request payment through electronic funds transfer ("EFT") or cash deposits upfront for the first month, regardless of the chosen payment method. Nexus ISP shall also be entitled to collect any Service fees or any other applicable charges immediately where any Service requires immediate activation (this includes but is not limited to prepaid Services such as additional top-up data). You may request to make use of EFT or cash deposits as your preferred method of payment for Services; however Nexus ISP reserves the right to deny such requests and may enforce specific methods of payment, such as debit order. All manual payments must be received in full by Nexus ISP on or before the first business day of each month or immediately prior to Service activation whichever is applicable to the particular Service.

### **9.2 Amendment of Service Prices**

Subject to the terms and conditions of any agreement entered into between Nexus ISP and a network operator or other supplier of service to Nexus ISP (the "Network Operator"), Nexus ISP shall be entitled to amend the fees or charges for its Services or products at any time on one calendar month notice to you as provided for in clause 15 below. Subject to the terms and conditions of any agreement entered into between Nexus ISP and a Network Operator and subject to the relevant product or Service specific terms and conditions which are applicable to the Services and/or products provided to you by Nexus ISP, you may terminate this agreement within one calendar month from the date of Nexus ISP's notification to you, should you not agree to the amendment and where such amendments are not already agreed to by means of a separate agreement, failing which the amendment will take effect on the date indicated in the notice.

### **9.3 Non-Payment**

Subject to a pending dispute in accordance with clause 9.6 below, Nexus ISP shall be entitled to immediately suspend any Services provided to you in the event of your failure to remit payment in full to Nexus ISP on time. While Services are in a suspended state you will have no access to the Services. You will however continue to be liable for the full cost associated with the Service and no refunds or pro-rata of any kind will be provided to you for the period in which the Service was suspended. In the event of a debit order being returned by your bank, Nexus ISP shall charge you a debit order return fee of 5% of the attempted debit order amount or R50.00 (whichever is larger). Interest of 2% may also be levied on all outstanding amounts on a monthly basis at Nexus ISP's discretion.

#### **9.3.1 Recoveries Policy**

In the event of non-payment passing fourteen days from the due date, a letter of demand will be sent to you as provided for in clause 15. Should payment not be received after twenty business days from the date of notice, your default will be listed on a registered credit bureau database. Such default will remain in effect for a period of up to four years and will affect your overall credit rating. At the discretion of Nexus ISP further legal action may be taken against you to recover all outstanding amounts and any legal costs incurred will be recovered from you.

#### 9.4 Refund Policy

Certain Services carry a setup fee charged by Nexus ISP that must be paid by you in order to make use of the Services; these fees are utilised by Nexus ISP in the provision of the Service to you and are not refundable whatsoever. Should this Agreement be terminated for whatsoever reason, you will continue to be responsible for any outstanding Service fees owed to Nexus ISP in accordance with this Agreement. Nexus ISP does not offer any refunds whatsoever for domain name registrations, prepaid data Services or for Service fees due by you in terms of this Agreement, subject to clause 9.6 below.

#### 9.5 Billing Information

You confirm that you are legally permitted to provide Nexus ISP with banking or credit card account details and you are either the legal signatory of said account or are legally permitted to provide such details on behalf of the account holder for the collection of fees for the Services. You agree to provide Nexus ISP with immediate notice of any change of banking or credit card account particulars prior to any attempted collection of fees by Nexus ISP as set out by the particular Service. Such changes may be affected in writing as provided for in clause 15 below or updated by you directly through the Customer Control Panel located at URL: <http://www.nexus.co.za/billing>.

#### 9.6 Billing Complaints Handling Procedure

You are required to direct a billing complaint to Nexus ISP in writing as provided for in clause 15 below. The complaint is required to be accompanied by the following;

9.6.1 a copy of the bill concerned or the particulars thereof, e.g. username or invoice number;

9.6.2 the reason for the dispute;

9.6.3 the amount in dispute; and

9.6.4 supporting information or documentation, if any.

Nexus ISP will reach a determination regarding the billing complaint and communicate its decision to you within fourteen (14) working days of receipt of the complaint.

### **10. Service Level Agreement**

While every effort is made by Nexus ISP and its providers to ensure that all Services retain a constant uptime and high level of service quality, given the nature of the Services, technology, infrastructure and number of third parties involved in the provision of such Services this is not always achievable. As such all Services unless otherwise agreed to in writing are based on the best effort premise where no guarantees on throughput, latency or uptime can be provided.

### **11. Exemptions, Liability and Indemnification**

THE PARTIES AGREE THAT IN NO EVENT SHALL NEXUS ISP BE LIABLE TO ANY THIRD PARTY FOR YOUR BREACH OR ALLEGED BREACH OF ANY OF THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT, ANY OTHER AGREEMENT BETWEEN THE PARTIES OR ANY GOVERNMENT REGULATION OR RULE OF LAW IN CONNECTION WITH YOUR USE OF THE SERVICES. YOU AGREE TO DEFEND, INDEMNIFY AND HOLD HARMLESS NEXUS ISP FROM ANY AND ALL EXPENSES, LOSSES, LIABILITIES, DAMAGES OR THIRD PARTY CLAIMS RESULTING FROM YOUR BREACH OR ALLEGED BREACH OF ANY OBLIGATIONS SET FORTH HEREIN. YOU AGREE THAT ALTHOUGH NEXUS ISP ENDEAVOURS TO ENSURE FULL OPERATION OF ALL SERVICES AT ALL TIMES, SHOULD ANY FAILURE OF SERVICE OCCUR FOR WHATSOEVER REASON, YOU AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS NEXUS ISP FROM ANY AND ALL EXPENSES, LOSSES, LIABILITIES, DAMAGES OR THIRD PARTY CLAIMS. NEXUS ISP WILL NOT BE LIABLE FOR ANY DIRECT OR INDIRECT LOSS OR DAMAGES OF ANY KIND, WHICH YOU MAY SUFFER AS A RESULT OF LOSS OF DATA OR ANY PART THEREOF FOR ANY REASON WHATSOEVER. IN NO EVENT SHALL NEXUS ISP BE LIABLE FOR DAMAGES RESULTING FROM THE USE OF THE NEXUS ISP SITE OR ANY SERVICES, OR FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH THIS AGREEMENT, ANY OTHER AGREEMENT BETWEEN THE PARTIES OR IN CONNECTION WITH YOUR USE OF ANY SERVICES.

## **12. Term and Termination**

In the event of a dispute in term or termination requirements between this Agreement and any specific Service terms, the Service terms shall take precedence. This Agreement shall be effective from the date on which you register for any Services with Nexus ISP. Subject to the Service terms, this Agreement shall continue in effect on a month to month basis and either party shall have the right to terminate this Agreement upon providing the other party with at least one calendar month notice. All termination notices must be sent in writing to the other party as provided for in clause 15 below. In the event that you are found to be in breach of this Agreement or where no Services are being provided to you, Nexus ISP may terminate this Agreement and all Service specific terms immediately and without notice.

## **13. Taxes**

You agree to pay all taxes directly as required by rule of law. You agree to indemnify and hold Nexus ISP harmless from any taxes associated with or arising from your use of the Services, including any penalties, interest and any costs associated with the collection or withholding thereof. All prices exclude VAT unless otherwise stated.

## **14. Privacy**

Nexus ISP shall not distribute your personal information to any third party with the exception of its suppliers, credit checking service providers or where such information is required in order to provide the Services or as required by law or order of court. You agree to allow Nexus ISP to send you marketing material, notices, announcements or any other communications deemed of interest to you by Nexus ISP. Such communications shall be sent in accordance with clause 15 below. You agree to defend, indemnify and hold harmless Nexus ISP from any and all expenses, losses, liabilities, damages or third party claims resulting from any external parties obtaining your personal information without the consent of Nexus ISP.

## **15. Notices**

The parties shall for the purposes of sending notices as described in this Agreement or any subsequent agreements make use of the other party's nominated contact details as provided for in this clause. The parties shall be entitled from time to time by written notice to the other, to vary its contact details, which change will take effect on the date on which the notice is deemed to be received by the other party in terms of clause 15.1 below.

15.1 Any notice required to be given in terms of this Agreement shall be valid and effective only if in writing or where otherwise agreed upon in writing.

15.2 Any notice given by one party to another party (the "addressee") which:

15.2.1 is delivered by hand during normal business hours at the addressee's physical address shall be deemed to have been received by the addressee at the time of delivery;

15.2.2 is given by fax shall be deemed to have been received by the addressee on the first business day following the day of successful transmission of the fax;

15.2.3 is given by pre-paid registered post shall be deemed to have been received by the addressee on the tenth business day following the day of posting;

15.2.4 is given by electronic mail shall be deemed to have been received by the addressee on the second business day following the day of successful transmission of the electronic mail;

15.2.5 is given via the Nexus ISP customer control panel interface located at URL <http://www.nexus.co.za/billing> shall be deemed to have been received by the addressee on the first business day following the day of successful submission.

## **16. Breach**

If you hereto:

breach any of the terms or conditions of this Agreement;

commit any act of insolvency;

endeavour to compromise generally with Nexus ISP's creditors or do or cause anything to be done which may prejudice Nexus ISP's rights hereunder or at all;

allow any judgment against you to remain unsettled for more than 10 (ten) days without taking immediate steps to have it rescinded and successfully prosecuting the application for rescission to its final end; or

are placed in liquidation or under judicial management (in either case, whether provisionally or finally) or, being an individual, your estate is sequestrated or voluntarily surrendered;

16.1 Nexus ISP shall have the right, without prejudice to any other right which it may have against you, to:

- a) suspend or terminate all Services;
- b) treat as immediately due and payable all outstanding amounts which would otherwise become due and payable over the unexpired period of the Agreement, and to claim such amounts as well as any other amounts in arrears including interest and to cease performance of its obligations hereunder as well as under any other contract with you until you have remedied the breach; and/or
- c) cancel this Agreement;

16.2 in any event without prejudice to Nexus ISP's right to claim damages. You shall be liable for all costs incurred by Nexus ISP in the recovery of any amounts or the enforcement of any rights which it has hereunder, including collection charges and costs on an attorney and own client scale whether incurred prior to or during the institution of legal proceedings or if judgment has been granted, in connection with the satisfaction or enforcement of such judgment.

#### **17. Cession**

You shall not be entitled to cede or assign any rights and/or obligations which you may have in terms of this Agreement to any third party unless consented to in writing by Nexus ISP.

#### **18. Lien**

The parties agree that in the event of a breach of this Agreement by you which causes Nexus ISP to suffer damages of any nature whatsoever, Nexus ISP shall not be required to attach any of your hardware in execution, and shall be entitled to retain a lien over such hardware in reduction of any debt due by you to Nexus ISP.

#### **19. Governing Law and Jurisdiction**

This Agreement will be governed by and construed in accordance with the laws of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with South African law by a South African court having jurisdiction.

#### **20. Miscellaneous**

If any of the provisions, or portions thereof, of this Agreement are found to be invalid under any applicable statute or rule of law, then, that provision notwithstanding, this Agreement shall remain in full force and effect and such provision or portion thereof shall be deemed omitted. This Agreement and the rights granted and obligations undertaken hereunder may not be transferred, assigned or delegated in any manner by you, but may be so transferred, assigned or delegated by Nexus ISP. Any waiver or any provision of this Agreement, or a delay by any party in the enforcement of any right hereunder, shall neither be construed as a continuing waiver nor create an expectation of non-enforcement of that or any other provision or right. This Agreement and Nexus ISP's policies are subject to change without notice and are published from time to time on the Nexus ISP website located at <http://www.nexus.co.za>. You are responsible for regularly checking the Nexus ISP website for any changes to this Agreement and your continued use of the Services constitutes your acceptance thereof.