

## TERMS AND CONDITIONS

### INTEREXCEL ADSL

1. General
  - 1.1. These terms and conditions govern the use of all of Interexcel ISP services.
  - 1.2. Submitting this electronic application will serve as a valid and binding contract between the Applicant named on the electronic form and Interexcel, after completion thereof by the applicant and receipt hereof by Interexcel.
  - 1.3. The client or the client's agent certifies that he/she is above the age of 18 years, has full contractual capacity and is duly authorised by the Applicant to contract on Applicant's behalf.
2. Upstream Services
  - 2.1. The provision of Interexcel access service is subject to the provision of upstream services by IS and SAIX.
3. Service availability and confirmation of service availability
  - 3.1. Service availability to any applicant is subject to:
    - 3.1.1. Any credit checks which Interexcel may, in its sole discretion, elect to carry out and, for this purpose, the applicant hereby authorises Interexcel to conduct such checks and provide such information to any relevant credit bureau as may be required for this purpose; and
    - 3.1.2. Compliance by the applicant with the RICA registration requirements.
4. Term and termination
  - 4.1. Interexcel reserves the right to, without notice, suspend all services if payment in terms of paragraph 4 hereof is not duly effected on due date thereof, and to terminate this agreement forthwith and without notice if such payment is not effected on or before the next payment in terms of this application becomes due and payable, and/or if such payment is not also duly made on due date thereof.
5. Rollover of bandwidth
  - 5.1. Bandwidth not utilised by fixed cap subscribers during the relevant period is not carried over and is lost. The fixed cap subscriber will be re-allocated bandwidth at the commencement of the next month.
6. "Topping-up" bandwidth
  - 6.1. Where a subscriber exhausts the purchased bandwidth or reaches the fixed cap he or she will be hard-capped. This means that a subscriber may request a "Top-up" for further access.
7. Concurrency
  - 7.1. Uncapped packages allow only two connection simultaneous for each account while the Capped packages allow five simultaneous connections from different locations for each account.
8. Uncapped DSL - Fair Use Policy
  - 8.1. In order to ensure quality of service and experience across Interexcel client base Interexcel employs throttling based on monthly usage.
  - 8.2. Interexcel reserves the right to amend its management of its Uncapped DSL services although a cap will not be applied.
9. Monitoring of usage
  - 9.1. Interexcel takes steps to monitor the bandwidth usage of subscribers so as to ensure that subscriber bandwidth limitations are not exceeded. This monitoring is subject to the nature of the ADSL service as offered by Telkom, including the fact that monitoring is session-based, i.e. bandwidth usage can only be calculated when the subscriber's DSL session is terminated. As a result a subscriber's current session will be automatically terminated for a very short period of time every 24 hours.
  - 9.2. Interexcel further reserves the right to take such steps as may be necessary to properly monitor and calculate usage, including remotely terminating subscriber DSL sessions.

- 9.3. Where a subscriber exceeds the pre-purchased bandwidth or fixed cap (where applicable) then:
    - 9.3.1. Interexcel, at its sole discretion, may allow a degree of over-usage
    - 9.3.2. Such allowed over-usage constitutes a discretionary indulgence and shall not in any manner constitute a waiver or relaxation of Interexcel's rights to enforce the hard cap.
    - 9.3.3. Interexcel may, at its sole discretion, recover the cost of the over-usage. Such recovery will be from the subsequent month's fixed cap or the next top-up purchased.
  - 9.4. Notwithstanding the monitoring of usage the subscriber agrees that they remain solely responsible for ensuring that they do not exceed their allowable bandwidth during any applicable period.
  - 9.5. Interexcel also monitors its systems for performance and accounting purposes. The information gained thereby and by any other means may be used to ensure that the Terms of Use and AUP are being complied with.
10. Subscriber usage management
- 10.1. Subscribers will receive a daily report on their usage to avoid being prematurely hard capped.
11. Disclaimer and Limitation of Liability
- 11.1. Interexcel accepts no liability for any loss or damage to the property or equipment of the client arising out of the provision, installation or maintenance of the DSL access service.
  - 11.2. Application for use of and subscription to this service are at the sole risk of the subscriber or applicant.
  - 11.3. Subscribers are solely responsible for all actions authenticated by credentials associated with their account(s). It is advised that authentication credentials be changed regularly to allay concerns of security. Interexcel accepts no liability for any loss or damage suffered by Subscribers for any loss or damage suffered by the use of Subscribers' authentication credentials.
  - 11.4. The provision of the Interexcel DSL service is subject to:
    - 11.4.1. The provision of upstream and network services;
    - 11.4.2. Network availability;
    - 11.4.3. Distance of the applicant from the local exchange;
    - 11.4.4. Copper quality as provided by Telkom; and
    - 11.4.5. Line sync speed limitations as may be applied or incurred through Telkom.
  - 11.5. Interexcel reserves the right to refuse DSL service based on network, domain and/or equipment identifiers.
  - 11.6. Interexcel will not be liable to the subscriber or any third party in respect of all and any damages, loss, claims or costs, of whatever nature and including but not limited to direct, indirect, consequential or special damages, suffered by the subscriber or third party, howsoever arising.
12. Indemnity
- 12.1. The client indemnifies and holds harmless Interexcel in respect of any damages, loss or costs or claims instituted against Interexcel arising from any application or subscription to or use of the service or breach of the terms and conditions applicable to it.

#### INTEREXCEL ADSL LINE RENTAL

13. Quality of Service
- 13.1. Due to the fact that Telkom cannot guarantee the bandwidth throughput achieved when subscribers access the Internet utilising a DSL access line, Interexcel can likewise also not offer such a guarantee.
  - 13.2. Please note that DSL is an access medium to the Internet and accordingly remains subject to any bandwidth related constraints which may apply to or be experienced in the use of the World Wide Web (WWW).
14. Telkom Voice Line Rental
- 14.1. ADSL Line Rental clients remain liable to Telkom for the monthly Voice Line Rental fee, regardless of whether the Voice Line is in use (plugged in) or not. Telkom requires that voice lines remain active in order to provide ADSL services.
  - 14.2. Telkom will bill clients directly for Voice Line Rental.
15. Repairs

- 15.1. Interexcel will be entitled to assume that DSL service provision to a subscriber is in good working order until such time as the subscriber advises Interexcel Support of any problems or service breaks.
  - 15.2. Any faults or service interruption should be reported immediately.
  - 15.3. According to the circumstances of the service interruption and nature of the repairs required, either Interexcel or Telkom will attend to faults reported by the subscriber during office hours and the relevant party will apply its reasonable endeavours to have the DSL service restored in the shortest possible time.
  - 15.4. If either Interexcel or Telkom determines that the fault reported by the subscriber was caused by subscriber equipment which is not covered by a maintenance agreement with Interexcel, the subscriber shall be liable for payment of the relevant call-out charge as determined by Interexcel or Telkom from time to time.
16. Service credit
- 16.1. The subscriber shall be entitled to a credit on the rental amount payable for the service, pro rata to the duration of the interruption if the ADSL service has been completely unavailable for a continuous period of at least twenty four (24) hours. The credit shall exclude rental for the twenty four (24) hour period.
  - 16.2. The calculation of time periods for the purpose of calculating any service credit shall only commence upon the reporting of any fault to Interexcel Support.
17. Cancellations
- 17.1. Cancellations will only be accepted if done in writing. Interexcel requires one calendar month's written notice, after the initial contract period, which notice will take effect on the first day of the month immediately following the end of the notice period.
  - 17.2. Cancellation of any ADSL service (Data or ADSL Line rental) is the client's responsibility and should also be done in writing. The client is responsible for ensuring that such cancellation of service is actioned with due attention to terms of cancellation, as well as cancellation conditions which require the client to specifically indicate a required process (for example whether an ADSL Line Rental service should be moved back to Telkom or cancelled entirely). Verbal cancellations will not be valid and will not be deemed as a cancellation.
18. Amendments
- 18.1. Subscribers are required to note that, due to a variety of factors including upstream costs, tariffs and the terms and conditions of upstream providers, these terms and conditions are subject to change. Subscribers agree to check these terms and conditions regularly and Interexcel will highlight any changes made.
  - 18.2. Where changes to tariffs or the terms and conditions of service are made, the subscriber will be deemed to have agreed to the amended tariff or terms and conditions if they continue to use the service. In the event that a subscriber does not agree with any amendment they should cease using the service and contact Interexcel.

## INTEREXCEL DOMAIN AND HOSTING SERVICES

19. Introduction
- 19.1. These terms and conditions govern the use of the Interexcel domain registration and hosting services. By contracting with Interexcel for the services you will be lawfully regarded as having agreed to your use of the services specified being governed by this agreement.
  - 19.2. The client or the client's agent certifies that he/she is above the age of 18 years, has full contractual capacity and is duly authorised by the client to contract on client's behalf.
20. Domain Registration
- 20.1. Interexcel registers domains on the Internet through the relevant governing bodies and hosts websites and related material on the Interexcel server(s) on behalf of clients. These terms and conditions apply to the use and registration of domain names and the web hosting services offered by Interexcel.
  - 20.2. Domain registration may be discounted or offered free of charge with Hosting products, depending on the nature and type of TLD (Top Level Domain). This offer is based on the assumption that the

domain (and site content) will be hosted with Interexcel for a reasonable period. We reserve the right to, at our discretion, charge a parking fee where a minimum period (3 months) has not been observed on the Hosting product before downgrading to a Parking product. The fee will depend on the type of domain and applicable administration fees.

20.3. Initial Set-up fees are non-refundable. Domain Name Registration fees constitute a once-off payment subject to certain renewal charges.

## 21. Domain Transfer

21.1. Interexcel will transfer existing (registered) domains from existing hosting providers to Interexcel's DNS and web servers. Upon requesting the transfer, and accepting the Terms & Conditions, the client explicitly agrees that they have the authority to do so, being the owner of the domain in question, or having been nominated as an agent of the legal owner. The client thereby indemnifies Interexcel from any disputes regarding ownership of the domain and any claims as a result thereof.

## 22. Cancellation

22.1. A cancellation request in respect of any Domain Registration, Web Hosting or Dialup service must be done in writing one calendar month (30 days) before the date of ceasing the service.

22.2. Interexcel reserves its rights to change its prices at any time on reasonable notice. Interexcel reserves the right to stop offering certain web hosting package types if it deems it necessary. Interexcel will then either provide the web hosting service for the remainder of the time that has been paid for or refund the amount paid for that specific package.

## 23. Liability for registration and use of domain names

23.1. Interexcel has not and does not conduct pre-registration searches in respect of the client's use and registration of its selected Domain Name/s and is therefore not obliged to either advise the Domain Name client about possible conflicting third party rights or to take steps to ensure against possible disputes concerning a third party's intellectual property or other rights.

23.2. The use or registration of the Domain Name by a client does not interfere with nor infringe the rights of any third party in any jurisdiction with respect to trademark, service mark, trade name, company name, close corporation name, copyright nor any other intellectual property right, and that client has the right to use the Domain Name as requested.

23.3. Interexcel cannot act as an arbiter of disputes arising out of the registration and use of Domain Names. At the same time, clients acknowledge that Interexcel may be presented with evidence that a Domain Name registered by a client violates the rights of a third party. In such instance Interexcel shall be allowed to provide a complainant with the client's name and address and all further communication will exclude Interexcel and Interexcel will have no further obligations to the client. In such instance the client shall be entitled to continue using the Domain Name registered for the client by Interexcel until a court or other body with jurisdiction directs otherwise.

## 24. Hosting services

24.1. Interexcel reserves the right to suggest suitable alternatives to the client and / or charge for excessive traffic as it deems necessary, at its sole discretion.

24.2. Bandwidth Usage Allocations (and unlimited web traffic on Shared Hosting) are based on calculated normal usage as intended for the specific product. The following activities (and resultant excessive bandwidth usage) are prohibited and Interexcel reserves the right, at its sole discretion, to summarily suspend services as provided by the Acceptable Usage Policy:

24.3. Otherwise circumventing the Acceptable Usage Policy or intended use of the product.

24.4. Interexcel reserves the right to suggest suitable alternatives to the client for excessive Web Server Processor usage as it deems necessary, at its sole discretion.

24.5. Interexcel reserves the right to move a website between web servers and internet backbones, both within South Africa and internationally as it deems necessary. If a client moves in excess of their monthly web traffic allocation, then the client will be contacted and various options will be presented.

24.6. Interexcel reserves the right (but does not assume any obligation) to inspect the contents of data that the client transmits, receives or stores on an Interexcel Server to ensure compliance with this Agreement or any applicable laws regulations or codes of practice.

## 25. Backups

- 25.1. Clients are solely responsible for backing up their data and Interexcel strongly encourages ALL Hosting clients to do so as frequently and completely as possible. Interexcel will not be liable for any data loss or any other losses or damages related to backups or data recovery without exception.
- 25.2. Interexcel may, in some instances, offer a separate backup service in conjunction with dedicated hosting, and will make such backups available to clients on request as and when they are available. However, Interexcel does not warrant or guarantee the availability, completeness or "up to date" status of such backups. Clients are still ultimately responsible for their own data, and Interexcel strongly encourages such clients to continue to make their own backups as frequently and completely as possible to ensure that they have recourse in the event of any failure.
- 25.3. Interexcel also cannot guarantee the condition or fitness of any backups provided. Such backups are provided "as is" and are used at the client's own risk and discretion - whether restored by Interexcel by instruction from clients or by clients themselves. Interexcel will not be liable for any losses or damages relating to any incidents arising out of such backups being provided (or not provided) to clients on request.

## 26. Disclaimers, Limitations and Indemnities

- 26.1. Interexcel will not be liable for any loss or damage, interruption of business, or any indirect, special, incidental, or consequential damages of any kind (including lost profits), regardless of the form of action, whether in contract or otherwise which may be suffered as a result of or which may be attributable, directly or indirectly, to the use and/or registration of the Client's selected domain names/s or any action taken by Interexcel in response to the abuse of the domain registration services which it offers.
- 26.2. The Client hereby indemnifies and holds harmless Interexcel against any loss whatsoever arising from any dispute or claim or other action occasioned by the Client's use and registration of its selected Domain Name, even if Interexcel has been advised of the possibility of such damages;
- 26.3. Interexcel will not be liable for any indirect or consequential loss, damage, cost or expense of any kind, irrespective of how such damage or loss was caused, whether arising under contract or otherwise, including, and not limited to, data loss or corruption, loss of profits, contracts, operation time and goodwill.
- 26.4. Neither Interexcel, its employees, affiliates, agents, third party information providers, merchants, licensors or the like, warrant that Interexcel's Server service will not be interrupted or error free; nor do they make any warranty as to the results that may be obtained from the use of the Server service or as to the accuracy, reliability or content of any information service or merchandise contained in or provided through the Interexcel Server service, unless otherwise expressly stated in this Agreement.
- 26.5. Interexcel expressly limits its damages to the Client for any non-accessibility time or other down time to the pro-rata monthly charge during the system unavailability. Interexcel specifically denies any responsibilities for any damages arising as a consequence of such unavailability.
- 26.6. Interexcel is not responsible if an external company network and firewall is setup to block access to services Interexcel provides. If a client's network is setup to block certain ports or web addresses that compromise the services Interexcel provides it is the client's responsibility to ensure that their network configurations are changed as necessary.

## 27. 99.9% Website Uptime Guarantee

- 27.1. The 99.9% website uptime guarantee is applicable only if the web server on which a client's shared web hosting account resides crashes or goes down at an unscheduled time. This guarantee is not valid if there is any network problem between the client and the web server which prevents the client from seeing the web server, e.g. if the client's ISP's link to the respective data centre goes down or is faulty, but the web server Interexcel hosts is still up, we are not responsible for the client not being able to reach their website.
- 27.2. Interexcel is not responsible if any third party operated network or service experiences problems and outages (i.e. all network infrastructure and links, client's internet connection, firewall service managed by external parties). If the applicable web server is up and running at all times then the website will be deemed to have achieved 99.9% uptime.
- 27.3. The 99.9% website uptime guarantee does not apply to any scheduled downtime for maintenance of any of the Interexcel web servers. If there is scheduled maintenance to be done the client will be

notified at least 24 hours in advance. The scheduled maintenance will always be done after hours (based on Central African Time (CAT)) and the web server downtime will be kept to a minimum.

- 27.4. Third party monitoring service reports may not be used for justification due to a variety of factors including the monitor's network capacity/transit availability. The uptime of the server is defined as the reported uptime from the operating system and the Apache Web Server which may differ from the uptime reported by other individual services.
28. Use at Clients's risk
- 28.1. Interexcel will exercise no control whatsoever over the content of the material hosted on, or the information passing through the Interexcel network and in no way moderates such content.
- 28.2. Clients expressly agree that use of Interexcel's Server(s) and Services are at the client's sole risk.
- 28.3. Interexcel is not responsible for files and/or data residing on a subscriber's account. The subscriber agrees to take full responsibility for files and data transferred and to maintain all appropriate backup of files and data stored on the Interexcel web servers, including e-mail, databases and site content.
29. Limitation on mail size
- 29.1. Individual mail sent to the client's POP3/IMAP box or forwarded to the client's existing email address may be limited to 20Mb in size each.
30. Refusal of services based on network, domain and/or equipment identifiers
- 30.1. Interexcel reserves the right to refuse domain and hosting services based on network, domain and/or equipment identifiers.
31. Termination
- 31.1. Should the client breach of any of the terms and conditions contained herein, including but not specifically limited to the payment terms, Interexcel has the right (solely at Interexcel's discretion) to immediately demand payment of the full amount owing and demand compliance forthwith with all the terms and conditions, alternatively to terminate the agreement and services forthwith, in either instance without in any way derogating from any common law, contractual and or delictual rights which Interexcel may have.
- 31.2. Interexcel reserves the right to suspend or terminate the service of any client that does not comply with the terms and conditions, Acceptable Use Policy, Acceptable Hosting Policy or any other contractual obligations.

#### GENERAL PROVISIONS

32. Clients hereby confirm that all statements made in this application are true and correct. Interexcel reserves the right to request proof thereof.
33. Any disputes arising in relation to this application or the supporting documents shall be governed by the applicable laws of the Republic of South Africa.
34. Any form of abuse of Interexcel staff will result in suspension or termination of your services, irrespective of the form and medium of this abuse.
35. In the event that any of the terms of this document are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining terms, which will continue to be valid and enforceable.
36. Interexcel reserves the right to remove any content hosted by that member which it considers illegal or for which it has received a take-down notice.
37. Identity Verification Requirements (RICA)
- 37.1. All ADSL products are subject to ID verification, as per RICA requirements (Regulation of Interception of Communication Act of 2009). Clients are required to email, fax or upload a clear, legible copy of their valid Identity Document or Driver's Licence. Non-South African citizens may submit a copy of their valid Passport or International Driver's Licence. Verification documents must contain photo

identification. Failure to produce ID verification account will result in the product not being activated, regardless of any pro-rata amounts billed.

- 37.2. Should the client cancel all their current valid ADSL products, ID verification will be required on signup for new products. ID verification will not be requested as long as verified ADSL products remain active.
- 37.3. For other products, such as Web Hosting, Interexcel reserves the right to, at any time, request verification of the identity of the Primary Account Holder. Failure to produce such verification could result in summary suspension or cancellation of the product(s).

#### 38. Payment, Penalties and Payment Terms

- 38.1. The amounts owing for the initial month will be pro-rated from the date of signature to the end of the initial month and shall be added to the first debit at the end of the subsequent month. Clients shall ensure that there are sufficient funds in the account, details of which have been supplied to Interexcel to cover such amount.
- 38.2. In the event that a debit order amount is recalled due to incorrect information supplied by the client or due to insufficient funds in the client's bank account the hosting of the website will be immediately suspended.
- 38.3. In the case of a website being suspended due to non-payment a reconnection fee of R150.00 will be payable before the website is unsuspended.
- 38.4. In the case of an annual web hosting account being terminated by the client before their prepaid hosting term ends there will be a calendar month notice period and a R100 administration fee charged.
- 38.5. Interexcel may record the existence of the client's account with a Credit Bureau.
- 38.6. Interexcel may record and transmit details of how the client has performed to a Credit Bureau, and how the account is conducted by the client in meeting their obligations on the account.
- 38.7. Interexcel only accepts Debit Order, Credit Card and EFT payments for month to month services, and will only accept alternative payment under specific circumstances and only by prior arrangement at Interexcel's discretion.
- 38.8. Interexcel will not accept any liability or responsibility for delays, suspensions or impact to services due to use of non-approved payment methods by clients.
- 38.9. Unpaid Debit Orders, declined Credit Cards or any other irregularity regarding payment which results in non-payment will result in immediate suspension of services (which may not be limited to the particular service in question). Interexcel retains the right to suspend any services provided in light of non-payment, and to withhold such services until all arrears are settled in full on any and all products and services.
- 38.10. Interexcel will charge a Reconnection Fee for non-payment and subsequent reactivation of services of R150.00, and such fee will be charged at Interexcel's discretion. Reconnection fees are payable in full before any services can be reactivated, once suspended. Interexcel may charge multiple reconnections fees where multiple products are affected, and may charge "escalating" penalties for repeated non-payment offences. Any prior leniency shown in this regard will not prejudice Interexcel's right to enforce such penalties in full at any time (within their discretion).

#### 39. Debit Order Authorisation

- 39.1. By accepting these Terms and Conditions, clients hereby authorize Interexcel to debit their nominated bank account or credit card any variable amount pertaining to the service or products they have selected, on sign up for a calculated pro-rata and thereafter in the beginning of each month (or on signup entirely for purchase of non-service products). This sum being the amount for settlement of the monthly amount due by the client in respect of services or products.
- 39.2. The client authorises Interexcel's nominated agent to debit their account or card on Interexcel's behalf. The debit authority will remain in force until such services or products are cancelled, though the client agrees that debits related to cancellation notice periods will be honoured before the expiration of the debit authority.
- 39.3. The client agrees that the party hereby authorized to debit their bank account or credit card may not cede or assign any of its rights and that the client may not cede any of their obligations in terms of this debit order instruction to any third party without prior written consent of the authorized party.

39.4. Unpaid Debit Orders, declined Credit Cards or any other irregularity regarding payment which results in non-payment will result in a R50.00 administration cost fee.

*DD: 23/01/2014*