



## iCall™ 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's subscription to the service, together with the acceptance of these terms and conditions.

1.2 **Application Form:** the Subscriber's application form that he completed in subscribing to iBurst.

1.3 **Charges:** The monthly subscription of R50 that is inclusive of VAT to be paid by the subscriber in respect of the service.

1.4 **Effective Date:** Notwithstanding the date of signature of the application form, the date of activation of service.

1.5 **Installation:** The installation of equipment or software 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 or SIP (signalling protocol).

1.7 **License:** The License issued by the telecommunications regulator granted to the Service Provider to provide the iCall™ service.

1.8 **VOIP:** Voice Over Internet Protocol, utilised to make a voice call made over the Internet using Internet Protocol

1.9 **VOIP Access Numbers:** The access numbers, unique Subscriber name or subscription numbers used to identify Subscribers to the iCall™ service.

1.10 **Order** An order placed by a Subscriber to the Service Provider for the provision of the iCall™ services.

1.11 **Parties:** Service Provider and Subscriber.

**Party** refers to either one of them as so determined by the context.

1.12 **Service Provider:** iBurst (Pty) Ltd.

1.13 **WBS:** Wireless Business Solutions (Pty) Ltd that holds the licence to provide the services.

1.14 **Services:** iCall™ and Webfone services offered by the Service Provider as a supplementary service to an existing fixed line phone service.

1.15 **Subscriber:** Any party to whom the iCall™ services are made available in terms of the Agreement.

1.16 **Equipment:** The iBurst approved or other applicable Subscriber terminals, including VoIP Gateway, VoIP Router, VoIP Softphone, VoIP PBX used by a Subscriber to make a voice call and may include any other special equipment provided by the Service Provider in order to facilitate any future enhanced services to Subscribers.

1.17 **VAT:** Value Added Tax as provided in terms of the Value Added Tax Act 89 of 1991.

1.18 **VAS:** Value Added Services

1.19 **Webfone:** an SIP-compatible Internet Phone that also works as the Equipment for an external PC requiring Internet connectivity.

## Part 1: **General Terms and Conditions**

### 2. **Commencement and termination**

2.1 The Agreement shall commence on the date of subscription to the Service and shall, subject to the provisions of clause 7 and 9 below, continue for an unlimited period unless terminated:

2.1.1 By the Subscriber, on expiration of the Subscriber's subscription to the service as the case may be, by giving to the Service Provider a written notice of termination of not less than one calendar month.

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

2.2 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 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 equipment or any damages.

### **3. Supply and installation of the equipment and 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 do its best to comply promptly 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 any reason. The Service Provider may in its discretion refer the Subscriber to a third party who may undertake the installation of the 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.

3.6 The Subscriber hereby warrants and undertakes in favour of Service Provider that the Subscriber:

3.6.1 Shall not use nor allow the 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 Services.

3.6.2 Shall only use the 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 equipment and the provision of services.

3.6.3 Recognises that no right, title or interest in the software contained in the

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 equipment.

#### **4. Access and Charges**

4.1 In consideration for the provision of the Services, 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 email sent to the Subscriber on subscription.

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 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 statements 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 The Subscriber will be able to purchase airtime vouchers on [www.iburst.co.za](http://www.iburst.co.za) to have access to the service and all remaining airtime vouchers will be forfeited.

4.9 The Service Provider reserves the right to charge a cancellation penalty.

4.10 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.

4.11 The service is available free of charge between the Subscribers

4.12 The Subscriber who signs up a 24 month Webfone agreement will receive access to iCall™ but will be required to purchase subscription and vouchers to make calls.

4.13 iCall™ and Webfone VAS subscriptions will be subject to credit-vetting if the Subscriber is currently on a month-to-month package.

4.14 iCall™ and Webfone VAS cancellations will be subject to standard agreement cancellations.

4.15 The standard iBurst package rules apply to all iCall™ and Webfone 24 month agreements.

## **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 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 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 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 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 equipment either on the required date or at all; and/or

6.1.2 The Services are interrupted, suspended or terminated for whatsoever reason; and/or

6.1.3 Service Provider fails to suspend the provision of the 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) 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 in law.

## **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 equipment and related risks as referred to the 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 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 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 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 the 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 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.

9.7 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 aforementioned events.

## **10. Consent/Authority**

10.1 The Subscriber consents to the Service Provider using Subscriber's 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 equipment**

### **11. Sale of equipment and conditions applicable**

11.1 The sale of equipment by Service Provider to the Subscriber at a subsidised price as set out in the 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 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 equipment shall be limited to the warranty provided by the manufacturer of the equipment. All delivery costs shall be for the Subscriber's account.

11.2 Should the Subscriber, upon purchase of the equipment discover any fault or defect in the VoIP equipment, the Subscriber shall within 3 days of purchase return the equipment to Service Provider in the same condition and packaging as the equipment was purchased along with the proof of purchase. Service Provider shall replace the damaged or faulty equipment. In the event of the Subscriber not returning the equipment packaging to Service Provider, Service Provider may charge the Subscriber a packaging fee.

## **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 P.O. 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. **Quality of Service**

The Service Provider does not guarantee the quality of service of the service.

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. By activating the Service, the Subscriber acknowledges that he/she has read and understood, and agrees, to the terms and conditions of this Agreement. The Subscriber also agrees that he/she is entering into a legally binding agreement with iBurst upon accepting these terms and conditions. These terms and conditions should be read in conjunction with the standard Subscriber terms and Conditions.

15. **Termination** 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. The Subscriber may terminate the service by giving the Service provider 30 days cancellation notice.

### 16. **Interception of communications**

Subject to the provisions of Regulation of Interception of Communications and Provision of Communication-related information Act (RICA), 70 of 2002, the Subscriber acknowledges the Service Provider's right to intercept, block, filter, read, delete, disclose and use all communications sent or posted via the Service Provider's network. RICA may be accessed from <http://www.info.gov.za/acts/2002/a70-2002>.

