



## Subscriber Standard Terms and Conditions

### 1. DEFINITIONS

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

- 1.1 **“Add-ons”**: Additional services to the Services offered by iBurst from time to time.
  - 1.2 **“ADSL”** means Asymmetric Digital Subscriber Line, as offered by iBurst in terms of the ADSL Terms and Conditions found at the link at the bottom of these Subscriber Standard Terms and Conditions.
  - 1.3 **“Agreement”**: The Subscriber Application Form setting out the Subscriber’s details, together with all annexures attached thereto, and the Subscriber Standard Terms and Conditions.
  - 1.4 **“Calendar Month”** the period from the first day of the month to the last day of the month e.g. 1 January to 31 January. If a notice is given in the middle of the month, the calculation thereof will commence from the following first day of the month.
  - 1.5 **“Charges”** means charges related to the provision of Services, including but not limited to, the connection charges, monthly service charges, usage charges, charges related to value-added services provided to the Subscriber in terms of the Agreement, once-off costs for activation of Services, costs of subsidizing the Hardware, costs of acquiring the Subscriber, administration costs, postage charges, Hardware restoration costs, packaging costs and any other charges pertaining to the provision of the Services.
  - 1.6 **“Contract Term”**: The period of validity of the Agreement, as indicated on the Subscriber Application Form, commencing on the Effective Date.
  - 1.7 **“Data Carry-over Rules”**: the rules applicable to the usage of data by the Subscriber(s), available at the following link: [http://www.iburst.co.za/neuvo.aspx?link=get\\_packages\\_carryoverrules](http://www.iburst.co.za/neuvo.aspx?link=get_packages_carryoverrules)
  - 1.8 **“Downward Package Migration”**: moving from one subscription level to another with a lesser subscription rate value per month within the same technology.
  - 1.9 **“Early Cancellation Charges”** means the charges due to iBurst, including but not limited to, the balance of the contract, cooling-off period cancellation charges to be determined by iBurst, administration costs, usage charges, discounts provided, costs of subsidising the Hardware, hardware restoration and packaging costs, monthly service charges and any other charges pertaining to the provision of the Services.
  - 1.10 **“Effective Date”**: the date of commencement of the Agreement, or the date of delivery of Hardware/ Services to the Subscriber who entered into this Agreement.
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- 1.11 **“Hardware”**: The hardware type approved by iBurst or other applicable user hardware, including but not limited to the antennas, modems, laptops, web phones and communication cards used by the Subscriber to send and/or receive any data signal via an MDN radio link. It may include any other special equipment provided by the Network Operator in order to facilitate any future enhanced services to Subscribers.
- 1.12 **“HSPA”**: High-Speed Packet Access, as offered by iBurst in terms of the HSPA Terms and Conditions found at the link at the bottom of these Subscriber Standard Terms and Conditions.
- 1.13 **“iBurst”** refers to iBurst (Pty) Ltd, registration number: 2004/029951/07, a company registered in terms of the laws of the Republic of South Africa.
- 1.14 **“Installation”**: The act of installing Hardware at a location or on the Subscriber’s laptop/desktop or a similar device specified by the Subscriber in the Order.
- 1.15 **“Internet”**: The interconnected system of networks that connect computers around the world via the TCP/IP protocol.
- 1.16 **“Licence”**: The national mobile data telecommunication licence granted to the Network Operator, iBurst, to provide a national mobile data telecommunication service by means of a mobile data network.
- 1.17 **“MDN”**: The mobile data network established and operated by the Network Operator in terms of its Licence.
- 1.18 **“Mobile Access Number”**: The mobile access number, IP address, unique user name or subscription number used to identify the Subscriber who has access to the Services.
- 1.19 **“Network Operator”** or **“WBS”** (Wireless Business Solutions (Pty) Ltd): the company which has granted iBurst the authorisation to make Services available to the Subscriber.
- 1.20 **“Order”**: An order placed by the Subscriber for the provision of Services by iBurst.
- 1.21 **“Parties”** refers to the person(s) and service provider(s) involved in this Agreement. It can refer to iBurst, the Network Operator and/or the Subscriber as determined by the context.
- 1.22 **“Regulator”** refers to the Independent Communications Authority of South Africa (ICASA).
- 1.23 **“Renewal Period”**: A period indicated by the Subscriber in writing or another recorded form (except via SMS), commencing on the day immediately following the expiration of the Contract Term, or an anniversary of the expiration period, as the case may be.
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1.24 **“Services”**:

- a. 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 iBurst in terms of the Agreement.
- b. The services chosen by the Subscriber in the Subscriber Application Form, including any additional value-added services (which have their own specific terms and conditions).

1.25 **“Subscriber”**:

- a. Any party to whom Services are made available in terms of the Agreement.
- b. the corporate or retail subscriber, their successors or authorised assignees, to whom the Hardware and Services are provided in terms of this Agreement and whose details appear on the Subscriber Application Form.

1.26 **“Subscriber Application Form”** means the physical or online application form completed by either a business or individual subscriber; it forms part of the Agreement.

1.27 **“Upward Package Migration”**: moving from one subscription level to another with a higher subscription rate and value per month within the same technology.

1.28 **“VAT”**: Value Added Tax as provided for in the Value Added Tax Act, Act 89 of 1991.

## **PART 1: GENERAL TERMS AND CONDITIONS**

### **2. COMMENCEMENT, RENEWAL AND TERMINATION**

2.1 The Agreement shall commence on the Effective Date and shall, subject to any other termination provision stated in this Agreement, including the Subscriber Application Form and any other addendum thereof, continue for the agreed Contract Term, and thereafter continue automatically on a month-to-month basis and/or for the specified Renewal Period unless terminated:

2.1.1 By the Subscriber, on expiration of the Contract Term or Renewal Period, as the case may be, by giving iBurst written notice (except via SMS) of termination not less than one (1) calendar month and not more than three (3) calendar months before the expiration of the Contract Term or the Renewal Period, as the case may be; and/or

2.1.2 By the Subscriber by giving iBurst notice in writing (except via SMS), within a period of seven (7) calendar days from the Effective Date. The Subscriber acknowledges that Early Cancellation Charges shall apply and that Hardware returned as a result of the Subscriber terminating this Agreement in terms of this clause has to be returned at the Subscriber’s expense and in its original condition and packaging; and/or

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- 2.1.3 By the Subscriber for any reason whatsoever before the expiry of the Contract Term or Renewal Period. In this case, the Subscriber shall be obliged to pay iBurst the applicable Early Cancellation Charges as well any other applicable Charges, whether due at the time of cancellation or not.
- 2.1.4 By iBurst, after twenty (20) business days' notice to the Subscriber of the rectification of material failure, after which the Subscriber has failed to comply.
- 2.1.5 By iBurst, after a 20 business days' written notice, in the event that the Network Operator has to upgrade its network and cannot continue providing the same or alternative service/s at the same or other price/s and/or the License to provide the Services has been revoked, terminated or amended by the Regulator for any reason whatsoever. In this case, the Subscriber may, using own discretion, decide to continue or discontinue the subscription with iBurst but return the subsidized Hardware to iBurst.
- 2.1.6 By iBurst, after a 20 business days' written notice, in the event that the costs of providing the services to the Subscriber/s become financial unviable and or unreasonable for iBurst to continue providing the services to the subscribers. For this reason, iBurst may, after a 20 business days' written notice to the affected Subscribers, terminate the Services accordingly.
- 2.2 Notwithstanding the use of agents or other intermediaries (Delegated Service Providers) by iBurst, the Order by the Subscriber is a request made by the Subscriber to iBurst and will be considered once received by iBurst. iBurst's acceptance of the Order shall consist of the Subscriber's signing the Subscriber Application Form and/or delivery of the Hardware and/or Services to the Subscriber; this shall constitute a valid binding agreement between iBurst and the Subscriber.
- 2.3 The Subscriber may not terminate the Agreement and demand reimbursement for Hardware or any damages of whatsoever nature as a result of the Subscriber's relocation to an area outside of iBurst's coverage. It is the Subscriber's responsibility to ensure that he/she/it is happy with coverage in the area where the Services are provided by iBurst. Should the Subscriber opt to terminate the Agreement before the expiry date, iBurst reserves its right to impose Early Cancellation Charges on the Subscriber.
- 2.4 Notwithstanding clause 2.1 above, the Subscriber may extend the Agreement to another 12, 24 or 36-months by giving not more than three (3) calendar months' written notice (except via SMS) and not less than one (1) calendar month's written notice (except via SMS) to iBurst before the expiry of the Contract Term or Renewal Period, as the case may be. Should the Subscriber opt for early renewal, the Subscriber will be responsible for any outstanding amount owing under the Contract Term preceding the renewed Agreement.
- 2.5 Notwithstanding any provision contained in clause 2 or anywhere in these terms and conditions, iBurst shall be entitled to terminate the Agreement at any time and provide a reason for such termination in compliance with the applicable legislation. iBurst may, to avoid causing any inconvenience to the Subscribers, provide, where feasible, alternative internet access, specifically to the existing iBurst Subscribers at such prices and packages to be determined by iBurst at the relevant time.
- 2.6 The Subscriber acknowledges that, upon termination of the Agreement and where data, airtime or
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related Services remains unused, iBurst shall not in any way, convert such unused data, airtime or related Services into credit on the Subscriber's account and refund same to the Subscriber.

2.7 The Subscriber agrees that any cancellation of Add-ons is subject to the provision of a calendar month's written notice to iBurst.

### **3. SUPPLY AND INSTALLATION OF HARDWARE AND SERVICES**

3.1 The Order placed by the Subscriber to iBurst is subject to iBurst's approval.

3.2 iBurst may in its discretion refer the Subscriber to a third party who may undertake the Installation of the Hardware in its own name and on its own behalf and not as an agent of iBurst.

3.3 The Subscriber shall be responsible for obtaining all necessary approvals and authorisations required by the competent authority or body (this includes, but is not limited to, body corporates, local municipalities and provincial governments) for the purpose of any such supply and/or delivery and/or Installation, and the Subscriber hereby indemnifies iBurst against any claim or liability suffered by iBurst by reason of such approval or authorisation not having been obtained.

3.4 All risk in and to the Hardware supplied and delivered by iBurst to the Subscriber shall pass to the Subscriber on delivery.

3.5 If Hardware is lost, stolen or damaged, the Subscriber shall immediately notify iBurst in writing; until such notification, the Subscriber shall remain liable for all costs and Charges pertaining to such Hardware. iBurst shall as soon as reasonably possible replace the Hardware. The cost of this replacement equipment shall be for the Subscriber's account. Such loss, theft or damage and/or the replacement of the Hardware 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 iBurst 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 impairment or interruption to the Services.

3.6.2 Shall only use the Hardware provided by iBurst, and comply with relevant legislation and regulations imposed by any competent authority and all directives issued by iBurst relating to the use of Hardware and the provision of Services.

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

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- 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, iBurst reserves its right to limit the Subscriber's top up data.
- 3.8 Hardware attached to a prepaid agreement shall not be used in any other contract except for prepaid services.
- 3.9 The Subscriber acknowledges that the availability of voice services provided by the Service Provider is dependent on an active access network.
- 3.10 Pay per use is billed to the maximum credit limit as agreed to with the Subscriber for any usage recorded by the Service Provider whilst on the Service. The Subscriber is billed per MB at the quoted rate.
- 3.11 The Subscriber acknowledges that there are Data carry over rules applicable to the various packages provided by iBurst, the rules apply as follows:

Product	Data Carry over Type	Time Limitation
iBurst Capped Wireless packages	Anytime Data	Up to 3 months
iBurst Capped Wireless packages	Midnight to morning data	No carry over
All iBurst Uncapped Wireless packages	Daily Data Allocation	No carry over

#### **4. CHARGES**

- 4.1 In consideration of the provision of the Services, Hardware and any other services supplied by iBurst to the Subscriber, the Subscriber shall effect payment to iBurst of the applicable Charges, as detailed in the Subscriber Application Form and whether or not the Services have been, or are being utilised by the Subscriber.
- 4.2 iBurst 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 iBurst in writing, the Subscriber shall effect payment to iBurst:
- 4.3.1 for the supply, delivery, maintenance and Installation of Hardware on presentation of the invoice for such delivery.
  - 4.3.2 in advance for monthly service charges and for all other Charges, monthly in arrears, in either event in full, within twenty-one (21) days from date of the relevant invoice.
  - 4.3.3 at iBurst's premises or iBurst's bankers in Johannesburg. Where payment is made by the Subscriber by means of 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 iBurst.
- 4.4 Notwithstanding the provisions of clause 4.3, iBurst may at any time, by reasonable written notice to the Subscriber, vary its invoicing and payment procedures and requirements.
- 4.5 In the event that iBurst 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:
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- 4.5.1 Cancels such debit order without the written consent of iBurst.
  - 4.5.2 Changes his banking details upon which the debit order relies, without giving iBurst prior notification of such change and providing iBurst with the Subscriber's new banking details.
  - 4.5.3 Provides the service provider with incorrect banking details.
  - 4.6 The Subscriber authorises iBurst to debit any bank account held by the Subscriber for the costs owed by the Subscriber to iBurst in terms of this Agreement.
  - 4.7 The Subscriber acknowledges that payments will be debited from the account or credit card in the name of the Subscriber (or in the name of any third party who has consented thereto) as described in the Subscriber Application Form.
  - 4.8 The Subscriber acknowledges that when there are insufficient funds in the account or credit card of a third party to cover the debit, iBurst reserves its right to debit the Subscriber's banking account or credit card in respect of any Charges owed by the Subscriber to iBurst.
  - 4.9 iBurst shall be entitled to levy an administration charge and the Subscriber agrees to pay such a charge in the event that any debit order or other form of payment is returned unpaid from the account or credit card described in the Subscriber Application Form.
  - 4.10 The monthly statement shall be sent by iBurst to the Subscriber to the address supplied by the Subscriber to iBurst. 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 thirty (30) days from the date thereof, the contents of the statement shall be deemed to be correct.
  - 4.11 The Subscriber shall not be absolved from paying the full remaining amount of his/her contract as a result of incorrect invoices being sent and/or failure of iBurst to send statements or invoices to the Subscriber.
  - 4.12 Package migrations:
    - 4.12.1 Month-to-month Agreements: The Subscriber shall be entitled to a Downward Package Migration, subject to one (1) calendar month's notice. A migration fee shall be charged by iBurst for downward migration.
    - 4.12.2 12/24/36-month Agreements: The Subscriber is allowed to Downward Migrate by furnishing iBurst with (1) one calendar month notice; the migration will take immediate effect subject to a fixed migration fee as determined by iBurst from time to time and three (3) months' differential and value of the monthly subscription fee (e.g.: package monthly subscription is worth R100,00; Subscriber migrates to R50,00 package. The differential is  $R50,00 \times 3 \text{ months} = R150,00$ ).
    - 4.12.3 In the event of an Upward Package Migration, no fee will be charged. The Data Carry-over Rules will apply based on the new package. The data will be equivalent to the new package; the Subscriber
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will forfeit any data on the old package. The Data Carry-over Rules are available on the following link: [http://www.iburst.co.za/default.aspx?link=packages\\_carryover](http://www.iburst.co.za/default.aspx?link=packages_carryover).

- 4.12.4 Any migration from one package option to another shall for the duration of this Agreement and be subject to iBurst's approval in its discretion and iBurst 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. The Subscriber acknowledges that there will be no data carried over in the event of any type of migration.
- 4.12.5 In the event that the Subscriber has an existing separate hardware contract, the Subscriber will still be liable for the balance of the Hardware.
- 4.12.6 Should the Subscriber want to migrate to any package with zero-rated Hardware, the Subscriber will not be entitled to receive such zero-rated Hardware. This zero-rated Hardware is only available to Subscribers who sign up for a new agreement.
- 4.13 iBurst reserves the right to levy Charges and Early Cancellation Charges in accordance with the provisions of this Agreement
- 4.14 iBurst reserves its right to cap off-net (Internet) and on-net (iBurst to iBurst) traffic according to its capping limits, as applicable from time to time. In the event of the Subscriber account being capped, iBurst reserves the right to charge the Subscriber for every megabyte used above the cap limit.
- 4.15 The Subscriber indemnifies and holds iBurst harmless for any loss suffered as a result of incorrect amounts being debited in respect of applicable Charges.
- 4.16 The Subscriber shall be responsible for the costs of any additional bandwidth or boosters purchased from iBurst either online or otherwise. The Subscriber acknowledges that there are time delays regarding the updating of the information after purchasing bandwidth/boosters which will be communicated to the Subscriber upon purchase. The additional bandwidth or boosters shall be subject to applicable rules and reflected on the Acceptable and Fair Usage Policy as amended from time to time and available on the following link: [http://www.iburst.co.za/documents/legal/document\\_2.pdf](http://www.iburst.co.za/documents/legal/document_2.pdf).

## 5. SUSPENSION

- 5.1 iBurst may at any time, with the necessary 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.
- 5.1.2 The Subscriber fails to perform any of his or her obligations, or breaches any terms of the Agreement (in which event iBurst may also suspend the Subscriber's use of the Hardware).
- 5.1.3 iBurst is unable to provide the Services to the Subscriber at iBurst's discretion for any reason whatsoever.
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5.1.4 The Subscriber allows children under the age of 16 years unmonitored access to the Services.

5.2 iBurst 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. 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, iBurst 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 iBurst fails for any reason whatsoever to supply and/or deliver and/or provide Installation of Hardware 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 iBurst fails to suspend the provision of the Services to the Subscriber in terms of an arrangement between iBurst and the Subscriber or after the Subscriber has specifically requested iBurst 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 iBurst, its employees or its agents; and/or

6.1.5 Such loss was caused by the Subscriber's actions, including but not limited to: allowing the Services to be accessed by someone else other than the Subscriber, whether such actions are through the Subscriber's negligence, omission or consent.

6.2 iBurst shall not be liable to the Subscriber in any circumstances whatsoever for any loss, injury or damage of any nature whatsoever or howsoever arising and whether in agreement or in delict, including loss of profit or any other special damages, indirect or consequential loss or damages which the Subscriber or any other person may sustain, whether as a result of any breach of this Agreement by iBurst or whether caused directly or indirectly by the Hardware or the use thereof, and the Subscriber hereby indemnifies iBurst and holds it harmless against any claim by the Subscriber or any other person.

6.3 The Subscriber hereby indemnifies iBurst against any claims arising out of: force majeure or act of God (e.g., fire, flood, inclement weather, epidemic or earthquake); war or act of terrorism, including chemical or biological warfare; labour disputes, lockout, strike or embargo; governmental acts, orders or restrictions; failure of suppliers or third persons; or where the claim is a result of an action that is beyond iBurst's reasonable control.

6.4 iBurst shall not be liable for any fraudulent activities that may occur due to access by third parties to the Subscriber's account/ connection/ premises/ voice platform. The Subscriber shall remain liable for the voice account in the event of such fraudulent activity taking place on the Subscriber's account. iBurst reserves its right to scan the Subscriber's voice platform/Hardware for any external vulnerabilities/

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risks. Should iBurst detect a vulnerability/risk, iBurst will advise the Subscriber accordingly and require the Subscriber to eliminate or mitigate the vulnerability/risk at the Subscriber's expense before providing the Services.

## **7. BREACH**

- 7.1 If the Subscriber commits a breach of any of these terms and conditions and remains in default for a period of twenty (20) business days after delivery to the Subscriber of a written notice ("notice of breach") from iBurst calling for such breach to be remedied, iBurst 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 iBurst'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, iBurst may forthwith terminate the Agreement at any time by giving the Subscriber written notice of such termination if (i) the Subscriber fails to make payment of 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 sequestered, 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 iBurst 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 taking away any other rights or remedies available to iBurst in terms of the Agreement or the law, in the event of the Agreement being cancelled by the Subscriber (for whatsoever reason) before the expiry of the Contract Term or Renewal Period, or in the event of iBurst electing to terminate the Agreement pursuant to any breach by the Subscriber which entitles iBurst to cancel, the Subscriber shall be liable to iBurst and hereby agrees to pay on demand, the full Charges payable to iBurst for the remainder of the Contract Term or Renewal Period, as the case may be. The Charges shall include legal costs at the highest scale as between attorney and own client, collection charges, Early Cancellation Charges as well any other applicable Charges whether or not due at the time of cancellation.

## **8. INSURANCE**

- 8.1 iBurst acts as a collection agent for insurance brokers and/or underwriters in respect of the optional insurance of the Hardware and related risks as referred to the schedule or Subscriber Application Form. iBurst 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 Hardware and related risks or in accordance with the procedures introduced by iBurst from time to time, the Subscriber shall not be covered in respect of the Hardware and related risks.
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- 8.3 If at any stage before or after the Subscriber elects to take insurance, the Subscriber requests from iBurst a summary of the terms and conditions of the applicable insurance policy, iBurst 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 insure the Hardware with any other insurance provider and to ensure that the premiums in respect of the insurance policy are paid timeously and in full. If the insurance is provided through iBurst and for any reason, iBurst omits to include insurance charges in a statement to the Subscriber; the Subscriber shall forthwith notify iBurst of such omission. iBurst 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 Hardware 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 iBurst.

## **9. GENERAL**

- 9.1 In the event of the Subscriber failing to effect payment of any amount owing by them to iBurst on due date, then without derogating from iBurst rights in terms of clause 7, the Subscriber shall be liable to effect payment of interest to iBurst on the amount so owing at the prime interest rate as published from time to time by ABSA Bank Limited plus 2% (per cent), 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 iBurst in terms of the Agreement may be ceded and delegated by it to any other party on written notice to the Subscriber.
- 9.4 iBurst 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 iBurst or any circumstances or events similar to the foregoing. iBurst shall notify the Subscriber of any changes as contemplated herein in writing.
- 9.5 A certificate under the hand of any Manager of iBurst certifying the sum of any amount owing by the Subscriber to iBurst shall be prima facie proof of its contents and sufficient proof for the purposes of enabling iBurst 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 Add-ons offered by iBurst. The Subscriber may be required to subscribe to iBurst Add-ons which forms part of a mandatory subscription. The Subscriber shall, however, have a right to request
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to be exempted from such a subscription, which exemption shall be provided at the sole discretion of iBurst.

- 9.7 In the event of iBurst instituting legal proceedings against the Subscriber to recover amounts due to iBurst 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 iBurst, in writing (except via SMS) within 7 (seven) days of occurrence of the afore-mentioned events.
- 9.9 The Subscriber may not allow children to access the Services without supervision and have to ensure that they do not access websites with illegal content, including but not limited to pornographic content and/or gambling.

## **10. CONSENT/AUTHORITY**

- 10.1 The Subscriber hereby consents/authorises iBurst to disclose the Subscriber's name, address and personal details to any party whenever it is reasonably necessary for iBurst to properly perform its functions or protect its interests, or for the purpose of enabling the Network Operator or iBurst to provide emergency services to the Subscriber, or directory or repair services and information to network users generally. In addition, the Subscriber consents to iBurst using any information supplied by the Subscriber for the purposes of informing Subscribers of iBurst's and/or iBurst's affiliates or partners' services which may interest the Subscriber from time to time.
- 10.2 The Subscriber hereby consents/authorises iBurst 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 iBurst to provide regular reports in respect of the Subscriber's payment conduct to any authorised and registered credit reference agency in the Republic of South Africa.

## **PART 2: CONDITIONS FOR SALE OF HARDWARE AND WARRANTIES**

### **11. SALE OF HARDWARE AND CONDITIONS APPLICABLE**

- 11.1 The sale of Hardware by iBurst to the Subscriber at a subsidised price as set out in the schedule and Subscriber Application Form shall be subject to the following terms and conditions:
- 11.1.1 All risk in and to the Hardware supplied and delivered by iBurst to the Subscriber shall pass to the Subscriber on delivery.
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- 11.1.2 Ownership in the leased Hardware will remain vested in iBurst until the expiry of the Agreement. Ownership in the Hardware shall only pass to the Subscriber upon fulfilment of all its obligations in terms of this Agreement.
- 11.1.3 iBurst obligations in terms of any warranties pertaining to the Hardware shall be limited to suppliers'/manufacturers' prescribed warranties. All delivery costs shall be for the Subscriber's account. Warranties exclude negligence, misuse, abuse, power surges and incorrect Installation.
- 11.2 Should the Subscriber, upon purchase of the Hardware discover any fault or defect in the Hardware, the Subscriber shall within 3 days of purchase return the Hardware to iBurst in the same condition and packaging as the Hardware was purchased along with the proof of purchase. iBurst shall replace the damaged or faulty Hardware. In the event of the Subscriber not returning the Hardware packaging to iBurst, iBurst may charge the Subscriber a packaging fee.
- 11.3 The iBurst reserves its right to limit the number of Hardware that may be linked to the Subscriber's 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. iBurst 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, iBurst may vary the amount of the subsidy applied at the time of the sale of the Hardware to the Subscriber. If the subsidy amount is reduced, iBurst shall be entitled to require the Subscriber to pay to iBurst the amount by which the subsidy has been reduced. It being understood that this charge does not constitute a migration fee, but enables iBurst to adjust the subsidy amount to the amount that would have been applicable at the time of sale of the Hardware if the Subscriber had first chosen the package option to which the Subscriber is changing.
- 11.5 Should the Subscriber return the Hardware for any reason whatsoever, the Subscriber shall furnish iBurst with the original tax invoice provided on purchase of the Hardware.

## **12. MISCELLANEOUS MATTERS**

- 12.1 Postal address: Any written notice (except SMS) in connection with the Agreement must be addressed to:
- 12.1.1 In the case of iBurst:  
Attention: The Legal Department  
iBurst (Pty) Ltd  
PO Box 651921  
Benmore, 2010
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12.1.1.2 In the case of the Subscriber:

To the postal address and fax number set out in the Subscriber 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 seven (7) 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 sender 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 (except via SMS) to the other party.

12.2 As address for service of legal documents, 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 iBurst, to:

iBurst (Pty) Ltd  
3012A William Nicol Drive  
Bryanston, 2021  
Fax No: 086 530 4405  
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 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 sending notice in writing (except via SMS) to the other party.

12.3 Entire Agreement: 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.

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- 12.5 Amendment and waiver: iBurst reserves its right to amend these terms and conditions from time to time. No failure, delay, relaxation, or indulgence on the part of iBurst in exercising any power or right conferred upon it in terms of this Agreement shall operate as a waiver of such power or right, nor shall any such failure, delay, relaxation or indulgence be deemed to be a novation of any of the terms and conditions of this Agreement.
- 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 (except via SMS) 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 (except via SMS)]. 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**

- 13.1 The Subscriber hereby gives permission to iBurst to register the information into the Subscriber's payment conduct to any registered credit bureau. The Subscriber waives his/her/its right to claim against iBurst in relation to the disclosure of information related to this provision. iBurst will give the Subscriber twenty (20) business days' notice of its intention to provide a credit bureau with any adverse payment information; and
- 13.2 iBurst reserves its right to blacklist the Hardware on the blacklisted account to prevent the further usage thereof.

### **14. ACKNOWLEDGEMENTS**

- 14.1 The Subscriber acknowledges having read and accepted the terms and conditions of the Acceptable and Fair Usage Policy on iBurst website as well as the terms and conditions as set out herein. The Subscriber acknowledges that these terms and conditions may vary from time to time and shall be updated on iBurst's website. The Subscriber further acknowledges that the terms and conditions available on iBurst's website will be applicable and binding in respect of any dispute arising. The Subscriber acknowledges that any Add-ons supplied to the Subscriber is in accordance to a separate agreement that the Subscriber is
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entering into. The Add-ons are governed in accordance with their own terms and conditions. Furthermore, the Subscriber acknowledges that these terms and conditions will remain in force and effect until the end of the Agreement entered into with the Subscriber. The Subscriber acknowledges that iBurst reserves the right to not provide any free or promotional initiatives to downward migrated contract(s). You acknowledge that the display of products is not a guarantee of the availability of any hardware and that certain hardware products may not be in stock at the time of submitting your Order and delivery thereof may be delayed. Notwithstanding this, such delay(s) shall not entitle you to withdraw your Order unless we agree with you in writing that the duration of delay is unreasonable. The Subscriber acknowledges that the Services are provided on a best effort basis, iBurst may not be held liable for any consequence(s) as a result of the failure of the Services to fulfil the Subscriber's expectations.

## **15. INTERCEPTION OF COMMUNICATIONS**

15.1 Subject to the provisions of the Regulation of Interception of Communications and Provision of Communication-related Information Act (RICA), Act 70 of 2002, the Subscriber acknowledges iBurst's right to intercept, block, filter, read, delete, disclose and use all communications sent or posted via iBurst's network. RICA may be accessed from <http://www.info.gov.za/acts/2002/a70-02/index.html>

## **16. PROTECTION OF PERSONAL INFORMATION "POPI"**

16.1 Whilst the service provider uphold the principles of the Protection of Personal Information Act, Act 4 of 2013, the Subscriber hereby authorises the service provider to keep its personal information beyond the contract date, in order for the service provider to comply with its information retention obligations. The Subscriber further authorizes the service provider to use the Subscriber's information for the purposes of selling its communications/telecommunications products directly or indirectly.

## **17. SECURITY**

17.1 The Subscriber acknowledges that there is a password that will be provided upon activation of the Services and that the responsibility lies with the Subscriber to change the password to avoid access by any unauthorised user. The Subscriber further acknowledges that no unsupervised access to the Services will be allowed to minors.

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