

iSmart Terms & Conditions

1. INTERPRETATION

1.1 In this agreement, unless inconsistent with or otherwise indicated by the context – :

- 1.1.1 "the/this agreement" means the agreement as set out herein together with the service agreement together with all annexure's and addenda hereto;
- 1.1.2 "the service agreement" means this entire document containing an application by the customer for the provision of the services and the sale of the equipment, if applicable, to it by iSmart together with any annexure's and/or addenda thereto;
- 1.1.3 "call charge" means the charge for a specified unit of time or bytes of data downloaded as set out in the tariff;
- 1.1.4 "equipment" means the piece of customer apparatus specified on the service agreement together with all additions and accessories thereto specified in the service agreement;
- 1.1.5 "customer" means the customer named on the service agreement;
- 1.1.6 "customer apparatus" means any fixed or mobile, digital equipment or terminal which is capable of connection by radio interface to the system, which is approved by the regulatory authority and under any legislation concerning such equipment, used by the customer and acceptable to iSmart together with a Network SIM card;
- 1.1.7 "delivery" means delivery of the equipment to the customer;
- 1.1.8 "equipment" means the cellular handset, device and/or customer apparatus and activated Network SIM card;
- 1.1.9 "initial period" means the minimum duration of this agreement, being a period of 24 months from the date of activation of the services;
- 1.1.10 "the interest rate" means the published prime overdraft rate as published by the major banks from time to time;
- 1.1.11 "migration" means the migration from one package to another and will be subject to the discretion of iSmart, and any migration charges where applicable will be as per the applicable iSmart tariff published from time to time and available on request;
- 1.1.12 "monthly subscription charge" means the monthly charge for being connected to the system as set out in the tariff;
- 1.1.13 "package" means the tariff plan under which the customer is connected to the system, which tariff plans are set out in the price list and may vary according to usage charges and other variables but subject to the requirements, conditions and/or approvals of the regulatory authority where applicable;
- 1.1.14 "the regularity authority" means the relevant regulatory authority vested with the power and authority in terms of the Post Office Act, 1958, to regulate the operation of the system and any similar systems in the Republic of South Africa;
- 1.1.15 "the services" means the sale and delivery of the equipment to the customer by iSmart;
- 1.1.16 "the system" means the digital cellular mobile telecommunication system using the GSM standard as defined by the European Technical Standards Institute operated by the Networks;
- 1.1.17 "the tariff" means the tariff of charges as published and amended from time to time by the Networks and/or iSmart at their sole discretion;
- 1.1.18 "equipment charge" means the unit price for the equipment as set out in the agreement;
- 1.1.19 "SIM card" means the Subscriber Identification Module card, being a user card bearing a Mobile Subscriber Integrated Services Digital Network (MSISDN) number and issued by iSmart to the customer to enable the customer to access the system;
- 1.1.20 "iSmart" means iSmart (Proprietary) Limited with registration number 2004/024118/07.

1.2 The Clause headings in this agreement have been inserted for convenience only and shall not be taken into account in its interpretation.

1.3 This agreement shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa.

2. CONNECTION TO THE SYSTEM AND PROVISION OF SERVICES

2.1 The customer acknowledges that this document constitutes an offer by the customer, which may be accepted or refused by iSmart in its sole discretion. Connection of the customer to the system shall be deemed to constitute acceptance of the offer by iSmart and commencement of this agreement. This agreement shall become binding between iSmart and the customer whether or not the customer was notified of the

acceptance of the offer. The customer herewith expressly dispenses with notification of acceptance of the offer by iSmart.

- 2.2 Subject to acceptance by iSmart in terms of clause 2.1 and subject further to the remaining terms and conditions of this agreement, iSmart shall connect and maintain the connection of the equipment to the system and iSmart shall use its reasonable endeavours to make the services available to the customer throughout the duration of this agreement, save and except, for circumstances beyond the control of iSmart and/or the networks.

3. DURATION

- 3.1 This agreement shall commence on the date of activation of the services and shall continue for the initial period and thereafter indefinitely until terminated by iSmart giving notice to the customer in terms of clause 13 or by the customer giving iSmart not less than 1 (one) calendar month written notice of termination, provided that the customer shall not be entitled to give such notice within the initial period.
- 3.2 In the event of termination of this agreement for whatsoever reason prior to the expiry of the initial period, iSmart shall have the right to claim payment of the balance of the monthly subscription charges owing in respect of the initial period and an amount equal to which the equipment was subsidised by iSmart at the time of sale of the equipment by iSmart and the customer shall be obliged to effect payment of the amount so claimed on demand.
- 3.3 In the event that this agreement is extended after the initial period or any period thereafter, the terms and conditions of this agreement will apply for such extended period.
- 3.4 No downward migration from one package to another will be performed by iSmart within the initial period or any extended period subsequent to the initial period.

4. PAYMENT

- 4.1 The customer shall pay to iSmart the aggregate of all charges levied by iSmart from time to time including, without limitation:
- 4.1.1 Upon commencement hereof, the connection charge, the SIM card charge, the first month's subscription charge and any other introductory or commencement charges where applicable; and
 - 4.1.2 Any pro-rata subscription charge which may arise in the first billing period; and
 - 4.1.3 Monthly in advance, the monthly subscription charges; and
 - 4.1.4 Monthly in arrears, or as and when billing is passed to the customer, the total call charges used and/or generated by the customer in conjunction with or by means of the SIM card during any billing period, and any other charges payable in respect of the services requested by the customer or other charges levied by iSmart from time to time; and
 - 4.1.5 Value added tax at the applicable rate on all vat able charges and services. All prices and charges, in terms of this agreement, unless otherwise stated, include value added tax.
 - 4.1.6 Such deposit as iSmart shall be entitled to demand in terms of clause 4.3 below.
- 4.2 Any amount due by the customer to iSmart, not paid on the due date thereof, shall at the discretion of iSmart bear a penalty fee at a rate equal to 2% (two percent) per annum above the prime interest rate, calculated from the date payment was due until date of actual payment thereof.
- 4.3 iSmart shall be entitled to demand, upon signing of the service agreement by the customer or at any time thereafter, payment of such deposit as it may deem fit, which deposit shall be paid by the customer in cash simultaneously with the signing of the service agreement by the customer or immediately upon demand by iSmart. If the customer has paid a deposit to iSmart, such deposit may be detained and appropriated in whole or in part by iSmart towards payment of any sums whatsoever due to iSmart by the customer.
- 4.4 The customer agrees that payment shall only have been made to iSmart when the monies remitted by the customer have been received into iSmart's bank account.
- 4.5 Should any debit order or cheque payment be returned unpaid or stopped or should any charge card account or credit card account of the customer be rejected for whatsoever reason or should iSmart exercise its right to suspend the provision of the services due to non or late payment of any monies due in terms hereof by the customer, then the customer shall pay an administrative charge as may be levied by iSmart from time to time for each such non-payment, suspension or any other breach of the agreement which

amount shall be payable upon demand and recoverable by iSmart.

4.6 iSmart shall be entitled to demand, at any time after the signing of the service agreement by the customer, full payment in advance of all charges to be levied by iSmart for the balance of the initial period of this agreement, excluding call charges which shall be invoiced monthly in arrears, in the following circumstances:

- 4.6.1. Should iSmart have a reasonable suspicion of any fraudulent act having been or about to be committed by the customer in respect of this agreement; or
- 4.6.2. Should it come to iSmart's attention that the customer has failed to disclose material information upon the signing of the service agreement.

5. CREDIT LIMIT

Where applicable iSmart shall be entitled in its sole and absolute discretion from time to time to determine and amend the maximum amount of fees and charges ("credit limit") which may be used and/or accumulated by the customer at any time and iSmart shall be entitled to suspend the services should the customer exceed such maximum amount.

6. RISK AND OWNERSHIP

- 6.1. All risk of profit and loss in and to the equipment shall pass to the customer upon installation, whichever is the earlier.
- 6.2. Ownership of the equipment shall vest in iSmart at all times up until the expiry of the initial period provided that all outstanding amounts have settled in full.

7. BLACKLISTING

- 7.1 Upon the customer defaulting on any payment due in terms hereof, iSmart shall be entitled to blacklist the equipment used in conjunction with the SIM card, to prevent the further use thereof and the customer indemnifies iSmart in respect of any claim whatsoever arising from iSmart exercising such right.
- 7.2 Notwithstanding that the ownership of the equipment may have passed to the customer at any time, the customer acknowledges iSmart's right to blacklist or disconnect the equipment in the event of the customer defaulting in payment and the customer indemnifies iSmart in respect of any claim whatsoever arising from iSmart exercising such right.

8. AFTER SALE CARE AND GUARANTEE

- 8.1. Notwithstanding that the customer purchased or leased the equipment and related accessories from iSmart or from any third party, should the equipment be damaged, lost, stolen, un-operational or undergoing repair, the customer agrees that this agreement is not conditional upon such purchase, lease, availability or operation and shall continue to be in full force and effect and the customer shall continue to pay all amounts due in terms hereof.
- 8.2. In the event that the equipment was purchased from iSmart, then the manufacturer's warranty will apply to such equipment. Such warranty is normally for 6 (six) to 12 (twelve) months from the date of purchase and normally covers defective equipment as result of faulty design, manufacture or workmanship provided that such equipment has not been misused, overloaded, modified or repaired by an unauthorised party. In addition, batteries are normally excluded from any warranty. iSmart may require the customer to make available the equipment to iSmart or its nominees for inspection of the equipment at a time and place to be arranged by iSmart and/or its nominees.
- 8.3. Should iSmart accept the equipment for repairs and maintenance it shall be deemed to do so as agent on behalf of the manufacturer or local supplier of the equipment and iSmart shall not be liable for any loss, damage, destruction, theft or negligent workmanship however caused.
- 8.4. Should the customer fail to pay any monies due in respect of the equipment or accessories purchased, leased or loaned from iSmart, then iSmart shall be entitled without prejudice to any other rights it may have at law forthwith and without notice to suspend, interrupt or disconnect the services or any part thereof.

9. CUSTOMER ACKNOWLEDGEMENT

The customer acknowledges and agrees that:

- 9.1. Service quality and coverage available to the customer shall be limited to that provided by the Network system and the services may from time to time be adversely affected by physical features such as buildings and underpass as well as atmospheric conditions and other causes of interference; and
- 9.2. It shall not hold iSmart, any of its directors, employees, agents or approved representatives liable for any non-availability of the services or for any other reason whatsoever including damages.

10. LIABILITY

- 10.1. This clause specifies the entire liability for iSmart, any of its directors, employees, agents or approved representatives, including for negligence and in particular, but without limitation, all other statutory, express, implied or collateral terms, conditions or warranties are excluded.
- 10.2. iSmart shall not be under any liability (including liability for negligence) for any loss or damage or injury to the customer whatsoever no matter when or how arising out of the provision of the services or otherwise, whether direct or indirect, consequential or contingent and whether foreseeable or not and in particular iSmart shall not be liable for any financial loss or loss of profits, loss of contracts, loss of business or goodwill.
- 10.3. The customer indemnifies iSmart against any damage, cost or liability (including liability for iSmart's negligence) arising from the provisions of the services to the customer, its employees, directors and/or agents together with all legal costs relating to any claim arising there from.
- 10.4. Under no circumstances will iSmart's liability, whether in contract or otherwise, exceed a sum equal to the monthly subscription charge payable at the date of the claim multiplied by a factor of 15 (fifteen).
- 10.5. The customer indemnifies iSmart against any damage, cost or liability (including for iSmart's negligence) arising from any illness or personal injury or death suffered by the customer as a result of the use of the equipment, irrespective of when or how, and whether foreseeable or not, together with all legal costs relating to any claim arising there from.
- 10.6. The customer acknowledges iSmart's right to inform third parties of any breach by the customer of its obligations in terms of this agreement and the customer indemnifies iSmart in respect of any claim whatsoever arising from iSmart's exercising of this right.

11. USE OF SERVICES VIA THE EQUIPMENT

The customer acknowledges and agrees that it is aware and will stay aware of and shall at all times comply with all statutory or other regulatory provisions relating to wireless telegraphy and telecommunication services applying to the provision and use of the services via the equipment from time to time. In addition the customer shall:

- 11.1 Comply with any instructions issued by iSmart which concern the customer's use of the services, equipment or connected matters; and
- 11.2 Provide iSmart with all such necessary information that iSmart may reasonably require; and
- 11.3 Only use equipment that is supplied by and/or approved for any use with the system by iSmart in writing.

12. SUSPENSION / DISCONNECTION OF SERVICES

- 12.1 iSmart and/or the Networks may from time to time without notice suspend the services (and at iSmart and/or the Networks discretion disconnect the equipment from the system) in any of the following circumstances:
 - 12.1.1 During any technical failure, modification or maintenance of the system provided that iSmart and/or the Networks will use its reasonable endeavours to procure the resumption of the services as soon as reasonably practicable; or
 - 12.1.2 If the customer fails to comply with any of the terms and conditions of this agreement (including any credit

limit set by iSmart and/or failure to pay any amounts due) until the breach (if capable of remedy) is remedied, or does, or allows to be done, anything which in iSmart's opinion may negatively affect the operation of the services.

- 12.2 Notwithstanding any suspension of the services under this clause, the customer shall remain liable for all changes due hereunder throughout the period of suspension unless iSmart at its sole discretion determines otherwise in writing.

13. TERMINATION

- 13.1 In the event that the customer breaches any term of this agreement or any warranty given by it hereunder or fails to fulfil any obligation resting upon it, then without prejudice to iSmart's other rights in terms of this agreement or the common law, iSmart may either terminate this agreement or call for specific performance of all the customer's obligations and immediate payment of all sums owing by the customer, whether or not then due, in either event without prejudice to iSmart's right to recover such damages as it may have suffered by reason of such breach or failure.
- 13.2 Notwithstanding the afore going and pending iSmart's election in terms of this clause, iSmart shall not be obliged to perform any of its obligations under this agreement and the customer shall remain liable for the payment of all amounts owing by the customer in terms of this agreement whether or not such amounts are then due.
- 13.3 iSmart may, without notice, terminate his agreement immediately in any of the following circumstances:
- 13.3.1 If the customer fails to pay any amount owing to iSmart on due date; or
 - 13.3.2 If the customer makes or offers any arrangement or compromises with its creditors or commits any act of insolvency or if any petition or application for sequestration, liquidation, winding-up or judicial management is presented by or made against the customer, or if any resolution to wind-up the customer is passed or if a receiver, trustee or curator is appointed over the whole or any part of the customer's assets or estate or if iSmart anticipates that any of the events as set out in this clause are imminent; or
 - 13.3.3 If the customer does or allows to be done anything which in iSmart's opinion will or may have the effect of negatively effecting the operation of the services; or
 - 13.3.4 If any license to operate or use the system is revoked, terminated or modified for any reason either in whole or in part; or
 - 13.3.5 If, for any reason, the Networks ceases to make the system available to iSmart or the services are substantially reduced for a continuous period exceeding 60 (sixty) days.
- 13.4 Upon termination of this agreement iSmart shall disconnect the equipment and SIM card from the Network system.
- 13.5 After disconnection of the equipment from the system consequent upon termination of this agreement, the customer shall pay on demand all charges outstanding at the time of disconnection, including the balance of the monthly subscription charges as described in clause 4.1.
- 13.6 Notwithstanding any termination of this agreement and notwithstanding the provisions of clause 13.4, iSmart may refuse to re-register its registration of the Mobile Subscriber Integrated Services Digital Network (MSISDN) number allocated to the customer.

14. ASSIGNMENT

The customer shall not cede, assign, transfer, encumber or delegate any of its rights or obligations in terms of this agreement to any third party without iSmart's prior written consent. iSmart shall be entitled, at any time, to cede, assign, transfer, encumber or delegate any of its rights, title, interest or obligations in terms of this agreement to any third party without the customer's consent and if, for any reason whatsoever, the consent of the customer may be required, the customer shall be deemed to have consented thereto in terms of this agreement.

15. EXCUSABLE EVENTS

iSmart shall not be liable to the customer for any breach of these terms and conditions or failure on iSmart's part to perform any obligation as a result of the technical problems relating to the system, termination of any license to operate or use the system, acts of God, Government control,

restrictions or prohibitions or any other Government act or omission, whether local or national, act or default of any supplier, agent or sub-contractor, industrial disputes of any kind or any other similar cause beyond iSmart's control.

16. VARIATION OF CHARGES AND TERMS

- 16.1. iSmart may vary all or any of its charges (including but not limited to the charges described in clause 4 of this agreement, any charges in respect of benefits provided to customers and in respect of value added services) by publishing an amended tariff,
- 16.2. iSmart reserves the right to vary the terms and conditions of this agreement at its sole discretion, whether as a result of new legislation, statutory instruments, Government regulations or licenses, amendments to the standard terms and conditions of the Networks, any similar event, or not. iSmart, at its sole discretion, may elect to notify the customer of any such variation in writing or to publish such variation at its principal place of business.
- 16.3. iSmart reserves the right, without cost or penalty to itself, to alter any name, code or number allocated by iSmart from time to time for use in connection with the services and the customer indemnifies iSmart and/or the Networks against any liability arising from such alteration.

17. DISCONNECTION AND RECONNECTION FEE

iSmart, having regard to the circumstances at the time of disconnection or reconnection, may elect to charge a reasonable fee for disconnection or reconnection of the equipment to the system.

18. RELAXATION

No latitude, extension of time or other **indulgence which may be given or allowed** by either party to the other party in respect of the performance of any obligations hereunder, and no delay or forbearance in the enforcement of any right of either party arising from this agreement, and no single or partial exercise of any right by either party under this agreement, shall in any circumstances be construed to be an implied consent or election by such party or operate as a waiver or a notation or otherwise affect any of the party's rights in terms of or arising from this agreement or stop or preclude any such party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term of this agreement.

19. NOTICES AND DOMICILIA

The customer chooses, as its domicilium citandi et executandi, the address set out in the credit application and service agreement, or such other address of which the customer may notify iSmart in writing not being a post office box or poste restante. All notices given in terms of this agreement shall be in writing.

20. COSTS

- 20.1. The customer shall repay to iSmart on demand all costs iSmart actually incurs as a result of the customer's failure to comply with the terms and conditions of this agreement or the cancellation hereof, which include:
- 20.2. Costs in connection with the tracing of the customer and/or equipment and obtaining possession of the equipment of whatsoever nature.
- 20.3. All legal costs.
- 20.4. Collection commission that may legally be recovered from the customer by iSmart's attorneys or collection agents on amounts collected.

21. SET OFF

The customer shall not be entitled to set off any amount/s that may be owing to the customer by iSmart against any amount the customer owes or may owe iSmart in terms of this agreement.

22. CONSENT TO JURISDICTION

The customer hereby consents to the jurisdiction of the Magistrate's Court having jurisdiction over its person in respect of any action by iSmart arising from this agreement or the cancellation thereof. This consent does not oust the jurisdiction of any other competent Court and iSmart shall be entitled, in its discretion, to institute action against the customer in any Court of competent jurisdiction. The parties agree that this consent is severable and shall apply even in the cancellation of this agreement.

23. SEVERABILITY

In the event of any one or more of these terms and conditions being unenforceable, same will be deemed to be severable from the remainder of this agreement, which will nevertheless be binding and enforceable.

24. WHOLE AGREEMENT

This agreement constitutes the whole agreement between the parties as to the subject matter hereof and no agreements, representations or warranties between the parties regarding the subject matter hereof other than those set out herein are binding on the parties save and accept for the provisions of clause 16 above.

25. GENERAL

- 25.1 The customer hereby consents to iSmart conducting an investigation into the creditworthiness of the customer utilising the information contained on the front page hereof, which information the customer warrants is true and correct, and such information forms the basis of this agreement. The customer agrees that should such information turn out not to be correct in all respects, iSmart shall be entitled to immediately and without prejudice to any other rights that iSmart may have to terminate this agreement and the customer agrees to hold iSmart harmless in such an event. The customer hereby agrees that iSmart may, in addition to any of its rights in terms of this agreement or otherwise, list any default information on the customer with any credit information bureau.
- 25.2 The customer agrees to the disclosure by iSmart to any third party, of any information pertaining to the customer or this agreement, to the extent that such disclosure is necessary for the conduct of iSmart's business, or is required by any relevant law, statute, regulation or license.
- 25.3 Where iSmart is represented by any duly authorised representative, his/her authority need not be proved.

CUSTOMER DECLARATION:

I declare that:

1. I have read through the contract and understand and accept the terms and conditions set out therein;
2. I will be able to satisfy in a timely manner all of my financial obligations including all credit agreements to which I am a party
3. I generally understand that, prior to the signature of this Agreement, I have the right to request iSmart for further clarification in the event that any aspects of my risk, the costs and my obligations under this Agreement are not fully understood and appreciated by me
4. In light of 3 above, I am able to now declare that I generally understand and appreciate my risk, costs and obligations under this Agreement
5. I fully and truthfully answered any request for information by iSmart as part of the assessment required for this Agreement and acknowledge that it is a complete defence to an allegation that this Agreement was reckless if it is established that I failed to fully and truthfully answer any request for information in relation to this Agreement
6. I am not in the process of being declared over-indebted by a debt counsellor or any court and am not in the process of applying to any debt counsellor or competent court for an order declaring me over-indebted
7. I am not currently under administration, nor am I in the process of instituting an application for an administration order
8. I am not an un-emancipated minor, nor have I been declared mentally unfit by any competent court
9. A copy of this entire Agreement has been made available to me

DEBIT ORDER MANDATE:

1. I hereby authorize iSmart to draw against my account with my nominated bank referred to in my application (or any other bank or branch to which I may transfer my account) the amount necessary for payment of the monthly commitment due in respect of this agreement or any future indebtedness I may incur with iSmart under this Agreement.
2. All such withdrawals from my bank account by iSmart shall be treated as though they had been signed by me personally. Should my account fall in arrears or any periodical instalment be returned by my bank on the basis of insufficient funds in my account, then I hereby authorise iSmart to increase my monthly instalment to recover the arrears within the contract period or to collect this amount in partial amounts which amounts may be deducted from my account from time to time.
3. I explicitly authorise iSmart to change the payment date to coincide with my salary payment date and to utilise the functionality of tracking supported on the NAEDO Payment Stream.
4. This authority may be cancelled by me by giving iSmart 30 (thirty) days' notice in writing, sent by prepaid registered post, but I understand that I shall not be entitled to any refund on amounts which iSmart has withdrawn while the authority was in force if such amount were legally owing to iSmart. I acknowledge that cancellation of this authority after activation could result in iSmart suspending the service and all cancellation costs will be for the my account.
5. Receipt of this instruction shall be regarded as receipt thereof by my bank (whichever it is or will be).
6. I acknowledge that this authority may be ceded or assigned to a third party if the basis for my indebtedness recorded herein is also ceded or assigned to that third party.