

# GENERAL TERMS AND CONDITIONS OF THE AGREEMENT

Between

## ADEPT INTERNET (PROPRIETARY) LIMITED

(Registration No. 1984/01310/07)

Datavoice House, 16 Elektron Avenue, Techno Park, Stellenbosch, 7600

PO Box 267, Stellenbosch, 7599

("Adept")

And

## THE SUBSCRIBER IDENTIFIED IN THE ADEPT SERVICE CONTRACT

("the Subscriber")

ADEPT hereby agrees to provide to the Subscriber the services which are described in the ADEPT Service Offering to which these terms and conditions are attached ("**the Contract**").

These terms and conditions apply to each separate set of services which are to be provided by ADEPT as described in the Contract and/or a separate agreement based upon these terms and conditions and shall come into existence with respect to each set of services. Accordingly, the phrase "**the Service**" in these terms and conditions shall include individual as well as a set of services, which the Subscriber agrees to subscribe for in terms of the Contract, and the phrase "**the Agreement**" shall mean the agreement embodied in the Contract and these terms and conditions in respect of each of the Services. Wherever stipulated elsewhere in writing and as part of additional service documentation, then in as far as it conflicts with these terms and conditions, the terms and conditions in the additional documentation shall supersede the terms and conditions herein.

### 1. COMMENCEMENT DATES

The commencement date of the Agreement shall be from the date of service activation.

### 2. DURATION

This Agreement shall commence on the commencement date, and shall endure for the period specified on the service application form relevant to the specific service, and continue indefinitely thereafter on a month-to-month basis, subject to termination by either party on receipt of one (1) calendar months' notice.

The subscriber / client must provide one (1) calendar month's notice of the intended service termination; such notification must reach ADEPT on or before the 1<sup>st</sup> of the notice month, irrespective of whether the 1<sup>st</sup> falls on a weekend or public holiday.

For Fibre to the Home (FTTH) services, FTTH cancellation requests must reach Adept by no later than the 20<sup>th</sup> of the month, for the cancellation to be effective at the end of the following month.

If the service was added by use of an online signup tool or by means of an email request, the agreement duration for this service shall be as specified in the last signed contract, or in the event of none it will be on a monthly basis.

### 3. CHARGES

3.1. The Subscriber shall pay to ADEPT all fees and charges set out in the Contract, plus all Value Added Tax payable thereon, by electronic funds transfer or by debit order on due date (within 7 days from invoice), in South African currency, free of exchange, without deduction or set-offs.

3.1.1. All services are billed in advance

3.1.2. All debit orders and payments are due by the first business day of the month

3.1.3. An administrative fee of R60 will be levied for each instance of a debit order not being honoured by the subscriber / client's financial institution. In such instances the subscriber must effect an EFT payment of monies due and payable within three (3) days from date of notification by ADEPT to prevent *inter alia* suspension of service and/or remedies provided for herein.

3.2. It is recorded that some fees and charges are based on a Rand/US Dollar exchange rate and the Subscriber understands that such amounts shall be adjusted in accordance with the prevailing exchange rate, beginning on the date of commencement of the Agreement as provided for by Nedcor or any other registered financial institution nominated at its sole discretion by ADEPT.

3.3. In addition to monthly charges envisaged in 3.1, ADEPT shall be entitled from time to time on 30 (thirty) days' prior written notice to the Subscriber to increase the monthly charges set out in the Contract.

- 3.4. Any amount which is due by the Subscriber but unpaid shall bear interest at a rate equal to the maximum allowable by law, calculated daily in advance from the payment due date until date of full settlement thereof, both days inclusive.
- 3.5. In the event of any dispute arising as to the amount or calculation of any fee or charge which is payable by the Subscriber, the dispute shall not be referred to arbitration in accordance with Clause 8, but rather for determination to an independent auditor appointed by agreement between the parties, or failing such agreement by the President for the time being of the South African Institute of Chartered Accountants. The said auditor shall be entitled to make a determination as to which party or parties shall bear the costs of the auditor and of the procedure. The said auditor shall act as an expert and not as an arbitrator and his decision shall be final and binding on ADEPT and the Subscriber. Where uncertainty exists whether the provisions of this clause or clause 8 apply, determination thereof will be at the sole discretion of ADEPT.
- 3.6. Under no circumstances may the Subscriber resile from this Agreement or withhold or defer any payment for services for any reason whatsoever. Subscribers are not entitled to a reduction in any charge or have any other right or remedy against ADEPT, its servants, its agents or any other persons to whom it may be liable in law (and in whose favour the provision constitutes a *stipulatio alteri*) in the event of lawful interruption of Service by ADEPT and/or in terms of the provisions of paragraph 5 hereof.
- 3.7. This Agreement will remain in full force and effect until such time as all payment or disputes have finally been adjudicated on in terms hereof and full payment has been made in terms of such adjudication or settlement reached between the parties.

#### **4. WARRANTIES**

- 4.1. Save as expressly set out in this Agreement or given in writing, ADEPT does not make any representations, warranties or guarantees of any nature whatsoever in respect of the Services and the Subscriber acknowledges that no warranties or representations have induced it to enter into this Agreement.
- 4.2. In particular, and without limiting the generality of the foregoing, ADEPT does not warrant or guarantee that the Services or the information transmitted by or available to the Subscriber by way of the services:
  - 4.2.1. will be preserved or sustained in their entirety;
  - 4.2.2. will be suitable for any purpose; and/or
  - 4.2.3. will be free of inaccuracies or defects or bugs or viruses or malware of any kind.
- 4.3. ADEPT accepts no liability, responsibility or obligation towards any claim for any loss, expense or damage (whether consequential and/or incidental) arising from any of the exclusions set forth in this Contract.
- 4.4. In general, and where possible, ADEPT may notify Subscribers of service outages / disruptions by means of SMS or any other communication method it deems appropriate including, but not limited to, social media platforms.

#### **5. EXCLUSION OF LIABILITY DUE TO INTERRUPTION, SUSPENSION OR WITHDRAWAL OF SERVICES**

- 5.1. Except for any deliberate act or intentional omission on the part of ADEPT, its employees or agents, and except as otherwise expressly provided herein to the contrary, ADEPT shall not be liable to the Subscriber or to any third party for any loss or damage of whatsoever nature or howsoever arising (including consequential or incidental loss or damage) which the Subscriber (or any third party) may incur or suffer, or for any costs, claims or demands of whatsoever nature arising directly or indirectly from the Service, its use, access to, withdrawal, suspension or termination of or disruption to any information or materials provided or not provided, as the case may be.
- 5.2. Without in any way limiting or derogating from any of the provisions of the foregoing, any damages or other amount for which ADEPT may be held liable to the Subscriber shall in no event exceed the aggregate of the fees and charges paid by the Subscriber under this Agreement for the period of 60 (sixty) days preceding the date upon which any such cause of such loss or damage arose.
- 5.3. The Subscriber hereby indemnifies ADEPT against and holds ADEPT harmless from any claim by any third party arising directly or indirectly out of access to or use of the Service provided for in terms of the Agreement or information obtained through the use thereof, or from suspension or withdrawal of the Services, or in respect of any eventuality for which the liability of ADEPT is excluded in terms of this Clause 5, or howsoever else arising.
- 5.4. The Subscriber acknowledges that from time to time the Service may be interrupted for maintenance, repair and improvements of the network. Notwithstanding ADEPT's undertaking to, wherever possible, give reasonable notice to the Subscriber, ADEPT shall not be held liable for any loss or damage (direct or consequential) which may arise as a result of the service interruption, nor for any costs, claims or demands of any nature arising therefrom and the Subscriber's sole claim against ADEPT shall be for a *pro rata* credit in respect of the monthly charges payable by the Subscriber in respect of the period for which the Services are interrupted by ADEPT.
- 5.5. The Subscriber further acknowledges that from time to time service interruptions may occur resulting from circumstances beyond the control of ADEPT (including, but not limited to, *force majeure*, conduct of bulk service providers and/or conduct of third parties); ADEPT shall not be liable to the Subscriber, or to any of the Subscriber's

customers, employees or agents, or to any third party for any loss, damage costs or claims of whatsoever nature resulting from such service interruptions.

- 5.6. For the purpose of this Agreement "force majeure" shall include any cause beyond ADEPT's control, including, but not limited to, acts of God, labour stoppages, civil unrest, theft, fire, explosion, war, sabotage, national emergency, martial law, lightning, storms or other adverse weather conditions, power shortages, the action or inaction of any government or other competent authority including the prohibition, intervention or direction by legislation, regulation or other legally enforceable order (including any order of Court), or any breakdown of plant, machinery or equipment, externally caused transmission interference or satellite failure, malfunction or downtime for any reason whatsoever, or any malfunction of any service of ADEPT or shortage of fuel, power, machinery, equipment or material.
- 5.7. In the event that a *force majeure* event exceeds fourteen (14) consecutive days or in the event that alternative services or facilities or both cannot be provided by ADEPT or its nominee, the parties agree to meet and negotiate the termination or restructuring of the Service in accordance with this Agreement. Should the *force majeure* event exceeds thirty (30) consecutive days, and in the event that alternative services and/or facilities cannot be provided by ADEPT or its nominee, either party shall be entitled to terminate this Agreement upon written notice to the other. Upon the removal or cessation of the *force majeure* event, all obligations under this Agreement shall resume unless the parties have agreed to terminate or restructure the service or the provisions of this Agreement.
- 5.8. ADEPT shall not be liable for defamation, slander, or infringement of copyright arising from or in connection with the provision of the Service to the Subscriber, nor for infringement of patents or other intellectual property rights arising from the combination or use of the facilities of ADEPT with apparatus and systems of the Subscriber or arising from the provision of the Services, and the Subscriber hereby indemnifies ADEPT against any such liability.
- 5.9. The Subscriber hereby indemnifies ADEPT against any claim, loss or damage which ADEPT may incur arising from the provision of Domain Name Services by ADEPT, and, in particular, from any claim, loss or damage which might arise from the infringement of any intellectual property right of any person in providing such Services or in registering or allocating any domain name or internet protocol address to the Subscriber. The Subscriber acknowledges that ADEPT does not represent, warrant or guarantee that any domain name or Internet protocol address requested by the Subscriber will be registered or available for use.
  - 5.9.1. It remains the responsibility of the Subscriber to ensure that domains are timeously renewed. In order to avoid domain suspension and possible forfeiture the Subscriber must ensure that renewal fees are paid timeously.
- 5.10. If the Subscriber is in breach of any of the provisions of this Agreement (including, but not limited to, fail / refuse / neglect to settle any amount due and payable on the specified date), ADEPT shall be entitled, without any obligation of prior notification whatsoever, to interrupt, suspend and/or terminate the Service to the Subscriber until the breach is remedied to ADEPT's satisfaction. ADEPT furthermore reserves the right to levy a reconnection fee for the reinstatement / activation of such suspended Services.
- 5.11. The Subscriber undertakes not to knowingly create, store or disseminate any illegal content and commit to the lawful conduct in the use of the services, including copyright and intellectual property rights and undertake not to send or promote the sending of spam.
- 5.12. The Subscriber gives ADEPT right to remove or block any content hosted which ADEPT considers illegal or for which it has received a lawful take-down notice.
- 5.13. ADEPT reserves the right to immediately terminate any Service of a Subscriber in the event of malicious, deliberate or continuous contravention and/or defiance of the provisions of this Agreement (including but not limited to the provisions of ADEPT's Acceptable Use Policy as published on the ADEPT website from time to time).

## 6. EQUIPMENT

- 6.1. Any equipment provided by ADEPT to the Subscriber in connection with the provision of the Services ("**the equipment**") shall be and remain the property of ADEPT, unless otherwise stipulated in additional documentation. Risk in and to the equipment shall pass to the Subscriber upon delivery of the equipment to the Subscriber, and the Subscriber shall not move the equipment to any location other than the physical address set out in the Contract without the prior written consent of ADEPT.
- 6.2. The Subscriber shall only use the equipment in strict accordance with any instructions for use set by ADEPT (and in accordance with any regulatory framework of any governing body and, if applicable, the provisions of any licence held by ADEPT), and the Subscriber shall not in any manner tamper with or attempt to modify the equipment.
- 6.3. If the Subscriber engaged ADEPT's Service at a location for which a Lease Agreement (or similar undertaking, verbal or in writing) was entered into, the Subscriber shall notify the property owner (or a duly appointed agent or any other person(s) who may be entitled to a lien, hypothec or any other right over the property where the Service is delivered) in writing that ownership of such equipment is vested in ADEPT and not the Subscriber until such time as the conditions for the transfer of ownership are met.
- 6.4. The Subscriber shall be responsible for ensuring that the equipment is adequately insured.
- 6.5. ADEPT shall only be liable for the costs associated with routine maintenance of equipment; any costs in respect of repairs (including parts) shall be for the account of the Subscriber who undertakes to effect payment thereof upon demand.

- 6.6. ADEPT shall be allowed all reasonable access to the premises and/or any other location where the service is delivered or where the equipment is housed in order to install, inspect, maintain and/or repair the equipment.
- 6.7. Upon termination or cancellation of this Agreement for any reason, ADEPT shall be entitled to remove the equipment from the premises of the Subscriber and the Subscriber shall afford ADEPT all access necessary to do so. The equipment shall be returned to ADEPT in the same good order and condition as it was delivered to the Subscriber, fair wear and tear excepted.

## 7. DOCUMENTATION

Any specifications, descriptive matter, drawings and any other documents which may be furnished by ADEPT to the Subscriber from time to time:

- 7.1. do not form part of this Agreement and may not be relied upon, unless they are agreed in writing by both parties hereto to form part of this Agreement; and
- 7.2. shall be and remain the property of ADEPT and shall be deemed to have been imparted by ADEPT in trust to the Subscriber for the sole use of the Subscriber. All copyright in such documents vests in ADEPT and such documents and all copies made thereof shall be returned to ADEPT on demand.

## 8. DISPUTES

- 8.1. Subject to clause 3.5 above and 8.6 below, in the event of any dispute or difference arising between the parties hereto relating to or arising out of this agreement, including the validity, implementation, execution, interpretation, rectification, termination or cancellation of this agreement, the parties shall forthwith meet to attempt to settle such dispute or difference, and failing such settlement within a period of 14 (fourteen) days, the said dispute or difference shall on written demand by any party to the dispute be submitted to arbitration in accordance with the rules of the Arbitration Foundation of Southern Africa ("the Foundation") by an arbitrator or arbitrators appointed by the Foundation and agreed to by the parties. ADEPT will, in its sole discretion, nominate the head office or the appropriate local branch of the Foundation to administer the arbitration.
- 8.2. Should the parties fail to agree on an arbitrator within 10 (ten) days after arbitration has been demanded, the arbitrator shall be nominated at the request of any party to the dispute by the Foundation.
- 8.3. The parties irrevocably agree that the submission to arbitration in terms of this clause is subject to the parties' rights of appeal set out hereunder.
- 8.4. Any party to the arbitration may appeal the decision of the arbitrator within a period of 21 (twenty one) calendar days after the arbitrator's ruling has been handed down by giving written notice to this effect to the other party or parties to the arbitration. The appeal shall be dealt with in accordance with the rules of the Foundation by a panel of 3 (three) arbitrators by the Foundation.
- 8.5. The decision of the arbitrator shall be final and binding on the parties to the arbitration after the expiry of the period of 20 (twenty) working days from the date of the arbitrator's ruling if no appeal has been lodged by any party. A decision that becomes final and binding in terms of this clause may be made an order of court at the instance of any party to the arbitration.
- 8.6. Nothing herein contained shall prevent or prohibit ADEPT in its sole discretion from applying to, issuing summons from or approaching the High Court or the Magistrates Court for any legal relief, finding, order or adjudication between Adept and the Subscriber, and the Subscriber hereby irrevocably consents to the Jurisdiction of the Court so chosen.
- 8.7. The provisions of clause 8 will continue to be binding on the parties notwithstanding any termination or cancellation of the agreement.
- 8.8. As a member of the Internet Service Providers' Association (ISPA), ADEPT's subscribers are also able to avail themselves of the ISPA mediation and complaints processes for the purpose of raising disputes. Details on how to do so can be found on ISPA's website: <https://ispa.org.za/code-of-conduct/mediation-and-complaints-process/>

## 9. BREACH

- 9.1. If the Subscriber:
  - 9.1.1. fails to pay any amount payable to ADEPT in terms of the Agreement on due date; or
  - 9.1.2. breaches any of the other terms or conditions of the Agreement and fails to remedy such breach within 7 (seven) days after the receipt of written notice from ADEPT; or
  - 9.1.3. commits any act of insolvency, or is the subject of any order for liquidation, judicial management or sequestration (whether provisional or final); or
  - 9.1.4. endeavours to compromise generally with its creditors or does or causes anything to be done, which may prejudice ADEPT's rights;then, without prejudice to any other rights, which ADEPT may have in terms of the Agreement or according to law, ADEPT shall be entitled to forthwith cease to perform or provide the Services without incurring any liability of any nature to the Subscriber until the breach has been remedied to ADEPT's satisfaction, and to:

- 9.1.5. either claim its damages, or to treat as immediately due and payable all amounts which would otherwise become due and payable over the unexpired period of the Agreement as agreed and liquidated damages, and to claim such amounts as well as any other amounts due to it, including interest at the maximum rate allowed by the Usury Act.; or
- 9.1.6. apply for an order for specific performance, with or without claiming damages; or
- 9.1.7. cancel this Agreement with or without claiming damages.
- 9.2. In the event of any expiration, termination or cancellation of this Agreement, the provisions of clause 14 hereof and any other clause hereof which is intended to continue and survive such expiration, termination or cancellation shall so continue and survive.
- 9.3. The Subscriber shall be liable to ADEPT for all legal costs incurred by ADEPT in enforcing ADEPT's rights against the Subscriber in terms of this Agreement, on the attorney and own client scale, including collection commission and any fees or costs associated therewith.
- 9.4. ADEPT reserves the right to blacklist with any or all credit bureau agencies within the Republic of South Africa, any such Subscriber who fails to comply with the agreed payments. In addition, ADEPT will not be responsible or required to assist with the removing or rescinding of any such information, which may be recorded by a credit bureau agency.

## **10. CESSION AND ASSIGNMENT**

The Subscriber shall not be entitled to cede its rights or assign its obligations in terms of this Agreement to any third party without the prior written consent of ADEPT, which consent may not be unreasonably withheld.

ADEPT shall be entitled to cede and assign its rights and obligations hereunder to any third party.

## **11. HEADINGS AND INTERPRETATION**

- 11.1. The clause headings contained herein are for reference purposes only and shall not be used in the interpretation of this Agreement
- 11.2. If any one or more of the provisions contained in this Agreement or any document executed in connection herewith shall be invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired.
- 11.3. The Agreement shall be governed by and interpreted in accordance with the laws of South Africa.

## **12. DOMICILIUM CITANDI ET EXECUTANDI**

- 12.1. For all purposes, including the giving of any notice, the making of any communication and the serving of any process, ADEPT and the Subscriber respectively choose their *domicilium citandi et executandi* ("domicilium") at their respective physical addresses and telefax numbers set out on the face hereof in the case of ADEPT, and on the Contract in the case of the Subscriber. Either party shall be entitled from time to time to vary its *domicilium* provided that any address selected by it shall situate in South Africa and any such variation shall only become effective 5 (five) days after receipt of notice in writing by the other party of such variation. Any notice which either party may give to the other shall be hand delivered to the other party's *domicilium* or sent via electronic means with proof of delivery.
- 12.2. Any notice given in terms of this Agreement shall be deemed to have been received by the addressee -
  - 12.2.1. on the date upon which it is delivered by hand; or
  - 12.2.2. if sent by electronic means, upon the first business day following the date of transmission of the notice.

## **13. MAGISTRATES COURT JURISDICTION**

For the purpose of all proceedings hereunder the Subscriber hereby consent to the jurisdiction of the Magistrates' Court, notwithstanding that the amounts claimed are beyond such jurisdiction, provided that ADEPT shall have the right at its sole option and discretion to institute proceedings in the High Court or any other competent Court or Forum.

## **14. CONFIDENTIALITY**

The parties agree as follows -

- 14.1. the Subscriber agrees and warrants to ADEPT that it shall at all times keep the terms and conditions of this Agreement confidential and shall not disclose the same to any other third party (save to its legal advisors and accountants solely for the purposes of obtaining professional advice thereon); and
- 14.2. each party acknowledges that it will exchange proprietary and confidential information with the other, as reasonably necessary for each to perform its obligations under this Agreement. All information relating to this Agreement provided by either party to the other, whether oral or written, shall be deemed to be confidential and proprietary information, unless indicated to the contrary in writing.



## **15. SUBSCRIBER'S OBLIGATIONS AND WARRANTIES**

- 15.1. The Subscriber shall comply strictly with all laws, regulations or restrictions imposed on the users of computer networks or which relate to the provision and use of the Service. The Subscriber shall also comply with ADEPT's reasonable requirements and restrictions on the use of the Services which may be notified by ADEPT to the Subscriber from time to time.
- 15.2. The Subscriber shall not commit or attempt any act or omission which directly or indirectly:
- 15.2.1. may in any way damage the ADEPT technical infrastructure or any part thereof;
  - 15.2.2. may impair or preclude ADEPT from being able to provide the Services (or any services to any other subscriber) in a timeous or business-like manner; or
  - 15.2.3. constitutes an abuse or malicious misuse of the Services;
- or is reasonably demonstrated to have the abovementioned effect/s. In such an event, should ADEPT incur any damages or expenses to remedy the situation, ADEPT shall be entitled to claim from the Subscriber such expenses or damages.
- 15.3. The Subscriber undertakes to familiarise itself and ensure that it is kept continuously apprised of all laws and regulations in force from time to time which have any bearing on the Services and their use. ADEPT is under no obligation to assist the Subscriber in this regard.
- 15.4. The Subscriber is prohibited from:
- 15.4.1. selling, reselling or otherwise dealing with the Services in any manner whatsoever. Without derogating from the foregoing, any consideration which the Subscriber may receive whilst acting in breach of this prohibition shall be immediately forfeited to ADEPT; or
  - 15.4.2. allowing any other person access to the Services in any manner whatsoever.
- 15.5. The Subscriber agrees and warrants to ADEPT that it shall not use the Services in any manner contrary to the provision of the Telecommunications Act 103 of 1996, as amended, and the regulations promulgated thereunder, or any other applicable legislation or regulations, or so as to in any way contravene, or cause a contravention of, the provisions of any licence/s issued to ADEPT. The Subscriber hereby indemnifies ADEPT against any loss, damage or expense, which ADEPT may suffer as a result of a breach by the Subscriber of the provisions of this clause.
- 15.6. It is the client's responsibility to keep contact details and relevant profile information valid and up to date.

## **16. GENERAL**

- 16.1. It is recorded that the provision of the Internet Access Service by ADEPT to the Subscriber may be a pre-requisite for the provision of any other service.
- 16.2. No amendment or consensual cancellation of this Agreement or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by a duly authorised representative from both ADEPT and the Subscriber.
- 16.3. No extension of time or waiver or relaxation of any of the provisions of this Agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against ADEPT, nor shall it operate so as to preclude ADEPT thereafter from exercising its rights strictly in accordance with this Agreement.
- 16.4. Neither party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.
- 16.5. The Agreement constitutes the whole of the agreement between ADEPT and the Subscriber relating to the subject matter hereof. No variation, addition, deletion, or cancellation will be of any force or effect unless reduced to writing and signed by the Subscriber or their duly authorised representatives.
- 16.6. By applying to receive any Goods or Services from ADEPT, the Subscriber consents to ADEPT carrying out a credit check on the Subscriber at any applicable credit bureau, and may make the provision of the Goods or Services dependant on its satisfaction with the results. ADEPT may additionally provide information on the Subscriber's payment record to a credit bureau.
- 16.7. Adept reserves the right to impose credit limits on any service as and when it sees fit.
- 16.8. Consumer connectivity services are contended (i.e. data capacity may be shared among a number of end users) unless otherwise specified.

## **17. WARRANTY OF AUTHORITY**

The person signing this Agreement on behalf of the Subscriber expressly warrants his or her authority to do so.