



WIRELESS SERVICES: STANDARD TERMS & CONDITIONS

1. Definitions

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

activation means the earlier of the date on which we permit you to use the services or the date on which you actually start to use the services over the CPE;
agreement means the application form together with all annexure's and these standard terms and conditions;
application form means the form completed by the subscriber indicating choices of service and equipment which constitutes an order;
capping limits or **cap** means the limit which SP may impose on usage or spend by a particular subscriber on a particular package in any one or more months;
charges means the connection charges, monthly service charges, out-of package charges, sage charges and any other charges pertaining to the provision of the services and any other services provided to the subscriber, which will be provided to you in the application form or on the SP website, or otherwise by notice from time to time;
CPE means customer premises equipment including, modems, gateways, the antennas and communication cards installed on a subscriber's premises to send and/or receive a signal via a radio link and may include any other special equipment provided by us;
coverage area means the physical geographic area within which the services are provided by us;
dti means the Department of Trade and Industry;
effective date means notwithstanding the date of signature of the application form, the date of activation;
force majeure means an event which is beyond the SP's reasonable control for example civil riot, strikes, flood, storm, or fire, or faults or interruptions to any other network forming part of the SP network which is not owned and operated by the SP;
ICASA means the Independent Communications Authority of South Africa;
licence means the licence/s granted to the SP by ICASA to provide electronic communications services over an electronic communications network, and includes any codes of conduct or regulations also applying to the SP;
monthly data allocation means that amount of data in bits which the subscriber is permitted to access over the SP network using CPE or otherwise as permitted by the SP;
insurance means the insurance which can be purchased at the subscriber's option to insure the CPE, in accordance with the insurer's policy terms and conditions;
services means any one or more of our 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 and any other services made available to the subscriber by the SP;
SP numbers means the mobile access numbers, IP address, unique user name or subscription numbers used to identify subscribers to the services;
SP or **us** means Screamer Telecommunications Services (Pty) Ltd, a company duly incorporated under the Laws of South Africa,;
SP's head office means the SP's premises situated at 21 Watershed Close, Louwlandia Ext 38, Centurion; Gauteng;
SP network means the network owned and operated by the SP under its licence, or any network which is used by the SP in order to provide the services;
party/ies means us and you or either of us;
renewal period means 1 (one) or more periods of 1 (one) calendar month during which time services continue to be made available and you continue to be liable to pay for them;
subscriber or **you** means the party to whom the services are made available;
services means broadband services or internet services or data services, or any other services which we are authorized to provide to you under the licence;
top up means the additional usage which the subscriber is permitted to purchase, over and above any monthly data allocation or capping limits that apply to the subscriber's package;
usage means actual use of services by the subscriber resulting in the subscriber incurring charges; and
VAT means value added tax as provided for in the Value Added Tax Act 89 of 1991.

2. Commencement and termination

2.1 The agreement shall commence on the effective date and shall thereafter continue automatically for an unlimited number of renewal periods unless terminated:
2.1.1 by the subscriber, by giving to the SP a written notice of termination of not less than 1 (one) calendar month; and/or
2.1.2 by the subscriber, within a period of 7 (seven) days from the effective date, if the subscriber does not find the service fit for use, provided that the subscriber shall return all CPE and make payment in full for all usage; and/or
2.1.3 by the SP, on written notice to the subscriber as set out in this agreement; or
2.1.4 by the SP without notice if for any reason the licences are withdrawn, amended or suspended.
2.2 On termination for any reason, any outstanding installments on CPE must be paid in full.
2.3 The SP may accept or reject the application form in its discretion, and shall signify acceptance of the order placed by the subscriber in the application form by activation at the SP's head office, at which time the agreement shall become binding on the SP. Activation will not take place until and unless the subscriber has provided all information required in the application form to the SP, and any additional information that the SP may require, for example, in order to obtain a credit reference for the subscriber.

3. Supply, activation and use of CPE and services

3.1 The SP shall use reasonable endeavours to promptly comply with any supply and/or delivery and/or activation requirements recorded in the application form but shall not be liable to the subscriber if supply and/or delivery and/or activation is delayed or cancelled, for whatsoever reason.
3.1 The subscriber shall be responsible for obtaining all necessary approvals and authorities from any competent authority or body for the purpose of any such supply and/or delivery and/or activation, and the subscriber hereby indemnifies the SP against any claim or liability suffered by the SP by reason of such approval and authorities not having been obtained or maintained as the case may be.
3.3 All risk in and to the CPE shall pass to the subscriber on delivery. The CPE and all cabling shall remain the property of the SP
3.4 If any CPE is lost, stolen or damaged, the subscriber shall immediately notify the SP in writing and until such notification, the subscriber shall remain liable for all costs and charges pertaining to such CPE. The SP shall, as soon as is reasonably possible, replace the CPE. The subscriber shall be liable for the cost of this replacement CPE unless the subscriber has taken out insurance. Such loss, theft or damage and/or the replacement of the CPE and/or the allocation of a new mobile access number as a result, shall in no way be deemed to constitute a termination of the agreement which shall continue to be of full force and effect.
3.5 The subscriber hereby warrants and undertakes in favour of SP that the subscriber:
3.5.1 shall not use nor allow the services to be used for any improper, immoral or unlawful purpose, nor in any way which may cause injury or damage to persons or property or an impairment or interruption to the services;
3.5.2 shall only use the CPE provided by the SP, and comply with relevant legislation and regulations imposed by any competent authority and all directives issued by SP relating to the use of CPE and the provision of the services;
3.5.3 recognises that no right, title or interest in the CPE or the software contained in the CPE issued to the subscriber vests in the subscriber.; and
3.5.4 shall not, nor permit any third party to reverse engineer, decompile, modify or tamper with the software contained in or pertaining to any CPE.
3.6 Should the subscriber exceed the monthly data allocations, the subscriber is entitled to purchase top ups, subject to any capping limit imposed by the SP.
3.7 CPE must be used in accordance with our or the manufacturer's instructions, as the case may be. Other services provided to you by third parties are subject to their terms and conditions.
3.8 We are not liable to replace any CPE that is out of warranty, or that is not covered by insurance, or that is not working as a result of wear and tear, and even if the subscriber has not paid for it in full, payment of any remaining installments must be made in the usual way.
3.9 Services can only be provided in the coverage area and it is the responsibility of the subscriber to check that their requirements are satisfied in this regard.
3.10 The SP may issue one or more SP numbers to a subscriber, subject to payment of the charges for usage related to that SP number. The SP number may be withdrawn if payment is not made for usage. Where the SP number constitutes a domain name, if this agreement is terminated for any reason, the SP may retain the domain name if the subscriber:
3.11.1 has not paid for usage associated with that SP number, in full; and
3.11.2 does not transfer that SP number to another service provider and notify the SP accordingly in writing.
3.11 You hereby consent to and authorizes SP to:



- 3.11.1 disclose your name, address and personal details to any party whenever it is reasonably necessary for SP to properly perform its functions or protect its interests, or for the purpose of enabling the SP to provide directory or repair services; and
 - 3.11.2 contact you to inform you of new or different services which may interest you from time to time; and
 - 3.11.3 send marketing, promotional updates and client satisfaction surveys to you from time to time.
- 3.12 Use of the SP's website is subject to the website's own terms and conditions of use, and may require you to use a password.

4. Charges

- 4.1 In consideration for the provision of the services, CPE and any other services supplied by the SP to the subscriber, the subscriber shall make payment to the SP of the applicable charges whether or not the services have been, or are being used by the subscriber, according to the invoice provided to the subscriber by the SP by email (in which case the electronic version of the invoice is deemed to be the original invoice) or by post.
- 4.2 The SP may, by written notice to the subscriber, vary future charges, its invoicing procedure, or its payment procedure, either in whole or in part, by written notice to the subscriber with effect from the date specified in that notice.
- 4.3 Unless otherwise agreed to by SP in writing or unless clause 4.4 applies, the subscriber shall make payment to the SP:
- 4.3.1 for the delivery, installation and maintenance of CPE on presentation of an invoice and against delivery;
 - 4.3.2 of monthly service charges and charges due under the installment plan monthly in advance and of all other charges including usage, monthly in arrears, within 7 (seven) days of receiving an invoice; and
 - 4.3.3 at the SP premises or at the bankers of the SP in Johannesburg. Where payment is made by the subscriber through a debit order, other electronic means or any other intermediary, the subscriber's bankers or other intermediaries shall be deemed to act as the subscriber's agent and the subscriber shall have discharged its obligations only upon payment being finally received by SP.
- 4.4 The subscriber may only rent the CPE and the CPE always remains the property of the SP.
- 4.5 In the event that SP requires payment for the services to be made by debit order, the subscriber will commit a material breach of the agreement if the subscriber:
- 4.5.1 cancels the debit order without the written consent of the SP;
 - 4.5.2 changes his banking details without giving SP prior notification of such change; and/or
 - 4.5.3 provides the SP with incorrect banking details.
- 4.6 The subscriber authorizes the SP to debit any bank account or credit card held by the subscriber, the details of which are reflected on the application form, for the charges owed by the subscriber to the SP in terms of this agreement, and if there are insufficient funds in one account then the subscriber specifically authorizes the SP to debit any other account.
- 4.7 The SP 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 application form.
- 4.8 The subscriber shall be liable to effect payment of interest to SP on the amount so owing at the prime interest rate as published from time to time by Standard Bank Limited plus 2% (percent), from due date to date of payment.
- 4.9 The SP's invoice shall be sent to the subscriber at the e-mail address supplied by the subscriber in the application form. It is the duty of the subscriber to check the invoice in order to ensure that the contents are correct. Unless a query is raised in respect of the contents of the statement within 30 (thirty) days from the date of the invoice, the contents of it shall be deemed to be correct.
- 4.10 Any migration from one package option to another shall be subject to the SP's approval in its discretion and SP shall be entitled to levy fees for migrations.
- 4.11 The SP may limit off-net (internet) and on-net (SP to SP) traffic in accordance with its capping limits from time to time. In the event of usage being capped, the SP may charge the subscriber for usage above the cap at its then applicable standard rates which may exceed the rates otherwise applying to the subscriber's package or usage.
- 4.12 Unless specifically stated otherwise, all prices and charges set out in the agreement are inclusive of VAT and any exclusive of any other applicable tax or duty, and the subscriber remains liable to pay all such taxes in addition to the charges.
- 4.13 A certificate under the hand of any Manager of the SP (whose authority the SP does not have to prove) certifying the sum of any amount owing by the subscriber to SP shall be prima facie proof of its contents and sufficient proof for the purposes of enabling SP to obtain any judgment or order against the subscriber.
- 4.14 In the event of SP having to institute legal proceedings against the subscriber to recover amounts due to SP or for any other reason, the subscriber shall be liable for costs incurred by the SP on the scale as between attorney and own client.
- 4.15 The subscriber hereby consents to and authorizes SP to obtain information about the subscriber from any credit reference agency in the Republic of South Africa.
- 4.16 The SP may, without prejudice to any other rights which it may have under the agreement or at law:
- 4.16.1 notify credit reference agencies of any default by the subscriber; and
 - 4.16.2 blacklist the CPE to prevent the further use thereof.

5. Suspension

- 5.1 The SP may at any time, without notice to the subscriber and in any manner whatsoever, suspend the subscriber's access to the services in the event that any emergency modification, maintenance or remedial work must be carried out in relation to the services or the SP network.
- 5.2 The SP may on notice to the subscriber as set out in clause 7, suspend the subscriber's access to the services in the event that the subscriber fails to perform any of his or her obligations, or breaches any terms of the agreement (in which event SP may also suspend the subscribers use of the CPE), and the SP may charge a reconnection fee to connect the SP to services and/or CPE once the breach has been remedied to the SP's reasonable satisfaction.
- 5.3 If either clause 5.1 or 5.2 applies, the subscriber will remain liable to pay all charges during any period of suspension.
- 5.3 SP will use its reasonable endeavours to inform the subscriber beforehand in the event of planned maintenance.

6. Liability

- 6.1 Without detracting from any of the other provisions of the agreement, SP shall not be liable to the subscriber for any loss or damage suffered by the subscriber, whether the same is direct, indirect, contractual, delictual, or consequential (including loss of profit or loss of business), in the event that:
- 6.1.1 SP fails for any reason whatsoever to deliver and/or provide installation of any CPE either on the required date or at all (provided the subscriber has not made payment for it); and/or
 - 6.1.2 the services are interrupted, suspended or terminated for whatsoever reason beyond our reasonable control including force majeure; and/or
 - 6.1.3 SP fails to suspend the provision of the services to the subscriber after the subscriber has specifically requested SP; and/or
 - 6.1.4 such loss or damage was caused by any negligent act or omission on the part of SP, its employees or its agents; and/or
 - 6.1.5 such loss was caused by or was contributed to by the subscriber's actions or omissions, including but not limited to allowing services to be accessed by someone else other than the subscriber.
- 6.2 The subscriber indemnifies the SP against any damage suffered by the SP as a result of the subscriber's breach of this agreement.

7. Breach

- 7.1 If the subscriber commits a breach of any of the terms and conditions hereof and remains in default for a period of 7 (seven) days after delivery to the subscriber of a written notice from the SP calling for such breach to be remedied, the SP shall be entitled forthwith and without further notice to the subscriber to terminate the agreement and claim the immediate payment of all sums of money payable by the subscriber including all outstanding usage charges and all installments still owing under the installment plan, whether or not then due, in either event without prejudice to the SP'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 clauses 2.1.3 and 7.1 above, the SP may forthwith terminate the agreement at any time by giving the subscriber written notice of termination if (i) the subscriber fails to make payment of any charges on or before the due date for payment; and/or (ii) the subscriber within a twelve-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.



8. Insurance

- 8.1 SP acts as a collection agent for insurance brokers and/or underwriters in respect of the insurance. SP shall not be liable to the subscriber under any policy issued or claim declined pursuant to the subscribers election to take insurance.
- 8.2 It shall be the responsibility of the subscriber to obtain and familiarise himself with the terms and conditions of the insurance policy applicable and the subscriber may request a copy from the SP at any time.
- 8.3 It shall be the responsibility of the subscriber to ensure that the premiums in respect of the insurance policy are paid timeously and in full.
- 8.4 Save as provided herein, any queries which the subscriber may have regarding or arising from the insurance of the CPE 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 SP.

9. General

- 9.1 **Cession and assignment:** 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 SP in terms of the agreement may be ceded and delegated by it to any other party on written notice to the subscriber.
- 9.2 **Passwords:** It is the responsibility of the subscriber to keep all usernames and passwords confidential to prevent unauthorized access to the services and CPE.
- 9.3 **Interception:** Subject to the provisions of Regulation of Interception of Communications and Provision of Communication-Related information Act (RICA), 70 of 2002, the subscriber acknowledges the SP may be obliged by law to intercept, block, filter, read, delete, disclose and use all communications sent or posted using the SP network.
- 9.4 **Notices:** Any notice in connection with the agreement must be addressed:
- 9.4.1 in the case of SP, to Screamer Telecommunications (Pty) Ltd, 21 Watershed Close, Louwlandia, Centurion, or by fax to 011 467 1835 marked for the attention of the Legal Department; or
- 9.4.2 in the case of the subscriber, to the physical address, e-mail address and fax number set out in the application form and marked for the attention of the subscriber.
- 9.5 The notice shall be deemed to have been duly given 7 (seven) days after posting, if posted by registered post; on delivery if delivered to the party's physical address ; on dispatch if sent to the party's then fax number and confirmed by registered letter posted no later than the next business day; or on dispatch if sent to the subscribers email address, unless the addresser is aware, at the time the notice would otherwise be deemed to have been given, that the notice is unlikely to have been received by the addressee through no act or omission of the addressee.
- 9.5 Either party may change its address for this purpose by notice in writing to the other party.
- 9.6 **Entire contract:** The Agreement contains all the express provisions agreed on by the parties with regard to the subject matter of the agreement and 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.
- 9.7 **Amendment:** The SP may amend these terms and conditions from time to time as set out in clause 3.
- 9.8 **Waiver:** No failure, delay, relaxation, or indulgence on the part of the SP 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.
- 9.9 **Applicable law:** The agreement shall be interpreted and implemented in accordance with the laws of the Republic of South Africa and the parties hereby submit to the exclusive jurisdiction of the Magistrates' Court of Johannesburg.
- 9.10 **Disputes:** Any dispute arising out of this agreement which is brought to the attention of the SP by the subscriber, including a dispute about charges, shall be referred in the first instance to the legal department of the SP at the address set out above for notices. The SP will use its reasonable endeavours to resolve the dispute within a period of 10 (ten) days, provided that it has all relevant information. If the subscriber is unhappy with the conduct or outcome of the dispute, then it may be referred to dti Consumer Affairs Committee, for attention Chief Director, Office of Consumer Protection, Private Bag X84, Pretoria, 0001, or tel: (012) 394 1542.
- 9.11 **Customer call centre:** Calls to our call centre may be recorded for training purposes and for the protection of the subscriber and the SP.
- 9.11 If you require these terms and conditions in any other language, you may obtain them from the dti or ICASA.
- 9.12 **RICA;** You acknowledge that Screamer or a third party Network Operator (as the case may be) may under the circumstances as prescribed in the Regulation of Interception of Communications and Provision of Communication Related Information Act, 2002 ("RICA"), be required to intercept, lock, filter, read, delete, disclose and use communications sent or posted via Screamer's or the Network Operator's network and you hereby consent to the undertaking of such activities by Screamer's and/or a third party Network Operator. Screamer and/or a third party Network Operator shall not be liable to you for any losses, liabilities, damages and claims and for any related costs and expenses suffered by you as a result of Screamer and/or a third party Network Operator performing any activity referred to in this clause.
- 9.13 A copy of RICA is available at <http://www.info.gov.za/acts/2002/a70-02>