

# Subscriber Standard Terms and Conditions



## 1. Definitions

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

1.1 "ADSL" means Asymmetric Digital Subscriber Line offered by iBurst in terms of the ADSL Terms and Conditions found on the link at the bottom of these Subscriber Standard Terms and Conditions.

1.2 "Agreement" The Subscriber application form setting out the Subscriber's details, together with all annexes attached thereto, and the Subscriber terms and conditions.

1.3 "Charges" The connection charges, monthly service charges, usage charges and any other charges pertaining to the provision of the MDN services and any other services provided to the Subscriber in terms of the Agreement.

1.4 "Downward Package Migration" moving from one subscription level to another with a lesser subscription rate value per month within the same technology.

1.5 "Effective Date" Notwithstanding the date of signature of the application form, the date of activation of Hardware/Services.

1.5 "HSPA" High-Speed Packet Access offered by iBurst in terms of the HSPA Terms and Conditions found on the link at the bottom of these Subscriber Standard Terms and Conditions.

1.6 "Contract Term" A period of the agreement as indicated on the application form, commencing on the Effective Date.

1.7 "Installation" The installation of Hardware on a location or Subscriber laptop/desktop or similar device specified by the Subscriber in an order.

1.8 "Internet" The interconnected system of networks that connect computers around the world via the TCP/IP protocol.

1.9 "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.

1.10 "MDN" The mobile data network established and operated by the Network Operator in terms of the licence.

1.11 "MDN Services" 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.

1.12 "Mobile Access Numbers" The mobile access numbers, IP address, unique user name or subscription numbers used to identify Subscribers

having access to the MDN.

1.13 "Network Operator" or "WBS" Wireless Business Solutions (Proprietary) Limited which has granted iBurst authorisation to make the MDN services available to the Subscriber.

1.14 "Order" An order placed by a Subscriber on iBurst for the provision of the MDN services.

1.15 "Parties" iBurst/Network Operator and Subscriber and "Party" refers to either of them as so determined by the context.

1.16 "PPU" Pay-per-use as described and detailed in the Pay Per use terms and conditions found on the link at the bottom of these Subscriber Standard Terms and Conditions.

1.17 "Regulator" The Independent Communications Authority of South Africa/ICASA".

1.18 "Renewal Period" A period indicated by the Subscriber in writing or another recorded form, commencing on the day immediately following the expiration of the Contract Term, or an anniversary of the expiration period, as the case may be.

1.18 "iBurst" iBurst (Pty) Ltd, registration number: 2004/029951/07, a company registered in terms of the laws of the Republic of South Africa.

1.19 "Service" The services chosen by the Subscriber in the Application form.

1.20 "Subscriber" Any party to whom the MDN services are made available in terms of the Agreement.

1.21 "Hardware" The type approved iBurst or other applicable user hardware, including but not limited to the antennas, modems, laptops, web phones and communication cards used by a Subscriber to send and/or receive any data signal via an MDN radio link and may include any other special equipment provided by the Network Operator in order to facilitate any future enhanced services to Subscribers.

1.21 "Upward Package Migration" moving from one subscription level to another with a higher subscription rate value per month within the same technology.

1.22 "VAS" The Value Added Services offered by iBurst from time to time.

1.23 "VAT" Value Added Tax has provided in the Value Added Tax act 89 of 1991.

## Part 1: General Terms and Conditions

### 2. Commencement and termination

2.1 The Agreement shall commence on the Effective Date and shall, subject to the provisions of clause 7 and 9 below, continue for the agreed contract term, and thereafter continue automatically on a month to month basis and/or for the specified Renewal Periods unless

terminated:

2.1.1 By the Subscriber, on expiration of the Contract Term or a Renewal Period, as the case may be, by giving to iBurst a written notice of termination not less than (1) one calendar month and not more than (3) (three) 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, within a period of 7 (seven) days from the Effective Date, should the Subscriber not find the service fit for use, subject to full restitution by the Subscriber including without limitation, return of the Hardware and full payment in respect of all data used which data will be billed per megabyte price applicable to the package subscribed for (incl. VAT); and/or

2.1.3 By iBurst, after 20 business days notice to Subscriber to notify the Subscriber to rectify a material failure, and after which the Subscriber has failed to comply with.

2.1.4 By iBurst, in the event that the licence to provide the Services has been revoked by the Regulator.

2.2 Notwithstanding the use of agents or other intermediaries (Delegated Service Providers) by iBurst, the order by the Subscriber is an offer made by the Subscriber to iBurst and will be considered once received by iBurst. iBurst's acceptance of the offer shall consist of the activation of the Hardware as contemplated in clause 2.1, and upon which activation the Agreement shall become binding between iBurst and the Subscriber.

2.3 The Subscriber may not cancel or 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 responsibility of the Subscriber 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, iBurst has a right to impose a reasonable penalty to cover its costs of subsidizing the Hardware, discounts provided, as well as the cost of providing the Service.

2.4 Notwithstanding clause 2.1 above, the Subscriber may renew the Agreement to a 24 month Agreement with 3 (three) calendar months notice or less prior to 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 prior to commencing with the renewed Agreement.

2.5 Notwithstanding any provision contained in this 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.

2.6 The Subscriber acknowledges that, upon termination of the agreement and where there has been unused data, airtime or related service, iBurst shall not in any way, convert such unused data, airtime or related service into credit on the Subscriber's account and refund same to the Subscriber.

### **3. Supply and installation of Hardware and MDN 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 behalf and not as an agent of iBurst.

3.3. The Subscriber shall be responsible for obtaining all necessary approvals and authorities imposed by any competent authority or body (this includes but is not limited to body corporates, provincial and local municipalities) and required for the purpose of any such supply and/delivery and/installation, and the Subscriber hereby indemnifies iBurst against any claim or liability suffered by iBurst by reason of such approval and authorities 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 any Hardware is lost, stolen or damaged, the Subscriber shall immediately notify iBurst in writing and 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 MDN 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 MDN 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 MDN 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 any

Hardware.

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.

### **4. Charges**

4.1 In consideration for the provision of the MDN 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 application form and whether or not the MDN 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 and delivery and maintenance of Hardware and installation on presentation of invoice and against such delivery.

4.3.2 of monthly service charges monthly in advance and of all other charges, monthly in arrears, in either event in full, within 21 days from date of the relevant invoice.

4.3.3 at iBurst's premises or at the bankers of iBurst in Johannesburg. Where payment is made by the Subscriber through a debit order, other electronic means or any other intermediary, the Subscriber's bankers or other intermediaries shall act as the Subscriber's agent and the Subscriber shall have discharged its obligations only upon payment being received by iBurst.

4.4 Notwithstanding the provisions of clause 4.3, iBurst may at any time on reasonable written notice to the Subscriber vary its invoicing and payment procedures and requirements.

4.5 In the event that 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:

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 by signature next to the account details) 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 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 the Subscriber's agreement as a result of incorrect invoices being sent and/or failure of iBurst to send statements or invoices to the Subscriber.

### **4.11 Package Migrations**

#### **4.11.1 Month to Month Agreements**

The Subscriber shall be entitled to Downward Package Migration subject to (1) one calendar month notice. A migration fee shall be charged by iBurst in respect of downward migration.

#### **4.11.2 Twenty Four month Agreement**

The Subscriber shall not be entitled to Downward Migration but shall be entitled to Upward Package Migration free of charge by furnishing iBurst with a notice; the migration will take immediate effect.

4.11.3 In the event of an Upward Package Migration and Downward Package Migration there will be no data carry over. The data carry over rules will apply based on the new package. The data will be equivalent to the new package; the Subscriber 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).

4.11.4 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.

4.12 iBurst reserves the right to charge

a reasonable cancellation penalty. This would include any discounts, subsidy to the equipment and the cost of Service to the Subscriber

4.13 iBurst reserves its right to cap off-net (internet) and on-net (iBurst to iBurst) traffic as per its capping limits 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 utilised above the cap limit.

4.14 The Subscriber indemnifies and holds iBurst harmless for any loss suffered as a result of incorrect amounts being debited in respect of applicable charges.

4.15 PPU shall automatically be provisioned to the Subscriber in respect of any package that the Subscriber has chosen. The Subscriber is however, entitled to opt-out by furnishing iBurst with (1) one calendar month's notice of termination.

4.16 The Subscriber shall be responsible for the costs of any additional bandwidth or boosters purchased from iBurst either online or otherwise.

## 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 MDN 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 MDN 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 MDN Services to the Subscriber at iBurst's discretion for any reason whatsoever.

5.1.4 The Subscriber allows unmonitored access to the Services to children under the age of 16 years.

5.2 iBurst reserves the right to require the Subscriber to effect payment of any applicable reconnection charges pursuant to the restoration of the MDN Services suspended in the circumstances contemplated in clause 5.1.2. In the event that the Subscriber's access to the Network is suspended, the Subscriber shall still be liable for the monthly service charges during any such period of suspension.

## 6. Limitation of liability

6.1 Without detracting from any of the other provisions of the Agreement, 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 any Hardware either on the required date or at all; and/or

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

6.1.3 iBurst fails to suspend the provision of the MDN 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.

6.1.5 Such loss was caused by the Subscriber's actions, including but not limited to: allowing the MDN 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 Acts 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, 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 into the Subscriber's premises/voice platform. The Customer shall remain liable for the voice account in the event of such fraudulent activity taking place in the Subscriber's account.

## 7. Breach

7.1 If the Subscriber commits a breach of any of the terms and conditions hereof and remains in default for a period of 7 (seven) days after delivery to the Subscriber of a written notice ("notice of breach") from 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 Subscriber written notice of such termination if (i) the Subscriber fails to make payment of any charges on or before the due date for payment thereof; and/or (ii) the Subscriber within a 12-month period calculated from a notice of breach, receives a further two notices of breach; or (iii) in the event that the Subscriber is 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 derogating from any other rights or remedies available to iBurst in terms of the Agreement or at law, in the event of the Agreement being cancelled by the Subscriber (for whatsoever reason) prior to the expiry of the Contract Term or any 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:

7.4.1 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.

## 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 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.

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 and to ensure that the premiums in respect of the insurance policy are paid timeously and in full, and, if 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% (percent), from due date to date of payment.

9.2 Unless specifically stated otherwise, all prices and charges set out in the Agreement and any price list are inclusive of Value-Added Tax and exclusive any other applicable tax or duty, the liability of which shall vest with the Subscriber.

9.3 The rights and obligations of the Subscriber in terms of the Agreement may not be ceded or delegated to any third party. The rights and obligations of 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 VAS offered by iBurst. The Subscriber may be required to subscribe to an iBurst VAS which forms part of a mandatory subscription. The Subscriber shall, however, have a right to request 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 within 7 (seven) days of occurrence of the afore-mentioned events.

9.9 The Subscriber may not allow children to access the internet services unmonitored and that they do not access websites that have 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 MDN 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 Subscriber's payment conduct to any authorised and registered credit reference agency in the Republic of South Africa.

10.4 The Subscriber consents/authorises receiving marketing, promotional updates and client satisfaction surveys from iBurst.

## Part 2: Conditions for sale of Hardware

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 application form shall be subject to the following terms and conditions:

11.1.1 In the event of early termination of the Agreement for whatsoever reason, the Subscriber shall be obliged to effect payment to iBurst of the amount claimed by, or any amount that it is legally bound to pay to iBurst in terms of this Agreement.

11.1.2 All risk in and to the Hardware supplied and delivered by iBurst to the

Subscriber shall pass to the Subscriber on delivery.

11.1.3 Ownership in the Hardware will remain vested in iBurst until the expiry of the 24 (twenty four) month agreement period. Ownership in the Hardware shall only pass to the Subscriber upon fulfilment of all its obligations in terms of this Agreement.

11.1.4 iBurst obligations in terms of any warranties pertaining to the Hardware shall be limited to the one (1) year from the Effective date. All delivery costs shall be for the Subscriber's account.

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 a Subscriber 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:

12.1.1 Any written notice in connection with the Agreement must be addressed for the Attention of the LEGAL DEPARTMENT:

12.1.1.1 In the case of iBurst to: iBurst (Pty) Ltd PO Box 651921, Benmore, 2010

12.1.1.2 In the case of the Subscriber to the postal address and fax number set out in the Subscriber details application form to which these standard terms and conditions apply, and marked for the attention of the

Subscriber.

12.1.2 The notice shall be deemed to have been duly given 7 (seven) days after posting, if posted by registered post to the parties addressed in terms of this sub-clause.

12.1.3 On delivery if delivered to the party's physical address in terms of either this sub-clause or the next sub-clause dealing with service of legal documents.

12.1.4 On dispatch if sent to the party's then fax number and confirmed by registered letter posted no later than the next business day.

12.1.5 Unless the addresser is aware, at the time the notice would otherwise be deemed to have been given, that the notice is unlikely to have been received by the addressee through no act or omission of the addressee.

12.1.6 Either party may change its Postal address for this purpose by notice in writing to the other party.

12.2 Address for service of legal documents (notices and domicilia) The parties choose the following physical addresses and fax numbers at which documents and legal proceedings in connection with the Agreement may be served.

12.2.1.1 In the case of iBurst, to: iBurst (Pty) Ltd, Address: 3012A, William Nicol Drive, Bryanston, 2021; Fax No: 086 503 9111 marked for the attention of the Legal Department.

12.2.1.2 In the case of the Subscriber, to the physical address and fax number set out in the Subscriber details application form to which these standard terms and conditions are attached and marked for the attention of the Subscriber.

12.2.2 Either party may change its address for the purpose of the Agreement to another physical address in the Republic of South Africa by notice in writing to the other party.

12.3 **Entire 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.

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 of a clear and unambiguous conduct, amounting to more than mere delay, not to exercise the right (if the aggrieved party is willing to relinquish that right, the aggrieved party will on request do so in writing). In particular, acceptance of late performance shall for a reasonable period after performance be provisional only, and the aggrieved party may still exercise that right during that period.

12.6.2 Shall not be stopped (i.e. prevented) from exercising the aggrieved party's rights arising out of the breach, despite the fact that the aggrieved party may have elected or agreed on one or more previous occasions not to exercise the rights arising out of any similar breach or breaches.

12.7 **Applicable law:** The Agreement shall be interpreted and implemented in accordance with the laws of the Republic of South Africa.

13 **Blacklisting Clause:** iBurst may, without prejudice to any other rights which it may have under the Agreement or at law:

13.1 Notify credit bureaus of the Subscriber's default; and

13.2 Blacklist the equipment to prevent the further use thereof.

14. **Acknowledgements:** The Subscriber acknowledges having read and accepted the terms and conditions of the Acceptable Use 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 VAS supplied to the Subscriber is in accordance to a separate agreement that the Subscriber is entering into. The VAS is governed in accordance with its 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.

15 Termination without Cause: Without prejudice to any other rights at law or set out in the Agreement, iBurst may terminate the Agreement upon written notice to the Subscriber in the event that the Licence is revoked, terminated or amended for any reason whatsoever.

16. **Interception of communications.** Subject to the

provisions of Regulation of Interception of Communications and Provision of Communication-related information Act (RICA), 70 of 2002, the Subscriber acknowledges 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/a70-2002>.

Certain Products or Services are subject to their own set of terms and conditions and such terms and conditions available on iBurst website are deemed to be included and part of these terms and conditions. Such Product or Service terms include, but are not limited to the following:

iBurst ADSL terms and conditions

iBurst HSDPA terms and conditions

PPU terms and conditions