

Terms and Conditions – General

1. PROVISION OF THE SERVICE

SAI undertakes to provide the service to subscriber, as described in the relevant Service Schedule hereto on the terms and conditions set out herein and in the aforementioned service schedule.

2. THESE TERMS AND CONDITIONS TO PREVAIL

These terms and conditions, together with the Agreement hereto and any relevant Service Schedules, shall constitute the whole of the agreement between SAI and Subscriber relating to the subject matter hereof, notwithstanding anything in Subscriber's inquiry, specification, acceptance, order or other documentation or discussion to the contrary. In the event of any conflict arising between these terms and conditions on the one hand and the Application Form or any schedule on the other hand, then, unless a contrary intention clearly appears, these terms and conditions shall prevail.

3. NO VARIATION OR AMENDMENT

- 3.1. No amendment or consensual cancellation of this Agreement or any provision or term thereof or of any agreement 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 authorized representative from both SAI and Subscriber.
- 3.2. No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against either parties hereto in respect of its right under this Agreement, nor shall it operate so as to preclude either of the parties thereafter from exercising its rights strictly in accordance with this Agreement.
- 3.3. Either party shall not be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract between Subscriber and SAI or not.

4. CHARGES

- 4.1. Subscriber is responsible for and agrees to pay to SAI all fees and charges, in South African currency, without deduction or set-off of any amount of whatsoever nature or for whatsoever reason.
- 4.2. In the event of any dispute arising as to the amount or calculation of any fee or charge which is payable by Subscriber, the dispute shall be referred for determination to independent auditors chosen by SAI. They shall act as experts and not as an arbitrator, and their decision shall be final and binding on SAI and Subscriber. The cost of the determination shall be paid on demand by the party against which the determination is made, or as determined by the said auditors.
- 4.3. If payment for any service(s) has not been made by the due date stated thereon, SAI reserves the right in its sole and absolute discretion and without any notice to the Applicant to suspend the provision of the service until payment has been received in full.
- 4.4. In addition to what is set out in Clause 4.3 above, SAI shall be entitled in its sole discretion to suspend any Domain Name(s) registered and/or renewed by SAI if there has been a failure to make payment of the necessary fees in respect of the Domain Name(s). In addition SAI shall be entitled to retain a lien on the Domain Name(s) in respect of any outstanding debts owing to SAI in terms of any other services supplied to subscriber by SAI.
- 4.5. Any amount falling due for payment by Subscriber to SAI in terms of or pursuant to this Agreement which is not paid on its due date shall bear interest calculated from the due date for payment thereof until date of payment, at the publicly quoted overdraft rate charged by First National Bank Limited from time to time plus 3%, calculated monthly in arrears.

5. SUBSCRIBERS WARRANTIES

Subscriber represents, warrants and agrees that:

- 5.1. The use of the service(s) provided does and will not interfere with nor infringe the right of any third party in any jurisdiction with respect to trademark, service mark, tradename, company name, close corporation name, copyright nor any other intellectual property right;
- 5.2. Subscriber will not knowingly create, store or disseminate any illegal content;
- 5.3. Subscriber will not send nor promote the sending of spam;
- 5.4. Subscriber shall not use the service(s) in contravention of any laws or statutory enactments, and that the Service(s) shall be used in accordance with the guidelines provided by the Internet Corporation for Assigned Names and Numbers (ICANN at www.icann.org). Subscriber acknowledges that SAI has no obligation to assist Subscriber in regard to familiarising Subscriber and keeping Subscriber apprised of all relevant South African law in force from time to time which has any bearing on the Service(s) and/or their use;
- 5.5. Subscriber is not seeking to use nor shall it use the Service(s) for any unlawful purpose, including, without limitation, delictual interference with contract or prospective business advantage, unfair competition, 'cybersquatting', injuring the reputation of another, nor for the purpose of confusing or misleading any person, whether natural or incorporated.
- 5.6. If an application for Domain Name(s) is made by a proxy agent for Subscriber, including but not limited to an Internet Service Provider (ISP), Subscriber is nonetheless bound as a principal for all the obligations in terms of all terms and conditions contained herein.

6. SAI WARRANTIES

- 6.1. Save as expressly set out in this Agreement, SAI does not make any representations nor gives any warranties or guarantees of any nature whatsoever in respect of the Service and all warranties which are implied or residual at common law are hereby expressly excluded.



- 6.2. Without limitation to the generality of clause 6.1, SAI does not warrant or guarantee that the information transmitted by or available to Subscribers by way of the Service:
- 6.2.1. will be preserved or sustained in their entirety;
 - 6.2.2. will be suitable for any purpose;
 - 6.2.3. will be free of inaccuracies or defects or bugs or viruses of any kind;
- and SAI assumes no liability, responsibility or obligations in regard to any of the exclusions set forth in this clause 6.2 and 6.1 above.

7. EXCLUSION OF LIABILITY

- 7.1. Except for any deliberate act or gross negligence on the part of SAI, its servants or agents, and except as otherwise expressly provided herein to the contrary, SAI shall not be liable to Subscriber or any third party for any loss to Subscriber or any third party for any loss or damage of whatsoever nature and/or howsoever arising (including consequential or incidental loss or damage which shall include but shall not be limited to loss of property or of profit, business, goodwill, revenue or anticipated savings) or for any costs, claims or demands of any nature whether asserted against SAI or against Subscriber by any party arising directly or indirectly out of the Service, its use, access, withdrawal or suspension or out of any information or materials provided or not provided, as the case may be, by or from their use.
- 7.2. Subject to clause 7.1 above, the entire liability of SAI and Subscriber's exclusive remedy for damages from any cause related to or arising out of this Agreement, regardless of the form of action, whether in contract or in delict, will not exceed the aggregate of the fees and charges paid by Subscriber under this Agreement for the period of 1 (one) month preceding Subscriber's written notice thereof.
- 7.3. Subscriber hereby indemnifies SAI against and holds SAI harmless from any claim by any third party arising directly or indirectly out of access to or use of the Service or information obtained through the use thereof or in respect of any matter for which liability of SAI is excluded in terms of clause 7.1 above.
- 7.4. Because of the need to conduct maintenance, repair and/or improvement work from time to time on the technical infrastructure by means of which the Services are provided, the provision of the Services may be suspended from time to time, when under the control of SAI, with the giving of at least 48 hours notice, and all liability on the part of SAI of any loss or damage (whether directly or consequential) thereby incurred or for any costs, claims, or demands of any nature arising therefrom, is excluded, and the provisions of clause 5.1 above shall apply mutatis mutandis to such exclusion. Should the provision of the Service be suspended by SAI for the purpose aforementioned in this clause 7.4, for a period in excess of 48 (forty eight) consecutive hours, SAI shall give Subscriber credit in an amount which represents a pro rata portion of Subscriber's basic monthly subscription fee for the suspended service for the month during which the SAI suspension occurred.

8. BREACH

- 8.1. Subject to the provisions of clause 8.2 to the contrary, if either party hereto:
- 8.1.1. breaches any of the terms or conditions of this Agreement and fails to remedy such breach or pay such amount, as the case may be, within 7 (seven) days after the receipt of written notice from the other party;
 - 8.1.2. commits any act of insolvency;
 - 8.1.3. endeavours to compromise generally with its creditors or does or causes anything to be done which may prejudice the other party's rights hereunder or at all;
 - 8.1.4. allows any judgment against it to remain unsettled for more than 10 (ten) days without taking immediate steps to have it rescinded and successfully prosecuting the application for rescission to its final end; or
 - 8.1.5. is placed in liquidation or under judicial management (in either case, whether provisionally or finally) or, being an individual, his estate is sequestrated or voluntarily surrendered;
- the other shall have the right, without prejudice to any other right which it may have against the other, to:
- a) treat as immediately due and payable all outstanding amounts which would otherwise become due and payable over the unexpired period of the Agreement, and to claim such amounts as well as any other amounts in arrears including interest and to cease performance of its obligations hereunder as well as under any other contract with the defaulting party until such party has remedied the breach; or
 - b) cancel this Agreement;
- in either event without prejudice to such party's right to claim damages.
- 8.2. In the event of any expiration, termination or cancellation of this Agreement, provisions hereof which are intended to continue and survive shall so continue and survive.
- 8.3. The defaulting party shall be liable for all costs incurred by the other party in the recovery of any amounts or the enforcement of any rights which it has hereunder, including collection charges and costs on an attorney and own client scale whether incurred prior to or during the institution of legal proceedings or if judgment has been granted, in connection with the satisfaction or enforcement of such judgement.

9. CESSION

Neither party shall be entitled to cede or assign any rights and/or obligations which it may have in terms of this Agreement to any third party unless consented to in writing by the other party, which consent may not be unreasonably withheld.

10. HEADINGS AND INTERPRETATION

The clause headings contained herein are for reference purposes only and shall not be used in the interpretation of this Agreement. Words importing any one gender include the other two genders, the singular includes the plural and vice versa, and natural persons includes created entities (corporate or unincorporate) and vice versa.

11. DOMICILIUM CITANDI ET EXECUTANDI

For all purposes, including but not by way of limitation, the giving of any notice, the making of any communication and the serving of any process, SAI and Subscriber respectively choose their domicilium citandi et executandi ("domicilium") at their respective street addresses appearing on the face hereof. Either party shall be entitled from time to time to vary its domicilium and shall be obliged to give notice to the other within ten days of the intended change. Any notice which either party may give to the other shall be posted by prepaid registered post or hand delivered to the other party's domicilium and shall be presumed, unless the contrary is proved by the party to whom it is addressed, to have been received by that party on the tenth day after the date of posting or on the day of delivery as the case may be.

12. GOVERNING LAW AND JURISDICTION

This Agreement will be governed by and construed in accordance with the law of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with South African law by a South African Court having jurisdiction.

13. FORCE MAJEURE

13.1. SAI shall not be liable for non-performance under this agreement to the extent to which the non-performance is caused by events or conditions beyond the control of SAI, provided that SAI makes all reasonable efforts to perform.

13.2. In the event that any provision of this Agreement conflicts with any statute, ruling or order of any governmental or regulatory body from time to time, then such provision of this Agreement shall be controlled by the statute, ruling or order.

14. SEVERABILITY

Should any of the terms and conditions of this Agreement be held to be invalid, unlawful or unenforceable, such terms and conditions will be severable from the remaining terms and conditions which will continue to be valid and enforceable.

Terms and conditions - Payments

General – These terms apply to all subscribers

- a. Fees and / or subscriptions are due and billed monthly in advance and the service will be suspended if the subscription has not been received before the 1st of the month for which it is due. **(SAI operates strictly on a pre-paid basis. In the case where an account is not paid by the start of the usage period, our system automatically suspends the service. To avoid the inconvenience of suspension or your service, please ensure that your account is settled before due date).**
- b. An administration fee of R50.00 excl. VAT will be charged to Subscriber in the following circumstances:
 - On each occasion that a cheque is returned unpaid from the bank or that a debit order is rejected by the bank to cover bank charges and administrative costs incurred.
 - For ADSL capped and dial services, on each occasion that a temporary change is requested by the user, including manual temporary changes to cap sizes, or voluntary temporary suspension or reactivation of the service.

Debit Orders – These terms apply to subscribers paying by Debit Order

- c. SAI are hereby authorised to debit subscriber's bank account specified in the debit order authority monthly in advance with any fees payable to SAI in terms of services nominated on this, or any other applications for service authorised by subscriber, including any costs relating to domain registrations requested.
- d. The amount debited may be amended from time to time for example as a result of price changes by SAI who undertake to advise subscriber by email no less than one month in advance of any such changes, or as a result of service changes requested by subscriber.
- e. SAI will receive all amounts without prejudice of their rights.
- f. Subscriber confirms by their signature on the subscription form that the debit order authorisation has been signed in terms of the mandate held by their bank.
- g. All withdrawals authorised may be processed by a computer, in which event, if the debit order is computerised, subscriber will not receive a receipt.

Payment by other means – These terms apply to subscribers not paying by Debit Order

- c. SAI's banking details are as follows:

BANK:	FIRST NATIONAL BANK
ACCOUNT NAME:	JBJ INTERNET T/A SAI
BRANCH:	BANK STREET
BRANCH CODE:	220825
ACCOUNT NUMBER:	62032734932
- h. All outstanding amounts must be settled in full before the 1st of each month to avoid the subscribed service/s being suspended.
- d. **Cash:** For security reasons, SAI is not able to accept cash payments at their offices. Subscribers wishing to make cash payments may do so by direct deposit into our bank account. When depositing directly into our bank account the payee reference section should be completed by inserting subscriber's company name in order that it reflects correctly on SAI's bank statement. Failure to do so may result in misidentification of the payer and the risk of service being suspended unnecessarily.
- e. **Cheques:** When depositing cheques directly into our bank account the payee reference section should be completed by inserting subscriber's company name in order that it reflects correctly on SAI's bank statement. Failure to do so may result in misidentification of the payer and the risk of service being suspended unnecessarily. Cheques should be deposited directly into SAI's account as postal delays may impact on the date we receive the cheque, which could possibly result in service suspension.
- f. **Internet Banking:** The payee reference section on the transfer should be completed (again, using subscriber's company name) so that it reflects correctly on SAI's bank statement. Failure to do so may result in misidentification of the payer and the risk of service being suspended unnecessarily.
- g. **Stop Orders:** The subscriber's company name must be reflected on the transfer. Failure to do so may result in misidentification of the payer and the risk of service being suspended unnecessarily.