

1. INTRODUCTION

- 1.1 CM Value Added Services (Pty) Ltd t/a CMVAS provides access to the Internet and email functionality through a comprehensive offering of connectivity products available in the marketplace, including, but not limited to, fibre and wireless broadband. Various ancillary services come standard with Internet access and email, such as blogs, expert forums, video albums, chat and discussion boards. CMVAS also offers various other products and services, hosting of websites, fax-mail and VPN.
- 1.2 These General Terms and Conditions include the Copyright Notice, Privacy Policy and Acceptable Use Policy which are available on our website.
- 1.3 These General Terms and Conditions apply to all products and services offered by CMVAS.
- 1.4 You will be required to agree to these General Terms and Conditions at the outset, and then to the relevant product or service specific terms and conditions when you decide to subscribe to a service or procure a product. A separate agreement will in each instance be concluded between us.
- 1.5 In the event of a discrepancy between these General Terms and Conditions and the product or service specific terms and conditions, the product or service specific terms and conditions will take precedence.

2. DEFINITIONS

- 2.1 Activation Date means the date on which CMVAS will give you access to and/or enable you to use a service;
- 2.2 Agreement means the General Terms and Conditions as defined in clause 1.2 together with the relevant product or service specific terms and conditions which are applicable to the services and/or products, including the Application Form provided to you by CMVAS;
- 2.3 Application Form means the document on which you selected your service or product of choice;
- 2.4 Authority means the Independent Communications Authority of South Africa ("ICASA");
- 2.5 Business Day means Monday to Friday, but excludes a day which is an official public holiday in the Republic of South Africa;
- 2.6 Business Hours means the hours between 08h00 and 17h00 on a Business Day;
- 2.7 Effective Date means the date on which you accept the terms and conditions prescribed by us for the provisioning of a service or product, be that in writing or by way of electronic medium, including telephonic acceptance and, in the event of any dispute as to said date of acceptance, the Effective Date shall be the Activation Date;
- 2.8 Electronic Communications Act means the Electronic Communications Act, 2005;
- 2.9 ECT Act means the Electronic Communications and Transactions Act, 2002;
- 2.10 Force Majeure means (including without limitation) in the event of war, riots, fire, flood, hurricane, typhoon, earthquake, lightning, explosion, strikes, lockouts, slowdowns, prolonged shortage of energy supplies and acts of state or governmental action prohibiting or impeding any party from performing its respective obligations under the contract or any other cause beyond the reasonable control of CMVAS, that may result in a delay or a failure to provide the Service;
- 2.11 Intellectual Property Rights means the copyright in any work in terms of the Copyright Act, No. 98 of 1978, and includes without limitation the right to reproduce that work, the rights in respect of a trademark conferred by the Trade Marks Act, No. 194 of 1993, the rights in respect of a design conferred by the Designs Act, No. 195 of 1993, and the rights in respect of a patent conferred by the Patents Act, No. 57 of 1978;
- 2.12 Marks means any trademarks, logos, brand names, domain names or other marks of CMVAS;
- 2.13 NCA means the National Credit Act, 34 of 2005;
- 2.14 Network Coverage means the geographical area within which the service can be accessed and used by you, as determined at the time coverage was established;
- 2.15 Network Operator means a company that owns an electronic communications network, and which makes such network and the electronic communications services conveyed over such network

- available to other industry players for commercial purposes (e.g. Telkom);
- 2.16 RICA means the Regulation of Interception of Communications and Provision of Communication Related Information Act, 2002;
- 2.17 Services means any service that CMVAS provides to the subscriber;
- 2.18 Subscriber means a user of the service; Subscribe or Subscription has a corresponding meaning;
- 2.19 CMVAS refers to CM Value Added Services Pty (Ltd), registration number: 2004/003828/07;
- 2.20 We, us and our means CMVAS its affiliates and subsidiaries;
- 2.21 Website means www.cmvas.co.za;
- 2.22 VAT means Value Added Tax as provided for in the Value Added Tax Act, 1991; and
- 2.23 You means the subscriber to the service.

3. CONCLUSION OF THE AGREEMENT

- 3.1 You warrant that you have the authority and contractual capacity to enter into this Agreement with us.
- 3.2 When you apply for a service or product with CMVAS you will provide us with a certified copy of your identity document, proof of residential and/or business address and proof of banking details (confirmation letter from Bank or previous month's bank statement) In the event of a juristic person, you will provide us with the same information as above for your authorised representative, together with proof of address (certified copy of company letterhead) and a company resolution authorising the application and the company representative's capacity to enter into the Agreement.
- 3.3 Your application for a service or product may be subject to a credit referencing or risk assessment process. This means that CMVAS may request and receive your Confidential Information, Consumer Credit Information and Prescribed Information (as defined in the NCA) ("Assessment Information") from registered credit bureaus in order to perform a financial means test to determine whether you will be in a position to meet your obligations under the intended agreement.
- 3.4 CMVAS is entitled to perform a financial means test each time you apply for a service or product.
- 3.5 An agreement for the service or product applied for will commence on the Effective Date. No agreement will come into effect in the event of a negative credit reference or risk assessment.
- 3.6 In this regard you consent to CMVAS requesting, receiving and reporting your Assessment Information from and to registered credit bureaus in accordance with the provisions and for the purposes of the NCA; and the sharing of such Information by registered credit bureaus and such other persons as contemplated in the NCA, for the prescribed purposes of the NCA.
- 3.7 CMVAS shall not be under any obligation to supply any services to the subscriber until an order in respect of the required services has been agreed by means of signing the order AND clicking an acceptance button, sending of a confirmatory document, and acceptance by CMVAS including an email or by signing or indicating acceptance by means recognised by the ECTA.
- 3.8 You are, in terms of section 44 of the ECT Act, entitled to cancel, without reason and without penalty, an electronic transaction and related credit agreement that was concluded electronically for the supply of:
- 3.8.1 products, within 7 (seven) days after the date of receipt of the goods; and
- 3.8.2 services, within 7 (seven) days after the date of the conclusion of the agreement, subject to the exclusions in section 42 (2) of the ECT Act which include (without limitation), services that began with your consent before the end of the aforementioned 7 (seven) day period, goods which, by their nature, cannot be returned, or computer software which is unsealed by you.
- 3.9 An instalment agreement, which falls within the ambit of the NCA, which was concluded at a location other than the registered business premises of CMVAS, but not electronically, may be terminated by you within 5 (five) Business Days of the date of signature thereof by you, by:
- 3.9.1 delivering a notice to CMVAS by hand or by registered mail; and
- 3.9.2 by tendering the return of any goods or paying in full for any services received by you, in terms of the instalment agreement.
- 3.10 In the event that a credit agreement as contemplated in clause 3.9 was concluded electronically, the 7 (seven) day period under the ECT Act as set out in clause 3.8 above will apply.

- 3.11 In the event that you cancel the contract, you agree to a one-calendar month notice period that is billable.
- 3.12 This Agreement will continue indefinitely, and you will be bound thereby for as long as you use any service or product offered by CMVAS. The Agreement will terminate simultaneously with the termination for any reason of all specific service or product offerings, as provided for in the service and product specific terms and conditions.
- 3.13 Termination of the contract by the subscriber prior to expiry of the term will entitle CMVAS to immediately collect the full amount outstanding for the remainder of the contract.
- 3.14 After 12, 24 or 36 months on the SLA the equipment will be the property of the client alternatively the equipment can be rented on 12, 18 or 24 months after which the equipment will remain the property of the company.

4. CONDITIONS OF ACCESS

- 4.1 CMVAS will make the service available to you on the Activation Date.
- 4.2 CMVAS will issue a username and password to you prior to the Activation Date in order to enable you to gain access to and/or use a service. You will not be able to access and/or use a service without a username and password.
- 4.3 You agree that:
 - 4.3.1 you will use your username and password for your own personal use only;
 - 4.3.2 you will not disclose your username and password to any other person for any reason whatsoever and that you will maintain the confidentiality thereof;
 - 4.3.3 in the event that your password is compromised, you will immediately notify CMVAS to change your password;
 - 4.3.4 you, in your capacity as the holder of the username and password, are solely responsible for all payments in respect of a service charged to your CMVAS account, irrespective of whether the service has been utilized or is being utilized by you or not;
 - 4.3.5 the entire amount outstanding on your CMVAS account will be deemed to have arisen from (or relate to) your access to and/or use of a CMVAS service;
 - 4.3.6 you will not, at any time, permit and/or initiate a simultaneous network log-in; and
 - 4.3.7 you will not attempt to circumvent CMVAS's user authentication processes or engage in attempts to access CMVAS's network where not expressly authorized to do so.
- 4.4 You acknowledge that CMVAS will provide you with an opportunity in respect of all electronic transactions to:
 - 4.4.1 review the entire electronic transaction;
 - 4.4.2 correct any mistakes; and
 - 4.4.3 withdraw from the transaction, before finally placing the order.
- 4.5 The subscriber shall use the services in accordance with CMVAS's acceptable use policy, which is available on the website.

5. SERVICE DELIVERY AND AVAILABILITY

- 5.1 CMVAS will make all its services and products available to you in accordance with the provisions of its Acceptable Use Policy which is available on our Website and on request.
- 5.2 Services or products will be dispatched, delivered or rendered to you within 30 (thirty) days from the date on which we received your application, unless otherwise agreed to between us, failing which you will be entitled to cancel the agreement on 7 (seven) days written notice to us.
- 5.3 CMVAS will immediately notify you should CMVAS be unable to perform in terms of the applicable agreement where the services or products required by you are unavailable. CMVAS will under such circumstances refund any payments to you within 30 (thirty) days of the aforementioned notification of unavailability.
- 5.4 CMVAS provides its asynchronous services on a "best -effort" basis to its subscribers and offers no service levels of any nature thereto.
- 5.5 CMVAS will use its best endeavours to notify you in advance of any maintenance and repairs which may result in the unavailability of a service but cannot guarantee that it will be able to provide such notification

timeously or at all.

6. COMMUNICATION, COMPLAINTS HANDLING AND CONSENT TO ARBITRATION

- 6.1 You agree that CMVAS may, from time to time, send you communications regarding (without being limited to) special offers, or discounts which CMVAS may negotiate for and offer to its subscribers, operational changes that may affect the services and/or new services or products launched or discontinued by CMVAS from time to time.
- 6.2 Complaints must be submitted to CMVAS and will be dealt with by CMVAS in accordance with the provisions of this clause 6.
- 6.3 Any payment default by you, arising from or in connection with, any service or product rendered or provided by CMVAS, will be excluded from the provisions of this clause, and CMVAS may, in our sole discretion, proceed to institute legal action against.
- 6.4 You are required to afford us an opportunity to resolve a complaint before you approach the Authority or refer the matter to Arbitration, as contemplated in clause 6.10 below.
- 6.5 You are required to direct a complaint to info@cmvas.co.za. Your complaint should include the following:
 - 6.5.1 your name and surname;
 - 6.5.2 your account number;
 - 6.5.3 the date on which the complaint arose; and
 - 6.5.4 a brief description of what gave rise to the complaint.
- 6.6 CMVAS will acknowledge receipt of your complaint within 3 (three) working days of receipt thereof.
- 6.7 CMVAS will formally resolve your complaint in writing within 14 (fourteen) working days of receipt thereof, or within such longer period as we may agree to under circumstances where the resolution of the complaint is, for example (but without limitation), in the hands of a supplier or third-party service provider.
- 6.8 You may approach the Authority or refer the matter to Arbitration as set out in clause 6.10 below, for resolution of the dispute, should you not be satisfied with the outcome of the dispute as determined by CMVAS.
- 6.9 The dispute will be referred to the Complaints and Compliance Committee of the Authority, in terms of section 17 (C) of the ICASA Act, in the event that the dispute is not resolved by the Authority itself as contemplated in clause 6.8.
- 6.10 Subject to clauses 6.2 to 6.9 above, any dispute between the parties shall be referred to arbitration and finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa. Such arbitration shall be held in Klerksdorp and conducted in English before an arbitrator appointed in accordance with the said rules. Any award will be final and not subject to appeal. This agreement to arbitrate shall be enforceable in, and judgement upon any award may be entered in any court of any country having appropriate jurisdiction. A dispute shall be deemed to have arisen when either party notifies the other party in writing to that effect.
- 6.11 The arbitrator shall have the power to give default judgement if any party fails to make submissions on the due date and/or fails to appear at the arbitration.
- 6.12 These provisions shall not prevent either party from approaching the Magistrates or High Court to obtain timely interim or other relief in cases of urgency or breach of this clause.

7. FEES AND PAYMENT

- 7.1 Billing will commence on the Activation Date.
- 7.2 You agree to pay all amounts due under this Agreement in consideration for a service or product, in accordance with the service or product specific terms under which that service is rendered or that product is offered. Amounts recorded in the service and product specific terms include transport costs and excludes VAT, unless otherwise indicated.
- 7.3 All amounts due and payable in terms hereof shall be paid free of exchange in South African Rands without deduction or set-off, by way of a direct debit order in favour of CMVAS (drawn against a current banking account nominated by you), or in such other manner as CMVAS may from time to time determine. You agree that:

- 7.3.1 by furnishing your bank details to us, you instruct and authorize CMVAS to draw all amounts payable in terms of this agreement from the account specified (or any other bank or branch to which it may be transferred);
- 7.3.2 that the debit order will commence on the Activation Date and continue until termination of this Agreement and the service or product specific agreement under which a service is rendered, or a product provided;
- 7.3.3 you will sign all such forms and do all such things as may be necessary to give effect to the debit order as contemplated in this clause 7.3.
- 7.3.4 in the event that the debit order be returned as unpaid, a penalty fee will be charged. The payment of this penalty fee must be made in addition to all outstanding amounts before the service will be reinstated
- 7.4 You are required to direct any complaint or dispute in connection with a payment to us in accordance with the provisions set out in clause 6 above. CMVAS will reach a decision on the billing complaint and communicate it to you within fourteen (14) business days of receipt of the complaint.
- 7.5 Should you fail to pay any amount on the due date, notwithstanding receipt of CMVAS's decision referred to in clause 7.4, then CMVAS may, without prejudice to any of its other rights:
 - 7.5.1 take all such further steps as may be necessary to recover the outstanding amount from you, including (without limitation) the use of debt collection mechanisms; and if the debt arises from an agreement which is a credit agreement, then in accordance with the collection and repayment practices as prescribed in the NCA;
 - 7.5.2 charge interest at the rate of 2% above the prime overdraft rate published by CMVAS's bankers from time to time on the overdue amount, calculated from the due date until the date of payment (both dates inclusive), which interest, if charged, will be capitalized monthly;
 - 7.5.3 suspend your access to the service without notice to you until such time as the outstanding amount has been paid in full, including the penalty fee for unpaid debit orders as per clause 7.3.4 above and a reconnection fee; or
 - 7.5.4 terminate this agreement with immediate effect.
- 7.6 Subject to the terms and conditions of any agreement entered into between CMVAS and a Network Operator, CMVAS shall be entitled to amend the fees or charges for its services or products at any time on 30 (thirty) days' notice to you as provided for in clause 19 below. Subject to the terms and conditions of any agreement entered into between CMVAS and a Network Operator and subject to the relevant product or service specific terms and conditions which are applicable to the services and/or products provided to you by CMVAS, you may terminate this agreement within 30 (thirty) days from the date of CMVAS's notification to you, should you not agree to the amendment, failing which the amendment will take effect on the date indicated in the notice.
- 7.7 CMVAS will use reasonable endeavours to inform you well advance, and in any event prior to disconnection, about the possibility of disconnection in the case of non-payment.

8. RETURN, EXCHANGE AND REFUNDS

- 8.1 CMVAS's exchange, return and refund policies in respect of products, in particular hardware, provided to you under this Agreement are dealt with in the service and product specific terms and conditions.
- 8.2 CMVAS's policy in respect of exchanges, returns and refunds depends on the type of goods and the policy of the manufacturer or supplier thereof. Where the manufacturer or supplier does not have an exchange, return and refund policy in place, no mention of such policy will be made in the service and product specific terms and conditions.
- 8.3 Warranties, if any, will ordinarily be included in the hardware packaging.
- 8.4 CMVAS will consider requests for other refunds, for example where an account was debited with the wrong amount, on an ad hoc basis in accordance with the Billing Complaints Handling Procedure referred to in clause 7.
- 8.5 CMVAS will endeavour to put alternative measures in place where goods or products received by you in terms

of this Agreement are defective and are taken in for repairs, subject to the availability of substitute goods or products and/or the terms and conditions of the commercial arrangement between CMVAS and the supplier or manufacturer of the goods or products.

9. SECURITY AND PRIVACY

- 9.1 CMVAS will take whatever action CMVAS may deem necessary and reasonable to preserve the security and reliability of its network.
- 9.2 You may not utilize any service in any manner which may compromise the security of CMVAS's network, or any other network connected to CMVAS's network, or tamper with a service or such a network in any manner whatsoever.
- 9.3 CMVAS takes reasonable steps to secure your payment information. CMVAS uses a payment system that is sufficiently secure with reference to accepted technological standards at the time of the electronic transaction and the type of the transaction concerned.
- 9.4 CMVAS will deal with your personal information in accordance with the provisions of our Privacy Policy which is available on our website.

10. INTERCEPTION OF COMMUNICATIONS

You acknowledge that CMVAS and/or a third-party Network Operator (as the case may be) may under the circumstances as prescribed in RICA, be required to intercept, lock, filter, read, delete, disclose and use communications sent or posted via CMVAS's or the Network Operator's network and you hereby consent to the undertaking of such activities by CMVAS and/or a third-party Network Operator. CMVAS 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 CMVAS and/or a third-party Network Operator performing any activity referred to in this clause.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 You agree to comply with all laws applicable to any Intellectual Property Rights in respect of any data, files and/or information accessed, retrieved or stored by you through your use of any of our services and/products.
- 11.2 You are prohibited from using any of CMVAS's Marks without the prior written approval of CMVAS.
- 11.3 Other than as specifically provided in the product or service specific terms and conditions, CMVAS will wholly and exclusively retain all existing Intellectual Property Rights and become the exclusive and unencumbered owner of all intellectual property right(s) employed in or otherwise related to software used by CMVAS, its network infrastructure, e-commerce network infrastructure, business and the provision of any of the services in terms of the product or service specific terms and conditions.

12. BREACH

- 12.1 Should you be in breach of any provision of this Agreement, other than the provisions of clause 11 above, or any provision of the service and product specific terms and conditions, then CMVAS shall be entitled, without prejudice to any other rights that it may have and without notice to you, to forthwith:
 - 12.2 afford you a reasonable opportunity to remedy the breach;
 - 12.3 suspend your access to a service; but in the case of a billing dispute only once the outcome of the investigation was conveyed to you as provided for in clause 7.4;
 - 12.4 cancel all agreements concluded between us; or
 - 12.5 claim immediate performance and/or payment of all your obligations in terms hereof.

13. INDEMNITY

- 13.1 You hereby unconditionally and irrevocably indemnify CMVAS and agree to hold CMVAS harmless against all loss, damages, claims, liability and/or costs, of whatsoever nature, howsoever and whenever arising, suffered or incurred by CMVAS or instituted against CMVAS as a result of (without limitation):
 - 13.1.1 your use of the service;

- 13.1.2 any act of force majeure;
- 13.1.3 your refusal to install a UPS to protect equipment from electricity surges and lightning strikes;
- 13.1.4 your failure to comply with these General Terms and Conditions and a provision of any Agreements concluded between us;
- 13.1.5 any unavailability of, or interruption in the service, as contemplated in clause 5 above.

14. LIMITATION OF LIABILITY

To the extent permitted by applicable law, howsoever arising neither party shall be liable to the other for any special, indirect, incidental, consequential or punitive damages arising out of or relating to this Agreement, whether resulting from negligence, breach or any other cause. To the extent that a competent court or tribunal finally determines, notwithstanding the limitation contained in this clause, that CMVAS is liable to you for any damages, CMVAS's liability to you for any damages howsoever arising shall be limited to the amounts paid by you under this Agreement in consideration for a service or product as contemplated in clause 8.2 during the immediately preceding 12 (twelve) month period in respect of the service or product which gave rise to the liability in question.

15. CERTIFICATE OF INDEBTEDNESS

- 15.1 The amount due and payable by you to CMVAS in terms of any agreement between us at any time, shall be determined and proved by a certificate signed by one of CMVAS's directors, whose appointment, qualification and authority need not be proved.
- 15.2 Such certificate shall be deemed to be a liquid document for the purpose of obtaining summary judgment, provisional sentence and/or any other judgment against you, unless you have reason to direct a dispute in connection with a payment to us in accordance with the Billing Complaints Handling Procedure as contemplated in clause 7.

16. CESSION AND DELEGATION

You may not sell, cede, assign, delegate or in any other way alienate or dispose of any or all of your rights and obligations under and in terms of this Agreement without the prior written approval of CMVAS. CMVAS shall be entitled to sell, cede, assign, delegate, alienate, dispose or transfer any or all of its rights and obligations under and in terms of this Agreement to any of its affiliates or to any third party without your consent and without notice to you. "Affiliates" for this purpose includes CMVAS's holding company, the holding company(ies) of CMVAS's holding company (collectively "its holding companies"), its subsidiaries, subsidiaries of its holding companies and any other companies which are directly or indirectly controlled by CMVAS or are under common control with CMVAS.

17. JURISDICTION

Notwithstanding clause 6.10 above, you hereby consent to the jurisdiction of the Magistrate's Court in the Republic of South Africa in respect of any proceedings that may be initiated by CMVAS arising out of this Agreement, provided that CMVAS shall be entitled, in its sole discretion, to institute such proceedings in the High Court of South Africa and, in such event, you consent to the jurisdiction of such court and agree that costs shall be calculated in accordance with the tariff of such court. The jurisdiction of the Small Claims Court is specifically excluded, as the parties agreed to follow the arbitration process set out in clause 6.10 above.

18. AMENDMENT OF THIS AGREEMENT

CMVAS reserves the right to amend this agreement from time to time. Any new version of the Agreement will be displayed on our Website together with the date on which it will become effective, which will never be less than 30 (thirty) days after the date on which it is first published. It is your obligation to visit our website on a regular basis in order to determine whether any amendments have been made.

19. **GENERAL**

- 19.1 The parties acknowledge and agree that this Agreement constitutes the whole of the agreement between them and that no other agreements, guarantees, undertakings or representations, either verbal or in writing, relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on the parties. No variation or addition of this Agreement or the Application Form will be binding on any of the parties unless recorded in writing and signed by both parties.
- 19.2 CMVAS is, in terms of section 43 of the ECT Act, required to make its contact details, its *domicilium citandi et executandi* and certain other information available to its Subscribers who enter into electronic transactions with CMVAS. This information is available on our website: www.cmvas.co.za
- 19.3 You agree that any notices we send to you in terms of any agreement concluded between us may be sent via e-mail.
- 19.4 No indulgence, leniency or extension of time which CMVAS may grant or show to you shall in any way prejudice CMVAS or preclude CMVAS from exercising any of its rights in the future.
- 19.5 You warrant that as at the date of signature of the application form, all the details furnished by you to CMVAS are true and correct and that you will notify CMVAS in the event of any change to such details.
- 19.6 All our terms and conditions can be accessed, stored, and reproduced electronically.
- 19.7 The physical address where CMVAS will receive legal service of documents/*domicilium citandi et executandi* is 49 Galaxy Avenue, Linbro Business Park, Sandton, 2190.