

TERMS AND CONDITIONS IN RESPECT OF INFO-GRO SERVICE PROVIDER AGREEMENT

The parties to the agreement are
INFO-GRO (PTY) LTD
REGISTRATION NUMBER: 2000/023821/07
45 VAN VELDEN STREET
BRITS
0250
("Info-Gro")
and
THE SUBSCRIBER,
whose details is as captured at the Register page

The Subscriber wishes to subscribe to Infogro ADSL. The terms and conditions set out in this document govern the relationship between Info-Gro and the Subscriber.

1. DEFINITIONS

- 1.1. In this agreement, unless the context clearly indicates a contrary intention, the following words shall have the meanings ascribed to them in this clause, and similar expressions shall bear corresponding meanings:
- 1.2. "Agreement" means the Application and these terms and conditions;
- 1.3. "Application" means an application form completed by the Subscriber;
- 1.4. "Bill Limit" means the threshold limit of the Subscriber's account as pre-determined and agreed to by the parties;
- 1.5. "Charges" means the Connection Fees, Monthly Service Charges, Usage Charges and any other charges pertaining to the provision of the service/s;
- 1.6. "Connection Fee" means the initial charge, levied by Info-Gro on the Subscriber in consideration for activating the service/s;
- 1.7. "Info-Gro" means Info-Gro (Pty) Ltd, registration number 2000/023821/07, 45 Van Velden Street, Brits, 0250;
- 1.8. "Info-Gro Internet Service" means all the services subscribed to by the Subscriber in terms of the agreement;
- 1.9. "Info-Gro Network" means all equipment, devices, fibre, copper or radio connections that is the property of Info-Gro or is under Info-Gro's control;
- 1.10. "Monthly Service Charge" means the monthly charge/s levied by Info-Gro in consideration for the Subscriber's access to and use of the service/s;
- 1.11. "Product/s" means any item other than service/s provided in terms of this agreement;
- 1.12. "Product costs" means the cost of any product needed to activate the service/s;
- 1.13. "Service/s" means the service/s configured by the Subscriber;
- 1.14. "Subscriber" means the party whose particulars were captured during registration;
- 1.15. "Usage Charges" means the fees charged by Info-Gro to the Subscriber for use of the service/s.
- 1.16. "Free service" means free data given by Info-Gro to the subscriber for a specific period.

2. COMMENCEMENT AND TERMINATION

- 2.1. This Agreement shall commence on the date on which the service/s is/are activated ("commencement date"), and shall endure, subject to the provisions of clause 7, for an indefinite period, unless terminated:

- 2.1.1. by the Subscriber, by cancelling the service online;
- 2.1.2. by Info-Gro, by giving the Subscriber 30 (thirty) days prior written notice of termination of the Agreement.
- 2.1.3. by Info-Gro because the free service period of 30 days has expired.

3. PROVISION OF THE SERVICE/S

- 3.1. The Application made by the Subscriber is subject to Info-Gro's approval in its sole discretion. If Info-Gro does not approve the Application, it shall not be under any obligation to give reasons for its decision to the Subscriber.
- 3.2. Info-Gro shall endeavour to promptly connect the service/s requested in the Application, but shall not be liable to the Subscriber in the event that the connection of such service/s is delayed or cancelled for any reason whatsoever.
- 3.3. From the commencement date and for the duration of this agreement thereafter, Info-Gro shall make reasonable efforts to make available a continuous, uninterrupted, expedient and error-free service to the Subscriber, subject to the terms and conditions set out herein.
- 3.4. Notwithstanding the provision of 3.3, the Subscriber acknowledges that in the normal course of provision of service/s, temporary interruptions may occur for whatever reason and that, subject to the conditions set out in clause 4, Info-Gro shall not be held liable for any damages (economical or otherwise) which the Subscriber may suffer as a result of such interruption of service/s.
- 3.5. Unless otherwise stated herein the Subscriber shall solely be responsible, for provisioning, configuration and maintenance of all equipment on its premises, including (without limitation) computer hardware equipment, telecommunication equipment and modems necessary in order to make use of the service/s.
- 3.6. Where the service/s or any part thereof are provided directly or indirectly by a third party network or service provider, then such service/s or the Subscriber's connection or access thereto may be delayed, interrupted or diminished for reasons beyond Info-Gro's control and Info-Gro shall not be held liable for any such delay, interruption or diminution.

4. NETWORK AVAILABILITY GUARANTEE

- 4.1. Info-Gro guarantees a minimum network availability of 97% during which the Subscriber will have access to the Info-Gro Network
- 4.2. "Network unavailability" is the amount of time that the Info-Gro network was not available to the Subscriber, but does not include unavailability due to the following circumstances;
 - 4.2.1. Scheduled network maintenance work done by Info-Gro or the upstream provider.
Such maintenance work will as far as possible be done outside of normal business hours and with 24 (twenty-four) hours' notice;
 - 4.2.2. The Subscriber's equipment or facilities being faulty or inadequate;
 - 4.2.3. Acts or omissions by the Subscriber.

5. CHARGES AND PAYMENT

- 5.1. Info-Gro will invoice the Subscriber for the product costs, which costs shall be recovered from the stored payment method listed on our website, on the day that payment is due. Where the Subscriber's line is ported, or the Subscriber is on an Openserve Fibre Broadband connection managed by Info-Gro, the billing date will be mandatory for the first day of every month.
- 5.2. The Subscriber shall pay the applicable charges for the provision of the services to Info-Gro, as determined by Info-Gro from time to time, irrespective whether there was an

interruption of the services or the Subscriber did not make use of the service/s.

- 5.3. Info-Gro may, on written or electronic (sms) notice to the Subscriber, vary any Charges, either in whole or in part, with effect from the date specified in such notice.
- 5.4. The Subscriber shall affect payment of all charges to Info-Gro by way of recurring Credit card payment, or debit order. The Subscriber agrees to the debit order and renders Info-Gro duly authorised to action the payment by debit order as instructed on the website.
- 5.5. The monthly statement ("bill") sent via e-mail by Info-Gro to the Subscriber, shall contain the Monthly Service Charge, which is payable monthly in advance.
- 5.6. The Subscriber shall, on demand, pay to Info-Gro all costs and expenses incurred by Info-Gro in enforcing the terms of this agreement, including without limitation legal costs on an attorney and own client basis.
- 5.7. Should the Subscriber's bank dishonour any payment offered by the Subscriber to Info-Gro, Info-Gro shall be entitled to charge a reasonable administration fee, over and above the dishonoured payment and bank charges.
- 5.8. Should the Subscriber's services be disconnected as a result of non-payment of any charges, the services may be reconnected in Info-Gro's sole discretion on payment of all outstanding charges, interest and a reconnection fee as determined by Info-Gro.

6. INSTALLATION AND CONNECTION

- 6.1. The Subscriber acknowledges that any installation date or connection date furnished by Info-Gro is provisional only.
- 6.2. Info-Gro shall not refund any payment received in respect of installation and connection fees in the event that the Subscriber cancels the agreement.

7. LIMITATION OF LIABILITY

- 7.1. Without detracting from any of the other provisions of this Agreement, Info-Gro shall under no circumstances be liable, including liability for negligence, for any loss, damage or injury that the Subscriber or any third party may suffer, no matter when or how arising.
- 7.2. Any service/s provided, is/are provided on an "as-is" basis and Info-Gro gives no express or implied warranties or makes no representations of whatsoever nature with respect to any such service/s.
- 7.3. The Subscriber hereby indemnifies Info-Gro:
 - 7.3.1. against any damage, loss or liability arising from the provision of services to the Subscriber, its employees, directors, agents and/or representatives;
 - 7.3.2. against any damage, loss or liability of whatsoever nature arising from a breach of Info-Gro's security measures, any misuse of Info-Gro's facilities or services and/or any act or omission of any other customer of Info-Gro;
 - 7.3.3. from any claim by any third party arising directly or indirectly out of or related to the Subscriber's access to or use of services rendered by Info-Gro or any information obtained through such access or use, and
 - 7.3.4. from all loss, damage, cost or liability in the event that the Subscriber's use of the service/s supplied hereunder –
 - 7.3.4.1. constitutes a violation of any law, regulation or tariff,
 - 7.3.4.2. is defamatory, fraudulent or deceptive,
 - 7.3.4.3. is intended to threaten, harass or intimidate, or
 - 7.3.4.4. interferes with the use or enjoyment of other subscribers.

8. USE LIMITATIONS

- 8.1. The Subscriber hereby confirms –
- 8.2. that it is and will remain aware of, and will at all times comply with all statutory or other regulatory provisions and rules applicable to the provision and use of the services from time to time;
- 8.3. that it shall make use of the services in a responsible, prudent, lawful and honest manner;
- 8.4. that it shall comply with any directions, instructions and limitations issued or notified by Info-Gro from time to time in connection with the services;
- 8.5. that he / she shall not use any service in a manner which –
 - 8.5.1. constitutes a violation of any law or regulation that may be in force in South Africa or elsewhere. In particular the Subscriber undertakes to familiarise itself and ensure that it is kept continuously apprised of all such laws and regulations in force from time to time which may have any bearing on the services rendered by Info-Gro and/or the Subscriber's access to or use thereof;
 - 8.5.2. constitutes an act or omission that is generally unacceptable or offensive to internet users in general, to the public at large or as same may be determined by Info-Gro from time to time in its sole and absolute discretion, specifically including, but not limited to, the hosting of pornographic material, spamming, hacking, unsolicited mailing etc.;
 - 8.5.3. is defamatory, fraudulent or deceptive;
 - 8.5.4. is intended to threaten, harass or intimidate;
 - 8.5.5. tends to damage the name or reputation of Info-Gro, its holding company and subsidiaries, or
 - 8.5.6. interferes with the use and enjoyment of Internet related services of customers of Info-Gro;
- 8.6. that the services to be rendered to the Subscriber shall be as defined and subject to such limitations as may be notified from time to time by Info-Gro;
- 8.7. that the Subscriber is aware that all relevant service quality and coverage available shall be limited to that supported by the infrastructure of Info-Gro and its network providers and that service may from time to time be adversely affected by a number of different causes;
- 8.8. that it shall not commit any act or omission which may have any adverse technical effect on the integrity or functionality of the network infrastructure of Info-Gro or that provided or made available to the Subscriber by or through Info-Gro. If any act or omission of the Subscriber has such an adverse technical effect the Subscriber shall, on receiving notification to that effect from Info-Gro, forthwith take such steps as may be necessary to rectify the situation at his own cost and expense, failing which Info-Gro shall be entitled without prejudice to its other rights in terms hereof or at law, to forthwith suspend the service and/or terminate this agreement;
- 8.9. that unless otherwise agreed by Info-Gro in writing, it shall not resell or make available to third parties, in any manner whatsoever and whether directly or indirectly, the services provided to it by Info-Gro;
- 8.10. that it shall take whatever steps may be necessary to ensure the safekeeping and confidentiality of all identification codes and passwords furnished by Info-Gro for use by the Subscriber and shall specifically not disclose same to any third party without Info-Gro's prior written consent;
- 8.11. to comply with the rules and regulations applicable to any network that is accessed through Info-Gro.

9. SUSPENSION OF SERVICE

- 9.1. Info-Gro may from time to time and without notice suspend the service in any of the following circumstances -

- 9.1.1. during any technical failure, modification or maintenance either of the service or the equipment by means of which the service is provided;
- 9.1.2. if the Subscriber –
 - 9.1.2.1. fails to comply with any of the terms and conditions of this agreement, including failure to pay any charges due, until the breach, if capable of remedy, is remedied; or
 - 9.1.2.2. does or allows to be done anything which, in Info-Gro's reasonable opinion, may negatively affect the operation of the Info-Gro network or the provision of services to the Subscriber or to any other customer(s) of Info-Gro.
- 9.2. Notwithstanding any suspension of service under this clause the Subscriber shall remain liable for all charges due hereunder throughout the period of suspension unless Info-Gro, in its sole discretion, determines otherwise.

10. CANCELLATION

- 10.1. Notwithstanding any provision to the contrary contained in this agreement, Info-Gro shall at any time be entitled to terminate this agreement on not less than 30 (thirty) days' notice to such effect to the Subscriber.
- 10.2. Without prejudice to any other rights or remedies which Info-Gro may have in terms hereof or in law, Info-Gro shall be entitled to forthwith cancel this agreement and discontinue the service/s if the Subscriber fails to comply with any of the terms or conditions of this agreement or any other agreement entered into between Info-Gro and the Subscriber.
- 10.3. Upon termination of this agreement Info-Gro shall disconnect the Subscriber from the networks of Info-Gro and all its network providers and any amount due by the Subscriber to Info-Gro shall become immediately due and payable.
- 10.4. Upon termination due to any breach of this agreement by the Subscriber, Info-Gro shall be entitled to claim damages.
- 10.5. The 5GB Free Capped service is only available for 30 days after activation and is cancelled automatically when the 5GB has been used or the 30 days are reached, whichever one comes first.

11. SUPPORT SERVICE

- 11.1. Info-Gro shall, when specifically requested to do so by the Subscriber in writing, render such consultation and support services pertaining to problems encountered by the Subscriber in the Info-Gro services rendered to it or with its internet related services in general, subject to the payment by the Subscriber of all hourly tariffs, travelling cost and other related fees in respect thereof.
- 11.2. Info-Gro shall attempt to identify and solve the Subscriber's problem, but does not give any warranty, guarantee or any other similar undertaking that it will be able to identify and/or solve all or any of the problems.
- 11.3. The Subscriber shall –
 - 11.3.1. render to Info-Gro, its agents, representatives and employees all necessary assistance to identify, locate and solve any problem encountered by the Subscriber; and
 - 11.3.2. ensure the safety of all agents, representatives and employees of Info-Gro present at the Subscriber's premises and shall and hereby does assume responsibility and liability for any cost, expense, loss or damage of whatsoever nature incurred or suffered by Info-Gro or any of its representatives, agents or employees.

- 11.4. Info-Gro does not and shall not accept any responsibility or liability for any existing data on the Subscriber's equipment and shall specifically not be required to back-up any data before commencing any support service. The Subscriber hereby indemnifies and holds Info-Gro harmless against any cost, liability, loss or damage incurred or suffered by the Subscriber as a result of the loss of any such data, whether occasioned by any act or omission of Info-Gro, its representatives, agents or employees or otherwise.
- 11.5. Consultation time charged for will commence when the relevant Info-Gro agent, representative or employee leaves the Info-Gro office and will end when he returns to the Info-Gro office. The Subscriber will be charged should the consultant for any reason whatsoever not be able to obtain access to the Subscriber's premises or equipment.
- 11.6. Support services shall only be available during office hours on weekdays excluding public holidays.

12. GENERAL

- 12.1. The Subscriber shall not cede, assign, transfer, encumber or delegate any of his rights or obligations in terms of this agreement to any third party. Notwithstanding anything to the contrary contained herein, Info-Gro shall be entitled to cede its rights and delegate its obligations in terms of this agreement to any third party.
- 12.2. The terms and conditions as set out herein, constitute the entire agreement between Info-Gro and the Subscriber and supersede all representations made to the Subscriber, all amendments effected by the Subscriber to any application form or other similar document submitted by him and all communications between Info-Gro and the Subscriber relating to the subject matter hereof.
- 12.3. The Subscriber chooses, as his / hers domicilium citandi et executandi, the physical address set out in the Application.
- 12.4. Info-Gro reserves the right to amend these terms and conditions from time to time and shall notify the Subscriber of such amendments.
- 12.5. This agreement shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa.
- 12.6. The clause headings in this agreement are for the purpose of convenience only and shall not be considered in the interpretation of or modify the terms of this agreement, unless inconsistent with or a contrary intention clearly appears from the context words, importing any reference to natural persons include legal persons and vice versa.
- 12.7. If any clause or clauses of the terms and conditions of this agreement is found to be invalid or unenforceable, the remainder of the terms and conditions of this agreement shall remain valid and enforceable.