

## **Terms & Conditions of Use & Service**

OpenISP CC (trading as "OpenWeb")

### **1. SCOPE OF AGREEMENT**

OpenISP CC hereby sells the Service to the User on the Terms and Conditions set out below.

By clicking on the icon "I Accept" at the bottom of this page and by further logging into the OpenWeb ADSL account, the User (or his/her/its representative) indicates that the User irrevocably accepts the Terms and Conditions. Please pay special attention to the terms below which are in capital letters. This page will not time out even if it takes some time to read and understand the Terms and Conditions.

### **2. INTERPRETATION**

In these Terms and Conditions:

2.1 "Consumer Protection Act" means the Consumer Protection Act 68 of 2008 and any regulations promulgated (published) under it;

2.2 "OpenISP CC" means OpenISP CC, a registered close corporation which trades as OpenWeb;

2.3 "OpenISP Network" means the electronic infrastructure used by OpenISP CC to provide Internet access and bandwidth;

2.4 "Parties" means OpenISP CC and the User;

2.5 "the Service" means the provision of access to the Internet by OpenISP CC to the User in accordance with these Terms and Conditions;

2.6 "Terms and Conditions" means the terms and conditions set out below;

2.7 "the User" means the person who has purchased the Service and/or any person using the Service with the purchaser's authority.

2.8 "logging on" means the User entering the OpenWeb ADSL credentials (username and password) provided into a router, modem or Computer with the intent of connecting to the Openweb ADSL network and internet.

### 3. PROVISION OF SERVICE

3.1 The User will be solely responsible for obtaining and arranging, configuring and maintaining all of the User's equipment, including (but not limited to) computer hardware equipment, telecommunication equipment, modems and the like, used by the User to obtain and maintain access to the Service.

3.2 The User will be liable for all telephone call charges and other costs payable to third parties relating to obtaining and arranging, configuring and maintaining equipment as described in 3.1 above.

### 4. NETWORK & AVAILABILITY OF SERVICE

4.1 THE OPENISP NETWORK MAY BE USED TO LINK INTO OTHER NETWORKS WORLDWIDE AND THE USER AGREES TO CONFORM TO THE USE POLICIES OF THESE NETWORKS. (This means that the User must make sure that it does not use other networks, for example Internet Solutions, in a way that breaches the rules of use and acceptable usage policies (AUPs) of those networks.)

4.2 The User may not circumvent user authentication or security of any host, network, or account (referred to as "cracking" or "hacking"), nor interfere with service to any user, host, or network (referred to as "denial of service attacks").

4.3 In addition and without prejudice to (without overriding or taking away from) what is set out above, the use of any application that overloads the OpenISP Network by whatever means will be regarded as making reckless use of the OpenISP Network and is NOT allowed. Use of IP multicast (this essentially results in persons accessing or benefitting from the Service without having paid for it) other than by means provided and co-ordinated by OpenISP is also prohibited.

4.4 Users who violate systems or network security may incur criminal or civil liability. OpenISP CC will fully co-operate with investigations of suspected criminal violations, violation of systems or network security under the leadership of law enforcement or relevant authorities.

4.5 OpenISP CC will make every effort to make the Service available at all times and will use its utmost endeavours to strive for 100 % (one hundred percent) " best effort" uptime and associated bandwidth speeds. HOWEVER, SINCE OPENISP CC RELIES ON NUMEROUS SUPPLIERS IN ORDER TO PROVIDE THE SERVICE, OPENISP CC IS UNABLE TO AND DOES NOT GUARANTEE 100 % (ONE HUNDRED PERCENT) UPTIME AND ASSOCIATED BANDWIDTH SPEEDS.

4.6 OpenISP CC will strive at all times to provide Users with prior notice, where possible, of scheduled maintenance which may result in Users having to log-off for any period of time.

4.7 openisp CC will not be responsible for the performance of external communications networks to which the Service is connected, including the networks of Internet Service Providers other than openisp CC.

#### IMPORTANT WAIVER AND INDEMNITY

#### 4.8 THE USER:

- WAIVES ANY AND ALL CLAIMS THAT MAY ARISE AS A RESULT OF OPENISP CC BEING UNABLE TO MAKE THE SERVICE AVAILABLE TO THE USER UNDER THE CIRCUMSTANCES CONTEMPLATED IN 4.7 ABOVE; AND

- INDEMNIFIES OPENISP CC AND HOLDS OPENISP CC HARMLESS AGAINST ANY AND ALL CLAIMS THAT MAY ARISE AS A RESULT OF OPENISP CC BEING UNABLE TO MAKE THE SERVICE AVAILABLE TO THE USER UNDER THE CIRCUMSTANCES CONTEMPLATED IN 4.7 ABOVE,

#### MEANING:

4.8.1 THE USER CANNOT BRING ANY SUCH CLAIM AGAINST OPENISP CC;

#### 4.8.2 IN RELATION TO THIRD PARTY CLAIMS:

4.8.2.1 THE USER WILL pay all costs, damages, awards AND judgments finally awarded against openisp CC arising from such claims;

4.8.2.2 THE USER WILL PAY ALL LEGAL FEES INCURRED IN CONNECTION WITH SUCH CLAIMS ON AN ATTORNEY AND OWN CLIENT SCALE (fees will be “as incurred” and not limited to any amount set in terms of public regulation), INCLUDING FEES INCURRED:

- PRIOR TO THE INSTITUTION OF LEGAL PROCEEDINGS;
- DURING LEGAL PROCEEDINGS; AND
- IN CONNECTION WITH THE SATISFACTION OF ANY COSTS, DAMAGES, AWARDS OR JUDGMENTS AWARDED AGAINST OPENISP CC;

4.8.2.3 THE USER WILL, AT THE USER’S EXPENSE:

- NOTIFY OPENISP CC OF ANY SUCH CLAIM WHICH COMES TO THE USER’S ATTENTION;
- WHERE APPLICABLE AND WHEN REQUIRED BY OPENISP CC, GIVE OPENISP CC FULL AUTHORITY TO DEFEND, COMPROMISE OR SETTLE ANY SUCH CLAIM; AND
- GIVE OPENISP CC ALL REASONABLE ASSISTANCE NECESSARY TO DEFEND SUCH CLAIMS;

4.8.2.4 THE USER’S INDEMNITY AGAINST THIRD PARTY CLAIMS WILL NOT APPLY TO THE EXTENT THAT IT IS NOT PERMITTED UNDER THE CONSUMER PROTECTION ACT.

REFERENCE TO OPENISP CC IN THIS CLAUSE 4.8 INCLUDES REFERENCE TO ANY EMPLOYEE, REPRESENTATIVE OR OTHER PERSONNEL OF OPENISP CC.

4.9 OpenISP CC will provide the Service strictly subject to the terms and conditions prescribed by its third party bandwidth resellers and the national regulator (Independent Communications Authority of South Africa, ICASA).

4.10 OpenISP CC will be entitled to suspend the Service if, during the User's use of the Service, the OpenISP Network is or potentially may be endangered, harmed and/ or impeded. Where possible, OpenISP CC will notify the User prior to such a suspension.

4.11 The Service is a usage-based ADSL service. Usage is calculated by third party bandwidth wholesalers, like, but not limited to INTERNET SOLUTIONS and SAIX, and such calculation is considered as being accurate. OPENISP CC WILL NOT BE HELD RESPONSIBLE FOR ANY BANDWIDTH

LOSS OR THEFT, AS IT IS THE USER'S RESPONSIBILITY TO ENSURE PROPER MANAGEMENT OF THEIR USAGE.

4.12 Local Usage (relating to the use of internet sites and email servers hosted in South Africa): In some cases, the local usage provided after the initial cap has been depleted, is capped at a set number of gigabytes (e.g. 1GB, 10GB or 30GB's depending on the account purchased). ONCE THE USER'S ACCOUNT HAS REACHED THE APPLICABLE LOCAL USAGE CAP, THE ACCOUNT WILL BE HARD-CAPPED UNTIL THE FOLLOWING MONTH (the User will not be able to make use of the Service while the User's account is hard-capped). Additional accounts can be purchased, at the User's discretion.

## 5. USER ETIQUETTE & ILLEGAL USE

5.1 The User acknowledges and agrees that the User is expected to abide by generally accepted Netiquette.

5.2 The User acknowledges that openisp CC is unable to exercise control over the content of the information passing over the openisp Network. THEREFORE, OPENISP CC IS NOT RESPONSIBLE FOR THE CONTENT.

5.3 The openisp Network may only be used for lawful purposes. The User will accordingly not use the service in any manner which:

5.3.1 CONSTITUTES A VIOLATION OF ANY LAW, REGULATION OR TARIFF THAT MAY BE IN FORCE IN SOUTH AFRICA OR ELSEWHERE;

5.3.2 CONSTITUTES AN ACT OR OMISSION THAT IS GENERALLY UNACCEPTABLE OR OFFENSIVE TO INTERNET USERS IN GENERAL OR TO THE PUBLIC AT LARGE, SPECIFICALLY INCLUDING (BUT NOT LIMITED TO) THE HOSTING OF PORNOGRAPHIC OR OTHER OBSCENE MATERIAL, SPAMMING, HACKING, UNSOLICITED MAILING OR THE USE OF MATERIAL THAT VIOLATES EXPORT CONTROL LAWS;

5.3.3 IS DEFAMATORY, FRAUDULENT OR DECEPTIVE;

5.3.4 IS INTENDED TO THREATEN, HARASS OR INTIMIDATE;

5.3.5 TENDS TO DAMAGE THE NAME OR REPUTATION OF OPENISP CC;

5.3.6 INTERFERES WITH THE USE AND ENJOYMENT OF INTERNET RELATED SERVICES BY OTHER USERS OF OPENISP CC SERVICES;

5.3.7 FORWARDS OR PROPAGATES CHAIN LETTERS OR MALICIOUS E-MAIL; AND/OR

5.3.8 SOLICITS MAIL FOR ANY ADDRESS OTHER THAN THAT OF THE USER, EXCEPT WITH FULL CONSENT OF THE OWNER OF SUCH OTHER ADDRESS.

(To help the User to comply with the User's obligations under this clause 5.3, OpenISP CC will forward or communicate to the User any notifications which OpenISP CC receives relating to the improper use of the Service or the OpenISP Network by the User.)

5.4 THE USER UNDERTAKES TO ABIDE BY ALL LAWS APPLICABLE TO COPYRIGHT AND INTELLECTUAL PROPERTY, RE-DISTRIBUTION OR RE-SALE OF ANY DATA AND/OR PUBLICATIONS, COMPOSITIONS, PRODUCTIONS AND SOFTWARE INFORMATION RETRIEVED FROM THE SERVICE AND/OR THE INTERNET BY USE OF THE SERVICE. Use, transmission, distribution or storage of any material protected by copyright, trademark, trade secret or other intellectual property right without proper authorization, is strictly prohibited.

5.5 The User will not, without the express written permission of OpenISP CC, resell or otherwise make the Service or any other service the User may receive from OpenISP CC, available to any third party.

5.6 THE USER ACKNOWLEDGES THAT THIRD PARTY PRODUCT AND SERVICE PROVIDERS ADVERTISE THEIR PRODUCTS AND SERVICES ON THE OPENISP CC WEB SITE. Open ISP CC forms partnerships or alliances with some of these vendors from time to time in order to facilitate the provision of these products and services to the User. HOWEVER, THE USER ACKNOWLEDGES AND AGREES THAT AT NO TIME IS OPENISP CC MAKING ANY REPRESENTATION OR WARRANTY REGARDING ANY THIRD PARTY'S PRODUCTS OR SERVICES, NOR WILL OPENISP CC BE LIABLE TO THE USER OR ANY THIRD PARTY FOR ANY CLAIMS ARISING FROM OR IN CONNECTION WITH SUCH THIRD PARTY PRODUCTS AND SERVICES.

#### IMPORTANT INDEMNITY

5.7 The User INDEMNIFIES AND HOLDS OPENISP CC HARMLESS AGAINST ANY AND ALL THIRD PARTY CLAIMS THAT MAY ARISE from the User's use of the openisp Network and/or the telecommunication line and/or the Service, MEANING:

5.7.1 THE USER WILL pay all costs, damages, awards AND judgments finally awarded against openisp CC arising from such claims;

5.7.2 THE USER WILL PAY ALL LEGAL FEES INCURRED IN CONNECTION WITH SUCH CLAIMS ON AN ATTORNEY AND OWN CLIENT SCALE (fees will be “as incurred” and not limited to any amount set in terms of public regulation), INCLUDING FEES INCURRED:

5.7.2.1 PRIOR TO THE INSTITUTION OF LEGAL PROCEEDINGS;

5.7.2.2 DURING LEGAL PROCEEDINGS; AND

5.7.2.3 IN CONNECTION WITH THE SATISFACTION OF ANY COSTS, DAMAGES, AWARDS OR JUDGMENTS AWARDED AGAINST OPENISP CC;

5.7.3 THE USER WILL, AT THE USER’S EXPENSE:

5.7.3.1 NOTIFY OPENisp cc OF ANY SUCH CLAIM WHICH COMES TO THE USER’S ATTENTION;

5.7.3.2 WHERE APPLICABLE AND WHEN REQUIRED BY OPENISP CC, GIVE OPENISP CC FULL AUTHORITY TO DEFEND, COMPROMISE OR SETTLE SUCH CLAIMS; AND

5.7.3.3 GIVE OPENISP CC ALL REASONABLE ASSISTANCE NECESSARY TO DEFEND SUCH CLAIMS;

5.7.4 THE USER’S INDEMNITY AGAINST THIRD PARTY CLAIMS WILL NOT APPLY TO THE EXTENT THAT IT IS NOT PERMITTED UNDER THE CONSUMER PROTECTION ACT.

REFERENCE TO OPENISP CC IN THIS CLAUSE 5.7 INCLUDES REFERENCE TO ANY EMPLOYEE, REPRESENTATIVE OR OTHER PERSONNEL OF OPENISP CC.

## 6. PAYMENT FOR SERVICE

6.1 The User will pay to OpenISP CC a monthly subscription as set out in the applicable tariff guide appearing at [http://www.openweb.co.za/index\\_uncapped.asp](http://www.openweb.co.za/index_uncapped.asp)

[http://www.openweb.co.za/index\\_standard.asp](http://www.openweb.co.za/index_standard.asp)

or

[http://www.openweb.co.za/index\\_unshaped.asp](http://www.openweb.co.za/index_unshaped.asp)

6.2 Subscriptions are due on or before the 27th of each month, paid in advance for the following month's Service. Subscriptions may be paid by way of electronic transfer, credit card payment or debit order.

6.3 The User is responsible for ensuring that debit order and credit card payments are honoured and that the necessary payment mechanisms are in place. IF THE USER PAYS BY ELECTRONIC TRANSFER, THE USER IS RESPONSIBLE FOR SENDING PROOF OF PAYMENT TO OPENISP CC BY EMAIL TO admin@openweb.co.za OR BY FAX TO 086 691 2166 AND FOR VERIFYING THAT OPENISP CC HAS RECEIVED THE PROOF OF PAYMENT AND MARKED THE USER'S ACCOUNT AS PAID ON OR BEFORE THE 27TH OF EACH MONTH.

6.4 The Service will be terminated without notice to the User, with effect from the first day of the following month, if:

6.4.1 a subscription which is due for the following month is not paid; or

6.4.2 in the case of electronic transfers, proof of payment of a subscription is not received by the 27th of the month preceding the month of usage and OpenISP CC does not subsequently receive the subscription in its bank account after the 27th but before the end of that month.

OPEN ISP CC WILL NOT BE LIABLE FOR ANY LOSS (INCLUDING LOSS OF BUSINESS OR REVENUE), DAMAGES, EXPENSES, COSTS OR CLAIMS ARISING DUE TO THE TERMINATION OF THE SERVICE IN THESE CIRCUMSTANCES.

6.5 Except to the extent the following limitations may be prohibited by the Consumer Protection Act in certain circumstances:

6.5.1 subscriptions are to be paid without deduction, set-off or demand; and

6.5.2 subscriptions paid are non-refundable.

6.7 Service paid for within a month (i.e. after the first day of the month), will only last until the end of the month it was purchased in.

## 7. SUSPENSION / TERMINATION OF SERVICE BY OPENISP CC

7.1 The Service may be suspended by OpenISP CC in the following circumstances:

7.1.1 During any technical failure, modification or maintenance of the Service or the Network, including but not limited to:

7.1.1.2 a failure due to activity such as cracking, hacking or denial of service attacks described in 4.2 above; and

7.1.1.3 any maintenance contemplated in 4.6 above,

provided that OpenISP CC will use its reasonable efforts to resume the Service as soon as possible.

7.1.2 If and when the OpenISP Network is or potentially may be endangered, harmed and/ or impeded as described in 4.10 above.

7.2 In addition to the right of termination set out in 6.4 above, the Service may be terminated by openisp CC immediately and without notice to the User should the User fail to comply with any material term or condition set out in these Terms and Conditions.

7.3 openisp CC reserves the right to levy a re-connection charge (an amount determined and calculated at the discretion of openisp CC) for re-connection to the Service or openisp Network after suspension or termination of the Service for any reason. Any re-connection charge will be payable immediately when the User receives an invoice from openisp CC for the re-connection charge.

7.4 the User will remain liable for all charges due throughout a period of suspension of the service unless OpenISP CC in its sole discretion determines otherwise in writing.

## 8. TERMINATION OF SERVICE BY THE USER

The User may terminate the Service by giving written notice to OpenISP CC at [cancellations@openweb.co.za](mailto:cancellations@openweb.co.za) or 086 691 2166 as follows:

8.1 one (1) calendar months' notice for all Users making use of debit/credit order payment facilities, given before the 25th day of the month before the last month for the provision of the Service (e.g. if the User wishes the Service to terminate at the end of April, notice of termination must be given before 25 March). Users may not downgrade their ADSL account/s during the one (1) calendar months' notice period. Where proper notice is given in time, OpenISP CC will issue, by email, a cancellation reference number. Only once a cancellation reference number has been issued will the User's account be deemed to be cancelled.

8.2 Subject to 8.3 and 8.4 below, 10 (ten) days' notice for all Users using other methods of payment, given before the 27th day of the month before the last month for the provision of the Service (i.e given on or before the 17th day of the last month of service) .

8.3 Except to the extent that the Consumer Protection Act provides otherwise, (three) calendar months' notice for all Users making use of an Internet Solutions or Vodacom Business Uncapped Solution with static IP addresses, which notice may only be given after the User's initial 12 (twelve) month contract has expired.

8.4 Three (3) calendar months' notice for IS Business Uncapped ADSL clients. The router must be returned to Internet Solutions on the last day of Service.

## 9. DISPUTE RESOLUTION

9.1 Any dispute between the User and OpenISP CC in regard to any matter arising out of these Terms and Conditions or their interpretation, or the Parties' respective rights and liabilities under these Terms and Conditions or the cancellation of these Terms and Conditions or any matter relating to these Terms and Conditions will be submitted for mediation and, failing resolution at mediation, for arbitration.

9.2 The mediator/arbitrator will be appointed by agreement between the Parties and will be, if the question in issue is:

9.2.1 primarily an accounting matter, an independent chartered accountant based in Durban;

9.2.2 primarily a legal matter, a practising advocate of not less than 5 (five) years' standing accredited as a mediator (where the advocate is required to mediate) based in Durban;

9.2.3 any other matter, an independent person agreed on between the Parties and failing agreement appointed by the Chairperson of the KZN Bar Council or his nominee.

9.3 This clause 9 is not intended to limit the User's right to settle a dispute concerning the application of the Consumer Protection Act using the mechanisms provided in the Consumer Protection Act.

## 10. REGULATORY COMPLIANCE

10.1 THE USER UNDERTAKES TO COMPLY WITH ALL REGULATORY OBLIGATIONS THAT MAY NOW OR IN THE FUTURE BE IMPOSED BY THE BODY UNDER WHOSE AUTHORITY THE SERVICE FALLS (currently the Independent Communications Authority of South Africa, ICASA).

(To help the User to comply with the User's obligations under this clause 10.1, OpenISP CC will forward or communicate to the User any notifications which OpenISP CC receives relating to the User's regulatory obligations as imposed by ICASA or its successor.)

IN ADDITION, THE USER ACKNOWLEDGES THAT THE IMPOSITION OF REGULATORY OBLIGATIONS BY SUCH BODY MAY RESULT IN THE NEED TO CHANGE THESE TERMS AND CONDITIONS AND THE USER UNDERTAKES TO COOPERATE WITH OPENISP CC IN THIS PROCESS.

## 11. GENERAL

11.1 THE USER ACKNOWLEDGES AND AGREES THAT THESE TERMS AND CONDITIONS GOVERN THE USER'S USE OF THE SERVICE AND THAT THERE ARE NO OTHER AGREEMENTS, GUARANTEES OR REPRESENTATIONS, EITHER VERBAL OR IN WRITING, GOVERNING OR RELATING TO THE USER'S USE OF THE SERVICE.

11.2 Any explanations in italics are for explanatory purposes only, to aid understanding by the User, and will not govern the interpretation of these Terms and Conditions.

Any queries regarding these Terms and Conditions can be sent to [admin@openweb.co.za](mailto:admin@openweb.co.za).