



ACCESS POINT TECHNOLOGIES (PTY) LTD
Company Reg: 2016/303066/07
Physical Address: Unit 204 Simbithi Business Park,
1 Club Road, Shaka's Rock, Ballito, 4420
Tel: 032 815 0400
E Mail: info@accesspoint.co.za

Accesspoint Terms and Conditions

ACCESSPOINT'S STANDARD TERMS AND CONDITIONS FOR THE PROVISION OF ELECTRONIC COMMUNICATIONS SERVICES & PRODUCTS

1. INTRODUCTION

- 1.1 The Applicant more fully described in the Service Order Application form must take note of the details set out under these terms and conditions.
- 1.2 If you cannot understand these standard terms and conditions, please visit Accesspoint's website at www.accesspoint.co.za or send an e-mail to info@Accesspoint.co.za.
- 1.3 These terms and conditions will become binding and apply to you, the Applicant, once Accesspoint has agreed to provide you with the service or device, which you have requested under the Service Order Application form.

2. EXCLUSION OR LIMITATION OF LIABILITY CLAUSES

- 2.1 In terms of section 49 of the Consumer Protection Act, 2008 (the CPA), a term or notice which purports to limit in any way the risk or liability of the supplier or any other person or constitutes an assumption of risk or liability by the consumer or imposes an obligation on the consumer to indemnify the supplier or any other person for any cause, or constitutes the acknowledgement of any fact by the consumer, must be written in plain language and the fact, nature and effect of such provision must be drawn to the attention of the consumer before the consumer concludes the transaction or is required to offer consideration under it.
- 2.2 This must be done in a conspicuous manner and form likely to attract the attention of the ordinarily "alert" consumer having regard to the circumstances and the consumer must be given adequate opportunity to comprehend the notice or provision. Accesspoint has housed certain clauses, which contain certain limitations under its Standard Terms and Conditions.
- 2.3 These clauses are highlighted in red/ capital letters and include:
- 2.3.1 Clause 10.5 Cancellation or variation of the Accesspoint Services – if you cancel or vary any of the Accesspoint Services, before the Connection date, in whole or in part, Accesspoint will have the right to charge you all Abortive Costs which Accesspoint has incurred as a result of the cancellation or variation.
- 2.3.2 Clause 10.6 Termination of a Fixed Term Agreement by a Consumer for no cause– if you as a Consumer, conclude a Fixed Term Agreement with Accesspoint, you will have the right to terminate the Fixed Term Agreement, for no particular reason or cause, at any time, on 20 (Twenty) Business days written notice, which termination will be subject to payment of a reasonable cancellation fee, determined using the guidelines set out under section 14 and Regulation 5(2) of the CPA.
- 2.3.3 Clause 12.2.10 Migration- Any request by you to migrate, will be subject to certain conditions, including the payment of any additional Migration charges, levied by Accesspoint, which charges are detailed under the Tariff List or as advised by Accesspoint and the signing of a new Agreement.
- 2.3.4 Clause 12.3 Charges and payment- Accesspoint will levy certain charges in respect of the use by you of the Accesspoint Services and Selected SE. Accesspoint also has the right to ask for a deposit and set credit limits and levy interest on unpaid charges.
- 2.3.5 Clause 11.27 Change in numbers due to reasons beyond Accesspoint's control -Accesspoint may be forced to change your number by a regulator or a supplier of Accesspoint, and if this occurs Accesspoint will not be liable to you or to any other person for any loss, damage or costs (direct, consequential or otherwise) which may be incurred in consequence of any change to the number.
- 2.3.6 Clause 14.3 Incorrect use of SE or use of illegal equipment - Accesspoint reserves the right to disconnect from the TECN or Network and suspend or terminate the Accesspoint Service, where any unlicensed or illegal SE is used in connection with the Accesspoint Services in such case you will indemnify Accesspoint against any liability, loss or damage which you or Accesspoint may incur as a result of the unlawful or incorrect usage of such SE.
- 2.3.7 Clause 15 Limited liability and indemnity -Accesspoint, under certain circumstances will not be responsible for certain damages or losses which may be incurred as a result of the purchase and /or use of the Accesspoint Services and / or Goods.
- 2.4 The Applicant must before it concludes the Application, carefully consider the Accesspoint standard terms and conditions housed under the Agreement, and applicable to the Accesspoint SE and / or Services which purport to limit the risk or liability of Accesspoint and other third parties acting on behalf of Accesspoint.

3. APPLICATION OF STANDARD TERMS AND CONDITIONS

- 3.1 These standard terms and conditions, as amended by Accesspoint from time to time in accordance with the provisions of Accesspoint's Electronic Communications Service (ECS) license, the Electronic Communications Act 36 of 2005, the Consumer Protection Act, 68 of 2008 or any other applicable legislation, are applicable to the provision and use of all electronic communications services and products provided by Accesspoint to customers.
- 3.2 The Customer accepts and agrees that these terms and conditions become binding on it once Accesspoint has processed the Customer's Application and agreed to provide the Customer with the Accesspoint Services and where applicable the Selected SE. Accesspoint will notify the Customer of its acceptance or non-acceptance and where applicable the deposit which it may require in order to secure the Accesspoint Services and or Selected SE.
- 3.3 Persons wishing to obtain, Accesspoint Services and where applicable, the SE, must apply for the Accesspoint Service and SE by signing the standard Accesspoint Application Form, which can be either downloaded from the Accesspoint Website or obtained on request from Accesspoint's customer service branches or by following any other application procedure determined by Accesspoint from time to time.
- 3.4 Accesspoint reserves the right to decline and / or reject the Application and the offer to contract.

4. AMENDMENT OF THE ACCESSPOINT STANDARD TERMS AND CONDITIONS

- 4.1 Accesspoint reserves the right to amend its standard terms and conditions from time to time, subject to the provisions of the Consumer Protection Act, 68 of 2008, in so far as these amendments may relate to a Consumer, as defined.
- 4.2 Accesspoint will place the amended terms and conditions on the Accesspoint website www.Accesspoint.com and the Consumer Commission, which amendment, from date of such filing, will thereafter be deemed to be incorporated into the Agreement.

5. CREDIT REFERENCING

- 5.1 The Applicant and Customer give Accesspoint express permission to carry out general and specific credit reference enquiries about the Applicant who has applied for Accesspoint Services or Selected SE. In addition the Applicant and Customer expressly give Accesspoint permission to check the correctness of any of the information supplied by the Applicant when applying for a service.

6. WARRANTY BY APPLICANT

- 6.1 THE APPLICANT WARRANTS AND REPRESENTS THAT ALL INFORMATION SUPPLIED BY IT IN APPLYING FOR THE ACCESSPOINT SERVICE AND WHERE APPLICABLE THE SELECTED SE, IS TRUE, CORRECT AND COMPLETE AND INDEMNIFIES AND HOLDS ACCESSPOINT HARMLESS AGAINST ALL CLAIMS, OF WHATSOEVER NATURE, THAT ARISE, DIRECTLY OR INDIRECTLY, AS A RESULT OF THE APPLICANT OR ITS AGENT PROVIDING ACCESSPOINT WITH ANY INCORRECT INFORMATION.



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6.2 Accesspoint will use the Applicant's/Customer's information strictly in accordance with the Regulations promulgated in terms of Section 69 of the Act, being Regulation 1740 headed: Code of Conduct for electronic communications and electronic communications network services licenses (Government Gazette No. 30553) and Regulation 3.8 which states as follows:

Licensees must protect the confidentiality of consumer information, and in particular, must (a) use the information only for the purpose permitted or required, (b) report or release that information only to the consumer or prospective consumer, (c) only release that information to another person:

1. when directed by the written instruction of the consumer or prospective consumer, or
2. when directed by an order of a court.
- iii. during the process of collection of debts owed to the licensees to accredited debt collection agencies.

1. by the licensees' auditors for the purpose of auditing their accounts.
2. in terms of any applicable law.

7. MEANINGS OF CERTAIN WORDS AND PHRASES

7.1 This section sets out the meaning of certain words and phrases, which are used throughout the Agreement. To enable the Customer to read and understand the contents of Agreement, the Customer must first understand the meanings of these words and phrases.

7.2 Unless it appears differently from the context or under this clause 7, words, terms and phrases used in the Agreement shall have the same meaning as the definitions set out in the Electronic Communications Act, 36 of 2005 (Act) and under Accesspoint's Individual Electronic Communications Services License, which Act and related content can be viewed on the ICASA Website;; <http://www.icasa.org.za/> under the heading "Legislation";;

7.3 Words importing the singular shall include the plural and vice versa.

7.4 Words denoting persons shall include natural human beings, legal entities and unincorporated associations of persons, and vice versa.

7.5 The headings in these terms and conditions shall not affect their interpretation.

7.6 In addition to the above provisions, unless inconsistent with the terms set out under the acts and/or license referred to under clause 7.2 or otherwise indicated by the context, the words and phrases set out below shall mean as follows:

"Abortive costs" has the meaning as set out in clause 12.2.8;

"Act" means the Electronic Communications Act 36 of 2005, as amended from time to time, and any regulations, as may be amended or replaced from time to time, which Act, amongst other things, regulates the telecommunications industry and related sectors and the provision by them of certain electronic communications network services and electronic communication services. The Act and related content can be viewed on the ICASA Website at <http://www.icasa.org.za/>

"Applicant" means the person whose details are reflected on the Service Order Application Form, whether captured on paper, or via electronic means such as voice recordings, computer generated and captured data or similar means;

"Agreement" means the Application Form, the Tariff List, and these terms and conditions which will apply to the Customer, in respect of the Accesspoint Services and Selected SE, together with any Renewal Addendum (where applicable);

"Application Form" means the official Accesspoint Service Order Application Form which is completed by the Applicant in writing, electronically or telephonically, which houses the Applicant's details and the Applicant's/Customer's request that Accesspoint provide it with certain Accesspoint Services and/or the Selected SE;

"Authority" means the Independent Communications Authority of South Africa established in terms of section 3 of the Independent Communications Authority of South Africa Act, 2000 and its successors who govern and oversee the telecommunications and electronic communications industry;

"Applicable Law" means any of the following, to the extent it applies to Accesspoint, the Customer or the Goods and Services:

- (i) any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time;
- (ii) the common law and the law of equity;
- (ii) any binding court order, judgment or decree;
- (iii) any applicable industry code, policy or standard enforceable by law; and

any applicable direction, rule, pronouncement, policy or order that is given by a regulator.

"Basic telephone service" means an electronic communications service comprising technical features, which are the minimum necessary to allow the establishment of a telephony channel for the purpose of providing an electronic communications service in order to convey voice grade signals between two items of SE connected to TECN;

"Business Day" means Monday to Friday, excluding Saturday and Sunday and excluding any public holiday as defined under the Public Holiday Act, 36 of 1994;;

"Connections" means the licensed ECNS Connections, which Accesspoint or an Accesspoint supplier or contractor, will install at the Customer's premises as reflected under the Application Form, which allows the Customer to use the Accesspoint Service, through the service provider;

"Connection date" means the date when Accesspoint installs the Connections at the Customer's premises where the Accesspoint Service will be used, which allows the Customer to utilize the Accesspoint Services and Selected SE or the SE;

"Consumer" means a Customer who is a "consumer" as defined under section 1, section 6 and Regulation GN 294 of 2011 of the CPA;;

"Charges" means the amounts charged by Accesspoint in respect of the Selected SE, where purchased or leased from Accesspoint, and the Accesspoint Services, which charges are set out under the Tariff List or as notified by Accesspoint from time to time, and which Charges will be set out under the Invoice which will be submitted to the Customer in terms of the Agreement;

"CPA" means the Consumer Protection Act, 68 of 2008, as amended and any regulations published in terms thereof, as amended or replaced from time to time;;

"Credit referencing procedure" means the procedure set up by Accesspoint to determine the creditworthiness of an Applicant;

"Commencement date" means the date when Accesspoint has processed the Application and notified the Customer that it has agreed to provide the Customer with the Accesspoint Services and where applicable the Selected SE;

"Customer" means the person who has applied for and who Accesspoint has agreed to provide the Accesspoint Services and Selected SE, where applicable, and who will be liable for the payment of the Charges and for compliance with the Agreement. Customer will also include "Subscriber" and "End-user" as defined in section 1 of the Act;



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"Due date" means the date on which any amounts owed by Customer to Accesspoint in respect of the Accesspoint Services and the Selected SE, where applicable, become due and payable, and which is printed on the Invoice;

"Electronic Communications" means the emission, transmission or reception of information, including without limitation, voice, sound, data, text, video, animation, visual images, moving images and pictures, signals or a combination thereof by means of magnetism, radio or other electromagnetic waves, optical, electromagnetic systems or any agency of a like nature, whether with or without the aid of tangible conductor/conduit, but does not include content service as defined in section 1 of the Act;;

"Electronic Communications Network" or "ECN" means any system of electronic communications facilities (excluding Selected SE and SE), as defined under section 1 of the Act, including without limitation satellite systems; fixed systems (circuit- and packet-switched); mobile systems;; fiber optic cables (undersea and land-based);; electricity cable systems (to the extent used for electronic communications services);; and other transmission systems, used for conveyance of electronic communications;;

"Electronic Communications Network Service" or "ECNS" means a service as defined under section 1 of the Act, whereby a person makes available an electronic communications network, whether by sale, lease or otherwise, for that person's own use for the provision of an electronic communications service or broadcasting service;; to another person for that other person's use in the provision of an electronic communications service or broadcasting service;; or for resale to an electronic communications service licensee, broadcasting service licensee or any other service contemplated in the Act, and 'network services' is construed accordingly;;

"Electronic Communications Service" or "ECS" means any service provided to the public, sections of the public, the State, or the Customers to such service, which consists wholly or mainly of the conveyance by any means of electronic communications over an electronic communications network, but excludes broadcasting services;

"Exchange connection" means the line that connects a main telephone service to an exchange which is also referred to as a private branch exchange line (PBX line) when terminated in a private branch exchange (PBX) or in any other type of telephone system;

"Fixed Term Agreement" means an Agreement concluded by Accesspoint with a Customer which is in excess of a one month period, as selected by the Applicant under the Application Form, and which for any avoidance of doubt will be limited in the case of a Consumer, to a maximum period of 5 (five years) together with any renewed period or term as requested by the Consumer in accordance with options granted by Accesspoint to the Consumer as per the provisions of section 14 of the CPA;

"Initial Period" means the number of months which the Customer has selected under the Application Form under the line item "contract period" for which the Agreement will run, which period will start running on the Connection date;

"Individual Consumer" means a Consumer who is natural person;

"Interest rate" means the interest rate determined by Accesspoint from time to time levied on any outstanding amounts due to Accesspoint which will not exceed the maximum rate allowed under the National Credit Act, 34 of 2005 and provided that the said rate shall be uniformly applied to all amounts outstanding and due;

"Invoice" shall mean the notification of Charges sent to the Customer setting out all amounts due and owing to Accesspoint by the Customer in respect of the Accesspoint Services and/or where applicable, the Selected SE;

"Migration" means the Customer's election to change the Accesspoint Services and or Selected SE received under the Agreement to another, which if accepted by Accesspoint will give rise to a review and amendment of the Charges;

"Minimum Service Standards" means the minimum service standards for end users and subscribers set by the Authority (ICASA), housed under the Act, titled Regulations Setting Out The

Minimum Standards For End-User And Subscriber Service Charters, GNR.774 of 24 July 2009, Government Gazette no 32431, as amended or replaced from time to time;

"Month to Month Agreement" means the Agreement, which has been concluded between Accesspoint and the Customer, which will run on a month to month basis and which is capable of being terminated by either party on 1 (one) month written notice, which option the Customer has selected under the Application Form under the line item "contract period", or being the default contract term once a fixed term agreement between Accesspoint and the Customer has expired, which the Customer chose not to renew or cancel;

"Office hours" means Accesspoint's normal business hours, as determined by Accesspoint from time to time, currently being Monday to Friday, 8h00 to 17h00, but excluding public holidays;

"Private branch exchange (PBX) switching unit" means a telephone-switching unit installed on the Customer's premises, or intended for such an installation, that is capable of being connected to an Electronic Communications Network by means of one or more exchange connections. Such a unit functions as an intermediary switching device for traffic between exchange Connections and extension circuits of the PBX (extensions), or between those extensions;;

"Private electronic communications network" or "PECN" means an electronic communications network used primarily for providing electronic communications for the owner's own use as envisaged in Section 6 (2) (c) of the Act;

"Parties" means collectively, Accesspoint and the Customer;;

"Personal Data" means all personal details conveyed to Accesspoint by the Applicant/Customer such as his/her identity, whereabouts, credit levels, financial status, earning capabilities, family members, likes, preferences and dislikes, which are required in order to process the application and required to determine current and future customer requirements;

"Regulations" means any regulations promulgated in terms of section 95 of the Act;

"Renewal period" means the additional number of months which the Parties have agreed to renew the Agreement for, as set out under the Renewal Addendum/ Application Form, which period will start on the day following the last day of the Initial Period, where applicable;

"Renewal Addendum" means the renewal agreement concluded by the Parties, which sets out the additional terms applicable to the Renewal period;

"RICA" means the Regulation of Interception of Communication and Provision of Communication Regulated Information Act 70 of 2002, as amended/replaced from time to time, and its related provisions, which apply to Accesspoint and to the Customer;

"SE" means the equipment used by Customers to access, use or receive electronic communications services or the Accesspoint Services and as defined in section 1 of the Act;

"Selected SE" means the equipment used by Customers to access, use or receive electronic communications services or the Accesspoint Services and as defined in section 1 of the Act, which SE is leased or purchased by the Customer from Accesspoint in terms of the Agreement;

"Standard terms and conditions" means the standard terms and conditions as described in this Agreement and any annexures or amendments thereto and the word "conditions" shall bear the same meaning;



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"Tariff List" means the list of Charges levied by Accesspoint in respect of the Accesspoint Services and where applicable the Selected SE, as amended from time to time, and payable to Accesspoint by the Customer;

"Accesspoint" means Accesspoint Management (Pty) Ltd Limited, Registration number 2000/015690/07, a private company incorporated in terms of the laws of the Republic of South Africa;

"Accesspoint Services" means the electronic communication services, as selected by the Customer under the Application Form, which Accesspoint will provide to the Customer in terms of the Agreement;

"ECN" means the electronic communications network used by Accesspoint to render electronic communications services in terms of Accesspoint's Individual Electronic Communications Service License or supplied by another ECS License holder contracted to supply such services for an on behalf of Accesspoint and "Network" shall have the same meaning; and

"Terminal connection equipment" or "TCE" means the electronic communications equipment and/or electronic communication facility on which Accesspoint terminates Electronic Communication Service(s).

7.7 The Customer is to note that the provisions of the Electronic Communications and Transactions Act, 25 of 2002 (ECTA) shall apply, the Parties expressly agreeing:

7.7.1 that where a provision of the Agreement requires that a document must be signed or initialed, that signing or initialing may be effected in any manner recognized by law, including the use of an electronic signature, as defined in ECTA;; Accesspoint/ in this regard will take reasonable measures to prevent the use of the Consumer's electronic signature for any purpose other than the signing or initialing of the particular document that the consumer intended to sign or initial; and

7.7.2 that where anything is required to be in writing, unless expressly stipulated to the contrary by Accesspoint, any electronic communication, including an SMS, telephonic call or electronic message such as an email, exchanged between the Parties, will meet this requirement.

7.8 The Customer is to note that when a particular number of days is provided for between the happening of one event and another, the number of days must be calculated by:-

7.8.1 excluding the day on which the first such event occurs;;

7.8.2 including the day on or by which the second event is to occur;; and

7.8.3 excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in clauses 17.1 and 1.7.2, respectively.

8. AGREEMENT TO CONTRACT AND APPLICATION OF THESE TERMS AND CONDITIONS

8.1 This clause confirms that you, the Customer, have asked Accesspoint to provide you with certain electronic communication services and equipment, which you selected when you completed the Application Form. Accesspoint has agreed to provide you with the selected services and equipment, but these will be provided on condition that you will comply with the terms and conditions set out under the Agreement.

8.2 The Customer accepts and agrees that the terms and conditions set out under the Agreement will become binding on it once Accesspoint has processed the Application Form and agreed to provide the Customer with the Accesspoint Services and where applicable, the Selected SE.

8.3 Accesspoint reserves the right to amend these terms and conditions from time to time. Accesspoint will give written notice to each Consumer of such amendments and will place the amended terms and conditions on Accesspoint's website www.Accesspoint.com and file such amended terms and conditions with the Authority, if required by law, which amendment will be deemed to be incorporated into the Agreement and bind the Customer from the date that the amendment has been filed with the Authority or published on Accesspoint's website.

8.4 Where, as a result of any amendment anticipated under clause 8.3 a Consumer is of the view that such amendment is to its detriment; the Consumer may terminate the Agreement without penalty provided that it gives Accesspoint 20 (twenty) Business days' notice in writing of its election to terminate the Agreement. Where a Consumer terminates the Agreement as per his rights under this clause 8.3, such termination will be WITHOUT PENALTY, SAVE WHERE THE CONSUMER HAS BEEN GIVEN OR HAS PURCHASED BUT NOT YET PAID FOR, SELECTED SE. IN SUCH A CASE THE CONSUMER WILL HAVE A LEGAL DUTY AND ACCESSPOINT WILL HAVE A LEGAL RIGHT TO DEMAND FROM THE CONSUMER, FULL PAYMENT IN RESPECT OF THE SELECTED SE, LESS ANY AMOUNTS WHICH HAVE ALREADY BEEN PAID TO ACCESSPOINT IN RESPECT THEREOF PRIOR TO SUCH TERMINATION.

9. PROCESSING OF PERSONAL INFORMATION, RIGHTS TO PRIVACY AND RICA

9.1 Although Accesspoint respects you, the Customer's privacy and to this end your right not to have your personal data misused or distributed to other persons, you, the Customer must comply with the provisions of RICA, which is a law which requires that bodies such as Accesspoint verify your details before they are able to provide you with a communication service or device. This clause sets out Accesspoint's undertaking to protect and respect your personal data and not to misuse it.

9.2 It also sets out your undertaking to comply with RICA.

9.3 Accesspoint at any time reserves the right to make general credit reference enquiries about the Customer and to check the correctness of the information that has been supplied.

9.4 Accesspoint shall also be entitled to furnish any information relating to the Customer's account and compliance with these conditions to any registered credit bureau.

9.5 THE CUSTOMER WARRANTS AND REPRESENTS THAT ALL INFORMATION SUPPLIED BY IT IS TRUE, CORRECT AND COMPLETE AND INDEMNIFIES AND HOLDS ACCESSPOINT HARMLESS AGAINST ALL CLAIMS, OF WHATSOEVER NATURE, THAT ARISE, DIRECTLY OR INDIRECTLY, AS A RESULT OF ANY INCORRECT INFORMATION BEING FURNISHED.

9.6 Accesspoint will use the Customer's information strictly in accordance with the Regulations promulgated in terms of Section 69 of the Act and undertakes to process and use the Customer personal data only for the purpose for which it has been collected and undertakes that this processing will be carried out in accordance with any notice, consent or other requirement which may be required by any applicable law in force in South Africa from time to time. Accesspoint furthermore will use the Customer's information strictly in accordance with the provisions housed under its Accesspoint Individual Communications Service License.

9.7 THE CUSTOMER ACKNOWLEDGES AND ACCEPTS THAT WHERE IT DOES NOT COMPLY WITH THESE PROVISIONS THAT THIS WILL AMOUNT TO A MATERIAL BREACH BY THE CUSTOMER OF THIS AGREEMENT WHICH WILL ALLOW ACCESSPOINT TO CANCEL THE AGREEMENT AND TO CLAIM DAMAGES AS A RESULT OF THE CANCELLATION.

9.8 The Customer also acknowledges and accepts that where it does not comply with the provisions set out under clause 9, that this will be a breach of RICA and this will give rise to a possible criminal charge and sanction being imposed against the Customer as per the requirements of RICA.

10. DURATION, RENEWAL AND TERMINATION FOR NO CAUSE

10.1 The clause sets out how long the Agreement will run for and your rights to cancel the Agreement.



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10.2 Notwithstanding the Connection date, the Agreement will start on the Commencement date and will carry on for either the Initial Period or on a Month to Month basis, as selected by the Customer under the Application Form and for any Renewal Period, where renewed by the Customer, save for where the Agreement is terminated earlier by either of the Parties in accordance with their respective rights set out under this Agreement.

10.3 On expiration of the Initial Period, the Customer will have the right to terminate the Agreement by giving Accesspoint written notice of its election to terminate the Agreement or enter into a Renewal Addendum or complete a new Application Form, which Renewal Addendum or Application Form will set out the Renewal Period, and the applicable terms and conditions pertaining to such renewal. Accesspoint will notify Individual Customers, who have concluded a fixed term agreement with Accesspoint, not more than 80 nor less than 40 business days prior to the date of expiry of the Initial Period of the impending expiry of their fixed term agreement as per Section 14(2) (c) of the Consumer Protection Act, 2008.

10.4 Should a Customer fail to notify Accesspoint of its election to terminate or renew the Agreement, and more in particular where a Consumer fails to notify Accesspoint of its election to either terminate or renew the Agreement as permitted under section 14 of the CPA, then the Agreement will continue on a month to month basis on the same terms and conditions as contained under the Agreement except for the adjustment of the charges associated with the month to month term and subject always to any variations in accordance with the Tariff List. Any month to month Agreement as envisaged in terms of this clause may be terminated by either party by giving 1 (One) months written notice to the other party.

10.5 Cancellation or variation of the Accesspoint Services or Selected SE before the Connection date WHERE THE CUSTOMER CANCELS OR VARIES ANY OF THE ACCESSPOINT SERVICES, AND / OR THE SELECTED SE AS SELECTED UNDER THE APPLICATION FORM, WHICH CANCELLATION IS NOT AS A RESULT OF ANY BREACH ON THE PART OF ACCESSPOINT, BEFORE THE CONNECTION DATE, IN WHOLE OR IN PART, ACCESSPOINT WILL HAVE THE RIGHT TO CHARGE THE CUSTOMER ALL ABORTIVE COSTS WHICH ACCESSPOINT HAS INCURRED AS A RESULT OF THE CANCELLATION OR VARIATION, WHICH AMOUNT SHALL BE PAYABLE BY THE CUSTOMER ON DEMAND.

10.6 Termination of a Fixed Term Agreement by an Individual Consumer for no cause where an Individual Consumer has concluded a Fixed Term Agreement, the Individual Consumer will have the right to terminate the Fixed Term Agreement, for no particular reason or cause, at any time, provided the Consumer gives Accesspoint at least 20 (Twenty) Business days written notice of its election to terminate the Agreement, WHICH TERMINATION WILL BE SUBJECT TO PAYMENT OF A REASONABLE CANCELLATION FEE, WHICH WILL BE DETERMINED AND CALCULATED AT THE TIME WHEN THE NOTICE TO TERMINATE IS GIVEN BY THE CONSUMER, USING THE GUIDELINES SET OUT UNDER SECTION 14 AND REGULATION 5(2) OF THE CPA.

10.7 Should the Individual Consumer elect to terminate the Agreement earlier than anticipated, as envisaged and permitted under clause 4.3.1, I.E. BEFORE THE EXPIRATION OF THE INITIAL PERIOD, then on receipt of the termination notice, Accesspoint will advise the Individual Consumer of the amounts which are still owed to it, namely all the arrears amounts owing to Accesspoint in terms of the Agreement up to date of termination;; and the cancellation fee, as determined by Accesspoint as per the provisions of clause 10.6. The Consumer will pay Accesspoint the amounts referred to under clause 10.6 by the Due date indicated on the Invoice setting out the arrears amounts and the cancellation fee.

11 INSTALLATIONS AND PROVISION OF THE ACCESSPOINT SERVICES

11.1 This clause sets out the type and quality of Accesspoint Services and where applicable the Selected SE which Accesspoint has agreed to provide you, the Customer with, who bears the risk of any misuse of the Accesspoint Services and Selected SE and what will happen when the Accesspoint Services are interrupted due to events/incidents which is beyond Accesspoint's control. It also covers your right to change the Accesspoint Service, and Accesspoint's right to change your number or the Accesspoint Services and or the Selected SE where required.

11.2 The Accesspoint Service, including any Basic telephone service, is exclusive of any required SE, unless the Customer has expressly, under the Application Form, requested that Accesspoint provide it with the Selected SE. The Selected SE will be either leased or sold to the Customer at the prices, fees or rates set out under the Tariff List or as notified by Accesspoint to the Customer.

11.3 WHERE ANY SE IS REQUIRED FOR THE USE AND ENJOYMENT OF THE ACCESSPOINT SERVICES WHICH IS NOT PROVIDED BY ACCESSPOINT, THE CUSTOMER WILL BE RESPONSIBLE FOR INSTALLING SUCH SE AT ITS OWN RISK, COST AND EXPENSE.

11.4 Accesspoint shall install the Connections required for the use of the Accesspoint Services and where applicable, the Selected SE at the Customer's premises as set out under the Application Form, as requested by the Customer, against payment of the relevant installation fee and deposit, if applicable, as set out in the Tariff List or as quoted by Accesspoint.

11.5 Accesspoint shall make reasonable endeavors to meet the installation date as requested by the Customer. However it is a condition of the Agreement that Accesspoint gives no undertakings that it will be able to meet any installation date requested by the Customer, the Customer accepting that Accesspoint will install the Connections required for the use of the Accesspoint Services and where applicable the Selected SE when it is in a position to do so, which will depend on the availability of spares, parts and service providers or Accesspoint contractors, whatever the case may be.

11.6 Accesspoint will give the Customer notice of the installation date once it has received the Selected SE and secured the services of its Accesspoint contractors and service providers for the purposes of installing the Connections and selected SE.

11.7 Accesspoint will ensure that it complies with all installation requirements set out under the Minimum Standard in so far as installation of the Connections and the Selected SE is concerned.

11.8 Accesspoint's duty to physically install the Connections required for the use of the Accesspoint Services and where applicable the responsibility to install the Selected SE or SE will terminate once the Connections and where applicable the Selected SE or SE have been supplied, installed and the Customer is able to receive, via the Selected SE, the Accesspoint Services.

11.9 Only SE that has been type approved by the Authority may be used in conjunction with the Accesspoint Service, which SE must have all the technical and operational characteristics and modifications of the type that has been approved.

11.10 If the SE is modified, it may not be used in conjunction with the Accesspoint Service until such time that the Authority has approved the modification.

11.11 ACCESSPOINT RESERVES THE RIGHT TO DISCONNECT FROM THE TECN OR NETWORK AND SUSPEND OR TERMINATE THE ACCESSPOINT SERVICE, WHERE ANY SE THAT HAS NOT BEEN APPROVED BY THE AUTHORITY OR THAT HAS BEEN LICENSED OR APPROVED BUT HAS BEEN MODIFIED WITHOUT THE APPROVAL OF THE AUTHORITY IN TERMS OF SECTION 35 OF THE ACT HAS BEEN USED IN CONNECTION WITH THE ACCESSPOINT SERVICES OR WHERE THE SE HAS BEEN INCORRECTLY INSTALLED OR CONNECTED TO THE CONNECTIONS AND THE CUSTOMER INDEMNIFIES ACCESSPOINT AGAINST ANY LIABILITY, LOSS OR DAMAGE WHICH ACCESSPOINT AND/OR THE CUSTOMER MAY INCUR AS A RESULT OF THE UNLAWFUL OR INCORRECT USAGE OF SUCH SE OR THE INCORRECT INSTALLATION OF THE SE, WHAT EVER THE CASE MAY BE.

11.12 A PBX switching unit may only be connected to the TECN, if it has been installed, or modified after installation, and/or commissioned by Accesspoint or by a person duly licensed by the Authority to install, modify, and/or commission such equipment, as the case may be.

11.13 If the Customer is not the owner of the premises where the Accesspoint Service and / or where applicable the Selected SE is to be installed, the Customer must prior to any installation by Accesspoint, AT ITS OWN COST AND EXPENSE, OBTAIN WRITTEN PERMISSION FROM THE OWNER OF SUCH PREMISES FOR ANY SUCH INSTALLATION AND THE CUSTOMER INDEMNIFIES ACCESSPOINT AGAINST DAMAGES OR CLAIMS RESULTING FROM THE FAILURE TO OBTAIN SUCH PERMISSION INCLUDING ALL AND ANY ABORTIVE COSTS WHICH MAY HAVE TO BE INCURRED BY ACCESSPOINT SHOULD ACCESSPOINT HAVE TO REMOVE ANY CONNECTIONS AND / OR THE SELECTED SE FROM THE PREMISES.



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11.14 The Customer must at its own cost and expense provide suitable and adequate electrical power supply as may be required for the proper functioning of the Connections and the Selected SE or SE.

11.15 THE CUSTOMER MUST AT ITS OWN COST AND EXPENSE ENSURE THAT OPTIMUM ENVIRONMENTAL CONDITIONS AS MAY BE REQUIRED FOR THE PROPER MANAGEMENT AND/OR FUNCTIONING OF THE CONNECTIONS AND THE SELECTED SE OR SE ARE PROVIDED, SUCH AS ADEQUATE VENTILATION, LIGHTING AND WALL/RACK SPACE.

11.16 Where an exchange connection or group of exchange connections rented by the Customer is used to such an extent that the number of calls to such lines cannot be completed because of engaged conditions become such that it causes an undue overload of the exchange, Accesspoint will notify the Customer in writing of the need to increase the number of exchange connections by a specified amount. Where the Customer fails to allow the installation of the additional exchange connections indicated in the notification Accesspoint may suspend the Accesspoint Service, until such time as the Customer has made contact with Accesspoint and has made arrangements for the installation of additional exchange connections. ACCESSPOINT TAKES NO RESPONSIBILITY FOR THE QUALITY OF THE ACCESSPOINT SERVICE, WHICH MAY RESULT FROM ANY CIRCUMSTANCES AS ENVISAGED IN TERMS OF THIS CLAUSE.

11.17 WHILST ACCESSPOINT PROVIDES THE SERVICES HEREIN, ACCESSPOINT HEREBY EXPRESSLY ADVISES THE CUSTOMER THAT ACCESSPOINT DOES NOT OPERATE IN ISOLATION BUT INSTEAD RELIES ON FUNCTIONALITIES, EQUIPMENT AND/OR INFRASTRUCTURE WHICH ARE PROVIDED BY A NUMBER OF SERVICE PROVIDERS WHO PROVIDE SEPARATE BUT INTERRELATED AND CONNECTED SERVICES WHICH AS A WHOLE, ALLOWS THE ECN/NETWORK, THE SELECTED SE AND SE TO FUNCTION. THESE SERVICE PROVIDERS OPERATE AS INDEPENDENT SERVICE PROVIDERS WHO ARE NOT NECESSARILY CONTRACTED BY ACCESSPOINT AND THE CUSTOMER ACCEPTS AND ACKNOWLEDGES THIS FACT.

11.18 WHILST ACCESSPOINT WILL COMPLY WITH AND MEET THE MINIMUM SERVICE STANDARDS AND USE ITS BEST ENDEAVORS TO ENSURE THAT THE ACCESSPOINT SERVICES AND ANY SELECTED SE ARE OPERATIONAL AT ALL TIMES, ACCESSPOINT DOES NOT WARRANT THAT THE ACCESSPOINT SERVICES WILL BE OPERATIONAL ON A 24 (TWENTY FOUR) HOUR 365 (THREE HUNDRED AND SIXTY FIVE) DAYS PER YEAR BASIS, THIS BEING DUE TO THE NATURE OF THE TELECOMMUNICATIONS INDUSTRY AND THE NETWORK, WHICH IS DEPENDENT ON THE ACTIONS AND/OR INPUT OF A NUMBER OF INDEPENDENT SERVICE PROVIDERS WHOM ACCESSPOINT HAS NO DIRECT CONTROL OVER.

11.19 Accesspoint will use its best endeavors to notify the Customer in advance of any failure of, or interruption to the Accesspoint Services/ Selected SE or the Connections and where applicable any required maintenance and repairs which may result from such failure, interruption or unavailability, where Accesspoint is in a position to do this.

11.20 ACCESSPOINT IN ADDITION EXPRESSLY ADVISES AND THE CUSTOMER ACKNOWLEDGES AND ACCEPTS THAT THE CERTAIN SELECTED SE ARE NOT MANUFACTURED BY ACCESSPOINT, BUT ARE MANUFACTURED BY THIRD PARTIES. IN MOST CASES, DUE TO THE PROVISIONS OF THE ACT READ TOGETHER WITH THE AUTHORITY CODE OF PRACTICE AND GUIDELINES, ACCESSPOINT WILL NOT BE IN A POSITION TO OPEN CERTAIN SELECTED SE OR TO TEST OR OPERATE THE SELECTED SE BEFORE THEY ARE HANDED TO THE CUSTOMER IN ORDER TO ENSURE THAT THEY ARE FIT FOR PURPOSE AND / OR ARE INTACT.

11.21 IN LIGHT OF THE DISCLOSURES HOUSED UNDER CLAUSES 5.4.1- 5.4.4 ACCESSPOINT EXPRESSLY STIPULATES AND THE CUSTOMER ACKNOWLEDGES THAT ACCESSPOINT CANNOT WARRANT OR GUARANTEE THAT THE ACCESSPOINT SERVICES AND / OR THE SELECTED SE WILL:

11.21.1 AT ALL TIMES BE FREE OF ERRORS OR INTERRUPTIONS;;

11.21.2 ALWAYS ARE AVAILABLE;;

11.21.3 BE FIT FOR ANY PURPOSE;;

11.21.4 NOT INFRINGE ON ANY THIRD PARTY RIGHTS;;

11.21.4 BE SECURE AND RELIABLE,

SAVE WHERE THE ACCESSPOINT SERVICES, THE CONNECTIONS AND / OR SELECTED SE ARE FOUND TO BE DEFECTIVE AND SUCH DEFECT HAS BEEN SOLELY CAUSED BY ACCESSPOINT AS ANTICIPATED UNDER SECTIONS 54, 55 AND 56 OF THE CPA, WHERE APPLICABLE

11.22 Notwithstanding the provisions of clause 11.21 above, Accesspoint will use its best endeavors to notify the Customer in advance of any failure of, or interruption to the Accesspoint Services Connections and / or the Selected SE and where applicable any required maintenance and repairs which may result from such failure, interruption or unavailability, where Accesspoint is in a position to do so.

11.23 ACCESSPOINT AND THE CUSTOMER AND MORE IN PARTICULAR THE CONSUMER CONFIRM THAT THE PROVISIONS HOUSED UNDER CLAUSE 11 EXPRESSLY SET OUT THE THAT THE SELECTED SE AND THE ACCESSPOINT SERVICES ARE SOLD OR OFFERED IN A SPECIFIC CONDITION. IN LIGHT OF THE ABOVE DISCLOSURES, WHICH ARE PERMITTED UNDER SECTION 54(1) OR 55 (6) OF THE CPA, THE CUSTOMER AND MORE IN PARTICULAR THE CONSUMER, ACKNOWLEDGES THAT IT WILL NOT BE ALLOWED TO:

11.23.1 withhold any amounts due and owing to Accesspoint;; or

11.23.2 deduct any monies,

11.24 In respect of "dropped" or discontinued calls and/or connections or any temporarily unavailability of the Accesspoint Services, the Connections or the Selected SE, including as an example, extra traffic on the Network, excessive use by users or technical problems which result in line congestion, fatigue and the general unavailability of the Network, except and to the degree that Accesspoint is solely responsible for any such unavailability, or failure and in such case the Customer's remedies will be limited, at the Customer's election, to either having the defect remedied by Accesspoint or the right to receive a refund from Accesspoint of any reasonable portion of the price paid for the Selected Accesspoint Services which have not been performed or which have not been available, having regard to the extent of the failure.

11.25 Furthermore, where the Connections or the Selected SE are defective, or faulty, then in such an event the Consumer's rights will be limited to those set out under clause 14.

11.26 Change in numbers due to reasons beyond Accesspoint's control

11.26.1 Notwithstanding anything to the contrary contained in the Agreement, the Customer acknowledges that it does not own the telephone number that is allocated to it in respect of the Accesspoint Service or Selected SE, which number is owned by the Authority and which has been allocated to Accesspoint as per the provisions of the Act.

11.27 Accesspoint reserves the right to change any number within the existing numbering plan, code, password, user identity or name allocated by Accesspoint from time to time for use in connection with the Accesspoint Services, the Selected SE or SE which change has been necessitated by the Authority who owns the number range and/or where Accesspoint may have to change the aforementioned numbers if it changes its technology and/or due to other operational requirements and/or where a customer moves to another location which falls within a different exchange area and this necessitates a change to the numbering scheme. Adequate notice where possible will be provided to the Customer of the number change, the reasons therefore and the new number.



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11.28 ACCESSPOINT WILL NOT BE LIABLE TO THE CUSTOMER OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR COSTS (DIRECT, CONSEQUENTIAL OR OTHERWISE) WHICH MAY BE INCURRED IN CONSEQUENCE OF ANY CHANGE TO THE NUMBER AS ANTICIPATED AND SET OUT IN THIS CLAUSE 11.

12. CHARGES AND PAYMENT

12.1 This clause sets out the Charges which Accesspoint is entitled to levy in respect of the use of the Accesspoint Services and Selected SE which you, the Customer, have asked Accesspoint to provide you with, its right to ask for a deposit and set credit limits and how the invoice will be paid by yourself once you receive it.

12.2 In return for the supply of and access to the Accesspoint Services and the Selected SE, the Customer agrees and undertakes to pay to Accesspoint the Charges as per the Tariff List or as advised by Accesspoint and as set out under the Invoice.

12.3 For the avoidance of doubt any Invoice, which will be submitted to the Customer, will set out and detail the following Charges, where applicable:

12.3.1 installation charge: the installation charge, and any other introductory charges which will be charged during the first month of the Agreement and levied as a once off initial charge in respect of the connection of the Accesspoint Services and the Selected SE;

12.3.2 reconnection charge: levied, where the Customer's right to use the Accesspoint Services and Selected SE is suspended due to non-payment, and which fee is in respect of any restoration of the Accesspoint Service or Selected SE, which fee is payable in advance, together with any outstanding amounts which are due to Accesspoint and any deposit which Accesspoint requests to be paid; ;

12.3.3 service charges: levied on each occasion for the provision of miscellaneous services requested by the Customer;

12.3.4 rental charges: levied periodically, usually on a monthly basis, in respect of the use and availability of the Accesspoint Services and Selected SE and subject to a minimum rental period of one calendar month. Rental charges are payable in advance for the first and any subsequent rental period, with effect from the Connection date;

12.3.5 maintenance charges: levied periodically, usually on a monthly basis, or on performance, depending on the type of maintenance contract, for maintenance of the Accesspoint Services and or Selected SE that Accesspoint has contracted to provide to the Customer and which are not covered by the rental charge, which amounts are payable in advance for the first and any subsequent maintenance period, as from the date on which the maintenance contract is signed, or as performed, as the case may be;

12.3.6 cancellation fee: levied to recover any costs incurred by Accesspoint in respect of the Customer electing to terminate the Agreement as per the provisions of clauses

12.3.7 call/usage charges: levied on the use of the Accesspoint Service or on any element thereof, where such use is metered. Calls are metered from the moment that a connection is established up until the moment it is terminated. Call charges are billed to the Customer at the end of each billing period and are payable on the due date of the Invoice;

12.3.8 Abortive costs: levied to recover abortive costs incurred by Accesspoint in relation to the provision or maintenance of services. These will include, without limitation, the recovery of costs including any cost relating to the de-installation of the service (or any element or part thereof) that may result from changes to an application before the service is provided, or for work to repair faults caused by non-Accesspoint equipment. Abortive Costs are billed to the Customer at the end of the billing period in which they are incurred and are payable on the due date of the Invoice;

12.3.9 interest on overdue amounts: any amount due by the Customer to Accesspoint not paid on or before the Due date indicated on the Invoice, shall bear interest at the Interest rate, compounded monthly, calculated from the date of issue of the Invoice until date of actual payment thereof.

12.3.10 migration costs: levied in respect of any agreement reached by the Parties in respect of a Migration by the Customer; and

12.3.11 VAT: value added tax levied on the Charges as required under the Value Added Act 89 of 1991.

12.4 Accesspoint shall be entitled to levy and collect from the Customer the payment of a deposit, as determined by Accesspoint in its sole discretion, and communicated to the Customer when Accesspoint accepts the Customer's application and agrees to provide the Customer with the Accesspoint Services and Selected SE, where applicable, which will be a pre-condition for providing the Accesspoint Services and Selected SE. The deposit is to serve as security for payment of any amounts set out under the Invoice which are due to Accesspoint by the Customer, but not paid on Due date.

12.5 Where any amounts due to Accesspoint by the Customer, are not paid on Due date, Accesspoint shall have the right, without prejudice to any of its rights, to:

12.5.1 suspend the Accesspoint Services and use of the Selected SE, and give the Customer 20 (Twenty) days' notice to pay all arrears/outstanding amounts which suspension will stay in place until the Customer has paid all arrears amounts and Interest in full;

12.5.2 use the deposit (where one has been paid) to settle any amount due to Accesspoint by the Customer together with interest thereon at the Interest rate, and

12.5.3 demand from the Customer:

12.5.3.1 the payment of a deposit where none has been paid;

12.5.3.2 payment of an additional or an increased deposit; and

12.5.3.3 payment of a reconnection charge, as determined by Accesspoint as a pre-condition for restoring the Accesspoint Services.

12.6 Accesspoint will periodically provide the Customer, usually on a monthly basis, with an account, which constitutes a statement in respect of the Accesspoint Services and where applicable, in respect of the use of the Selected SE, and an Invoice for the amounts payable by the Customer. The invoice will at the Customer's election be sent by electronic means (email/MMS/etc.) at no charge to the customer or by mail, which may attract reasonable additional charges.

12.7 Detailed billing is available to the Customer and will be provided on request against the payment of the applicable service charge set out under the Tariff List.

12.8 Where Accesspoint notices that there is a significant increase in call/usage charges since the Customer's last Invoice, Accesspoint may, at its own discretion, issue to the Customer an Invoice outside the normal billing cycle, and/or demand immediate payment of any amounts due by the Customer in respect of such Invoice.

12.9 In the event that a faulty condition in the ECN which prevents an accurate determination of the number of units on which the call charges are determined for a billing period, the call charge for the period in question shall be set as the average call charge for the preceding 6 (six) billing periods (or lesser billing periods if the Accesspoint Service has been provided for a shorter time).

12.10 The Invoice rendered by Accesspoint to the Customer is on the face of it, and until the contrary is proved, (prima facie) proof of the amount due by the Customer to Accesspoint. The Customer is, however, entitled to query or dispute any element of the Invoice in accordance with the provisions of this Agreement. All undisputed portions of the Invoice must, however, be paid by the Due date.

12.11 If Accesspoint determines that the disputed amount is in error, Accesspoint shall reverse the amount incorrectly debited, on the Customer's next Invoice. Should Accesspoint, however, determine and inform the Customer that the disputed amount was billed correctly, such, payment together with interest at the Interest rate shall be paid by no later than the Due date of the next Invoice.



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- 12.12 The Customer is liable for the payment of all Charges as reflected in the Invoice, extraordinary Invoice or interim Invoice, as the case may be.
- 12.13 Accesspoint Services and SE are subject to an annual increase. The customers shall be notified of such annual increase 30 days before it is given effect to.
- 13. RISK AND OWNERSHIP**
- 13.1 Ownership in and to the Accesspoint Services and the Selected SE, where applicable, will remain vested in Accesspoint unless the Customer has bought and paid for in full, the Selected SE.
- 13.2 Notwithstanding the provisions of clause 13.1, risk in and to the Accesspoint Services and the Selected SE will pass to the Customer on the date of delivery of the Connections and the Selected SE to the Customer's premises, including risk of loss, theft, destruction or damage.
- 14. DEFECTS, LIABILITY, WARRANTIES, REPAIRS AND SUSPENSION OF THE ACCESSPOINT SERVICE**
- 14.1 Consumer's Implied Warranty On Selected SE**
- 14.1.1 Accesspoint expressly stipulates and the Consumer acknowledges that Accesspoint provides the Selected SE in a sealed package and hence it will not have been able to ascertain if the Selected SE is free from defect or in good order and condition. In other words Accesspoint cannot warrant or guarantee that the Selected SE will at all times be available, suitable for the intended purpose, are of good quality and in good working order, free of defects, free of errors or interruptions, fit for any purpose, do not infringe on any third party rights, or that they are secure and reliable.
- 14.1.2 Notwithstanding the above exclusions, should the Selected SE including the software and battery used in connection with the Selected SE, fall short of the standards set out under section 55(2) of the CPA, and such defect or fault becomes apparent within 6 (Six) months after the Selected SE has been delivered by Accesspoint to the Consumer, then the Consumer must immediately notify Accesspoint of the defect and /or failure and bring the Selected SE to a nominated Accesspoint repair center.
- 14.1.3 No return will be accepted by Accesspoint unless the Consumer returns the complete unit of the Selected SE including packaging, accessories (including but not limited to CD's containing software, manuals, AC Adapter (charger) and any other inclusive part of the Selected SE) and can and does provide proof of purchase of the Selected SE from Accesspoint, which must be in the form of a sales record or Invoice. The Consumer must retain the packaging for the warranty period as stipulated by the manufacturer. Accesspoint will not be responsible for ordinary wear and tear on the SE or negligence on the part of the customer having given rise to the SE defect.
- 14.1.4 On return of the Selected SE, the Consumer must:
- 14.1.4.1 describe what caused the Selected SE to malfunction or to stop functioning; and
- 14.1.4.2 allow the Accesspoint representative to inspect the Selected SE for physical damage and/ or signs of liquid damage.
- 14.1.5 The acceptance of the returned SE by Accesspoint is subject to the following terms and conditions:
- 14.1.5.1 the Selected SE will be sent to the Accesspoint technical center for further examination, and analysis, which will take no longer than 3 (Three) weeks or such a longer period as notified by Accesspoint;
- 14.1.5.2 acceptance of the Selected SE is on behalf of the manufacturer and is not an admission of liability by Accesspoint, or Accesspoint acting on behalf of its suppliers or manufacturers, that the Selected SE is defective or that it is not in accordance with the standards as set out in section 55(2) of the CPA;
- 14.1.5.3 Accesspoint will notify the Consumer as soon as is reasonably possible and within the prescribed period set out under sub clause 14.1.5.1 read together with the periods set out under the Minimum Service Standards of the results of any inspection and/or analysis and the cause of the defect and/or failure and whether Accesspoint or the manufacturer of the Selected SE accepts responsibility or not for such defect and or failure.
- 14.1.6 Where on inspection it has been found that the Selected SE is not in accordance with the standards set out in section 55(2) of the CPA as the case may be, then Accesspoint, either itself, or on behalf of the supplier and / or manufacturer of the Selected SE will either, at the option of the Consumer:
- 14.1.6.1 repair or replace the failed, unsafe or defective part of the Selected SE; or
- 14.1.6.2 instead, at the election of the Consumer, refund to the Consumer the price paid by the Consumer, for the returned Selected SE, less any reasonable Usage charges.
- 14.1.7 Where any returned Selected SE are found to fall outside of the minimum warranty period set out under section 55(2) of the CPA where applicable, then the supplier, manufacturer and in particular Accesspoint will have no further responsibility or liability in relation to the returned Selected SE, save that it has the right to offer to repair, at the Consumer's cost, the Selected SE and subject further to the following conditions:
- 14.1.7.1 any acceptance of the Selected SE for repairs and maintenance will be done on or under the condition that Accesspoint is acting as an agent on behalf of the manufacturer or local supplier of the Selected SE; and
- 14.1.7.2 Accesspoint will not be liable for any loss, damage, destruction, theft or negligent workmanship howsoever or by whomsoever caused to the Selected SE whilst under the manufacturer or local supplier's control who is performing the repair or maintenance work; and
- 14.1.7.3 the costs of any such maintenance or repair work, which will be quoted for before commencement of the service and or repair work, will once accepted by the Consumer, be for the Consumer's account.
- 14.2 Customer's warranty on Selected SE**
- 14.2.1 Where clause 14.1 does not apply, because the Customer is not a Consumer, as defined, and where the Customer is of the view that the Selected SE is faulty, then the Customer must immediately notify Accesspoint of the extent of the defect and /or failure.
- 14.2.2 Upon receipt of the complaint Accesspoint will notify the Customer where to take the faulty Selected SE for the purposes of inspecting the Selected SE, which is faulty or defective.
- 14.2.3 The acceptance of any returned goods by Accesspoint in terms of this clause 14.2.3, is subject to the following terms and conditions:
- 14.2.3.1 the Selected SE will be sent to the Accesspoint technical center for further examination, and analysis, which will take no longer than 3 (Three) weeks or such a longer period as notified by Accesspoint;
- 14.2.3.2 acceptance of the Selected SE is on behalf of the manufacturer and is not an admission of liability by Accesspoint, or Accesspoint acting on behalf of its suppliers or manufacturers, that the Selected SE is defective;
- 14.2.3.3 Accesspoint will notify the Customer as soon as is reasonably possible and within the prescribed period set out under sub clause 14.2.3.1 of the results of any inspection and/or analysis and the cause of the defect and/or failure and whether Accesspoint or the manufacturer accepts responsibility or not for such defect and/or failure;
- 14.2.3.4 Where on inspection it has been found that the Selected SE is defective and is covered under the manufacturer's warranty, then Accesspoint will submit on behalf of the Customer to the supplier and / or manufacturer the defective Selected SE for repair and/or replacement as per the standard manufacturer's warranty;



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14.2.3.5 Where any returned Selected SE are found to fall outside of the manufacturer's warranty, then the supplier, manufacturer and in particular Accesspoint will have no further responsibility or liability in relation to the returned Selected SE.

14.3 Suspension and Withdrawal of the Selected Accesspoint Service and or Selected SE

14.3.1 Accesspoint may from time to time, and on notice where this is possible, or without notice where this is not possible, suspend the Accesspoint Service and where applicable the right to use the Selected SE, or in its discretion disconnect the Selected SE from the TECN in any of the following circumstances:

14.3.1.1 for modifications to, or planned maintenance of the TECN;

14.3.1.2 for routine maintenance of international facilities;

14.3.1.3 if the Customer has failed to pay any amounts due to Accesspoint by Due date as reflected in the Invoice;

14.3.1.4 where the Accesspoint Services are suspended or discontinued as a result of 3rd parties experiencing problems on their infrastructure which has affected or disrupted the Accesspoint Service;

14.3.1.5 where certain Accesspoint Services are being abused by the Customer or by customers in general; and/or

14.3.1.6 where the Accesspoint Service or Selected SE is found to contain a security risk or shortcoming which enables the Customer to exploit the Accesspoint Service to the detriment of Accesspoint;

14.3.2 The Customer accepts that the rights to suspend the Accesspoint Services and or Selected SE are necessary in order to protect the interest of both the Customer and Accesspoint and that during such period of suspension, despite the fact that limited or no Accesspoint Services will be available, that it will nonetheless in the case of the circumstances set out under clauses 14.3.1.3, 14.3.1.5, or 14.3.1.6 remain liable for all Charges due and set out under any Invoice which may be levied by Accesspoint during the period of suspension.

14.3.3 No interruption of the Accesspoint Service referred to under clause 14.3.1 shall be deemed to have occurred during any modifications and/or maintenance window or any authorised suspension of a service and the Customer acknowledges that it shall have no claim against Accesspoint in respect of all or any of the interruptions described under clause 14.3.1, save that the Customer will in the case of the circumstances set out under clauses 14.3.1.1, 14.3.1.2, and 14.3.1.4 be entitled to receive a reduction of the Charges levied by Accesspoint on a pro rata basis, taking into consideration the length and severity of the suspension or unavailability.

14.3.4 Accesspoint may from time to time, and on notice where this is possible, or without notice where this is not possible, and without prejudice to any other claims or remedies, which Accesspoint may have in terms hereof or in law, discontinue or terminate any part of the Accesspoint Service and where applicable the right to use the Selected SE, or in its discretion disconnect the Selected SE from the TECN in any of the following circumstances:

14.3.4.1 where the Accesspoint Service or Selected SE is found to contain a defect which enables the Customer to exploit the Accesspoint Service to the detriment of Accesspoint;

14.3.4.2 where the Accesspoint Service or Selected SE has reached the end of its lifespan and is uneconomical to maintain or continue;

14.3.4.3 where it is unduly burdensome and/or unfeasible for Accesspoint to provide such services, or

14.3.4.4 where there has been an insignificant interest in the use of a particular Accesspoint Service or Selected SE; and/or

14.3.4.5 in response to an instruction from the Authority or in terms of the Act or some other law or body the Accesspoint Service or Selected SE or SE is discontinued.

14.3.4.6 where the Customer uses SE that is not approved by the Authority for such use;

14.3.4.7 if the Customer has received the Accesspoint Service as a result of fraud or misrepresentation;

14.3.4.8 if the Customer uses in connection with the Accesspoint Service, SE that belongs to Accesspoint but which the Customer has obtained illegally;

14.3.4.9 if the Customer makes or offers to make any arrangement or composition with its creditors or commits any act of insolvency in terms of the Insolvency Act or any other applicable legislation;

14.3.4.10 if the Customer does or allows to be done any act or omission, which in Accesspoint's opinion will or may have the effect of negatively affecting the operation of the Accesspoint Service or the TECN;

14.3.4.11 if the Customer is using, or permitting the use of the Accesspoint Service or any element thereof for any illegal purpose or in contravention of the Act, CPA and/or any act of Parliament;

14.3.4.12 if Accesspoint has been instructed to do so by any authority competent to issue such instruction;

14.3.4.13 where the Accesspoint Service is provided as a dedicated private international circuit, Accesspoint may terminate the service immediately where any remote portion of the circuit is suspended or terminated by the foreign service provider;;

14.3.4.14 for any other reason incidental to 14.3.4.1 - 14.3.4.14 inclusive.

14.3.5 The Customer accepts that the rights to terminate or discontinue the Services and or Selected SE are necessary in order to protect the interest of both the Customer and Accesspoint and that where any such Service or Selected SE is discontinued that the Customer will be entitled to receive a reduction of the Charge levied by Accesspoint pro rata to such discontinuation or termination.

14.3.6 Where a Accesspoint Service or Selected SE is discontinued or suspended, as per this clause 14.3 then the Customer agrees that it will not:

14.3.6.1 withhold any amounts which are or which may become due and owing to Accesspoint;;

14.3.6.2 deduct any monies from the Charges, save for the amounts which Accesspoint may agree to as per the provisions of clause 14.3.5 above;; and/ or

14.3.6.3 demand any refund, or bring any action for damages or otherwise against Accesspoint, in respect of any such discontinued service.

15. LIMITED LIABILITY AND INDEMNITY

This section sets out Accesspoint's liability in respect of the Accesspoint Services, the Selected SE or the SE, which you, the Customer, should take careful note of.

15.1 Accesspoint assumes no responsibility for the integrity, correctness, retention or content of information transported via the TECN.

15.2 Accesspoint is not liable for any damages or loss suffered by the Customer as a result of any entry, incorrect entry or omission of an entry in the Directory, which is beyond Accesspoint's control.



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15.3 LIABILITY FOR DAMAGES CAUSED BY ACCESSPOINT WHICH ARISES OR OCCURS AS A RESULT OF THE USE, INSTALLATION, MAINTENANCE OR REMOVAL OF THE ACCESSPOINT CONNECTIONS, SERVICES, SELECTED SE AND SE WILL BE SUBJECT TO THE PROVISIONS OF SECTION 61 OF THE CONSUMER PROTECTION ACT. THE CONSUMER IN THIS CASE WILL BE ALLOWED TO AVAIL ITSELF TO THE PROVISIONS HOUSED UNDER SECTION 61 OF THE CPA SO LONG AS THE CONSUMER IS ABLE TO SHOW THAT THE ACCESSPOINT CONNECTIONS, SERVICES, SELECTED SE OR SE WERE OR ARE DEFECTIVE AND THAT SUCH DEFECT GAVE RISE TO THE LOSS OR DAMAGE BUT SUBJECT ALWAYS TO THE DEFENSES PERMISSIBLE AND AVAILABLE TO ACCESSPOINT AND ITS SERVICE PROVIDERS UNDER SECTION 61 OF THE CPA.

15.4 SUBJECT TO THE PROVISIONS OF CLAUSE 15.3 ABOVE, ACCESSPOINT SHALL NOT BE LIABLE TO THE CUSTOMER OR ANY OTHER PERSON WHOMSOEVER, UNDER ANY CIRCUMSTANCES WHATSOEVER, OR INCUR ANY LIABILITY FOR ANY LOSS OR DAMAGES TO THE CUSTOMER OR ANY OTHER PERSON OR USER; WHICH ARISES OR OCCURS AS A RESULT OF THE USE OF, OR ARISING OUT OF THE PROVISION OF, THE CONNECTIONS;; THE ACCESSPOINT SERVICES;; THE SELECTED SE;; THE SE;; OR THE INSTALLATION, MAINTENANCE OR REMOVAL OF THE CONNECTION, THE ACCESSPOINT SERVICES, SELECTED SE OR SE, AND WHETHER SUCH CLAIM, ACTION OR DAMAGE IS DIRECT OR INDIRECT, CONSEQUENTIAL OR CONTINGENT AND IN PARTICULAR ACCESSPOINT SHALL NOT BE LIABLE FOR ANY:

15.4.1. LOSS OF LIFE,

15.4.2 INJURY,

15.4.3 MEDICAL EXPENSES,

15.4.4 SUPPORT,

15.4.5 FINANCIAL LOSS OR FINANCIAL SUPPORT,

15.4.6 LOSS OF EARNINGS,

15.4.7 LOSS OF PROFIT AND/OR INCOME,

15.4.8 LOSS OF REVENUE,

15.4.9 LOSS OF BUSINESS OR GOODWILL, OR

15.4.10 ANY OTHER SPECIAL DAMAGES,

INCURRED BY THE CUSTOMER, ANY USER OR ANY OTHER PERSON WHO MAY BE USING THE ACCESSPOINT SERVICES, SE, SELECTED SE OR THE CONNECTIONS, HOWSOEVER ARISING, AND THE CUSTOMER INDEMNIFIES ACCESSPOINT AGAINST ANY CLAIM OR ACTION, AS DESCRIBED ABOVE, WHICH MAY BE BROUGHT BY ANY PERSON IN THIS REGARD.

15.5 Accesspoint only provides access to the Internet. Accesspoint does not operate or control the information, services, opinions or other content of the Internet, and Accesspoint makes no warranties or representation regarding any such information, services, opinions or other content. The Customer agrees that it shall make no claim whatsoever against Accesspoint relating to the content of the Internet or respecting any information, product, service or software ordered through or provided by virtue of the Internet. Accesspoint reserves the right to take measures as may be necessary, in Accesspoint's sole discretion, to ensure security and continuity of service on the Accesspoint network, including but not limited to identification and blocking or filtering of internet traffic sources which Accesspoint deems to pose a security risk or operational risk or a violation of its acceptable use policy. In addition, the Customer understands that Accesspoint does not own or control other third party networks outside of the Accesspoint network, and Accesspoint is not responsible or liable for filtering or access restrictions imposed by such networks or for the performance (or non-performance) within such networks or within interconnection points between Accesspoint network and other third party networks.

15.6 The provision of the Accesspoint Internet access is further subject to the Internet Terms and Conditions as well as the acceptable use policy as available on the Accesspoint web site (www.Accesspoint.com)

15.7 The Customer is responsible for maintaining the security of its internal network from unauthorized access through the Internet. Accesspoint shall not be liable for unauthorized access to the Customer's network or other breaches of the Customer's network security.

15.8 The limitation on liability set out above is addition to any limitation of liability set out elsewhere under the Agreement.

16. CUSTOMER ASSISTANCE, COMPLAINTS AND DISPUTES

This section sets out how you, the Customer, can contact Accesspoint for assistance and how you must lodge a complaint, should one arise.

16.1 Accesspoint provides Customer care to all Customers during Office hours, excluding times when it is unable to assist due to reasons beyond its reasonable control.

16.2 The Customer must, once it experiences any trouble with any of the Accesspoint Services and/or Selected Customer Equipment bring the suspected problem to Accesspoint's attention by contacting the relevant Customer care office at the number listed on the Invoice and website. The suspected problem will then be logged and detailed, and the Customer will be provided with a reference number.

16.3 Accesspoint will use its best endeavors to attend to the complaint as soon as it is possible, which will depend on the complexity and nature of the suspected problem, as logged, as well as resource/manpower availability, but subject always to the minimum service standards set out under the Minimum Service Standards.

16.4 Where a Customer is of the view that the matter has not been resolved to the satisfaction of the Customer, the Customer will have the right to elevate the matter to the Authority, which can be done by contacting either:

16.4.1 the complaints website <http://www.icasa.org.za> and selecting the tab "complaints"; or

16.4.2 by email at Customers@icasa.org.za.

16.5 The above rights set out under clauses 16.1 to 16.4 are without prejudice to both parties' respective rights to pursue a complaint or action in any other forum, which has jurisdiction over the matter including the rights to submit the complaint, dispute or action to the National Consumer Commission or to arbitration.

17. BREACH AND TERMINATION

This section sets out what will happen when one of the parties to the Agreement fails to comply with the terms and conditions, which is known as a breach of the agreement which will allow the party who has not breached the agreement to cancel the Agreement and claim damages.

17.1 Should the Customer breach any term of this Agreement including any failure to pay Accesspoint any monies on Due date, then Accesspoint shall give the Customer 20 (Twenty) Business Days' notice to rectify the breach. Should the Customer neglect or fail to rectify the breach within the 20 (Twenty) Business Days' notice period, then Accesspoint will have the right to either suspend or to cancel the Agreement, *without prejudice* (meaning to preserve your respective rights and positions) to Accesspoint's rights to claim all and any damages which Accesspoint has incurred in consequence of such breach.

17.2 Should Accesspoint breach any material term of this Agreement, then the Customer will have the right to provide Accesspoint with a letter requiring Accesspoint to rectify the breach within a period of 20 (Twenty) Business Days. Should Accesspoint neglect or fail to rectify such breach within the 20 (Twenty) Business Days' notice period, then the Customer may cancel the Agreement, which will be *without prejudice* (meaning to preserve your respective rights and positions) to the Customer's rights to claim any damages which it may have incurred in consequence of Accesspoint's breach.



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- 17.3 Should the Customer be sequestrated, liquidated, Accesspoint shall be entitled to immediately cancel this Agreement upon notice to the Customer.
- 17.4 The Customer agrees that Accesspoint may register the details of the manner in which payments have been conducted by it or its agent, with any registered credit bureau.
- 17.5 The Customer shall be liable for all costs, including legal costs on an attorney and client scale, and tracing cost and collection commission incurred by Accesspoint in respect of the enforcement of any obligations of the Customer in terms of this Agreement and in the case of a Consumer, subject to the provisions housed under Regulation 44 (3) (aa) of the CPA.
- 17.6 Without prejudice to any other claims or remedies which Accesspoint may have against the Customer in terms of this Agreement or in law, Accesspoint may on 20 (Twenty) Business Days' notice terminate the Agreement if the Customer has delayed the installation of the Selected Accesspoint Service for longer than 3 (Three) months and hold the Customer liable for all and any abortive costs incurred by Accesspoint in this regard.

18. CONSEQUENCES OF ANY TERMINATION

This section sets out what will happen when the Agreement is cancelled.

- 18.1 After termination of the Agreement for whatever reason,
- 18.1.1 Accesspoint may, on reasonable notice and in the Customer's presence enter the Customer's premises to remove the Selected SE and / or Connection, which is owned by Accesspoint; and
- 18.1.2 the Customer will remain liable for and will pay on demand all charges and/or costs outstanding at the time of termination, or accrued thereafter because of the termination.

19. LEGAL ADDRESS FOR SERVICE (DOMICILIUM AND NOTICES)

This section sets out the addresses of each party where the other party can serve legal documents and notices on the other.

- 19.1 The parties choose the addresses set out below as their chosen place to receive legal notices (*domicilium citandi et executandi*)
- 19.1.1 Accesspoint Management (Pty) Ltd, 2 to 6 Simbithi Office Park Office Park, Shaka's Rock Drive, Ballito KZN, and
- 19.1.2 the Customer at the physical or residential address specified in the Application Form.
- 19.2 All notices given in terms of this Agreement shall be in writing.

20. GENERAL

The details below are all general in content and should be read and considered carefully.

- 20.1 **Consumer status**
In consequence of the recently released CPA, certain rights have been granted to a Customer who is a Consumer, as defined under the CPA. Accesspoint reserves the right to withhold any of these rights and / or resultant benefits until such time as the Customer is able to prove to Accesspoint, which proof may be in the form of a set of Financial statements or an identity document, that it is a Consumer / and or in the case of a right which it is wanting to exercise under section 14 of the CPA, that it is an Individual Consumer. Where the Customer is unable to show that it is a Consumer or Individual Consumer, in such an event Accesspoint reserves the right to reverse or call for restitution (a refund) of any rights or benefits which are permitted under the CPA and which the Customer has unlawfully taken advantage of.
- 20.2 **Customer details and changes thereto**
The Customer agrees to supply Accesspoint with such information, documentation and signatures that Accesspoint may reasonably require at the time that the Agreement is concluded, in order to give effect to the payment arrangements of the Agreement. Any subsequent changes that affect the information supplied to Accesspoint such as bank account, legal service address referred to under clause 19 and credit card details must be brought to the immediate attention of Accesspoint by the Customer in writing.
- 20.3 **Cession**
Accesspoint shall be entitled to transfer (cede) its rights and/or to delegate its obligations arising from the Agreement and/or (hand over) assign the Agreement, wholly or partly, to any third party and it will give the Customer reasonable notice of this fact. The Customer shall not be entitled to cede, assign, encumber or delegate his obligations arising out of the Agreement without the prior written consent of Accesspoint, which will not be unreasonably withheld.
- 20.4 **Variation and Amendment**
Subject to and save where the right to amend the Agreement, has been specifically mentioned under the Agreement, neither party may vary the terms of the Agreement unless the other party agrees to such variation and the variation is reduced to writing and signed by both parties.
- 20.5 **Whole Agreement**
This document read with the relevant application form (which is deemed incorporated herein by reference), contains the sole and entire record of the Agreement between the parties. No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein or otherwise created by operation of law and no indulgence, leniency or extension of time which either party ("the grantor") may grant or show to the other, shall in any way prejudice the grantor or preclude the grantor from exercising any of its rights in the future.
- 20.6 **Authority**
Where Accesspoint is represented by any duly authorised representative, Accesspoint's authority need not be proved.
- 20.7 **Duplicate and scanned version in place of original**
The Customer agrees that the Application Form and the Agreement, in particular the face page may be scanned and the paper version destroyed, and agrees to the scanned version and waives his right to dispute the authenticity of the scanned version.
- 20.8 **Unsolicited marketing and right to opt out**
The Customer understands that, in terms of section 45 of the Electronic Communications, Transactions Act 25 of 2002, and Protection of Personal Information Act (when enacted) the Customer and in terms of the provisions of the CPA in the case of a Consumer, the Consumer or the Customer has the option to request Accesspoint to remove its relevant contact particulars from its data base in respect of direct marketing and / or unsolicited commercial and/or marketing communications by Accesspoint.
- 20.9 **Severability**
In the event of any one or more of these terms and conditions being unenforceable, these clauses will be deleted and severed from the remainder of the Agreement, which will nevertheless continue to apply, be binding and enforceable.
- 20.10 **Acts of God**
Except as specifically provided under the Agreement, Accesspoint shall not be liable to the Customer for any breach of these conditions or failure to perform any obligation as a result of any *force majeure* (event beyond its reasonable control) event, including but not limited to technical problems relating to the TECN/Network, acts of God, Government controls, restrictions or prohibitions or any other Government act or omission, whether local or national, any act or default of any supplier, agent or sub-contractor, industrial disputes, strikes, lockouts or work stoppages of any kind or any other similar or dissimilar cause, in so far as these are beyond Accesspoint's reasonable control.
- 20.11 **Indulgence and relaxing**
The failure of Accesspoint to enforce at any time the Agreement or any part thereof, or any right with regard thereto, must in no way be construed to be a waiver of the provision of the Agreement or to be an estoppel or novation or in any way to affect the validity of the Agreement. Any indulgence towards the Customer or the relaxing of



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the provisions of the Agreement must not prejudice the right of Accesspoint to insist on the strict compliance by the Customer of its undertakings and obligations in terms of the Agreement.

20.12 Intellectual property rights

Any intellectual property rights vesting in Accesspoint, whether by statute or common law, will remain vested in Accesspoint and the Customer agrees not to do anything or allow anything to be done that may infringe Accesspoint's rights and the Customer hereby INDEMNIFIES Accesspoint against any claims, actions and proceeding that may arise as a result of the Customer infringing or violating Accesspoint's intellectual property rights.

20.13 Applicable laws and Jurisdiction

This Agreement will be interpreted and governed by the Laws of South Africa.