

## TERMS AND CONDITIONS

### 1. INTRODUCTION

- 1.1. Be Broadband is licensed to provide electronic communications services and conducts business as, inter alia, an electronic communications network service provider and an electronic communications service provider and can provide BE BROADBAND services to subscribers.
- 1.2. The subscriber intends to use such services, each of which shall be described on a Service Schedule which will form part of this agreement once completed and signed by subscriber and Be Broadband.

### 2. DURATION

- 2.1. The duration of this agreement commences on the date of signature of this agreement by the party signing last in time and ends on termination of the last service remaining operative in terms of this agreement and any subsequent Service Schedules, or until terminated by either party on 2 (two) calendar months written notice to the other party.
- 2.2. The termination or expiry of this agreement shall not affect the contract term of any BE BROADBAND service, which shall continue, in full force and effect, in accordance with the terms and conditions of this Agreement, as if this Agreement had not been terminated, until the end of the Contract Term.
- 2.3. The provision of each BE BROADBAND service will be effective from the Effective date for that service and for the duration defined in the relevant service schedule therefore.

### 3. EFFECTIVE DATE

- 3.1. The Effective Date for each service is the date when a service first commences. Should the Effective Date occur after the date of signature, nothing contained herein shall be construed to give either party the right to cancel or rescind any Agreement before the Effective Date.
- 3.2. If, at any time during the currency of an agreement, Subscriber upgrades/downgrades the Service, then the Effective Date in respect of the service as upgraded/downgraded shall be the date when the upgraded/downgraded Service first commences. If the specific service schedule relating to the respective service has its own Effective Date defined, the specific schedule will take precedence over this clause only in so far as there is a conflict with this clause.

### 4. PAYMENTS, FEES AND CHARGES

Fees and / or subscriptions are due and billed monthly in advance and the service will be suspended if any amounts due have not been received before the 1<sup>st</sup> of the month for which they are due. **(BE BROADBAND operates strictly on a pre-paid basis. In the case where an account is not paid by the start of the usage period, our system automatically suspends the service. To avoid the inconvenience of suspension or your service, please ensure that your account is settled before due date).**

BE BROADBAND's preferred method of receiving payments from subscribers is either by debit order or EFT transfer. In the case of any other payment method, including cash and cheque deposits made into our bank account, where BE BROADBAND incurs bank charges in respect of these payments, BE BROADBAND will pass these charges on to the subscriber, and subscriber hereby agrees to accept these charges.

An administration fee of R75.00 excl. VAT will be charged to Subscriber in the following circumstances:

- On each occasion that a debit order is rejected by the bank, to cover administrative costs and bank charges incurred.
- For ADSL capped and dial services, on each occasion that a temporary change is requested by the user, including manual temporary changes to cap sizes, or voluntary temporary suspension or reactivation of the service.

BE BROADBAND is hereby authorized to debit subscriber's bank account specified in the debit order authority monthly in advance with any fees payable to BE BROADBAND in terms of services nominated on this, or any other applications for service authorized by subscriber, including any costs relating to domain registrations requested.

The amount debited may be amended from time to time for example because of price changes or because of service changes requested by subscriber.

Subscriber confirms by their signature on the subscription form that the debit order authorization has been signed in terms of the mandate held by their bank.

All withdrawals authorized may be processed by a computer, in which event, if the debit order is computerized, subscriber will not receive a receipt.

BE BROADBAND will receive all amounts without prejudice of their rights.

Subscriber is responsible for and agrees to pay to BE BROADBAND all fees and charges set out in each Service Schedule, in South African currency, without deduction or set-off of any amount of whatsoever nature or for whatsoever reason.

- 4.10. In the event of any dispute arising as to the amount or calculation of any fee or charge which is payable by Subscriber, the dispute shall be referred for determination to independent auditors. They shall act as experts and their decision shall be final and binding on BE BROADBAND and Subscriber.
- 4.11. Any amount falling due for payment by Subscriber to BE BROADBAND in terms of or pursuant to this Agreement which is not paid on its due date shall bear interest calculated from the due date for payment thereof until date of payment, at a rate equal to the prime overdraft rate charged by First National Bank plus 3%, calculated monthly in arrears.
- 4.12. BE BROADBAND may include on any invoice any amount not previously billed for calendar months prior to the current month where applicable.
- 4.13. All services provided are to be billed as of the effective date. In the event of a service consisting of several components, billing will commence for each respective component of that service on that component's effective date.
- 4.14. BE BROADBAND shall be entitled from time to time, on 1 (one) months prior written notice thereof to Subscriber, to amend the monthly fees, provided that BE BROADBAND shall not be entitled to increase the monthly fees during the first contractual term of an Agreement, nor on more than one occasion during the defined contractual term.

## 5. SUSPENSION OF SERVICE

BE BROADBAND may from time to time without notice and without any liability whatsoever, suspend a provided service:-  
for modification or maintenance of the network; or

if the subscriber fails to make any payment of any amount due or payable on or before the due date of payment; or

if the subscriber fails to comply with any of the terms and conditions of this agreement and until the breach is remedied.  
for modification or maintenance of the network; or

if the subscriber fails to make any payment of any amount due or payable on or before the due date of payment; or

if the subscriber fails to comply with any of the terms and conditions of this agreement and until the breach is remedied.

## 6. SUBSCRIBERS OBLIGATIONS

Subscriber shall comply strictly with all restrictions imposed on computer networks through which any information and/or data transmitted by Subscriber passes.

Subscriber may not commit nor attempt to commit any act or omission which directly or indirectly constitutes an abuse or malicious use of the Service or is calculated to have the abovementioned effect. In such an event, should BE BROADBAND incur expenses to remedy the situation, BE BROADBAND reserves the right to charge Subscriber any amount that is necessary to cover BE BROADBAND's additional expenditure.

Subscriber may not at any time use the Service in contravention of any South African law. Subscriber undertakes to familiarize itself and ensure that it is kept continuously apprised of all South African law in force from time to time which has any bearing on the Service and/or its use. BE BROADBAND has no obligation to assist Subscriber in this regard.

Subscriber agrees that any allocation IP allocation addresses from BE BROADBAND are non-portable and on loan for the duration of the period that Subscriber is connected via BE BROADBAND's Internet Access Service. At the termination of the service for any reason whatsoever all IP addresses allocated by BE BROADBAND will become available for reallocation and Subscriber shall return to BE BROADBAND the IP addresses allocated by BE BROADBAND.

Under no circumstances may a Subscriber resile from this Agreement or withhold or defer payment or be entitled to a reduction in any charge or have any other right or remedy against BE BROADBAND, its servants, its agents or any other persons for whom it may be liable in law (and in whose favor this provision constitutes a stipulation alteri) if BE BROADBAND interrupts the Service to Subscriber as it would be entitled to if Subscriber is in default of any of its obligations under this Agreement to BE BROADBAND, or for any other reason.

## 7. EQUIPMENT OR DEVICES

- 7.1. With certain services, equipment or devices may be provided by BE BROADBAND for use by subscriber for the duration of the service. In all cases, whether such equipment or device is rented or purchased, all risk of loss and/or destruction of the equipment or devices shall be retained by Subscriber at all times. Subscriber shall be responsible for ensuring the safety of the equipment or device and shall ensure that it is insured against loss and destruction for the usual causes arising, and shall be liable for its replacement costs in the event of any loss or destruction thereof.

- 7.2. In the case of equipment or devices provided under rental:

- 7.2.1. The equipment or devices are owned by BE BROADBAND, who all times is and remains the owner of the equipment or devices and nothing in this Schedule shall be construed to confer any rights or interest therein to Subscriber other than as a hirer of the equipment or devices.
- 7.2.2. On termination of the service, subscriber shall forthwith return the equipment or devices to BE BROADBAND in the same condition as it stands on the Effective Date.
- 7.2.3. BE BROADBAND shall always operate and maintain the equipment or devices, and subscriber shall permit BE BROADBAND to have access to the equipment or devices at all reasonable times to inspect the state and condition thereof. Subscriber shall not have access to the equipment or device's configuration and shall not change nor attempt to change the equipment or device's configuration.

## 8. THESE TERMS AND CONDITIONS TO PREVAIL

These terms and conditions, together with the Agreement hereto and any relevant Service Schedules, shall constitute the whole of the agreement between BE BROADBAND and Subscriber relating to the subject matter hereof, notwithstanding anything in Subscriber's inquiry, specification, acceptance, order or other documentation or discussion to the contrary.

## 9. NO VARIATION OR AMENDMENT

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

## 10. WARRANTIES

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

Without limitation to the generality of clause

- 10.1. BE BROADBAND does not warrant or guarantee that the information transmitted by or available to Subscribers by way of the Service:
- 10.2.1. will be preserved or sustained in their entirety;
- 10.2.2. will be suitable for any purpose;
- 10.2.3. will be free of inaccuracies or defects or bugs or viruses of any kind; and BE BROADBAND assumes no liability responsibility or obligations regarding any of the exclusions set forth in this clause 10.2 and 10.1 above.

## 11. EXCLUSION OF LIABILITY

BE BROADBAND shall not be liable (including liability for negligence) and the subscriber accordingly indemnifies BE BROADBAND and holds it harmless against all and any loss or damage or injury to the subscriber whatsoever, no matter when or how arising out of the provision of the services, including, without limitation, any loss and/or damage to the subscriber's or any third person's data, whether such loss, damage or injury is direct or indirect, consequential or contingent and whether foreseeable or not and in particular not be liable for financial loss, loss of property or of profit, business, goodwill, revenue or anticipated savings. The subscriber, further irrevocably indemnifies and hold BE BROADBAND harmless against all and any actions (including direct, indirect, special or consequential damages), suits, proceedings, claims, demands, costs, loss of income and, expenses of whatsoever nature and howsoever incurred which may be taken or made against them or be incurred or become payable by the subscriber or any third party, arising out of this agreement including but not limited to the subscriber's negligence or fraud. This indemnity applies for BE BROADBAND's benefit and all companies directly or indirectly owned, wholly or partly owned or controlled by BE BROADBAND, and all officers, employees, contractors, subcontractors, agents or anyone else to whom BE BROADBAND or these parties are responsible for.

Except for any deliberate act or gross negligence on the part of BE BROADBAND, its servants or agents, and except as otherwise expressly provided herein to the contrary, BE BROADBAND shall not be liable to Subscriber or any third party for any loss to Subscriber or any third party for any loss or damage of whatsoever nature and/or howsoever arising (including consequential or incidental loss or damage which shall include but shall not be limited to loss of property or of profit, business, goodwill, revenue or anticipated savings) or for any costs, claims or demands of any nature whether asserted against BE BROADBAND or against Subscriber by any party arising directly or indirectly out of the Service, its use, access, withdrawal or suspension or out of any information or materials provided or not provided, as the case may be, by or from their use.

Subject to clause 11.1 above, BE BROADBAND's entire liability and Subscriber's exclusive remedy regardless of the form of action, whether in contract or in delict, including liability for damages from any cause related to or arising out of this Agreement, for negligence, and in particular, but without limitation, all other statutory, express, implied or collateral terms, common law recourse, conditions or warranties which are excluded will not exceed the monthly subscription fee paid for the relevant services for the month preceding Subscriber's written notice thereof.

Subscriber hereby indemnifies BE BROADBAND against and holds BE BROADBAND harmless from any claim by any third party arising directly or indirectly out of access to or use of the Service or information obtained through the use thereof or in respect of any matter for which liability of BE BROADBAND is excluded in terms of clause 11.1 above.

Because of the need to conduct maintenance, repair and/or improvement work from time to time on the technical infrastructure by means of which the Services are provided, the provision of the Services may be suspended from time to time, when under the control of BE BROADBAND, with the giving of at least 48 (forty eight) hours' notice, and all liability on the part of BE BROADBAND of any loss or damage (whether directly or consequential) thereby incurred or for any costs, claims, or demands of any nature arising there from, is excluded, and the provisions of clause 11.1 above shall apply mutatis mutandis to such exclusion. Should the provision of the Service be suspended by BE BROADBAND for the purpose aforementioned in this clause 11.5, for a period more than 48 (forty-eight) consecutive hours, BE BROADBAND shall give Subscriber credit in an amount which represents a pro rata portion of Subscriber's basic monthly subscription fee for the suspended service for the month during which the BE BROADBAND suspension occurred.

## 12. TERMINATION FOR CONVENIENCE

Notwithstanding any contract term set out in the Service Schedule, subscriber shall be entitled in its sole discretion and without cause to terminate 1 (one) or more BE BROADBAND services (the "Terminating Services") by giving BE BROADBAND 1 (one) calendar months prior written notice, which termination shall be subject to the provisions set out in clause 14 **EARLY TERMINATION COSTS** below.

## 13. BREACH

13.1. Subject to the provisions of clause 13.2 to the contrary, if either party hereto:

13.1.1. breaches any of the terms or conditions of this Agreement and fails to remedy such breach or pay such amount within 7 (seven) days after the receipt of written notice from the other party;

13.1.2. commits any act of insolvency;

13.1.3. endeavors to compromise generally with its creditors or does or causes anything to be done which may prejudice the other party's rights hereunder or at all;

13.1.4. allows any judgment against it to remain unsettled for more than 10 (ten) days without taking immediate steps to have it rescinded and successfully prosecuting the application for rescission to its end; or

13.1.5. is placed in liquidation or under judicial management (in either case, whether provisionally or finally) or, being an individual, his estate is sequestrated or voluntarily surrendered;

the other shall have the right, without prejudice to any other right which it may have against the other, to;

a. treat as immediately due and payable all outstanding amounts which would otherwise become due and payable over the unexpired period of the Agreement, and to claim such amounts as well as any other amounts in arrears including interest and to cease performance of its obligations hereunder as well as under any other contract with the defaulting party until such party has remedied the breach; or

b. terminate this Agreement which termination shall be subject to the early termination costs set out in clause "14. EARLY TERMINATION COSTS" below.

in either event without prejudice to such party's right to claim damages.

13.2. In the event of any expiration, termination or cancellation of this Agreement, provisions hereof which are intended to continue and survive shall so continue and survive.

13.3. The defaulting party shall be liable for all costs incurred by the other party in the recovery of any amounts or the enforcement of any rights which it has hereunder, including collection charges and costs on an attorney and own client scale whether incurred prior to or during the institution of legal proceedings or if judgment has been granted, relating to the satisfaction or enforcement of such judgment.

## 14. EARLY TERMINATION COSTS

Early termination costs shall be applicable for any services that are terminated prior to the expiration of the duration specified in the relevant Service Schedule, and are calculated as follows:

14.1. In the event that the **terminating service** has published pricing for provision on a month to month basis, the early termination cost will be the total amount that would have been charged, from the effective date, or most recent anniversary thereof, to date of termination at the month to month pricing, less the amount paid for this period. The termination date will be deemed as the date of formal termination notice plus any applicable noticed period as stipulated on the supporting documentation of the service in question.

14.2. In the event that the **terminating service** does not have published month to month pricing, a deemed month to month price shall be used, calculated as (annual price / 0.8), and the early termination cost then shall be calculated as in 14.1 above, using the deemed month to month pricing.

## 15. CESSION

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

## 16. HEADINGS AND INTERPRETATION

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

**17. DOMICILIUM CITANDI ET EXECUTANDI**

For all purposes, including but not by way of limitation, the giving of any notice, the making of any communication and the serving of any process, Subscriber chooses their domicilium citandi et executandi ("domicilium") at their street address appearing on the face hereof, and BE BROADBAND as 7 Autumn Street, Rivonia, 2128.

Either party shall be entitled from time to time to vary its domicilium and shall be obliged to give notice to the other within ten days of the intended change. Any notice which either party may give to the other shall be posted by prepaid registered post or hand delivered to the other party's domicilium and shall be presumed, unless the contrary is proved by the party to whom it is addressed, to have been received by that party on the tenth day after the date of posting or on the day of delivery.

**18. GOVERNING LAW AND JURISDICTION**

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

**19. FORCE MAJEURE**

BE BROADBAND shall not be liable for non-performance under this agreement nor any alleged breach of these terms or conditions, or failure on BE BROADBAND's part to perform any obligation as a result of technical problems which it is unable to resolve, network, termination of any license to operate or use of the network, act of God, Government control, restriction or prohibitions or any other, Government act or omission whether local or national, act or default of any supplier, agent, or sub-contractor, industrial disputes of any kind or any other similar or dissimilar to the to the extent to which the non-performance is caused by events or conditions beyond the control of BE BROADBAND, provided that BE BROADBAND makes all reasonable efforts to perform.

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

**20. SEVERABILITY**

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

**ACCEPTABLE USAGE POLICY (AUP)**

Thank you for reading Be Broadband's Acceptable Usage Policy (AUP). By accessing this website, or by contracting with us for service, you agree, without limitation or qualification, to be bound by this policy and the Terms and Conditions it contains, as well as any other additional terms, conditions, rules or policies which are displayed to you relating to this service/website.

The purpose of this document is to comply with the relevant laws of the Republic; to specify to clients and users of our service/website what activities and online behavior are considered an unacceptable use of the service/website; to protect the integrity of our network and to specify the consequences that may flow from undertaking such prohibited activities.

This document contains many legal obligations which you are presumed to be familiar with. As such, we encourage you to read this document thoroughly and direct any queries to our client services/legal department at 0861 300 900.

Be Broadband respects the rights of our clients and users of our services to freedom of speech and expression; access to information; privacy; human dignity; religion, belief and opinion in accordance with our constitution. We undertake not to interfere with any of those rights unless required to do so by law; unless those rights are exercised for unlawful purposes; or unless the exercise of those rights threatens to cause harm to another person or affect the integrity of our network.

**ISPA membership and Code of Conduct**

Be Broadband confirms that in compliance with section 72 of the Electronic Communications and Transactions Act 25 of 2002, Be Broadband is a member of the Internet Service Providers' Association (ISPA) and has adopted and implemented the association's official Code of Conduct, which can be viewed at [www.ispa.org.za/code](http://www.ispa.org.za/code)

**Unlawful Use**

Be Broadband services/website may only be used for lawful purposes and activities. We prohibit any use of our website/network including the transmission, storage and distribution of any material or content using our network that violates any law or regulation of the Republic.

**This includes:**

1. Any violation of local and international laws prohibiting child pornography; obscenity; discrimination (including racial, gender or religious slurs) and hate speech; or speech designed to incite violence or hatred, or threats to cause bodily harm.

2. Any activity designed to defame, abuse, stalk, harass or physically threaten any individual in the Republic or beyond its borders; including any attempt to link to, post, transmit or otherwise distribute any inappropriate or defamatory material.
3. Any violation of Intellectual Property laws including materials protected by local and international copyright, trademarks and trade secrets. Moreover, Be Broadband cannot be held liable if you make any unlawful use of any multimedia content accessed through the search facility provided by Be Broadband network, or otherwise available through access to our network, whether for commercial or non-commercial purposes.
4. Any violation of the individual's right to privacy, including any effort to collect personal data of third parties without their consent.
5. Any fraudulent activity whatsoever, including dubious financial practices, such as pyramid schemes; the impersonation of another subscriber without their consent; or any attempt to enter into a transaction with Be Broadband on behalf of another subscriber without their consent.
6. Any violation of the exchange control laws of the Republic.
7. Any activity that results in the sale, transmission or distribution of pirated or illegal software.
8. Failing to respond to a request by a recipient of unsolicited mail to be removed from any mailing or direct marketing list and continuing to send unsolicited mail following such a request for removal. Where any user resides outside of the Republic, permanently or temporarily, such user will be subject to the laws of the country in which s/he is currently resident and which apply. On presentation of a legal order to do so, or under obligation through an order for mutual foreign legal assistance, Be Broadband will assist foreign law enforcement agencies (LEA) in the investigation and prosecution of a crime committed using Be Broadband resources, including the provisioning of all personal identifiable data.

#### **Prohibited Activities**

The following sections outline activities that are considered an unacceptable use of Company's services/network/website and detail the guidelines for acceptable use of certain facilities/services.

#### **Threats to Network Security**

Any activity which threatens the functioning, security and/or integrity of Be Broadband's network is unacceptable

##### **This includes:**

1. Any efforts to attempt to gain unlawful and unauthorized access to the network or circumvent any of the security measures established by Be Broadband for this goal;
2. Any effort to use Be Broadband equipment to circumvent the user authentication or security of any host, network or account ("cracking" or "hacking");
3. Forging of any TCP-IP packet header (spoofing) or any part of the header information in an email or a newsgroup posting;
4. Any effort to breach or attempt to breach the security of another user or attempt to gain access to any other person's computer, software, or data without the knowledge and consent of such person;
5. Any activity which threatens to disrupt the service offered by Be Broadband through "denial of service attacks", flooding of a network, or overloading a service or any unauthorized probes ("scanning" or "nuking") of others' networks;
6. Any activity which in any way threatens the security of the network by knowingly posting, transmitting, linking to or otherwise distributing any information or software which contains a virus; Trojan horse; worm, lock, mail bomb, cancelbot or other harmful, destructive or disruptive component.
7. Any unauthorized monitoring of data or traffic on the network without Be Broadband explicit, written consent.
8. Any unsolicited mass mailing activity including direct marketing; spam and chain letters for commercial or other purposes, without the consent of the recipients of those mails.

#### **Public Space & Third-Party Content & sites**

In reading the Acceptable Usage Policy or in signing a service contract with Be Broadband, you acknowledge that Be Broadband has no power to control the content of the information passing over the Internet and its applications, including e-mail; chat rooms; news groups; or other similar fora, and that Be Broadband cannot be held responsible or liable, directly or indirectly, for any of the abovementioned content, in any way for any loss or damage of any kind incurred as a result of, or in connection with your use of, or reliance on, any such content.

Our services also offer access to numerous third-party webpages. You acknowledge that we exercise absolutely no control over such third-party content, or sites and in such cases, our network is merely a conduit or means of access and transmission. This includes, but is not limited to, third party content contained on or accessible through the Be Broadband network websites and web pages or sites displayed as search results or contained within a directory of links on the Be Broadband network. It remains your responsibility to review and evaluate any such content, and that all risk associated with the use of, or reliance on, such content rests with you.

Access to public Internet spaces, such as bulletin boards, Usenet groups, chat rooms and moderated forums is entirely voluntary and at your own risk.

Be Broadband's employees do not moderate any of these services, or your communications, transmissions or use of these services. We do not undertake any responsibility for any content contained therein, or for any breaches of your right to privacy that you may experience because of accessing such spaces.

#### **Usenet Newsgroups**

The client is responsible for determining and familiarizing himself or herself with the written policies of a given newsgroup before posting to it.

The client must comply with these guidelines always which can be obtained from other users of the newsgroup upon request, or from the group's administrators/moderators.

The following are prohibited practices regarding Usenet newsgroups and Be Broadband reserves the right to delete and/or cancel posts which violate the following conditions:

1. Excessive cross-posting of the same article to multiple newsgroups.
2. Posting of irrelevant or off-topic material to newsgroups (also known as USENET spam).
3. Posting binaries to a non-binary newsgroup.
4. Posting adverts, solicitations, or any other commercial messages unless the guidelines of the newsgroup in question explicitly permit them.

Be Broadband does not monitor nor control the content that is available or unavailable via newsgroup and/or UseNet services. The services offered by Be Broadband

in respect to UseNet services are merely a convenience to Be Broadband's clients to make the use of the service more convenient. Be Broadband accepts no liability and has no control over the content that may or may not be available, including, but not limited to, pornography, illegally obtained movies, applications and music.

#### **Unsolicited, Spam and Junk mail**

Spam and unsolicited bulk mail are highly problematic practices. They affect the use and enjoyment of services by others and often compromise network security. Be Broadband will take swift and firm action against any user engaging in any of the following unacceptable practices:

1. Sending unsolicited bulk mail for marketing or any other purposes (political, religious or commercial) to people who have not consented to receiving such mail;
2. Operating or maintaining mailing lists without the express permission of all recipients listed;
3. Failing to promptly remove from lists invalid or undeliverable addresses or addresses of unwilling recipients;
4. Using Be Broadband's service to collect responses from unsolicited e-mail sent from accounts on other Internet hosts or e-mail services, that violate the Acceptable Usage Policy or the T'S & C'S of any other Internet service provider;
5. Including Be Broadband's name in the header or by listing an IP address that belongs to Be Broadband in any unsolicited email sent through Be Broadband's network or not;
6. Failure to secure a client's mail server against public relay as a protection to themselves and the broader Internet community. Public relay occurs when a mail server is accessed by a third party from another domain and utilized to deliver mails, without the authority or consent of the owner of the mail-server. Mail servers that are unsecured against public relay often become abused by unscrupulous operators for spam delivery and upon detection such delivery must be disallowed. Be Broadband reserves the right to examine users' mail servers to confirm that no mails are being sent from the mail server through public relay and the results of such checks can be made available to the user. Be Broadband also reserves the right to examine the mail servers of any users using Be Broadband's mail servers for "smart hosting" (when the user relays its mail via a Be Broadband's mail server to a mail server of its own) or similar services at any time to ensure that the servers are properly secured against public relay. All relay checks will be done in strict accordance with Be Broadband privacy policy.

#### **Spam/Virus Filtering**

Be Broadband provides a spam and virus filtering system to protect clients from unsolicited mail and viruses. The client acknowledges that this system might incorrectly identify a valid message as spam or as a virus and consequently this message might not be delivered to the client. The client acknowledges and agrees that Be Broadband shall without limitation have no responsibility for, or liability in respect of any data lost because of this system.

#### **Webmail**

Webmail and other web based email services made available by Be Broadband are provided on an "as is" basis without representations, warranties or conditions of any kind, and the client acknowledges and agrees that Be Broadband shall have no responsibility for, or liability in respect of, any aspect of the Webmail services, including without limitation for any lost or damaged data or any acts or omissions of Be Broadband. As webmail storage space is limited, some Webmail messages may not be processed due to space constraints or message limitations.

Webmail is provided to individuals and for personal use only. Any unauthorized commercial use of the Webmail service or resale of the Webmail service is expressly prohibited.

### **Uncapped Services**

It is our goal to protect the integrity of our network, to provide the best possible internet experience for all our clients using all uncapped services and as such we reserve the right to manage uncapped users who are deemed to be causing an unusually large burden on the network. We are committed to managing our network in a way that allows us to provide all users with the best experience possible; however, we cannot guarantee that the allocated capacity will always be available.

### **Home Uncapped / Premium Uncapped ADSL**

The Be Broadband Protocol Manager is used to provide all uncapped users on our network with the best possible internet experience. During peak network times, we give priority to real time services (such as browsing, email, streaming etc.), high bandwidth services such as NNTP, Peer-to-Peer and Torrents (and similar but not limited to) will receive less priority. Clients deemed to be continuously uploading/downloading or using the service for unattended automated processes will be managed by the Be Broadband Protocol Manager. The Be Broadband Protocol Manager may be used to manage clients by rate limiting (slowing down speed) and limiting or preventing service using specific protocols or ports. We reserve the right to use the Be Broadband's Protocol Manager to manage the integrity of our network should network capacity not be available at any time, we assure our clients that we will do this in a responsible manner should the need arise.

Any user that is found attempting to bypass or circumvent the Be Broadband Protocol Manager will be suspended and could have their service cancelled. Home Uncapped services are best suited for average home users with little to no high bandwidth services such as NNTP, Peer-to-Peer and Torrents (and similar but not limited to). Premium Uncapped services are better suited to more advanced users, and are managed proactively by the Be Broadband Protocol Manager.

### **Business Uncapped**

This is an uncapped service that is prioritized for Business Users based on available network capacity where high priority is required for typical business protocols.

Business protocols such as VOIP, Terminal Services, Web Browsing and Email are unshaped. Clients deemed to be continuously uploading/downloading or using the service for unattended automated processes or non-typical business protocols (such as but not limited to NNTP, Peer-to-Peer, Https Downloading and Torrents) will be managed by the Be Broadband Protocol Manager. The Be Broadband Protocol Manager may be used to manage clients by rate limiting (slowing down speed) and limiting or preventing service using specific protocols or ports. Be Broadband reserves the right, to at its discretion manage non-typical business protocols such as but not limited to NNTP, Peer-to-Peer, Https Downloading and Torrents and/or rate limit service speed. We reserve the right to use the Be Broadband Protocol Manager to manage services to protect the integrity of our network according to the available network capacity, we assure our clients that we will do this in a responsible manner should the need arise.

Any user that is found attempting to bypass or circumvent the Be Broadband Protocol Manager will be suspended and could have their service cancelled.

### **Hosting**

Be Broadband offers unlimited bandwidth (web traffic) usage on Shared Hosting platforms. However, this is subject to reasonable and responsible usage, as determined at Be Broadband' discretion. Shared Hosting is designed for serving personal hosting requirements or that of small enterprises, and not medium to large enterprises. Be Broadband reserves the right to move Clients deemed to have excessive bandwidth usage to a Cloud product, which will better suit their requirements. Clients will be given notice as such, and will be informed of any cost implications.

Disk Space on Shared Hosting may only be used for Website Content, Emails and related System Files. General data storage, archiving or file sharing of documents, files or media not directly related to the website content is strictly prohibited.

Unauthorized storage or distribution of copyrighted materials is prohibited, via FTP hosts or any other means.

For Shared Hosting, Be Broadband will implement security updates, software patches and other updates or upgrades from time to time, to maintain the best performance, at their sole discretion. Be Broadband is under no obligation to affect such upgrades, or to rectify any impact such changes could potentially have to Shared Hosting Clients.

Be Broadband will not be liable or responsible for the backing up, restoration or loss of data under any circumstances. Clients are solely responsible for ensuring their data is regularly backed up and for restoring such backups in the event of data loss or corruption.

### **Be Broadband prohibits Clients from doing the following on hosting platforms administered by Be Broadband:**

- Running applications that are not production-ready. Any applications on the hosting platform must be optimized with respect to memory usage and must have appropriate data indexing.
- Running applications with inadequate security controls.
- Generating significant side-channel traffic from an application, whether by design or otherwise. Databases should be stored locally, and remote content should be cached.
- Failure to maintain proper "housekeeping" on a shared server including storing or generating useless content, including comment spam, unused cache files, log file and database entries.
- Storing malicious content, such as malware or links to malware.
- Monopolizing server resources, including CPU time, memory, network and disk bandwidth.
- Maintaining long-running processes and long-running database queries.
- Storing or running back-door shells, mass mailing scripts, proxy servers, web spiders, phishing content, or peer-to-peer software.



- Sending bulk mail of any form, particularly mail that cannot be efficiently delivered due to volume or incorrect addresses.
- Using poor passwords.
- Sharing security credentials with untrusted parties. Running Torrents for download or Seed Servers. Running TOR (or other Online Anonymity Services).
- Otherwise circumventing the Acceptable Use Policy or intended use of the product.

#### **Protection of Minors**

Be Broadband prohibits clients from using Be Broadband's service to harm or attempt to harm a minor, including, but not limited to, by hosting, possessing, disseminating, distributing or transmitting material that is unlawful, including child pornography.

#### **Privacy and Confidentiality**

Be Broadband respects the privacy and confidentiality of our clients and users of our service. Please review our [privacy policy](#) which details how we collect and use personal information gathered during operating this service.

#### **User Responsibilities**

Clients are responsible for any misuse of Company's services that occurs through the client's account. It is the client's responsibility to ensure that unauthorized persons do not gain access to or misuse Be Broadband's service.

Be Broadband urges clients not to reply to unsolicited mail or "spam", not to click on any suggested links provided in the unsolicited mail. Doing so remains the sole responsibility of the client and Be Broadband cannot be held liable for the client being placed on any bulk mailing lists as a result.

Where the client has authorized a minor to use any of the Be Broadband's services or access its websites, you accept that as the parent/legal guardian of that minor, you are fully responsible for: the online conduct of such minor; controlling the minor's access to and use of any services or websites; and the consequences of any misuse by the minor, including but not limited to transactions entered by the minor using such access.

Be Broadband cannot be held liable for any business dealings you have with any third parties on the Internet, including any vendors, or advertisers found on, or through, the Be Broadband network. Further, Be Broadband assumes no responsibility whatsoever for any charges you or any user of your account incurs when making purchases or other transactions in this manner. Further, the responsibility for ensuring compliance with all applicable customs and exchange control laws relating to any such transactions shall be the client's.

#### **Notice and Take-down Procedures**

Be Broadband confirms that it has a procedure in place for the notice and take-down of illegal material. In compliance with section 77 of the Electronic Communications and Transactions Act (No. 25 of 2002) Be Broadband designated agent for this process can be reached at (010) 500 1200 or at: [complaints@ispa.org.za](mailto:complaints@ispa.org.za), P.O.Box 512 Noordwyk 1687. The notice and take-down procedure can be viewed at [www.ispa.org.za/code](http://www.ispa.org.za/code).

Clients are also notified of the content and procedures of the ISPA Code of Conduct ([www.ispa.org.za/code](http://www.ispa.org.za/code)) which may be used against any Internet service provider who fails to comply with the code of conduct. We urge you to familiarize yourselves with this code.

#### **Complaints and procedures**

It is the client's responsibility to familiarize himself or herself with the procedure set out below and report any cases of violation of the Acceptable Usage Policy to Be Broadband designated complaints handling agent.

Please note that Be Broadband cannot handle complaints concerning networks or users that do not have service contracts with us or our affiliates, or are outside of our control.

For Be Broadband to thoroughly investigate the complaint and take appropriate action, all complaints must be in writing, via fax or e-mail and contain as much information as possible, including, but not limited to:

- the origin of abuse or offence, including the website, full mail headers, relevant log file extracts etc.;
- any contact details for the source of the complaint;
- A brief explanation why the incident is an offence

Be Broadband discourages anonymous complaints being made via this service, and urges complainants to supply their name and contact details to us. Such information will not be released, except where required by law enforcement. Anonymous complaints will however be acted upon as long as sufficient detail as outlined above is supplied.

#### **Action following breach of the AUP**

Upon receipt of a complaint, or having become aware of an incident, Be Broadband may take any of the following steps:

- In the case of a network, inform the user's network administrator of the incident and request the network administrator or network owner to deal address the incident in terms of the Acceptable Usage Policy and the ISPA Code of Conduct;
- In severe cases suspend access of the user's entire network until abuse can be prevented by appropriate means;



- In the case of individual users, warn the user; suspend the user's account and/or revoke or cancel the user's network access privileges completely;
- In all cases, charge the offending parties for administrative costs as well as for machine and human time lost due to the incident;
- Assist other networks or website administrators in investigating credible suspicions of any activity listed in the Acceptable Usage Policy;
- Institute civil or criminal proceedings;
- Share information concerning the incident with other Internet access providers, or publish the information, and/or make available the users' details to law enforcement agencies

**Reservation and Non- Waiver of Rights**

Be Broadband reserves the right to amend or alter this policy at any time, and without notice to you.

Be Broadband reserves the right to act against any individuals, companies or organizations that violate any of the prohibited activities set out herein, or engage in any illegal or unlawful activity while accessing our services, to the fullest extent of the law.

Be Broadband reserves the right, at its sole discretion, to act against other types of abuse not listed in this document and to investigate or prevent illegal activities being committed over our network.

Be Broadband reserves the right to monitor user and network traffic for site security purposes and prevent any unauthorized attempts to tamper with our site or cause damage to our property.

Be Broadband reserves the right to suspend, revoke or cancel Be Broadband services to the client/user if the safety and integrity of Be Broadband resources are placed at risk in continuing to provide service to the subscriber/user.

Be Broadband reserves the right to remove any information or materials in whole or in part, that, in Be Broadband's sole discretion, is deemed to be offensive, indecent, or otherwise objectionable.

Be Broadband does not undertake to guarantee the security of any data passing through its networks. Although Be Broadband will provide a "best effort" service;

including regular updates on computer viruses and other threats to security of data, it is the responsibility of the communicating parties to safeguard their data, and Be Broadband cannot be held liable for any loss or damage arising as result of the failure to do so.

Be Broadband does not waive its right to enforcement of the Acceptable Usage Policy at any time, or prejudice its right to take subsequent action, should Be Broadband fail, neglect or elect not to enforce a breach of the AUP at any time.

**Full Name:** \_\_\_\_\_

**Sign:** \_\_\_\_\_ **Date:** \_\_\_\_\_

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