

Tel-a-care TERMS AND CONDITIONS

1. DEFINED TERMS

1.1 The following expressions shall bear the meanings assigned to them below and related expressions shall bear corresponding meanings:

1.1.1 "Agreement" means these terms and conditions, as amended from time to time;

1.1.2 "New User Signup form" means the signup form on the Website or Sign up form sent via email or printed which the Customer is required to complete and submit in order to make use of the Service/s;

1.2 "Confidential Information" includes, but is not limited to

1.2.1 clients and business associates of Tel-a-care;

1.2.2 the contractual arrangements between Tel-a-care, its suppliers, business associates, clients, agents and employees;

1.2.3 the financial details of I Tel-a-care relationships with its suppliers, business associates, clients, agents and employees;

1.2.4 prospective clients of Tel-a-care and their requirements;

1.2.5 Tel-a-care financial structure, operating results, financial statements and income tax returns;

1.2.6 the remuneration paid by I Tel-a-care to its various employees and their duties;

1.2.7 management know-how, processes and techniques;

1.2.8 other matters which relate to the business of Tel-a-care, which information is not readily available in the ordinary course of business to a competitor of Tel-a-care;

1.3 "Content" means all information (such as data files, written text, computer software, music, audio files or other sounds, photographs, videos or other images) which the Customer or Users may have access to as part of, or through their use of, the Service/s;

1.4 "Costs" means the fees and charges payable for the Service/s from time to time;

1.5 "CPA" means the Consumer Protection Act No. 68 of 2008, as amended from time to time;

1.6 "Customer" means the Party specified as Customer on the New User Signup form which these terms and conditions apply to;

1.7 "ECT" means the Electronic Communications and Transactions Act No. 25 of 2002, as amended from time to time;

1.8 "Effective Date" means the date on which the Customer accepted the Agreement, be that in writing or by way of electronic medium such as clicking on "I agree" on the web page or telephonic acceptance;

1.9 "Equipment" means equipment supplied by IS Ignite to the Customer on the basis of a loan,

rental or otherwise, to enable the Customer to utilise the Services;

1.10 Tel-a-care means Dimension Data (Proprietary) Limited (company registration number 1987/006597/07) trading through its division Internet Solutions;

1.11 Tel-a-care Associates" means officers, servants, agents or contractors or other persons in respect of whose actions IS Ignite may be held to be vicariously liable;

1.12 "Tel-a-care means Internet Solutions a division of Dimension Data (Proprietary) Limited trading as IS (company registration number 1987/006597/07);

1.13 "Intellectual Property" means, collectively, the patents, copyrights (and moral rights), trademarks, designs, models, brands, names, trade names, graphics, icons, hyperlinks, know-how, trade secrets and any other type of intellectual property (whether registered or unregistered including applications for and rights to obtain or use same);

1.14 "Intellectual Property Rights" means rights in Intellectual Property which are recognised and/or protected by South African Law;

1.15 "Losses" means all losses (including, but not limited to those in respect of injury, damage to physical property or loss of life), liabilities, costs, expenses, fines, penalties, damage, damages and claims, and all related costs and expenses (including legal fees, whether on the scale as between attorney and own client or otherwise, tracing and collection charges, costs of investigation, interest and penalties);

1.16 "Monthly Costs" means the monthly fee payable by the Customer to Tel-a-care in consideration for the provision of the Service/s;

1.17 "Once Off Costs" means the once off initial costs charged to the Customer for the set up and/or installation of the Software, Equipment and/or Services;

1.18 "Parties" means the Parties to these Standard Terms and Conditions and "Party" means any one of them as the context may indicate;

1.19 "Privacy Policy" means the Tel-a-care privacy policy located **on our website**.

1.20 "Proprietary Information" means any and all trade secrets and data/information of a proprietary and/or confidential nature, including data/information of a Party that the other Party should reasonably have known to be proprietary or confidential;

1.21 "Registration Data" means personal information Users are required to submit to Tel-a-care in order to use the Service/s, which is requested during the registration process and is governed by the Privacy Policy;

1.22 "RIC" means Regulation of Interception of Communications and Provision of Communication Related Information No. 70 of 2002, as amended from time to time;

1.23 "Service/s" means all the service/s provided by Tel-a-care to the Customer, including all software and Equipment necessary for the provision of the Service/s;

1.24 "Software" means any computer program or software installed or provided by Tel-a-care for the purposes of using the Services;

1.25 "South African Law" means all and any laws and regulations of the Republic of South Africa, including but not limited to the Constitution of the Republic of South Africa, the ECT, CPA or any other legislative enactment or regulation in force from time to time applicable codes of conduct, as may be promulgated or amended from time to time;

1.26 "Third Party Websites" means websites other than the Website;

1.27 "use" when used in the context of:

1.27.1 the Service/s, means to visit or load the Website in a web browser, mobile phone or similar software application or device and access or otherwise engage with the Service/s;

1.27.2 Content, means to copy, download, view, modify, adapt, load in a web browser, mobile phone, software application or device or to otherwise engage with and/or manipulate such content;

1.28 "User" means a person who is authorised by the Customer to make use of the Service/s the Customer has elected to make use of in terms of this Agreement, alternatively, anyone who registers with and uses the Service/s under the auspices of the Customer ("Users" has a corresponding meaning);

1.29 "VAT" means Value-Added Tax as defined in the Value-Added Tax Act 89 of 1991;

1.30 "Website" means the Service/s website located at <http://www.isignite.co.za>

2. BINDING CONTRACT

2.1 This Agreement is a contract between the Customer and Tel-a-care and govern the Customer's and its Users' use of this Service/s. The Customer warrants that, to the extent necessary, it is authorised to bind its Users to this Agreement and that such Users have given the Customer such authority.

2.2 The Customer agrees that it shall not use the Service/s unless it agrees to abide by the terms and conditions set out in this Agreement.

2.3 The Customer signifies its agreement with this Agreement and to regards itself as bound by them if it does either of the following:

2.3.1 Click to accept or agree to this Agreement where Tel-a-care presents an option to do so, either on the Website or otherwise; or

2.3.2 By using the Service/s in any way, in which case the Customer understands and agree Tel-a-care will treat its Service/s use as acceptance of this Agreement from the moment it first begins to access the Service.

2.5 Application of the Consumer Protection Act

2.5.1 A transaction (as defined in the CPA) between the Customer and Tel-a-care may or may not fall under the provisions of the CPA depending upon whether certain of the Customer's metrics and values ("Threshold Values") are below a certain value at the time the transaction is entered into.

2.5.2 The Threshold Values are the Customer's asset value or annual turnover, and the value against which they are measured is as determined by the Minister of Trade and Industry by publication in the Government Gazette from time to time.

2.5.3 Tel-a-care duties towards the Customer may vary depending upon whether the transaction in question is subject to the CPA, and Tel-a-care will act upon the information given to it by the Customer in this regard. Consequently:

2.5.3.1 The Customer warrants that any statement made to Tel-a-care in respect of its Threshold Values is accurate.

2.5.3.2 If the Customer claims that all the Threshold Values are below the relevant value, or otherwise that the CPA applies to the transaction in question, Tel-a-care may at its instance require the Customer to provide it with financial statements as proof thereof.

2.5.3.3 If the Customer misstates the Threshold Values in such a way that IS Ignite considers for a period that the transaction is subject to the CPA when it is not, all provisions of this Agreement that do not apply to transactions subject to the CPA shall retroactively apply to the transaction in question, and the Customer shall be liable for any damage sustained by IS Ignite resulting from such misstatement.

3. REGISTRATION

3.1 Users may be required to register if they wish to use the Service/s if indicated by Tel-a-care.

3.1.1 Users are required to register with the Service/s using a registration form available on the Website.

3.1.2 When Users register to use the Service/s, they will be asked to select a username and password in order to secure Users' accounts.

3.1.3 Users may only register once to use the Service/s.

3.1.4 Users may not impersonate another person and Users are be required to use their real identities as identifiers associated with their account. Not adhering to this clause constitutes fraud and such account will summarily be closed without notice.

3.1.5 Once registered Users will be able to log into their accounts using their usernames and passwords.

3.2 In order to successfully complete the registration process, Users are required to submit the Registration Data to Tel-a-care.

3.2.1 Users warrant that the Registration Data is accurate, current and complete. The Customer agrees that Users will be denied access to the Service/s should those Users breach this warranty or subsequently be found to have breached this warranty.

3.2.2 Tel-a-care may take steps to verify Users' Registration Data once Users have completed the requisite registration process. The Customer and Users agree to this verification process and irrevocably consent to IS Ignite gaining access to relevant information held by third parties which may be required to reasonably complete the verification process. The Customer and Users acknowledge and agree that their access to the Service/s may be limited until such time as this verification process has been successfully completed.

3.2.3 Should Users not agree to the verification process as contemplated above or withhold their consent, Users' access to the Service/s, generally, may be suspended or terminated.

3.2.4 Users waive any claims Users may have against Tel-a-care Associates arising out of Tel-a-care denial of access to Users to the Service/s.

3.3 Passwords and Account Security

3.3.1 Users agree that the security of Users' account is solely Users' own responsibility. Users further agree that

3.3.1.1 Users are responsible for maintaining and promptly updating the Registration Data and any other information Users furnish Tel-a-care with, thereby keeping it accurate, current and complete;

3.3.1.2 if Users believe their Service/s account security has been compromised in any way, Users will notify Tel-a-care immediately;

3.3.1.3 Users shall be held fully responsible for any misuse or compromise to Users' account Tel-a-care is not adequately notified about; and

3.3.1.4 Tel-a-care reserves the right to suspend Users' access to their Service/s accounts pending an investigation and resolution if any security violations are believed to have occurred in association with Users' Service/s account.

4. COMMENCEMENT AND DURATION

4.1 The Agreement shall commence upon the Effective Date and shall endure until the termination date of the last of the Services.

4.2 The terms for each Service will stipulate the duration of each such Service. If no such duration is recorded or in the case of where it cannot be determined what the duration of such Service should be, the duration of each of the Services shall be for 1 (one) month rolling until terminated by either Party on 30 (thirty) days' notice.

5. CHARGES AND PAYMENT

5.1 Costs shall be payable to Tel-a-care monthly in advance by way of credit card or debit order deducted on the last day of the month (unless otherwise agreed).

5.2 Costs shall be payable to Tel-a-care monthly in advance by way of credit card, EFT or debit order deducted on the last day of the month (unless otherwise agreed).

5.3 The Costs specified on the Website include VAT and any other any taxes and duties including any regulatory surcharge, which Customer becomes obligated to pay by virtue of this Agreement.

5.4 The Costs specified on the Website may change from time to time without notice to the Customer. The Customer should visit the Website on a regular basis in order to take notice of such changes.

5.5 Invoices will be emailed to the Customer's designated email address (for billing purposes) indicated in the New User Signup form unless the Customer gives its written request for delivery of invoices by means other than email, or that the email address (for billing purposes) has been changed.

5.6 Debit Order and Service/s Cancellation

5.6.1 By the act of the Customer supplying its banking details and agreeing to the terms and conditions of the Agreement the Customer accepts and agrees to the following:

5.6.2 Debit orders will be done on our website via Payfast and will get an request to accept terms & conditions.

5.6.2.1 The request and authorisation of Tel-a-care to draw against the bank account of the Customer (or any other bank or branch to which the Customer may transfer its account) the due amount or any variable amount pertaining to this Agreement, on the first working day of each month. This being the amount necessary for the settlement of the monthly invoice and/or any overdue amounts, due to Tel-a-care respect of the Customers purchases or in terms of this Agreement.

5.6.2.2 The Customer agrees that all withdrawals from its account by Tel-a-care shall be treated as though they had been signed by the Customer itself. The Customer specifically instructs and authorizes the relevant duly authorised Tel-a-care agent or by computer through a system provided by the South African Banks to draw against the account of the Customer.

5.6.2.3 The Customer hereby agrees to pay any banking charges relating to this debit order instruction.

5.6.2.4 The authority and Service/s may be cancelled by the Customer by clicking and accepting the cancellation of services link as displayed on the website before the 25th of the current month. Failure

to do so will result in the product being activated and the monthly subscription being debited from the Customer bank account. If the Customer cancels on or after the 25th of the month, cancellation of the service will be actioned for the end of the following month.

5.6.2.5 The Customer can also cancel the Service by informing Tel-a-care in writing by sending an email with the appropriate Customer account and service details together with the termination date to Info@tel-a-care.co.za. This email notification needs to be sent before the 25th of the current month. Failure to do so will result in the monthly subscription being debited from the Customer bank account. If the Customer cancels on or after the 25th of the month, cancellation of the service will be actioned for the end of the following month.

5.6.2.6 If any Service contract duration is longer than a month, each specific Service terms and conditions will stipulate the penalty for early termination. If no such penalty is recorded or in the case of where it cannot be determined what the penalty of such Service should be, the penalty of each of the Services shall be the remaining value of the contract.

5.6.2.7 Debit orders will be processed on the first working day of every month. The debit order fails, the Customer Service/s will be disabled immediately and you will be required to pay the outstanding amount by way of credit card or electronic bank transfer in order to reactivate the Service/s.

5.6.2.8 All other debit order instructions (new account sign ups, top ups, upgrades), besides the monthly subscription debit orders, will be processed on a daily basis. Should a change be made on your account after the monthly debit order run, the balance will be processed on the 1st working day of the month.

5.6.2.9 Tel-a-care shall be entitled from time to time on 30 (thirty) days prior written notice thereof to Customer to increase the Monthly Costs, provided that

5.6.2.10 Tel-a-care shall not be entitled to increase the Monthly Costs during the first 12 (twelve) months of this Agreement; and

5.6.2.11 Tel-a-care shall not increase the Monthly Costs on more than one occasion in any subsequent 12 (twelve) month period of this Agreement;

5.6.2.12 Should such an increase, as envisaged per sub-clause 5.6.1 above, occur after the initial 12 (twelve) month period, the Customer shall have the right to request Tel-a-care to provide proper and reasonable justification for such an increase, which Tel-a-care shall not unreasonably withhold.

5.6.2.13 Payment must be made by the due date on your invoice which is typically 7 days from the date of invoice.

5.6.2.14 Payment must be made without deduction or set-off.

5.6.2.15 All fees are non refundable unless otherwise stated.

5.6.2.16 Invoices overdue for more than 7 days may result in Service suspension or cancellation without notice.

5.6.2.17 All fees remain payable where we suspend the Services in accordance with these Conditions.

5.6.2.18 You will also be liable for any rental charges that may have been accrued during the suspension of your account.

5.6.2.19 We may impose a credit limit on your account and/or require a deposit as security for paying bills.

6. SERVICE/S PROVISION

6.1 To the extent that the provisions of the CPA are applicable to this Agreement, in the event that the Customer alleges that there is a defect in the quality of the Services, the only remedy that the Customer will have against Tel-a-care, is to require Tel-a-care to remedy the defect in the quality of the Services performed.

6.2 If Tel-a-care has supplied Equipment to enable the Customer to utilise the Service/s, defects in the Equipment will be dealt with as described in clause 6.5 below.

6.3 Tel-a-care may add new features to the Service/s and modify or even discontinue existing features on reasonable notice to the Customer and in Tel-a-care ' sole discretion. The Customer agrees to this.

6.4 Risk and Ownership

6.4.1 All rights of ownership in and to any Equipment:

6.4.1.1 supplied by Tel-a-care on a loan or rental basis, shall remain vested in Tel-a-care;

6.4.1.2 acquired by the Customer from IS Ignite either free of charge or at a subsidised price shall remain vested in Tel-a-care for the duration of the Initial Period of the Schedule in terms of which it is supplied; and

6.4.1.3 acquired at Tel-a-care listed price shall remain vested in IS Ignite until the Customer has made payment therefor in full to IS Ignite.

6.4.2 All risk in and to the Equipment shall pass to the Customer on delivery thereof at the premises of the Customer. Upon the signature of a proof of delivery by the Customer, the Customer shall be liable for any and all loss, theft or destruction of or damage thereto, howsoever arising.

6.4.3 In the event of damage to or the loss, theft or destruction of the Equipment or any portion thereof after the signature of a proof of delivery, the Customer shall be obliged to replace and/or repair or to pay to Tel-a-care the cost of replacing and/or repairing the Equipment so damaged, lost, stolen or destroyed.

6.4.4 The Customer undertakes:

6.4.4.1 to display in relation to the Equipment no lesser degree of care than it would had if the Equipment belonged to it and shall take all reasonably necessary precautions to avoid loss, theft or destruction of or damage to the Equipment;

6.4.4.2 not, in any manner, to alienate, encumber or otherwise dispose of the Equipment;

6.4.4.3 not to procure repair or maintenance of the Equipment by any third party without the prior written consent of IS Ignite (which shall not be unreasonably withheld) or in any other manner tamper with the Equipment.

6.5 Returns and Refunds

6.5.1 If the provisions of the CPA are applicable to this Agreement, to the extent that Equipment is supplied to a Customer, the Equipment is warranted in respect of quality, suitability and durability for a period of 6 (six) months of the Effective Date in respect of the Equipment concerned. Provided the Customer is not in breach of the Agreement, Customer may within this period return the Equipment to Tel-a-care without penalty if the Equipment fails to satisfy the requirements and standards contemplated and IS Ignite shall repair or replace the failed, unsafe or defective Equipment.

6.5.2 If Customer elects to enforce the provisions of clause 6.5 and, within 3 (three) months of any repair undertaken by Tel-a-care, the failure, defect or unsafe feature has not been remedied, or a further failure, defect or unsafe feature is discovered by Customer, Tel-a-care shall, in its sole and absolute discretion:

6.5.2.1 replace the Equipment; or

6.5.2.2 refund to Customer the Once Off Cost applicable thereto.

6.5.2.2 refund to Customer the monthly fee for the duration that the service could not be used.

7. Specific Conditions on the Provision of Telephony Services

7.1 Wireless Internet Services

7.1.1 Due to the nature of wireless services, we make absolutely no guarantees about the speed, availability or stability of the service, except that we will do our utmost to ensure you receive an acceptable service. You will not be held to We would consider an acceptable service where:

7.1.1.1 Intermittent dropouts and signal loss is less than once a week and an aggregate uptime of at least 99% (excluding exceptional outages)

7.1.1.2 Internet speeds at least proportionate to our advertised contention rates during peak times. This may mean you can load websites, but may not be able to stream video.

7.1.1.3 Unacceptable service has been proved by performing tests as prescribed by Tel-a-care and done with the assistance of Tel-a-care support staff

7.2 Voice of IP (VoIP)

7.2.1 By purchasing our Telephony Services (VoIP) you confirm that you understand that our services:

7.2.1.1 may not offer all of the features you may expect from a conventional phone line;

7.2.1.2 may sometimes be unavailable as a result of things over which we have no control, for example, the weather, power disruptions and failures of your internet service provider (ISP) or broadband connection and you understand that in such circumstances all services (including emergency call services) will also be unavailable;

7.2.1.3 may not be able to offer you the ability to transfer (port) your existing number to an alternative service if your service ends due to circumstances beyond our control

7.2.1.4 You will lose your assigned phone number if you cease your service with us, or your account is closed by us due to your breach of contract or your failure to settle your bills by the date due.

7.3 You agree to adhere to all the relevant telephony regulations applicable, including to regulations imposed by the ICASA.

8. CUSTOMER'S OBLIGATIONS

8.1 Tel-a-care is obliged to protect its technical infrastructure against security threats and to protect the interests of its customers by ensuring that the conduct of no one customer prejudices the user experience of the other customers. Accordingly, Tel-a-care imposes certain reasonable rules relating to the Customer's conduct while using the Services which are contained in Tel-a-care Acceptable Use Policy. Because security threats can be fluid and acceptable usage can change, Tel-a-care may from time to time amend this AUP by publication on its website. These amendments will not materially affect the Agreement, but will merely update the limits of the Customer's existing duty to use the Services in a safe and responsible manner.

8.2 Customer shall not commit nor attempt to commit any act or omission which directly or indirectly:

8.2.1 damages in any way Tel-a-care technical infrastructure or any part thereof;

8.2.2 impedes, impairs or precludes IS Ignite from being able to provide the Service/s in a reasonable and businesslike manner;

8.2.3 constitutes an abuse or malicious misuse of the Service/s;

8.2.4 or is calculated to have any of the abovementioned effects. In such an event, should Tel-a-care incur expenses to remedy the situation, Tel-a-care reserves the right to charge the Customer the amount necessary to cover Tel-a-care additional expenditure. Notwithstanding the above, Tel-a-care reserves the right to take any other appropriate action it may deem necessary to remedy the situation.

8.3 Customer is prohibited from unauthorised selling, reselling or otherwise dealing with the Service/s which are proprietary to Tel-a-care in any manner whatsoever. Without limitation to the a fore going, the Customer agrees that any consideration which it may receive whilst acting in breach of this prohibition shall be deemed to be Tel-a-care damages suffered as a result of the Customer's breach of this prohibition and payable to IS Ignite.

8.4 Customer is prohibited from allowing any person other than its employees or other authorised parties, access to the Service/s through any of Customer's Equipment, personnel and/or address.

8.5 Under no circumstances may Customer 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 Tel-a-care or Tel-a-care ' Associates if Tel-a-care interrupts the Service to Customer as it would be entitled to do if Customer is in default of any of its obligations under this Agreement to Tel-a-care.

8.6 Customer may not at any time use the Service in contravention of any South African Law. Customer acknowledges that Tel-a-care has no obligation to assist Customer in obtaining knowledge and/or clarity in terms of the applicable South African Law.

9. Billing & Rates

9.1 You will be billed either as a pre-paid customer or monthly invoice as decided by us based on the Service you subscribe to and your credit status.

9.2 Call Charges are calculated on a per minute basis and billed per second

9.3 While you may be able to view up to date information on your usage, the charges may be adjusted on your monthly bill based on billing information we receive from our suppliers.

9.4 Our call charges may change from time to time and the latest rates will be available on our

Website.

- 9.5 While we endeavour to ensure that our Rates tables contain accurate information, we cannot guarantee its accuracy and may be different from your monthly bill. It may also be possible to phone other destinations not covered in our Rates table (such as Premium rate numbers) and these will be billed accordingly.
- 9.6 Charges will be calculated by reference to the data recorded by Us or on Our behalf and not by reference to data logged or recorded by any other party.
- 9.7 Premium rate numbers will be subject to a surcharge.

10. DOCUMENTATION

10.1 Any specifications, descriptive matter, drawings and other documents which may be furnished by Tel-a-care to Customer from time to time:

10.1.1 do not form part of this Agreement and may not be relied upon, unless they are agreed in writing by both parties hereto to form part of this Agreement by way of a Schedule;

10.1.2 shall remain the property of Tel-a-care and shall be deemed to have been imparted by it in trust to Customer for the sole use of Customer. All copyright in such documents vests in Tel-a-care. Such documents shall be returned to Tel-a-care on demand.

11. LIABILITY

11.1 Liability Limitation

11.1.1 Tel-a-care shall not be liable for any Losses of whatsoever nature and howsoever arising where Tel-a-care failure, delay or inability to perform any of the Service/s is due to the occurrence of any of the following events:

11.1.1.1 the Customer's failure to perform, or delay in performing its obligations in terms of this Agreement; or

11.1.1.2 circumstances that constitute an event of force majeure as contemplated in clause 16 hereof; or

11.1.1.3 all telecommunications infrastructure and communication line faults; or

11.1.1.4 failure or unreasonable delay by the Customer to report faults/problems to Tel-a-care; or

11.1.1.5 the failure of any hardware, software programme, applications/s or any other computer systems (or any component thereof) or product or service of any third party on whom the Customer relies (whether directly or indirectly) to use the Service/s and/or on which Tel-a-care relies to provide the Service/s.

11.1.2 Tel-a-care shall not be responsible for any Losses of whatsoever nature and howsoever arising if such Losses is caused by any defect or failure in the Equipment due to:

11.1.2.1 compliance by IS Ignite with any applicable legislation; and/or

11.1.2.2 any alteration to the Software and Equipment by the Customer; and/or

11.1.2.3 any defect and/or hazard in any third party equipment required by the Customer to be used in the provision of the Services.

11.1.3 In addition to 9.1.1 and 9.1.2 above, and to the extent permitted by South African Law, **Tel-a-care** shall not be responsible for Losses of whatsoever nature and howsoever arising in respect of the Services under this Agreement.

11.1.4 Subject to clause 9.1.1 to 9.1.3 above, the entire liability of **Tel-a-care** and Customer's exclusive remedy for direct damages from any cause related to or arising out of this Agreement, regardless of the form of action, whether in contract or in delict, will not exceed the aggregate of the fees and charges paid by Customer under this Agreement for the period of 1 (one) month preceding Customer's written notice to **Tel-a-care** in respect of such claim.

11.1.5 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 on reasonable notice to Customer, and all liability on the part of **Tel-a-care** of any loss or damage (whether direct or consequential) thereby incurred or for any costs, claims, or demands of any nature arising therefrom, is excluded.

11.1.6 Nothing in these Conditions in any way excludes or restricts our liability for negligence causing death or personal injury or for fraudulent misrepresentation or for anything which may not legally be restricted

11.2 Indemnity

11.2.1 The Customer indemnifies **Tel-a-care** and **Tel-a-care** Associates from any Losses which arise as a result of the Customer's use of the Services or the Customer's breach of this Agreement.

11.2.2 The Customer shall indemnify and hold **Tel-a-care** and **Tel-a-care** Associates harmless against all Losses, suffered or incurred by them as a result of any claim by any third party, arising out of the provisions of clauses 9.2.1 above.

11.2.3 Customer hereby indemnifies **Tel-a-care** against and holds **Tel-a-care** harmless from any claim by any third party arising directly or indirectly out of access to or use of the Service/s or information obtained through the use thereof or in respect of any matter for which liability of **Tel-a-care** is excluded in terms of clause 9.1.1 to 9.1.3 above.

11.3 Third Party websites

11.3.1 Links to and from the service from and to other websites belonging to or operated by Third Parties ("Linked Websites") do not constitute **Tel-a-care** endorsement of such Linked Websites or their contents nor does **Tel-a-care** necessarily associate itself with their owners or operators. The Customer is solely responsible for identifying and familiarising itself with any terms of use which will govern the Customer's relationship with such Third Party.

11.3.2 **Tel-a-care** has no control over Linked Websites and the Customer agrees that **Tel-a-care** is not responsible or liable for any content, information, goods or services available on or through any such Linked Websites or for any Losses caused or alleged to be caused by or in connection with the Customer's use of or reliance on any such content, information, goods or services available on or through any such Linked Websites. The Customer agrees that where it or its Users access Linked Websites, they do so entirely at the Customer's or, where appropriate, the Users' own risk.

11.3.3 Interaction, correspondence or business dealings with Third Parties which are referred to or linked from or to the service is similarly entirely at the Customer's or, where appropriate, the Users' own risk.

11.4 Warranties

11.4.1 **Tel-a-care** warrants and represents that:

11.4.1.1 it has full capacity and authority and all the necessary licences, permits and consents

to enter into and perform in terms of this Agreement and to provide the Services to the Customer;

11.4.1.2 it is the owner of or has the right to use under licence any intellectual property employed by it during or as part of the Services;

11.4.1.3 it is not aware, as at date hereof, of any matter within its reasonable control which might or will adversely affect its ability to perform its contractual obligations under this Agreement;

11.4.1.4 the Services shall be performed in compliance with South African Law;

11.4.1.5 the Services shall be provided in accordance with the provisions of this Agreement;

11.4.1.6 the Services will be performed in a professional manner and that it is and/or it shall use personnel that is appropriately experienced, suitably qualified and has sufficient knowledge, expertise and competence to perform the services, in accordance with the highest standard of its industry.

11.4.2 Save as expressly set out in clauses 10.1 above, **Tel-a-care** does not make any representations nor gives any warranties or guarantees of any nature whatsoever in respect of the Service/s and all warranties which are implied or residual at common law are hereby expressly excluded.

11.4.3 **Tel-a-care** does not warrant or guarantee that the information transmitted by or available to Customer by way of the Service/s:

11.4.3.1 will be preserved or sustained in its entirety;

11.4.3.2 will be delivered to any or all of the intended recipients; or

11.4.3.3 will be suitable for any purpose;

11.4.3.4 will be free of inaccuracies or defects or bugs or viruses of any kind; or

11.4.3.5 will be secured against intrusion by unauthorised third parties;

11.4.3.6 and **Tel-a-care** assumes no liability, responsibility or obligations in regard to any of the exclusions set forth in this clause 9.4.

11.5 Complaints

11.5.1 Not with standing anything to the contrary contained in this Agreement, **Tel-a-care** reserves the right in its absolute discretion and after the receipt by **Tel-a-care** of any take-down notice in terms of the ECT or through any other legal and/or regulatory complaint, mechanism or process from any governmental department or agency, or any other third party (including but not limited to any Internet industry body or any other organisation) that Customer's web site contains information that infringes against any third party's rights in terms of South African Law, or is defamatory in nature, to immediately give written notice to Customer of **Tel-a-care** intention to remove the offending information or any portion thereof from Customer's web site.

11.5.2 Should such offending information not be removed from the web site by Customer within 24 hours of written notice to that effect, **Tel-a-care** shall be entitled to immediately remove the offending information or any portion thereof from Customer's web site, or where it is not possible to remove such content, to terminate the Hosting Services of such Customer. Any removal or termination by **Tel-a-care** shall in no way constitute a breach by **Tel-a-care** of this Agreement.

11.5.3 In the event a Customer is believed to be infringing on any person's rights in terms of South African Law, any person affected by such infringements may report the matter to **Tel-a-care** by visiting **Tel-a-care** Abuse page at <http://www.is.co.za/Abuse/Pages/default.aspx>.

12. BREACH

12.1 Should the Customer breach any of the terms and conditions of this Agreement, without prejudice to any other rights that it may have, Tel-a-care shall be permitted to either:

12.1.1 afford the Customer reasonable opportunity to remedy the breach;

12.1.2 suspend access to or terminate the Services;

12.1.3 cancel this Agreement;

12.1.4 in any event without prejudice to Tel-a-care right to claim damages and/or specific performance.

12.2 The Customer shall be liable for all costs incurred by Tel-a-care 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 judgement has been granted, in connection with the satisfaction or enforcement of such judgement.

13. INTELLECTUAL PROPERTY

13.1 The Customer acknowledges that all Intellectual Property Rights relating to or used in connection with the Service/s provided under this Agreement vest in Tel-a-care, either as owner or licensee of such Intellectual Property Rights.

13.2 Except as provided in this clause 11, the Customer does not acquire any rights under this Agreement from Tel-a-care or Tel-a-care licensors to the Service/s, including any related Intellectual Property Rights. Some Service/s may be provided to the Customer under a separate license, in which case that license will govern the Customer's use of the Service/s concerned.

13.3 Tel-a-care grants the Customer a limited, revocable, non-exclusive, non-sublicensable, non-transferrable license to access and use the Service/s solely in accordance with this Agreement; and
13.4 Customer hereby indemnifies and holds Tel-a-care and Tel-a-care Associates harmless against all Losses suffered or incurred by them as a result of any Intellectual Property Rights claim by any third party.

14. INTERCEPTION AND MONITORING

14.1 Subject to the provisions of the RIC Act, the Customer and Users agree to permit Tel-a-care to intercept, block, filter, read, delete, disclose and use all communications the Customer and Users send or post to or using the Service/s and/or to Tel-a-care staff.

14.2 The Customer and Users agree and acknowledge that the consent they provide above satisfies the "writing" requirement specified in ECT and RIC.

15. PROTECTION OF CONFIDENTIAL INFORMATION

15.1 Each Party will keep confidential and protect Confidential Information from disclosure to third parties and restrict its use to that which is provided for in this Agreement.

15.2 Either Party acknowledges that unauthorised disclosure or use of Proprietary Information may cause substantial economic loss. All materials containing Confidential Information will be marked with "Proprietary" or "Confidential", or in a manner which gives notice of its proprietary nature. Confidential Information shall not be copied, in whole or in part, except when essential for correcting, generating or modifying Confidential Information for either Party's authorised use. Each such copy, including its

storage media, will be marked with all notices, which appear on the original.

15.3 Each Party shall ensure that its employees comply with its obligations under this clause 13.

15.4 This clause 13 shall survive termination or cancellation of this Agreement.

15.5 This Agreement does not transfer to either Party title to any Intellectual Property Rights contained in any Confidential Information of the other Party.

16. CESSION AND ASSIGNMENT

14.1. The Customer shall not 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 Tel-a-care prior to such cession and/or assignment.

17. FORCE MAJEURE

17.1 Tel-a-care shall not be liable for non-performance under this Agreement to the extent to which the non-performance is caused by events or conditions beyond the control of Tel-a-care, provided that Tel-a-care makes all reasonable efforts to perform.

17.2 It is expressly recorded that for purposes of this clause the following shall be considered circumstances beyond the control of Tel-a-care and the force majeure provisions shall apply:

17.2.1 a fault on the part of an IS Ignite supplier that affects the Service/s; and/or

17.2.2 the non-performance, inability to perform or delay in performance by a supplier to Tel-a-care relating to the provisioning of equipment, services and/or facilities to Tel-a-care that affects the Service/s; and/or

17.2.3 acts or omissions of any government, government agency, provincial or local authority or similar authority, any laws or regulations having the force of law, civil strife, riots, insurrection, sabotage, acts of war or public enemy, illegal strikes, interruption of transport, lockouts, flood, storm or fire.

18. SEVERABILITY

18.1 If any clause or term of this Agreement shall have been held by a court of competent jurisdiction to be invalid, unenforceable or illegal, then the remaining terms and provisions of this Agreement shall be deemed to be severable therefrom and shall continue in full force and effect unless such invalidity, unenforceability or illegality goes to the root of this Agreement.

19. DISPUTE RESOLUTION AND ARBITRATION

19.1 Any dispute which arises between the Parties relating to or arising out of this Agreement, including the validity, implementation, execution, interpretation, rectification, termination or cancellation of this Agreement, shall be referred to a committee consisting of two (2) members appointed by the Customer, and two (2) members appointed by Tel-a-care, or alternates appointed by them, who will use their best efforts to resolve the dispute within fourteen (14) calendar days of the dispute having been referred to them.

19.2 Should the committee be unable to resolve a dispute, the parties agree to have the dispute resolved in accordance with the Rules of the Arbitration Foundation of Southern Africa by an arbitrator appointed in terms of such Rules.

19.3 In the case of litigation:

19.3.1 the Parties consent to the jurisdiction of the appropriate division of the High Court of South Africa in respect of all proceedings which may arise out of or in connection with this Agreement;

19.3.2 all costs of litigation, on an attorney and own client scale and including any value added tax, charges and disbursements and fees of a like nature, incurred by the successful Party in successfully enforcing or defending any of the provisions of this Agreement, or any claim hereunder and shall be for the account of the unsuccessful Party.

19.4 Where the Customer instigates the dispute and where the provisions of the CPA are applicable to this Agreement, and the Customer does not use the Services under dispute wholly or mainly for his business or profession, then the provisions of clauses 17.2 shall be voluntary, and the Customer may choose such other means of resolving the dispute as are set out in the CPA.

20. GOVERNING LAW AND JURISDICTION

20.1 This Agreement will be governed by and construed in accordance with the laws 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.

21. PLACE FOR DELIVERY OF NOTICES

21.1 The Customer chooses its place for delivery of notices ("domicilium") at the physical address appearing on the New User Signup form for all purposes, including but not by way of limitation, receiving notice from Tel-a-care, communicating with Tel-a-care and the receiving service of process.

21.2 Tel-a-care chooses its domicilium at 4 langverwacht, unit 5, Kuilsriver, Cape town, South Africa.

21.3 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 (10) days of the intended domicilium change.

21.4 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 10th (tenth) day after the date of posting or on the day of delivery as the case may be.

22. RESELLERS

22.1 Notwithstanding that which is contained herein, in addition hereto the following terms shall apply to resellers of the Service/s:

22.1.1 The Services shall be sold as described and presented on the website, resellers shall not attempt to alter or customise such Service/s without the consent of Tel-a-care;

22.1.2 The reseller shall be responsible for all support calls from its direct customers, Tel-a-care shall however assist only the reseller through the existing Tel-a-care support channels.

22.1.3 The reseller is responsible for onward invoicing and collection of monies from its customers. Failure to collect such monies shall in no manner be an excuse or reason for the resellers' failure to make payment of the Service/s provided by Tel-a-care and may lead to suspension of the Service/s at the discretion of IS Ignite.

23. SERVICE LEVEL

23.1 Notwithstanding clause 9.4.3 above, the Service/s provided should be viewed as "best-effort",

"as is" or "as available". Tel-a-care cannot guaranteed or warrant that the Service/s will at all times be free of errors or interruptions. During any technical failure, modification or maintenance of the Service/s provided, Tel-a-care will use its reasonable endeavours to notify the Customer of such maintenance and to resume the Service/s as soon as possible.

24. GENERAL

24.1 No variation, amendment or consensual cancellation of this Agreement, or this clause, shall be binding unless recorded in a written document signed by a duly authorised Tel-a-care representative or published by an authorised Tel-a-care representative to the Website.

24.2 The parties acknowledge having read and understood this Agreement and are not entering into this Agreement on the basis of any representations not expressly set forth in it.

24.3 Neither Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the Agreement between Customer and Tel-a-care or not.

24.4 No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement shall operate as an estoppel against either Party hereto in respect of its right under this Agreement, nor shall it operate so as to preclude either of the parties thereafter from exercising its rights strictly in accordance with this Agreement.

24.5 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.

24.6 Nothing in the Agreement shall constitute a partnership, joint venture, agency or employment between the Parties hereto, and neither Party shall have the authority or power to bind, or contract in the name of, or to create a liability against the other in any way for any purpose.

24.7 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.

24.8 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. In particular, termination or cancellation of this Agreement shall not affect any rights or duties arising under it with respect to Confidential Information as set out in clause 13 above.

24.9 These terms and conditions, together with the New User Signup form, constitute the whole of the Agreement between Tel-a-care and Customer relating to the subject matter hereof.

25. SCHEDULE A - Fees and Charges

Item	Fee
Account activation following Suspension	R 100
Bounced Cheque / Debit Order payment	R 50 + bank costs
On-site Engineer visit - Per Hour	R 500
Missed Engineer Appointment	R 500*

Missed Engineer Appointments can have additional charges from our suppliers. We will pass on these costs if you have missed an appointment.