

# **iBound Standard Terms and Conditions**

## **1. Definitions And Interpretation**

1.1. In this Agreement, the words hereunder will have the meanings assigned to them below:-

1.1.1. "**Agreement**" means these Standard Terms and Conditions and any Application Form, Schedules, Annexures and attachments hereto;

1.1.2. "**Application Form**" means the application form to which these Terms and Conditions are attached;

1.1.3. "**Contract Value**" means the total sum of the Costs in respect of the Service/s being provided to the Customer by iBound in terms of this Agreement;

1.1.4. "**Cost Schedule**" means Schedule 1 attached hereto wherein the aggregate of all Costs relating to the Service/s provided in terms of this Agreement are set out, as may be amended from time to time;

1.1.5. "**Costs**" means the sum of the Once Off Costs and the Monthly Costs;

1.1.6. "**CPA**" means the Consumer Protection Act No. 68 of 2008;

1.1.7. "**Customer**" means the Party specified as Customer on the Application Form to which these Standard Terms and Conditions are attached;

1.1.8. "**Customer Support Schedule**" means the schedule attached hereto containing customer support information;

1.1.9. "**Effective Date**" means notwithstanding the Signature Date, the date upon which the first of the Services and each subsequent Effective Date listed in each Schedule provided to the Customer in terms of this Agreement, have been Commissioned;

1.1.10. "**ECNS Provider**" means one of the electronic communication network service providers licensed to provide those services in terms of the Electronic Communications Act 36 of 2005;

1.1.11. "**Equipment**" means equipment supplied by iBound to the Customer on the basis of a loan, rental or otherwise, to enable the Customer to utilise the Services;

1.1.12. "**iBound**" means iBound cc (company registration number 2009/216590/23);

1.1.13. "**Initial Period**" means the initial term relating to each of the Service/s, as set out in the Cost Schedule;

1.1.14. "**iBound MAC Form**" means a form completed by iBound and Customer wherein moves, additions, or changes to pricing or specifications of existing Services under the Agreement are to be made;

1.1.15. "**Monthly Costs**" means the monthly fee payable by the Customer to iBound in consideration for the provision of the Service/s;

1.1.16. "**Once Off Costs**" means the once off initial costs charged to the Customer as set out in the Cost Schedule, for the set up and/or installation of the Software, Equipment and/or Services;

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

1.1.18. "**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;

1.1.19. "**Schedule/s**" means the each of the Schedules attached hereto wherein the service specifications of each of the Service/s, and the Costs related thereto are specified, as may be amended from time to time;

1.1.20. "**Service/s**" means all the service/s provided by iBound as specified in the Schedules to this Agreement, including all software and Equipment necessary for the provision of the Service/s;

1.1.21. "**Signature Date**" means the date of signature of this Agreement by the Party signing it last in time;

1.1.22. "**Software**" means any computer program or software installed or provided by iBound for the purposes of using the Services;

1.1.23. "**South African Law**" means all and any laws and regulations of the Republic of South Africa, including but not limited to applicable codes of conduct, as may be promulgated or amended from time to time;

1.1.24. "**VAT**" means Value-Added Tax as defined in the Value-Added Tax Act 89 of 1991.

1.2. The clause headings contained in this Agreement are for reference purposes only and shall not be used in the interpretation of this Agreement. Words importing any one gender includes the other gender, the singular includes the plural and vice versa, and natural persons includes juristic entities and vice versa.

## **2. Appointment**

The Customer hereby appoints iBound to provide the Service/s to the Customer for the duration of this Agreement, which appointment iBound accepts, on the terms and conditions contained in this Agreement.

## **3. Commencement And Duration**

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

3.2. The duration period of each of the Services shall be as specified in the relevant Schedules.

## **4. Charges And Payment**

4.1. iBound shall be entitled to commence invoicing the Customer for the Costs in relation to each Service from the date that such Service is Commissioned, as set out in the Schedule concerned ("Date of Commissioning").

4.2. When the Date of Commissioning is delayed through the fault of the Customer, iBound shall be entitled to commence invoicing the Customer for the Costs in relation to each Schedule, with effect from 60 (sixty) days after the Signature Date.

4.3. In the event of a single Service consisting of a number of components, iBound shall be entitled to commence invoicing the Customer for each respective component of that Service as and when each component of that Service is activated for Customer use.

4.4. Customer is responsible for and agrees to pay to iBound all Once Off Costs and Monthly Costs specified in the Cost Schedule in South African currency, without deduction or set-off of any amount of whatsoever nature or for whatsoever reason.

4.5. The Costs specified in the Cost Schedule exclude:

4.5.1. VAT and any other any taxes and duties including any regulatory surcharge, which Customer becomes obligated to pay by virtue of this Agreement, and

4.5.2. all and any ECNS Provider fees, for which Customer agrees to make payment directly to the ECNS provider on such terms as are agreed between the ECNS provider and Customer, and shall at all times be the responsibility of the Customer. The Customer hereby indemnifies and holds iBound harmless against any claims, costs and/or damages which may be incurred by the Customer or the ECNS Provider as a result of a failure by the Customer to pay the ECNS Provider fees, or any part thereof, as the case may be.

4.6. Invoicing will be processed and delivered monthly in advance, and all invoices for Services shall be settled by the Customer, monthly within 10 (ten) days of the date of invoice.

4.7. In the event of any dispute arising as to the amount or calculation of any Costs to which iBound is entitled in terms of this Agreement, the dispute shall be referred for determination to independent auditors. They shall act as experts and their decision shall be final and binding on iBound and Customer. The cost of the determination shall be paid on demand by the Party against whom the determination is made, or as determined by the said auditors. However, where the provisions of the CPA are applicable to this Agreement, and do not allow for the enforcement of the above provisions this clause shall not apply.

4.8. Any amount falling due for payment by Customer to iBound 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 plus two percent (2%) charged by Nedcor Bank Limited from time to time, monthly in arrears.

4.9. iBound shall be entitled from time to time on 30 (thirty) days prior written notice thereof to Customer to increase the Monthly Costs, provided that:

4.9.1. iBound shall not be entitled to increase the Monthly Costs during the first 12 (twelve) months of this Agreement; and

4.9.2. iBound shall not increase the Monthly Costs on more than one occasion in any subsequent 12 (twelve) month period of this Agreement;

4.9.3. Should such an increase, as envisaged per sub-clause 3.7.2 above, occur after the initial 12 (twelve) month period, the Customer shall have the right to request iBound to provide proper and reasonable justification for such an increase, which iBound shall not unreasonably withhold.

4.10. Invoices will be emailed to the Customer's designated email address (for billing purposes) indicated in the Application 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. Customer's Obligations**

5.1. iBound 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, iBound imposes certain reasonable rules relating to the Customer's conduct while using the Services which are contained in iBound' Acceptable Use Policy ("AUP") (available at [www.ibound.net/legal/](http://www.ibound.net/legal/) by clicking on the "legal" link). Because security threats can be fluid and acceptable usage can change, iBound 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.

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

5.2.1. damages in any way iBound' technical infrastructure or any part thereof;

5.2.2. impedes, impairs or precludes iBound from being able to provide the Service/s in a reasonable and businesslike manner;

5.2.3. constitutes an abuse or malicious misuse of the Service/s; or is calculated to have any of the above mentioned effects. In such an event, should iBound incur expenses to remedy the situation, iBound reserves the right to charge the Customer the amount necessary to cover iBound' additional expenditure. Notwithstanding the above, iBound reserves the right to take any other appropriate action it may deem necessary to remedy the situation.

5.3. Customer is prohibited from selling, reselling or otherwise dealing with the Service/s which are proprietary to iBound in any manner whatsoever. Without limitation to the foregoing, any consideration which Customer may receive whilst acting in breach of this prohibition shall be forfeited to iBound.

5.4. 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.

5.5. Customer is prohibited from modifying any Equipment (including but not limited to router equipment) utilised by Customer to receive any of the Service/s, in any way whatsoever, including the changing of any of the settings of such Equipment.

5.6. Customer shall at all times adhere to and ensure compliance with the Schedule/s, if applicable.

5.7. 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 iBound, its servants, its agents or any other persons for whom it may be liable in law if iBound 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 iBound.

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

## **6. Provision of the Services by iBound**

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 iBound, is to require iBound to remedy the defect in the quality of the Services performed.

6.2. If iBound has supplied Equipment to enable the Customer to utilise the Services in the circumstances set out in clause 6.1, defects in the Equipment will be dealt with as described in clause 7.

## **7. Returns and Refunds**

7.1. 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 iBound without penalty if the Equipment fails to satisfy the requirements and standards contemplated and iBound shall repair or replace the failed, unsafe or defective Equipment.

7.2. If Customer elects to enforce the provisions of clause 7.1 and, within 3 (three) months of any repair undertaken by iBound, the failure, defect or unsafe feature has not been remedied, or a further failure, defect or unsafe feature is discovered by Customer, iBound shall, in its sole and absolute discretion:

7.2.1. replace the Equipment; or

7.2.2. refund to Customer the Once Off Cost applicable thereto.

## **8. Warranties**

8.1. iBound warrants and represents that:

8.1.1 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;

8.1.2 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;

8.1.3 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;

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

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

8.1.6 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.

8.2 Save as expressly set out in clauses 6, 7 or 8.1 above, iBound 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.

8.3 iBound does not warrant or guarantee that the information transmitted by or available to Customer by way of the Service/s:

8.3.1 will be preserved or sustained in its entirety;

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

8.3.3 will be suitable for any purpose;

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

8.3.5 will be secured against intrusion by unauthorised third parties; and iBound assumes no liability, responsibility or obligations in regard to any of the exclusions set forth in this clause 8.

## **9. Risk and Ownership**

9.1 All rights of ownership in and to any Equipment:

9.1.1 supplied by iBound on a loan or rental basis, shall remain vested in iBound;

9.1.2 acquired by the Customer from iBound either free of charge or at a subsidised price shall remain vested in iBound for the duration of the Initial Period of the Schedule in terms of which it is supplied; and

9.1.3 acquired at iBound's listed price shall remain vested in iBound until the Customer has made payment therefor in full to iBound.

9.2 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.

9.3 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 iBound the cost of replacing and/or repairing the Equipment so damaged, lost, stolen or destroyed.

9.4 The Customer undertakes:

9.4.1 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;

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

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

## **10. Limitation Of Liability**

10.1 iBound shall not be liable for any loss (including but not limited to loss of data, profits and goodwill), liability, damages (whether direct, indirect or consequential) or expense of whatsoever nature and howsoever arising where iBound's failure, delay or inability to perform any of the Service/s is due to the occurrence of any of the following events:

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

10.1.2 circumstances that constitute an event of force majeure as contemplated in clause 17 hereof; or

10.1.3 all telecommunications infrastructure and communication line faults; or

10.1.4 failure or unreasonable delay by the Customer to report faults/problems to iBound; or

10.1.5 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 iBound relies to provide the Service/s.

10.2 iBound shall not be responsible for any loss (including but not limited to loss of data, profits and goodwill), liability, damages (whether direct, indirect or consequential) or expense of whatsoever nature and howsoever arising if such loss is caused by any defect or failure in the Equipment due to:

10.2.1 compliance by iBound with any applicable legislation; and/or

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

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

10.3 In addition to 10.1 and 10.2 above, and to the extent permitted by South African Law, iBound shall not be responsible for indirect or consequential damages or loss (including but not limited to loss of data, profits and goodwill) of whatsoever nature and howsoever arising in respect of the Services under this Agreement.

10.4 The Customer shall indemnify and hold iBound and any of its subsidiaries, affiliates, holding company, fellow subsidiaries, representatives, directors, officers or employees harmless against all losses, damages, liability, costs and expenses, including reasonable attorney fees, suffered or incurred by them as a result of any claim by any third party, arising out of the provisions of clauses 10.2 above.

10.5 Subject to clause 10.1 - 10.3 above, the entire liability of iBound and Customer's exclusive remedy for 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 12 (twelve) months preceding Customer's written notice to iBound in respect of such claim.

10.6 Customer hereby indemnifies iBound against and holds iBound 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 iBound is excluded in terms of clause 10.1 - 10.3 above.

10.7 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 iBound 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.

10.8 Notwithstanding anything to the contrary contained in this Agreement, iBound reserves the right in its absolute discretion and after the receipt by iBound of any take-down notice in terms of the Electronic Communications and Transactions Act 25, 2002 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 the Constitution of the Republic of South Africa, the Electronic Communications and Transactions Act, any other legislative enactment or regulation in force from time to time, or is defamatory in nature, to immediately give written notice to Customer of iBound' intention to remove the offending information or any portion thereof from Customer's web site. Should such offending information not be removed from the web site by Customer within 24 hours of written notice to that effect, iBound 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 iBound shall in no way constitute a breach by iBound of this Agreement.



## **11. Documentation**

11.1 Any specifications, descriptive matter, drawings and other documents which may be furnished by iBound to Customer from time to time:

11.1.1 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;

11.1.2 shall remain the property of iBound 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 iBound. Such documents shall be returned to iBound on demand.

## **12. Breach**

12.1 If either party hereto:

12.1.1 breaches any of the terms or conditions of this Agreement and fails to remedy such breach or pay such amount, as the case may be, within 7 (seven) days after the receipt of written notice from the non-breaching party;

12.1.2 commits any act of insolvency;

12.1.3 endeavours to compromise generally with its creditors or does or causes anything to be done which may prejudice the non-breaching party's' rights hereunder or at all;

12.1.4 allows any judgement against it, in excess of R1 ,000.000.00 (One Million Rand), 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 final end; or

12.1.5 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 party shall have the right, as and where applicable without prejudice to any other right which it may have against the breaching party, to:

a) suspend or terminate the Services;

b) in the case of iBound, 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 Customer until Customer has remedied the breach; and/or

c) cancel this Agreement;

in any event without prejudice to the non-breaching party's' right to claim damages. The right of either party to suspend or terminate the Services as a result of breach shall apply throughout the duration of the Agreement, both within the Initial Period and thereafter.

12.2 The breaching party shall be liable for all costs incurred by the non-breaching 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 judgement has been granted, in connection with the satisfaction or enforcement of such judgement.

12.3 Subject to what is set out in Clause 12.1 above, iBound shall be entitled to suspend the provision of the Services where Customer breaches any provision of this Agreement or where any payment to iBound is overdue by more than 30 (thirty) days.

12.4 If the provisions of the CPA are applicable to this Agreement, the above sub-clauses shall operate as follows:

12.4.1 The Parties will be required to give 20 business days' notice to the other of any of the circumstances set out in clause 12.1;

12.4.2 Clause 12.1(b) shall not be applicable and in such circumstances iBound shall be entitled to payment by Customer of no less than 80% (Eighty Percent) of the remaining amounts due and payable over the unexpired period of the Agreement.

### **13. Intellectual Property**

13.1 Notwithstanding anything set out in clause 13 below, all intellectual property rights in and to the Software (including, without limitation, copyright, trademarks, designs and patents) relating to or used in connection with the Service/s provided under this Agreement shall belong to iBound. Customer undertakes that it shall at no time, have any right, title or interest in the intellectual property and agrees that it shall not (or permit any third party to) reverse engineer, decompile, modify or tamper with the equipment or software owned by iBound, or any of its third party suppliers.

13.2 Customer warrants that it shall not use the Service/s to produce, host or present any content in contravention of any person's intellectual property rights, and in particular warrants that it shall recognize, acknowledge and use any content in accordance with any third party's intellectual property rights. Customer furthermore warrants that it has received all necessary permissions to make use of any intellectual property relating to 3rd parties.

13.3 Customer hereby indemnifies and holds iBound and any of its subsidiaries, affiliates, holding company, fellow subsidiaries, representatives, directors, officers or employees harmless against all losses, damages, liability, costs and expenses, including reasonable attorney fees, suffered or incurred by them as a result of any claim by any third party made arising out of the provisions of clauses 15.1 and 15.2.

### **14. Protection Of Proprietary Information**

14.1 Each Party will keep in confidence and protect Proprietary Information from disclosure to third parties and restrict its use to that which is provided for in this Agreement. Either Party acknowledges that unauthorised disclosure or use of Proprietary Information may cause substantial economic loss. All printed materials, containing Proprietary Information will be marked with "Proprietary" or "Confidential", or in a manner which gives notice of its proprietary nature. Proprietary Information shall not be copied, in whole or in part, except when essential for correcting, generating or modifying Proprietary Information for either Party's authorized use. Each such copy, including its storage media, will be marked with all notices, which appear on the original.

14.2 Each Party shall ensure that its employees comply with its obligations under this clause 14.

14.3 This clause 14 shall survive termination or cancellation of this Agreement.

14.4 This Agreement does not transfer to either Party title to any intellectual property contained in any Proprietary Information of the other Party.

## **15. Cession and Assignment**

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 iBound prior to such cession and/or assignment.

## **16. Lien**

The parties agree that in the event of a breach of this Agreement by Customer which causes iBound to suffer damages of any nature whatsoever, iBound shall not be required to attach any of Customer's hardware in execution, and shall be entitled to retain a lien over such hardware in reduction of any debt due by Customer to iBound.

## **17. Force Majeure**

17.1 iBound 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 iBound, provided that iBound 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 iBound and the force majeure provisions shall apply:-

17.2.1 an ECNS provider fault that affects the Service/s; and/or

17.2.2 the non-performance, inability to perform or delay in performance by the ECNS provider relating to the provisioning of equipment, services and/or facilities to iBound 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. Dispute Resolution and Arbitration**

18.1 The Parties accept that disputes may arise between the Parties during the term of this Agreement.

18.2 Any dispute which arises 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 iBound, 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.

18.3 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.

18.4 In the case of litigation –

18.4.1 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;

18.4.2 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

18.5 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 18.3 shall be voluntary, and the Customer may choose such other means of resolving the dispute as are set out in the CPA.

## **19. Governing Law And Jurisdiction**

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.

## **20. Place for Delivery of Notices**

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, Customer chooses its place for delivery of notices (“domicilium”) at the physical address appearing on the Application Form. iBound chooses its domicilium at Block A Bellevue Campus, 5 Bellevue Road, Kloof, Durban, South Africa. 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 said 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 10th (tenth) day after the date of posting or on the day of delivery as the case may be.

## **21. General**

21.1 No variation, amendment or consensual cancellation of this Agreement or any provision or term thereof or of any agreement, bill of exchange 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 iBound and Customer. With respect to new pricing and/or service specifications in respect of existing

Service/s, an iBound MAC Form signed by a duly authorised representative of iBound and a duly authorised representative of Customer will constitute a written variation of the Agreement in accordance with this clause 21.1.

21.2 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.

21.3 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 iBound or not.

21.4 No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement, bill of exchange or other document issued or executed pursuant to or in 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.

21.5 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.

21.6 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.

21.7 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.

21.8 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 Proprietary Information as set out in clause 14 above.

21.9 The terms and conditions appearing in the Schedule(s) hereto are hereby incorporated into the Agreement. In the event of any conflict between the Standard Terms and Conditions of this Agreement and those appearing in any Schedule/s hereto, these Standard Terms and Conditions shall prevail. In respect of any conflict in respect of pricing in the Agreement or the Schedules hereto, the costs set out in the Cost Schedule shall prevail.

21.10 These terms and conditions, together with the Schedule(s), Annexures and attachments hereto, constitute the whole of the agreement between iBound and Customer relating to the subject matter hereof, notwithstanding anything in Customer's inquiry, specification, acceptance, order or other documentation or discussion to the contrary.

## **22. Application of the Consumer Protection Act**

22.1 A transaction (as defined in the CPA) between the Customer and iBound may or may not fall under the provisions of the CPA depending upon whether certain values set out in clause 22.2 in respect of the Customer (“Threshold Values”) are below a certain value at the time the transaction is entered into.

22.2 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.

22.3 iBound' duties towards the Customer may vary depending upon whether the transaction in question is subject to the CPA, and iBound will act upon the information given to it by the Customer in this regard. Consequently:

22.3.1 The Customer warrants that any statement made to iBound in respect of its Threshold Values is accurate.

22.3.2 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, iBound may at its instance require the Customer to provide it with financial statements as proof thereof.

22.3.3 If the Customer misstates the Threshold Values in such a way that iBound 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 iBound resulting from such misstatement.