

ChillNet CC
P.O Box 21422
Valhalla
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Tel: +27(072) 728 4659
Fax: 086 610 4420
E-Mail: accounts@chillnet.co.za
Web: <http://www.chillnet.co.za>

Registration Number: (2005/007043/23)

END USER TERMS AND CONDITIONS

1. INTRODUCTION

- 1.1 ChillNet CC has agreed to provide the services to the subscriber on the following terms and conditions.
- 1.2 Upon subscription for the services, ChillNet CC will issue a user name and password to the subscriber. By using the user name and password to access the services and/or by using the services, the subscriber shall signify the subscriber's acceptance of these terms and conditions of use, which will form a binding agreement between the subscriber and ChillNet CC.

2. INTERPRETATION

For the purposes of this agreement –

- 2.1 "services" means the internet access and/or related services described herein provided by ChillNet CC to the subscriber in accordance with the terms and conditions contained herein;
- 2.2 "subscriber" means the party who has purchased the services from ChillNet CC;
- 2.3 "subscription period" means the period for which the subscriber subscribes for the services;

3. SERVICES

- 3.1 ChillNet CC shall provide all e-mail and web-hosting related services required in terms of the provisions of this agreement.

4. SERVICE AVAILABILITY

- 4.1 ChillNet CC shall use reasonable endeavors to keep the services available at all times. However, the subscriber agrees that ChillNet CC shall not be liable to the subscriber or any other person whatsoever in respect of any loss or damages caused by or arising from the unavailability of, or any interruption in the services for any reason whatsoever.
- 4.2 ChillNet CC shall use their best endeavors to notify the subscriber of any maintenance and repairs which may result in the services being unavailable, but do not warrant that such notice will be given in advance.
- 4.3 Neither the subscriber nor any other person shall have any claim against ChillNet CC for any direct, consequential, incidental, indirect or special loss or damages including (without being limited to) business interruption, loss of business information, loss of data or other pecuniary loss, arising from the unavailability of, or interruption in the services, regardless of whether such claim is based on breach of contract, delict, breach of implied warranties or otherwise and even if the possibility of such loss or damages could have been foreseen.

5. DURATION

This agreement shall, save as expressly indicated to the contrary in any application form, commence upon acceptance of the application by ChillNet CC and shall continue indefinitely thereafter, provided that your account is paid up to date, if not so, you will be notified through SMS and/or e-mail. If the account is not paid thereafter, the service provided by ChillNet CC to the subscriber will be suspended.

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6. SUBSCRIPTION FEES

The subscriber, in accordance with the completed application form, agrees to pay such charges as levied by ChillNet CC from time to time as follows –

- 6.1 monthly or quarterly subscriptions shall be payable by the subscriber to ChillNet CC, monthly or quarterly in advance as the case may be. Pro-rata charges, should this be applicable, will be charged for the first month or quarter's billing. Annual subscriptions are payable annually, in full, in advance, by the subscriber to ChillNet CC;
- 6.2 in order for ChillNet CC to activate the subscriber's account, details of a valid Visa, Master or a current or savings bank account need to be provided for debit order purposes. All amounts due to ChillNet CC will be recovered from the subscriber's specified banking institution;
- 6.3 ChillNet CC will only issue invoices on request by the subscriber;
- 6.4 in the event the subscriber fails to pay any charges, ChillNet CC shall be entitled to suspend the services, in whole or in part from the 5th day of each month when payment was due; and may charge penalty fees to the subscribers account in this event.
- 6.5 Notwithstanding anything to the contrary contained herein –
 - 6.5.1 ChillNet CC shall have the right, by written notice to the subscriber, at all times during the period of this agreement to vary the charges and fees payable by the subscriber to ChillNet CC;
 - 6.5.2 all payments to be made by the subscriber to ChillNet CC shall be made free of deduction, bank charges or commission, strictly on the due date for the payment thereof, time for payment being of the essence of this agreement;
 - 6.5.3 should the rate of value-added tax or such other similar taxation be varied from time to time, the payments to be made by the subscriber to ChillNet CC shall be adjusted accordingly.

7. INDEMNITY

The subscriber hereby unconditionally and irrevocably indemnifies ChillNet CC and agrees to hold ChillNet CC free from all loss, damages, claims and/or costs, of whatsoever nature suffered or incurred by ChillNet CC or instituted against this service provider as a direct or indirect result of –

- 7.1 the subscriber's use of the services;
- 7.2 the subscriber's failure to comply with any provision of this agreement or any other requirements which ChillNet CC may impose from time to time; and
- 7.3 any unavailability of, or interruption in the services, as contemplated in clause 4 above.

8. CONFIDENTIALITY

- 8.1 ChillNet CC shall not divulge any personal information obtained from the subscriber to any third parties unless –
 - 8.1.1 the subscriber has consented to any disclosure of such personal information to be made to any third party;
 - 8.1.2 any disclosure of such personal information is to be made by ChillNet CC to any of their employees or agents for the purpose of rendering the services to the subscriber;
 - 8.1.3 ChillNet CC is compelled by any law or order of court to disclose such personal information.

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- 8.2 Any personal information supplied by the subscriber to ChillNet CC, shall be securely stored.
- 8.3 Whilst ChillNet CC shall endeavor to protect the subscriber from disclosure to any other party concerning the information furnished in this agreement in accordance with the provisions of clauses 8.1 and 8.2 above, ChillNet CC shall nonetheless not be liable for damages in any manner whatsoever to the subscriber should such information become known to any other party, provided that such endeavor shall not apply in regard to any information which is publicly available from sources other than the parties.
9. SUBSCRIBER ETIQUETTE
- 9.1 The subscriber agrees –
- 9.1.1 not to use the services for illegal purposes;
- 9.1.2 not to interfere with or disrupt the services or servers or networks connected to the services;
- 9.1.3 to comply with all requirements, procedures, policies and regulations of networks connected to the services;
- 9.1.4 to comply with all applicable laws regarding the transmission of technical data exported from the country in which the subscriber is connecting to the services;
- 9.1.5 not to transmit through the services any unlawful, harassing, libelous, privacy invading, abusive, threatening, harmful, vulgar, obscene or otherwise objectionable material of any kind;
- 9.1.6 not to transmit any material that violates the rights of another, including but not limited to the intellectual property rights of another;
- 9.1.7 not to transmit any material that violates any applicable local, state, national, or international law or regulation;
- 9.1.8 not to attempt to gain unauthorized access to other computer systems or networks connected to the services;
- 9.1.9 not to transmit "junk mail", "spam", "chain letters", "viruses", "worms", "hoaxes" or unsolicited mass distribution of e-mail;
- 9.1.10 to protect their equipment against viruses, and to apply patch updates to their operating systems on a regular basis.
- 9.2 Should the subscriber not comply with any one or more of the above practices, which shall be determined in ChillNet CC's sole discretion and which decision shall be final, then ChillNet CC shall be entitled, without prejudice to any other rights it may have, to –
- 9.2.1 without notice, suspend the subscriber's access to the services; and
- 9.2.2 terminate this agreement with immediate effect.

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10. TERMINATION

Should the subscriber be in breach of any provision of this agreement, then ChillNet CC shall be entitled, without prejudice to any other rights it may have and without notice to the subscriber, to forthwith –

- 10.1 claim immediate payment of all outstanding amounts payable in terms of this agreement; and/or
- 10.2 suspend the subscriber's access to the services; and/or
- 10.3 terminate this agreement, retain all amounts already paid by the subscriber and recover all costs incurred by ChillNet CC, including (without being limited to) legal costs on an attorney and own client basis.

11. ASSIGNMENT

- 11.1 The subscriber shall not cede, assign or delegate or in any manner whatsoever transfer any of its rights or obligations under this agreement without the prior written consent of ChillNet CC.
- 11.2 ChillNet CC shall be entitled to cede, assign, transfer or delegate all or any of their respective rights or obligations under this agreement to an affiliate of ChillNet CC respectively or to any third party without the subscriber's consent.

12. GENERAL

- 12.1 This document constitutes the sole record of the agreement between the parties in regard to the subject matter hereof and ChillNet CC shall not be bound by any express, tacit or implied terms, representation, warranty promise or the like if not recorded herein.
- 12.2 Save as otherwise specifically provided herein, and in particular in relation to ChillNet CC's right to vary its changes and fees from time to time, no addition, variation, or consensual cancellation of this agreement shall be of any force or effects unless in writing and signed by or on behalf of the parties.
- 12.3 No indulgence, which ChillNet CC may grant to the subscriber, shall constitute a waiver of any of the rights of ChillNet CC who shall not thereby be precluded from exercising any rights against the subscriber which may have arisen in the past or which might arise in the future.
- 12.4 All notices, consents, advice or other communication by the parties, shall be in writing and unless in writing, shall be deemed not to have been given or made. For such purpose "writing" shall be deemed to include telegrams, facsimile, telex communications (which have been successfully transmitted) and any electronically delivered data message in accordance with the provisions of the Electronic Communications and Transactions Act, 2002.
- 12.5 These terms and conditions will be governed, construed and take effect in all respects in accordance with the laws of the Republic of South Africa.
- 12.6 The subscriber chooses as its *domicilium citandi et executandi* for all purposes arising from this agreement, the address set out in the application form and any notice given by ChillNet CC to the subscriber at such address by prepaid registered post shall be deemed to have been received by the subscriber and brought to its notice on the 7th (seventh) day after the date of posting.
- 12.7 The subscriber shall be liable for all costs as between attorney and client, which are incurred by ChillNet CC in the pursuance of its right under this agreement. Such costs shall include the cost of tracing as well as collecting commission.
- 12.8 The subscriber shall provide a valid personal e-mail address at all times in order that communications from ChillNet CC with regard to services and accounts can be communicated to this personal e-mail

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address. The obligation rests with the subscriber to notify ChillNet CC of any changes to the personal e-mail address by using "Manage my Account" function on the ChillNet CC Portal website, or by written notice to ChillNet CC.

13. WEB SITE HOSTING

13.1 ChillNet CC shall, in accordance with the Subscriber's choices as indicated on the application form:

13.1.1 host the Subscriber's Web site on the server;

13.1.2 permit Subscribers of the Internet access to the Web site, limited to a maximum monthly data traffic allowance as set out in the specific hosting package the subscriber has chosen, and subject to additional charges should this allowance be exceeded;

13.1.3 provide such platform as set out in the application form;

13.1.4 allocate the Subscriber disk space on ChillNet CC's server as indicated on this application form;

13.1.5 take such steps as ChillNet CC regards as reasonable to secure the Subscriber's Web site from unauthorized access;

13.1.6 shall not be liable for any illegal software or licenses

13.2 The Subscriber acknowledges that ChillNet CC has no knowledge of, nor interest in, nor in any way contributes to, nor approves the creation of the Subscriber's content as hosted by ChillNet CC and published by the Subscriber on the Subscriber's web site and that hosting or publication of certain kinds of content may be offensive, unlawful, in breach of codes of conduct binding on ChillNet CC, violations of legislation (including regulations), violations of the common law generally, and violations of the requirements and rules of any regulatory authority and that hosting and publication of certain kinds of content may cause harm to the name, goodwill and reputation of ChillNet CC, its affiliates, and its business partners.

13.3 Accordingly the Subscriber agrees, if ChillNet CC in the exercise of its sole discretion, is of the opinion that the Subscriber's content is offensive, unlawful, or harmful, as set out above, or the Subscriber has uploaded and utilized illegal or harmful software or licenses, that ChillNet CC without derogating from any of its other rights in terms of this agreement, may:

13.3.1 request the Subscriber forthwith to remove the offensive, unlawful, or harmful content, as the case may be; or

13.3.2 request the Subscriber forthwith to amend or modify the content; or

13.3.3 without notice delete the Subscriber's web site from the server; or

13.3.4 without notice terminate access to the Subscriber's web site.