



## Terms and Conditions

### 1. INTERPRETATIONS AND DEFINITIONS

"**Agreement**" means the agreement set out in this document and any documents incorporated by reference; "**equipment**" means hardware and software associated with the Fax services; "**inbound communications**" means the Services that will allow the END-USER to receive faxes via a dedicated email address; "**Intellectual Property Rights**" means, but shall not be limited to, any ideas, concepts, know-how, data processing techniques, copyrights, patents, designs, inventions, source code and documentation, notes and memoranda which are created, invented and/or developed; "**outbound communications**" means the Services that will enable the END-USER to send faxes from its personal computer; "**Parties**" means ITNT FAX and the END-USER and "Party" means either one of the Parties, as the context may indicate; "**Services**" means the Fax Services (in-bound and out-bound (where requested) fax communication services), to be rendered by ITNT FAX; and In this Agreement, unless clearly inconsistent with or otherwise indicated by the context – ° any reference to the singular includes the plural and vice versa; ° any reference to "person" shall include a natural person as also a juristic person; and ° any reference to a gender includes the other genders.

### 2. CHARGES AND PAYMENTS

2.1 Services pertaining to the initial set-up, initial training, initial support and inbound communications are **FREE**;

2.2 Costs related to the outbound communications facility are stipulated within the outbound communication rate as per the separate Fax Agreement agreed to between the END-USER and ITNT FAX. For activation of Outbound communication services the End-User can contact ITNT FAX at support@itnt.co.za;

### 3. INTELLECTUAL PROPERTY

3.1 It is recorded that all Intellectual Property Rights in relation to the Services, the support, the business, related technologies, business methodology and the actual ITNT FAX fax to email number, as recorded under the general understanding above, is either owned by ITNT FAX, alternatively by certain other license holders who has licensed the use thereof to ITNT FAX, and the End-User acknowledges that it shall have no claim to the Intellectual Property rights or the particular fax to email number that attach to the aforesaid Services, support services, technologies and business methodologies or any Intellectual Property utilised by ITNT FAX in its business, merely as a result of this Agreement;

3.2 The End-User 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 and use any content in accordance with ITNT FAX's Intellectual Property Rights;

3.3 Any copyright, trademarks, patents, designs or other intellectual Property Rights including the development of any hardware, software, know-how, techniques or the like, which may come into existence during the course of this agreement shall remain the property of ITNT FAX, alternatively the License Holders or other business partners of ITNT FAX, and above clause shall apply *mutatis mutandis*

3.4 Nothing in this agreement shall entitle the End-User to use ITNT's, inclusive of license holder's, names, logo's, trademarks, designs, copyrights or any other intellectual property in any manner whatsoever without such other party's prior written consent;

### 4. SUSPENSION OF SERVICES

ITNT FAX reserves the right to suspend the provision of the Service/s for the purposes of maintenance, modification or remedial work. In the event of any such suspension whether initiated by ITNT FAX or a the third party service provider ITNT FAX shall provide the End-User with five days prior written notice subject to receipt of a relevant notice from the third party provider in the case of a suspension initiated by the third party provider and if reasonable possible.

### 5. FORCE MAJEURE

5.1 Should ITNT FAX fail to meet any of its obligations under this Agreement as a result of:

5.1.1 any act of God, war, strike, lock-out or other labour dispute, fire, flood or legislation; or

5.1.2 any computer virus or any other cause beyond the reasonable control of the defaulting party,

(hereinafter the "*force majeure*"), then notwithstanding anything to the contrary contained or implied in this Agreement the affected obligation as well as the other party's counter-obligation shall be suspended for the duration of the force majeure and the End-User shall not have any claim for damages of whatsoever nature against ITNT FAX.

### 6. DATA - & PRIVACY PROTECTION

6.1 The email addresses used in this Agreement are used for the purpose of this Agreement only. The email addresses may not be used for any other purpose unless the parties to this email have opt-in for such other use. The email addresses may not be used for any unsolicited communications or placed in a database to be used by 3rd parties for purposes of unsolicited communications;

6.2 Although ITNT FAX is not obliged to provide security in terms of the fax to email communications ITNT FAX feels it is important that the End-User's information or any communication between End-User and ITNT FAX is dealt with

in the most secure manner reasonable possible, however because of the nature of the internet ITNT FAX cannot warrantee that the End-User's communications is completely secure;

#### **7. THE END-USER'S OBLIGATIONS**

7.1 The End-User shall not commit or attempt to commit any act which directly or indirectly:

7.1.1 damages the technical infrastructure or any part thereof;

7.1.2 impairs ITNT FAX from being able to provide the Service in a reasonable and business-like manner;

7.1.3 results in information security risks, threats and incidents including without limitation malicious code, denial of service, intellectual property infringement and confidentiality breaches;

7.1.4 be in breach of any laws.

#### **8. DURATION, BREACH AND TERMINATION**

8.1 This Agreement shall endure indefinite, subject to the terms and conditions in this clause 8;

8.2 ITNT FAX will be entitled to terminate this Agreement at anytime without notice to the End-User if the End-User breaches any term of this Agreement;

8.3 This Agreement and the obligations of ITNT FAX shall automatically be terminated upon the termination or cancellation for any reason whatsoever of the contract and/or License by any service provider and/or Licensor and the End-User shall not have any claim whatsoever against ITNT FAX or its service provider or Licensor;

8.4 This Agreement can be terminated by either party by furnishing the other with not less than 1 (one) month's written notice ("Termination Notice");

8.5 The End-User agrees to utilize the Services on a regular basis and if not utilized for a period of two continuous months, the user fax number may be reallocated to another subscriber, subsequent to a notification from ITNT FAX.

#### **9. LIMITATION OF LIABILITY**

9.1 ITNT FAX shall not be liable in terms of this Agreement, in delict, warranty or otherwise for any direct, indirect or consequential damages, loss of profit, liability or destruction suffered by the End-User, howsoever arising and the End-User indemnifies ITNT FAX accordingly;

9.2 The End-User hereby waives all other warranties, guarantees, conditions or liabilities, express or implied, arising by law or otherwise, including without limitation, any obligation of ITNT FAX as stipulated above arising out of the use of, or inability to use the ITNT FAX Services (including but not limited to the fitness of the equipment). Without limiting the a foregoing, ITNT FAX does not give nor imply any guarantee with respect to neither the quality nor the suitability of the Services for a specific application or that the Services will be fit for the purposes for which it is to be used by the End-User and is not bound to any representations not in writing regarding the quality of the Services or the suitability thereof for a specific use. Also, it is not a term of this Agreement that use of the Services will be uninterrupted or error-free;

9.3 The End-User hereby indemnifies ITNT FAX against and holds ITNT FAX harmless from any claim by any third party arising directly or indirectly out of access to or use of the ITNT FAX Service;

9.4 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, and all liability on the part of ITNT FAX of any loss or damage thereby incurred or for any costs, claims or demands of any nature arising there from, is excluded, and the provision of clauses 9.1 above shall apply *mutatis mutandis* to such exclusion, on condition that ITNT FAX provides the End-User with a written notice 3 (three) days prior to the maintenance, repair and / or improvement work.

#### **10. WARRANTIES**

10.1 ITNT FAX provides no warranties or guarantees of any nature in respect to the Service;

10.2 Without limitation to the generality above, ITNT FAX does not warrant or guarantee that the information transmitted by or available to the End-User by way of the Service/s:

10.2.1 will be preserved or sustained in its entirety;

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

10.2.3 will be suitable for any purpose;

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

10.2.5 will be secured against intrusion by unauthorized third parties.

#### **11. MORE INFORMATION ABOUT ITNT**

a. Full name: Modem Computer Services t/a InTheNet Technologies

Johannesburg: Tel :+27 (0) 11 792 5990, Fax: +086 682 5204: : email support@itnt.co.za

#### **12. AGREEMENTS AND COMMUNICATIONS WITH ITNT FAX**

12.1 Except for this Agreement, no other agreement will be concluded by electronic communications, unless an authorized representative of ITNT FAX have confirmed such an agreement by return email (auto response excluded) and subject to contract law in general;

12.2 Data Messages sent from ITNT FAX to the End-User have been sent from ITNT FAX's place of business;

12.3 Data Messages sent from ITNT FAX to the End-User is deemed to be received by the End-User when complete message are outside the control of ITNT FAX (left the system of ITNT FAX);

12.4 Data Messages from the End-User to ITNT FAX are deemed to be received by ITNT FAX only when ITNT FAX responds thereto. Such acknowledgement further does not give legal effect to that message, unless specifically indicated by ITNT FAX that it does give legal effect to the Message;

### **13. INTERCEPTION, MONITORING AND DISCLOSURE**

13.1 The End-User accepts that should the security of the equipment or communication facilities necessary for the provision of the ITNT FAX Services be compromised, it may cause ITNT FAX considerable financial loss and legal liability and in the interest of the protection and maintenance of ITNT FAX Services facility, the End-User agrees, accepts and acknowledges that ITNT FAX has the right to:

13.1.1 intercept any communications, records, and information directly associated with the Fax services;

13.1.2 communications that may arise in risks, threats or incidents with a view to mitigate such risks, threats and incidents.

13.2 ITNT FAX shall only disclose the contents of a communication if –

13.2.1 authorised thereto by the End-User;

13.2.2 authorised thereto by any third party who send the communication;

13.2.3 reasonably required for the proper execution of the Services in terms of this Agreement; or

13.2.4 authorised or required through due legal process.

### **14. GENERAL**

14.1 No data message, including but not limited to an e-mail, SMS and recorded voice message, sent by the End-User to ITNT FAX shall amend this agreement or the rights and duties of the parties in any manner, unless such a data message is reduced to paper and signed by the parties;

14.2 This Agreement constitutes the entire agreement between the Parties with regard to the subject matter thereof and supersedes all previous agreements, negotiations, representations and correspondence in respect of the subject matter of this Agreement.

14.3 No alteration or variation to, but not limited to, consensual cancellation of this Agreement, including this clause, or settlement of disputes arising under this Agreement, including this clause, shall be of any force or effect, unless it is recorded in writing and signed by the Parties.

14.4 No failure by either Party to enforce any provision of this Agreement shall constitute a waiver of such provision or affect in any way a Party's right to require performance of any such provision at any time in the future, nor shall the waiver of any right arising from any subsequent breach nullify the effectiveness of the provision itself, or be used as an estoppel against any party in respect of its rights under this Agreement;

14.5 The End-User shall not be entitled to cede, assign or transfer its rights and/or obligations under this Agreement without the prior written consent of ITNT FAX. ITNT FAX will be entitled to cede, assign or transfers its rights and/or obligations under this Agreement without prior notice;

14.6 Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement, shall survive any termination or expiration of this Agreement;

14.7 Neither Party shall, during the continuance of this Agreement and for a period of twelve (12) months immediately following the date of termination of this Agreement, directly or indirectly solicit or offer employment or any other form of contract for services to any of the other Party's employees.

### **15. GOVERNING LAW AND JURISDICTION**

The law of the Republic of South Africa shall govern this legal notice and all parties to this message consent to the jurisdiction of the Witwatersrand, Magistrates Court of Johannesburg