



## OUT OF THIS WORLD INTERNET SOLUTIONS

### STANDARD TERMS AND CONDITIONS

As at 2023-03-01

THIS AGREEMENT is made between ASAP Internet (PTY) Ltd also known as "ASAP" and the "customer" / "client".

**1. SERVICES:**

ASAP agrees to provide website hosting and/or internet access and/or email and other Internet or Network services to which the customer has subscribed, subject to the following terms and conditions.

**2. CONTENT AND INDEMNIFICATION:**

The customer acknowledges that ASAP does not regulate or take any responsibility for the content of the customer's websites, email or any other service rendered by ASAP or for the security of customer's password.

ASAP, with effect from the effective date, hereby grants to the customer the use and enjoyment of its computer network to gain entry to the Internet ("access") or related hosting / network services on the terms and conditions set out herein.

- a. The customer hereby acknowledges receipt of such services and agrees to be bound by these Terms & Conditions along with ASAP's Acceptable Use Policy and all other Policies as posted on the ASAP website.
- b. The customer agrees that the use and security of his/her passwords is solely their responsibility.
- c. The customer agrees not to give or make available in any way his/her personal log-in ID and password to any person for such person's use ("unauthorized use") and undertakes to maintain the confidentiality of such log-in ID and password.
- d. The customer agrees that if he/she believes the security of their account has been compromised in any way that he/she will notify ASAP immediately.
- e. Static IP addresses are rented to the customer by ASAP monthly only and are not necessarily a standard service unless specifically stated in the service contract.
- f. The customer warrants that he/she has all rights necessary to lawfully submit any information or materials that he/she is uploading\transmitting to or via ASAP, including all intellectual property rights.
- g. The customer agrees that ASAP may remove any hosted content on the customer's account which is considered, in ASAP's opinion, to be of an illegal nature or for which a valid take-down notice has been received. The customer agrees that ASAP will be indemnified against any action or liability because of these actions.
- h. The customer agrees to indemnify ASAP against any action brought by a third party because of such material or information, or because of the customer's use in any way of the services provided by ASAP.
- i. The customer acknowledges that he/she has read the ASAP Acceptable Use Policy and hereby agrees to abide by and conform to all points as set out in the Acceptable Use Policy.

**3. TRADEMARKS & COPYRIGHTS:**

The customer warrants that he/she has the right to use any trademarks and service marks which the customer may choose to use in its domain name, on their website or any related product or service. ASAP cannot be held responsible in the event of a customer infringing on any intellectual or property copyright.

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#### 4. **NO WARRANTIES:**

ASAP makes no warranties of any kind, whether express or implied, for the services to be provided hereunder.

- a. The customer agrees that ASAP shall not be liable for any losses or damages of any kind to the customer, including but not limited to, loss that may result from service interruption, delays in account activation, delays in general or non-deliveries no matter what the cause might be.
- b. ASAP makes no warranties regarding its ability to recover any lost file or information, regardless of how or why the file / information was lost or deleted.
- c. Use of the service is at the customer's sole risk. ASAP is not responsible for files and data residing on a customer's account.
- d. The customer agrees to take full responsibility for files and data transferred and to maintain all appropriate backup of files and data stored on the ASAP network.
- e. Under no circumstances will ASAP be liable for any consequential damages or for any delictual liability of any nature whatsoever.
- f. ASAP may temporarily suspend its obligations in terms of this agreement in order to service, repair, maintain, upgrade, modify, alter, replace, or improve any of ASAP's services. Where the circumstances permit, ASAP shall use its best endeavours to provide prior notice of any such suspension to the customer. The customer shall not be entitled to any setoff, discount, refund or other credit in respect of any such suspension of service nor in respect of any suspension, which is beyond ASAP control.

#### 5. **BILLING POLICY:**

- a. The charge for a subscription to the service is a monthly fee, payable monthly in advance by the customer to ASAP, including a pro-rata charge for the first month's proportional billing where relevant.
- b. Invoices will be sent to the customer via electronic mail in advance of receiving services. The customer agrees to submit payment for all invoices upon receipt. Accounts not paid in full by the last day of every month preceding the month of service are subject to immediate suspension.
- c. Payment is rendered without deduction, free of exchange or set-off by way of debit order or in such manner as determined acceptable by ASAP.
- d. It is a condition of activation that details of an active bank account be provided for debit order purposes. All amounts due to ASAP will be recovered from the banking source given.
- e. ASAP will not be held responsible for any damages, losses, or claims because of an account being suspended for non-payment.
- f. Accounts 30 days past due are subject to cancellation which will result in the deletion of the customer's files, including but not limited to web pages, email, and databases. ASAP reserves the right to withhold access for overdue accounts, while the customer shall continue to be liable for the service until the conditions of notice of termination are fulfilled.
- g. Without prejudice to rights granted to ASAP in terms hereof, any amount due by the customer to ASAP not paid on due date thereof:

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- i. shall bear interest at a rate equal to the maximum allowable in terms of prevailing legislation, calculated daily in advance from date payment was due until date of actual payment thereof; and
    - ii. should the customer fail to pay any amount owing to ASAP on due date, ASAP shall be entitled, in its discretion, to cancel this agreement without notice to the customer, or to suspend performance of its obligations pending full payment by the client.
  - h. ASAP shall be entitled to take all such steps, without notice to the customer, as may be necessary to recover such outstanding amount. The customer shall be liable to pay all costs incurred in respect of the recovery of such outstanding amount.
  - i. ASAP reserves the right to levy a charge for handling fees at an amount determined by ASAP for monies due in the event of a customer's payment being returned or rejected by the customer's bankers.
  - j. ASAP furthermore reserves the right to blacklist with any or all credit bureau agencies within the Republic of South Africa, any such customer who fails to comply with the payment agreement for subscription to the service. In addition, ASAP will not be held responsible or be required to assist with the removing or rescinding of any such information, which may be recorded by a credit bureau agency.
  - k. The customer agrees that submission of Banking Details to ASAP shall constitute authorisation by the customer for ASAP to bill the specified Bank Account for all fees owed by the customer to ASAP.
  - l. The customer agrees that all setup fees where applicable and monthly fees are non-refundable.
  - m. The customer agrees that unless he/she notifies ASAP of his/her desire to cancel any or all services received, those services will be billed on a recurring basis.
  - n. The signatory hereby binds himself/herself in his/her personal capacity as co-debtor in solidum for the full amount due to ASAP and agrees that the Standard Conditions will apply mutatis mutandis to him/her and he/she renounces the benefits of excursion and division.
  - o. ASAP reserves the right to amend service subscription charges at its sole discretion. Annual increases will be effective 1<sup>st</sup> March of each year – these will be published on the website. In the case of any other increases due directly to changes in Market conditions and Third-Party providers changes, ASAP shall give the customer 30 (thirty) days' notice of any such amendment and the customer shall be bound to such adjustments.
  - p. The customer shall not be entitled to any setoff, discount, refund, or other credit in respect of any suspension or interruption of or delay in service or where in any month the client has utilised less than any minimum bandwidth specified.
  - q. The customer shall be automatically moved to an EFT payment method after three (3) consecutive debit order returns for whatever reasons.
6. **CALL OUT FEES:**  
Once installation has been completed, any subsequent callouts of engineers shall be billed at the engineer's charge out rate, with a minimum charge out of 1 (one) hour plus travel expenses.
7. **DEFINITION OF UNLIMITED BANDWIDTH:**  
The term "Unlimited" is often used within the Internet Services community to describe services to which no hard limits or per unit pricing are imposed, but which are nonetheless governed by limitations of fair and reasonable use, often at the discretion of the service provider. ASAP offers some services with "Unlimited" bandwidth, which bear no per unit charges, nor hard limits, but nonetheless are governed by reasonable and fair use. This means that we will not charge you for any bandwidth your account uses, nor will we impose any

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hard limits on the amount of bandwidth that you can use, provided said use is what ASAP in its sole discretion deems to be reasonable.

If at any time ASAP deems your bandwidth usage to be abusive or unreasonable for the level of service you have purchased, or your bandwidth usage threatens to impair the quality of other users' service, ASAP may, at its sole discretion take steps to throttle or prioritise particular traffic protocols or bandwidth you consume in order to protect the quality of our network or request you to upgrade to a higher package.

Special hosting or Internet Access packages can be designed for sites or users that require higher than normal bandwidth. ASAP will at no time attempt to collect payment for bandwidth already used by a customer whose account grants them unlimited bandwidth, regardless of the amount. ASAP does however reserve the right to charge the client for any additional bandwidth he/she might request or require.

### 8. BROADBAND (ADSL/FIBRE/WIRELESS) SPECIFIC CONDITIONS:

- a. Service Levels
  - i. Broadband Services are provided as best-effort services and uptime cannot be guaranteed. During any technical failure, modification or maintenance of the service provided, ASAP will use its reasonable endeavours to resume the service as soon as possible. This excludes upstream provider infrastructure that is not within the control of ASAP.
- b. Modems/Routers
  - i. A WAN enabled router will be required to connect to either a Fibre or Wireless Broadband service.  
A DSL router is required for connection to ADSL/VDSL services. These routers are quoted and charged for at the time of installation or may be provided by the client. If the service is provided with a Free-to-Use router, this remains the property of ASAP and must be returned to ASAP on cancellation of the service.
  - ii. ASAP undertake to carry the cost of one exchange or return if required, thereafter the client will be responsible for the delivery and collections costs.
  - iii. The **FIRST** modem includes a 1 year replacement warranty.
  - iv. Where the client selects to provide their own router ASAP is not responsible for ensuring that the router specifications match that of the line speed ordered, ie. An ethernet router for a 200mb service.
  - v. Where a Free-to-Use router has been made use of and the client elects to upgrade to a speed requiring the replacement/upgrade of the router, ASAP reserves the right to charge an upgrade fee for the router swap out.
- c. Third party Last mile providers
  - i. ASAP makes use of third-party providers to provision services over last mile networks where the third party is either the primary or only supplier of the relevant service.
  - ii. In all cases where these services are made use of, ASAP is subject to the terms and conditions of the third party. ASAP will thus bind our client to the same terms and conditions by acceptance of these terms and conditions.
  - iii. As an ASAP client you accept that any relevant charges levied by the third-party provider in relation to your service being provisioned on the third party's network will be billed to your ASAP customer account and will be payable to ASAP as per ASAP's normal billing processes.



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### 9. DOMAIN NAMES AND DOMAIN NAMES DISPUTES:

- a. ASAP will not be held liable for any disputes arising out of domain name registrations or domain name hosting on behalf of the customer.
- b. ASAP will not be held liable for any losses or damages the customer may suffer due to a domain name being reallocated, transferred or deleted by any Domain Name Authority or NIC.
- c. ASAP will not issue any credits for domain names where the client has requested the wrong domain name to be registered. By submitting a domain name registration form, the customer confirms that he/she has completed the registration form correctly and that the domain name that he/she has entered is correct.
- d. ASAP reserves the right to take ownership of any domain name upon cancellation by the customer should the client not specify any action to be taken in regard to ownership or transfer of the domain name.
- e. ASAP requires 24 hours written notification via email prior to releasing any domain name. Where the customer has not notified ASAP of his intention to transfer or move a domain name, all transfer requests will be declined. For clarification this notification must be sent to **domains@asap.net.za**.
- f. ASAP will retain the administration of the domain name in the event of the customer's accounts not being settled in full on termination of the service agreement.

### 10. PROMOTIONS:

- a. All promotions offered by ASAP are Fibre Network Operator (FNO), area, product and date specific.
- b. ASAP reserves the right to disallow or terminate any promotions for any reason whatsoever.

### 11. CONTRACT SUSPENSION AND TERMINATION:

- a. If ASAP at any time reasonably believes that the customer is in breach of any of the terms and conditions contained in this agreement or is using ASAP' services in an unacceptable manner, ASAP may, at its sole discretion, immediately suspend or terminate the customer's services and/or this agreement without liability.
- b. ASAP may terminate this contract with 1 calendar months' notice to the customer for any reason or for no reason.
- c. The customer may terminate this contract at any time by giving ASAP no less than 1 calendar months' written notification which must coincide with the last day of the billing period. Written notification must be received by the last working day of the month prior to the calendar months' notice. For clarification this notification must be sent to **cancellations@asap.net.za**.
- d. At the time of cancellation notification, the customer shall be responsible for the entire amount of any outstanding fees due.
- e. All goods and services supplied by ASAP remain the property of ASAP until such goods or services have been paid for in full. The customer is not entitled to sell or dispose of any goods / services unpaid for without the prior written consent of ASAP.
- f. All goods supplied by ASAP that remain the property of ASAP, must be returned to ASAP's head office, in the original packaging, within 10 working days from the date of service termination.
- g. Causes for termination of the contract or service due to any of the following instances where the party ("Defaulting Party") is considered to be in default (breach) if it;
  - i. fails to pay any amount due by it in terms of this Agreement, by the due date, and fails to remedy such breach within 7 (seven) days of written notice to do so; or

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- ii. commits a material breach of any other provision of this Agreement and fails to remedy such breach within 5 (five) days (or such period as may be reasonable in the circumstances) of written notice to do so; or
- iii. the Defaulting Party, commits an act of insolvency in terms of Section 8 of the Insolvency Act 24 of 1936, as amended or replaced from time to time, which would have constituted such an act of insolvency if it had been a natural person; or
- iv. an order is made placing the Defaulting Party under supervision and/or commencing business rescue proceedings in respect of such Defaulting Party; or
- v. the Defaulting Party is removed from the register of companies or is placed under provisional or final liquidation or sequestration;
- vi. distributes notice of a meeting of the shareholders or directors of the Defaulting Party, at which meeting the voluntary liquidation of or the commencement of business rescue proceedings in respect of the Defaulting Party will be tabled; or
- vii. board of directors resolves that the Defaulting Party voluntarily begin business rescue proceedings and be placed under supervision;
- viii. is (or is deemed by any authority or legislation to be) financially distressed, as contemplated in section 128 of the Companies Act 71 of 2008, as amended or replaced from time to time; or
- ix. is unable to pay its debts as and when they become payable in the ordinary course of business, (ii) suspends or threatens to suspend payment of all or a material part of its indebtedness to the other Party or any other creditors, (iii) commences negotiations and/or takes any other step with a view to the deferral, rescheduling or other readjustment of all (or all of a particular type of) its indebtedness to its other creditors, or (iv) proposes or makes a general assignment or an arrangement or composition with or for the benefit of its creditors or a moratorium is agreed or declared in respect of or affecting all or a part of its indebtedness to the other Party or its other creditors; or
- x. fails to satisfy any final judgment taken against it or fails to apply to have such judgment set aside within 7 (seven) days of becoming aware of it; or
- xi. commits repeated breaches of its obligations under this Agreement and the cumulative effect of those repeated breaches is a material breach of this Agreement, or
- xii. infringes any intellectual property rights of the other Party and, if capable of remedying, fails to remedy the breach within 7 (seven) days after the date on which the other Party delivered a written notice on the Defaulting Party calling upon it to remedy the breach.

### 12. LEGAL AGE/AUTHORISATION:

- a. The customer certifies that he/she is of legal age in the country of his/her residence to enter into this agreement.
- b. Where acting on behalf of a Partnership, Close Corporation, PTY (Ltd), LTD or any other form of company/legal entity, the customer hereby confirms that he/she has the full permission/authority to act on behalf said legal entity.

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### 13. TAKE-DOWN NOTICE

In terms of Section 75 of the Electronic Communications and Transactions Act ("the Act") ASAP has designated the Internet Service Providers' Association (ISPA) as an agent to receive notifications of infringements as defined in Section 77 of the Act.

Details for ISPA:

Tel: 010 500 1200

complaints@ispa.org.za

PO Box 518

Noordwyk

1687

### 14. AMENDMENTS:

ASAP reserves the right to make amendments or changes to this agreement from time to time. ASAP shall notify all customers via e-mail when changes are made.

### 15. CESSION, DELEGATION OR ASSIGNMENT:

The customer shall not be entitled to cede its rights or assign its obligations in terms of this Agreement to any third party without the prior written consent of ASAP, which consent may not be unreasonably withheld.

### 16. DOMICILIUM:

For all purposes, including the giving of any notice, the making of any communication and the serving of any process, ASAP and customer respectively choose their domicilium citandi et executandi ("domicilium") at their respective street addresses appearing on the face hereof. Either party shall be entitled from time to time to vary its domicilium provided that any address selected by it shall be situate in South Africa and any such variation shall only become effective upon receipt of notice in writing by the other party of such variation. Any notice which either party may give to the other shall be posted by prepaid registered post or hand delivered or sent by telefax to the other party's domicilium.

### 17. LITIGATION AND ATTORNEY'S FEES:

In the event of any dispute arising out of or relating to this agreement, such dispute shall be resolved in Durban, South Africa.

The customer shall be liable to ASAP for all legal expenses on the Attorney Client scale of an Attorney and Counsel incurred by ASAP in the event of (a) any default by the customer or (b) any litigation in regard to the validity and enforceability of this agreement. The customer will also be liable for any collection or valuation fees incurred. The customer agrees that ASAP shall not be liable to make payment of security into Court in terms of section 62 of the Magistrate's Court Act, as amended. The customer hereby consents to the jurisdiction of the Magistrates Court. The customer chooses Domicilium citandi et executandi for servicing of all documents and processes the address entered in on the Customer Account Information form.

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**18. ENTIRE AGREEMENT AND SEVERABILITY:**

This represents the complete agreement and understanding between ASAP and customer with respect to the subject matter herein. In the event that any term or provision of this agreement is held by a court to be unenforceable, then the remaining provisions shall remain in full force and effect.

**19. ACCEPTANCE OF TERMS:**

Use of any ASAP services constitutes acceptance of the terms and conditions contained in this agreement and any amendments thereto as well as acceptance to ASAP's Acceptable Use Policy.

\_\_\_\_\_  
Customer signature

\_\_\_\_\_  
Date

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