

## **Screamer Telecommunications Services (Pty) Ltd**

### **TERMS & CONDITIONS OF USE & SERVICE OF ADSL PRODUCTS AND SERVICES**

#### **1. SCOPE OF AGREEMENT**

Screamer Telecommunications Services (Pty) Ltd ("Screamer") hereby sells the service to the Client on the terms and conditions contained herein. The Client is deemed to have read and irrevocably accepted the terms and conditions. Screamer Telecommunications Services (Pty) Ltd reserves the right to modify the terms and conditions at any time, effective upon posting of the modified terms and conditions at [www.screamer.co.za](http://www.screamer.co.za). It is the Client's responsibility to ensure their awareness of any such changes. If you do not want to be bound by these Terms and Conditions you must not use or subscribe to the DSL Service.

The provision of Screamer's DSL access service is subject to the provision of upstream services by Telkom SA Limited. The following legal document accordingly applies to the provision of the SCREAMER service and are binding on any client to such service:

- Telkom's Standard Terms and Conditions for the provision of Public Switched Telecommunication Services, available here ([http://www.telkom.co.za/pls/portal/docs/page/contents/common/downloads/telkom\\_terms\\_and\\_conditions\\_1\\_june\\_2005.pdf](http://www.telkom.co.za/pls/portal/docs/page/contents/common/downloads/telkom_terms_and_conditions_1_june_2005.pdf)) or from all Telkom Direct Shops

Clients and potential clients are encouraged to familiarize themselves with the content of these documents, which are incorporated by reference into these Terms and Conditions.

CLIENTS ACCORDINGLY AGREE THAT THEY HAVE READ, UNDERSTOOD AND AGREED TO THESE DOCUMENTS AND THE TERMS AND CONDITIONS CONTAINED IN THEM.

#### **Service availability and confirmation of service availability**

Before subscribing to the service please ensure that you have a valid and active Telkom telephone service as this is a prerequisite for provision of the service.

SCREAMER advises potential clients to confirm the availability of the service in their particular desired location prior to purchasing or ordering a DSL modem or other hardware. Due to the fact that Telkom cannot guarantee the bandwidth throughput achieved when clients access the Internet utilizing a DSL access line, SCREAMER can likewise also not offer such a guarantee.

The availability of DSL services can be checked here

(<https://secure1.telkom.co.za/adslchecker/check.htm;jsessionid=a58f995130e8d2c0387f5ad3408c8d02a6c732ff523b.e3uSbNqSahmLe34OaxuQahyPbx10n6jAmljGr5XDqQLvpAe>)

Screamer can also not guarantee the provision of the requested service upon the receipt of an application form. Applicants will be formally notified after receipt of an order on whether or not the service can or will be provided.

Service availability to any applicant is further subject to:

- Any credit checks which SCREAMER may, in its sole discretion, elect to carry out and, for this purpose, the applicant hereby authorises SCREAMER to conduct such checks and provide such information to any relevant credit bureau as may be required for this purpose;
- Compliance by the applicant with legislative requirements such as those set out in the Regulation of Interception of Communications and Provision of Communication-related Information Act ("RICA") through the provision by the applicant of
  - Full names (if the applicant is a business then the full names of the person representing the business in making the application)
  - Identity Number (if the applicant is a business then the identity number of the person representing the business in making the application)
  - Residential / Business and Postal address (if the applicant is a business then the residential address of the person representing the business in making the application)
  - A certified copy of the applicant's identity document (if the applicant is a business then a certified copy of the identity document of the person representing the business in making the application)
  - A certified copy of the applicant's business letterhead (if applicable)

#### **ADSL line rental**

Where a client elects to rent the ADSL line from SCREAMER then SCREAMER will make application to Telkom on behalf of the client and the client will thereafter pay SCREAMER in respect of the rental of the line.

Clients electing to rent the ADSL line from SCREAMER will qualify for the Self-Install Option, subject to the restrictions placed thereon from time to time by Telkom. Self-Install allows the client to affect the portion of the installation required at their premises, rather than wait for a Telkom technician.

### **Rollover of bandwidth**

Where a client selects a fixed cap package, bandwidth not utilised during the relevant period is not carried over and is lost. The fixed cap client will then be reallocated bandwidth at the commencement of the next month.

### **"Out of Bundle" bandwidth**

Where a client selects a fixed cap package and exhausts the purchased bandwidth or reaches the fixed cap, he or she will be allowed to continue using the service at Screamer's out of bundle rates as published from time to time on its web site ([www.screamer.co.za](http://www.screamer.co.za)). All out of bundle usage and charges will be debited to the client's bank account at the end of the month of the usage together with their normal subscription for the forthcoming month's bandwidth. By subscribing to the Service the client hereby requests and authorises Screamer to draw against the account completed on the application form, with whichever bank it may be, the amounts required for this additional out of bundle usage and the Client authorises their bank to DEBIT their account with any amounts drawn against it in terms of this contract, on the last day of each month.

### **Monitoring of usage**

SCREAMER takes steps to monitor the bandwidth usage of clients so as to ensure that client bandwidth limitations are not exceeded. This monitoring is subject to the nature of the ADSL service as offered by Telkom, including the fact that monitoring is session-based, i.e. bandwidth usage can only be calculated when the client's DSL session is terminated. As a result a client's current session will be automatically terminated for a very short period of time every 24 hours.

SCREAMER further reserves the right to take such steps as may be necessary to properly monitor and calculate usage, including remotely terminating client DSL sessions.

NOTWITHSTANDING THE MONITORING OF USAGE THE CLIENT AGREES THAT HE OR SHE REMAINS SOLELY RESPONSIBLE FOR MONITORING THEIR BANDWIDTH USAGE AND ENSURING THAT, IN THE CASE OF A CAPPED DATA PACKAGE THEY ARE AWARE OF THE OUT OF BUNDLE DATA THAT THEY ARE USING DURING ANY APPLICABLE PERIOD.

Bandwidth usage can also be checked by logging in to the usage service – **(please insert the web address for the Screamer bandwidth monitor)**

## **2. INTERPRETATION**

In these terms and conditions:

- 2.1 "the Client" means the party who has purchased the service and/or any person using the service;
- 2.2 "the service" means the Internet service provided by Screamer Telecommunications Services (Pty) Ltd to the Client in accordance with the terms and conditions contained herein;

## **3. PROVISION OF SERVICE**

- 3.1 The Client shall be solely responsible for provisioning, configuration and maintenance of all his/her equipment, including (but not limited to) computer hardware equipment, telecommunication equipment, modems and the like, utilized by the Client to obtain and retain access to the required service(s).
- 3.2 The Client shall be liable for all telephone call charges and other third party costs incidental thereto.

## **4. NETWORK & AVAILABILITY OF SERVICE**

- 4.1 The Screamer Telecommunications Services (Pty) Ltd Network may be used to link into other networks worldwide and the Client agrees to conform to the acceptable use policies of these networks.
- 4.2 The Client may not circumvent client authentication or security of any host, network, or account (referred to as "cracking" or "hacking"), nor interfere with service to any client, host, or network (referred to as "denial of service attacks").
- 4.3 Without prejudice to the foregoing, Screamer Telecommunications Services (Pty) Ltd considers that any use or application that overloads the Screamer Network by whatever means will be considered as making profligate use of the Screamer Network and is as such NOT allowed.
- 4.4 Clients who violate systems or network security may incur criminal or civil liability. Screamer Telecommunications Services (Pty) Ltd will fully co-operate with investigations of suspected criminal violations, violation of systems or network security under the leadership of law enforcement or relevant authorities
- 4.5 Screamer Telecommunications Services (Pty) Ltd shall make every effort to make the service available at all times and shall use its utmost endeavours to strive for 100 % (one hundred percent) "best effort" uptime. Screamer Telecommunications Services (Pty) Ltd is, however, unable to, and does not, guarantee 100 % (one hundred percent) uptime.
- 4.6 Screamer Telecommunications Services (Pty) Ltd shall strive at all times to provide Clients with prior notice, where possible, of scheduled maintenance so as to avoid Clients having to log-off for any period of time.

4.7 Screamer Telecommunications Services (Pty) Ltd shall not be responsible for the performance of external communications networks to which the service is connected, and which networks include the networks of Internet Service Providers other than itself.

4.8 The Client accordingly indemnifies Screamer Telecommunications Services (Pty) Ltd against all claims that may arise as a result of Screamer Telecommunications Services (Pty) Ltd being unable to make its service available to the Client under the circumstances described in this clause.

4.9 Screamer Telecommunications Services (Pty) Ltd shall be entitled to suspend the Services if, during the Client's use of the Services, the Screamer network is or potentially may be jeopardised, harmed and/ or impeded. However, should Screamer Telecommunications Services (Pty) Ltd be able to notify the Client and/ or assist the Client prior to the said suspension, Screamer Telecommunications Services (Pty) Ltd undertakes to provide the same.

4.10 Screamer Telecommunications Services (Pty) Ltd provides, amongst others, a usage and uncapped based ADSL service. In the case of a usage based ADSL service, usage is calculated by Screamer Telecommunications Services (Pty) Ltd, and such usage is considered as being accurate. Screamer Telecommunications Services (Pty) Ltd shall not be held responsible for any bandwidth loss or theft, as it is the customer's responsibility to ensure proper management of their usage.

4.11 Payment of your account is due on the last day of each month, paid in advance for the following month's access and/or broadband package and/or services. Accounts purchased within a month, will only last until the end of the month it was purchased in.

4.12 By subscribing for this service, you automatically agree to these terms of service.

## **5. CLIENT ETIQUETTE & ILLEGAL USE**

5.1 The Client acknowledges and agrees that clients are expected to abide by generally accepted Netiquette.

5.2 The Client acknowledges that Screamer Telecommunications Services (Pty) Ltd is unable to exercise control over the content of the information passing over the Screamer Network. Therefore, Screamer Telecommunications Services (Pty) Ltd is not responsible for the content. The Screamer network may only be used for lawful purposes. The Client shall accordingly not use the service in any manner which:

5.2.1 constitutes a violation of any law, regulation or tariff that may be in force in South Africa or elsewhere;

5.2.2 constitutes an act or omission that is generally unacceptable or offensive to Internet clients in general, to the public at large or as same may be determined from time to time by Screamer Telecommunications Services (Pty) Ltd in its sole discretion, specifically including (but not limited to) the hosting of pornographic or other obscene material, spamming, hacking, unsolicited mailing or the use of material that violates export control laws;

5.2.3 is defamatory, fraudulent or deceptive;

5.2.4 is intended to threaten, harass or intimidate;

5.2.5 tends to damage the name or reputation of Screamer Telecommunications Services (Pty) Ltd;

5.2.6 interferes with the use and enjoyment of Internet related services of Clients of Screamer Telecommunications Services (Pty) Ltd;

5.2.7 forwards or propagates chain letters or malicious e-mail; and/or

5.2.8 solicits mail for any other address other than that of the Client, except with full consent of the owner of the referred address.

5.3 The Client undertakes to abide by all laws applicable to copyright, re-distribution or re-sale of any data and/or information retrieved from the service and/or the Internet. Use, transmission, distribution or storage of any material protected by copyright, trademark, trade secret or other intellectual property right without proper authorization, is prohibited.

5.4 The Client shall not, without the express written permission of Screamer Telecommunications Services (Pty) Ltd, resell or make available to any third party such services as they might receive from Screamer Telecommunications Services (Pty) Ltd.

5.5 The Client acknowledges that third party product and service providers advertise their products and services on the Screamer web site. Screamer Telecommunications Services (Pty) Ltd forms partnerships or alliances with some of these vendors from time to time in order to facilitate the provision of these products and services to the Client. However, the Client acknowledges and agrees that at no time is Screamer Telecommunications Services (Pty) Ltd making any representation or warranty regarding any third party's products or services, nor will Screamer Telecommunications Services (Pty) Ltd be liable to the Client or any third party for any claims arising from or in connection with such third party products and services.

5.6 The Client shall indemnify and keep Screamer Telecommunications Services (Pty) Ltd indemnified from any claim howsoever arising (lawful or otherwise), brought by any third party resulting from the Client use of the Screamer network and/or the telecommunication line and/or the Service. The Client will pay all costs, damages, awards, fees (legal fees 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 of such judgement) and judgments finally awarded against Screamer Telecommunications Services (Pty) Ltd arising from such claims, and will provide Screamer Telecommunications Services (Pty) Ltd with notice of such claims, full authority to defend, compromise or settle such claims and all reasonable assistance necessary to defend such claims, at the Client's sole expense. Screamer Telecommunications Services (Pty) Ltd agrees that any actions taken by Screamer Telecommunications Services (Pty) Ltd in respect of such claims will be taken in consultation with the Client, subject to Screamer Telecommunications Services (Pty) Ltd being entitled to run all legal proceedings.

## **6. PAYMENT FOR SERVICE**

6.1 The Client shall pay to Screamer Telecommunications Services (Pty) Ltd a monthly subscription as set out in the tariff guide appearing at [www.screamer.co.za](http://www.screamer.co.za)

6.2 Subscriptions are payable monthly in advance and Out of Bundle charges are payable monthly in arrears by the Client to Screamer Telecommunications Services (Pty) Ltd. Payment is to be rendered without deduction or demand by Screamer by debit order. This amount is non-refundable.

The Client hereby requests and authorises Screamer to draw against the account completed on the application form, with whichever bank it may be, the amounts required under this contract or any renewal thereof and the Client authorises their bank to DEBIT their account with any amounts drawn against it in terms of this contract, on the last day of each month.

6.3 Should the aforesaid payment not be paid by the end of the month and/or the debit order returned unpaid, the service will be terminated forthwith and without notice to the Client.

6.4 In the event of a defaulting Client wanting to make use of the service at any stage after being terminated, a reconnection charge will be levied.

## **7. SUSPENSION / DISCONNECTION OF SERVICE**

Screamer Telecommunications Services (Pty) Ltd may at its sole discretion from time to time and without notice, suspend or disconnect a Client from the Service in any of the following circumstances:

7.1 During any technical failure, modification or maintenance of the Service, provided that Screamer Telecommunications Services (Pty) Ltd will use its reasonable endeavours to resume the Service as soon as possible;

7.2 Should the Client fail to comply with any of the Terms and Conditions of this agreement;

7.3 Screamer Telecommunications Services (Pty) Ltd reserves the right to levy a re-connection charge, an amount determined and calculated at the discretion of Screamer Telecommunications Services (Pty) Ltd, payable by the Client on invoice, for any request to be re-connected to the Service, and irrespective of how the Service Screamer's suspended or disconnected.

7.4 Notwithstanding any suspension of the Service in terms hereof, the Client shall remain liable for all charges due throughout the period of suspension unless Screamer Telecommunications Services (Pty) Ltd in its sole discretion determines otherwise in writing.

## **8. TERMINATION OF SERVICE**

8.1 Save for the immediate termination of a defaulting Client Screamer will give the Client 10 days written / email notice.

8.2 Should the client wish to terminate this contract the client must give Screamer 1 calendar months notice using the prescribed form obtainable from Screamer's office.

## **9. REGULATORY COMPLIANCE**

The Client undertakes to comply with all regulatory obligations that may now or in the future be imposed by the body under whose authority the service falls. The Client furthermore acknowledges that the imposition of regulatory obligations by such body may necessitate amendments to be effected to these terms and conditions and hereby consents to Screamer Telecommunications Services (Pty) Ltd effecting such amendments without prior notice.

## **10. DISCLAIMER & LIMITATION OF LIABILITY**

SCREAMER accepts no liability for any loss or damage to the property or equipment of the customer arising out of the provision, installation or maintenance of the DSL access service.

APPLICATION FOR, USE OF AND SUBSCRIPTION TO THIS SERVICE ARE AT THE SOLE RISK OF THE CLIENT OR APPLICANT.

The provision of the SCREAMER Bundled DSL service is subject to

- Telkom provision of upstream and network services
- Seacom provision of upstream and network services
- Network availability
- Distance of the applicant from the local exchange
- Copper quality as provided by Telkom
- Line sync speed limitations as may be applied or incurred through Telkom

SCREAMER WILL NOT BE LIABLE TO THE CLIENT OR ANY THIRD PARTY IN RESPECT OF ALL AND ANY DAMAGES, LOSS, CLAIMS OR COSTS, OF WHATEVER NATURE AND INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES, SUFFERED BY THE CLIENT OR THIRD PARTY, HOWSOEVER ARISING.

## **INDEMNITY**

THE CLIENT INDEMNIFIES AND HOLDS HARMLESS SCREAMER IN RESPECT OF ANY DAMAGES, LOSS OR COSTS OR CLAIMS INSTITUTED AGAINST SCREAMER ARISING FROM ANY APPLICATION OR SUBSCRIPTION TO OR USE OF THE SERVICE OR BREACH OF THE TERMS AND CONDITIONS APPLICABLE TO IT.

## **"BEST EFFORT" SERVICE**

Due to the fact that Telkom currently only offers DSL access services as a "best effort" service, Screamer's DSL service is likewise also a "best effort" service and no guarantees or warranties whatsoever are provided on throughput or any other aspect of the service, including but not limited to warranties in respect of merchantability, non-infringement of third party rights, freeness from errors or interruptions or availability, other than set out in these terms and conditions.

Due to the fact that Telkom cannot guarantee the bandwidth throughput achieved when clients access the Internet utilizing a DSL access line, Screamer can likewise also not offer such a guarantee.

Please note that DSL is an access medium to the Internet and accordingly remains subject to any bandwidth related constraints which may apply to or be experienced in the use of the World Wide Web (WWW).

## **11. GENERAL**

11.1 No Guarantees: The Client acknowledges and agrees that these terms and conditions govern the Clients use of the service and that there are no other agreements, guarantees or representations, either verbal or in writing, in regard thereto.

11.2 No Resale: The Client shall not, without the express written permission of Screamer Telecommunications Services (Pty) Ltd, resell or make available to any third party such services as they might receive from Screamer Telecommunications Services (Pty) Ltd.

11.3 These terms and conditions may change from time to time. The Client may view such terms and conditions at [www.screamer.co.za](http://www.screamer.co.za) and unless otherwise notified, Screamer Telecommunications Services (Pty) Ltd shall deem that the Client has acknowledged and agreed thereto within 14 (fourteen) days of such changes being effected.

11.4 Cession and assignment: The rights and obligations of the client in terms of the agreement may not be ceded or delegated to any third party. The rights and obligations of Screamer in terms of the agreement may be ceded and delegated by it to any other party on written notice to the client.

11.5 Passwords: It is the responsibility of the client to keep all usernames and passwords confidential to prevent unauthorized access to the service.

11.6 Interception: Subject to the provisions of Regulation of Interception of Communications and Provision of Communication-Related information Act (RICA), 70 of 2002, the client acknowledges that Screamer may be obliged by law to intercept, block, filter, read, delete, disclose and use all communications sent or posted using the SP network.

11.7 Notices: Any notice in connection with the agreement must be addressed to:

11.7.1 in the case of Screamer, to Screamer Telecommunications Services (Pty) Ltd, 21 Watershed Close, Louwlandia, Centurion, or by fax to 011 467 1835 marked for the attention of the Legal Department; or

11.7.2 in the case of the client, to the physical address, e-mail address and fax number set out in the application form and marked for the attention of the client.

11.7.3 The notice shall be deemed to have been duly given 7 (seven) days after posting, if posted by registered post; on delivery if delivered to the party's physical address ;on dispatch if sent to the party's then fax number and confirmed by registered letter posted no later than the next business day; or on dispatch if sent to the clients email address, unless the addresser is aware, at the time the notice would otherwise be deemed to have been given, that the notice is unlikely to have been received by the addressee through no act or omission of the addressee.

11.8 Either party may change its address for this purpose by notice in writing to the other party or by Screamer publishing it's new address on it's website at [www.screamer.co.za](http://www.screamer.co.za).

11.9 Entire contract: The Agreement contains all the express provisions agreed on by the parties with regard to the subject matter of the agreement and neither party may rely on any representation which allegedly induced that party to enter into the agreement, unless the representation is recorded in the agreement.

11.10 Waiver: No failure, delay, relaxation, or indulgence on the part of Screamer in exercising any power or right conferred upon it in terms of this agreement shall operate as a waiver of such power or right, nor shall any such failure, delay, relaxation or indulgence be deemed to be a novation of any of the terms and conditions of this agreement.

11.11 Applicable law: The agreement shall be interpreted and implemented in accordance with the laws of the Republic of South Africa and the parties hereby submit to the exclusive jurisdiction of the Magistrates' Court of Johannesburg.

11.13 Disputes: Any dispute arising out of this agreement which is brought to the attention of Screamer by the client, including a dispute about charges, shall be referred in the first instance to the legal department of Screamer at the address set out above for notices. Screamer will use its reasonable endeavours to resolve the dispute within a period of 10 (ten) days, provided that it has all relevant information. If the client is unhappy with the conduct or outcome of the dispute, then it may be referred to dti Consumer Affairs Committee, for attention Chief Director, Office of Consumer Protection, Private Bag X84, Pretoria, 0001, or tel: (012) 394 1542.

11.14 Customer call centre: Calls to our call centre may be recorded for training purposes and for the protection of the client and Screamer.

11.15 Amendments: Clients are required to note that, due to a variety of factors including upstream costs, tariffs and the terms and conditions of these terms and conditions are subject to change. Clients agree to check these terms and conditions regularly and Screamer will highlight any changes made. Where changes to tariffs or the terms and conditions of service are made the client will be deemed to have agreed to the amended tariff or terms and conditions if they continue to use the service. In the event that a client does not agree with any amendment they should cease using the service and contact Screamer.