

1 Definitions

- 1.1 **"Acceptance Date"** means the date on which Client accepted this Agreement;
- 1.2 **"Activation Date"** means the date on which IGAIN will give Client access to and/or enable Client to use a product or service;
- 1.3 **"Agreement"** means the agreement concluded between Client and IGAIN in respect of the product or service contemplated in the Application Form which agreement will be exclusively governed by these general terms and conditions and the product specific terms and conditions applicable to the relevant product or service ("**Product Terms**") read together with the Application Form;
- 1.4 **"Application Form"** means the document (including any electronic document) on which (inter alia) Client selected its service or product of choice;
- 1.5 **"Business Day"** means Monday to Friday, but excludes Saturdays or any day which is an official public holiday in the Republic of South Africa;
- 1.7 **"Business Hours"** means the hours between 08h00 and 17h00 on a Business Day;
- 1.8 **"CPA"** means the Consumer Protection Act, 2008;
- 1.9 **"Client"** means the user of the products or services as fully described in the Application Form;
- 1.10 **"Electronic Communications Act"** means the Electronic Communications Act, 2005;
- 1.11 **"ECT Act"** means the Electronic Communications and Transactions Act, 2002;
- 1.12 **"Equipment"** means any device, equipment or hardware used to access the services or used in conjunction with the services;
- 1.13 **"Intellectual Property Rights"** means the copyright in any work in terms of the Copyright Act, No. 98 of 1978, and includes without limitation the right to reproduce that work, the rights in respect of a trade mark conferred by the Trade Marks Act, No. 194 of 1993, the rights in respect of a design conferred by the Designs Act, No. 195 of 1993, and the rights in respect of a patent conferred by the Patents Act, No. 57 of 1978 including any applications for the foregoing and any names, licenses, know how, trade secrets and data associated with the foregoing;
- 1.14 **"Juristic Person"** means a company or close corporation and includes a body corporate, partnership, association or trust;
- 1.15 **"Legal Notices Website"** means <http://www.igain.co.za/legalpolicies>;
- 1.16 **"IGAIN Marks"** means any trademarks, logos, brand names, trade names domain names or other names or marks of IGAIN whether registered or not;
- 1.17 **"IGAIN", "we", "us" and "our"** means Information Gain CC, Registration Number 2005/091928/23, its affiliates and subsidiaries;
- 1.18 **"NCA"** means the National Credit Act, 34 of 2005;
- 1.19 **"Website"** means www.igain.co.za;
- 1.20 **"Customer", "Client"** means a user of any of IGAIN'S products or services;
- 1.21 **"Uncontrollable Event"** means (including without limitation) any fire, flood, earthquake, elements of nature or acts of God, riots, civil disorders, rebellions or revolutions in any country or any other cause beyond the reasonable control of IGAIN including the termination or suspension of a service or product provided by a Network Operator, that may result in a delay or a failure to provide any product or service; and
- 1.22 **"VAT"** means Value Added Tax as provided for in the Value Added Tax Act, 1991.

2 Commencement, Duration, Termination and Cooling-off

2.1 This Agreement will commence on the Acceptance Date and endure indefinitely until it is cancelled as provided for in this clause 2, or otherwise provided in this Agreement. In the event that the product or service Client has applied for is not activated within 30 (thirty) days of the Acceptance Date (or such extended period as IGAIN may advise) due to an Uncontrollable Event, the Agreement will automatically terminate and no party shall have any liability to the other as a result of such termination.

2.2 Fixed Term Agreements

2.2.1 where the Acceptance Date is after 31 March 2011 and the Customer is a natural person, Client may cancel the Agreement either on the expiry of the fixed period ("**Initial Fixed Period**") selected in the Application Form (such Initial Fixed Period calculated from the Activation Date) or on at least 20 Business Days

written notice to IGAIN at any time prior to the expiry of the Initial Fixed Period, subject to clause 2.2.4. If the Agreement is not cancelled by Client or by us prior to or on the expiry of the Initial Fixed Period, it will automatically continue and constitute a month to month agreement terminable on at least 1 (one) calendar month's written notice to IGAIN, which termination will take effect on the first day of the month immediately following the end of the applicable notice period. We will notify Client not more than 80 (eighty) and not less than 40 (forty) Business Days prior to the expiry of the Initial Fixed Period of the impending expiry date of any material changes to the Agreement that will apply to such automatic renewal and Client retains its right to cancel as aforesaid.

2.2.2 Where the Customer is a Juristic Person, Client may not cancel the agreement during the initial fixed term of the Agreement (such initial fixed period calculated from the Activation Date) save for a material unremedied breach committed by IGAIN. At the expiry of the initial fixed period, the Agreement will automatically renew and shall continue on a month to month basis ("**Renewal Period**") on the revised terms including revised pricing applicable for such Renewal Period which IGAIN will notify Client of prior to the expiry of the initial fixed period. Client may terminate the Agreement during the Renewal Period by giving us 1 (one) calendar months' notice depending on the specific notice period set out in the Product Terms or Application Form, which notice will take effect on the first day of the month immediately following the end of such notice period.

2.2.3 IGAIN may cancel the Agreement –

2.2.3.1 in the case of a fixed term agreement concluded with natural persons – 20 (twenty) Business Days after giving Client written notice to remedy a material breach of the Agreement and Client have failed to remedy that breach with such time; and

2.2.3.2 in the case of any other fixed term agreement or any month to month agreement, on the expiry of the reasonable notice period given to Client to remedy a material breach and Client have failed to remedy that breach within such reasonable period, or otherwise as provided for in the Product Terms or these general terms and conditions.

2.2.4 In the case of a fixed term agreement contemplated in 2.2.1, in the event that Client cancel the agreement prior to the expiry of the Initial Fixed Term. Client will remain liable for all amounts owing up to the date of cancellation and in addition IGAIN will be entitled to impose a reasonable cancellation penalty in contemplation of the Agreement enduring for its intended fixed term.

2.3 Save as specifically provided for in clause 2.2 above, termination of the Agreement shall be governed by and given effect to as contemplated in this Agreement. In particular, month to month agreements (other than fixed term agreements contemplated in clause 2.2.1 and clause 2.2.2) may be terminated by either IGAIN or Client on one calendar months' notice, save to the extent provided otherwise in the Product Terms, which termination will take effect on the first day of the month immediately following the end of the applicable notice period.

2.4 Notwithstanding the termination of the Agreement, in the event that Client continue to use the products or services despite the termination of the Agreement, Client will remain liable for and promptly pay on demand all amounts that would have been due to IGAIN as a result of the use of or access to the product or service and this Agreement shall be deemed to continue to apply until such time as all amounts due to IGAIN have been paid in full.

2.5 If the Agreement results from any direct approach to Client by IGAIN or is an electronic transaction as contemplated in the ECT Act, Client will be entitled to cancel the Agreement on written notice to IGAIN without reason or penalty within 5 (five) Business Days of –

2.5.1 in the case of services only being provided in terms of the Agreement - the Acceptance Date; and

2.5.2 in the case where goods are provided and constitute the subject of the Agreement, whether in conjunction with services or on its own – the date of delivery of such goods.

2.6 For purposes of clause 2.5.2, goods include any literature, music, photograph, motion picture, game, information, data software, code or other intangible product or any license to use such intangible product. Where the Agreement relates to the provision of services and Client are provided with Equipment or goods to which clause 9 applies then clause 2.5.1 and not clause 2.5.2 will apply.

3 NCA and ECT Act

3.1 Although the Agreement is not a credit agreement as contemplated in the NCA, Client's application for a service or product may be subject to a credit referencing or risk assessment process. This means that IGAIN may utilize the information provided by Client including Client's personal information and request and receive information about Client and Client's credit record ("**Assessment Information**") from registered credit bureaus in order to determine whether Client will be in a position to meet Client's obligations under the intended Agreement. IGAIN will be entitled to decline to activate a product or service that the Client may apply for if IGAIN reasonably determines that Client may not be able to meet its commitments under the Agreement.

3.2 IGAIN is entitled to perform these assessments each time Client apply for a service or product.

3.3 The consumer protection provisions of the ECT Act, apply to transactions and communications that are executed electronically by a natural person. It also does not apply to paper based transactions, e.g. where Client apply for a service or product by completing an Application Form in writing.

4 Conditions of access

4.1 IGAIN will, unless it declines to activate the service as contemplated in clause 3.1, make the service available to Client on the Activation Date.

4.2 IGAIN will, where relevant, issue a user name and password to Client prior to the Activation Date in order to enable Client to gain access to and/or use a service. In such instance, Client will not be able to access and/or use a service without a user name and password.

4.3 Client agrees that:

4.3.1 Client will use Client's user name and password for Client's own personal use only;

4.3.2 Client will not disclose its user name and password to any other person for any reason whatsoever and that Client will maintain the confidentiality thereof;

4.3.3 in the event that Client's password is compromised, Client will immediately notify IGAIN and change Client's password;

4.3.4 Client, as the holder of the user name and password, acknowledges that it is solely responsible for all payments in respect of a service charged to Client's IGAIN account, irrespective of whether the service has been utilized or is being utilized by Client or not and accordingly the entire amount outstanding on Client's IGAIN account will be deemed to have arisen from (or relate to) Client's access to and/or use of a service;

4.3.5 Client agrees to cause all persons who use any products or services under Client's account or with Client's authorization to comply with this Agreement. All acts or omissions of all persons who use services under Client's account or with Client's authorization will be treated for all purposes as Client's acts or omissions;

4.3.6 unless such right is specifically and expressly provided to Client in terms of any applicable Product Terms Client will not, at any time, permit and/or initiate a simultaneous network log-in; and

4.4.7 Client will not attempt to circumvent IGAIN's user authentication processes or engage in attempts to access IGAIN's network where not expressly authorized to do so.

5 Service Delivery, Service Availability

5.1 IGAIN will make all its services and products available to Client as far as reasonably possible.

5.2 IGAIN will use reasonable endeavors to make its services available to its Customers, and to maintain the availability thereof for use by its subscribers. However, we provide the services "as is" and "as available" and do not warrant or guarantee that the services will at all times be free of errors or interruptions, be always available, fit for any purpose, not infringe any third party rights, be secure and reliable, or will conform to Client's delivery timeline requirements subject always to the provisions of the CPA where applicable.

5.3 IGAIN will use its best endeavors to notify Client in advance of any maintenance and repairs which may result in the unavailability of a service, but cannot always guarantee this.

6 Data Retention

6.1 IGAIN will use reasonable endeavors to ensure the safekeeping of any data or content which Client may receive or upload to our servers from time to time, such as (without being limited to) photographs, websites, videos, data and e-mail messages (hereinafter collectively referred to as "Client's data"). However, it is Client's obligation to keep copies and back-ups of Client's data, as:

6.1.1 we will not be liable for any direct or indirect loss or damages of any kind, which Client may suffer as a result of the loss of Client's data, or any part thereof, for any reason whatsoever; and

6.1.2 we will, unless otherwise required by law, delete all Client's data from our servers upon termination of the Agreement and any other agreement between us.

7 Communication, Complaints Handling and Dispute Resolution

7.1 Client agrees that IGAIN may from time to time send Client communications regarding (without being limited to) special offers or discounts which IGAIN may negotiate for and offer to its Customers and/or new services or products launched. All communications will abide by our Privacy Policy and applicable law. Client will always be entitled to notify IGAIN in writing that Client does not wish to receive or continue to receive such communications and if Client is a consumer as contemplated in the CPA, to pre-emptively block the receipt of such communications.

7.2 Complaints must be submitted to IGAIN and will be dealt with by IGAIN in accordance with the provisions of this clause 7.

7.3 Any payment default by Client arising from, or in connection with, any service or product rendered or provided by IGAIN, will be excluded from the provisions of this clause, and IGAIN will be entitled to proceed to institute legal action against Client.

7.4 Without prejudice to Client's rights in law, Client is required, to first approach IGAIN with any complaint or dispute and afford IGAIN an opportunity to resolve a complaint before Client approaches any other relevant authority, court or other dispute resolution body or refer the matter to Arbitration as contemplated below.

7.5 Please direct all complaints to: info@igain.co.za. Client's complaint should include the following:

7.6 IGAIN will formally respond with a view to proposing a resolution of Client's complaint in writing within 14 (fourteen) working days of receipt thereof, or within such longer period as we reasonably require under circumstances where the resolution of the complaint is for example (but without limitation) in the hands of a supplier or third party service provider.

7.7 Client may refer the matter to Arbitration as set out below, for resolution of the dispute, should Client not be satisfied with the proposed resolution of the dispute by IGAIN.

7.8 Any dispute between the parties may be referred to arbitration and finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa. Such arbitration shall be held in Johannesburg, and conducted in the English language before one arbitrator appointed in accordance with the said rules. Any award will be final and not subject to appeal. This agreement to arbitrate shall be enforceable in, and judgment upon any award may be entered in any court of any country having appropriate jurisdiction. A dispute shall be deemed to have arisen when either party notifies the other party in writing to that effect.

7.9 The arbitrator shall have the power to give default judgment if any party fails to make submissions on due date and/or fails to appear at the arbitration.

7.10 The provisions set out above shall not prevent either party from approaching any court of competent jurisdiction to obtain interim or other relief in cases of urgency.

8 Payment

8.1 Billing will commence on the Activation Date.

8.2 Client agrees to pay all amounts due under this Agreement in consideration for a service or product in accordance with the Application Form under which that service is rendered or that product is offered.

8.3 To the fullest extent permitted by law, all amounts due and payable in terms hereof shall be paid free of exchange and without deduction or set-off, by way of a direct deposit or electronic funds transfer in favor of IGAIN into the nominated current banking account of IGAIN, or in such other manner as IGAIN may from time to time determine.

8.4 Should Client fail to pay any amount on the due date for payment then IGAIN may, without prejudice to any of its other rights and remedies:

8.4.1 take all such further steps as may be necessary to recover the outstanding amount from Client, including without limitation the use of debt collection mechanisms;

8.4.2 suspend Client's access to the service or the use of any product without notice to Client until such time as the outstanding amount has been paid in full; or

8.4.3 subject to clause 2, terminate this agreement with immediate effect.

8.5 In the event of IGAIN suspending Client's access to the service, IGAIN reserves the right to continue to charge Client the minimum required to keep Client's account activated for the period of suspension, unless terminated by Client in terms of this Agreement.

8.6 If any changes are proposed to any terms of an agreement between IGAIN and a third party supplier which impacts on the provision of any services or products in terms of this Agreement, IGAIN shall subject to clause 2 above, be entitled to amend the terms, fees or charges for its services or products at any time on 30 (thirty) days written notice to Client. The amendment will take effect on the date indicated in the notice.

8.7 IGAIN will use reasonable endeavors to inform Client well in advance, and in any event prior to disconnection, about the possibility of disconnection in the case of non-payment.

8.8 To the extent that IGAIN incurs any additional expenditure relating to the tracing and/or collection of unpaid amounts, those costs shall be for Client account to the extent permitted by law as well as all legal costs incurred by IGAIN in the collection process on an attorney and own client scale and collection commission of 10 (ten) per cent until fully paid.

9 Equipment and Software

9.1 Except for Equipment that Client has fully paid for, all Equipment installed or provided by us remains our property and Client agrees that:

9.1.1 Client will take reasonable care with such Equipment;

9.1.2 Client may not sell, lease, mortgage, transfer, assign or encumber such Equipment;

9.1.3 Client may not re-locate such Equipment without our knowledge and permission;

9.1.4 Client will inform any landlord that such Equipment is owned by IGAIN and therefore not subject to any landlord's hypothec; and

9.1.5 Client will return such Equipment to us at Client's own expense upon termination of the services to which the Equipment related.

9.2 If such Equipment is lost, stolen or damaged or sold, leased, mortgaged, transferred, assigned, encumbered or not returned, Client agree to pay us the reasonable value of such Equipment, together with any costs incurred by us in seeking possession of such Equipment.

9.3 Client authorizes IGAIN and its representatives to enter or have access to Client's premises as reasonably necessary, at mutually agreed upon times, to install, maintain, inspect, repair or remove the Equipment or to maintain, investigate, protect, modify or improve the operation of our services or our facilities.

9.4 Client must immediately notify us, at any of the points of contact specified below, if Client's Equipment is lost, stolen or destroyed. Should Client then wish to terminate the services, Client's obligations under the Agreement will continue to apply save as provided for in clause 2.

10 Return, Exchange and Refunds

10.1 IGAIN's policy in respect of exchanges, returns and refunds depends on, inter alia, the type goods and the policy of the manufacturer or supplier thereof. Where the CPA applies to Client, IGAIN's policy in this regard will comply with the requirements of the CPA in relation to exchanges, returns and refunds.

10.2 Warranties, if any, will ordinarily be included in the hardware packaging.

10.3 Where the CPA applies to Client and/or the product or service in question, IGAIN will provide, the warranties, undertakings and assurances as required under the CPA but subject to any limitations and restrictions as allowed under the CPA.

11 Security and Privacy

11.1 IGAIN will be entitled to take whatever action IGAIN may deem necessary and reasonable to preserve the security and reliability of its networks and services.

11.2 Client may not utilize any service in any manner which may compromise the security of IGAIN's network, or any other network connected to IGAIN's network, or tamper with a service or such a network in any manner whatsoever.

12 Acceptable Use Policy

Client hereby agrees to adhere to generally acceptable Internet and e-mail etiquette.

13 Intellectual Property Rights

13.1 Client agrees to comply with all laws applicable to any Intellectual Property Rights in respect of any data, files and/or information accessed, retrieved or stored by Client through Client's use of any of our services and/products.

13.2 Client is prohibited from using any IGAIN Marks without the prior written approval of IGAIN.

13.3 Other than as specifically provided in the product or service specific terms and conditions, IGAIN will wholly and exclusively retain all existing Intellectual Property Rights and become the exclusive and unencumbered owner of all intellectual property right(s) employed in or otherwise related to software used by IGAIN, its network infrastructure, e-commerce network infrastructure, business and the provision of any of the services in terms of the product or service specific terms and conditions.

14 Breach

14.1 Subject to any other provisions set out in these general terms and conditions or the Product Terms and without prejudice to any of these provisions, should Client be in breach of any provision of this Agreement, then IGAIN shall be entitled, without prejudice to any other rights that it may have and to the extent required or permitted, as the case may be, by law, to forthwith:

14.1.1 afford Client a reasonable opportunity to remedy the breach, taking into

account the nature of the breach in question; or

14.1.2 suspend Client's access to a service;

14.1.3 cancel all agreements concluded between us; or

14.1.4 claim immediate performance and/or payment of all Client's obligations in terms hereof.

14.2 Should IGAIN suspend, disconnect or terminate Client's service, IGAIN will be entitled to, charge Client a fee for reconnecting Client's service.

15 Indemnity

15.1 Client hereby unconditionally and irrevocably indemnifies IGAIN and agrees to indemnify and hold IGAIN harmless against all loss, damages, claims, liability and/or costs, of whatsoever nature, howsoever arising, suffered or incurred by IGAIN as a result of any claim instituted against IGAIN by a third party (other than Client) as a result of (without limitation):

15.1.1 Client's use of our services or products other than as allowed or prescribed in the Agreement;

15.1.2 any other cause whatsoever relating to the Agreement or the provision of services or products to Client where Client has acted wrongfully or failed to act when Client had a duty to so act.

16 Limitation of liability

16.1 Save to the extent otherwise provided for in this Agreement or where Client is entitled to rely on or receive, by operation of law, any representations, warranties or guarantees, we do not make or provide any express or implied representations, warranties or guarantees regarding the availability, accuracy, reliability, timeliness, quality or security of any product or service.

16.2 IGAIN shall not be liable for and Client will have no claim of whatsoever nature against IGAIN as a result of -

16.2.1 the loss of or access to any user names or passwords which Client are required to safeguard and not allow unauthorized access on the understanding that we will be entitled to assume that Client is the person so using or gaining access to any service or account where Client's user name or password is used;

16.2.2 any unavailability of, or interruption in the service due to an Uncontrolled Event;

16.2.3 any damage, loss, cost or claim which Client may suffer or incur arising from any suspension or termination of the service/s for any reason contemplated in the Agreement.

16.3 In addition to and without prejudice to any other limitations of liability provided for in the Agreement and to the fullest extent permitted by applicable law, IGAIN shall not be liable to Client for any direct damages howsoever arising and neither party shall be liable to the other for any special, indirect, incidental, consequential or punitive damages arising out of or relating to this Agreement, whether resulting from negligence, breach or any other cause. To the extent that a competent court or tribunal or other competent dispute resolution body or authority finally determines, notwithstanding the exclusion contained in this clause, that IGAIN is liable to Client for any damages, IGAIN's liability to Client for any damages howsoever arising shall be limited to the amounts actually paid by Client under this Agreement in consideration for a service or product up to said date, or for the period during the immediately preceding 12 (twelve) month period in respect of the service or product which gave rise to the liability in question, whichever is lower.

17 Cession and Delegation

Client may not sell, cede, assign, delegate or in any other way alienate or dispose of any or all of Client's rights and obligations under and in terms of this Agreement without the prior written approval of IGAIN. IGAIN shall be entitled to sell, cede, assign, delegate, alienate, dispose or transfer any or all of its rights and obligations under and in terms of this Agreement to any of its affiliates or to any third party without Client's consent and without notice to Client.

18 Jurisdiction

Client hereby consents to the jurisdiction of the Magistrate's Court in the Republic of South Africa in respect of any proceedings that may be initiated by IGAIN arising out of this Agreement, provided that IGAIN shall be entitled, in its reasonable discretion, to institute such proceedings in the High Court of South Africa and, in such event, Client consent to the jurisdiction of such court. The jurisdiction of the Small Claims Court is specifically excluded, as the parties agreed to follow the arbitration process set out above.

19 Amendment of this agreement

IGAIN reserves the right to amend this agreement from time to time. Any new version of the Agreement will be displayed on our Website together with the date on which it will become effective, which will never be less than 30 (thirty) days after the date on which it is first published. It is Client's obligation to visit our web site on a regular basis in order to determine whether any amendments have been made.

20 General

20.1 The parties acknowledge and agree that this Agreement constitutes the whole of the agreement between them and that no other agreements, guarantees, undertakings or representations, either verbal or in writing, relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on the parties. No changes or cancellation of this Agreement by Client, including any changes to the Application Form will be binding on any of the parties unless recorded in writing and signed by both parties, notwithstanding activation of the service.

20.2 Client agrees that any notices we send to Client in terms of any agreement concluded between us may be sent via e-mail unless otherwise prescribed by law.

20.3 No indulgence, leniency or extension of time which IGAIN may grant or show to Client shall in any way prejudice IGAIN or preclude IGAIN from exercising any of its rights in the future.

20.4 All our terms and conditions can be accessed, stored, and reproduced electronically by Client.

20.5 The physical address where IGAIN will receive legal service of documents is the following:

**Information Gain CC
101 Derby Road
Kensington
Johannesburg**