

MYGATE'S TERMS AND CONDITIONS FOR CONTRACT

PART I: SUBSCRIBER AGREEMENT

1 SUBSCRIBER AGREEMENT FORM

- 1.1 In this Agreement unless the context clearly indicates a contrary intention, the words herein below defined shall have the meanings assigned to them, and similar expressions shall bear corresponding meanings:
- 1.2 "activation" means the enabling of the software on the designated system by the CSP to enable the Merchant to operate the software in terms of this Agreement;
- 1.3 "Agreement" means the Schedule and these terms and conditions in Part;
- 1.4 "charges" means the setup fee, monthly service charges, usage charges and any other charges pertaining to the provision of MyGate services, and other services however described, by MyGate to the Subscriber as detailed in the price list from time to time;
- 1.5 "setup fee" means the charge levied by MyGate on the Subscriber and connection for activating the Subscriber's service;
- 1.6 "Bank" shall mean the bank in which MyGate is sending the credit card transaction to for authorization and settlement on behalf of the merchant;
- 1.7 "initial period" means a period of 12 (twelve) successive months for MyGate Standard Package and 24 (twenty Four) months for MyGate 300 or MyGate 600 Package commencing from the date of activation which date shall be set out in the first bill sent to the Subscriber;
- 1.8 "the CSP" shall mean MyGate Communications, Registration Number 2006/018060/07, a (PTY) Ltd in terms of the laws of the Republic of South Africa;
- 1.9 "a month" shall mean a period that commences at 0h00 on a particular day (determined by MyGate from time to time) of a calendar month and shall endure until 0h00 on the same day of the following calendar month;
- 1.10 "monthly service charges" means the minimum billing required by MyGate in consideration for the Subscriber's access to and use of the MyGate services as detailed in a price list from time to time;
- 1.11 "MyGate" means MyGate Communications (Pty) Ltd of Model Villa, Cnr. Of Hiddingh Ave. and Mill Str., Gardens, 8000;
- 1.12 "MyGate's premises" means the offices of MyGate at the address set out in the Schedule and/or in clause 1.11 but specifically excludes the branch offices of MyGate and the offices of any agent or intermediary acting on behalf of MyGate or any other party;
- 1.13 "MyGate services" means any solution including value added services, made accessible to the Subscriber by MyGate in terms of this Agreement;
- 1.14 "order" means an order placed by a Subscriber to MyGate as per the Schedule or in any other form approved by MyGate for the provision and/or installation of its solutions or services;
- 1.15 "package option" means any one of the tariff plans under which MyGate services are made accessible to Subscribers which tariff plans are set out in the price list and vary according to the rate of usage charges, value added services included and other variables determined by MyGate from time to time, but subject to the requirements, conditions and/or approvals of the regulatory authority, where applicable;
- 1.16 "price list" means the schedule on which the charges levied by MyGate as approved are recorded as amended from time to time which price list is available on request from MyGate;
- 1.17 "the Schedule" means the order or application form section of this Agreement and to which these terms and conditions are attached or printed overleaf;
- 1.18 "Subscriber" means that party whose particulars appear on the Schedule;
- 1.19 "usage charges" means the charges charged by MyGate to the Subscriber for recorded usage of its services, as published in the price list from time to time;
- 1.20 "value added services" means the secondary services designated as such by MyGate which are part of the MyGate services except that they may be provided only to Subscribers under certain package options to the exclusion of other Subscribers, or may be provided at additional charges and may be introduced or withdrawn by MyGate at its discretion from time to time;
- 2 COMMENCEMENT AND TERMINATION**
- 2.1 This contract shall be for an initial period of 12 (twelve) months for MyGate Standard Packages and 24 months for MyGate 300 and MyGate 600 Packages, calculated from the date of activation. The contract will continue in force automatically thereafter for 12 (twelve) months for MyGate Standard and 24 months for MyGate 300 or MyGate 600 unless the Subscriber gives not less than 30 (Thirty) days and no more than 90 (Ninety) days written notice of termination before the end of the current contract cycle. Should the Subscriber give notice less than 90 (Ninety) days before the end of the current cycle, MyGate reserves the right to charge a termination fee.
- 2.2 MyGate reserves the right to terminate forthwith on written notice to the Subscriber in the event of the bank in terms of which MyGate is authorised and empowered to give the Subscriber access to the MyGate services being terminated for whatsoever reason.
- 2.3 MyGate's set up fee is non refundable and will be charged in the month following receipt of the subscriber agreement irrespective of merchant id being issued.
- 2.4 Notwithstanding the use of agents or other intermediaries by MyGate, the order by the Subscriber is an offer made by the Subscriber to MyGate and will be considered once received by MyGate at MyGate's premises. MyGate's acceptance of the offer (if it does accept) shall consist of the activation of the MyGate service as contemplated in and upon which activation this Agreement shall become binding between MyGate and the Subscriber whether or not the Subscriber was notified of the acceptance of the offer. The Subscriber hereby expressly dispenses with notification of acceptance of the offer by MyGate.

3 INSTALLATION AND MYGATE SERVICES

- 3.1 The order placed by the Subscriber on MyGate is subject to the approval of MyGate in its sole discretion. If MyGate does not approve the order, it shall not be under any obligation to the Subscriber to give reasons for its decision.
- 3.2 MyGate shall utilise its best endeavours to promptly comply with any supply and/or delivery and/or integration requirements recorded in the order, but shall not be liable to the Subscriber in the event that such supply and/or delivery and/or installation is delayed or cancelled, for whatsoever reason. MyGate may in its discretion refer the Subscriber to a third party who may undertake the installation in its own name for and on behalf and not as an agent of MyGate. The Subscriber waives all and any claims from whatsoever cause arising against MyGate or any other party arising out of the provision of its services.
- 3.3 The Subscriber shall be responsible for obtaining all necessary approval and authorities imposed by any competent authority and required for the purpose of any such supply and/or delivery and/or installation, and the Subscriber hereby indemnifies MyGate against any claim or liability suffered by MyGate by reason of such approval and authorities not having been obtained. The Subscriber waives all and any claims against MyGate arising out of the conclusion of this Agreement.
- 3.4 The Subscriber hereby warrants and undertakes in favour of MyGate that the Subscriber:
- 3.4.1 shall not use nor allow the MyGate services to be used for any improper, immoral or unlawful purposes nor in any way which may cause injury or damage to persons or property or an impairment or interruption to the MyGate services; recognise that no right, title or interest in the software, issued to the Subscriber vests in the Subscriber;
- 3.4.2 shall not use nor allow the MyGate services to be used for any improper, immoral or unlawful purposes nor in any way which may cause injury or damage to persons or property or an impairment or interruption to the MyGate services; recognise that no right, title or interest in the software, issued to the Subscriber vests in the Subscriber;
- 3.5 The availability of value added services, whether for free or in circumstances where a charge is charged, is subject to the discretion of MyGate and may be charged for or withdrawn at any time by MyGate and in their sole discretion. In the event that MyGate withdraw any value added service for which a subscription fee is charged, no further subscription fee will be charged for the period after the withdrawal of the value added service concerned. Where the Subscriber subscribes to a package option that includes provision of value added services free of charge, MyGate shall be entitled, in its sole discretion and without notice to the Subscriber to vary, discontinue or substitute any such value added service without reducing any of the monthly service charges or providing any refund unless it determines in its sole discretion to do so.
- 4 CHARGES**
- 4.1 In consideration for the provision of the MyGate services, and any other services supplied by MyGate to the Subscriber, the Subscriber shall effect payment to MyGate of the applicable charges as detailed in the price list, and whether or not the MyGate services have been or are being utilised by the Subscriber.
- 4.2 MyGate may, by written notice to the Subscriber vary future charges either in whole or in part, with effect from the date specified in such notice.
- 4.3 The Subscriber shall effect payment to MyGate into the following account: (details to be supplied) unless otherwise agreed in writing by MyGate:
- 4.3.1 of monthly service charges and of all other charges monthly in arrears in full, within 7 (seven) days from the date of the relevant invoice;
- 4.3.2 the Subscriber's bankers or other intermediaries shall act as the Subscriber's agent and the Subscriber shall have discharged its obligation only upon payment being received in the said account.
- 4.4 Notwithstanding the provisions of clause 4.3 MyGate may at any time on reasonable written notice to the Subscriber vary its invoicing and payment procedures and requirements.
- 4.5 In the event that MyGate requires payment for the services provided to the Subscriber to be made by debit order, the Subscriber will commit a breach of this Agreement if the Subscriber:
- 4.5.1 cancels any such debit orders without the written consent of MyGate;
- 4.5.2 change banking details upon which the debit order relies without giving MyGate prior notification of such change and providing MyGate with the Subscriber's new banking details.
- 4.6 The Subscriber hereby authorises MyGate to debit any bank account held by the Subscriber between the first and thirty first of the month for the costs owed by the Subscriber in terms of this Agreement.
- 4.7 The monthly statement ("bill") shall be sent by MyGate to the Subscriber at the address supplied by the Subscriber in the Schedule or in writing to MyGate. It shall be the duty of the Subscriber to check the bill in order to ensure that the contents thereof are correct. Unless a query is raised in respect of the contents of a bill within thirty days from date thereof the contents shall be deemed as correct.
- 4.8 Any migration from one package option to another shall for the duration of this Agreement be subject to MyGate's approval in writing in their discretion and MyGate shall be entitled to levy fees for migrations but which fees may not exceed the amounts approved or fixed by the responsible regulatory authority from time to time.
- 4.9 Where a package option includes minimum billing:
- 4.9.1 Transaction charges must equal minimum billing of package or a surcharge for the difference will be applied;
- 4.9.2 in the event that the commencement date of this Agreement falls on a day other than the first day of a calendar month, then the minimum billing shall be pro-rated for the remaining portion of that month;

5 SUSPENSION

- 5.1 MyGate may at any time, without notice to the Subscriber and in any manner whatsoever, suspend the Subscriber's access to the MyGate services in the event that:
- 5.1.1 any modification, maintenance or remedial work is required to be undertaken pertaining in any manner whatsoever, to the MyGate services;
- 5.1.2 the Subscriber fails to perform any of his obligations, or breaches any terms of this Agreement;
- 5.1.3 the Subscriber at any time exceeds the credit limit which MyGate in their absolute discretion shall set and notify the Subscriber of, from time to time.
- 5.2 MyGate reserve the right to require the Subscriber to effect payment of any applicable reconnection charges pursuant to the restoration of MyGate services suspended.
- 5.3 In the event that the Subscriber's access to the MyGate services is suspended, the Subscriber shall still be liable for the monthly service charges during any such period of suspension.
- 6 LIMITATION OF LIABILITY**
- 6.1 Without detracting from any of the other provisions of this Agreement, MyGate shall not be liable to the Subscriber for any loss or damage suffered by the Subscriber and whether same is direct or consequential in the event that:
- 6.2 MyGate fails for any reason whatsoever to supply and/or deliver and/or provide integration of MyGate services on the required date or at all; and/or
- 6.3 the MyGate services are interrupted, suspended or terminated for whatsoever reason; and/or
- 6.4 MyGate fails to suspend the provision of the MyGate services to the Subscriber's in terms of any usage agreement between MyGate and the Subscriber or after the Subscriber has specifically requested MyGate to do so in order to limit the usage charges; and/or
- 6.5 such loss or damage was caused by any negligent act or omission on the part of MyGate, its employees or its agents, its employees or its agents.

7 BREACH

- 7.1 In the event that the Subscriber breaches any term of this Agreement, or any warranty given by it hereunder, or fails to fulfil any obligation resting upon the Subscriber including a failure to pay any amount owing to MyGate on due date, then without prejudice to MyGate other rights in terms of this Agreement or the common law, MyGate may forthwith and without notice to the Subscriber, either terminate this Agreement, or call for specific performance of all the Subscriber's obligations and immediate payment of all sums of money owing by the Subscriber, whether or not then due. Notwithstanding the aforesaid and pending MyGate's election in terms of this clause, MyGate shall not be obliged to perform any of their obligations under this Agreement and the Subscriber shall remain liable for the payment of all amounts owing by the Subscriber in terms of this Agreement, whether or not such amounts are then due.
- 7.2 MyGate shall be entitled forthwith without notice, to terminate this Agreement in the event that the Subscriber is sequestered, liquidated, or placed under judicial management, whether provisionally or finally, and whether voluntarily or compulsory.
- 7.3 Without detracting from any of the other provisions of this clause 7, in the event of a breach of any provisions of this Agreement or the Subscriber prematurely terminating this Agreement and MyGate electing to cancel same, the Subscriber shall be liable to effect payment to MyGate of all the monthly service charges which would have been payable to MyGate in respect of the remainder of the period of this Agreement.

8 ARBITRATION

- 8.1 Should any dispute arise between MyGate and the Subscriber from the terms of this Agreement of any suspension or termination thereof such dispute shall be referred to arbitration by an arbitrator by the parties or failing agreement thereon by the President for the time being of the Cape Law Society or its successor whose decision shall be final and binding on the parties. Such arbitration shall be conducted as informally and as inexpensively as possible at any venue in Cape Town selected by the arbitrator and otherwise in accordance with the provisions of the arbitration Act 1965 as amended.

9 GENERAL

- 9.1 In the event of the Subscriber failing to effect payment of any amounts due in terms of this Agreement on due date, without derogating from MyGate's rights in terms of clause 7, the Subscriber shall be liable to effect payment of interest to MyGate on the amount at the maximum permissible rate from time to time as set forth in the Usury Act as amended or any other applicable legislation.
- 9.2 All prices and charges in this Agreement and any price list are exclusive of Value Added Tax and any other applicable tax or duty, the liability for which shall vest with the Subscriber.
- 9.3 The rights and obligations of the Subscriber in terms of this Agreement may not be ceded or delegated to any third party. The rights and obligations of MyGate in terms of this Agreement may be ceded and delegated by it to any other party without any written notice to the Subscriber.
- 9.4 MyGate may change the terms and conditions of this Agreement as a result in changes in tax laws, regulations, the terms and conditions of the licence issued to the bank and the terms and conditions of any agreement between the bank and any other party to this Agreement or circumstances or events similar to the aforesaid. MyGate shall notify the Subscriber of any changes as contemplated herein in writing.
- 9.5 This document contains the entire agreement between the parties regarding the matters contained herein, and no other warranties, undertakings and/or representations have been made by MyGate or any purported agent of MyGate.

- 9.6 No indulgence, leniency or extension of time which MyGate may show to the Subscriber shall in any way prejudice MyGate or preclude MyGate from exercising any of its rights in the future.
- 9.7 This Agreement and all matters or disputes arising herefrom or incidental hereto shall be governed and construed in accordance with the laws of the Republic of South Africa.
- 9.8 The Subscriber, by his signature hereto and in terms of the provisions of Section 45 of the Magistrates' Court Act, No. 32 of 1944, as amended, consents to the jurisdiction of the Magistrates' Court in relation to any actions or proceedings instituted against the Subscriber in terms of, or arising out of the provisions of this Agreement, provided that MyGate, in their sole and absolute discretion shall be entitled to institute any such actions or proceedings in any division of the High Court of South Africa possessed of the requisite jurisdiction.
- 9.9 A certificate under the hand of any manager of MyGate certifying the sum of any amount owing by the Subscriber to MyGate shall be prima facie proof of its contents and sufficient proof for the purposes of enabling MyGate to obtain any judgment or order against the Subscriber.
- 9.10 If any term, condition, agreement, requirement or provision contained in this Agreement is held by any Court having jurisdiction to be unenforceable, illegal, void or contrary to public policy, such term, condition, requirement or provision shall be of no effect whatsoever upon the binding force or effectiveness of any of the remainder of this Agreement, it being the intention and declaration of the parties that had they or either of them known of such unenforceability, illegality or that the provision was contrary to public policy, they would have entered into a contract containing all other terms and conditions set out in this Agreement.
- 9.11 Each of the parties choose domicilium citandi et executandi ("domicilium") for the purposes of the giving of any notice, the serving of any process and for any purposes arising from this Agreement at their respective addresses set forth in clause 1 and/or the Schedule.
- 9.12 Each of the parties shall be entitled from time to time by written notice to the other to vary its domicilium to any other address within the Republic of South Africa which is not a post office box or poste restante.
- 9.13 No alteration, cancellation or variation which the Subscriber may be entitled to make to the Schedule shall be of any force or effect unless 60 (Sixty) days written notice of such alteration, cancellation or variation is given to MyGate.
- 9.14 Any notice given and any payment made by a party to the other ("the addressee") which:
- 9.14.1 is delivered by hand during the normal business hours of the addressee at the addressee's domicilium for the time being shall be presumed, unless the contrary is proved by the addressee, to have been received by the addressee at the time of delivery provided that if the delivery is effected by or on behalf of the Subscriber at MyGate's domicilium, the presumption shall only apply as regards MyGate if proof of receipt is obtained by the party effecting such delivery and duly produced as may be required to prove such delivery;
- 9.14.2 is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee's domicilium for the time being shall be presumed unless the contrary is proved by the addressee, to have been received by the addressee, on the 7th (Seventh) day after the date of posting.
- 9.15 Where, in terms of this Agreement any communication is required to be in writing the term "writing" shall include communications by telex and/or facsimile. Communication by telex and/or facsimile shall, unless the contrary is proved by the addressee, be deemed to have been received by the addressee 48 (Forty Eight) hours after the time of transmission.
- 9.16 In the event of MyGate instituting legal proceedings against the Subscriber to recover amounts due to MyGate or take any other legal steps arising out of this Agreement, the Subscriber shall be liable for all legal costs on the scale as between attorney and own client and/or any collection costs.
- 9.17 MyGate shall be entitled to charge any banking and/or administration fees in the event of the Subscriber defaulting in its payments or any other of its obligations as set out in this Agreement.

Full Name _____

Signature _____