



STANDARD TERMS AND CONDITIONS

concluded between

“Customer”	
Registered Name:	
Legal Description:	
Physical Office Address:	
Registered No:	
Address for Legal Notices:	
Email Address:	
Representative:	

and

“INX-ZA”	
Registered Name:	INTERNET SERVICE PROVIDERS’ ASSOCIATION NPC t/a INX-ZA
Legal Description:	NON-PROFIT COMPANY
Registered Physical Address:	32 GEORGE ROAD GLEN AUSTIN MIDRAND GAUTENG 1685
Registered No:	2016/167416/08
Address for Legal Notices:	As above, for the attention of the Chairperson
Email Address:	malcolm@ispa.org.za
Representative:	Malcolm Siegel

RECITALS

- A. INX-ZA is an autonomous division of the [Internet Service Providers' Association \(ISPA\)](#) of South Africa. INX-ZA is community run Internet exchange points in South Africa, namely the [Johannesburg Internet exchange \(JINX\)](#), [Cape Town Internet Exchange \(CINX\)](#) and [Durban Internet Exchange \(DINX\)](#).
- B. The Customer is desirous of peering/interconnecting with other network operators at one or more of the INX-ZA Internet exchange points.

THE PARTIES THEREFORE AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1. The following terms and abbreviations shall have the following meanings:

- 1.1.1. **"Accepted Request"** has the meaning given to it in clause 3.4;
- 1.1.2. **"Agreement"** means these standard terms and conditions together with the [Service Descriptions](#), [Policies](#) and [Technical Guides](#) published at <https://www.inx.net.za> as well as any terms in a Service Request (all of which are incorporated herein by reference);
- 1.1.3. **"Business Day"** will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;
- 1.1.4. **"Business Hours"** means time between 08h00 and 16h30 on a Business Day;
- 1.1.5. **"Commencement Date"** means that date of the last party signing this Agreement;
- 1.1.6. **"Default Rate"** means the rate determined in accordance with the Prescribed Rate of Interest Act, 55 of 1975;
- 1.1.7. **"Direct Loss"** means foreseeable economic loss, but excludes any loss or damages which, as a matter of South African Law, are considered special, indirect or consequential loss or damage;
- 1.1.8. **"Fees"** means the recurring and/or non-recurring charges for a Service as set out in the relevant Accepted Request;
- 1.1.9. **"Intellectual Property Rights"** means all registered or unregistered intellectual property rights including, but not limited to, patents, trade secrets, trademarks, service marks, trade names, copyrights and other rights in works of authorship (including rights in computer software), moral and artists' rights, design rights, database rights, trade or business names, domain names, rights protecting goodwill, know-how and semiconductor topography rights and all rights or forms of protection of a similar nature in any country throughout the entire world;
- 1.1.10. **"INX-ZA Portal"** means <https://portal.ispa.org.za/>;
- 1.1.11. **"Law or Laws"** refers to all constitutions; statutes; regulations; by-laws; codes; ordinances; decrees; rules; judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, orders, decisions, rulings, or awards; policies; voluntary restraints; guidelines; directives; compliance notices; abatement notices; agreements with, requirements of, or instructions by any governmental body and the common law;
- 1.1.12. **"Person"** means, as the context requires, any natural person, company, close corporation, trust, partnership, joint venture, association, unincorporated association, governmental body, or other entity whether having separate legal personality or not;
- 1.1.13. **"Port Start Date"** means the date a port and IP address has been assigned by INX-ZA to the Customer;
- 1.1.14. **"Service(s)"** means those port and co-location services as ordered by the Customer in a Service Request, together with any valued added services offered by INX-ZA as further described in the [Service Descriptions](#), [Policies](#) and [Technical Guides](#); and
- 1.1.15. **"Service Request"** means a request for the provision of:
- 1.1.15.1. new Services; or
- 1.1.15.2. upgrade/downgrade of existing Services; by completing the online form located on the INX-ZA Portal.

Interpretation

- 1.2. Where there is conflict between the provisions of this Master Agreement and the provisions of any terms incorporated by reference, the terms of this Master Agreement without any of the terms incorporated by reference shall take precedence.
- 1.3. Clause headings and the heading of the Agreement are for convenience only.
- 1.4. An expression which denotes:
 - 1.4.1. the male gender includes the female gender and *vice versa*;
 - 1.4.2. the singular includes the plural and *vice versa*; and
 - 1.4.3. a party includes a reference to that party's successors in title and assigns allowed at Law;
- 1.5. The words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 1.6. Unless otherwise provided, defined terms appearing in this Agreement in capitalised form shall be given their meaning as defined, while the same terms appearing in uncapitalised form shall be interpreted in accordance with their plain English meaning.
- 1.7. Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a Business Day, the next succeeding Business Day.
- 1.8. If the due date for performance of any obligation in terms of this Agreement is a day which is not a Business Day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately preceding Business Day.
- 1.9. Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 1.10. The rule of construction that this Agreement shall be interpreted against the party responsible for the drafting of this Agreement, shall not apply.
- 1.11. No provision of this Agreement shall, unless otherwise expressly stipulated, create a stipulation for the benefit of any Person who is not a party to this Agreement.
- 1.12. The use of any expression in this Agreement covering a process available under South African Law, such as winding-up, shall, if any of the parties to this Agreement is subject to the Law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the Law of such other jurisdiction.

2. TERM

This Agreement shall come into force on the Commencement Date and shall continue to apply for as long as the Customer procures Services (the "Term").

3. PROVISION OF SERVICES

- 3.1. The Customer may order Services by submitting a Service Request.
- 3.2. INX-ZA shall be entitled to rely upon the authority of the Customer's personnel and act upon all Service Requests received from the Customer in the above manner.
- 3.3. INX-ZA shall notify the Customer in writing whether INX-ZA accepts the Service Request or proposes changes to the Service Request.
- 3.4. If a Service Request is accepted by INX-ZA or the Customer accepts INX-ZA's proposed changes or the parties otherwise reach consensus (in each instance constituting the Accepted Request) then INX-ZA shall configure the requested Services in accordance with the provisions of this Agreement.
- 3.5. The provision of any Service under this Agreement shall commence on the Port Start Date.
- 3.6. All Accepted Requests together with the terms of this Agreement shall constitute the sole contract between the Customer and INX-ZA.

4. CANCELLATION OF SERVICES

- 4.1. Services may be terminated by requesting deactivation thereof through the INX-ZA Portal. Services, and their related billing, will cease, a calendar month after a disconnection request has been received and acknowledged.
- 4.2. INX-ZA shall be entitled to rely upon the authority of the Customer's personnel and act upon all deactivation requests received from the Customer in the above manner.

5. THE CUSTOMER'S OBLIGATIONS

The Customer shall be obliged to:

- 5.1. use the Service strictly for the purposes for which it is designed and expressly supplied in terms of this Agreement;
- 5.2. not knowingly use the Service, nor knowingly permit the use thereof in any manner which may directly or indirectly or have the effect of:
 - 5.2.1. violating any applicable Law;
 - 5.2.2. violating the acceptable usage policies of any networks, equipment or services of third-party networks;
 - 5.2.3. infringing on the Intellectual Property Rights of others; or
 - 5.2.4. being fraudulent, deceptive, or misleading.

6. FEES AND PAYMENT TERMS

- 6.1. The Fees for each Service will become billable from the Port Start Date;
- 6.2. Fees for Services are charged monthly in arrears.
- 6.3. INX-ZA shall provide the Customer with an invoice that complies with South African Law;
- 6.4. Subject to clause 6.5, the Customer shall pay Fees for which invoices have been sent to the Customer within 30 days of invoice, free of any withholding or similar taxes;
- 6.5. The Customer may dispute invoiced amounts for a period of up to 36 months from the date of the invoice on which the disputed amount appears, but it shall only be entitled to withhold payment of disputed amounts if the dispute is clearly communicated to INX-ZA before the due date of the invoice on which the disputed amount appears.
 - 6.5.1. The disputed portion of INX-ZA's invoice shall be resolved within seven (7) working days of due date of the invoice in accordance with the procedure set out in clause 15 below;
 - 6.5.2. Any disputed portion resolved in favour of INX-ZA shall be paid by the Customer forthwith.
- 6.6. Other than disputed amounts withheld in conformance with clause 6.5, any sum not paid when due, shall attract interest at the Default Rate with effect from due date to date of final payment;
- 6.7. All Fees are exclusive of all applicable taxes including value added tax (if any), and regulatory surcharges (if any). Such amounts will be detailed and charged separately in INX-ZA's invoices to the Customer.
- 6.8. No party shall be entitled to set off any other amounts due in terms of this Agreement.

7. CO-LOCATION (RACK SPACE)

The Customer shall always comply with rules and reasonable directives and instructions provided to it by the personnel, security staff or the like of any of the data centres where INX-ZA is present and co-location is effected under an Accepted Request.

8. SUSPENSION OF SERVICES

- 8.1. INX-ZA may, without terminating this Agreement and by giving the Customer 7 (seven) days written notice of its intention to this effect, suspend part or all the Services until further notice if:

- 8.1.1. INX-ZA is entitled to terminate this Agreement as provided for in clause 10 hereunder;
or
- 8.1.2. INX-ZA is obliged to comply with an order, instruction or request of a government body, regulatory authority, an emergency services organisation, or other competent administrative authority having jurisdiction over the area where the Services are supplied. In such event, INX-ZA will use its best endeavours to give the Customer the maximum period of notice practicable in the circumstances.

9. TERMINATION CAUSE

Each of the following events or circumstances set out in this clause 9 is a "Termination Cause":

- 9.1. Non-payment - The Customer fails to pay any amount payable pursuant to this Agreement on due date and at the place and in the currency in which it is expressed to be payable, without placing such amount in dispute as provided for in this Agreement.
- 9.2. Material Breach - The Customer breaches the INX-ZA [Policies](#), [Technical Guides](#) or the provisions of clauses 5.2, 7 and 20 and/or either party breaches the provisions of clauses 12 and 13.
- 9.3. Insolvency and business rescue proceedings
 - 9.3.1. Any corporate action, legal proceedings or other procedure or step is taken in relation to: -
 - 9.3.1.1. the suspension of payments, a moratorium of any indebtedness, bankruptcy, liquidation, winding-up, dissolution, administration, business rescue or reorganisation, whether by way of voluntary arrangement, scheme of arrangement or otherwise, of either party;
 - 9.3.1.2. a composition, compromise, assignment or arrangement with any creditor of either party; or
 - 9.3.1.3. the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager, judicial manager, insolvency practitioner or other similar officer in respect of either party;
 - 9.3.1.4. or any analogous procedure or step is taken in any relevant jurisdiction.
 - 9.3.2. A meeting is proposed or convened by the directors of either party; a resolution is proposed or passed; application is made or an order is applied for or granted, to authorise the entry into or implementation of any business rescue or financial administration proceedings or any similar proceedings in respect of either party or any analogous procedure or step is taken in any jurisdiction.
- 9.4. Expropriation - The authority or ability of either party to conduct its business is wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person.
- 9.5. Unlawfulness - It is or becomes unlawful for either party to perform any of its obligations under this Agreement.
- 9.6. Business - Either party suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business.

10. BREACH AND TERMINATION

- 10.1. If a party (the "**Defaulting party**") commits a Termination Cause and fails to remedy such Termination Cause after receiving written notice from the other party (the "**Aggrieved party**") to remedy the Termination Cause within the "**Notice Period**" of:
 - 10.1.1. 5 (five) Business Days for breach of payment obligations; or
 - 10.1.2. In respect of all other Termination Causes, such period as is reasonable in the circumstance, having regard to the right of the Aggrieved party to protect its rights and obligations to third-parties;
 then the Aggrieved party shall be entitled to:

- 10.1.3. claim immediate specific performance of the Defaulting party's obligations under this Agreement, with or without claiming damages, whether such obligation has fallen due for performance or not; or
- 10.1.4. cancel this Agreement, with or without claiming damages, in which case written notice of the cancellation shall be given to the Defaulting party, and the cancellation shall take effect on the giving of the notice.
- 10.2. The parties agree that any costs awarded will be recoverable on an attorney-and-own-client scale unless the Court specifically determines that such scale shall not apply, in which event the costs will be recoverable in accordance with the High Court tariff, determined on an attorney-and-client scale.
- 10.3. The Aggrieved party's remedies in terms of this clause 10 are without prejudice to any other remedies to which the Aggrieved party may be entitled in law.

11. FORCE MAJEURE

- 11.1. For the purposes of this Agreement the expression "**Force Majeure**" shall mean any event which is beyond the control of an affected party and which such party could neither anticipate nor mitigate by means of insurance, contingency planning or any other prudent business means.
- 11.2. An event will only be considered Force Majeure if it is not attributable to the wilful act, neglect, default or other failure to take reasonable precautions of the affected party, its agents, employees or contractors.
- 11.3. Industrial dispute or labour action shall not give rise to an event of Force Majeure.
- 11.4. No party shall in any circumstances be liable to the other for any loss of any kind whatsoever relating to a Force Majeure event, including, but not limited to, any damages caused to or incurred by the other party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure.
- 11.5. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations hereunder for the duration of such Force Majeure event.
- 11.6. If any party shall become aware of circumstances of Force Majeure which are likely to give rise to or which are likely to give rise to any failure or delay on its part, it shall forthwith notify the other party by the most expeditious method then available followed by written notice informing the other party of the period for which it is estimated that such failure or delay shall continue.
- 11.7. For the avoidance of doubt, it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay in performance of a party's obligations in terms of this Agreement shall be an event qualifying for Force Majeure hereunder or as otherwise expressly provided in this Agreement.
- 11.8. Nothing in this Agreement shall be construed to preclude the Customer from using any alternative facilities to meet its business needs during the continuance of Force Majeure.

12. DATA PROTECTION

- 12.1. In this clause 12, the terms "**personal data**", "**data**", "**data subject**" and "**processing**" shall have the meanings ascribed to them in the Electronic Communications and Transactions Act 25 of 2002.
- 12.2. Compliance by either party with the provisions of this clause 12 shall be at no additional cost to the other party.
- 12.3. Each party shall comply with any data protection, privacy or similar Laws anywhere in the world ("**Data Protection Laws**"), including but not limited to, the Electronic Communications and Transactions Act 25 of 2002, that apply in relation to any personal data processed in connection with this Agreement ("**Protected Data**"), and render such assistance and co-operation as is reasonably necessary or reasonably requested by the other party, including, but not limited to, the provision of information regarding the existence, applicability and extent of application of Data Protection Laws in particular jurisdictions to Protected Data.
- 12.4. Either party shall ensure that it:
 - 12.4.1. processes Protected Data only for purposes notified to it by the other party and/or the relevant data subjects: and

- 12.4.2. maintains appropriate technical and organisational measures to prevent unauthorised or unlawful processing of the Protected Data and against accidental loss or destruction of, or damage to, the Protected Data.
- 12.5. In the event that either party becomes aware of any unauthorised, unlawful or dishonest conduct or activities, or any breach of the terms of this Agreement relating to Protected Data, such party shall immediately notify the other party thereof in writing.

13. INTELLECTUAL PROPERTY RIGHTS

All Intellectual Property Rights in and title to the Services are owned by INX-ZA or its licensors. Each party shall retain all Intellectual Property Rights to their respective Intellectual Property.

14. NOTICES

- 14.1. Except as otherwise expressly provided no giving of notice by one party to the other party in terms of this Agreement shall be of any force or effect unless made and communicated in writing.
- 14.2. For the purposes of receiving any notice provided for or required under this Agreement, the parties select the physical address and other electronic communication contact details set out on the cover page of this Agreement, provided that a party may change its chosen address for the purposes of notices to any other physical address or electronic communication contact details by written notice to the other party to that effect. Such change of address will be effective 5 (five) Business Days after receipt of the notice of the change.
- 14.3. All notices to be given in terms of this Agreement will be given in writing, in English, and will be delivered by hand or sent email and:
 - 14.3.1. if delivered by hand during Business Hours, be presumed to have been received on the date of delivery. Any notice delivered after Business Hours or on a day which is not a Business Day will be presumed to have been received on the following Business Day; and
 - 14.3.2. if sent by email during Business Hours, be presumed to have been received on the date of successful transmission of the telefax or email. Any telefax or email sent after Business Hours or on a day which is not a Business Day will be presumed to have been received on the following Business Day.
- 14.4. Any notice given in writing in English, and actually received by the party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause.

15. DISPUTE RESOLUTION AND GOVERNING LAW

- 15.1. Should any dispute, disagreement, or claim arise between the parties (hereafter referred to as "the dispute") arising out of or in connection with this Agreement, the parties will first endeavour to resolve the dispute by negotiation. The negotiation will entail one party inviting the other in writing to a meeting and to attempt to resolve the dispute within 7 (seven) days from the date of the written invitation.
- 15.2. If the dispute has not been resolved by negotiation, either party may approach a South African High Court with competent jurisdiction to hear the matter.
- 15.3. Nothing contained in clause 15 shall prohibit a party from approaching any Court of competent jurisdiction for urgent interim relief pending the determination of the dispute by arbitration.
- 15.4. This Agreement will in all respects be governed by and construed under the laws of the Republic of South Africa.

16. ENTIRE AGREEMENT

- 16.1. This Agreement constitutes the whole of the agreement between the parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on any of the parties.

16.2. This Agreement supersedes and replaces any and all agreements between the parties (and other persons, as may be applicable) and undertakings given to or on behalf of the parties (and other persons, as may be applicable) in relation to the subject matter hereof.

17. VARIATIONS AND WAIVERS TO BE IN WRITING

- 17.1. No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this Agreement will be of any force or effect unless in writing and signed by the parties.
- 17.2. No waiver, suspension or postponement by any party of any right arising out of or in connection with this Agreement shall be of any force or effect unless in writing and signed by such party. Any such waiver, suspension or postponement will be effective only in the specific instance and for the purpose given.

18. NO INDULGENCES

Failure or delay on the part of any party in exercising any right, power or privilege under this Agreement will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

19. LIMITATION OF LIABILITY

The parties shall be liable to each other only for Direct Loss.

20. NO ASSIGNMENTS

Except as otherwise specifically provided herein, neither this Agreement nor any part, share or interest herein nor any rights or obligations hereunder may be ceded, delegated or assigned by any party without the prior signed written consent of the other party.

21. COSTS

Except as otherwise specifically provided herein, each party will bear and pay its own legal costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of this Agreement.

22. SIGNATURE

- 22.1. This Agreement is signed by the parties on the dates and at the places indicated below.
- 22.2. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the party last signing one of the counterparts.
- 22.3. The persons signing this Agreement in a representative capacity warrant their authority to do so.

CUSTOMER:

INX-ZA:

/s/: _____
Name: _____
Title: _____
Date: _____

/s/: _____
Name: _____
Title: _____
Date: _____