



email & internet

New customer? [] Are you an existing customer? [] If you are, please specify your e-mail address _____

PLEASE INCLUDE THE FOLLOWING WITH THIS FORM:

- 1. Certified Copy Of S.A. ID or S.A. Passport
2. Proof Of Residential Address
3. Fully Completed And Signed Pots Form (Pots Form To Be Completed By Telkom Account Holder)

(Please ensure that this Application Form is completed in FULL and SIGNED upon return.)

My Personal Details (Please complete this IN FULL, IN BLOCK LETTERS AND BLACK)

Form fields for personal details including Title, Surname, First Names, Identity Number, Marital Status, Residential Address, Postal Address, Delivery Address & Special Delivery Instructions, Employer, and Period Employed.

My Registration Details (e-mail address and password)

Form fields for registration details including Preferred E-mail Address, 2nd E-mail Option, Password, and Gross Monthly Income.

Authority for Debit Order / Payment Details

Please debit my bank account as shown in favour of MWEB CONNECT (PTY)/LTD with the total amount owing by me, as specified under this agreement.

Form fields for authority for debit order including Account Holder's Name, Branch, Account No., Credit Card No., CSV, Expiry Date, Type of Account, and Authorised Signature.

Any cancellation of a debit order after activation, could result in polka suspending the service. The account holder will incur all cancellation costs. Billing will commence no later than 2 days after the ADSL line has been put into service.



Polka All-in-One Internet Subscription Contract

Please Choose ONE of the following All-in-One ADSL products

Month-To-Month All-in-One ADSL products

DSL up to 384kbps line

+ 1Gig polka adsl Cap	R 199.00	
+ 2Gig polka adsl Cap	R 279.00	
+ 3Gig polka adsl Cap	R 399.00	

DSL up to 512kbps line

+ 1Gig polka adsl Cap	R 399.00	
+ 2Gig polka adsl Cap	R 469.00	
+ 3Gig polka adsl Cap	R 549.00	

DSL up to 4096kbps line

+ 1Gig polka adsl Cap	R 499.00	
+ 2Gig polka adsl Cap	R 539.00	
+ 3Gig polka adsl Cap	R 579.00	

Declaration

- This order form must be accompanied by a copy of your ID document, Proof of Address and Proof of Income (Salary Advice).
- I declare that the information given above is true and correct.
- I have read, understand and agree to be bound by the ADSL Service Terms, the ADSL Line Rental Agreement, as well as the conditions contained in this Application Form.
- "I, the consumer, hereby consent to: polka requesting and reporting my Confidential Information, Consumer Credit Information and Prescribed Information as defined in the National Credit Act, No 34 of 2005 (the "Act"), (herein after "Information") from and to registered credit bureaux in the sharing of such Information by registered credit bureaux and such other persons as contemplated by in the Act, for the prescribed purposes of the Act".
- No variation or addition to this Application Form will be binding on any of the parties unless recorded in writing and signed by both parties. Activation by POLKA of any services provided to you in terms of this Application Form shall not in any way constitute POLKA's acceptance of any variation or addition to the Application Form or to any of our Terms and Conditions applicable to the services.

PRINT NAME: _____

AUTHORISED SIGNATURE: _____

DATE: _____

D D / M M / Y Y Y Y

Return to polka membership sales – Fax: (021) 596 8131 Tel: 0860 00 44 55 E-mail: polkasalesfaxes@mweb.com



Polka adsl line rental agreement

Internet Service Provider details - (Polka)

BUILDING NAME & NUMBER: Polka

STREET NAME & NUMBER: 100 FAIRWAY CLOSE

SUBURB: PAROW

TOWN: CAPE TOWN

POSTAL CODE: 7463

BUSINESS REGISTRATION NUMBER: 1996/015134/07

VAT REGISTRATION NUMBER: 4390165688

TEL NUMBER (WORK): 021 596 7000

Polka E-MAIL ADDRESS: info@polka.co.za

Customer Details

Telephone number on which you require ADSL:

Order ADSL Access Line

DSL up to 384kbps: DSL up to 512kbps: DSL up to 4096kbps:

Declaration

- I consent that Polka may apply for an ADSL line on my behalf.
- I agree that upon Telkom's confirmation, a new agreement for the provisioning of an ADSL service will come into place between myself and Polka.
- I confirm that Polka may link the new ADSL Line service to my existing POTS service.
- I indemnify Polka against any claims, damages, costs, expenses or penalties, which may arise from the application of my Telkom ADSL line.
- I have read, understand and agree to Telkom's standard terms and conditions found at http://www.telkom.co.za/athome/products/dsl/home_terms.html.
- I have read, understand and agree to the Polka ADSL service terms.
- I confirm that the information provided in this ADSL Line Rental Agreement is true and correct.
- I warrant that the ADSL line I wish to migrate from Telkom to Polka is registered in my name or, if the line is registered in the name of another person, I warrant that I am duly authorised to complete and sign this application form on their behalf. Accordingly I indemnify Polka and hold it harmless from any and all liability and/or costs arising as a result of my not being authorised to migrate the line from Telkom to Polka.

PRINT NAME: _____

DATE: D D / M M / Y Y Y Y

AUTHORISED SIGNATURE: _____

Return to polka membership sales – Fax: (021) 596 8131 Tel: 0860 00 44 55

Products Terms and Conditions:

polka ADSL Service Terms

Please read the following terms very carefully as they set out your rights and obligations when you subscribe to or use our capped shaped ADSL Service.

1. ADSL Service Description

We provide a capped asymmetric digital subscriber line (ADSL) service that enables you to send and receive data and email and to access the Internet using a high-speed connection (ADSL Service).

2. Introduction

2.1 By using or subscribing to the ADSL Service you agree that you have read, understand and are bound by:

- 2.1.1. the General Terms and Conditions and other notices under "General" on our Legal notices Webpage;
- 2.1.2. the terms that apply specifically to the ADSL Service, set out herein and on the ADSL Website (ADSL Service Terms). (collectively "the Terms")

2.1 Your use of the ADSL Service indicates your acceptance without modification of the Terms, which will constitute a legal agreement between you and MWEB. If you do not want to be bound by the Terms, you must not use or subscribe to the ADSL Service.

2.2 Unless the context clearly indicates the contrary, any term defined in the General Terms and Conditions when used herein, shall bear the same meaning as defined in the General Terms and Conditions.

3. Interpretation

In these ADSL Service Terms:

- 3.1 the singular includes the plural and vice versa;
- 3.2 amounts exclude VAT unless otherwise stated;
- 3.3 **ADSL** means an Asymmetric Digital Subscriber Line which transmits your data onto the Telkom network;
- 3.4 **ADSL Service** or **Service** means the provisioning of the Shaped ADSL and Cap;
- 3.5 **ADSL Website** means the website located at: <http://www.myadsl.polka.co.za>;
- 3.6 **Agreement** means the Application Form and the terms and conditions referred to in clause 2.1 in terms of which the ADSL Service is provided to you;
- 3.7 **Application Form** means the document in terms of which you apply for the Service, select your desired Cap and provide related information to us;
- 3.8 **Auto Booster** means the Out of Package Usage of 1 Gig which will automatically be made available to you when you reach or exceed your Base Cap, should you subscribe for this service;
- 3.9 **Booster** means the Out of Package Usage that you can purchase from us to increase your Base Cap;
- 3.10 **Base Cap** or **Cap** means the amount of data, measured in Gigabytes (GB), that you would like to send and receive during the course of a calendar month and can be 1GB, 2 GB; 3 GB; 6 GB; 9 GB or 12 GB;
- 3.11 **Base Cap Charge** means the amount which we will charge you for the Cap selected by you, as recorded in the Application Form and/or displayed on the ADSL Website;
- 3.12 **Fixed Term Agreement** means a contract for the provisioning of the Service for a period of 12 (twelve) months;
- 3.13 **Installation and bringing into Service Charge** means a once off fee for the costs relating to the set-up and connection of a subscriber to Telkom's network for the ADSL Service;
- 3.14 **Kbps** means kilobytes per second;
- 3.15 **Meg** means megabyte;
- 3.16 **Modem** or **Router** means the device which is used to connect your computer to the Telkom Telephone Service, in order to enable the ADSL Service;
- 3.17 **Out of Package Usage** means data sent or received over and above your Base Cap;
- 3.18 **Self Install Option** means that you are in a position to complete the part of the ADSL line installation that is required to take place at your premises, yourself;
- 3.19 **Service Fee** means the amount which we will charge you for the rental of the ADSL and the Cap selected by you, as recorded in the Application Form and/or displayed on the ADSL Website;
- 3.20 **Shaped** means that online traffic is prioritized and channeled in a specific order, e.g. first email, then HTTP, and then peer-to-peer;
- 3.21 **Telkom** means Telkom SA Ltd;
- 3.22 **Telkom Resell ADSL Terms and Conditions** means the Telkom Resell ADSL product-specific conditions, which are available at www.telkom.co.za;

- 3.23 **Telkom Telephone Service** means a fixed access line for making and receiving telephone calls;
 - 3.24 **Unit Price** means the cost per megabyte of the Usage Based Booster;
 - 3.25 **Usage Based Booster** means Out of Package Usage for which you will be charged per megabyte.
- #### 4. ADSL Service Terms
- 4.1 Pre-requisites
 - 4.1.1 **ADSL availability**
 - 4.1.1.1 The ADSL Service is not available everywhere;
 - 4.1.1.2 You are responsible for checking that the ADSL Service is available on your Telkom Telephone Service before you Subscribe to the ADSL Service.
 - 4.1.2 **Telkom Telephone Service and ADSL.** You are required to have beneficial use of an active Telkom Telephone Service, as well as an ADSL in order to make use of the ADSL Service. You can gain access to an ADSL in one of three ways:
 - 4.1.2.1. engage with Telkom directly for the ADSL rental, under which circumstances:
 - 4.1.2.1.1 Telkom will attend to the installation of the ADSL;
 - 4.1.2.1.2 you will pay an Installation and bringing into Service Charge and a monthly line rental charge directly to Telkom; and
 - 4.1.2.1.3 we will provide the Base Cap to you over the Telkom ADSL network on a month to month basis, for which you will pay us the Base Cap Charge monthly in advance;
 - or
 - 4.1.2.2. rent an ADSL directly from polka, under which circumstances:
 - 4.1.2.2.1 you will qualify for the Self Install Option according to the criteria determined by Telkom, as set out on the ADSL Website;
 - 4.1.2.2.2 polka will apply to Telkom for the ADSL on your behalf and Telkom will approve your application;
 - 4.1.2.2.3 polka will supply you with a Modem which is required to enable the ADSL Service;
 - 4.1.2.2.4 polka will provide the ADSL Service to you, over the Telkom ADSL network;
 - 4.1.2.2.5 you will agree to and sign the Telkom Resell ADSL Terms and Conditions;
 - 4.1.2.2.6 you will enter into either a monthly or a Fixed Term Agreement with us for the provisioning of the Service;
 - 4.1.2.2.7 you will be liable to make payment to us of the Service Fee as provided for in clause 4.2;
 - 4.1.2.2.8 you acknowledge that an ADSL procured in this manner will have one of 3 (three) line speeds:
 - 4.1.2.2.8.1 up to 384 Kbps;
 - 4.1.2.2.8.2 up to 512 Kbps; or
 - 4.1.2.2.8.3 up to 4096 Kbps;
 - or
 - 4.1.2.3. transfer your existing Telkom ADSL to polka, under which circumstances:
 - 4.1.2.3.1 you will consent in writing that polka may terminate your existing ADSL with Telkom and that we may transfer your ADSL to polka;
 - 4.1.2.3.2 you agree to rent the ADSL from polka and agree that polka will provide you with a Cap;
 - 4.1.2.3.3 you will be liable to make payment to us of the Service Fee as provided for in clause 4.2; and
 - 4.1.2.3.4 you indemnify polka against any damages or penalties which may arise from the termination of your existing Telkom ADSL.
 - 4.1.3 **Installation of ADSL**

Should you qualify to receive the Service and reside within an ADSL-enabled exchange area, Telkom is required to install the ADSL Service within 30 (thirty) business days of receipt of your application for the Service.
 - 4.2. **Billing**
 - 4.2.1. You will pay the Base Cap Charge or the Service Fee, as the case may be, to polka monthly in advance by way of debit order, on or before the 1st day of each and every calendar month.
 - 4.2.2. Billing will commence on the Activation Date.
 - 4.2.3. You will be liable for the charges of any Telkom technician who is dispatched to your premises at your instance, save for Telkom ADSL network related matters, which will be free of charge.
 - 4.3. **Measures to control Out of Package Usage**

- 4.3.1. We have measures available to limit your access to the ADSL Service when you reach or exceed your Base Cap, which are implemented subject to the provisions of clause 4.3.2.1.4.
- 4.3.2. Where you reach or exceed your Base Cap, you will not be able to use the ADSL Service, send or receive data or email, or access the Internet until the start of the next month, unless you do one of the following things:
- 4.3.2.1. buy a Booster;
- 4.3.2.2. use a dial-up service; or
- 4.3.2.3. increase your Base Cap to a higher Gigabyte factor.
- The different options are discussed below:
- 4.3.2.1 **OPTION 1:** Buy a booster either online or via our call centre:
- 4.3.2.1.1. THREE (3) TYPES OF BOOSTERS ARE AVAILABLE;
- 4.3.2.1.1.1 The Hard Cap Booster (if you are an existing subscriber);
- 4.3.2.1.1.1.1 You may buy a 1GB Booster if you have a 1GB, 2GB, 3GB, 6GB or 9GB Base Cap; or
- 4.3.2.1.1.1.2 You may buy a 3GB Booster if you have a 3GB, 6GB or 9GB Base Cap.
- 4.3.2.1.1.1.3 It lies within our discretion to limit the number of Hard Cap Boosters that you may use in any given month.
- 4.3.2.1.1.2 The Auto-Booster
- 4.3.2.1.1.2.1 You may only subscribe for one Auto Booster per month.
- 4.3.2.1.1.3 Usage Based Booster (if you are a new subscriber or an existing subscriber who selects this option, or should you fail to select any option)
- 4.3.2.1.1.3.1 The Usage Based Booster will kick in automatically once you reach your Base Cap.
- 4.3.2.1.1.3.2 You will be able to obtain Out of Package Usage under this option up to 5 Gigabytes (the "5 Gig Safety Lock").
- 4.3.2.1.1.3.3 Every time that you reach the 5 Gig Safety Lock, you will be required to settle your account for the Out of Package Usage immediately, whereupon you will become eligible to use another 5GB.
- 4.3.2.1.1.3.4 Should you fail to settle your account once you reach the 5 Gig Safety Lock, we will not make another Usage Based Booster available to you, and we will bill you in arrears for the Out of Package Usage.
- 4.3.2.1.1.3.5 We reserve the right to change the limit of the Safety Lock from time to time.
- 4.3.2.1.2 **PRICING**
- 4.3.2.1.2.1 The prices for the different Hard Cap Boosters, the Auto Booster, and the Unit Price for the Usage Based Boosters are available on the ADSL Website.
- 4.3.2.1.2.2 We reserve the right to change these prices from time to time.
- 4.3.2.1.3 **UNUSED DATA CAPACITY**
- 4.3.2.1.3.1 You can cancel any Booster that you have bought, save for the Usage Based Booster, if you have not used the Booster at all. In that case, we will refund you the charges for the Hard Cap Booster or the Auto Booster (as the case may) but not in respect of the Usage Based Booster.
- 4.3.2.1.3.2 Data capacity under a Hard Cap Booster or the Auto Booster (as the case may) but not in respect of the Usage Based Booster, which was not used during the course of a month will be carried over to the next month for use during that month, but that month only. Under such circumstances, you will first use your Base Cap, and then the Booster data capacity, which was carried over.
- 4.3.2.1.4 **DISCLAIMER**
- 4.3.2.1.4.1 Because of the nature of the ADSL sessions, and because ADSL is a session based technology, we do not guarantee the efficiency of the measures available to limit your usage as contemplated in this clause 4.3, including without limitation the 5 Gig Safety Lock.
- 4.3.2.1.4.2 We accordingly do not accept responsibility if you exceed your Base Cap, and we will charge you for Out of Package Usage at our prevailing rates.
- 4.3.2.1.4.3 You are therefore responsible for monitoring and controlling your use of the ADSL Service.
- 4.3.2.2 **OPTION 2:**
- 4.3.2.2.1 Use a dial-up service if you have subscribed for this.
- 4.3.2.2.2 If you have selected the 3GB, 6GB, 9GB or 12GB Base Cap, the dial-up service is automatically included in your ADSL Service at no additional charge.
- 4.3.2.2.3 If you have selected the 1GB or 2GB Base Cap, you may choose to add the dial-up service at an additional monthly charge.
- 4.3.2.2.4 The additional charges are displayed on the ADSL Website. We reserve the right to change the charges from time to time.
- 4.3.2.3 **OPTION 3:**
- 4.3.2.3.1 Increase your Base Cap to a higher Gigabyte factor.
- 4.3.2.3.2 If you regularly exceed your Base Cap, you should consider increasing your Base Cap.
- 4.3.2.3.3 You may increase (or decrease) your Base Cap with effect from the first day of the month following the month in which you requested such increase (or decrease) against payment of the relevant charges, as displayed on the ADSL Website
- 4.4 **Monitoring usage**
- 4.4.1. As stated above, we have a computer system that measures your usage of the ADSL Service to determine if and when you reach your Base Cap.
- 4.4.2. Because your access to the ADSL Service will be restricted when you reach your Base Cap, it is important that you: -
- 4.4.2.1 monitor your usage of the ADSL Service by using our cap aids and alerts (see below); and
- 4.4.2.2 regularly end your current sessions so that we are able to measure your usage.
- 4.4.3 Notwithstanding the measures which we will use to monitor your usage, you acknowledge and agree that you are responsible for monitoring and controlling your use of the ADSL Service.
- 4.4.4 We provide three monitoring measures, currently free of charge, that will assist you to keep track of your ADSL Service usage:
- 4.4.4.1 ADSL Website:
- this will provide you with guidelines to help you to monitor your use of the ADSL Service online, and enables you to buy Boosters, and to manage your SMS cap alerts.
- 4.4.4.2 SMS and email alert:
- 4.4.4.2.1 When you subscribe to or start using the ADSL Service you will be asked whether you wish to receive SMS alerts.
- 4.4.4.2.2 In respect of your Base Cap: We will send you SMSs and/or emails at regular intervals to inform you how much of your Base Cap you have used. You may also subscribe to ("opt in") to receive SMS alerts when you have used 30%, 50%, 70% or 90% of your Base Cap.
- 4.4.4.2.3 In respect of the Usage Based Boosters: We will send you an e-mail alert for each R100 (one hundred Rand) Meg increment of Out of Package Usage you have used.
- 4.5. **Concurrency**
- 4.5.1. You may only have the following connections to the ADSL Service at any given time:
- 4.5.1.1 If your account has a 1GB Base Cap, you may only have:-
- 4.5.1.1.1 1 (one) ADSL connection; and
- 4.5.1.1.2 1 (one) dial-up connection (if applicable) (analogue or 64K ISDN only) to Telkom's network at any given time.
- 4.5.1.2 If your account has a 2GB Base Cap, you may only have:-
- 4.5.1.2.1 2 (two) ADSL connections; and
- 4.5.1.2.2 1 (one) dial-up connection (if applicable), to the network at any given time.
- 4.5.1.3. If your account has a 3GB Base Cap, you may only have:-
- 4.5.1.3.1 2 (two) ADSL connections; and
- 4.5.1.3.2 1 (one) dial-up connection (if applicable), to Telkom's network at any given time.
- 4.5.1.4 If your account has a 6GB, 9GB or 12GB Base Cap, you may only have:-
- 4.5.1.4.1 3 (three) ADSL connections; and
- 4.5.1.4.2 1 (one) dial-up connection (if applicable), to Telkom's network at any given time.
- 4.5.2. You may increase or reduce the number of concurrent connections on your ADSL Service, subject to the limitations detailed in clause 4.5.1, by accessing the ADSL Website and making the necessary changes.
- 4.6. **Exceeding your Cap and blacklisting**
- 4.6.1. From time to time, in any given month, we may in our sole discretion allow you to exceed your Base Cap without stopping your access to the ADSL Service.
- 4.6.2. However, if we allow you to exceed your Base Cap in this manner, it will merely constitute a temporary indulgence on our part. It will not constitute a waiver of any of our rights, including (without limitation) our right to stop your access to the ADSL Service if you exceed your Base Cap at any time in the future.

- 4.6.3. If you exceed your Base Cap, we reserve the right in our sole discretion to recover from you the cost of the amount of data by which you have exceeded your Base Cap.
- 4.6.4. If you exceed your Base Cap regularly, we reserve the right in our sole discretion to "blacklist" you. In that case, we will measure your usage of the ADSL Service very carefully and stop your access to the ADSL Service promptly every time you exceed your Base Cap.
- 5. Duration and termination of the Agreement**
- 5.1. Subject to the provisions of clause 3.8 of the General Terms and Conditions this Agreement commences on the Effective Date and will terminate:
- 5.1.1. in the case of a Fixed Term Agreement: upon the expiry of a period of 12 (twelve) months following the Activation Date ("the Initial Period"). At the end of the Initial Period, the Agreement will automatically renew and will continue on a month to month basis ("the Renewal Period"). You may terminate the Agreement during the Renewal Period by giving us 1 (one) calendar month's written notice, which notice will take effect on the first day of the month immediately following the end of the 1 (one) month notice period; or
- 5.1.2. in the case of a month to month arrangement: upon receipt in writing from you of 1 (one) calendar months notice, which notice will take effect on the first day of the month immediately following the end of the 1 month notice period; or
- 5.1.3. on the date specified in a notice in writing from us which we may give to you in the event of the termination of the agreement between us and Telkom relating to the ADSL Service.
- 5.2. You agree to pay the Service Fee for the remainder of the 12 (twelve) month term, as well as any other amounts due by you to us under this Agreement, in the event of the early termination by you of the Fixed Term Agreement. Early termination will be accepted on 30 (thirty) days prior written notice to us.
- 5.3. We reserve the right to suspend the provisioning of the Service to you in terms of clause 8.5.3 of the General Terms and Conditions or as a result of a breach by you of the Agreement, or as a result of your non-payment to Telkom of any amounts due to Telkom in respect of your Telkom Telephone Service. You will, however, under these circumstances be able to be reconnected to the Service upon payment of a re-activation fee.
- 5.4. We reserve the right to terminate the provisioning of the Service to you terms of clause 8.5.3 of the General Terms and Conditions or as a result of a breach by you of the Agreement, or as a result of your non-payment to Telkom of any amounts due to Telkom in respect of your Telkom Telephone Service, or the termination by you of your Telkom Telephone Service.
- 5.5. We will always use reasonable endeavors to notify you in advance of the suspension or termination of the Service as contemplated in clauses 5.2 and 5.3 above.
- 5.6. You indemnify us against any damage, loss, cost or claim which you may suffer or incur arising from the suspension or termination of the Service.
- 6. ADSL Acceptable Use Policy**
- 6.1. You will only use the ADSL Service for purposes: -
- 6.1.1. that are lawful; and
- 6.1.2. for which it was designed.
- 6.2. You will not use the ADSL Service, directly or indirectly, in a way that:
- 6.2.1. is harmful, obscene, discriminatory, defamatory or illegal;
- 6.2.2. constitutes hate speech, incitement to commit criminal acts, or invasion of privacy; infringes copyright or other intellectual property rights;
- 6.2.3. spreads viruses or other computer or communications software, code, programs or files that impede or destroy the functionality of any computer or communications software or equipment;
- 6.2.4. interferes with any third party's use of the ADSL Service;
- 6.2.5. transmits unsolicited bulk messages ("spam");
- 6.2.6. obtains information about or from third parties;
- 6.2.7. causes your Cap to be regularly exceeded; or
- 6.2.8. otherwise breaches the General Terms and Conditions or the ADSL Service Terms.
- 6.3. We reserve the right to limit the number of emails that you may send in any given period or to limit the total message volume (amount of data) sent per hour.
- 7. Disclaimer**
- 7.1. We use the Telkom ADSL network to provide the Service. We accordingly provide the ADSL Service subject to the limitations and terms imposed on us by Telkom, which includes the actual availability of the Telkom network.
- 7.1.1. We will always try to provide the Service to the best of our ability. However, we:-
- 7.1.1.1. provide the ADSL Service "as is" and "as available"; and
- 7.1.1.2. do not warrant or guarantee that the Service:-
- 7.1.1.2.1. is free of errors or interruptions;
- 7.1.1.2.2. is always available;
- 7.1.1.2.3. is fit for any purpose;
- 7.1.1.2.4. does not infringe any third party rights;
- 7.1.1.2.5. is secure and reliable; or
- 7.1.1.2.6. will conform to your delivery timeline requirements.
- 7.2. We also do not warrant that we will always be in a position to obtain an ADSL for you from Telkom, or that Telkom will continue to make the ADSL used by you available to us for the purposes of this agreement; or that we will always be in a position to lease ADSLs to subscribers as contemplated in clause 4.1.2 above.
- 8. Limitation of Liability**
- 8.1. You subscribe to and use the ADSL Service at your own risk.
- 8.2. We are not liable to you or any third party for, and you hold us harmless and indemnify us against, any damages suffered by you or a third party howsoever arising from your Subscription to or use of the ADSL Service, including (without limitation) any damages suffered by you due to:-
- 8.2.1. any interruption of or error in the ADSL Service; or
- 8.2.2. our failure to fulfill our obligations as a result of uncontrollable events, including without limitation Telkom's neglect, failure or refusal to make, or to continue to make, the ADSLs or the ADSL Service available to us.
- 8.3. In this clause 8:
- 8.3.1. damages means all damages of whatsoever nature and includes (without limitation) all damages, loss, claims or costs, including (without limitation) loss of data, profits or custom, or loss of current or future business whether:-
- 8.3.1.1. in contract, delict or otherwise;
- 8.3.1.2. direct, indirect, special or consequential;
- 8.3.1.3. foreseeable or not; and
- 8.3.1.4. we were advised of the damages in advance or not; and
- 8.3.2. uncontrollable events means any circumstances beyond our reasonable control, including (without limitation) an act of God, of public enemy, fire, explosion, earthquake, perils of the sea, flood, storm or other adverse weather conditions, war declared or undeclared, civil war, revolution, civil commotion or other civil strife, riot, blockade, embargo, sanctions, epidemics, act of any government or other authority, compliance with government orders, demands or regulations, or any act or omission on the part of a third party (including (without limitation) Telkom).
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