

## IS IGNITE TERMS AND CONDITIONS

PLEASE NOTE: These product or service specific terms and conditions must always be read together with our General Terms and Conditions, which will always apply to your use of this product or service.

### 1. DEFINITIONS

1.1 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.

1.2 Unless the context clearly indicates to the contrary, the following words bear the meanings ascribed thereto-

1.2.1 “Application Form” means the contract that contains the service that the Customer has agreed to procure from IS Ignite;

“24 Hour Reboot Service” means the additional Rack Space service, Customer can subscribe to at additional service fees, as contemplated in clause 9.10;

1.2.2 “Customer Server” means the file server comprising of computer hardware/machinery/equipment which is either supplied by Customer;

1.2.3 “Data Traffic” means any data traffic originating from the Server to the Internet and packets originating from the Internet to the Server;

1.2.4 “Location” means IS Ignite data centre situated at The Internet House, Greenacres Office Park, cnr Barry Hertzog/Rustenburg Roads, Victory Park, Johannesburg, Gauteng and/or any other address indicated by IS Ignite from time to time;

1.2.7 “Server” means the Customer Server, as the context may indicate;

1.2.8 “Rack Space” means the services contemplated in these Product Terms which IS Ignite renders to Customer in accordance with Customer’s selection as indicated on the Application Form under such heading or description whereby: (i) IS Ignite hosts the Server at the Location; and (ii) supplies such ancillary/additional Rack Space services, as selected by Customer in the Application Form;

1.2.9 “Operating Software” means software that controls basic, low-level server hardware operations, and file management, without the user thereof having to operate it or application software, purchased from IS Ignite or rented to Customer by Ignite, as selected by Customer and indicated on the Application Form. Such purchase or rental is additional to the Rack Space service to which additional service fees apply;

1.2.10 “SPLA Software” means software owned by Microsoft and supplied to IS Ignite by Microsoft in accordance with the provisions of the Service Provider Licence Agreement (“SPLA”), which SPLA Software is rented to Customer by IS Ignite in accordance with the provisions of these Product Terms and Microsoft software license terms and conditions. Such rental is an additional Rack Space service to which additional service fees apply.

1.2.11 **“Unsupported Software”** means any software and/or applications required to operate any System that Customer obtained/purchased from a third party and is licensed to use, but excludes software that is not supplied, installed, managed, maintained or licensed by Ignite.

1.2.12 **“Client Software”** means software that allows a Device to access or utilise the services or functionality provided by the Server Software.

1.2.13 **“Device”** means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, “smart phone,” or electronic device.

1.2.14 **“Server Software”** means software that provides services or functionality on a computer acting as a Server.

1.2.15 **“Software Documentation”** means any end user document included with Server Software;

1.2.16 **“Redistribution Software”** means the software described in Paragraph 4 (“Use of Redistribution Software”) below.

## 2. PAYMENT

Customer shall pay IS Ignite the services fees specified in the Application Form in accordance with the provisions set out in the General Terms and Conditions.

## 3. TERMS AND CONDITIONS SPECIFIC TO SERVER HOSTING

3.1 In order for IS Ignite to provide the Rack Space service, the following are required:

3.1.1 Server;

3.1.2 Operating Software; and

3.1.3 SPLA Software;

3.2 The Server will be housed at the Location. Customer shall under no circumstances be entitled to remove the Server from the Location irrespective of whether such Server is: (i) a Customer Server; or (ii); without IS Ignite’s authority.

3.3 IS Ignite will provide Rack Space services to Customer in accordance with the Rack Space product selected by Customer in the Application Form which products are dealt with in clauses 4 and 5 below.

3.4 IS Ignite is not responsible to back-up any data on the Server. All back-ups are the sole responsibility of the Customer. IS Ignite will not be liable for any losses or damages Customer may suffer as a result of Customer’s failure to perform back-ups.

3.5.1 The peak outbound traffic rate to the internet will be limited to 100Mbps, and the peak inbound traffic rate from the internet will be limited to 10 Mbps;

3.5.2 The peak outbound and inbound rates specified in 3.5.1 do not constitute a sustained throughput guarantee, only an upper limit. Actual throughput will be determined by prevailing network conditions influenced by such factors as time of day and the external networks being communicated with.

3.5.3 The outbound traffic usage for any particular calendar month must exceed that of the inbound traffic usage of the same month.

3.5.4 The service shall not be used for the purposes of bulk downloading from the Internet by using the hosted server as a traffic proxy or tunnel relay.

3.5.5 Failure to comply with 3.5.3 or 3.5.4 shall constitute a breach of the server hosting services with an uncapped traffic allowance.

3.5.6 Should the conditions specified in 3.5.3 or 3.5.4 not be rectified in the month subsequent to notification by IS Ignite, IS Ignite reserves the right to terminate the service unconditionally.

#### **4. Rack Space (IF SELECTED IN THE APPLICATION FORM)**

4.1 If the Server is provided by Customer:

4.1.1 Customer will deliver the Server to the Location at its own cost;

4.1.2 Customer will be responsible for the set-up and configuration of the Server;

4.1.3 IS Ignite will not be responsible for the Server including maintenance, repair, virus protection, upgrades, updates, security updates/patches or the like;

**4.1.4 All risk of loss, damage and/or destruction of or to the Server whilst housed at the Location shall remain vested in Customer, and Customer shall make its own arrangement regarding the insurance thereof.**

**4.2 Customer warrants and represents that it is the owner of the Server and/or that it has the right to be in possession of the Server. IS Ignite shall not be liable for and Customer indemnifies IS Ignite against any claim or losses incurred by IS Ignite as a result of Customer's breach of the aforementioned warranty.**

4.3 The Server or any other equipment in IS Ignite's possession, which relates to Rack Space, shall be held by IS Ignite as security for the Customer's fulfillment of all its obligations with regard to Rack Space services.

4.4 IS Ignite shall be responsible for the installation which shall include the following:

4.4.1 allocation of hosting space for the Server in accordance with the Customer's selection in the Application Form;

4.4.2 allocation of an IP Address and/or additional IP Addresses (if selected on the Application Form) for the Server to: (i) enable a connection from the Server to IS Ignite's network; and (ii) enable and facilitate the transmission of Data Traffic as well as the provision of the relevant IP Address information (including IP gateway's, DNS servers and subnet information) and Customer Identifiers to Customer;

4.4.3 provisioning the amount of Internet bandwidth for the purposes of clause 4.4.2, in accordance with Customer's choices in the Application Form; and

4.4.4 configuration of a unique VLAN (Virtual Local Area Network).

4.5 Except if otherwise stated, IS Ignite shall grant Customer access to the Server either remotely or at the Location and Customer agrees to be bound by IS Ignite's security policies and/or its occupational health and safety rules.

4.6 IS Ignite will use reasonable endeavours to provide a smooth, uninterrupted electrical power supply to the Server. Other than as specifically provided in these Product Terms, IS Ignite will not be liable for any loss or damage as a result of any interruption in the electrical power supply.

## **6. OPERATING SOFTWARE (IF SELECTED IN THE APPLICATION FORM)**

6.1 The Operating Software needs to be installed by the client in accordance with the inherent software license agreement attached to the applicable Operating Software and subject to the provisions of this clause 6. Customer will acquire such rights to the Operating Software, as allowed by such licenses.

6.4 IS Ignite will not be responsible for any software and/or applications not supplied and installed by it, including the licensing thereof (hereinafter referred to as "**Unsupported Software**").

6.5 Customer agrees that any Unsupported Software contemplated in clause 6.4 required and loaded, if allowed, by Customer on the Customer Server will be its own responsibility and is loaded at its sole risk and responsibility. The licensing of all such installed Unsupported Software shall be the sole responsibility of Customer. All Unsupported Software shall be licensed in accordance with the vendor's software and/or application license agreements. IS Ignite retains the right to carry out routine checks to validate such software license agreements.

**6.6 Customer will be solely responsible for all the maintenance and/or upgrades of the Unsupported Software, which will include any patches, updates and security updates/patches of whatever nature installed in terms of clause 6.5.**

## **7. SPLA SOFTWARE (IF SELECTED IN THE APPLICATION FORM)**

7.1 IS Ignite shall:

7.1.1 Rent the SPLA Software to Customer in accordance with the provisions of the Microsoft End User Licence terms as set out in clause 11 below and these Product Terms;

7.1.2 Only install the SPLA Software on the Server if Customer has selected this option in the Application Form;

7.1.3 manage the maintenance and upgrade of the SPLA Software on Customer's behalf.

7.2 Customer's use of the SPLA Software shall be in accordance with the provisions of clause 11 below.

7.3 SPLA Software is never owned by Customer, but licensed to Customer for the duration of Server Hosting services through an arrangement that Microsoft has with IS Ignite

7.4 Customer furthermore agrees to be bound by the terms and conditions related to the SPLA Software, which are contained in clause 11 below.

7.5 Upon termination of the Server Hosting services, IS Ignite shall format the Server in order to remove the SPLA Software from the Server, failing which, Customer shall remain directly liable to IS Ignite and/or

Microsoft for all damages suffered by IS Ignite and/or Microsoft as a result of illegal and/or unauthorized usage of the SPLA Software.

7.6 Where IS Ignite is not installing and managing the SPLA Software on Customer's behalf, Customer shall indemnify and hold IS Ignite and Microsoft harmless from any claims arising as a result of: (i) improper installation of the SPLA Software on the Computer System; (ii) any software virus introduced by Customer; (iii) Customer's including his/her/its employees, agents and/or contractor's breach of the provisions of this Agreement; (iv) unauthorised installation, use, access, copying, reproduction and/or distribution of the SPLA Software. **In addition, Customer shall be liable to IS Ignite and/or Microsoft Corporation for all damages, costs and an expense, including reasonable attorney's fees, resulting from Customer's including his/her/its employees, agents and/or contractor's continued distribution of an allegedly infringing SPLA Software after IS Ignite has notified Customer to stop.**

## 8. SOFTWARE

8.1 Customer acknowledges that IS Ignite shall not be held responsible for any Unsupported Software installed on the Server and such software, where allowed by IS Ignite, are installed at Customer's sole risk and responsibility. IS Ignite expressly disclaims any direct, indirect, incidental, special, punitive or consequential losses or damages suffered by Customer or which Customer may suffer as a result of installation of such Unsupported Software.

8.2 Customer warrants that all installed Unsupported Software as contemplated in clause 8.1 are and will remain licensed properly according to vendors' license agreements.

8.3 Customer warrants that all licenses of installed Unsupported Software are valid and up to date and Customer shall ensure that all such licenses are renewed timeously to ensure that it remain valid licenses.

8.4 Customer shall at all times fully comply with the relevant vendor's software license agreements and any other relevant terms and conditions.

8.5 Customer hereby indemnifies and holds IS Ignite harmless against any claims arising as a result of (i) any unlicensed software used by Customer, (ii) Customer's non-compliance with relevant vendor terms and conditions in relation to software, (iii) improper installation of software, (iv) being in possession of invalid software licenses (including but not limited to expired licenses), (v) unauthorized use, access, copying, upgrades, patches, reimaging, reproduction and/or distribution of software, or (vi) Customer's including its employees', agents', and/or contractors' continued distribution of an allegedly infringing software after IS Ignite has notified Customer to discontinue such infringement.

8.6 Customer agrees that Customer shall be liable to IS Ignite for the payment of all damages, fines, costs, expenses, interest, including any attorney fees incurred or that may be incurred by IS Ignite as a result of any of the aforesaid actions or omissions contemplated in clause 8.5..

8.7 Customer agrees that IS Ignite (or a software vendor) may carry out routine checks and/or audits to validate any software license agreements entered into with any vendor. Should any vendor audit result in penalties or fines being levied against IS Ignite as a result of the conduct of Customer, then Customer will pay any such fines or penalties or any other costs or damages IS Ignite may suffer as a result of such negative audit.

8.8 Customer agrees to make available for inspection by IS Ignite all tax invoices, receipts and licenses upon reasonable written request by IS Ignite.

## 9. SERVICE LEVEL AGREEMENT

9.1 IS Ignite will provide Customer with Rack Space set out herein in accordance with this Service Level Agreement (“Service Level Agreement”).

9.2 IS Ignite will maintain an average of 99% service uptime over a consecutive period of 3 (three) months, provided that no three-month period or any period forming part of such three month period shall be used more than once for the purpose of calculating the reduction in terms of clause 9.3 below.

9.3 Should the service uptime fall below the prescribed service uptime level, Customer shall be entitled to the following reduction of the Rack Space service fees in respect of the relevant 3 (three) month period. Any reduction of service fees may only be claimed as a credit against future service fees.

9.3.1 99 - 100% no reduction

9.3.2 95 - 98.999% 25 % reduction

9.3.3 90 - 94.999% 50 % reduction

9.3.4 Less than 90% 70% reduction

9.4 The liability of IS Ignite for failing to achieve the minimum service uptime in terms of this Service Level Agreement will be limited to the reduction contemplated in clause 9.3 above.

9.5 For the purpose of this Service Level Agreement:

9.5.1 Service uptime will be measured by IS Ignite’s monitoring software and only with reference to IS Ignite’s network availability and UPS power;

9.5.2 The calculation of service uptime and the calculation of any reduction of service fees will exclude any downtime, outage or interruption or unavailability of the Rack Space, as a result of, or caused by:

9.5.2.1 Any outage, interruption or unavailability of the services or facilities of an external or third party telecommunications or network provider to which the IS Ignite network infrastructure is connected;

9.5.2.2 Any outage, interruption or unavailability caused by Customer’s hardware, software and/or applications;

9.5.2.3 scheduled downtime for general maintenance, enhancements, upgrades or modifications (or of an otherwise scheduled nature). IS Ignite shall use its reasonable endeavours to notify Customer of such downtime and shall furthermore use its reasonable endeavours to provide such notification at least 24 (twenty four) hours prior to such scheduled downtime.

9.5.2.4 Force Majeure;

9.5.2.5 any action or omission of the Customer, including without limitation, accidental damage, operator errors, abnormal operating conditions, the connection of unauthorised peripheral equipment, improper use, misuse, neglect or abuse of the Rack Space service; and

9.5.2.6 Any factor beyond the reasonable control of IS Ignite

9.7 Should Customer wish to claim any reduction of Service Fees, Customer will, within 30 (thirty) days from the end of any 3 (three) months measurement period, notify IS Ignite in writing of the reduction claimed, the dates of the measurement period and the dates, times and duration of non-availability of Rack Space service. IS Ignite may request further documentation and supporting data from Customer to compare against its own monitoring data.

9.8 All service requests and technical support calls can be logged 24 hours per day, 365 days per year with IS Ignite Customer Care Centre.

9.9 IS Ignite will keep Customer informed of the progress of the problem resolution. IS Ignite will endeavor to adhere to the following times (in business hours) with regard to feedback:

9.9.1 Critical Disruptions: Total loss of all services - 1 hour

9.9.2 Service Disruptions: Serious degradation of services - 2 hours

9.9.3 Service Incidents: Minor loss/degradation of services - 4 hours

9.9.4 Service Queries: No loss/degradation of services - 4 hours

9.10 24 Hour Reboot Service: (if subscribed to)

Customer shall have access to the services of qualified IS Ignite technical staff outside of normal business hours to reboot the Server, should Customer not be able to reboot it remotely.

9.11 No Server will be reinstalled if custom DLL's been operational on the old system and are required on the new installation.

9. 9.13 Server and SQL backups will be performed only if selected in the Application Form.

9.14 IS Ignite will not be responsible for any loss of data should Customer require a Server reinstall.

## **10. POWER**

10.1 IS Ignite has designed the electrical power delivery systems to provide an uninterrupted supply of electrical power through various primary and secondary supply mechanisms. For electrical power delivery to the IDC Space, clients may choose between the following configurations:

10.2 Non-Redundant Power – Electricity delivered via one (1) power circuit.

10.3 Non-Redundant Power at 99.67+% availability. This is met by achieving less than twenty-eight comma eight (28.8) hours of unavailability over a calendar year period per cabinet. For the purposes of this paragraph, a Non-Redundant Power circuit is considered unavailable when a functioning cabinet is powered by one (1) power circuit, and the power circuit experiences an interruption in electrical power such that the cabinet experiences an interruption in electrical power.

10.4 Redundant Power – Electricity delivered via two (2) power circuits from two different power busses.

10.5 Redundant Power is at 99.982+% availability. This is met by achieving less than one comma six (1.6) hours of unavailability over a calendar year period per cabinet. For the purposes of this paragraph, a Redundant Power circuit pair is considered unavailable when a functioning cabinet

that includes client provided automatic failover capability is powered by two (2) power circuits from different power busses, and both power circuits experience a simultaneous interruption in electrical power such that the cabinet experiences an interruption in electrical power.

- 10.6 The Rack Space service includes 32Amp single phase circuits per physical rack, and uplinks to the Data Center core switching environment. It excludes any additional electrical circuits and additional Structured Cabling, these are provided on an agreement of a quote and bill of materials by the client.
- 10.7 Use of client-provided power strips must be approved by IS Ignite Data Centre Management team. Power strips must be industry approved; provide some type of over-current protection; and, must be mounted in the racks. If Internet Solutions determines that the receptacles need to be changed to accommodate the Client-provided power strips, additional charges may apply.
- 10.8 Clients are prohibited from installing their own power circuits into IS Ignite's Data Centre's. Additional circuits are to be installed by an IS Ignite-approved vendor. Any violations of this policy will lead to an immediate disconnect. This is deemed as a breach in the terms of the Client's contract and an assessment will be conducted by IS Ignite, which could potentially lead to immediate expulsion and the termination of the Client's contract with IS Ignite.
- 10.9 Clients are prohibited from plugging their own power strips into IS Ignite or client provided power strips (daisy-chaining). This is in violation of electrical and safety codes and IS Ignite reserves the right to demand their removal. Any violations of this policy must be rectified immediately. Failure to correct this violation after one business day is a material breach of the terms of the Client's contract.
- 10.10 Client-provided power strips are considered custom power.
- 10.11 IS Ignite shall not be responsible for an outage caused by a Client-provided power strip.
- 10.12 Client-requested power audits must be requested via the support ticket process.
- 10.13 IS Ignite may conduct periodic power audits of any Client space. Any violation of power limitations must be addressed immediately.
- 10.14 IS Ignite may independently inspect the power configuration of any cabinet within a Client space, at any time.
- 10.15 IS Ignite reserves the right to deny any electrical work in the Data Centre without a pre-approved Change Control.
- 10.16 Power Availability is defined as follows: Power Availability is the reservation of power by a client for that specific Rack deployment in a Data Centre. Power Availability for all Data Centres are governed by the Design Specification of the specific DC. The default power availability will apply for any new Racks. Upgrades to this availability will be possible as per the table below but is subject to additional charges.
- 10.17 IS Ignite reserves the right to increase power in line with any Eskom related increases as defined by Government.
- 10.18 Power Usage is defined as follows: Power Usage in the Data Centres is billable via the following options, availability of these options is listed below:



10.18.1 Bundled Power Usage: Bundled power will start with a minimum of the Design Specification of a Data Centre. Bundled power is billed one month in arrears and is billed at a constant rate of the bundle selected. Should the client exceed this bundle, another bundle in increments of 1kW will be billed for separately.

## **11. MICROSOFT END USER LICENCE FOR SPLA SOFTWARE (IF SUBSCRIBED TO)**

Customer acknowledges that: (i) IS Ignite is duly appointed to license certain Microsoft software products to Customer in terms of a Microsoft Service Provider License Agreement entered into with the Microsoft Corporation; (ii) if Customer has selected any SPLA Software to be rented to it by IS Ignite, the terms and conditions set out below will apply to the rental of such Microsoft software products to Customer. These are the Microsoft Terms and Conditions:

## **12. "TERMS AND CONDITIONS REGARDING USE OF MICROSOFT SPLA SOFTWARE"**

This document concerns your use of Microsoft software, which includes computer software provided to you by IS Ignite as described below, and may include associated media, printed media, an "online" or electronic documentation (individually and collectively "Licensed Products"). IS Ignite does not own the Licensed Products and the use thereof is subject to certain rights and limitations of which IS Ignite needs to inform you. Your right to use the Licensed Products is subject to your Agreement with IS Ignite, and to your understanding of, compliance with and consent to the following terms and conditions, which IS Ignite does not have authority to vary, alter or amend.

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**14. USE OF CLIENT SOFTWARE.** You may use the Client Software installed on your Devices by IS Ignite only in accordance with the instructions, and only in connection with the services, provided to you by IS Ignite. The terms of this document permanently and irrevocably supersede the terms of any Microsoft End User License Agreement that may be presented in electronic form during your use of the Client Software.

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**18. NO RENTAL.** You may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute the Licensed Products to any third party, and you may not permit any third party to have access to and/or use the functionality of the Licensed Products except for the sole purpose of accessing the functionality of the Licensed Products in the form of software services in accordance with the terms of this agreement and any agreement between you and IS Ignite.

**19. TERMINATION.** Without prejudice to any other rights, IS Ignite may terminate your rights to use the Licensed Products if you fail to comply with these terms and conditions. In the event of termination or cancellation of your agreement with IS Ignite or IS Ignite's agreement with Microsoft under which the Licensed Products are licensed, you must stop using and/or accessing the Licensed Products, and destroy all copies of the Licensed Products and all of its component parts.

**20. NO WARRANTIES, LIABILITIES OR REMEDIES BY MICROSOFT. ANY WARRANTIES, LIABILITY FOR DAMAGES AND REMEDIES, IF ANY, ARE PROVIDED SOLELY BY IS IGNITE AND NOT BY MICROSOFT OR ITS AFFILIATES OR SUBSIDIARIES.**

**21. PRODUCT SUPPORT.** Any support for the Licensed Products is provided to you by IS Ignite and is not provided by Microsoft or its affiliates or subsidiaries.

**22. NOT FAULT TOLERANT. THE LICENSED PRODUCTS MAY CONTAIN TECHNOLOGY THAT IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE LICENSED PRODUCTS COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE.**

**23. EXPORT RESTRICTIONS.** The Licensed Products are of U.S. origin for purposes of U.S. export control laws. You agree to comply with all applicable international and U.S. laws that apply to the Licensed Products, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by the U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.

**24. LIABILITY FOR BREACH.** In addition to any liability you may have to IS Ignite, you agree that you will also be legally responsible directly to Microsoft for any breach of these terms and conditions."