

## **Terms of Service / Terms and Conditions of Use**

This is an agreement between Penquin Airtime (Pty) Ltd (hereinafter referred to as “the Company”), the owner and operator of [www.penguin.co.za](http://www.penguin.co.za) (hereinafter referred to as the “Site”), the Company software, collectively, including all content provided by the Company through the Company and the Site, or the “Service”), and you (“User” or “You” or “you” or “Your” or “your”) a user of the Site.

**BY USING THE SITE, YOU ACKNOWLEDGE AND AGREE TO THESE TERMS OF THE SITE, AND THE COMPANY’S PRIVACY POLICY, WHICH CAN BE FOUND AT [www.penguin.co.za](http://www.penguin.co.za), AND WHICH ARE INCORPORATED HEREIN BY REFERENCE. If You choose to not agree with any of these terms, you may not use the Service and/or the Site.**

This Sites is offered to You conditioned upon your acceptance without modification of any/all the terms, conditions, and notices set forth below (collectively, the “Agreement”). By accessing or using this Website in any manner, You agree to be bound by the Agreement.

Be sure to return to this page from time to time to review the most current version of the Agreement. The Company reserves the right at any time, at our sole discretion, to change or otherwise modify the Agreement without prior notice, and your continued access or use of this Website signifies your acceptance of the updated or modified Agreement.

As a condition of your use of this Website, You warrant that all information supplied by You on this Website is true, accurate, current and complete.

The language of choice of the Company for the Site is English and even though the service may be viewed in other languages, the Company shall not be held liable for incorrect translation of any language, information or interpretation from English to any other language.

The Company retains the right at our sole discretion to deny access to anyone to this Website and the services The Company offers, at any time and for any reason, including, but not limited to, for violation of this Agreement.

This website, the content hereof and the online services are the property of, and all proprietary rights therein, vest in the Company, alternatively are licensed to the Company. The User acknowledges that ownership of all intellectual property rights, including the trade marks indicated on the website (whether registered or not), vest in the Company or its licensors, and that it is not authorized to use, amend or exploit any of the intellectual property rights, including the trade marks in any manner whatsoever, without the prior written consent of the Company. The User furthermore acknowledges that the information and documentation contained in this website is the proprietary information and copyrighted material of the Company or is licensed to the Company and that no party is entitled to use or exploit in any manner whatsoever, any of the proprietary information or copyrighted material of the Company without the prior written consent of the Company. The User shall not, other than for his personal and non-commercial use (a) store on his computer, or print copies of extracts from this website; (b) mirror or cache information provided via this website on his own server or other computer or other storage facility of whatsoever nature; or (c) copy, adapt, modify or re-use the text or graphics from this website, without the prior written consent of the Company.

These Terms of Service apply to all Users of the Site. Information provided by our Users through the Site may contain links to third party websites that are not owned or controlled by the Company.

This website and online services may also make available other services, service providers, dealings, web sites and/or web pages operated by third parties offering material, information and online services (the "third party service"). The use of the third party services and the use of information collected by the operators of such services / sites are governed by the terms of use and privacy policies found at such sites (if any). Third party services are made available only as a convenience, and the inclusion within the online services of any link to a third party service does not imply endorsement by the Company of the operator of such site or any association between the Company and such operator. Any direct dealings between the User and any third party in connection with a third party service, including the delivery of and payment for goods and services and any other terms, conditions, warranties or representations associated with such dealings, are solely between the User and such third party or the operator of such site, the Company will not be responsible or liable for any part of any such dealings. The Company has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third party websites. By using the Service, You expressly acknowledge and agree that the Company shall not be responsible for any damages, claims or other liability arising from or related to your use of any third-party website.

These terms and conditions of use regulate access to and use of this website. Please note that these terms and conditions are valid, binding and enforceable against all persons that access and/or use the Company website, web pages or any part hereof. The User is automatically bound by these terms and conditions by virtue of accessing this website. OUR TERMS AND CONDITIONS CONTAIN SPECIFIC PROVISIONS TO LIMIT OUR LIABILITY. THESE TERMS AND CONDITIONS HAVE BEEN SET OUT IN CAPITAL LETTERS. The User should pay particular attention to these terms and conditions since they limit the User's ability to recover losses which the User may incur in connection with the use of this website.

The Company reserves the right, in its sole discretion, to: (a) change these terms and conditions without notice to the User; (b) change the content and/or services available on or through the website; (c) discontinue any aspect of the website or service(s) available from the website; and/or (d) delete the website. The User is responsible for reviewing these terms and conditions each time it uses the website and online services. The User's continued use of the website and online services constitutes the User's agreement to the then current terms and conditions.

THE USE OF THIS WEBSITE AND ONLINE SERVICES IS AT THE USER'S OWN RISK. IN NO EVENT, INCLUDING WITHOUT LIMITATION, NEGLIGENCE, WILL THE COMPANY, ITS SUBSIDIARIES, AFFILIATES, AGENTS, OFFICERS, DIRECTORS, EMPLOYEES, PARTNERS OR SUPPLIERS BE LIABLE TO THE USER OR ANY THIRD PARTY FOR ANY DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, SPECIAL, PUNITIVE, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND, OR THOSE RESULTING FROM LOSS OF USE, DATA OR PROFITS, VIRUSES, WORMS, SPAM, WHETHER OR NOT THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE USE OF OR THE INABILITY TO USE THE ONLINE SERVICES, MATERIALS OR INFORMATION, THE STATEMENTS OR ACTIONS OF ANY THIRD PARTY ON OR THROUGH THE ONLINE SERVICES, MATERIALS OR INFORMATION OR ANY DEALINGS WITH VENDORS OR OTHER THIRD PARTIES, ANY

UNAUTHORIZED ACCESS TO OR ALTERATION OF THE USER'S TRANSMISSIONS OR DATA, ANY INFORMATION THAT IS SENT OR RECEIVED OR NOT SENT OR RECEIVED, ANY FAILURE TO STORE OR LOSS OF DATA, FILES OR OTHER CONTENT, ANY SERVICES AVAILABLE THROUGH THE ONLINE SERVICES OR WEBSITE THAT ARE DELAYED OR INTERRUPTED, OR ANY WEBSITE REFERENCED OR LINKED TO FROM THE ONLINE SERVICES FEATURE.

**If You are a consumer you have certain rights under South Africa's e-commerce legislation Chapter VII of the Electronic Communications and Transactions Act 25 of 2002 ("ECT Act")**

If You are a consumer as defined in the ECT Act and the goods and services You are using are not excluded from protection, You may have certain rights as a consumer under Chapter VII of the ECT Act. A consumer is defined in the ECT Act as a natural person who enters or intends entering into an electronic transaction with a supplier as the *end user* of the goods or services offered by that supplier. For more information on these rights visit Acts Online or [www.acts.co.za](http://www.acts.co.za) or [http://www.acts.co.za/ect\\_act/index.htm](http://www.acts.co.za/ect_act/index.htm) and see Chapter VII. If You need more information about this please contact The Company. Nothing in this Agreement will be interpreted to deny consumers of any of the rights given to them under the ECT Act.

Information, ideas and opinions expressed on this site should not be regarded as professional advice or the official opinion of the Company. The Company cannot be held liable for illegal or unconstitutional content. The User indemnifies the Company from all liability in this regard.

1. Subject to your compliance with these Terms of Service, the Company hereby grants You permission to use the Service, provided that:
  - 1.1. your use of the Service as permitted is solely for your use, and You are not permitted to resell or charge others for use of or access to the Service, or in any other manner inconsistent with these Terms of Service;
  - 1.2. You shall not duplicate, transfer, give access to, copy or distribute any part of the Service in any medium whatsoever; and
  - 1.3. You shall otherwise comply with the terms and conditions of these Terms of Service and Privacy Policy.
2. You agree not to use or launch any automated system, including without limitation, "robots," "spiders," "offline readers," etc. or "load testers" such as wget, apache bench, mswebstress, httpload, blitz, Xcode Automator, Android Monkey, etc.
3. No person, business or web site may use any technology to search and gain any information from this site without the prior written permission of the Company.
4. The use of search technology, such as "web-crawlers" or "web-spiders", to search and gain information from the site is not permitted.

5. You agree not to collect or harvest any personally identifiable information, from the Service, nor to use the communication systems provided by the Service for any commercial or spam purposes. You agree not to spam, or solicit any Users of the Service.
6. The design of the Site along with the Company created text, scripts, graphics, interactive features, the trademarks, service marks and logos contained therein are owned by the Company, subject to copyright and other intellectual property rights under the Republic of South Africa and foreign laws and international conventions. The Site is provided to You AS IS for your information and use only.
7. The Company reserves all rights not expressly granted in and to the Site. You agree to not engage in the use, copying, or distribution of any of the Site other than expressly permitted herein.
8. The Company reserves the right to discontinue any aspect of the Site at any time.
9. You agree that your use of the Site shall be at your sole risk. To the fullest extent permitted by law, the Company, its officers, directors, employees, and agents disclaim all warranties, express or implied, in connection with the Site and your use thereof.
10. The Company makes no warranties or representations about the accuracy or completeness of this Site's content and assumes no liability or responsibility whatsoever. The User understands that when using this website and online services, the User will be exposed to content from a variety of sources. The website and online services and other services and materials could include technical or other mistakes, inaccuracies or typographical errors or offensive, indecent, or objectionable content. If the User does so object, the User should not use this website and/or the online services. The information, services and materials may be out of date, and the Company gives no undertaking of any manner whatsoever to update such information, services or materials. Any information contained on our website, is intended for general information purposes only, and is not meant to be an endorsement or representation by the Company or any other party and should in no way be construed as professional advice. The User should refrain from making any business decisions on the basis of this information without consulting the Company for advice related to your specific and precise requirements. Any reliance the User places on any content is strictly at the User's own risk.
11. The Company does not warrant, endorse, guarantee, or assume responsibility for any product or service advertised or offered by a third party through the Site or any hyperlinked website or other advertising, and the Company will not be a party to or in any way be responsible for monitoring any transaction between you and third-party providers of products or services.
12. In no event shall the Company, its officers, directors, employees, or agents, be liable to You for any direct, indirect, incidental, special, or consequential damages whatsoever resulting from any:
  - 12.1. Errors, mistakes, or inaccuracies of content *inter alia*, pricing, availability, specials and advertising,

- 12.2. Personal injury or property damage, of any nature whatsoever, resulting from your access to and use of our service,
  - 12.3. Any unauthorized access to or use of our secure servers and/or any and all personal information and/or financial information stored therein,
  - 12.4. Any interruption or termination of transmission to or from our servers,
  - 12.5. Any bugs, viruses, trojan horses, or the like, which may be transmitted to or through our service by any third party,
  - 12.6. Any errors or omissions in any content or for any loss or damage of any kind incurred as a result of your use of any content posted, emailed, transmitted, or otherwise made available via the Myers Attorneys Incorporated service, whether based on warranty, contract, or any other legal theory, and whether or not the Company is advised of the possibility of such damages, and/or
  - 12.7. The disclosure of information pursuant to these terms of service or privacy policy. This limitation of liability shall apply to the fullest extent permitted by law in the applicable jurisdiction.
13. The Company may from time to time supply Users with information including but not limited statistics, comparisons and/or data collected on/by the Site, the Company shall not be held liable for the accuracy of this information, statistics, comparisons and/data.
14. Please be aware that by submitting content to this Website, postings on this Website or otherwise, including but not limited to hotel information, reviews, questions, comments, suggestions, ideas, You grant the Company a non-exclusive, royalty-free, perpetual, transferable, irrevocable and fully sub-licensable right to:
- 14.1. use, reproduce, modify, adapt, translate, distribute, publish, create derivative works from and publicly display such content in any media; and
  - 14.2. use the name that you submit in connection with such content, posting or otherwise.
15. You acknowledge and agree that Submissions are non-confidential and non-proprietary.
16. The User agrees that it will only use this website, the information contained herein and the online services in respect of the specific purposes for which it is created. In using the website, information or online services, the User will not: (a) disrupt or interfere with any other user's enjoyment of such services or materials or any affiliated or linked sites; (b) upload, post or otherwise transmit any viruses or other harmful, disruptive or destructive files; (c) create a false identity; (d) use or attempt to use another's account, password, service or system without authorization from the Company; (e) access or attempt to access any service or content which the User is not authorized to access; (f) disrupt or interfere with the security of, or otherwise cause harm to, any system resources, accounts, passwords, servers or networks connected to or accessible through such feature or any affiliated or linked sites; (g) conduct any surveys, contests, pyramid schemes, chain letters, junk email, spamming or any duplicative or unsolicited messages (commercial or otherwise); (h) threaten, defame, abuse, harass, stalk or otherwise violate the legal rights (including the rights of privacy and publicity) of others; (i) publish, post, upload, distribute or

disseminate any defamatory, obscene, or unlawful topic, name, material or information; (j) upload or otherwise make available files that contain images, photographs, software or other material protected by intellectual property laws, including, without limitation, copyright, trademark, patents, designs, privacy and publicity laws unless the User owns or controls the rights thereto or has received all necessary authority to do the same; (k) advertise or offer to sell or buy any goods or services for any purpose; (l) violate any laws or regulations of the Republic of South Africa or any other country applicable.

17. You expressly agree not to post, upload to, transmit, distribute, store, create or otherwise publish through the Site any of the following:
  - 17.1. Any message, data, information, text, music, sound, photos, graphics, code or any other material ("Content") that is unlawful, defamatory, obscene, pornographic, indecent, lewd, suggestive, harassing, threatening, invasive of privacy or publicity rights, abusive, inflammatory, fraudulent or otherwise objectionable;
  - 17.2. Content that would constitute, encourage or provide instructions for a criminal offence, violate the rights of any party, or that would otherwise create liability or violate any local, national or international law,
  - 17.3. Content that may infringe any patent, trademark, trade secret, copyright or other intellectual or proprietary right of any party;
  - 17.4. Content that impersonates any person or entity or otherwise misrepresents your affiliation with a person or entity, including The Company;
  - 17.5. Unsolicited promotions, political campaigning, advertising, contests, raffles, or solicitations;
  - 17.6. Private information of any third party, including, without limitation, surname, addresses, phone numbers, email addresses, identity numbers and credit card numbers;
  - 17.7. Viruses, corrupted data or other harmful, disruptive or destructive files; or
  - 17.8. Content or links to content that, in the sole judgment of the Company,
    - 17.8.1. violates the terms and conditions of this Agreement,
    - 17.8.2. is objectionable,
    - 17.8.3. which restricts or inhibits any other person from using or enjoying the Site in any way whatsoever, or
    - 17.8.4. which may expose the Company or its affiliates or its users to any harm or liability of any type.
18. The Site is controlled and offered by the Company from its facilities in the Republic of South Africa. The Company makes no representations that the Site is appropriate or available for use in other locations. Those who access or use the Site from other jurisdictions do so at their own volition and are responsible for compliance with local law.
19. You affirm that you are either more than 18 years of age, or possess legal parental or guardian consent, and are fully able and competent to enter into the terms, conditions, obligations, representations, and warranties set out in these Terms of Service, and to abide by and comply with these Terms of Service.

20. These Terms of Service, and any rights and licenses granted hereunder, may not be transferred or assigned by You, but may be assigned by the Company without restriction.
21. In the event of a dispute as to the content of these terms and conditions at any time, a certificate signed by the administrator responsible for maintaining the website shall be *prima facie* proof of the date of publication and content of the current version and all previous versions of these terms and conditions.
22. You agree that:
  - 22.1. the Site shall be deemed solely based in the Republic of South Africa;
  - 22.2. the Site shall be deemed a passive server that does not give rise to personal jurisdiction over the Company, either specific or general, in jurisdictions other than the Republic of South Africa; and
  - 22.3. that you agree to subject to the jurisdiction of the Republic of South Africa, more specifically the South Gauteng High Court, in the event of any legal dispute.
  - 22.4. These Terms of Service shall be governed by the laws of the Republic of South Africa.
  - 22.5. Any claim or dispute between You and The Company that arises in whole or in part from the Site shall be decided exclusively by a court of competent jurisdiction, more specifically the South Gauteng High Court, of South Africa.
23. These Terms of Service, together with the Privacy Policy at [www.penguin.co.za](http://www.penguin.co.za) and any other legal notices published by The Company, shall constitute the entire Agreement between You and the Company concerning the Site.
24. If any provision of these Terms of Service is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of these Terms of Service, which shall remain in full force and effect.
25. No waiver of any term of this these Terms of Service shall be deemed a further or continuing waiver of such term or any other term, and the Company's failure to assert any right or provision under these Terms of Service shall not constitute a waiver of such right or provision.
26. If you do not agree to the revised Terms, your only recourse is to discontinue the use of the Site. Your continued use of the Site following any amendment of these Terms of Service will signify your assent to and acceptance of its revised terms.

Date Modified – 7 September 2020