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www.imagine.co.za



communications | networking | development

# Wholesale ISP Application Form

Confidential and subject to Imagine's terms and conditions

## Business Details (Wholesaler)

Company Trading Name .....

Full Registered Company name .....

Company Incorporation Reg No. .... Formation Date .....

Describe Business Activities ..... VAT Reg No.....

Company Physical Address .....

.....

Company Postal Address .....

.....

## Technical Contact Details

Name .....

Position .....

Email .....

Phone .....

Cell .....

Fax .....

## Administrative/Billing Contact Details

Name .....

Position .....

Email .....

Phone .....

Cell .....

Fax .....

**NOTE:** When returning this form, please provide photocopies of all Director ID documents, your Closed Corporation or Company Registration and VAT registration certificate. Imagine reserves the right to run a credit check on any application, however, this will not be the only grounds for accepting or declining the application.

The Wholesaler hereby agrees that:

- all **Service/s provided pursuant to Imagine's acceptance of this** application form will be subject to the terms and conditions attached hereto, which terms and conditions are explicitly incorporated into and form an integral part of the agreement between Imagine and the Wholesaler.
- has initialled or signed each page of the 3 (three) pages to this agreement.
- they are authorised to enter into agreements for/on behalf of the Wholesaler.

Signed ..... Position .....

Print Name ..... Date .....

# Standard Terms & Conditions

## DEFINITIONS

In this Agreement, the words hereunder will have the meanings assigned to them below:-

AGREEMENT	means these Standard Terms and Conditions and any Application Form, Schedules, Annexures, Imagine's Privacy Policy, Imagine's Acceptable Use policy, Imagine's mailbox rules and all other terms and conditions and attachments which may, from time to time, impose in respect of the Service/s, as amended and updated from time to time.
ADSL	refers to all ADSL accounts supplied by Imagine, excluding Secure ADSL VPN and all types of Uncapped ADSL accounts.
CUSTOMER	means the unspecified party who has purchased an Imagine product or service through the Wholesaler.
DOMAIN & EMAIL	refers to the purchase, parking and management of domain names and setup, administration, hosting and management of email services and additional parts thereof including, but not limited to virus scanning, spam filtering and mailbox management.
DURATION	means the length of time and responsibility for the Service from the Effective Date.
EFFECTIVE DATE	means, notwithstanding the date of signature of this Agreement, the date when the Service/s is commissioned by Imagine for use by the Wholesaler irrespective of whether or not the Wholesaler uses the Service/s;
HOSTING SERVICES	including but not limited to Web Hosting and Domain & Email Hosting, management and setup.
IMAGINE WHOLESALER	Benwest Internet Services (Pty) Ltd trading as Imagine IPS. means the party specified as Wholesaler on the Application Form to which these Standard Terms and Conditions are attached.
PSTS	means the public switched telecommunications services provider licensed to provide such services in terms of section 36 of the Telecommunications Act 103 of 1996 as amended.
SERVICE/S	means the service described in 1 below and any other service that you may subscribe to or which may form part of Imagine's offering from time to time.
VAT	means Value-Added Tax as defined in the Value-Added Tax Act 89 of 1991.
WEB HOSTING	means a shared hosting service provided specifically for the use of presenting a website to the internet audience, on one or multiple servers. Management rights by the Customer or Wholesaler will be limited.

## 1. DESCRIPTION OF SERVICE AND SUPPLY

- 1.1 ADSL
  - 1.1.1 Imagine undertakes to provide the Wholesaler with ADSL account services as requested by the Wholesaler through the Imagine Wholesaler ADSL Control Panel, through the Imagine HelpDesk system or via any other subscription channel that Imagine makes available to the Wholesaler.
  - 1.1.2 Imagine is not responsible for the installation and maintenance of the ADSL line, but will assist in the quick resolution of any faults.
  - 1.1.3 The Telkom ADSL line service is not available everywhere and it is your responsibility to confirm that the Telkom ADSL line service is available on your Telkom telephone connection before you subscribe to the Imagine ADSL service.
  - 1.1.4 The ADSL service that we provide utilises the Telkom ADSL network and is thus subject to Telkom's terms and conditions which can be found on their website <http://www.telkom.co.za>. The service is subject to the limitations and availability of the Telkom ADSL network.
  - 1.1.5 The Wholesaler may choose to either rent or purchase the equipment required to create the Wholesaler side of an operational TCP/IP (Transmission Control / Internet Protocol) networking link. Should the Wholesaler rent the equipment from Imagine, the equipment remains at all time the property of Imagine. Should the Wholesaler purchase the equipment either from Imagine or from another source Imagine will not be responsible for the maintenance of the equipment unless otherwise specified and confirmed in writing by an Imagine representative.
- 1.2 HOSTING SERVICES
  - 1.2.1 For Web Hosting, Imagine undertakes to provide the Wholesaler with web space on its servers that is accessible to the Internet as individually requested through a Wholesaler's Web Hosting Application Form, through the Imagine HelpDesk System or via any other subscription channel that Imagine makes available to the Wholesaler. Imagine will supply an FTP login for the Wholesaler who may upload and alter the web site at his/her discretion.
  - 1.2.2 E-mail services will also be provided by Imagine as detailed in the Wholesaler's Web Hosting Application Form, through the Imagine HelpDesk System or via any other subscription channel that Imagine makes available to the Wholesaler.

## 2. EFFECTIVE DATE, ANNIVERSARY DATE AND DURATION

- 2.1 ADSL
  - 2.1.1 The Effective Date shall be the date that the service is requested by the Wholesaler via the Imagine Wholesaler ADSL Control Panel, the Imagine HelpDesk system or via any other subscription channel that Imagine makes available to the Wholesaler.
  - 2.1.2 Pre-paid Contract: The Service will be paid in full, in advance by the Wholesaler.
- 2.2 HOSTING SERVICES
  - 2.2.1 The Effective Date shall be the first date on which a computer not connected directly to the Imagine network can access the web page or four (4) weeks from the date the document is signed, whichever is the sooner.
  - 2.2.2 Pre-paid Contract: The Service will be paid in full, in advance by the Wholesaler. This agreement endures for an indefinite period, subject to the right of either party to terminate this agreement at any time by means of 1 (one) calendar month prior written notice to such effect to the other party.
- 2.3 The Wholesaler will forfeit all claim to and all monies pre-paid after 12 months of inactivity of the Service. Inactivity can be classified as not accessing any Imagine Service.

## 3. INSTALLATION AND MAINTENANCE

- 3.1 Installation
- 3.2 Optional installation will be effected by an Imagine approved technician or team of technicians. The technician/s will liaise with a Wholesaler appointed representative. The Wholesaler will provide the access necessary to install and maintain all equipment required to provide an operational network link.
- 3.3 Maintenance
  - 3.3.1 Imagine will maintain all Imagine equipment. The Wholesaler undertakes to provide free and full access, to all equipment, to an Imagine approved technician should the need arise. The Wholesaler will also provide free and full remote access to all Imagine equipment when requested to do so by Imagine.
  - 3.3.2 The Wholesaler undertakes to use the Imagine equipment and related software only in strict accordance with instructions from Imagine and that Imagine is not liable for any repairs or damage caused other than by the normal and instructed use of the Imagine equipment.
- 3.4 Insurance
- 3.5 The Wholesaler will be responsible for insuring all Imagine equipment on the Wholesaler's or Customer's site against any form of loss or damage from all risks. This insurance should be of a value equal to the full replacement value of the Imagine equipment.

## 4. DOMAIN NAMES

- 4.1 Should Imagine IPS assist the Wholesaler to register a domain name in respect of its web site, the Wholesaler hereby indemnifies Imagine IPS against any claim if the use of such domain name is in conflict with any statutory enactment or court order or where the use of such domain name infringes the legal rights of a third party including circumstances where such third party contests the Wholesaler's intellectual property rights such as trade marks, trade names or other proprietary rights to any name. Imagine IPS shall not be liable for any claim or damages of whatsoever nature if it is unable for any reason to secure the registration of the Wholesaler's requested domain name.

## 5. DEPOSIT

- 5.1 The Wholesaler may be required to keep a minimum balance in their account with Imagine as a security deposit.

## 6. CHARGES & PAYMENT

- 6.1 All Service/s provided are to be billed as of the Effective Date. In the event of a single Service consisting of a number of components, billing will commence for each respective component of that Service as and when each component of that Service goes live.
- 6.2 Wholesaler is responsible for and agrees to pay to Imagine all fees for the Service/s in South African currency, without deduction or set-off of any amount of whatsoever nature or for whatsoever reason.
- 6.3 Unless otherwise stipulated, all prices specified include:
  - 6.3.1 VAT and any other any taxes and duties including any regulatory surcharge, which Wholesaler becomes obligated to pay by virtue of this Agreement, and
  - 6.3.2 PSTS provider service fees, for which Wholesaler agrees to make payment directly to the PSTS provider on such terms as are agreed between the PSTS provider and Wholesaler, and shall at all times be the responsibility of the Wholesaler.
- 6.4 Unless otherwise agreed, invoicing will be processed and delivered in advance and all invoices for Services will be settled, in full, in advance of using the Service.
  - 6.4.1 Imagine will suspend or terminate the Service until payment is received as in Clause 11.1.
- 6.5 In the event of any dispute arising as to the amount or calculation of any fee or charge to which Imagine is entitled, the dispute shall be referred for determination to Imagine's auditors. They shall act as experts and their decision shall be final and binding on Imagine and Wholesaler. The cost of the determination shall be paid on demand by the party against whom the determination is made, or as determined by the said auditors.
- 6.6 Any amount falling due for payment by Wholesaler to Imagine in terms of or pursuant to this Agreement which is not paid on its due date shall bear interest calculated from the due date for payment thereof until date of payment, at a rate equal to the prime overdraft rate plus two percent (2%) charged by ABSA Bank from time to time, monthly in arrears.
- 6.7 Imagine shall be entitled from time to time on 30 (thirty) days prior written notice thereof to Wholesaler to increase the monthly fees referred to in the Service Schedule, provided that:
  - 6.7.1 Imagine shall not be entitled to increase the monthly fees more than the current CPI rate.
- 6.8 Invoices will be processed and sent to the Wholesaler's designated Billing Contact indicated in the Application Form to which this document is attached, unless the Wholesaler gives its written request for delivery of invoices by means other than, or that the e-mail details of the Billing Contact have been changed.

## 7. WHOLESALER'S AGREEMENTS & OBLIGATIONS

- 7.1 The Wholesaler is responsible for all first line contact & support, billing and management of the Customer.
- 7.2 Imagine will deal solely with the Wholesaler and all Customer enquiries to the Imagine helpdesk we be referred back to the Wholesaler.
- 7.3 Imagine will bill the Wholesaler as per the rates for the various Services.
- 7.4 Imagine reserves the right to amend or refuse access to Services, pricing or commission structures.
- 7.5 Wholesaler shall comply strictly with all restrictions imposed on computer networks through which any information and/or data transmitted by Wholesaler passes.
- 7.6 Wholesaler shall not commit nor attempt to commit any act or omission which directly or indirectly:
  - 7.6.1 damages in any way Imagine' technical infrastructure or any part thereof;
  - 7.6.2 impairs or precludes Imagine from being able to provide the Service/s in a reasonable and businesslike manner;
  - 7.6.3 constitutes an abuse or malicious misuse of the Service/s;
  - 7.7 or is calculated to have the abovementioned effect. In such an event, should Imagine incur expenses to remedy the situation, Imagine reserves the right to charge the Wholesaler the amount necessary to cover Imagine's additional expenditure. Notwithstanding the above, Imagine reserves the right to take any other appropriate action it may deem necessary to remedy the situation.
- 7.8 Wholesaler is prohibited from modifying any equipment (including but not limited to router equipment) utilised by Wholesaler to receive any of the Service/s, in any way whatsoever, including the changing of any of the settings of such equipment.
- 7.9 In the event of termination of this Agreement arising from a breach on the part of the Wholesaler or should the Wholesaler cease to resell Imagine Service/s, then, without prejudice to any of the other rights which Imagine may have and which are recorded in 12.1 below, Imagine shall acquire an option to continue to render the Services to the Wholesaler's Customers in the future, and for this purpose to contract with the Wholesaler's Customers directly. In the event of this option being exercised, the Wholesaler undertakes to facilitate the cession of its Customers to Imagine as far as reasonably possible, including, but not being limited to, furnishing Imagine with the names and contact details of its Customer database, and furnishing Imagine with copies of all agreements concluded with its Customers up until the date of the breach.
- 7.10 Under no circumstances may Wholesaler resile from this Agreement or withhold or defer payment or be entitled to a reduction in any charge or have any other right or remedy against Imagine, its servants, its agents or any other persons for whom it may be liable in law (and in whose favour this provision constitutes a stipulation alteri) if Imagine interrupts the Service to Wholesaler as it would be entitled to do if Wholesaler is in default of any of its obligations under this Agreement to Imagine or in the circumstances contemplated in clause 10.4 below.
- 7.11 Wholesaler may not at any time use the Service in contravention of any South African law. In particular, Wholesaler undertakes to familiarize itself and ensure that it is kept continuously apprised of all South African law in force from time to time which has any bearing on the Service and/or its use. Wholesaler acknowledges that Imagine has no obligation to assist Wholesaler in this regard.

## 8. COMMUNICATION

- 8.1 The Wholesaler hereby agrees that Imagine may from time to time send you communications regarding (without being limited to) special offers/discounts which Imagine may negotiate for its members, operational changes that may affect the service and/or new services launched by Imagine from time to time.
9. SECURITY
- 9.1 In order to ensure the security and reliable operation of the service to all Imagine Wholesalers, Imagine hereby reserves the right to take whatever action Imagine finds necessary to preserve the security and reliability of its network.
  - 9.2 The Wholesaler may not utilise the service in any manner which may compromise the security of Imagine's network or tamper with the service or the network in any manner whatsoever.

## 10. EXCLUSION OF LIABILITY

- 10.1 Except as otherwise expressly provided herein to the contrary, Imagine shall not be liable to Wholesaler or any third party for any loss or damage of whatsoever nature and/or howsoever arising (including consequential or incidental loss or damage which shall include but shall not be limited to loss of property or of profit, business, goodwill, revenue, data or anticipated savings) or for any costs, claims or demands of any nature whether asserted against Imagine or against Wholesaler by any party, arising directly or indirectly out of the Service/s, their use, access, withdrawal or suspension or out of any information or materials provided or not provided, as the case may be.
- 10.2 Subject to clause 10.1 above, the entire liability of Imagine and Wholesaler's exclusive remedy for damages from any cause related to or arising out of this Agreement, regardless of the form of action, whether in contract or in delict, will not exceed the aggregate of the fees and charges paid by Wholesaler under this Agreement for the period of 12 (twelve) months preceding Wholesaler's written notice to Imagine in respect of such claim.
- 10.3 Wholesaler hereby indemnifies Imagine against and holds Imagine harmless from any claim by any third party arising directly or indirectly out of access to or use of the Service/s or information obtained through the use thereof or in respect of any matter for which liability of Imagine is excluded in terms of clause 10.1 above.
- 10.4 Because of the need to conduct maintenance, repair and/or improvement work from time to time on the technical infrastructure by means of which the Services are provided, the provision of the Services may be suspended from time to time, and all liability on the part of Imagine of any loss or damage (whether direct or consequential) thereby incurred or for any costs, claims, or demands of any nature arising therefrom, is excluded, and the provisions of clause 10.1 above shall apply mutatis mutandis to such exclusion. Should the provision of the Service/s be suspended by Imagine for the purpose aforementioned for a period in excess of 48 (forty eight) consecutive hours, Imagine shall give

- Wholesaler credit in an amount which represents a pro rata portion of Wholesaler's basic monthly subscription fee for the month during which the said suspension occurred.
- 10.5 Where the Service/s provided include Hosting Services, then, notwithstanding anything to the contrary contained in this Agreement, Imagine reserves the right in its absolute discretion and after the receipt by Imagine of any complaint from any governmental department, or any other third party (including but not limited to any Internet industry body or any other organisation) that Wholesaler's web site contains information that infringes against any third party's rights in terms of the Constitution of the Republic of South Africa, the Electronic Communications and Transactions Act, any other legislative enactment or regulation in force from time to time, or is defamatory in nature, to immediately give written notice to Wholesaler of Imagine's intention to remove the offending information or any portion thereof from Wholesaler's web site. Should such offending information not be removed from the web site by Wholesaler within 24 hours of written notice to that effect, Imagine shall be entitled to immediately remove the offending information or any portion thereof from Wholesaler's web site, or where it is not possible to remove such content, to terminate the Web Hosting Services of such Wholesaler. Any removal or termination by Imagine shall in no way constitute a breach by Imagine of this Agreement.
11. DOCUMENTATION
- 11.1 Any specifications, descriptive matter, drawings and other documents which may be furnished by Imagine to Wholesaler from time to time;
- 11.2 do not form part of this Agreement and may not be relied upon, unless they are agreed in writing by both parties hereto to form part of this Agreement;
- 11.3 shall remain the property of Imagine and shall be deemed to have been imparted by it in trust to Wholesaler for the sole use of Wholesaler. All copyright in such documents vests in Imagine. Such documents shall be returned to Imagine on demand.
12. BREACH
- 12.1 If the Wholesaler hereto:
- 12.1.1 fails to make payment in full for a Service prior to use of that Service or;
- 12.1.2 where agreed, is invoiced after the use of Service and fails to make payment in full to Imagine within 7 (seven) days of receipt of invoice;
- 12.1.3 breaches any of the terms or conditions of this Agreement and fails to remedy such breach, as the case may be, within 7 (seven) days after the receipt of written notice from Imagine;
- 12.1.4 commits any act of insolvency;
- 12.1.5 endeavours to compromise generally with its creditors or does or causes anything to be done which may prejudice Imagine's rights hereunder or at all;
- 12.1.6 allows any judgement against it to remain unsettled for more than 10 (ten) days without taking immediate steps to have it rescinded and successfully prosecuting the application for rescission to its final end; or
- 12.1.7 is placed in liquidation or under judicial management (in either case, whether provisionally or finally) or, being an individual, his estate is sequestrated or voluntarily surrendered;
- 12.2 If Clause 12.1 is true, Imagine shall have the right, without prejudice to any other right which it may have against the Wholesaler and in any event without prejudice to Imagine's right to claim damages:
- 12.2.1 suspend or terminate the Services;
- 12.2.2 treat as immediately due and payable all outstanding amounts which would otherwise become due and payable over the unexpired period of the Agreement, and to claim such amounts as well as any other amounts in arrears including interest and to cease performance of its obligations hereunder as well as under any other contract with the Wholesaler until Wholesaler has remedied the breach; and/or
- 12.2.3 cancel this Agreement;
- 12.3 Wholesaler shall be liable for all costs incurred by Imagine in the recovery of any amounts or the enforcement of any rights which it has hereunder, including collection charges and costs on an attorney and own client scale whether incurred prior to or during the institution of legal proceedings or if judgement has been granted, in connection with the satisfaction or enforcement of such judgement.
13. LIEN
- 13.1 The parties agree that in the event of a breach of this Agreement by Wholesaler which causes Imagine to suffer damages of any nature whatsoever, Imagine shall not be required to attach any of Wholesaler's hardware in execution, and shall be entitled to retain a lien over such hardware in reduction of any debt due by Wholesaler to Imagine.
14. CESSION AND DELEGATION
- 14.1 You may not cede any of your rights or delegate any of your obligations under this agreement without Imagine's express written consent.
- 14.2 Imagine shall be entitled, in its sole discretion and without notice to you, to cede and transfer or delegate to any third party all or any of its rights or obligations under this agreement.
15. FORCE MAJEURE
- 15.1 Imagine shall not be liable for non-performance under this Agreement to the extent to which the non-performance is caused by events or conditions beyond the control of Imagine, provided that Imagine makes all reasonable efforts to perform.
- 15.2 It is expressly recorded that for purposes of this clause the following shall be considered circumstances beyond the control of Imagine and the force majeure provisions shall apply:-
- 15.2.1 a PSTS provider fault that affects the Service/s; and/or
- 15.2.2 the non-performance, inability to perform or delay in performance by the PSTS provider relating to the provisioning of equipment, services and/or facilities to Imagine that affects the Service/s; and/or
- 15.2.3 acts or omissions of any government, government agency, provincial or local authority or similar authority, any laws or regulations having the force of law, civil strife, riots, insurrection, sabotage, acts of war or public enemy, illegal strikes, interruption of transport, lockouts, flood, storm or fire.
16. GOVERNING LAW AND JURISDICTION
- 16.1 This Agreement will be governed by and construed in accordance with the laws of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with South African law by a South African court having jurisdiction.
17. AMENDMENT OF THIS AGREEMENT
- 17.1 Imagine reserves the right to amend this agreement from time to time with a minimum of 30 days notice to you. Any new version of the agreement will be displayed on our web site together with the date on which it will become effective, which will never be less than 30 days after the date on which it is first displayed.
18. INTELLECTUAL PROPERTY
- 18.1 All Imagine intellectual property (including, without limitation, copyright, trade marks, designs and patents) relating to or used in connection with the Service/s provided under this Agreement shall belong to Imagine. Wholesaler undertakes that it shall at no time, have any right, title or interest in the intellectual property and agrees that it shall not (or permit any third party to) reverse engineer, decompile, modify or tamper with the equipment or software owned by Imagine, or any of its third party suppliers. Imagine shall notwithstanding anything to the contrary, have no right, title or interest in any intellectual property that belongs to the Wholesaler and/or that the Wholesaler has the lawful entitlement to.

- 18.2 Wholesaler warrants that it shall not use the Service/s to produce, host or present any content in contravention of any person's intellectual property rights, and in particular warrants that it shall recognize, acknowledge and use any content in accordance with any third party's intellectual property rights. Wholesaler furthermore warrants that it has received all necessary permissions to make use of any intellectual property relating to 3rd parties.
19. PROTECTION OF PROPRIETARY INFORMATION
- 19.1 Each party will keep in confidence and protect Proprietary Information from disclosure to third parties and restrict its use to that which is provided for in this Agreement. Either party acknowledges that unauthorised disclosure or use of Proprietary Information may cause substantial economic loss. All printed materials, containing Proprietary Information will be marked with "Proprietary" or "Confidential", or in a manner which gives notice of its proprietary nature. Proprietary Information shall not be copied, in whole or in part, except when essential for correcting, generating or modifying Proprietary Information for either party's authorized use. Each such copy, including its storage media, will be marked with all notices, which appear on the original.
- 19.2 Each party shall ensure that its employees comply with its obligations under this clause.
- 19.3 This clause shall survive termination or cancellation of this Agreement.
- 19.4 This Agreement does not transfer to either party title to any intellectual property contained in any Proprietary Information of the other party.
20. WARRANTIES
- 20.1 Save as expressly set out in this Agreement, Imagine does not make any representations nor gives any warranties or guarantees of any nature whatsoever in respect of the Service/s and all warranties which are implied or residual at common law are hereby expressly excluded.
- 20.2 Without limitation to the generality of 20.1 above, Imagine does not warrant or guarantee that the information transmitted by or available to Wholesaler by way of the Service/s:
- 20.2.1 will be preserved or sustained in its entirety;
- 20.2.2 will be delivered to any or all of the intended recipients;
- 20.2.3 will be suitable for any purpose;
- 20.2.4 will be free of inaccuracies or defects or bugs or viruses of any kind; or
- 20.2.5 will be secured against intrusion by unauthorised third parties;
- 20.2.6 And Imagine assumes no liability, responsibility or obligations in regard to any of the exclusions set forth in this clause.
21. SURETYSHIP
- 21.1 The signatory to this Agreement, as the authorized representative of the Wholesaler, hereby binds himself/herself to Imagine as personal surety and as co-principle debtor in solidum with Wholesaler for the due, punctual and proper fulfilment and performance by Wholesaler of all its obligations in terms of this Agreement. The aforementioned signatory hereby renounces all benefits arising from the legal exceptions of non numeratae pecuniae, non causa debiti, errore calculi and beneficio excussionis et divisionis, with the force and effect of which he/she hereby declares himself/herself to be fully acquainted.
22. DOMICILIUM CITANDI ET EXECUTANDI
- 22.1 For all purposes, including but not by way of limitation, the giving of any notice, the making of any communication and the serving of any process, Wholesaler chooses its domicilium citandi et executandi ("domicilium") at the physical address appearing on the application form to which these Standard Terms and Conditions are attached. Imagine chooses its domicilium citandi et executandi ("domicilium") at Imagine: 2nd Floor West Wing 158 Jan Smuts, 9 Walters Ave, Rosebank, Johannesburg, South Africa. Either party shall be entitled from time to time to vary its domicilium and shall be obliged to give notice to the other within ten (10) days of the said change. Any notice which either party may give to the other shall be posted by prepaid registered post or hand delivered to the other party's domicilium and shall be presumed, unless the contrary is proved by the party to whom it is addressed, to have been received by that party on the tenth (10th) day after the date of posting or on the day of delivery as the case may be.
23. DATA PROTECTION
- 23.1 Imagine reserves the right to put the names and other information from this form relating to its Wholesalers into a computerised directory for internal use only.
24. THIRD PARTY NETWORK CONNECTIONS
- 24.1 If the Wholesaler intends to connect their network to other wide area networks (i.e. networks that are not Imagine networks) they must first obtain permission from Imagine before committing to the other network connections.
25. GENERAL
- 25.1 No variation, amendment or consensual cancellation of this Agreement or any provision or term thereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by a duly authorized representative from both Imagine and Wholesaler.
- 25.2 The parties acknowledge having read and understood this Agreement and are not entering into this Agreement on the basis of any representations not expressly set forth in it.
- 25.3 Neither party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the Agreement between Wholesaler and Imagine or not.
- 25.4 No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against either party hereto in respect of its right under this Agreement, nor shall it operate so as to preclude either of the parties thereafter from exercising its rights strictly in accordance with this Agreement.
- 25.5 In the event that any provision of this Agreement conflicts with any statute, ruling or order of any governmental or regulatory body from time to time, then such provision of this Agreement shall be controlled by the statute, ruling or order.
- 25.6 Should any of the terms and conditions of this Agreement be held to be invalid, unlawful or unenforceable, such terms and conditions will be severable from the remaining terms and conditions which will continue to be valid and enforceable.
- 25.7 In the event of any expiration, termination or cancellation of this Agreement, provisions hereof which are intended to continue and survive shall so continue and survive. In particular, termination or cancellation of this Agreement shall not affect any rights or duties arising under it with respect to Proprietary Information as set out in Clause 19 above.
- 25.8 The terms and conditions appearing in the Schedule(s) hereto, are hereby incorporated into the Agreement. In the event of any conflict between the Standard Terms and Conditions of this Agreement and those appearing in any Schedule/s hereto, these Standard Terms and Conditions shall prevail. In respect of any conflict in respect of pricing in the Agreement or the Schedules hereto, the costs set out in the Service Schedule shall prevail.
- 25.9 These terms and conditions, together with the Schedule(s), Annexures and attachments hereto, constitute the whole of the agreement between Imagine and Wholesaler relating to the subject matter hereof, notwithstanding anything in Wholesaler's inquiry, specification, acceptance, order or other documentation or discussion to the contrary.

IMAGINE IPS BANKING DETAILS	
Account Name :	Benwest Internet Services
Account number :	4051061382
Branch Code :	633005
Branch Name :	160 Jan Smuts
Account Type :	ABSA Cheque Account

**OFFICIAL USE ONLY**

Scanned to file?  Date .....

Signed .....

Print Name .....

Position .....

Date .....

Initialed .....

Director : W.G. Bennett Reg No.: 1999/022516/07

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