

Basic terms and conditions

1. All quoted pricing exclude Value Added Tax of 15.00%.
2. Standard payment terms are 7 days from the date of invoice.
3. Account holders must be 18 year or older.
4. The customer will receive a notice of an outstanding amount on the 1st day of the calendar month with an email containing the invoice. The customer will receive an email notice of an unpaid amount, if the account is in arrears, by the 5th day of the calendar month. A last notification for accounts in arrears will be sent by the 15th day of the calendar month.
5. If payment is not made within 30 days of the last invoice date, the Wingu system will remove the customer's ability to login to the system portal until the outstanding amount is settled in full. Over a defined period of time access will be removed, systems forcibly shutdown and finally deleted in an unrecoverable way. If the account is in arrears by 60 days, the Wingu system will execute a hard shut-off of all tenants with unpaid accounts automatically. This will cause all running virtual machines to shut down and become unavailable. Wingu will not be liable for any data loss or data corruption as a result of this action.
6. All tenants with unpaid accounts will have their systems automatically deleted after 120 days of non-payment from the last invoice date. Wingu will not be liable for any data loss or data corruption as a result of this action.
7. Payments are made via our payment platform partner, PayFast. Customers are required to register a free PayFast account at www.payfast.co.za.
8. Payment methods accepted via PayFast included direct Electronic Fund Transfers from the four major South African retail banks (Standard Bank, ABSA, Nedbank, First National Bank). Payment is also accepted via credit cards or Bitcoin.
9. We assume no liability for customer data contained either in a virtual machine, a volume, image or snapshot. As per best practise standards, customers are required to make suitable and frequent backups of their data and store it in an additional platform external to the Wingu Public Cloud platform. Data safety and backups are the customer's responsibility and Wingu will not accept any responsibility for any customer data loss under any circumstances. This includes underlying infrastructure failure, accidental or deliberate deleting of any or all customer infrastructure, including routers, networks, ports, floating IP addresses, volumes, images, snapshots, virtual instances and subnets.
10. Wingu operates an OpenStack platform based on the OpenStack Mitaka long term support release. User documentation for system operation is available at <http://docs.openstack.org/mitaka/>
11. Wingu provides Microsoft Server Licensing based on a Service Provider License Agreement. The license for Windows server is included in the cost of provided Windows virtual machines. Wingu accepts no responsibility for ANY other Microsoft or other software installed on virtual machines, which may or may not breach Microsoft's or other software providers' license agreements.
12. Support requests must be logged via our email platform at support@wingu.co.za. Customers will receive a confirmation email with a unique service call identity. All communication regarding support will be delivered via this system and the Service Level Agreement and customer satisfaction rating will be tracked via this system.
13. Wingu aims for a system compute uptime target of at least 99%. This means that even if other Wingu services fail, the compute environment running virtual instances will be available 99% of the time.
14. The standard support service level agreement included with any Wingu infrastructure is Next Business Day resolution of a problem. It means that any service call logged via support@wingu.co.za during 08h00 to 17h00, weekdays in the GMT+2 time zone, will be attended to and resolved by the next business day. Any calls logged after hours or on weekends will be attended to on the next business day, within the parameters of the standard service level agreement.
15. All network traffic inbound and outbound from an instance will be charged at the rate specified as per the latest pricelist in force. The latest pricing information can be obtained by sending an email to support@wingu.co.za.

16. Virtual instances are charged at the point of creation and is charged per month regardless of power state (Running, power off, shut down, paused, shelved or suspended).
17. Access to the Wingu platform is at Wingu's discretion. We reserve the right to approve or deny access to the Wingu platform at the discretion of the Wingu business. Customers engaging in malicious activities will have their accounts suspended and their infrastructure disabled and/or deleted. Abuse includes any illegal activities, any attempts to compromise systems either on the Wingu or any other platform, using any means available.
18. Successfully signing up to the Wingu platform (completing the registration, accepting the terms and conditions and having a functional login to the platform) constitutes a purchase order having been created, which the customer accepts as an order placed on Wingu for cloud services.
19. Wingu may from time to time allow customers to create accounts used for proof of concepts. These accounts will have a fixed credit amount allocated, as agreed between the customer and Wingu. If this proof of concept account is not closed and all virtual infrastructure not deleted, the customer will become liable for all billing amounts over and above the credit amount that was loaded initially.
20. Wingu may from time to time make available promotional codes to new customers. These promotional codes will be issues for a fixed value and a fix validity period. The value can be consumed by any Wingu service. Once the credit is depleted the customer will be liable for any outstanding amounts as per the regular monthly invoices.
21. Wingu provides online access to financial information showing a customer's past invoices as well as currently unbilled charges for the current calendar month. It is up to customers to manage their spending on Wingu. Customers will be held liable for full outstanding amount.
22. The full terms under which these services are rendered is provided on the Wingu website (www.wingu.co.za) and in the acceptance term and conditions when signing up for a Wingu account.

General notice

23. This is an agreement between you and Wingu Network Solutions (Pty) Ltd (Wingu) regarding your use of Wingu products, services, computers, networks, dashboards, interactive information, cloud technology, communications and server management services. All such usage shall be subject to the terms and conditions contained in this agreement and the policies set out below as read with the product specific terms and conditions applicable to the relevant product or service(collectively, "the / this Agreement")
24. This Agreement applies to all accounts, sub-accounts, and alternative account names associated with your principal account. The Account Holder (customer) is responsible for the use of each account, whether used under any name or by any person, and for ensuring full compliance with this Agreement by all users of that account.
25. In circumstances of the Consumer Protection Act, 2008 ("the CPA") being applicable to this Agreement, the provisions of the CPA shall prevail in the event of a conflict between any provision of this Agreement and the provisions of the CPA.

Acceptable Use Policy

Acceptable use policy

26. By using our services, you agree to comply with our Policies and Procedures, including this Acceptable Use Policy (AUP).

General and acceptable use

27. You are expected to use the Internet, cloud platform and other networks and services access through the services with respect, courtesy, and responsibility, giving due regard to

the rights of other Internet users. We expect you to have a basic knowledge of how the Internet functions, the types of uses which are generally acceptable, and the types of uses which are to be avoided. Common sense is the best guide as to what is considered acceptable use.

Unacceptable use

28. Illegality in any form, including but not limited to activities such as unauthorized distribution or copying of copyrighted material, violation of export restrictions, harassment, fraud, trafficking in obscene material, child sexual abuse imagery, drug dealing, and other illegal activities.
29. Wingu's services and servers may be used only for lawful purposes. Transmission, distribution or storage of any material in violation of any applicable law or regulation is prohibited. This includes, without limitation, material protected by copyright, trademark, trade secret or other intellectual property right used without proper authorization, and material that is obscene, defamatory, constitutes a legal threat, or violates export control laws. Examples of unacceptable content or links: "Pirated software", "Hackers programs or archives", "Warez sites", "IRC Bots", "Illegal MP3's" etc.
30. Due to the nature of a shared cloud environment, Wingu reserves the right to ask customers to upgrade or correct issues pertaining to upgrade their shared cloud services, or to correct issues on their shared cloud services, should it adversely affect the network or server performance for the majority of our cloud platform customers.
31. The Wingu shared cloud platform is intended for delivering services with relevant performance and functions for a small or medium business application without the concern of performance bottlenecks. The use of the service should not be indicated for large scale enterprises or applications where a dedicated server would be more suited.
32. Wingu prohibits the use of the shared cloud service to be utilised for purposes other than its intended function: virtual server, virtual datacentre and storage delivery.
33. The use of shared or dedicated hosting services for hosting torrent boxes and/or running proxies is strictly prohibited. Servers continuously running a risk of supporting these types of services will be disabled and cancelled from our network.
34. Posting of defamatory, scandalous, violent or private information about a person without their consent, intentionally inflicting emotional distress, or violating trademarks, copyrights, or other intellectual property rights.
35. Any unacceptable use of the services constitutes a material breach of these Terms and Conditions of Use and Wingu fully and strictly reserves its rights in this regard.

Protection of Minors

36. Wingu prohibits clients from using Wingu's service to harm or attempt to harm a minor, including, but not limited to, by hosting, possessing, disseminating, distributing or transmitting material that is unlawful, including child pornography.

Business use

37. Violations of system or network security are prohibited, and may result in criminal and civil liability. Examples include, but are not limited to the following:
 - a) Wingu defines a Business Customer as a business entity, when said entity is operating with more than 5 registered employees.
 - b) The distinction is in place on the basis that home/residential solutions are designed for a specific requirement <5 users on average.
 - c) Wingu has full discretion to immediately suspend or terminate any service not operating within these requirements without notice.

Interpretation

38. The provisions of this Policy are intended as guidelines and are not meant to be exhaustive. Generally, conduct that violates law, regulation, or the accepted norms of the

Internet community, whether or not expressly mentioned in this Policy, is prohibited. Wingu reserves the right at all times to prohibit activities that damage its commercial reputation and goodwill.

System and network security

39. Violations of system or network security are prohibited, and may result in criminal and civil liability. Examples include, but are not limited to the following:
- a) Unauthorized access, use, probe, or scan of a systems security or authentication measures, data or traffic.
 - b) Interference with service to any user, host or network including, without limitation, mail bombing, flooding, deliberate attempts to overload a system and broadcast attacks.
 - c) Forging of any TCP-IP packet header or any part of the header information in an e-mail or a newsgroup posting.
 - d) Employing posts or programs which consume excessive CPU time, network capacity or storage space.

Spamming

40. Sending unsolicited mail messages, including, without limitation, commercial advertising and informational announcements, is expressly prohibited. A user shall not use another site's mail server to relay mail without the express permission of the site or distributing, advertising or promoting products or software or services that have the primary purpose of encouraging or facilitating unsolicited commercial E-mail or spam.
41. It is contrary to the Wingu policy for customers to use our servers to effect or participate in any of the following activities:
- a) To post to any Usenet or other newsgroup, forum, e-mail mailing list or other similar group or list articles which are off-topic according to the charter or other owner- published FAQ or description of the group or list.
 - b) To send unsolicited mass e-mailings, if such unsolicited e-mailings provoke complaints from the recipients.
 - c) To engage in any of the foregoing activities using the service of another provider, but channelling such activities through a Wingu provided server, or using a Wingu provided server as a maildrop for responses.
 - d) To falsify user information provided to Wingu or to other users of the service in connection with use of a Wingu service.

Determination of a breach of this policy

42. Wingu will be the sole arbiters and have a sole and unfettered discretion in determining what constitutes a violation of this Policy.

Consequences of breach of this policy

43. When Wingu becomes aware of an alleged violation of its AUP (Acceptable Use Policy), Wingu will initiate an investigation (within 24-48 hours). During the investigation Wingu may restrict your access in order to prevent further possible unauthorized activity. If you are found in violation of our policy, Wingu may, at its sole discretion, restrict, suspend, or terminate your account and/or pursue other civil remedies. Also, Wingu reserves the right to pursue civil remedies for any costs associated with the investigation of a substantiated policy violation. If such violation is a criminal offence, Wingu will notify the appropriate law enforcement department of such violation.
44. Wingu does not issue service credits for any outages incurred through service disablement resulting from Policy violations.
45. You shall be held liable for any and all costs incurred by Wingu as a result of your violation of these terms and conditions. This is including, but is not limited to, attorney fees and

costs resulting from Postmaster responses to complaints from and the clean-up of unsolicited commercial mailings and/or unauthorized bulk mailings and/or news server violations.

46. First violations will result in a Cleanup Fee of R 2000.00 and your account will be reviewed for possible immediate termination.
47. A second violation will result in Cleanup Fee of R 4000.00 and immediate termination of your account.
48. The Customer who violates this policy agrees to also pay Investigation Fees of no more than R 2500.00 per hour that Wingu personnel must spend to investigate any violations.

Modification

49. Wingu may, at times with reasonable notice to Customers, revise or amend its current cloud offerings relating to price, features, traffic allocations and disk sizes.
50. Wingu reserves the right to add, delete, or modify any provision of this Policy at any time without notice.

Reporting abuse

51. Any party seeking to report any violations Wingu policy may contact via e-mail: abuse@wingu.co.za

Website takedowns

52. All queries related to website take downs may be directed to the Internet Service Providers' Association (ISPA), which Wingu has appointed as its agent for the purposes of receipt of take down notices in accordance with Chapter 11 of the Electronic Communications and Transactions Act of 2002:

Website: www.ispa.org.za
Email: takedown@ispa.org.za

Disclaimers and limitation of liability

53. You agree that our entire liability, and your exclusive remedy, with respect to any Services(s) provided under this Agreement and any breach of this Agreement is solely limited to the amount you paid for such Service(s). We and our contractors shall not be liable for any direct, indirect, incidental, special or consequential damages resulting from the use or inability to use any of the Services or for the cost of procurement of substitute services.
54. We disclaim any and all loss or liability resulting from, but not limited to:
 - a) Loss or liability resulting from access delays or access interruptions.
 - b) Loss or liability resulting from data non-delivery or data mis-delivery.
 - c) Loss or liability resulting from acts of God.
 - d) Loss or liability resulting from the unauthorized use or misuse of your account identifier or password.
 - e) Loss or liability resulting from errors, omissions, or misstatements in any and all information or services(s) provided under this Agreement
 - f) Loss or liability resulting from the interruption of your Service.
55. You agree that we will not be liable for any loss of registration and use of your domain name, or for interruption of business, or any indirect, special, incidental, or consequential damages of any kind (including lost profits) regardless of the form of action whether in contract, tort (including negligence), or otherwise, even if we have been advised of the possibility of such damages.
56. Subject always to the provisions of the CPA, to the extent that it is applicable, Wingu services are provided on an as is, as available, basis without warranties of any kind, either express or implied, including, but not limited to, warranties of merchantability, fitness for a

particular purpose or non-infringement. Wingu expressly disclaims any representation or warranty that the Wingu services will be error-free, secure or uninterrupted.

57. No oral advice or written information given by Wingu or other XON group companies, its employees, licensors of the like, will create a warranty; nor may you rely on any such information or advice as if it were a warranty. The terms of this section will survive any termination of this Agreement.
58. Wingu will use its best efforts to maintain a full time Internet and cloud service presence for the Account Holder. You hereby acknowledge that the network may, at various time intervals, be down due, but not restricted to, utility interruption, equipment failure, natural disaster, acts of God, or human error.
59. The terms of this Section will survive any termination of this Agreement.

Responsibility for content and account holder indemnities

60. You agree to indemnify and hold Wingu harmless from any and all Claims resulting from or connected with any activities conducted by you. You and Wingu will promptly notify the other upon receipt of any Claim or legal action arising out of activities conducted pursuant to this Agreement.
61. You agree not to store, transmit, link to, advertise or make available any images containing pornography through the cloud platform service. Wingu reserves the right to refuse service if any of the content within, or any links from, your website or cloud service is deemed illegal, misleading, or obscene, or is otherwise in breach of these terms or Wingu's then current Acceptable Use Policy, in the sole and absolute opinion of Wingu.
62. Wingu will not change passwords to any account without proof of identification, which is satisfactory to Wingu, which may include written authorization with signature. In the event of any partnership break-up, divorce or other legal problems that includes you, you understand that Wingu will remain neutral and may put the account on hold until the situation has been resolved. Under no circumstances will Wingu be liable for any losses incurred by you during this time of determination of ownership, or otherwise. You agree to indemnify and hold harmless Wingu from any and all Claims arising from such ownership disputes.
63. You agree to indemnify and hold harmless Wingu and any other Account Holder from any and all Claims resulting from your use of the services provided by Wingu. The terms of this Section will survive any termination of this Agreement.
64. You agree not to harm Wingu, its reputation, computer systems, programming and/or other persons using Wingu services.
65. The terms of this Section will survive any termination of this Agreement.

Variation of services

66. You agree that Wingu may establish limits concerning use of any Wingu service offered on any Wingu web site or cloud service, including without limitation the maximum number of days that e-mail messages will be retained by any Wingu service, the maximum number of e-mail messages that may be sent from or received by an account on any Wingu service, the maximum size of an e-mail message that may be sent from or received by an account on any Wingu service, the maximum disk space that will be allotted on Wingu servers on your behalf either cumulatively or for any particular service. You agree that Wingu has no responsibility or liability for the deletion, corruption or failure to store any messages or other content maintained or transmitted by any Wingu service. You acknowledge that the features, parameters (for example, the amount of storage available to users) or existence of any Wingu service may change at any time.
67. Wingu reserves the right to select the server for your cloud service for best performance. You understand that the services provided by Wingu are provided on a shared server. This means that one virtual server cannot be permitted to overwhelm the server with heavy CPU usage. If your service use overwhelms the server and causes complaints from other users, you have outgrown the realm of shared services, and will need to relocate your services and products. If you refuse to comply with this Section, then Wingu has the right

to terminate the services provided to you without any refunds of the unused portion prepaid by you.

Non-transferability of services

68. Your rights and privileges under this Agreement cannot be sold or transferred without the prior written consent of Wingu.

Passwords

69. You are responsible for maintaining the confidentiality of your passwords. In the event of a breach of security through your account, you will be liable for any unauthorized use of Wingu services, including any damages resulting there from, until you notify Wingu customer service.
70. The responsibility of all passwords and other related sensitive information is assumed by you, should any additional fee's arise from resource consumption due to poor credentials (such as, but not limited to blank passwords or "test" accounts) no fault shall be levied on Wingu.

Assignment of IP addresses

71. If Wingu assigns you an Internet Protocol address in connection with your use of the Wingu services, the right to use that Internet Protocol address will remain with and belong only to Wingu, and you will have no right to use that Internet Protocol address except as allowed by Wingu in its sole and absolute discretion.

General provisions

72. This Agreement constitutes the entire agreement between you and Wingu with respect to the Wingu services and supersedes all prior agreements between you and Wingu. Wingu reserves the right to amend this Agreement from time to time. Any new version of the Agreement will be displayed on our Website together with the date on which it will become effective, which will never be less than 30 (thirty) days after the date on which it is first published. It is your obligation to visit our web site on a regular basis in order to determine whether any amendments have been made. Any use by you of the Wingu services after the effective date of any such amendment, shall be deemed to constitute acceptance by you of such amendment.
73. Wingu's failure to enforce any provision of this Agreement shall not be construed as a waiver of any provision or right.
74. In the event that a portion of this Agreement is held unenforceable, the unenforceable portion will be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties, and the remainder of the provisions will remain in full force and effect. The terms of this Section will survive any termination of this Agreement.
75. Save where otherwise provided for in this Agreement, if you:
- a) fail to pay any amount payable under this Agreement within ten days after receipt of written demand requiring such payment; or
 - b) commit a breach of any provision (other than a payment obligation) of this Agreement and, if such breach is capable of remedy, fail to remedy such breach within thirty days after receipt of written demand requiring you to do so;
 - c) are placed under liquidation, judicial management, business rescue proceedings or any similar disability, whether provisionally or finally and whether voluntarily or compulsorily;
 - d) commit any act which if committed by a natural person would constitute an act of insolvency;
 - e) become insolvent;
 - f) compromise or attempt to compromise generally with any of your creditors;

- g) have a final judgment taken against you which is not satisfied within 30 days after the granting of such judgment, then Wingu shall be entitled, without prejudice to any of its other rights under this Agreement and/or in law and by giving written notice, to immediately cancel this Agreement or to claim immediate specific performance of all of your obligations whether or not due for performance, in either event without prejudice to Wingu's right to claim damages.
76. The interpretation and enforcement of this Agreement shall be governed according to the laws of the Republic of South Africa (excluding its choice of law rules).
77. You consent to the jurisdiction of the South Africa courts.
78. The Wingu services are provided from Johannesburg, Cape Town and Durban, South Africa, and this Agreement is deemed to have been entered into at these locations.
79. Notices required by this Agreement shall be in writing and shall be delivered either by personal delivery, fax or by email. If delivered by mail, notices shall be sent by any express mail service; or by certified or registered mail, return receipt requested, with all postage and charges prepaid, and shall be deemed to have been received on the 5th Business day after posting. Emails and faxes shall be deemed to be received on the Business Day they are sent if sent before 16h00 on that day or on the next Business Day thereafter if sent after 16h00 on a Business Day or if sent on a non-Business Day.

Wingu Billing Terms

General

80. Wingu will provide you with an itemised bill or invoice on request or where this is specified as part of the services provided to you.
81. Accounts are due on invoice presentation date ("Due Date") shown on all invoices received from Wingu, unless agreed otherwise. Wingu retains the right to impose, subject to a notice period of 7 business days, a credit limit on any of its customers as and when it sees fit.
82. Wingu products and services are not pro-rated with the exception of cloud virtual infrastructure.
83. Wingu will provide a service to you, as chosen by you, for the period of time ("the Term") corresponding with the payment plan specific to you or as otherwise specific in the product terms and conditions relating to the particular product or service supplied by Wingu. This contract will be automatically renewed at the end of the Term and each successive renewal term, unless terminated.

Effect of non-payment

84. In the event of non-payment of an invoice by the stipulated Due Date, without prejudice to any other rights that Wingu has in terms of this Agreement or in law, Wingu reserves the right to hold you liable for the total amount due pursuant to such invoice.
85. Interest of 2% per month may be charged on all overdue accounts.
86. Wingu may stop the supply of new services to you and/or terminate current services held by you if payment of any invoice is not made by the Due Date, or if an application for business rescue proceedings or liquidation is filed by or against the customer, or if the customer goes out of business or announces intention to do so.
87. If the supply of new services is stopped or the existing services are terminated in accordance with this agreement, the full outstanding balance becomes due and payable immediately.
88. If you pay the amount due in full, you may have your existing services re-activated and also purchase new services.
89. If you neglect to pay the amount due in full, Wingu will submit the full delinquent amount for Collections. In the event of the account being handed over to an outside collection agency, any costs incurred as such will be for your account.

90. If the preferred method of payment used by you is EFT, it will be your sole responsibility to ensure your payments are made using the correct beneficiary reference as indicated on all invoicing. Failure to comply may result in an incorrect allocation of your payment which may cause service disruption as a result of the account being suspended due to non-payment.

Payment methods and fees

91. Wingu makes use of 3rd party online payment processing providers. For South African customers we accept Credit Cards (MasterCard and VISA) and direct Electronic Fund Transfers from the four major retail banks (ABSA, FNB, Standard Bank and Nedbank). From time to time additional payment methods may be made available.
92. The merchant outlet country at the time of presenting payment options to the cardholder is the Republic of South Africa and the transaction currency is South African Rand (ZAR).

Refunds

93. Wingu will only refund a customer in the event of their account having a credit balance.
94. Refunds are loaded back as credit on customer accounts.

Cancellations

95. Customers must delete all virtual infrastructure inside a tenant environment (virtual instances, volumes, snapshots, backups, ports, networks, subnets, floating IP's, security groups, key pairs, routers etc.) in order to cancel their services.
96. An email has to be sent to support@wingu.co.za if full deletion of all customers' accounts and records is required. If not requested, customers will continue to receive zero value invoices, if all infrastructure has been deleted.

Service upgrades or downgrades

97. Wingu customers have full control over their service quantities. The top limit of these quantities can be controlled by allocating top limit quotas. Wingu provides a default quota limit, but customers can request to have this upgraded or downgraded via the Wingu accounts control panel, available at <https://accounts.wingu.co.za>. These quota request limits are services by the Wingu helpdesk during normal business hours on normal business days.

Dispute Resolution

General Dispute Resolution

98. The parties shall attempt to resolve all disputes arising out of this Agreement in a spirit of cooperation and with a problem-solving mind set, without formal proceedings and in accordance with the various dispute resolution procedures provided.
99. In the event of the dispute not being resolved, please follow the general complaint procedure as stipulated by ICASA for all complaints except Billing disputes: You are required to direct a general complaint to support@wingu.co.za.
100. The complaint is required to be accompanied by the following;
- a) The complaint is required to be accompanied by the following;
 - b) A statement of the reasons for the complaint with enough detail to allow us to assess these;
 - c) Any relevant evidence or documentation you wish to submit in support of your complaint.
 - d) Under the ICASA Code of Conduct Regulations Wingu is required to:
 - i. Acknowledge receipt of your complaint within three working days; and

- ii. Determine an outcome for the complaint and communicate this to you within fourteen (14) working days.

Referral of complaints to ICASA

101. If you are not happy about the outcome of the Complaint you have the right to escalate it to ICASA. If ICASA are not able to resolve the matter it may be referred to the ICASA Complaints and Compliance Committee for adjudication.
102. Please note that under the ICASA Code of Conduct Regulations 2008 you must give us an opportunity to resolve the matter within the 14 day period before you have the right to escalate your complaint to ICASA.
103. ICASA can be contacted in the following ways:
 - a) telephone (011) 566 3000,
 - b) fax (011) 444 1919 or
 - c) email: consumer@icasa.org.za
104. Any dispute, which cannot be so resolved, shall be subject to binding arbitration upon the written demand of either party. Arbitration shall take place in South Africa. Should any legal action permissible under this Agreement be instituted to enforce the terms and conditions of this Agreement, in particular the right to collect money due on unpaid invoices, the prevailing party shall be entitled to recover reasonable attorney's fees and expenses incurred at both the trial and appellate levels. The terms of this Section will survive any termination of this Agreement.

Billing dispute resolution

Purpose of this procedure

105. This Procedure sets out the obligations of Wingu and the Customer in resolving a Billing Dispute, including the manner in which Billing Disputes should be lodged and how they will be handled thereafter.
106. The Wingu Billing Dispute Handling Procedure is intended to service both the Customer and Wingu's interests by setting out clear rules and procedures to be used where Billing Disputes Occur.
107. Definitions: "Billing Dispute" means an instance where a Customer states in good faith that their bill contains incorrect charges, payments or adjustments. "Billing Dispute Notice" means a notice submitted by the Customer in terms of this Procedure. "Billing Disputes Procedure" and "this Procedure" mean this Billing Dispute Procedure for the initiation and resolution of Billing Disputes. "Billing Enquiry" means the situation where the Customer seeks information or clarification relating to an Invoice including without limitation seeking clarification of charges or sources of usage. For the avoidance of doubt, this is not a Billing Dispute. "Business Day" means any day other than a Saturday or Sunday or a public holiday observed as such in the Republic of South Africa; "Complaint" means an expression of dissatisfaction or grievance made by a Customer, but does not include a request for information. A Complaint is not a Billing Dispute.

General

108. Any charge recorded on an Invoice (the subject of a Billing Dispute) which is not submitted in accordance with this Procedure is payable in full to Wingu by the Due Date of the Invoice.
109. For the avoidance of doubt the parties acknowledge and agree that:
 - a) An amount that is not in dispute ("Undisputed Amount") cannot be withheld for any reason (including without limitation when that amount is on an invoice together with a Disputed Amount).

- b) Only Billing Disputes can trigger the Billing Dispute Handling Procedure (and the potential right to withhold payment of Disputed Amounts from Wingu as set out below).
 - c) Billing Enquiries and Complaints are not Billing Disputes and do not trigger the Billing Dispute Procedure. Billing Enquiries should be directed to support@wingu.co.za
 - d) While Complaints are dealt with under the Wingu Complaints Handling Procedure.
110. Please note that Wingu will not entertain any Billing Dispute based on unauthorised use of the services or on unauthorised use of the services by a third party, it being your responsibility to safeguard access to the services which you receive and to use them in the manner set out in the terms and conditions applicable thereto.

Customer's obligations to first use of this procedure

111. As a current or prior Customer of Wingu, you agree to allow Wingu to attempt settlement of any Billing Dispute for 14 Business Days before raising a dispute with any third party, credit card company or bank. Wingu requires and you agree that it be the first option in Billing Disputes. Should Wingu receive a chargeback or other reversed charge from a third party, Credit Card Company or bank on your behalf before Wingu has been given a chance to resolve the issue, Wingu has the right to collect on the rendered services and any fees associated with those disputes.
112. Not all Billing Disputes may be settled to a customer's satisfaction. Once this Procedure has been exhausted, a Customer may use any third party, Credit Card Company or bank in an attempt to settle the dispute. However, Wingu still retains the right to collect on any rendered services or fees that are due. Should Wingu be unable to reverse any disputed amounts with a third party, Credit Card Company or bank, Wingu will submit the full delinquent amount for Collections.

Time period within which Billing Disputes can be initiated

113. A Billing Dispute Notice may be lodged in the required manner until the passing of 60 days from the date of the relevant invoice.

Circumstances under which payment of a Disputed Amount may be withheld

114. You may only withhold payment of a Disputed Amount where Wingu receives a valid Billing Dispute Notice relating to such Disputed Amount at least 5 Business Days prior to the Due Date recorded on the relevant invoice.

Billing dispute notice

115. A Billing Dispute can only be validly initiated through the submission of a valid Billing Dispute Notice using the support@wingu.co.za email address.
116. The Billing Dispute Notice should clearly set out:
- a) Invoice number and date;
 - b) The amount in dispute ("the Disputed Amount");
 - c) The amount not in dispute ("the Undisputed Amount");
 - d) The full details of the dispute; and
 - e) Any relevant evidence or documentation you wish to submit in support of your complaint.

Response to billing dispute notice

117. Under the ICASA Code of Conduct Regulations Wingu is required to acknowledge receipt of your complaint within 3 Business Days.
118. Wingu shall provide a response to the Billing Dispute Notice within 14 Business Days, which response shall take one of the following forms:

- a) A rejection of the Billing Dispute Notice on the basis that:
- b) The Billing Dispute Notice was not received by Wingu within 60 days from the date of the relevant invoice;
- c) The Billing Dispute Notice does not contain all of the information set out in the Billing Dispute Procedure or was not submitted in accordance with the agreement.
- d) The Customer has not made payment in accordance with (and does not have a right to withhold payment) in terms of the procedure in this agreement.
- e) Wingu has confirmation from the Customer that the dispute which is the subject of the Billing Dispute Notice has been resolved;
- f) The Customer is disputing the charges on the basis that the Customer did not authorize the particular use of the services by another person; or
- g) Wingu reasonably believes that the Customer does not have a bona fide dispute in relation to the charges.
- h) A request for information or documentation from the Customer lodging the Billing Dispute Notice which is reasonably required to assist Wingu in making a determination in the matter. The Customer shall provide such information or documentation as soon as possible and the running of the 14 Business Day period referred to below shall be suspended until such time as it has been received by Wingu.
- i) A determination of the Billing Dispute and the reasons for such determination.

Referral to senior management

119. If you are not satisfied with Wingu's response under the Billing Dispute Procedure then you must notify ("SM Request") Wingu within 3 Business Days of receiving Wingu's response that you want the matter referred to Senior Management ("SM"). Subject to you complying with the Billing Dispute Procedure, both parties agree:
- a) To ensure that SM meet to resolve the dispute within 7 Business Days of Wingu receiving the SM Request but in any event not later than 14 Business Days after the lodging of the Billing Dispute Notice.
 - b) Any decision of SM will be final and binding on both parties.
 - c) Both parties acknowledge and agree that if Wingu does not receive a Notification from you in accordance with the Billing Dispute, it will be deemed to have been resolved in accordance with the response provided under the procedure and Wingu will have no further obligations in relation to the Billing Dispute.

Resolution, Agreement or Determination

120. If stipulated under Wingu's response under this agreement or where SM agree on a resolution or reach a decision under this agreement that you must make payment of a Disputed Amount, you must within 5 Business Days of the date of the determination pay the Disputed Amount.
121. If stipulated under Wingu's response under this agreement or where SM agree on a resolution or reach a decision under this agreement that Wingu must withdraw the disputed charge or refund a disputed charge previously paid, Wingu must do so as soon as practicable:
- a) If stipulated under Wingu's response under this agreement or where SM agree on a resolution or reach a decision in terms of this agreement that Wingu must withdraw the disputed charge or refund a disputed charge previously paid, Wingu must do so as soon as practicable:
 - b) Credit any Disputed Amount already paid by you.
122. Where a resolution or determination is made in accordance with this agreement, subject to either party meeting the payment obligations specified in such resolution or determination, the Billing Dispute will be deemed to be resolved and Wingu will have no further obligations in relation to the Billing Dispute.

Effect of this Procedure on continued service provision

123. Wingu will not disconnect a service provided to you which is the subject of a Billing Dispute or take adverse collection procedures or impose late payment penalties or charges while attempting to resolve a Billing Dispute lodged in terms of this Procedure and until such time as Wingu has reached a determination and communicated this to you.
124. We reserve the right, however, to take such measures immediately:
- a) Where a determination of the Billing Dispute has been made and communicated to you; or
 - b) Where you have indicated that you are unable to pay your invoice or bill or have filed or are the subject of any application to court for sequestration or liquidation or otherwise seek to reach a formal arrangement with your creditors.
125. Subject only to the above, the rights and obligations of each party under the Billing Dispute Procedure continue pending resolution of a Billing Dispute invoked under this Billing Dispute Procedure. For the avoidance of doubt this includes that Wingu shall continue to have the right to terminate or suspend the service in accordance with Wingu's rights under the agreement that you have with Wingu.

Confidentiality

126. Neither party shall use any information obtained from the other party during the course of any process invoked under this Procedure for any purpose other than the resolution of the particular Billing Dispute.

Overage disputes

127. Should you wish to dispute an overage charge you may do so by following the Billing Dispute Procedure and requesting an overage investigation.
128. Should, however, the overages be accurate (within a 5% margin) a once off charge of R150.00 will be applied to your account.

Request for Reconciliation or Historical Information/Reporting

129. Should you want a reconciliation done on your account, you may request one by following the Billing Dispute Procedure.
130. Should however the reconciliation prove the account to be accurate (within a 5% margin), a once off charge of R150.00 per reconciliation will be applied to your account. Should you request historical information that is made available to you on a monthly basis via the Customer Accounts Portal or any of the management interfaces provided to you, a once off administration charge of R150.00 per request will be applied to your account.

Referral of Billing Disputes to ICASA

131. If you are not happy about the outcome of the complaint you have the right to escalate it to ICASA. If ICASA cannot resolve the matter it may be referred to the ICASA Complaints and Compliance Committee for adjudication.
132. ICASA can be contacted in the following ways:
- a) telephone (011) 566 3000,
 - b) fax (011) 444 1919 or
 - c) email: consumer@icasa.org.za

Use of Account Holder information for promotional purposes

133. Wingu may include your name and contact information in directories of Wingu's service subscribers for the purpose promoting the use of the services by additional potential customers. However, Wingu is not authorized to print your name, trademarks or other identifying information in any other advertising or promotional materials without your prior written consent.