



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

SmartCape Conditions of use— English

Making progress possible. Together.

Introduction

1. These Conditions of Use set out the City of Cape Town's terms for the provision of computing and related services to the public, which includes the Internet and e-mail, and seeks to provide advice and assistance to the user which must be followed.

2. The City of Cape Town shall use its best endeavors to make available to SmartCape users continuous (during the time that the library or other public facility is open to the public), uninterrupted, and error free services, subject to the terms and conditions set out herein.

General conditions of use

3. Each individual SmartCape user may register once only and shall use and operate only one user name and password. Individuals may not under any circumstances register as a user more than once, or have more than one user name in operation.

4. Each individual SmartCape user warrants that during the registration process, he or she agrees to: (a) provide accurate, current and complete information as prompted, and (b) maintain and update this information in order to keep it accurate, current and complete. If the City of Cape Town learns or suspects any of this user information is not accurate, current or complete, the City of Cape Town reserves the right to suspend access to or terminate access to the SmartCape service, immediately and without notice, and to refuse any future use of the service.

5. As part of the registration process, each user selects a user name and password. This user name and password may only be used by the original user; users may not provide this information to any other person for what ever reason, including allowing another person to pose as the original user for the purpose of accessing the SmartCape service. Each user is responsible for maintaining the confidentiality of their user name and password and for all activities in connection with it. If a user becomes aware of any unauthorized use of their user name and password, then they must notify SmartCape immediately. Further, a user may not transfer or sell their access to the service to another party.

6. The SmartCape user undertakes to use the equipment provided at SmartCape Access Points solely for the purposes for which it is intended and in the way recommended (as described above), and to do nothing that will prevent the equipment from being used for this purpose by the user or other users. The user therefore undertakes to exercise all reasonable care when using the equipment, and agrees not to tamper, modify, or otherwise damage the equipment in any way.

7. The City of Cape Town shall be solely responsible for provisioning, configuring and maintaining all equipment which may be required in order for the SmartCape user to receive the services offered by City of Cape Town in terms hereof, including, without limitation, all computer hardware equipment, software and telecommunication equipment which may be necessary and required by the SmartCape user to enjoy the services provided herein. SmartCape users acknowledge that they have no rights or obligations in this regard.

8. The SmartCape services make use of software is based on FOSS (Free and Open Source Software). The City of Cape Town retains all rights to software developed specifically for SmartCape Access Point. Users are not permitted to change or copy the installed software, or install any additional software on the Smart Cape Access Point computers.

9. The SmartCape user acknowledges that:

- The SmartCape facilities are provided entirely at the risk of the user.
- The City of Cape Town does not provide any warranty or guarantee with respect to the following:
 - the availability of the computers and the applications which run on them at any given time
 - the availability of the wireless network
 - the availability of the SmartCape Email service
 - the availability and the speed of internet access; or
 - the usefulness of the computers and the applications which run on them for any particular purpose.

10. The City of Cape Town may, from time to time and without notice to the SmartCape user, be entitled to suspend or terminate the services in the event of any of the following:

- A technical failure, modification or maintenance either of the services or the equipment by means of which the services are provided, or the City of Cape Town SmartCape network;
- If the SmartCape user:
 - fails to comply with any of the terms and conditions of this agreement; or
 - does or allows to be done anything which, in the ruling of an official of the City of Cape Town so appointed, may have the effect of negatively affecting the operation of the City of Cape Town SmartCape network, the provision of services to the SmartCape user or to any other SmartCape user, or the City of Cape Town's reputation; or

- misuse or abuses the service and the equipment used to provide it in anyway
- then City of Cape Town to terminate the service to the user or, all users, or to modify these Conditions of Use to include the levying of a charge which individual users must pay.

11. The City of Cape Town reserves the right and shall be entitled to alter any name, code, number or log-in ID allocated or allowed by City of Cape Town for use in regard to the services, and the SmartCape user hereby indemnifies City of Cape Town against any loss or liability which may arise from such alterations.

12. The SmartCape user acknowledges that in the normal course of the provision of services, temporary interruptions may occur for which the City of Cape Town shall not be liable for any damages of any kind.

13. The City of Cape Town shall not be responsible for any consequences for delay in Internet access or be liable for any damages, costs or expenses whatsoever consequently incurred or suffered by the SmartCape user or any third party.

14. The SmartCape user acknowledges that it is aware of the limitations of the services to be provided herein and that service quality and coverage is dependent on the City of Cape Town SmartCape network and the infrastructure of its network providers, and that services may from time to time be adversely affected by a number of different causes over which the City of Cape Town has no direct control.

Support services

15. The SmartCape user acknowledges that, in as much as the services to be provided by City of Cape Town herein are provided on a "no frills, no guarantees" basis, City of Cape Town shall not be required to provide support to SmartCape users.

16. In the event that the SmartCape user encounters a technical problem in the provision of the SmartCape services by City of Cape Town, the SmartCity user may ask the Access Point Administrator to call the SmartCape Help Desk on telephone number 021 400 3434 where the problem will be recorded and subsequently addressed and resolved.

17. City of Cape Town does not give any warranty, guarantee or any other similar undertaking that it will be able to solve or rectify all or any of the problems brought to its attention as above.

Security

18. Users may only make use of the facilities provided at SmartCape Access Points using the username and password first selected by them and subsequently allocated to them, or subsequently allocated in the event that a username or password has been lost. Users may not use the username belonging to another person at any time or for any reason.

19. Each SmartCape user must take all reasonable precautions to prevent unauthorized use of the SmartCape facilities by others, including unregistered individuals.. Each user is responsible for selecting a password, which must be kept confidential. Users must change their password if they suspect that it has been compromised.

20. The City of Cape Town and the users of the SmartCape Access Points expressly recognise that it is impossible to maintain complete security in respect of information provided, or transactions concluded, on the Internet.

21. In order to ensure the security and reliable operation of the City of Cape Town SmartCape network to all SmartCape users, the City of Cape Town hereby reserves the right to take whatever action City of Cape Town may deem appropriate in order to preserve the security and reliability of the SmartCape network.

22. The SmartCape user acknowledges and warrants that he or she shall not utilise Smart Cape services to compromise the security of or to tamper with the City of Cape Town network, or any information contained on the City of Cape Town network or any computer utilised by City of Cape Town, or that of any other person or organization.

User etiquette and sanctions for breach

23. The SmartCape user undertakes to, and warrants that he or she shall, conform to generally acceptable Internet etiquette and to abide by City of Cape Town's General Guidelines for Internet Access and General Rules Governing Internet Use (see Part 1 of these Conditions of Use), which may be amended from time to time at City of Cape Town's sole discretion, (and the SmartCape user hereby indemnifies City of Cape Town, and holds City of Cape Town free from liability, in respect of any loss or damage of whatever nature caused as a result of any breach of such undertaking) which policies include but are not limited to the guidelines set out below:

- not to engage in any abuse of e-mail or spamming, including but not limited to, the posting or cross-posting of unsolicited articles with the same message (or substantially the same message) to more than 5 (five) newsgroup recipients that did not request to receive such messages;

- not to post or transmit any message, data, image or programme which is defamatory, insulting, discriminatory, disruptive, offensive, obscene, in any way sexually explicit, or violates any other personality rights;
- not to post or transmit any message, data, image or programme which is offensive, threatening, abusive, harassing, harmful or hateful to others; or which advocates harm based on gender, race, sexual orientation, age, religious or political beliefs, nationality, illness, or physical or mental disability;
- not to transmit, distribute or store any material in violation of any law or regulation, including without limitation material protected by copyright, trade mark, trade secret or any other intellectual property rights;
- not to post or transmit any message, data, image or programme which violates the intellectual property rights of others;
- not to interfere with use of the Internet by any other SmartCape users or other users;
- not to post or transmit any file which contains a virus, worm or trojan horse or any other destructive features, regardless of whether or not damage is intended by the SmartCape user;
- not to cancel Usenet post other than the SmartCape user's own;
- not to send unsolicited mail messages, including, without limitation, spam, `make-money-fast` schemes, chain letters, commercial advertising and informational announcements, nor to repeatedly post gratuitous off-the- topic postings to news groups;
- not to gather e-mail addresses and/or names for commercial, political, charity or like purposes;
- not to violate the privacy of any person or to violate the security of any system or network, which shall include but shall not be limited to:
 - hacking;
 - unauthorised access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of any system or network, or to breach security or authentication measures without express authorisation of the owner of such system or network;
 - unauthorised monitoring of data or traffic on any network or system without express authorisation of the owner of such system or network;
- not to misrepresent the identity of a person responsible for an e-mail or other electronic message (e.g. by using another's e-mail account without permission, by so-called IP spoofing, or by modifying another's messages without permission);
- not to violate any law, regulation or tariff that may be in force in South Africa or elsewhere. In this regard, the SmartCape user undertakes to familiarise himself or herself with, and ensure that he or she is kept continuously aware of, any amendments to such laws, regulations or tariffs which may be in force from time

to time and which may have any bearing on the SmartCape user's access to, or use of, the Internet;

- not to perform any act or omission which is generally unacceptable or offensive to Internet users in general, to the public at large or as may be determined by City of Cape Town from time to time in its sole and absolute discretion, including but not limited to the hosting or transmitting of pornographic material;
- not to contravene any SmartCape policy, as may be updated and published or accessible from the SmartCape website from time to time;
- not to do anything which tends, has the effect of, or is likely to have the effect of, damaging the name or reputation of City of Cape Town, its directorates, departments or any affiliates;
- not to commit any act or omission which may have an adverse technical effect on the integrity or functionality of the Smart Cape network;
- not to resell or make available to third parties, in any manner whatsoever and whether directly or indirectly, all or any part of the services provided to it by City of Cape Town;
- not to give or make available in any way his or her log-in ID (user name and password) to any other person for any person's use, and undertakes to take whatever steps may be necessary to ensure the safe-keeping and confidentiality of such log-in codes and passwords which may be furnished by the City of Cape Town for use by the SmartCape user, and shall specifically not disclose same to any third party without City of Cape Town's prior written consent;
- not to use his or her user name and password ('log-in ID') for any simultaneous log-in, nor to permit any other person access to, or use of, such log-in ID;
- not to contravene or violate in any way any amendments to these policy rules and guidelines posted from time to time on the SmartCape website.

24. In the event that the SmartCape user should engage in any one or more of the practices contemplated in this section (USER ETIQUETTE AND SANCTIONS FOR BREACH), which shall be determined in City of Cape Town's sole discretion and which decision shall be final, then City of Cape Town shall be entitled to, without prejudice to its rights:

- suspend or terminate, without notice, the Smart Cape user's registration and/or access to the services;
- bill the SmartCape user for any costs incurred by City of Cape Town, including, but not limited to, bandwidth, administration costs, downtime, usage of City of Cape Town's name or registered domain names, and CPU cycles;

- notify all persons who received any offending spam or who were adversely affected by such practice of the personal and public information of the Smart Cape user;
- in the event that any such practice has an adverse technical effect on the City of Cape Town network, to require the Smart Cape user to take such steps as may be necessary to rectify the situation at his or her own cost and expense;
- terminate this agreement in as much as it applies to the specific user; and
- initiate legal proceedings including but not limited to criminal prosecution under appropriate laws that may prevail in South Africa from time to time.

Limitation of liability

25. Notwithstanding anything to the contrary contained in this agreement, the City of Cape Town shall not be liable to the SmartCape user or to any other person in respect of any loss or damage of whatsoever nature caused by or arising from any of the following circumstances, and the SmartCape user hereby indemnifies City of Cape Town against any claims in respect of such loss or damage:

- any fact or circumstance beyond the reasonable control of City of Cape Town;
- any breakdown in any of the services provided by network service providers to the City of Cape Town (including, but not limited to a line failure);
- the performance or unavailability of the SmartCape network, or any other communications network to which the SmartCape network or the SmartCape computers are connected;
- any technical failure in the services provided by City of Cape Town, or a suspension or interruption in performance of any of City of Cape Town's obligations in terms of this agreement, as a direct or indirect result of any technical problems, including but not limited to denial of access to any website or information contained on the Internet;
- any breach of privacy or security by any person or entity affected by means of the SmartCape network or any other communications network to which it may be connected;
- the loss, damage, destruction, theft, contamination or corruption of any data, information or content accessible by means of the Smart Cape network;
- the preservation and integrity of any text or any other form of data, information or content which is accessible by means of the Internet;
- any publication or use of any information or data contained on the Internet;
- the Smart Cape user's use of the service, or access to the Internet;
- the Smart Cape user's failure to perform its obligations in terms of this agreement, including but not limited to failure to comply with any guideline set out in these Conditions Of Use.

26. Without limiting the generality of the foregoing, the City of Cape Town shall not be liable for any consequential or incidental loss suffered by the Smart Cape user or any other person, and the user hereby indemnifies and holds the City of Cape Town harmless against any such claim or liability, including but not limited to loss of profits, loss of anticipated business and/or goodwill.

27. The Smart Cape user expressly recognises that the City of Cape Town does not operate, control or endorse any information, products or service offered or accessible by means of the Internet, and that any entity that does offer or provide such information, products or services, is not in any way affiliated with the City of Cape Town. The City of Cape Town further does not act as an agent of such entity, not does the City of Cape Town provide any express or implied warranties or endorsements to the user or any other person whatsoever in respect of such information, products or services. In particular, the City of Cape Town disclaims any liability for and the user hereby indemnifies the City of Cape Town against, any claim or liability which may arise from any information, products or services advertised for sale, associated with or displayed on the City of Cape Town's website or accessible by means of the Smart City network.

28. No relaxation or waiver of any provision of these Conditions of Use by the City of Cape Town or delay in enforcement of any provision of these Conditions of Use shall in any circumstances be construed to be implied consent or election by the City of Cape Town or operate as a waiver or a novation of or otherwise affect any of the City of Cape Town's rights in terms of or arising from these Conditions of Use or estop or preclude the City of Cape Town from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term of these Conditions of Use.

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