



**MXit**

## **MXit MAIN TERMS OF USE**

Welcome to MXit, a ground breaking way to interact with other people using social networking and instant messaging.

**PLEASE READ THESE TERMS OF USE CAREFULLY BEFORE MAKING USE OF ANY OF OUR SERVICES.** By downloading the MXit Application and/or using our Services, you indicate your agreement to these Terms Of Use. If you do not agree to these Terms Of Use without changes, you are not authorised to use the MXit Application or our Services in any way.

These Terms Of Use make reference to sections of the Electronic Communications and Transactions Act, 25 of 2002 (hereinafter "**the ECT Act**"), promulgated in the Republic of South Africa, a copy of which may be obtained at [http://www.internet.org.za/ect\\_act.html](http://www.internet.org.za/ect_act.html).

### **1 DEFINITIONS**

- 1.1 In these Terms Of Use the following words shall have the meanings given to them:
- 1.1.1 "**Additional Terms**" mean the Country Specific Terms, as well as any additional guidelines, rules and/or policies applicable to your use of the MXit Application, MXit Websites, MXit goods and/or Services that may be published on the MXit Websites from time to time, which will apply in addition to these Terms Of Use;
- 1.1.2 "**Chat**" means instant messaging;
- 1.1.3 "**Contacts**" means the people you have invited or whose invitation you have accepted and who are subsequently listed on the MXit Application as your "contacts";
- 1.1.4 "**Content**" various forms of content supported by the MXit Application from time to time, including, without limitation, rich media content and digital content like images, sound clips, ringtones and news;
- 1.1.5 "**Country Specific Terms**" means any additional terms published with these Terms Of Use and which relate to your particular geographic region, if any;
- 1.1.6 "**Intellectual Property**" means all intellectual property rights, howsoever arising and in whatever tangible or intangible media including (without limitation) patents, rights to inventions, utility models, copyright, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, domain names, topography rights, moral rights, business processes, rights in confidential information (including trade secrets and know-how) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the word;
- 1.1.7 "**MXit**" means:
- 1.1.7.1 MXit Lifestyle (Pty) Ltd (Registration No. 2004/004890/07) a private company incorporated in South Africa of Riesling House, Brandwacht Office Park, Trumali Road, Stellenbosch, 7600; Tel. 021 888 7000; with the following directors: H H Heunis, J M Freeman and A A Roux, if you are located in South Africa; or
- 1.1.7.2 MXit Lifestyle International Limited (Registration No. 067402) a limited liability company incorporated in Mauritius of C/o International Financial Services Limited, IFS Court Twenty Eight, Cybercity, Ebene, Mauritius; Tel: +230 467 3000; with the following directors: H H Heunis, D Joory, J Groenewoud and S F Ward, if you are located outside of South Africa;
- 1.1.8 "**MXit Application**" means the software made available by MXit for installation and use on supported mobile devices or personal computers to use the Services;
- 1.1.9 "**MXit ID**" means the unique alphanumeric identity number created during registration for a User Account;
- 1.1.10 "**MXit Platform**" means the Chat, Content, storage facility, discussion forums and any other service MXit may from time to time offer to MXit Users, inclusive of the MXit Application and MXit Websites;

- 1.1.11 "MXit User" means a user of the MXit Application;
- 1.1.12 "MXit Websites" refers to MXit's Internet websites, WAP sites and widgets, including, but not limited to, www.mxit.com, m.mxit.com and forum.mxit.com;
- 1.1.13 "PIN" means a personal identification number that serves as a password to access authenticated services;
- 1.1.14 "Services" means the services provided by MXit from time to time, via the MXit Platform;
- 1.1.15 "Splash Screen" means an advertisement that gets shown while MXit is loading;
- 1.1.16 "Territory" means:
- 1.1.16.1 the Republic of South Africa, if you are located in South Africa; or
- 1.1.16.2 the rest of the world, excluding the Republic of South Africa, if you are not located in South Africa; or
- 1.1.16.3 the relevant geographic region specified in any Country Specific Terms, if you are located in the relevant geographic region specified in such Country Specific terms;
- 1.1.17 "Terms Of Use" means these terms and conditions, which regulate your use of the MXit Application, the MXit Websites and the Services;
- 1.1.18 "Upload" means the electronic transfer of information or data by you to the Services; and
- 1.1.19 "User Account" refers to the account (or 'profile') you create with MXit to enable you to use the Services.
- 1.2 Unless specifically otherwise provided, all amounts mentioned in these Terms Of Use are exclusive of value-added tax, general sales tax or whichever like form of taxation is applicable.

## 2 TERMS APPLICABLE TO USE

- 2.1 Your use of the MXit Application, the MXit Websites and of our Services shall at all times be subject to these Terms Of Use and any Additional Terms which may be applicable from time to time.
- 2.2 MXit reserves the right to amend these Terms Of Use and to publish or amend any Additional Terms at any time, with the new or amended terms coming into force on the date of publication on the MXit Website. It is your responsibility to continually stay abreast of changes to the Terms Of Use, and any Additional Terms which apply to you that may be published from time to time (you may visit www.mxit.com to access the latest versions).
- 2.3 If there is any conflict between Additional Terms and these Terms Of Use, these Terms of Use will prevail, unless otherwise stated in the relevant Additional Terms and provided that any terms of MXit will prevail against any conflicting third party terms.
- 2.4 A certificate signed by an administrator in the employ of MXit shall be *prima facie* proof of the date of publication and contents of any version of any applicable terms.
- 2.5 It is hereby recorded that section 44 of the ECT Act does not apply to the Services.

## 3 ELIGIBLE PERSONS

- 3.1 Unless otherwise stated by MXit in writing, you must be at least 13 (thirteen) years old to make use of the MXit Application, the MXit Websites and the Services. If you are 17 (seventeen) years and younger, but older than 13 (thirteen), you will inform your parents or guardians that you have registered for and are using the Services of MXit and upon request provide reasonable proof that you have complied with this prerequisite for access to the MXit Application and the Services.
- 3.2 MXit reserves the right to place an age restriction on any Services at any time.
- 3.3 Corporate entities (such as organisations, companies, businesses and other entities with legal personality) may not use the MXit Application or the Services.

## 4 AUTHORISED USE AND LICENCE

- 4.1 The Intellectual Property rights in the MXit Application, the MXit Websites and the Services are either owned by MXit or licensed to MXit and include any applications or renewals of such rights and are protected by intellectual property laws. This includes (without limitation) any compilation of such Intellectual Property rights which is likewise the exclusive property of MXit and protected by applicable law.
- 4.2 The trade marks 'MXit' and the MXit logo are registered trademarks of MXit and its affiliated companies and may not be used in any manner without MXit's prior written permission. All other Intellectual Property not owned by MXit that appear on the MXit Application, the MXit Websites or the Services are the property of their respective owners.

- 4.3 Your use of the MXit Application, the MXit Websites and the Services is for personal, non-commercial and lawful use only, and you agree not to use the MXit Application, the MXit Websites or Services to operate any commercial activities or to promote any products or services, other than expressly authorised by MXit in writing.
- 4.4 MXit grants you a free, non-exclusive, non-transferable, revocable, personal licence to download and install the MXit Application on a mobile device or personal computer or other supported device for the sole purpose of using the Services provided by MXit.
- 4.5 You may not do anything in respect of the MXit Application, MXit Websites or the Services unless these Terms Of Use expressly permit you to do so. Without limiting the general nature of this prohibition, you may not distribute, sell, grant sub-licences or grant any rights to another person, nor render any services in respect of the MXit Application, MXit Websites or the Services and you may not modify, reverse engineer, decompile, hack or create a derivative work from it.
- 4.6 MXit is under no obligation to release new versions of the MXit Application, nor to support any version of the MXit Application.
- 4.7 For MXit to provide the MXit Application free of charge, MXit secures revenue from other sources such as advertising and promotional activities. You agree to receive marketing communications and advertisements from our third party advertisers and/or ourselves (such as Splash Screens and broadcast messages) via sms, the MXit Application, MXit Websites and the Services or to your email address (if you have provided same to us) and you agree that you cannot opt out of receiving such marketing communication and advertisements as may be published by MXit from time to time in its sole discretion.
- 4.8 You also agree that MXit may communicate with you and/or send you information messages via sms, the MXit Application, MXit Websites and the Services or to your email address (if you have provided same to us) from time to time, provided that you will be able to opt-out of receiving sms and email communications by replying "STOP" to the relevant communication in the manner indicated in such communication.
- 4.9 You should not choose brand names or trademarks as your MXit ID and/or display name, since the Intellectual Property rights in such names do not belong to you. MXit reserves the right, using its reasonable discretion, to take over any MXit User's MXit ID and/or display name at any time (without compensation), should it require such MXit ID and/or display name for any reason whatsoever, including should MXit be requested to do so by the owner of a brand name or trade mark. In such event MXit will contact the MXit User and notify the MXit User that it requires the MXit ID and/or display name in question. In such event, MXit shall move the MXit User's account to a mutually agreed replacement MXit ID and/or link same to a mutually agreed replacement display name.
- 4.10 All rights not expressly granted to you in these Terms Of Use shall remain reserved in favour of MXit.

## **5 USE OF THE SERVICES**

- 5.1 You warrant and represent that any and all information you submit as part of the process to become a MXit User is true and correct and that you are the legitimate owner of such information, including (but not limited to) your date of birth, gender, location, first & last name, cell phone number and contact details.
- 5.2 You furthermore warrant and represent that you are the legitimate owner of (or that have obtained the necessary license or permission in respect of) any Content or images that you Upload via the MXit Application.
- 5.3 It is your responsibility to ensure the secrecy of your PIN.
- 5.4 Any activity on the MXit Application, the MXit Websites or the Services authenticated with your login credentials shall be deemed binding on and attributable to you personally.
- 5.5 Unless otherwise agreed in writing, we may suspend or terminate access to the MXit Application, the MXit Websites and/or the Services without notice to you. In addition, we reserve the right to revoke any privilege or access granted to you without prior notice to you and in our sole discretion.
- 5.6 You may not give your MXit ID and PIN to someone else to log on to your User Account or to access the Services using your User Account or authorise another person to do so.
- 5.7 You agree that you are responsible for the security of your mobile device or any other device used to access the MXit Application, MXit Websites and/or the Services.
- 5.8 You agree to notify MXit immediately in writing to: support@mxit.com, when you become aware of any unauthorised use of your User Account or other breach of security or attempted breach of security.

- 5.9 If your use of the Services is dependent on using a mobile device, personal computer or bandwidth of another person, you hereby represent that you have received that person's permission.
- 5.10 Further to the above, you are hereby notified that should you have provided MXit with fraudulent or incorrect information regarding your age and/or date of birth, you may be exposed to inappropriate or adult advertising and/or content and you hereby accept full responsibility for your actions in this regard and indemnify MXit against any claims and/or damages MXit may incur as a result thereof.
- 5.11 If you have not logged in to your User Account for a period of 6 (six) months, MXit may delete your User Account without prior notice and assign another user your MXit ID.

## **6 CONTENT AND MESSAGING**

- 6.1 Unless otherwise agreed in writing, by an Upload of any Content to the Services, you grant MXit and its affiliated companies a non-exclusive, royalty free, worldwide and perpetual licence to use the said Content, inclusive of the right to amend the said Content.
- 6.2 MXit has the right, but not the obligation (unless expressly required by applicable law), to monitor postings to Chat rooms or forums and also has the right, but not the obligation, to exercise editorial control over any material available in the Chat rooms or forums.
- 6.3 MXit, without derogation to the general provision in clause 6.2 above, has the right, but not the obligation, to appoint a moderator to manage any Chat room, and such person may retract permission given to you to join that Chat room and may edit or remove any Content that was posted by you that may contravene any Additional Terms which may apply to Chat rooms or forums.
- 6.4 MXit reserves the right to remove, edit or amend at its own discretion any Content posted by you to a Chat room or forum without notice to you.
- 6.5 You agree that MXit has no control over any Content or communication you receive from any of your Contacts. You may therefore be exposed to unwanted Content and it is your duty to report any undesirable Content to MXit.
- 6.6 You may not use the MXit Application or Services to:
- 6.6.1 send or post unsolicited commercial communications;
  - 6.6.2 publish Content that:
    - 6.6.2.1 contains a visual presentation of explicit violent sexual conduct, bestiality, incest or rape or extreme violence which constitutes incitement to cause harm;
    - 6.6.2.2 contains pornographic images;
    - 6.6.2.3 results in any unreasonable invasion of privacy;
    - 6.6.2.4 induces an unacceptable sense of fear or anxiety;
    - 6.6.2.5 encourages or incites any person to engage in dangerous practices or to use harmful substances;
    - 6.6.2.6 induces or promotes racial disharmony;
    - 6.6.2.7 causes grave or widespread offence;
    - 6.6.2.8 debases, degrade or demeans;
    - 6.6.2.9 is unacceptable in our view; or
    - 6.6.2.10 in any other way contravenes MXit's Content Policy or Privacy Policy, both of which is available at: [www.mxit.com](http://www.mxit.com).
- 6.7 You accept the risk that, due to the interactive nature of the Services, you may be exposed to Content that contravenes these Terms Of Use. In such event, you are required to immediately report the infringing Content to MXit so that appropriate action can be taken.

## **7 AVAILABILITY OF SERVICES AND DISCLAIMERS**

- 7.1 You hereby acknowledge and agree that your use of the MXit Application, MXit Websites and the Services are entirely at your own risk.
- 7.2 MXit does not warrant that you will always be able to communicate with your Contacts or have access to the Services and Content. This may be for different reasons, amongst others, because you or your contact's cellular telephone does not have reception or if a telecommunications provider on whom you, your contact or MXit rely to get the Services, is unavailable.
- 7.3 Whilst we endeavour to ensure that the MXit Application, the MXit Websites and the Services are always accessible and messages delivered, we make no warranties or representations as to the

level of uptime, the speed of access that can be expected or that messages and communications will be posted and/or delivered.

- 7.4 You cannot rely on the MXit Services to dispatch any emergency communications.
- 7.5 It is your responsibility to acquire the hardware and Internet connectivity necessary to access the Services and you are responsible for paying all fees that are due in respect of the hardware, mobile and the Internet connectivity and bandwidth consumed while accessing MXit.
- 7.6 The capabilities of your mobile device may limit the availability of some features and Services to you or may mean that certain Content cannot be played or displayed on your mobile device.
- 7.7 MXit may suspend the Services for any reason, including for repairs or upgrades to any of MXit's systems and MXit may suspend your account pending any investigation into a possible breach by you of these Terms Of Use.
- 7.8 MXit may decide to change the features and technical aspects of the MXit Application, MXit Websites or the Services. Such changes may cause interruptions to the Services and may require you to make changes to the settings on your mobile device or to your personal computer.
- 7.9 Whilst we endeavour to ensure that our information is accurate and complete, we make no warranties about the accuracy, reliability, completeness or timeliness of information published.
- 7.10 Where we provide third party Content or publish advertisements as part of your use of the MXit Platform or a Service we do not:
  - 7.10.1 warrant or represent that the third party Content or advertisements are suitable, accurate, correct, complete, reliable, appropriate, or lawful; or
  - 7.10.2 endorse the third party Content or advertisements.
- 7.11 Your correspondence or dealings with, or participation in promotions and/or competitions of advertisers through the MXit Platform, and any other terms, conditions, warranties or representations associated arising therefrom, lie between you and the relevant advertisers. You agree that MXit shall not be liable for any loss or damage of any nature incurred as a result of any such interactions between you and the advertisers, or as the result of the presence of such advertisers on the MXit Platform.
- 7.12 WE DISCLAIM LIABILITY FOR ANY CLAIM, LOSS, INJURY OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH THE USE OF INFORMATION AND/OR GOODS AND/OR SERVICES AVAILABLE FROM OR THROUGH THE MXIT APPLICATION, THE MXIT WEBSITES OR THE SERVICES, WHETHER DIRECT OR INDIRECT INCLUDING, WITHOUT LIMITATION, ANY LIABILITY RELATING TO ANY LOSS OF USE, INTERRUPTION OF BUSINESS, LOST PROFITS OR LOST DATA, OR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND.
- 7.13 YOU HEREBY AGREE TO INDEMNIFY, DEFEND AND HOLD MXIT, ITS AFFILIATES, RELATED COMPANIES, PARENT COMPANIES, SUBSIDIARIES, OFFICERS, DIRECTORS, AGENTS, LICENSORS AND ANY OTHER PARTNERS AND EMPLOYEES HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, EXPENSES, DAMAGES, ACTIONS, DEMANDS, LIABILITIES OR COSTS, INCLUDING BUT NOT LIMITED TO LEGAL FEES RESULTING OUT OF OR YOUR USE THE MXIT APPLICATION, THE MXIT WEBSITES OR THE SERVICES, INCLUDING WITHOUT LIMITATION:
  - 7.13.1 ANY HARM OR LOSS SUFFERED BY YOU AS A RESULT OF YOUR USE OF THE MXIT APPLICATION, MXIT WEBSITES AND/OR THE SERVICES;
  - 7.13.2 ANY VIOLATION OF THESE TERMS OF USE BY YOU; AND
  - 7.13.3 ANY CONTENT POSTED BY YOU.

## **8 MOOLA AND PAYMENTS**

- 8.1 'Moola' is MXit's token currency and can be used only to purchase Services and Content from MXit.
- 8.2 The amount of Moola obtained from any purchase:
  - 8.2.1 shall be calculated in accordance with MXit's quoted exchange rate, which may vary from time to time and from country to country; and
  - 8.2.2 may differ depending on your handset functionality and the payment method used to purchase the Moola,which differences are explained and published at: [www.mxit.com](http://www.mxit.com).
- 8.3 Once you have purchased Moola you cannot reverse the transaction, exchange the Moola, transfer it to another User Account or redeem it for cash.
- 8.4 When your User Account is inactive for a period of 6 (six) consecutive months or when MXit terminates your User Account in terms of these Terms Of Use, you will forfeit all Moola linked to your User Account.

- 8.5 Your bank or any other payment provider may charge additional fees for purchasing Moola.
- 8.6 You are responsible for ensuring that the channel or device you use to buy Moola is secure.
- 8.7 Should you choose to pay with a credit card, you agree to be bound by the Additional Terms applicable to credit card payments and warrant that you are the authorised user of such credit card. In addition you should note that:
  - 8.7.1 MXit uses industry standard Secure Socket Layer (SSL) encryption technology to protect your personal information or credit card details as the data travels over the Internet. However, there is no 100% secure transmission of data on the Internet given the current state of Internet technology. Therefore we cannot guarantee the absolute security of any information you transmit to us or which we transmit to you; and
  - 8.7.2 by submitting your credit card details you warrant that you are authorised to make payment with the relevant card and that there are sufficient funds available to pay the applicable fees.
- 8.8 Should you access the MXit Application via the web, you can view your transaction history as part of your profile at any time whilst logged in on the website. Invoices will also be provided for each billed for transaction on the website. However, should you access the MXit Application via your mobile, we will not be able to show you your transaction history.

## **9 UNAUTHORISED CONDUCT**

- 9.1 You may not monitor, intercept or modify any communication that is not addressed to you or to your User Account.
- 9.2 You may not use any harmful or malicious code, including (without limitation) viruses, Trojan horses, worms or spiders, to interfere with or access any data, communications or software associated with the Services, the MXit Application, MXit Websites or any Services/Content otherwise owned by MXit.
- 9.3 You may not send any unsolicited communication to MXit or to any MXit User, whether such unsolicited communication is sent to the MXit User's User Account or to any other address of such MXit User.
- 9.4 You may not use the Services in such a manner as to threaten, harass, embarrass or invade the privacy of any person or to contravene any applicable law or regulation.
- 9.5 You may not resell the Services or any Content you bought from MXit to a third party.
- 9.6 You may not impersonate any other MXit User or any other person, and you may not use another person's MXit ID or PIN to access another MXit User's account, nor may you access or assume another MXit User's profile. You may not use or distribute the images taken by and/or belonging to any other person via the MXit Application in any manner without such person's consent.
- 9.7 Other than as may be authorised by MXit in writing and bona fide public search engines generally, you may not programmatically access any Services using an electronic or other automated means used independently to initiate an action or respond to data messages or performances in whole or in part, including (without limitation) any web spiders, crawlers or similar technologies.
- 9.8 You are notified that it is a criminal offence to gain unauthorised access to any restricted areas of the MXit Websites or to otherwise interfere with the proper functioning thereof.

## **10 BREACH AND TERMINATION**

- 10.1 If you are found or are believed to violate any of your obligations as described in these Terms Of Use as determined by MXit in its sole and absolute discretion, MXit may, without limiting or prejudice to any other right, warranty or indemnification that may be granted to it under these Terms Of Use, cancel any right, privilege or entitlement you may have hereunder immediately and without prior notice to you, suspend your access to the Services, remove any Content Uploaded by you and/or ban you for such period as MXit may deem fit from using the Services and/or take such other steps as MXit may (in its sole and absolute discretion) deem reasonable under the circumstances.
- 10.2 If MXit terminates your User Account as provided for in these Terms Of Use, any licence(s) granted to you hereunder will also terminate at the same time and you will immediately stop using the MXit Application, the MXit Websites and the Services and, in the case of the MXit Application, remove it from the mobile device and personal computer and/or other devices on which it has been installed and destroy all other copies of the MXit Application in your possession.
- 10.3 In the event that you no longer wish to use MXit, you should remove the MXit Application from the mobile device and personal computer and/or other devices on which it has been installed and destroy all other copies of the MXit Application in your possession. You may also request MXit to archive your User Account in such event, which MXit will do upon receipt of acceptable proof of your ownership of the User Account and MXit ID in question, which will effectively de-activate your User Account and make it inaccessible. Your profile will however continue to be stored on our

systems for 5 (five) years after such request in line with relevant legislation, including the Income Tax Act 58 of 1962. In such event clause 8.4 will also apply.

## 11 PRIVACY

- 11.1 MXit collects, and you hereby consent to, the following personal information (hereinafter "**personal information**") about you being collected and processed when using the MXit Application, MXit Websites and/or the Services:
- 11.1.1 your cellular telephone number (if provided) and other contact details;
  - 11.1.2 your date of birth (and age);
  - 11.1.3 your Internet protocol address ("**IP address**") and the area where you reside; and
  - 11.1.4 your gender;
  - 11.1.5 your avatar;
  - 11.1.6 your profile picture (if provided);
  - 11.1.7 full name and surname;
  - 11.1.8 International Mobile Equipment Identity (IMEI), Cell ID and Mobile Network Code;
  - 11.1.9 your history of using the MXit Application, MXit Websites and the Services, which includes transactions concluded using the foregoing.
- 11.2 You agree to provide us with accurate information and to keep such information updated. Upon reasonable request, we will let you have access to the personal information that we store and allow you to update such information.
- 11.3 MXit may use your personal information to render the Services to you and to compile non-personally identifiable and/or aggregated statistics about your use of the Services. You consent that MXit may in addition use your personal information to allow third parties to market and promote their goods and services only via the MXit Application, MXit Websites and the Services and only in circumstances where:
- 11.3.1 it is reasonably necessary to render the Services; or
  - 11.3.2 if you have given consent to do so; or
  - 11.3.3 if required by law.
- 11.4 MXit may transfer your personal information to other entities and/or countries if we deem it necessary or beneficial in the rendering of the Services. If we do make such a transfer, we will do so only in cases where a confidentiality agreement prohibits the disclosure of the personal information by the transferee.
- 11.5 You agree that unless communication over the Internet has been encrypted that it is not secure. MXit does not encrypt your communication and you agree that MXit is not responsible for any unauthorised access to your communications by way of interception or monitoring.
- 11.6 Due to the nature of Internet connectivity your communications may be transmitted through countries other than the Territory. MXit may additionally utilise its network of secure, distributed data centres located internationally to enhance your experience of the MXit Application, MXit Websites and the Services and to increase the resilience thereof.
- 11.7 You agree not to post personal information, such as your telephone number, street address, last name, e-mail address or other contact details so that it is publicly accessible to other MXit Users or third parties. MXit is unable to take responsibility for any infringement of your rights or harm you may suffer resulting from your failure to comply with this undertaking.
- 11.8 You are hereby informed, and you agree thereto, that MXit may, in so far as it is allowed or required by law, intercept and/or monitor any communication sent and/or received by yourself using the MXit Application, MXit Websites and the Services. You understand that MXit may not notify you in the event that MXit is required by law to intercept and/or monitor your communications and that, if required by law, it has to disclose such communications together with your personal information to the relevant law enforcing authority.
- 11.9 You further agree to adhere to MXit's Privacy Policy, which is available at: [www.mxit.com](http://www.mxit.com).

## 12 JURISDICTION AND ENFORCEABILITY

- 12.1 These Terms Of Use shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa. The parties agree that the High Court of South Africa, Cape Division, shall have exclusive jurisdiction to hear any disputes that may arise from these Terms Of Use.
- 12.2 Each provision of these Terms Of Use shall be severable from the other provisions. Should any provision be found by a Court of competent jurisdiction to be invalid or unenforceable for any

reason, the remaining provisions of these Terms Of Use shall nevertheless remain binding and continue with full force and effect.

### **13 GENERAL**

- 13.1 You may not cede, assign, delegate or in any other way alienate or dispose of any or all of your rights and obligations under and in terms of these Terms Of Use without the prior written approval of MXit. MXit on the other hand shall be entitled to cede, assign or otherwise transfer this agreement or its rights in terms of this agreement without your prior consent and without giving notice to you.
- 13.2 You agree that for the purposes of the giving of any notice, the serving of any process and for any other purposes arising from these Terms Of Use that MXit may send such notices to your cellular telephone number as indicated on your User Account. MXit will accept legal service of documents at Riesling House, Brandwacht Office Park, Trumali Road, Stellenbosch, 7600. MXit's website address is [www.mxit.com](http://www.mxit.com) and can be emailed at: [support@mxit.com](mailto:support@mxit.com).
- 13.3 These Terms Of Use constitute the whole agreement between you and MXit relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of these Terms Of Use not incorporated in these Terms Of Use shall be binding on any of the parties.
- 13.4 Failure or delay on the part of any party hereto in exercising any right, power or privilege hereunder will constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.