



TERMS AND CONDITIONS

WEBSITE TERMS AND CONDITIONS

Virgin Active South Africa (Proprietary) Limited
(Registration Number: 2005/041060/07)

These terms and conditions are binding and enforceable against all persons that access the Virgin Active South Africa (Proprietary) Limited web site or any part thereof ("the Virgin Active web site") in terms of section 11(3) of the Electronic Communications and Transactions Act 25 of 2002 ("the ECT Act").

If you do not agree to these terms and conditions you must leave the Virgin Active web site now, as further use will automatically bind you to these terms and conditions.

A copy of the ECT Act may be downloaded from <http://www.polity.org.za> under the heading "Legislation and Policy".

Definitions and interpretation

a. "Virgin Active" means Virgin Active South Africa (Proprietary) Limited (Company Reg No. 2005/041060/07);

b. "Virgin Active web site" means the Virgin Active site located at www.virginactive.co.za and includes any part or element thereof;

c. "User" means any person who enters or uses the Virgin Active web site, notwithstanding the fact that such a person only visited the home page of the Virgin Active web site;

d. References herein to the singular includes the plural and vice versa; and

e. Notwithstanding the fact that hyperlinks in these terms and conditions to copyright notices and legislation should be deemed part of these terms and conditions in terms of section 11 of the ECT Act, the fact that some or all of the hyperlinks may be non-operational, shall not play a role in determination of the validity and interpretation of these terms and conditions.

1. GENERAL

Virgin Active was established in 2001 as a health and fitness operator and currently operates a number of health club facilities within the Republic of South Africa, Namibia and Botswana.

2. ALLOWED USE & LICENSE

2.1. Virgin Active licenses the User to view, download and print the content of the Virgin Active web site, provided that such content is used for personal, educational and/or non-commercial purposes only.

2.2. Content from the Virgin Active web site shall not be used or exploited by Users for any commercial and non-private purposes without the prior written consent of Virgin Active.

2.3. Users may only access and use the Virgin Active web site for legal purposes.

2.4. The caching of the Virgin Active web site shall only be allowed if:

2.4.1. purpose of the caching is to make the onward transmission of the content from the Virgin Active web site more efficient;

2.4.2. The cached content is not modified in any manner whatsoever;

2.4.3. The cached content is updated at least every 12 (twelve) hours; and

2.4.4. The cached content is removed or updated when so required by Virgin Active.

2.5. If any User uses content from the Virgin Active web site in breach of the provisions detailed herein:

2.5.1. Virgin Active reserves the right to claim damages from the User;

2.5.2. Virgin Active reserves the right to institute criminal proceedings against the User; and

2.5.3. Virgin Active shall not be liable, in any manner whatsoever, for any damage, loss or liability that resulted from the use of such content by the User or any third party who obtained any content from the User.

2.6. Hyperlinks to the Virgin Active web site from any other source shall be directed at the home page of the Virgin Active web site. Virgin Active shall not be liable, in any manner whatsoever, for any damage, loss or liability that resulted from the use of content from the Virgin Active web site,



if such content was accessed through a hyperlink not directed at the home page of the Virgin Active web site. Persons that wish to link to content beyond the home page of the Virgin Active web site shall do so at their own risk and indemnify Virgin Active against any loss, liability or damage that may result from the use of content from the Virgin Active web site, if such content was accessed through a hyperlink not directed at the home page of the Virgin Active web site. Virgin Active non-liability for deep linking is based on the fact that deep links bypass these terms and conditions.

2.7. Users may quote small and reasonable amounts of content available from the Virgin Active web site only if such quote is placed in inverted commas and acknowledged.

2.8. No person may frame the Virgin Active web site, in any manner whatsoever, without the prior written consent of Virgin Active.

2.9. Apart from bona-fide search engine operators and use of the search facility provided on the Virgin Active web site by Users, no person may use or attempt to use any technology or applications (including web crawlers or web spiders) to search or copy content from the Virgin Active web site for any purposes, without the prior written consent of Virgin Active.

2.10. All licenses and/or permissions granted in terms of this clause 2 are provided on a non-exclusive and non-transferable basis and may be terminated or cancelled by Virgin Active at any time without giving reasons therefore.

3. INTELLECTUAL PROPERTY RIGHTS & DOMAIN NAME USE

3.1. All intellectual property on the Virgin Active web site, including but not limited to content, trademarks, domain names, patents, design elements, software, databases, text, graphics, icons and hyperlinks are the property of or licensed to Virgin Active and as such, are protected from infringement by domestic and international legislation and treaties. Subject to the rights licensed to the User in clause 2, all other rights to intellectual property on the Virgin Active web site are expressly reserved.

3.2. Virgin Active is a registered trademark and Users agree not to use the trademark as an elements of a domain name or sub domain name, notwithstanding the fact that such domain name use or registration may be allowed in terms of trademark and/or constitutional law. Upon request to do so a User shall immediately cease to use such domain name and transfer it to Virgin Active at the cost of the User.

4. SOFTWARE & EQUIPMENT

It is the responsibility of the User to acquire and maintain, at his/her own expense, the computer hardware, software, lines and access accounts required to access the Internet and the Virgin Active web site and/or download content from this web site.

5. DISCLOSURES REQUIRED BY SECTION 43 OF THE ECT ACT

Access to the services, content, software and content downloads available from the Virgin Active web site is classified as "electronic transactions" in terms of the ECT Act and therefore Users have the rights detailed in Chapter 7 of the ECT Act and Virgin Active has the duty to disclose the following information:

5.1. The full name and legal status of the web site owner: Virgin Active South Africa (Proprietary) Limited;

5.2. Street address: 3rd Floor, Mont Clare Place, Cnr Main and Camp Ground Road, Claremont, Cape Town, 7708;

5.3. Postal address: P.O. Box 379, Rondebosch, 7701;

5.4. Physical address for receipt of legal service: 3rd Floor, Mont Clare Place, Cnr Main and Camp Ground Road, Claremont, Cape Town, 7708;

5.5. Main business: The main business of Virgin Active is detailed at <http://www.virginactive.co.za>;

5.6. The web site address of the Virgin Active web site is: <http://www.virginactive.co.za>;

5.7. The official e-mail address of the Virgin Active web site is: webadmin@virginactive.co.za;

5.8. Membership of self-regulatory or accreditation bodies: IHRSA;

5.9. Codes of conduct to which the Virgin Active web site subscribes: IHRSA;

5.10. The Manual published in terms of section 51 of the Promotion of Access to Information Act 2 of 2000 of the owner of the Virgin Active web site may be viewed on the Virgin Active site (click here);

5.11. Management: The management profile of Virgin Active is available from:<http://www.virginactive.co.za>;

5.12. The costs associated with the access and use of the Virgin Active Product is available from <http://virginactive.co.za>;

5.13. Alternative dispute resolution: Subject to urgent and/or interim relief, all disputes regarding:

5.13.1. access to the Virgin Active web site;

5.13.2. the inability to access the Virgin Active web site;

5.13.3. the services and content available from the Virgin Active web site; or

5.13.4. these terms and conditions,

shall be referred to arbitration in terms of the expedited rules of the Arbitration Foundation of South Africa and such arbitration proceedings shall be conducted in Cape Town in English. The arbitration ruling shall be final and the unsuccessful party shall pay the costs of the successful party on a scale as between attorney and own client. The expedited rules of the Arbitration Foundation of South Africa may be downloaded from the following web site:

<http://www.arbitration.co.za>;

5.14. Cooling-off period: In terms of the operation of section 42(1)(d) of the ECT Act, the cooling-off provisions of the ECT Act do apply to this web site; and

5.15. Users may lodge complaints concerning the Virgin Active web site with Virgin Active at (telephone) 0860 200 911 or (email) webadmin@virginactive.co.za.

6. CHANGES AND AMENDMENTS

Virgin Active expressly reserves the right, in its sole and absolute discretion, to do any of the following, at any time without prior notice:

6.1. change these terms and conditions;

6.2. change the content and/or services available from the Virgin Active web site;

6.3. discontinue any aspect of the Virgin Active web site or service(s) available from the Virgin Active web site; and/or

6.4. change the software and hardware required to access and use the Virgin Active web site.

7. PRIVACY

7.1. Virgin Active shall take all reasonable steps to protect the personal information of Users and for the purpose of this clause, "personal information" shall be defined as detailed in the Promotion of Access to Information Act 2 of 2000 (PAIA). The PAIA may be downloaded from:<http://www.polity.org.za>.

7.2. Virgin Active may electronically collect, store and use the following personal information of Users:

7.2.1. name and surname;

7.2.2. contact numbers;

7.2.3. non-personal browsing habits and click patterns;

7.2.4. e-mail address; and

7.2.5. IP address.

7.3. Virgin Active collects, stores and uses the abovementioned information for the following purposes:

7.3.1. communicate requested information to the User; and

7.3.2. to compile non-personal statistical information about browsing habits, click-patterns and access to the Virgin Active web site.

7.4. Information detailed above is collected either electronically by using cookies or is provided voluntarily by the User. Users may determine cookie use independently through their browser settings.

7.5. Virgin Active may collect, maintain, save, compile, share, disclose and sell any information collected from users, subject to the following provisions:



7.5.1. Virgin Active shall not disclose personal information from Users unless the User consents thereto;

7.5.2. Virgin Active shall disclose information without the User's consent only through due legal process; and

7.5.3. Virgin Active may compile, use and share any information that does not relate to any specific individual.

7.6. Virgin Active owns and retains all rights to non-personal statistical information collected and compiled by Virgin Active.

8. HYPERLINKS TO THIRD PARTY SITES

8.1. Virgin Active may provide hyperlinks to web sites not controlled by Virgin Active (target sites) and such links do not imply any endorsement, agreement on or support for the content of such target sites; and

8.2. Virgin Active does not editorially control the content on such target sites and shall not be liable, in any manner whatsoever, for the access to, inability to access or content available on or through such target sites.

9. SECURITY

9.1. Virgin Active shall take all reasonable steps to secure the content of the Virgin Active web site and the information provided by and collected from Users from unauthorised access and/or disclosure. However, Virgin Active does not make any warranties or representations that content shall be 100% safe and secure;

9.2. Virgin Active is under no legal duty to encrypt any content or communications from and to the Virgin Active web site and is also under no legal duty to provide digital authentication of any page on the Virgin Active web site;

9.3. Users may not deliver or attempt to deliver, whether on purpose or negligently, any damaging code, such as computer viruses, to the Virgin Active web site or the server and computer network that support the Virgin Active web site. Notwithstanding criminal prosecution, any person who delivers any damaging code to the Virgin Active web site, whether on purpose or negligently, shall, without any limitation, indemnify and hold Virgin Active harmless against any and all liability, damages and losses Virgin Active and its partners / affiliates may suffer as a result of such damaging code;

9.4. Users may not develop, distribute or use any device to breach or overcome the security measures of the Product and Virgin Active reserves the right to claim damages any and all persons concerned with a security failure or breach; and

9.5. Any User who commits any of the offences detailed in sections 85 to 88 of the ECT Act shall, notwithstanding criminal prosecution, be liable for all resulting liability, loss or damages suffered and/or incurred by Virgin Active and its partners / affiliates. The ECT Act may be downloaded from:<http://www.polity.org.za>

10. DISCLAIMER & LIMITATION OF LIABILITY

10.1. Subject to the provisions of sections 43(5) and 43(6) of the ECT Act, if applicable, and as far as allowed by law, Virgin Active (including its owners, employees, suppliers, Internet service providers, partners, affiliates and agents) shall not be liable for any damage, loss or liability of any nature incurred by whomever and resulting from:

10.1.1. access to the Virgin Active web site;

10.1.2. access to web sites linked to the Virgin Active web site;

10.1.3. inability to access the Virgin Active web site;

10.1.4. inability to access web sites linked to the Virgin Active web site;

10.1.5. content available on the Virgin Active web site;

10.1.6. services available from the Virgin Active web site;

10.1.7. downloads and use of content from the Virgin Active web site;

10.1.8. any other reason not directly related to Virgin Active gross negligence.

10.2. The Virgin Active web site is supplied on an "as is" basis and has not been compiled to meet the User's individual requirements. It is the responsibility of the User to satisfy himself or



herself, prior to entering into this agreement with Virgin Active, that the content available from and through the Virgin Active web site meet the User's individual requirements and is compatible with the User's computer hardware and/or software.

10.3. Information, ideas and opinions expressed on the Virgin Active web site should not be regarded as professional advice or the official opinion of Virgin Active and Users are encouraged to consult professional advice before taking any course of action related to the information, ideas or opinions expressed on the Virgin Active web site.

10.4. Virgin Active does not make any warranties or representation that content and services available from the Virgin Active web site will in all cases be true, correct or free from any errors. Virgin Active shall take all reasonable steps to ensure the quality and accuracy of content available from the Virgin Active web site.

10.5. Virgin Active does not make any warranties or representations that the Virgin Active web site shall be available at all times. Users acknowledge that the Virgin Active web site may be unavailable due to updates or other causes beyond the reasonable control of Virgin Active, including, but not limited to virus infection, unauthorised access, power failure or other "acts of God".

11. REMOVAL & CORRECTION OF CONTENT

Users are encouraged to report untrue, inaccurate, defamatory, illegal, infringing and/or harmful content available from the Virgin Active web site to Virgin Active and Virgin Active undertakes to correct and/or remove such content or any part thereof if the person reporting such content provided reasonable grounds to prove the alleged nature of the content.

12. INTERCEPTION OF COMMUNICATION

12.1. Subject to the provisions of the Regulation of Interception of Communications (RIC) Act 70 of 2002, the User agrees to Virgin Active' right to intercept, block, filter, read, delete, disclose and use all communications send or posted by the User to the Virgin Active web site, its staff and employees; and

12.2. The User agrees and acknowledges that the consent provided by the User in clause 12.1 satisfies the "writing" requirement as detailed in the ECT Act and the RIC Act.

13. ENTIRE AGREEMENT & SEVERABILITY

13.1. Subject to the provisions of the Content Use License, these terms and conditions constitute the entire agreement between Virgin Active and the User and shall take precedent over any disclaimers and/or legal notices attached to any communications and/or postings received by Virgin Active from the User.

13.2. Any failure by Virgin Active to exercise or enforce any right or provision shall in no way constitute a waiver of such right or provision.

13.3. In the event that any term or condition detailed herein is found unenforceable or invalid for any reason, such term(s) or condition(s) shall be severable from the remaining terms and conditions. The remaining terms and conditions shall remain enforceable and applicable.

14. AGREEMENT IN TERMS OF SECTION 21 OF THE ECT ACT

The User and Virgin Active agree that:

14.1. the User shall be bound to these term and conditions and such agreement is concluded in Cape Town (South Africa) at the time the User enters the Virgin Active web site for the first time or immediately after the User indicated consent as required in Content Use Agreement;

14.2. data messages (as defined in the ECT Act) addressed by the User to Virgin Active shall only be deemed to have been received if and when responded to;

14.3. data messages (as defined in the ECT Act) addressed to the User by Virgin Active shall be deemed to be received by the User as detailed in section 23(b) of the ECT Act;

14.4. data messages (as defined in the ECT Act) addressed by the User to Virgin Active shall be deemed to have been created and send by the User from within the geographical boundaries of South Africa;

14.5. electronic signatures, encryption and/or authentication is not required for valid electronic communications between the User and Virgin Active; and



14.6. the User agrees and warrants that data messages that are sent to Virgin Active from a computer, IP address or mobile device normally used by or owned by the User, was sent and/or authorised by the User personally.

15. APPLICABLE & GOVERNING LAW

Subject to clause 5.13, the Virgin Active web site is hosted, controlled and operated from the Republic of South Africa and therefore the South African law enforced by the South African courts governs the use or inability to use the Virgin Active web site, its content, services and these terms and conditions.

16. LEGAL COSTS

Virgin Active shall not be liable for costs incurred by Users to obtain professional advice relating to these terms and conditions.