

# CYBERSMART (PTY) LTD

## COMPLAINTS PROCEDURES

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### Introduction

1. In order to provide electronic communications services to its subscribers, Cybersmart (Pty) Ltd (“Cybersmart”) holds licences issued by the Independent Communications Authority of South Africa (“ICASA”).
2. ICASA requires that all licence-holders develop and publish its procedures for handling Complaints and Billing Disputes, in order to comply with the requirements in:
  - 2.1. The ICASA Code of Conduct Regulations 2007, which are available [here](#); and
  - 2.2. The ICASA End-User and Subscriber Service Charter Regulations 2016, which are available [here](#).
3. Cybersmart has developed this document in line with these Regulations, and will follow the procedures set out below in dealing with Complaints and Billing Disputes (as defined herein) with its Consumers.

### Definitions

4. **“Billing Dispute”** means an instance where a Customer states in good faith that their bill contains incorrect charges, payments or adjustments. Billing Disputes are a specific form of Complaint dealt with only in terms of the Billing Disputes Procedure set out herein.
5. **“Billing Dispute Notice”** means a formal, written notice submitted to Cybersmart by the Customer in terms of this Procedure.

6. **“Billing Disputes Procedure”** mean the Billing Disputes Procedure set out herein for the initiation and resolution of Billing Disputes.
7. **“Billing Enquiry”** means the situation where the Customer seeks information or clarification relating to an invoice issued by Cybersmart including without limitation seeking clarification of charges or sources of usage. For the avoidance of doubt, a Billing Enquiry is not a Billing Dispute.
8. **“Business Day”** means any day other than a Saturday or Sunday or a public holiday observed as such in the Republic of South Africa.
9. **“Complaint”** means a formal, written expression of dissatisfaction or grievance made by a Customer in terms of the General Complaints Procedure, but does not include a request for information or a Billing Dispute. Complaints are dealt with only in terms of the General Complaints Procedure set out herein.
10. **“Customer”** means a Cybersmart subscriber or potential subscriber.

### **General Complaints Procedure**

11. This Procedure applies to all Complaints other than Billing Disputes, which are dealt with in terms of the Billing Dispute Procedure set out below.
12. The Customer is required to direct a formal Complaint to ICASA-Complaints@cybersmart.co.za
13. The Complaint is required to be accompanied by the following:
  - 13.1. The Customer’s full particulars and contact details;
  - 13.2. The Customer’s relationship with Cybersmart, together with any customer reference numbers or details which may be applicable;
  - 13.3. A statement of the reasons for the Complaint, with enough detail to allow Cybersmart to assess these; and
  - 13.4. Any relevant evidence or documentation the Customer wishes to submit in support of the Complaint.
14. Cybersmart will acknowledge receipt of the Complaint within 3 Business Days and allocate a reference number.
15. Cybersmart will provide a written response with its decision on the outcome of the Complaint within 14 Business Days following receipt of the Complaint.

### **Billing Disputes Procedure**

#### General

16. Billing Enquiries should be directed to accounts@cybersmart.co.za, and Complaints not related to Billing Disputes are dealt with under the General Complaints Procedure set out above.
17. The Customer expressly acknowledges and agrees that:
  - 17.1. Any charge recorded on an invoice which is not submitted in accordance with this Billing Disputes Procedure is payable in full to Cybersmart by the due date of that invoice;

- 17.2. 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 an amount that is in dispute (“Disputed Amount”);
- 17.3. The Billing Disputes Procedure is only triggered when Cybersmart receives a Billing Dispute, and it is only after this that the Customer may withhold payments of the Disputed Amount only as set out in clause 21; and
- 17.4. Billing Enquiries, Complaints and requests for information are not considered to be Billing Disputes and do not trigger this Billing Disputes Procedure. Billing Enquiries should be directed to [accounts@cybersmart.co.za](mailto:accounts@cybersmart.co.za) Complaints are dealt with under the General Complaints Procedure set out above, and requests for information can be sent to [info@cybersmart.co.za](mailto:info@cybersmart.co.za)
18. Please note that Cybersmart will not entertain any Billing Dispute based on unauthorised use of the services or on unauthorised use of the services by a third party, as it is the Customer’s responsibility to safeguard access to the services received by the Customer and to use such services in the manner set out in the terms and conditions applicable thereto.

#### Customer Acknowledgements

19. The Customer expressly agrees to allow Cybersmart to attempt settlement of any Billing Dispute within 14 Business Days before raising a dispute with any third party, credit card company or bank. Cybersmart requires and Customer expressly agrees that Cybersmart will be the first option in Billing Disputes. Should Cybersmart receive a chargeback or other reversed charge from a third party, credit card company or bank on behalf of the Customer before Cybersmart has been given a chance to resolve the Billing Dispute, then Cybersmart has the right to collect on the rendered services and any fees associated with those charges.
20. Not all Billing Disputes may be settled to the Customer's satisfaction. Once this Billing Disputes Procedure has been exhausted, a Customer may use any third party, credit card company or bank in an attempt to settle the dispute. However, Cybersmart still retains the right to collect on any rendered services or fees that are due. Should Cybersmart be unable to reverse any disputed amounts with a third party, credit card company or bank, Cybersmart will submit the full delinquent amount for collection.

#### Withholding the Disputed Amount

21. The Customer may only withhold payment of a Disputed Amount where Cybersmart 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.

#### Initiating Billing Disputes

22. A Billing Dispute Notice may be lodged in the manner set out herein until the passing of 30 calendar days from the date of the relevant invoice.
23. The Customer is required to direct a formal Billing Dispute Notice to  
[ICASA-Billing-Disputes@cybersmart.co.za](mailto:ICASA-Billing-Disputes@cybersmart.co.za)
24. The Billing Dispute Notice is required to be accompanied by the following:

- 24.1. The Customer's full particulars and contact details;
- 24.2. The Customer's relationship with Cybersmart, together with any customer reference numbers or details which may be applicable;
- 24.3. Invoice number and date;
- 24.4. The amount in dispute ("the Disputed Amount");
- 24.5. The amount not in dispute ("the Undisputed Amount");
- 24.6. A statement of the reasons for the Billing Dispute, with enough detail to allow Cybersmart to assess these; and
- 24.7. Any relevant evidence or documentation the Customer wishes to submit in support of the Billing Dispute.

### Response to Billing Dispute Notice

25. Cybersmart will acknowledge receipt of the Billing Dispute Notice within 3 Business Days and allocate a reference number.
26. Cybersmart may request additional information or documentation from the Customer lodging the Billing Dispute Notice, which information or documentation is reasonably required to assist Cybersmart in making a decision on the matter. The Customer shall provide such information or documentation as soon as possible, and the running of the 14 Business Day period will be suspended until such time as the requested information or documentation has been received by Cybersmart.
27. Cybersmart will provide a written response with its decision on the outcome of the Billing Dispute Notice within 14 Business Days following receipt of the Billing Dispute Notice.
28. Cybersmart's decision (and reasons for such decision), will take one of the following forms:
  - 28.1. A confirmation that the Billing Dispute is valid, and a statement indicating such adjustments as may be necessary;
  - 28.2. A rejection of the Billing Dispute Notice on the basis that:
    - The Billing Dispute Notice was not received by Cybersmart within 30 calendar days of the date of the relevant invoice, as required in clause 21;
    - The Billing Dispute Notice does not contain all of the information required, as set out in clause 24, or was not submitted in the required manner, as set out in clause 23;
    - The Customer has not made payment of any Undisputed Amounts, and does not have the right to withhold payment of any Disputed Amounts in accordance with clause 21.
    - Cybersmart has confirmation from the Customer that the Billing Dispute which is the subject of the Billing Dispute Notice has been resolved;
    - The Customer is disputing any charges on the basis of unauthorised use of the services;  
or
    - Cybersmart reasonably believes that the Customer does not have a bona fide dispute in relation to Billing Dispute submitted.
  - 28.3. Any alternate resolution that Cybersmart deems appropriate.

### Response Implications

29. If stipulated in Cybersmart's response in terms of clause 28 that the Customer must make payment of the Disputed Amount or a portion thereof, the Customer must pay the Disputed Amount or such indicated portion within 5 Business Days of the date of Cybersmart's response.
30. If stipulated under Cybersmart's response in terms of clause 28 that Cybersmart must withdraw the Disputed Amount or refund a fee already paid, Cybersmart must as soon as practicable:
  - 30.1. Provide the Customer with a statement reflecting the adjustment to their account. It is intended that this adjustment will be contained on the next invoice issued to the Customer, but the parties acknowledge that this may be delayed due to timing issues with the response and Cybersmart's standard billing terms; or
  - 30.2. Credit any Disputed Amount already paid by the Customer.

### Continued Service Provision

31. Cybersmart will not disconnect a service provided to the Customer which is the subject of a Billing Dispute Notice, or take adverse collection procedures or impose late payment penalties or charges, while attempting to resolve a Billing Dispute lodged in terms of this Billing Disputes Procedure and until such time as Cybersmart has reached a decision and communicated this to the Customer, provided that Undisputed Amounts are paid timeously.
32. Cybersmart reserves the right, however, to take such measures mentioned in clause 31 immediately:
  - 32.1. Where a determination of the Billing Dispute has been made and communicated to the Customer; or
  - 32.2. Where the Customer has indicated that they are unable to pay the 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 their creditors.
33. Subject only to the above, the rights and obligations of each party under the Billing Disputes Procedure continue pending resolution of a Billing Dispute invoked under this Billing Disputes Procedure. For the avoidance of doubt, this includes that Cybersmart shall continue to have the right to terminate or suspend the service in accordance with Cybersmart's rights under the agreement that the Customer has with Cybersmart.

### **Confidentiality**

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

### **Referral of Complaints to ICASA**

35. If the Customer is not happy about the outcome of a Complaint or a Billing Dispute, the Customer has 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.

36. Please note that in terms of the ICASA Code of Conduct Regulations 2007, the Customer must give Cybersmart an opportunity to resolve the matter within the period specified in this Complaints Procedure before the Customer may escalate the Complaint or Billing Dispute to ICASA.
37. ICASA can be contacted in the following ways:
  - 37.1. telephone: 011 566 3000;
  - 37.2. fax: 011 444 1919; and/or
  - 37.3. email: [consumer@icasa.org.za](mailto:consumer@icasa.org.za)

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