

# Newstrack Online (Pty) Ltd.

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## TERMS AND CONDITIONS OF USE

IN TERMS OF SECTION 11 OF THE ELECTRONIC COMMUNICATIONS AND TRANSACTIONS (ECT) ACT 25 OF 2002 AND THE COMMON LAW OF CONTRACT, THESE TERMS AND CONDITIONS ARE VALID, BINDING AND ENFORCEABLE AGAINST ALL PERSONS THAT ACCESS THE NEWSTRACK ONLINE WEBSITE OR USE THE SERVICE THROUGH THE NEWSTRACK ONLINE WEBSITE OR ANY PART THEREOF.

IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS YOU MUST LEAVE THE WEBSITE(S) IMMEDIATELY AS FURTHER USE WILL AUTOMATICALLY BIND YOU TO THESE TERMS AND CONDITIONS.

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### DEFINITIONS AND INTERPRETATION

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- a) **"Newstrack Online"** means Newstrack Online (Pty) Ltd, registration number 2006/038633/07 of The Firs, Craddock Ave, Rosebank, Johannesburg, Gauteng, South Africa, 2196.
- b) **"the Service"** means the online news monitoring service offered by Newstrack Online to Subscribers;
- c) **"Service Agreement"** means an agreement concluded between Newstrack Online and Subscribers for provision of the Service;
- d) **"Subscribers"** means parties who concluded a Service Agreement with Newstrack Online for the monitoring of online news;
- e) **"the Website"** means the Newstrack Online website, Newsletter, Application and RSS feeds, including the Service available on and through the aforementioned and any page, part or element thereof;
- f) **"User"** means any person who enters or uses the Website;
- g) References herein to the singular includes the plural and vice versa; and
- h) Hyperlinks herein to legal documents should be deemed part of these terms and conditions in terms of section 11(3) of the ECT Act. The fact that some or all of the hyperlinks may, from time to time, be non-operational, shall not affect the validity and interpretation of these terms and conditions.

#### **1. GENERAL**

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Newstrack Online is an online news monitoring service available to Subscribers.

#### **2. ALLOWED USE AND LICENSE**

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- 2.1 Newstrack Online licenses the User to view, download, and print the content of the Website and / or use the Service provided that such use is for private, personal, educational, and/or non-commercial purposes only.
- 2.2 Content from the Website and the Service may not be used or exploited by Users for any commercial and non-private purposes without the prior written consent of Newstrack Online.
- 2.3 Users may only access, browse and use the Website and Service for legitimate personal or commercial purposes and may not use the Website or any Newstrack Online services and/or products for:
  - 2.3.1 Harmful purposes;
  - 2.3.2 Illegal purposes;
  - 2.3.3 Disclosing, sharing or publishing material that may be offensive, defamatory, regulated, copyrighted, incorrect, untrue, prohibited, infringing or damaging to any person; and/or

- 2.3.4 The creation, storage and sending of unsolicited commercial communications.
- 2.4 The caching of the Website shall only be allowed if:
  - 2.4.1 The purpose of the caching is to make the onward transmission of the content from the Website 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 Newstrack Online.
- 2.5 If any User uses content from the Website or the Service in breach of the provisions detailed herein:
  - 2.5.1 Newstrack Online reserves the right to claim damages from the User;
  - 2.5.2 Newstrack Online reserves the right to institute criminal proceedings against the User; and
  - 2.5.3 Newstrack Online 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 Website from any other source shall be directed at the home page of the Website. Links beyond the Newstrack Online home page may only be used with Newstrack Online's prior written consent.
- 2.7 Newstrack Online shall not be liable, in any manner whatsoever, for any damage, loss or liability that resulted from the use of content, products or services available from the Website, if such content, products or services was accessed through a hyperlink not directed at the home page of the Website. Persons that wish to link to pages beyond the home page of the Website without Newstrack Online's prior written consent shall do so at their own risk and indemnify Newstrack Online against any loss, liability, or damage that may result from the use of such hyperlinks. Newstrack Online's non-liability for deep linking is because deep links bypass these terms and conditions.
- 2.8 Users may quote small and reasonable amounts of content available from the Website as may be permitted within fair use principles under the applicable Copyright.
- 2.9 Users who opt to receive news content via the RSS/XML feed/s must at all times display the prescribed fields; Date, Headline and Source, and as further detailed in the Service Agreement.
- 2.10 No person may, without the prior written consent of the Newstrack Online, frame the Website in any manner whatsoever.
- 2.11 Apart from bona-fide search engine operators and use of the search facility provided on the Website by Users, no person may use or attempt to use any technology or applications (including web crawlers, robots or web spiders) to search, collect or copy content from the Website for any purpose whatsoever, without the prior written consent of the Newstrack Online.
- 2.12 Email addresses, names, telephone numbers, and fax numbers published on the Website may not be incorporated into any database used for electronic marketing or similar purposes. No permission is given or should be implied that information on the Website may be used to communicate unsolicited communications to Newstrack Online and all rights detailed in section 45 of the ECT Act are reserved.
- 2.13 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 Newstrack Online at any time without prior notice or reasons.

### **3. INTELLECTUAL PROPERTY RIGHTS**

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- 3.1 All intellectual property on the Website, including but not limited to content, trademarks (or any confusingly similar trademarks), trade names, logos, pictures, video, downloads, domain names, patents, design elements, software, source code, meta tags, databases, text, graphics, icons and hyperlinks are the property of or licensed to Newstrack Online and as such, are protected from infringement by domestic and international legislation and

treaties. Subject to the rights licensed to the User in section 2, all other rights to intellectual property on the Website are expressly reserved.

3.2 No person shall amend, copy, use, decompile and / or reverse engineer the source code of the Website.

3.3 No person may use logos, icons, or trademarks from the Website as hyperlinks or other purposes without Newstrack Online's prior written consent.

#### **4. SOFTWARE AND EQUIPMENT**

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It is the responsibility of the User to acquire and maintain, at his/her own expense, the necessary computer hardware, software, communication lines and Internet access accounts required to access the Internet and the Website and/or download content from the Website.

#### **5. DISCLOSURES REQUIRED BY SECTION 43 OF THE ECT ACT**

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Access to the Website and the Service may be classified as "electronic transactions" as defined in terms of the ECT Act and therefore Users have the rights detailed in Chapter 7 of the ECT Act and Newstrack Online has, amongst others, the duty to disclose the following information:

<b>Full name and legal status of website owner</b>	Newstrack Online (Pty) Ltd.
<b>Office Bearer</b>	Available on request.
<b>Physical address</b>	The Firs, Cradock Ave, Rosebank, Johannesburg, Gauteng, South Africa, 2196.
<b>Postal address</b>	PO Box 693, Northlands, Johannesburg, Gauteng, 2116 / info@newstrackonline.com
<b>Telephone number</b>	+27 (0) 11 759 4100
<b>Website address</b>	www.newstrackonline.com or client site
<b>Email address</b>	info@newstrackonline.com
<b>Membership of self-regulatory bodies</b>	South African Media Monitoring and Measurement Association (SAMMA).
<b>Code of conduct</b>	N/A
<b>Registration number</b>	2006/038633/07
<b>Place of registration</b>	South Africa (ZA).
<b>Physical address for receipt of legal service</b>	PO Box 693, Northlands, Johannesburg, Gauteng, 2116 / info@newstrackonline.com
<b>Goods and services</b>	Online news monitoring service delivered via an online portal, newsletter RSS feed and Application to Subscribers.
<b>Alternative dispute resolution</b>	Subject to urgent and/or interim relief, all disputes regarding: i) access and use of the Website or Service; ii) the inability to access the Website; iii) the services and content available from the Website; or iv) 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 Johannesburg 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 website: <a href="http://www.arbitration.co.za">http://www.arbitration.co.za</a>
<b>Complaints</b>	info@newstrackonline.com
<b>Security procedures</b>	N/A

<b>Privacy policy</b>	See section 7 below.
<b>Duration of agreement</b>	As detailed in Service Agreement.
<b>Cooling off rights</b>	The cooling off provisions detailed in section 44 of the ECT Act do not apply to the Website or Service.

Pricing information and information regarding specific transactional arrangements are available upon request.

## **6. CHANGES AND AMENDMENTS**

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Newstrack Online reserves the right, in its sole and absolute discretion, to do any of the following, at any time without prior notice or justification:

- 6.1 change these terms and conditions;
- 6.2 change the content and/or Service available from the Website;
- 6.3 discontinue any aspect of the Website or Service(s) available from the Website; and/or
- 6.4 change the software and hardware required to access and use the Website.

## **7. PRIVACY**

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- 7.1 Newstrack Online subscribes to the principles for electronically collecting personal information as outlined in section 51 of the ECT Act and only processes personal information in accordance with the Protection of Personal Information Act No. 4 of 2013 ("POPI"). In respect of users situated within the European Union, Newstrack Online only processes personal information in accordance with the Regulation (EU) 2016/679 — protection of natural persons with regard to the processing of personal data and the free movement of such data ("General Data Protection Regulation" or "GDPR").
- 7.2 Newstrack Online shall take all reasonable steps to protect the personal information as well as the payments and payment 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), POPI and GDPR.
- 7.3 Newstrack Online may electronically collect, store and use the payment information of Subscribers, as well as the following personal information of Users:
  - 7.3.1 name and surname;
  - 7.3.2 area code;
  - 7.3.3 street address;
  - 7.3.4 postal address;
  - 7.3.5 title;
  - 7.3.6 contact numbers;
  - 7.3.7 non-personal browsing habits and click patterns;
  - 7.3.8 e-mail address; and / or
  - 7.3.9 IP address.
- 7.4 Newstrack Online collects, stores and uses the abovementioned information for the following purposes:
  - 7.4.1 Communicate requested information to the User;
  - 7.4.2 Enable the Service;
  - 7.4.3 Provide services to the User as requested by the User;
  - 7.4.4 Authenticate the User;
  - 7.4.5 Provide the User with access to restricted pages on this website; and / or
  - 7.4.6 Compile non-personal statistical information about browsing habits, click-patterns, and access to the Website.

- 7.5 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.
- 7.6 Newstrack Online may collect, maintain, save, compile, share, disclose any information collected from users, subject to the following provisions:
- 7.6.1 Newstrack Online shall not disclose personal information from Users unless the User consents thereto;
  - 7.6.2 Newstrack Online shall disclose personal information without the User's consent only if it is required to do so in order to comply with an obligation imposed on it by law;
  - 7.6.3 Users have the right to access their personal information and to request Newstrack Online to rectify the information collected should it be incomplete or contain any errors; and
  - 7.6.4 Newstrack Online may compile, use and share any information that does not relate to any specific individual.
- 7.7 Newstrack Online owns and retains all rights to non-personal statistical information collected and compiled by the Newstrack Online.
- 7.8 Users have the right to lodge a complaint with regards to the processing of any personal information with the Information Regulator at email: infoirsa@justice.gov.za if the User is situated within South Africa or with their National Data Protection Authority if the User is situated within the European Union.

## **8. HYPERLINKS TO THIRD PARTY SITES**

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- 8.1 Newstrack Online may provide hyperlinks to websites not controlled by Newstrack Online ("target sites") and such hyperlinks do not imply any endorsement, agreement on or support of the content, products, and/or services of such target sites.
- 8.2 Newstrack Online does not editorially control the content, products and/or services on target sites and shall not be liable, in any manner whatsoever, for the access to, inability to access, use, and inability to use or content available on or through target sites.

## **9. SECURITY**

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- 9.1 Newstrack Online shall take all reasonable steps to secure the content of the Website and the information, provided by and collected from Subscribers from unauthorised access and/or disclosure. However, Newstrack Online does not make any warranties or representations that content shall be 100% safe or secure.
- 9.2 Subject to the provisions of sections 43(5) and 43(6) of the ECT Act, if applicable, Newstrack Online is under no legal duty to encrypt any content or communications from and to Users and is also under no legal duty to provide digital authentication of any pages on the Website.
- 9.3 Users may not deliver or attempt to deliver, whether on purpose or negligently, any damaging code, such as computer viruses, robots or spy ware, to the Website or the server and computer network that support the Website.
- 9.4 Notwithstanding criminal prosecution, any person who delivers or attempts to deliver any damaging code to the Website, whether on purpose or negligently, shall, without any limitation, indemnify and hold Newstrack Online harmless against any and all liabilities, damages, risks and losses that Newstrack Online and its partners / affiliates may suffer as a result of such delivery, attempt or damaging code.
- 9.5 Users may not develop, distribute, or use any device or programme designed to breach or overcome the security measures of the restricted pages, products and services on the Website and Newstrack Online reserves the right to claim damages from any and all persons involved, directly and indirectly, in the development, use and distribution of such devices or programmes.

- 9.6 Users who commit any of the offences detailed in sections 85 to 88 of the ECT Act shall, notwithstanding criminal prosecution, be liable for all resulting liabilities, losses, destruction or damages suffered and/or incurred by Newstrack Online and its partners / affiliates due to or related to these illegal actions.

## **10. DISCLAIMER AND LIMITATION OF LIABILITY**

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- 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, Newstrack Online (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 Website;
  - 10.1.2 access to and use of the Service;
  - 10.1.3 access to websites linked to the Website;
  - 10.1.4 inability to access the Website or use the Service;
  - 10.1.5 inability to access websites linked to the Website;
  - 10.1.6 content available on the Website;
  - 10.1.7 services available from the Website; or
  - 10.1.8 any other reason not directly related to Newstrack Online's gross negligence.
- 10.2 The Newstrack Online website 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 the Newstrack Online, that the content available from and through the Website 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 Website should not be regarded as professional advice or the official opinion of Newstrack Online and Users are encouraged to consult professional advice before taking any course of action related to the information, ideas or opinions expressed on the Website.
- 10.4 Newstrack Online does not make any warranties or representation that content and services available from the Website shall in all cases be true, correct or free from any errors. Newstrack Online shall take all reasonable steps to ensure the quality and accuracy of content available from the Website.
- 10.5 Newstrack Online does not make any warranties or representations that the Website shall be available at all times. Users acknowledge that the Website may be unavailable due to updates or other causes beyond the reasonable control of the Newstrack Online, including, but not limited to virus infection, unauthorised access (hacking), power failure or other "acts of God."
- 10.6 The Software and the Service are provided "as is" and no warranties, implied or express, are given or implied.

## **11. REMOVAL AND CORRECTION OF CONTENT**

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Users are encouraged to report untrue, inaccurate, defamatory, illegal, infringing, and/or harmful content available from the Website to Newstrack Online and Newstrack Online 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 COMMUNICATIONS**

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The User and Newstrack Online agree that Newstrack Online will only monitor and/or intercept communication in accordance with the Regulation of Interception of Communications and Provision of Communication-Related Information Act 70 of 2002. The User does not agree to the Newstrack Online's right to block, filter, read, delete, disclose and use any communications (including any "data messages" as defined in the ECT Act) sent or posted by the User through the Newstrack Online platform.

### **13. ENTIRE AGREEMENT AND SEVERABILITY**

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- 13.1 These terms and conditions constitute the entire agreement between Newstrack Online and the User and shall take precedent over any disclaimers and/or legal notices attached to any communications and/or postings received by Newstrack Online from the User.
- 13.2 Any failure by Newstrack Online 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**

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The User and Newstrack Online agree that:

- 14.1 the User shall be bound to these term and conditions and such agreement is concluded in Pretoria (South Africa) at the time the User enters the Website for the first time;
- 14.2 data messages (as defined in the ECT Act) addressed by the User to Newstrack Online 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 Newstrack Online 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 Newstrack Online shall be deemed to have been created and sent 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 the Newstrack Online; and
- 14.6 the User agrees and warrants that data messages that are sent to Newstrack Online 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 AND GOVERNING LAW**

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The Newstrack Online website is hosted, controlled and operated from the Republic of South Africa and therefore, subject to clause 5 the South African law enforced by the South African courts governs the use or inability to use the Website, its content, services, products and these terms and conditions.

### **16. LEGAL COSTS**

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