

## SmartSwitch Acceptable Use Policy (AUP)

### General Notice

By accessing this website, or by contracting with us for service, you agree, without limitation or qualification, to be bound by this policy and the terms and conditions it contains, as well as any other additional terms, conditions, rules or policies which are displayed to you in connection with this service/website.

The purpose of this AUP is to comply with the relevant laws of the Republic; to specify to clients and users of our service/website what activities and online behaviour are considered an unacceptable use of the service/website; to protect the integrity of our network and to specify the consequences that may flow from undertaking such prohibited activities.

This document contains several legal obligations which you are presumed to be familiar with. As such, we encourage you to read this document meticulously and direct any queries [legal@smartswitch.co.za](mailto:legal@smartswitch.co.za)

SmartSwitch respects the rights of our clients and users of our services to freedom of speech and expression; access to information; privacy; human dignity; religion, belief and opinion in accordance with our constitution. We undertake not to interfere with any of those rights unless required to do so by law; unless those rights are exercised for unlawful purposes; or unless the exercise of those rights threatens to cause harm to another person or affect the integrity of our network.

### **ISPA membership and Code of Conduct**

Blue Centrix (Pty) T/A SmartSwitch confirms that in compliance with section 72 of the Electronic Communications and Transactions Act 25 of 2002, we are a member of the Internet Service Providers' Association (ISPA) and has adopted and implemented the association's official Code of Conduct, which can be viewed at <https://ispa.org.za/code-of-conduct/>

### **Unlawful Use**

Smart Switch's services/website may only be used for lawful purposes and activities.

We prohibit any use of our website/network including the transmission, storage and distribution of any material or content using our network that violates any law or regulation of the Republic.

#### **This includes:**

Any violation of local and international laws prohibiting child pornography; obscenity; discrimination (including racial, gender or religious slurs) and hate speech; or speech designed to incite violence or hatred, or threats to cause bodily harm.

Any activity designed to defame, abuse, stalk, harass or physically threaten any individual in the Republic or beyond its borders; including any attempt to link to, post, transmit or otherwise distribute any inappropriate or defamatory material.

Any violation of Intellectual Property laws including materials protected by local and international copyright, trademarks and trade secrets. Moreover, SmartSwitch cannot be held liable if you make any unlawful use of any multimedia content accessed through the search facility provided by SmartSwitch's network, or otherwise available through access to our network, whether for commercial or non-commercial purposes.

Any violation of the individual's right to privacy, including any effort to collect personal data of third parties without their consent.

Any fraudulent activity whatsoever, including dubious financial practices, such as pyramid schemes; the impersonation of another subscriber without their consent; or any attempt to enter into a transaction with SmartSwitch on behalf of another subscriber without their consent.

Any violation of the exchange control laws of the Republic.

Any activity that results in the sale, transmission or distribution of pirated or illegal software.

Failing to respond to a request by a recipient of unsolicited mail to be removed from any mailing or direct marketing list and continuing to send unsolicited mail following such a request for removal.

Where any user resides outside of the Republic, permanently or temporarily, such user will be subject to the laws of the country in which s/he currently resides, and which apply.

On presentation of a legal order to do so, or under obligation through an order for mutual foreign legal assistance, SmartSwitch will assist foreign law enforcement agencies (LEA) in the investigation and prosecution of a crime committed using SmartSwitch's resources, including the provisioning of all personal identifiable data.

## **Prohibited Activities**

The following sections outline activities that are considered an unacceptable use of Company's services/network/website and detail the guidelines for acceptable use of certain facilities/services, as the case may be.

### **Threats to Network Security**

Any activity which threatens the functioning, security and/or integrity of SmartSwitch's network is unacceptable.

This includes:

1. Any efforts to attempt to gain unlawful and unauthorised access to the network or circumvent any of the security measures established by SmartSwitch for this goal;
2. Any effort to use SmartSwitch's equipment to circumvent the user authentication or security of any host, network or account ("cracking" or "hacking");
3. Forging of any TCP-IP packet header (spoofing) or any part of the header information in an email or a newsgroup posting;
4. Any effort to breach or attempt to breach the security of another user or attempt to gain access to any other person's computer, software, or data without the knowledge and consent of such person;
5. Any activity which threatens to disrupt the service offered by SmartSwitch through "denial of service attacks", flooding of a network, or overloading a service or any unauthorised probes ("scanning" or "nuking") of others' networks;
6. Any activity which in any way threatens the security of the network by knowingly posting, transmitting, linking to or otherwise distributing any information or software which contains a virus; Trojan horse; worm, lock, mail bomb, cancelbot or other harmful, destructive or disruptive component.
7. Any unauthorised monitoring of data or traffic on the network without SmartSwitch's explicit, written consent.
8. Any unsolicited mass mailing activity including direct marketing; spam and chain letters for commercial or other purposes, without the consent of the recipients of those mails.

### **Public Space & Third Party Content & sites**

In reading this AUP or in signing a service contract with SmartSwitch, you acknowledge that SmartSwitch has no power to control the content of the information passing over the Internet and its applications, including e-mail; chatrooms; news groups; or other similar fora, and that SmartSwitch cannot be held responsible or liable, directly or indirectly, for any of the abovementioned content, in any way for any loss or damage of any kind incurred as a result of, or in connection with your use of, or reliance on, any such content.

Our services also offer access to numerous third party webpages. You acknowledge that we exercise absolutely no control over such third party content, or sites and in such cases, our network is merely a conduit or means of access and transmission. This includes, but is not limited to, third party content contained on or accessible through the SmartSwitch network websites and web pages or sites displayed as search results or contained within a directory of links on the SmartSwitch network. It remains your responsibility to review and evaluate any such content, and that any and all risk associated with the use of, or reliance on, such content rests with you.

Access to public Internet spaces, such as bulletin boards, Usenet groups, chat rooms and moderated forums is entirely voluntary and at your own risk.

SmartSwitch employees do not moderate any of these services, or your communications, transmissions or use of these services. We do not undertake any responsibility for any content contained therein, or for any breaches of your right to privacy that you may experience as a result of accessing such spaces.

### **Usenet Newsgroups**

The client must always comply with these guidelines which can be obtained from other users of the newsgroup upon request, or from the group's administrators/moderators.

The following are prohibited practices about Usenet newsgroups and SmartSwitch reserves the right to delete and/or cancel posts which violate the following conditions:

1. Excessive cross-posting of the same article to multiple newsgroups.
2. Posting of irrelevant or off-topic material to newsgroups (also known as USENET spam).
3. Posting binaries to a non-binary newsgroup.
4. Posting adverts, solicitations, or any other commercial messages unless the guidelines of the newsgroup in question explicitly permit them.

SmartSwitch does not monitor nor control the content that is available or unavailable via newsgroup and/or usenet services. The services offered by SmartSwitch in respect to usenet services is merely a convenience to SmartSwitch clients to make the use of the service more convenient. SmartSwitch accepts no liability and has no control over the content that may or may not be available, including, but not limited to, pornography, illegally obtained movies, applications and music.

### **Unsolicited, Spam and Junk mail**

Spam and unsolicited bulk mail are highly problematic practices. They affect the use and enjoyment of services by others and often compromise network security. SmartSwitch will take swift and firm action against any user engaging in any of the following unacceptable practices:

- Sending unsolicited bulk mail for marketing or any other purposes (political, religious or commercial) to people who have not consented to receiving such mail;
- Operating or maintaining mailing lists without the express permission of all recipients listed;
- Failing to promptly remove from lists invalid or undeliverable addresses or addresses of unwilling recipients;
- Using SmartSwitch's service to collect responses from unsolicited e-mail sent from accounts on other Internet hosts or e-mail services, that violate this AUP or the AUP of any other Internet service provider;
- Including SmartSwitch's name in the header or by listing an IP address that belongs to SmartSwitch in any unsolicited email sent through SmartSwitch's network or not;
- Failure to secure a client's mail server against public relay as a protection to themselves and the broader Internet community. Public relay occurs when a mail server is accessed by a third party from another domain and utilised to deliver mails, without the authority or consent of the owner of the mail-server. Mail servers that are unsecured against public relay often become abused by unscrupulous operators for spam delivery and upon detection such delivery must be disallowed. SmartSwitch reserves the right to examine users' mail servers to confirm that no mails are being sent from the mail server through public relay and the results of such checks can be made available to the user. SmartSwitch also reserves the right to examine the mail servers of any users using SmartSwitch's mail servers for "smarthosting" (when the user relays its mail via a SmartSwitch mail server to a mail server of its own) or similar services at any time to ensure that the servers are properly secured against public relay. All relay checks will be done in strict accordance with SmartSwitch's privacy policy.

### **Uncapped Services**

It is our goal to protect the integrity of our network, in order to provide the best possible internet experience for all of our clients using all Uncapped services and as such we reserve the right to manage uncapped users who are deemed to be causing an unusually large burden on the network. We are committed to managing our network in a way that allows us to provide all users with the best experience possible, however we cannot guarantee that the allocated capacity will always be available.

#### **Home Uncapped / Premium Uncapped**

Home Uncapped services are best suited for average home users who make little to no use of high bandwidth services such as NNTP, Peer-to-Peer and Torrents (and similar but not limited to). Home Uncapped services are proactively managed by the SmartSwitch Radius account manager.

Premium Uncapped services are better suited to more advanced users and are managed proactively by the SmartSwitch Radius account manager.

### Home Basic Uncapped Fibre

Home Uncapped services are always managed according to the last 7 days usage projected to 30 days as well as the available capacity on the network.

There are predefined thresholds set and when exceeded the account speed will be managed down to a maximum of 50% of the account speed. Should the demand on the network exceed available capacity these thresholds may be managed more aggressively by the SmartSwitch Radius account manager and differ to the table below.

The thresholds per account speed are:

Speed	Threshold
5Mbps	80GB
8Mbps	100GB
10Mbps	120GB
20Mbps	200GB
40Mbps	250GB
50Mbps	250GB
100Mbps	300GB
200Mbps	400GB
1000Mbps	1000GB

Any user that is found attempting to bypass or circumvent the SmartSwitch Radius account manager will be suspended and could have their service cancelled.

### Premium Uncapped Fibre

The SmartSwitch Radius account manager is used to provide all uncapped users on our network with the best possible internet experience. During peak network times, we give priority to real time services (such as browsing, email, commercial streaming such as Netflix, Showmax etc), high bandwidth services such as NNTP, Peer-to-Peer and Torrents (and similar but not limited to) will receive less priority.

Clients deemed to be continuously uploading/downloading or using the service for unattended automated processes will be managed by the SmartSwitch Radius account manager. The SmartSwitch Radius account manager may be used to manage clients by rate limiting (slowing down speed) and limiting or preventing service using specific protocols or ports. We reserve the right to use the SmartSwitch Radius account manager to manage the integrity of our network should network capacity not be available at any time, we assure our clients that we will do this in a responsible manner should the need arise. Any user that is found attempting to bypass or circumvent the SmartSwitch Radius account manager will be suspended and could have their service cancelled.

### Business Uncapped Fibre

This is an uncapped service that is prioritised for Business Users based on available network capacity where high priority is required for typical business protocols.

Clients deemed to be continuously uploading/downloading or using the service for unattended automated processes or non-typical business protocols (such as but not limited to NNTP, Peer-to-Peer, Https Downloading and Torrents) will be managed by the SmartSwitch

Radius account manager. The SmartSwitch Radius account manager may be used to manage clients by rate limiting (slowing down speed) and limiting or preventing service using specific protocols or ports. SmartSwitch reserves the right, to at its discretion manage non typical business protocols such as but not limited to NNTP, Peer-to-Peer, Https Downloading and Torrents and/or rate limit service speed.

We reserve the right to use the SmartSwitch Radius account manager to manage services in order to protect the integrity of our network according to the available network capacity, we assure our clients that we will do this in a responsible manner should the need arise.

Any user that is found attempting to bypass or circumvent the SmartSwitch Radius account manager will be suspended and could have their service cancelled.

#### **Protection of Minors**

SmartSwitch prohibits clients from using SmartSwitch's service to harm or attempt to harm a minor, including, but not limited to, by hosting, possessing, disseminating, distributing or transmitting material that is unlawful, including child pornography.

#### **Privacy and Confidentiality**

SmartSwitch respects the privacy and confidentiality of our clients and users of our service. Please review our privacy policy which details how we collect and use personal information gathered in the course of operating this service.

#### **User Responsibilities**

Clients are responsible for any misuse of Company's services that occurs through the client's account. It is the client's responsibility to ensure that unauthorised persons do not gain access to or misuse SmartSwitch's service.

SmartSwitch urges clients not to reply to unsolicited mail or "spam", not to click on any suggested links provided in the unsolicited mail. Doing so remains the sole responsibility of the client and SmartSwitch cannot be held liable for the client being placed on any bulk mailing lists as a result.

Where the client has authorised a minor to use any of the SmartSwitch's services or access its websites, you accept that as the parent/legal guardian of that minor, you are fully responsible for: the online conduct of such minor; controlling the minor's access to and use of any services or websites; and the consequences of any misuse by the minor, including but not limited to transactions entered into by the minor using such access.

SmartSwitch cannot be held liable for any business dealings you have with any third parties on the Internet, including any vendors, or advertisers found on, or through, the SmartSwitch network. Further, SmartSwitch assumes no responsibility whatsoever for any charges you or any user of your account incurs when making purchases or other transactions in this manner. Further, the responsibility for ensuring compliance with all applicable customs and exchange control laws in connection with any such transactions shall be the client's.

#### **Notice and Take-down Procedures**

SmartSwitch confirms that it has a procedure in place for the notice and take-down of illegal material. In compliance with section 77 of the Electronic Communications and Transactions Act (No. 25 of 2002) SmartSwitch's designated agent for this process can be reached at (010) 500 1200 or at: [complaints@ispa.org.za](mailto:complaints@ispa.org.za), P.O.Box 518, Noordwyk, 1687. The notice and take-down procedure can be viewed at <https://ispa.org.za/code-of-conduct/>.

Take-down notice email: [complaints@ispa.org.za](mailto:complaints@ispa.org.za)

Take-down notice information and form: <https://ispa.org.za/tdn/>

Clients are also notified of the content and procedures of the ISPA Code of Conduct (<https://ispa.org.za/code-of-conduct/>) which may be used against any Internet service provider who fails to comply with the code of conduct. We urge you to familiarise yourselves with this code.