



POLICY 037/2017 RAADSBELEID

SUBJECT/ONDERWERP: WEBSITE TERMS & CONDITIONS

REFERENCE/VERWYSING: 6.1.3

RESOLUTION NR/BESLUIT NO: 14.4/05/2017 (SCM)

DATE/DATUM: 30 MAY 2017

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 DKM WEBSITE, WEB PAGES OR ANY PART THEREOF. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS YOU MUST LEAVE THE DKM WEBSITE WITHOUT DELAY, AS FURTHER USE WILL AUTOMATICALLY BIND YOU TO THESE TERMS AND CONDITIONS.

DEFINITIONS AND INTERPRETATION

- a) *“The Dawid Kruiper Municipality (DKM website)”* means the website, owned and operated by Dawid Kruiper Municipality and located at <http://www.dkm.gov.za>, including any page, part or element thereof;
- b) *“DKM”* means Dawid Kruiper Municipality;
- c) *“User”* means any person who enters or uses the DKM website, notwithstanding the fact that such a person only visits the home page of the DKM website;
- d) References herein to the singular include the plural and vice versa; and
- e) 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

1.1 DKM provides general and tourism information about Dawid Kruiper Municipality.

2. ALLOWED USE AND LICENSE

- 2.1** DKM licenses the User to view, download and print the content of the DKM website, provided that such content is used for private, personal, educational and/or non-commercial purposes only.
- 2.2** Content from the DKM website may not be used or exploited by Users for any commercial and non-private purposes without the prior written consent of DKM.
- 2.3** Users may only access, browse and use the DKM website for legitimate personal or commercial purposes and may not use the DKM website or any DKM 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, 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 DKM 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 DKM 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 DKM.
- 2.5** If any User uses content from the DKM website in breach of the provisions detailed herein:
 - 2.5.1 DKM reserves the right to claim damages from the User;
 - 2.5.2 DKM reserves the right to institute criminal proceedings against the User; and
 - 2.5.3 DKM 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 DKM website from any other source shall be directed at the home page of the DKM website. Links beyond the DKM home page may only be used with DKM's prior written consent.
- 2.7** DKM 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 DKM website, if such contents, products or services were accessed through a hyperlink not directed at the home page of the DKM website. Persons that wish to link to pages beyond the home page of the DKM website without DKM's prior written consent shall do so at their own risk and indemnify DKM against any loss, liability or damage that may result from the use of such hyperlinks. DKM's non-liability for deep linking is based on the fact that deep links bypass these terms and conditions.

- 2.8** Users may quote small and reasonable amounts of content available from the DKM website and only if such a quote is placed in inverted commas and acknowledged.
- 2.9** No person may, without the prior written consent of DKM, frame the DKM website in any manner whatsoever.
- 2.10** Apart from bona-fide search engine operators and use of the search facility provided on the DKM 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 DKM website for any purpose whatsoever, without the prior written consent of DKM.
- 2.11** E-mail addresses, names, telephone numbers and fax numbers published on the DKM 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 DKM website may be used to communicate unsolicited communications to DKM and all rights detailed in Section 45 of the ECT Act are reserved.
- 2.12** 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 DKM at any time without prior notice or reasons.

3. INTELLECTUAL PROPERTY RIGHTS

- 3.1** All intellectual property on the DKM website, including but not limited to content, trademarks (or any confusingly similar trademarks), 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 DKM 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 DKM website are expressly reserved.
- 3.2** No person may use logos, icons or trade marks from the DKM website as hyperlinks or other purposes without DKM's prior written consent.

4. SOFTWARE AND EQUIPMENT

- 4.1** 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 DKM's website and/or download content from the DKM website.

5. DISCLOSURES REQUIRED BY SECTION 43 OF THE ECT ACT

These terms and conditions as well as product and / or service specific terms and conditions govern the sale of goods and / or the provision of services from or through the DKM website.

Access to the services, content, software and downloads available from the DKM website 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 DKM has, amongst others, the duty to disclose the following information:

- 5.1 The full name and legal status of the website registrant:** DKM Municipality;
- 5.2 Directors:** Municipal Manager, Director Corporate Services, Director Social Services, Director Civil Engineering;
- 5.3 Street address:** Civic Centre, Market Street, Upington, 8800;
- 5.4 Postal address:** Private Bag X6003, Upington, 8800;
- 5.5 Physical address for receipt of legal service:** Civic Centre, Market Street, Upington, 8800;
- 5.6 Telephone number:** 054 332 5911;
- 5.7 Fax number:** 054 332 1762;
- 5.8 Main business:** The provision of municipal services to the inhabitants of DKM;
- 5.9 Code of Conduct:** Municipal Systems Act 32 of 2000;
- 5.10 The website address of the DKM website is:** <http://www.dkm.gov.za>;
- 5.11 The official e-mail address of the DKM website is:** manager@dkm.gov.za;

5.12 Alternative dispute resolution:

Subject to urgent and/or interim relief, all disputes regarding:

- 5.12.1 access to the DKM website;
- 5.12.2 the inability to access the DKM website;
- 5.12.3 the services and content available from the DKM website; or
- 5.12.4 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 Upington 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: <http://www.arbitration.co.za>;

- 5.13 Cooling-off period:** In terms of the operation of section 42(1)(d) of the ECT Act, the cooling-off period provision of the ECT Act do not apply to this website and;
- 5.14 Users may lodge complaints concerning the DKM website with DKM at:** manager@dkm.gov.za

6. CHANGES AND AMENDMENTS

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

- (a) change these terms and conditions;
- (b) change the content and/or services available from the DKM website;

- (c) discontinue any aspect of the DKM website or service(s) available from the DKM website; and/or
- (d) change the software and hardware required to access and use the DKM website.

7. PRIVACY

7.1 DKM 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).

7.2 DKM may electronically collect, store and use the following personal information of Users:

- 7.2.1 name and surname;
- 7.2.2 area code;
- 7.2.3 street address;
- 7.2.4 postal address;
- 7.2.5 title;
- 7.2.6 contact numbers;
- 7.2.7 non-personal browsing habits and click patterns;
- 7.2.8 e-mail address; and / or
- 7.2.9 IP address.

7.3 DKM collects, stores and uses the abovementioned information for the following purposes:

- 7.3.1 Communicate requested information to the User;
- 7.3.2 Provide services to the User as requested by the User;
- 7.3.3 Authenticate the User;
- 7.3.4 Provide the User with access to restricted pages on this website; and
- 7.3.5 Compile non-personal statistical information about browsing habits, click-patterns and access to the DKM website.

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

- 7.5.1 DKM shall not disclose personal information from Users unless the User consents thereto;
- 7.5.2 DKM shall disclose personal information without the User’s consent only through due legal process; and
- 7.5.3 DKM may compile, use and share any information that does not relate to any specific individual.

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

8. HYPERLINKS TO THIRD PARTY SITES

8.1 DKM may provide hyperlinks to websites not controlled by DKM (“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 DKM 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, inability to use or content available on or through target sites.

8.3 SECURITY

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

8.3.2 Subject to the provisions of sections 43(5) and 43(6) of the ECT Act, if applicable, DKM 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 DKM website.

8.3.3 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 DKM website or the server and computer network that support the DKM website.

8.3.4 Notwithstanding criminal prosecution, any person who delivers or attempts to deliver any damaging code to the DKM website, whether on purpose or negligently, shall, without any limitation, indemnify and hold DKM harmless against any and all liabilities, damages, risks and losses that DKM and its partners/affiliates may suffer as a result of such delivery, attempt or damaging code.

8.3.5 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 DKM website and DKM 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.

8.3.6 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 DKM and its partners/affiliates due to or related to these illegal actions.

9. DISCLAIMER AND LIMITATION OF LIABILITY

9.1 Subject to the provisions of sections 43(5) and 43(6) of the ECT Act, if applicable, and as far as allowed by law, DKM (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 whomsoever and resulting from:

- 9.1.1 access to the DKM website;
- 9.1.2 access to websites linked to the DKM website;
- 9.1.3 inability to access the DKM website;
- 9.1.4 inability to access websites linked to the DKM website;
- 9.1.5 content available on the DKM website;
- 9.1.6 services available from the DKM website;
- 9.1.7 products available from the DKM website;
- 9.1.8 downloads and use of content from the DKM website; and/or
- 9.1.9 any other reason not directly related to DKM's gross negligence.

9.2 The DKM 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 DKM, that the content available from and through the DKM website meets the User's individual requirements and is compatible with the User's computer hardware and/or software.

- 9.3** Information, ideas and opinions expressed on the DKM website should not be regarded as professional advice or the official opinion of DKM and Users are encouraged to obtain professional advice before taking any course of action related to the information, ideas or opinions expressed on the DKM website.
- 9.4** DKM does not make any warranties or representation that content and services available from the DKM website shall in all cases be true, correct or free from any errors. DKM shall take all reasonable steps to ensure the quality and accuracy of content available from the DKM website.
- 9.5** DKM does not make any warranties or representations that the DKM website shall be available at all times. Users acknowledge that the DKM website may be unavailable due to updates or other causes beyond the reasonable control of the DKM, including, but not limited to virus infection, unauthorised access (hacking), power failure or other “acts of God”.

10. COMMENTS

DKM does not edit or scan comments posted by the User or e-mails from the User to DKM or the DKM website and shall not be liable for any defamatory, illegal, infringing, hateful, pornographic or harmful postings.

11. REMOVAL AND CORRECTION OF CONTENT

Users are encouraged to report untrue, inaccurate, defamatory, illegal, infringing and/or harmful content available from the DKM website to DKM and DKM 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

- 12.1** Subject to the provisions of the Regulation of Interception of Communications (RIC) Act 70 of 2002, the User agrees to DKM’s right to intercept, block, filter, read, delete, disclose and use all communications (including all “data messages” as defined in the ECT Act) sent or posted by the User to the DKM website, its staff and employees. The RIC Act may be downloaded from: <http://www.info.gov.za/acts/2002/a70-02/>.
- 12.2** The User agrees and acknowledges that the consent provided by the User in clause 13.1 satisfies the “writing” requirement as detailed in the ECT Act and the RIC Act.

13. ENTIRE AGREEMENT AND SEVERABILITY

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

- 14.1** the User shall be bound to these term and conditions and such agreement is concluded in Upington (South Africa) at the time the User enters the DKM website for the first time;
- 14.2** data messages (as defined in the ECT Act) addressed by the User to DKM shall only be deemed to have been received if and when responded to. An auto-reply shall not constitute such “*response*” for the purposes of this clause;
- 14.3** data messages (as defined in the ECT Act) addressed to the User by DKM 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 DKM 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 DKM; and
- 14.6** the User agrees and warrants that data messages that are sent to DKM from a computer, IP address or mobile device normally used by or owned by the User, were sent and/or authorised by the User personally.

15. APPLICABLE AND GOVERNING LAW

The DKM website is hosted, controlled and operated from the Republic of South Africa and therefore, s
ubject to clause 5.11, the South African law enforced by the South African courts governs the
use or inability to use the DKM website, its content, services, products and these terms and conditions.

16. LEGAL COSTS

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

REPEAL

That all previous resolutions/policies regarding this matter be repealed.