

TERMS AND CONDITIONS

1. Interpretation

In this Agreement:

- 1.1. clause headings are for convenience and shall not be used in its interpretation;
- 1.2. unless the context indicates a contrary intention, any reference to:
 - 1.2.1. a natural person, includes a juristic person and vice versa;
 - 1.2.2. the singular includes the plural and vice versa;
 - 1.2.3. any gender includes other genders;
- 1.3. unless the contrary is expressly indicated, the following words and expressions shall have the meaning set out hereunder:
 - 1.3.1. **"Agreement"** shall mean this written document together with all written appendices, annexures, exhibits or amendments attached to it from time to time;
 - 1.3.2. **"Confidential Information"** shall mean:
 - 1.3.2.1. any information of whatever nature which has been or may be obtained by either of the Parties from the other, whether in writing or in electronic form or pursuant to discussions between the Parties or which can be obtained by examination, testing, visual inspection or analysis, including without limitation, scientific, business or financial data, know-how, formulae, processes, designs, sketches, photographs, plans, drawings, specifications, sample reports, models, customer lists, price lists, studies, findings, computer software, inventions or ideas;
 - 1.3.2.2. analyses, concepts, compilations, studies and other material prepared by or in possession or control of the recipient which contain or otherwise reflect or are generated from any such information as is specified in this definition;
 - 1.3.2.3. any dispute between the Parties resulting from this Agreement;
 - 1.3.3. **"Commencement Date"** means the date of signature of this Agreement by the party so last signing;
 - 1.3.4. **"Business Days"** means and includes all days excluding public holidays Saturdays, and Sundays.
 - 1.3.5. **"Month end"** shall mean the last day of a calendar month;
 - 1.3.6. **"Party"** means Vexen and the Customer individually and **"Parties"** means them collectively;
 - 1.3.7. **"Prime Rate"** means the publicly quoted rate (per cent, per annum) from time to time charged by Vexen's bank for similar amounts on unsecured overdraft to its prime customers in good standing in the private sector, as certified by any manager of that bank whose appointment it will not be necessary to prove, calculated on a daily bases and compounded monthly in arrears;
 - 1.3.8. **"Service"** means the service offered by Vexen which the Customer elect to use.
- 1.4. Any substantive provision conferring rights or imposing obligations on any party in the interpretation clause shall be given effect to as if it were a substantive provision in the body of the Agreement.
- 1.5. Words and expressions defined in any clause shall, unless the application of such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.
- 1.6. Reference to months or years shall be construed as calendar months or years.
- 1.7. No provision herein shall be construed against or interpreted to the disadvantage of any party by reason of such Party having or being deemed to have structured or drafted such provision.
- 1.8. Whenever a term is followed by the word "including" which is then followed by specific examples, such examples shall not be construed so as to limit the meaning of that term.
- 1.9. A reference to any statutory enactment shall be construed as a reference to that enactment as the signature date as the amended or re-enacted from time to time.
- 1.10. Unless specifically otherwise provided, all amounts in this Agreement are exclusive of value-added tax.

2. Duration

- 2.1. This Agreement shall commence on the Commencement Date and shall remain in force for until all the Services have been terminated as provided for in this Agreement. Each Service however will only commence as agreed to between the Parties in writing.
- 2.2. Should the Customer cancel a Service or this Agreement before the initial term of that Service, the Customer will pay Vexen a cancellation fee calculated as follows:
 - 2.2.1. the cost of the equipment provided by Vexen to the Customer for that Service
 - 2.2.2. payment equal to two monthly payments applicable for that Service.

3. Communication with credit bureaus / credit providers

- 3.1. The Customer hereby consents that, and authorises Vexen to:
 - 3.1.1. contact, request and obtain information from any credit provider or registered credit bureau relevant to an assessment of the behaviour, profile, payment patterns, indebtedness, whereabouts, and creditworthiness of the Customer;
 - 3.1.2. furnish information concerning the behaviour, profile, payment patterns, indebtedness, whereabouts, and creditworthiness of the Customer to any registered credit bureau or to any credit provider seeking a trade reference regarding the Customer's dealings with Vexen.

4. Authority to debit the Nominated Bank Account

- 4.1. Prior to the Commencement Date, the Customer shall nominate a bank account ("Nominated Bank Account") from which Vexen shall debit the charges payable by the Customer to Vexen for the Services in terms of this Agreement. The Customer shall not change the Nominated Bank Account without first giving 7 (seven) Business Days written notice to Vexen and signing a new debit order form, if required.
- 4.2. The Customer hereby authorises Vexen to debit the Nominated Bank Account by debit order with the following amounts:
 - 4.2.1. the charges applicable to the Services
 - 4.2.2. any penalties for failed debit orders against the Customer's account;
 - 4.2.3. Any interest calculated at Prime Rate which may be due on late payments.
- 4.3. The Customer will not be entitled to withhold payment of any amount payable to the Contractor to satisfy any claim of the Customer arising from this or any other contract between the Parties, nor will the Customer be entitled to set-off such an amount against the amount payable to the Contractor in terms of this Agreement or any other contract.
- 4.4. Late payments may incur interest calculated at Prime Rate from the due date for payment until date of payment.
- 4.5. Failed debit orders may carry a penalty of R50 which will be levied against the Customer's account. Should a debit order fail, all or some of the Services may be disabled immediately and the Customer will be required to pay the

- 4.6. arrears and the debit order penalty. Vexen reserves the right to reprocess failed debit orders at any time for the outstanding amount or any part thereof. Any dispute relating to the debit made by Vexen from the Nominated Bank Account shall be communicated to Vexen within 30 (thirty) days of the date of the relevant debit, failing which the Customer shall have no claim against Vexen in respect thereof.

5. Breach

- 5.1. If the Customer breaches or otherwise is in default of its obligations under the terms of this Agreement, Vexen shall give the Customer written notice to remedy such breach. If the Customer fails to comply with such notice within 5 (five) days of receipt thereof, then Vexen shall be entitled to terminate this Agreement or the specific Service without further notice, or alternatively, to claim immediate performance and/or payment from the Customer of all its obligations in terms of this Agreement, whether or not the same are then due for performance payment, the foregoing being without prejudice to any right Vexen may have at law, including the right to claim damages.
- 5.2. Without limiting the generality of clause 5.1, it is recorded that the Customer shall be deemed to have committed a material breach of this Agreement should the Customer commit any act of insolvency or effect a compromise with its creditors or should a creditor institute insolvency proceedings against the Customer, in which event Vexen shall be entitled to terminate this Agreement immediately.

6. Jurisdiction

This Agreement shall in all respects be governed by, and construed in accordance with, the laws of the Republic of South Africa, and all disputes, actions and other matters in connection with this Agreement shall be determined in accordance with such laws.

7. Termination

- 7.1. Where any of the Services is used to commit fraud or where Vexen suspects that the any of the Services is being used to commit fraud by the Customer, Vexen may terminate that specific service or all of the Services at its own discretion without giving the Customer notice thereof and Vexen shall furthermore be entitled to recover any equipment supplied to the Customer for that specific service or all of the Services.
- 7.2. Unless determined otherwise in this Agreement, when a specific service is terminated, the Customer must return to Vexen the equipment provided by or on behalf of Vexen for that service.
- 7.3. Unless determined otherwise in this Agreement, any of the Services may be terminated by either party on one Month's written notice to the other for any reason whatsoever.
- 7.4. This Agreement will terminate when all the Services have been terminated.
- 7.5. The termination of a Service / this Agreement, for whatever reason, shall not affect the rights of either of the Parties:
 - 7.5.1. that may have accrued before the termination of the Service / this Agreement; or
 - 7.5.2. which specifically or by their nature survives the termination of the Service/ this Agreement.

8. Force majeure

Vexen shall not be liable for damages for any delay or failure to perform its obligations hereunder, if such delay or failure is due to causes beyond its control or without its fault or negligence, including, without limitation, strikes, riots, wars, fires, epidemics, lack of human or material resources, quarantine restrictions, unusually severe weather, earthquakes, explosions, acts of god or state or any public enemy, or acts mandated by any applicable laws, regulation or order (whether valid or invalid) of any governmental body.

9. Domicilium and Notices

- 9.1. The Parties hereby choose *domicilium citandi et executandi* for all purposes and in connection with this Agreement including, without limitation, the service of all notices pertaining to this Agreement at their respective physical addresses as cited in **annexure A** of this Agreement or such other addresses as may be notified to the other in writing in terms hereof.
- 9.2. All notices to be given in terms of this Agreement shall:
 - 9.2.1. be in writing and delivered by hand or sent by prepaid registered post or sent by telefax or sent by email;
 - 9.2.2. if delivered by hand, be deemed to have been received on the date of delivery;
 - 9.2.3. if sent by the prepaid post, be deemed to have received within 7 (seven) Business Days of posting, unless contrary is provided;
 - 9.2.4. if sent by email / telefax, be deemed to have been received on the first business day following the date of sending the email / telefax, unless contrary is proved.

10. Severability

In the event that any of the terms of this Agreement are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining terms, which will continue to be valid and enforceable.

11. Miscellaneous

- 11.1. This Agreement, constitutes the entire agreement between the Parties in respect of the subject matter hereof and correctly reflects the intention of the Parties and constitutes all arrangements entered into between them.
- 11.2. A certificate of indebtedness, purporting to have been signed by any authorised person of Vexen (whose authority or capacity need to be proved) shall constitute *prima facie* (i.e. sufficient) proof to the particulars included therein for purposes of provisional sentence, summary judgement or for any other purpose.
- 11.3. No failure, delay, relaxation or indulgence on the part of Vexen in exercising any power conferred upon in terms of this Agreement shall operate as a waiver of such power or right, not shall these be deemed to be a notation of any of the terms and conditions of this Agreement.
- 11.4. Save as expressly otherwise herein provided, this Agreement or any part thereof, or any share interest therein or any rights or obligations hereunder may not be ceded, assigned or otherwise transferred without prior notice of the other party.

SECTION B: TERMS SPECIFIC TO CARD SERVICES

Should Vexen provide Card Services to the Customer, the terms under this section B will be applicable to the Card Service.

12. Additional definitions:

Unless the contrary is expressly indicated, the following words and expressions shall have the meaning set out hereunder:

- 12.1. **"Card"** means any valid bank card which is acceptable to Vexen (as notified to the Customer from time to time) and issued by a financial institution for the exclusive use by a card holder which card is required to execute the transactions contemplated herein;
- 12.2. **"Cardholder"** means any juristic or natural person to whom a card is issued and who is authorized to use the card;
- 12.3. **"Card Equipment"** means a manual imprinter and/or electronic device which enables a card transaction to take place, and such other devices (including the Customer's cards) which are required by the Customer to accept card transactions
- 12.4. **"Merchant Transaction Fee"** means the fee the Customer is charged per transaction by Vexen;
- 12.5. **"Payment Solution Software"** shall mean the software owned or licensed to the Customer, which enables card transactions to be directed to financial

- institutions for processing, which software requires the Card Equipment for its operation;
- 12.6. "Transaction" means an EFT Transaction with an authorization code from the acquiring bank.
- 13. Use of Payment Solution Software**
- 13.1. Vexen hereby grants the Customer the right to use the Payment Solution Software in subject to the Customer's compliance with the terms and conditions of this Agreement.
- 13.2. Vexen may upgrade or change the Payment Solution Software, Card Equipment and/or communications infrastructure from time to time during the duration of this Agreement.
- 13.3. Vexen shall provide training on the use of the Payment Solution Software upon request.
- 14. Communications infrastructure**
- If required, Vexen will introduce the Customer to a communications service provider to set up the required Card Equipment and communications infrastructure.
- 15. Acquiring Bank relationship**
- 15.1. The Customer is required to enter into a relationship with a financial institution ("Acquiring Bank") to process card Transactions conveyed via the Payment Solution Software and Card Equipment, and for this purpose the Customer has agreed that its Acquiring Bank shall be Nedbank, ABSA or FNB.
- 15.2. Vexen shall not be held liable or responsible for any future variation in the said rate which the Acquiring Bank may introduce from time to time.
- 15.3. The Customer will sign all necessary agreements with the Acquiring Bank to accept card Transactions.
- 15.4. The Customer shall not change the Acquiring Bank relationship without first providing Vexen with 30 days written notice thereof.
- 15.5. The offering of the Card Services to the Customer is subject to the Customer entering into an agreement with the Acquiring Bank.
- 16. Transaction Fee**
- 16.1. The Customer shall pay Vexen a Merchant Transaction Fee listed in **annexure C**. Vexen reserves the right to change the Merchant Transaction Fee from time to time, based on the CPI.
- 16.2. Vexen shall furnish the Customer with a Monthly invoice indicating the Merchant Transaction Fees to be debited from the Nominated Bank Account. If Vexen does not furnish the Customer with the mentioned statement, Vexen shall not be deemed to have waived the Merchant Transaction Fee.
- 17. Merchant fee**
- 17.1. The Customer shall pay Vexen a fee ("Merchant Fee") listed in **annexure C** for each Card Equipment per Month per store, which fee shall be payable monthly in advance. The number of Card Equipment utilized by the Customer are listed in **annexure C**. Vexen, reserves the right to change the Merchant fee from time to time, based on CPI.
- 17.2. Vexen shall furnish the Customer with a Monthly invoice indicating the Merchant Fee to be debited to the Nominated Bank Account. If Vexen does not furnish the Merchant with the mentioned invoice, Vexen shall not be deemed to have waived the Merchant fee.
- 18. Installation and Activation fees**
- 18.1. The Customer shall pay Vexen an installation fee as well as a Merchant Activation Fee as listed in **annexure C**.
- 18.2. The installation fee includes
- 18.2.1. Integration Software
- 18.2.2. User Manuals
- 18.2.3. Staff training on operation, reporting and reconciliation
- 19. Indemnification**
- 19.1. The Customer hereby acknowledges that, save as recorded in this Agreement, Vexen has given no warranty, express or implied, concerning its obligations arising out of this Agreement, the operation of the Card Equipment and/or the Payment Solution Software, its rights in and to the Payment Solution Software or in respect of any provisions contained in this Agreement.
- 19.2. The Customer indemnifies and holds Vexen harmless against any loss or damage it might suffer, howsoever arising, as a result of any intentional or negligent conduct by the Customer or its officers or employees, including fraudulent card Transactions.
- 19.3. Vexen shall not be held responsible for, or liable for any loss suffered as a result of, any corrupted computerised data or vouchers or data or vouchers lost in transit, howsoever caused.

SECTION C: TERMS SPECIFIC TO NETVOUCHER SERVICES

Should Vexen provide NetVoucher services to the Customer, the terms under this section C will be applicable to the NetVoucher service:

- 20. Additional definitions**
- 20.1. "Terminal" means the mobile prepaid machine of Vexen that is loaned, sold or rented to the Customer to resell airtime and electricity vouchers to third parties.
- 20.2. "Goods" means any virtual vouchers being bought by means of the terminal/software.
- 21. Obligations of Vexen**
- 21.1. Provide the Customer with a unique reference number to be used for bank deposits.
- 21.2. Provide the Customer with discounted prepaid airtime and electricity rates (as per **Annexure D**). These discounts are subject to change without notice, should the respective service providers to Vexen change their prices.
- 21.3. Use its best endeavours to provide technical backup of the Terminal.
- 22. Obligations of Customer**
- 22.1. The Customer shall ensure that the Terminal are only used with due skill and care in accordance with Vexen's specifications and directions. The Customer shall not alter or modify the Terminal in any way.
- 22.2. The Customer shall ensure that only legal power sources are used for the Terminal.
- 22.3. Should the Terminal be lost or stolen, the Customer must report it to Vexen immediately and to a police station within 24 hours after the incident.
- 22.4. The Customer must keep the Terminal safe and in a good working condition. The Customer shall be liable for all costs incidental to maintenance and safekeeping of the Terminal.
- 22.5. The Customer shall not do or omit to do anything which may prejudice Vexen rights in terms of this Agreement, reputation, or cause Vexen Technologies to suffer any loss or damages.
- 22.6. The Customer may not reverse engineer or modify the software of Vexen in any way.
- 22.7. Should Vexen load their software on a third party machine for the Customer's use, the Customer hereby provides the third party permission to share contact details of the Customer with Vexen.
- 23. Payments**
- 23.1. The Customer shall pay all monies due to Vexen Technologies directly to Vexen's bank account using the deposit reference number supplied by Vexen.
- 23.1.1. The Customer shall ensure that every direct or cash deposit contains the full reference number supplied to the Customer.

Payments will not be allocated to the Customer without such reference being included with the direct deposit.

- 23.2. Only cash and EFT deposits are accepted. If a cheque deposit is made, the Terminal will not be released and credit will not be loaded until the cheque has been cleared by Vexen's bank.
- 24. Resell restrictions**
- 24.1. The Customer must have a sufficient credit balance in order to sell prepaid airtime and electricity.
- 25. Risk**
- 25.1. All risk of loss, destruction or damage to or malfunction of the Terminal shall vest in the Customer. The Customer is responsible for all costs, including transport, to repair or replace the Terminal. The Customer is obliged to insure the Terminal against damage and theft.
- 25.2. Some electricity providers require pre-approval of a Customer's address before electricity vending can be activated. The turn-around time for approval can take up to 31 (thirty-one) days and Vexen cannot guarantee the success of the application.
- 25.3. Vexen will not be held liable for changes made to electricity areas covered by Easy Pay, ESKOM or municipalities.
- 25.4. The Customer indemnifies Vexen against any claim of any nature whatsoever which may at any time be made against Vexen arising from or connected directly or indirectly with the Terminal or the use or possession thereof, unless it is attributable to the gross negligence of Vexen.
- 25.5. Vexen shall not be liable for any direct or consequential damages or loss suffered by the Customer emanating from this Agreement, unless it is attributable to the gross negligence of Vexen.
- 25.6. Vexen shall not be liable to the Customer for any losses or damages whatsoever, including consequential losses, due to the supplier's actions or lack thereof or any technical backup being delayed, interrupted or cancelled for any reason whatsoever or in the event that the Terminal Goods are faulty in any respect. Vexen may in its discretion refer the Customer to a third party who may undertake the supply and/or delivery and/or technical backup in its own name and behalf and / or as an agent of Vexen.

SECTION D: TERMS SPECIFIC TO INTERNET SERVICES

Should Vexen provide Internet services to the Customer, the terms under this section D will be applicable to the Internet service.

26. Additional definitions

- 26.1. In this Section D, the term "you" or "You" refers to the Customer.

27. General

- 27.1. If you do not use your Internet Service in the month this does not entitle you to stop your debit order. Your Internet Service is payable irrespective of whether you use your Internet Service or not or whether your service is disabled or not and the monthly amounts will continue to accrue against your account until the service is cancelled in writing with a copy of your Identity Document
- 27.2. You may not sign up on-line for multiple accounts using the same bank details. Should you wish to order any additional services you will be required to email support@vexen.co.za

28. Pricing

- 28.1. If you connect with a faster circuit, you will AUTOMATICALLY be billed for the higher circuit price.
- 28.2. All prices include 1 Free 5Gig email address @eazyweb.co.za
- 28.3. If your account is activated after the 20th of the month both the amount that you are invoiced and the Gigs that you have bought will be pro rata. For the absence of doubt examples are provided. :-
- 28.3.1. If you are activated on the 20th of July, you will be billed for the full month of July and receive the full Gigs;
- 28.3.2. If you are activated on the 21st of July you will be billed for the remaining 10 days in July and you will receive 10/31 of the Gigs;
- 28.3.3. However you will be billed pro rata for the circuit from date of activation of your Internet Services circuit irrespective which day of the month it is activated;
- 28.3.4. Since payment is for services in advance, your FIRST debit order amount will be for the month that you are activated in plus the following months services;
- 28.4. Promotional free and discounted Internet services for a limited period are opt-out services. Should you wish to cancel the Internet services at the end of the promotional period you are required to cancel in the prescribed manner as laid out in this section D.
- 28.4.1. If you have been given a free or discounted router as part of any promotional package and you opt out before the end of 12 calendar months you will be required to pay the full purchase price of the router as set out in the **signup form**.
- 28.4.2. In the event of you having received a free or discounted router as part of your package, should you terminate the contract within 12 months you will be required to pay the full purchase price of the router.
- 28.4.3. Should you downgrade any Package or Bundle you will be liable to pay a downgrade fee of R200.00.
- 28.5. You may only connect from ONE account per location. Additional accounts at the same location will be disabled or the owners of each of the secondary accounts will be billed at the top-up rate as prescribed on our web-site from time to time.
- 28.6. You receive a CAP which is the maximum amount of the sum of your upload/download traffic that you may use in a month. Spare Cap is not carried to the following month unless you have done a "rolled top up" in which case whatever is left of your "rolled top up" gigs will be carried over to the following month.
- 28.6.1. Please note that uploading and downloading is not limited to reading web pages and browsing the internet. Email transfers, streaming and online gaming as well as any data transfers and internet traffic are also included in your download/upload limit.
- 28.6.2. Should Vexen detect that your upload/download traffic exceeds your CAP (i.e. you have upload/download traffic more than 3Gigs on a 3Gig account) without "topping up", these extra traffic that were used, but not paid for will be subtracted from the user's allocated data in the following month or from the top-up.
- 28.7. At any time you may buy additional data. Such top-ups will be charged at the rate displayed on the web-site at the time that the application for a top-up was made
- 28.7.1. Should you top up during the month, the costs thereof will be collected in the debit order run on the 1st working day of the following month. The data that you top up DO NOT carry over to the following month unless you have paid the rollover fee or have purchased a Giggybank add-on service.
- 28.8. Vexen scans emails for both viruses and unsolicited bulk email (SPAM). Vexen will not be held liable should an email be erroneously blocked as SPAM.
- 28.8.1. Further, Vexen uses a third party virus scanner in order to scan for viruses. Only viruses that are known by this scanning software can be blocked.

- 28.8.2. Vexen will not be held liable for any damage caused by a virus that was unable to be blocked by the virus scanner.
- 28.8.3. A Customer is prohibited from sending unsolicited bulk email and our mail servers will only allow you to address your email to a maximum of 25 recipients.
- 28.8.4. For purposes of billing you will be billed according to the circuit speed that you are using not the circuit speed you subscribed to in the signup process.
- 29. VOIP Phone service**
- 29.1. The VOIP account is only usable if you apply for the account and purchase the phones and have your current numbers ported from Telkom.
- 29.2. VOIP cannot be used as the least cost route for calls (eg: call centre, sip trunking, etc)
- 29.3. We reserve the right to establish policies, rules and limitations, from time to time, concerning the use of the VOIP Service. Failure to comply with these rules will result in your service being restricted, suspended or terminated, in our sole discretion. Should we discover that you have found a way to bypass any of our control measures your service will be restricted, suspended or terminated, in our sole discretion.
- 30. Internet Service Acceptable Use Policy**
- 30.1. You will not use the Internet Service, directly or indirectly, in a way that:
- 30.1.1. spreads viruses or other computer or communications software, code, programs or files that impede or destroy the functionality of any computer or communications software or equipment;
- 30.1.2. interferes with any third party's use of the Internet Service;
- 30.1.3. transmits unsolicited bulk messages;
- 30.1.4. in Vexen's sole discretion constitutes abuse of the Internet Service or of Vexen's systems.
- 30.2. Vexen reserves the right to limit the number of emails that you may send in any given period or to limit the total message volume (amount of data) sent per hour.
- 30.3. You may not restrict, inhibit or interfere with the ability of any person to access, use or enjoy the Internet or the Internet Services, or create an unusually large burden on our network or otherwise generating levels of traffic sufficient to impede others' ability to send or retrieve information, or use the Internet Services in an abusive manner.
- 30.4. We reserve the right to establish policies, rules and limitations, from time to time, concerning the use of the Internet Service. You must comply with any bandwidth, data storage and other limitations we may impose, in our sole discretion. Failure to comply with these rules will result in your service being restricted, suspended or terminated, in our sole discretion. Should we discover that you have found a way to bypass any of our control measures your service will be restricted, suspended or terminated, in our sole discretion.
- 30.5. We will manage bandwidth usage to the best of our ability during peak periods, however, it remains a best effort service.
- 30.6. We reserve the right to manage our network in order to optimize its efficiency for the benefit of all our subscribers. We may take any other action we deem appropriate in order to help ensure the integrity of the network experience for all subscribers.
- 30.7. We reserve the right to amend or discontinue any promotional packages at our discretion.
- 30.8. We do not make any express or implied representations, warranties or guarantees regarding the availability, accuracy, reliability, timeliness, quality or security of the Internet Service.
- 30.9. We are committed to provide you with an uninterrupted Internet Service. However, we cannot guarantee that the Internet Service and the allocated capacity will always be available.
- 30.10. We can terminate the Internet Service at any time if we decide to discontinue the Internet Service offering for any reason whatsoever, without any further liability to you.
- 30.11. If the Internet Service is used in a way that we, in our sole discretion, believe violates this Acceptable Use Policy or any of our rules or limitations, we may take any responsive actions we deem appropriate. Such actions may include without limitation, temporary or permanent removal of content, cancellation of newsgroup posts, filtering of Internet transmissions, and/or the immediate limitation, restriction, suspension or termination of all or any portion of the Internet Services or your account.
- 34.2. If Vexen in its sole and unfettered discretion determines that any Customer content or usage of the Webhosting Service violates any law or the Acceptable use policy, it may: 1) Request the Customer to immediately remove, amend or modify such content; and/or 2) Without notice, terminate access to any services and/or suspend or terminate any Services; and/or 3) Without notice, delete the offending content; and/or 4) Notify the relevant authorities of the existence of such content (if required by law or otherwise), make any backup, archive or other copies of such material as may be required by such authorities, disclose information regarding the Customer as may be requested by the authorities and take such further steps as may be required by such authorities.
- 35. Availability of Webhosting Services**
- 35.1. Vexen will use reasonable endeavours to keep the Webhosting Services available at all times. Where possible, Vexen will notify the Customer of any maintenance or repairs which may result in the unavailability of the Webhosting Services, but does not guarantee notice.
- 35.2. The Customer acknowledges and agrees that Vexen will not be liable for any claim, loss or damage, whether foreseeable or not, whether direct or consequential from: any fact or circumstances beyond the reasonable control of Vexen; any downtime, outage, interruption in or unavailability of the Webhosting Services attributable to any cause, including but not limited to repairs and maintenance, any breakdown of whatever nature and howsoever arising to any service provided by Vexen as well as external communication networks to which services are connected.
- 36. Support Services & Back-Ups**
- 36.1. Vexen will provide support services in respect of the Webhosting Services during weekday office hours. After hours and on weekends staff is on standby support. The Customer is liable for any call out charges.
- 36.2. The Customer is responsible to make backups of its information.

SECTION E: TERMS SPECIFIC TO WEBHOSTING SERVICES

Should Vexen provide Webhosting services to the Customer, the terms under this section E will be applicable to the Webhosting service.

- 31. Additional definitions**
- 31.1. "Acceptable use policy" means the Acceptable use policy available on <http://www.vexen.co.za/index.php?next=legal.php>.
- 31.2. "Charges" means the subscription charges, charge rates, purchase price, rental rates, renewal fees, reconnection fees, cancellation fees, transfer fees and/or any other fees which may be charged in respect of the Services;
- 31.3. "Intellectual property rights" means all present and future rights, including but not limited to copyright, title, trademarks, patents, internet protocol addresses, in or in relation to the services and other rights which may in the future be based on the services,
- 31.4. "Webhosting Services" and "Webhosting Service details" means the provision of those web hosting services requested by the Customer;
- 31.5. "Subscription Form" means the subscription attached as in the signup form.
- 32. Duration**
- 32.1. This Agreement will commence on the date stated in the Subscription Form, and unless terminated in accordance with this Agreement, will endure for the initial period set out in the Subscription form, and thereafter will automatically endure for successive periods equal to that of the initial period unless terminated by either party on not less than 30 days written notice to the other party prior to the termination of the initial period or renewal periods.
- 32.2. If the Customer terminates this Agreement prior to the expiry of the initial period or successive renewal periods, the Customer will immediately be liable to Vexen for all charges in respect of the remaining contract period. In the case of variable charges, the amount owing will be calculated on the basis of the average charges billed to the Customer over the last three month period of normal billing prior to the termination of the contract multiplied by the remaining period of the contract.
- 33. Payment of Charges**
- 33.1. As consideration for the Webhosting Services provided to the Customer, the Customer will pay to Vexen the Charges.
- 33.2. The Charges are subject to increases in the cost price of the Webhosting Services, including currency fluctuations, and may otherwise be varied by Vexen, in its sole discretion, upon 30 days prior notice to the Customer.
- 34. Customer Undertakings**
- 34.1. The Customer undertakes to abide by and conform to generally acceptable internet etiquette: not to use or permit use of the Webhosting Services for any unlawful or improper purpose, including but not limited to hosting of pornographic material, spamming, hacking and unsolicited mailing and not to modify or permit the modification of the software; to use the Webhosting