

TERMS OF USE

TERMS OF SERVICE

Please read through our Terms & Conditions below:

MAXINET INTERNET ACCESS SERVICES AGREEMENT

1. This Internet Access Services Agreement (hereinafter referred to as the "Contract") is a legally binding contract concluded between Maxinet Communications (Pty) Ltd t/a **MAXINET**, Registration No. CK1997/58636/23 with its principal place of business at First Floor Rothnick Croft Building, 155 Main Road, Hermanus (hereinafter referred to as "**MAXINET**") and any individual, close corporation, association, agency, company, or other Legal entity (hereinafter referred to as the "USER") who accesses and / or uses the facilities, systems, or services of **MAXINET**.
2. The USER agrees to be bound by the terms of this Contract as a prerequisite to and in consideration for receiving and using the Internet Access Services provided by **MAXINET**. The Internet Access Services shall include but not be limited to any and /or all services, information, materials and systems, etc., accessed or used though or by means of any **MAXINET'S** facilities, systems or services. In the event of a breach of this Contract by the USER, all the USER's Internet Access Services provided by **MAXINET** shall be immediately terminated and upon any such termination all USER fees paid, shall be forfeited to **MAXINET** as liquidated damages. The aforesaid right of termination shall be exercised in **MAXINET'S** sole discretion, and knowledge of and / or acquiescence by **MAXINET** in similar or prior breaches by the USER shall not preclude **MAXINET'S** subsequent exercise of this right of termination.
3. The USER with his / her signature hereof, certifies that any materials supplied to **MAXINET** for publication by electronic or other media and / or are published by the USER himself through the use of **MAXINET'S** Internet Access Services are not copyrighted. Where copyright exists on such materials, the USER warrants that authority has been obtained from such copyright holder to publish such materials. The USER herewith indemnifies **MAXINET** and agrees to carry all costs, including legal costs on an Attorney and Client scale, should a copyright dispute arise as a result of materials supplied by the USER. The USER further acknowledges that the interests and rights of any legal persons on whose behalf this contract is entered into are reserved.
4. Internet Access Services provided by **MAXINET** may only be used for lawful purposes and in accordance with all applicable laws, statutes, rules and / or regulations of the Republic of South Africa. The use of **MAXINET'S** facilities for any unlawful activity in violation of any law of South Africa, or international governing law, statute, rule, regulation or ordinance is strictly prohibited and constitutes a breach of this agreement.
5. The prohibition of unlawful uses and activities by the USER includes, but are not limited to the sending of unsolicited email (SPAM), transmission, promulgation, theft, procurement, communication, alteration, publication, storage, or use of any information, material, property, images, code, or data in violation of any laws relating to intellectual property, copyright, patents, trade mark, trade secret, privacy, indecency, obscenity, or harassment.
6. The USER is solely responsible to obtain the required knowledge of and / or adherence to any and all applicable laws, statutes, rules and regulations pertaining to the USER's use of any of **MAXINET'S** facilities, systems, or services, and to the communications means by which the USER connects its terminal or PC to **MAXINET'S** facilities, systems, or services or any other service provided by **MAXINET**.
7. **MAXINET** reserves the right, but does not accept any liability, to read, examine, delete, evaluate or inspect any information contained in a USER's files, electronic mail messages, newsgroup postings or other communications to the extent deemed necessary, in **MAXINET'S** sole discretion in order to protect **MAXINET**, its facilities, systems, or other users from or damage or legal liability from whatsoever nature, and for proper administration and maintenance of the system. **MAXINET** will not release or disclose any of the USER's information to any other party unless required or directed to

do so by an applicable legal authority and / or Court Order. Unless legally prohibited from doing so, **MAXINET** shall make all reasonable efforts to notify the USER of any disclosure of the USER's information to third parties. Notwithstanding the aforesaid **MAXINET** reserves the right to disclose USER information in order to prohibit or prevent any unlawful activity by the USER and / or in the event of any legal action or proceedings instituted against **MAXINET** by the USER and / or any other party as a result of any activity or action by the USER.

8. Once the initial 12 month contract expires, cancellation of this internet access services agreement can be done by either party giving the other written notice of not less than 60 (sixty) days, at the other party's chosen domicilium citandi et executandi. **MAXINET** reserves and will have the right to delete all data, files and / or other information that is stored or held in the USER's account, if the USER's account with **MAXINET** is terminated, for any reason, by either **MAXINET** or the USER.
9. The resale of **MAXINET** services by USER is strictly prohibited. Not more than one login session may be active at any given time for any specific USER account.
10. The USER acknowledges that access to the world wide Internet is dependent upon various factors, technologies and systems, which are beyond **MAXINET'S** authority and control and that routine maintenance and periodic system repairs, upgrades, and reconfigurations may result in temporary impairment or interruption of service to the USER. In lieu of the aforesaid **MAXINET** does not guarantee continuous or uninterrupted service, and reserves the right, from time to time, to temporarily reduce and / or suspend its service to the USER without notice. **MAXINET** will as far as reasonable possible, but cannot guarantee such efforts, notify the USER's in advance of any such service reduction or interruption and schedule any such service reduction or interruption during off-peak periods and for as brief duration as possible.
11. **MAXINET** shall not be liable to the USER for any consequential loss or damage sustained by the USER in connection with the agreement or for any claims made by any other legal entity whatsoever. The USER hereby indemnifies and hold harmless **MAXINET**, its officers, directors, shareholders, agents, employees and other users, from any and all claims, costs, expenses, judgments, causes of actions, attorneys fees, litigation, or court costs resulting from the USER's use of **MAXINET'S** facilities, systems, or services in any manner, whether directly, indirectly, or by any act or omission.
12. It is expressly recorded that **MAXINET** does not warrant or guarantee, without limitation thereof, the availability, accuracy or content of information, products or services provided through and / or in connection with the facilities, systems, or services of **MAXINET** or the merchantability or fitness thereof for a particular purpose.
13. **MAXINET** does not accept any liability, including without limitation, for damages caused by any failure of performance, error, omission, interruption, electrical surge/damage/interference, deletion, defect, delay in operation or transmission, communications line failure, theft or destruction of or unauthorized access to, alteration of, or use of records whether for breach of contract, tortious behaviour, negligence, or under any other cause of action.
14. The Rules, Policies and System Use Guidelines of **MAXINET** can be found at <http://www.maxinet.co.za/> and are incorporated herewith of this Agreement. Violation of any of **MAXINET** Rules and Regulations shall constitute breach of this Agreement. **MAXINET** reserves the right to amend **MAXINET** Rules and Regulations from time to time and any such amendments shall become effective upon promulgation thereof to the USER.
15. The USER nominates the street address, as aforesaid, as the domicilium citandi et executandi for the service of all notices and legal process pursuant to the terms and conditions of this agreement.
16. The USER shall be responsible and liable for all and / or any legal costs on an Attorney and Own Client scale, incurred by **MAXINET** to recover any monies due by the USER and / or occasioned by a breach of any of the terms and conditions contained herein by the USER, which legal costs shall include tracing costs, collection commission and any related cost or expenses.
17. The parties hereby agree that this agreement is subject to the Law of South Africa and consent to the jurisdiction of the Magistrate's Court should any claim arising out of the terms and conditions of this Agreement be beyond the jurisdiction of the Magistrate's Court. Notwithstanding the aforesaid, **MAXINET** shall have the right to take legal action against the USER in any other Court of competent jurisdiction.
18. This Agreement and any written extensions thereof represents the whole agreement between the parties and supersedes all prior written or oral negotiations, representations, guaranties, warranties, promises, orders, statements, or agreements between the parties or any statement or representation made or furnished by any other person representing or purporting to represent either party. No

variation hereof shall be binding and have effect, unless agreed to by the USER and **MAXINET** in writing. I / We the Directors, Members, Partners / Proprietors for and on behalf of the USER hereby undertakes to personally honour any indebtedness of the USER towards **MAXINET** and I / We hereby bind myself / ourselves as surety(ies) and co-principal debtor(s) to and in favour of **MAXINET** for all and the debts of the USER hereinafter incurred pursuant to the Agreement.

ADSL SPECIFIC TERMS AND CONDITIONS

1. INTRODUCTION

1. By subscribing to and/or using the **MAXINET** ADSL Service, the USER agrees to have read, understands and are bound by:
 1. **MAXINET** Internet Access Service Agreement;
 2. The Rules, Policies and System Use Guidelines of **MAXINET** which can be found at www.maxinet.co.za;
 3. The ADSL Service Terms, contained in this document;
 4. Telkoms' standard terms and conditions

2. INTERPRETATION

1. In this agreement, unless inconsistent with or otherwise indicated by the context, the following words and terms shall have the following meanings:
 1. "ADSL" means Asymmetrical Digital Subscriber Line;
 2. "ADSL Service" means the Asymmetrical Digital Subscriber Line Service, which is a data communications technology that enables data transmission over copper telephone lines;
 3. "Top-up" means any additional bandwidth ordered during a certain month;
 4. "Auto-topup" means the automated Top-up of any additional bandwidth;
 5. "Telkom" means Telkom SA Ltd;
 6. "Telkom Telephone Service" means a fixed access line for making and receiving telephone calls;
 7. "POTS" means Plain Old Telephone System;
 8. "use" includes (without limitation) accessing, retrieving, downloading, logging on to, or subscribing to the ADSL Service;
 9. "**MAXINET**" means Maxinet Communications (Pty) Ltd, trading as **MAXINET** Internet Services.
2. Any reference to:
 1. the singular shall include the plural and vice versa;
 2. natural persons includes legal persons and vice versa;
 3. a gender includes the other genders.

3. ADSL SERVICE TERMS

1. The USER shall be solely responsible for the purchase, management, security, and maintenance of all relevant computer equipment, networking equipment, modem, operating system, software, and all Telkom telephone services and phone call costs.
2. The provision of an ADSL service depends on Telkom's ability to supply the relevant resources;
3. The USER must have an existing active telephone service registered in his/her name with Telkom;
4. The telephone service of the USER must be provided by means of normal copper lines and not, for example, any other access media such as ISDN and DECT services;
5. The copper line on which the above telephone service is provided by Telkom to the USER must be ADSL compatible and enabled;
6. USERS can obtain an ADSL line from **MAXINET** or from Telkom
 1. **MAXINET** can provide the line rental subject to the following conditions:
 1. The customer qualifies for the ADSL Self Install Option according to criteria determined by Telkom,
 2. Telkom approves **MAXINET's** application, on behalf of the customer
 3. Line Rental and ADSL Service fees are paid to **MAXINET** Internet Services.

4. Any installation or other fees, payable to Telkom or any other 3rd Party, are for the USER's own account.
2. Telkom can supply the ADSL line under the following conditions:
 1. Telkom will be responsible for the installation of the ADSL Line;
 2. Any installation fees and the monthly line rental, will be payable to Telkom;
 3. **MAXINET** will provide an ADSL Data Package
7. ADSL is a "best effort" service. As a result of MAXINET's dependence upon Telkom for the provision of ADSL, **MAXINET** cannot guarantee throughput speeds, availability, or its usefulness for any application.
8. If the USER already has an existing ADSL Access Services and wishes for **MAXINET** to provide the service, this Service will need to be cancelled with the existing provider and with Telkom;
9. Only ICASA approved modems may be used on the ADSL Services;
10. Usage is based on the amount of data uploaded and downloaded per account login.
11. USER can select ADSL data packages based on monthly data use, i.e. (1GB ADSL). Once the USER's usage equals or exceeds the included traffic allowance during any calendar month, the service will cease to function until the end of the current calendar month.
12. Usage records are updated every hour.
13. Additional bandwidth (Top-ups) can be purchased at any time during the month by enabling Auto-Topup at <http://www.maxinet.co.za/our-services/adsl/> or by contacting technical support.
14. Additional bandwidth will be invoiced at month end and debited against the nominated bank account where a debit order agreement exists.
15. Any unused portion of additional bandwidth will be carried over to the following month unless an account is upgraded or downgraded, in which event unused bandwidth will be forfeited.
16. **MAXINET** reserves the right to refuse automatic updates where the USERS do not have a debit order arrangement.
17. USERS can upgrade or downgrade data packages; but any such change will only be applied at month end.
18. Month end calculations will be finalised within 48 hours of the 1st of any given month. Month end will be within 48 hours of the 1st of any given month.
19. Written notice of any disputes regarding data usage or charges must be provided to **MAXINET** within 14 days of the time the dispute occurred. **MAXINET's** decision is final regarding the accuracy of data usage statistics.
4. SUSPENSION AND TERMINATION OF SERVICES
 1. In the event of a Subscriber not paying the Telkom telephone account or ADSL Line Rental Account, the telephony service will be suspended and, where applicable, terminated.
 2. In the event of a Telephony service being suspended or terminated the ADSL service will automatically be suspended or terminated and any monies paid for such service shall be forfeited.
 3. In the event that a telephony service is regarded as terminated, such service shall not be capable of reactivation and a new application will have to be made for the service.
 4. In the event that any USER obligations are not met within the due date of such obligations, any services provided to the USER by **MAXINET** may be suspended and, where applicable, terminated, whether such USER has been notified of the intention to suspend or terminate any such service or not.

WIRELESS ACCESS TERMS OF SERVICE

The following terms of service apply to MAXINET Wireless Access services provided over licence free spectrum. These terms of service may be amended at any time by way of notices provided by email or placed on a prominent place on our website.

1. The service is provided on a best effort basis and MAXINET cannot guarantee the suitability of the service for any particular application.
2. The service is provided as an alternative where ADSL/Fibre services are not available.
3. MAXINET reserves the right to discontinue the service should more appropriate alternatives become available.
4. MAXINET reserves the right to take the service down for technical changes from time to time. MAXINET undertakes to try and inform the customer of such interruption should it be possible.
5. No unused package data will be carried over to the next month.
6. Once the package data has been used, the service will be suspended until the following month, unless additional top-up data is purchased.
7. Additional top-up data is available in 1 Gigabyte increments.
8. Only unused top-up data purchased will be carried over to the following month.
9. An Acceptable Usage Policy (AUP) is in place for all uncapped services
10. AUP can be located at <https://www.maxinet.co.za/information/legal/acceptable-use-policy/>
11. MAXINET reserves the right to shape the service, apply quality of service rules and block access to services such as peer to peer networks.
12. Public IP available on request at a monthly fee.
13. The service may be terminated by either party given one calendar month's notice in writing.
14. By using the service, you agree to MAXINET's Standard Terms and Conditions and MAXINET's wireless Access Terms of Service, available on the following internet address:
<https://www.maxinet.co.za>