

# Real Image INTERNET

PO Box 3517 Mbabane; Tel 2409 1000/ Fax 2404 8333  
info@realnet.co.sz http://www.realnet.co.sz

## GENERAL TERMS & CONDITIONS of SERVICE

Please read the following terms very carefully as they set out your rights and obligations when you subscribe to or use any of our Services.

### RECORDAL

- Real Image sells access to its computer network on a subscription basis and access to the Internet is exercised via a dial-up connection by the subscriber keying in a valid log-on ID and password specifically granted to the subscriber (hereinafter referred to as the "log-on ID").
- In order for the subscriber to be issued with a valid log-on ID and password, Real Image requires the subscriber to conclude this Real Image Service Agreement and the subscriber hereby binds himself to this agreement.

### INTERPRETATION IN THIS AGREEMENT:

"effective date" - means when the subscriber receives his log-on ID and password, whichever date is the earlier; "password" - means the word or device or sign given by Real Image to the subscriber that will entitle the subscriber to gain access to Real Image's computer network; "service" - means any service as may be provided by Real Image in terms hereof; "subscription" - means any amount payable to Real Image as stated in this agreement and, where applicable, includes the monthly connection fee, usage fees, any interest outstanding, all current amounts due and amounts that must still become due.

### SUBSCRIPTION AGREEMENT

- Real Image, with effect from the effective date, hereby grants to the subscriber the use and enjoyment of its computer network to gain entry to the Internet ("access") on the terms and conditions set out herein.
- The subscriber hereby acknowledges receipt of such access and agrees:
- that the log-on ID and password will be used for his/her personal use only
- not to give or make available in any way his/her personal log-on ID and password to any other person for such person's use ("unauthorised use") and undertakes to maintain the confidentiality of such log-on ID and password;
- in the event that any unauthorised use takes place, to pay immediately, on demand made by Real Image, all such costs involved in the use of such subscriber's log-on ID and password;

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- By using or subscribing to the Dial-Up Service the subscriber agrees that they have read, understand and are bound by: the Terms and Conditions and other notices under “Terms and Conditions” on our Real Image Webpage;
- Your use of the Dial-Up Service indicates your acceptance without modification of the Terms, which will constitute a legal agreement between you and Real Image. If you do not want to be bound by the Terms, you must not use or subscribe to the Dial-Up Service.

## **SYSTEM AVAILABILITY**

Real Image shall use reasonable endeavours to keep the system available at all times, however, the subscriber agrees that Real Image shall not be liable to the subscriber or any other person or entity whatsoever in respect of (and the subscriber or any such person or entity shall have no claim against Real Image and the subscriber hereby indemnifies and holds Real Image free from liability in respect of) any loss or damage:

- caused by or arising from any fact or circumstances beyond the reasonable control of Real Image; or
- if such loss or damage is consequential or incidental loss or damage; or
- which is as a result of any downtime, outage, interruption in or unavailability of the system attributable to any cause whatsoever, including but not limited to: repairs and maintenance, any breakdown of whatever nature and howsoever arising in any of the services provided by Telkom (including, but not limited to, line failure) as well as by any other external communications networks and by the networks of Internet service providers other than Real Image. Real Image shall use its best endeavours to notify the client of any maintenance and repairs which may result in the system being unavailable but does not warrant that notice shall be given to the client prior to such maintenance and repairs being undertaken.
- Without limiting the generality of the above the subscriber indemnifies and holds Real Image harmless against any and all losses, injury, damage, penalties or claims of whatever nature and howsoever arising from or in connection with the service hereby made available by Real Image.

## **PAYMENT OF CHARGES**

The subscriber shall pay the subscription, charges and charge rates as set out in the standard price list applicable as at the effective date and subject to any increases or decreases as set out below:

- The subscriber shall be invoiced for the subscription fees as set out in the price list in advance at the beginning of each month.

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- In the event that the subscriber fails to pay any amount which may become due by the subscriber to Real Image in terms hereof on the due date for such payment, then, without prejudice to any of the rights granted to Real Image in terms hereof:
- any such amount not paid on due date shall bear interest at the rate of 2% above the prime overdraft rate, calculated daily in advance as from the due date (both dates inclusive);
- Real Image shall be entitled to take all such further steps, without notice, as may be necessary to recover such monies from the subscriber, and/or to suspend the service to the subscriber until such time that the subscriber has fulfilled his/her obligations in terms hereof, or to terminate this agreement. The subscriber agrees that he/she shall pay all costs associated with the recovery of monies including legal fees on an attorney and client basis.
- Rates are due to change without notice, although Real Image shall endeavor to give the subscriber timely notification of any increase or decrease in the rates set out in its standard price list should Real Image in its sole discretion elect to increase or decrease such rates, and the subscriber shall be bound to such adjustments.
- The subscription charges set out herein and all other payments due in terms hereof shall be paid free of exchange and without deduction or set-off by way of a direct debit order (drawn against the subscriber's nominated current banking account) in favour of Real Image's bankers, or in such other manner as Real Image may from time to time determine and at such address as Real Image may elect. The subscriber shall sign all such forms and do all such things as may be necessary to give effect to the foregoing.
- The subscriber shall not be entitled during the currency of this agreement to withhold payment of any amount by reason of any alleged breach by Real Image. In addition, the subscriber shall not be entitled to any setoff, discount, refund or other credit in respect of any unavailability of the service.

## SECURITY

- In order to ensure the security and reliable operation of the system to all subscribers, Real Image hereby reserves the right to take whatever action Real Image finds necessary to preserve the security and reliability of the system.
- The subscriber acknowledges that he/she is prohibited from utilising Real Image services to compromise the security or tamper with system resources or account(s) on computer(s) at Real Image, or at any other site.

## SPAMMING AND USER ETIQUETTE

The subscriber agrees to conform to generally acceptable Internet etiquette ("netiquette") and to abide by Real Image's operating policies, which may be

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amended from time to time at Real Image's sole discretion, (and the subscriber hereby indemnifies and holds Real Image free from liability in respect of any loss or damage of whatever nature caused as a result of any violations of such policy) which policies include but are not limited to the guidelines set out below:

- not to engage in any abuse of e-mail or spamming, and which shall include, but is not limited to, the posting or cross-posting of unsolicited articles with the same message (or substantially the same message) to an unacceptably high number of e-mail and newsgroup recipients that did not request to receive such messages;
- not to post or transmit any message, data, image or programme which is defamatory, or violates any other personality rights;
- not to post or transmit any message, data, image or programme which is illegal, offensive, threatening, abusive, harassing, harmful or hateful data, image or programme;
- not to post or transmit any message, data, image or programme which violates the intellectual property rights of others;
- not to interfere with use of the Internet by any other Real Image subscribers or other users;
- not to post or transmit any file which contains viruses or any other destructive features, regardless of whether or not damage is intended by the subscriber;
- not to cancel Usenet post other than the subscriber's own;
- not to repeatedly post gratuitous off the topic postings;
- not to gather e-mail addresses and/or names for commercial, political, charity or like purposes; and
- not to violate the privacy of any person, which shall include but shall not be limited to, hacking. In the event that the subscriber should engage in any one or more of the above practices, which shall be determined in Real Image's sole discretion and which decision shall be final, then Real Image shall be entitled to:
- terminate, without notice, the subscriber's account and/or access to Real Image services, including but not limited to web hosting services and e-commerce;
- bill the subscriber for any costs incurred by Real Image, including, but not limited to, bandwidth, administration costs, downtime, usage of Real Image's name or registered domain names, and CPU cycles; and
- notify all those persons who received the offending spam of the personal and public information of the subscriber.

## USE OF MATERIAL

- Without limiting the above, the subscriber undertakes to abide by all laws applicable to the intellectual property rights (including but not limited to: title, copyright, trade marks, and patents) of any and all data and/or information retrieved from the service including those expressly or impliedly specified by

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Real Image or by any of the local or foreign service providers or any laws governing the provision of the service.

- The subscriber may not resell the information, or use the information for monetary gain, unless permitted to do so in writing by Real Image and/or the Information Provider.
- Real Image disclaims any warranty as to the quality or accuracy of information or fitness for a particular purpose.
- Real Image makes no warranty as to the accuracy or quality of any information on the Internet.

## **INDEMNITY**

- The subscriber hereby indemnifies Real Image and any other person in its employ free from liability for loss or damage of whatever nature and howsoever arising from the subscriber's use of the service and/or failure to perform its obligations in terms of this agreement, including but not limited to its failure to comply with the above guidelines, and with any other requirements of Real Image as may be imposed from time to time.
- The subscriber understands that a telephone line is provided for their use in terms of an agreement between the subscriber and the telephone network operator. Real Image is not a party to that agreement and serves to provide you with access to the Internet only. You accordingly agree not to hold Real Image liable for any act or omission, including negligence on the part of your telephone network operator, which may affect the Service, be it direct or indirect.

## **BREACH**

Should the subscriber be in default of any payment due in terms of this agreement or fail to observe and perform any of the other terms, conditions or obligations of this agreement, then Real Image shall be entitled, but not obliged, in its sole discretion and without prejudice to any of its rights that it may have in law, including the right to claim damages, without notice, to do the following:

- claim immediate payment of all amounts payable in terms of this agreement, whether or not such amounts are due; and/or
- immediately suspend the services provided for in this agreement until such time that all such outstanding amounts have been paid; and/or
- immediately terminate this agreement, retain all monies already paid by the subscriber and to recover all legal costs, including costs on the attorney and client scale.

## **CERTIFICATE OF INDEBTEDNESS**

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- The amount of the subscriber's indebtedness to Real Image and the fact that such indebtedness is due and payable shall be determined and proved by a certificate signed by Real Image (or by one of Real Image's directors, whose appointment, qualification and authority need not be proved).
- The certificate shall be binding on the subscriber, be prima facie of the amount due, owing and payable by the subscriber to Real Image and shall be deemed to be a liquid document for the purpose of obtaining provisional sentence and/or any other judgment against the subscriber.

## **CESSION AND DELEGATION**

- The subscriber shall not cede any of his/her rights nor delegate any of his/her obligations hereunder.
- Real Image shall be entitled to cede and transfer or delegate to any third party at its absolute discretion all or any of its rights or obligations under this agreement.

## **JURISDICTION**

The subscriber hereby irrevocably consents to the jurisdiction of the Magistrate's Court in the Kingdom of Swaziland in respect of any proceedings that may be initiated by Real Image arising out of this agreement, provided that Real Image shall be entitled, in its sole discretion, to institute such proceedings in the High Court of Swaziland and, in such event, the subscriber consents to the jurisdiction of the said court.

## **TERMINATION OF AGREEMENT**

The agreement can be terminated upon prior written notice of 1 calendar month by either party. Termination will not result in any refund by Real Image of pre-payments made to Real Image. On account of termination, no refund will be made and outstanding balances remain valid and have to be settled within 30 days of termination.

## **GENERAL**

- The parties acknowledge and agree that this agreement sets out the whole of the agreement between them and that there are no other agreements, guarantees or representations, either verbal or in writing, in regard thereto upon which any party is relying in concluding this agreement.
- No variation of this agreement shall be binding unless recorded in writing and signed by the parties.

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- The subscriber agrees that by furnishing his/her bank details, he/she consents to Real Image deducting the amount of his/her subscription and other charges from the account specified.