

### Subscriber Details:

Name:(individuals) \_\_\_\_\_

Company Name: \_\_\_\_\_

Trading Name: \_\_\_\_\_

Reg. Number / ID: \_\_\_\_\_

VAT Number: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Cell: \_\_\_\_\_ / \_\_\_\_\_

Email ( accounting and custodian of username & passwords )  
\_\_\_\_\_@\_\_\_\_\_.\_\_\_\_.\_\_\_\_

Tel : ( \_\_\_\_ ) \_\_\_\_\_ Fax: ( \_\_\_\_ ) \_\_\_\_\_

Physical Address: \_\_\_\_\_

\_\_\_\_\_ Code: \_\_\_\_\_

Postal: \_\_\_\_\_

\_\_\_\_\_ Code: \_\_\_\_\_

### Terms:

This contract is a 12 ( Twelve ) month contract commencing on the 1st day of the month in which the service is provisioned and activated. Consumers are advised to manage Data consumed as Webstorm cannot be held accountable for this. Cancellation of services requires a 3 (three) full calendar months notice in writing prior to the initial 12 month contractual term. Failure to submit a written cancellation will result in the term of the contract being renewed for a further 12 ( twelve ) months. Subscribers agree to remain obliged to pay all subscriptions for the remaining term should the service be discontinued for any reason. All prices include VAT. Access details will be emailed to the email address indicated on this agreement. Lead time for this service is estimated at 8 to 10 weeks and subject to feasibility study and approval. Services will be suspended should the monthly subscription fee not be paid within 7 (seven) days from the due date as stipulated in the Terms here under. Resumption of services will only occur once all arrears are settled and all debit order information is current. Subscription fees are payable in advance and no Pro-rata payments are catered for. Webstorm reserves the right to terminate services unilaterally without providing reasons for such termination. Subscription is payable monthly in advance on or shortly after the 1st day of the month. Further Terms and Conditions continue on page 2 of this Subscriber Agreement.

### Declaration and Instruction:

On the acceptance of this subscriber agreement by Webstorm, I/we hereby request and instruct Webstorm to debit my/our bank account as detailed here under with all amounts becoming due on a monthly basis and to continue uninterrupted until this debit order is cancelled in writing and in accordance with all terms and conditions relating to this agreement. I/we have read and understood and agree to be bound by the conditions of this agreement and declare that the information given is true and correct. I/we hereby consent to Webstorm doing a credit check for vetting this agreement. I/we agree to pay any penalties or bank charges that may be incurred due to a debit order not being honoured.

### Banking Detail:

Account Name: \_\_\_\_\_

Bank Name: \_\_\_\_\_

Type of Account: Cheque  Saving  Transmission

Account Number: \_\_\_\_\_

Branch Name & Code: \_\_\_\_\_ / \_\_\_\_\_

Authorised Signature: \_\_\_\_\_

Date: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

*Please supply certified copy of ID, Letter Head & Company reg. documents*

### Webstorm Fibre Link With Pay per Gig Internet

| Line Speed:<br>(Line rental is included.) | Fibre Line rental | Redundant Link | Select Main Link | Select Redundant Link |
|---|-------------------|----------------|------------------|-----------------------|
| 512Kbps                                   | R1,250.00         | N/A            |                  | N/A                   |
| 1Mbps                                     | R2,250.00         | N/A            |                  | N/A                   |
| 2Mbps                                     | R4,250.00         | N/A            |                  | N/A                   |
| 4Mbps                                     | R7,750.00         | R2,450.00      |                  |                       |
| 6Mbps                                     | R10,950.00        | R3,410.00      |                  |                       |

**DATA** (Uncapped - pay for what you use) @ R65/GB

Please note that there is no CAP imposed and that clients will need to monitor usage as Webstorm cannot be held accountable for bandwidth usage.

**NB: All once-off costs are payable Cash on Invoice**

#### Equipment Required:

Media Converter + Installation @ R1,710.00

#### Additional:

On-Site delivery and installation required @ R 350/hr

#### Optional:

Multi Port Switch ( to be quoted on if required )

Extra cabling ( to be quoted on if required )

**IMPORTANT: Please complete and sign all pages.**

**Please supply the contact details for sites to arrange access For the installation teams**

## Webstorm (Pty) Ltd

Call Centre: 086 1101 527

Call Centre Fax: 086 522 6989

Support mail: support@webstorm.co.za

Accounts mail: accounts@webstorm.co.za

Postal Address: P.O. Box 10444, Ashwood, 3605

Website: www.webstorm.co.za

Co. reg. no. 2006/037291/07

Vat Number: 4230218069

IECS & IECNS Lic. 0338

I request and authorise Webstorm to apply for the provisioning of Ethekweni Metro Fibre Services. I understand and agree that the application will be subject to an initial feasibility study and approval. I furthermore understand and agree that the installation and provisioning of the link will be subject to an estimated lead time of 8 (eight) to 10 (ten) weeks from date of feasibility approval but that the installation may be delayed beyond this time frame due to unforeseen circumstances.

#### Terms and conditions:

##### Payments and Suspension:

Services will be suspended should the monthly subscription fee not be paid within 7 (seven) days from the due date as stipulated in the Declaration and Instruction on the first page of this agreement. Resumption of services will only occur once all arrears are settled and all debit order information is current. Subscription fees are payable in advance and no Pro-rata payments are catered for. Webstorm reserves the right to terminate services unilaterally without providing reasons for such termination. Subscription is payable monthly in advance on or shortly after the 1st day of the month. Notwithstanding this condition, Upon suspension of services clients will have 30 days in which all arrears on account must be settled. Failing to comply will result in Webstorm cancelling the line rental agreement and the subscriber will liable for all costs incurred until the end of the agreement. Under such conditions and where the agreement is still in the initial term, as per the subscriber agreement, and has not reached the three month prior to the end of the term, Webstorm will consider the end of the term as if the subscriber has given the required timeous ( three calendar month notice of termination ) instruction or notice of termination and will terminate the agreement at the end of the stated term. Where the termination herein described, falls within the last three months of the initial period, the agreement will terminate at the end of the second term. The subscriber agrees and confirms that he understands that this condition is imposed on the subscriber because Webstorm has the same or similar conditions with the upstream provider of this service.

##### Abuse:

Webstorm, at it's sole discretion, may impose a rate limit of 128Kbps on the service should Webstorm deem the service to be abused by the subscriber. Abuse, intentionally or unintentionally is deemed to occur if the data usage patterns on the service appears to be excessive opposed to the norm in the ISP industry as compared to average consumption amongst users of similar services. The intention of Webstorm is to guard itself against potential loss due to excessive data consumption as well as an interest in the integrity of the subscriber infrastructures that may be under threat due to human abuse or data consumption being manipulated by means of virus, worms, malware and other malicious or malfunctioning software or code. It is stated that Webstorm will undertake negotiations with clients that request rate limited services to be reinstated, only if such reinstatement will lead to usage patterns that are deemed by Webstorm to be acceptable and within the norms as defined by Webstorm in its sole discretion.

##### Policy on Port Shaping:

Webstorm, at it's sole discretion, may impose port shaping in order to ensure priority is given to the most common business related protocols. Requests for the lifting of such measures may be motivated by subscribers and will be considered by Webstorm on merit as determined by Webstorm at its sole discretion.

##### Leniency:

Under no circumstances will any leniency towards the terms and conditions imply that the terms and conditions has altered and the subscriber agrees that in such event all terms and conditions remains as is, valid and applicable.

##### Performance Policy:

Webstorm warrants that the link ( circuit ) between the subscriber's site(s) and the Webstorm IDC is a 1:1 contention circuit. The provisioning of Internet services will be contended to a maximum of 1:10. The uptime of the link(s) are subject to certain conditions that may fall outside the control of Webstorm and as such, the subscriber indemnifies Webstorm of any direct or indirect loss due to the availability or non availability, the quality and or the speed of the service and data delivery.

#### ACCEPTABLE USE POLICY

##### General Notice

Thank you for reading **Webstorm's** Acceptable Use Policy (AUP). 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 subscribers 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 a number of legal obligations which you are presumed to be familiar with. As such, we encourage you to read this document thoroughly and direct any queries to our subscriber services **086 1101 527**.

**Webstorm** respects the rights of our subscribers 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

**Webstorm** confirms that in compliance with section 72 of the Electronic Communications and Transactions Act 25 of 2002, **Webstorm** is 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 <http://www.ispa.org.za/code>.

##### Unlawful Use

**Webstorm'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.

Initial Subscriber: \_\_\_\_\_

Initial Webstorm: \_\_\_\_\_

- 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 **Webstorm** cannot be held liable if you make any unlawful use of any multimedia content accessed through the search facility provided by **Webstorm'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 **Webstorm** 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 is currently resident and which apply. On presentation of a legal order to do so, or under obligation through an order for mutual foreign legal assistance, **Webstorm** will assist foreign law enforcement agencies (LEA) in the investigation and prosecution of a crime committed using **Webstorm's** resources, including the provisioning of all personal identifiable data.

**Prohibited Activities**

The following sections outline activities that are considered an unacceptable use of **Webstorm's** services/network/website and also 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 **Webstorm's** network is unacceptable. This includes:

- Any efforts to attempt to gain unlawful and unauthorised access to the network or circumvent any of the security measures established by **Webstorm** for this goal;
- Any effort to use **Webstorm's** equipment to circumvent the user authentication or security of any host, network or account "cracking" or "hacking";
- Forging of any TCP-IP packet header (spoofing) or any part of the header information in an email or a newsgroup posting;
- 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;
- Any activity which threatens to disrupt the service offered by **Webstorm** through "denial of service attacks"; flooding of a network, or overloading a service or any unauthorised probes ("scanning" or "nuking") of others' networks;
- 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.
- Any unauthorised monitoring of data or traffic on the network without **Webstorm's** explicit, written consent.
- 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 and Third Party Content and sites**

In reading this AUP or in signing a service contract with **Webstorm**, you acknowledge that **Webstorm** has no power to control the content of the information passing over the Internet and its applications, including e-mail; chat rooms; news groups; or other similar fora, and that **Webstorm** 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 **Webstorm** network websites and web pages or sites displayed as search results or contained within a directory of links on the **Webstorm** 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.

**Webstorm** 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 subscriber is responsible for determining and familiarizing himself or herself with the written policies of a given newsgroup before posting to it. The subscriber must comply with these guidelines at all times which can be obtained from other users of the newsgroup upon request, or from the group's administrators/moderators.

Initial Subscriber: \_\_\_\_\_

Initial Webstorm: \_\_\_\_\_

**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. **Webstorm** 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 or a recipient who has indicated s/he wishes to be removed from such list;
- Using **Webstorm'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 **Webstorm's** name in the header or by listing an IP address that belongs to **Webstorm** in any unsolicited email whether sent through **Webstorm's** network or not;

Failure to secure a subscriber'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. **Webstorm** 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. **Webstorm** also reserves the right to examine the mail servers of any users using **Webstorm's** mail servers for "smarthosting" (when the user relays its mail via a **Webstorm** mail server to a mail server of its own or vica-versa) 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 **Webstorm's** privacy policy.

**Spam/virus Filtering**

Where the **Webstorm** provides email such as: *name@webstorm.co.za*. **Webstorm** provides a spam and virus filtering system to protect subscribers from unsolicited mail and viruses. The subscriber acknowledges that this system might incorrectly identify a valid message as spam or as a virus and consequently this message might not be delivered to the subscriber. The subscriber acknowledges and agrees that **Webstorm** shall without limitation have no responsibility for, or liability in respect of any data lost as a result of this system.

As email storage space is limited, some email messages may not be processed due to space constraints or message limitations.

**Webstorm** reserves the right to examine incoming or outgoing mail to the extent necessary to determine if it is classified as spam.

**Webmail**

Webmail and other web based email services made available by **Webstorm** are provided on an "as is" basis without representations, warranties or conditions of any kind, and the subscriber acknowledges and agrees that **Webstorm** shall have no responsibility for, or liability in respect of, any aspect of the Webmail services, including without limitation for any lost or damaged data or any acts or omissions of **Webstorm**.

Any unauthorised use of the Webmail service, or resale of the Webmail service is expressly prohibited.

**Protection of Minors**

**Webstorm** prohibits subscribers from using **Webstorm'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**

**Webstorm** respects the privacy and confidentiality of our subscribers 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**

Subscribers are responsible for any misuse of **Webstorm's** services that occurs through the subscriber's account. It is the subscriber's responsibility to ensure that unauthorised persons do not gain access to or misuse **Webstorm's** service.

**Webstorm** urges subscribers 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 subscriber and **Webstorm** cannot be held liable for the Subscriber being placed on any bulk mailing lists as a result.

Where the subscriber has authorised a minor to use any of the **Webstorm'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.

**Webstorm** 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 **Webstorm** network. Further, **Webstorm** 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 subscriber's.

**Notice and Take-down Procedures**

**Webstorm** 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) **Webstorm's** designated agent for this process is the Internet Service Providers' Association. ISPA can be reached at +27-11-318-1406 or takedown@ispa.org.za. The notice and take-down procedure can be viewed at <http://www.ispa.org.za/code>.

Subscribers are also notified of the content and procedures of the ISPA 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.

Initial Subscriber: \_\_\_\_\_

Initial Webstorm: \_\_\_\_\_

**Complaints and procedures**

It is the subscriber's responsibility to familiarise himself or herself with the procedure set out below and report any cases of violation of this AUP to **Webstorm's** designated complaints handling agent.

Please note that **Webstorm** cannot handle complaints concerning networks or users that do not have service contracts with us or our affiliates, or are outside of our control.

In order for **Webstorm** to thoroughly investigate the complaint and take appropriate action, all complaints must be in writing, via fax or e-mail and contain as much information as possible, including, but not limited to:

- the origin of abuse or offence, including the website, full mail headers, relevant logfile extracts etc;
- any contact details for the source of the complaint;
- a brief explanation why the incident is considered to be an offence.

**Webstorm** discourages anonymous complaints being made via this service, and urges complainants to supply their name and contact details to us. Such information will not be released, except where required by law enforcement. Anonymous complaints will however be acted upon as long as sufficient detail as outlined above is supplied.

**Action following breach of the AUP**

Upon receipt of a complaint, or having become aware of an incident, **Webstorm** may take any of the following steps:

- In the case of a network, inform the user's network administrator of the incident and request the network administrator or network owner to deal address the incident in terms of this AUP and the ISPA Code of Conduct;
- In severe cases suspend access of the user's entire network until abuse can be prevented by appropriate means;
- In the case of individual users, warn the user; suspend the user's account and/or revoke or cancel the user's network access privileges completely;
- In all cases, charge the offending parties for administrative costs as well as for machine and human time lost due to the incident;
- Assist other networks or website administrators in investigating credible suspicions of any activity listed in this AUP;
- Institute civil or criminal proceedings;
- Share information concerning the incident with other Internet access providers, or publish the information, and/or make available the users' details to law enforcement agencies

**Reservation and Non Waiver of Rights**

**Webstorm** reserves the right to amend or alter this AUP at any time, and without notice to you.

**Webstorm** reserves the right to take action against any individuals, companies or organizations that violate any of the prohibited activities set out herein, or engage in any illegal or unlawful activity while accessing our services, to the fullest extent of the law.

**Webstorm** reserves the right, at its sole discretion, to act against other types of abuse not listed in this document and to investigate or prevent illegal activities being committed over our network.

**Webstorm** reserves the right to monitor user and network traffic for site security purposes and prevent any unauthorised attempts to tamper with our site or cause damage to our property.

**Webstorm** reserves the right to suspend, revoke or cancel **Webstorm's** services to the subscriber/user if the safety and integrity of **Webstorm's** resources are placed at risk in continuing to provide service to the subscriber/user.

**Webstorm** reserves the right to remove any information or materials in whole or in part, that, in **Webstorm's** sole discretion, is deemed to be offensive, indecent, or otherwise objectionable.

**Webstorm** does not undertake to guarantee the security of any data passing through its networks. Although **Webstorm** will provide a "best effort" service, including regular updates on computer viruses and other threats to security of data, it is the responsibility of the communicating parties to safeguard their data, and **Webstorm** cannot be held liable for any loss or damage arising as result of the failure to do so.

**Webstorm** does not waive its right to enforcement of this AUP at any time, or prejudice its right to take subsequent action, should **Webstorm** fail, neglect or elect not to enforce a breach of the AUP at any time.

**Process and Procedures:**

Once this agreement has been signed and approved by **Webstorm**, a feasibility request document will be submitted to eThekwin MetroConnect network for evaluation. The subscriber agrees to furnish **Webstorm** with the relevant information required to complete this document and agree that the withholding of information for any reason whatsoever, will impact on the lead time required to provision the solution. As such, the subscriber agrees not to cancel the application for the service due to any delays that may be caused by the lack of information required to process this application and furthermore acknowledge that **Webstorm** cannot be held responsible for time delays.

Progress reports are updated on a weekly basis and subscribers are invited to query the progress of the application once a week. **Webstorm** will endeavour but cannot guarantee, that subscribers will be sent updates without the subscriber's written request. Requests may be emailed to: support@webstorm.co.za. Telephonic requests will not be considered as official responses and subscribers are hereby informed that **Webstorm** will under no circumstances be held accountable for any information regarding this service, obtained telephonically.

Initial Subscriber: \_\_\_\_\_

Initial Webstorm: \_\_\_\_\_

**General**

The expiration or termination of this agreement shall not affect such of the provisions of this agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

The rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply.

Any reference in this agreement to a party shall include a reference to that party's assigns expressly permitted under this agreement and, if such party is liquidated or sequestrated, be applicable also to and binding upon that party's liquidator or trustee, as the case may be.

Webstorm has the right to amend prices for the service and such prices will be implemented 2 (two) months after the subscriber was informed by electronic mail at the address stipulated on the first page of this agreement.

Webstorm shall not be liable to compensate the subscriber for any loss or damage incurred as a result of the unavailability of the service and shall not be liable for any indirect, contingent, or consequential loss howsoever arising.

**SERVICE LEVEL AGREEMENT ( see attached schedule )**

The subscriber agrees that the services, infrastructures and management thereof is in the hands of eThekwini MetroConnect network and as such, the following provisions are available to Webstorm in order to ensure that the subscriber benefit from service levels as provided by eThekwini MetroConnect network;

eThekwini shall use commercially reasonable efforts to provide, through Webstorm, operational, support, administrative and maintenance services in respect of the services provided by eThekwini to the service provider in terms of the provisions of this agreement.

The operational, support, administrative and maintenance services referred to above shall in general include but not be limited to –

- monitoring and management of activities and services carried over the network;
- provision of a service centre to assist **Webstorm** with any requests and log problems encountered in respect of the services;
- restoration of the link/s between the eThekwini MetroConnect network and the subscriber and/or **Webstorm** IDC premises; which operational, support, administrative and maintenance services are more fully detailed in schedule hereto, which schedule may be amended by eThekwini from time to time by written notice to the service provider and is included for information purposes only.

**SUBSCRIBER EQUIPMENT DEVICE**

It is recorded that, in terms of the provisions of this agreement, eThekwini shall not supply, configure and/or manage any subscriber equipment device and/or cables and any such subscriber equipment device and/or cables shall be supplied, configured and/or managed by Webstorm. Any request by the subscriber for Webstorm to perform *inter alia* installation and maintenance services in respect of the subscriber equipment device and/or cables shall be the sole responsibility of Webstorm.

eThekwini and/or its operator shall not be responsible for any consequences as a result of any delay in the connection of the subscriber equipment device and/or cables to the system, including *inter alia* any damages suffered or any expenses incurred by Webstorm and/or the subscriber.

**LIMITATION OF LIABILITY**

The subscriber acknowledges and agrees that it shall not hold eThekwini and/or Webstorm or any of their respective employees, directors, representatives or agents liable for any loss or damage incurred as a result of the services other than loss or damage arising from the negligence or wilful default of eThekwini and/or Webstorm, and that eThekwini and/or Webstorm shall not be liable for any indirect, contingent or consequential loss of whatsoever nature and howsoever arising (including that arising from the negligence of eThekwini and/or Webstorm).

**CESSION**

Neither party shall be entitled to cede, assign, transfer, encumber, delegate or sub-contract any of its rights in terms of this agreement without consent of the other party, which consent shall not be unreasonably withheld. The provisions of this clause shall not apply to eThekwini in the event that eThekwini is required to carry out one or more of the actions referred to above, in terms of *inter alia* any legislation including but not limited to any regulations and/or notices in terms of, or amendments to, the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998).

**ALIENATION, ASSIGNMENT AND CESSIONS**

Webstorm retains the right to alienate, assign and or cede this agreement at its own discretion. The subscriber agrees that he will not, without the written consent of Webstorm, which will not be unreasonably withheld, alienate, assign or cede this agreement.

**DOMICILIUM CITANDI ET EXECUTANDI**

The parties choose as their *domicilia citandi et executandi* for all purposes under this agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature, the following addresses -

**Webstorm (Pty) Ltd** at:  
Suite 11  
Hilltop House  
5 Old Main Road  
Kloof  
3610  
Email: support@webstorm.co.za  
Fax: 0865226989

**The Subscriber** at the registered address and facsimile set out in the first page of this Subscriber Agreement.

Initial Subscriber: \_\_\_\_\_

Initial Webstorm: \_\_\_\_\_

Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing but it shall be competent to give notice by telefax and/or electronic mail. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

Any party shall be entitled to change its *domicilium* from time to time, provided that any new *domicilium* selected by it shall be situated in the Republic of South Africa, and any such change shall only be effective 10 (ten) days after receipt of notice in writing by the other party of such change.

**WHOLE AGREEMENT, NO AMENDMENT**

This agreement constitutes the whole agreement between the parties relating to the subject matter hereof.

No amendment or consensual cancellation of this agreement or any provision or term thereof or of any agreement or document issued or executed pursuant to or in terms of this agreement and no settlement of any disputes arising under this agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this agreement or of any agreement or document issued pursuant to or in terms of this agreement shall be binding unless recorded in a written document signed by the parties.

Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.

No extension of time or waiver or relaxation of any of the provisions or terms of this agreement or any agreement or document issued or executed pursuant to or in terms of this agreement, shall operate as an estoppel against any party in respect of its rights under this agreement, nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with this agreement.

No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

If any clause or term of this agreement shall be invalid, unenforceable, defective, or illegal for any reason whatsoever, then the parties shall negotiate in good faith to replace such a clause with a clause which is valid, enforceable and legal but maintaining the essential provisions of that clause to the extent possible, provided that if the parties should fail to reach agreement of such replacement clause, then the remaining terms and provisions of this agreement shall be deemed to be severable therefrom and shall continue in full force and effect unless such invalidity, unenforceability, defect or illegality goes to the root of this agreement.

**SCHEDULES TO THIS AGREEMENT**

Any schedules attached to this agreement is deemed to be only informative and will not form any part of this agreement unless agreed to by Webstorm and the subscriber, containing wording to such an effect and signed as such by both parties.

Signatories of this agreement, by signing the agreement warrant that they are legally entitled and mandated to sign this agreement in the stated capacities, fully aware of and agreeing to the content of this document.

**For the Subscriber:**

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2009,

in his/her capacity as \_\_\_\_\_ ( insert designation here )

Name and surname: \_\_\_\_\_

Signature: \_\_\_\_\_

Witness 1: \_\_\_\_\_ Witness 2: \_\_\_\_\_

**For Webstorm (Pty) Ltd:**

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2009,

in his/her capacity as \_\_\_\_\_ ( insert designation here )

Name and surname: \_\_\_\_\_

Signature: \_\_\_\_\_

Witness 1: \_\_\_\_\_ Witness 2: \_\_\_\_\_