

Vixen Electronics Limited

VEMS Terms and Conditions of Service v 1.3



Welcome to Vixen Electronics Monitoring System (VEMS), an activity monitoring service designed to support individuals living in their own home. These Terms of Use are intended to explain our obligations as a service provider and Your obligations as a customer. Please read them carefully.

These Terms are binding on any use of the Service and apply to You from the time that Vixen Electronics Ltd provides You directly with access to the Service. If you use VEMS through a third party, alternative terms and conditions may apply.

The VEMS Service may evolve over time based on user feedback. These Terms are not intended to answer every question or address every issue raised by the use of the VEMS Service. Vixen Electronics Ltd reserves the right to change these terms at any time, effective upon posting the modified terms; Vixen Electronics Ltd will make every effort to communicate these changes to You via email or notification via the Website. It is likely the terms of use will change over time. It is Your obligation to ensure that You have read, understood and agree to the most recent terms available on the Website.

By registering to use the Service you acknowledge that You have read, understood and accept these Terms or have the authority to act on behalf of any person for whom You are using the Service.

These Terms were last updated on 8th February 2021.

1. Definitions

"Agreement"

means these Terms of Use.

"Access Fee"

means the monthly fee or yearly prepaid access fee (excluding any taxes and duties) payable by You in accordance with the Fee Schedule.

"Confidential Information"

includes all information exchanged between the parties to this Agreement, whether in writing, electronically or orally, including the Service but does not include information which is, or becomes, publicly available other than through unauthorised disclosure by the other party.

"Data"

means any data entered by You or with Your authority into the Vixen Electronics website or the Mobile Phone applications.

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"Fee Schedule"

means the information relating to subscriptions and billing set out on the Vixen Electronics Ltd subscriptions and billing pages on the Website, or any other page(s) on the Website notified by Vixen Electronics Ltd, which may be updated or amended by Vixen Electronics Ltd from time to time.

"Intellectual Property Right"

means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual or industrial property rights, anywhere in the world whether or not registered.

"Service"

means the monitoring and alert service made available (as may be changed or updated from time to time by Vixen Electronics Ltd) via the Website and the Mobile Phone applications.

"Goods"

means the sensor unit required to capture the motion, temperature and humidity.

"Website"

means the Internet site at the domain www.vixenelectronics.co.uk or any other site operated by Vixen Electronics Ltd.

"Mobile Phone Applications"

means the VEMS Administration and VEMS Notifications mobile phone applications that can be downloaded from the Google PlayStore, the Apple App Store and the Amazon Appstore.

"Vixen Electronics Ltd"

means Vixen Electronics Ltd Limited which is registered in England and Wales with number 10545037

"Invited User"

means any person or entity, other than the Subscriber, that uses the Service with the authorisation of the Subscriber from time to time.

"Subscriber"

means the person who registers to use the Service, and, where the context permits, includes any entity or

person on whose behalf that person registers to use the Service.

"You"

means the Subscriber, and where the context permits, an Invited User. "Your" has a corresponding meaning.

2. Use of Software

Vixen Electronics Ltd grants You the right to access and use the Service via the Website and the Mobile Phone Applications with the particular user roles available to You. This right is non-exclusive, non-transferable, and limited by and subject to this Agreement. You acknowledge and agree that, subject to any applicable written agreement between the Subscriber and the Invited Users, or any other applicable laws:

- a. the Subscriber determines who is an Invited User and what level of user role access to the relevant organization and
- b. the Subscriber is responsible for all Invited Users' use of the Service;
- c. the Subscriber controls each Invited User's level of access to the Service at all times and can revoke or change an Invited User's access, or level of access, at any time and for any reason, in which case that person will cease to be an Invited User or shall have that different level of access, as the case may be;
- d. if there is any dispute between a Subscriber and an Invited User regarding access to the Service, the Subscriber shall decide what access or level of access to the Service that Invited User shall have, if any.

3. Your Obligations

a. Payment obligations:

An invoice for the Access Fee will be issued each month or once a year in accordance with the details set out in the Fee Schedule. Vixen Electronics Ltd or the appointed Service Provider will continue invoicing You in accordance with the Fee Schedule until this Agreement is terminated in accordance with clause 8.

All Vixen Electronics Ltd invoices will be sent to You, or to a Billing Contact whose details are provided by You, by email. Payment of all amounts specified in an invoice must be paid in accordance with the Fee Schedule. You are responsible for payment of all taxes and duties in addition to the Access Fee if applicable.

b. Preferential pricing or discounts:

You may from time to time be offered preferential pricing or discounts for the Access Fees Eligibility for

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such preferential pricing or discounts is conditional upon Your acceptance of responsibility for payment of any Access Fees in relation to all of Your Organizations. Without prejudice to any other rights that Vixen Electronics Ltd may have under these Terms or at law, Vixen Electronics Ltd reserves the right to render invoices for the full (non-discounted) Access Fees due or suspend or terminate Your use of the Service in respect of any or all of Your Organizations in the event that any invoices for those Access Fees are not paid in full in accordance with the requirements set out in the Fee Schedule.

c. General obligations:

You must only use the Service and Website for Your own lawful personal purposes, in accordance with these Terms and any notice sent by Vixen Electronics Ltd or condition posted on the Website. You may use the Service, Mobile Phone Applications and Website on behalf of others or in order to provide services to others but if You do so you must ensure that You are authorized to do so and that all persons for whom or to whom services are provided comply with and accept all terms of this Agreement that apply to You.

d. Access conditions:

i. You must ensure that all usernames and passwords required to access the Service are kept secure and confidential. You must immediately notify Vixen Electronics Ltd of any unauthorized use of Your passwords or any other breach of security and Vixen Electronics Ltd will reset Your password and You must take all other actions that Vixen Electronics Ltd reasonably deems necessary to maintain or enhance the security of Vixen Electronics Ltd's computing systems and networks and Your access to the Services.

ii. As a condition of these Terms, when accessing and using the Services, You must:

(A). not attempt to undermine the security or integrity of Vixen Electronics Ltd's computing systems or networks or, where the Services are hosted by a third party, that third party's computing systems and networks;

(B). not use, or misuse, the Services in any way which may impair the functionality of the Services or Website, or other systems used to deliver the Services or impair the ability of any other user to use the Services or Website;

(C). not attempt to gain unauthorized access to any materials other than those to which You have been given express permission to access or to the computer system on which the Services are hosted;

(D). not transmit, or input into the Website, any content that may be offensive, or material or Data in violation of any law (including Data or other material protected by copyright or trade secrets which You do not have the right to use); and

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(E). not attempt to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer any computer programs used to deliver the Services or to operate the Website except as is strictly necessary to use either of them for normal operation.

e. Usage Limitations:

There are no usage limitations of the Service.

f. Communication Conditions:

As a condition of these Terms, if You use any communication tools available through the Website (such as any forum, chat room or message center), You agree only to use such communication tools for lawful and legitimate purposes. You must not use any such communication tool for posting or disseminating any material unrelated to the use of the Services, including (but not limited to): offers of goods or services for sale, unsolicited commercial e-mail, files that may damage any other person's computing devices or software, content that may be offensive to any other users of the Services or the Website, or material in violation of any law (including material that is protected by copyright or trade secrets which You do not have the right to use).

When You make any communication on the Website, You represent that You are permitted to make such communication. Vixen Electronics Ltd is under no obligation to ensure that the communications on the Website are legitimate or that they are related only to the use of the Services. As with any other web-based forum, You must exercise caution when using the communication tools available on the Website. However, Vixen Electronics Ltd does reserve the right to remove any communication at any time in its sole discretion.

g. Indemnity:

You indemnify Vixen Electronics Ltd against: all claims, costs, damage and loss arising from Your breach of any of these Terms or any obligation You may have to Vixen Electronics Ltd, including (but not limited to) any costs relating to the recovery of any Access Fees that are due but have not been paid by You.

4. Confidentiality

Unless the relevant party has the prior written consent of the other or unless required to do so by law:

a. Each party will preserve the confidentiality of all Confidential Information of the other obtained in connection with these Terms. Neither party will, without the prior written consent of the other, disclose or make any Confidential Information available to any person, or use the same for its own benefit, other than as contemplated by these Terms.

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b. Each party's obligations under this clause will survive termination of these Terms.

c. The provisions of clauses 4.a and 4.b shall not apply to any information which:

(i). is or becomes public knowledge other than by a breach of this clause;

(ii). is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

(iii). is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party; or

(iv). is independently developed without access to the Confidential Information.

5. Privacy

Vixen Electronics Ltd maintains a privacy policy that sets out the parties' obligations in respect of personal information. You should read that policy at www.Vixen Electronics Ltd.com/privacy/ and You will be taken to have accepted that policy when You accept these Terms.

6. Intellectual Property

a. General:

Title to, and all Intellectual Property Rights in the Services, the Website, the Mobile Phone Applications and any documentation relating to the Services remain the property of Vixen Electronics Ltd (or its licensors).

b. Ownership of Data:

Title to, and all Intellectual Property Rights in, the Data remain Your property. However, Your access to the Data is contingent on full payment of the Vixen Electronics Ltd Access Fee when due. You grant Vixen Electronics Ltd a licence to use, copy, transmit, store, and back-up Your information and Data for the purposes of enabling You to access and use the Services and for any other purpose related to provision of services to You.

c. Backup of Data:

Vixen Electronics Ltd adheres to its best practice policies and procedures to prevent data loss, including a daily system data back-up regime, but does not make any guarantees that there will be no loss of Data. Vixen Electronics Ltd expressly excludes liability for any loss of Data no matter how caused.

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d. Third-party applications and your Data.

Your data will not be shared with any third party applications or sold to any third parties.

7. Warranties and Acknowledgements

a. Authority:

You warrant that where You have registered to use the Service on behalf of another person, You have the authority to agree to these Terms on behalf of that person and agree that by registering to use the Service You bind the person on whose behalf You act to the performance of any and all obligations that You become subject to by virtue of these Terms, without limiting Your own personal obligations under these Terms.

b. Acknowledgement:

You acknowledge that:

i. You are authorized to use the Services, the Website, the Mobile Phone Applications and to access the information and Data that You input into the Website, including any information or Data input into the Website by any person you have authorized to use the Service. You are also authorized to access the processed information and Data that is made available to You through Your use of the Website, the Mobile Phone Applications and the Services (whether that information and Data is Your own or that of anyone else).

ii. Vixen Electronics Ltd has no responsibility to any person other than You and nothing in this Agreement confers, or purports to confer, a benefit on any person other than You. If You use the Services or access the Website on behalf of or for the benefit of anyone other than yourself (whether a body corporate or otherwise) you agree that:

A. You are responsible for ensuring that You have the right to do so;

B. You are responsible for authorizing any person who is given access to information or Data, and you agree that Vixen Electronics Ltd has no obligation to provide any person access to such information or Data without Your authorization and may refer any requests for information to You to address; and

C. You will indemnify Vixen Electronics Ltd against any claims or loss relating to:

I. Vixen Electronics Ltd's refusal to provide any person access to Your information or Data in accordance with these Terms,

II. Vixen Electronics Ltd's making available information or Data to any person with Your authorization.

d. The provision of, access to, and use of, the Services is on an "as is " basis and at Your own risk.

e. Vixen Electronics Ltd does not warrant that the use of the Service will be uninterrupted or error free. Among other things, the operation and availability of the systems used for accessing the Service, including public telephone services, computer networks and the Internet, can be unpredictable and may from time to time interfere with or prevent access to the Services. Vixen Electronics Ltd is not in any way responsible for any such interference or prevention of Your access or use of the Services.

f. The VEMS monitoring system captures motion, temperature and humidity, and applies algorithms to build a model of behaviour, notifying nominated persons if according to the data captured the algorithms determine that there MIGHT be something wrong. VEMS it is not a sentient being that is able to capture every possible problem that You might encounter. If You feel that you need the support of a person you should make suitable arrangements for yourself or the person on whose behalf you are subscribing to this service.

g. It is Your sole responsibility to determine that the Services meet your needs, or the need of the person on whose behalf you are registering for the VEMS service, and are suitable for the purposes for which they are used.

h. No warranties:

Vixen Electronics Ltd gives no warranty about the Services. Without limiting the foregoing, Vixen Electronics Ltd does not warrant that the Services will meet Your requirements or that it will be suitable for your particular purpose. To avoid doubt, all implied conditions or warranties are excluded in so far as is permitted by law, including (without limitation) warranties of merchantability, fitness for purpose, title and non-infringement.

i. Consumer guarantees:

In addition to the Buyer's statutory rights, the Seller guarantees all Goods against faulty workmanship and materials for a period of 12 months from the date of delivery. This guarantee excludes misuse or mishandling of the Goods.

8. Limitation of Liability

a. To the maximum extent permitted by law, Vixen Electronics Ltd excludes all liability and responsibility to You (or any other person) in contract, tort (including negligence), or otherwise, for any loss (including loss of information) or damage resulting, directly or indirectly, from any use of, or reliance on, the Service, the Mobile Phone Applications or Website.

b. If You suffer loss or damage as a result of Vixen Electronics Ltd's negligence or failure to comply with

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these Terms, any claim by You against Vixen Electronics Ltd arising from Vixen Electronics Ltd's negligence or failure will be limited in respect of any one incident, or series of connected incidents, to the Access Fees paid by You in the previous 12 months and the cost of the sensor(s) You purchased.

c. If You are not satisfied with the Service, Your sole and exclusive remedy is to terminate these Terms in accordance with Clause 8.

9. Termination

a. Pilot policy

No longer applicable. The pilot phase has expired.

b. Prepaid Subscriptions

Vixen Electronics Ltd will refund remaining prepaid period for a prepaid Access Fee subscription, as defined in the package to which you have subscribed.

c. No-fault termination:

These Terms will continue for the period covered by the Access Fee paid or payable under clause 3.a. At the end of each billing period these Terms will automatically continue for another period of the same duration as that period, provided You continue to pay the prescribed Access Fee in accordance with the Fee Schedule, unless either party terminates these Terms by giving at least one month's advance written notice. If You elect to terminate these Terms by providing one month's' advance written notice, You shall be liable to pay all relevant Access Fees up to and including the day of termination of these Terms.

d. Breach:

If You:

i. breach any of these Terms and do not remedy the breach within 14 days after receiving notice of the breach if the breach is capable of being remedied;

ii. breach any of these Terms and the breach is not capable of being remedied (which includes (without limitation) any breach of clause 3.4 or any payment of Access Fees that are not paid in full in accordance with the requirements set out in the Fee Schedule); or

iii. You become insolvent Vixen Electronics Ltd may take any or all of the following actions, at its sole discretion:

iv. Terminate this Agreement and Your use of the Services;

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v. Suspend for any definite or indefinite period of time, Your use of the Services;

vi. Suspend or terminate access to all or any Data.

vii. Take either of the actions in sub-clauses (d), (e) and (f) of this clause 9(d) in respect of any or all other persons whom You have authorized to have access to Your information or Data.

For the avoidance of doubt, if payment of any invoice for Access Fees due in relation to any of Your Billing Contacts, Billing Plans or any of Your Organizations (as defined at clause 3) is not made in accordance with the requirements set out in the Fee Schedule, Vixen Electronics Ltd may suspend or terminate Your use of the Service, which will include access to Your data via the Website and the Mobile Applications.

e. Accrued Rights:

Termination of these Terms is without prejudice to any rights and obligations of the parties accrued up to and including the date of termination. On termination of this Agreement You will:

i. remain liable for any accrued charges and amounts which become due for payment before or after termination; and

ii. immediately cease to use the Services, the Mobile Phone Applications and the Website.

iii. Expiry or termination:

Clauses 3.a, 3.g, 4, 5, 6, 7, 8 and 10 survive the expiry or termination of these Terms.

10. Help Desk

a. Technical Problems:

In the case of technical problems You must make all reasonable efforts to investigate and diagnose problems before contacting Vixen Electronics Ltd. If You still need technical help, please check the support provided online by Vixen Electronics Ltd on the Website or failing that contact us via the Contact Us link in the www.vixenelectronics.co.uk website.

b. Service availability:

Whilst Vixen Electronics Ltd intends that the Services should be available 24 hours a day, seven days a week, it is possible that on occasions the Services or Website may be unavailable to permit maintenance or other development activity to take place.

If for any reason Vixen Electronics Ltd has to interrupt the Services for longer periods than Vixen

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Electronics Ltd would normally expect, Vixen Electronics Ltd will use reasonable endeavours to publish in advance details of such activity on the Website.

11. General

a. Entire agreement:

These Terms, together with the Vixen Electronics Ltd Privacy Policy and the terms of any other notices or instructions given to You under these Terms of Use, supersede and extinguish all prior agreements, representations (whether oral or written), and understandings and constitute the entire agreement between You and Vixen Electronics Ltd relating to the Services and the other matters dealt with in these Terms.

b. Waiver:

If either party waives any breach of these Terms, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing.

c. Delays:

Neither party will be liable for any delay or failure in performance of its obligations under these Terms if the delay or failure is due to any cause outside its reasonable control. This clause does not apply to any obligation to pay money.

d. No Assignment:

You may not assign or transfer any rights to any other person without Vixen Electronics Ltd's prior written consent.

e. Governing law and jurisdiction:

This Agreement is governed by the laws of England and Wales and You hereby submit to the exclusive jurisdiction of the courts of England and Wales for all disputes arising out of or in connection with this Agreement.

f. Severability:

If any part or provision of these Terms is invalid, unenforceable or in conflict with the law, that part or provision is replaced with a provision which, as far as possible, accomplishes the original purpose of that part or provision. The remainder of this Agreement will be binding on the parties.

g. Notices:

Any notice given under these Terms to you by Vixen Electronics Ltd will be sent to the email address that You provided when setting up Your access to the Service, and will be deemed to have been given upon transmission. Any notice given under these Terms to Vixen Electronics Ltd by You must be submitted in writing via the email address information@vixenelectronics.co.uk, available as a link in the website, and will be deemed to have been given upon successful submission.

h. Rights of Third Parties:

A person who is not a party to these Terms has no right to benefit under or to enforce any term of these Terms.

12. Additional terms for Account Information Services in the United Kingdom

Communications

As a technology company, we prefer to communicate with you online. If we are required to communicate with You, we will:

- a. Communicate general messages with a notification on the Website; and
- b. Communicate messages specific to You, including in the event of actual or suspected fraud, to the email address provided by You during the registration process.

REVISION HISTORY

Version	Date	Reason	Status
0.1	05/09/2019	First Draft	Draft
0.2	11/09/2019	Minor updates in sections 8b, 9a and 10g following review	Draft
1.0	24/09/2019	First release	Released version
1.1	03/10/2019	Update to section 3a	Released.
1.2	01/01/2020	Minor updates	Released
1.3	08/02/2021	Correction of a numbering error	Released