

NETLAYER

CLIENT SERVICES AGREEMENT

entered in to between

NETLAYER PTY LTD

and

Name : _____

Registration/ID No. : _____

Authorised representative : _____

Physical Address : _____

Contact Number : 1. _____ 2. _____

Email Address : _____

(hereinafter referred to as “the **Client**”)

CONSUMER PROTECTION ACT NOTICE

PLEASE TAKE NOTE THAT if the Client is a natural person, or a juristic entity whose turnover or asset value is/was below the prescribed threshold at the Commencement Date, then the Client is a “Consumer” in terms of the Consumer Protection Act, Act 68 of 2008 (“the CPA”).

IF THE CLIENT IS A CONSUMER, THEN NOTE FURTHER THAT:

- ✓ provisions of this agreement which may: impose or hold risk or liability for the client; or may require the client to indemnify any person; or which may constitute a risk of an atypical nature; or which could lead to injury or death have been identified through use of **bold font**
- ✓ you understand and comprehend their full content, meaning and effect before signing this agreement; and
- ✓ although these provisions have been highlighted for your attention, the remaining provisions of this agreement must also be read and understood and any provision which is not clear, understandable or the content, meaning and effect of which is not understood by you, should be clarified before signing this agreement.

WHEREAS Netlayer (as defined herein) provides IT support, ISP (Internet Service Provider) and VOIP (Voice Over Internet Protocol) and related services;

AND WHEREAS the Client (as defined herein) wishes to contract Netlayer to receive such services in accordance with the written terms and conditions of this Agreement (as defined herein);

NOW THEREFORE the parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless inconsistent with or otherwise indicated by the context the following words and expressions shall have the meanings set out apposite:

1.1.1 **“Activation Date”** means the date upon which Netlayer’s equipment and/or Services have been physically installed and activated and used by the Client whereafter Netlayer commences billing any/the monthly Fees;

1.1.2 **“Agreement”** means this Agreement and includes:

1.1.2.1 Annexure **A**, the Client Quote annexed hereto, which includes, where applicable, the Netlayer Service Description; and

1.1.2.2 Annexure **B**, the Client contract application, annexed hereto;

which annexures (including any amendment to the Netlayer Service Description) may be amended by the parties from time by the signature and dating of an amended Annexure A or B and any such amendment shall not otherwise alter the remaining terms and conditions of this Agreement;

1.1.3 **“Client”** means the person described on the cover / first page of this Agreement and Annexure B;

- 1.1.4 **“Commencement Date”** means the date of signature of this Agreement by the party last signing;
 - 1.1.5 **“Fees”** means the fees payable by the Client to Netlayer in respect of Netlayer’s rendering and/or the making available to the Client of the Services, as described in the Annexure “A”;
 - 1.1.6 **“Netlayer”** means Netlayer Pty Ltd., a private limited company duly registered as such in accordance with the Companies laws of the Republic of South Africa, having registration number 2012/116665/07, herein represented by Duncan Wiggill, Sole Director and thus duly authorised;
 - 1.1.7 **“Services”** means the IT support, ISP (Internet Service Provider) and VOIP (Voice Over Internet Protocol) and related services rendered or made available to the Client as described more fully in Annexure A); and
 - 1.1.8 **“parties”** means Netlayer and the Client and reference to “a party” shall mean either of them as indicated by the context.
- 1.2 This Agreement shall be interpreted according to the following provisions, unless the context requires otherwise:
- 1.2.1 References to “this Agreement” shall include this Agreement as amended, varied, novated or substituted in writing from time to time;
 - 1.2.2 If figures are referred to in numerals and words, the words shall prevail in the event of any conflict between the two;
 - 1.2.3 Words importing the singular number shall include the plural and vice versa, and words importing either gender or the neuter shall include both genders and the neuter;
 - 1.2.4 Unless specifically otherwise provided, the number of days indicated to commit an act or indicated for any other purpose, is calculated by excluding the first day and including the last day;
 - 1.2.5 Reference to "days" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;
 - 1.2.6 References to “months” shall be construed as calendar months;

- 1.2.7 If any provision in a definition or in Annexure A or B contains a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to such provision as if it was a substantive provision in the body of this Agreement. In the event of any conflict between any provision of this Agreement and Annexure A and/or B then the provisions of the Annexures shall take precedence and apply;
- 1.2.8 General words preceded or followed by words such as “other” or “including” or “particularly” shall not be given a restrictive meaning because they are preceded or followed by particular examples intended to fall within the meaning of the general words; and
- 1.2.9 The Parties acknowledge that each of them has had the opportunity to take legal advice concerning this Agreement and agree that no provision or word used in this Agreement shall be interpreted to the disadvantage of either Party because that Party was responsible for or participated in the preparation or drafting of this Agreement or any part of it.

2. APPOINTMENT OF AND ACCEPTANCE BY NETLAYER TO RENDER THE SERVICES

The Client hereby appoints Netlayer, and Netlayer hereby accepts such appointment, to render the Services to the Client in accordance with the terms and conditions of this Agreement.

3. COMMENCEMENT AND DURATION

- 3.1 This Agreement shall commence on the 1st calendar day of the month of the Commencement Date and shall endure for the fixed period of months indicated in Annexure A (hereinafter “the fixed period”), whereon it shall, unless otherwise agreed by the parties in writing, continue in force subject to the right of the Client to terminate this agreement by the giving of 1 (one) clear calendar months’ notice in writing to Netlayer.
- 3.2 If a Client terminates the agreement as contemplated in terms of:
- 3.2.1 clause 3.1 above the Client shall remain liable to pay the Fees during and in respect of the notice period, irrespective of whether any Services are rendered during the notice period; or
- 3.2.2 their right to do so afforded by s14 of the Consumer Protection Act, Act 68 of 2008 (**which right is only available to natural persons and not to juristic entities**) then the Client agrees, having due regard to the factors set forth in the regulations to the aforementioned section of the Act, that a reasonable cancellation penalty shall be an amount equal to at least one month’s fees (in addition to the Fee in respect of the notice period contemplated above).
- 3.3 Notwithstanding the foregoing Netlayer may terminate this Agreement by giving the client 20 (twenty) business days’ notice in writing.
- 3.4 If the Client terminates this Agreement after the Commencement Date but before the Activation Date then the Client shall be liable to pay Netlayer immediately on demand:
- 3.4.1 an amount equal to one month’s fees as a cancellation penalty; plus

- 3.4.2 all costs incurred by Netlayer in respect of any equipment purchased by or installed by it as well as all costs of any de-installation of same; plus
- 3.4.3 any charges payable by Netlayer to any third-party service provider(s) as a result of the termination by the Client.

4. CHARGES AND PAYMENT

- 4.1 The Client shall pay Netlayer:
 - 4.1.1 the Fees and any other charges levied on it in terms of this Agreement without deduction, withholding or set-off for whatever reason;
 - 4.1.2 on invoice, the initial installation and set-up charge and any other introductory or commencement charges (if applicable);
 - 4.1.3 monthly in advance, the monthly subscription and/or services charges;
 - 4.1.4 monthly in arrears, or as and when billing is passed on, the total usage charges and/or generated by the Client in conjunction with each billing period and any other charges payable in respect of the services requested by the Client or other charges levied by Netlayer from time to time; and
 - 4.1.5 upon demand, a deposit of an amount determined by Netlayer in its sole discretion which shall not bear interest.
- 4.2 Unless otherwise agreed by the parties in writing, the Fees shall escalate annually each year on 1 January (irrespective of the Commencement Date) by an amount equal to 10% (ten percent).
- 4.3 Netlayer shall (in addition to its rights to suspend rendering the Services *vide* clause 11.4 below) be entitled to levy interest to the Client's account in respect of any amount payable by the Client not paid timeously as from 7 (seven) days from the due date of such payment, calculated at the prime lending rate of FNB plus 3% (three percent), calculated daily and compounded monthly in arrears.
- 4.4 All charges, unless otherwise stated, exclude Value Added Tax.
- 4.5 Should Netlayer incur a price escalation from its suppliers then it is agreed that Netlayer may escalate its charges to the Client at the same rate of escalation. Any escalations will be communicated to the Client on 30 (thirty) days' notice.
- 4.6 The Client acknowledges that data and other services are rendered to the Client by means of the hardware which are issued to the Client, and which facilitates access to the network and the services. The Client will be liable for all charges applicable to hardware issued to the Client, irrespective of whether or not such hardware has been used by the Client or whether any other has been requested by the Client. Until Netlayer has received notification in writing from the Client and confirmed such notification that the equipment has been returned, stolen, or destroyed, the Client shall be liable for all data and other charges howsoever and by whomsoever for the replacement costs thereof.
- 4.7 Netlayer's monthly statement of charges shall constitute *prima facie* proof of the amounts owed by the Client to Netlayer in terms hereof and of the other facts stated therein and should

the Client dispute the number, duration or amount charged in respect of any services rendered by Netlayer.

- 4.8 A reasonable reconnection fee for the restoration of any Services will be levied in respect of all Services that were suspended due to the Client's non- or late payment of Fees. This fee is payable in advance, together with any outstanding amounts which are due to Netlayer and any deposit which Netlayer requires to be paid before any suspended Services are reconnected or restored.
- 4.9 A de-installation fee (equivalent to the once-off installation or configuration fee as quoted) will be due upon termination of the Agreement and/or upon return of Netlayer equipment to Netlayer and/or upon the Client's request to move the installed equipment to other premises for reinstallation.

5. OBLIGATIONS AND RESPONSIBILITIES OF THE CLIENT

The Client shall:

- 5.1 Always adhere to directions or guidelines given to it by Netlayer in respect of the use or operation of any hard- or software in respect of or related to the Services;
- 5.2 Provide Netlayer all information reasonably required by Netlayer to fulfill its obligations in terms of this Agreement;
- 5.3 Inform Netlayer in writing of any complaints in respect of Netlayer's rendering of the Services as soon as reasonably possible;
- 5.4 Provide Netlayer with all reasonable or necessary co-operation or support reasonably requested to fulfill its obligations in terms of this Agreement;
- 5.5 Not modify or attempt modify any hardware or the scope and nature of the Services with any employee of Netlayer without Netlayer's written consent; and
- 5.6 Not employ or seek to employ or entice away any employee of Netlayer from Netlayer for a period of 1 (one) year following the termination of this Agreement.

6. EQUIPMENT

- 6.1 Netlayer shall install the Services within the estimated time frame as indicated in Annexure A provided all approvals to be obtained by the Client for the installation of the Services have been obtained by the Client as required. The Client indemnifies Netlayer against any claims and/or damages directly or indirectly resulting from a delayed installation which is wholly or partially attributable to outstanding approvals and/or wayleaves and/or any other prerequisites required by Netlayer for the installation.
- 6.2 All Netlayer hardware and equipment (in this clause, "equipment"), except that which the Client has purchased from Netlayer, shall be and remain the property of Netlayer and accordingly, where any equipment is in the possession, or under the control of the Client the Client agrees:
- 6.2.1 not to remove or allow the equipment to be removed from the site without Netlayer's prior written consent;

- 6.2.2 to take reasonable steps to protect the equipment from loss and/or damage and/or theft and to keep the equipment in good condition and complete;
 - 6.2.3 allow Netlayer to inspect the equipment at all reasonable times;
 - 6.2.4 not to allow the equipment to be encumbered by operation of law or otherwise and where the Client is a tenant at the premises where the equipment is installed the Client shall, on the Activation Date, give written notice to its landlord notifying it of Netlayer's ownership aforesaid and excluding it from the landlord's tacit hypothec; and
 - 6.2.5 to return the equipment to Netlayer on the termination of the applicable Services. Should the Client fail to return any equipment to Netlayer upon termination of the Agreement upon demand then Netlayer shall be entitled to charge and recover from the Client (who shall pay such charges upon demand) the replacement value of the equipment, including the replacement value of any missing and/or damaged parts thereof.
- 6.3 Upon installation at the Client's nominated premises, all risk of loss, theft, destruction, or damage to the equipment shall vest in the Client and the Client shall be liable and responsible for its own insurance of the equipment.
 - 6.4 In the event of theft or loss of an LTE router and/or SIM card, the Client has a statutory obligation to report such loss or theft to the South African Police Services immediately, and to request Netlayer to suspend such SIM Card. The Client shall be liable to pay the replacement cost thereof.
 - 6.5 Where the Client purchased equipment from Netlayer then the manufacturer's warranty will apply to such equipment. Such warranty is limited to 12 months from date of purchase and normally covers defective equipment as a result of faulty design, manufacture or workmanship provided that such equipment has not been misused, over-loaded, modified or repaired by an unauthorised party. Netlayer may require the Client to make available the equipment to Netlayer or its nominee for inspection of the equipment at a time and place to be arranged by Netlayer or its nominee.
 - 6.6 Should Netlayer accept the equipment for repairs and maintenance it shall be deemed to do so as agent on behalf of the manufacturer or local supplier of the equipment and Netlayer shall not be liable for any loss, damage, destruction, theft, or negligent workmanship howsoever or by whomsoever caused.
 - 6.7 Should Netlayer loan equipment to the Client whilst the Client's owned or leased equipment is being repaired then the Client shall upon demand return the loaned equipment to Netlayer and all risk in and to such loaned equipment shall vest in the Client until the Client returns it to Netlayer at the Client's own cost. Should the Client fail to return any loaned equipment to Netlayer when asked to, then Netlayer shall be entitled to charge and recover from the Client (who shall pay such charges upon demand) a rental fee of R1 000 (one thousand rand) excluding VAT per day reckoned from the due date of return or demand, whichever is the earlier, until the equipment is returned to Netlayer.

7. INDEMNITY AND LIMITATION OF LIABILITY

- 7.1 The Client acknowledges that Netlayer depends upon third party service providers and/or suppliers and that the delivery of services by Netlayer may be affected by circumstances beyond

Netlayer's control. Netlayer will use its reasonable endeavours to ensure a reliable service is provided to the Client.

- 7.2 **The Client irrevocably waives and/or shall have no claim of any nature against Netlayer by reason of any direct or consequential damages, loss, damage or injury of whatsoever nature which the Client or any other person whomsoever may directly or indirectly suffer by reason of any cause or action either wholly or partly beyond Netlayer's control or any suspension or interruption of the Services or pursuant to the Client's breach of this Agreement, provided that such is not due to the wilful conduct or gross negligence of Netlayer.**
- 7.3 **The Client indemnifies and shall keep Netlayer indemnified at all times against any claims referred to in clause 7.2 above, or any other claim, action, charge, cost, demand or expense, including without limitation all legal fees and costs arising as a result of the foregoing, or non-compliance by the Client with, or contravention of the provisions of any law or directives or rules advised of by Netlayer, or conditions of Netlayer, provided that the indemnification aforesaid does not apply to instances where the liability which is indemnified arose as a result of the wilful conduct or gross negligence of Netlayer.**

8. FORCE MAJEURE

- 8.1 A party shall not be deemed in default of any of its obligations under this agreement, if, and to the extent that, performance of such obligation is prevented or delayed by an event of force majeure, provided that such event is not caused by the negligence of that party, and that party has notified the other in writing of the event of force majeure. The notifying party shall use all reasonable endeavours to avoid or minimise the effects and if an event of force majeure continues for a continuous period of more than 45 (forty-five) calendar days, the other party shall be entitled to terminate this agreement.
- 8.2 The Client's failure and/or inability to continue to pay for Netlayer's services does not amount to a force majeure event. In such circumstances, the Client is required to cancel the Agreement and pay early cancellation charges and/or other charges as applicable under this Agreement.
- 8.3 **The Client agrees and acknowledges that Loadshedding enforced and carried out in the Republic of South Africa remains out of Netlayer's and/or all Third Party Service Provider's control; and which power failure and/or the restriction of power and/or the failure or inability of generators to recharge, remains out of Netlayer's Control and any downtime caused as a result thereof will be regarded as a Force Majeure event out of Netlayer's control and Netlayer will not be in breach of its obligations held under this agreement.**

9. CONFIDENTIALITY

During the course of this agreement, each party may disclose to the other party certain proprietary information (including trade secrets, know-how, software, techniques, product plans, marketing plans, customers, inventions, improvements, and research data) ("Confidential Information") of a character regarded by the disclosing party as confidential. Each party and each of its Associates, directors, officers, employees, representatives, agents, or professional advisers to whom disclosure is made shall hold all Confidential Information and the terms of this agreement in confidence and shall not disclose such information to any third party or apply it to uses other than the recipient's performance of this agreement.

10. UNDERTAKING AS CO-PRINCIPAL DEBTOR ON BEHALF OF THE CLIENT BY THE SIGNATORY

If the Client as identified on the face page hereof is a company, close corporation, the trustee(s) of a trust or a juristic person, then the signatory hereto who signs on behalf of the Client ("the signatory") warrants that he is duly authorised to enter into this agreement on behalf of the Client and expressly binds himself as co-principal debtor for the Client unto and in favour of Netlayer for the due and punctual fulfilment of all of the Client's obligations to Netlayer arising out of this agreement including the payment of all charges, fees, penalties and damages. The signatory as co-principal debtor hereby renounces and waives the benefits of the legal defences of excussion, division and cession of actions and hereby acknowledges that he understands the full meaning of such defences and the effect of such renunciation and waiver.

11. BREACH OF AGREEMENT

11.1 It is understood and accepted by the Client that "downtime" or *force majeure* does not constitute breach.

11.2 In the event of a breach by either party ("the defaulting party") of any of the terms and conditions of this Agreement, and in the event that the defaulting party fails to remedy such breach within 7 (seven) calendar days after receiving written notice from the other party ("the innocent party") to do so, the innocent shall be entitled to enforce strict compliance with the terms and conditions of this Agreement or to cancel same and claim such damages sustained.

11.3 If the Client is a Consumer in terms of the Consumer Protection Act, 2011, and the Client is the party in breach then the period referred in clause 12.2 above shall be 20 (twenty) business days.

11.4 **In the event of any breach by the Client of its obligations in respect of payment of the Fees, Netlayer shall be entitled to summarily, on written notice to the Client, suspend any Services forthwith until such time as such breach is remedied in full to the sole satisfaction of Netlayer inclusive payment of all legal costs incurred by it (nothing excluded). The Client expressly acknowledges and agrees that this is reasonable and necessary in lieu of the direct and indirect costs and/or lost profits opportunity in relation to Netlayer's rendering of and/or making available the Services.**

12. DOMICILIUM AND NOTICES

12.1 The Parties hereby choose as their respective addresses for all notices arising out of this Agreement and as their *domicilium citandi et executandi* ("domicilium") their addresses as indicated below:

Netlayer:

Physical Address

**Ground & 1st Floor, Gateway West, 22 Magwa
Cres, Waterval City,
Midrand, 2066**

Postal Address

**Ground & 1st Floor, Gateway West, 22 Magwa
Cres, Waterval City,
Midrand, 2066**

Email Address

accounts@netlayer.co.za

The Client:

As appears on the cover / first page of this Agreement.

- 12.2 Each of the Parties shall be entitled from time to time by written notice to the other to vary its *domicilium* to any other address within the Republic of South Africa.
- 12.3 Any notice required or permitted to be given in terms of this agreement shall be valid and effective only if in writing.
- 12.4 Any notice given by one party to the other ("the addressee") which:
- 12.4.1 is delivered by hand during the normal business hours of the addressee at the addressee's *domicilium* for the time being shall be presumed, until the contrary is proved, to have been received by the addressee at the time of delivery; or
- 12.4.2 is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee's *domicilium* for the time being shall be presumed, until the contrary is proved, to have been received by the addressee on the seventh day after the date of posting.
- 12.5 Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by the Parties from one another, including by way electronic mail, shall be adequate written notice or communication to such Party.

13. PROTECTION OF PERSONAL INFORMATION

- 13.1 The parties agree and shall ensure that the conditions for the lawful processing of Personal information as set out in Chapter 3 of POPIA (The Protection of Personal Information Act 4 of 2013), and all the measures that give effect to such conditions, are complied with.
- 13.2 The Client hereby consents to Netlayer and its subsidiary/ies to collecting, holding, organising, storing, using, and administering personal information of the Client and/or signatory for the purpose of executing this Agreement.
- 13.3 Both parties agree to process personal information lawfully and in a reasonable manner that does not infringe upon the Client's rights to privacy and within the lawful bounds prescribed by the Act.
- 13.4 Netlayer's Privacy Policy is made available on Netlayer's website and can further be supplied to the Client upon request. The Client acknowledges that it has read the Policy and agreed to be bound by the terms therein as if specially incorporated herein.
- 13.5 Should either party suspect or find evidence of violation of this Privacy Policy, it shall notify the defaulting party of the data breach, investigate the data breach, and take all reasonable steps to mitigate the effects and to minimise any damage resulting therefrom.

14. MISCELLANEOUS

- 14.1 No provision of this Agreement may be amended, substituted or otherwise varied, and no provision may be added to or incorporated in this Agreement, except by an agreement in writing signed by the Parties.
- 14.2 The Client hereby consents to Netlayer conducting an assessment into the creditworthiness of the Client utilising the information contained on the face page and identity information supplied with the contract application, which information the Client and signatory warrants is true and correct, and such information forms the basis of this agreement.
- 14.3 The Client must comply with the Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002 ("RICA") registration process prior to services being activated and furnish to Netlayer all compliance documentation.
- 14.4 The Client hereby agrees to abide by Netlayer's product specific rules, terms of service and acceptable and fair usage policy, which is made available on Netlayer's website and can be supplied on request to the Client. Should Netlayer's suspect or find evidence of violation of its product specific rules, terms of service, the acceptable and fair usage policy or network traffic and/or voice traffic that interferes with Netlayer's network, the Client hereby agrees to be immediately disconnected without notice until the violation and/or interfering network traffic is removed
- 14.5 Any relaxation, indulgence or delay (collectively referred to as "Indulgence") by either Party in exercising, or any failure by either Party to exercise, any right under this Agreement shall not be construed as a waiver of that right and shall not affect the ability of that Party subsequently to exercise that right or to pursue any remedy, nor shall any Indulgence constitute a waiver of any other right (whether against that Party or any other person).
- 14.6 This Agreement supersedes all prior agreements, representations, communications, negotiations and understandings between the Parties concerning the subject matter of this Agreement.
- 14.7 The rights and obligations of the Parties in terms of this Agreement shall be personal and incapable of being ceded, assigned or delegated by either of them to any other person save with the written consent of the other Party.
- 14.8 Whenever possible, each provision of this Agreement shall be interpreted in a manner which makes it effective and valid under applicable Law, but if any provision of this Agreement is held to be illegal, invalid or unenforceable under applicable Law, that illegality, invalidity or unenforceability shall not affect the other provisions of this Agreement, all of which shall remain in full force.
- 14.9 In the event of either party having to instruct any attorney to enforce any of its rights in terms of this Agreement, the successful party in such circumstance shall be entitled to recover from the other party its full attorney and own client legal costs, including tracing fees and/or the costs of counsel.
- 14.10 This Agreement may be executed in any number of identical counterparts, all of which when taken together shall constitute one agreement. Any single counterpart or a set of counterparts taken together which, in either case, are executed by the Parties shall constitute a full original of this Agreement for all purposes.

SIGNED AT _____ ON THIS ____ DAY OF _____ 20 ____

Insert Name: _____
On behalf of **Netlayer**

As witness:

1. _____

SIGNED AT _____ ON THIS ____ DAY OF _____ 20 ____

Insert Name: _____
On behalf of the **Client**

As witness:

1. _____