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| <p>This Master Services Agreement is entered into between NETLAYER (PTY) LTD (Registration Number: 2012/116665/07) a company incorporated under the laws of South Africa with its principal place of business at 6 Kikuyu Road, Ext 56 Sunninghill, Johannesburg South Africa (hereinafter "Supplier") and the Customer who orders any of the Services specified herein.</p> | 1.1.9.2 | <p>information contained in or constituting or relating to the Disclosing Party's systems, machinery, Equipment or software, networks, telecommunications services and facilities, including Third Party Products, and associated Material, and information or Incidents concerning faults or defects therein;</p> |
| <p>1 INTERPRETATION AND PRELIMINARY</p> | 1.1.9.3 | <p>the Disclosing Party's technical, scientific, commercial, financial and market information (including valuations and forecasts), methodologies, formulae and trade secrets;</p> |
| <p>The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement or any clause hereof. In this Agreement, unless a contrary intention clearly appears –</p> | 1.1.9.4 | <p>the Disclosing Party's architectural information, demonstrations, plans, designs, drawings, processes, process maps, functional and technical requirements and specifications and the data relating thereto;</p> |
| <p>words importing –</p> | 1.1.9.5 | <p>business process outsourcing knowledge of the Disclosing Party or that is proprietary to a third party, including but not limited to Third Party Products and data relating to the customers of the Disclosing Party; and</p> |
| <p>1.1.1 any one gender include the other gender;</p> | 1.1.9.6 | <p>business process outsourcing knowledge of the Disclosing Party and information relating to the Disclosing Party's current existing strategic objectives, strategy documents and plans for both its existing and future information technology, processing, business processing and business process outsourcing;</p> |
| <p>1.1.2 the singular includes the plural and vice versa; and</p> | 1.1.10 | <p>"Disaster Recovery Services" means the services specified in annexure "B" hereto;</p> |
| <p>1.1.3 natural persons include created entities (corporate or non-incorporate) and vice versa;</p> | 1.1.11 | <p>"Disclosing Party" means a Party that discloses Confidential Information;</p> |
| <p>the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:</p> | 1.1.12 | <p>"Documentation" means in respect of the Licensed Software and the Equipment, all drawings, diagrams, maintenance and operation instructions and manuals and any other information relating to the use or operation of the Licensed Software and/or Equipment to be provided by Supplier and/or the manufacturer or producer of the Equipment to the relevant Customer under this Agreement or required to be provided or made available under this Agreement in whatever form or format and however embodied;</p> |
| <p>1.1.4 "this Agreement" means this written document, together with all written appendices, annexures, schedules, or exhibits to this written document, as may be amended from time to time;</p> | 1.1.13 | <p>"Endpoint Backup" means the services specified in annexure "J" hereto;</p> |
| <p>1.1.5 "Applicable Law" means all laws applicable in the jurisdictions in which the Parties operate, and includes any present or future constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty, directive, rule, guideline or code, practice or practice note issued by any relevant Authority;</p> | 1.1.14 | <p>"Effective Date" means the date specified in a Purchase Order for the commencement of the relevant Services;</p> |
| <p>1.1.6 "Authority" means any Government, governmental, administrative, fiscal, monetary, Central Bank, judicial, regulatory, self-regulatory or government owned or controlled body, department, commission, authority, tribunal, agency or entity to whose jurisdiction any Party or the Services may be subjected;</p> | 1.1.15 | <p>"Expiry Date" means the date on which the Service Term expires, as specified in a Purchase Order;</p> |
| <p>1.1.7 "Colocation Hosting Services" means the services specified in annexure "A" hereto;</p> | 1.1.16 | <p>"Equipment" means the Rental Equipment and the Purchased Equipment;</p> |
| <p>1.1.8 "CPI" means the weighted average of the Consumer Price Index in respect of all metropolitan areas and for all items as published by Statistics South Africa or its successors from time-to-time;</p> | 1.1.17 | <p>"Hosting Services" means the services specified in annexure "C" hereto;</p> |
| <p>1.1.9 "Confidential Information" means any information or data of any nature, tangible or intangible, oral or in writing and in any format or medium, which by its nature or content is or ought to be reasonably identifiable as confidential and/or proprietary to the Disclosing Party or which is provided or disclosed in confidence, and which the Disclosing Party or any person acting on behalf of the Disclosing Party may disclose or provide to the Receiving Party or which may come to the knowledge of the Receiving Party by whatsoever means. Without limitation, the Confidential Information of the Disclosing Party shall include the following even if it is not marked as being</p> | 1.1.18 | <p>"Information Technology" means all computers, laptops, software, programs, systems, electronic document retention, storage and retrieval processes and all other information technology of whatsoever kind or nature used by the Customer at the Site;</p> |
| <p>'confidential', 'restricted' or 'proprietary' (or any similar designation):</p> | 1.1.19 | <p>"Installation Date" means the date specified on the Purchase Order for the installation of the Equipment and/or Software necessary for the Supplier to render the applicable Service;</p> |
| <p>1.1.9.1 information relating to the Disclosing Party's Intellectual Property, business activities, business relationships, products, services, processes, data, and Staff, including agreements to which the Disclosing Party is a party;</p> | 1.1.20 | <p>"Intellectual Property" means any know-how (not in the public domain), invention (whether or not patented), design, trade mark (whether or not registered), or Copyright Material (whether or not registered), goodwill, processes, process methodology and all other identifiably</p> |

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| | or similar intellectual property as may exist anywhere in the world and any applications for registration of such intellectual property. For the purposes of this definition, | | http://www.netlayer.co.za/ticket-timeline.php ; |
| 1.1.21 | “Copyright Material” means any Material in which copyright subsists; | 1.1.39 | “Supplier’s Website” means www.netlayer.co.za ; |
| 1.1.22 | “Internet Connectivity Services” means the services specified in annexure “D” hereto; | 1.1.40 | “Time and Materials Rate” means the hourly labour rates advised by the Supplier to the Customer from time to time for each hour or part thereof spent in rendering the applicable service, as well as all actual costs and disbursements incurred by the Supplier in rendering such service (including, travel costs, subsistence, costs of replacement parts, if applicable); |
| 1.1.23 | “IT Support Services” means the services specified in annexure “E” hereto; | 1.1.41 | “VOIP Services” means the services specified in annexure “F” hereto; |
| 1.1.24 | “Licensed Software” means the Licensed Term Software and the Perpetually Licensed Software; | 1.1.42 | any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time-to-time; |
| 1.1.25 | “Licensed Term Software” means any and all software , excluding Perpetually Licensed Software, which is licensed to the Customer in terms of this Agreement for the Service Term; | 1.1.43 | if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of this Agreement; |
| 1.1.26 | “Losses” means, without limitation, any claims, losses , damages, costs, charges, liabilities, penalties, interest and fines and expenses (including legal and other professional charges and expenses); | 1.1.44 | subject to clauses 1.1.45, 1.1.46 and 1.1.50, defined terms appearing in this Agreement in title case shall be given their meaning as defined, whilst the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning; |
| 1.1.27 | “Material” means all reports, documentation, information, software or inventions in material form, irrespective of the media on which they occur, and includes, without limiting the generality thereof, all written and printed material, all micrographic and other reproductions of the written word, depiction and pictorial material, and all audio-visual, machine-reachable and other information; | 1.1.45 | reference to “days” shall be construed as calendar days unless qualified by the word “business” , in which instance a “business day” shall be any day other than a Saturday, Sunday or public holiday in the Republic of South Africa. Any reference to “business hours” shall be construed as being the hours between 08:00 and 17:00 on any business day. Any reference to “time” shall be based upon South African standard time, being Greenwich Meantime plus two hours; |
| 1.1.28 | “Outsourced IT Manager” means the IT Support Manager outsourcing terms specified in annexure “G” hereto; | 1.1.46 | this Agreement incorporates the annexes, which annexes shall have the same force and effect as if set out in the body of this Agreement. In this Agreement the words “clause” or “clauses” and “annex” or “annexes” refer to clauses of and annexes to this Agreement; |
| 1.1.29 | “Parties” means in its singular form Customer or Supplier, and in its plural form Customer and Supplier; | 1.1.47 | unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the succeeding business day; |
| 1.1.30 | “Perpetually Licensed Software” means all software that is specified in a Purchase Order as a “one time item”; | 1.1.48 | the <i>contra proferentum</i> rule shall not apply and accordingly, no provisions herein shall be construed against or interpreted to the disadvantage of a Party by reason of such Party having or being deemed to have structured, drafted or introduced such provision; |
| 1.1.31 | “Purchased Equipment” means all Materials and Equipment that is specified in a Purchase Order as a “one time item”; | 1.1.49 | the expiration, cancellation or other termination of this Agreement shall not affect those provisions of this Agreement which expressly provide that they will operate after such expiration, cancellation or termination or which of necessity must continue to have effect after such expiration, cancellation or termination, notwithstanding that the clauses themselves do not expressly provide for such continuation; and |
| 1.1.32 | “Purchase Order” means a Quotation signed by the Customer; | 1.1.50 | the words “include” and “including” means “include without limitation” and “including without limitation” . The use of the words “include” and “including” followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it. |
| 1.1.33 | “Quotation” means a written quotation issued by the Supplier pursuant to a Written Request for Services specified in clause 5.1 from the Customer, specifying the nature of the Services and Equipment to be provided, the charges applicable to such Services and Equipment, the Installation Date(s), delivery time frames and costs and any other matters the Parties may agree to include; | | |
| 1.1.34 | “Rental Equipment” means any all Materials and Equipment , excluding Purchased Equipment, which is leased to the Customer by the Supplier pursuant to this Agreement and a Purchase Order for the Service Term; | | |
| 1.1.35 | “Services” means the Colocation Hosting Services, Disaster Recovery Services, Cloud Backup Services, Hosting Services, Internet Connectivity Services, IT Support Services, and Voice over IP Services which are provided by the Supplier to the Customer pursuant to a Purchase Order; | | |
| 1.1.36 | “Service Term” means the period commencing on Effective Date and ending on the Expiry Date; | | |
| 1.1.37 | “Site” means the Customer’s premises specified in a Purchase Order whereat the Equipment will be installed and/or Services rendered; | | |
| 1.1.38 | “Standard Ticket Time” means the proposed time line set out upon the Supplier’s website which are subject to change at the Suppliers sole discretion and available at | | |

2 SCOPE OF THIS AGREEMENT

This Agreement is an enabling agreement under which the Parties may from time to time agree for the provision

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| | of the Services by the Supplier to the Customer in terms of a Purchase Order. | 3.3.6.1 | Should any Party (“the Defaulting Party”) – |
| 3 | TERM & TERMINATION | 3.3.6.1.1 | be wound-up, whether provisionally or finally and whether compulsorily or voluntarily, or voluntarily or compulsorily enter into business rescue; |
| 3.1 | Agreement Term. This Agreement shall commence on the date of the first Purchase Order and shall continue indefinitely until terminated in accordance with the terms hereof. | 3.3.6.1.2 | enter into any arrangement or compromise with any of its creditors; or |
| 3.2 | Service Term. The Services ordered by the Customer shall commence on the Effective Date and shall expire on the Expiry Date. The Service Term may be extended following mutual written agreement between the Parties. | 3.3.6.1.3 | be the subject of any resolution passed for its winding up or dissolution, |
| 3.3 | Termination without cause. | 3.3.6.2 | then the other Party shall be entitled to claim immediate payment and/or performance by the Defaulting Party of all of its obligations whether or not the due date for payment and/or performance shall have arrived, alternatively it shall be entitled to cancel this Agreement and claim damages. Cancellation of this Agreement in terms of this clause shall result in the deemed cancellation of any and all Services; or |
| 3.3.1 | Either Party may terminate this Agreement for convenience by giving the other Party 30 (thirty) days’ written notice to that effect, provided that such termination shall not affect any Purchase Order which is still in force at the effective date of such termination and the terms of this Agreement shall continue to apply to the applicable Purchase Order. | 3.3.6.3 | breach this Agreement in relation to a specific Service and fail to remedy such breach within 7 (seven) business days after the date of delivery to it of a written notice by the other Party indicating the breach and demanding that it be remedied, then the other Party shall be entitled to cancel the applicable Service and claim damages or to claim specific performance. The Supplier shall have the right in such circumstances to further cancel any and all other Services. |
| 3.3.2 | Supplier may terminate one or more of the Services specified in a Purchase Order for convenience by giving 30 (thirty) days’ written notice to that effect, provided that such termination shall not affect any rights and obligations of either the Supplier and/or the Customer in respect of this Agreement and/or the Purchase Order (in so far as it relates to the terminated Service) that have accrued prior to the effective date of such termination. | 4 | SERVICES |
| 3.3.3 | Customer may terminate one or more of the Services specified in a Purchase Order without cause by giving the Supplier 30 (thirty) days written notice to that effect, which termination shall be subject to the following early termination charges – | 4.1 | Supplier is hereby appointed on the terms and conditions of this Agreement to render the applicable Services for the Service Term and the Supplier accepts such appointment. Nothing in this Agreement shall be construed as restricting the Supplier from rendering the Services or any similar services to a third party. |
| 3.3.3.1 | in the event that the Service is terminated prior to the Effective Date applicable to such Service, the Customer shall be liable for the greater of the actual costs incurred by the Supplier in delivering or installing the Equipment and/or Licensed Software or 3 (three) months of the monthly fees associated with such Services; | 4.2 | The Services will be governed by the Supplier’s Standard Ticket Timelines unless otherwise specifically agreed in writing. |
| 3.3.3.2 | in the event that the Service is terminated subsequent to the Effective Date thereof; the Customer shall be liable for the greater of the actual costs incurred by the Supplier in delivering or installing the Equipment and/or Licensed Software or 20% of the monthly fees for the remainder of the Service Term of such terminated Services; and | 5 | ISSUE OF PURCHASE ORDERS |
| 3.3.3.3 | notwithstanding clauses 3.3.3.1, 3.3.3.2, all Equipment and bandwidth rental charges applicable to such Service (if any) shall carry a minimum monthly rental charge equal to 4 (four) months and the Customer will be liable for such rental charges, unless otherwise provided by the Supplier. | 5.1 | If a Customer wishes to order any of the Services under this Agreement, it shall provide the Supplier with a list of the type of the Services it wishes to order (“ Written Request for Services ”) and shall request the Supplier to furnish it with a Quotation. The Supplier shall be entitled to request, on receipt of a Written Request for Services and prior to the issuing of the Quotation, information related to the Customer’s creditworthiness. For the avoidance of doubt the Parties agree that the Supplier is authorised to conduct all reasonable credit checks and searches on the Customer. |
| 3.3.4 | The liquidated damages referred to under clause 3.3.3 shall become immediately due and payable on the effective date of termination and the Supplier’s right thereto shall be in lieu of damages the Supplier is entitled to due solely to the Customer’s early termination of the Service. Except as set out above, a claim for liquidated damages shall be without prejudice to the Supplier’s other rights and remedies. | 5.2 | Quotation. The Supplier shall furnish the Customer with a Quotation within 7 (seven) business days from receipt of a Written Request for Services and shall specify the date until which such Quotation shall be open for acceptance by the Customer. Where a Quotation does not state a date of expiry, it shall, unless otherwise agreed by the Supplier, be open for acceptance by the Customer for 7 (seven) business days following receipt by the Customer of such Quotation. Should the Customer accept a Quotation it shall furnish the Supplier with a signed copy thereof. |
| 3.3.5 | It is expressly provided that the Supplier shall have no liability to the Customer for any of the Customer’s equipment (including Purchased Equipment), software or documentation stored by the Supplier after termination of the applicable Service. Risk in and to such equipment, software and/or documentation shall immediately pass to the Customer on termination. | 5.3 | It is specifically recorded that each signed Quotation and its relevant attachments will form part of this Agreement and the Parties agree to be bound by the Terms of this Agreement as amended from time to time |
| 3.3.6 | Termination with cause. | 6 | LICENSE |
| | | 6.1 | Licensed Term Software. |
| | | 6.1.1 | The Supplier grants to the Customer a revocable, non-exclusive, non-sublicensable, non-transferable, non-assignable right and license to use the Licensed Term Software in object code form and the Documentation to enable the Supplier to perform its obligations in terms of |

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| | this Agreement and the applicable Purchase Order for the Service Term. | 7.1.2.4 | Any Deficiency in relation to the Equipment shall not be regarded as a breach of this Agreement by the Supplier and the Customer's right of recourse in this regard shall be against the manufacturer thereof. |
| 6.1.2 | If the Service Term expires, or if a Service is validly terminated, the Customer's right and license to use the Licensed Term Software applicable to that Service shall cease. Following expiry or termination as aforesaid, the Customer shall, at the Supplier's request, return to the Supplier all Licensed Term Software and Documentation, as well as all copies thereof, which is in the Customer's possession at the effective date of termination, or which may come into its possession thereafter and shall certify the same in writing. | 7.1.3 | The risk in the Purchased Equipment shall pass to the Customer upon delivery or collection to/by the Customer and ownership in the Purchased Equipment shall pass upon payment by the Customer in full. |
| 6.2 | Perpetually Licensed Software. The Supplier grants to the Customer a perpetual, revocable, non-exclusive, non-sub licensable, non-transferable, non-assignable right and license to use the Perpetually Licensed Software in object code form and the Documentation in accordance with the terms of this Agreement and any other terms advised by the third party supplier, developer and/or the manufacturer thereof. | 7.2 | Rental Equipment. |
| | | 7.2.1 | The Customer shall rent from the Supplier all of the Rental Equipment on a month to month basis for the Service Term. |
| | | 7.2.2 | The cost of renting the Rental Equipment shall be included in the costs of the Services. |
| | | 7.2.3 | The Customer shall give written notice to the landlord and mortgagee of any premises where the Rental Equipment is stored or located advising that the owner of the Rental Equipment is the Supplier. The Customer shall furnish the Supplier with a copy of the written notice on demand. |
| 6.3 | General provisions relating to the Licensed Software – | 7.3 | Use. |
| 6.3.1 | The Customer accepts that its rights in respect of the Licensed Software are confined to the license expressly granted pursuant to this Agreement. | 7.3.1 | The Customer shall – |
| 6.3.2 | The Customer shall not, without the Supplier's express written consent – | 7.3.1.1 | at all times keep the Rental Equipment under its control and shall take reasonable care in the use of the Rental Equipment and shall protect the same from loss and damage; |
| 6.3.2.1 | make copies of the Licensed Software or Documentation; | 7.3.1.2 | only use the Rental Equipment with due skill and care for the purpose for which the Rental Equipment is reasonably designed, specified, supplied and intended by the Supplier and/or the original manufacturer thereof; |
| 6.3.2.2 | reverse compile, reverse engineer, re-compile, re-engineer or adapt the whole or any part of the Licensed Software or Documentation; or | 7.3.1.3 | at its own expense take reasonable steps to keep the Rental Equipment free from attachment, hypothec or other legal charge or process and shall not, without the prior written consent of the Supplier, sell, let, loan, pledge, transfer or otherwise encumber the Rental Equipment in any way or permit any lien to arise in respect of the Rental Equipment; |
| 6.3.2.3 | remove or alter any copyright or other proprietary notice on any of the Licensed Software or Documentation. | 7.3.1.4 | not do or omit to do anything which may cause damage to the Rental Equipment; |
| 7 | EQUIPMENT | 7.3.1.5 | ensure that the required stable power supply, cellular connectivity and/or network connectivity will be available on Site for use with the Rental Equipment; |
| 7.1 | Purchased Equipment. | 7.3.1.6 | take reasonable steps to ensure that all restrictions on the use of the Rental Equipment that are imposed by any law are observed by the Customer and its Staff; and |
| 7.1.1 | The Supplier sells to the Customer, who purchases from the Supplier, the Purchased Equipment stipulated in the Purchase Order for the price therein stipulated. | 7.3.1.7 | ensure that no alterations and/or modifications are made to the Rental Equipment. All replacement components used in the Rental Equipment are regarded as being part of the Rental Equipment and shall remain the property of the Supplier. |
| 7.1.2 | Delivery of the Equipment – | 7.3.2 | The Customer indemnifies the Supplier against all claims, losses, liability, damage or expense that the Supplier may sustain as a result of, or attributable to, any claim instituted by anyone in connection with any act or omission of the Customer relating to the Rental Equipment. |
| 7.1.2.1 | Subject to any third party supplier delays or any other extraneous factors not within the direct control of the Supplier which impacts on the Supplier's ability to meet delivery time-frames, payment of the purchase price (in respect of Purchased Equipment) or deposits (in respect of Rental Equipment) and delivery costs, the Supplier shall use its reasonable endeavours to deliver, or procure the delivery of the Equipment within the delivery time-frames stipulated in the Purchase Order at the Site. | 7.3.3 | Ownership and Risk – |
| 7.1.2.2 | Should the quantity of Equipment delivered not correspond with the quantity stipulated in the Purchase Order, then and in such event the Customer shall accept the lesser quantity of Equipment and recover from the Supplier any payments made in respect of the undelivered Equipment within 15 (fifteen) days. | 7.3.3.1 | The Supplier shall at all times be and remain the owner and/or the lawful possessor of the Rental Equipment and shall be entitled to substitute any |
| 7.1.2.3 | The Customer shall promptly inspect the Equipment upon delivery or collection and shall complete and sign a quality control packing list provided to it by the Supplier or its third party suppliers, or third party manufacturer, confirming in writing that it has inspected the Equipment and is satisfied that it is in good order. | | |

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| | item or component with an item or component that fulfils materially the same function. | | provide the Services. |
| 7.3.3.2 | All risks relating to the Rental Equipment, including but not limited to its loss, damage or destruction, arising from any cause whatsoever (including force majeure events), will pass to the Customer on delivery/collection of the Rental Equipment by/to it. | 9 | PRICES AND CHARGES |
| 7.3.3.3 | The Supplier does not give any guarantee or warranty in regard to the performance, functionality or otherwise in respect of the Rental Equipment and shall not be liable to the Customer or any third party for any loss, liability, damage (whether direct or indirect, consequential or otherwise and whether for loss of profits, revenue, data or goodwill) or expense of any nature whatsoever which may be suffered by the Customer or such third party as a result of or which may be attributable, directly or indirectly to the use by the Customer of the Rental Equipment and the Customer hereby indemnifies the Supplier against any claim of whatsoever nature which may be made against the Supplier arising out of the foregoing. | 9.1 | Invoicing. Subject to clause 8.2 and unless otherwise agreed in writing between the Parties, the Supplier shall invoice the Customer for the Services as follows – |
| 7.3.4 | All Risks Insurance Cover – | 9.1.1 | monthly in arrears in respect of the IT Support Services, Disaster Recovery Services, Hosting Services and the Collocation Hosting Services and Outsourced IT Manager; and |
| 7.3.4.1 | The Customer shall, prior to collection or delivery of the Rental Equipment, provide the Supplier with a copy of the all risks insurance policy (“ the policy ”) in terms of which the Rental Equipment is insured against any loss or damage which may occur thereto. | 9.1.2 | monthly in advance in respect of the Internet Connectivity Services and the VOIP Services. |
| 7.3.4.2 | The Supplier may refuse to release the Rental Equipment if it is not satisfied that the policy adequately covers any risk in relation to the Rental Equipment. | 9.2 | The Supplier shall invoice the Customer for Rental and Purchased Equipment and Software as follows – |
| 7.3.4.3 | The Customer shall maintain the policy for as long as the Rental Equipment remains in its possession. | 9.2.1 | monthly in advance in respect of the Purchased Equipment and Purchased Software; and |
| | 7.4 Support – | 9.2.2 | in respect of the Rental Equipment and Rental Software, in the manner agreed between the Parties and failing agreement, monthly in advance. |
| | The Customer shall, in respect of the Equipment, only be entitled to the technical and/or operational support covered under the IT Support Services. | 9.3 | Notwithstanding anything to the contrary contained in this Agreement, the Customer shall be liable to make payment of any required deposits prior to the Effective Date of the applicable Service and the Supplier reserves its rights to suspend provision of the applicable Service until such time as it receives the said deposit. |
| 8 | ACCESS TO PREMISES AND COOPERATION | 9.4 | All Invoices shall be payable immediately upon receipt thereof via EFT into the Supplier’s bank account designated on the invoice in South African rand. |
| 8.1 | The Customer shall give the Supplier, its employees and consultants all reasonable access to the Site and the Information Technology during ordinary business hours on work days to enable the Supplier to provide the Services. | 9.5 | Disputed costs or charges. The Customer shall pay all amounts, whether disputed or undisputed, when due. Unless otherwise agreed in writing between the Parties, the Customer shall follow the procedure set out in clause 21 with regard to any disputed costs or charges if such dispute has not been remedied by a director of the Supplier and the Customer within 10 days of referral to such directors. |
| 8.2 | The Customer acknowledges that such access may cause interruption and disruption to the Business whilst such Services are being rendered. | 9.6 | The Supplier shall, subject to clause 9.6.3, be entitled to adjust the fees and charges payable by the Customer as set out in this Agreement and/or under any Purchase Order – |
| 8.3 | If requested by the Supplier (acting reasonably) to shut down or not use the whole or any part of its Information Technology so as to allow the Supplier to provide the Services, then the Customer must promptly shut down and cease using the Information Technology until permitted by the Supplier to resume use. | 9.6.1 | annually, on the anniversary date of the Effective Date (or such later period as the Supplier may determine), by the increase in CPI for the 12 (twelve) month period ending 3 (three) months prior to such anniversary date, plus 3% (three per centum); |
| 8.4 | The Supplier acknowledges that in the circumstance of a shut down, the Supplier must do all things promptly and without delay as are necessary to allow the Customer to resume use of its Information Technology as soon as practicably possible. | 9.6.2 | as a result of any regulatory, economical, or government imposed factors that impact on such fees and Charges, provided that the Supplier has given the Customer at least 1 (one) months’ notice thereof; and/or |
| 8.5 | The Customer must ensure that all its staff co-operate with the Supplier, its employees and consultants at all times and provide them with all reasonable support and assistance that may be reasonably required. | 9.6.3 | when increases are applied by the wholesaler, distributor or Supplier from whom a portion of the Services are procured, provided that the Supplier has given the Customer at least 1 (one) months’ notice thereof. |
| 8.6 | The Customer must at all times ensure that the Premises are safe for the Supplier, its employees and consultants to | 9.6.4 | Notwithstanding anything to the contrary contained in this Agreement, the Supplier shall be entitled to adjust all rental charges for Rental Equipment annually on the anniversary date of the Effective Date (or such later date as determined by the Supplier) by 10% (ten per centum). |
| | | 10 | CUSTOMER’S OBLIGATIONS |
| | | 10.1 | The Customer acknowledges and understands that the Services may be subject to further terms and conditions which shall be displayed on the Supplier’s Website. The Supplier shall be entitled at any stage to amend or vary the terms and conditions. The Supplier shall notify the Customer of any change or variation at least 14 (fourteen) |

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| <p>days prior to the effective date of such changes. The Customer warrants that it has read through the applicable terms and conditions and shall comply at all times therewith and with any amendments thereto. Such terms and conditions shall be incorporated into this Agreement by reference.</p> <p>10.2 The provisions applicable to the Supplier's terms and conditions in clause 10.1 shall apply equally to the Supplier's acceptable use policies and privacy policies.</p> <p>10.3 The Customer shall not take any steps or fail to take any steps which directly or indirectly –</p> <p>10.3.1 rearrange, disconnect, remove, attempt to repair, or otherwise tamper with the Services, without the prior written consent of the Supplier;</p> <p>10.3.2 damage the Supplier's network (or any networks interconnected to the Supplier) or any part thereof;</p> <p>10.3.3 cause the Supplier to breach any of its licence terms or any provision of applicable legislation; or</p> <p>10.3.4 constitutes an abuse of the Services (in the reasonable opinion of the Supplier).</p> <p>11 WARRANTIES.</p> <p>11.1 Equipment and Licensed Software warranties –</p> <p>11.1.1 The Supplier does not make any representations or warranties in respect of the quality or functionality of the Equipment or Licensed Software. The Customer shall only be entitled to rely on the warranties and indemnities provided by the original equipment manufacturer in respect of the Equipment and Licensed Software, which warranties and indemnities shall be enforced directly against the original manufacturer or developer and not against the Supplier.</p> <p>11.1.2 The warranty period for Equipment shall be the length of the manufacturer's warranty.</p> <p>11.2 General Warranties</p> <p>11.2.1 Each of the Parties hereby warrants to and in favour of the other that –</p> <p>11.2.1.1 it is, and will remain for the duration of this agreement, in full compliance with any and all Applicable Laws;</p> <p>11.2.1.2 it has legal capacity and has taken all necessary corporate action required to empower and authorise it to enter into this Agreement;</p> <p>11.2.1.3 this Agreement constitutes an agreement valid and binding on it and enforceable against it in accordance with its terms;</p> <p>11.2.1.4 the execution of this Agreement and the performance of its obligations hereunder does not and shall not –</p> <p>11.2.1.5 contravene any law or regulation to which that Party is subject to;</p> <p>11.2.1.6 contravene any provision of that Party's constitutional documents; or</p> <p>11.2.1.7 conflict with, or constitute a breach of any of the provisions of any other agreement, obligation, restriction or undertaking which is binding on it; and</p> <p>11.2.1.8 it is not relying upon any statement or representation by or on behalf of any other Party, except those expressly set forth in this Agreement.</p> <p>11.2.2 Each of the representations and warranties given by the Parties in terms of this clause 11 shall –</p> | <p>11.2.2.1</p> <p>11.2.2.2</p> <p>11.2.2.3</p> <p>12</p> <p>12.1</p> <p>12.2</p> <p>13</p> <p>13.1</p> <p>13.2</p> <p>13.3</p> <p>13.3.1</p> <p>13.3.2</p> | <p>be a separate warranty and will in no way be limited or restricted by inference from the terms of any other warranty or by any other words in this Agreement;</p> <p>continue and remain in force notwithstanding the completion of any or all transactions contemplated in this Agreement; and</p> <p>prima facie be deemed to be material and to be a material representation inducing the other Parties to enter into this Agreement.</p> <p>BUSINESS RELATIONSHIP OF THE PARTIES.</p> <p>12.1 Independent Contractor Status. All of Supplier's activities are those of an independent contractor, and Supplier, its employees, agents and representatives shall not be considered to be employees or agents of Customer. As an independent contractor, Supplier assumes all legal and contractual obligations arising out of the performance of this Agreement, no matter to whom such obligations may be owing, whether to the country or any political subdivision thereof, to Supplier's own personnel or to third persons. Customer may instruct and direct Supplier as to the results to be obtained from Supplier's employees. Supplier, as an independent contractor, however, shall have complete control, supervision and direction over its equipment and personnel and over the manner and method of all its activities.</p> <p>12.2 Subcontractors. Supplier may subcontract to affiliated or non-affiliated third party contractors ("subcontractors") such duties as Supplier deems necessary for its successful performance of its obligations under this Agreement or the applicable Purchase Order. Use of subcontractors by Supplier shall not relieve Supplier from any liability or obligation under this Agreement. The terms of this Agreement regarding Supplier's performance, its equipment and personnel shall likewise apply to any subcontractor's work to be performed, its property and personnel as if such performance, property and personnel were the performance, property and personnel of Supplier. Supplier shall only contract with subcontractors in a manner consistent with Customer's rights under this Agreement. No subcontractor, employee or business associate of Supplier shall be a third party beneficiary of this Agreement.</p> <p>13 CHANGES</p> <p>13.1 Changes to the Services. During the currency of this Agreement, events may occur which require a change to the nature and scope of the Services. Unless otherwise agreed in writing by the Parties no such change shall be implemented unless the Parties comply with the provisions of this clause.</p> <p>13.2 Party desiring Change. Should either Party wish to propose any changes to the nature and scope of the Services purchased in terms of a Purchase Order, such Party shall address a written document to the other Party detailing the desired changes ("Scope Change Document").</p> <p>13.3 Scope Change Document. Should such Scope Change Document be made by –</p> <p>13.3.1 The Customer, the Customer shall specify the reasons for that change and describe the change in sufficient detail to enable Supplier to formulate a response. Supplier shall investigate the likely impact upon the provision of the Services and, within a reasonable time, in any event, not exceeding 30 (thirty) days from receipt of the Scope Change Document, including the deliverables, amended pricing and timeframes, in respect thereof.</p> <p>13.3.2 The Supplier, the Supplier shall detail in a Scope Change Document the reasons for and impact of the change, the services required to implement the change and the effect that the changes, if implemented, will have on the</p> |
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| Services (including on pricing and timeframes). | such part of it which – |
|--|--|
| 13.4 If a scope change proposal – | 15.2.1 was lawfully in its possession at the time of receipt; |
| 13.4.1 is acceptable to the Parties, the Scope Change Document shall be signed off by the authorised signatories of the Parties; or | 15.2.2 was at the time of receipt part of the public domain or lawfully thereafter became part of the public domain; |
| 13.4.2 is rejected by the Customer or the Supplier (as applicable), the Services shall continue to be provided by the Supplier on the then existing agreed terms and conditions. | 15.2.3 was lawfully received from a third party entitled to possess and disclose that information; |
| | 15.2.4 it was entitled to use as permitted in terms of the provisions of this Agreement; |
| 14 LIMITATION OF LIABILITY | 15.2.5 is required to be furnished by law, or by existing contract, or by any stock exchange rules and regulations on which the shares are listed, as the case may be; or |
| 14.1 Direct damages: The Parties agree that, in the event of a breach of any of the provisions of this Agreement and/or the Purchase Order, the defaulting Party shall be liable to the other Party for all Losses which constitute direct damages, provided always that the Supplier's liability to the Customer for Losses which constitute direct damages shall be limited to an amount equal to the amount invoiced for the relevant Service during the month in which the Incident occurred. | 15.2.6 the Receiving Party shall require in order to pursue any legal remedy available to it; provided that – |
| | 15.2.7 the onus shall at all times rest on the Receiving Party to establish that such information falls within such exclusions; |
| 14.2 Where the insurance cover of any insurance policy that is procured by either Party under this Agreement which is capable of being called upon to cover any liability/damage, exceeds the aggregate cap of liability specified in Clause 14.1, such aggregate cap of liability shall not compromise the insurance cover that can be claimed by the Customer to cover the liability/damage in question. Accordingly, the imposition of such aggregate cap of liability shall not be construed as a <i>stipulatio alteri</i> in favour of any insurer who would otherwise be liable to make payment from the insurance cover to cover a claim that is in excess to such aggregate cap of liability under such insurance policy. | 15.2.8 the information disclosed will not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information in the public domain or in a Party's possession; and |
| | 15.2.9 any combination of features will not be deemed to be within the foregoing exclusions merely because individual features are in the public domain or in a Party's possession, but only in the combination itself is in the public domain or in a Party's possession. |
| 14.3 Notwithstanding clause 14.1, the Customer shall have unlimited liability in respect of all claims arising out of – | 15.3 The determination of whether information is Confidential Information shall not be affected by whether or not such information is subject to, or protected by, common law or statute related to copyright, patent, trademarks or otherwise. |
| 14.3.1 death or personal injury caused by its negligence or that of its employees, agents or subcontractors as applicable; or | 15.4 Any Party disclosing Confidential Information in terms of clause 15.2 shall limit the extent of the disclosure to that amount of information, which is practically necessary in the circumstances, taking into consideration the reasons for which it is disclosed. |
| 14.3.2 any breach of, liability arising from, or indemnity given in respect of Confidential Information and and/or Intellectual Property. | 15.5 Prior to revealing the Confidential Information, or any part thereof, to either of the Parties' officers, employees, consultants and professional advisors who have a need-to-know, the Disclosing Party shall ensure that such officers, employees, consultants and professional advisors are made aware of the confidential nature of the information being made available to them and that they agree to keep such information confidential. |
| 14.4 Notwithstanding clause 14.1, the Supplier shall not be liable for any direct damages suffered by the Customer, howsoever arising, for – | 15.6 Unless otherwise agreed in writing, it is recorded that Confidential Information, which is the property of any Party hereto, shall remain the property of that Party. |
| 14.4.1 inadvertent damage, corruption or loss of the Customer's data or equipment which is stored by the Supplier for and on behalf of the Customer (save where expressly provided otherwise in annexure A); or | 15.7 The Receiving Party shall return to the Disclosing Party, forthwith on written demand from the Disclosing Party after the termination of this Agreement for any reason whatsoever, all copies of any documents, hand written notes, computer discs and other formats in which the Confidential Information is stored (irrespective of whether the Receiving Party or another person prepared or produced them) which the Receiving Party may have obtained from the Disclosing Party, as well as all notes or copies of documents concerning the Disclosing Party which the Receiving Party may have prepared or which it may have obtained as a result of the Confidential Information being made available to it. A certificate, signed by a director/member of the Receiving Party, certifying that the Receiving Party has not retained any Confidential Information or part thereof shall be delivered |
| 14.4.2 any loss or damage resulting from internet or server downtime. | |
| 14.5 Indirect damages: Except for any claims that may arise in terms of clause 14.3, the Parties agree that, in the event of a breach of any of the provisions of this Agreement or a Purchase Order, the defaulting Party shall not be liable to the other Party for any Losses which constitute indirect, special and/or consequential damages (which includes loss of profits, revenue, goodwill and business). | |
| 15 NON-DISCLOSURE | |
| 15.1 The Parties shall hold in confidence all Confidential Information received from each other in terms of, or arising from the implementation of this Agreement, and shall not divulge or permit the Confidential Information to be divulged to any person, save for officers, employees, consultants and professional advisors who have a need-to-know. | |
| 15.2 Nothing in this clause 15 shall prohibit any Party from utilising and/or divulging Confidential Information or any | |

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| | simultaneously with the Confidential Information. | | any of its obligations insofar as it proves – |
| 15.8 | This clause 15 shall survive termination of this Agreement. | 19.1.1 | that the failure was due to an impediment beyond its control; |
| 16 | INTELLECTUAL PROPERTY | 19.1.2 | that it could not reasonably be expected to have taken the impediment and its effects upon the Party's ability to perform into account at the time of the conclusion of this Agreement; and |
| 16.1 | Save as expressly otherwise provided herein, nothing herein contained shall be construed so as to transfer any Intellectual Property rights owned by one Party to another; | 19.1.3 | that it could not reasonably have avoided or overcome the impediment or at least its effects. |
| 16.2 | All rights to the Intellectual Property in the Licensed Software, Equipment Documents and Materials made available to the Customer, whether in existence at Signature Date or created during the duration of this Agreement, shall vest in the Supplier or to the extent that the Supplier procured a license from a third party to use any Intellectual Property in accordance with this Agreement, such third party. | 19.2 | An impediment, as aforesaid, may result from events such as the following, this enumeration not being exhaustive: |
| | | 19.2.1 | war, whether declared or not, civil war, civil violence, riots and revolutions, acts of sabotage; |
| | | 19.2.2 | natural disasters such as violent storms, cyclones, earthquakes, tidal waves, floods, destruction by lightning; |
| | | 19.2.3 | explosions, fires, destruction of machines, of factories and of any kind of installations; |
| | | 19.2.4 | boycotts, strikes and lock-outs of all kinds, go-slows, occupation of factories and premises and work stoppages; or |
| | | 19.2.5 | acts of authority, whether lawful or unlawful, apart from acts from which the Party seeking relief has assumed the risk by virtue of any other provisions of this Agreement. |
| 16.3 | The Customer retains all right, title and interest in and to the Customer's Intellectual Property. As of the Effective Date, the Supplier is granted a non-exclusive license for the continued duration of this Agreement to perform any lawful act including the right to use, copy, maintain, modify, enhance and create derivative works of the Customer's Intellectual Property (including source code materials, programmer interfaces, available documentation, manuals and other materials to the extent necessary for the use, modification, or enhancement thereof) for the sole purpose of providing the Services to the Customer pursuant to this Agreement. The Supplier shall not be permitted to use the Customer's Intellectual Property for the benefit of any entities other than the Customer without the written consent of the Customer, which may be withheld at the Customer's sole discretion. Except as otherwise requested or approved by the Customer, which approval shall be in the Customer's sole discretion, the Supplier shall cease all use of the Customer's Intellectual Property as of date of termination of the Purchase Order or expiry of the Service Term. | 19.3 | For the purposes of this clause "impediment" does not include lack of authorisations, licenses, permits, or approvals necessary for the performance of this Agreement and to be issued by the appropriate authority. |
| 16.4 | The Supplier shall not be permitted to use the Customer's Intellectual Property for the benefit of any entities other than the Customer without the written consent of the Customer, which may be withheld at the Customer's sole discretion; | 19.4 | Relief from liability for non-performance by reasons of the provisions of this clause shall commence on the date upon which the Party seeking relief gives notice of the impediment relied upon and shall terminate upon the date upon which such impediment ceases to exist; provided that if such impediment continues for a period of more than 60 (sixty) days either of the Parties shall be entitled to terminate this Agreement. |
| 16.5 | The Customer hereby indemnifies and holds the Supplier harmless from any and all losses arising from, or in connection with any claim or action arising from the Customer's infringement of any Intellectual Property rights of the Supplier or any third party. | 20 | NON-WAIVER |
| 17 | SUSPENSION OF SERVICES | 20.1 | This Agreement constitutes the whole agreement between the Parties relating to the subject matter hereof. |
| 17.1 | The Supplier reserves the right to suspend, change, interrupt or restrict the Services for technical updates and other maintenance or operational services. | 20.2 | No amendment or consensual cancellation of this Agreement or any provision or term thereof (including this clause 20) or of any agreement, bill of exchange or other 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, bill of exchange or other 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. |
| 17.2 | The Supplier reserves the right to immediately suspend or terminate the Services if the Customer has breached any of the terms of this Agreement, where the continued provision of the Services is prohibited by Applicable Law or where a third party has instituted action against either the Supplier or the Customer for infringement of its Intellectual Property. | 20.3 | No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any agreement, bill of exchange or other 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. |
| 18 | NOTICES | 20.4 | 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 |
| 18.1 | Any notice of other document to be served under this Agreement may be delivered by hand or sent by prepaid or registered post, and if overseas by airmail post (which, unless proven to the contrary shall be deemed to have been served on the tenth day following the date of posting) at the principal address of the other Party stipulated on the Purchase Order. | | |
| 19 | FORCE MAJEURE | | |
| 19.1 | Neither of the Parties shall be liable for a failure to perform | | |

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was negligent or not.

are warranting that you have the requisite authority to enter into this Agreement for and on behalf of the Customer and you unequivocally consent to being bound by the terms of this Agreement.

21 APPLICABLE LAW AND JURISDICTION

21.1 This Agreement will in all respects be governed by and construed under the laws of the Republic of South Africa.

21.2 Subject to the provisions of this Agreement, the Parties hereto hereby consent and submit to the non-exclusive jurisdiction of the South Gauteng High Court, Johannesburg, of the Republic of South Africa in any dispute arising from or in connection with this Agreement. The Parties agree that any costs awarded will be recoverable in accordance with the High Court tariff, determined on an attorney-and-own-customer scale.

22 INDEPENDENT ADVICE

22.1 Each of the Parties to this Agreement hereby acknowledges and agrees that:

22.1.1 it has been free to secure independent legal and other professional advice (including financial and taxation advice) as to the nature and effect of all of the provisions of this Agreement and that it has either taken such independent advice or has dispensed with the necessity of doing so; and

22.1.2 all of the provisions of this Agreement and the restrictions herein contained are fair and reasonable in all the circumstances and are in accordance with the Parties' intentions.

23 SEVERABILITY

In the event that any of the terms of this Agreement are found to be invalid, unlawful or unenforceable such terms will be severable from the remaining provisions, which shall remain of full force and effect. If any invalid term is capable of amendment to render it valid, the Parties agree to negotiate in good faith an amendment to render it valid

24 COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement, as the case may be, as at the date of signature of the Party last signing one of the counterparts. The Parties undertake to take whatever steps may be necessary to ensure that each counterpart is duly signed by each of them without delay.

25 COST

Each Party shall bear their own costs incidental to the preparation and execution of their obligations in terms of this Agreement.

26 RESTRAINT OF TRADE

26.1 The Customer hereby agrees to restrain itself from offering employment to, or employing, or causing employment to be offered to, or causing to be employed, or assisting, or advising in the employment of, or solicitation of, any of the Suppliers employees with the customer, for the duration of the contract period and for a further 12 months thereafter. In the event that the customer does offer employment to, or employ, or cause employment to be offered to, or cause to be employed, or assist, or advise in the employment of, or solicitation of, any of the Suppliers employees, The customer hereby agrees that it will be liable for any damages that the supplier suffers as a result thereof, including but not limited to the cost incurred in training the employee, the cost involved in training a replacement employee and any other damages that the supplier may suffer as a result thereof.

27 ACCEPTANCE OF THESE TERMS

By signing a Quotation issued by the Supplier or in any manner using the Services set out in this Agreement you

ANNEXURE A

COLLOCATION HOSTING

1. DEFINITIONS

- 1.1 "Customer Zone" means the web-based application made available through the Supplier's Website which will enable the Customer to view the monthly fees applicable to the Collocation Hosting Services, to log tickets and to keep track of tickets logged;
- 1.2 "Data Center" means the physical space within the Location used for hosting of the Supported Equipment and Supported Software;
- 1.3 "Data Infrastructure" means the rack, power connection, network connection and data connection made available by the Supplier to the Customer in the Data Center;
- 1.4 "Location" means Teraco House, 5 Brewery St, Johannesburg, 1600 or such other location as advised by the Supplier to the Customer in writing from time to time;
- 1.5 "Supported Equipment" means all of the Customer's equipment (including Rental Equipment and Purchased Equipment, where applicable) which the Supplier hosts at the Location pursuant to the Collocation Hosting Services; and
- 1.6 "Supported Software" means all of the Customer's software (including Licensed Term Software and Perpetually Licensed Software, where applicable) which the Supplier hosts at the Location for purposes of the Collocation Hosting Services;
- 1.7 "Customer Employee" means staff employed by the customer.

2. COLOCATION HOSTING SERVICES

- 2.1 The Customer shall specify by way of a Written Request for Collocation Hosting Services (as set out in clause 5.1 of this Agreement), which equipment and software it requires to be hosted by the Supplier under the Collocation Hosting Services.
- 2.2 The Supplier shall indicate in the Quotation which equipment and software it has agreed to host.
- 2.3 The Customer will be responsible for delivering the equipment to the Location. Prior to arrival, a copy of the Customers representative's ID is required in order to arrange access to the Data Center. The customer will meet a representative from the Supplier who will assist in the installation of the Supported Equipment and Software.
- 2.4 The Customer shall be provided with the Data Infrastructure. The Customer must supply its own server(s) and peripherals.
- 2.5 The Customer shall not be entitled to move the Supported Equipment or Software to a location on the rack other than that specifically authorised by the Supplier.
- 2.6 The Supplier shall supply all IP addresses and Bandwidth, The Customer is solely responsible for all bandwidth and traffic charges. This includes regularly monitoring usage through the Customer Zone. These charges can be viewed in the Customer Zone.
- 2.7 Any traffic management and reporting tools provided by the Supplier are provided solely to assist the Customer in this process. If the Customer decides to use the Customer Zone traffic monitoring tool, the Customer acknowledges that the information will not be real time information and there will always be a one day delay in the furnishing of information; the Supplier will not be responsible for any traffic spikes, information or denial of service attacks, or any loss or damage the Customer may suffer due to the information not being provided in real time.
- 2.8 The Customer shall at all times adhere to the standard health and safety guidelines laid down for Customers entering the Location. The Supplier may deny the Customer access to the Location if the Supplier at any time has reason to believe that the Customer is failing to comply with such procedures and guidelines.

3. INDEMNITY

- 3.1 Notwithstanding anything to the contrary contained in this Agreement, the Customer hereby indemnifies and holds the Supplier harmless against any loss or damage which the Customer or any other person may sustain as a result of –
 - 3.1.1 any damage to or destruction of the Customer's data, Supported Equipment and/or the Supported Software, save in the event of the Supplier's gross negligence or willful misconduct;
 - 3.1.2 the Customer's use of the Collocation Hosting Services other than in terms of this Agreement or any other policies or terms of use made available by the Supplier to the Customer from time to time;
 - 3.1.3 the Customer's abandonment of the Supported Equipment and/or Supported Software. For the purposes of this clause "abandonment" shall include the Customer's failure to collect the Supported Equipment and/or Supported Software on or before the date specified by the Supplier by way of written notice; regardless of the purpose for such notice;
 - 3.1.4 the Supplier disconnecting the Customer from the network where the Customer's server(s) or network components become the target or source of any form of denial of service attack;and/or
 - 3.1.5 the Customer failing to keep any access cards, keys or passwords safe and secure.

4. ACCESS CONTROL

- 4.1 The Customer shall submit to the supplier a request for access form as per ANNEXURE I when access to the customer's data infrastructure is required and needs to specify if equipment will be removed or added to the location.
- 4.2 The request for access form will be emailed to support@netlayer.co.za.
- 4.3 Only the customer employees specified as allowed to have access to the data infrastructure will be allowed access to the customer's data infrastructure.
- 4.4 The customer will be accompanied to his data infrastructure by a representative from the supplier.

Signed on behalf of the Customer:

Name: _____

Position: _____

Date: _____

Signed on behalf of the Supplier:

Name: _____

Position: _____

Date: _____

ANNEXURE B DISASTER RECOVERY

ticket logging process which can be located at <http://www.netlater.co.za/ticket-timeline.php>, or by the agreed SLA.

1. DEFINITIONS

- 1.1 "Location" means the remote storage location situated at Teraco House, 5 Brewery St, Johannesburg, 1600, or any other location advised by the Supplier to the Customer in writing from time to time;
- 1.2 "NAS" means Network Attached Storage; and
- 1.3 "Supported Data" means the content specified by the Customer in clause 1 of annexure B1 hereto.
- 1.4 "BDR" means the backup disaster recovery appliance or server.

2. DISASTER RECOVERY SERVICES

- 2.1 The Supplier shall install the backup Disaster Recovery server, external hard drives and Software licenses necessary for the Supplier to render the Disaster Recovery Services on or before the Installation Date.
- 2.2 The Disaster Recovery Services are governed by the Supplier's standard ticket logging process which can be found here: <http://www.netlayer.co.za/ticket-timeline.php>.
- 2.3 The Customer may choose either or all of the services specified in Annexure B1.
- 2.4 In the event that a disaster occurs the Customer will be quoted on the restore process.

3. RECOVERY TIME OBJECTIVE (RTO)

The recovery time objective refers to how long it will take to recover the Customer when a disaster strikes. Due to many unknown factors that contribute towards the RTO, each Customer's RTO will need to be discussed and agreed to based on the services selected in annexure B1.

4. RECOVERY PROCESS

- 4.1 The Customer is required to log a ticket with the Supplier's support desk in order to activate the recovery process.
- 4.2 If local storage is not available, e.g BDR, the Supplier will start the recovery using the external drives.
- 4.3 If the external drive is not available, the Supplier will start the recovery using the cloud storage.
- 4.4 Once the customers Supported Data has synced from the cloud storage the Supplier shall dispatch the external drive to the Customer's Site in order to commence the recovery of the primary server.
- 4.5 If arranged otherwise the Customer's server may be taken to the Supplier's datacenter in order for the Supplier to commence the recovery from the location.
- 4.6 In the event that the Customer elects not to have certain additional back storage medium in place (for example if the Customer does not have an external drive and only cloud storage is available), this could delay the recovery process.
- 4.7 The Supplier shall only be able to determine the recovery time objective once the recovery process has started or if the Customer has a secondary server and has opted for testing services.
- 4.8 The Supplier's designated account manager shall contact the Customer to discuss the deployment of a recovery engineer to the Customer's offices.
- 4.9 The Disaster Recovery Service is governed by the standard

5. SECURITY

- 5.1 Each file is encrypted using 256-bit AES encryption technology.

6. FILE COMPRESSION

Before files are encrypted they are compressed on the NAS using state-of-the-art compression technology. Because each file is significantly smaller, less storage space is used on the onsite and remote servers.

7. BACKUP FREQUENCY

The Customers data will be backed up based on the point in time options selected as per Annexure B1

8. THE REMOTE STORAGE FACILITY AT THE LOCATION

- 8.1 Highly redundant storage with backup images stored at the datacenter on the Storage Access Network at the Location.
- 8.2 Connectivity is provided by multiple providers with automatic failover capabilities.
- 8.3 Facilities provide two fiber optic network drops for the Supplier's backbone.
- 8.4 Full physical security is provided at each location including security cameras, and finger print access control.
- 8.5 The network is secured with high-end redundant, automatic failover firewalls.
- 8.6 Fire suppression and environmental control is provided.
- 8.7 Automatic backup power is provided by on-site generators.

9. BASE REMOTE BACKUP IMAGE CREATION

- 9.1 The base image will be sent via a SATA drive to the primary remote storage facility at the Location.
- 9.2 There is generally a one week turnaround time required for this base image transfer to occur.
- 9.3 Incremental backups will occur daily and they will collapse into the base image when the transfer is complete.

10. EXTERNAL HARD DRIVE SYNCING

Data residing on the NAS device will be synced to an external drive which will be collected from the Customer's offices at the frequency selected in annexure B1. The Customer has the option of storing the external drives **at its own risk** off site.

11. ROUTINE TESTING

- 11.1 The Disaster Recovery Services do not include monthly image testing and only software based MD5 testing is done.
- 11.2 Customers may opt for monthly testing by the Supplier under the heading "Disaster Testing Required" in annexure B1,

12. OWNERSHIP OF THE DATA

The backup data being stored on the NAS and at the location remains the sole property of the Customer. If the Customer chooses to terminate Services, the Supplier will assist the Customer in the orderly termination of Services. This could involve copying the backup image to an external drive which can be synchronized with the data on the NAS. The Customer agrees to pay Supplier the costs of rendering such assistance at a Time and Materials Rate.

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13. **PASSWORDS**

The Supplier acknowledges that it must have access to any and all systems and resources to perform their duties under this agreement. As such, it must have access to any and all passwords. Bear in mind that the backup data will always be encrypted and not accessible to anyone who does not have the password. If the encryption password is lost, the backup data will be inaccessible.

14. **INDEMNITY**

14.1 The Customer hereby indemnifies and holds the Supplier harmless for any loss or damage which the Customer or any other person may sustain as a result of –

14.1.1 internet downtime or where the downtime is not attributable to the Supplier's breach of this Agreement or any other fault of the Supplier;

14.1.2 any damage to or destruction of the NAS which is not attributable to the Supplier;

14.1.3 the Customer's use of the Disaster Recovery Services other than in terms of this Agreement or the terms of use made available by the Supplier to the Customer from time to time;

14.1.4 the Customer's removal of the Supported Data, NAS, external drives and/or storage units from the Site and/or the Location without the Supplier's express written consent;

14.1.5 the Customer's storage of the Supported Data, NAS, external drives and/or other storage devices at a site other than the Site and/or the Location without the Supplier's express written consent;

14.1.6 the Customer using the NAS or any other Equipment with any hardware and/or software not supported by the Supplier; or

14.1.7 any other negligent act or omission attributable to the Customer or breach of this Agreement by the Customer.

Signed on behalf of the Customer:

Name: _____

Position: _____

Date: _____

Signed on behalf of the Supplier:

Name: _____

Position: _____

Date: _____

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**ANNEXURE B1
DISASTER RECOVERY REQUEST FORM**

Please select the services you wish to purchase by placing an X in the box displayed:

| Service Name | Covered? |
|---|--|
| Server DR License | <input type="checkbox"/> |
| Desktop DR License | <input type="checkbox"/> |
| Virtual Edition DR License | <input type="checkbox"/> |
| SBS Edition DR License | <input type="checkbox"/> |
| Headstart Restore License | <input type="checkbox"/> |
| Shadow Stream License | <input type="checkbox"/> |
| iFTP Job | <input type="checkbox"/> |
| Exchange GRE License | <input type="checkbox"/> |
| Data Archiving : Years Required | <input type="checkbox"/> |
| Data Testing Required | <input type="checkbox"/> |
| External Drive Collection Required | <input type="checkbox"/> |
| Remote Offsite Storage (requires Shadow Stream License) | <input type="checkbox"/> (please select the applicable option by circling either 1, 2 or 3 in the left image) |
| Retention Tier 1 : Base Image + 3 Daily Backups | |
| Retention Tier 2 : 1 Base Image + 3 Daily Backups, 2 Weekly Backups | |
| Retention Tier 3 : 1 Base Image + 3 Daily Backups, 4 Weekly Backups, 3 Monthly Backups | |
| Monitoring, Backup Chain Repair, File and Folder Recovery | <input type="checkbox"/> |

Please specify which data you intend to protect under the Disaster Recovery Services:

| Data type | Covered? |
|---------------------------|--------------------------|
| Complete Snapshot | <input type="checkbox"/> |
| Microsoft Exchange Emails | <input type="checkbox"/> |

Please stipulate how many months of synthetics you require to be retained at any given time: _____ Months

- Point in Time Recovery Options: (Only applies to DR licenses)**
- Please advise on the point in time you would need to be recovered by in case of a disaster, for example if you need the supplier to recover you to an exact point in time based on an exact hour of the day and you advise that you only want one backup done per day the supplier will only have one backup for that day to recover you to and no hourly backups to recover you too. Please note that if intra daily images are kept your amount of backup data will increase significantly and you are require to ensure that the additional storage is available where these intra daily images will be store:
 - RPO for which particular time in the day : **1st :8:00 2nd:12:00 3rd : 16:00**
 - RPO for which particular day : **Day prior to the crash**
 - RPO for which particular week : **Most Current Week prior to the crash**
 - RPO for which particular Month : **Most Current Month prior to the crash**
- Retention thresholds: (Only applies to Disaster Recovery licenses)**
Based on the above requirements the supplier will ensure that the following amount of backup chain data is retained.
 - Base image
 - Monthly synthetics (for last 3 Months)
 - Weekly synthetics (for last 4 weeks)
 - Daily synthetics (for last 7 days)
 - Intra-day incremental (Keep Intra-Daily / Do not keep intra-Daily) for last 5 days
- Data Testing**
When data testing services are selected the customers backup images are virtualized in order to test if server and server data is accessible. Please specify the frequency of the data testing by placing an x next to either of the following options:
Monthly Testing _____
Quarterly Testing _____
Annual Testing _____
Based on the above the customer RTO can be determined.
- External Drive Collection**
When external drives are collected, they are stored at the location.
Drive collection will be done every _____

Signed on behalf of the Customer:

Name: _____

Position: _____

Date: _____

Signed on behalf of the Supplier:

Name: _____

Position: _____

Date: _____

ANNEXURE C HOSTING

1. **DOMAIN REGISTRATION SERVICES**
 - 1.1 The Supplier registers domains on the internet through the relevant governing bodies and hosts websites and related material on the Supplier's server(s) on behalf of Customers.
 - 1.2 The Customer shall specify by way of a Written Request for Hosting Services (as set out in clause 5.1 of this Agreement), which domains it requires to be registered and which websites and other related material it requires to be hosted by the Supplier under the Hosting Services.
2. **PENALTIES**

In the case of a website being suspended due to non-payment a reconnection fee of R150.00 will be payable before the website is restored.
3. **LIABILITY FOR REGISTRATION AND USE OF DOMAIN NAMES**
 - 3.1 The Supplier has not and does not conduct pre-registration searches in respect of the Customer's use and registration of its selected domain name/s and is therefore not obliged to either advise the domain name Customer about possible conflicting third party rights or to take steps to ensure against possible disputes concerning a third party's Intellectual Property or other rights.
 - 3.2 The use or registration of the domain name by the Customer must not interfere with nor infringe the rights of any third party in any jurisdiction with respect to trademark, service mark, tradename, company name, close corporation name, copyright nor any other intellectual property right, and the Customer has the right to use the domain name as requested.
 - 3.3 The Supplier cannot act as an arbiter of disputes arising out of the registration and use of domain names. At the same time, Customer acknowledges that the Supplier may be presented with evidence that a domain name registered by the Customer violates the rights of a third party.
 - 3.4 In such instance the Supplier shall be allowed to provide a complainant with the Customer's name and address and the Supplier will have no further obligations to the Customer.
4. **HOSTING SERVICES**
 - 4.1 The Supplier does NOT provide SMTP mail services by default with any hosting packages. These are available on request at an additional charge.
 - 4.2 The Supplier reserves the right to suggest suitable alternatives to the Customer and/or charge for excessive traffic as it deems necessary and at its sole discretion.
 - 4.3 The Supplier reserves the right to suggest suitable alternatives to the Customer for excessive Web Server Processor usage as it deems necessary at its sole discretion.
 - 4.4 The Supplier reserves the right to move a website between web servers and internet backbones, both within South Africa and internationally as it deems necessary.
 - 4.5 If a Customer moves in excess of 2 GB traffic monthly then the Customer will be contacted and various options will be presented. Should the Customer fail to choose one of the presented options within 2 (two) business days of communication thereof the Supplier may, in its sole discretion, immediately terminate the Hosting Services and shall not be liable in any manner for any damages suffered by the Customer as a result of such termination.
 - 4.6 The Supplier reserves the right (but does not assume any obligation) to inspect the contents of data that the Customer transmits, receives or stores on the Supplier server to ensure compliance with this Agreement or any Applicable Laws, regulations or codes of practice.
5. **DISCLAIMERS, LIMITATIONS AND INDEMNITIES**
 - 5.1 The Customer hereby indemnifies and holds harmless the Supplier against any loss whatsoever arising from any dispute or claim or other action occasioned by the Customer's use and registration of its selected domain name, even if the Supplier has been advised of the possibility of such damages.
 - 5.2 Neither the Supplier, its employees, affiliates, agents, third party information providers, merchants, licensors or the like, warrant that the Supplier's server service will not be interrupted or error free; nor do they make any warranty as to the results that may be obtained from the use of the server service or as to the accuracy, reliability or content of any information service or merchandise contained in or provided through the Supplier's server service, unless otherwise expressly stated in this Agreement.
 - 5.3 The Supplier expressly limits its damages to the Customer for any non-accessibility time or other down time to the pro-rata monthly charge during the system unavailability.
 - 5.4 The Supplier specifically denies any responsibilities for any damages arising as a consequence of such unavailability.
 - 5.5 The Supplier is not responsible if an external company network and firewall is setup to block access to the Hosting Services.
 - 5.6 If the Customer's network is setup to block certain ports or web addresses that compromise the Hosting Services. It is the Customer's responsibility to ensure that its network configurations are changed as necessary.
6. **USE AT CUSTOMER'S RISK**
 - 6.1 The Supplier will exercise no control whatsoever over the content of the material hosted on, or the information passing through the Supplier's network and in no way moderates such content.
 - 6.2 The Customer expressly agrees that use of the Supplier's server(s) and Hosting Services are at customer's sole risk. The Supplier is not responsible for files and/or data residing on the Supplier's servers.
 - 6.3 The Customer agrees to take full responsibility for files and data transferred and to maintain all appropriate backup of files and data stored on the Supplier's web servers, including e-mail, databases and site content.
7. **LIMITATION ON MAIL SIZE**
 - 7.1 Individual mail sent to the Customer's POP3/IMAP box or forwarded to the Customer's existing email address may be limited to 3000kB in size each.
 - 7.2 The Supplier reserves the right to refuse Hosting Services based on network, domain and/or equipment identifiers.
8. **OTHER TERMS AND CONDITIONS**
 - 8.1 In addition to the above the following terms and conditions are applied by the relevant domain registrars for the following domains:
 - 8.2 .CO.ZA domains Terms and Conditions All .UK domains Terms and Conditions .US.COM, .EU.COM, .BR.COM, .CN.COM, .DE.COM, .HU.COM, .NO.COM, .QC.COM, .RU.COM, .SA.COM, .SE.COM, .SE.NET, .UK.COM, .UK.NET, .UY.COM & .ZA.COM domains Terms and Conditions.
 - 8.3 The Customer is solely responsible for ensuring that it complies with the Supplier's Acceptable Use Policy ("AUP") published on the Supplier's Website.



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TEL +2711 234 9306 **CELL** +2784 951 2391 **E-MAIL** info@netlayer.co.za **WEB** www.netlayer.co.za

Signed on behalf of the Customer:

Name: _____

Position: _____

Date: _____

Signed on behalf of the Supplier:

Name: _____

Position: _____

Date: _____

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ANNEXURE D
INTERNET CONNECTIVITY

Signed on behalf of the Customer:

Name: _____

Position: _____

Date: _____

Signed on behalf of the Supplier:

Name: _____

Position: _____

Date: _____

1. INTERNET CONNECTIVITY SERVICES

- 1.1 The Customer shall submit a Written Request for Internet Connectivity Services (as set out in clause 5.1 of this Agreement), specifying that it requires Internet Connectivity Services.
- 1.2 The Customer shall allow the Supplier access to the Site and to the Customer's Information Technology in order for the Supplier to prepare a Quotation.
- 1.3 The Supplier shall, as soon as reasonably practical after having inspected the Customer's Site and Information Technology, submit to the Customer a Quotation.
- 1.4 The Supplier shall install the Equipment as per the purchase Order necessary on or before the Installation Date.
- 1.5 The Supplier shall render the Internet Connectivity Services in accordance with the Service Level Agreement annexed hereto as annexure D1.

2. ACCEPTABLE USE OF NETWORK AND INTERNET CONNECTIVITY SERVICES

- 2.1 The Customer is solely responsible for ensuring that it complies with the Supplier's Acceptable Use Policy ("AUP") published on the Supplier's Website.
- 2.2 The Supplier reserves the right to implement technical mechanisms which prevent usage patterns in violation of the AUP.
- 2.3 The Supplier further reserves the right to take such action as may be necessary to protect the integrity of the network including, but not limited to, network monitoring, as well as protocol management and shutting down of ports affected by viruses, worms or other malicious code.
- 2.4 Nothing contained in the AUP shall be construed to limit the Supplier's rights or remedies in any way with respect to any of the foregoing activities, and the Supplier reserves the right to take any actions that it may deem appropriate with respect to such activities, including without limitation: investigating suspected violations of the AUP, taking action to recover the costs and expenses of identifying offenders and terminating their access to and use of the Internet Connectivity Service, and levying cancellation charges to cover the Supplier's costs in the event of termination of access to the Broadband access service.
- 2.5 In addition, the Supplier reserves all available rights and remedies with respect to such activities at law or in equity.
- 2.6 The AUP may be clarified or modified periodically and the Supplier reserves the right to modify the AUP at any time, which changes shall become effective as soon as they are posted to the Supplier's website.
- 2.7 The Customer indemnifies the Supplier and holds it harmless against any claims arising from a breach of the AUP by the Customer, its employees, customers, or any third party who accesses the Site or the Customer Equipment.

ANNEXURE D1

Service Level Agreement (SLA)

| | |
|--|--|
| <p>1. DEFINITIONS</p> <p>1.1. “Degradation” means the presence of anomalies or defects in the absence of a fault;</p> <p>1.2. “Incident” means a fault that directly affects the Service levels by substantially or completely reducing them. This excludes any faulty Customer equipment;</p> <p>1.3. “Monthly Recurring Charge” means the fixed, recurring charge invoiced by the Supplier to the Customer on a monthly basis for the Internet Connectivity Service, exclusive of any variable charges;</p> <p>1.4. “MTTRs” (Mean Time to Respond) means the average time from when the ticket is logged with the Supplier to the time the Supplier’s Support Representative attends to the Incident or trouble ticket;</p> <p>1.5. “MTRS” (Mean Time to Restore Service) means the average time from the first detection or reporting of Internet Connectivity Service interruption to the Supplier by the Customer until the time when the Internet Connectivity Service is restored;</p> <p>1.6. “Network Unavailability” means the time that the Internet Connectivity Service is unavailable or degraded to such an extent that it is unusable, measured from the first detection or reporting of Internet Connectivity Service interruption to the Supplier by the Customer until the time when the Internet Connectivity Service is restored and excluding any Internet Connectivity Service interruption outside of the contracted services and/or the Supplier’s control. Network Unavailability will not include scheduled maintenance/emergency maintenance or any unavailability resulting from (a) any local loop provider, (b) the Customer’s applications, equipment or facilities, (c) acts or omissions of the Customer or any use of the Internet Connectivity Service authorised by the Customer, (d) reasons of Force Majeure, or (e) power loss and/or interruptions at the Customer’s Site;</p> <p>1.7. “On-Net Services” means those Services provided at the Customer’s Site that are on the Supplier’s electronic communications network;</p> <p>1.8. “Service Credit” means:</p> <p>1.8.1. One (1) day Service Credit = 1/30th of Customer’s Monthly Recurring Charges.</p> <p>1.8.2. One (1) week Service Credit = 7/30ths of Customer’s Monthly Recurring Charges.</p> <p>1.8.3. One (1) month Service Credit = Full amount of Customer’s Monthly Recurring Charges.</p> <p>1.9. “Service Level” means the quantitative and qualitative measurement of the Internet Connectivity Service as specified in clause 5 of this Annexure D1;</p> <p>1.10. “Uptime” means total number of available minutes in a calendar month.</p> <p>2. DURATION</p> <p>This SLA shall endure for the Service Term, unless the Internet Connectivity Service is terminated in accordance with the Agreement.</p> <p>3. SERVICE LEVELS</p> <p>3.1. Commitment</p> <p>3.2. Network Availability, MTTR, and MTRS:</p> <p>3.2.1. GOLD PREMIUM SERVICE – Within 2 hours MTTR, 5 hours MTRS with 99.5% Uptime.</p> <p>3.2.2. SILVER PREMIUM SERVICE - Within 2 hours MTTR, 7 hours</p> | <p>MTRS with 99.2% Uptime.</p> <p>3.2.3. BRONZE PREMIUM SERVICE - Within 4 hours MTTR, 11 hours MTRS with 98.7% Uptime.</p> <p>3.2.4. BEST EFFORT – MTTR : Best Effort, MTRS : Best Effort with no Uptime guarantee and no Service Credit.</p> <p>3.3. Network Availability scope provides that the Supplier’s network will be available for the specified percentage of the time, dependant on the type of Service taken.</p> <p>3.4. “Network Unavailability” consists of the number of minutes that the Supplier’s Network is not available to the Customer, and includes unavailability associated with any maintenance at the Supplier’s hub to which the Customer’s circuit is connected other than scheduled maintenance (defined below 7.1). Outages will be counted as Network Unavailability only if the Customer opens a trouble ticket with the Supplier’s Customer support.</p> <p>3.5. Network Availability Process. To receive credit for Network Availability non-compliance, the Customer must request such credit within 7 business days from the date of the non-compliance.</p> <p>3.6. Network Availability Remedy. For each cumulative hour of Network Unavailability or fraction thereof in any calendar month, at the Customer’s request, the Customer’s account shall be credited for the pro-rated charges for one day of the Monthly Recurring Charge with respect to which a Network Availability has been non-compliant. The maximum credits for Network Availability shall not exceed 20% of the Customer’s Monthly Recurring Charge for the affected Service.</p> <p>3.7. Response Time – this is the time taken for the Supplier to respond (acknowledge) that there is a fault on the Network. The Supplier will inform the Customer of the Network failure and give estimated times for the Network to be restored.</p> <p>3.8. Network Latency</p> <p>Real Time – 40 milliseconds or less</p> <p>Priority Data – 40 milliseconds or less</p> <p>Basic – 100 milliseconds or less</p> <p>3.9. Latency is the average time for a packet to make a trip between network terminations on the Supplier’s Network (Gauteng only). Aggregate latency will be monitored by monitoring trip times between NNI to UNI and/or UNI to UNI on an ongoing basis.</p> <p>3.10. After notification of Network Latency being in excess of rates applicable as stated above, the Supplier will use commercially reasonable efforts to determine the source of such excessive latency and to correct such problem. If the Supplier fails to remedy such Network Latency within two (4) hours of being notified of any excessive Network Latency and average Network Latency for the preceding 30 days has exceeded the rates specified above, the Customer will receive, at the Customer’s request, a Service Credit for the period from the time of notification by the Customer until the average Network Latency for the preceding 30 days is less than the rates specified above. The Customer may obtain no more than 20% of one (1) month Service Credit for any given month.</p> <p>3.11. Packet Delivery</p> <p>Real Time - Monthly packet loss no greater than 0.02%</p> <p>Priority Data - Monthly packet loss no greater than 0.02%</p> <p>Basic Services - Monthly packet loss no greater than 0.10%</p> <p>3.12. Packet Loss is defined as the percentage of packets that are dropped between NNI to UNI and/or UNI to UNI on the Supplier’s Network (Gauteng only). The Supplier monitors this aggregate packet loss and compiles the collected data into a monthly average packet loss measurement for the Network.</p> |
|--|--|

- 3.13. After being notified by the Customer of Packet Loss in excess of rates applicable as stated above, the Supplier will use commercially reasonable efforts to determine the source of such excess Packet Loss and to correct such problem to the extent that the source of the problem is on the Network. If the Supplier fails to remedy such excess Packet Loss within two (4) hours of being notified of any excessive Packet Loss on the Network and average Packet Loss for the preceding 30 days exceeds rates applicable as stated above, the Customer will receive, at the Customer's request, a Service Credit for the period from the time of notification by the Customer until the average Packet Loss for the preceding 30 days is less than those applicable rates as stated above. The Customer may obtain no more than 20% of one (1) month Service Credit for any given month.

4. SERVICE CREDIT CLAIM PROCESS

- 4.1. In order to initiate a claim for Service Credit, the Customer must contact the Supplier's customer service group within seven (7) business days after the end of the month for which credit is requested. The Service Credit request must include:
- 4.1.1. the Customer's name and contact information;
- 4.1.2. the date and beginning/end time of the claimed outage or failed metric; and
- 4.1.3. a brief description of the characteristics of the claimed outage or failed metric.
- 4.2. The Customer will be notified via e-mail upon resolution of the request. If rejected, the notification will specify the basis for rejection. If approved, the Supplier will issue Service Credit to the Customer's account, appearing on the next invoice issued. Multiple Service Credits will not be given for the same period of time, i.e., failure to meet multiple criteria during a period of time generates only a single Service Credit. The total number of all Service Credits for all failures to meet Guarantees occurring in a given month may not exceed 20% of the total Monthly Recurring charge actually paid by the Customer for the Service during that month. Service Credits will be credited against the Customer's monthly payment for Monthly Recurring Charges and will not be received in the form of a refund.
- 4.3. The Guarantees and Service Credits provided for in this SLA assume compliance by the Customer with the terms and conditions of the Agreement, and the failure of the Customer to comply with those terms and conditions may invalidate the Supplier's guarantees provided herein. No credit is available for a Customer that:
- 4.3.1. restricts the Supplier from monitoring the Customer's premises router;
- 4.3.2. does not provide the necessary reasonable access to personnel and facilities at the Customer's premises to enable the Supplier to perform comprehensive troubleshooting; or
- 4.3.3. whose account is not in good financial standing with the Supplier.
- 4.4. The Supplier is not liable for failure to fulfill its obligations hereunder if such failure is due to the Customer tampering with any equipment, or due to acts beyond the Supplier's reasonable control, such as Force Majeure.

5. CUSTOMER SUPPORT

- 5.1. The Supplier will establish at its own cost and expense, a Technical Service Desk which will be staffed on a 24 (twenty-four)-hour-seven-days-a-week basis and equipped with the necessary infrastructure to facilitate efficient communication in order to manage and support all user- and or network-related issues reported by the Customer.
- 5.2. The Supplier's Technical Service Desk will be available 24 hours per day, 365/6 days per year to attend to all telephonic,

e-mail and web-based support queries. The Technical Service Desk can be contacted telephonically on 011 234 9306. Additional information can be sent to the Technical Service Desk via e-mail at support@netlayer.co.za. If for any reason the Technical Service Desk cannot be reached telephonically, the Customer shall follow the agreed escalation procedure as stipulated on the Supplier's website at <http://www.netlayer.co.za/ticket-timeline.php>

- 5.3. The Customer shall report all faults to the Supplier in accordance with the notification procedure set out in clause 6 of this SLA, using either telephonic, e-mail or web-based media.
- 5.4. 80% of incoming telephone calls to the Supplier's Technical Service Desk will be answered within an estimated 45 seconds.
- 5.5. All e-mail requests to the support@netlayer.co.za will be answered within an estimated 8 hours.
- 5.6. Where assistance is required by either Party, this shall be requested through the Supplier's Technical Service Desk in the Network Operations Centre (NOC).
- 5.7. A copy of all contact telephone numbers and escalation matrix shall be made available by each Party to the other Party and must be updated as and when changes occur.
- 5.8. From time to time testing and routine maintenance will be required on the network infrastructure and will normally be performed during off-peak times (00:00 – 06:00).
- 5.9. Where testing or maintenance is required during the times stipulated in 5.8 above, a standard service interruption notification will be communicated to the Customer at least 7 (seven) calendar days prior, where possible.

6. FAULT REPORTING

- 6.1. The Supplier shall monitor the infrastructure platform and notify the Customer in the event of disruptions that will affect the delivery of service to the Customer.
- 6.2. The Supplier will use an automated Trouble Ticketing System to log all Customer and network-related faults.
- 6.3. Each trouble ticket logged shall be linked to a unique reference number for all such reported faults or failures.
- 6.4. The Supplier shall keep a fault log which includes at least the following details:
- reference number;
 - time reported;
 - reported by whom;
 - service affected;
 - symptoms;
 - action taken;
 - time restored;
 - root cause of the problem;
 - comments.
- 6.5. The Customer shall supply the Supplier with the following details when logging a fault:
- reference number;
 - start time of the fault;
 - service affected;
 - symptoms and nature of the downtime;

7. REPAIRS & MAINTENANCE

- 7.1. Scheduled maintenance of the Supplier's network (or portion thereof) will not normally result in Service interruption or outage. However, in the event scheduled maintenance should require a Service interruption or outage, the Supplier will exercise commercially reasonable efforts to (a) provide the Customer with seven (7) days' prior written notice of such scheduled maintenance, (b) work with the Customer in good faith to attempt to minimise any disruption to the Customer's services that may be caused by such scheduled maintenance, and (c) to

perform such schedule maintenance during the non-peak hours of 0:00 (midnight) until 06:00 local time.

7.2. The Supplier shall, subject to clause 7.5 below, for a period of 3 (three) months from the Effective Date ("**Initial Term**"), maintain and service the Rental Equipment free of charge in order to ensure that the Rental Equipment is and remains in good working order.

7.3. After expiry of the Initial Term and for the remainder of the Internet Connectivity Service Term the Customer shall be responsible for all expenses relating to maintenance, including time and material, return airfares, suitable accommodation, meals, incidental costs and spare parts.

7.4. The Supplier shall not be responsible for any consumables and the Customer shall replace consumables at its own cost as and when necessary.

7.5. The maintenance services shall not include those services that are provided by the Supplier to the Customer to the extent that the deficiency in the Rental Equipment results from:

7.5.1. the Customer or any third party operating the Rental Equipment in a manner that is inconsistent with the Documentation or other instructions from the Supplier or its subcontractors;

7.5.2. the Customer or any third party using the Rental Equipment in conjunction with incompatible hardware or software;

7.5.3. any modifications to the Rental Equipment to sustain foreign systems (hardware or software), not supplied by the Supplier;

7.5.4. a breach by the Customer of any of the terms of this Agreement;

7.5.5. changes or adaptations made to the Rental Equipment by any persons other than the Supplier;

7.5.6. a lack of virus protection by the Customer;

7.5.7. any deficiency in the Equipment which is attributable to any act or omission of the Customer;

7.5.8. theft, electrical surges, physical damage, heat, damp, water or storage medium failure, force majeure or any other cause not attributable to reasonable wear and tear and not attributable to any act or omission on the part of the Supplier.

7.6. Notwithstanding anything to the contrary herein contained, the Supplier shall not be responsible to render the maintenance services after hours.

7.7. The Supplier shall be entitled to charge the Customer at a Time and Materials Rate for any maintenance services rendered in an attempt to remedy any deficiency brought about by any eventuality referred to in 7.5. Such charges shall include the time spent by the Supplier in taking and following up on the call logged (including usual procedure to determine the cause of the deficiency), to be charged at a Time and Materials Rate.

7.8. In the event of theft the Customer will be held liable for replacing the Supplier's equipment, including Rental Equipment.

8. REPORTS

8.1. The Supplier will provide the Customer with an Incident report for any Service Affecting faults within twenty-four (24) hours (in the business window) of such fault occurring.

8.2. The Supplier will indicate, in the Incident report, measures taken or to be taken in rectifying the fault, and to prevent recurrence of the fault.

8.3. Reports will be provided by the Supplier at monthly intervals to

the Customer.

9. ESCALATION PROCEDURE

9.1. Should the Customer wish to escalate a problem, either because of the urgency of the problem, or because the Customer does not feel it is being given the priority it deserves, the Customer may contact the Supplier's Technical Service Desk with the reference number and request that the problem be escalated.

9.2. If for whatever reason the Customer feels this to be insufficient, the Supplier's escalation matrix must be followed.

9.3. Each Party shall follow the sequence of escalation in accordance with the agreed Escalation Matrix, as included in Annexure H.

9.4. The Supplier's Service Manager will take the necessary steps to ensure that the call receives the appropriate priority and/or attention.

10. CHANGE MANAGEMENT PROCEDURE

10.1. Notification of all planned changes or maintenance schedules will be emailed to the Customer.

10.2. The Supplier shall try and inform the Customer of any change or scheduled maintenance that will affect service at least seven (7) calendar days before the planned implementation date.

10.3. If the Customer requires that the planned changes or maintenance to be stalled, postponed or rescheduled because of business-affecting reasons, these reasons must be reported to the Supplier within 24 hours of receiving notification from the Supplier.

10.4. The Supplier's Technical Service Desk will inform and consult with the Customer regarding any emergency change or maintenance to correct a fault that will affect service, at least one (1) hour before the implementation, if possible.

10.5. If and to the extent an emergency change is required and, after all attempts to inform the appropriate Customer representative as the Customer's escalation matrix failed, the Supplier may make such a change provided it is otherwise in compliance with the Agreement, and shall as soon as reasonably practicable after making such a change and again upon termination of the emergency concerned, provide the Customer's representative with full written details of such change and the reason or reasons therefore.

10.6. All changes are managed by the Technical Service Desk. The start of the change is logged, the change is implemented by trained technical personnel and overseen by a Supplier supervisor. The end of the change is logged and the success thereof logged and recorded.

11. SERVICE PERFORMANCE REVIEWS

11.1. Service targets shall be reviewed every month at which time formal review meetings can be held to discuss conformance to targets.

11.2. The Supplier hereby appoints the following Account/Service Manager, for the purposes of this Agreement:

11.3. The Customer hereby appoints the following Account/Service Manager, for the purposes of this Agreement:

11.4. Either Party may amend the Account/Service Managers from time to time, in their sole discretion on written notice to the other Party.



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Signatures

This service level agreement forms part of and is governed by the Agreement

Downtime permitted by SLA _____ Hours

After Hour Support Required **Yes \ No**

Agreed after hour availability if applicable _____

Signed on behalf of the Customer:

Name: _____

Position: _____

Date: _____

Signed on behalf of the Supplier:

Name: _____

Position: _____

Date: _____

| ANNEXURE E IT SUPPORT | | 3.4.3.1 3.4.3.2 | Status Monitoring Scheduled Preventative Maintenance |
|--|--|--|--|
| 1. DEFINITIONS | | 3.4.4 | Workstation |
| 1.1 | " Disclosure " means the disclosure by the Customer of its support and maintenance requirements in respect of its Information Technology at the Site for which it requires the IT Support Services; and known problems on the network. | 3.4.4.1 3.4.4.2 3.4.4.3 3.4.4.4 3.4.4.5 3.4.4.6 | Workstation service status monitoring OS & 3rd Party Patch Management Advanced Performance Monitoring Scheduled Preventative Maintenance License & Asset Management Webroot Managed Anti-Virus |
| 1.2 | " Supported Information Technology " means the software and equipment specified by the Customer under annexure E1 or E2 as applicable; | 3.4.5 | Proactive Care Add-On |
| 1.3 | " Maintenance Program " means the program prepared by the Supplier under annexure E3 and E4 listing the schedule to be followed for conducting maintenance on Supported Information Technology. | 3.4.5.1 3.4.5.2 | Corporate Governance for Mobile devices Cloud Desktop\Server Backup |
| 2. DISCLOSURE, PROPOSAL, MAINTENANCE PROGRAM AND PURCHASE ORDER | | 3.4.6 | Billable Services |
| 2.1 | Should the Customer wish to acquire the IT Support Services the Customer shall furnish the Supplier with a completed annexure E1 and a Disclosure. | 3.4.6.1 3.4.6.2 3.4.6.3 3.4.6.4 3.4.6.5 3.4.6.6 | Onsite & Remote Technical Support After Hours Support Equipment and Software replacement upgrades New Projects Site Audit Travel |
| 2.2 | The Customer shall allow the Supplier access to the Site and to its Information Technology in order for the Supplier to prepare the Maintenance Program. | 3.4.7 | Total Care |
| 2.3 | The Supplier shall, as soon as reasonably practical after having inspected the Customer's Site and Information Technology, submit to the Customer a Quotation incorporating the Maintenance Program and if requested by the Customer, the service level agreement annexed hereto as annexure E2. | 3.4.7.1 3.4.7.2 | Total server care ensures Customers workstations, servers and network devices are kept up to date and is monitored for any faults. The solution also includes a commercial anti-virus license. When faults are detected, the Supplier will log a ticket which the Customer is required to approve. Any technical support under this Agreement is deemed non-billable at our standard hourly rate. |
| 2.4 | Should the Customer reject the Maintenance Program it will be liable for the reasonable costs of the on the Site visit and preparation of the Maintenance Program. | 3.4.8 | Server |
| 3. SERVICES | | 3.4.8.1 | Onsite and Remote IT Support for Adds, Moves or Changes |
| 3.1 | The Customer has the option of selecting either fixed fee based IT support or block hour IT Support, as set out in the Quotation. | 3.4.8.2 3.4.8.3 3.4.8.4 3.4.8.5 3.4.8.6 | Webroot Managed Anti-Virus Server status and service monitoring OS & 3rd Party Patch Management Advanced Performance Monitoring Scheduled Preventative Maintenance |
| 3.2 | The block hour IT Support: The Customer's block hours are to be used for support and maintenance as set out in the Maintenance Program provided | | |
| 3.3 | Fixed Fee IT Support: The Customer will be charged a fixed fee per device on their network which needs to be maintained and supported. | 3.4.9 | Network |
| 3.4 | The Customer shall further be entitled to elect any of the following services: | 3.4.9.1 3.4.9.2 3.4.9.3 | Onsite and Remote IT Support for Adds, Moves or Changes Status Monitoring Scheduled Preventative Maintenance |
| 3.4.1 | Proactive Care: | 3.4.10 | Workstation |
| 3.4.1.1 | Proactive server care ensures Customer's workstations, servers and network devices are kept up to date and are monitored for any faults. The solution also includes a commercial anti-virus license. | 3.4.10.1 3.4.10.2 3.4.10.3 3.4.10.4 3.4.10.5 3.4.10.6 3.4.10.7 3.4.10.8 | Onsite and Remote IT Support for Adds, Moves or Changes Desktop Cloud Backup (Includes 10GB storage) Webroot Managed Anti-Virus Workstation status and service monitoring OS & 3rd Party Patch Management Advanced Performance Monitoring Scheduled Preventative Maintenance License & Asset Management |
| 3.4.1.2 | When faults are detected, the Supplier will log a ticket which the Customer is required to approve. Any technical support provided in respect of the IT Support Services shall be charged at Time and Material Rates. | | |
| 3.4.2 | Server | 3.4.11 | Total Care Add-On |
| 3.4.2.1 | Server status and service monitoring | 3.4.11.1 | Corporate Governance for Mobile devices |
| 3.4.2.2 | OS & 3rd Party Patch Management | 3.4.11.2 | Cloud Desktop\Server Backup |
| 3.4.2.3 | Advanced Performance Monitoring | | |
| 3.4.2.4 | Scheduled Preventative Maintenance | 3.4.12 | Billable Services |
| 3.4.2.5 | Webroot Managed Anti-Virus | | |
| 3.4.3 | Network | 3.4.12.1 3.4.12.2 3.4.12.3 3.4.12.4 | After Hours Support Equipment and Software replacement and upgrades New Projects Site Audit |

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- | | |
|---|---|
| <p>3.4.12.5 Travel</p> <p>3.4.13 Managed Anti-Virus</p> <p>3.4.13.1 The service includes a commercial anti-virus license which is managed by Netlayer for a monthly fee.</p> <p>3.4.14 Managed Monitoring</p> <p>3.4.14.1 The services ensure that critical services are monitored for status availability.</p> <p>3.5 The Supplier shall render the IT Support Services to the Customer for the Service Term in accordance with the terms of this Agreement, the Maintenance Program, the Purchase Order and the service level agreement annexed hereto as annexure "E2" (once completed and signed by both Parties).</p> <p>3.6 If the Maintenance Program or service level agreement conflicts with the terms of this Agreement then the provisions of that Maintenance Program will take precedence in relation to the IT Support Services to be supplied in accordance with that Maintenance Program.</p> <p>4. THE SOFTWARE COVERED BY THE IT SUPPORT SERVICES</p> <p>The IT Support Services apply only to the machine-operable versions of the supported software and does not cover any service in relation to source code versions (unless the Maintenance Program specifically stipulates otherwise).</p> <p>5. REPLACEMENT –</p> <p>5.1 The Supplier shall not be responsible for any consumables and the Customer shall replace consumables at its own cost as and when necessary.</p> <p>5.2 Notwithstanding anything to the contrary contained in this Agreement or otherwise, the Customer shall not be liable for the cost of repair and/or replacement of any part of the Supported Information Technology.</p> <p>6. CUSTOMER'S OBLIGATIONS –</p> <p>6.1 The Customer shall –</p> <p>6.1.1 not tamper with the Supported Information Technology; and</p> <p>6.1.2 follow correct procedures for reporting faults.</p> <p>7. EXCLUSIVITY</p> <p>7.1 The Customer shall, in respect of the Information Technology, only use the Supplier during the Service Term for the provision of the IT Support Services.</p> <p>7.2 The Customer must not without the express prior written consent of the Supplier permit any other person to interfere with, alter or change the Supported Information Technology.</p> <p>8. CUSTOMER WARRANTIES</p> <p>8.1 The Customer warrants to the Supplier that all information which it has provided to the Supplier in the Disclosure and subsequent thereto and which the Supplier has reasonably relied on in assessing any Quotation, compiling the Proposal, the Maintenance Program or the service level agreement is complete and not misleading in any way.</p> <p>8.2 The Customer warrants to the Supplier that it has not withheld any material information about the Supported Information Technology or its Business and that all the Customer's relevant employees who use the Supported Information Technology in the Business are competent and experienced and suitably trained in using the Supported Information Technology.</p> <p>9. NEW PROJECTS</p> | <p>9.1 New projects are seen as server operating system software installation and reinstallations.</p> <p>9.2 New server hardware installations.</p> <p>9.3 Network redesign reconfigurations.</p> <p>9.4 Anything out of our control which constitutes the above.</p> <p>9.5 When more than 3 workstations require a new solution deployment.</p> <p>10. REMOTE MONITORING</p> <p>10.1 Remote monitoring is performed in order to monitor the availability of services, where the server or workstation operating system software behaves in a way that is out of our control Netlayer cannot be held accountable for the operating system behavior and the customer is required to seek reimbursement for losses or damages from the software vendor.</p> <p>10.2 Status monitoring reveals if the server is online or offline</p> <p>11. MANAGED ANTI-VIRUS</p> <p>11.1 As the Anti-Virus application being used is from a 3rd party software vendor the vendor does not provide the customer with a 100% guarantee that they are protected from newly released viruses and therefore Netlayer does not take responsibility for infected devices or networks.</p> <p>12. PREVENTATIVE MAINTENANCE</p> <p>12.1 When software patches are released by third party vendors it is done so under the assumption that they have been approved by the third party vendor and are deployed at specified intervals by Netlayer. Netlayer cannot be held accountable if the patches cause a disruption in services. If the customer requires that the patches are tested before deploying them to the customers network the customer is required to provide a separate device on which these patches can be tested on.</p> <p>13. LICENSE MANAGEMENT</p> <p>13.1 Customers are required to ensure that all applications are licenses as per software vendors software license terms and conditions.</p> |
|---|---|

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Servers _____

Desktops _____

Network Devices _____

| | |
|---|-------------------------|
| 2 | 2% of total monthly fee |
| 3 | 1% of total monthly fee |

8. GUARANTEED RESPONSE TIMES

- 8.1. When the Customer raises a support issue with the Supplier, the Supplier agrees to respond in a timely fashion.
- 8.2. The response time measures how long it takes the Supplier to respond to a support request raised via the Supplier's online support system.
- 8.3. The Supplier is deemed to have responded when it has replied to the Customer's initial request. This may be in the form of an email or telephone call, to either provide a solution or request further information.
- 8.4. Guaranteed response times depend on the priority of the item(s) affected and the severity of the issue. They are shown in this table:

| | | High | Medium | Low |
|---------------|---|------------|------------|------------|
| Item priority | 1 | 15 minutes | 15 minutes | 30 minutes |
| | 2 | 30 minutes | 30 minutes | 45 minutes |
| | 3 | 60 minutes | 60 minutes | 75 minutes |

- 8.5. Response times are measured from the moment the customer's ticket was logged.
- 8.6. Response times apply during standard working hours (8am — 5.00pm) Monday to Friday, unless the contract between the Customer and Supplier specifically includes provisions for out of hours support.

9. SEVERITY LEVELS

- 9.1. The severity levels shown in the tables above are defined as follows:
 - 9.1.1. **High:** Complete Degradation — **all users and critical functions affected.** Item or service completely unavailable.
 - 9.1.2. **Medium:** Significant Degradation — **large number of users or critical functions affected.**
 - 9.1.3. **Low:** Limited Degradation — **limited number of users or functions affected.** Business processes can continue.

10. MEASUREMENT AND PENALTIES

- 10.1. Response times are measured using the Supplier's support ticketing system, which tracks all issues from initial reporting to resolution.
- 10.2. It is vital the Customer raises every issue via this system. If an issue is not raised in this way, the guaranteed response time does not apply to that issue.
- 10.3. If the Supplier fails to meet a guaranteed response, a penalty will be applied in the form of a credit for the Customer.
- 10.4. This means the following month's fee payable by the customer will be reduced on a sliding scale.
- 10.5. The level of penalty will be calculated depending on the number of hours by which the supplier missed the response time, minus the downtime permitted by the SLA:

| Priority Level | Penalty per hour (Pro-rated to nearest minute) |
|----------------|--|
| 1 | 5% of total monthly fee |

11. IMPORTANT NOTES:

- 11.1. Response time penalties in any month are capped at 30% of the total monthly fee.
- 11.2. Response times are measured during working hours (8am — 5.00pm).
- 11.3. If an issue is reported at 4.30pm with a response time of 60 minutes, the Supplier has until 8.30am the following day to respond.

12. RESOLUTION TIMES

- 12.1. The Supplier will always endeavour to resolve problems as swiftly as possible. It recognises that the Customer's computer systems are key to its business and that any downtime can cost money.
- 12.2. However, the supplier is unable to provide guaranteed resolution times. This is because the nature and causes of problems can vary enormously.
- 12.3. For instance, it may be possible to resolve a fatal server issue in minutes, simply by restarting the server. But if a server fails due to disk error or a hardware fault (also classed as a fatal issue) it may take much longer to get back up and running.
- 12.4. In all cases, the supplier will make its best efforts to resolve problems as quickly as possible. It will also provide frequent progress reports to the customer.

13. ESCALATION PROCEDURE

- 13.1. Should the Customer wish to escalate a problem, either because of the urgency of the problem, or because the Customer does not feel it is being given the priority it deserves, the Customer may contact the Supplier's Technical Service Desk with the reference number and request that the problem be escalated.
- 13.2. If for whatever reason the Customer feels this to be insufficient, the Supplier's escalation matrix must be followed.
- 13.3. Each Party shall follow the sequence of escalation in accordance with the agreed Escalation Matrix, as included in Annexure H.
- 13.4. The Supplier's Service Manager will take the necessary steps to ensure that the call receives the appropriate priority and/or attention.

14. RIGHT OF TERMINATION

- 14.1. The Supplier recognises that it provides services that are critical to the Customer's business.
- 14.2. If the Supplier consistently over ten consecutive incidences within the same calendar month, fails to meet the service levels described in this document, the Customer may terminate the IT Support Services.

Signatures

This service level agreement forms part of and is governed by the Agreement

Downtime permitted by SLA _____ Hours

After Hour Support Required **Yes \ No**

Agreed after hour availability if applicable _____

Signed on behalf of the Customer:

Name: _____



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Position: _____

Date: _____

Signed on behalf of the Supplier:

Name: _____

Position: _____

Date: _____

ANNEXURE F
VOIP

1. **VOIP SERVICES**

1.1 The Supplier shall install the Equipment and Software as per the Purchase Order necessary for the Supplier to render the VOIP Services on or before the Installation Date.

2. **USE OF BANDWIDTH**

2.1 If required, the Supplier shall arrange installation of bandwidth required for the purpose of accessing the VOIP Services.

2.2 The Customer shall provide the necessary space, electricity supply and environmental conditions required for the bandwidth.

2.3 Bandwidth supplied by the Supplier is supplied through their Wholesale agreements with the various bandwidth suppliers.

2.4 The Customer shall permit the Supplier to enter its premises to inspect the bandwidth or perform any other lawful function in the bona fide interest of the Supplier in respect of the bandwidth, or to carry out any necessary repairs, replacement of bandwidth or other maintenance work, in respect of the bandwidth.

2.5 Unless expressly authorised by the Supplier, neither the Customer nor any third party may make use of the bandwidth for any reason other than connecting to the Supplier Network to access the VOIP Services.

2.6 The cost of the bandwidth will be charged to the customer as a monthly rental.

2.7 In the case where the Supplier does not supply the bandwidth the Customer shall be liable for any and all calls made from the Supplier SIP Accounts provided.

3. **CONNECTION**

The Supplier shall use its best endeavours to provide the Customer with access to the VOIP Services and maintain such access in accordance with the provisions of this Agreement The Supplier shall not be responsible for any consequences resulting from any delay in the connection of the services, including inter alia any damages suffered or any expenses incurred by the Customer.

4. **CREDIT LIMIT**

4.1 The Supplier will set a credit limit in accordance with the Customer's existing telecommunications spend. This service will automatically email the Customer notifications when 80% of credit limit has been used.

4.2 The Customer will be required to respond to this communication in writing informing the Supplier of the preferred credit limit

4.3 Should the customer not respond to this email, the Supplier shall re-evaluate the call usage and set a credit limit according to the historical usage

5. **UPGRADES**

Bandwidth upgrades will be done by means of a change request form. The same applies to hardware upgrades. –

6. **CALLER LINE IDENTITY**

The Customer agrees to a mandatory monthly fee displayed on the Supplier's Website. This fee is subject to an annual increase of 10%.

7. **VOICE RECORDING**

7.1 The Customer acknowledges that the voice recording provided by the Supplier is a value added feature and will only archive recorded calls for a period of 30 days.

7.2 The Customer accepts the mandatory monthly charge as per the purchase order for this service.

7.3 The Customer acknowledges that it is aware of the legal requirements pertaining to, and the admissibility of the voice recordings made in this manner.

8. **NUMBER PORTING**

8.1 The Customer agrees to pay the mandatory fee as per the purchase order.

9. **FIRST RIGHT OF FIRST REFUSAL**

9.1 The Customer agrees to give the Supplier the right of first refusal if another Supplier is able to deliver a more cost effective solution than the one supplied by the Supplier.

9.2 If The Supplier is able to provide a greater cost savings to the customer compared to an alternative Supplier, then the Customer agrees to remain bound to the terms.

10. **EXCLUSIVITY**

The Customer will only use the Supplier during the Service Term for the provision of the VOIP Services.

Signed on behalf of the Customer:

Name: _____

Position: _____

Date: _____

Signed on behalf of the Supplier:

Name: _____

Position: _____

Date: _____

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ANNEXURE G

Outsourced IT Manager

1. Outsourcing terms and term

- 1.1 The Outsourced IT Manager will be placed at the customer's offices either full day or half day as per the purchase order.
- 1.2 The Outsourced IT Manager will be responsible for managing all aspects of the customers IT environment as per the purchase order.
- 1.3 All tickets are to be logged either by contacting the Call Centre or sending an email to support@netlayer.co.za or via the customer portal.
- 1.4 In the event that support tickets are logged after the specified time periods the outsourced IT Manager is on site for, the ticket will be dealt with based on the severity of the ticket, by the suppliers service desk. If Netlayer deems the ticket not urgent the Outsourced IT Manager will deal with the ticket the following day.
- 1.5 Support required out of the Outsourced IT Managers agreed support times will be billed for at a rate of R700 per hour.
- 1.6 Additional projects that require after hour support or support over weekends will be quoted for and planned accordingly.
- 1.7 Monthly management meetings need to be attended to by the IT Manager as he forms part of the customers Management team. During these meetings the IT Manager will be required to address reports concerning the customers network and tickets and any other topics the customer deems important for those meetings.
- 1.8 The Outsourced IT Manager will be placed at the customer's office for the term specified as per the purchase order.

Signed on behalf of the Customer:

Name: _____

Position: _____

Date: _____

Signed on behalf of the Supplier:

Name: _____

Position: _____

Date: _____

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ANNEXURE H (ESCALATION MATRICES)

Escalate to:

Customer:

| Escalate to | Name | Contact No. | E-mail | Severity | After | Impact |
|----------------------------|---------------|-------------|------------------------|----------|--------|-------------------------|
| Noc Support desk | Supervisor | 0871514049 | support@netlayer.co.za | 1 | 15 min | Network completely down |
| Account manager | Revel Wiggil | 0721731500 | revelw@netlayer.co.za | 1 | 30 min | Network completely down |
| Network operations manager | Duncan Wiggil | 0765427718 | duncanw@netlayer.co.za | 2 | 1 hr | Network completely down |

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ANNEXURE I

Request for Access

| Personal Information | |
|------------------------------------|--|
| Scheduled Date | |
| Time | |
| Company | |
| Contact Person | |
| Contact Number | |
| Teraco Data Centre | Isando |
| Area of Data Centre | |
| Cabinet Number | |
| Number of Visitors | |
| Name and ID Number of Each Visitor | |
| Name and ID Number of Each Visitor | |
| Name and ID Number of Each Visitor | |
| Nature of Visit | Maintenance / Hardware Add / Hardware Remove |
| Cabinet Number | |

Annexure J

Endpoint Backup

1. Acceptable Use of the Services - Fair Use Policy.

1.1 THE SUPPLIER SHALL HAVE THE ABSOLUTE AND UNILATERAL RIGHT IN ITS SOLE DISCRETION TO DENY USE OF AND ACCESS TO ALL OR ANY PORTION OF THE SERVICES TO USERS WHO ARE DEEMED BY NETLAYER TO BE USING THE SERVICES IN A MANNER NOT REASONABLY INTENDED BY NETLAYER OR IN VIOLATION OF LAW, INCLUDING BUT NOT LIMITED TO SUSPENDING OR TERMINATING A CUSTOMERS ACCOUNT WITH NETLAYER.

1.2 The Services are designed to serve the needs of particular types of users, such as individual consumers, SMB, Enterprise Level Businesses, Higher Education etc. If you have registered for a Service that is inappropriate for your actual usage, The supplier may require you to switch to an appropriate Service which may result in your having to pay The supplier additional fees for use of the appropriate Service, or to terminate your Services and refund, on a prorated basis, fees you may have paid on the unused portion of your subscription.

1.3 The supplier may, in its sole discretion and from time to time, establish or amend general operating practices to maximize the operation and availability of Services and to prevent abuses. As part of these practices, The supplier reserves the right to monitor its systems to identify excessive consumption of network resources and to take such technical and other remedies as we deem appropriate. Your consumption of Services may be deemed excessive if, within any month, your usage greatly exceeds the average level of monthly usage of The supplier's customers, generally. In the event you are deemed to have violated this policy, we reserve the right to offer an alternative pricing plan or Service that will permit you to continue to use the Services. We reserve the right to terminate or suspend your right to use the Services, without prior notice in the event of a violation of this policy.

2. Your Conduct.

2.1 As a condition of your use of the Services, you agree that you will not use the Services for any unlawful purpose. Without limiting the foregoing, you agree that you will not use the Services: (i) to infringe the intellectual property rights or proprietary rights, or rights of publicity or privacy, of any third party; (ii) to violate any applicable law, statute, ordinance or regulation; (iii) to disseminate any content in any form or format that is harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, or otherwise objectionable under applicable laws or community standards; or (iv) to disseminate any software viruses or any other computer code, files or programs that may interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment. You are solely responsible for all Content (as defined in section 8.4) that you upload, post, email, transmit, or otherwise disseminate using, or in connection with, the Services, and you will be solely responsible for any damage to any party resulting there from.

3. Modifications to the Services; Support and Updates.

3.1 The supplier reserves the right to modify, add, or remove features or functions to or from the Services, or to provide programming fixes, enhancements, updates and upgrades, to the Software (collectively "Updates"). The Software which you use may automatically download and install Updates from time to time from The supplier. You agree that The supplier has no obligation to provide you with Updates, or make available to you any subsequent versions of the Software. You also agree that you may have to enter into a renewed version of the Terms if you want to download, install or use an Update. Your license to an existing version of the Software may, at The supplier's discretion, expire when new versions of Software are released. You acknowledge and agree that The supplier, in its sole discretion,

may modify, discontinue or suspend your ability to use any version of the Software or any Service, and/or disable any Software you may already have accessed or installed without any notice to you, for the repair, improvement, and/or upgrade of the underlying technology, or for any other reason. All support services are provided in the English language.

4. Privacy and Data Protection.

4.1 Your use of the Services signifies acknowledgment of and agreement to the Privacy Policy as may be amended by The supplier from time to time.

4.2 We take commercially reasonable precautions to ensure the privacy of your data. We store your content in geo-redundant data centers physically located in the United States, Denmark, Canada, or Australia (AWP Region). By default, the location of your AWP account and your stored content will be assigned to one of these AWP Regions based on your source IP address when you initially create your account. By way of example, if you are located in the United States when you initially create your account, your Content will be stored in the United States, and if you are located in the UK or Germany when you initially create your account, your Content will be stored in Denmark. Your Content will always remain in the AWP Region it has been assigned regardless of where you access your account after you have created it. Under certain circumstances, you may have the option of specifying the AWP Region in which your Content will be stored. We will not move your Content from your assigned AWP Region without notifying you, unless required to comply with the law or lawful requests of government entities. You acknowledge and agree that storing your Content in a specific AWP Region may subject you to additional laws and regulations specific to that AWP Region and that AWP is authorized to take all necessary and appropriate actions to ensure your account in a specific AWP Region remains compliant with all relevant and applicable laws and regulations.

4.3 The Service allows users to store and exchange information, materials, data, files, programs, ideas and opinions ("Content"). Users have a choice regarding which Content (which under your sole control may contain personally identifiable information and/or sensitive information), they upload to our servers and which (if any) other users they provide access to those files and folders. You are solely responsible for the selection of the Content you upload and the other users you choose to share such Content with.

4.4 You agree that we or our Resellers and suppliers may access user accounts, including Content, to respond to service or technical problems or at your request. You acknowledge that we may allow Resellers to access the Services environment, including your Content (as defined in section 8.4), as required for the provision of the Reseller Services to you.

5. Administrators, Team Members, and Connections.

5.1 Certain Services operate under an "Administrator", "Team Member" and "Connection" seat license hierarchy. Administrators are those users who are authorized to perform administrative and billing functions, and to manage the accounts of other end users within the team. In the creation of a new end user account, the new subscriber is the "Default Administrator". All Administrators are responsible for billing issues related to their Team Members and Connections, and Administrators can at their sole discretion terminate a Team Member's or a Connection's account.

5.2 A "Team Member" seat license is for regular and unrestricted users of the Services who are the individuals themselves, or are the direct employees of entities or organizations that have contracted with The supplier or a Reseller to make the Services available to the team. When a Team Member is created for the first time, such persons may also be given "Administrator" rights based on their role by the Default Administrator.

5.3 A "Connection" seat license may have limited rights and capabilities and are typically not allocated individual storage.

- There may be Legacy Connections with different capabilities.
- 5.4 You acknowledge and agree that every regular user of the Services who is a direct employee of an entity or organization that has contracted with The supplier or a Reseller to make the Services available to the team, requires a Team Member seat license and may not use a Connection seat license.
- 5.5 You acknowledge and agree that we or the Reseller through whom you purchased the Services may create and manage user accounts, allocate storage and assign permissions.
- 6. Term and Termination of Services.**
- 6.1 We will provide the Services for the initial term you have selected when registering with us or a Reseller AS PER THE PURCHASE ORDER SIGNED. Unless you notify The supplier or the Reseller, as applicable, by email, no later than thirty (30) days prior to the conclusion of the term of your subscription, your Services will automatically renew for the same term. If you have purchased the Services from us, The supplier will charge your credit card on the first day of the renewal term. Except for your or The supplier's termination rights as set forth in these Terms, the initial term and renewal terms are non-cancelable.
- 6.2 Without limiting other remedies, The supplier may limit, suspend, or terminate its legal agreement with you, terminate your use of Software, prohibit access to the Services and delete your user account, effective immediately, if (i) The supplier believes that you are in breach of the Terms, creating problems, possible legal liabilities, infringing someone else's intellectual property rights, engaging in fraudulent, immoral or illegal activities, or for other similar reasons, (ii) if The supplier is required to do so by law (for example, where the provision of the Services to you is, or becomes, unlawful), (iii) if The supplier is transitioning to no longer providing the Services to users in the country in which you reside or from which you use the Service, or (iv) the provision of Services to you is no longer, in The supplier's opinion, commercially viable. The supplier shall effect such termination by providing notice to you to the email address you have provided, and/or by preventing your access to your user account.
- 6.3 Upon termination, you may request a file of your data, which The supplier will make available for a fee. You must make such request within thirty (30) days of the effective date of termination. Otherwise, ANY DATA YOU HAVE STORED ON THE SUPPLIER ENDPOINT BACKUP™ SYSTEMS MAY NOT BE RETRIEVED, and The supplier shall have no obligation to maintain any data stored in your account or to forward any data to you or any third party. You agree that The supplier may retain (but shall have no obligation to retain) your Content for a period after your account has been terminated, expired, or otherwise lapsed, as part of The supplier's marketing to you of the opportunity to purchase, renew, or extend your account.
- 6.4 If a Team account terminates, all Team Member accounts will be terminated as well. Upon termination of your account, you will receive a FINAL termination notice stating that your data will be deleted from our system.
- 6.5 In addition to other termination provisions, trial and demo accounts are subject to termination if: (a) you do not engage in any activity within thirty (30) days of registration, or (b) you do not engage in any activity for any period of sixty (60) consecutive days. We will send you an email reminding you of our policy and informing you that your account will be closed within seven (7) days unless you begin to use the account during that period. At the conclusion of that seven (7) day period, absent any such activity we will close the account. ANY DATA YOU MAY HAVE STORED WILL BE LOST.
- 6.6 Upon termination and the cancellation of your account (a) you acknowledge and agree that all licenses and rights to use the Services and Software shall terminate, and (b) you will cease any and all use of the Software, and (c) you will remove the Software from all hard drives, networks and other storage media and destroy all copies of the Software in your possession or under your control. Following termination The supplier reserves the right to retain data required for account settlement or billing purposes.
- 6.7 The supplier will not be liable for any damages caused by the termination of your agreement with The supplier or a Reseller, for any reason.
- 7. Indemnity.**
- 7.1 You agree that The supplier shall have no liability whatsoever for any use you make of the Services or Software. You agree to indemnify, defend and hold The supplier harmless from and against any and all claims, damages, liabilities, and costs and fees (including reasonable attorneys' fees), in connection with or arising out of your (a) violation or breach of any term of the Universal Terms or any applicable law or regulation, whether or not referenced herein, or (b) violation of any rights of any third party, (c) use or misuse of the Services or Software, or (d) any upload, download or dissemination or your Content by means of the Services.
- 8. WARRANTY DISCLAIMER.**
- 8.1 THE SERVICES AND SOFTWARE ARE PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, AND THE SUPPLIER AND ITS LICENSORS HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, PERFORMANCE, ACCURACY, RELIABILITY, AND NON-INFRINGEMENT. THE SUPPLIER AND ITS LICENSORS MAKE NO WARRANTY THAT THE SERVICES OR SOFTWARE WILL BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ERROR-FREE OR OTHERWISE MEET YOUR EXPECTATIONS. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THE UNIVERSAL TERMS. AS SOME JURISDICTIONS DO NOT ALLOW SOME OF THE EXCLUSIONS OR LIMITATIONS ABOVE, THEY MAY NOT APPLY TO YOU.
- 9. LIMITATION OF LIABILITY.**
- 9.1 IN NO EVENT SHALL THE SUPPLIER OR ITS AFFILIATES, SUPPLIERS OR DISTRIBUTORS (OR ANY OF THE FOREGOING ENTITIES' OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS) BE LIABLE FOR ANY INDIRECT DAMAGES, INCLUDING, BY WAY OF ILLUSTRATION AND NOT LIMITATION, LOST DATA, LOST PROFITS, LOST BUSINESS OR LOST OPPORTUNITY, OR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING LEGAL FEES, ARISING OUT OF THE DOWNLOAD, USE, OR INABILITY TO USE THE SERVICES OR SOFTWARE. IN NO EVENT WILL THE MAXIMUM CUMULATIVE LIABILITY OF THE SUPPLIER UNDER THE TERMS, EXCEED THE FEES YOU HAVE PAID TO THE SUPPLIER IN THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO YOUR CLAIM, OR IF NONE PAID, \$100. YOUR ONLY RIGHT OR REMEDY WITH RESPECT TO ANY PROBLEMS OR DISSATISFACTION WITH THE SOFTWARE OR SERVICE IS TO DEINSTALL THE SOFTWARE AND CEASE USE OF THE SERVICES. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION AND EXCLUSION MAY NOT APPLY TO YOU.



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Signed on behalf of the Customer:

Name: _____

Position: _____

Date: _____

Signed on behalf of the Supplier:

Name: _____

Position: _____

Date: _____