



# NETLAYER

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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 "**Netlayer**") and the Customer who orders any of the Services specified herein.

## 1 INTERPRETATION AND PRELIMINARY

1.1 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 –

1.2 words importing –

1.2.1 any one gender include the other gender;

1.2.2 the singular includes the plural and vice versa; and

1.2.3 natural persons include created entities (corporate or non-incorporate) and vice versa;

1.3 the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

1.3.1 "**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;

1.3.2 "**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;

1.3.3 "**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;

1.3.4 "**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;

1.3.5 "**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 'confidential', 'restricted' or 'proprietary' (or any similar designation):

1.3.5.1 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;

1.3.5.2 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;

1.3.5.3 the Disclosing Party's technical, scientific, commercial, financial and market information (including valuations and forecasts), methodologies, formulae and trade secrets;

1.3.5.4 the Disclosing Party's architectural information, demonstrations, plans, designs, drawings, processes, process maps, functional and technical requirements and specifications and the data relating thereto;

1.3.5.5 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

1.3.5.6 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;

1.3.6 "**Content**" means information, software and data, including without limitation, any Personal Data, hypertext markup language files, scripts, programs, recordings, sound, music, graphics or images that are created, uploaded or transferred by the Customer or any user authorised by the Customer;

1.3.7 "**Disclosing Party**" means a Party that discloses Confidential Information;

1.3.8 "**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;

1.3.9 "**Enabling Software**" means any Program and associated materials provided by Netlayer or a third party to the Customer as part of the SaaS to facilitate access to and use of SaaS;

1.3.10 "**Effective Date**" means the date specified in a Services Schedule for the commencement of the relevant Services;

1.3.11 "**Expiry Date**" means the date on which the Service Term expires, as specified in a Services Schedule;

1.3.12 "**Equipment**" means the Rental Equipment and the



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|        | Purchased Equipment;  | 1.3.27 | <b>"Rental Equipment"</b> means any all Materials and <b>Equipment</b> , excluding Purchased Equipment, which is leased to the Customer by Netlayer pursuant to this Agreement and a Purchase Order for the Service Term;  |
| 1.3.13 | <b>"Information Technology Infrastructure"</b> 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;  | 1.3.28 | <b>"Saas"</b> means an offering which Netlayer makes available to the Customer remotely through the internet providing access to (i) functionality of programs, (ii) infrastructure and (iii) technical support;   |
| 1.3.14 | <b>"Installation Date"</b> means the date specified on the Purchase Order for the installation of the Equipment and/or Software necessary for Netlayer to render the applicable Service;  | 1.3.29 | <b>"Services"</b> means the services including but not limited to co-location 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 Netlayer to the Customer pursuant to and as more fully described in one or more Services Schedules;   |
| 1.3.15 | <b>"Intellectual Property"</b> 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 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, | 1.3.30 | <b>"Service Term"</b> means the period commencing on the <b>Effective Date</b> and ending on the Expiry Date;  |
| 1.3.16 | <b>"Copyright Material"</b> means any Material in which copyright subsists;   | 1.3.31 | <b>"Services Schedule"</b> means the document which comprises part of this Agreement and which details, <i>inter alia</i> , the specifications of the Services, Equipment or SaaS to be provided to the Customer;  |
| 1.3.17 | <b>"Licensed Software"</b> means the Licensed Term Software and the Perpetually Licensed Software;  | 1.3.32 | <b>"Signature Date"</b> means the earlier of the date on which this Agreement is signed by the party signing last in time or a Services Schedule is signed by the party signing last in time;  |
| 1.3.18 | <b>"Licensed Term Software"</b> means any and all <b>software</b> , excluding Perpetually Licensed Software, which is licensed to the Customer in terms of this Agreement for the Service Term;   | 1.3.33 | <b>"Site"</b> means the Customer's premises <b>specified</b> in a Services Schedule whereat the Equipment will be installed and/or Services rendered;  |
| 1.3.19 | <b>"Losses"</b> means, without limitation, any claims, <b>losses</b> , damages, costs, charges, liabilities, penalties, interest and fines and expenses (including legal and other professional charges and expenses);  | 1.3.34 | <b>"Supplier's Website"</b> means <a href="http://www.netlayer.co.za">www.netlayer.co.za</a> ;   |
| 1.3.20 | <b>"Material"</b> 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;  | 1.3.35 | <b>"Time and Materials Rate"</b> means the hourly labour rates advised by Netlayer to the <b>Customer</b> 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 Netlayer in rendering such service (including, travel costs, subsistence, costs of replacement parts, if applicable);   |
| 1.3.21 | <b>"Personal Data"</b> means any information relating to an identified or identifiable person;  | 1.4    | Any reference to an enactment is to that <b>enactment</b> as at the date of signature hereof and as amended or re-enacted from time-to-time.   |
| 1.3.22 | <b>"Parties"</b> means in its singular form Customer or Supplier, and in its plural form Customer and Supplier;   | 1.5    | If any provision in a definition is a substantive provision conferring rights or imposing <b>obligations</b> 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.  |
| 1.3.23 | <b>"Perpetually Licensed Software"</b> means all <b>software</b> that is specified in a Purchase Order as a "one time item";  | 1.6    | Subject to clauses 1.7, 1.8 and 1.12, defined terms <b>appearing</b> 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.   |
| 1.3.24 | <b>"Purchased Equipment"</b> means all Materials and <b>Equipment</b> that is specified in a Purchase Order as a "one time item";   | 1.7    | Reference to <b>"days"</b> shall be construed as calendar days unless qualified by the word <b>"business"</b> , in which instance a <b>"business day"</b> shall be any day other than a Saturday, Sunday or public holiday in the Republic of South Africa. Any reference to <b>"business hours"</b> shall be construed as being the hours between 08:00 and 17:00 on any business day. Any reference to <b>"time"</b> shall be based upon South African standard time, being Greenwich Meantime plus two hours. |
| 1.3.25 | <b>"Purchase Order"</b> means a Quotation signed by the Customer;   | 1.8    | This Agreement incorporates the annexes, which annexes   |
| 1.3.26 | <b>"Quotation"</b> means a written quotation issued by Netlayer 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;   |        |  |



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|       | shall have the same force and effect as if set out in the body of this Agreement. In this Agreement, the words “ <b>clause</b> ” or “ <b>clauses</b> ” and “ <b>annex</b> ” or “ <b>annexes</b> ” refer to clauses of and annexes to this Agreement.   | 3.3.3     | Unless otherwise specified in a Services Schedule, Customer may terminate one or more of the Services and/or SaaS specified in a Services Schedule without cause by giving Netlayer 30 (thirty) days written notice to that effect, which termination shall be subject to the following early termination charges –   |
| 1.9   | Unless specifically otherwise provided, any number of days prescribed shall be determined by <b>excluding</b> 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.  | 3.3.3.1   | in the event that the Service is terminated by the Customer at any time prior to the Effective Date applicable to such Service, the Customer shall be liable for the <b>greater</b> of –  |
| 1.10  | 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.   | 3.3.3.1.1 | the actual costs incurred by Netlayer in delivering or installing the Equipment and/or Licensed Software together with any and all early termination charges incurred by Netlayer and payable to any third-party (if any), including but not limited to –   |
| 1.11  | The expiration, cancellation or other termination of this Agreement shall not affect those provisions of this Agreement which expressly provide <b>that</b> 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.  |           | (i) termination charges, penalties,, minimum charges or other non-cancelable charges payable to third party suppliers; and  |
| 1.12  | The words “ <b>include</b> ” and “ <b>including</b> ” means “ <b>include without limitation</b> ” and “ <b>including without limitation</b> ”. The use of the words “ <b>include</b> ” and “ <b>including</b> ” followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.   |           | (ii) salaries and associated employee benefits for Netlayer personnel providing the Services as of the time of termination of the Services for up to 60 (sixty) days pending the redeployment of such personnel; and  |
| 2     | <b>SCOPE OF THIS AGREEMENT</b>   |           |   |
| 2.1   | This Agreement is an enabling agreement under which the Parties may from time to time agree for the provision of Equipment, the Services and/or the SaaS by Netlayer to the Customer in terms of a specific Services Schedule.   | 3.3.3.1.2 | 3 (three) months of the monthly fees associated with such Services;   |
| 3     | <b>TERM &amp; TERMINATION</b>  | 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 the amounts referred to in 3.3.3.1.1 (i) and (ii) and 20% of the monthly fees for the remainder of the Service Term of such terminated Services (were it not for termination); and   |
| 3.1   | <b>Agreement Term.</b> This Agreement shall commence on the earlier of the Signature Date or the date on which the Services or SaaS commence as stipulated in a Services Schedule and shall continue indefinitely until terminated in accordance with the terms hereof.  | 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 agreed by Netlayer.   |
| 3.2   | <b>Service Term.</b> 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.   | 3.3.4     | The liquidated damages referred to under clause 3.3.3 shall become immediately due and payable on the effective date of termination and Netlayer’s right thereto shall be in lieu of damages Netlayer 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 Netlayer’s other rights and remedies. |
| 3.3   | Termination without cause.   | 3.3.5     | It is expressly provided that Netlayer shall have no liability to the Customer for any of the Customer’s equipment (including Purchased Equipment), software or documentation stored by Netlayer after termination of the applicable Service. Risk in and to such equipment, software and/or documentation shall immediately pass to the Customer on termination.   |
| 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 Services Schedule 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 Services Schedule.  |           |   |
| 3.3.2 | Supplier may terminate one or more of the Services and/or SaaS specified in a Services Schedule 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 Netlayer 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. |           |   |



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- 3.4 Termination with cause.
- 3.4.1 Should any Party ("the Defaulting Party") –
- 3.4.1.1 be wound-up, whether provisionally or finally and whether compulsorily or voluntarily, or voluntarily or compulsorily enter into business rescue;
- 3.4.1.2 enter into any arrangement or compromise with any of its creditors; or
- 3.4.1.3 be the subject of any resolution passed for its winding up or dissolution,
- 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 and/or SaaS; or
- 3.4.1.4 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. Netlayer shall have the right in such circumstances to further cancel any and all other Services.
- 3.4.2 Netlayer shall not be held liable for any failure to perform its obligations, whether in whole or in part, as a result of –
- 3.4.2.1 Netlayer withholding performance pending compliance by the Customer;
- 3.4.2.2 the non-availability or incorrect functioning of any system of the Customer;
- 3.4.2.3 the non-availability of any personnel of the Customer;
- 3.4.2.4 the unreasonable delay in the provision of information or decisions required from the Customer;
- 3.4.2.5 the non-availability of computer and/or network resources; or
- 3.4.2.6 the non-availability of data or material defects in data.

## 4 SERVICES

Supplier is hereby appointed on the terms and conditions of this Agreement to render the applicable Services and/or SaaS for the Service Term and Netlayer accepts such appointment. Nothing in this Agreement shall be construed as restricting Netlayer from rendering the Services or any similar services to a third party.

## 5 ISSUE OF PURCHASE ORDERS

- 5.1 If a Customer wishes to order any of the Services and/or SaaS under this Agreement, it shall provide Netlayer with a list of the

type of the Services it wishes to order ("**Written Request for Services**") and shall request Netlayer to furnish it with a Quotation. Netlayer 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 Netlayer is authorised to conduct all reasonable credit checks and searches on the Customer.

- 5.2 **Quotation.** Netlayer 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 Netlayer, 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 Netlayer with a signed copy thereof. The signed Quotation by the Customer shall constitute a Purchase Order.

- 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.

## 6 LICENCE

- 6.1 Licensed Term Software.

- 6.1.1 Netlayer grants to the Customer a revocable, non-exclusive, non-sublicensable, non-transferable, non-assignable right and licence to use the Licensed Term Software in object code form and the Documentation to enable Netlayer to perform its obligations in terms of this Agreement and the applicable Purchase Order for the Service Term.

- 6.1.2 If the Service Term expires, or if a Service is validly terminated, the Customer's right and licence to use the Licensed Term Software applicable to that Service shall cease. Following expiry or termination as aforesaid, the Customer shall, at Netlayer's request, return to Netlayer 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.

- 6.2 Perpetually Licensed Software. Netlayer grants to the Customer a perpetual, revocable, non-exclusive, non-sub-licensable, non-transferable, non-assignable right and licence 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.

- 6.3 General provisions relating to the Licensed Software –

- 6.3.1 The Customer accepts that its rights in respect of the Licensed Software are confined to the licence expressly granted pursuant to this Agreement.

- 6.3.2 The Customer shall not, without Netlayer's express written consent –

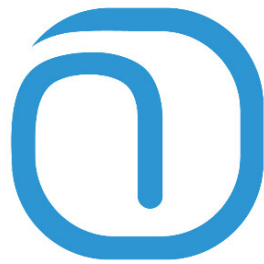
- 6.3.2.1 make copies of the Licensed Software or Documentation;



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| 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     | Use.  |
| 6.3.2.3 | remove or alter any copyright or other proprietary notice on any of the Licensed Software or Documentation.   | 7.3.1   | The Customer shall –  |
| 7       | <b>EQUIPMENT</b>  | 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;   |
| 7.1     | <b>Purchased Equipment.</b>   | 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 Netlayer and/or the original manufacturer thereof;   |
| 7.1.1   | Netlayer sells to the Customer, who purchases from Netlayer, the Purchased Equipment stipulated in the Purchase Order for the price therein stipulated.   | 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 Netlayer, 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; |
| 7.1.2   | <b>Delivery of the Equipment –</b>  | 7.3.1.4 | not do or omit to do anything which may cause damage 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 Netlayer which impacts on Netlayer'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, Netlayer 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. | 7.3.1.5 | ensure that the required stable power supply, cellular connectivity and/or network connectivity will be available on Site for use with the Rental Equipment;  |
| 7.1.2.2 | 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 Netlayer any payments made in respect of the undelivered Equipment within 15 (fifteen) days.   | 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  |
| 7.1.2.3 | 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 Netlayer 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.   | 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 Netlayer.   |
| 7.1.2.4 | Any Deficiency in relation to the Equipment shall not be regarded as a breach of this Agreement by Netlayer and the Customer's right of recourse in this regard shall be against the manufacturer thereof.  | 7.3.2   | The Customer indemnifies Netlayer against all claims, losses, liability, damage or expense that Netlayer 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.  |
| 7.1.3   | 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 to Netlayer in full.   | 7.3.3   | <b>Ownership and Risk –</b>   |
| 7.2     | <b>Rental Equipment.</b>  | 7.3.3.1 | Netlayer 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 item or component with an item or component that fulfils materially the same function.  |
| 7.2.1   | The Customer shall rent from Netlayer all of the Rental Equipment on a month to month basis for the Service Term.   | 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.  |
| 7.2.2   | The cost of renting the Rental Equipment shall be included in the costs of the Services.  | 7.3.3.3 | Netlayer 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                                     |
| 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 Netlayer. The Customer shall furnish Netlayer with a copy of the written notice on demand.  |         |   |



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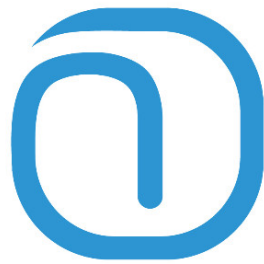
- profits, revenue, data or goodwill) or expense of any nature whatsoever which may be suffered by the Customer or such third party as a result of or which may be attributable, directly or indirectly to the use by the Customer of the Rental Equipment and the Customer hereby indemnifies Netlayer against any claim of whatsoever nature which may be made against Netlayer arising out of the foregoing.
- 7.3.4 All Risks Insurance Cover –
- 7.3.4.1 The Customer shall, prior to collection or delivery of the Rental Equipment, provide Netlayer 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.
- 7.3.4.2 Netlayer 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.
- 7.3.4.3 The Customer shall maintain the policy for as long as the Rental Equipment remains in its possession.
- 7.4 Equipment Support –
- 7.5 The Customer shall, in respect of the Equipment, only be entitled to the technical and/or operational support covered under an IT support Services Schedule.
- 8 **ACCESS TO PREMISES AND COOPERATION**
- 8.1 The Customer shall give Netlayer, its employees and consultants all reasonable access to the Site and the Information Technology Infrastructure during ordinary business hours on work days to enable Netlayer to provide the Services and/or the SaaS.
- 8.2 The Customer acknowledges that such access may cause interruption and disruption to the Customer’s business whilst such Services are being rendered.
- 8.3 If requested by Netlayer (acting reasonably) to shut down or not use the whole or any part of its Information Technology so as to allow Netlayer to provide the Services and/or the SaaS, then the Customer must promptly shut down and cease using the Information Technology until permitted by Netlayer to resume use.
- 8.4 Netlayer acknowledges that in the circumstance of a shutdown, Netlayer 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.
- 8.5 The Customer must ensure that all its staff co-operate with Netlayer, its employees and consultants at all times and provide them with all reasonable support and assistance that may be reasonably required.
- 8.6 The Customer must at all times ensure that the Premises are safe for Netlayer, its employees and consultants to provide the Services.
- 9 **PRICES AND CHARGES**
- 9.1 **Invoicing.** Netlayer shall invoice the Customer for the Services and the SaaS in accordance with the Services Schedule.
- 9.2 Netlayer shall invoice the Customer for Rental and Purchased Equipment and Software as follows –
- 9.2.1 on invoice in respect of the Purchased Equipment and Purchased Software; and
- 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.
- 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 Netlayer reserves its rights to suspend provision of the applicable Service until such time as it receives the said deposit.
- 9.4 All Invoices shall be payable immediately upon receipt thereof via EFT into Netlayer’s bank account designated on the invoice in South African rand free of set-off counterclaim or deduction.
- 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 22 with regard to any disputed costs or charges..
- 9.6 Netlayer shall, be entitled to adjust the fees and charges payable by the Customer as set out in this Agreement and/or under any Purchase Order –
- 9.6.1 annually, on the anniversary date of the Effective Date (or such later period as Netlayer 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);
- 9.6.2 as a result of any regulatory, economical, or government imposed factors that impact on such fees and Charges, provided that Netlayer has given the Customer at least 1 (one) months’ notice thereof; and/or
- 9.6.3 when increases are applied by the wholesaler, distributor or Supplier from whom a portion of the Services are procured, provided that Netlayer has given the Customer at least 1 (one) months’ notice thereof.
- 9.7 Notwithstanding anything to the contrary contained in this Agreement, Netlayer 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 Netlayer) by 10% (ten per centum).
- 10 **CUSTOMER’S OBLIGATIONS**
- 10.1 The Customer acknowledges and understands that the Services and/or SaaS may be subject to further terms and conditions which shall be displayed on Netlayer’s Website. Netlayer shall be entitled at any stage to amend or vary the terms and conditions. Netlayer shall notify the Customer of any change or variation at least 14 (fourteen) 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.
- 10.2 The provisions applicable to Netlayer’s terms and conditions in clause 10.1 shall apply equally to Netlayer’s



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|          | acceptable use policies and privacy policies.  | 11.2.3.5 | contravene any law or regulation to which that Party is subject to;   |
| 10.3     | The Customer shall not take any steps or fail to take any steps which directly or indirectly –   | 11.2.3.6 | contravene any provision of that Party's constitutional documents; or   |
| 10.3.1   | rearrange, disconnect, remove, attempt to repair, or otherwise tamper with the Services or the SaaS, without the prior written consent of Netlayer;  | 11.2.3.7 | 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   |
| 10.3.2   | damage Netlayer's network (or any networks interconnected to Netlayer) or any part thereof;  | 11.2.3.8 | 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.  |
| 10.3.3   | cause Netlayer to breach any of its licence terms or any provision of applicable legislation; or   | 11.2.4   | Each of the representations and warranties given by the Parties in terms of this clause 11 shall –  |
| 10.3.4   | constitutes an abuse of the Services or the SaaS (in the reasonable opinion of Netlayer).  | 11.2.4.1 | 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;   |
| 11       | <b>WARRANTIES.</b>   | 11.2.4.2 | continue and remain in force notwithstanding the completion of any or all transactions contemplated in this Agreement; and  |
| 11.1     | Equipment and Licensed Software warranties –   | 11.2.4.3 | prima facie be deemed to be material and to be a material representation inducing the other Parties to enter into this Agreement.   |
| 11.1.1   | Netlayer 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 Netlayer. | 11.2.5   | The warranties under this clause 11 are the Customer's exclusive warranty in respect of the Equipment, Licensed Software, Enabling Software, the Services and the SaaS and replaces all other warranties or conditions, express or implied, including but not limited to the implied warranty or condition of fit for purpose.  |
| 11.1.2   | The warranty period for Equipment shall be the length of the manufacturer's warranty.  | 12       | <b>BUSINESS RELATIONSHIP OF THE PARTIES.</b>  |
| 11.2     | Services Warranties –  | 12.1     | <b>Independent Contractor Status.</b> 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.  |
| 11.2.1   | Netlayer warrants that –   | 12.2     | <b>Subcontractors.</b> Supplier may subcontract to affiliated or non-affiliated third-party contractors (" <b>subcontractors</b> ") such duties as Supplier deems necessary for its successful performance of its obligations under this Agreement or the applicable Purchase Order. Unless otherwise specified in a Services Schedule, the 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 |
| 11.2.1.1 | it shall use adequate numbers of suitably qualified personnel with suitable training, education, experience and skills to perform the Services in accordance with the description of the Services set out in the relevant Services Schedule; and   |          |   |
| 11.2.1.2 | the SaaS shall, if not altered by the Customer or a third party, when used with properly functioning equipment, shall perform substantially in accordance with its specifications.   |          |   |
| 11.2.2   | General Warranties   |          |   |
| 11.2.3   | Each of the Parties hereby warrants to and in favour of the other that –   |          |   |
| 11.2.3.1 | it is, and will remain for the duration of this agreement, in full compliance with any and all Applicable Laws;  |          |   |
| 11.2.3.2 | it has legal capacity and has taken all necessary corporate action required to empower and authorise it to enter into this Agreement;  |          |   |
| 11.2.3.3 | this Agreement constitutes an agreement valid and binding on it and enforceable against it in accordance with its terms;   |          |   |
| 11.2.3.4 | the execution of this Agreement and the performance of its obligations hereunder does not and shall not –  |          |   |



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|        | shall be a third-party beneficiary of this Agreement.  |        | such insurance policy.  |
| 13     | <b>CHANGES</b>   | 14.3   | Notwithstanding clause 14.1, the Customer shall have unlimited liability in respect of all claims arising out of –  |
| 13.1   | <b>Changes to the Services.</b> During the currency of this Agreement, events may occur which require a change to the nature and scope of the Services or SaaS. Unless otherwise agreed in writing by the Parties no such change shall be implemented unless the Parties comply with the provisions of this clause.  | 14.3.1 | death or personal injury caused by its negligence or that of its employees, agents or subcontractors as applicable; or  |
| 13.2   | <b>Party desiring Change.</b> Should either Party wish to propose any changes to the nature and scope of the Services or SaaS purchased in terms of a Purchase Order, such Party shall address a written document to the other Party detailing the desired changes (" <b>Scope Change Document</b> ").   | 14.3.2 | any breach of, liability arising from, or indemnity given in respect of Confidential Information and and/or Intellectual Property.  |
| 13.3   | <b>Scope Change Document.</b> Should such Scope Change Document be made by –   | 14.4   | Notwithstanding clause 14.1, Netlayer shall not be liable for any direct damages suffered by the Customer, howsoever arising, for –   |
| 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 or SaaS 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.   | 14.4.1 | inadvertent damage, corruption or loss of the Customer's data or equipment which is stored by Netlayer for and on behalf of the Customer (save where expressly provided otherwise in a Services Schedule where Netlayer is required to carry out, create or maintain the back-up of data); or   |
| 13.3.2 | Netlayer, Netlayer 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 Services or SaaS (including on pricing and timeframes).   | 14.4.2 | any loss or damage resulting from internet or server downtime.  |
| 13.4   | If a scope change proposal –   | 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). |
| 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     | <b>NON-DISCLOSURE</b>   |
| 13.4.2 | is rejected by the Customer or Netlayer (as applicable), the Services or SaaS shall continue to be provided by Netlayer on the then existing agreed terms and conditions.  | 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.   |
| 14     | <b>LIMITATION OF LIABILITY</b>   | 15.2   | Nothing in this clause 15 shall prohibit any Party from utilising and/or divulging Confidential Information or any such part of it which –  |
| 14.1   | <b>Direct damages:</b> 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 Netlayer'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.  | 15.2.1 | was lawfully in its possession at the time of receipt;  |
| 14.2   | <b>Where</b> 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 | 15.2.2 | was at the time of receipt part of the public domain or lawfully thereafter became part of the public domain;   |
|        |  | 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;   |
|        |  | 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  |
|        |  | 15.2.6 | the Receiving Party shall require in order to pursue any legal remedy available to it;  |
|        |  | 15.3   | provided that –   |
|        |  | 15.3.1 | the onus shall at all times rest on the Receiving Party to establish that such information falls within such exclusions;  |





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- 15.3.2 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
- 15.3.3 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.
- 15.4 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.
- 15.5 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.
- 15.6 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.
- 15.7 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.
- 15.8 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 simultaneously with the Confidential Information.
- 15.9 This clause 15 shall survive termination of this Agreement.
- 16 **DATA PROTECTION AND SECURITY**
- 16.1 In relation to all Personal Data provided by or through the Customer to Netlayer, the Customer will be responsible as the data controller for complying with all data protection laws which regulate the processing of Personal Data.
- 16.2 The Customer warrants that it shall have obtained all legally required consents, authorisations and approvals and shall make all necessary disclosures before -
- 16.2.1 including and Personal Data in Content; and
- 16.2.2 using the Enabling Software and SaaS..
- 16.3 The Customer confirms and acknowledges that it is solely responsible for any Personal Data that may be contained in
- any Content and that it is solely responsible for determining the purposes and means of processing and Personal Data by Netlayer under this Agreement, including that such processing according to the Customer's instructions shall not place Netlayer in breach of any applicable data protection laws.
- 16.4 The Customer indemnifies Netlayer against any claims brought against Netlayer by any person arising from or in respect of a breach by the Customer of its data protection obligations under this Agreement and the Applicable data protection laws.
- 17 **INTELLECTUAL PROPERTY**
- 17.1 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;
- 17.2 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 Netlayer or to the extent that Netlayer procured a license from a third party to use any Intellectual Property in accordance with this Agreement, such third party.
- 17.3 The Customer retains all right, title and interest in and to the Customer's Intellectual Property. As of the Effective Date, Netlayer 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 or SaaS to the Customer pursuant to this Agreement. Netlayer 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, Netlayer 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.
- 17.4 Netlayer 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.
- 17.5 The Customer hereby indemnifies and holds Netlayer 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 Netlayer or any third party.
- 18 **SUSPENSION OF SERVICES**
- 18.1 Netlayer reserves the right to suspend, change, interrupt or restrict the Services and/or SaaS for technical updates and other maintenance or operational services.
- 18.2 Netlayer reserves the right to immediately suspend or terminate the Services and/or SaaS 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 Netlayer or the Customer for infringement of its Intellectual



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## 19 NOTICES

19.1 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.

## 20 FORCE MAJEURE

20.1 Neither of the Parties shall be liable for a failure to perform any of its obligations insofar as it proves –

20.1.1 that the failure was due to an impediment beyond its control;

20.1.2 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

20.1.3 that it could not reasonably have avoided or overcome the impediment or at least its effects.

20.2 An impediment, as aforesaid, may result from events such as the following, this enumeration not being exhaustive:

20.2.1 war, whether declared or not, civil war, civil violence, riots and revolutions, acts of sabotage;

20.2.2 natural disasters such as violent storms, cyclones, earthquakes, tidal waves, floods, destruction by lightning;

20.2.3 explosions, fires, destruction of machines, of factories and of any kind of installations;

20.2.4 boycotts, strikes and lock-outs of all kinds, go-slows, occupation of factories and premises and work stoppages; or

20.2.5 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.

20.3 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.

20.4 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.

## 21 NON-WAIVER

21.1 This Agreement constitutes the whole agreement between the Parties relating to the subject matter hereof.

21.2 No amendment or consensual cancellation of this Agreement or any provision or term thereof (including this clause 21) 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.

21.3 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.

21.4 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 was negligent or not.

## 22 DISPUTES, APPLICABLE LAW AND JURISDICTION

22.1 Should any dispute, disagreement or claim arise between the Parties ("the dispute") concerning this Agreement, the Parties shall endeavour to resolve the dispute by negotiation. One of the Parties shall invite the other Party in writing to meet to attempt to resolve the dispute within 7 (seven) days from the date of written invitation.

22.2 If the dispute has not been resolved by such negotiation within 14 (fourteen) days of the commencement thereof by agreement between the Parties, then the Parties shall submit the dispute, for final resolution, to arbitration before an arbitrator ("the Arbitrator")

22.3 The Arbitrator shall be such person as mutually agreed upon between the Parties. If the Parties fail to reach agreement regarding the appointment of the Arbitrator within a period of 5 (five) days after the dispute has been submitted to arbitration, either of the Parties may request the Arbitration Foundation of South Africa, or its successor, to appoint the Arbitrator, and the Parties shall be bound by such appointment.

22.4 The then current rules of the Arbitration Foundation of South Africa shall apply to the arbitration *mutatis mutandis*.

22.5 Unless otherwise agreed in writing by all the Parties, any such negotiation or arbitration shall be conducted in English and in Johannesburg.

22.6 The provisions of clauses 22.1 to 22.5 (inclusive) –

22.6.1 Constitute an irrevocable consent by the Parties and no Party shall be entitled to withdraw therefrom or claim at any stage of the proceedings that it is not bound by such proceedings;

22.6.2 Are severable from the rest of this Agreement and shall remain in effect despite the termination or invalidity or alleged invalidity for any reason of this Agreement or any part thereof; and

22.6.3 Shall not preclude any Party from instituting any injunctive proceedings in any appropriate court.

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

22.8 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



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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-client scale.

Agreement you 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.

23 **INDEPENDENT ADVICE**

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

23.1.1 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

23.1.2 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.

24 **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

25 **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.

26 **COST**

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

27 **NON SOLICITATION**

27.1 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 Netlayer's 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 Netlayer's 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, placement fees, 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.

28 **ACCEPTANCE OF THESE TERMS**

By signing a Quotation issued by Netlayer or in any manner using the Services and/or SaaS set out in this

**THUS DONE and SIGNED at** \_\_\_\_\_

on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ in the presence of the undersigned witnesses.

For: Customer

\_\_\_\_\_

Name:

Capacity:

Who warrants that he/she is authorised to do so

**AS WITNESSES**

1. \_\_\_\_\_

**THUS DONE and SIGNED at** \_\_\_\_\_

on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ in the presence of the undersigned witnesses.

For: Netlayer

\_\_\_\_\_

Name:

Capacity:

Who warrants that he/she is authorised to do so