



## SERVICES SCHEDULE

### VOIP SERVICES

This Services Schedule is entered into between Netlayer (Registration No. 2012/116665/07) and the Customer and is governed by the terms and conditions contained in the Netlayer Master Services Agreement which are incorporated herein by reference and are located at <https://www.netlayer.co.za/wp-content/uploads/2019/10/Netlayer-MSA-2019.pdf> ("the Master Services Agreement").

To the extent that there is any contradiction, inconsistency or ambiguity between this Services Schedule and the Master Services Agreement, the terms of the Master Services Agreement shall prevail.

Terms and conditions contained in any purchase order issued by the Customer in respect of the subject matter of this Services Schedule shall not apply to the Services to be provided by Netlayer under this Services Schedule.

The following actions constitute, without limitation, the Customer's approval to be bound by, and to comply with the terms of this Services Schedule –

- (i) the Customer's utilisation of the Services;
- (ii) the Customer registering for Services on our webpage and accepting "I Accept" as part of the registration process; or
- (iii) the Customer's signature of this Services Schedule.

### 1. INTRODUCTION

- 1.1 Netlayer has entered into agreements with electronic communications network service ("ECNS") and electronic communications service ("ECS") licensees for the wholesale purchase of licensed services.
- 1.2 Netlayer wholesales services from the Licensees.
- 1.3 Netlayer resells the licensed services and such other services as are specified in this Services Schedule and in the Purchase Order.

### 2. INTERPRETATION AND DEFINITIONS:

In this Services Schedule, unless the context indicates otherwise or the contrary, the following words and expressions used shall have the meanings assigned to them hereunder –

- 2.1 **"Ancillary or CPE Equipment"** means Voice over Internet Protocol (VoIP) hardware, Network routers, switches and modems, and the reference to "Equipment" shall be a reference to either one of them;
- 2.2 **"Approved Hardware"** means the hardware certified and approved by Netlayer for use with Netlayer's Services;
- 2.3 **"Business Hours"** means the hours between 08:00 and 17:00 Monday to Friday, excluding Public Holidays.
- 2.4 **"Cloud"** means based in a data centre and accessible over an Internet connection;
- 2.5 **"Customer"** means the party so named in the signature section of this Services Schedule;
- 2.6 **"Effective Date"** means the date of installation of the Equipment stipulated in the Purchase Order;
- 2.7 **"Geographic Numbers"** mean geographic specific numbers from the national numbering range such as 021 or 031;
- 2.8 **"ICASA Regulations"** means the regulations published under the Independent Communications Authority of South Africa Act, 2000;
- 2.9 **"Licensees"** means the holder of Electronic Communications Network Service (ECNS) and Electronic Communications Service (ECS) licenses under the Electronic Communications Act 36 of 2005;
- 2.10 **"PBX"** stands for Private Branch Exchange, which is a private telephone network used within a company;
- 2.11 **"Prime Rate"** means the publicly quoted basic rate of interest (expressed as a nominal annual rate compounded monthly in arrears) levied on overdrafts, as published by ABSA Bank Limited from time to time and certified by any of its bank managers (whose certificate shall be prima facie proof of the facts therein stated and whose appointment it shall not be necessary to prove);

- 2.12 **"Public Holiday"** means a public holiday within the meaning of the Public Holidays Act, No 36 of 1994 (as amended);
- 2.13 **"Services"** means the following:
- 2.13.1 the provision of Cloud PBX and voice services; and
  - 2.13.2 the provision of call recording and logging services, as more fully described in a Purchase Order.
- 2.14 **"Service Fees"** means the monetary value charged for the use of Netlayer's Services;
- 2.15 **"Standard Configuration Change Request"** means a standard change in Services requested from the Customer not based on any fault in the Services.
- 2.16 **"Suitable Connectivity"** means a good quality Internet connection with low enough latency, jitter and packet loss for clear voice transmission;
- 2.17 **"Support"** means the provision of training assistance by email or telephone and/or diagnosing a problem directly related to the functioning of the Services; and
- 2.18 **"Troubleshooting Request"** means a request by the Customer to address any problems the Customer is experiencing with the Services.

### 3. NETLAYER'S UNDERTAKINGS IN RESPECT OF THE SERVICES

- 3.1 The Customer appoints Netlayer to provide the Customer with the Services and any Ancillary Equipment or products specified in terms of this Services Schedule and the Purchase Order.
- 3.2 Netlayer shall, under this Services Schedule, install the Equipment and Software as per the Purchase Order necessary for the provision of the Services.

### 4. DURATION

The Services shall commence on the Effective Date and shall continue and endure for the service period stipulated in the Purchase Order unless terminated in accordance with this Services Schedule.

### 5. CUSTOMER'S UNDERTAKINGS IN RESPECT OF THE SERVICES

- 5.1 The Customer shall, at its own cost:
- 5.1.1 comply with any instructions issued by Netlayer which concern its use of the Services, Approved Hardware, Ancillary Equipment, rented equipment or matters related thereto, and which may be required to ensure the satisfactory provision of the Services;
  - 5.1.2 provide Netlayer with all information relating to its use of the Services, Equipment or matters related thereto that Netlayer may reasonably require from time to time; and
  - 5.1.3 provide primary contacts responsible for all administration, including ordering new products and services, submitting change requests and support requests relating to the Customer's account with Netlayer as per Annexure "B".
- 5.2 Netlayer's performance of the Services under this Services Schedule is predicated upon the fulfilment of the following dependencies which should be procured at the Customer's own cost, –
- 5.2.1 installation of Approved Hardware which complies with Netlayer's applicable technical and interconnection standards and requirements;
  - 5.2.2 operational and properly configured access to the Internet with Suitable Connectivity; and
  - 5.2.3 any other dependency identified by Netlayer and advised in writing to the Customer per pre-site inspection.
- 5.3 The Customer agrees that it will use the Services lawfully and that it shall comply with all applicable laws and with Netlayer's Acceptable Use Policies published on [www.netlayer.co.za](http://www.netlayer.co.za).
- 5.4 The Customer hereby indemnifies Netlayer and holds it harmless against any claims by third parties in respect of prohibited or unlawful activities conducted by the Customer.
- 5.5 The Customer shall not take any steps or fail to take any steps which directly or indirectly damages Netlayer's or Netlayer's suppliers' and/or the Licensee's networks (or any networks interconnected to these networks) or any part thereof or impairs or precludes them (and any person with whom it interconnects or shares facilities) from being able to provide its Services in a professional manner; or constitutes an abuse of the Services.
- 5.6 The Customer acknowledges that Netlayer's suppliers' and/or Licensees may, if it is of their reasonable opinion that the Customer is abusing the Services or using the Services unlawfully, suspend or terminate the provision of the Services without notice and without liability on the part of themselves or on the part of Netlayer.
- 5.7 The Customer acknowledges that Netlayer may, if it is of the reasonable opinion that the Customer is abusing the Services or using the Services unlawfully, suspend or terminate the provision of the Services without notice without liability on the part of Netlayer.

## **6. LICENCE**

- 6.1 Subject to the provisions of this Services Schedule, Netlayer grants the Customer a limited, non-exclusive, non-transferable licence to use the Cloud PBX, in order to receive the benefit of the Services.
- 6.2 All rights not expressly granted to the Customer under this Services Schedule are specifically withheld and reserved by Netlayer including but not limited to, rights to any and all patents, source code, copyrights, trademarks, service marks, trade secrets, proprietary processes, and all other intellectual property rights that may be related to, or found in, the Services.

## **7. NETLAYER'S SUPPORT WHEN PROVIDING THE SERVICES**

- 7.1 In providing the Services, Netlayer shall maintain the backend server environment and systems and monitor the servers and processes 24 (twenty-four) hours a day through a combination of human and computer management systems.
- 7.2 Customers using Netlayer's Cloud PBX with Approved Hardware and Suitable Connectivity for voice transmission, including phones and routers, shall receive remote Support by telephone and email at no additional charge to the Customer.
- 7.3 Customers not using Suitable Connectivity for voice transmission, as deemed by Netlayer, may be refused services and/or customer Support.
- 7.4 Customers may be required to connect Approved Hardware to their existing network infrastructure at their premises. Netlayer is not responsible for any network related issues, connection downtime, or any other network related problems as a result of connecting Approved Hardware into the Customer's existing network infrastructure.
- 7.5 If a Customer elects for any reason whatsoever to use hardware that is not approved by Netlayer the Customer assumes all responsibility for the hardware including technical support.

## **8. SYSTEM UPTIME AND THE SERVICE UNDERTAKING**

- 8.1 During the period of this Services Schedule, subject to the provisions of clause 0, the Cloud PBX and voice services will be operational and available to the Customer at least 99% (ninety nine percent) of the time in any calendar month.
- 8.2 Notwithstanding the provisions of clause 8.1, service availability and levels may vary due to conditions beyond the control of Netlayer, including the state, condition and installation of the Customer's Equipment. Services may be subject to interruptions due to factors including but not limited to –
  - 8.2.1 network capacity limitations;
  - 8.2.2 Equipment installation and conditions;
  - 8.2.3 power outages;
  - 8.2.4 network restrictions;
  - 8.2.5 Internet outages; and
  - 8.2.6 Customer Internal Network failure.
- 8.3 Netlayer shall have no obligation to provide the Services during periods of interruption contemplated in clause 9.2 and shall not be liable to the Customer for any losses arising from the interruption in Services.

## **9. NETLAYER'S STANDARD SUPPORT RESPONSE TIMES AND PROCEDURES**

- 9.1 Netlayer shall respond to the Customer's Support-related queries during Business Hours Monday to Friday (08h00-17h00) (excluding Public Holidays).
- 9.2 All support queries need to be emailed by the Customer to [support@netlayer.co.za](mailto:support@netlayer.co.za) or reported by telephone. Refer to [www.netlayer.co.za/info/](http://www.netlayer.co.za/info/) for specifics on the logging and handling of Support queries.
- 9.3 Response Times –
  - 9.3.1 in the event of a Standard Configuration Change Request, Netlayer's initial email or telephonic response time to a confirmed email request shall not exceed 8 (eight) Business Hours of notification of the request to Netlayer. Thereafter, all valid change requests shall be actioned within 16 (sixteen) Business Hours from notification of the request to Netlayer.
  - 9.3.2 in the event of a Troubleshooting Request, Netlayer's initial email or telephonic response time to a confirmed email or telephone request shall be 4 (four) Business Hours from notification to Netlayer and Troubleshoot Request action shall be actioned within a period not exceeding 16 (sixteen) Business Hours.
  - 9.3.3 Remote Support assistance is provided at no charge to a Customer where that Customer is making use of a Netlayer approved network configurations, Approved Hardware and Suitable Connectivity. For all other Customers, support is charged at our standard, market related, hourly support rates, during which Netlayer shall work with the Customer's onsite network support company or personnel. Netlayer undertakes to review the problem(s) and consult on a potential solution but shall be under no obligation to correct the system error.
- 9.4 The management of changes on all PBX systems is offered as an additional service to Customers at an additional monthly cost.
- 9.5 After hours support, which is provided between 17:00pm to 08:00am on business days as well as on weekends, is only available in the event of a critical fault which is preventing the Customer from making operational use of the PBX system which support shall be charged at Netlayer's applicable after-hours hourly rate.

## **10. SERVICE CHARGES AND PAYMENT TERMS**

- 10.1 Netlayer shall charge the Customer for the Services rendered under this Services Schedule and the Customer shall pay to Netlayer the following amounts –
- 10.1.1 the monthly service fee stipulated in the Purchase Order for each month during the currency of this Service Schedule which amount shall be payable monthly in advance;
  - 10.1.2 the calling costs levied monthly in arrears in accordance with the provisions of this clause 10; and
  - 10.1.3 support and maintenance costs on an ad hoc basis at the hourly support rates stipulated in the Purchase Order.
- 10.2 Any change in the Service Fees will precede a 30 (thirty) day notification period.
- 10.3 All fees and costs stipulated are exclusive of Value Added Tax.
- 10.4 Calling costs are calculated from the 24th to the 23rd day of each month and paid monthly in arrears without any deduction whatsoever or withholding for any reason and without any form of set-off, cross-claim or condition.
- 10.5 Service fees are calculated by calendar month and paid monthly in advance and shall be paid without any deduction whatsoever or withholding for any reason and without any form of set-off, cross-claim or condition.
- 10.6 Prepaid services are available and do not require a debit order or deposit.
- 10.7 Netlayer's invoices will be deemed to be correct unless the Customer raises a dispute or query within 45 (forty-five) days of receiving it. If the Customer disputes or queries an invoice it must submit a written claim for the disputed amount, fully documenting the basis of the claim and with sufficient evidence and documentation to support it. The Customer waives the right to dispute or query any charges that it does not dispute or query within the specified time frame. The Customer remains liable to pay all undisputed amounts (unless the parties otherwise agree in writing).
- 10.8 All amounts due in terms of or arising out of this Services Schedule shall, unless paid during banking hours on or before due date, bear interest from the due date to date of payment. Such interest shall be calculated at the Prime Rate plus 1% (one percent) and capitalised monthly in arrears on the balance due.

## **11. SECURITY REQUIRED BY NETLAYER**

- 11.1 The Customer authorises Netlayer to conduct all reasonable credit checks and searches to establish its creditworthiness and undertakes to provide all documents reasonably required by Netlayer.
- 11.2 Netlayer will set a calling credit limit for the Customer. If the Customer reaches or exceeds the usage limit set by Netlayer at any time during the use of the Services, outbound calling will be suspended until the Customer provides additional security or settles all outstanding amounts.
- 11.3 Netlayer may alter or remove the Customer's calling credit limit entirely at its own discretion.
- 11.4 Payments due by Customers shall be made to Netlayer by way of a duly authorised debit order instruction annexed hereto as Annexure "A".
- 11.5 For accounts requiring a credit limit over R2 000.00, a security deposit will be required based on the credit analysis completed by Netlayer.
- 11.6 If the Customer does not sign a debit order and does not wish to use the prepaid services option, a refundable deposit of 100% or more of the total monthly costs including calling credit is necessary for Services to commence.

## **12. ALLOCATED NUMBERS**

- 12.1 The Customer is entitled to port its number in accordance with any relevant ICASA Regulations.
- 12.2 The Customer is prohibited from using its number in any geographical area other the geographical area to which the number is assigned.
- 12.3 The rights in the Geographic Numbers provided shall be deemed to be those of the Customer in accordance with ICASA Regulations, and may be ported prior to termination of this contract, subject to the limitation of liability of Netlayer in clause 14.

## **13. TERMINATION OF SERVICES**

- 13.1 Either party shall be entitled to terminate the Services by providing the other party with thirty (30) days prior written notice to that effect.
- 13.2 Termination in accordance with clause 13.1 shall not affect the terms and conditions set out in any additional contracts signed for Services with Netlayer.
- 13.3 The termination of these Services by the Customer shall be subject to the early termination charges set out in the Master Services Agreement.

## **14. LIMITATION OF LIABILITY**

- 14.1 Nothing contained in this clause 14 or the provisions of clause 14 of the Master Services Agreement, shall limit the Customer's liability in respect of charges incurred for the Services and Calling costs.

14.2 In addition to the provisions of clause 14 of the Master Services Agreement, it is specifically recorded that Netlayer is not liable to the Customer or any other person for:

14.2.1 porting a phone number in accordance with the Customer's request; or

14.2.2 any delays in or failures to implement a request to port; or

14.2.3 any variation of the Customer's phone number; or

14.2.4 rights of use in the Customer's phone number coming to an end.

14.3 Netlayer depends on third party providers, directly or indirectly, to provide its services. To the extent permitted by law, the Customer agrees not to hold third party service providers liable for damages, losses, costs or expenses for any consequential, incidental or indirect losses or for any loss of profits, business, income or interest, or in respect of any claims by third parties arising from or in connection with any act, omission, neglect or default of a third party provider, or us where this is a direct result of the third party provider act or omission, neglect or default.

## 15. SIGNATURE

Each party accepts the terms of this Services Schedule by signing this Service Schedule by hand or, where recognized by law, electronically. By such acceptance each party agrees that no modifications have been made to this Terms of Service. Additional or different terms in any written communication from Customer (such as a purchase order) are void.

In entering into this Services Schedule, neither party is relying upon any representation that is not specified in this Services Schedule including without limitation, any representations concerning 1) estimated completion dates, hours, or charges to provide any Service; 2) the experiences of other customers; or 3) results or savings Customer may achieve.

**Customer Name:**

**Registration Number:**

**Domicilium Address:**

**Site:**

**Effective Date:**

**Signed on behalf of the Customer:**

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

Position: \_\_\_\_\_

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

**Signed on behalf of Netlayer:**

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

Position: \_\_\_\_\_

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

## ANNEXURE A – DEBIT ORDER AUTHORISATION