

Newwave (PTY) Ltd
Block 3, Stratford Office Park
Cedar Rd. Fourways
t. +2711 465 0457 f. +2711 465 0408
www.newwave.co.za



Newwave

TERMS AND CONDITIONS OF PROVISION OF ALL SERVICES

THE CLIENT

Name of company.....
Registration number.....
VAT number.....
Identity document no. (Of director).....
(of Pty)Ltd/cc

COMPANY'S BUSINESS ADDRESS FOR
INSTALLATION (This address shall be the company's chosen
domicilium citandi et executandi unless otherwise
agreed in writing)

.....
.....
.....

.....
(HEREINAFTER "THE CLIENT")

THE PROVIDER

Newwave Communications Pty LTD
Registration Number.....

.....
(HEREINAFTER "THE PROVIDER")

1. EFFECT OF THIS AGREEMENT

- 1.1. These terms and conditions together with the Service Level Agreement, the accepted Proposal and other Annexure (where applicable) hereto shall constitute the whole agreement between the parties and shall Supersede any other records or written documents concerning the subject matter of the contract between the parties. No amendments, alterations or additions thereto shall be of any force or effect unless recorded in writing and signed by duly authorized representatives of both parties.
- 1.2. No waiver or relaxation of any provision hereof shall prevent either party from enforcing its rights strictly in terms of this agreement.
- 1.3. No representation of any nature, not contained herein or in the Schedule hereto, shall have any binding effect on either party.
- 1.4. The provider shall not be bound by any obvious errors in pricing provided.

2. PROVISION OF SERVICES

- 2.1. The provider hereby provides to the client the services set out in detail in the accepted Proposal.
- 2.2. The services specified consist (in part) of the leasing of certain servers to the client at a monthly rental and the maintenance of connectivity to the extent provided for in the Proposal. The level of services rendered by the provider shall be as set out in the annexed Service Level Agreement in detail.

3. PERIOD OF THE AGREEMENT AND TERMINATION THEREOF

- 3.1. The minimum contract term shall be 24 months.
- 3.2. Longer contract periods may apply if so specified in annexure "A" or annexure "B" hereto (where applicable).
- 3.3. The services provided in terms of this agreement and the annexure's hereto and the obligation to pay for those services shall be terminable by either party by written notice furnished to the other party no less than 60 days prior to the anniversary of the signature of the agreement. If no written notice is given the agreement shall automatically renew for further successive periods of 12 months.

4. BREACH

4.1. The following shall constitute a material breach of the agreement:

4.1.1. The failure by the client to make payment of the costs and fees set out herein and in the annexure hereto for a period exceeding 30 days from due date;

4.1.2. Failure by the client to make any payment due to provider on two occasions within a period of 6 months;

4.1.3. The commission of an act of insolvency

4.2. In the event of a material breach as defined above, the provider shall have the right, without prejudice to any other right which it may have in terms hereof to:

4.3. Treat as immediately due and payable any and all amounts due in terms hereof for the balance of the contract period in full, which amounts in damages shall be recoverable upon acceptance of termination of the agreement, irrespective of whether any services are in fact rendered to the client after date of termination.

4.4. Should either party commit any other act or omission, which, in the view of the other party, constitutes a breach of the agreement, the party complaining of breach shall give 10 days written notice of such breach and an opportunity to the opposing party to remedy same within the period.

4.4.1. If within 20 days the alleged breach has not been remedied, the complaining party shall be entitled to cancellation of the contract and to take such other legal steps as it may be entitled to take.

4.5. The parties record specifically that the failure by the provider to deal with any one incident precisely within the agreed Response time set out in the annexure hereto shall not constitute a material breach of the agreement or entitle the client to cancellation.

Non compliance with the following requirements will also constitute a breach :

4.5 The requirement that the customer will not knowingly create, store or disseminate any illegal content;

4.6 The requirement for the customers commitment to lawful conduct in the use of the services, including copyright and intellectual property rights;

4.7 The requirement that the customer undertakes not to send or promote the sending of spam.

4.8 The requirement of compliance with Newwave communications Africa right to remove any content hosted by that member which it considers illegal or for which it has received a take-down notice.

4.9 The requirement that the customer comply with the terms and conditions, Acceptable Use Policy or any other contractual obligations." or "Preferred" requirements

4.9.1 The requirement to adhere to preferred" requirements the standard terms and conditions refer to a commitment listed below.

4.9.2A commitment that recipients of the service shall adhere to the provisions of Chapter 7 of the ECT Act (the consumer protection provisions), if applicable;

4.9.3 A commitment that recipients of the service shall adhere to the provisions of Chapter 8 of the ECT Act (the privacy provisions), if applicable, and that it shall have a privacy policy which is prominently displayed on and accessible from the client's website;

4.9.4 A commitment that a client shall have adequate safeguards to assist in the control and monitoring of minor's access.

5. RESERVATION OF OWNERSHIP AND IP

5.1. The servers shall remain the property of the provider at all times before during and after the contract period set out herein, and the client remains liable for all insurance on site at customer's premises in respect of the goods supplied.

5.2. It is recorded that the software configuration of all servers and any other software necessary for the use of the Server in the rendering of services to the client is the Intellectual Property of the provider. The client undertakes not to modify or in any way tamper with the software configuration of the server.

5.2.1. Client agrees that it shall be liable for a re-installation fee in full:

5.2.1.1. Should the client in any way modify or deal with the software of the server or allow any person other Than the provider to do so, or

5.2.1.2. Should any faults in either hardware or software provided by the provider arise within 3 days of the Opening of or working upon the hardware or software by any persons other than the provider, or

5.2.1.3 Should the hardware or software provided by the provider be stolen or damaged for any reason whatsoever.

5.3. It is recorded further that any and all software, diagrams, or information used in databases shall be and remain The intellectual property of the provider, whether in terms of copyright or otherwise. The Client undertakes not to Interfere with or dilute the intellectual property of the provider in any form and without limitation undertakes not To reverse engineer, decompile or modify any equipment or software owned by the provider or its suppliers and Not to allow such conduct by any person.

6. COSTS AND PAYMENT

6.1. The client shall make payment of all amounts detailed in the Proposal provided; without deduction or set-off.

6.2. All prices quoted in the Proposal or Cost Schedule or by way of quote shall be exclusive of VAT.

6.3. The installation fee, quoted in the Proposal, will be paid in advance, before the commencement of project.

6.4. The monthly solution rental amount will become due once the server is installed on-site and working according

to the Schedule of Services detailed in the Proposal.

6.5. The Client shall make payment of monthly rentals, whether for the server rentals, domain and email hosting or otherwise by means of a monthly debit order/EFT/Deposit and all such rentals shall be payable on the first of a month, monthly in advance.

6.6. Rentals for servers shall escalate annually on the anniversary of the agreement by an amount of 8% of such rental;

6.7. The client shall not be entitled to set off any amount, however arising, without the prior written consent of the provider.

6.8. Client shall be liable for any bank charges incurred by the provider in the event of monthly debit orders being returned for any reason.

6.9. The calling out of any staff member of the provider to perform tasks not included as part of the leased service specified in the accepted Proposal shall be paid for by the client at a rate of R395.00 per hour excluding VAT. Invoices in respect of such call outs shall be provided to the client upon rendering of such service and paid by the client within 7 days of invoice.

6.10. A reinstatement fee at the same charge as that specified in the Proposal for installation, shall be payable should the provider be obliged to replace or repair the server leased to client by provider, which arises out of physical harm or electrical damage to the server.

6.11. Should the installation of any hardware or software have to be physically performed by the provider's staff outside the metropolitan areas of Johannesburg, Pretoria or Cape Town, the client shall be liable for the reasonable daily Subsistence and travel allowances paid to technicians, which shall be payable for the duration of the period of installation and testing.

6.12. Should installations of any software or hardware be undertaken **after hours** by the special request of the client the minimum charge in respect of such installations shall be R300.00 per hour (ex VAT) irrespective of the amount quoted by the provider to the client or specified in annexure "A" (where applicable).

6.13. Any sum / s due to the provider and not paid on due date in terms hereof shall bear interest at the prime overdraft rate charged by the Standard Bank of South Africa Limited from time to time, calculated and compounded monthly in advance.

6.13.1. A certificate by any employee of the Standard Bank of South Africa who appears prima facie to be authorized to do so, confirming the percentage currently charged as the prime overdraft rate of that bank shall be prima facie proof of such rate of interest.

6.14. Should the provider be obliged to institute proceedings for the recovery of any sums due by the client in terms of this agreement, the client hereby undertakes liability to pay legal costs on the attorney and client scale, together with tracing costs and collection commission.

7. CONNECTIVITY

7.1. It is recorded that the services rendered by the provider do not include the carriage of data messages by way of telephone, Diginet, ADSL, wireless or other physical connections (hereinafter referred to as "carrier services").

7.2. The provider shall render the connectivity services specified in the accepted Proposal and Service Level Agreement on the terms and conditions set out more fully therein.

7.3. It is specifically recorded that the extra line provided on ADSL services shall be used exclusively for the remote support the provider contracts to provide.

7.4. Notwithstanding the agreement to provide the connectivity services detailed, the provider specifically excludes any liability for any damages suffered by a client arising from:

7.4.1. Physical or electrical damage to the server at the client's premises, howsoever sustained;

7.4.2. Failure of carrier services;

7.4.3. Power surges or

7.5. The Service Level Agreement details the level of maintenance of connectivity that the provider undertakes to provide. Maintenance thereof is provided to the level detailed therein only insofar as the provider provides the connectivity.

7.6. All server support detailed in the annexure (unless otherwise recorded in writing) shall be included in the monthly rental charges for the server UNLESS the client has no UPS protection for such servers. In the event that a server does not have a UPS device attached thereto server support shall be rendered at additional cost to the client.

7.7. Newwave undertake to continuously look towards more cost effective technologies that might be relevant for the client and will endeavour to pass the benefit of these on to the client.

7.8. Performance degradation will be serviced by implementing additional ADSL lines as might be required in relation to the number of users at the branch on a case by case basis.

8. WARRANTIES GIVEN

8.1. The manufacturer warrants the Server hardware free from defect for a period of one year from date of installation.

8.2. The provider undertakes that products supplied are warranted against defects in workmanship and material in the manufacture of such products evidencing themselves under reasonable normal and proper use of such products. The provider reserves the right to inspect products alleged to be defective for evidence of misuse or abuse and to determine whether in the sole discretion of the provider, defects arose from such reasonable, normal and proper use.

9. SECURITY

9.1. The provider shall install and update the Server/s with the highest level of Open Source security software, consistent with the client’s needs as detailed in the accepted Proposal.
9.2. The provider cannot furnish an absolute guarantee of the security of a network or other connectivity service rendered.

10. EXCLUSIONS FROM LIABILITY

10.1. The provider shall not be liable for economic loss or consequential damages suffered by the client arising from a loss of data or information howsoever arising or from an inability to transmit, use or receive any data or information, or from any virus, worm or other corruption of data or information.

11. CONFIDENTIALITY OF PROPOSAL OFFER AND PRICING

11.1. All information, particularly prices and details of the configuration offered, contained in documents furnished by the provider to the client by way of a proposal or quotation whether contained herein or given to the client prior to, during or after the conclusion of this agreement shall be deemed to be the confidential information of the provider.
11.2. The client hereby acknowledges that:
11.2.1. This confidential information is not readily or publicly available;
11.2.2. The information has economic value to the provider;
11.2.3. The dissemination of the information would cause the provider substantial economic loss;
11.3. The client therefore undertakes in favour of the provider not to copy, publish or disseminate the information in any fashion and to make it available only to those persons who are bound by the same provisions of confidentiality.

12. DOMICILIUM & JURISDICTION

12.1. The client shall be deemed to have chosen domicilium citandi et executandi at the address set out in paragraph 1 above and to have submitted and agreed to the jurisdiction of the High Court of South Africa or within the sole discretion of the provider the Magistrate’s Court even though the amount in dispute or the subject of litigation might exceed the jurisdiction of the Magistrate’s Court relating to cause of action in respect of any dispute or litigation arising between the provider and the client.

THUS DONE AND SIGNED at (*place*)
on this (*day, month, year*) in the presence of the undersigned witnesses.

Witnesses:

1

2

(*Signatures of witnesses*)

.....

(*Signature of CLIENT*)

Witnesses:

1

2

(*Signatures of witnesses*)

.....

(*Signature of PROVIDER*)