

## IMPORTANT NOTICE

By ordering, installing, connecting or making use of MacroLan's goods or services, or by indicating your acceptance of this Agreement in any other way, you agree to be bound by MacroLan's Standard Terms as well as MacroLan's Acceptable Use Policy and the Service Terms applicable to the good or service concerned.

Your attention is drawn in particular to clauses rendered in bold capitals in the MacroLan Standard Terms. What follows is a summary for your convenience and does not form part of the agreement between you and MacroLan. It is your responsibility to read the clauses that are referred to:

- You consent to a credit check (clause 6.1).
- You are responsible for your own actions using the services provided by MacroLan (clause 8.1).
- You are responsible for all hardware and software required to make use of the services provided by MacroLan unless otherwise agreed (clause 8.2).
- You agree to comply with MacroLan's Acceptable Use Policy (clause 8.4).
- You warrant that you have the right to use any material transmitted, accessed, stored, displayed or reproduced using the service provided by MacroLan (clause 11.7).
- You consent to MacroLan monitoring your traffic data for accounting purposes and to ensure that the MacroLan system is operating properly (clause 14.1).
- As soon as equipment provided by MacroLan leaves MacroLan's possession, risk passes to you (clause 17.4.)
- If any equipment owned by MacroLan is located on premises you do not own, you must reimburse MacroLan if the landlord attaches the equipment as part of a rental dispute (clause 18.3).
- MacroLan will not be liable to you if you suffer loss as a result of your use of the services provided by MacroLan or which arises from the agreement between you and MacroLan (clause 19).
- You indemnify MacroLan against any claim made against MacroLan as a result of any unlawful act that you may commit, or your use of the goods or services provided by MacroLan other than as allowed in this Agreement (clause 20).

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## **1. Parties**

- 1.1. "MacroLan" is MacroLan (Pty) Ltd a company incorporated in terms of the company laws of the Republic of South Africa with registration number 2013/137402/07

Address: Unit 1, The Waverly Business Park, Wycroft Road, Mowbray, 7700

Email: info@macrolan.co.za

Facsimile number: 086 6886251

- 1.2. "The Customer" or "You" is the party described as such on any Service Order executed between you and MacroLan with contact details as entered on the Service Order.

## **2. How the Agreement Works**

- 2.1. The Goods and Services that MacroLan will provide to the Customer will be described in Service Orders.
- 2.2. This Agreement applies to all Service Orders.
- 2.3. More details of particular Goods or Services may be contained in Service Terms.
- 2.4. The Service Order(s), Service Terms, and this document together form the Agreement between MacroLan and the Customer. If the Parties enter into a Service Level Agreement or agree to an annexure to any of these documents, these will also form part of the Agreement.
- 2.5. If there is any conflict between any of these documents, they will be interpreted in descending order of precedence as follows: Standard Terms (this Agreement), Service Terms, Service Order, and Acceptable Use Policy, unless otherwise expressly stated in writing.
- 2.6. The meanings of any capitalised words in this document are found under the Glossary at the end of this document.

## **3. Service Orders**

- 3.1. MacroLan will provide the Goods and Services to the Customer as described in Service Orders in terms of the Agreement.
- 3.2. A Service Order may be signed in hard copy (in counterparts or not), entered into via the MacroLan Website, per email or by another method.
- 3.3. Each Service Order (read with the other documents mentioned above) will be a separate contract between the Customer and MacroLan (unless the Service Order is amended or renewed by another Service Order).
- 3.4. The terms of one Service Order will not apply to another, unless a Service Order amends or renews an existing Service Order or adds Goods or Services to an existing Service Order.

## **4. Term of Agreement and Renewal**

- 4.1. The Agreement will be in force from the date on which the Customer signs or indicates acceptance of the terms of this Agreement, and will continue in force for the period stated on the applicable Service Order. If the Service Order or Service Terms do not specify a time period, the Agreement will be in force for 12 months.

- 4.2. Where the commencement of a Service is delayed, the termination date of the Agreement will be calculated from the date that the Service commenced.
- 4.3. If the Customer is a natural person, then MacroLan will give the Customer written notice that the current period of the Agreement is coming to an end. This notice must be given not more than 80 and not less than 40 Business Days before the expiry of the current period, and will state the following:
  - 4.3.1. The expiry date of the current period,
  - 4.3.2. any material changes that will apply to the Agreement beyond the expiry date, and
  - 4.3.3. the Customer's right either to terminate the Agreement or renew for a further period.

If the Customer doesn't either terminate or renew the Agreement, it will automatically renew on a month-to-month basis, subject to any changes described in the written notice, until terminated by either party on one month's notice.

- 4.4. If the Customer is not a natural person, then the Agreement will automatically renew on a month-to-month basis at the end of its period, subject to any changes made to the Standard Terms or Service Terms, until terminated by either party on one month's notice.

## **5. Amendment of Terms**

- 5.1. If the Agreement is fixed-term, then MacroLan may amend the Standard Terms and the Service Terms at any time, but these changes will only come into force when the Agreement is next renewed.
- 5.2. If the Agreement renews on a month to month basis, then:
  - 5.2.1. MacroLan must give at least one calendar month's notice of an amendment, which will become effective at the beginning of the first calendar month after the notice period has expired; and
  - 5.2.2. If the Customer objects to any amendment, it may terminate the Agreement immediately during the notice period.
- 5.3. The amended documents will be posted on the MacroLan Website, and MacroLan will as soon as possible after posting the amendments make reasonable efforts to advise the Customer of them by email. The Customer also has a duty to keep itself informed of the latest version of the above documents by accessing the MacroLan Website on a regular basis.

## **6. Initiation**

- 6.1. **THE CUSTOMER CONSENTS TO MACROLAN CARRYING OUT A CREDIT CHECK ON THE CUSTOMER AT ANY APPLICABLE CREDIT BUREAU, AND MAY MAKE THE PROVISION OF THE GOODS OR SERVICES DEPENDANT ON ITS SATISFACTION WITH THE RESULTS.**
- 6.2. If the Customer is a juristic person, MacroLan may require one or more of its officers to stand surety for the Customer's obligations under this Agreement. Even if the Agreement has commenced, MacroLan may withhold providing the Services until the surety has been signed.

- 6.3. Depending upon the Service provided, MacroLan may be obliged under RICA to obtain certain information from the Customer, and MacroLan may withhold or suspend providing Services until the Customer has provided the necessary information to MacroLan.
- 6.4. If the Customer has not complied with a requirement of this clause 6, MacroLan may delay providing the Goods or Services until the Customer has complied. If the Customer does not comply within a reasonable period, MacroLan may terminate this Agreement and will not be liable for any damage that the Customer may suffer as a result.

## **7. Fees and Payment**

- 7.1. The Customer must pay the Fee set out in the Service Order for the Goods and Services, or if the Fee has been changed, that new Fee.
- 7.2. The Customer must pay all Fees by way of debit order unless otherwise agreed.
- 7.3. Unless otherwise agreed in writing:
  - 7.3.1. Billing will commence on the date that Service provision commences.
  - 7.3.2. Service Fees will be payable in advance; excess usage will be payable monthly in arrears.
  - 7.3.3. Fees in respect of the procurement and installation of Equipment will be invoiced upon receipt of the applicable Service Order and must be paid before MacroLan will provide the Equipment and/or Service.
  - 7.3.4. Fees in respect of *ad hoc* Services will be payable monthly in arrears.
  - 7.3.5. If the Customer is to pay Fees in arrears, these will be invoiced monthly in arrears and must be paid within 30 (thirty) calendar days of the date of the invoice.
  - 7.3.6. If the Customer is to pay Fees on a prepaid basis, payment will be made as set out in clause 7.4.
  - 7.3.7. All amounts payable are quoted exclusive of VAT, unless otherwise specified.
- 7.4. If the Customer is to pay Fees on a prepaid basis the following will apply:
  - 7.4.1. Payment for the Services must be made to MacroLan in advance, and credited to the Customer's account with MacroLan.
  - 7.4.2. Fees will be deducted from the Customer's account with MacroLan on a declining-balance basis.
  - 7.4.3. If the balance in the Customer's account with MacroLan reaches zero, the Services will be suspended until the Customer has credited its account appropriately.
  - 7.4.4. Credit in the Customer's account will be valid for a period of 6 (six) months from the date of payment, after which the Customer's account will no longer be valid and will only be paid back to the Customer on written request by the Customer.
  - 7.4.5. Credit in the Customer's account will not accrue any interest for the benefit of the Customer.

- 7.4.6. MacroLan may from time to time by publication on the MacroLan Website set a minimum balance for the Prepaid Account (failing which the minimum balance will be zero), and / or a maximum amount by which the Prepaid account may be in credit.
- 7.5. Interest will be charged on any amount that remains unpaid by the Customer beyond the due date of payment:
- 7.5.1. The interest rate will be 2% (two percent) above the prime overdraft rate (percent, per annum), up to a maximum effective rate of 2% per month.
- 7.5.2. The prime overdraft rate will be as charged by MacroLan's bankers at the time, which will be evidenced by a certificate issued by any manager of that bank, whose authority it shall not be necessary to prove.
- 7.5.3. The interest will be calculated on a daily basis from the due date of payment to the date of actual payment, both days inclusive, and will be compounded monthly in arrears. The Customer agrees and undertakes to pay the interest.
- 7.6. MacroLan may suspend providing Services for which any amount is outstanding on 5 (five) Business Days written notice to the Customer, unless the Customer has lodged a billing complaint with MacroLan. If a Service is suspended for any reason, the Customer will still have to make payment of further Fees for that Service or any other amounts due to MacroLan.
- 7.7. If a particular Service is provided by calendar month, and the commencement date for that Service is not the beginning of a calendar month, the Fee for that first month will be reduced proportionately.
- 7.8. MacroLan may decrease the Fees charged for Services at any time, and will increase Fees only when this Agreement is renewed. If the Agreement is for an indefinite period, then:
- 7.8.1. MacroLan must give at least one calendar month's notice of a price increase, which will become effective at the beginning of the first calendar month after the notice period has expired; and
- 7.8.2. If the Customer objects to the price increase, it may terminate the Agreement immediately during the notice period.
- 7.9. If MacroLan agrees to perform any task that is not listed in a Service Order, then the Customer must reimburse MacroLan for all reasonable expenses that are necessarily and actually incurred by MacroLan and MacroLan's Personnel in doing so. These expenses will include but are not limited to travelling, subsistence, goods and services purchased on the Customer's behalf, communications, stationery, report and presentation material.
- 7.10. MacroLan may allocate all amounts received from the Customer as follows: firstly towards interest and reimbursement of expenses, secondly to Fees payable for Services rendered, and thirdly to Fees payable to purchase Goods.
- 8. Use of Services**
- 8.1. THE CUSTOMER ACCEPTS THAT IT IS RESPONSIBLE FOR ALL OF THE CONSEQUENCES OF ITS OWN ACTIVITIES AND THOSE OF ITS EMPLOYEES, OFFICERS, AGENTS, INDEPENDENT CONTRACTORS AND ALL OTHERS UNDER ITS CONTROL WHEN USING THE SERVICES.**

- 8.2. **THE CUSTOMER IS RESPONSIBLE FOR OBTAINING, INSTALLING AND MAINTAINING ALL HARDWARE AND SOFTWARE REQUIRED TO ACCESS THE MACROLAN SYSTEM AND MAKE USE OF THE SERVICES, UNLESS OTHERWISE AGREED IN WRITING.**
- 8.3. The Customer must make use of the Services in a considerate and lawful way, and MacroLan has developed an Acceptable Use Policy that contains reasonable rules of conduct for the use of the Service. The Acceptable Use Policy as amended is available for viewing on the MacroLan Website.
- 8.4. **THE CUSTOMER MUST COMPLY WITH THE ACCEPTABLE USE POLICY AND ENSURE THAT ANYONE UNDER ITS CONTROL THAT USES THE SERVICES ALSO DOES SO. A BREACH OF THE ACCEPTABLE USE POLICY IS A BREACH OF THE CUSTOMER'S DUTY TO ACT IN A CONSIDERATE AND LAWFUL WAY.**
- 8.5. Network security threats evolve quickly and behaviours change as technology changes. As a result, MacroLan must be able to amend the Acceptable Use Policy at any time, and reserves the right to do so. Because the Customer has a general duty to act in a considerate and lawful way, an amendment to the Acceptable Use Policy is not an amendment of this Agreement.
- 8.6. MacroLan may use upstream Suppliers in providing certain Services, which may maintain their own acceptable use policies. MacroLan will inform the Customer if this is the case. The Customer agrees to abide by these policies in using the relevant Services. MacroLan may treat a breach of a Supplier's acceptable use policy as if it were a breach of MacroLan's Acceptable Use Policy.

## **9. Personal Information**

- 9.1. In this Agreement, the terms "Data Subject", "Personal Information" and "Processing" have the meanings assigned to them in the Protection of Personal Information Act 4 of 2013.
- 9.2. It is hereby recorded that with regard to Processing of Personal Information,
- 9.2.1. MacroLan and the Customer are each responsible for complying with their respective obligations under applicable laws governing the processing of Personal Information.
- 9.2.2. The Customer remains solely responsible for obtaining Data Subjects' consent for MacroLan to process Personal Information for purposes consistent with providing the Services, or otherwise ensuring the lawfulness of such Processing in accordance with applicable law and warrants to MacroLan that it will do so.
- 9.3. It is hereby recorded that with regard to trans-border Personal Information flows:
- 9.3.1. The Customer warrants that it has obtained the Data Subjects' consent to MacroLan transferring Personal Information across country borders for purposes consistent with providing the Services, alternatively that it is lawful for the Personal Information to be transferred in that way.
- 9.3.2. The Customer is solely responsible for determining that any transfer of Personal Information across a country border complies with the applicable laws.

## 10. Consulting Services

The Customer may request MacroLan to provide Consulting Services to the Customer during the term of this Agreement, either on an *ad-hoc* basis or in terms of a Service Order. Unless otherwise agreed between the Parties in writing, MacroLan will charge the Customer the Consulting Services Fee for providing these Services.

## 11. Intellectual Property

- 11.1. Nothing in this Agreement will be interpreted as granting either MacroLan or the Customer a license to deal in any way with any Intellectual Property owned by the other, nor will anything be construed as an assignment of Intellectual Property to the other, unless otherwise agreed in writing.
- 11.2. If MacroLan provides the Customer with Software as part of providing a Service, and it holds Intellectual Property rights to the Software, it grants the Customer a non-exclusive, non-transferable licence to use that Software:
  - 11.2.1. only for the Customer's own purposes;
  - 11.2.2. for making use of the Services; and
  - 11.2.3. for the duration of this Agreement and subject to its terms.
- 11.3. If MacroLan provides the Customer with Software owned by a third party, the Customer must comply with all license terms imposed by the third party when it uses the Software. These terms include any terms appended to a Service Order.
- 11.4. Copyright in any Software or other works created by MacroLan in terms of this Agreement will vest in MacroLan. MacroLan will assign all right, title and interest to the Software or other works to the Customer as soon as reasonably possible after it has received payment in full of the related Fee, and undertakes to do all things and execute all documents required to give effect to the assignment.
- 11.5. The Customer is specifically prohibited from reverse engineering, disassembling, decompiling or using any method to discover the source code of any Software provided in terms of this Agreement (or attempting to do so), where the Intellectual Property is not owned by the Customer.
- 11.6. The Customer undertakes to comply with all intellectual property laws, and to do nothing related to or connected with this Agreement or its use of the MacroLan System which may infringe the Intellectual Property rights of MacroLan or any third party.
- 11.7. **THE CUSTOMER WARRANTS THAT IT EITHER OWNS THE INTELLECTUAL PROPERTY RIGHTS TO ALL MATERIAL TRANSMITTED, ACCESSED, STORED, DISPLAYED OR REPRODUCED USING THE MACROLAN SYSTEM, OR THAT IT HAS THE PERMISSION OF THE OWNER OF THE MATERIAL TO MAKE USE OF THAT MATERIAL IN THAT WAY.**
- 11.8. MacroLan will have the right to make copies of the Customer Data if this is necessary to provide a Service.
- 11.9. While providing the Services, MacroLan may have one or more Internet Protocol ("IP") addresses allocated to the Customer.

- 11.9.1. The Customer must put the assigned IPs to the use specified or implied in the Service Order, and will not put them to another use without the express written consent of MacroLan.
- 11.9.2. The Customer acknowledges that IP addresses are not property and cannot be owned. As a result the Customer has no right or expectation of a right to any IP address assigned to it.
- 11.9.3. On termination of this Agreement or the relevant Service Order, any IP Addresses assigned to the Customer may be removed from the Customer, and the Customer will have no recourse against MacroLan or any third party as a result of any loss sustained as a result.

## **12. Security**

- 12.1. MacroLan will implement measures in line with Good Industry Practice to ensure the security of the MacroLan System and the physical security of the MacroLan Premises, but gives no warranty that breaches of security will not take place.
- 12.2. If the Customer discovers a security violation, or thinks that a security violation is imminent, it must immediately notify MacroLan.
- 12.3. If the Customer suffers damage as a result of loss or corruption of Customer Data through a security violation, it will be liable for the damage if the violation was the Customer's fault.
- 12.4. The Customer must not do anything that may prejudice the security of the MacroLan System, and must take all reasonable measures necessary to ensure that:
  - 12.4.1. no unlawful access is gained to the MacroLan Premises or the MacroLan System;
  - 12.4.2. no Malicious Code is introduced into the MacroLan System;
  - 12.4.3. the Customer Data is safeguarded; and
  - 12.4.4. any Internet Protocol ("IP") address range assigned to the Customer cannot be attacked by third parties.
- 12.5. If a security violation occurs, or MacroLan is of the view that a security violation is imminent, MacroLan may take whatever steps it considers necessary to maintain the proper functioning of the MacroLan System including without limitation:
  - 12.5.1. changing the Customer's access codes and passwords (or those of any user of the MacroLan System),
  - 12.5.2. suspending the Services, and
  - 12.5.3. preventing access to the MacroLan System.
- 12.6. MacroLan takes reasonable measures to provide disaster recovery but does not warrant that recovery will be successful or that it will be completed within any time limit.
- 12.7. The Customer must give its full cooperation to MacroLan in any investigation that may be carried out by MacroLan regarding a security violation.

- 12.8. If the Customer is providing any service to third parties that makes use of the MacroLan System, the Customer must contractually bind those third parties to equivalent terms regarding security as are set out in this clause 12.

### **13. Suspension of Service**

- 13.1. MacroLan is entitled to suspend provision of the affected Service to the Customer where:
- 13.1.1. the Customer's pre-paid account balance falls below the minimum balance described in clause 7.4.6;
  - 13.1.2. a court of competent jurisdiction so orders;
  - 13.1.3. MacroLan needs to carry out Emergency Maintenance;
  - 13.1.4. the Customer has not made payment of as set out in clause 7.6;
  - 13.1.5. where the Customer is in consistent breach of the Acceptable Use Policy (clause 8.4),
  - 13.1.6. MacroLan becomes aware of a potential threat to the proper operation or security of the Service as described in clause 12 (Security); or
  - 13.1.7. MacroLan has reasonable grounds to believe that the Services are being used fraudulently, or illegally, or in violation of the terms of this Agreement.
- 13.2. MacroLan is entitled to suspend Service as set out in clause 13.1 immediately and without notice. In the case of grounds set out in clauses 13.1.5 to 13.1.7 MacroLan must provide the Customer with at least 30 (thirty) days' notice of such suspension, unless the circumstances are such that immediate suspension is necessary to avoid loss to MacroLan, the Customer or any third party.
- 13.3. The period of suspension will be that which is reasonable under the particular circumstances that gave rise to the suspension.
- 13.4. Reconnection of any Service suspended in terms of clauses 13.1.4 and 13.1.5 will be subject to a reconnection Fee which will be published on the MacroLan Website from time to time.

### **14. Data & Content**

- 14.1. WHILE MACROLAN RECOGNISES THE CUSTOMER'S RIGHT TO PRIVACY OF ITS DATA, THE CUSTOMER CONSENTS TO MACROLAN MONITORING THE CUSTOMER'S TRAFFIC DATA USING THE MACROLAN SYSTEM FOR ACCOUNTING PURPOSES AND TO ENSURE THAT THE MACROLAN SYSTEM IS OPERATING PROPERLY.**
- 14.2. The Customer must not upload to, store on or transmit any data or content via the MacroLan System that is unlawful, harmful, or in breach of the Acceptable Use Policy.
- 14.3. Where the Customer's use of a Service leads to the transmission of data to or from the Republic of South Africa, the Customer acknowledges that it has a duty to comply with any relevant statutory provisions dealing with data privacy either in the Republic of South Africa or in any foreign country to which the data is transmitted.
- 14.4. MacroLan has no knowledge of or interest in data that the Customer may transmit via, store on or access from the MacroLan System. MacroLan also has no duty to monitor any content

made available or published through the MacroLan System, unless required under clause 15 (Statutory Compliance).

## **15. Statutory Compliance**

15.1. MacroLan is obliged to comply with certain statutory provisions including, but not limited to, those set out in the following Acts (and their associated regulations):

15.1.1. the Films and Publications Act 65 of 1996;

15.1.2. the Electronic Communications and Transactions Act 25 of 2002;

15.1.3. the Regulation of Interception of Communications and Provision of Communication-related Information Act (Act 70 of 2002), and

15.1.4. the Electronic Communications Act 36 of 2005.

15.2. MacroLan's compliance with these statutory provisions may require measures that would otherwise be infringements of the Customer's privacy, such as interception of the Customer's communications or the examination of Customer Data. No action will lie against MacroLan for any damages that the Customer may suffer as a result of these measures.

## **16. Loss of License**

16.1. If MacroLan cannot continue with provision of any Service because any license, permit, certificate consent, exemption or other necessary legal requirement is withdrawn, MacroLan must make best endeavours to provide an alternative service to the Customer within 10 (ten) Business Days. It may do this either by utilising another of its own services, or by having a Supplier or third party provide the Service in its place.

16.2. If the Customer is not satisfied with the steps taken by MacroLan in clause 16.1, MacroLan must cease provision of the Service in question and reduce the Fee accordingly.

16.3. If MacroLan cannot provide the other Services provided under this Agreement because they depend upon a Service that has been terminated in terms of clause 16.2, the Customer may terminate this Agreement.

16.4. MacroLan must provide the Customer with timely notice of the circumstances described in clause 16.1 if reasonably possible.

## **17. Risk and Ownership in Equipment**

17.1. Ownership of all Equipment is retained by MacroLan (or the supplier of the Equipment as the case may be) and nothing in this Agreement must be interpreted as creating any expectation with regard to the transfer of ownership to the Customer.

17.2. The Customer may purchase Equipment only by agreeing to do so in writing in a Service Order or by way of a separate agreement, in which case ownership in the Equipment will pass to the Customer only once payment has been made for it in full.

17.3. Delivery of Equipment will take place when MacroLan passes possession of the Equipment to the Customer, its Freight Forwarder, or a third party nominated by the Customer, or when MacroLan delivers it to any location indicated in writing by the Customer where the Equipment is not under the control of MacroLan.

**17.4. RISK IN THE EQUIPMENT WILL PASS TO THE CUSTOMER ON DELIVERY, FROM WHICH MOMENT ALL RISK OF DAMAGE AND LOSS IN THE EQUIPMENT WILL FALL ON THE CUSTOMER, WHICH MUST TAKE RELEVANT STEPS TO INSURE THE EQUIPMENT AND OTHERWISE MITIGATE ITS RISK OF LOSS THEREIN.**

17.5. If the Customer requires that the Equipment set out in a Purchase Order be delivered directly to a Client or third party as the case may be, the Customer must procure the services of an appropriate Freight Forwarder for the purpose, and risk of loss or damage to the Equipment will pass to the Customer upon MacroLan's delivery of such Equipment to the nominated Freight Forwarder.

**18. Use and Maintenance of Equipment**

18.1. This clause 18 applies only where Customer is not the owner of the Equipment but risk has passed to the Customer as described in clause 17.4, for example where MacroLan has leased the Equipment to the Customer, or the Customer is paying for the Equipment in instalments.

18.2. The Customer must:

18.2.1. ensure that the Equipment remains in a safe environment that is conducive to its continued operation;

18.2.2. ensure that the Equipment is used with care and that reasonable precautions are taken to avoid accidents and to safeguard it from loss or damage and excessive wear and tear;

18.2.3. notify MacroLan immediately of any loss of, or damage to, the Equipment or part thereof or any failure of the Equipment to function;

18.2.4. ensure that no part or component for the Equipment is used which has not been supplied by MacroLan or its authorised subcontractors;

18.2.5. ensure that the Equipment is insured at a reasonable value against any damage or loss;

18.2.6. not rent, sell, mortgage or otherwise encumber the Equipment without the prior written consent of MacroLan;

18.2.7. provide MacroLan with all such information as it may reasonably require to protect its right of ownership in the Equipment;

18.2.8. ensure that the Equipment does not leave the Customer's possession, and no person other than its Personnel is permitted to use the Equipment without MacroLan's prior written consent;

18.2.9. provide reasonable access to the Equipment by MacroLan or its agents (upon request) for maintenance and/or repairs; and

18.2.10. reimburse MacroLan for any repairs and/or maintenance needed to the Equipment at the Time and Materials Rate, provided that the Customer authorises the cost of such repairs and/or maintenance prior to implementation.

18.3. Where Equipment is installed or stored on or at a premises which is leased from a third party or otherwise not owned by the Customer then the Customer undertakes to:

- 18.3.1. obtain all such consents and permissions as may be necessary so as to allow the installation and maintenance of the Equipment; and
  - 18.3.2. in the case of a dispute with the landlord or owner of the premises, inform the landlord or owner of the premises in writing of the fact that the Equipment is the property of MacroLan and does not belong to the Customer, and inform MacroLan in writing without delay in order that MacroLan may take the necessary steps to assert its claim to the Equipment. The Customer specifically indemnifies and holds harmless MacroLan in respect of any breach of this clause.
- 18.4. Under no circumstances is the Customer permitted to authorise or carry out technical maintenance on any Equipment without the prior written permission of MacroLan. Any modification or re-configuration carried out or attempted by the Customer or any third party authorised to do so by the Customer without the express prior written approval of MacroLan is strictly prohibited and MacroLan specifically reserves its right to claim damages should this clause be breached.

## **19. LIMITATION OF LIABILITY**

- 19.1. For the purposes of this clause "Loss" means and includes:
- 19.1.1. all losses, liabilities, and damages relating to or arising from this Agreement or the Services, howsoever arising, whether out of breach of express or implied warranty, breach of contract, misrepresentation, negligence, vicarious or strict liability, in delict or otherwise, and whether foreseen by either of the Parties or not; and
  - 19.1.2. any legal costs (including legal fees at an attorney and own client scale and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties) or other costs, claims or demands.
- 19.2. **MacroLan will not be liable to the Customer or any third party for any indirect Loss (including consequential, punitive, special or incidental loss or damage which will include but not be limited to loss of property or loss of profit, business, goodwill, revenue or anticipated savings).**
- 19.3. Without limiting the provisions of clause 19.2 in any way, MacroLan will not be liable to the Customer for Loss arising from:
- 19.3.1. any breach of this Agreement by the Customer or any act, misrepresentation, error or omission made by or on behalf of the Customer or the Customer's Personnel;
  - 19.3.2. the Customer's failure to put in place adequate security measures as set out in clause 12 (Security);
  - 19.3.3. the interruption, suspension or termination of the Service(s) for whatever reason; or
  - 19.3.4. Loss arising as a result of lost data, damaged or corrupted data or a delay in transmissions.
- 19.4. Without in any way limiting or derogating from the above provisions, the Parties agree that the total amount of MacroLan's liability to the Customer for Loss will not exceed the amount of the Fees paid by the Customer for the Service from which the damage arose in the 12 (twelve) month period immediately preceding the damage-causing event.

## **20. INDEMNITY**

### **20.1. THE CUSTOMER WILL INDEMNIFY, DEFEND, AND HOLD MACROLAN HARMLESS FROM ALL CLAIMS BROUGHT AGAINST MACROLAN BY THIRD PARTIES AS A RESULT OF:**

**20.1.1. THE CUSTOMER'S USE OF THE GOODS OR SERVICES OTHER THAN AS ALLOWED IN THIS AGREEMENT OR ACCEPTABLE USE POLICY;**

**20.1.2. BREACH OF PRIVACY RIGHTS, OR INFRINGEMENT OF ANY LAW (WHETHER SOUTH AFRICAN OR FOREIGN) GOVERNING CROSS-BORDER DATA FLOWS BY THE CUSTOMER;**

**20.1.3. THE INFRINGEMENT OF ANY RIGHT IN INTELLECTUAL PROPERTY BY THE CUSTOMER, INCLUDING WITHOUT LIMITATION THOSE SET OUT IN CLAUSE 9; OR**

**20.1.4. ANY OTHER WRONGFUL ACT OR OMISSION BY THE CUSTOMER.**

### **20.2. THE INDEMNIFIED CLAIMS WILL INCLUDE LEGAL COSTS ON THE SCALE AS BETWEEN ATTORNEY AND OWN CLIENT AND ANY ADDITIONAL LEGAL COSTS.**

20.3. If the CPA is applicable to this Agreement, and any provision of this clause 20 is found by a court or tribunal with jurisdiction over MacroLan to be unfair, unreasonable or unjust, then that provision (whether it be a word, phrase or sub-clause) will be severed, and the remainder of this clause 20 will have full force and effect.

## **21. Warranties**

### **21.1. MacroLan warrants that:**

21.1.1. it has the facilities, infrastructure, capacity and capability to provide the Services;

21.1.2. it will employ a sufficient number of suitably trained staff to provide the Services;

21.1.3. it will provide the Services:

21.1.3.1. with promptness and diligence and in a workmanlike manner and in accordance with the practices and professional standards of well-managed companies performing services similar to the Services; and

21.1.3.2. in accordance with all applicable laws and regulations.

21.2. Equipment is guaranteed under the manufacturer's product specific warranties only, and all other guarantees and warranties including common law guarantees and warranties in relation to Equipment are hereby specifically excluded by MacroLan.

21.3. Unless expressly set out in this clause and elsewhere in this Agreement or in any Service Level Agreement and to the maximum extent permitted by law, MacroLan disclaims any representations and warranties or guarantees of any nature whatsoever in respect of the Equipment or Services, which are provided on a "reasonable effort" basis, and all warranties which are implied or residual at common law are hereby expressly excluded.

21.4. For the avoidance of doubt, MacroLan does not warrant any of the following:

21.4.1. connection quality (including throughput, availability, jitter, latency and packet loss);

21.4.2. the confidentiality, integrity and / or availability of any Customer Data;

21.4.3. the correctness of the identification of any email as spam; or

21.4.4. the success of any backup or disaster recovery service offered.

21.5. If the CPA applies to this Agreement, the provisions of this Agreement or of this clause 21 will not be interpreted in such a way as to exclude the Customer's rights under sections 54 (Right to quality service), 55 (Right to safe, good quality goods), or 56 (Implied warranty of quality) of the CPA. These sections however apply only to the minimum possible extent. Unless the contrary is stated elsewhere in this Agreement, the Customer will have no rights in respect of quality of service, safe & good quality goods or implied warranty of quality beyond those explicitly stated in the those sections.

## **22. Assignment, Subcontracting and Reselling**

22.1. Neither Party will be entitled to cede, assign, delegate or otherwise transfer the benefit or burden of all or any part of this Agreement without the prior written consent of the other Party, which consent will not be unreasonably withheld or delayed.

22.2. MacroLan may sub-contract its obligations in terms of this Agreement to a third party, provided that:

22.2.1. such sub-contracting will not absolve MacroLan from responsibility for the provision of the Service or complying with its obligations in terms of this Agreement; and

22.2.2. MacroLan will at all times remain the sole point of contact for the Customer.

22.3. The Customer may not resell any Service, or otherwise provide any Service to a third party for consideration, unless agreed in writing between the Parties.

## **23. Relationship between the Parties**

23.1. The Parties agree that the relationship between them is one of commissioner and independent contractor, and nothing in this Agreement will be construed as giving rise to a relationship of employer and employee, whether between Customer and MacroLan or between Customer and any officer, employee or agent of MacroLan.

23.2. This Agreement does not give rise to a relationship of principal and agent. Neither Party will be entitled to conclude any agreement on behalf of the other, nor to sign any document on behalf of the other, unless this is specifically authorised in writing by the other.

23.3. MacroLan's right to terminate this Agreement will be regulated by the law of contract alone and neither MacroLan or its employees, officers or agents is "an employee" of the Customer as defined in the Labour Relations Act 66 of 1995, s1 of the Basic Conditions of Employment Act 75 of 1997 or any similar statute.

23.4. The relationship between the Parties will not be an exclusive one and both Parties will be free to enter into agreements similar to this one with third parties.

23.5. Both Parties to this Agreement (including the employees, officers and agents of the Parties) undertake to use their best endeavours and exercise good faith in implementing the provisions of this Agreement according to its intent and purpose and they further undertake to pass such resolutions and do all such acts and deeds as may be necessary, to this end.

23.6. In order to facilitate the effective provision of the Services, the Customer will:

23.6.1. allow MacroLan reasonable access to its premises in order for MacroLan to provide the Services, and the Customer will procure that its employees, officers and agents co-operate with and give MacroLan any necessary assistance in the provision of the Services;

23.6.2. comply with any reasonable instructions given by MacroLan relating to the provision of the Services, as well as MacroLan's relevant policies and procedures, which will be made available to the Customer on request;

23.6.3. enter into any agreement with a supplier necessary to allow MacroLan to provide the Services; and

23.6.4. respond to any request for information, access or authorisation as soon as reasonably possible, having regard to the circumstances of the request.

## **24. No Solicitation**

24.1. Both Parties undertake that they will not employ any employee of the other, or any person who was an employee of the other during the previous 12 (twelve) months. This restriction applies during the term of this Agreement and for a period of 6 (six) months after its termination for any reason. "Employ" includes persuading, encouraging or procuring the employee to be employed by or through the guilty Party or any of its subsidiaries, and by doing so directly or indirectly. The restriction also applies to inducing an employee to terminate his or her employment.

24.2. The provisions of clause 24.1 do not prohibit either of the Parties from considering any application for employment submitted on an unsolicited basis or in response to a general advertisement of employment opportunities.

## **25. Application of the Consumer Protection Act**

25.1. If the Customer is a juristic person then the CPA applies to this Agreement only if both the Customer's asset value and annual turnover (the "Business Values") are less than R 2 000 000 (two million rand) (the "Threshold Value") on the date [the Agreement is entered into / the applicable Service Order is executed]. Both the Business Values and the Threshold Value may be amended in terms of the CPA.

25.2. MacroLan's duties under this Agreement may vary depending upon whether the CPA applies to this Agreement, and MacroLan will act upon the information given by the Customer in this regard. Consequently:

25.2.1. the Customer warrants that any statement made to MacroLan in respect of its Business Values is accurate.

25.2.2. If the Customer claims that all the Business Values are below the Threshold Value, or otherwise that the CPA applies to this Agreement, MacroLan may at its instance require the Customer to provide it with financial statements as proof thereof.

25.2.3. If the Customer misstates the Business Values (whether negligently or otherwise) in such a way that MacroLan believes that this Agreement is subject to the CPA when it is not, then MacroLan may retroactively apply any provisions of this Agreement that were not applied as a result of this belief.

25.2.4. The Customer will be liable for any costs or damage sustained by MacroLan resulting from such misstatement.

25.3. If the CPA is applicable to this Agreement, the provisions of the CPA will be applied and take precedence where they contradict any provision of this Agreement.

## **26. Breach and Termination**

26.1. If the either Party:

26.1.1. fails to comply with any of its obligations or commits a breach of this Agreement and fails to remedy the default or breach within 5 (five) Business Days after having received a written notice to do so,

26.1.2. resolves to begin business rescue proceedings as contemplated in chapter 6 of the Companies' Act 71 of 2008,

26.1.3. is placed in provisional or final liquidation or sequestration, or judicial management,

26.1.4. enters into any compromise arrangements with its creditors,

26.1.5. fails to satisfy a judgment taken against it within ten (10) Business Days, or

26.1.6. falls under the controlling interest or ownership of a competitor of the other Party (for the purpose of this clause, the Party which makes this allegation will carry the burden to prove it),

the other Party will be entitled either:

26.1.7. to hold the Party in breach to the Agreement; or

26.1.8. to cancel the Agreement.

26.2. The provisions of this clause will not affect the rights of either Party to claim damages in respect of a breach of any of the provisions of this Agreement.

## **27. Notices**

27.1. The Parties choose their addresses where they will accept service of any notices/documents for all purposes arising from this Agreement (*domicilium citandi et executandi*):

27.1.1. in the case of MacroLan, as set out in clause 1.1 of this document, and

27.1.2. in the case of the Customer the addresses set out in the most recent Service Order entered into between the Parties.

27.2. Either Party may vary its given postal address or other contact details by notifying the other Party in writing. Postal addresses must be located within the Republic of South Africa.

27.3. Any notice given in terms of this Agreement must be in writing and any notice given by any Party to another ("the addressee") which:

27.3.1. is delivered by hand will be deemed to have been received by the addressee on the date of delivery; or

27.3.2. if sent by fax during Business Hours, upon production of a satisfactory transmission report by the fax machine which sent the fax and if outside such Business Hours then at the beginning of the next Business Day; or

27.3.3. is transmitted by email will be deemed to have been received upon confirmation of receipt (not automated receipt) thereof by the addressee; or

27.3.4. is posted by pre-paid registered post from an address within the Republic of South Africa to the addressee at its chosen postal will be deemed to have been received by the addressee on the seventh (7<sup>th</sup>) day after the date of posting.

27.4. Despite the above:

27.4.1. any notice that MacroLan sends by email to an email account hosted on the MacroLan System by the Customer will be deemed to have been received by the Customer on the date of transmission; and

27.4.2. if a written notice or communication is actually received by one of the Parties from the other, this will be adequate written notice or communication to that Party.

## **28. Disputes**

28.1. In the event of any dispute arising between the Parties regarding this Agreement or any Service, the Parties will act in good faith to attempt to settle the dispute through discussions between the relevant representatives of the Parties within 30 (thirty) days of a Party giving the other Party notice of the issue in dispute. The Parties will follow any dispute or complaints resolution process that MacroLan may have in place.

28.2. Any dispute which cannot be resolved by the Parties within the 30 (thirty) days period, as provided in this clause 28, will be resolved by arbitration in the English language by a single arbitrator appointed by the Arbitration Foundation of South Africa and in accordance with the Rules of the Arbitration Foundation of South Africa.

28.3. Notwithstanding the provisions of this clause 28, either Party will have the right to seek relief by way of interim relief from any court of competent jurisdiction.

28.4. Pending final settlement or determination of a dispute, the Parties will continue to perform their subsisting obligations hereunder.

28.5. Notwithstanding the above, the Customer consents to the jurisdiction of the Magistrate's Court in respect of any action initiated for the recovery of overdue payments, notwithstanding that the amount summonsed for exceeds such jurisdiction, the decision on which Court to proceed being in the sole discretion of MacroLan.

28.6. Nothing in this clause 28 must be interpreted so as to restrict the Customer's right to approach the tribunal of its choice in terms of the CPA, if it is applicable.

28.7. This clause is separate from the rest of the Agreement and will remain effective between the parties if this Agreement is terminated.

## **29. Force Majeure**

29.1. Neither Party will be liable for any delay or failure in performing any obligation under this Agreement due to any cause beyond its reasonable control, including without limitation:

industrial action, sabotage, terrorism, civil commotion, riot, war, fire, explosion, storm, flood, or other natural physical disaster, any act or policy of any state or government or other authority having jurisdiction over either Party, sanctions, boycott or embargo, termination or suspension of upstream service.

- 29.2. If a delay or failure referred to in clause 29.1 occurs, this Agreement will be suspended for as long as the cause of the delay or failure lasts. If the suspension is longer than three months, either Party may terminate this Agreement by written notice to the other.

### **30. Interpretation**

- 30.1. This Agreement will be governed by and construed in accordance with the law of the Republic of South Africa.
- 30.2. In this Agreement, unless the context requires otherwise: - words importing any one gender will include the other gender; the singular will include the plural and vice versa; a reference to natural persons will include created entities (corporate or unincorporate) and *vice versa*.
- 30.3. Words and expressions defined in any clause will, for the purposes of that clause, bear the meanings assigned to such words and expressions in such clause.
- 30.4. If any provision is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in a definitions clause, effect will be given to it as if it were a substantive provision in the body of the agreement.
- 30.5. Clause headings have been inserted for convenience only and will not be used for nor assist or affect its interpretation; where a clause number is cited, it will be deemed to include reference to all subclauses of that numbered clause.
- 30.6. The rule of construction that an agreement will be interpreted against the Party responsible for its drafting or preparation will not apply.

### **31. General**

- 31.1. This Agreement is the whole of the agreement between the parties, and no document or statement not mentioned above will form part of it. Only a written variation, waiver or cancellation agreed to and signed by both parties will be of any effect.
- 31.2. If one party chooses not to enforce any part of this Agreement, that does not mean that the party cannot enforce that part at a later time. If any part of the Agreement is found to be unenforceable, the rest will still be enforceable.
- 31.3. The signatories hereto acting in representative capacities warrant that they are authorised to act in such capacities, and accept personal liability under this Agreement should they prove not to be so authorised.
- 31.4. In the event that any part of this Agreement is found to be partially or fully unenforceable for any reason, this will not affect the application or enforceability of the remainder of this Agreement.

### **32. Glossary**

The terms listed below will have the following meanings in this Agreement:

- 32.1. "Acceptable Use Policy" means the document with that heading available at the MacroLan Website, as amended from time to time.
- 32.2. "Affiliate" means, in relation to a Party, the Party's holding company, its subsidiaries, the subsidiaries of its holding company and any other companies which, directly or indirectly, is controlled by the Party, controls the Party or is under common control with the Party.
- 32.3. "Agreement" means these Standard Terms, as well as the relevant Service Order(s), Service Terms and any schedules or annexures relating to them or to this document, which all form part of the Agreement.
- 32.4. "Business Day" means any day other than a Saturday, a Sunday or a public holiday in the Republic of South Africa.
- 32.5. "Business Hour" means a period of 60 minutes between the hours of 08h00 and 17h00 South African Time, on a Business Day.
- 32.6. "Client" means a person that is a client of the Customer in that such person has entered into a business arrangement with Customer enabling it to access the Services, subject to the terms of this Agreement.
- 32.7. "CPA" means the Consumer Protection Act No. 68 of 2008.
- 32.8. "Consulting Services" means all services rendered by MacroLan outside the scope of the Communication Services, including without limitation, consultancy, installation, configuration, training, project management and support other than for Errors.
- 32.9. "Consulting Services Fee" means the fees payable by the Customer as consideration for the rendering of Consulting Services by MacroLan, which fees will be payable on a Time and Materials basis.
- 32.10. "Customer Data" means Data:
- 32.10.1.transmitted to the Customer using the MacroLan System,
  - 32.10.2.stored by the Customer on the MacroLan System, or
  - 32.10.3.transmitted by the Customer via the MacroLan System,
- in the day-to-day utilisation of a Service.
- 32.11. "Data" means electronic representations of information in any form.
- 32.12. "Database" means a collection of related data including, but not limited to, text, images sound and video, all of which have been created and integrated using a method of connecting and displaying the data into a collection of interrelated independent files or data which are stored together.
- 32.13. "Domain" means an Internet subdomain registered with an authorised registrar appropriate to its top-level domain ("TLD") and comprising its constituent domain name server records including, but not limited to, host names, aliases and mail exchange ("MX") records.
- 32.14. "Emergency Maintenance" means maintenance to the MacroLan System intended to remedy existing circumstances or prevent imminent circumstances that are likely to cause

danger to persons or property, an interruption to the Communication Services, or substantial loss to MacroLan, the Customer or any third party.

- 32.15. "Equipment" means any equipment supplied to the Customer by MacroLan in terms of this Agreement.
- 32.16. "Fees" means the fees and charges due to MacroLan by the Customer in respect of Goods or Services provided by MacroLan to the Customer in terms of this Agreement.
- 32.17. "Good" means any and all goods to be provided by MacroLan to the Customer in terms of this Agreement, including without limitation equipment, hardware and third party software.
- 32.18. "Good Industry Practice" means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably be expected from a skilled and experienced service provider providing similar services to those provided under this Agreement. Such a service provider would seek in good faith to comply with its contractual obligations, and with all applicable laws, codes of professional conduct, relevant codes of practice, relevant standards, and all conditions of planning and other consents.
- 32.19. "Intellectual Property Rights" means patents, registered designs, trade marks (whether registered or otherwise), copyright, trade secret rights, database rights, design rights, service marks and other intellectual property rights and rights to claim something as confidential information, including in other jurisdictions, that grant similar rights.
- 32.20. "Malicious Code" means anything that contains any computer software routine or code intended to:
- 32.20.1.allow unauthorised access or use of a computer system by any party, or
- 32.20.2.disable, damage, erase, disrupt or impair the normal operation of a computer system,
- and includes any back door, time bomb, Trojan horse, worm, drop dead device or computer virus.
- 32.21. "MacroLan Premises" means any premises where equipment used by MacroLan to provide the Services is located, and which is not owned or occupied by the Customer.
- 32.22. "MacroLan System" means equipment operated together as a system by MacroLan to provide any Service, including without limitation servers, peripherals, routers, switches, Software, Databases, cables, generators, and uninterruptible power supplies.
- 32.23. "MacroLan Website" means the Internet website published at the URL "www.macrolan.co.za" or another URL that MacroLan notifies the Customer of from time to time.
- 32.24. "Party" means either of MacroLan or the Customer and "Parties" means both of them collectively. The term also includes their successors and anyone to whom their rights have been assigned (if this is permitted).
- 32.25. "Personnel" means any director, employee, agent, consultant, contractor or other representative of a Party.

- 32.26. "RICA" means the Regulation of Interception of Communication and Provision of Communication-related Information Act 70 of 2003.
- 32.27. "Service" means a service provided by MacroLan to the Customer in terms of this Agreement.
- 32.28. "Service Level Agreement" means a document with that heading defining levels of service to be met by MacroLan under the Agreement.
- 32.29. "Service Order" means a goods, license, services and / or work order agreed to in writing by both the Parties in terms of this Agreement describing the specific Goods or Services to be provided by MacroLan to the Customer.
- 32.30. "Service Terms" means a document describing the terms on which MacroLan will provide a particular Good or Service, as amended from time to time.
- 32.31. "Standard Terms" or "MacroLan Standard Terms" means this document.
- 32.32. "Software" means any computer programme (whether source- or object code), as well as any database structure or content, artistic work, screen layout, cinematograph film, sound recording, preparatory material, user or technical documentation or any other work created in connection therewith and any modifications, enhancements or upgrades thereto.
- 32.33. "Supplier" means a supplier of goods and / or services to MacroLan.
- 32.34. "Time and Materials Rate" means MacroLan's standard time and materials fees and charges applicable from time to time, including all expenses reasonably and actually incurred by MacroLan, including for travel, accommodation and subsistence.

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