Introduction

These terms regulate the:

(i) agreement between Netblaze and the customer when Netblaze supplies goods and/or services to the customer and;

(ii) use of the website by any user, whether a customer or not.

By using the goods or services or visiting the website, you agree to be bound by these terms.

Definitions

Unless the context otherwise indicated, the following expressions shall have the meanings given to them hereunder: "Act" means the Electronic Communications Act No. 36 of 2005;

"agreement" means these general terms and conditions, including all schedules and annexures hereto, together with the terms of any orders and the acceptable use policy which are incorporated herein by reference;

"business day" means Monday to Friday, excluding public holidays published as such in the government gazette; "business hours" means from 08h00 (8am) to 17h00 (5pm) South African time, on business days;

"charges" means MRC, NRC, usage fees and any other charges payable under this agreement;

"contract term" means the term of the applicable services as set out in the applicable service order or on the website;

"customer" means the person that has entered into an agreement with Netblaze for the provision of goods or services or the user of the website, whichever applies in the circumstances;

"ECTA" means the Electronic Communications and Transactions Act 25 of 2002, as amended;

"effective date" means the date of signature of the agreement; alternatively, the date on which this website is accessed;

"Full Calendar Month" shall mean the period that begins at midnight on the last day of the previous month and ends at midnight on the last day of the month under consideration. For the avoidance of doubt, any reference to a calendar months' notice in this agreement shall be interpreted to mean a notice period aligning with the definition of a Full Calendar Month as stated above.

"goods" means any IT goods, including but not limited to hardware and software that Netblaze provides to customer in terms of an order;

"household" means the home or dwelling where the party who entered into the agreement/concluded the order with Netblaze;

“intellectual property” means all intellectual property rights, including but not limited to any domain names; know- how (not in the public domain); invention (whether or not patented); design, trademark, copyright material (whether or not registered), material eligible for copyright in terms of applicable legislation trade or business names, trade secrets or any similar rights to any of the above rights that may subsist in South Africa or elsewhere, whether or not such rights are registered or capable of being registered;

“MRC” means monthly recurring cost;

“NCA” means the National Credit Act 34 of 2005, as amended;

“NRC” means non-recurring cost;

“order” means a goods or services order, which ever applies, that sets out the commercial terms for the provision of goods or services by Netblaze to the customer. This includes an order sent to Netblaze via email, the website or any other means.

“party” means either Netblaze or the customer and “parties” means both of them collectively and shall be deemed to mean and include their respective successors and permitted assigns’;

“personal information” has the meaning ascribed to such term in the POPI Act;

“personnel” means any director, employee, agent, consultant, contractor or other representative of a party; “premises” means the premises where Netblaze provides the services;

“POPIA” means the Protection of Personal Information Act 4 of 2013;

“services” means any services that Netblaze provides to the customer in terms of the order;

“services commencement date” means the commencement date specified in the order and if no commencement date is specified, the first day on which the service is activated or provided;

“service levels” means the levels according to which Netblaze will provide the service as agreed by the parties in the order or as specified on the website;

“site(s)” means the customer’s premise(s) where the service will be rendered;

“third party contractor” means the contractor, supplier, or licensor (which ever applies) of any goods or services, but which is not a party to this agreement;

“website” means www.netblaze.co.za or any localised URL derivative owned by Netblaze. It also includes the Netblaze system, or any other system being used by Netblaze for purposes of fulfilling its obligations in terms of the agreement.

Interpretation

Any reference to days shall be interpreted to be a reference to a calendar day unless qualified as a business day.

When any number of days are prescribed, the number of days shall be calculated on the basis that the first day is excluded and the last day is included, provided that if the last day is not a business day, the last day shall be the ensuing business day.

Inclusion of the words "including" or "excluding" followed by examples or items following the term be illustrative only and will not limit its ambit or application.

Terms other than those defined will be given their plain English meaning, and those terms, acronyms, and phrases known in the information and communication technology industry will be interpreted in accordance with their generally accepted meanings.

Each order shall constitute the subject of a separate agreement between the parties. In the event of any conflict between the following; the order, the acceptable use policy and the service order, it will be interpreted in the following order:

(i) The service order;
(ii) The general terms and conditions;
(iii) The acceptable use policy;

Any conduct which violates any laws, regulations, or practices, are prohibited in terms of these terms and conditions.

Acceptable Use

The customer shall use the services of Netblaze, or any goods or services supplied by Netblaze is in accordance with the acceptable use policy of Netblaze and:

- Undertakes to not knowingly create, store or disseminate any illegal content.
- Commits to lawful conduct in the use of the services, including copyright and intellectual property rights.
- Undertakes not to send or promote the sending of spam.

Netblaze shall monitor its systems for performance and accounting purposes and to ensure compliance with the terms of any agreement between Netblaze and the customer, including the acceptable use policy.

Commencement and Duration

This agreement shall commence on the effective date and shall thereafter remain in force indefinitely, subject to the remaining provisions of this agreement.

If applicable, the commencement of the services to be provided shall be in terms of each individual order that is completed by the customer and will be effective from the service commencement date for the contract term in the order.

Notice of termination of the initial agreement must be provided at least one Full Calendar Month prior to the expiration of the initial period.

If such notice is not given, the contract shall carry on indefinitely, subject to each party.

Goods and Services Appointment

The customer appoints Netblaze to provide the services and/or equipment, subject to the terms and conditions contained in this agreement, which appointment Netblaze accepts.

Goods and Services

Netblaze will sell the goods and provide the services to customer in terms of the agreed order, alternatively if no order is agreed, as described and specified on the website.

If Netblaze supplies goods that are accompanied by software, the use of the software will be regulated by a license agreement between the customer and the owner or licensor of the software, which agreement will constitute a separate agreement between the customer and the owner or licensor of the software. Netblaze will not be a party to this license agreement.

The customer agrees to comply with all license or other terms of third-party contractors that supply goods or services for use in conjunction with the goods or services provided by Netblaze.

Permission to Access

The customer expressly gives its permission and authorises Netblaze to remotely access its data, network, system, software, hardware or do whatever is required to fulfil its obligations and render the services in terms of the agreement.

Permissions in Terms of the NCA

The Customer expressly permits Netblaze to conduct a credit referencing or risk assessment process. This may entail the use of information provided by the customer to obtain information about the customer and the customer's credit information from registered credit bureaus.

Consequently, Netblaze shall be entitled to request information related to the customer's creditworthiness and the parties agree that Netblaze is authorised to conduct all reasonable credit checks and searches in accordance with the NCA.

The customer consents to Netblaze sharing their information and report on their payment behaviour with registered credit bureaus. This includes, listing a customer's failure to make payments in terms of any agreement between the customer and Netblaze.

The customer shall be liable for any costs incurred by Netblaze in listing the customer with a credit bureau or legal action taken by Netblaze to recover costs from a customer.

Provision of Services

Netblaze agrees that it will from the effective date, and thereafter, continue throughout the duration of this agreement to supply the services as requested by the customer in accordance with the order.

For the duration of this agreement, the customer shall obtain the services as it requires from Netblaze in terms of this agreement, the services schedule and the order concluded from time to time.

Where applicable, Netblaze shall not be under any obligation to supply any services to the customer until an order in respect of the required services has been agreed by means of signing the order - clicking an acceptance button, sending of a confirmatory document, including an email or by signing or indicating acceptance by means recognised by the ECTA.

Each order shall constitute an agreement between the parties subject to and regulated by this agreement.

In order to provide the services, Netblaze reserves the right to utilise any technology available and which it considers at its discretion as the most suitable to provide services.

The services shall be used by the customer in accordance with the order, agreement and acceptable use policy.

Service Order

In the event that these terms or conditions are in conflict with the terms of the order, the service order shall take preference.

Service orders may, depending on the service in question, be placed online or via a request for a quote from Netblaze.

If the particular service requires Netblaze to provide a quote to the customer first, the customer must confirm acceptance of the quote either in writing to sales@netblaze.co.za, or by ticking the confirmation button online, whichever one applies.

The customer must place such an order in the prescribed manner stipulated on the quote.

Any order placed by a customer, whether online or otherwise, is an offer to Netblaze to enter into the agreement with the customer.

Ownership and Risk

Risk in any goods provided by Netblaze will pass to the customer on delivery to the customer. Unless expressly specified and agreed otherwise, ownership of any goods, modem, hardware or equipment supplied by Netblaze to the Customer shall remain with Netblaze.

The customer will bear the risk in all goods supplied by Netblaze and shall be responsible to ensure that any such goods, equipment or hardware are adequately insured at all times.

The customer shall use any goods, equipment and hardware at their own risk and only for the purpose it is provided for. The customer further assures that the goods, equipment and hardware will remain in the same condition as when it was first supplied to the Customer by Netblaze.

Where goods are purchased by the customer, ownership of the goods will only pass once the full payment for the goods have been received.

Delivery and Installation

Any delivery date provided to a customer is an estimate date only and Netblaze shall make all reasonable efforts to deliver on the estimated date.

If Netblaze is not able to deliver on the estimated date, Netblaze will take all reasonable measures to inform the customer timeously of the delay in delivery.

Should the customer assist with the installation of any goods or services, including software, Netblaze will not be liable for any damage caused or losses suffered as a result of the customer's assistance with the installation.

Should Netblaze charge the customer any delivery charges, Netblaze will quote for this upfront and all deliveries will be payable in full as specified on the quote, before delivery of the goods.

The products offered for residential use are not suitable for business use and Netblaze shall not be liable for any loss or damage arising from the use of residential use products for any other purpose.

The service provided is for use by a single household only and may not be shared with parties outside of the household.

Netblaze does not accept responsibility for the third party router and will not be held liable for the functioning of the third party router.

Fees and Payments

The customer shall be liable for and shall pay the fees in respect of the goods or services as set out in this clause or in the applicable service order(s). No monthly fees for services shall be payable on a pre-paid or pay-as-you-go method.

Fees are payable in South African Rand without deduction or set-off for any reason and each order will constitute a separate agreement between the parties.

Unless otherwise agreed in the service order, all monthly fees payable for services shall be invoiced by Netblaze monthly

in advance and are due on or before the 1st day (first-day) of each month. The customer agrees to Netblaze rendering electronic invoices.

Netblaze may invoice pro-rata portions of monthly fees for services where an agreement commences on a day other than the first of the month.

The customer shall be required to authorise a recurring card transaction.

Netblaze may in their own discretion decide not to provide any goods or services in the absence of a valid debit order authorisation being in place.

The customer will be liable for an administrative fee of R25.00 (twenty five rand) if their debit payment is rejected. By special arrangement and at the discretion of Netblaze, the customer may arrange to pay via electronic funds transfer.

Recurring card transactions shall be processed on the first day of each month.

Time and material-based services rendered, will be invoiced for and is payable before commencement/delivery.

The customer may not withhold payment of any amount due to Netblaze for any reason, including an alleged breach of contract by Netblaze.

Should any amount invoiced be disputed, the customer shall not be entitled to withhold any such amount pending resolution of the dispute and any dispute will be dealt with in terms of the provisions of this agreement.

Fees and charges not settled in terms of the agreement will bear interest at the prime interest rate plus 2% (two percent), such interest to be calculated from the due date of payment to the date of actual payment, both days inclusive, calculated daily and compounded monthly in arrears.

The customer shall reimburse all reasonable expenses authorised by the customer and incurred by Netblaze in fulfilling obligations in terms of the agreement including, but not limited to, goods and services purchased on the customer's behalf and expenses as invoiced. The Customer will not withhold authorisation unreasonably.

Should the Customer fail to make payment in accordance with any order/these terms, Netblaze shall have the right to immediately suspend all services to the Customer.

The Customers shall be liable for payment of a reconnection fee of R100.00 (on hundred rand), to reconnect services that have been suspended due to non-payment.

The Customer will be held liable for any surcharges, including but not limited to those relating to upgrades, down- grades, or other ad-hoc fees, charged by the applicable FNO in connection with the provision of selected services. These surcharges shall be payable by the Customer as stipulated on the invoice issued by the Service Provider.

Charges

Netblaze shall be entitled to adjust the monthly fees and charges in the event of any regulatory, or government- imposed factors which impact on such fees and charges.

Netblaze may, from time to time, adjust package offerings and prices should Netblaze incur increases from the FNO. The Customer shall be given 30-days (thirty-days) written notice of any such amendments.

Exchange Rate Fluctuations:
The prices quoted are based on the exchange rate at the time of the quotation. If there are significant fluctuations in the exchange rate between the quotation date and payment, the final price may be adjusted. Any adjustment will reflect the exchange rate at the time the invoice is issued, and the Customer will be notified in writing.

The Customer may accept the revised price or request order cancellation. Any costs incurred by Netblaze due to cancellation will be charged to the Customer.

Netblaze is not liable for any losses resulting from exchange rate fluctuations, and the Customer bears the associated risk.

Promotional Codes

Promotional codes used from time to time may be subject to its own terms and conditions.

Security

Netblaze will provide adequate protection for all personal information held and take reasonable steps to stop unauthorised access and use of personal information. Netblaze will, on an on-going basis, continue to review their security controls and related processes to ensure that the Customer's personal information remains secure. The customer shall give reasonable cooperation in any investigation that may be carried out by Netblaze relating to a security violation.

The customer must follow all security instructions of Netblaze, including but not limited to advise Netblaze in writing of any security violation or imminent violation and indemnifies Netblaze against any loss, harm or damage suffered by Netblaze, including third party claims, arising out of any breach of security caused by the acts or omissions of the customer or its personnel.

In the event of a security violation, or if Netblaze, in its sole discretion, determines that a security violation is imminent, Netblaze may take whatever steps it deems necessary to protect its system and/or the premises, including without limitation:

- **changing the customers' access codes and passwords;**
- **temporarily preventing access to the customer's account or system;**
- **preventing access to the system and/or premises;**

- relocating the customer's website

The customer will cooperate in any investigation that may be carried out by Netblaze relating to a security violation or where a court order requires information to be provided.

It is the customer's responsibility to ensure that it keeps all information relating to its account secure. Netblaze will respond to all customer activity until such time as a customer has informed Netblaze of a security violation and Netblaze will not be liable for any damages caused to the customer in this regard.

Suspension of Services

Netblaze will be entitled to suspend the service with immediate effect and without notice if:

- the customer fails to make payment/a debit is unsuccessful on the agreed date as per the order or these terms;
- there is a security violation or imminent security violation of the service, system or website;
- emergency maintenance, as determined by Netblaze in its sole discretion is required;
- it is necessary to comply with the law;
- it receives a take-down notification from ISPA, and the alleged conduct is in contravention. The customer contravenes the terms of the Netblaze Acceptable Use policy.

Netblaze will be entitled to suspend the service and will endeavour to provide reasonable notice if routine maintenance, repair or the like is required.

Should the customer's services be suspended due to non-payment or any other breach of the agreement between the customer and Netblaze or any term of the terms and conditions, the customer services shall continually be billed and invoiced for the services as depicted in the agreement between the parties for as long as the contract remains in force between the parties. The breach of any one term of the agreement does not automatically constitute the termination or amendment of any other term of the agreement.

Warranties

Netblaze does not give any warranty or guarantee of any nature whatsoever, whether express or implied, in respect of any goods or services provided in terms of this or any related agreements entered into with the customer.

Indemnity

Subject to "Exclusion and limitation of liability" clause Netblaze will not be liable for any loss or damage whatsoever and the customer indemnifies Netblaze against such loss or damage that the customer may suffer as a result of the customer's use of the services, fault, down-time, or outages of the goods or services or viruses, or security violations, howsoever arising and whether arising out of any problems with the services attributable to Netblaze or any electronic communications network services or another third party contractor of electronic communications services, loss of income, or for any other reason, the customer further indemnifies Netblaze against any claim resulting from:

- the use of the customer's data by a third party;
- the loss of the customer's data;
- any non-compliance or breach with the agreement.

Notwithstanding the above, nothing in this agreement and/or any order, service order or acceptable use policy shall exclude or in any way limit Netblaze's liability for gross negligence or willful misconduct.

Exclusion and Limitation of Liability

Netblaze is indemnified from all liability howsoever caused as a result of any use of third-party contractor's goods or services. Netblaze shall not be liable for any loss or damage to the property or equipment of the customer arising out of the provision, installation or maintenance of any services or goods to the customer.

Netblaze shall under no circumstances be liable for any special, indirect, consequential, economic or like damages which may arise pursuant to this agreement (or any act or omission arising during the course and scope of fulfilling its obligations in terms of this agreement), including, without limitation, any damages arising due to any loss of profits or loss of business.

Netblaze will only be liable for direct damages. The maximum total liability for direct damages as a result of breach of this agreement by Netblaze, will in all circumstances be:

- the monthly service fee (if any) paid by the customer for the last 2 months prior to cancellation of the agreement;
- the monthly service fee shall be determined with reference to the relevant service order.

By entering into an agreement with Netblaze, the customer acknowledges that:

- The customer has read and understands the Privacy Policy of Netblaze which can be found on Netblaze's website;
- Netblaze may collect, use and process the customer's personal information and/or data in accordance with POPIA for purposes listed in Netblaze's Privacy Policy;
- Netblaze may disclose personal information and/or data in the instances listed in Netblaze's Privacy Policy;
- Netblaze my retain personal information in accordance with the provisions of POPIA.

Confidentiality

The parties agree to treat all confidential information of the other party that is normally regarded as confidential information or not ordinarily available to the public as confidential for the period of the agreement as well as after termination of the agreement.

Termination and Breach

Either party may terminate this agreement by giving the other party one Full Calender Month notice in writing.

If the customer commits a material breach of the agreement, Netblaze may without any prejudice to any other rights

afforded in terms of the law:

- terminate the agreement and/or;
- suspend the customer's access or use of the service with immediate effect;
- claim immediate payment of all outstanding fees and charges and future fees and charges due in terms of the agreement which fees and charges will become due and payable on demand.

Subject to the "Termination and breach" clause, should either party fail to comply with any of its obligations or commit a breach of the agreement and fail to remedy such default or breach within 14-days (fourteen-days) after having received a written notice to do so, or be placed in provisional or final sequestration, placed under debt review or judicial management, or enter into any compromise or scheme of arrangement with its creditors, or fail to satisfy a judgment taken against it within 14-days (fjourteen-days), the other party shall be entitled to terminate this agreement on written notice to the defaulting party.

The Customer shall be liable for any administration or legal costs arising from the termination of the agreement due to breach.

Force Majeure

Netblaze shall not be liable for any delay in performing or any failure to perform any obligations under this agreement due to any cause beyond their reasonable control, including but without being limited to any of the following: strikes, lock outs or other industrial action, sabotage, terrorism, civil commotion, riot ,invasion, war, threat of or preparation for war, fire, explosion, storm, flood, subsidence, epidemic or other natural physical disaster, impossibility of the use of railways, shipping aircraft, motor transport or other means of public or private transport; any act or policy of any state or government or other authority having jurisdiction over either party, sanctions, boycott or embargo, failure of any supplier of electricity, including ESKOM, telecommunication infrastructure or services, including TELKOM or any similar circumstances beyond the reasonable control of Netblaze.

Upon the occurrence of any delay or failure referred to in this clause the provisions of this agreement affected shall be suspended for as long as the cause in question continues to operate, provided that if that cause has not ceased to operate within 2-months (two-months) from when it first arose, this agreement may be terminated by either party on written notice to the other.

Dispute Resolution

In the event that a dispute arises in respect of this agreement, including a dispute related to any invoice, the Customer may direct a complaint to accounts@netblaze.co.za.

Netblaze shall attend to and respond to such complaint within 14 (fourteen) business days.

General

Nothing in this agreement will constitute any relationship of employment, subcontract or partnership and neither party will be able to bind the other party contractually.

The parties choose as domicilium citandi et executandi the address stipulated in the order. This agreement will be regulated and interpreted in accordance with the laws of South Africa. The Customer may only assign its rights and obligations under this agreement to a third party with the written consent of Netblaze.

Netblaze reserves the right to sell its customer database to a third party at any time and reserves the right to cede its rights and obligations to any third party without the written consent of the customer.

Netblaze reserves the right to amend, update, or modify these Terms and Conditions at any time in its sole discretion. Any such changes will be communicated to the Customer by way of written notice, including via electronic communication or publication on Netblaze's official website. Continued use of Netblaze's services by the Customer after receipt of such notification will be deemed to constitute acceptance of the updated Terms and Conditions.

The parties' consent to the jurisdiction of the North Gauteng High Court of South Africa for purposes of any ligation flowing from this agreement.