Internet Access Service Application Form

END USER AGREEMENT

Full particulars of subscriber:

Name of company or close corporation or partnership or individual			
Registration or ID number		VAT number	
Admin Contact Name:		Job Title	
e-mail address		Work number	
Cell number		Fax number	
Technical Contact 1 Name:		Job Title	
e-mail address		Work number	
Cell / Pager number		Fax number	
Technical Contact 2 Name:		Job Title	
e-mail address		Work number	
Cell / Pager number		Fax number	
ADSL Telephone Number			
Physical address			
Postal address			
Contract Details	Payment Method:	Debit Order	

Debit Order Details

Dealer is hereby authorised to arrange with my bank or building society to collect the monthly subscription rate against my bank or transmission account (wherever it may be) in terms of a debit order.

Date of first withdrawal	1st of every Month	Bank Name	
Account Name		Branch Name	
Account Number		Branch Code	

Signature of payer or authorised official(s)

THE SUBSCRIBER HEREBY AGREES THAT ALL SERVICE/S PROVIDED PURSUANT TO DEALER'S ACCEPTANCE OF THIS APPLICATION FORM WILL BE SUBJECT TO THE TERMS AND CONDITIONS ATTACHED HERETO, WHICH TERMS AND CONDITIONS ARE EXPLICITLY INCORPORATED INTO AND FORM AN INTEGRAL PART OF THE AGREEMENT BETWEEN DEALER AND THE SUBSCRIBER.

Signed on behalf of Subscriber, duly authorised	**Signatory's Name**	**Signatory's Designation**	**Date**

<u>NOTE:</u> PLEASE COMPLETE AND SIGN OR INITIAL EACH PAGE ATTACHED HERETO.

A G R E E M E N T

Between

Third Generation Internet (3Gi)

(1999/024814/07)

of PO Box 10152, Centurion, 0046

("DEALER")

and

……

(…….....)

of ……

……

("SUBSCRIBER")

<u>NOTE:</u> PLEASE COMPLETE AND SIGN OR INITIAL EACH PAGE ATTACHED HERETO.

SERVICE SPECIFICATION ANNEXURE

The Service/s

The Service to be provided is specified in the schedules attached to this annexure. The Service is subject to the terms and conditions contained in this document. Quoted prices for the service options selected are as follows:

Description of Services	Set up fees (Upgrade)	Monthly Costs	No. of Services
ADSL Router			
Static IP Address (maximum 5)			
Uncapped ADSL Business Solution (Unshaped)			
1024K Business DSL Cruiser	R1 500.00	R835.00	
2024K Business DSL Cruiser	R1 500.00	R1 490.00	
4096K Business DSL Cruiser	R1 500.00	R2 140.00	
10240K Business DSL Cruiser	R1 500.00	R5 300.00	
Capped ADSL Business Solution (Unshaped)			
*Up to 10MB Telkom Access Speed to ISP**			
5GB Business DSL Extreme	R1 500.00	R200.00	
10GB Business DSL Extreme	R1 500.00	R335.00	
25GB Business DSL Extreme	R1 500.00	R815.00	
30GB Business DSL Extreme	R1 500.00	R975.00	
40GB Business DSL Extreme	R1 500.00	R1 295.00	
50GB Business DSL Extreme	R1 500.00	R1 590.00	
60GB Business DSL Extreme	R1 500.00	R1 875.00	
75GB Business DSL Extreme	R1 500.00	R2 275.00	
100GB Business DSL Extreme	R1 500.00	R2 845.00	
150GB Business DSL Extreme	R1 500.00	R4 060.00	
When the predetermined amount of bandwidth is consumed, the line speed will be reduced to 64Kbps thus ensuring that connectivity for essential services such as mail and local browsing is maintained for the remainder of the month.			
SMTP Authentication Server			
Outbound Mail Server (5GB SMTP Traffic)	R150.00	R350.00	
Uncapped VOICE Business Solution			
Business DSL Cruiser VX	R1 710.00	R1 075.00	

BUSINESS DSL FAILOVER TO GSM SOLUTION

BUSINESS DSL FAILOVER TO GSM SOLUTION	Set up fees	Monthly Costs	No. of Services
Huawei and Network Service - VODACOM	R570.00	R325.00	
Huawei and Network Service - MTN	R570.00	R325.00	

BUSINESS DSL FAILOVER TO GSM SOLUTION

DATA USAGE FEES	Cost per MB
VODACOM	R0.95
MTN	R0.85

GSM Service Availability

- The customer is responsible for undertaking signal strength tests prior to choosing a Network Provider at the specific location where the equipment (Router) will be installed. Any additional antennas, installation cabling, testing or troubleshooting what so ever will be for the Customer's expense.
- Customer is responsible for any onsite troubleshooting
- Signal strength for the GSM Service on any network is not guaranteed in any particular area.
- GSM download and upload speeds are not guaranteed and will vary depending on the location of the Customer's site.
- 3Gi is not liable for any loss of business due to failure of the GSM Service to perform.

Additional Services

Should Subscriber upgrade the Service/s and/or subscribe to Service/s in addition to those specified in the Schedules, an amended annexure will replace this Service Specification Annexure, and, if necessary, additional schedules will be attached.

Fees and Charges

The following fees and charges shall be paid by Subscriber in respect of the Service/s with effect from the Effective Date:

- Total initial set-up cost: **R1 500.00** (to be invoiced on Effective Date of the Service specified in Schedule 1)
- Fixed monthly cost: **R**_____ per month (payable in advance, on the first of the month and pro-rata for the first month of the service)
- Additional services as described above will be invoiced monthly.
- **All prices includes VAT.**

Signed on behalf of Subscriber, duly authorised	**Signatory's Name**	**Date**

STANDARD TERMS AND CONDITIONS OF CONTRACT

1 **THESE TERMS AND CONDITIONS TO PREVAIL**

These terms and conditions, together with the Schedules hereto and the Service Specification Annexure, (hereinafter collectively referred to as "this agreement") shall constitute the whole of the agreement between Dealer and Subscriber relating to the subject matter hereof, notwithstanding anything in Subscriber's inquiry, specification, acceptance, order or other documentation or discussion to the contrary.

2 **NO VARIATION OR AMENDMENT**

2.1 No amendment or consensual cancellation of this agreement or any provision or term thereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this agreement shall be binding unless recorded in a written document signed by a duly authorised representative from both Dealer and Subscriber.

2.2 No extension of time or waiver or relaxation of any of the provisions or terms of this agreement, bill of exchange or other document issued or executed pursuant to or in terms of this agreement, shall operate as an estoppel against either parties hereto in respect of its right under this agreement, nor shall it operate so as to preclude either of the parties thereafter from exercising its rights strictly in accordance with this agreement.

2.3 Either party shall not be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract between Subscriber and Dealer or not.

3 **CHARGES**

3.1 Subscriber is responsible for and agrees to pay to Dealer all fees and charges set out in the Service Specification Annexure in South African currency, without deduction or set-off of any amount of whatsoever nature or for whatsoever reason.

3.2 In the event of any dispute arising as to the amount or calculation of any fee or charge which is payable by Subscriber, the dispute shall be referred for determination to independent auditors. They shall act as experts and their decision shall be final and binding on Dealer and Subscriber.

3.3 Any amount falling due for payment by Subscriber to Dealer in terms of or pursuant to this agreement which is not paid on its due date shall bear interest calculated from the due date for payment thereof until date of payment, at a rate equal to the prime overdraft rate charged by Standard Bank from time to time, monthly in arrears.

4 **WARRANTIES**

4.1 Save as expressly set out in this agreement, Dealer does not make any representations nor gives any warranties or guarantees of any nature whatsoever in respect of the Equipment or Services and all warranties which are implied or residual at common law are hereby expressly excluded.

4.2 Without limitation to the generality of clause 4.1, Dealer does not warrant or guarantee that the information transmitted by or available to Subscribers by way of the Services:

4.2.1 will be preserved or sustained in their entirety;

4.2.2 will be suitable for any purpose;

4.2.3 will be free of inaccuracies or defects or bugs or viruses of any kind;

and Dealer assumes no liability, responsibility or obligations in regard to any of the exclusions set forth in this clause 4.2 and 4.1 above.

5 **EXCLUSION OF LIABILITY**

5.1 Except for any deliberate act or gross negligence on the part of Dealer, its servants or agents, and except as otherwise expressly provided herein to the contrary, Dealer shall not be liable to Subscriber or any third party for any loss to Subscriber or any third party for any loss or damage of whatsoever nature and/or howsoever arising (including consequential or incidental loss or damage which shall include but shall not be limited to loss of property or of profit, business, goodwill, revenue, data or anticipated savings) or for any costs, claims or demands of any nature whether asserted against Dealer or against Subscriber by any party arising directly or indirectly out of the Equipment or Services, their use, access, withdrawal or suspension or out of any information or materials provided or not provided, as the case may be, by or from their use.

5.2 Subject to clause 5.1 above, the entire liability of Dealer and Subscriber's exclusive remedy for damages from any cause related to or arising out of this agreement, regardless of the form of action, whether in contract or in delict, will not exceed the aggregate of the fees and charges paid by Subscriber under this agreement for the period of 12 (twelve) months preceding Subscriber's written notice in terms of clause 7.1.

5.3 Subscriber hereby indemnifies Dealer against and holds Dealer harmless from any claim by any third party arising directly or indirectly out of access to or use of the Equipment or Services or information obtained through the use thereof or in respect of any matter for which liability of Dealer is excluded in terms of clause 5.1 above.

5.4 Because of the need to conduct maintenance, repair and/or improvement work from time to time on the technical infrastructure by means of which the Services are provided, the provision of the Services may be suspended from time to time, and all liability on the part of Dealer of any loss or damage (whether directly or consequential) thereby incurred or for any costs, claims, or demands of any nature arising therefrom, is excluded, and the provisions of clause 5.1 above shall apply mutatis mutandis to such exclusion. Should the provision of the Services be suspended by Dealer for the purpose aforementioned for a period in excess of 48 (forty eight) consecutive hours, Dealer shall give Subscriber credit in an amount which represents a pro rata portion of Subscriber's basic monthly subscription fee for the month during which the said suspension occurred.

6 **DOCUMENTATION**

Any specifications, descriptive matter, drawings and other documents which may be furnished by Dealer to Subscriber from time to time:

6.1 do not form part of this agreement and may not be relied upon, unless they are agreed in writing by both parties hereto to form part of this agreement;

6.2 shall remain the property of Dealer and shall be deemed to have been imparted by it in trust to Subscriber for the sole use of Subscriber. All copyright in such documents vests in Dealer. Such documents shall be returned to Dealer on demand.

7 **BREACH**

7.1 Subject to the provisions of clause 7.2 to the contrary, if either party hereto:

7.1.1 breaches any of the terms or conditions of this agreement and fails to remedy such breach or pay such amount, as the case may be, within 7 (seven) days after the receipt of written notice from the other party;

7.1.2 commits any act of insolvency;

7.1.3 endeavours to compromise generally with its creditors or does or causes anything to be done which may prejudice the other party's rights hereunder or at all;

7.1.4 allows any judgement against it to remain unsettled for more than 10 (ten) days without taking immediate steps to have it rescinded and successfully prosecuting the application for rescission to its final end; or

7.1.5 is placed in liquidation or under judicial management (in either case, whether provisionally or finally) or, being an individual, his estate is sequestrated or voluntarily surrendered;

the other shall have the right, without prejudice to any other right which it may have against the other, to:

a) treat as immediately due and payable all outstanding amounts which would otherwise become due and payable over the unexpired period of the agreement, and to claim such amounts as well as any other amounts in arrears including interest and to cease performance of its obligations hereunder as well as under any other contract with the defaulting party until such party has remedied the breach; or

b) cancel this agreement;

in either event without prejudice to such party's right to claim damages.

7.2 In the event of any expiration, termination or cancellation of this agreement, provisions hereof which are intended to continue and survive shall so continue and survive.

7.3 The defaulting party shall be liable for all costs incurred by the other party in the recovery of any amounts or the enforcement of any rights which it has hereunder, including collection charges and costs on an attorney and own client scale whether incurred prior to or during the institution of legal proceedings or if judgement has been granted, in connection with the satisfaction or enforcement of such judgement.

8 **INTELLECTUAL PROPERTY**

All intellectual property (including, without limitation, copyright, trade marks, designs and patents) relating to or used in connection with the Service/s provided under this agreement shall belong to Dealer or its third party suppliers, as the case may be. Subscriber undertakes that it shall at no time, have any right, title or interest in the intellectual property and agrees that it shall not (or permit any third party to) reverse engineer, decompile, modify or tamper with the equipment or software owned by Dealer, or any of its third party suppliers.

9 **CESSION**

Subscriber shall not be entitled to cede or assign any rights and/or obligations which it may have in terms of this agreement to any third party unless consented to in writing by Dealer, which consent may not be unreasonably withheld.

10 **HEADINGS AND INTERPRETATION**

The clause headings contained herein are for reference purposes only and shall not be used in the interpretation of this agreement. Words importing any one gender include the other two genders, the singular includes the plural and vice versa, and natural persons includes created entities (corporate or unincorporate) and vice versa.

11 **DOMICILIUM CITANDI ET EXECUTANDI**

For all purposes, including but not by way of limitation, the giving of any notice, the making of any communication and the serving of any process, Dealer and Subscriber respectively choose their domicilium citandi et executandi ("domicilium") at their respective street addresses appearing on the face hereof. Either party shall be entitled from time to time to vary its domicilium and shall be obliged to give notice to the other within ten days of the said change. Any notice which either party may give to the other shall be posted by prepaid registered post or hand delivered to the other party's domicilium and shall be presumed, unless the contrary is proved by the party to whom it is addressed, to have been received by that party on the tenth day after the date of posting or on the day of delivery as the case may be.

12 **MAGISTRATES' COURT JURISDICTION**

For the purpose of all or any proceedings hereunder the parties consent to the jurisdiction of the magistrates' court having territorial jurisdiction, notwithstanding that such proceedings are otherwise beyond its jurisdiction. This clause shall be deemed to constitute the required written consent conferring jurisdiction upon the said court pursuant to section 45 of the Magistrates' Court Act, 1944, provided, nevertheless, that any party shall have the right at its sole option and discretion to institute proceedings in any other competent court.

13 **FORCE MAJEURE**

13.1 Dealer shall not be liable for non-performance under this agreement to the extent to which the non-performance is caused by events or conditions beyond the control of Dealer, provided that Dealer makes all reasonable efforts to perform.

13.2 In the event that any provision of this agreement conflicts with any statute, ruling or order of any governmental or regulatory body from time to time, then such provision of this agreement shall be controlled by the statute, ruling or order.

14 **SEVERABILITY**

Should any of the terms and conditions of this agreement be held to be invalid, unlawful or unenforceable, such terms and conditions will be severable from the remaining terms and conditions which will continue to be valid and enforceable.

SCHEDULE 1 – ADSL / LEASED LINE SERVICE FOR INTERNET ACCESS

1 **DESCRIPTION OF SERVICE**

1.1 Dealer will provide Subscriber with on-line access to the collection of local area networks and wide area networks that all use the same protocol (namely TCP/IP) to form a seamless, packet-switched network known colloquially as the “INTERNET” (hereinafter referred to as “the Service”). Such access is gained via a dedicated permanent digital leased line connected to Dealer’s’ managed infrastructure.

1.2 Dealer will further provide Subscriber with the value-added services specified in the Service Specification Annexure, should Subscriber subscribe to such value-added services.

2 **FEES AND CHARGES**

2.1 Subscriber shall pay the fees specified in the Service Specification Annexure for the Service.

2.2 Dealer shall be entitled from time to time on 90 (ninety) days prior written notice thereof to Subscriber to increase the monthly fees referred to in the Service Specification Annexure;

Provided that:

2.2.1 Dealer shall not be entitled to increase the monthly fees during the first 12 month period of this agreement;

2.2.2 Dealer shall not increase the fees on more than one occasion in any 12 month period of this agreement.

3 **DURATION**

3.1 The provision of the Service shall endure for an initial period of 12 (twelve) months, commencing on and with effect from the Effective Date.

3.2 Subject to termination by Dealer or Subscriber by way of 90 days prior written notice of termination to be effective on any anniversary of the Effective Date, the duration of the Service shall automatically renew for successive periods of 12 (twelve) months each on the terms and conditions set out in this agreement, but subject to an escalation in fees per clause 2.2.

4 **EFFECTIVE DATE**

4.1 The Effective Date of this agreement is the date when Service first commences. Should the Effective Date occur after the date of signature of this agreement, nothing herein contained shall be construed so as to give either party the right to cancel or rescind this agreement before the Effective Date.

4.2 If at any time during the currency of this agreement, Subscriber upgrades the Service, then the Effective Date in respect of the Service as upgraded, shall be the date when the upgraded Service first commences.

5 **SUBSCRIBERS OBLIGATIONS**

5.1 Subscriber shall comply strictly with all restrictions imposed on computer networks through which any information and/or data transmitted by Subscriber passes.

5.2 Subscriber may not commit nor attempt to commit any act or omission which directly or indirectly:

5.2.1 damages in any way Dealer's technical infrastructure or any part thereof;

5.2.2 impairs or precludes Dealer from being able to provide the Service in a reasonable and businesslike manner;

5.2.3 constitutes an abuse or malicious misuse of the Service;

or is calculated to have the abovementioned effect. In such an event, should Dealer incur expenses to remedy the situation Dealer reserves the right to charge the Subscriber any amount that is necessary to cover Dealer's additional expenditure.

5.3 Subscriber may not at any time use the Service in contravention of any South African law. In particular, Subscriber undertakes to familiarise itself and ensure that it is kept continuously appraised of all South African law in force from time to time which has any bearing on the Service and/or its use. Dealer has no obligation to assist Subscriber in this regard.

5.4 Subscriber agrees that its IP allocation addresses from Dealer are non-portable and on loan for the duration of the period that Subscriber is connected via Dealer's leased line Service. At the termination of the Service for any reason whatsoever all IP addresses allocated by Dealer will become available for reallocation, and the Subscriber shall return to Dealer the IP address allocated by Dealer.

6 **INSTALLATION AND ACCESS TO SERVICE**

6.1 Subscriber shall accept installation of and provision of access to the Service by way of furnishing and activating of the address whenever tendered by Dealer.

Under no circumstances may Subscriber resile from this agreement or withhold or defer payment or to be entitled to a reduction in any charge or have any other right or remedy against Dealer, its servants, its agents or any other persons for whom it may be liable in law (and in whose favour this provision constitutes a stipulation alteri) if Dealer interrupts the Service to Subscriber as it would be entitled to do if Subscriber is in default of any of its obligations under this agreement to Dealer or in the circumstances contemplated in clause 5.4 of the above standard terms and conditions of contract.

SCHEDULE 2 – ROUTER RENTAL

1 **HIRE**

1.1 Dealer herewith, with effect from the Effective Date, lets to Subscriber, which hereby takes on hire, the Router ("Equipment") specified in the Service Specification Annexure subject to the terms of this agreement.

1.2 The Effective Date of the Equipment rental is the date the Equipment is first rented.

2 **DURATION**

2.1 The hiring of the Equipment in terms hereof shall endure for an initial period of 12 months commencing on and with effect from the Effective Date ("the initial period").

2.2 After the expiry of the initial period, the hiring of the Equipment in terms hereof shall continue indefinitely for successive periods of 12 (twelve) months each until terminated by either party at the end of any such period by way of 90 (ninety) days prior written notice of termination.

3 **RENTAL**

3.1 Subscriber shall pay the fees specified in the Service Specification Annexure for the router rental.

3.2 Dealer shall be entitled from time to time on 90 (ninety) days prior written notice thereof to Subscriber to increase the monthly fees referred to in the Service Specification Annexure;

Provided that:

3.2.1 Dealer shall not be entitled to increase the monthly fees during the first 12 month period of this agreement;

3.2.2 Dealer shall not increase the monthly fees on more than one occasion in any 12 month period of this agreement.

3.3 As long as this agreement subsists, Subscriber shall not be entitled to withhold payment of any rental for any reason.

4 **OWNERSHIP**

Dealer shall at all times be and remain the owner of the Equipment and nothing in this agreement shall be construed so as to confer any rights or interest therein on Subscriber other than as a hirer of the Equipment.

5 **RETURN OF EQUIPMENT**

On termination of this agreement in the manner envisaged in clause 2 hereof or clause 7 of the above standard terms and conditions of contract, as the case may be, Subscriber shall forthwith return the Equipment to Dealer in the same condition as it stands on the Effective Date.

6 **RISK**

All risk of loss and/or destruction of the Equipment shall be retained by Subscriber at all times. Subscriber shall be responsible for ensuring that the Equipment is insured against loss and destruction for the usual causes arising.

7 **OPERATION OF EQUIPMENT**

Subscriber shall at all times operate and maintain the Equipment in accordance with Dealer's Manual of Instructions which shall be issued to Subscriber on the Effective Date and the Subscriber will permit Dealer at all reasonable times to have access to the Equipment and to inspect the state and condition thereof. In the event of breakdown or malfunction of the Equipment, the Subscriber shall at its cost attend to the repairs of the same.

8 **SAFETY OF EQUIPMENT**

From the Effective Date, the Subscriber shall be responsible for the safety of the Equipment and the cost of repair of any damage caused to the Equipment in any manner whatsoever while the Equipment is under the control of the Subscriber.

9 **DUTIES OF SUBSCRIBER**

Subscriber shall:

9.1 use or permit the use of the Equipment only for the purpose and in the manner for which it is intended to be used;

9.2 allow Dealer to inspect the Equipment at all reasonable times;

9.3 take all such care as may be necessary to protect the Equipment from loss or damage;

9.4 not permit any person other than Dealer to acquire any right to or in respect of the Equipment;

9.5 under no circumstances be entitled to withhold or defer payment of Rentals.

10 **INDEMNITY**

The Subscriber indemnifies and holds Dealer harmless against any damage, loss or matter arising from or connected with the Equipment irrespective of the cause of such claim. Subscriber shall have no claim or right against Dealer in respect of or arising out of the Equipment, the use, possession or failure thereof or any defect therein or damage caused thereby.