

**SUBSCRIBER AGREEMENT FOR BOOMERANG INDIVIDUAL
SUBSCRIBER**

1 CONTRACT

1.1 The Subscriber requires certain asset tracking Equipment and Netstar Services from Netstar, and Netstar has agreed to provide the asset tracking Equipment and Netstar Service to the Subscriber.

1.2 This Contract sets out the terms which will apply to the asset tracking Equipment and Netstar Service provided by Netstar to the Subscriber, regardless whether the Contract has been signed by the Subscriber.

2 DEFINITIONS AND INTERPRETATION

2.1 The words and phrases stated below will be used throughout the Contract. When reading the Contract, the word or phrase must be given the meaning set out next to it.

"Application Schedule" means the form which sets out the identity of the Subscriber, details of the Netstar Service which will be provided by Netstar and the fees payable for the Netstar Service;

"Business Day" means Monday to Friday, excluding weekends, being Saturday and Sunday and excluding a public holiday as defined under the Public Holidays Act, 36 of 1994;

"Contract" means this agreement, the Application Schedule, the Netstar User Manual and related literature;

"Effective Date" means the date that the Equipment has been activated by the Subscriber;

"Equipment" means the mobile Netstar Boomerang tracking unit and SIM card and any piece of additional equipment which has been supplied by Netstar for the purposes of providing the Netstar Service;

"GSM Network" means the Global Systems for Mobile Communications Network, which is a wireless communications network over which the Netstar Service is provided by Netstar;

"Initial Period" means the period of the Contract, as stated under the Application Schedule;

"Netstar" means Netstar (Proprietary) Limited, a South African company bearing registration number 1992/001223/07 with its registered office at Block O, Central Park Offices, Midrand, and includes its employees, agents and contractors as well as any and all of its business divisions including but not limited to Netstar Fleet Solutions;

"Netstar Control Centre" means the centre at Netstar where signals from the Equipment may be monitored and acted upon in terms of this Contract;

"Netstar Fitment Centre" means an independent entity that has been authorised and approved by Netstar to repair the Equipment on Netstar's behalf;

"Netstar Service" means the Equipment and various services provided by Netstar to the Subscriber in terms of the Contract which includes tracking of the Equipment and SARS over the GSM Network;

"Netstar User Manual" means the Netstar user guide, training materials and related documents provided to the Subscriber, which states how the Netstar Service operates;

"Network Service Provider" means the service provider who provides the GSM Network;

"Parties" means both the Subscriber and Netstar collectively and "Party" means either the Subscriber or Netstar;

"SARS" means Stolen Asset Recovery Services rendered by Netstar as set out in this agreement where applicable which includes the response, tracking, and an attempt to recover any reported and/ or suspected stolen asset in which the Equipment is located;

"Subscriber" means the party to whom this Contract applies, whose details are more specifically set out in the Application Schedule;

"Territory" means the Republic of South Africa;

"Voice-logged Contract" means an oral Contract concluded telephonically by the Subscriber with Netstar for the Netstar Service to which the terms and conditions of this Contract apply;

"Website" means the Boomerang website through which the Subscriber can register and activate the Equipment and locate its position.

2.2 The provisions of this Contract will take precedence over any conflicting provision found under the Netstar User Manual, Application Schedule or any other applicable document which may be provided to the Subscriber from time to time.

2.3 Words referring to the single form will include the plural form and words referring to one gender will include the other gender.

3 AGREEMENT TO PROVIDE THE NETSTAR SERVICE

3.1 The Subscriber has agreed to contract with Netstar for the Netstar Service and Netstar has agreed to provide the Netstar Service to the Subscriber on the terms set out in this Contract.

3.2 Where the Subscriber has entered into a Voice-logged Contract, the Subscriber agrees that the terms of this Contract will apply in all respects to the Netstar Service which the Subscriber telephonically requested and which Netstar agreed to provide to the Subscriber.

4 DURATION OF THE CONTRACT

4.1 The duration of the Contract will be for the Initial Period, commencing on the Effective Date, unless terminated earlier by either of the Parties, as permitted in terms of this Contract.

4.2 On expiry of the Initial Period, and provided that the Subscriber has not confirmed that the Contract will terminate on the expiration of the Initial Period, the Contract will continue on an indefinite basis, where either Party will have the right to terminate the Contract on 20 (twenty) Business Days written notice to the other.

4.3 THE SUBSCRIBER MAY CANCEL THE CONTRACT PRIOR TO THE EXPIRY OF THE INITIAL PERIOD ON 20 (TWENTY) BUSINESS DAYS WRITTEN NOTICE SUBJECT TO PAYMENT OF A REASONABLE CANCELLATION FEE TO NETSTAR AS WELL AS ANY OTHER AMOUNTS DUE AND PAYABLE IN TERMS OF THIS CONTRACT.

4.4 Where the Equipment is purchased by the Subscriber, there will be no Initial Period applicable and either Party will have the right to terminate the Contract at any time upon 20 (twenty) Business Days written notice to the other.

5 THE NETSTAR SERVICE, EQUIPMENT AND WARRANTIES

5.1 Netstar will provide the following services in terms of this Contract:

5.1.1 the Website service which involves receiving information regarding the position of the Equipment, this information being communicated by the Equipment the Netstar Control Centre and being made available to the Subscriber via the Website

5.1.2 SARS, where applicable and at an additional charge, which will include response, tracking, and recovery of a stolen asset. SARS will be limited to 4 (four) response services per annum. Where Netstar is required to render the SARS on more than 4 (four) occasions per annum, a fee will be payable at the standard response rate applicable at the time, for each additional service rendered.

5.2 Netstar will provide the Subscriber with the Netstar Service for the duration of the Contract, provided that the Subscriber complies with its obligations under the Contract.

5.3 The Subscriber agrees that the Netstar Service cannot be provided by Netstar or used by the Subscriber unless the Equipment is programmed, enabled and functioning to its manufacturer's specifications. Only Equipment supplied and approved by Netstar may be used for the purposes of this Contract.

5.4 The Subscriber will, at its own cost, obtain and take delivery of the Equipment from either Netstar or an authorised and approved Netstar agent, as directed by Netstar.

5.5 All risk of loss and damage in and to the Equipment will, upon the date of delivery, pass to the Subscriber.

5.6 The Equipment will carry a 12 (twelve) month warranty, subject to fair wear and tear which is excluded. Maintenance or repairs required in terms of this warranty shall be carried out a Netstar Fitment Centre.

5.7 The Subscriber agrees not to alter or modify the Equipment under any circumstances. If altered, modified, misused or tampered with or if the damage to the Equipment is due to water or collision damage or any other cause beyond Netstar's control, then the warranty set out under clause 5.6 will not apply and Netstar will not have any obligation to repair or replace the Equipment or provide the Netstar Service, or refund to the Subscriber any amounts claimed by the Subscriber, in respect of any warranty, damages or contractual claim.

5.8 The Subscriber acknowledges that the nature of the Equipment is such that the Subscriber will be in a position to determine whether the Equipment is functioning or not and Netstar will be relieved of its obligation to provide the Netstar Service at any time that the Equipment is not functioning properly.

5.9 Where the Equipment is not in use for any reason, or is not functioning properly whether under warranty or not, and the Subscriber has not made any attempt to have the Equipment repaired by Netstar, the Subscriber will still be liable to pay the Netstar Service fee.

5.10 The Subscriber will notify the Netstar Control Centre immediately should the Equipment be accidentally activated. The Subscriber accepts responsibility for all consequences of any accidental activation of the Equipment, which may include a response by the police or response teams and a subsequent wrongful arrest of the Subscriber or any third party. THE SUBSCRIBER AGREES TO HOLD NETSTAR HARMLESS FROM, AND INDEMNIFIES NETSTAR AGAINST ANY CLAIMS FOR DAMAGES THAT MAY BE BROUGHT BY ANY PARTY AS A RESULT OF ANY ACCIDENTAL ACTIVATION OF THE EQUIPMENT.

5.11 The Subscriber agrees to use the Equipment and the Netstar Service in accordance with the Netstar User Manual and other literature provided by Netstar from time to time.

5.12 In the event of loss, damage or theft of the Equipment or SIM card, the Subscriber will report such loss, damage or theft:

5.12.1 to Netstar immediately upon knowledge thereof; and

5.12.2 to the Police within 48 (forty eight) hours of knowledge thereof.

6 NETSTAR SERVICE FEES

6.1 The fees for the Netstar Services will include the following as applicable:

6.1.1 the once off purchase price for the Equipment;

6.1.2 the monthly service fee for the Netstar Service; and

6.1.3 Any costs associated with SMS messages, voice calls, data messages, facsimiles, and any other related expenses associated with the SIM card which will be paid in arrears.

6.2 All amounts in respect of any fees due by the Subscriber will be set out in a monthly VAT invoice.

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- 6.3 In the event of Netstar having to render the SARS on more than 4 (four) occasions per annum as per clause 5.1.2, the Subscriber agrees that he will be liable for payment in respect of any subsequent response at the standard response rate as determined by Netstar from time to time.
- 6.4 The Subscriber will bear all the costs relating to the use of the SIM card including the cost of voice calls, data messages, facsimiles, and any other related expenses, notwithstanding that the SIM card may, through no fault of the Subscriber, have been lost and fraudulently used by a third party until such time that the Subscriber has acted in terms of clause 5.12.1.
- 6.5 All fees will be set out in a monthly VAT invoice which will be provided to the Subscriber on a monthly basis.
- 6.6 Subject to clause 6.1.3, all Netstar Service fees will be paid by way of debit order in favour of Netstar or in any other manner approved by Netstar, monthly in advance on or before the 7th (seventh) day of each calendar month or such date as specified in the debit order or payment authorisation contained in the Application Schedule.
- 6.7 Notwithstanding anything to the contrary in this clause, the fees for the first month of the Contract (pro rata where applicable) will be paid on the Effective Date of the Contract.
- 6.8 Should any debit order be returned unpaid or dishonoured for any reason, the Subscriber authorises Netstar to submit additional debit orders as may be necessary for the full outstanding balance including any arrear amounts.
- 6.9 Netstar will have the right to increase the Netstar Service fee and charges on an annual basis, provided that such increase is reasonable and that it provides the Subscriber with at least 1 (one) month's prior written notice of such increase in which event the Subscriber will be entitled to cancel this Contract as permitted in terms of clauses 4.3 and 4.4.
- 6.10 In the event that Netstar renders any service not required of it in terms of this Contract, the Subscriber agrees that it will pay Netstar an amount determined in accordance with Netstar's standard fees applicable from time to time, for such service rendered.
- 6.11 The Subscriber will not be allowed to withhold payment of any fees or other amounts due to Netstar where the Equipment is not functioning properly for any reason. Where this is the case, the Subscriber must immediately inform Netstar and make the necessary arrangements with Netstar for the Equipment to be repaired.
- 6.12 If the Subscriber fails to pay to Netstar any amount owing in terms of this Contract, Netstar will have the right to suspend the Netstar Services and will give the Subscriber 20 (twenty) Business Days to make payment of all outstanding amounts. Should Netstar not receive payment as requested in the notice, Netstar will have the right to immediately terminate the Contract and hand the outstanding account to an attorney or debt collector for recovery.
- 6.13 During any period of suspension or disconnection, Netstar reserves the right to refuse to release the SIM card to any other service provider of similar services.
- 7 FURNISHING INFORMATION AND NOTICES**
- 7.1 The Subscriber confirms that all information which it has provided to Netstar under the Contract is true and accurate and can be relied on by Netstar.
- 7.2 In the event of an emergency, the Subscriber agrees that it or its duly appointed representative, whose details is set out under the Application Schedule, may be contacted.
- 7.3 If there is any change to the information set out under the Contract, the Subscriber will notify Netstar immediately in writing of the change. Where the Subscriber fails to give Netstar written notice of any changes then the Subscriber agrees to hold Netstar harmless should Netstar rely or act upon the former and out dated information.
- 7.4 Where Netstar is required to notify the Subscriber or its contact person of any fact, notice and document relating to or in connection with this Contract, Netstar will communicate such message or notice using any form of electronic communication of its choice, including communication sent by fax, SMS, email or phone as Netstar deems appropriate and the Subscriber agrees that communication can be given in such a manner.
- 7.5 Where Netstar cannot reach the Subscriber or its duly appointed representative at the details supplied by Subscriber, Netstar will be excused and legally relieved of the duty to provide such notice.
- 7.6 Where legal notice is to be served, in terms of the Contract on the Subscriber, the Subscriber chooses its address for service of all legal notices and documents in connection with this Contract (domicilium citandi et executandi) at its physical address as set forth in the Application Schedule.
- 7.7 Where legal notice is to be served, in terms of the Contract on Netstar, Netstar chooses its respective address for service of all legal notices and documents in connection with this Contract (domicilium citandi et executandi) at the following physical address: Central Park Offices, Block O, 16th Road, Randjespark, Extension 5, Midrand.
- 7.8 Either Party may change its address, by written notice to the other Party provided that any new address selected by it will be a physical address, and such changes will only be effective upon receipt of notice in writing by the other Party.
- 7.9 The Subscriber acknowledges that Netstar is obligated to ascertain the Subscriber's credit worthiness as per the provisions of the National Credit Act, 34 of 2005. The Subscriber expressly gives Netstar or its authorised agent, permission to:
- 7.9.1 access from any duly registered credit bureau, the Subscriber's personal information concerning financial risk and payment habits ("payment profile") to process the Subscriber's application for the Netstar Service; and
- 7.9.2 share or disclose information about the Subscriber's payment profile to the credit bureau.
- 7.10 The Subscriber acknowledges that it is under a duty to provide Netstar with certain mandatory information in accordance the Regulation of Interception of Communications and Provision of Communication related Information Act, 48 of 2008 (as amended) ("RICA") and undertakes to cooperate with Netstar prior to the implementation of the Netstar Service, in respect of the provision of all the required documentation and information, **FAILING WHICH IT WILL HOLD NETSTAR HARMLESS AGAINST ANY LOSS OR DAMAGE RESULTING FROM SUCH FAILURE.**
- 8 EXCLUSION OF LIABILITY**
- 8.1 The Subscriber accepts that the Netstar Service is intended to reduce the risk of loss to the Subscriber but not to eliminate such risk.
- 8.2 **UNLESS PROHIBITED BY LAW, THE SUBSCRIBER AGREES TO HOLD NETSTAR HARMLESS FOR ANY LOSS OR DAMAGE CAUSED TO THE SUBSCRIBER AND OR THE AUTHORISED USER ARISING FROM THE NETSTAR SERVICE, AND OR NETSTAR NOT BEING ABLE TO PERFORM THE NETSTAR SERVICE FOR ANY REASON, INCLUDING NETSTAR'S NEGLIGENCE, OR DUE TO ANY MALFUNCTION OF THE EQUIPMENT AND OR THE NETWORK.**
- 9 FORCE MAJEURE**
- If Netstar is prevented or restricted in any way from carrying out all or any of its obligations under this Contract by reason of force majeure (an event or circumstance beyond the control of the Parties, such as a war, strike, riot, crime, or an "act of God" such as flooding or an earthquake which prevents one or both Parties from performing their obligations under the Contract), then Netstar will be relieved of its obligations to provide the Netstar Service during such period of force majeure, and Netstar will not be liable for any loss, damage, action or claim which may be brought by the Subscriber or by any other party in consequence of such delay or inability to perform.
- 10 BREACH AND CONSEQUENCES**
- 10.1 If the Subscriber:
- 10.1.1 fails to pay any amount under this Contract on due date; or
- 10.1.2 fails to carry out or perform any of its contractual obligations or breaches any term or condition of this Contract; or
- 10.1.3 in Netstar's reasonable opinion raises false alarms or abuses the Netstar Service, (referred to as "the breach"); then Netstar may immediately suspend the Netstar Service and provide the Subscriber with a written notice requiring it to rectify the breach within 20 (twenty) Business Days of the date of such notice.
- 10.2 Where the Subscriber fails to rectify the breach within the 20 (twenty) Business Day period, Netstar will thereafter have the right to immediately terminate the Contract, without notice to the Subscriber, which termination shall be without prejudice to any rights which Netstar may then have in law, including:
- 10.2.1 where the Initial Period of the Contract has not expired, the right to claim from the Subscriber an early termination fee reasonably calculated by Netstar;
- 10.2.2 where the Initial Period of the Contract has not expired, the right to immediately recover ownership and possession of the Equipment, at the Subscriber's risk and expense;
- 10.2.3 the right to demand from the Subscriber, all amounts payable, by the Subscriber to Netstar under the Contract; and
- 10.2.4 the right to claim any other damages from the Subscriber, which it may have incurred in law in consequence of the Subscriber's breach.
- 10.3 Where Netstar breaches any material term of the Contract, the Subscriber has the right to send Netstar a written notice requiring Netstar to rectify the breach within 20 (twenty) Business Days of receipt of such notice.
- 10.4 Where Netstar fails to rectify the breach within the 20 (twenty) Business Day period, the Subscriber will thereafter have the right to immediately terminate the Contract, on written notice to Netstar which termination will be without prejudice to any rights which the Subscriber may have in law, including the right to claim damages from Netstar which it may have incurred in consequence of Netstar's breach.
- 10.5 Where the Subscriber cancels the Contract during the Initial Period in terms of clause 10.2.1, the Subscriber will still be liable to pay Netstar an early termination fee and Netstar will have the right to immediately remove and recover ownership and possession of the Equipment.
- 10.6 Where Netstar has to recover the Equipment in terms of this clause, the Subscriber will do all such things as may be reasonably necessary to enable Netstar to collect the Equipment.
- 10.7 Where Netstar has to use the services of a debt collector or attorney to successfully enforce any provisions of the Contract, then the Subscriber will bear the costs incurred by Netstar, including legal fees, on an attorney and client basis.

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11 GENERAL

- 11.1 This Contract will be regulated and interpreted in accordance with the laws of the Republic of South Africa.
- 11.2 Should any provision of this Contract be declared at any stage whilst the Contract is in force to be unlawful, such provision will be deleted from the Contract and the remaining parts of the Contract will continue to operate.
- 11.3 This Contract sets out the entire agreement and understanding between the Parties and supersedes all prior Contracts, written or oral, in connection with the subject matter hereof.
- 11.4 No change or cancellation of this Contract will be of any force or effect unless such change or cancellation is agreed in writing and signed by both Parties.
- 11.5 Where one of the Parties does not act on a breach of the Contract by the other Party, failure to act will not result in that Party giving up its rights to act upon that breach or another breach, at a later stage.
- 11.6 The Subscriber will not be able to transfer, cede, delegate or assign its rights or obligations in terms of this Contract to another person without the prior written consent of Netstar, which consent will not unreasonably be withheld.
- 11.7 Netstar will be entitled to transfer, cede, delegate or assign its rights or obligations under this Contract provided that the Subscriber's rights in terms of this Contract remain unaffected. Netstar may at its sole discretion at any time elect to vary the Network Service Provider or to use facilities other than a GSM Network to provide the Netstar Service provided that Netstar's obligations to the Subscriber as provided under the Contract will not be affected.

I, the Subscriber confirm that I have read this Contract and that I fully understand the terms and conditions and effect of this Contract and that the terms will be binding on me from the Effective Date.

SIGNED by the Subscriber at _____ on the
_____ day of _____ 20____

Signature

Full Names in Print