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# SERVICE AGREEMENT

Between

**GBACKUP CC**  
**23A MAIN STREET, NEWLANDS**  
**CAPE TOWN, 7700**

("Gbackup")

and

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("the Subscriber")

Prepared by Buys Inc. Attorneys  
[www.buys.co.za](http://www.buys.co.za)



## 1. INTERPRETATION

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- 1.1 In this agreement, unless the context otherwise indicates:
- 1.1.1 “**Commencement Date**” means the Signature Date;
  - 1.1.2 “**Parties**” mean Gbackup and the Subscriber;
  - 1.1.3 “**Services**” mean automated and remote data backup services provided by Gbackup and fully described in Annexure A;
  - 1.1.4 “**Signature Date**” means the date when the last Party signing this agreement does so.
- 1.2 Words importing the singular shall include the plural and vice versa, words importing the masculine gender shall include the neuter gender and vice versa and words importing persons shall include partnerships and bodies corporate;
- 1.3 The clause headings to the paragraphs to this agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate; and
- 1.4 This agreement shall be binding on and enforceable by the estates, heirs, executors, administrators, trustees or permitted assigns of the Parties as fully and effectually as if they had signed this agreement in the first instance and reference to any Party shall be deemed to include such Party’s estate, heirs, executors, administrators, trustees or permitted assigns, as the case may be.

## 2. INTRODUCTION

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- 2.1 Gbackup provides automated remote data backup Services fully detailed in Annexure A;
- 2.2 The Subscriber wishes to appoint Gbackup to perform the Services; and
- 2.3 Gbackup is willing and able to accept such appointment.

## 3. APPOINTMENT OF GBACKUP

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The Subscriber hereby appoints Gbackup to perform the Services to the Subscriber for the term detailed in clause 5 and Gbackup accepts such appointment, subject to the terms and conditions of this agreement.

## 4. RELATIONSHIP BETWEEN THE PARTIES

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- 4.1 For the avoidance of doubt, the Parties record and agree that pursuant to the implementation of this agreement Gbackup shall at all times act as an independent contractor; and
- 4.2 Nothing in this agreement shall constitute an employer/employee relationship or an agency or a partnership in any shape or form between the Parties nor authorise either of the Parties to incur any liability on behalf of the other of them, save to the extent expressly provided for herein.



## 5. COMMENCEMENT DATE AND TERM

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This appointment shall:

- 5.1 commence on the Commencement Date; and
- 5.2 continue for a period of 12 (TWELVE) months (the Initial Period) and thereafter automatically renew for subsequent 12 (TWELVE) month periods, unless terminated with 1 (ONE) month's prior written notice by either Party, which notice may not be given by the Subscriber during the Initial Period.

## 6. COST AND PAYMENT

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- 6.1 In consideration for the Services to be rendered by Gbackup to the Subscriber in terms of this agreement, the Subscriber shall pay Gbackup the fees set out on the Gbackup website at <http://www.gbackup.co.za/pricing.htm>;
- 6.2 The subscriber shall complete the debit order authorisation attached hereto in Annexure B and thereby authorise Gbackup to debit the Subscribers bank account monthly with the due amounts; and
- 6.3 Gbackup reserves the right to terminate this agreement if the Subscriber's bank fails to honour any monthly debit order.

## 7. DUTIES OF THE PARTIES

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- 7.1 Notwithstanding other duties detailed herein, Gbackup has the duty to:
  - 7.1.1 Provide the Service to the Subscriber;
  - 7.1.2 Issue monthly invoices to the Subscriber detailing each relevant month's debit order payment; and
  - 7.1.3 Provide support for the Service on a telephonic and / or email basis, which excludes support for items not directly related to the Service.
- 7.2 Notwithstanding other duties detailed herein, the Subscriber has the duty to:
  - 7.2.1 Duly complete the debit order authorisation attached hereto in Annexure B; and
  - 7.2.2 Follow due procedure with regards to all communications and support requests as instructed by Gbackup and its employees.

## 8. WARRANTIES

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- 8.1 Gbackup makes no warranties or representations regarding the Service, whether express or implies and all such warranties are reserved; and
- 8.2 The Subscriber warrants that it has the necessary computer software and hardware required to access and use the Services and shall take all reasonable steps to secure and protect its password from unauthorised use and / or disclosure.



## 9. INDEMNITY

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The Subscriber hereby indemnifies and holds Gbackup harmless against any loss, claims, demands, proceedings, damages and expenses of whatsoever nature in respect of loss of or damage to any property of any person or loss of profits or inability to operate arising during the duration of this agreement which the Subscriber may suffer resulting from the use of the Service, unless caused by the gross negligence of Gbackup.

## 10. INTELLECTUAL PROPERTY RIGHTS AND RESTRAINT OF TRADE

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- 10.1 Gbackup hereby licenses the Subscriber to use the Gbackup software underlying the services on a non-exclusive and non-transferrable basis; and
- 10.2 All intellectual property used or developed by Gbackup in the performance of the Services shall be owned by and remain the exclusive property of Gbackup.

## 11. FAILURE TO PERFORM

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Should either Party fail to fulfil its obligations in terms of this agreement as a result of:

- 11.1 inability to secure labour, materials or supplies despite having taken reasonable steps to procure same;
- 11.2 any act of God, war, strike, lockout or other labour dispute, fire, malicious computer code infection, power failure, terrorism, urban terror, flood or legislation; or
- 11.3 any other cause beyond the reasonable control of the Party concerned,

then notwithstanding anything to the contrary contained or implied in this agreement, the other Party shall not be entitled to terminate this agreement prematurely, nor shall it have any claim for damages in whatsoever nature against the Party concerned.

## 12. NO ASSIGNMENT

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Gbackup shall be not entitled in any manner whatsoever to:

- 12.1 cede its rights;
- 12.2 delegate its obligations; and
- 12.3 assign its rights and obligations,

under this agreement without the prior written consent of the Subscriber.

## 13. EARLY TERMINATION

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Should:

- 13.1 either Party commit any breach of their obligations and/or undertakings in terms of this appointment and/or any other term and/or condition of this appointment, and fail to remedy such breach within a period of 7 (seven) days after receipt of written notice requiring it to do so;
- 13.2 either Party repeatedly breach any of the terms and/or conditions hereof in such a manner as to justify the innocent Party in holding that the other Party's conduct is inconsistent with the intention or ability of such other Party to carry out the provisions of this agreement; or



13.3 either Party become liquidated or insolvent or be in the process of liquidation or insolvency,

then in all or any of such events, the other (innocent Party) shall be entitled, without prejudice to any other claims that it may have, to prematurely terminate the appointment under this agreement.

#### 14. **ARBITRATION**

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All disputes in terms of this agreement or the interpretation hereof shall be referred to confidential arbitration in terms of the rules of the Arbitration Foundation of South Africa and such arbitration shall be conducted in English in Cape Town.

#### 15. **CO-OPERATION**

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The Parties undertake to co-operate with each other in all respects in order to give effect to the intent and import of this agreement.

#### 16. **GOOD FAITH**

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In the implementation of this agreement, the Parties undertake to observe the utmost good faith and they warrant in their dealings with each other that they shall neither do anything nor refrain from doing anything which might prejudice or detract from the rights, assets or interests of any other(s) of them.

#### 17. **NOTICES AND DOMICILIA**

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Each of the Parties chooses *domicilium citandi et executandi* ("domicilium") for the purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purposes arising from this agreement at their respective addresses set forth on the face of this agreement.

#### 18. **GENERAL**

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- 18.1 No data message (as defined in the Electronic Communications and Transactions Act 25 of 2002), including an e-mail, SMS and recorded voice message, sent by Gbackup to the Subscriber shall amend this agreement or the rights and duties of the Parties in any manner, unless such a data message is reduced to paper and signed by the Parties;
- 18.2 Data messages (as defined above) sent by Gbackup to the Subscriber shall be deemed to be received by the Subscriber only when the Subscriber responds thereto, and for the purposes of this clause an auto-response shall not be a response by the Subscriber;
- 18.3 Legal notices and/or disclaimers linked or accessible from or attached to a data messages (as defined above) sent by the Subscriber to Gbackup shall be deemed part of this agreement and shall override and replace any such notices and disclaimers linked or accessible from any data messages sent by Gbackup in a return message;
- 18.4 No alteration, cancellation, variation of, or addition hereto shall be of any force or effect unless reduced to writing and signed by all Parties to this agreement or their duly authorised representatives;



- 18.5 This document contains the entire agreement between the Parties and no Party shall be bound by any undertakings, representations, warranties, promises or the like not recorded herein;
- 18.6 No indulgence, leniency or extension of time which any Party (the Grantor) may grant or show to any other Party, shall in any way prejudice the Grantor or preclude the Grantor from exercising any of its rights in the future; and
- 18.7 The law of South Africa and the jurisdiction of the South African courts shall govern this agreement.

SIGNED at .....on the ..... day of .....2007

**AS WITNESSES:**

**GBACKUP**

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_ - who warrants his/her authority to sign

SIGNED at .....on the ..... day of .....2007

**AS WITNESSES:**

**SUBSCRIBER**

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_ - who warrants his/her authority to sign

Parties must initial every page of this agreement and, if necessary, at all changes made in ink.



## **ANNEXURE A**

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### **SERVICE SPECIFICATIONS**

Gbackup is a state of the art online backup system, incorporating numerous technologies to ensure reliability and efficiency, at a great price. The Gbackup system will allow you peace of mind with regards to your data.

Backup desktops, laptops and servers off-site, online, no matter where you are located or travel to. As long as your computer is switched on and has internet connectivity your backups will work.

Thorough research, evaluation and testing we have created an optimized solution for the South African market. The software we have implemented is used in 63 countries all with enormous success. We have invested heavily in the software and equipment to enable us to provide a world class service. Market research shows enormous need for the product in the South African market.

The software has the following features;

- Microsoft exchange support
- Microsoft SQL support
- Active directory support
- Pre-configured installation
- Automatic, Unattended Online Backups
- Works over the Internet or local network
- Assists with HIPAA Compliance
- Extreme Compression - Up to 90%
- Automatic File Selection
- Activity Reports
- Easy, Quick Restores
- Keeps Multiple File Versions
- Multiple backup sets
- Point in Time Restores
- Configurable Retention Period
- Pre-configured for simple installation
- Secure data storage - Up to 448-Bit Variable Key Blowfish Encryption
- E-mail notifications of complete backups
- Local notifications of missed backups
- Minimal maintenance required
- Bit-backup technology



**ANNEXURE B**

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**DEBIT ORDER AUTHORISATION**

<b>SUBSCRIBER:</b>	
<b>CONTACT PERSON:</b>	
<b>TELEPHONE NUMBER:</b>	
<b>FAX NUMBER:</b>	
<b>ADDRESS:</b>	
<b>BANK</b>	
<b>BRANCH:</b>	
<b>ACCOUNT TYPE:</b>	
<b>ACCOUNT NUMBER:</b>	
<b>DEBIT ORDER DAY:</b>	
<b>DATE OF FIRST DEBIT ORDER:</b>	

I / we, the undersigned, hereby authorise Gbackup CC of 23A Main Street, Newlands, Cape Town, to draw against my / our account with the abovementioned bank, the amount owed by me / us for the provision of the Gbackup service. All such withdrawals from my / our bank account by Gbackup CC shall be treated as though I/we had signed them personally. I/we furthermore give authority to Gbackup CC to amend this amount at any given time should there be any further amount outstanding by myself / ourselves due to arrears or annual increases. I / we agree to pay any bank charges relating to this debit order instruction. This authority may be cancelled by me / us by giving Gbackup CC thirty (30) days notice in writing, sent by prepaid registered post, but I / we understand that I / we shall not be entitled to any refund of amounts which you have withdrawn while this authority was in force if such amounts were legally due and payable.

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2007.

\_\_\_\_\_  
Signature

