

APPLICATION FOR SUBSCRIPTION AS CLIENT OF MEGASURF WIRELESS INTERNET

Trading Name: _____
Full names and surname: _____
Identity Number: _____ Date of Birth: _____
Contact Details: Landline: _____ Mobile: _____
Fax Number: _____ Email Address: _____
Postal Address: _____ VAT No: _____
_____ Code: _____
Physical address: _____

Nature of Business (Specify) : _____
Position held: _____ Tel No: _____

SECTION A

DEBIT ORDER:

BANKING DETAILS:

Account Holder: _____
Bank: _____ Branch: _____
Account No.: _____ Branch code: _____
Type of account: _____

Or

CREDIT CARD:

Account Holder: _____
Credit Card Number: _____
Expiry Date: _____
Credit Card Type: (Master or Visa) _____

Amount: _____ Package: _____

I/We, the undersigned, hereby authorize Megasurf Wireless Internet, to debit, the above amount and all other amounts which are due and payable, by me/us to Megasurf Wireless Internet as per their account, at the last day of the month from my/our account. Taking into consideration that the first debit order may include an additional prepaid amount, if so informed, at installation or at the set up of the network by Megasurf Wireless Internet.

Thus done and signed at _____ on _____ day of _____ 20 _____

Witnesses:

1. _____
Account Holder
2. _____

Office use Only
Username: _____
Tower name & No. _____
Rep code _____
Activation Date _____
Recurring Inv no. _____

Type of business: (a) SOLE OWNER (b) PARTNERSHIP (c) COMPANY (d) CLOCE COPORATION

(a) SOLE OWNER – (Please attach Identity Document)

Name: _____

Home Address: _____

If business is operated on rented property;

Name and address of owner: _____

(b) PARTNERSHIP (c) COMPANY (d) CLOSE CORPORATION – (Please attach CK1 or CM1)

Registered name: _____

Registered address: _____

Principal place of business: _____

Registration no. of Company or Close Corporation: _____

Date of registration/establishment: _____

Full names of Directors/members/partners:

1. Name: _____

Residential address: _____

Identity No.: _____

2. Name: _____

Residential address: _____

Identity No.: _____

3. Name: _____

Residential address: _____

Identity No.: _____

If business is operated on rented property:

Name and address of owner: _____

**SECTION B
SURETYSHIP**

The signatory above and all the above named members/directors/partners bind themselves in their personal capacities as joint debtors, jointly and severally for the full amount due to Megasurf Wireless Internet and agree that these terms and conditions beneath will apply *mutatis mutandis* to him/them.

SECTION C

CONSENT:

The Applicant and its principal hereby specifically CONSENT that Megasurf Wireless Internet may:

1. Perform a credit search on their records with a registered credit bureau to monitor their payment behaviour by researching their payment behaviour by researching their records with a registered credit bureau.
2. Use new information and data obtained from any registered credit bureau in respect of their future business transactions
3. Record the details in respect of the conduct of their accounts with the Supplier with a registered credit bureau.
4. Record and transmit details of how they have performed and how the account conducted

5. I/We herewith declare that I/We shall after payment of the monthly payment still have sufficient means to pay my/our monthly debts and Expenses and to maintain my/our dependants.

SECTION D

THE SIGNATORY FOR AND ON BEHALF OF THE APPLICANT HEREBY ACKNOWLEDGES AND AGREES THAT:

All transactions concluded between the applicant and Megasurf Wireless Internet shall be strictly subject to Megasurf's Terms and Conditions, which are set out hereunder in Section E.

All the information recorded in this application is true and correct, and it has been signed out of my own free will and with full knowledge and understanding of the contents hereof and I am duly authorised in doing so.

The Applicant hereby acknowledges that he/she/they has/have read and understood each and every term of the Agreement and accept these as binding.

Megasurf may rectify *bona fide* errors and mistakes in its documentation.

1. This Agreement will govern all future contractual relationships between the Parties applicable to all existing debts between the Parties.
2. The Contract is final and binding and is not subject to any suspensive conditions.
3. The Applicant warrants that the signatory on this document is authorized to Contract on the Applicant's behalf.
4. The Applicant acknowledges that representations were made by Megasurf Wireless Internet in regard to any goods and/or services or any of its duties leading up to the Agreement.

SECTION E

MEGASURF TERMS AND CONDITIONS

1. Introduction

1.1 Megasurf sells access to its network on a subscription which facilitates use of the World Wide Web, electronic mail, FTP and USENET ("access") via a wireless connection for Megasurf members who enter a valid user name and password.

1.2 When you subscribe for the service, Megasurf will issue a user name and password to you. By using the user name and password to Access service and/or by using the service, you will be signifying your acceptance of these terms and conditions of use, which will form a binding agreement between you and Megasurf.

2. Interpretation of this Agreement

2.1 **"the/this agreement"** - means these terms and conditions of use,

Megasurf's website terms and conditions of use, Mega surf's copyright notice, Megasurf's privacy policy, Megasurf's mailbox rules including all debit orders and application forms, and all other terms and conditions which Megasurf may, from time to time, impose in respect of the service, as amended and updated from time to time;

2.2. **"Effective date"** - means the date on which Megasurf activates your subscription to the service;

2.3. **"service(s)"** – means the service described in 1.1 above and any other service that you may subscribe to or which may form part of Mega surf's offering from time to time;

2.4. **"Membership fee"** - means the fee provided for in 6.1 below, as set out in Mega surf's standard price list from time to time

3. Conditions of access

3.1 Megasurf hereby, with effect from the effective date, grants you access to the service on the terms and conditions of this agreement.

3.2 You hereby acknowledge receipt of such access and agree that:

3.2.1 you will use your user name and password for your own personal use only;

3.2.2 you will not disclose your user name and password to any other person for any reason whatsoever and will maintain the confidentiality thereof;

3.2.3 in the event that your password is compromised, you will immediately notify Megasurf and change your password;

3.2.4 you will not, at any time, permit and/or initiate a simultaneous network log-in; and

3.2.5 You will not attempt to circumvent Mega surf's user authentication processes or engage in attempts to access Mega surf's network where not expressly authorised to do so.

3.2.6 Megasurf is running a secure firewall for all users on the Megasurf network and may not be bypass at any stage.

3.3 Should you fail to comply with any of the provisions of 3.2, you agree to pay to Megasurf immediately, on demand, all costs, loss and/or damages incurred or suffered by Megasurf as a result of your breach. This may include (without being limited to) the payment of an additional membership fee.

4. Service Availability

4.1 Megasurf will use reasonable endeavours to keep the service available at all times. However, you agree that Megasurf shall not be liable to you or any other person whatsoever in respect of any loss or damages caused by or arising from the unavailability of or any interruption in the service for any reason whatsoever.

4.2 Megasurf will use its best endeavours to notify you of any maintenance and repairs which may result in the service being unavailable, but does not warrant that such notice will be given in advance.

- 4.3 Neither you nor any other person shall have any claim against Megasurf for any direct, consequential, incidental, indirect or special loss or damages including (without being limited to) business interruption, loss of business information, loss of data or other pecuniary loss, arising from the unavailability of, or interruption in the service as contemplated in 4.1, regardless of whether such claim is based on breach of contract, direct, breach of implied warranties or otherwise and even if the possibility of such loss or damages could have been foreseen.
- 4.4 Megasurf will use reasonable endeavours to keep the service available at all times. However, you agree that Megasurf shall not be liable to you or any other person whatsoever in respect of any loss or damages caused by or arising from the unavailability of or any interruption in the service for any reason whatsoever.
- 4.5 Megasurf will use its best endeavours to notify you of any maintenance and repairs which may result in the service being unavailable, but does not warrant that such notice will be given in advance.
- 4.6 Neither you nor any other person shall have any claim against Megasurf for any direct, consequential, incidental, indirect or special loss or damages including (without being limited to) business interruption, loss of business information, loss of data or other pecuniary loss, arising from the unavailability of, or interruption in the service as contemplated in 4.1, regardless of whether such claim is based on breach of contract, Delict, breach of implied warranties or otherwise and even if the possibility of such loss or damages could have been foreseen.

5. Communication

You hereby agree that Megasurf may from time to time send you communications regarding (without being limited to) special offers/discounts which Megasurf may negotiate for its members, operational changes that may affect the service and/or new services launched by Megasurf from time to time.

6. Payment

- 6.1 You agree to pay the membership fee, which may include (without being limited to) the monthly access fee, usage fees, fees for closed user groups and fees for other services you may subscribe to from time to time. Unless we specifically agree otherwise, the membership fee will be payable monthly in advance, except for usage fees, which will be payable monthly in arrears.
- 6.2 We will invoice you for the membership fee on a monthly basis, unless we specifically agree otherwise.
- 6.3 The membership fee and all other amounts payable in terms hereof shall be paid free of exchange and without deduction or set-off by way of a direct debit order (drawn against a current banking account nominated by you) in favour of Megasurf or in such other manner as Megasurf may from time to time determine. You agree that by furnishing your bank details, you authorise Megasurf to deduct all amounts payable in terms of this agreement from the account specified. Should we require you to, you agree to sign all such forms and do all such things as may be necessary to give effect hereto.
- 6.4 Should you fail to pay any amount on the due date for payment, then, without prejudice to any other rights Megasurf may have:
- 6.4.1 Such amount shall bear interest at the rate of 2% above the prime overdraft rate of Mega surf's bankers from time to time, calculated from the due date until the date of payment (both dates inclusive) and will be capitalised monthly;
- 6.4.2 Megasurf shall be entitled to take all such further steps as may be necessary to recover the outstanding amount from you, in which event you agree to pay all costs associated with such recovery on an attorney and own client basis which includes but is not limited to tracing fees, collection commission, advocate fees on brief and all other necessary costs that may be incurred in collecting of any debts that may arise in terms of this agreement;
- 6.4.3 Megasurf shall be entitled to, without notice, suspend your access to the service until such time as the outstanding amount has been paid in full; and/or
- 6.4.4 Megasurf shall be entitled to terminate this agreement with immediate effect.
- 6.5 Megasurf shall, in its sole discretion, be entitled to increase or decrease the membership fee at any time. Megasurf undertakes to give you at least 30 days written notice of any such increase or decrease. Should the amended fee be unacceptable to you, you may terminate this agreement in accordance with 14 below, failing which the amended fee shall take effect on the date indicated in the written notice.
- 6.6 You may not withhold payment of any amount due to Megasurf in terms of this agreement by reason of any alleged breach of this agreement by Megasurf, nor will you be entitled to any discount, refund or other credit under any circumstances.
- 6.7 You agree to pay any extra value added services supplied by Megasurf to you with the same debit order and it is not necessary to sign any additional documentation regarding this service. If any value added services are added to your Megasurf account the amount on the debit order will automatically be adjusted to the corrected amount to be debited by Megasurf.
- 6.8 You hereby agree that in the event of non-payment and/or further legal action a garnishee order can be issued against your salary and payments can be deducted directly from your salary.
- 6.9 You further agree to Judgement in the event of non-payment and/or further legal action.

7. Security

- 7.1 In order to ensure the security and reliable operation of the service to all Megasurf members, Megasurf hereby reserves the right to take whatever action Megasurf finds necessary to preserve the security and reliability of its network.
- 7.2 You may not utilise the service in any manner that may compromise the security of Mega surf's network or tamper with the service or the network in any manner whatsoever.
- 7.3 It is your responsibility to take precautions and provide security measures that are suited to your situation and your intended use of the service

and Megasurf strongly recommends that you take measures to secure your hardware, software and Internet communications, whether through the use of virtual private networks, personal firewalls, encryption or otherwise. Megasurf does not offer or provide these solutions and therefore cannot guarantee or be held responsible for their effectiveness. This applies for any use of wireless technology via any service provider.

8. User Etiquette and Abusive Behaviour

- 8.1. You hereby agree to adhere to generally acceptable Internet and e-mail etiquette. In this regard, without being limited to the examples listed below, you agree not to:
- 8.1.1 engage in any abuse of e-mail or spamming, including (without being limited to) the posting or cross-posting of unsolicited articles with the same or substantially the same message to recipients that did not request to receive such messages;
 - 8.1.2 take any action aimed at deceiving or misleading any person, attempt to impersonate or misrepresent your affiliation to any person or forge headers or otherwise manipulate identifiers in order to disguise the origin of anything posted or transmitted through the service;
 - 8.1.3 use the service to post or transmit anything which is defamatory, discriminatory, obscene, offensive, threatening, abusive, harassing, harmful, hateful or which carries pornography, religious or racial slurs or threatens or encourages bodily harm or the like or which may violate any person's personality rights;
 - 8.1.4 use the service to make fraudulent offers to sell or buy products, items or services or to offer or solicit for any type of financial scam such as "pyramid schemes" and "chain letters";
 - 8.1.5 use the service in a manner that may infringe the intellectual property rights (for example copyright or trade marks) or other proprietary rights of others, including (without being limited to) the transmission of pirated software;
 - 8.1.6 use the service in any manner which could damage, impair, overburden or disable the service or interfere with any other party's use or enjoyment of the service;
 - 8.1.7 use the service to post or transmit anything which contains viruses or any other destructive features, regardless of whether or not damage is intended;
 - 8.1.8 cancel any Usenet post other than your own;
 - 8.1.9 repeatedly post gratuitous off the topic postings;
 - 8.1.10 gather e-mail addresses and/or names for commercial, political, charity or like purposes or use the service to collect or attempt to collect personal information about third parties without their knowledge or consent; and
 - 8.1.11 violate the privacy of any person or attempt to gain unauthorised access to the service or any other network, including (without being limited to) through hacking, password mining or any other means; and/or
 - 8.1.12 Use the service to engage in any illegal or unlawful activity.
- 8.2 Should you engage in any one or more of the above practices, which shall be determined in Mega surf's sole discretion and which decision shall be final, then Megasurf shall be entitled, without prejudice to any other rights it may have, to:
- 8.2.1 Without notice, suspend your access to the service;
 - 8.2.2 Terminate this agreement with immediate effect;
 - 8.2.3 bill you for any costs incurred by Megasurf, including (without being limited to) bandwidth, administration costs, downtime, usage of Mega surf's name or registered domain names and CPU cycles; and/or
 - 8.2.4 Notwithstanding Mega surf's privacy policy, disclose any information relating to you, whether public or personal, to all persons affected by your actions.

9. Indemnity

- 9.1 You hereby unconditionally and irrevocably indemnify Megasurf and agree to hold Megasurf free from all loss, damages, claims and/or costs, of whatsoever nature suffered or incurred by Megasurf or instituted against Megasurf as a direct or indirect result of:
- 9.1.1 your use of the service;
 - 9.1.2 your failure to comply with any provision of this agreement or any other requirements which Megasurf may impose from time to time; and
 - 9.1.3 Any unavailability of or interruption in the service, as contemplated in 4.1 above.

10. Breach

Should you be in breach of any provision of this agreement, then Megasurf shall be entitled, without prejudice to any other rights it may have and without notice to you, to forthwith:

- 10.1 claim immediate payment of all outstanding amounts payable in terms of this agreement;
- 10.2 suspend your access to the services; and/or
- 10.3 Terminate this agreement, retain all amounts already paid by you and recover all costs incurred by Megasurf, including (without being limited to) legal costs on an attorney and own client basis.

11. Certificate of Indebtedness

- 11.1 The amount due and payable by you to Megasurf in terms of this agreement at any time shall be determined and proved by a certificate signed by one of Mega surf's Members, whose appointment, qualification and authority need not be proved.
- 11.2 Such certificate shall be deemed to be a liquid document for the purpose of obtaining summary judgment, provisional sentence and/or any other judgment against you.

12. Cession and Delegation

12.1 You may not cede any of your rights or delegate any of your obligations under this agreement without Mega surf’s express written consent.

12.2 Megasurf shall be entitled, in its sole discretion and without notice to you, to cede and transfer or delegate to any third party all or any of its rights or obligations under this agreement.

13. Jurisdiction

You hereby consent to the jurisdiction of the Magistrate’s Court in the Republic of South Africa in respect of any proceedings that may be initiated by Megasurf arising out of this agreement, provided that Megasurf shall be entitled, in its sole discretion, to institute such proceedings in the High Court of South Africa and, in such event, you consent to the jurisdiction of such court and agree that costs shall be calculated in accordance with the tariff of such court.

14. Duration

This agreement will commence on the effective date and will endure for an Indefinite period, subject to the right of either party to terminate this agreement at any time by means of 1 (one) calendar month prior written notice to such effect to the other party. Upon termination of this agreement, any outstanding amounts remain payable and have to be settled within 30 days of termination.

15. Amendment of this agreement

Megasurf reserves the right to amend this agreement from time to time without notice to you. Any new version of the agreement will be displayed on our web site together with the date on which it will become effective, which will never be less than 30 days after the date on which it is first displayed. It is your obligation to visit our web site on a regular basis in order to ascertain whether any amendments have been made.

16. General

16.1 The parties acknowledge and agree that this agreement sets out the whole of the agreement between them and that there are no other agreements, guarantees or representations, either verbal or in writing, in regard thereto upon which any party is relying on concluding this agreement.

16.2 The parties choose their respective *domicilia citandi et executandi* for the purposes of giving any notice, the serving of any process and for any other purposes arising from this agreement as follows:

16.2.1 Megasurf, 149 Louis Thrichardt blvd, Vanderbijlpark, 1900, and

16.2.2 you: the address you provided to us when subscribing for the service.

16.3 You agree that any notices we send to you in terms of this agreement may be sent via e-mail.

16.4 No indulgence, leniency or extension of time which Megasurf may grant or show to you shall in any way prejudice Megasurf or preclude Megasurf from exercising any of its rights in the future.

16.5 You warrant that as at the effective date, all the details furnished by you to Megasurf are true and correct and that you will notify Megasurf forthwith in the event of any change to such details.

16.6 Any conflicting condition stipulated by the Applicant, are expressly excluded. These terms supersede all previous conditions without prejudice to any sureties or guarantees Id by Megasurf Wireless Internet.

16.7 These terms apply to all servants, agents and subcontractors and employees of Megasurf Wireless Internet.

16.8 The applicant agrees that neither Megasurf Wireless Internet nor any of its employees will be liable for any negligent or innocent representations made to the Applicant.

16.9 Any printout of computer evidence tendered by the Parties shall be sufficient proof and no party shall object to the admissibility of such evidence purely on grounds that such evidence is computer evidence.

16.10 The Applicant shall pay R5000.00 (FIVE THOUSAND RAND) into the Trust account of the Attorneys which act on behalf of Megasurf Wireless Internet as security in any action for costs in any action instituted by or against the applicant. The applicant agrees that Megasurf Wireless Internet will not be required to furnish security in terms of Rule 32 of the Rules of the Magistrate’s Court or in terms of Rule 47 of the Rules of the Supreme Court.

16.11 No authorized agent or salesman has any authority to waive, vary any of the conditions or make any application whatsoever on behalf of Megasurf Wireless Internet.

16.12 Megasurf Wireless Internet may require the Applicant to pay a deposit to Megasurf Wireless Internet in an amount of R_____, _____ in its sole discretion prior to delivery of goods or services to the Applicant and until such costs are paid in full, the services and goods shall not be delivered to the Applicant.

Thus done and signed at _____ on _____ day of _____ 20_____

Witnesses:

1. _____
Applicant

2. _____

