

MANAGED ISP SOLUTION

1. DEFINITIONS

1.1. For the purposes of this Services Schedule, the following definitions shall operate in addition to and supplementary to those contained in the MSA, and ought to be read as if specifically incorporated therein:

1.1.1. "**Anticipatory Costs**" means the charges that the Service Provider would have billed for the Term of the Services Schedule if the Services Schedule had run its full Term;

1.1.2. "**Carrier**" means the appropriate network that has the appropriate license to trench in fibre or provide a wireless last mile link in the area of the Client;

1.1.3. "**Managed Service Equipment**" means all third party equipment and/or Service Provider as provided by the Service Provider to the Client in the provision of the Services;

1.1.4. "**ISP**" means an Internet Services Provider;

1.1.5. "**Link**" means a physical or virtual circuit over an access medium provided by the Carrier that has the A-side terminating at the Client premises and the B-side terminating at the appropriate ISP data centre, comprising of one public IP address;

1.1.6. "**MSA**" means the Master Services Agreement which is entered into by and between the Parties simultaneously herewith;

1.1.7. "**Proposal**" means the proposal to which this Services Schedule is annexed or to which the Proposal otherwise makes reference to, and which sets out,

among other things, the exact nature of the Services required to be rendered, coupled with the cost in respect thereof;

1.1.8. "**Services**" means the managed ISP solution, making use of certain Carriers, comprising the last mile internet connectivity from one of the Service Provider's data centres to the Client; and

1.1.9. "**Services Schedule**" means this document, which may be one of a series of Service Schedules, which is annexed to the Proposal.

1.2. In addition to the foregoing, terms which are capitalised herein, but which have not been defined in clause 1.1 above, shall bear the same meaning as in the MSA.

1.3. Capitalised terms defined herein, but which also appear in the MSA, shall bear the meaning as defined herein.

2. INTRODUCTION

2.1. This Services Schedule is to be read with, and is subject to, the provisions of the MSA, and the Proposal to which this Services Schedule is annexed. The Services Schedule is designed to define the Services to be rendered to the Client by the Service Provider.

2.2. This Services Schedule is the basis on which the Service Provider will perform the Services to the Client.

2.3. This Services Schedule may be coupled with any number of other Service Schedules as required for all Services to be rendered to the Client.

3. NATURE OF THE SERVICE

- 3.1. The Services comprise a managed ISP solution, making use of certain Carriers to deliver the last mile internet connectivity from one of the Service Provider's data centres to the Client.

4. USE OF THE SERVICES AND RELATED MANAGED SERVICE EQUIPMENT

- 4.1. The provision of the Services to the Client does not confer on the Client any right to resell the Services.
- 4.2. The Services may not be used to:
 - 4.2.1. knowingly create, store or disseminate any illegal content;
 - 4.2.2. infringe on any third parties' intellectual property or copyright; and
 - 4.2.3. send unsolicited email.
- 4.3. For the Service Provider to ensure the provision of the Services, to protect the integrity of the Service Provider or to deal with emergencies, the Client must always, whilst the MSA is in place:
 - 4.3.1. comply with any instructions issued by the Service Provider which concern the Client's use of the Services; and
 - 4.3.2. provide the Service Provider with all information relating to the Client's use of the Services that the Service Provider may reasonably require from time to time.

5. USE OF SOFTWARE

- 5.1. The Client shall use any software provided to it by the Service Provider only for the purposes for which it is intended.
- 5.2. The Client shall not nor permit anyone else to reverse engineer, decompile, modify, tamper with, amend, enhance, copy, sell, lease, license, sub-license or otherwise deal with the software or any part, variation, modification, release or enhancement thereof or have any software or any program written or developed for it based on the software.
- 5.3. All rights of whatever nature in and to the software and all upgrades, updates, modifications and variations thereto are not assigned to the Client. The Client shall not, at any time in any way, question or dispute the ownership of the software and undertakes not to infringe or prejudice any rights of the Service Provider or its licensors in and to the software.
- 5.4. The Service Provider shall upgrade any software provided to the Client at its sole discretion.

6. FAILURE AND UNAVAILABILITY OF THE SERVICES OR MANAGED SERVICE EQUIPMENT OBTAINED FROM THE SERVICE PROVIDER

- 6.1. The Client recognises that the internet and data networks consist of multiple participating networks that are separately owned and not subject to the Service Provider's control.
- 6.2. As a result of the position set out in clause 6.1 above, the Service Provider does not warrant that the Services will be operational on a 24 (twenty-four) hour 365 (three hundred and sixty-five) days per year basis.

6.3. Furthermore, the Service Provider expressly advises, and the Client acknowledges and accepts that the Managed Service Equipment is not manufactured by the Service Provider, but by third parties. In most cases, the Service Provider will not be able to open certain Managed Service Equipment or to test or operate the Managed Service Equipment to ensure that they are fit for purpose and/or are intact before they are handed to the Client.

6.4. The Service Provider expressly stipulates and the Client acknowledges that the Service Provider cannot warrant or guarantee that the Services and/or the Managed Service Equipment will:

6.4.1. be free of errors or interruptions;

6.4.2. be available;

6.4.3. be fit for any purpose;

6.4.4. not infringe on any third-party rights;

6.4.5. be secure and reliable,

except where the Services, and/or the Managed Service Equipment is found to be defective and such defect has been solely caused by the Service Provider under sections 54, 55 and 56 of the Consumer Protection Act, where applicable.

6.5. Considering the above disclosures, Client agrees that it will not be allowed to:

6.5.1. withhold any amounts due and owing to the Service Provider; or

6.5.2. deduct any monies, or

6.5.3. allege a breach of the MSA

in respect of any temporary unavailability of the Services or the Managed Service Equipment, except and to the degree that the Service Provider is solely responsible for any such unavailability, or failure.

- 6.6. Notwithstanding the provisions of clause 6.5 above, the Service Provider will use its best endeavours where the Service Provider can do so to notify the Client of any failure of, or interruption to the Services and/or the Managed Service Equipment and where applicable any required maintenance and repairs which may result from such failure, interruption or unavailability.

7. INSTALLATION COSTS

- 7.1. In most instances, and as recorded in the Proposal, a once off installation cost is levied to the Client in respect of the installation of the Link.
- 7.2. The afore referred installation cost is only billed to the Client once the Link has been installed.
- 7.3. The duration to install a Link is subject to many factors which are outside the control of the Service Provider or the ISP, and installation times are therefore only estimates.
- 7.4. The Service Provider shall do everything reasonably and practically possible to meet installation times but shall not be held liable in any way whatsoever for any delays in the installation of a Link. Should the Client terminate the MSA before a Link is installed, the Client shall be obliged to pay to the Service Provider a termination fee as set out in clause 17 below.
- 7.5. The Client shall be responsible for obtaining all third-party approvals and consents necessary for installation and use of the Services.

8. COMMENCEMENT OF SERVICES

- 8.1. The Term with associated payments in respect thereof shall commence once the Link has been fully installed.
- 8.2. Notwithstanding the foregoing the MSA and this Services Schedule becomes binding on a Client, upon the installation of the Link having commenced. Installation will be deemed to have commenced once the Carrier team has completed their onsite site survey.

9. CLIENT'S HARDWARE RESPONSIBILITIES

- 9.1. The Client shall be required to provide a 19" rackmount cabinet for the installation of the necessary Equipment comprising part of the Link. 5 (five) rack units (RU) of space in such cabinet is required to be provided. Should the Carrier be Telkom, the Client will also need to provide an earth bar in the cabinet.
- 9.2. The Client further needs to provide two dedicated power plugs for the relevant Equipment comprising part of the Link. In this regard, it is the Client's responsibility to ensure that there is always power to the cabinet, and as such, it is essential for the Client to confirm that the cabinet has power when reporting an outage.

10. EQUIPMENT INSTALLED ONSITE

- 10.1. Any Equipment installed onsite by either the Service Provider or the Client shall remain the property of the Service Provider or the Carrier, as the case may be, and shall be returned on termination of this Services Schedule for any reason whatsoever.

11. APPROPRIATE NETWORK INFRASTRUCTURE

- 11.1. Prior to the installation of the Link, the Client shall be required to confirm that they have the appropriate local network infrastructure in place required to support the connectivity solution. This infrastructure comprises items such as, but not limited to firewalls, routers, switches, wireless access points and the like.
- 11.2. Accordingly, the Client hereby indemnifies and agrees to hold the Service Provider harmless in respect of any losses, damages or otherwise incurred, howsoever arising, suffered by the Client as a result of the Client failing to advise of the correct local network infrastructure.

12. ACCESS TO CLIENT'S PREMISES

- 12.1. The Client undertakes to allow the Service Provider's personnel and the personnel of the Carrier with the reasonable and appropriate access to the premises of the Client for installation, maintenance and repair of the Link together with associated Equipment, which shall be requested by the Service Provider or the Carrier in advance.

13. REPAIRS AND MAINTENANCE

- 13.1. Repairs and maintenance that could affect Link downtime will as much as reasonably possible be done between midnight and 6am.

14. UPTIME

- 14.1. The Service Provider guarantees a 99% (ninety nine percent) uptime of the Link per each quarter of a calendar year. This means that the Client's Link will have access to the internet 99% (ninety nine percent) of the time per each quarter of a calendar year.

15. LINK DOWNTIME

15.1. Should the Link go down, the Service Provider's system will log a ticket with its helpdesk, and in turn, the Service Provider will report this to the relevant Carrier for resolution. The Service Provider cannot, however, guarantee nor can it provide any warranties as to how soon the Carrier will attend to restoration of the Link. As such, the Client hereby indemnifies and agrees to hold the Service Provider harmless in respect of any losses, damages or otherwise incurred, howsoever arising, suffered by the Client as a result of the failure by the Carrier to attend to the reparation services timeously.

16. CLIENT'S MOVING OF PREMISES

16.1. Links cannot be moved from one premises to another. As such, should the Client relocate during the Term, there are two options:

16.1.1. if the Carrier permits the Link to be transferred to the new premises, the Client will pay a new full upfront installation cost, as referred to in clause 7.1 above, and the Link will be transferred to the new premises. In this regard, a new 24 (twenty four) month term will commence from the beginning; or

16.1.2. the Link will need to be terminated. In this regard, and unless the Carrier determines otherwise, the Client will be liable of the full installation costs referred to in clause 7.1 above, as well as cancellation costs amounting to the sum of all the remaining fees which would have been payable in terms of the Proposal, had the Services been rendered for the full Term.

17. CANCELLATION, SUSPENSION, WITHDRAWAL, TERMINATION OR VARIATION OF THE SERVICES AFTER THE INSTALLATION HAS COMMENCED

17.1. Where the Client cancels or varies any of the Services after the installation of the Link has been deemed to commence, as per clause 8.2 above, for any reason other than a breach on the part of the Service Provider, the Service Provider will have the right to charge the Client Anticipatory Costs, which amount shall be payable by the Client on demand.

17.2. Notwithstanding what is set out in clause 17.1 above, if the Client's termination date is a date prior to the expiry of the Term, or any subsequent renewal term, then the Client shall be liable to the Service Provider for termination penalties calculated as follows:

17.2.1. termination for any reason during the installation period: 100% (one hundred percent) of the monthly recurring values multiplied by the number of months indicated on the MSA; or

17.2.2. termination at any time after the Effective Date but before expiry of the MSA, including termination arising out of the Client moving premises or termination by the Service Provider as a result of the Client's breach: 100% (one hundred percent) of the monthly recurring values for the remainder of the Term.

17.3. The Service Provider may further, from time to time and on notice where this is possible, suspend the Services and where applicable the right to use the Managed Service Equipment, or in its discretion disconnect the Managed Service Equipment in any of the following circumstances:

17.3.1. for routine maintenance, modifications to, or unplanned maintenance of the Services and/or any other systems involved in the delivery of the Services;

17.3.2. to mitigate against fraudulent or suspected fraudulent use of the Client's Services;

17.3.3. as a result of problems on third parties' infrastructure which has affected or disrupted the Services;

17.3.4. where the Services are being abused by the Client; and/or where the Client uses Managed Service Equipment that is not approved by ICASA for such use; and

17.3.5. where the Services are removed because of a take-down notice that the Service Provider is obliged to act on.

17.4. The Client accepts that the right to suspend the Services is necessary to maintain the quality of the Services, the integrity of the Services and to protect the interest of both the Client and the Service Provider and that it will remain liable for all Anticipatory Costs which may be levied by the Service Provider during the period of suspension.

17.5. The Service Provider may from time to time, and on notice where this is possible, and without prejudice to any other claims or remedies which the Service Provider may have in terms hereof or in law, discontinue and/or terminate any part of the MSA, or in its discretion disconnect the Managed Service Equipment in any of the following circumstances:

17.5.1. where the Services or Managed Service Equipment has reached the end of its lifespan and is uneconomical to maintain or continue;

17.5.2. if the Client has received the Services because of fraud or misrepresentation;

17.5.3. if the Client makes or offers to make any arrangement or composition with its creditors or commits any act of insolvency in terms of the Insolvency Act or any other applicable legislation; and/or

17.5.4. if the Client is using or permitting the use of the Services or any element thereof for any illegal purpose or in contravention of Applicable Law.

17.6. Should the Term extend beyond the initial 24 (twenty four) month Term as recorded in clause 2.2.12 of the MSA and continue on a month to month basis (in circumstances where a renewal in terms of clause 6.1 of the MSA is not currently in place), the Client shall be required to provide the Service Provider with at least 3 (three) calendar months written notice to terminate the Services.

18. CONSEQUENCES OF TERMINATION

18.1. After termination of the MSA for whatever reason:

18.1.1. the Service Provider may, on reasonable notice and in the Client's presence enter the Client's premises to remove the Managed Service Equipment; and

18.1.2. the Client will remain liable for and will pay on demand all charges and/or costs outstanding at the time of termination or accrued thereafter because of the termination.

19. DOWNGRADING AND UPGRADING OF LINKS

19.1. During the Term, the Link speed cannot be downgraded.

19.2. Should the Client wish to upgrade the Link speed, certain Carriers require a new 24 (twenty four) month term to commence, whilst others, at their discretion, may permit an upgrade during the Term. The Client acknowledges that the Service Provider has no control over the Carriers preferences in this regard.

20. THEFT AND LOSS OF MANAGED SERVICE EQUIPMENT PROVIDED BY THE SERVICE PROVIDER

- 20.1. Whenever any Managed Service Equipment purchased from and/or supplied by the Service Provider has been delivered but is not yet paid for in full is lost, stolen or destroyed, the Client must immediately notify the Service Provider and any police officer at any police station in writing that the Managed Service Equipment has been lost, stolen, misplaced or destroyed.

- 20.2. Risk in the loss, theft or damage of the Managed Service Equipment will pass to the Client on the date of delivery to the Client's premises. The Service Provider reserves the right to hold the Client liable for the full replacement cost of the Managed Service Equipment (and where the same equipment has been discontinued, then the full replacement cost of the most comparable available equipment).