

Business Relationship Agreement - Services Terms and Conditions

BUSINESS RELATIONSHIP AGREEMENT (SERVICES TERMS AND CONDITIONS)

WHEREBY in consideration of Customer requiring Services from Provider, the parties agree to the following service-specific terms and conditions that form part of the Agreement and to be bound thereby:

1. INTRODUCTION

These are the service-specific terms and conditions of the Business Relationship Agreement between Provider and Customer. These terms and conditions cover transactions where Provider provides Services to Customer and are in addition to the General Terms and Conditions, which the Customer and Provider must sign separately. The commercial terms of transactions relating to these terms and conditions will be contained in the Schedules, which the Customer and Provider must sign separately for each Service provided. The terms and conditions contained in a Schedule shall prevail if there is a conflict of meaning with these terms and conditions. Nothing in these terms obliges any Party to enter into any Service.

2. DEFINITIONS

In the Agreement, unless a contrary intention clearly appears, the following terms shall bear the meanings assigned to them:

- 2.1. **"Agreement"** means the agreement between Provider and Customer, consisting of these General Terms and Conditions, the Services Terms and Conditions and the Schedules the parties enter into;
- 2.2. **"Business Day"** is any weekday that is not a South African public holiday;
- 2.3. **"Business Hours"** means Normal Business Hours or, if Customer subscribes to the extended business hours option, then Extended Business Hours
- 2.4. **"Commencement Date"** means the relevant commencement date specified in the Schedule;
- 2.5. **"Customer"** means the customer that enters into the Agreement;
- 2.6. **"Due Date"** means the relevant due date for a Service to be paid as specified in the Schedule;
- 2.7. **"Equipment and Networks"** means specific equipment and networks specified in the Schedule;
- 2.8. **"EULA"** means an end user licence agreement;
- 2.9. **"Extended Business Hours"** are the hours between 7:30 and 20:00 on weekdays and between 8:30 and 14:00 on Saturdays (South African time) that are not South African public holidays.
- 2.10. **"Fixed Monthly Rate"** means the fixed fees payable to Provider by Customer for a Service as specified in the Schedule;
- 2.11. **"General Terms and Conditions"** means the general terms and conditions of the Agreement;
- 2.12. **"Internal Rate of Return"** means the rate of return enjoyed by Provider during the currency of a Service on the amounts arising out of or in connection with the renting of the Rental Equipment to Customer in terms of the Service;
- 2.13. **"Initial Rental Period"** means the minimum period that Customer must rent Rental Equipment as specified in the Schedule;
- 2.14. **"Microsoft"** means the Microsoft Corporation;
- 2.15. **"Normal Business Hours"** are the hours between 8:30 and 17:00 (South African time) on weekdays that are not South African public holidays.
- 2.16. **"Outage"** means that the Service is unavailable to the Customer due to the Provider for whatever reason being temporarily unable to provide Customer with the Service;
- 2.17. **"Party"** means individually either the Customer or the Provider;
- 2.18. **"Parties"** means collectively the Customer and the Provider;
- 2.19. **"Peak Business Hours"** are the hours between 7:00 and 19:00 (South African time) on weekdays that are not South African public holidays.
- 2.20. **"Period"** means the duration of a Service as specified in the Schedule;
- 2.21. **"Personnel"** means any director, employee, agent, consultant, contractor or other representative;
- 2.22. **"Product"** means any product purchased by Customer from Provider;
- 2.23. **"Provider"** means the provider that enters into the Agreement;
- 2.24. **"Rental"** means the monthly rental fees specified in a Schedule, paid by Customer to Provider in exchange for Rental Equipment;
- 2.25. **"Rental Equipment"** means any hardware and software rented to Customer as specified in the Schedule;
- 2.26. **"Rental Equipment Buyout Amount"** means the price Customer would pay to purchase any Rental Equipment during the Period;
- 2.27. **"Rental Software"** means Microsoft software rented to Customer specified in the Schedule;
- 2.28. **"Schedule"** means the relevant schedule associated with a Service;
- 2.29. **"Schedules"** means the schedules in the Agreement;
- 2.30. **"Service"** means the relevant service Provider provides to Customer as specified in the Agreement;
- 2.31. **"Services"** means any services Provider provides to Customer as specified in the Agreement;
- 2.32. **"Services Terms and Conditions"** means the specific services terms and conditions of the Agreement and
- 2.33. **"VAT"** means Value Added Tax as determined by the Minister of Finance in terms of the Value Added Tax Act 89 of 1991 and changed from time to time;

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3. TERMS AND CONDITIONS FOR THE PROACTIVE SUPPORT SERVICE

- 3.1. Should Customer elect the extended business hours option, Provider shall provide the Service during Extended Business Hours at the hourly rates specified for that option in the Schedule.
- 3.2. Customer shall provide Provider with full access to Equipment and Networks in order to support it.
- 3.3. Customer will forfeit any hours that have accrued for a Service that remain unutilised at the termination of the Service and Provider will not be obligated in any way to perform the Service relating to such hours after termination of the Service.

4. TERMS AND CONDITIONS FOR THE MANAGED SUPPORT SERVICE

- 4.1. Should Customer elect the extended business hours option, Provider shall provide the Service during Extended Business Hours at the hourly rates and/or fixed charge specified for that option in the Schedule.
- 4.2. The Equipment and Networks will only be covered by the Agreement if it is in good condition and meets Provider's serviceability requirements, Provider's site environmental conditions and Provider's configuration criteria.
- 4.3. Customer shall provide Provider with full access to Equipment and Networks in order to support it.
- 4.4. Provider reserves the right to suspend Services if, in its sole discretion, conditions at Customer's locations pose a health or safety threat to Provider or its Personnel.
- 4.5. Provider reserves the right to inspect the Equipment and Networks prior to the provision of the Service for the purpose of creating a diagram of the Equipment and Networks or conducting a diagnostic test of the Equipment and Networks.
- 4.6. It is the responsibility of Customer to promptly notify Provider of any events or incidents that could impact on the provision of the Service.
- 4.7. Unless otherwise agreed to in writing, Customer agrees that it shall not permit any Party other than Provider to modify, install, or service the Equipment or Networks. Any Services provided on the Equipment and Networks required as a consequence of any unauthorised work on it by Customer or a third party will not be covered by the Fixed Monthly Rate and will be billed at the hourly rates specified in the Schedule.
- 4.8. Provider is obligated to provide the Services only at the locations of the Equipment and Networks as outlined in the specific Schedule. If Customer desires to relocate, add or remove locations, Customer will give appropriate notice to Provider of its intention to relocate 60 days in advance. Provider reserves the right to renegotiate service terms, including, but not limited to, the Fixed Monthly Rate, with respect to any relocation or addition of locations by Customer of the Equipment and Networks. Such right includes the right to refuse the provision of Services on the Equipment and Networks at the relocation or new location.
- 4.9. Any upgrade to the Equipment and Networks is not included in the Fixed Monthly Rate and will be billed by default at the applicable hourly rate.
- 4.10. Warranty components and the removal/installation thereof as relates to the Equipment and Networks are not included in the Fixed Monthly Rate and will be billed at the applicable hourly rate.
- 4.11. Periodic reboots of the Equipment and Networks including such devices as firewalls, routers, and servers are required to apply or activate critical update patches and configuration changes. Provision of the Service is dependent upon Customer's support and commitment to providing time or scheduling for such reboots whenever required by Provider.
- 4.12. Printer maintenance is outside the scope of the Service.
- 4.13. Virus removal and disinfection on the Equipment and Networks are dependent on Customer having appropriate anti-virus software installed.
- 4.14. Disaster recovery on the Equipment and Networks, including, but not limited to, restoration of lost data caused by hardware or software failure, is not included in the Fixed Monthly Rate (unless explicitly stated otherwise in a Schedule) and will be billed at the applicable hourly rate.
- 4.15. Any equipment supplied by Provider as disaster recovery spares is provided on-site at Customer's premises at the daily usage fees as specified in the Agreement unless otherwise agreed to in writing and remains the property of Provider at all times.

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5. TERMS AND CONDITIONS FOR DISASTER RECOVERY SPARES SERVICE

- 5.1. Provision of the Service is predicated on Customer subscribing to the Proactive Support service or the Managed Services service.
- 5.2. Any equipment supplied to cover failure on an item covered by the Service's "Core" option (as specified in the Schedule) is provided to Customer at no charge for a period of up to ten Business Days, after which time Customer may continue to rent such equipment by paying the equipment rental fee specified in the Schedule, except that such fee will be waived if Customer is waiting on delivery of replacement parts purchased from Provider that once installed will no longer require rental of that equipment.
- 5.3. Any equipment supplied to cover failure on an item covered by the Service's "Lite" option (as specified in the Schedule) is provided to the Customer at the equipment rental fee specified in the Schedule for a period of up to ten Business Days, after which time Customer may only continue to rent such equipment with Provider's consent and then only for the period of time specified by the Provider.
- 5.4. Notwithstanding the above, any equipment supplied in terms of the Service is provided to the Customer for a maximum period of 40 Business Days per failure event.
- 5.5. In the event of a disaster, Provider can with Customer's consent provide the Service on a cloud-based hosting platform as an alternative to a hosting platform at the Customer's premises.
- 5.6. Any equipment supplied in terms of the Service is for the purpose of maintaining business continuity and may not be identical in performance or capacity to the equipment it replaces.
- 5.7. Unless Customer subscribes to the Managed Services service, the Service does not include the costs of the time required by Provider to deliver, install and make operational any equipment supplied in terms of the Service. Such time will be charged for at the hourly support rate associated with the Proactive Support service.
- 5.8. Unless otherwise agreed to in writing, only Provider is permitted to install any equipment supplied to Customer in terms of the Service.
- 5.9. Provider will reasonably maintain sufficient equipment in order to provide the Service in every failure event, but cannot guarantee supply of equipment in circumstances where there is an uncharacteristic demand for whatever reason for specific equipment.

6. TERMS AND CONDITIONS FOR DISASTER RECOVERY SIMULATION SERVICE

- 6.1. In terms of this Service, Customer may request a quotation for Provider to perform a disaster recovery simulation of any of Customer's equipment on a hardware platform and in an environment provided by Provider. On acceptance of such a quotation, Provider is obligated to perform the disaster recovery simulation and document the procedure that was followed.
- 6.2. Any methodologies relating to delivery of the Service are confidential and proprietary to Provider.
- 6.3. Provider will issue a certificate to Customer confirming the successful completion of any disaster recovery simulation performed. In the event of a failed disaster recovery simulation, Provider will issue a written report to Customer detailing the reasons for the failure.
- 6.4. Customer agrees to provide Provider with the necessary backup information in a format and on a media that Provider has specified is required for it to perform the disaster recovery simulation. Customer further accepts that it is responsible for ensuring that it has sufficient media remaining to continue to perform its normal backup schedule.
- 6.5. Any quotation for a disaster recovery simulation includes the cost of a single collection and return of the media containing the required backup information from/to Customer by a courier, provided the distance to the place of collection/return is not greater than 50 kilometres from Provider's offices in Mowbray, Cape Town.
- 6.6. Provider will conduct a disaster recovery simulation in an environment and on a hardware platform that it in its sole discretion deems to be adequate to perform a successful disaster recovery simulation.
- 6.7. Any quotation for a disaster recovery simulation covers a single attempt by Provider to perform the simulation. Should a disaster recovery simulation fail due to any reason that is not the fault of Provider, then any further attempts to perform a successful simulation will result in Customer incurring additional costs over and above the amount specified in the quotation, provided that Customer has agreed in writing to incur such costs.

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- 6.8. Where Customer is responsible for determining what information is required to be backed up onto the media to perform a disaster recovery simulation, Provider cannot guarantee a successful disaster recovery simulation even if it has assisted Customer in making that determination.
- 6.9. Should a disaster recovery simulation identify any requirement for changes to the Customer's operating environment, then Customer will be liable for the costs associated with the time to make such changes should Customer request that Provider perform those changes.
- 6.10. Customer is responsible for testing the correct functioning of applications and the integrity of application data in the simulated environment. Provider will undertake to provide on-site or remote access to the simulated environment so that Customer can perform such testing.

7. TERMS AND CONDITIONS FOR PLATFORM RENTAL SERVICE

- 7.1. Customer shall pay Provider the Rental during the Initial Rental Period. Customer shall pay Provider 50% of the Rental after the Initial Rental Period should Provider and Customer mutually agree to extend the Period. The first payment of rental will be due on the Commencement Date and thereafter on or before the Due Date.
- 7.2. If at any stage during the Period there are any changes in circumstances that will reduce Provider's Internal Rate of Return then without derogating from anything in the Agreement, Provider can, at any time on or after the date of the change, recalculate the Rental. The recalculate Rental will be due for payment on or after the specified date so that Provider maintains the Internal Rate of Return it enjoyed immediately prior to the change. Any adjustment to the Rental will take effect upon the next Due Date.
- 7.3. Customer shall take delivery of the Rental Equipment at Customer's premises and provide adequate accommodation and all other facilities necessary for the installation and maintenance of the Rental Equipment as laid down in any specification issued by Provider. Customer shall pay all costs in respect of the delivery or installation of the Rental Equipment, if applicable.
- 7.4. If Customer or any competent authority determines, either before, during or after the installation of the Rental Equipment, that any alteration or additions are required to the Rental Equipment or to Customer's premises to ensure the proper installation and functioning of the Rental Equipment, then such alteration will be carried out only by technicians approved by Provider at Customer's sole cost and expense. Provider shall not be liable for any damages arising out of any alteration or additions.
- 7.5. Customer shall care for the Rental Equipment in a proper, diligent and careful manner and keep the Rental Equipment dry, clean and free from dust, extreme temperature and harmful fumes during the subsistence of the Service.
- 7.6. Customer shall ensure that all repair and maintenance service in respect of the Rental Equipment will be rendered only by suitably qualified persons approved by Provider.
- 7.7. Customer shall not interfere with or allow any interference with any identification which may be affixed to the Rental Equipment by Provider.
- 7.8. Customer acknowledges that all replacement parts, accessories, additions, modifications and alterations to the Rental Equipment during the Period be deemed to form part of the Rental Equipment and will accede to and become the property of Provider without compensation payable to Customer.
- 7.9. Customer shall keep the Rental Equipment in its own possession and control and free from the claim of third Parties and from attachment. Customer shall not alienate or transfer the Rental Equipment, encumber, either in part or as a whole, nor allow any lien to arise in respect thereof and should Customer allow the Rental Equipment to become subject to any lien or attachment of any nature prior to Customer making payment of all the Rental in respect of such Rental Equipment for the Initial Rental Period, and Provider pays the amount due for the release thereof, then such amount will constitute a debt owing to Provider by Customer and will become payable on demand.
- 7.10. Customer shall permit Provider to have access to and to inspect the Rental Equipment at all reasonable times.
- 7.11. It is recorded that this agreement applies to the renting of the Rental Equipment and the maintenance thereof and that the Rental as specified in the Schedule includes any payment in respect of maintenance.
- 7.12. Provider undertakes to perform the necessary maintenance to keep the Rental Equipment in good working order.
- 7.13. It is expressly agreed that the Rental Equipment will at all times be and remain the sole and absolute property of Provider. At no stage during the Period will Customer or any person on its behalf own the Rental Equipment in terms of the Agreement. Customer or any person on its behalf will not be entitled after termination of the Service to retain the possession or use of the Rental Equipment.

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- 7.14. Unless otherwise agreed to in writing, Provider will at its cost comprehensively insure the Rental Equipment against all insurable risks as deemed necessary by Provider and in terms of any statutory requirements. Customer warrants that it shall acknowledge receipt of and comply with those conditions imposed by Provider's insurer that Provider has provided to Customer in writing.
- 7.15. Customer shall advise Provider immediately of any loss of or damage to any of the Rental Equipment and Customer shall make good at its own expense any loss or damage caused to the Rental Equipment as a consequence of the Rental Equipment not being replaceable through an insurance claim due to Customer not having complied with the conditions of Provider's insurer.
- 7.16. Customer may during the Initial Rental Period terminate the Service and purchase the Rental Equipment from Provider for the related Rental Equipment Buyout Amount plus the total outstanding balance of the Rental for the entire Initial Rental Period.
- 7.17. Customer may upon termination of the Service after the Initial Rental Period purchase the Rental Equipment from Provider for 50% of the related Rental Equipment Buyout Amount.
- 7.18. Ownership of the Rental Equipment will only be acquired by Customer after payment of the purchase amount has been received in full by Provider in addition to any other amounts that may be owed by Customer in terms of the Service.
- 7.19. The Rental Equipment purchased by Customer is provided "as is" by Provider and with no warranty from Provider against defects.
- 7.20. Customer will immediately notify Provider in writing of the name and address of the owner or landlord of the premises where the Rental Equipment is in use or the name and address of any subsequent owner or landlord of the same or any other subsequent premises. Customer will advise Provider of any intended change in address in the use of the Rental Equipment at least thirty days prior to any such change. Customer will not without Provider's prior written consent, use the Rental Equipment outside the boundaries of the Republic of South Africa.
- 7.21. Customer may not terminate the Service before the Initial Rental Period has been reached unless Rental Equipment is purchased by the Customer under the terms of the Agreement.
- 7.22. Customer or Provider may terminate this Service by giving 90 days written notice to the other Party provided that the termination date is the day that the Initial Rental Period ends or is a subsequent anniversary thereof.
- 7.23. Should the Agreement be cancelled due to a breach by Customer, then Provider may, without any prejudice to any of its rights, take possession of the Rental Equipment and claim back any costs incurred by the Provider to do so from the Customer. Should it be necessary for the Rental Equipment to be valued, Customer authorises Provider to appoint a sworn appraiser nominated by Provider in its sole discretion to determine the value of the Rental Equipment. Customer agrees and undertakes to accept such valuation.
- 7.24. If there is any material deterioration in Customer's financial position during the Period, Provider will be entitled to withdraw from current arrangements, renegotiate the terms and conditions of the Agreement or call for additional security. If, within 14 days of being advised, Customer does not agree to such material deterioration having taken place, then the matter will be referred to an independent auditor for their opinion, with the opportunity for both Parties to present their case. Customer agrees that this opinion will be binding.
- 7.25. Customer will on termination of the Service return the Rental Equipment to Provider in the same condition as existed at the Commencement Date, fair wear and tear accepted. Notwithstanding the provisions of the Agreement, should Customer, in breach of its obligations, fail to return the Rental Equipment on termination of the Agreement, then in addition to any other claims which Provider may have against Customer, Customer will be liable to continue to pay the Rental to Provider as if the Agreement had not been terminated. The acceptance of such payments by Provider will not in any way prejudice Provider's rights to any other claim which Provider may have against Customer.

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8. TERMS AND CONDITIONS FOR MICROSOFT SOFTWARE RENTAL SERVICE

- 8.1. Provider grants to Customer a licence for use of the Rental Software. Customer accepts the licence subject to the provisions set out in the Agreement and any EULA accompanying the Rental Software.
- 8.2. Customer shall pay Provider the Rental on or before the Due Date for the use of the Rental Software during the previous calendar month or part thereof.
- 8.3. If at any stage during the Period there are changes in the number of licenses of the Rental Software in use by Customer; or changes by Microsoft or its distributors to the cost of the Rental Software; or changes to the cost of the Rental Software as a result of foreign exchange fluctuations; or changes to the cost of the Rental Software due to amended or added government taxes or duties, then without derogating from anything in the Agreement, Provider can, at any time on or after the date of the change, recalculate the Rental. The recalculated Rental will be due for payment on or after the specified date so that Provider maintains the Internal Rate of Return it enjoyed immediately prior to the change. Any adjustment to the Rental will take effect upon the next Due Date.
- 8.4. Customer shall pay all costs for the installation of the Rental Software, if applicable.
- 8.5. Customer shall keep the Rental Software in its own possession and control and free from the claim of third Parties and from attachment. Customer shall not alienate or transfer the Rental Software, encumber, either in part or as a whole, nor allow any lien to arise in respect thereof.
- 8.6. Customer shall permit Provider to have access to and inspect the Rental Software at all reasonable times and/or install utility programs to collect information about the licensing and usage of the Rental Software.
- 8.7. Provider or Microsoft will not under any circumstances be liable to Customer in respect of any damage to person or property of whatever nature and however arising, whether direct or consequential or special, or general, resulting from the use of the Rental Software or the late commissioning of the Rental Software, whether or not such late commissioning is occasioned by any fault or negligence of Provider or Microsoft.
- 8.8. Provider may not reverse engineer, decompile, or disassemble the Rental Software, except and only to the extent that applicable law, notwithstanding this limitation, expressly permits such activity.
- 8.9. Provider may not remove, modify or obscure any copyright, trademark or other proprietary rights notices that are contained in or on the Rental Software.
- 8.10. The Rental Software is not fault-tolerant and is not guaranteed to be error free or to operate uninterrupted and as such is not suitable for high risk use. Customer is not permitted to use the Rental Software in any application or situation where failure of the Rental Software could lead to death or serious bodily injury of any person, or to severe physical or environmental damage.
- 8.11. It is recorded that the Service applies to the renting of the Rental Software only and that Provider or Microsoft shall not provide technical support of the Rental Software in terms of the Service.
- 8.12. It is expressly agreed that the Rental Software will at all times be and remain the sole and absolute property of Microsoft. At no stage during the Period or thereafter will Customer or any person on its behalf through the possession, access, or use of the Rental Software acquire ownership of the Rental Software or any intellectual property rights.
- 8.13. Customer acknowledges that all title and intellectual property rights in and to the Rental Software are owned by Microsoft or its suppliers and that the Rental Software is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties.
- 8.14. Customer agrees that Microsoft is an intended third party beneficiary of the Agreement, with the right to enforce provisions of the Agreement and to verify the compliance of Customer.
- 8.15. Customer consents to the disclosure of any of Customer's information that relates in any way to the use of the Rental Software that Provider is required to disclose to Microsoft in terms of any agreement that Provider has with Microsoft.
- 8.16. Provider or Customer may terminate the Service by given 30 days written notice to the other Party. The Service will terminate on the next last calendar day of the month after the written notice is received.
- 8.17. Upon termination of the Service, Customer shall cease use of the Rental Software immediately; and shall within 30 days remove all copies of the Rental Software from Customer's devices or permit Provider to do so on behalf of Customer; and shall destroy or return to Provider all copies of the Rental Software that Customer received.
- 8.18. Notwithstanding the provisions of the Agreement, should Customer, in breach of its obligations, fail to cease use of the Rental Software on termination of the Service, then in addition to any other claims which Provider may have against Customer, Customer shall continue to pay the Rental to Provider as if the Service had not been terminated. The acceptance of such

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payments by Provider will not in any way prejudice Provider's claim for cancellation or any other claim which Provider may have against Customer.

9. TERMS AND CONDITIONS FOR THE VIRTUAL HOSTING SERVICE

- 9.1. Customer cannot terminate the Service early even if the Period is 12 months or less.
- 9.2. Provider undertakes to implement N+1 redundancy at a component level on server hardware with best effort to return to N+1 redundancy after single component failure.
- 9.3. Provider undertakes to host the virtual hosting facility in a third party data centre that meets Tier 3 requirements according to the third party.
- 9.4. Provider undertakes to use the VMware High Availability (HA) utility to restart Customer's virtual hosting requirements on another host within five minutes of a single host hardware failure event.
- 9.5. Provider undertakes to monitor all infrastructure within the virtual hosting facility 24 hours per day, 7 days a week.
- 9.6. Provider undertakes to respond to events arising within the virtual hosting facility during Business Hours.
- 9.7. Provider is entitled to perform maintenance on the virtual hosting facility should Provider determine at its sole discretion that it is necessary to do so and even if doing so causes downtime of the Service.
- 9.8. Provider shall provide the Customer with 24 hours' notice ahead of performing any planned maintenance on the virtual hosting facility that may result in downtime that will affect the Customer's use of the Service. Provider may perform any emergency maintenance on the virtual hosting facility without prior notice to the Customer.
- 9.9. Unless otherwise specified in a Schedule, Provider shall not provide guest operating system installation, support or monitoring; or application software installation or support; or system and data backups.
- 9.10. Provider shall not provide recovery services from any loss or corruption of programs or data due to any cause, including, but not limited to, hardware failure, software failure, virus infections and human error.
- 9.11. Provider may shut down any portion of the virtual hosting facility affected by a denial-of-service (DoS) attack or similar such threat on any of the Customer's hosted servers.
- 9.12. Unless otherwise specified in a Schedule, all Customer's hosted servers shall reside behind a firewall provided and managed by the Provider.
- 9.13. Customer must subscribe to sufficient processing power within the virtual hosting facility to ensure that average processor utilization does not exceed 80% in any 24-hour window period on any hosted server.
- 9.14. Customer must ensure that its average disk utilization does not exceed 20 megabytes per second in any 4-hour window period on any hosted server within the virtual hosting facility, where such measurement shall be performed by the Provider using any industry-accepted disk I/O measuring tool.
- 9.15. Customer shall install (or permit Provider to install) any Provider-specified VMware tools on Guest Operating Systems on all hosted servers.
- 9.16. Customer shall ensure guest operating systems on all hosted servers are updated whenever necessary to remain compatible with the version of VMware operating in the virtual hosting facility.
- 9.17. Customer is responsible for ensuring all passwords on all hosted servers are secure.
- 9.18. Customer shall provide a firewall approved by Provider to protect all hosted servers if Customer elects not to use Provider's firewall service.
- 9.19. Customer shall ensure that it is duly authorised to use the software installed on all hosted servers.

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10. TERMS AND CONDITIONS FOR THE CLOUD BACKUP SERVICE

- 10.1. Customer shall notify Provider of any loss or corruption of data within one Business Day of the awareness of such loss if there may be a requirement to restore the lost data from a backup.
- 10.2. Provider shall perform backups daily outside of Business Hours.
- 10.3. Provider shall provide Customer with a Schedule that provides written confirmation of the location of the data being backed up and the time that backups will be started.
- 10.4. Provider shall only maintain redundant copies of Customer's backups if the Schedule explicitly specifies that Provider is required to do so.
- 10.5. Provider shall monitor the status of backups and take appropriate action based on the information obtained.
- 10.6. The Service does not include the costs associated with Provider supplying the Customer with physical copies of any backups or restoring any data from backups requested by the Customer.
- 10.7. Provider undertakes to implement N+2 redundancy on disk drives in backup storage within the cloud backup facility with best effort to return to N+2 redundancy after single disk drive failure.
- 10.8. Provider shall encrypt Customer's data while it is in transit over any internet connection.
- 10.9. Provider undertakes to implement the cloud backup facility in a third party data centre that meets Tier 3 requirements according to the third party.
- 10.10. Customer accepts that preventing unauthorised access to its backups in the cloud backup facility is dependent on the Customer safeguarding the public/private keys which are stored on Customer's equipment.
- 10.11. In the event of termination of the Service, Provider shall delete all backups at the cloud backup facility and will remove all software and licenses relating to the provision of the Service from Customer's equipment, to which Customer will provide access to Provider.
- 10.12. Provider has the right to change the cost of the Service should the backup delta percentage exceed 10 percent, except that Customer would have the right to terminate the Service without penalty should it not agree to the change in cost.

11. TERMS AND CONDITIONS FOR THE CLOUD DISASTER RECOVERY SERVICE

- 11.1. Provision of the Service is predicated on Customer subscribing to Provider's Cloud Backup Service or Customer providing Provider with a backup that contains all information required to perform a complete recovery.
- 11.2. Provision of the Service is predicated on Customer subscribing to Provider's Virtual Hosting Service to provide a hosting platform for the period of time it is required following a disaster.
- 11.3. Customer shall notify Provider of any data loss within one Business Day of the awareness of such loss if there may be a requirement to restore the lost data from a backup.
- 11.4. In the event of a disaster, Provider can elect to provide the Service on a hosting platform at the Customer's premises as an alternative to a cloud-based hosting platform provided that the Customer is not prejudiced in any way by Provider doing so.

12. TERMS AND CONDITIONS FOR THE VIRTUAL FIREWALL SERVICE

- 12.1. Provider cannot be held responsible for any losses or damages incurred due to zero-day vulnerabilities or faults in any third party firewall software and/or equipment used to provide the Service.
- 12.2. Service shall be fully managed by Provider with no administrative access provided to Customer to alter the Service in any way.
- 12.3. Any changes to firewall rules must be requested in writing by a representative of the Customer that Customer has previously authorised to make such requests and informed Provider in writing of such.
- 12.4. Any authorised requests by Customer for changes to firewall rules will be implemented by Provider within 8 Business Hours of receiving such requests.

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- 12.5. Functionality of the Service is limited to the functionality of the firewall software and/or equipment used to provide the Service.
- 12.6. Provider cannot be held responsible for any losses or damages incurred due to any firewall rule additions, deletions or changes requested and authorised by Customer.

13. TERMS AND CONDITIONS FOR THE MANAGED FIREWALL SERVICE

- 13.1. Provider cannot be held responsible for any losses or damages incurred due to zero-day vulnerabilities or faults in any third party firewall software and/or equipment used to provide the Service.
- 13.2. If at any stage during the Period there are any changes in circumstances that will reduce Provider's Internal Rate of Return for the Rental Equipment included in the Fixed Monthly Rate, then without derogating from anything in the Agreement, Provider can, at any time on or after the date of the change, recalculate the Fixed Monthly Rate. The recalculate Fixed Monthly Rate will be due for payment on or after the specified date so that Provider maintains the Internal Rate of Return it enjoyed immediately prior to the change. Any adjustment to the Fixed Monthly Rate will take effect upon the next Due Date.
- 13.3. Should Customer wish to extend the Service beyond the Period, then such a request must be made in writing to the Provider at least 30 days before the end of the Period. Provider shall be entitled to reject such a request or accept it and revise the Fixed Monthly Rate to an amount determined at its sole discretion.
- 13.4. Customer cannot terminate the Service during the Period.
- 13.5. Service shall be fully managed by Provider with no administrative access provided to Customer to alter the Service in any way.
- 13.6. Any changes to firewall rules must be requested in writing by a representative of the Customer that Customer has previously authorised to make such requests and informed Provider in writing of such.
- 13.7. Any authorised requests by Customer for changes to firewall rules that can reasonably be completed within one hour of continuous working time by a competent person will be implemented by Provider within 8 Business Hours of receiving such requests.
- 13.8. Functionality of the Service is limited to the functionality of the firewall software and/or equipment used to provide the Service.
- 13.9. Provider cannot be held responsible for any losses or damages incurred due to any firewall rule additions, deletions or changes requested and authorised by Customer.

14. TERMS AND CONDITIONS FOR THE CLOUD CALL RECORDINGS BACKUP SERVICE

- 14.1. Customer shall notify Provider of any loss or corruption of call recording data within one Business Day of awareness of such loss if there may be a requirement to restore the lost data from a backup.
- 14.2. Provider shall perform backups daily after the end of Customer's working day.
- 14.3. Provider shall provide Customer with a Schedule that provides written confirmation of the location of the call recording data being backed up and the time that backups will be started.
- 14.4. Provider shall provide a single instance of backups and Customer must consider such backups as a duplicate of Customer's call recording data and not a primary copy.
- 14.5. Provider undertakes to monitor the status of all backups and take appropriate action based on the information obtained.
- 14.6. Customer accepts that should a backup fail, it could take up to 31 days for any call recording data missing from the failed backup to be backed up to the call recording backup facility.
- 14.7. The Service does not include the costs associated with Provider supplying the Customer with physical copies of any backups or restoring any data from backups requested by the Customer.

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- 14.8. Provider will perform restoration of any call recording data by manually copying the backup to the location of the Customer's call recording data either remotely over a network connection or from a portable storage device onsite at the premises where the call recording data is located.
- 14.9. Provider undertakes to implement N+2 redundancy on disk drives in backup storage within the call recording backup facility with best effort to return to N+2 redundancy after single disk drive failure.
- 14.10. Provider shall encrypt Customer's data while it is in transit over any internet connection.
- 14.11. Provider undertakes to implement the call recording backup facility in a third party data centre that meets Tier 3 requirements according to the third party.
- 14.12. Customer accepts that preventing unauthorised access to its backups in the call recording backup facility is dependent on the Customer safeguarding the public/private keys which are stored on Customer's equipment.
- 14.13. In the event of termination of the Service, Provider shall delete all backups at call recording backup facility and will remove all software and licenses relating to the provision of the Service from Customer's equipment, to which Customer will provide access to Provider.

15. TERMS AND CONDITIONS FOR THE HOSTED PBX SERVICE

- 15.1. Provider undertakes to implement N+1 redundancy at a component level on PBX hardware within the hosted PBX facility with best effort to return to N+1 redundancy after single component failure.
- 15.2. Provider undertakes to host the hosted PBX facility in a third party data centre that meets Tier 3 requirements according to the third party.
- 15.3. Provider undertakes to monitor all infrastructure within the PBX hosting facility 24 hours per day, 7 days a week.
- 15.4. Provider undertakes to respond to events arising within the PBX hosting facility during Business Hours.
- 15.5. Provider is entitled to perform maintenance on the PBX hosting facility should Provider determine at its sole discretion that it is necessary to do so and even if doing so causes downtime of Service.
- 15.6. Provider shall provide the Customer with 24 hours' notice ahead of performing any planned maintenance on the hosted PBX facility that may result in downtime that will affect the Customer's use of the Service. Provider may perform any emergency maintenance on the hosted PBX facility without prior notice to the Customer.
- 15.7. The Service does not cover the costs of provision of support to Customer on any problems not due to a fault with the Service, including, but not limited to, onsite support, support of Customer's equipment (such as handsets) and support of Customer's networks .
- 15.8. All passwords supplied by Provider to Customer in order to use the Service will be 16-digit hexadecimal numbers.
- 15.9. Provider cannot be held responsible for any costs or damages (including, but not limited to, call costs) incurred by Customer due to unauthorised use of passwords in the possession of Customer that Customer did not reasonably maintain securely.
- 15.10. Customer will have limited access to the PBX management system (be it FreePBX or another product) in order to manage and control certain aspects of the hosted PBX. Provider cannot be held responsible for any costs or damages (including, but not limited to, call costs) incurred by Customer due to Customer incorrectly configuring the PBX management system.
- 15.11. Provider cannot be held responsible for problems with the Service if Customer's usage of the Service exceeds the maximum call capacity specified by the Provider.
- 15.12. If unplanned downtime in any monthly billing period exceeds 7 hours in total, Customer will be refunded in full for the hosted PBX fixed charge component of the Service in that period.

16. TERMS AND CONDITIONS FOR THE NETWORK VULNERABILITY SCAN SERVICE

- 16.1. For internal network scanning, a VPN connection to the customer site is required.

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- 16.2. Customer will provide a VPN connection in order for Provider to remotely perform vulnerability scans on Customer's internal network.
- 16.3. Provider shall only check vulnerabilities for IP addresses specified in the Schedule.
- 16.4. Provider shall only check for known vulnerabilities as specified in the database of the third party software tool utilised to check for such vulnerabilities and Provider shall only be responsible for detecting vulnerabilities in Customer's equipment and services that is operational at the time of the vulnerability scan.
- 16.5. The Service does not include penetration testing.
- 16.6. The Service includes reporting discovered vulnerabilities to the Customer, but excludes the rectification thereof.
- 16.7. Vulnerability scans will be performed at a time mutually agreed to by Provider and Customer.
- 16.8. Customer agrees to permit Provider to perform a vulnerability scan on Customer's network.
- 16.9. Provider cannot be held responsible for any problem, damage or loss incurred by Customer arising out of Provider utilising the chosen third party tool to perform vulnerability scans on Customer's network.

17. TERMS AND CONDITIONS FOR THE MONITORING SERVICE

- 17.1. Provider cannot monitor any equipment or component that is not supported by the third party monitoring software tool used by Provider to provide the Service.
- 17.2. Customer acknowledges that not all aspects of Customer's equipment or network are monitored and Provider cannot be held responsible for problems that arise out of Provider not performing monitoring that is outside of the scope of the Service.
- 17.3. The availability of certain monitoring features is dependent on the versions of operating systems and other application software installed on Customer's equipment.
- 17.4. Provider undertakes to perform monitoring 24 hours per day, 7 days a week.
- 17.5. Provider undertakes to respond to monitoring alerts during Business Hours and will do so within predetermined time-frames depending on the severity of the alerts. Provider cannot be held responsible for the consequences of any failure that may occur should Provider reasonably have not responded to a related alert before the failure occurred.
- 17.6. Thresholds used to generate alerts are set by Provider according to industry best practices.
- 17.7. Provider is entitled to perform maintenance on the monitoring facility should Provider determine at its sole discretion that it is necessary to do so and even if doing so causes unavailability of Service.
- 17.8. Provider shall provide the Customer with 24 hours' notice ahead of performing any planned maintenance on the monitoring facility that may result in unavailability of the Service. Provider may perform any emergency maintenance on monitoring facility without prior notice to the Customer.
- 17.9. Provider is authorised by Customer to perform automated self-healing and certain specified manual corrective actions on Customer's equipment or network as a consequence of faults reported via the Service.
- 17.10. Customer acknowledges that Provider is entitled to remove data from certain directory locations on Customer's storage equipment should an alert determine that a fault may be remedied by such removal, provided that Customer has previously agreed in writing to those directory locations being used for that purpose.
- 17.11. Customer authorises Provider to take immediate action in exceptional circumstances where it is determined by Provider from monitoring information that it is in the best interests of the Customer to do so, even in circumstances where such action may have some negative consequences to the Customer.
- 17.12. The Service does not include the costs associated with any corrective work performed by Provider as a consequence of receiving alerts or other monitoring information. Furthermore, the Service does not include the costs of Provider re-enabling monitoring agents if such work is required due to the actions of Customer or a third party.
- 17.13. Provider will keep Customer's historical monitoring information for a minimum of three months and is entitled to keep such information up to three years.

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- 17.14. Provider may add or remove monitoring features from time to time but undertakes to make Customer aware of such changes.
- 17.15. Provider cannot generally determine from monitoring information whether or not the correct backup media is present in Customer's backup equipment at the time of any backup. As such, Customer acknowledges that it is entirely responsible for ensuring that the correct backup media is present in Customer's backup equipment prior to any backup being performed.

18. TERMS AND CONDITIONS FOR THE N-ABLE SAAS SERVICE

- 18.1. Provider cannot be held responsible for any losses or damages incurred due to software faults in any N-Able software or due to the misconfiguration of that software should the Customer perform such configuration.
- 18.2. Customer is responsible for ensuring that any software used through the Service meets the Customer's functionality requirements.
- 18.3. Customer is responsible for upgrades to software agents on Customer's monitored equipment to ensure compatibility with the N-Able monitoring platform.
- 18.4. Provider cannot be held responsible for non-delivery of alerts generated by Customer's monitored equipment if caused by the Customer or due to failure of the software used through the Service.
- 18.5. Provider cannot monitor any equipment or component that is not supported by the third party monitoring software tool used by Provider to provide the Service.
- 18.6. Customer acknowledges that monitoring of equipment is dependent on the availability of software agents provided by the developer of the software used through the Service and that monitoring will not be available on any of Customer's equipment should no software agent be available or compatible with such equipment at any time.

19. TERMS AND CONDITIONS FOR THE AUTOTASK (TASKFIRE) SERVICE

- 19.1. Provider cannot be held responsible for any losses or damages incurred due to software faults in any Autotask software or due to the misconfiguration of that software should the Customer perform such configuration.
- 19.2. Customer is responsible for ensuring that any software used through the Service meets the Customer's functionality requirements.
- 19.3. Customer is responsible for upgrades to the Autotask client software on Customer's equipment to ensure compatibility with the Autotask backend platform.
- 19.4. Customer acknowledge that the availability and reliability of the Autotask backend platform is dependent on multiple 3rd Parties and Provider cannot be held responsible for non-availability or lack of reliability of the Service if due to a third party.

20. TERMS AND CONDITIONS FOR THE MANAGED ENDPOINT PROTECTION SERVICE

- 20.1. Provider undertakes to ensure the third party endpoint protection software used for the Service is up to date and installed on devices in a manner so that it should function correctly.
- 20.2. Provider can only check for infections known to the third party endpoint protection software utilised to check for such infections and cannot be held responsible for detecting or protecting the Customer against infections that are not known to that software.
- 20.3. The Service does not include the costs associated with any corrective work performed by Provider as a consequence of an infection and Customer will be liable for such costs unless Provider is responsible for the infection due to negligence.
- 20.4. Provider cannot be held responsible for any losses or damages incurred due to software faults in the endpoint protection software or due to the misconfiguration of that software should the Customer perform such configuration.
- 20.5. Customer agrees to permit Provider to perform scans on Customer's network and further agrees that Provider cannot be held responsible for any problem, damage or loss incurred by Customer arising out of Provider performing scans on Customer's network.

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- 20.6. Provider cannot be held responsible for any scans that were unable to be performed due to circumstances reasonably beyond the control of the Provider.
- 20.7. Provider cannot be held responsible for any infections that occur on devices where Provider followed best practices at all times; or where devices were not detected by the third party endpoint protection software during a scan; or where the Customer elected not to protect devices using the third party endpoint protection software; or where devices could not be protected due to incompatibility with the third party endpoint protection software.
- 20.8. Customer is responsible for ensuring the devices to be scanned are installed with the latest security updates for the operating system and other relevant software. Furthermore, Customer is responsible for ensuring the devices are in good working order to enable installation and correct functioning of the third party endpoint protection software and agrees that Provider is entitled to charge for any time spent assisting Customer in that regard as such work is not included in the Service.

21. TERMS AND CONDITIONS FOR THE CLARVOICE SERVICE

- 21.1. Customer must provide Provider with a refundable deposit in the amount of the estimated average monthly call billing.
- 21.2. Customer will pay Provider the amount invoiced monthly for call costs by the 7th day of the calendar month.
- 21.3. Provider shall be entitled to suspend the Service without notice if Customer fails to make payment of any outstanding amounts by the Due Date; or if Customer exceeds its credit limit; or if Provider detects suspicious calling patterns that are not normally associated with the Customer.
- 21.4. Customer accepts that the Service is dependent on third party upstream service providers and as such accepts that Provider cannot be held responsible for non-availability of call services or poor call quality if such faults are due to a third party upstream service provider.
- 21.5. Customer cannot use the Service to make calls to destinations outside of South Africa unless Customer has requested to do so in writing and Provider has agreed to the request in writing.
- 21.6. Provider cannot be held responsible for any costs or damages (including, but not limited to, call costs) incurred by Customer due to unauthorised use (including, but not limit to, hacking and theft) of Customer's telephony system and/or Service access details in the possession of Customer.
- 21.7. The Service does not cover the provision of support to Customer on any problems not due to a fault with the Service.
- 21.8. Provider will ensure a Mean Opinion Score (MOS) of 3.5 or better for call quality as measured on equipment in Provider's core network upon which the Service is delivered.
- 21.9. The Service only supports GSM and G.729 codecs.
- 21.10. The Service does not support any facsimile services.
- 21.11. Provider will endeavour to ensure that the call rates associated with the Service are lower than the equivalent call rates that Customer would be charged by Telkom SA Limited.
- 21.12. Provider may change call rates associated with the Service at any time provided Customer receives written notice of such changes at least 20 Business Days prior to them becoming effective if not due to fluctuations in foreign currency exchange rates and one Business Day prior to them becoming effective if due to such fluctuations.
- 21.13. If the Schedule states that penalties apply for downtime of the Service, then should any downtime exceed two consecutive Business Days in any monthly billing period for reasons not due to a third party upstream service provider, then Customer will be credited the Fixed Monthly Rate for that billing period.

22. TERMS AND CONDITIONS FOR THE CLAROCONNECT SERVICE

- 22.1. If Provider is not responsible for provision of equipment at Customer's premises for use of the Service, then Customer shall provide such equipment in terms of functionality, reliability and performance to enable Customer to reasonably make use of the Service.

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- 22.2. Customer accepts that the Service is dependent on third party upstream service providers and as such accepts that Provider cannot be held responsible for non-availability or poor performance of the Service if such faults are due to a third party upstream service provider.
- 22.3. Provider shall be entitled to suspend the Service without notice if Customer fails to make payment of any outstanding amounts by the Due Date or if Provider detects a denial-of-service (DoS) attack targeting the Customer.
- 22.4. Should Customer terminate the Service during the Period, Customer shall be obliged on termination to pay Provider the outstanding fixed charges for the Service for the remaining Period.
- 22.5. Customer may request an increase the bandwidth of the Service during the Period at the related charges for that bandwidth but will not be permitted to decrease the bandwidth of the Service.
- 22.6. Provider shall provide the Customer with 24 hours' notice ahead of performing any planned maintenance that may result in unavailability of the Service. Provider may perform any emergency maintenance without prior notice to the Customer.
- 22.7. The Service does not cover the provision of support to Customer on any problems not due to a fault with the Service.
- 22.8. Should any downtime of the Service exceed two consecutive Business Days in any monthly billing period for reasons not due to a third party upstream service provider, then Customer will receive a percentage rebate on the Fixed Monthly Rate for that billing period. The percentage rebate will be calculated as the total number of minutes of downtime during the monthly billing period expressed as a percentage of the total minutes in that billing period.

23. TERMS AND CONDITIONS FOR THE SHIFT EIGHT CALL COST MANAGER SERVICE

- 23.1. Installation includes configuration of the CDR upload function, initial import of directory information provided by Customer, configuration of standard reports and setup of ClaroVoice and Telkom trunk rates.
- 23.2. Customer is solely responsible for ensuring that the Service utilises updated telecommunications trunk rates as and when changes occur other than changes to the rates associated with the ClaroVoice service.
- 23.3. Any work relating to the Service performed by Provider at the request of Customer subsequent to installation, including but not limited to training, support, reports, uploads and rate changes, will be billed at the applicable hourly rate unless otherwise agreed to by Provider in writing.
- 23.4. As the Service is dependent on certain resources provided by a third party, Provider cannot be held responsible for unavailability of the Service caused by any fault of that third party.
- 23.5. Customer accepts that minor discrepancies may exist between the telephone management system data provided by the Service and the billing received from Customer's telecommunications providers.
- 23.6. Customer agrees that Provider will not be held liable for any direct or indirect losses or damages due to the inaccuracy of any telephone management system data provided by the Service.

24. TERMS AND CONDITIONS FOR THE SHIFT EIGHT CALL QUALITY MANAGER SERVICE

- 24.1. Installation includes configuration of the Service-related application software, integration of the Service into the Monitoring Service (if applicable), configuration of default reports and validation of reporting data upon provision of the Service.
- 24.2. Customer's right of use of the proprietary software required by the Service is conditional upon Customer subscribing to an appropriate support service provided by Provider.
- 24.3. Upon termination of the Service, Customer shall immediately cease use of the proprietary software required by the Service; and shall within 7 days remove all copies of that software from Customer's devices or permit Provider to do so on behalf of Customer; and shall destroy or return to Provider all copies of that software in the possession of Customer.
- 24.4. Customer agrees that Provider will not be held liable for any direct or indirect losses or damages due to the inaccuracy of any data provided by the Service that is utilised for any purpose whatsoever, including, but not limited to, diagnosis, troubleshooting, monitoring and decision-making.

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25. TERMS AND CONDITIONS FOR THE PROACTIVE CONSULTING SERVICE

- 25.1. Provider shall determine at its sole discretion the category of the Service (small, medium, large or customised) required by Customer, based on criteria including, but not limited to, the number of qualifying server devices operated by Customer.
- 25.2. The Service entitles Customer to receive consulting from Provider relating to IT infrastructure strategy, solution designs and products unless it appears on the list of excluded consulting stated in the Schedule. If there is a dispute as to whether or not consulting requested by Customer is covered by the Service, Provider will have the right to make a final decision in that regard provided it can show reasonable justification for the decision.
- 25.3. The Service entitles Customer to receive a 2.5% rebate on products purchased from Provider subject to the following:
 - 25.3.1. Software license renewals and third party vendor hardware maintenance renewals do not qualify for rebates.
 - 25.3.2. The rebate is calculated and payable at the end of the Period on qualifying products purchased during the Period.
 - 25.3.3. The maximum value of the rebate is the cost to Customer for the Service during the Period.
 - 25.3.4. The rebate is reimbursed as a credit towards the cost of renewal of the Service and will be forfeited if the Customer elects not to renew the Service at the end of the Period.
- 25.4. Customer is not obliged in any way whatsoever to purchase products suggested or recommended by Provider in the course of provision of the Service.
- 25.5. Provider is not obligated to provide consultation in terms of the Service if Customer requests Provider to validate alternative quotations from third parties for products or services quoted by Provider.
- 25.6. Provider may apply a fair usage policy to cap the number of hours of consultation provided in terms of the Service during the Period. The cap is determined by the category of the Service subscribed to by the customer and is set at a maximum of 20, 40 and 60 hours of consultation for the small, medium and large categories of the Service respectively.
- 25.7. Customer agrees that Provider may charge the standard hourly consulting fee for consultation requested by Customer that is not covered by the Service, provided that Customer is informed by Provider of such charges prior to the provision of the consultation.