

General Terms and Conditions of Service

1. INTRODUCTION

- 1.1 As of the Effective Date, CipherWave shall be responsible for the maintenance and support of Customer's Managed Hosting Services and Networking Solutions as detailed in terms of the MSA, the Service Order/s which may be signed from time to time.
- 1.2 This Agreement sets out the terms and conditions, including the services to be provided and the terms and conditions applicable to those services, between the Service Provider and the Customer.
- 1.3 In the event of there being any conflict between the MSA and any other documents signed between the Customer and the Service Provider, then, in that event, the terms of the MSA will prevail.

2. DEFINITIONS

- 2.1 **"Agreement"** means the MSA, the Subscriber Application Form, together with any annexures annexed thereto.
- 2.2 **"Customer"** means the party to this agreement and to any subsequent Service Order which may be signed by the Customer and/or the Customer's duly authorised representative.
- 2.3 **"Charges"** The connection charges, monthly service charges, usage charges and any other charges pertaining to the provision of the Services and any other service(s) provided to the Subscriber in terms of the Agreement.
- 2.4 **"CipherWave Service Centre"** means any Service Centre of CipherWave in South Africa. There is currently a Centre at CSS House, 28 Augrabies Road, Waterfall Office Park, Vorna Valley, Midrand.
- 2.5 **"Commissioning of the Services"** The completion of installation and tests by network installation technicians confirming that the service is operational.
- 2.6 **"Completion Certificate"** means the Certificate sent through by the Service Provider to the Customer confirming that the Service Provider is now in a position to provide the services as set out in this agreement and/or the Service Order/s. A specimen of the Completion Certificate is annexed hereto as Annexure "B".
- 2.7 **"CPA"** means the Consumer Protection Act No. 68 of 2008
- 2.8 **"Days"** means Monday to Friday, unless the particular context indicates otherwise.
- 2.9 **"Delegated Service Provider"** Any Reseller who has been appointed by the Service Provider and who performs credit vetting, approves credit, concludes agreements, and directly bills the Subscriber or the end user for the Services.
- 2.10 **"Effective Date"** means, notwithstanding the date of signature of this MSA and its annexures, but rather the date stated as effective date on the Completion Certificate if the Completion Certificate is not objected to within 5 (five) days of the Completion Certificate being sent by

the Service Provider to the Subscriber and/or Customer. In the event of the Subscriber and/or Customer objecting to the Completion Certificate then the effective date shall be the date stated as effective date on the revised, signed and accepted Completion Certificate by the Subscriber and/or Customer.

- 2.11 **"EFT"** Electronic Fund Transfer.
- 2.12 **"Extension of Renewal Period"** means the renewal of the MSA for the period of the Renewal Period as set out in paragraph 3.1.4 of the agreement.
- 2.13 **"Initial Period"** means the period as indicated and as set out in the Service Order/s, signed from time to time by the Customer. That period shall be your Initial Period.
- 2.14 **"In writing"** includes signing a Service Order, Product and Services Schedule Order, sending a letter by registered post, sending an e-mail to the applicable/correct e-mail address, and, in the case of an e-mail being sent by the Customer to the Service Provider, in writing shall only be achieved when the Service Provider and/or the target addressee has acknowledged receipt of the e-mail, and, any other form of tangible or printable communication which the Service Provider deems suitable and which is totally in the sole discretion of the Service Provider.
- 2.15 **"Master Service Agreement"** (MSA) means this agreement, the Subscriber Application form and all annexures to the agreement.
- 2.16 **"Mobile Access Numbers"** The mobile access number(s), IP address(es), unique user name(s) or subscription number(s) used to identify Subscribers having access to the Services.
- 2.17 **"Network Operator"** which has granted the Service Provider authorisation to make the Services available to the Subscriber.
- 2.18 **"Normal Business Hours"** means the hours between 08h00 and 17h00 Monday to Friday, excluding public holidays in the Republic of South Africa.
- 2.19 **"Parties"** refers to CipherWave and the Customer and "Party" refers to either one of them as so determined by context.
- 2.20 **"Remote support"** includes telephonic support, e-mail support, remote access to all links and all other support, except on-site support.
- 2.21 **"Renewal Period"** means the renewal of the Initial Period of which Initial Period is set out in the Service Order in the event of no termination and/or notification being given as contemplated in paragraph 3.1.1.
- 2.22 **"Reseller"** means a third party appointed by the Service Provider for the providing of services to any third party.
- 2.23 **"Service Order/Order"** means an order placed by a Subscriber and/or Customer with the Service Provider for the provision of Services as set out in that Service Order. It is specifically agreed by the Customer and/or the Subscriber that the signature to the Service Order shall constitute a binding agreement on it/them to be bound to the terms and conditions of this agreement. A copy of the Service Order is annexed hereto as Annexure "A".
- 2.24 **"Service Provider"** CipherWave Storage Solutions Africa (Pty) Ltd.
- 2.25 **"Services"** means the managed hosting services and networking solutions that will be provided by the Service Provider to the Customer and/or Subscriber.

- 2.26 “**Subscriber**” means any party to whom the Services are made available in terms of this Agreement, including a Delegated Service Provider who on-sells the Services and bills an end user directly.
- 2.27 “**Terminal Equipment**” any equipment provisioned and supplied by the Service Provider.
- 2.28 “**Time to Respond**” means the time that would lapse between the Customer logging the service ticket and the Remote/On-Site Response.
- 2.29 “**Uptime Service**” means the time that the Customer’s hosted servers are live and operational, and the links provided under the Subscriber Agreement between CipherWave and the Customer are active and able to pass traffic.
- 2.30 “**VAT**” Value Added Tax as provided in the Value Added Tax Act 89 of 1991.

3. **COMMENCEMENT AND TERMINATION**

- 3.1 The Agreement shall commence on the Effective Date, and, shall continue for the Initial Period as set out on the Service Order/s, which will, from time to time (depending on how many are signed) form part of this agreement. This agreement shall terminate after the Initial Period provided that the Customer has complied with the below mentioned, failing which, the agreement shall continue on a month to month basis. The Subscriber may terminate this agreement by:
- 3.1.1 The Subscriber, on the expiry of the Initial Period, or, subsequent periods, as the case may be, by giving to the Service Provider a written notice of termination not less than one calendar month and not more than 90 days before the expiration of the Initial Period or the subsequent periods, as the case may be; and/or
- 3.1.2 The Service Provider may terminate this agreement, on written notice of a minimum 30 days to the Subscriber in the event that the authorisation issued by the Network Operator in terms of which the Service Provider is authorised and empowered to give the Subscriber access to the Services is terminated for whatever reason.
- 3.1.3 Notwithstanding the contents of paragraph 3.1.2, it is hereby agreed between the Service Provider and the Customer that the Service Provider may, on providing a minimum 30-day notice, terminate any and all services as provided in this agreement.
- 3.1.4 It is agreed that in the event of the Customer not providing notice as set out in paragraph 3.1.1, in such event, the services provided by The Service Provider, will continue on a month to month basis and requiring 90 days’ notice for termination.
- 3.2 It is agreed that the Service Order/s by the Subscriber and/or Customer is an offer made by the Subscriber and/or Customer to the Service Provider. The Service Provider’s acceptance of the Service Order in may place limited obligation on the Service Provider to render support services as set out in the Service Order until such time as the Completion Certificate has either been signed by the Subscriber, alternatively, the lapsing of the 5 (five) days of sending of the Completion Certificate to the Subscriber. It is specifically recorded that once the Service Order has been delivered to the Service Provider, that it cannot be withdrawn pending the issuing of the Completion Certificate.

- 3.3 The contents of paragraph 3.2 shall not apply to a Customer and/or Subscriber in the event of the Service Provider already providing the services so requested by the Customer and/or Subscriber in their Service Order/s. It is however agreed that the final decision in whether the Service Provider is already providing that service is solely within the discretion of the Service Provider.
- 3.4 The Customer and/or Subscriber may not, for any reason whatsoever and irrelevant of circumstances, terminate this MSA and/or any Service Order and/or demand any reimbursement, including but not limited to, damages whether direct or indirect, as a result of the Subscriber's relocation to an area outside of the Service Provider's coverage. In the event of the Customer and/or Subscriber terminating this MSA or any Service Order as a result of circumstances as mentioned in this paragraph shall immediately result in the Service Provider being entitled to claim for the full amount of the Initial Period, Renewal Period and/or Extended Renewal Period.
- 3.5 At the time the Subscriber signs the Application form or Order for the provision of Services, the Subscriber agrees that they are entering into a legally binding Agreement.

4. **SUPPLY AND INSTALLATION OF TERMINAL EQUIPMENT AND SERVICES**

- 4.1 The Service Provider shall utilise its best endeavours to promptly comply with any supply and/or delivery and/or installation requirements recorded in the Service Order, however, shall not be liable to the Customer and/or Subscriber in the event that such supply and/or delivery and/or installation is delayed or cancelled, for whatever reason.
- 4.2 The Service Provider in its sole discretion may refer the Customer and/or Subscriber to a third party who may, through an agreement with the Customer and/or Subscriber, undertake the installation of the terminal equipment on its (the Customer's and/or Subscriber's) own behalf and not as an agent of the Service Provider.
- 4.3 Notwithstanding the contents of paragraphs 4.1 and 4.2, it is specifically agreed between the parties that the Service Provider may, after providing a 30-day notice, within its sole discretion due to circumstances that may arise beyond the control of the Service Provider, even post acceptance of the Service Order, terminate any services so provided in terms of that Service Order. It is further agreed that, notwithstanding such termination, that the Customer and/or Subscriber hereby fully indemnifies the Service Provider against any losses which the Customer and/or Subscriber and/or its Employees and/or its Agents may suffer as a result of the cancellation and/or non-compliance of the Service Order and it is further agreed that the Service Provider shall not be liable in any way howsoever to the Customer and/or Subscriber for any loss and/or damage, whether direct, indirect or consequential that may be suffered by the Customer and/or Subscriber in the event of the cancellation of the Service Order. This indemnification shall also apply in the event of the Service Provider being required to install any equipment at the premises of the Customer and/or Subscriber in order for the Service Provider to provide the services.
- 4.4 The Subscriber shall be solely responsible for the obtaining of all necessary approvals,

certificates, qualifications and/or any authorities imposed by any competent authority and/or as required by law which may be required for the purpose of any supply and/or delivery and/or installation as contemplated in this agreement. The Subscriber hereby indemnifies and holds the Service Provider, its agents, employees and directors against any claim or liability that may be suffered by the Subscriber and/or its employees and/or agents, howsoever arising, specifically but not limited to any such approval and/or authority and/or requirement not been obtained as set out in this paragraph.

- 4.5 The Subscriber acknowledges that the Service Provider may, from time to time, have to change and/or alter the Terminal Equipment in order to ensure that the Service Provider can provide its Services and to ensure that it remains updated with technological evolution and/or progress, and, the Subscriber irrevocably agrees and undertakes that it will grant the Service Provider access to its premises in order to discharged its obligations in terms of this Agreement. The Subscriber hereby agrees to accept 24 hours' notice in respect of the requirement or the access needed by the Service Provider.
- 4.6 The Subscriber hereby guarantees and undertakes in favour of the Service Provider that the Subscriber:
- 4.6.1 Shall not use or allow the Services to be used for any improper, immoral or unlawful purpose, or in any way which may cause injury or damage to persons, property and/or an impairment or interruption of the Services.
- 4.6.2 Shall use only the terminal equipment provided by Service Provider and comply with relevant legislation and regulations imposed by any competent authority and all directives issued by Service Provider relating to the use of terminal equipment and the provision of Services.
- 4.6.3 Recognises that no right, title or interest in the software contained in the terminal equipment issued to the Subscriber vests in the Subscriber.
- 4.7 Shall not itself or permit any third party to reverse engineer, decompile, modify or tamper with the software and/or hardware contained in or pertaining to any terminal equipment.

5. **SERVICE LEVELS PROVIDED BY SERVICE PROVIDER**

- 5.1 The Service Provider shall provide a Managed Hosting Service and a Networking Service on the Products and Services detailed in Schedule "A" annexed hereto, and, shall provide services as per the agreed and accepted Service Orders which will form part of this agreement from time to time.
- 5.2 **Description of Bronze Level - This is the default level applicable to CipherWave services and is provided at no additional cost to Customer.** This service level provides for a next business day response on site during Normal Business Hours, subject to the distance between Customer's site and the nearest CipherWave Service Centre. A service ticket for assistance will be qualified within 4 (four) hours of receipt thereof by the Service Centre. Remote support will be provided, where available, within a 4 (four) hour response time after the service ticket has been qualified. After-hours is regarded as being between 17:00 and 08:00. CipherWave

will provide the labour, parts and equipment required and travel to the Customer's site to undertake the necessary maintenance of equipment covered under the Schedule. Equipment that is owned by Customer and does not fall within warranty will be invoiced out to the Customer at a nominal rate. CipherWave reserves the right to invoice the Customer at market related pricing for any consumables required and used out of necessity.

- 5.3 **Description of Silver Level** - This service level provides for a same day response on site during Normal Business Hours and a next business day response if call is logged after-hours, subject to the distance between Customer's site and the nearest CipherWave Service Centre. A service ticket for assistance will be qualified within 2 (two) hours of receipt thereof by the Service Centre. Remote support will be provided, where available, within a 2 (two) hour response time after the service ticket has been qualified. After-hours is regarded as being between 20:00 and 06:00. CipherWave will provide the labour, parts and equipment required and travel to the Customer's site to undertake the necessary maintenance of equipment covered under this Schedule. Equipment that is owned by Customer and does not fall within warranty will be invoiced out to the customer at a nominal rate. CipherWave reserves the right to invoice the Customer at market related pricing for any consumables required and used out of necessity.
- 5.4 **Description of Gold Level** - This service level provides for a 2 (two) hour response on site during Normal Business Hours or a 4 (four) hour response outside of Normal Business Hours, subject to the distance between Customer's site and the nearest CipherWave Service Centre. A service ticket for assistance will be qualified within 1 (one) hour of receipt thereof by the Service Centre. Remote support will be provided, where available, within a 1 (one) hour response time after the service ticket has been qualified. No after-hours periods applies to this service level. CipherWave will provide the labour, parts and equipment required and travel to the Customer's site to undertake the necessary maintenance of equipment covered under this Schedule. Replaced equipment that is owned by Customer and does not fall within warranty will be invoiced out to the customer at a nominal rate. CipherWave reserves the right to invoice the Customer at market related pricing for any consumables required and used out of necessity.
- 5.5 **Description of Platinum Level** - custom service level agreements can be negotiated on a case by case basis with Customer depending on their specific requirement/s and must be attached as an Annexure to this Master Service Agreement.
- 5.6 Notwithstanding CipherWave's undertaking regarding response times in the Service Levels stated above, where necessary, should the work (including travelling time) extend outside of the specified hours per service level above, the Customer will be offered the option of paying an overtime surcharge to allow work to continue to completion and provide a purchase order number to CipherWave, or to postpone the repair until recommencement of the specified hours per service level above.
- 5.7 **Service Level Priorities**
- 5.7.1 **Priority 1:** Customer is unable to do their business as a result of complete or partial system failure.

- 5.7.2 **Priority 2:** The problem has high visibility and impacts on the way Customer does business. The service is disrupted but not halted. The system performance may be degraded and some functions may not operate correctly.
- 5.7.3 **Priority 3:** A single user or small percentages of users are affected.
- 5.7.4 **Priority 4:** Changes or updates are required to the current system
- 5.7.5 **Remote and Onsite Support:** Prior to any onsite support an engineer will attempt to determine and resolve the problem via remote access where practical and Customer shall provide the remote access via the LAN/WAN to the onsite systems.

5.8 **Service Level Reaction Times**

Priority	Onsite	Remote	CipherWave DC
Priority 1	2	1	1
Priority 2	4	2	2
Priority 3	8	4	4
Priority 4	16	12	12

The above time is expressed in working hours.

- 5.9 CipherWave will not provide support at no cost for every problem/request that Customer may encounter or create while using its services. Support issues not covered under Customer’s individual plan as defined in this MSA, and/or the Service Order, may be billed at an hourly rate of R850 per hour ex VAT. CipherWave is committed to help Customers resolve any troubles or issues requiring CipherWave’s help or expertise. CipherWave will not bill for support without prior notification and approval in writing thereof by Customer. It is agreed that costings may vary according to each Customer’s individual plan of which costings and/or amendments thereto are set out on the price list which is published from time to time on the Service Provider’s website.

6. **SERVICES TO BE PERFORMED BY CIPHERWAVE**

6.1 CipherWave Network Availability and Uptime

- 6.1.1 CipherWave undertakes that its Network and Connectivity shall be made available with a minimum uptime of 99.9% measured monthly. This undertaking covers the availability of all network connectivity beyond the first point of entry from the Customer into the CipherWave Data Centre.
- 6.1.2 CipherWave undertakes that last mile connectivity (fibre, wireless, satellite) provided by CipherWave shall be made available with a minimum uptime of 99.5% measured monthly. This undertaking covers the availability of CipherWave provided routers, switches and microwave/satellite equipment between the Customer location and the CipherWave Data Centre.
- 6.1.3 CipherWave does not inherently provide any uptime undertakings associated with any last mile connectivity between the Customer and the CipherWave Data Centre other

than that mentioned in 6.1.2. Services such as ADSL, IPConnect, Diginet, etc. are excluded from any uptime undertakings unless specifically stated within the schedule attached. Special condition SLAs can be considered for last mile connectivity mediums other than those mentioned in 6.1.2 at an additional monthly cost to the Customer. Any special condition SLAs must be stated in the attached schedule of services.

- 6.1.4 The Customer is obliged to raise the service ticket and the time calculation will be determined from the time the call was logged, until the service is restored. Credits will only be paid subject to the correct procedure for the raising of a service ticket.
 - 6.1.5 **Access to customer's premises and installation of the Client Premise Equipment (CPE) device:** Where installation of the CPE is required to be undertaken, the Customer shall, whenever required by Service Provider, ensure that Service Provider's personnel or contracted installer, be permitted access to the Customer's premises and to remain at such premises –
 - 6.1.5.1 to carry out any inspection, repair, testing or maintenance of the CPE and other equipment relevant to the provision of the Service; and/or
 - 6.1.5.2 to verify that the manner in which the Service is being utilised by the Customer is in compliance with the General Terms and Conditions, this Service Schedule and applicable South African laws, rules and/or regulations; and/or
 - 6.1.5.3 to install, collect or remove the CPE; and/or
 - 6.1.5.4 for any other reasonable purpose whatsoever.
 - 6.1.6 To enable the installation of the CPE and any other equipment necessary for the provision of the Service, the Customer shall –
 - 6.1.6.1 Provide a suitable environment for the housing of the CPE and any other ancillary equipment together with all required trunking, electricity and connection points, conduits, cable trays and power supply in accordance with the relevant installation standards and manufacturers' instructions; and
 - 6.1.6.2 Take up or remove such fitted or fixed floor coverings, ceiling tiles, suspended ceiling and partition covers as may be necessary to install the CPE and/or ancillary equipment and carry out the making good of decorator's work required subsequent to such installation.
 - 6.1.7 The Customer shall be present at any installation of the CPE by Service Provider personnel or contracted installer and shall sign the installation completion certificate on completion thereof.
- 6.2 Dedicated Internet Services Availability and Uptime
- 6.2.1 The Availability Service Level for Dedicated Internet Service is 99.9%. Dedicated Internet Service is considered unavailable if the Primary Port (the main physical port on a network device to which we deliver network services e.g. internet, layer-2, MPLS, etc.) is unable to send or receive traffic. Primary refers to the port configured to be used for the network service delivery in normal optimal operational conditions i.e. not a redundant port or disaster recovery link.

6.2.2 In the event that Dedicated Internet Service becomes unavailable for reasons other than an Scheduled Outage, Customer will be entitled to a Service Credit off of the sum of (i) the monthly port charge for the affected port (if applicable), and (ii) the actual usage charges, if any, (calculated on a Megabit basis at the contracted-for price per Megabit) associated with the affected port for the particular month. Service Credits, in each case, are based on the cumulative unavailability of the affected port in a given calendar month as set forth in 6.9 Service Credits.

6.2.3 **Delay (Latency).** CipherWave commits to average (in a calendar month) latency between the Internet access routers of no more than the latency figures in the table below. If delay exceeds these objectives, except as the result of a Scheduled Outage, Customer will be entitled to a Service Credit off of the monthly port charge for the affected port as set forth below:

Route	Dedicated Internet Service
Local Internet Access	< 80 ms
International Internet Access (UK)	<350 ms

Delay Exceeding Objective	Service Level Credit
0.1% - 10%	10%
10.1% - 20%	30%
20.1% or greater	50%

6.2.4 **Packet Delivery** refers to network data packets being successfully sent from a sender IP address to a receiver IP address and acknowledged as successful. The packet delivery objective is 99.9%. Packet delivery is measured as the average number of IP packets transiting the CipherWave network that are delivered to the intended destination on the CipherWave network. Measurements are over a calendar month, and performance statistics for this SLA will be measured from CipherWave’s monitoring systems and compiled into a monthly report. If packet delivery exceeds these objectives except as the result of an Excused/Scheduled Outage, Customer will be entitled to a Service Credit off of the sum of (i) the monthly port charge for the affected port (if applicable), and (ii) the actual usage charges, if any, (calculated on a Megabit basis at the contracted-for price per Megabit) associated with the affected port for the particular month as set forth in 6.9 Service Credits.

6.2.5 Any unavailable service precluding access to other services except as the result of an Excused/Scheduled Outage, Customer will be entitled to a Service Credit off of the monthly service charge for the affected service/s as stipulated in the table in 6.9 Service Credits.

6.3 Broadband Internet Services Availability and Uptime

6.3.1 The Availability Service Level for Broadband Internet Services delivered over Fibre and/or Wireless is 99.5%. Broadband Internet Service is considered unavailable if the

- Customer is unable to send or receive traffic from the on-premise CipherWave Managed Router and normal environmental conditions (i.e. power available, etc.).
- 6.3.2 All You Can Eat (usage based billing) Broadband Internet Services are an uncontended internet service and CipherWave undertakes average bandwidth speed within 10% of the subscribed Committed Information Rate (CIR) of the Broadband Internet Service.
 - 6.3.3 Uncapped Broadband Internet Services are a best effort contended service and CipherWave undertakes average bandwidth speed within 30% of the subscribed Committed Information Rate (CIR) of the Broadband Internet Service.
 - 6.3.4 Fibre based Broadband Internet Services are uncontended between the Customer site and the CipherWave Data Centre, unless explicitly stated and CipherWave undertakes the average bandwidth speed between the Customer site and the CipherWave Data Centre within 10% of the subscribed Committed Information Rate (CIR) of the Fibre link.
 - 6.3.5 In the event that Broadband Internet Services becomes unavailable for reasons other than an Excused/Scheduled Outage, Customer will be entitled to a Service Credit off of the sum of (i) the line rental (fibre/wireless), and (ii) the router rental. Service credits will not apply to any bandwidth usage for All You Can Eat services. Service Credits, in each case, are based on the cumulative unavailability of the affected service in a given calendar month as set forth in 6.9 Service Credits.
- 6.4 Infrastructure Availability and Uptime
- 6.4.1 CipherWave undertakes that its infrastructure shall be made available with a minimum uptime of 99.9% measured monthly. This undertaking covers the availability of all power requirements, components, HVAC, fire suppression, security systems, UPS/PDU, appliances, power cabling, and other infrastructure or equipment, now or in the future, deemed as a requirement for maintaining the network infrastructure and providing CipherWave's services to Customer. If minimum uptime does not meet these objectives except as the result of a Scheduled Outage, Customer will be entitled to a Service Credit off of the monthly service charge for data centre co-location services affected by the outage as stipulated in the table in 6.9 Service Credits. However, it is specifically agreed that these Service Credits, and the granting of them, is solely within the discretion of the Service Provider.
 - 6.4.2 CipherWave will monitor the environmental attributes of the data centre to ensure that temperature parameters undertakes 99.9% availability of 26oC +/- 4oC and a relative humidity of 30% +/- 10%, where relative humidity is defined as the ratio of water vapour density (mass per unit volume) to saturation water vapour density, expressed in a percentage. If environmental attributes does not meet these objectives except as the result of an Scheduled Outage, Customer will be entitled to a Service Credit off of the monthly service charge as stipulated in the table in 6.9 Service Credits. However, it is specifically agreed that these Service Credits, and the granting of them, is solely within the discretion of the Service Provider.

- 6.4.3 Both temperature and humidity are daily averages measured in the return air path by the installed building management system.
- 6.4.4 Condition: Equipment to be installed according to supplier's recommendations, but with no less than 1U clearance between rack mounted units.
- 6.4.5 Any unavailable service precluding access to other services except as the result of an Scheduled Outage, Customer will be entitled to a Service Credit off of the monthly service charge for the affected service/s as stipulated in the table in 6.9 Service Credits.
- 6.5 Co-Location Availability and Uptime
 - 6.5.1 The Customer will supply their own Server which shall be placed at the Service Provider hosting facility and the Customer shall be responsible for configuring the Server to meet their own specific requirements.
 - 6.5.2 The Customer remains solely responsible for all aspects of the Server. Service Provider will be and undertakes to attend to the responsibilities as set out in paragraph 4, however, it is specifically agreed that the Customer leaves its server at the Service Provider's hosting facility at their absolute sole risk. In the event of there being any damage to the Server for any reason whatsoever, which shall include any non-compliance with paragraph 4, alternatively, theft and/or fire or for any reason whatsoever, the Customer fully indemnifies and hold the Service Provider harmless for any losses and/or any form of damage howsoever arising in respect to hosting the Server. In this regard the Customer is referred to paragraph 12 of this agreement which pertains to the limitation of liability and the paragraphs contained therein are repeated herein.
 - 6.5.3 The Customer remains solely responsible for the bandwidth and traffic management of the Server. The traffic management and reporting tools provided by Service Provider are provided to assist in this process, but do not absolve the Customer of responsibility nor place any such responsibility on Service Provider.
 - 6.5.4 Should the Subscriber's Server become the target or source of any form of Distributed Denial of Service (D-DOS) attack, Service Provider reserves the right to disconnect the Server from the network should it deem that no other solution is possible at that stage.
- 6.6 Managed Server Availability and Uptime
 - 6.6.1 Should the Subscriber Service Contract state that CipherWave is responsible for the management of the server operating system (OS), CipherWave undertakes the server OS shall be made available with a minimum uptime of 99.9% measured monthly. This undertaking covers the availability of the core OS, OS roles installed by CipherWave that are deemed a requirement to provide CipherWave services and OS updates performed by CipherWave.
 - 6.6.2 This undertaking excludes OS changes and configurations made by Customer or a third party. Any "downtime" caused by Customer or third party configuration changes or application installations on the server OS are not covered by this MSA and does not

count towards the total “downtime” for the measurement period. Any such “downtime” that the Customer requires CipherWave to resolve shall be done so according to the time-frames and costs as stipulated in Section 5.6 - 5.9 of this agreement.

6.7 Managed Application Availability and Uptime

6.7.1 If CipherWave is responsible for the management of certain applications (e.g. Microsoft SQL Server, Microsoft Exchange, etc.) and server roles (e.g. Hyper-V, Active Directory, etc.) per this Agreement and specified in Schedule A. CipherWave undertakes that these shall be made available with a minimum uptime of 99.9% measured monthly. If the managed application uptime does not meet these objectives except as the result of an Excused/Scheduled Outage, Customer will be entitled to a Service Credit off of the monthly service charge for affected services as stipulated in the table in 6.9 Service Credits.

6.7.2 The exclusion of such application uptime undertaking must be explicitly stated within the attached schedule. This undertaking excludes OS and or application changes made by Customer or a third party that affects the performance of the application. Any “downtime” caused by Customer or third party changes is not covered by this MSA and does not count towards the total “downtime” for the measurement period. Any such “downtime” that the Customer requires CipherWave to resolve shall be done so according to the time-frames and costs as stipulated in Section 5.6 – 5.9 of this agreement.

6.8 CipherCloud Hosted Services Availability and Uptime

6.8.1 CipherWave undertakes that its CipherCloud Services viz. Hosted Exchange, Hosted SharePoint, Hosted Dynamics CRM and Hosted Lync shall be made available with a minimum uptime of 99.9% measured monthly.

6.8.2 Downtime for each of the services will be defined as:

6.8.2.1 **Hosted Exchange;** Any period of time when end users are unable to send or receive email with Outlook Web Access and other mail client e.g. Microsoft Outlook.

6.8.2.2 **Hosted SharePoint;** Any period of time when users are unable to read or write any portion of a SharePoint site collection for which they have appropriate permissions.

6.8.2.3 **Hosted Dynamics CRM;** Any period of time when end users are unable to read or write any Service data for which they have appropriate permission but shall not include non-availability of Service add-on features.

6.8.2.4 **Hosted Lync;** Any period of time when end users are unable to see presence status, conduct instant messaging conversations, or initiate online meetings*. (*Online meeting functionality applicable only to Hosted Lync Enterprise service)

6.8.2.5 **Virtual Servers;** Any period of time when Customer cannot access their hosted Virtual Server via RDP (Remote Desktop Protocol), SSH (Secure Shell), FTP (File Transfer Protocol), HTTP (Hypertext Transfer Protocol) and HTTPS (Hypertext Transfer Protocol Secure) and the server does not respond to PING/ICMP (Internet Control Message Protocol) from inside and outside of the CipherWave network.

6.8.3 The Customer is obliged to raise the service ticket and the time calculation will be determined from the time the call was logged, until the service is restored. Credits will only be paid subject to the correct procedure for the raising of a service ticket. Customer will be entitled to a Service Credit off of the monthly service charge for the affected service/s as stipulated in the table in 6.9 Service Credits.

6.9 Downtime Crediting

6.9.1 In the event that Customer suffers any “downtime” or lack of network or infrastructure availability, the Customer shall receive a credit on their account subject to the table below. All requests for credit must be made within ten (10) business days from the occurrence of the downtime and must be made in writing via a support ticket. All credit requests must be verified by CipherWave staff and credits may take up to thirty (30) days to reflect on Customer’s invoice. CipherWave reserves the right to revoke any credit for downtime issued where it is later discovered to have been caused by or attributed to Customer activity or external forces not related to CipherWave network or hardware.

99.9% SLA	Credit
99.5% - 99.9%	10%
98% - 99.49%	25%
95% - 97.99%	50%
Below 95%	100%

99.5% SLA	Credit
98% - 99.49%	10%
95% - 97.99%	25%
90% - 94.99%	50%
Below 90%	100%

6.9.2 If the *average uptime over three (3) consecutive calendar months* falls between **90% - 95% on 99.9% SLA level** or between **85% - 90% on 99.5% SLA level**, the Customer has the right to terminate this agreement forthwith, without any penalty, subject to 6.9.4.

6.9.3 If the *average uptime for any one (1) calendar month is below 90% on 99.9% SLA level* or *below 85% on 99.5% SLA level*, the Customer has the right to terminate this agreement forthwith, without penalty, subject to 6.9.4.

6.9.4 **CipherWave utilises a network monitoring application that is able to accurately verify average uptimes. Should the Customer wish to effect termination of this agreement in terms of clause 6.9.2 and or 6.9.3 above, then CipherWave must first verify that the requirements therein are met through CipherWave’s own network monitoring application, which it do in good faith.**

6.9.5 The Customer must communicate the termination in writing to CipherWave and will

be liable for payments due up to that date, less any credit allotted to them.

6.10 Spares and Hardware Replacement Undertaking

6.10.1 Where products and services as detailed in this MSA and/or the Service Order/s are owned by CipherWave and provided to Customer as a managed rental, spares for such products and services will be maintained by CipherWave. In the event of the products and/or equipment being rented to the Customer and/or Subscriber then the Customer and/or Subscriber shall be required to enter into a separate rental agreement in respect thereof.

6.10.1.1 If CipherWave has sold hardware to the Customer outright. Therein the Customer owns the hardware, and the hardware was sold with a manufacturer/supplier warranty and/or support SLA. Customer undertakes to handle the support procedure between the Customer and the hardware manufacturer/supplier directly.

The following clauses (6.10.2 – 6.10.4) exclude wireless and satellite network services:

6.10.2 CipherWave warrants and undertakes that in the event of a critical component failure, CipherWave shall replace such component(s) at no cost to the Customer within 8 (eight) working hours of the service ticket being raised in respect of the failure. Acknowledgement shall be defined as the creation of a support ticket for the Customer by the Service Provider concerning the critical failure, and the 8 (eight) hour Hardware Replacement Undertaking shall begin at this time. Critical components shall be defined as one or more of the following components: CPU / Processors, Memory (RAM), Motherboards, Network Interface Cards (NIC Cards), Hard Drives, Secondary Hard Drives and Disks.

6.10.3 This MSA does not cover any special equipment that the Customer is using that CipherWave does not stock replacements for. This includes specialised storage devices, load balancers and networking equipment, optical drives, software and operating systems.

6.10.4 Failure on the part of CipherWave to replace critical components within 8 (eight) working hours shall result in credit being issued to the Customer's account based on the following formula:

Credit = ((minutes to replace - 480 minutes) ÷ 44 640 minutes) x overall monthly service fee as per contract.

All requests for credit must be made within ten (10) days from the occurrence of the critical component failure and must be made in writing via a support ticket. All credit requests must be verified by CipherWave staff and credits may take up to thirty (30) days to reflect on Customer's bill. It is further agreed that in the event of the request for the credit not being made within 10 (ten) days, then such credit will be forfeited

and the Subscriber and/or Customer will not be entitled to claim such credits.

6.10.4.1 It is to be recorded and specifically agreed herein that in the event of the Subscriber and/or Customer claiming a credit of which has been approved by the Service Provider, of which such approval is solely within the discretion of the Service Provider, the Subscriber and/or Customer accept that they will pay the full month's statement in which the credit request arose and which was approved and that the credit shall apply for the month following such approval.

6.10.5 Limitations on CipherWave Hardware Replacement Undertaking

CipherWave's Hardware Replacement Undertaking shall cover the time spent to replace critical components after the service ticket is raised by the Customer in respect of the critical component that is the cause of the problem or downtime and replacement is the agreed-upon course of action. This undertaking does not cover any time spent restoring any operating environment or restoring the functionality of a particular server or server environment, including, but not limited to: rebuilding data or domains, rebuilding control panels or server consoles, digital certificates, CRON jobs, installing operating systems or virtualization software, software components, RAID arrays, or any part of any configuration or setup concerning equipment provided to CipherWave by Customer. CipherWave is not responsible for any third-party loss due or attributed to any downtime experienced by Customer under this agreement.

6.10.6 It is specifically agreed that in respect to the spares and hardware replacement undertaking that such undertaking is given at the sole discretion and it is specifically agreed between the parties that insofar as this paragraph is concerned, that the indemnification and limitation of liability clauses as set out in paragraph 12 herein will apply to the spares and hardware replacement undertaking.

6.11 Customer Obligations

6.11.1 The Customer shall be responsible for procuring and maintaining, in its name and at its expense, all necessary permits (as required by law) and consents (as required by law) for the provision of the Service and/or the installation and/or use of the CPE and/or any ancillary equipment for the duration of this Agreement.

6.11.2 The Customer shall -

6.11.2.1 ensure all equipment connected to or used in conjunction with the Service is connected or used in accordance with applicable South African laws, rules and/or regulations and shall obtain the prior written approval of Service Provider before connecting or permitting any third party to connect any equipment to any electronic communication system or equipment operated by Service Provider or use any Equipment;

6.11.2.2 ensure that the Service is used strictly in accordance with Service Provider's Acceptable Use Policy. A copy of the Acceptable Use Policy is available upon request. However, notwithstanding the fact that it is available upon request

- the Subscriber and/or Customer accepts and acknowledges that they've read the Acceptable Use Policy and will be bound to the terms thereof.
- 6.11.2.3 responsible for its own local area network and infrastructure and shall implement such reasonable security measures in respect thereof to ensure that the security of and last mile access links provided by Service Provider (e.g. fibre, wireless, etc.) is not compromised;
 - 6.11.2.4 promptly comply with all notices, instructions or directions given by Service Provider in respect of the installation, use or operation of the Service, Software and the CPE;
 - 6.11.2.5 install, use and maintain all equipment necessary for the provision of the Service in good working order (fair wear and tear excepted) in accordance with the specifications, guidelines and recommendations of Service Provider and the vendor thereof;
 - 6.11.2.6 at all times retain custody and control of the CPE at the premises occupied by the Customer or such other premises as Service Provider may have approved for such purpose;
 - 6.11.2.7 use the service for its own internal business purposes and shall not be entitled, either directly or indirectly, to transfer, distribute, re-distribute, copy, sell, re-sell, lease, rent, lend, license or sub-license the Service, either in whole or in part, in any way whatsoever, to any third party without Service Provider's prior written consent.
- 6.11.3 The Customer shall not –
- 6.11.3.1 use or permit the use of the Service or install, connect or link or use (or permit the installation, connection, linking or use) of any electronic communications equipment in contravention of any South African laws, rules and/or regulations carry out or permit to be carried out any additions, improvements, adjustments, modifications, alterations or replacements to the CPE without the prior written consent of Service Provider;
 - 6.11.3.2 use or permit the use of the Service or any electronic communications equipment in any manner or for any purpose whatsoever which generates or is likely to generate electronic communications traffic which causes or is likely to cause congestion in or disruption of the Service offered by Service Provider;.
- 6.12 Completion Certificate and Service Order
Insofar as the Service Order and Completion Certificate is concerned it is specifically agreed that:
- 6.12.1 The Customer and/or Subscriber may, from time to time require services from the Service Provider.
 - 6.12.2 This request will be made by the Customer and/or Subscriber to the Service Provider to the e-mail address sales@cipherwave.co.za.

- 6.12.3 The Service Provider will then generate a Service Order similar to that as set out in Annexure "A" hereto of which shall be signed by the Customer and/or Subscriber and returned to the Service Provider by either e-mail or fax to sales@cipherwave.co.za.
- 6.12.4 That Service Order shall contain various information, including the initial period, the product and/or service to be provided together with the monthly charge.
- 6.12.5 That Service Order, which cannot unilaterally be withdrawn by the Customer and/or Subscriber will be deemed to be accepted by the Customer and/or Subscriber upon the Service Provider receiving the Service Order signed by the Customer and/or Subscriber.
- 6.12.6 Completion of the commissioning of services as per the Service Order would be deemed to have been achieved upon the Service Provider delivering a Completion Certificate to the Customer and/or Subscriber which is to be signed and returned by the Customer and/or Subscriber within 5 (five) days of receipt of the Completion Certificate, failing which, the Completion Certificate shall be deemed to have been accepted by the Customer and/or Subscriber. The effective date is as set out in paragraph 2.9. (Upon delivery of the Completion Certificate the services are rendered or capable of being rendered so are we not to remove the word "deemed".)
- 6.12.7 In the event of the Customer and/or Subscriber objecting to the Completion Certificate within the prescribed period, then the procedure as set out in paragraph 2.9 shall be followed. In this regard it is specifically agreed that in the event of the Customer and/or Subscriber raising unreasonable objections to the Completion Certificate shall entitle the Service Provider to, without notice, cancel the MSA and/or any Service Order/s.

7. **RAISING A SERVICE TICKET**

- 7.1 The Customer may raise a service ticket with the 24-hour Service Desk by using one of the following methods:
 - 7.1.1 Email service incident to **support@cipherwave.co.za**, or by
 - 7.1.2 Telephone call made to **0860 070 070, 010 612 0600** or **010 541 0000**.
- 7.2 Service tickets may only be raised by the designated persons nominated by the Customer. The nominated persons for raising service tickets must be outlined in Schedule A.

8. **GENERAL SERVICE EXCEPTIONS**

- 8.1 CipherWave has no obligation to support the following:
 - 8.1.1 Backups of the specified equipment unless otherwise specified in this MSA and/or any Service Order/s. Associated databases and components are specifically excluded from this SLA and will be the responsibility of the Customer.
 - 8.1.2 A Software problem or any defect resulting from unauthorised changes made by Customer to the Equipment in such a way that the Equipment becomes inconsistent

with the environment for which the Software or the hardware containing the Software was originally purchased. These changes could include the type of computer hardware, version of operating system, version of compilers, application software, and so on.

- 8.1.3 A Software problem or any defect caused by the negligence of Customer including, but not necessarily limited to unauthorised activities in the managed environment (i.e. change control management not followed) and/or the data centre according to the CipherWave Data Centre Policy or its employees, agents or any other person (other than a person of/through CipherWave).
- 8.1.4 Software problems or failures occasioned by virus infection whether or not virus protection software has been installed. The Customer will be solely responsible for ensuring that Product Manufacturer recommended anti-virus software is both installed and maintained with the latest versions.
- 8.1.5 All incidents will be followed by an incident report within 72 hours of being resolved and will state cause (e.g. action by person, software error, configuration error, hardware failure, etc.) and resolution of the issue as well as recommended steps to be taken to mitigate potential reoccurrence of the issue. The incident report will also state whether the cause of the incident is covered under this SLA and whether or not SLA credits are due.
- 8.1.6 Where service response may result in risk to the safety of the team attending to a raised service ticket.
- 8.1.7 Where service response may result in the team contravening any legal and or safety guidelines or regulations. For example - climbing masts in inclement weather.
- 8.1.8 In instances where uptime disruptions are as a result of power outages at the Customer's site, and the Customer has not implemented preventative measures such as uninterruptible power supplies or generators.

9. **GENERAL SERVICE PROVISIONS**

- 9.1 Product Updates are only offered where the Customer has purchased the Software Support Services. Product Updates are available via the Internet or other media upon request. Software maintenance release updates via CipherWave's Technical Services Support Centre will be supplied upon request in terms of clause 5.6 – 5.9.
- 9.2 The Customer will be responsible for the daily administration of the devices, log files and capacity management unless covered in terms of the SLA and Schedule of Service.
- 9.3 The Customer acknowledges that ownership of all Intellectual Property Rights relating to CipherWave's infrastructure and services shall at all times remain vested in CipherWave. This excludes the Intellectual Property hosted by CipherWave and developed by Customer. All intellectual property proprietary to each Party shall at all times and beyond the scope of the Agreement remain vested in the respective Party.

10. **CHARGES AND PAYMENT TERMS**

- 10.1 In consideration for the provision of the Services, Terminal Equipment and/or any other services supplied by CipherWave to Customer, the Customer shall effect payment to CipherWave of the applicable charges, as detailed in this Agreement and attached annexures/schedules whether or not the Services have been or are being utilised by the Customer.
- 10.2 Unless otherwise agreed to by CipherWave in writing, the Customer shall effect payment to CipherWave:
- 10.2.1 for once-off services (e.g. installation charges) on presentation of invoice and against commissioning of the Services.
- 10.2.2 for monthly service charges made monthly in advance within 14 days from date of any relevant invoice.
- 10.2.3 via an EFT where the Customer shall have discharged its obligations only upon payment being received by CipherWave.
- 10.3 In the event that CipherWave requires payment for the services provided to the Customer to be made by EFT, the Customer will commit a breach of the Agreement if the Customer:
- 10.3.1 Fails to honour the payment without the written consent of CipherWave.
- 10.3.2 Provides CipherWave with an incorrect payment amount.
- 10.4 The monthly statement shall be sent by CipherWave to the Customer to the e-mail address supplied by the Customer in this Agreement. Onus shall be on the Customer to check the statement in order to ensure that its contents are correct. Unless a query is raised in respect of the contents of the statement within 15 days from the date thereof, the contents of the statement shall be deemed to be correct.
- 10.5 For the duration of this Agreement, any migration from one service to another shall be subject to CipherWave's approval in its discretion and CipherWave shall be entitled to levy fees for migrations, but which fees may not exceed the amounts approved or fixed by the responsible regulatory authority from time to time.
- 10.6 In the event of Customer cancelling this or part of this Agreement other than for reasons stated in 6.9.2 or 11, CipherWave reserves the right to charge a penalty equal to or less than the value that would have been paid by the Customer for the service being cancelled over the full remaining term of the contract. This will include, but not be limited to, services such as licensed wireless links, fibre links and services provisioned from third parties.
- 10.7 CipherWave shall ensure that any Terminal Equipment is installed to the Customer's satisfaction before commencement of billing and once the Customer has signed off on said installation, CipherWave will accept that the Customer is satisfied with the Installation.
- 10.8 In the event of the Subscriber failing to effect payment of any amount owing by them to Service Provider on due date, then without derogating from Service Provider's rights in terms of clause 11, the Subscriber shall be liable to pay interest to Service Provider on the amount so owing at the prime interest rate as published from time to time by Standard Bank Limited plus 2% (percent), from due date to date of payment.

- 10.9 Unless specifically stated otherwise, all prices and charges set out in the Agreement and/or any price list are exclusive of Value-Added Tax and any other applicable tax or duty, the cost of which shall vest with the Subscriber.
- 10.10 A certificate under the hand of any Manager of Service Provider certifying the sum of any amount owing by the Subscriber to Service Provider shall be prima facie proof of its contents and sufficient proof for the purposes of enabling Service Provider to obtain any judgment or order against the Subscriber.
- 10.11 Should the Subscriber be placed under administration, sequestration or liquidation proceedings, or suffer any other legal disability which will negatively affect the Subscriber's ability to make payment to the Service provider, the Subscriber is required to notify the Service Provider in writing within 7 (seven) days of occurrence of the afore-mentioned events.
- 10.12 The Customer hereby consents in the event of any legal action being instituted by the Service Provider against it, it hereby consents to the jurisdiction of the Magistrate's Court holding jurisdiction despite the fact that the amount claimed exceeds the jurisdiction of the Magistrate's Court. Notwithstanding the contents of this paragraph the Service Provider can, if it deems necessary, approach the High Court holding jurisdiction for any urgent application and also has the discretion to institute action out any High Court holding jurisdiction.

11. **BREACH, SUSPENSION AND TERMINATION**

- 11.1 In the event that either Party (Primary) commits a breach of any of the terms and conditions herein, or, to any Service Order, then, in such event and in the event of the defaulting party remaining in breach for a period of 14 days after receipt of written notice ("notice of breach") from the other Party (Secondary) calling for such breach to be remedied, Secondary Party shall be entitled, without prejudice to any other rights or remedies it may have hereunder or in law including the right to claim damages, to -
- 11.1.1 claim specific performance, and/or
 - 11.1.2 cancel this Agreement, and/or
 - 11.1.3 claim damages.
- 11.2 Notwithstanding the contents of paragraph 11.1, it is specifically agreed that the Service Provider may at any time, and by providing adequate notice to the Subscriber and in any manner whatsoever, suspend the Subscriber's access to the Services in the event that:
- 11.2.1 Any modification, maintenance or remedial work is required to be undertaken pertaining in any manner whatsoever to the Services or the Network. Service Provider will endeavour to inform the Subscriber timeously in the event of planned maintenance.
 - 11.2.2 The Subscriber fails to perform any of their obligations, or breaches any terms of the Agreement, in which event Service Provider may also suspend the Subscriber's use of the terminal equipment and/or services.
- 11.3 Service Provider reserves the right to require the Subscriber to effect payment of any applicable reconnection charges pursuant to restoration of Services suspended in the

- circumstances contemplated in clause 11.2.2. In the event that the Subscriber's access to the Network is suspended, the Subscriber shall still be liable for the monthly service charges during any such period of suspension.
- 11.4 Notwithstanding the provision of Services to the Subscriber, all Terminal Equipment shall remain the property of the Service Provider.
- 11.5 The Service Provider shall be entitled to use the terminal equipment installed at any site for the provision of Services to Subscribers other than the Subscriber party to this Agreement.
- 11.6 Without prejudice to the provisions of clause 11.1 above, CipherWave may forthwith terminate this Agreement at any time by giving the Customer written notice of such termination if:
- 11.6.1 a judgment against the Customer remains unsatisfied for a period of 14 (fourteen) days or more after it comes, or ought reasonably to have come, to the attention of the Customer;
- 11.6.2 the Customer commits any act of insolvency as set forth in Section 8 of the Insolvency Act 24 of 1936, as amended;
- 11.6.3 the Customer makes any arrangement or composition with its creditors generally or ceases or threatens to cease trading;
- 11.6.4 the Customer is, other than for the purposes of reconstruction or amalgamation, placed under voluntary or compulsory liquidation or under judicial management or under the equivalent of the foregoing;
- 11.6.5 the Customer or any of its directors, shareholders or members is convicted of a criminal offence, which in CipherWave's opinion would impact negatively upon CipherWave.
- 11.6.6 the Service Provider's Licence is revoked, terminated or amended for any reason whatsoever.
- 11.6.7 the Customer commits a material breach of the agreement.
- 11.7 Indulgences: If either party at any time breaches any of that party's obligations under the Agreement, the other party ("aggrieved party"):
- 11.7.1 May at any time after that breach exercise any right that became exercisable directly or indirectly as a result of the breach, unless the aggrieved party has expressly elected in writing of a clear and unambiguous conduct, amounting to more than mere delay, not to exercise the right. In particular, acceptance of late performance shall for a reasonable period after performance be provisional only, and the aggrieved party may still exercise that right during that period.
- 11.7.2 Shall not be stopped (prevented) from exercising its rights arising out of a breach, despite the fact that the aggrieved party may have elected or agreed on one or more previous occasions not to exercise the rights arising out of any same/similar breach or breaches.
- 11.8 The Service Provider may, without prejudice to any other rights which it may have under the Agreement or at law:
- 11.8.1 Notify credit bureaus of the Subscriber's default; and

11.8.2 Blacklist the equipment to prevent the further use thereof. Once the terminal has been blacklisted, the Service Provider shall be entitled to remove or recover the terminal equipment from the site where it is stationed without notice to the Subscriber.

12. **LIMITATION OF LIABILITY**

12.1 Without detracting from any of the other provisions of this Agreement, Service Provider shall not be liable to the Subscriber, its directors, employees and/or agents for any loss and/or damage (whether direct, indirect or consequential) suffered by the Subscriber, its directors, employees and/or agents for any reason whatsoever in the event that:

12.1.1 Service Provider fails for any reason whatsoever to supply and/or deliver and/or provide installation of any terminal equipment either on the required date or at all; and/or

12.1.2 The Services are interrupted, suspended or terminated for whatever reason; and/or

12.1.3 Service Provider fails to suspend the provision of the Services to the Subscriber in terms of an arrangement between Service Provider and the Subscriber or after the Subscriber has specifically requested Service Provider to do so in order to limit the charges; and/or

12.1.4 Such loss or damage was caused by any gross or otherwise negligent act or omission on the part of Service Provider, its employees or its agents.

12.2 The Service Provider shall not be responsible for any loss or damage caused by third party suppliers.

12.3 The Service Provider shall not be liable for matters including but not limited to, any additional labour and equipment costs such as cabling, plug points.

13. **DISPUTES**

13.1 Notwithstanding the provisions of this Clause 13 in the event that there is a dispute arising pursuant to this Agreement, the signatories hereto undertake to meet prior to resorting to the provisions of this Agreement to ascertain whether it would be possible to resolve any such dispute without recourse to the provisions contained in this clause. In the event that the parties meet and are unable to agree a solution to the dispute, the provisions of this Clause 13 will prevail.

13.2 In the event of the matter not being able to be resolved in terms of paragraph 13.1, then, any dispute relating to the terms of this Agreement and/or should any dispute (other than a dispute contemplated in a specific clause to this Agreement which provides for a dispute resolution mechanism in terms of that clause) arise between the parties in respect to this Agreement or in relation to the conduct of the business of the Customer, without limiting the generality of the foregoing, any dispute relating to:

13.2.1 the interpretation or performance of any of the terms;

13.2.2 any of the parties' rights and obligations; or

13.2.3 any procedure to be followed; or

- 13.2.4 the termination or cancellation of this Agreement; or
 - 13.2.5 the rectification of this Agreement; or
 - 13.2.6 claim for damages by Service Provider.
then that dispute or difference may be submitted to the two parties' Chief Executives for resolution. Should the Chief Executives fail to resolve dispute within 7 working days, the dispute may be referred to arbitration in accordance with the following provisions:
 - 13.2.7 the arbitration proceedings shall be conducted in accordance with the rules of the Arbitration Foundation of South Africa;
 - 13.2.8 the arbitration proceedings shall be held on an informal basis, it being the intention that a decision should be reached as expeditiously and as inexpensively as possible, subject only to the due observance of the principles of justice;
 - 13.2.9 each party to the dispute shall be entitled to be represented at the arbitration proceedings by legal representative or representatives or any other expert or specialist retained by that party;
 - 13.2.10 the arbitrator shall:
 - 13.2.10.1 if the matter in dispute is primarily a legal matter, be a practicing counsel of not less than 10 (ten) years' experience as such, to be agreed upon between the parties, and failing agreement, to be nominated by the Arbitration Foundation of South Africa (AFSA);
 - 13.2.10.2 if the matter in dispute is primarily an accounting matter, the arbitrator shall be a chartered accountant of not less than 10 (ten) years' experience as such to be agreed upon between the parties, and failing agreement, to be nominated by the chairman for the time being of the Public Accountants and Auditors Board;
 - 13.2.10.3 if the matter in dispute relates to any matter not being primarily a legal and/or accounting matter, or if the parties are unable to agree on the nature of the matter of dispute, be such other person having an appropriate knowledge, as may be agreed upon between the parties, and failing agreement, nominated by AFSA;
 - 13.2.11 the decision of the arbitrator shall be final and binding upon the parties and capable of being made an order of a competent court on application by any party;
 - 13.2.12 the terms of this Agreement shall not preclude any party from applying to a competent court for a temporary interdict or other relief of an urgent and temporary nature, pending the award of the arbitrator;
 - 13.2.13 the costs of and incidental to any arbitration proceedings shall be in the discretion of the arbitrator who shall be entitled to direct that the costs be determined as between party-and-party, between attorney-and-client, or as between attorney-and-own-client.
- 13.3 The arbitration shall be held under the provisions as set out by AFSA, and, it is specifically agreed that the chosen arbitrator can, where need be, set out the procedure and rules to be

followed by the parties in order to expedite the matter, provided that the arbitration shall be held:

- 13.3.1 in Johannesburg;
 - 13.3.2 in accordance with such formalities and/or procedures as may be settled by the arbitrator and may be held in an informal and summary manner, on the basis that it shall not be necessary to observe or carry out the usual formalities of procedure, pleadings and/or discovery or respect rules of evidence.
- 13.4 The arbitration shall be held as quickly as possible after it is requested, with a view to it being completed within 30 (thirty) calendar days after it has been so requested or such other period as agreed to between the parties in writing.
- 13.5 Notwithstanding the contents of paragraph 13, it is specifically agreed that both parties after an initial engagement through the arbitration process can decide whether it intends to proceed with an action and/or summons and/or any other legal process through a Court having competent jurisdiction or whether it will proceed with arbitration.

14. **CONFIDENTIALITY**

- 14.1 Each Party (the “Disclosing Party”) will provide to the other (the “Receiving Party”), such Confidential Information as is necessary or expedient to enable the Receiving Party to carry out its obligations in terms of this Agreement.
- 14.2 The Receiving Party acknowledges that any Confidential Information is a valuable asset of the Disclosing party and that any unauthorised disclosure or use of the Confidential Information would result in financial or other harm which may be irreparable.
- 14.3 Either during the term of this Agreement, or thereafter, the Receiving Party undertakes to the Disclosing Party that it will not, whether directly or indirectly disclose or divulge, any Confidential Information to any third party for any reason or purpose whatsoever, without the express prior written consent of the Disclosing Party.
- 14.4 The Receiving Party further undertakes to protect the Confidential Information using the high degree of care it applies to protecting its own proprietary, secret or confidential information.
- 14.5 All Confidential Information disclosed to the Receiving Party is the property of the Disclosing Party and such disclosure does not confer any rights in or to the Confidential Information on the Receiving Party.
- 14.6 The Receiving Party will only disclose the Confidential Information to its employees and professional advisors on a need-to-know basis and then strictly in relation to the efficient conduct of its obligations in terms of this Agreement. The Receiving Party warrants that it will ensure that all such persons to whom confidential Information has been disclosed shall abide by the terms and conditions of this Agreement, and more specifically, clause 13.
- 14.7 The Receiving Party undertakes not to use, exploit, or in any other manner apply the Confidential Information disclosed to it for any purpose other than the purpose for which it was disclosed.
- 14.8 The Receiving Party shall, upon expiration or earlier termination of this Agreement for any

reason whatsoever:

- 14.8.1 forthwith return to the disclosing Party all Confidential Information in its or its employees' possession or under its or its employees' control;
- 14.8.2 not retain or withhold any copies of such Confidential Information.
- 14.9 The provision of clause 13 shall survive any termination or expiration of this Agreement for a period of 10 (ten) years from the date of termination of the Agreement.

15. **CONSENT/AUTHORITY**

- 15.1 The Subscriber hereby consents/authorises Service Provider to disclose the Subscriber's name, address and personal details to any party whenever it is reasonably necessary for Service Provider to properly perform its functions or protect its interests, or for the purpose of enabling the Network Operator or Service Provider to provide emergency Services to the Subscriber, or directory or repair services and information to Network users generally.
- 15.2 The Subscriber hereby consents/authorises Service Provider at any time, without notice to the Subscriber to obtain information about the Subscriber's profile from any authorised and registered credit reference agency in the Republic of South Africa.
- 15.3 The Subscriber consents/authorises the Service Provider to provide regular reports in respect of Subscriber's payment conduct to any authorised and registered credit reference agency in the Republic of South Africa.
- 15.4 The Subscriber consents/authorises receiving marketing, promotional updates and client satisfaction surveys from the Service Provider.

16. **INTERCEPTION AND MONITORING OF COMMUNICATIONS**

- 16.1 Subject to the provisions of Regulation of Interception of Communications and Provision of Communication- related information Act (RICA), 70 of 2002 or any law, the Subscriber acknowledges that the Service Provider is bound by RICA and accepts that in certain instances as set out in RICA that the Service Provider will be entitled and/or required to intercept, block, filter, read, delete, disclose any communications of the Subscriber sent or posted via the Service Provider's network. RICA may be accessed at <http://www.info.gov.za/acts/2002/a70-2002>.
- 16.2 The Subscriber acknowledges and agrees that in the event that the Service Provider is obliged by any applicable law determines or is required to determine that any content hosted by Service Provider, published by Service Provider on the Subscriber's behalf or transmitted by the Subscriber by means of the Service(s) ("Content") is in violation of any law or the Acceptable Use Policy, Service Provider shall be entitled –
 - 16.2.1 forthwith to request the Subscriber to remove such Content; and/or
 - 16.2.2 forthwith to require the Subscriber to amend or modify such Content; and/or
 - 16.2.3 without notice to the Subscriber terminate access to any Product(s) and/or Service(s) and/or suspend or terminate any Service(s); and/or
 - 16.2.4 without notice to delete the offending Content.

16.3 The Subscriber acknowledges that any exercise by Service Provider of its rights in terms of clause 16.2 above shall not be construed as an assumption of liability by Service Provider for the Content and/or the publication thereof whether or not Service Provider has knowledge of such Content, having cognisance of the fact that Service Provider has no general obligation in law to monitor Content. The Subscriber hereby indemnifies Service Provider and holds it harmless against any liability, claims, fines or other penalties of whatever nature suffered or imposed by any person arising either directly or indirectly out of the Content or the publication or hosting or transmission thereof.

17. **DOMICILIUM**

17.1 The Parties choose as their domicilium citandi et executandi ("domicilium") for the delivery of all notices arising out of this Agreement or its termination or cancellation, these addresses:

CipherWave: CSS House, Augrabies Road
Waterfall Office Park
Vorna Valley
Midrand
1685

Facsimile: 087 809 6063

Attention: Wayne D'SA

17.2 Both of the Parties shall be entitled from time to time, by written notice to the other, to vary their domicilium to any other address within the Republic of South Africa which is not a post office box or post restante.

17.3 Any notice required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing and signed by or on behalf of the duly authorised representative of the notifying party. For the purposes of this clause, notices shall include any notice in the form of a data message as defined in the Electronic communications and Transactions Act, 25 of 2002.

17.4 All notices made by any Party to the other ("the addressee") which:

17.4.1 is delivered by hand during the Normal Business Hours of the addressee at the addressee's domicilium shall be deemed, unless the contrary is proven by the addressee, to have been received by the addressee at the time of delivery;

17.4.2 is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee's domicilium shall be deemed, unless the contrary is proven by the addressee, to have been received by the addressee on the 10th day after the date of posting;

17.4.3 is sent by facsimile, shall be deemed, until the contrary is proven by the addressee, to have been received within one hour of transmission where it is transmitted during business hours of the receiving instrument or at noon on the following Business day

(excluding Saturdays and Sundays) where it is transmitted outside such business hours.

17.5 Notwithstanding anything contained to the contrary in this Agreement, any notice written or otherwise actually received by one Party from the other Party shall be adequate notice to such Party, unless otherwise required by any provision of this Agreement.

18. **CESSION AND DELEGATION**

18.1 The rights and obligations of the Subscriber in terms of the Agreement may not be assigned, ceded or delegated to any third party. The rights and obligations of Service Provider in terms of the Agreement may be assigned, ceded and/or delegated by it to any other party on written notice to the Subscriber.

19. **RISK AND OWNERSHIP**

19.1 The Subscriber acknowledges and agrees that all rights title and ownership in respect to the services and to any Network Equipment shall at all times remain vested in Service Provider.

19.2 All rights of ownership in and to any Equipment and/or Network Equipment –

19.2.1 supplied by Service Provider on a loan or rental basis, shall remain vested in Service Provider;

19.2.2 purchased by the Subscriber from Service Provider and supplied by Service Provider either free of charge or at a subsidised price shall remain vested in Service Provider for the duration of the initial period of the Service Schedule in terms of which it is supplied; and

19.2.3 at Service Provider's listed price shall remain vested in Service Provider until the Subscriber has made payment therefore in full to Service Provider.

19.3 All risk in and to –

19.3.1 the Equipment and/or Network Equipment shall pass to the Subscriber upon delivery thereof and the Subscriber shall be liable for any and all loss, theft or destruction of or damage thereto, howsoever arising.

19.3.2 In the event of damage to or the loss, theft or destruction of the Equipment and/or Network Equipment or any portion thereof, the Subscriber shall be obliged to pay to Service Provider the cost of replacing and/or making good the Equipment and/or Network Equipment so damaged, lost, stolen or destroyed.

19.4 The Subscriber undertakes –

19.4.1 to display in relation to the Equipment and/or Network Equipment no lesser degree of care than it would, had same belonged to it, and shall take all reasonably necessary precautions to avoid loss, theft or destruction of or damage to the Equipment and/or the Network Equipment;

19.4.2 not to, in any manner, alienate, encumber or otherwise dispose of the Equipment and/or the Network Equipment;

19.4.3 not to procure repair or maintenance of the Equipment and/or the Network Equipment

by any third party without the prior written consent of Service Provider or in any other manner tamper with the Equipment and/or the Network Equipment.

20. APPLICATION OF THE CONSUMER PROTECTION ACT

- 20.1 A transaction (as defined in the CPA) between the Subscriber and Service Provider may or may not fall under the provisions of the CPA depending upon whether certain values set out in clause 20.2 in respect of the Customer (“Threshold Values”) are below a certain value at the time the transaction is entered into.
- 20.2 The Threshold Values are the Subscriber’s asset value or annual turnover, and the value against which they are measured is as determined by the Minister of Trade and Industry by publication in the Government Gazette from time to time.
- 20.3 Service Provider’s duties towards the Subscriber may vary depending upon whether the transaction in question is subject to the CPA, and Service Provider will act upon the information given to it by the Subscriber in this regard. Consequently:
- 20.3.1 The Subscriber warrants that any statement made to Service Provider in respect of its Threshold Values is accurate.
- 20.3.2 If the Subscriber claims that all the Threshold Values are below the relevant value, or otherwise that the CPA applies to the transaction in question, Service Provider may at its instance require the Subscriber to provide it with financial statements as proof thereof.
- 20.3.3 If the Subscriber misstates the Threshold Values in such a way that Service Provider considers for a period that the transaction is subject to the CPA when it is not, all provisions of this Agreement that do not apply to transactions subject to the CPA shall retroactively apply to the transaction in question, and the Subscriber shall be liable for any damage sustained by Service Provider resulting from such misstatement.
- 20.4 To the extent that the provisions of the CPA are applicable to this Agreement, in the event that the Subscriber alleges that there is a defect in the quality of the Services, the only remedy that the Subscriber will have against Service Provider, is to require Service Provider to remedy the defect in the quality of the Services performed.
- 20.4.1 If Service Provider has supplied Equipment to enable the Subscriber to utilise the Services in the circumstances set out in clause 20.4, defects in the Equipment will be dealt with as described in clause 20.5.
- 20.5 If the provisions of the CPA are applicable to this Agreement, to the extent that Equipment is supplied to a Subscriber, the Equipment is warranted in respect of quality, suitability and durability for a period of 6 (six) months of the Effective Date in respect of the Equipment concerned. Provided the Subscriber is not in breach of the Agreement, Subscriber may within this period return the Equipment to Service Provider without penalty if the Equipment fails to satisfy the requirements and standards contemplated and Service Provider shall repair or replace the failed, unsafe or defective Equipment.
- 20.6 If Subscriber elects to enforce the provisions of clause 20.5 and, within 3 (three) months of

any repair undertaken by Service Provider, the failure, defect or unsafe feature has not been remedied, or a further failure, defect or unsafe feature is discovered by Subscriber, Service Provider shall, in its sole and absolute discretion:

20.6.1 replace the Equipment; or

20.6.2 refund to Subscriber the Once Off Cost applicable thereto.

21. **GENERAL/STANDARD CLAUSES**

21.1 Service Provider, Service Provider's employees and/or any of Service Provider's subcontractors shall, at all times, adhere to the Subscriber's security management and site access policies and procedures as notified to Service Provider in writing from time to time.

21.2 The Subscriber acknowledges further that the Subscriber's Local Area Network (LAN) is the Subscriber's responsibility; the Subscriber is therefore liable for any cost in relation to upgrading and/or configuration of the Subscriber's LAN when installing the Service Provider's solutions.

21.3 No waiver or indulgence which either Party may allow to the other Party shall be valid unless made in writing and such waiver or indulgence shall be strictly construed as applying only to the matter in respect of which it was allowed. Without limiting the generality of the a foregoing, if the innocent Party has taken no action as a result of any breach such inaction shall in no way prevent or stop such Party from exercising any rights which it may have which flow from the breach in question.

21.4 This Agreement and annexures/schedules constitutes the whole Agreement between the parties and no addition to, variation, modification or agreed cancellation of this Agreement shall be of any force or effect unless recorded in a written document and signed by or on behalf of the duly authorised representatives of both parties. For the purposes hereof, a "written document" shall exclude any document that is in the form, either wholly or partly, of a data message as defined in the Electronic Communications and Transactions Act, 25 of 2002, and "signed" shall mean a signature executed by hand with a pen and without any electronic process or intervention.

21.5 Service Provider may change the terms and conditions of this agreement as a result of changes in taxes, laws, regulations, the terms and conditions of the license issued to the license holder, the terms and conditions of any agreement between the license holder and Service Provider or any circumstances or events similar to the foregoing. Service Provider shall notify the Subscriber of any changes as contemplated herein in writing.

21.6 The Parties hereto acknowledge that no warranties or representations of whatsoever nature were made by either Party to the other prior to entering into this Agreement, save as may be recorded in this document.

21.7 This Agreement supersedes and cancels any and all previous service level agreements as per schedule A between CipherWave and the Customer relating to the subject matter hereof.

21.8 The Subscriber acknowledges having read and accepted the terms and conditions of the Acceptable Use Policy on the CipherWave website as well as the terms and conditions as set out herein.

- 21.9 The Customer and/or Subscriber acknowledges that this agreement may in certain respects limit the risk and/or liability of the Service Provider and/or may constitute an assumption of risk or liability by the Customer and/or Subscriber and/or impose an obligation on the Customer and/or Subscriber to indemnify the Service Provider or any other person so mentioned in terms of the agreement. In such an event it is specifically recorded that the Customers and/or Subscribers attention has been drawn to these limitations and the Customer and/or Subscriber understands and accepts such limitations. The Customer and/or Subscriber views the limitations and assumptions as fair and reasonable. The Customer and/or Subscriber has in no way, manner, means or form been forced and/or induced to enter into this agreement and fully accepts the terms and conditions thereof.
- 21.10 In the event of it being found that any paragraph herein is void and/or unenforceable shall not result in this agreement or any other paragraph being void and/or unenforceable. Each paragraph is severable of the other and in the event of it being found that a paragraph is void or unenforceable then only that paragraph shall be excluded and the remaining portion of the agreement shall survive.
- 21.11 The Customer and/or Subscriber confirms that it has knowledge of the Electronic Communications and Transactions Act 25 of 2002, specifically, chapter 11 thereof setting out the limitation of the liability of the Service Provider.
- 21.12 The Customer and/or Subscriber further undertakes that it shall fully comply with all provisions of the Films and Publications Act, 65 of 1996, in the event of the Act applying to it or them. The Customer and/or Subscriber is specifically directed to Section 27A of the Films and Publications Act as aforementioned and in the event of there being a breach of that paragraph the Service Provider shall immediately notify the relevant authorities and comply with the provisions thereof.