



MASTER SERVICES AGREEMENT

This Master Services Agreement between CipherWave and the Customer is intended to facilitate the conclusion of individual contracts in the form of Service Orders between CipherWave and the Customer. Each Service Order delivered and accepted in accordance with this Agreement forms an individual contract which incorporates the terms of this Master Services Agreement and establishes the terms and conditions under which CipherWave shall provide the Services to the Customer.

Between

Parties	
Registered Name of lessee:	CipherWave Business Solutions (Pty) Ltd
Company Registration Number:	2002/027250/07
Physical Office Address:	74 Waterfall Drive, Corporate Campus, Waterfall City, Midrand
Postal Address:	
Primary Telephone Number:	010 541 0000
Email:	
For attention:	Group CEO
Hereinafter referred to as:	CipherWave

and

Registered Name:	
Company Registration:	
VAT Registration Number:	
Physical Office Address:	
Postal Address:	
Primary Telephone Number:	
Email:	
For attention:	
Hereinafter referred to as:	Customer

1. Introduction

- 1.1 CipherWave is a leading provider of telecommunication and internet services and has sufficient experience and resources to sell and support the Services.
- 1.2 CipherWave wishes to sell, and the Customer wishes to procure the Services from CipherWave subject to the terms and conditions below.
- 1.3 The Customer and CipherWave record that this Agreement replaces the Contract entered into between the Parties previously and that all current Service Orders entered into between the Customer and CipherWave in terms thereof shall now be regulated by this Agreement.

2. Definitions and Interpretation

- 2.1 In this Agreement, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them, and cognate expressions bear the corresponding meanings –
 - 2.1.1 **“Agreement”** means this Master Services Agreement read together with each relevant Service Order and relevant Product Specific Terms as amended from time to time;
 - 2.1.2 **“Business Day”** means any Day other than a Saturday or Sunday or a Day which from time to time is a proclaimed public holiday in South Africa;
 - 2.1.3 **“Completion Certificate”** means the certificate provided by CipherWave to the Customer confirming that CipherWave is now in a position to provide the Services as set out in the Service Order.
 - 2.1.4 **“Charges”** means Call Charges, Usage Charges, Installation Charges, Rental Charges or Monthly Fees and any other charges or fees payable by the Customer to CipherWave in respect of a Service and revised from time to time in accordance with clause 4;
 - 2.1.4.1 **“Call Charges”** means the charges for circuit or packet switched telecommunication services payable in accordance with clause 4;
 - 2.1.4.2 **“Installation Charges”** means a non-recurring charge for the Installation of a Service (including installation of any Service Equipment) payable in accordance with clause 4;
 - 2.1.4.3 **“Rental Charges”** or **“Monthly Fee”** means recurring charges for a Service payable in accordance with clause 4;
 - 2.1.4.4 **“Usage Charges”** means the usage-based charges for internet services payable in accordance with clause 4;
 - 2.1.5 **“CipherWave Portal”** means any CipherWave approved extranet or web based system (or combination thereof) pursuant to which Customer its respective authorised employees, agents and representatives may access copies of current Service Orders, invoices etc. relating to the Services and access the applicable price lists associated with the eligible Services or where measurement data (real-time or historical) in connection with the Services can be accessed.
 - 2.1.6 **“Customer Equipment”** means the hardware, software, systems, cabling, and facilities provided by the Customer at the Customer Site and used in conjunction with the Service Equipment in order to receive a Service;
 - 2.1.7 **“Customer Site”** means the site/s specified in a Service Order at which the Service is to be provided.
 - 2.1.8 **“Digital Signature”** is defined as an electronic signature that:
 - 2.1.8.1 uses certificate based digital identification;
 - 2.1.8.2 is uniquely linked to the signatory;
 - 2.1.8.3 that binds the signature to the document with encryption;
 - 2.1.8.4 can be verified using public key infrastructure; and
 - 2.1.8.5 need not be an advanced electronic signature as defined in the Electronic Communications and Transactions Act No. 25 of 2002;
 - 2.1.9 **“Initial Term”** means the initial service term as stated on the Service Order form commencing on the Service Activation Date. If not stated on the Service Order a minimum of 1 (one) year from the Service Activation Date;
 - 2.1.10 **“Internet”** means the international interconnected network of networks using the TCP/IP protocol to exchange data communications;

- 2.1.11 **"Internet Service"** means service providing access to the internet across the IP Network together with any related Service Equipment or support services and as more specifically described in a Service Order;
- 2.1.12 **"IP Network"** means the points of presence, network hubs and hosted computers owned, operated or used by CipherWave in connection with the provision of an Internet Service;
- 2.1.13 **"Loss/es"** means all damages, fines, penalties, losses, liabilities (including settlements and judgments), costs and expenses of any kind, character or description (including payments, refunds and delivery of additional goods and/or services, interest, court costs, reasonable fees and expenses of attorneys and legal fees on the attorney and own client scale, accountants and other experts and professionals or other reasonable fees and expenses of litigation or other proceedings or of any claim, default or assessment);
- 2.1.14 **"Network"** means the Telecommunications Network and the IP Network;
- 2.1.15 **"Product Specific Terms"** means the terms and conditions dealing specifically with a particular Service category which is provided by CipherWave to the Customer and available on CipherWave's website and which is incorporated by reference into the Service Order;
- 2.1.16 **"Reference Interest Rate"** means the prime rate of interest as quoted by First National Bank to its customers on an overdraft facility from time to time, plus 2% (two per cent);
- 2.1.17 **"Renewal Term"** means a period of months as set out in the Service Order, which period will start on the day following the last day of the Initial Term;
- 2.1.18 **"RICA"** means the Regulation of Interception of Communication and Provision of Communication Regulated Information Act 70 of 2002, as amended/replaced from time to time;
- 2.1.19 **"Service"** means the specific telecommunications or internet services provided by CipherWave to the Customer, as described in a Service Order and as may be further described in the Product Specific Terms;
- 2.1.20 **"Service Activation Date"** means in relation to a Service, the date a Customer accepts or is deemed to accept a Service in accordance with clause 3.7;
- 2.1.21 **"Service Equipment"** means the hardware, software, systems, cabling, and facilities provided by CipherWave at the Customer Site;
- 2.1.22 **"Service Notification"** means a notification (Email, SMS, WhatsApp etc.) that may be provided to the Customer in accordance with clause 3 that a Service is ready for use;
- 2.1.23 **"Service / Sales Order"** means a request for a specific Service to be delivered by CipherWave to the Customer and accepted by CipherWave in accordance with clause 3 (for the avoidance of doubt, once the Customer signs a quotation and CipherWave accepts same it shall be deemed a Service / Sales Order ;
- 2.1.24 **"Service Term"** means in relation to a Service, the total period for which the Service is provided to the Customer pursuant to a Service Order.
- 2.1.25 **"Telecommunications Network"** means the telecommunication system/s that are owned, operated or used by CipherWave, from time to time.
- 2.1.26 **"User ID"** means any username, password or other personal details used for the authentication of an individual, used in connection with the CipherWave Portal.
- 2.1.27 **"VAT"** means Value Added Tax as provided in the Value Added Tax Act 89 of 1991, as amended.
- 2.2 Unless otherwise provided, defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the terms appearing in the lower case shall be interpreted in accordance with their plain English meaning.
- 2.3 Words not otherwise defined that have well-known and generally accepted technical or trade meanings are used in this Agreement in accordance with such recognised meanings.
In this Agreement —
- 2.4 Any reference to –
 - 2.4.1 **"business hours"** shall be construed as the hours between 08h00 and 17h00 on any Business Day. Any reference to time shall be based upon South African Standard Time;
 - 2.4.2 **"person"** means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality and includes:

- 2.4.2.1 an individual, firm, company, corporation, unincorporated body of persons and any Government Authority
 - 2.4.2.2 its successors in title, permitted assigns, permitted cessionary, and permitted transferees;
- 2.4.3 **"Days", "Months" or "years"** shall be construed as Gregorian calendar Days, Months or years;
- 2.4.4 **"clauses", "sub-clauses", and "Annexures"** are references to the clauses, sub-clauses and Annexures of this Agreement unless expressly stated otherwise;
- 2.4.5 an **affiliate** of any person shall be construed as a reference to a subsidiary or holding company, or a subsidiary of a holding company, of such person;
- 2.4.6 this **"Agreement"** or any other agreement or instrument shall include that agreement or instrument as amended, varied, novated or substituted in writing from time to time;
- 2.4.7 **"Government Authority"** or any public or professional organisation shall include a reference to any of its successors or any organisation or entity which takes over its functions or responsibilities;
- 2.4.8 **"Rand"** means the local currency of South Africa, being the South African Rand;
- 2.5 clause headings and the heading of the Agreement are for convenience only and are not to be used in its interpretation;
- 2.6 an expression which denotes —
 - 2.6.1 any gender includes the other genders;
 - 2.6.2 a natural person includes a juristic person and *vice versa*;
 - 2.6.3 the singular includes the plural and *vice versa*;
 - 2.6.4 a Party includes a reference to that Party's successors in title and assigns allowed at law; and
 - 2.6.5 a reference to a consecutive series of two or more clauses is deemed inclusive of the first and last-mentioned clauses.
- 2.7 The words **"include"** and **"including"** mean "include without limitation" and "including without limitation". The words **"like"**, **"include"**, and **"including"** followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 2.8 Any substantive provision conferring rights or imposing obligations on a Party and appearing in any of the definitions in this clause 2 or elsewhere in this Agreement shall be given effect as if it were a substantive provision in the body of the Agreement.
- 2.9 Unless the application of any such word or expression is specifically limited to that clause, words and expressions defined in any clause shall bear the meaning assigned to such word or expression throughout this Agreement.
- 2.10 Unless specifically otherwise provided, any number of Days prescribed shall be determined by excluding the first and including the last Day or, where the last Day falls on a Day that is not a Business Day, the next succeeding Business Day.
- 2.11 Where figures are referred to in numerals and words; if there is any conflict between the two, the words shall prevail;
- 2.12 The rule of interpretation or construction that, in the event of ambiguity, a contract shall be interpreted against the Party responsible for the drafting thereof, shall not apply in the interpretation of this Agreement;
- 2.13 This Agreement shall be enforceable by the estates, heirs, executors, administrators, trustees, permitted assigns, successors in title or liquidators of the Parties as fully and effectually as if they had signed this Agreement in the first instance, and reference to any Party shall be deemed to include any such Party's estates, heirs, executors, administrators, trustees, permitted assigns, successors in title or liquidators, as the case may be;
- 2.14 The expiration or termination of this Agreement shall not affect provisions of this Agreement which expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

3. Service

- 3.1 The Customer may from time to time deliver to CipherWave a Service Order on the terms of this Master Services Agreement. A Service Order shall be in such form as is provided to the Customer from time to time by CipherWave and/or as CipherWave may in its sole discretion accept.
- 3.2 A Service Order shall be binding on both Parties only after it is accepted by both Parties in written form, and:
- 3.2.1 **in the case of such acceptance by CipherWave, such acceptance shall be carried out to CipherWave's satisfaction of appropriate credit checks against the Customer, to which the Customer hereby consents;**
- 3.2.2 each Service Order issued and accepted in pursuant to the terms of this Agreement shall create an individual contractual relationship between the Parties to provide and receive the Service for the Service Term. That contractual relationship shall be governed by this Master Services Agreement read with the Service Order and Product Specific Terms to which terms the Parties agree.
- 3.2.3 in the event of conflict between the terms of the Master Service Agreement, Service Order and Product Specific Terms that cannot be reconciled, the order of precedence shall be as follows:
- 3.2.3.1 Service Order;
- 3.2.3.2 Product Specific Terms;
- 3.2.3.3 Master Services Agreement.
- 3.3 Services provided under this Agreement are agreed expressly on the condition that the Customer shall not resell, charge, transfer or otherwise dispose of the relevant Service or any part thereof to a third party.
- 3.4 Without releasing it from its obligations, CipherWave shall be entitled at any time to appoint subcontractors to perform some or all of its obligations.
- 3.5 The Customer will be responsible for the daily administration of the devices, log files and capacity management unless covered under a service level agreement.

Service Activation

- 3.6 Prior to the provision of a Service, CipherWave shall conduct such tests in order to determine whether the Service can be delivered. Upon successful completion of such tests, CipherWave shall use reasonable endeavours to deliver a Service Notification to the Customer.
- 3.7 The Customer shall be deemed to have accepted the Service either:
- 3.7.1 upon delivery of the Service Notification;
- 3.7.2 date upon which the Customer first uses the Service;
- 3.7.3 delivery of the Completion Certificate to the Customer; or
- 3.7.4 upon the Service Activation Date;
- whichever is earlier.

Service Level Agreement/s

- 3.8 CipherWave shall use reasonable endeavours to ensure that each Service will conform to any service descriptions and/or service levels as set out below:

SLA Service Level Offerings:

Support Plan	Business Hours	1st Level Response Times (Business Hours)	1st Level Response Times (Non-Business Hours/Weekends/Public Holidays)	Price
*Standard	Monday - Friday 06:00 - 18:00	15 Min	4 Hours	No Additional Cost

Advanced	Monday - Friday 06:00 - 18:00	15 Min	60 Minutes	Pricing on Request
Professional	Monday - Friday 06:00 - 18:00	15 Min	15 Minutes	Pricing on Request

**Customer's default SLA Service Level Offering*

CipherWave Support Level Response:

Service Type	Business Hours	After Hours	Monitoring of Service	*Availability / Uptime	1st Level Response Times
NOC	Monday - Friday 06:00 - 18:00	24/7 Support Weekends and Public Holidays	Yes	N/A	15 Minutes
Data Centre (Facilities, Power, Cooling)	Monday to Friday 06:00 - 18:00	24/7 Support Weekends and Public Holidays	Yes	99.982%	15 minutes
Infrastructure	Monday to Friday 06:00 - 18:00	24/7 Support Weekends and Public Holidays	Yes	99.9%	15 minutes
Network Security (Shared VDOM)	Monday to Friday 06:00 - 18:00	24/7 Support Weekends and Public Holidays	Yes	N/A	15 minutes
Network Security (Dedicated)	Monday to Friday 06:00 - 18:00	24/7 Support Weekends and Public Holidays	Yes	N/A	15 minutes
Core Network	Monday to Friday 06:00 - 18:00	24/7 Support Weekends and Public Holidays	Yes	99.5%	15 minutes

** Availability / Uptime means the number of hours in any month during which each defined service (in its normal state) and equals scheduled hours minus scheduled downtime hours minus excused outage hours*

- 3.9 The SLA term shall at all times be linked to the Customer's relevant Service Term;
- 3.10 Repair/Resolve times shall at all times be best effort unless the Customer is specifically subject to a different SLA Service Level Offering offered and charged under any relevant Product Specific Terms or included in the Service Order.
- 3.11 Any Customer shall automatically be placed on the Standard SLA Service Level Offering. Any Customer may opt for the Advanced or Professional SLA Service Level Offering at an additional cost.

4. Charges and Payment Terms

4.1 General principles as regards invoicing

- 4.1.1 Unless CipherWave has agreed, in writing, to different payment terms, the Customer shall pay CipherWave the amount of each invoice within 7 (seven) days upon receipt of such invoice of account via EFT or any other payment method as agreed upon between the parties;
- 4.1.2 All payments due by the Customer under this Agreement shall be made in South African Rands in immediately available funds to such bank account in South Africa as CipherWave shall from time to time nominate;

- 4.1.3 CipherWave shall levy interest at the Reference Interest Rate on any amount not paid on due date, which interest shall accrue from the due date to the payment date, both dates inclusive, and shall be capitalised monthly;
- 4.1.4 CipherWave reserves the right to levy a fee to the Customer for any electronic payment instruction rejected or returned by the Customer's bank.
- 4.2 Subject to the provisions of this clause 4, the Charges shall not increase during the Initial Term save for increases imposed by CipherWave's upstream providers. In this event CipherWave shall be entitled to notify the Customer on 30 (thirty) days' written notice to that effect.
- 4.3 Upon expiration of the Initial Term CipherWave shall be entitled to amend Charges on 30 (thirty) Days written notice to the Customer.
- 4.4 CipherWave shall be entitled to amend Call Charges, at any time during the Initial Term, Service Term or any subsequent Renewal Term, at its discretion upon written notice to the Customer.
- 4.5 Charges shall accrue as follows:
 - 4.5.1 Call Charges and Usage Charges upon the date that the Customer uses the Service and may be billed in arrears;
 - 4.5.2 Installation Charges upon the Service Activation Date and may be billed in advance;
 - 4.5.3 Rental Charges or any Monthly Fees upon the Service Activation Date and may be billed in advance.
- 4.6 Services provided by CipherWave to the Customer for any part of a Month shall be billed on a pro-rata basis.
- 4.7 Invoices shall be sent to the Customer via email.
- 4.8 Unless specifically stated otherwise, all Charges set out in the Agreement and/or any price list are exclusive of VAT and any other applicable tax or duty, the cost of which shall vest with the Customer.
- 4.9 Disputed invoices
 - 4.9.1 If the Customer disputes any details of an invoice delivered pursuant to this clause 4 then the Customer shall within 30 (thirty) Days deliver to CipherWave a notice ("**Invoice Dispute Notice**") setting out details of the item(s) set out in such invoice which the Customer disputes;
 - 4.9.2 CipherWave shall investigate and consider the Customer's Invoice Dispute Notice and shall, as soon as practically possible, advise the Customer of its findings, which will be final;
 - 4.9.3 the Customer shall not be entitled to withhold payment of any amount subject to an Invoice Dispute Notice.
- 4.10 Early Termination
 - 4.10.1 The Customer agrees to comply with the Initial Term commitment.
 - 4.10.2 In the event (save for events contained in clauses 9.6.3 and 10.3) of early termination by the Customer of a Service, or any part thereof, prior to the expiration of the Service Term, Initial Term or any subsequent Renewal Term, CipherWave may levy an early termination charge upon the Customer equal to 100% (one hundred per cent) of the remaining Rental Charges and any other Monthly Fees payable by the Customer to CipherWave for the unexpired portion of the Service Term, Initial Term or any subsequent Renewal Term and any other termination charges and/or other costs or expenses incurred by CipherWave for the cancellation of the Services, or any part thereof from any third party;
 - 4.10.3 The Customer hereby acknowledge and agrees that the early termination charge set out above is reasonable and a genuine pre-estimate of CipherWave's loss.

5 Term, Termination & Suspension

- 5.1 The Services shall commence on the Service Activation Date and endure for the Initial Term, whereafter the Service shall automatically continue on a month-to-month basis.

- 5.2 Upon expiration of the Initial Term, the Customer may terminate the Services, or any part thereof, on 1 (one) calendar month's written notice to Cipherwave.
- 5.3 CipherWave is entitled to terminate this Agreement and/or any Service Order, or part thereof, for convenience on 30 (thirty) days written notice to the Customer.
- 5.4 Should any Service Order, or part thereof, be terminated for any reason whatsoever it shall not affect the validity of or terminate the Master Services Agreement.
- 5.5 Termination of this Agreement shall not affect clauses which necessarily or by their context requires survival of this Agreement.

5.6 Customer Suspension

It is specifically agreed that the CipherWave may at any time, and by providing adequate notice to the Customer and in any manner whatsoever, suspend the Subscriber's access to the Services in the event that:

- 5.6.1 any modification, maintenance or remedial work is required to be undertaken pertaining in any manner whatsoever to the Services or the Network. CipherWave will endeavour to inform the Customer timeously in the event of planned maintenance;
 - 5.6.2 The Customer fails to perform any of their obligations, or breaches any terms of the Agreement, in which event CipherWave may also suspend the Customer's use of the Service Equipment;
 - 5.6.3 CipherWave has reasonable grounds to consider that the Customer has been involved or connected with criminal activity or any other activity that may be detrimental to CipherWave;
 - 5.6.4 CipherWave has reasonable grounds to consider that the Service/s is being used fraudulently or illegally;
 - 5.6.5 CipherWave has reasonable grounds to consider that the Customer will not or is unable to make any payment which is due or is to fall due to CipherWave hereunder.
- 5.7 CipherWave shall not be liable for any Loss or inconvenience suffered by the Customer as a result of any suspension.
- 5.8 Reconnection fees
- 5.8.1 Reconnection fees may apply per instance (to be charged by CipherWave at its discretion).

5.9 Cancellations

- 5.9.1 Upon expiration of the Initial Term, the Customer may terminate the Services, or any part thereof, on 1 (one) calendar month's written notice to CipherWave. The second to last business day of the month is the final date for a cancellation notice to qualify as a full calendar month.
- 5.9.2 The Customer must send a cancellation request to cancellations@cipherwave.co.za.
- 5.9.3 Customer shall remain liable for any Charges raised by CipherWave against the Customer's account after the Customer has sent CipherWave a cancellation notice that is not processed in the manner set out herein.

6 Supply & Installation of Service Equipment

- 6.1 CipherWave shall utilise its best endeavours to promptly comply with any supply, delivery and/or installation requirements recorded in the Service Order.
- 6.2 CipherWave shall not be liable to the Customer if such supply, delivery and/or installation is delayed or cancelled, especially where CipherWave is prevented by the Customers Landlord in any way.
- 6.3 The Customer 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.
- 6.4 The Customer acknowledges that CipherWave may, from time to time, have to change and/or alter the Service Equipment in order to ensure that CipherWave can provide the Service/s and to ensure that it remain updated with technological evolution and/or progress and the Customer irrevocably agrees and undertake that it will grant CipherWave access to the Customer Site in order to carry out its obligation under this Agreement. The Customer agrees to 24 (twenty four) hours' notice in respect of the requirement or the access needed by CipherWave. CipherWave always agrees to abide by the Customer's business rules for access to the Customer Site.
- 6.5 The Customer hereby guarantees and undertakes in favour of the CipherWave that the Customer:
- 6.5.1 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;
 - 6.5.2 shall use only the Service Equipment provided by CipherWave and comply with relevant legislation and regulations imposed by any competent authority and all directives issued by CipherWave relating to the use of Service Equipment and the provision of Services;
 - 6.5.3 recognises that no right, title or interest in the software contained in the Service Equipment issued to the Customer vests in the Customer.
 - 6.5.4 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.

7 Customer obligations

- 7.1 The Customer shall grant or shall procure the grant to CipherWave or its authorised representatives of such rights of access to each Customer Site, including any necessary licences, waivers or consents to enable it to perform its obligations or exercise its rights under this Agreement. The Customer shall advise CipherWave in writing of all health and safety rules and regulations and any other reasonable security requirements applicable at the Customer Site, and CipherWave shall use all reasonable endeavours to observe and ensure that its employees and authorised representatives observe such regulations and requirements as advised whilst at the Customer Site.
- 7.2 The Customer shall provide CipherWave with such facilities and information as CipherWave may reasonably require, to enable it to perform its obligations or exercise its rights under the Agreement.
- 7.3 The Customer warrants and undertakes that it shall:
- 7.3.1 use the Service Equipment only for receiving the Service and in accordance with CipherWave's reasonable instructions from time to time and/or any software licence that may be provided with the Service Equipment;
 - 7.3.2 not move, modify, relocate, or in any way interfere with the Service Equipment (or any words or labels on the Service Equipment) or the Network;
 - 7.3.3 not cause the Service Equipment to be repaired or serviced except by an authorised representative of CipherWave;
 - 7.3.4 insure and keep insured all Service Equipment installed at each Customer Site against theft and damage;
 - 7.3.5 not create or allow any charges, liens, pledges or other encumbrances to be created over the Service Equipment. Title to the Service Equipment shall always belong and remain with CipherWave, an CipherWave affiliate or their subcontractors;
 - 7.3.6 permit CipherWave to inspect, test, maintain and replace the Service Equipment at all reasonable times;
- 7.4 Comply with CipherWave's reasonable instructions in relation to the modification of the Customer Equipment to enable the Customer to receive the Service, at its own expense; and
- 7.5 Upon termination of a Service, allow CipherWave access to each Customer Site to remove the Service Equipment. Should any construction or alteration to the Customer Site have occurred to facilitate any Service, CipherWave is not obliged to restore the Customer Site to the same physical state as prior to Service delivery.
- 7.6 The Customer shall be liable for any and all damage to Service Equipment or the Network which is

caused by (i) the act or omission of the Customer or the Customer's breach of the terms of this Agreement; or (ii) malfunction or failure of any equipment or facility provided by the Customer or its agents, employees, or suppliers, including but not limited to the Customer Equipment, nor shall CipherWave be liable for any costs incurred by Customer arising out of any malfunction or failure of any such equipment or facility, including Customer Equipment;

- 7.7 The Customer warrants and undertakes that it shall in its use of the Services comply with:
- 7.7.1 any relevant legislative and regulatory provisions and shall not use the Services for any illegal or immoral purpose; and
 - 7.7.2 the then current version of the CipherWave Acceptable Use Policy (the "Policy"). The applicable Policy shall be available on the CipherWave website. The Customer shall, prior to commencing its use of the Service(s), read and understand the Policy. CipherWave reserves the right to change the Policy from time to time, effective upon posting of the revised Policy on its website and by notice to the Customer. The Customer shall indemnify CipherWave and CipherWave Affiliates in respect of all losses, damages, costs or expenses resulting from or arising out of any breach of the warranties set out in this clause 7.7 and/or any third party claim or allegation arising out of or relating to the use of the Service, and which relates to any act or omission of the Customer which is, or if substantiated would be, a breach of this clause 7.7.

8 Breach

- 8.1 If any party breaches any provision or term of this Agreement and fails to remedy such breach within 14 (fourteen) days of receipt of written notice requiring it to do so (or in the time and manner specified in any other clause that contains its remedies for non-compliance with that specific clause), then the aggrieved party shall be entitled without notice, in addition to any other remedy available to it at law or under this Agreement, including obtaining an interdict, to cancel this Agreement or to claim specific performance of any obligation whether or not the due date for performance has arrived, in either event without prejudice to the aggrieved party's right to claim damages.
- 8.2 CipherWave shall be entitled to terminate this Agreement immediately and without notice if:
- 8.2.1 the Customer suffers a judgment which is not satisfied in whole or appealed against (provided that such appeal is timeously and successfully prosecuted) or in respect of which an application to set it aside or rescind it is not made within 14 (fourteen) days after it becomes known to the Customer;
 - 8.2.2 the Customer commits any act of insolvency as contemplated in the Insolvency Act, 1936;
 - 8.2.3 the Customer is placed in liquidation or under judicial management, provisionally or finally.

9 Liability

- 9.1 The Customer shall hold CipherWave, its personnel, directors and officers (collectively the "representatives") harmless from and against all Losses and reimburse CipherWave and its representatives to the extent that
- 9.1.1 those Losses result from damage to property, death or personal injury arising from either the breach of this Agreement by the Customer or a representative of the Customer; and
 - 9.1.2 those Losses are not caused by the negligence, misconduct or breach of contract by CipherWave.
- 9.2 CipherWave shall notify the Customer, in writing, of any event that may result in a Loss requiring reimbursement under this clause as soon as CipherWave becomes aware of that event. A failure by CipherWave to so notify the Customer shall not reduce the Customer's obligations under this clause, except to the extent that CipherWave's delay increases its Losses.
- 9.3 The Customer's liability with respect to any Loss consisting of a third-party claim shall arise only upon the settlement of the Loss by CipherWave with the prior written consent of the Customer or if the Loss arises from a judgment or award of a court or tribunal of competent jurisdiction which either cannot be appealed and the Customer shall reimburse CipherWave in respect of that Loss

- within 7 (seven) Days after notice that the CipherWave has paid the claim pursuant to that settlement, judgment or award.
- 9.4 Subject to the provisions of this clause:
- 9.4.1 no Party shall be liable to the other Party under this Agreement, any applicable law, at law, the law of delict, statute, in equity, restitution or otherwise for any kind of indirect or consequential loss or damage, including loss of actual or anticipated profit or revenue, loss of use or productivity, loss of production or business interruption, loss of goodwill, loss of any contract or loss of opportunity that is connected with any claim arising under or in connection with this Agreement; and
- 9.4.2 the total liability of either party under or in connection with this Agreement in any calendar year, whether based on breach of contract or otherwise, shall not exceed 100% (one hundred per cent) of the CipherWave charges for that calendar year.
- 9.5 The clause above does not limit the liability of a Party where its liability;
- 9.5.1 arises from cases of death or personal injury;
- 9.5.2 arises from fraud, gross negligence, wilful misconduct; and/or
- 9.5.3 any other limitations on the application of the limitations to the Party's liability that may be imposed by applicable Law.
- 9.6 Notwithstanding anything to the contrary contained in this Agreement, the Customer fully indemnifies CipherWave and shall hold CipherWave harmless against any liability arising from:
- 9.6.1 a breach by the Customer of any provisions of this Agreement;
- 9.6.2 any defects in the Site whether existing at the signature date or that materialise during the Service Term; and
- 9.6.3 changes in law and/or actions of a government entity or the authorities that occur after the signature date.

10 Force Majeure

- 10.1 Neither Party shall be liable to the other for inability to perform or delayed performance in terms of the Agreement, should such inability or delay arising from any cause beyond the reasonable control of such Party, provided that the existence/happening of such cause has been drawn to the attention of the other Party within a reasonable time of occurrence of such cause (hereinafter referred to as "a Force Majeure Event").
- 10.2 For the purposes of this clause a Force Majeure Event shall without limitation of the generality of the foregoing, be deemed to include strikes, lock outs, accidents, fires, explosions, theft, war (whether declared or not), invasion, foreign enemies, hostilities rights, civil insurrection, flood, earthquake, lightning, act of local or national government, martial law or any other cause beyond the reasonable control of the Party effected.
- 10.3 Should CipherWave be unable to fulfil a material obligation under this Agreement or any Service Order, as the case may be, for a period of 30 (thirty) days due to circumstances beyond its control more fully set out above, and be unable to provide a suitable temporary alternative to the affected Service, as the case may be, then Customer may terminate this Agreement or the applicable Service Order.

11 Cession, Assignment & Delegation

- 11.1 The Customer shall not be entitled to cede, assign, delegate or otherwise transfer the benefit or burden of all or any part of this Agreement without the prior written consent of CipherWave, which consent shall not be unreasonably withheld.
- 11.2 CipherWave shall be entitled to cede, assign, delegate or otherwise transfer the benefit or burden of all or any part of this Agreement on written notice to the Customer.

12 Confidentiality

- 12.1 Subject to the provisions of this clause, each Party must for the duration of this Agreement and for a period of 2 (two) years thereafter:
- 12.1.1 use the other Party's confidential information only for the purposes of this Agreement and

must keep confidential and not disclose to any person the other party's confidential information; and

12.1.2 not make press or other public announcements or issue press releases about the Services without the consent of the other Party.

- 12.2 The clause above does not apply to confidential information that is in the public domain other than such information that has entered the public domain as a result of a breach of this Agreement or any other obligation of confidence.
- 12.3 A party may disclose the confidential information of the other party if that disclosure is to the employees, contractors or professional advisers of that party or its affiliates who have a need to know that information in relation to provision of the Services and who have agreed to keep it confidential, in terms of a written non-disclosure agreement.
- 12.4 A party may disclose confidential information of the other party if required by law or court order, or make an announcement that is required by law, if that party gives the other party the maximum practicable notice prior to disclosure or announcement and if practicable consults with the other party in relation to the content of the disclosure or announcement.
- 12.5 Either party may disclose confidential information of the other party when required to do so under any applicable law.

13 Data Protection

In performing its obligations under this Agreement, CipherWave shall:

- 13.1 The Customer acknowledges that CipherWave may share data, including but not limited to Personal Information of the Customer ("Customer Data"), with its Affiliates, subcontractors and the persons specified in its Privacy Policy ("Permitted Persons") to enable the performance of the Services ("Permitted Purpose").
- 13.2 CipherWave undertakes to and shall procure that its Permitted Persons use the Customer Data for the Permitted Purpose only, except with written consent of the Customer, or as may be required or permitted by law.
- 13.3 If disclosure of the Customer Data is required by law, CipherWave shall notify the Customer before making any such disclosure unless such prior notification is not reasonably practicable or is not permitted by applicable laws.
- 13.4 In respect of any Customer Data, CipherWave warrants and undertakes that:
 - 13.4.1 it shall comply with CipherWave' Privacy Policy;
 - 13.4.2 it shall only Process the Customer Data for the Permitted Purpose (other than to comply with any applicable laws to which CipherWave is subject);
 - 13.4.3 it shall have in place appropriate technical and organisational security measures to protect the Customer Data and to prevent the damage to, unauthorised destruction to and unlawful Processing of Customer Data;
 - 13.4.4 it shall restrict access to Customer Data to employees, individuals, subcontractors or agents who are appropriately authorised to process such Customer Data and who, by their office or binding contract, are subject to appropriate confidentiality obligations;
 - 13.4.5 it shall retain and delete Customer Data in the manner outlined in clauses 13.5 to 13.8;
 - 13.4.6 it shall not transfer or permit the transfer of Special Personal Information or Personal Information relating to children to, or access to from, a country or territory outside of South Africa, that does not have adequate data protection laws similar to the provisions of POPIA, without first obtaining prior authorisation from the relevant data protection authority, where required;
 - 13.4.7 it shall not transfer Customer Data outside of South Africa to recipients in locations that do not have adequate data protection laws unless there is a justification under POPIA to do so and subject to obtaining prior authorisation from the Information Regulator in circumstances where required; and
 - 13.4.8 it shall comply with all applicable data protection laws in relation to the Personal Information.

- 13.5 It is recorded that CipherWave shall only subcontract its Processing of any Personal Information contained in the Customer Data to the Subcontractor through a written agreement with the Subcontractors, which imposes the same obligations on the Subcontractors as are imposed on CipherWave in these terms. Where the Subcontractor fails to fulfil its data protection obligations under these terms, CipherWave shall remain fully liable to you for performing the Subcontractor's obligations.
- 13.6 The Customer agrees that, unless otherwise requested by it in writing for CipherWave to delete the Customer Data, CipherWave shall retain Customer Data subject to appropriate security safeguards being implemented to safeguard the information from unauthorised access or destruction.
- 13.7 The Customer agrees that, apart from information being deleted by the written request contemplated in clause 13.6, the Customer Data may be retained by CipherWave.
- 13.8 Subject to applicable laws, CipherWave agrees that it shall delete, de-identify, or hand over any of the Customer Data in its possession or control by such date as specified in the written request by the Customer requesting the deletion or handing over of such information or such later date which is reasonable and practicable in the circumstances, together with written confirmation that no copies of such information remain in its possession unless CipherWave is required or permitted to retain the Customer Data by applicable law.

14 Dispute resolution

- 14.1 In the event of any dispute in respect of the Agreement or its interpretation, the Parties agree that they shall in the first instance attempt to resolve the dispute through the authorised representatives of each Party, failing such resolution the dispute shall be escalated as follows:
- 14.1.1 Within 14 (fourteen) business days of any disagreement arising and the Parties being unable to reach agreement, the matter shall be referred to the Chief Executive Officer(s) or Managing Director(s) of the Parties (or a nominee or a person so authorized) who shall endeavour to settle the dispute through bona fide negotiations;
- 14.1.2 If the dispute has not been resolved by negotiation, the Parties will submit the dispute to the Arbitration Foundation of Southern Africa ("AFSA") administered mediation upon the terms set by the AFSA secretariat;
- 14.1.3 Failing such resolution, the dispute, if arbitrable in law, will be finally resolved in accordance with AFSA's rules by an arbitrator or arbitrators appointed by AFSA. Such arbitration is to be held in Johannesburg and conducted in English.
- 14.2 None of the terms of this clause will prevent a Party from approaching a court of competent jurisdiction to obtain urgent relief.

15 Relationship of the Parties

The relationship of the Parties under this Agreement is that of independent contractors. The Parties specifically state their intention that this Agreement is not intended to create a partnership or any other co-owned enterprise unless specifically agreed to by the Parties in a separate written instrument. Neither Party shall be deemed to be the employee, agent, partner or joint venture of any other Party under or in connection with this Agreement. Except as specifically provided herein, each Party shall continue to have the right to contract independently of the other Party with individuals and entities. Each Party shall be responsible for its own operating expenses and personnel expenses. Each Party will pay, collect and remit such taxes as may be imposed with respect to any compensation, royalties or transactions under this Agreement. Each Party will be responsible for all costs and expenses incurred by it in connection with the negotiation, execution and performance of this Agreement

16 CipherWave Portal

- 16.1 CipherWave may, in its complete discretion, make available to Customer the use of the CipherWave Portal from time to time. Access to any such CipherWave Portal shall be through an approved User ID or other authentication mechanism provided by CipherWave to Customer.
- 16.2 Customer acknowledges that the documentation and information that may be directly accessed by Customer through the CipherWave Portal shall be Confidential Information of CipherWave and,

as such, disclosure and use of such documentation and information shall be governed by the terms of this Agreement relating to Confidential Information.

- 16.3 Customer shall take all necessary steps to maintain the security and integrity of any and all User IDs used in connection with accessing the CipherWave Portal. For the avoidance of doubt, such steps shall include but not be limited to notifying CipherWave immediately if a person to whom Customer has disclosed User IDs leaves the employment of Customer.
- 16.4 Customer shall inform CipherWave if Customer has any reason to believe that a User ID used in connection with accessing the CipherWave Portal has or is likely to become known to someone not authorised to use it or is being or is likely to be used in an unauthorised way.
- 16.5 CipherWave reserves the right to suspend User ID access to the CipherWave Portal of Customer if at any time CipherWave reasonably considers, after consulting with Customer whenever practicable, that there has been or is likely to be a breach of security in respect of a User ID. CipherWave may issue replacement User IDs, or cease suspension, when CipherWave is satisfied that the breach of security or threat of breach of security is resolved.
- 16.6 Customer understands that CipherWave may amend User ID's on a periodic basis for the purpose of preventing unauthorised access to the CipherWave Portal and Customer will appoint an employee to whom CipherWave may communicate any such amended IDs.
- 16.7 CipherWave may in its sole and absolute discretion terminate the provision of Confidential Information via the CipherWave Portal at any time.

17 Consent

- 17.1 The Customer hereby consents/authorises CipherWave at any time, without notice to the Customer to obtain information about the Customer's profile from any authorised and registered credit reference agency/credit bureau in the Republic of South Africa.
- 17.2 The Customer consents/authorises the CipherWave to provide regular reports in respect of Customer's payment conduct to any authorised and registered credit reference agency in the Republic of South Africa.

18 Interception and monitoring of communications

- 18.1 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 Customer acknowledges that the CipherWave is bound by RICA and accepts that in certain instances as set out in RICA that the CipherWave will be entitled and/or required to intercept, block, filter, read, delete, disclose any communications of the Customer sent or posted via the CipherWave's network.
- 18.2 The Customer acknowledges and agrees that in the event that the CipherWave is obliged by any applicable law determines or is required to determine that any content hosted by CipherWave, published by CipherWave on the Customer's behalf or transmitted by the Customer by means of the Service/s ("Content") is in violation of any law or the Acceptable Use Policy, CipherWave shall be entitled –
 - 18.2.1 forthwith to request the Customer to remove such Content; and/or
 - 18.2.2 forthwith to require the Customer to amend or modify such Content; and/or without notice to the Customer terminate access to any Product(s) and/or Service(s); and/or
 - 18.2.3 suspend or terminate any Service(s); and/or
 - 18.2.4 without notice to delete the offending Content.
- 18.3 The Customer acknowledges that any exercise by CipherWave of its rights in terms of this clause shall not be construed as an assumption of liability by CipherWave for the Content and/or the publication thereof whether or not CipherWave has knowledge of such Content, having cognisance of the fact that CipherWave has no general obligation in law to monitor Content. The Customer hereby indemnifies CipherWave 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.

19 Miscellaneous

19.1 Notices

- 19.1.1 All notices or other communications to a Party shall be in writing and addressed for the attention of the persons and sent to the address or email address (or such persons, address or email address as each Party may from time to time notify to the other Parties) As indicated on cover page of this Agreement:
- 19.1.2 A notice shall be deemed to have been received by a Party:
 - 19.1.2.1 If sent by email, on the next Business Day following transmission thereof;
 - 19.1.2.2 if delivered by hand during business hours, on delivery at the chosen address.

19.2 Service of legal process

- 19.2.1 Each Party chooses its physical address, referred to above as its address at which legal process and other documents in legal proceedings in connection with this Agreement may be served.
- 19.2.2 By notice to the other Party, any Party may change its address at which legal process and other documents in legal proceedings in connection with this Agreement may be served to another physical address in South Africa.

19.3 Confidentiality and Publicity

The Parties agree to keep confidential and not disclose to any person (except to trustees, employees, officers, partners, or directors who are engaged in this Agreement) all confidential information that the Parties may receive from the other contracting Party or from any other source, relating to this Agreement and matters which are subject to the terms of this Agreement and will use, or cause to be used, such information solely for the purposes of the performance of the Parties obligations under the terms of this Agreement.

19.4 Entire Agreement

- 19.4.1 Each of the Parties confirms that this Agreement constitutes the entire agreement between the Parties with respect to its subject matter, and except for any confidentiality obligations, all previous oral or written understandings, proposals, negotiations, agreements, commitments, and representations are superseded by this Agreement.
- 19.4.2 The Parties acknowledge that, in entering into this Agreement, they have not relied upon any representation other than those expressly set out in this Agreement.

19.5 Remedies Cumulative

The remedies conferred by this Agreement are intended to be cumulative and shall not exclude any other remedy available under applicable Law.

19.6 Partial Invalidity

- 19.6.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable or, if modification is not possible, the relevant provision or part-provision shall be deemed deleted.
- 19.6.2 Any modification to or deletion of a provision or part-provision shall not affect the validity and enforceability of the rest of this Agreement.
- 19.6.3 If one Party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

19.7 Amendments

To the extent that no other form is required by applicable law, an amendment to this Agreement shall not be effective unless it is in writing and signed by the Parties. Any variation of this

Agreement shall be validly signed and accepted if signed by hand in wet ink, or by Digital Signature.

19.8 Waiver

- 19.8.1 A Party may waive its rights under this Agreement at any time, but such a waiver shall, to the extent permitted by law, only be effective if it is given in writing.
- 19.8.2 A failure or delay by a Party to require performance by another Party of any obligation under this Agreement shall not, to the extent permitted by law, affect the first Party's right to require performance unless a waiver has been given in accordance with this clause.
- 19.8.3 A waiver under this clause shall be limited to the matters expressly set out in writing and shall not be construed as a waiver of the same right on any future occasion.

19.9 Further assurances

The Parties shall do all further acts and execute and deliver all further documents as may be reasonably required to perform and carry out this Agreement.

19.10 Expenses

Except as otherwise provided in this Agreement, each Party shall pay its costs and expenses of executing and performing this Agreement.

19.11 Governing law and jurisdiction

This Agreement shall be governed and construed in accordance with South African law and the Parties hereto irrevocably agree to the exclusive jurisdiction of the South African courts.

19.12 Ethics, bribery and corruption

Each Party shall conduct its business in compliance with applicable anti-corruption laws and internationally accepted standards of business conduct and ethics, including the law, the anti-corruption provisions of the Companies Act (and the regulations thereto, promulgated in 2011), the Prevention and Combatting of Corrupt Activities Act 12 of 2004 and the Financial Intelligence Centre Act 38 2001, all as amended from time to time, and shall maintain policies and procedures designed to promote and achieve compliance with the foregoing laws and standards, provide adequate training to all of its officers, employees, agents and representatives in relation to the foregoing laws and standards, and only enter into contracts or procure services in relation to this Agreement which are on arms' length terms, are procured in accordance with the foregoing standards and agrees to comply with the provisions in this clause.

20 Signature

- 20.1 This Agreement is validly signed by hand in wet ink or by Digital Signature.
- 20.2 The persons signing this Agreement in a representative capacity warrant their authority to do so.

EXECUTED as an Agreement in duplicate by duly authorised representatives of the Parties:

CipherWave	
Signature:	
Name:	
Position:	
Date:	

Customer	
Signature:	
Name:	
Position:	
Date:	

V4
Updated: July 2026