

Terms and Connditions

Digital Parks SA (Pty) Ltd



Contents

1.	Definitions	4
2.	Status and Precedence	4
3.	Duration and Termination of this Master Services Agreement	4
4.	Appointment	5
5.	Fees and Payment	5
6.	Security of the Premises	6
7.	Intellectual Property	6
8.	Suspension of Service	6
9.	Data & Content	6
10.	Maintenance	6
11.	Statutory Compliance	6
12.	Limitation of Liability	7
13.	Assignment & Subcontracting	7
14.	Relationship between the Parties	7
15.	No Solicitation	7
16.	Warranties	7
17.	Publicity	7
18.	Confidential Information	7
19.	Termination and Breach	8
20.	Termination Assistance	8
21.	Domicilium & Notices	8
22.	Applicable Law & Jurisdiction	8
23.	Disputes	8
24.	Force Majeure	8
25.	Interpretation	9
26.	General	9

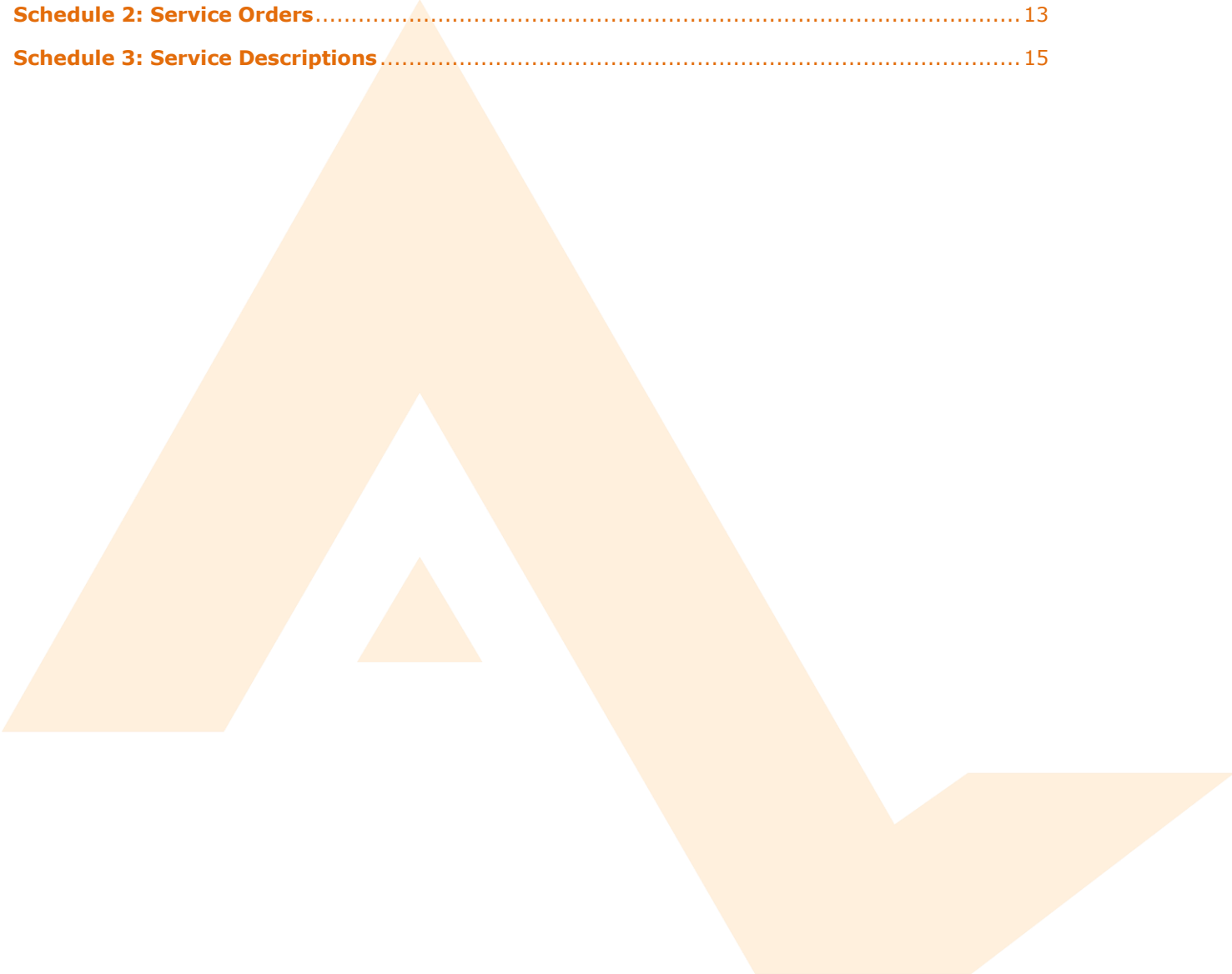


Schedules

Schedule 1: Service Level Agreement 11

Schedule 2: Service Orders 13

Schedule 3: Service Descriptions 15



1. Definitions

- 1.1. **"Agreement"** means this document, as well as schedules attached to it including but without limitation the Service Level Agreements and all Service Orders, which form part of the Agreement;
- 1.2. **"Business Day"** means Monday to Friday, excluding public holidays in the Republic of South Africa;
- 1.3. **"Caged Area"** means the physical space allocated for the sole use of the Customer as more fully described in a Service Order, which is segregated by means of a physically separate cage structure with independent, secured access, within the main **Colocation** area;
- 1.4. **"ClientZone"** means the web-based application and web frontend that can be accessed by a designated user and which provides the designated user certain functionality in order for the designated user to make use of the ClientZone Services, on the terms and conditions as contained in the ClientZone Addendum Agreement;
- 1.5. **"Collocated Equipment"** means the equipment installed at the Premises by the Customer subject to a Service Order and includes without limitation servers, peripherals, routers, switches, software, databases, data cables, and uninterruptible power supplies;
- 1.6. **"Colocation"** means the provision of an empty cabinet for the installation of equipment by the Customer with necessary power in a secure, controlled environment;
- 1.7. **"Commencement Date"** means the date on which specific Services commence, being the Ready for Service Date/Commencement Date, as specified on a Service Order, or such other date as may be agreed between the Parties in writing;
- 1.8. **"Contract Term"** means the period for which particular Service Orders will endure, as specified in such Service Order(s);
- 1.9. **"CPI"** means the latest available year on year increase in the Consumer Price Index (metropolitan areas, all items) as published by Statistics South Africa as at the effective date of increase;
- 1.10. **"Customer Account"** means a mechanism which allows the Customer access to the System;
- 1.11. **"Customer Data"** means data:
 - 1.11.1. transmitted to the Customer via the System (or on the Customer System as the case may be);
 - 1.11.2. stored by the Customer on the System (or on the Customer System as the case may be); or
 - 1.11.3. transmitted by the Customer via the System, in the day-to-day utilization of a Service;
- 1.12. **"Customer System"** means the Collocated Equipment operated together by the Customer as a system;
- 1.13. **"Effective Date"** means in respect of the Master Service Agreement, the date designated as such on the signature page, or failing such designation, the Signature Date;
- 1.14. **"Fee"** means the fees and charges to be paid by the Customer to Digital Parks Africa in respect of a Service provided by Digital Parks Africa in terms of a Service Order;
- 1.15. **"Good Industry Practice"** means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably be expected from a skilled and experienced service provider engaged in the provision of similar Services seeking in good faith to comply with its contractual obligations, complying with all applicable laws, codes of professional conduct, relevant codes of practice, relevant standards, building regulations, all conditions of planning and other consents;
- 1.16. **"Intellectual Property"** means any know-how (not in the public domain); invention (whether or not patented); design, trademark, or copyright material (whether or not registered);
- 1.17. **"Master Services Agreement"** means this document comprising clauses 1 to 26 and excludes any Schedules hereto;
- 1.18. **"Parties"** means collectively Digital Parks Africa and the Customer and the term "Party" refers to either one of them as the context may require;
- 1.19. **"Personnel"** means any director, employee, agent, consultant, contractor or other representatives of a Party involved in the execution of their rights and obligations under this Agreement;
- 1.20. **"Prime Rate"** means the publicly quoted prime rate of interest (percent, per annum) from time to time charged by Investec Bank Limited, as certified by any manager of such bank, whose appointment and authority it shall not be necessary to prove, calculated daily and compounded monthly in arrears;
- 1.21. **"Premises"** means the building in respect of which Digital Parks Africa makes Sites available and provides the Services;
- 1.22. **"Service"** means a service provided by Digital Parks Africa to the Customer in terms of a Service Order. A brief description of the Services is set out in Schedule 3;
- 1.23. **"Service Level Agreement"** means the document attached hereto as Schedule 1;
- 1.24. **"Service Order"** means a goods, license, services or work order agreed to and signed by both the Parties pursuant to this Master Services Agreement describing the specific Services to be provided by Digital Parks Africa to the Customer, including all additional terms and conditions relating to such Service. The initial Service Orders are attached to Schedule 2;
- 1.25. **"Signature Date"** means the date of the last-dated signature of this Agreement by a Party;
- 1.26. **"Site"** means the area allocated to the Customer by Digital Parks Africa for purposes as specified on the Service Order;
- 1.27. **"System"** means the equipment including without limitation servers, peripherals, routers, switches, software, databases, cables, generators, and uninterruptible power supplies which are operated together as a system by Digital Parks Africa in providing a Service;
- 1.28. **"Time and Materials"** means Digital Parks Africa's standard time and materials fees and charges applicable from time to time in respect of any service or installation that the Customer may request Digital Parks Africa to perform on the Customer's behalf, which is not part of the standard service offering, including, without limitation specialized cabling, equipment mounting, cabinet modifications and other similar services; and
- 1.29. **"Website"** means Digital Parks Africa's website at www.dpa.host

2. Status and Precedence

- 2.1. Except where specifically provided to the contrary in a Service Order and then only to the extent so specified, each Service Order shall be subject to this Master Services Agreement. Insofar as any term or condition in a Service Order conflicts with the Master Services Agreement, the provisions of the Service Order shall prevail to the extent only of that conflict.
- 2.2. Save where expressly provided to the contrary, the terms and conditions of one Service Order shall not apply to any other Service Order.

3. Duration and Termination of this Master Services Agreement

- 3.1. The Master Services Agreement shall commence on the Effective Date and shall continue for a period of 24 (twenty four) months, unless terminated earlier in terms of clause 19 ("Termination and Breach" or unless extended between the Parties by means of written agreement between the Parties.. Each Service Order shall commence on the relevant Commencement Date indicated therein.
- 3.2. Each Service Order shall endure for the Contract Term in months stipulated therein, where after it shall automatically renew for a further 12 (twelve) month period ("Renewal Term"), subject to the right of either Party to terminate a Service Order with effect from the end of the Contract Term or a Renewal Term (as the case may be) on no less than 3 (three) months written notice to the other Party.



3.3. For the avoidance of doubt, any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect.

4. Appointment

4.1. The Customer hereby appoints Digital Parks Africa to provide the Services and facilities as set out in Service Orders from time to time.

5. Fees and Payment

5.1. The Customer shall be liable for and shall pay the Fees in respect of Services supplied pursuant to this Agreement on the basis set out in the Service Orders.

5.2. In respect of Power Availability Licenses, the Customer subscribes for a specific band of power usage. Should Customer use in excess of the allocated power band for more than 10 hours in any month:

5.2.1. Digital Parks Africa may bill the Customer for such excess usage at the unit rate set out in the Service Order per additional 2kW of power (which amount will escalate on the basis set out in clause 5.12) utilized by the Customer in the relevant month; and

5.2.2. if the Customer exceeds the allocated power usage band on a second occasion during any 12 (twelve) month period, Digital Parks shall notify the Customer thereof, at which time the Parties shall engage in a process to determine whether an upgrade into the relevant power usage band is required. Once it is determined that such upgrade is required and following receipt of written approval from the Customer therefor, the Customer will automatically be upgraded into the relevant power usage band and be billed accordingly by Digital Parks Africa on the basis contemplated in clause 5.3.1.

5.2.3. Capped generator run-hours is 3 (three) days before adjustment in the event of major utility outages

5.3. Unless otherwise agreed upon in writing, in terms of a Service Order:
5.3.1. all Fees shall be invoiced by Digital Parks Africa monthly in arrears and paid in full within 30 (thirty) calendar days of the date of Digital Parks Africa's invoice;

5.3.2. all fees invoiced by Digital Parks Africa, shall be for a full calendar month, back dated to the 1st of the month in the month during which the Services commence;

5.3.3. a final invoice will be issued including the calendar month preceding the anniversary of the Service Order. Services however will continue until the anniversary date of the Service Order;

5.3.4. notwithstanding the provisions of clause 5.3.1, any fees incurred on a Time and Materials basis shall be billed monthly in arrears and shall be payable by the Customer within 30 (thirty) calendar days of the date of Digital Parks Africa's invoice in respect thereof; and

5.3.5. the Fees referred to in this Agreement exclude all taxes (including, without limitation, value added tax and other taxes levied in any jurisdiction but excluding taxes based on the income of Digital Parks Africa, duties, tariffs, rates, levies other governmental charges or expenses payable in respect of the Services), all of which shall be payable by the Customer in addition to the Fees stipulated in this Agreement.

5.4. Should the Customer dispute any amount reflected in any invoice in good faith, the Customer shall advise Digital Parks Africa of such disputed amounts, together with the reasons for disputing same, in writing within 30 (thirty) days of any invoice, provided that:

5.4.1. if the Customer fails to notify Digital Parks Africa of any such dispute within such 30 (thirty) day period, the Customer shall notwithstanding any dispute, nonetheless pay such amounts to Digital Parks Africa;

5.4.2. the Customer shall pay all undisputed amounts in respect of such invoice; and the Customer shall not be entitled to withhold any such amount pending resolution of the dispute;

5.4.3. to the extent that the Customer wrongfully withholds any amounts due in terms of clauses 5.4.1 or 5.4.2, such wrongfully withheld amounts shall be disputed, as follows:

5.4.4. any such dispute shall be referred for dispute resolution in accordance with clause 23.

5.5. If any payment due from Customer to Digital Parks Africa, including any other charges payable thereon, is not received by Digital Parks Africa by the due date of payment therefor and the Customer does not pay all such amounts within five (5) days of Digital Parks Africa 's written notice calling upon the Customer to do so, then Digital Parks Africa may (without limiting any other remedies it may have in terms of this Agreement or in law) in its sole discretion and upon written notice:

5.5.1. with immediate effect suspend (in whole or in part) the Services up until such time as all arrear amounts, including any interest thereon is paid in full; and/or terminate:

5.5.2. the particular Service Order to which the breach relates; or alternatively

5.5.2.2. the entire Agreement (and all Service Orders issued pursuant thereto); on written notice to the Customer and in either of the above circumstances, Digital Parks Africa shall be entitled, without limitation of its rights in law, to (a) recover from the Customer all damages Digital Parks Africa may suffer by reason of such termination, all arrears in fees and other costs, charges, assessments, and reimbursements, or (b) declare to be due and payable immediately, the then present value (calculated with a discount factor of the Prime Rate) of the entire amount of monthly fees which would have become due and payable under all terminated Service Orders for the remaining terms of such Service Orders (had this Agreement not been terminated). The Customer agrees to pay all such liquidated damages within 30 (thirty) days of the date of termination of this Agreement or the relevant Service Order, as the case may be, Digital Parks Africa and the Customer agreeing that Digital Parks Africa's actual damages in such event are impossible to ascertain and that the amount set forth above is a reasonable estimate thereof.

5.6. Monthly recurring fees shall continue to accrue and be payable by the Customer, notwithstanding Digital Parks Africa's exercise of available remedies set forth in clause 5.5.

5.7. All amounts due and payable by the Customer shall be paid to Digital Parks Africa via EFT in South African Rand, or such other currency as may be specified in the relevant Service Order, without deduction or set-off for whatever reason. The Customer will not be entitled to withhold payment of any amounts payable to Digital Parks Africa in terms of this Agreement to satisfy any claim of the Customer arising from this or any other Agreement.

5.8. Where Digital Parks Africa is required to perform additional services outside of the scope as envisaged by the Service Order, the Customer shall reimburse all reasonable expenses as are properly incurred by Digital Parks Africa and Digital Parks Africa's Personnel in fulfilling these additional services. Such expenses include, but are not limited to, travelling, subsistence, goods and services purchased on the Customer's behalf, communications, stationery, and report and presentation material. All such expenses shall be subject to the prior written approval of the Customer.

5.9. If the Parties (acting in good faith) dispute an amount the customer should make payment of any disputed quantum thereafter the parties shall be entitled to resolve the dispute per the mechanism afforded as follows. If the Parties (acting in good faith) dispute the calculation or quantum of any payment (or part thereof) but do not dispute whether the payment (or part thereof) is due and payable, then such dispute shall be referred to an independent Accountant to be agreed between the Parties (or failing agreement, appointed by the South African Institute of Chartered Accountants ("Accountant") to determine the quantum of the outstanding payment. The Accountant shall act as an expert and not as an arbitrator and will be requested to give his decision as soon as practicable and, in any event, by no later than 10 (ten) Business Days after the dispute is referred to the Accountant. The Accountant's determination shall be final and binding on the Parties and the relevant Party shall pay all amounts determined by the Accountant to be payable within 7 (seven) days of determination by the Accountant.

5.10. Where Digital Parks Africa employs the services of attorneys or other debt- recovery agencies in respect of any outstanding amounts owing by the Customer then the Customer undertakes to pay on demand all legal costs incurred on the scale as between attorney and client and including related costs such as collection commission and tracing fees.

5.11. Escalations

5.11.1. All Fees stipulated in a Service Order are subject to an annual escalation by Digital Parks Africa on 1 July of each year during the term of this Agreement.

5.11.2. In addition, charges payable in respect of a Power Availability License may be subject to additional half-yearly escalation on 1 July and 1 January of each year during the term of this Agreement.



- 5.11.3. Annual escalation shall not exceed the CPI, except the Power Availability License price escalation (excluding any increase related to increased power usage by the Customer), which shall not exceed prevailing price increases by the local power supplier. Digital Parks Africa will notify the Customer prior to any annual or power availability escalation.

6. Security of the Premises

- 6.1. Digital Parks Africa shall implement security measures commensurate with Good Industry Practice in respect of the System and the Premises.
- 6.2. If the Customer discovers a security violation, or reasonably considers that a security violation is imminent, it shall immediately advise Digital Parks Africa thereof in writing.
- 6.3. The Customer shall not do anything to encourage, and shall take all reasonable measures necessary to ensure that no unlawful access is gained to the Premises, the System, or the Customer System due to its default.
- 6.4. Subject to compliance by Digital Parks Africa with its obligations in terms of clause 6.1, Digital Parks Africa shall not be liable for any loss, harm or damage suffered by the Customer arising out of a breach of security in respect of the System or the Premises, save where such loss, harm or damage suffered by the Customer arising out of a breach of security in respect of the System or the Premises, is due to negligence or willful misconduct of Digital Parks Africa. Further, the Customer indemnifies Digital Parks Africa against any loss, harm or damage suffered by Digital Parks Africa, including third party claims, arising out of any breach of security caused by the acts or omissions of the Customer or its Personnel.
- 6.5. Risk in the Collocated Equipment shall at all times vest in the Customer, who shall be responsible for insuring same.
- 6.6. In the event of a security violation, or If Digital Parks Africa, in its sole discretion, determines that a security violation is imminent, Digital Parks Africa may take whatever steps it deems necessary to protect its System and/or the Premises, including without limitation:
- 6.6.1. changing Customers' access codes and passwords; and
- 6.6.2. temporarily preventing access to the Customer Account or Customer System as the case may be; and
- 6.6.3. preventing access to the System and/or Premises.
- 6.7. The Customer shall give reasonable cooperation to Digital Parks Africa in any investigation which may be carried out by Digital Parks Africa relating to a security violation.
- 6.8. If Digital Parks Africa is providing a Collocation Service or a Cage Service, Digital Parks Africa shall grant the Customer and its Personnel access to the Premises and Site for the purposes of installation, testing, commissioning, operation, repair, upgrade and maintenance of the Collocated Equipment at all times, provided that such access shall be subject to Digital Parks Africa's access, security, health and safety policies from time to time, as published and amended on the Website from time to time. Digital Parks Africa reserves the right to deny any person access who fails to, or who Digital Parks Africa believes may fail to, adhere to such policies. Without limiting the foregoing, Digital Parks Africa reserves the right to search any person entering or leaving the Premises and the Customer shall notify its Personnel of such possibility.
- 6.9. Digital Parks Africa may relocate the Customer within the Premises on no less than 7 (seven) days' notice to the Customer.
- 6.10. Digital Parks Africa may on prior written notice to the Customer inspect the Customer's installation and Collocated Equipment to ensure compliance with the building regulations and restrictions agreed between the Parties.
- 6.11. The Customer shall maintain the Site in a neat and tidy state and shall, upon termination of the Service Order in respect of any such area return the Site to its original state, fair wear and tear

accepted.

7. Intellectual Property

- 7.1. Unless otherwise stipulated in a Service Order:
- 7.1.1. nothing in this Agreement will be construed as effecting an assignment of Intellectual Property owned by either Party to the other; and
- 7.1.2. nothing in this Agreement will be construed as the grant of a license of Intellectual Property owned by either Party to the other.
- 7.2. As part of the provision of the Services, the Customer may be provided with software owned by third parties subject to a license from such third parties. The Customer agrees to comply with all license terms imposed by such third parties in its use of such software, including any such license terms appended to this Agreement or a Service Order.

8. Suspension of Service

- 8.1. Digital Parks Africa is entitled to suspend provision of the Services to the Customer under the following circumstances:
- 8.1.1. where the Customer has not made payment of monies owing to Digital Parks Africa by due date as set out in clause 5; or
- 8.1.2. where such suspension is necessary to maintain security as set out in clause 6.
- 8.2. Digital Parks Africa is entitled to suspend Services as set out in clause 8.1 immediately and without notice, provided that Digital Parks Africa shall use reasonable commercial endeavors to notify the Customer of any such suspension.
- 8.3. The period of suspension shall be that which is reasonable under the particular circumstances which gave rise to the suspension.

9. Data & Content

- 9.1. While Digital Parks Africa recognizes the Customer's right to privacy of its data, the Customer agrees that Digital Parks Africa may monitor the Customer's use of the System so as to ensure that the System is operating properly.
- 9.2. Digital Parks Africa has no knowledge of or interest in the data transmitted to, stored on or accessed from the Collocated Equipment by the Customer, subject to the further terms of this Agreement. Digital Parks Africa has moreover no duty to monitor any content made available or published through the System, subject to the provisions of clause 11.
- 9.3. The Customer agrees that no action shall lie against Digital Parks Africa for any damages howsoever arising as a result of any act or omission relating to the transmission of data to and from the Collocated Equipment, its storage on the Collocated Equipment or its publication using the Collocated Equipment to third parties. The Customer further indemnifies and holds Digital Parks Africa harmless in respect of any action brought by a third party resulting from such acts or omissions, subject to the provisions of clause 11.2.

10. Maintenance

- 10.1. Digital Parks Africa may be required to suspend access to the System in order to carry out routine maintenance to the System, provided that Digital Parks Africa shall endeavor to undertake same at times of low traffic volume.
- 10.2. Digital Parks Africa shall use best endeavors to advise the Customer within a reasonable time of the time and expected duration of such suspension of Service due to maintenance.
- 10.3. Notwithstanding the above, Digital Parks Africa may suspend access to the System without notice should maintenance be necessary in an emergency.

11. Statutory Compliance

- 11.1. The Customer further notes that Digital Parks Africa is obliged to comply with certain statutory provisions including, but not limited to those set out in:



- 11.1.1. the Regulation of Interception of Communications and Provision of Communication-related Information Act (Act 70 of 2003);
- 11.1.2. the Film and Publications Act (Act 65 of 1996); and
- 11.1.3. The Electronic Communications and Transactions Act (Act 25 of 2002).

11.2. Digital Parks Africa's compliance with certain statutory provisions may include steps which would otherwise constitute infringements of the Customer's privacy, such as the interception of the Customer's communications or the examination of Customer Data. The Customer agrees that no action shall lie against Digital Parks Africa for any damages howsoever arising as a result of such steps, and the Customer further indemnifies and holds harmless Digital Parks Africa in respect of any action brought by a third party resulting from such steps in relation to the Customer's System, save where such action brought by a third party is due to a negligent or willful act or omission on the part of Digital Parks Africa.

12. Limitation of Liability

- 12.1. Notwithstanding the form (whether in contract, delict, or otherwise) in which any legal action may be brought, either Party's maximum liability for general and/or direct damages for any breach of this Agreement or any act or omission arising during the course and scope of fulfilling its obligations in terms of this Agreement, for each specific month, shall be limited to an aggregate amount of all the Fees paid by the Customer to Digital Parks Africa in respect of the Services set out in the Service Order relevant to the breach during such specific month. Such maximum amount shall be an aggregate amount for all claims arising out of the causes mentioned.
- 12.2. Under no circumstances shall Digital Parks Africa entertain liability for general and/or direct damages for any breach of this Agreement if Fees payable by the Customer as set out in 5.3.1 are overdue.
- 12.3. Save for infringement of a Party's Intellectual Property, under no circumstances shall either Party be liable for any special, indirect, consequential or like damages which may arise pursuant to this Agreement (or any act or omission arising during the course and scope of fulfilling its obligations in terms of this Agreement), including, without limitation, any damages arising due to any loss of profits or loss of business.

13. Assignment & Subcontracting

- 13.1. Neither Party shall be entitled to cede, assign, delegate or otherwise transfer the benefit or burden of all or any part of this Agreement or any Service Order without the prior written consent of the other Party.
- 13.2. Subject to the prior written approval of the Customer, Digital Parks Africa may sub-contract its obligations under this Agreement, provided that Digital Parks Africa shall remain liable for performance of such subcontractor. Digital Parks Africa shall not be required to disclose the terms or payment provisions of any sub-contract entered into with respect to Digital Parks Africa's obligations under this Agreement.
- 13.3. The Customer acknowledges that Digital Parks Africa has entered into financing arrangements with finance parties and that, in connection therewith, Digital Parks Africa shall be entitled to cede and/or delegate all or any part of Digital Parks Africa's rights, benefits or obligations under this Agreement to any such financing parties or their nominees or any other party involved in such financing without the prior written consent of the Customer.

14. Relationship between the Parties

- 14.1. Nothing in this Agreement shall be construed as:
 - 14.1.1. constituting a temporary employment service as contemplated in section 198 of the Labor Relations Act, 1995; and/or

- 14.1.2. creating a partnership between the Parties and neither Party shall have any authority to incur any liability on behalf of the other or to pledge the credit of the other Party.

- 14.2. The Parties shall at all times owe each other a duty of good faith.
- 14.3. The relationship between the Parties will not be an exclusive one and both Parties will be free to enter into agreements similar to this one with third parties.

15. No Solicitation

Neither Party shall during the currency of the Agreement or for a period of 12 (twelve) months following the termination thereof directly or indirectly solicit or offer employment to any Personnel of the other Party who was involved in the implementation or execution of this Agreement, and shall not employ or contract in

any manner with any such Personnel of the other Party without the written consent of the other Party.

16. Warranties

- 16.1. Digital Parks Africa warrants that:
 - 16.1.1. it has the facilities, infrastructure, capacity and capability to provide the Services;
 - 16.1.2. it will provide the Services:
 - 16.1.2.1. with promptness and diligence and in a workmanlike manner and in accordance with Good Industry Practice; and
 - 16.1.2.2. in accordance with all applicable laws and regulations.
- 16.2. there will be no lien, hypothec or other encumbrance on the Collocated Equipment, during and after the term of the Agreement;
- 16.3. the Premises will at all times remain within the boundaries of South Africa.
- 16.4. Save for the foregoing warranties, and any specific warranties that may be contained in the Service Orders, the Services and Site are provided "as is" and "as available" and without any further warranty of any nature whatsoever, whether express or implied, including without limitation warranties of merchantability, fitness for purpose, title or non-infringement of intellectual property rights.

17. Publicity

- 17.1. Digital Parks Africa invests in marketing its Customers' businesses and promoting interconnection between its customers. The Customer therefore agrees to Digital Parks Africa issuing a news release about the Customer's use of Digital Parks Africa services from time to time, subject to the Customer's prior written approval of the wording of any such release.

18. Confidential Information

- 18.1. Each Party expressly undertakes to retain in confidence all information (including, with respect to Customer, the identification of other customers of Digital Parks Africa) and know-how, in whatever form transmitted, including, but not limited to, information concerning its past, present and future business affairs, business plans, operations or systems of such Party ("Disclosing Party") or another Party whose information the Disclosing Party has in its possession under obligations of confidentiality, disclosed in any way to it (the "Receiving Party") that the Disclosing Party has identified as being proprietary and/or confidential or that, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary and/or confidential ("Confidential Information"). The Receiving Party shall treat the Confidential Information with the same degree of care, and will make no use of such Confidential Information during the existence of this Agreement except as otherwise specified herein.
- 18.2. The Receiving Party shall have no obligation to maintain the confidentiality of information that:
 - 18.2.1. it received rightfully from another party without restrictions on disclosure prior to its receipt from the Disclosing Party;
 - 18.2.2. the Disclosing Party has disclosed to an unaffiliated third party without any obligation to maintain such information in confidence;



- 18.2.3. is independently developed by the Receiving Party; or
- 18.2.4. is ordered to be disclosed by an order of court or other adjudicative body.
- 18.3. Except as otherwise provided, the Receiving Party shall not disclose, disseminate, distribute or use any of the Disclosing Party's Confidential Information to any third party without the Disclosing Party's prior written permission;
- 18.4. The Parties agree that a breach of the terms of this clause 18 would result in irreparable injury to the Disclosing Party for which a remedy in damages would be inadequate. The Parties agree that in the event of such breach or threatened breach, the Disclosing Party shall be entitled to seek an interdict to prevent the breach or threatened breach, in addition to remedies otherwise available for such specific performance or injunctive relief, that the Disclosing Party has an adequate remedy at law.

19. Termination and Breach

- 19.1. Digital Parks Africa shall tender return of the Collocated Equipment immediately upon termination of the Service Order to which it pertains.
- 19.2. Should either Party fail to comply with any of its obligations or commit a breach of this Agreement and fail to remedy such default or breach within 7 (seven) days after having received a written notice to do so, or be placed in provisional or final liquidation, or judicial management, or enter into any compromise or scheme of arrangement with its creditors, or fail to satisfy a judgment taken against it within 10 (ten) days, the other Party shall be entitled to terminate this Agreement on written notice to the defaulting Party.
- 19.3. The provisions of this clause will not affect the rights of the Parties to claim damages in respect of a breach of any of the provisions of this Agreement.

20. Termination Assistance

Upon termination of this Agreement or any Service Order, subject to due payment by the Customer of all undisputed amounts due and payable to Digital Parks Africa, Digital Parks Africa shall render such reasonable assistance to the Customer so as to enable the Customer to migrate any Services affected by such termination to a service provider of the Customer's choice.

21. Domicilium & Notices

- 21.1. The Parties choose their physical and / or email addresses where they will accept service of any notices/documents for all purposes arising from or pursuant to this Agreement, the physical and / or email addresses set out on the data sheet of this Master Services Agreement:
- 21.2. Any Party shall be entitled from time to time by written, notice to the other, to vary its physical /email address to any other physical / email address within the Republic of South Africa, or to vary its other domicilium contact details.
- 21.3. The Parties record that whilst they may correspond via email during the term of this Agreement for operational reasons, no amendment or variation to this Agreement may be given or concluded via email.
- 21.4. Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the Parties from another, including by way of fax, shall be adequate written notice or communication to such Party.
- 21.5. Notices/documents shall be deemed to be delivered:
 - 21.5.1. if delivered by hand at the physical address, upon the date of delivery;

- 21.5.2. if delivered by registered post at the postal address, 7 (seven) days after posting thereof;
- 21.5.3. if delivered by way of email, on the date and time of the sending of such email as evidenced by electronic mail history; and
- 21.5.4. if delivered by way of fax, on the date and time of the sending of such fax as evidenced by a fax confirmation report.

22. Applicable Law & Jurisdiction

- 22.1. This Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa and all disputes, actions and other matters relating thereto shall be determined in accordance with such laws.

23. Disputes

- 23.1. The Parties will make every effort to cooperate and agree on matters covered by or arising from this Agreement, and to fairly and quickly resolve any disputes between them arising from this Agreement. If any such dispute cannot be resolved by the Parties themselves within 14 (fourteen) days of being declared by one of the Parties in writing and is not subject to resolution in terms of clause 5.10, then that dispute shall be submitted to and decided by arbitration. Either Party may submit a dispute to arbitration in terms of this clause upon written notice to the other of its intention to do so.
- 23.2. Such arbitration shall be held:
 - 23.2.1. at Sandton or at such other place as the Parties may agree;
 - 23.2.2. subject to any direction by the arbitrator, in an informal manner without any pleadings or discovery of documents and without it being necessary to observe the strict rules of evidence;
 - 23.2.3. as soon as possible with a view to it being completed within 1 (one) month of the date on which the dispute is referred to arbitration; and
 - 23.2.4. subject to anything contrary in this clause 23, in accordance with the provisions of the Arbitration Act 42 of 1965.
- 23.3. The arbitrator shall be agreed upon between the Parties in writing. In the event of the Parties failing to reach agreement as to the arbitrator within 5 (five) days after the arbitration has been demanded, the arbitrator shall be appointed by the Arbitration Foundation of Southern Africa.
- 23.4. The arbitrator:
 - 23.4.1. shall decide the dispute submitted to him expeditiously and, if possible, within 1 (one) month after the submission thereof to him;
 - 23.4.2. may call for whatever representations, evidence or arguments from the Parties which he may consider appropriate in the circumstances;
 - 23.4.3. may consult with other professionals or experts in any relevant field as he in his sole discretion may deem necessary to enable him to arrive at a just decision, although nothing in this clause shall preclude him from relying on his own expertise and/or experience;
 - 23.4.4. shall decide in his sole discretion on what proportions in which the Parties are responsible for all charges, costs and expenses incurred in resolving the dispute and as to whether, at what rate, and to what period a Party may be entitled to interest. In this regard, the arbitrator may take into account any travel and other expenses incurred by any Party who is required to travel to the arbitration hearing; and
 - 23.4.5. shall give his decision in writing;
- 23.5. The Parties hereby irrevocably agree that the decision of the arbitrator in any such arbitration shall be final and binding upon them. In the event of a Party failing to comply with such decision the other Party shall be entitled to institute legal proceedings for the enforcement of that decision.
- 23.6. This clause is separate from the rest of the Agreement and will remain effective between the Parties if this Agreement is terminated.
- 23.7. The foregoing shall not restrict the right of either Party to apply to a competent court for relief of an urgent nature or should its intellectual property rights be violated or threatened, and the Parties consent to the jurisdiction of the South Gauteng High Court of South Africa for such purposes.



24. Force Majeure

- 24.1. Neither Party shall be liable for any delay in performing or any failure to perform any obligations under this Agreement due to any cause beyond their reasonable control, including but without being limited to any of the following: strikes, lock outs or other industrial action, sabotage, terrorism, civil commotion, riot, invasion, war, threat of or preparation for war, fire, explosion, storm, flood, subsidence, epidemic or other natural physical disaster, impossibility of the use of railways, shipping aircraft, motor transport or other means of public or private transport; any act or policy of any state or government or other authority having jurisdiction over either Party, sanctions, boycott or embargo.
- 24.2. Upon the occurrence of any delay or failure referred to in clause 24.1, the provisions of this Agreement affected shall be suspended for as long as the cause in question continues to operate, provided that if that cause has not ceased to operate within 2 (two) months from when it first arose, this Agreement may be terminated by either Party on written notice to the other Party.

25. Interpretation

In this Agreement:

- 25.1. clause headings are for convenience and are not to be used in its interpretation;
- 25.2. unless the context indicates a contrary intention an expression which denotes any gender includes the other genders, a natural person includes a juristic person and vice versa, and the singular includes the plural and vice versa;
- 25.3. references to clauses, schedules, parts, annexes and sections are, unless otherwise provided, references to clauses, schedules, parts, annexes and sections of this Agreement;
- 25.4. cross-references to clauses in a specific schedule, part, annexe or section shall be a cross-reference to clauses in such schedule, part, annexe or section unless specifically stated otherwise;
- 25.5. when any number of days is prescribed, the number of days shall be calculated on the basis that the first day is excluded and the last day is included, provided that if the last day is not a Business Day, the last day shall be the ensuing Business Day;
- 25.6. any reference to an enactment contained in the Agreement is to the enactment as at the Effective Date of this Agreement, as amended or re-enacted from time to time;
- 25.7. where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 25.8. terms other than those defined within the Agreement will be given their plain English meaning, and those terms, acronyms, and phrases known in the information and communication technology industry will be interpreted in accordance with their generally accepted meanings;
- 25.9. the *eiusdem generis* rule will not apply and wherever the term "including" is used followed by specific examples, such examples will be interpreted to be illustrative only;
- 25.10. any reference to "days" shall be construed as being a reference to calendar days unless qualified by the word "Business"; and
- 25.11. a reference to a Party shall include the permitted successors and assigns of that Party.
- 26.3. No waiver of any of the terms and conditions of this Agreement will be binding or effectual for any purpose unless expressed in writing and signed by the Party giving same, and any such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party hereto in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 26.4. Should any of the terms and conditions of this Agreement be held to be invalid, unlawful or unenforceable, such terms and conditions will be severable from the remaining terms and conditions which will continue to be valid and enforceable. If any term or condition held to be invalid is capable of amendment to render it valid, the Parties agree to negotiate an amendment to remove the invalidity.
- 26.5. This Agreement will be governed by and construed in accordance with the law of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with such law.
- 26.6. Subject to clause 23, the Parties hereby consent and submit to the jurisdiction of the High Court of South Africa, Gauteng Local Division (Johannesburg) in any dispute arising from or in connection with this Agreement.
- 26.7. The signatories hereto acting in representative capacities warrant that they are authorized to act in such capacities.
- 26.8. Each Party shall bear and pay its own fees and costs of and incidental to the negotiation, drafting, preparation and execution of this Agreement.

26. General

- 26.1. This Agreement constitutes the entire Agreement between the Parties in respect of the subject matter hereof and neither Party shall be bound by any undertakings, representations, warranties or promises not recorded in this Agreement.
- 26.2. No variation or consensual cancellation of this Agreement and no addition to this Agreement shall be of any force or effect unless reduced to writing and signed by the Parties or their duly authorized representatives.



Schedule 1: Service Level Agreement

1. Introduction

- 1.1. This Service Level Agreement ("SLA") defines the service offerings that will enable Digital Parks Africa to manage the quality and the levels of service acceptable to the Customer.
- 1.2. The objective of Digital Parks Africa is to maintain adequate capacity and resources to deliver the agreed performance targets for required volumes at agreed times. To achieve this aim, the Customer must attend to any duties for which they are responsible and which may influence the provision of the Services by Digital Parks Africa.
- 1.3. This SLA aims to provide a mutual understanding of service level expectation and shall form a benchmark for performance measurement.

2. Definitions

- 2.1. Unless stated to the contrary words and phrases used in this document have the same meanings ascribed to them in the Master Services Agreement.
- 2.2. This document forms part of the Master Services Agreement.
- 2.3. "Contract Year" means a 12 (twelve) month period from the Commencement Date of a Service Order and each subsequent anniversary thereof during the currency of this Agreement;
- 2.4. "Service Availability Level" means the time during a particular calendar month, measured as a percentage, when the Service is accessible. The calculation of the Service Availability Level shall not take account of uptime lost due to the negligent acts or omissions of the Customer or Force Majeure, but shall take account of uptime lost due to maintenance carried out on the System by Digital Parks Africa; and
- 2.5. "Service Availability Level Target" means the target as applied separately to each measure.

3. Support

- 3.1. Digital Parks Africa shall provide the Customer with technical support Services through a call centre, which Digital Parks Africa shall maintain at its cost.
- 3.2. The technical support Services shall be available telephonically 24 hours a day and 365 days a year, and Digital Parks Africa may at its instance provide for incident submittal by any other medium including without limitation email, voice mail, website form-based submittal and SMS.
- 3.3. Incident reports on any service level breaches per parameter will be made available on ClientZone.

4. Service Escalation

- 4.1. In the event that the Service Availability Level of a particular Service falls below the Service Availability Level Target and the Customer is not satisfied with the actions being taken by Digital Parks Africa Support Personnel, the following escalation path should be followed:

LOCATION	LANDLINE
Head Office / Support	+27 12 004 0900

- 4.2. All incidents will have a support specialist allocated responsible for:
 - 4.2.1. Resolution of all calls and fault repair;
 - 4.2.2. Service Level Agreement resolution feedback;

- 4.2.3. Facilitation of monthly portal updates to SLA issues, namely measured SLA statistics vs. SLA Targets;
- 4.2.4. Service improvement opportunities and initiation of penalties when applicable;
- 4.2.5. Proactive trend analysis of the calls logged; and
- 4.2.6. Management of resolution, including technical reviews and root cause analysis.

5. Service Parameters

5.1. Downtime measurement

- 5.1.1. "99,999% availability" is defined as being when both the PDUs is offline and the service is not available for less than 5 minutes and 16 seconds accumulated in 12-month period.
- 5.1.2. "99,99% availability" is defined as being when both the PDUs is offline and the service is not available for less than 52 minutes and 34 seconds accumulated downtime in a 12-month period.
- 5.1.3. Loss of service to a fraction of the customer equipment accumulates, on a pro rata basis.

5.2. Power guarantees

- 5.2.1. *Power guarantee*: 99.999% availability of power to PDU (cabinet power bar).
- 5.2.2. *Metrics*: Downtime to the PDU will be measured as a complete lack of power to a rack from both the active and passive standby power socket from the time that such status is detected by the Digital Parks Africa Building Management System, to the time that power is restored to either or both main and standby power sockets.
- 5.2.3. *Power availability* shall be expressed as a percentage of time the power is available as measured on the Digital Parks Africa Building Management System over a 12-month period.
- 5.2.4. *Conditions*: Power consumption per cabinet may not exceed 1 KW (Customer specific), unless negotiated prior to signing the Service Order.

5.3. Environmental guarantees

- 5.3.1. *Temperature parameters*: 99.99% availability of 21°C to 26°C.
- 5.3.2. *Relative humidity levels*: of 20% to 80%.
- 5.3.3. *Metrics*: As used in this SLA: (a) relative humidity is the ratio of water vapor density (mass per unit volume) to saturation water vapor density, expressed in a percentage; and (b) both temperature and relative humidity are annual averages measured in the supply air path.
- 5.3.4. *Conditions*: Equipment to be installed according to supplier's recommendations, but with no less than 1U clearance between rack mounted units.

5.4. Physical Interconnect

- 5.4.1. Service levels only apply where the Physical Interconnect is provided by Digital Parks Africa and the Customer has a Service Order with monthly recurring charges. This is currently the customer responsibility.
- 5.4.2. The customer has the option of deploying a redundant link per connection and will need to subscribe to this link on a Service Order. The redundantly routed pair of network cables will be presented to the agreed upon primary (A) and standby (B) points.



- 5.4.3. Access to services via Digital Parks Africa network cabling is provided via a redundantly routed pair of network cables presented to agree primary (A) & standby (B) points.
- 5.4.4. *Metrics:* Downtime will be measured as a complete lack of connectivity to both A & B points at the rack from the Digital Parks Africa system from the time of notification by the Customer. This service level is measured by a customer notifying Digital Parks Africa (opening a "trouble ticket") that there is a loss of access to services over both the active and passive standby Digital Parks Africa network cabling service. If at least one of the redundant services proves not to be faulty, the trouble ticket is closed and there is no accumulation of downtime. Otherwise, Digital Parks Africa repairs or replaces the faulty service. Trouble ticket opening time to closing time in the latter case is appended to accumulated downtime.
- 5.4.5. System availability shall be expressed as a percentage of time the system is available over a calendar year.
- 5.4.6. *Conditions:* Customer has made provision to use both primary and secondary network points. Customer notifies Digital Parks Africa of any suspected faulty circuits or connections. Customer notifies Digital Parks Africa in writing of any changes made to cables or terminators belonging to the customer.
- 5.4.7. *Exceptions:* Carrier outages will not be included.

6. Penalties

- 6.1 Notwithstanding anything to the contrary in this Agreement in respect of the failure of DPA to comply with this Service Level Agreement the customer shall be entitled to levy the following penalty:
- 6.2 The following example should be used when calculating penalties regarding :
- 6.2.1 Penalty Calculation:
1. Rand value of monthly Service Order value (e.g. R1,000,000)
 2. 10% of Monthly Recurring Rand value (R100,000) Penalty will be up to a maximum cap of 10% of Monthly Recurring Rand value of the service order (in this case R100,000).
- 6.3 Any further breach of the power SLA implies material breach and warrants renegotiation of the contractual terms and conditions of the MSA and Service Order.



Schedule 3: Service Description

Access Control	Access to the physical environment is controlled and by means of biometric units at entry points.
Cage or Caged Space	An area physically cordoned off and separately lockable, within a DPA Data Centre by means of a steel cage, border, fence or bars or as specifically defined by the respective Service Order, in which a single Customer's Equipment, Racks or Cabinets are contained.
Carrier Hotel Power	A service provided by DPA consisting of resilient power within a single Rack, Cabinet or Cage commencing with a minimum of 1kW and increasing in increments of 1kW (Customer Specific) , provided in the form of redundant A and B feeds from two separate Power Distribution Units (PDU's) within each Cabinet. Specific availability levels are defined within the Service Level Agreement in Schedule 1. It is the Customer's responsibility to ensure that the Customer Equipment is able to draw power from either the A feed or B feed at any time to ensure resilience. A minimum of 1kW of resilient power to a single Rack, Cabinet or Cage in the form of redundant A and B feeds from two separate Power Distribution Units (PDU's) within each Cabinet.
Carrier Hotel Space	This is the separate area within the DPA Data Centre for the colocation of telecommunications carriers only. Carriers will typically be providers of physical telecommunications infrastructure into the building, such as fibre or wireless networks. DPA shall determine, at its sole discretion, whether Customers can co-locate within the Carrier Hotel Space
Colocation	The services offered in a DPA Data Centre, in units of Racks or Cabinets. The Colocation service offered excludes all the Customer Equipment within the Cabinet. The Customer shall be responsible for cabling within the Cabinet. Should the Customer wish DPA to provide cabling within the Cabinet, DPA can perform this, by prior agreement, on a Time and Materials basis. Colocation of Cabinets is possible either within the Carrier Hotel Space or within the Colocation Space, which denotes all other space within the DPA Data Centre, available for Customer Colocation.
Colocation – Data Centre	Supplied as a predetermined floor area (footprint) of 600mm x 1200mm.
Colocation – Wireless and Wireless Tower	Supplied as a predetermined pole position (footprint), in the designated wireless colocation space, of 1000mm x 1000mm, or Supplied as a single predetermined position, on a tower erected for such purpose, of top 7 meters or lower 8 meters, for the sole use of radio, microwave and other wireless equipment. The placing, mounting or installation of equipment on the high site or tower, shall be the responsibility of the Client. DPA shall be able, at its sole discretion, to move or terminate the service offered, should other Customers be at risk of interference. Note: Colocation on a Wireless Colocation tower or high site, is at the sole risk of the Customer, as DPA cannot guarantee protection from any weather elements such as rain, wind or lightning, furthermore it is the customers risk as to whether wireless connectivity takes place. Where possible, DPA will take reasonable steps to restrict physical access to such Wireless Colocation Spaces
Customer Physical Interconnect	A Physical Interconnect, including cables, connections, and other wiring, that runs specifically between items of Customer Equipment belonging to the same Customer in the same Rack or Cage. Customer Physical Interconnects can be provided
Customer Equipment	For each Customer, all network and/or computer equipment and/or electronic equipment (including wiring and the Customer Interconnects between such equipment and the Customer's termination Equipment) that the Customer deploys within any DPA Data Centre
Environmental Monitoring	Of temperature and humidity
FinVault Space	This is the separate area within the DPA Data Centre for the colocation of financial services providers only.
Fire Suppression	Is a standard feature
NAPAfrica	The neutral layer 2 (two) internet exchange point operated within certain DPA Data Centres by DPA. Customers may connect to ports on NAP Africa by prior agreement. Peering between Customers is negotiated independently by those Customers
Physical Interconnect	An interconnection (including without limitation: Fibre, PSTN (copper), Ethernet or wireless) that exists in a Customer's Cabinet or Cage and exits a Customer's Rack or Cage or that runs between two DPA Customers, or a Customer and another party in a DPA Data Center (including interconnections such as wireless, Bluetooth, laser and infrared connections). Physical Interconnects are provided by only DPA. Customers may not provide their own Physical Interconnects. Should this be a specific requirement by a Customer, this would be negotiated separately and fall outside of the usual SLAs on such Interconnections
Power Availability License	A service provided by DPA consisting of resilient power within a single Rack, Cabinet or Cage in increments of 1 kW to a maximum of 6 kW, provided in the form of redundant A and B feeds from two separate Power Distribution Units (PDU's) within each Cabinet. Specific availability levels are defined within the Service Level Agreement in Schedule 1. It is the Customer's responsibility to ensure that the Customer Equipment is able to draw power from either the A feed or B feed at any time to ensure resilience. Customer equipment must work at a power factor of 0.8 or better to be allowed in the Data centre
Power – Data Centre	1kW of resilient power to a single Rack, Cabinet or Cage in the form of redundant A and B feeds from two separate Power Distribution Units (PDU's) within each Cabinet. Customer equipment must have dual power feeds to avoid a single point of failure.
Power Distribution Unit	Only 8 port (non-POMs) are supplied as a standard
Racks or Cabinets	Steel cabinets or racks which are of a predetermined floor area (footprint) of 600mm x 1200mm and can be from 43 – 47u(nits) high. Cabinets are generally supplied by DPA although Customers may supply their own Customer Cabinets by prior written agreement. Alternative cabinet sizes are also allowed, by prior written agreement.
Remote Hands	The use of a DPA Technician to perform basic tasks on clear instruction and on behalf of the Customer and at the sole risk of the Customer. The basic tasks shall be limited to tasks such as tape swapping, unplugging of equipment, removing and swapping of cables, checking to see if equipment is turned on and other tasks as listed from time to time. Note: DPA Technicians are not qualified on customer server or network equipment. Not vendor specific certification.
Security	24x7 security at entry points to facility and on the premises.
Structured Cabling Equipment	(1) patch panels, DSX panels for all category type twisted pair, co-axial, single and multi-mode Fibre, or (2) other appropriate (as determined by DPA) equipment
DPA Data Centres	The DPA Data Centres leased or owned by DPA including all related areas, if any, which may be used by the Customer, such as parking and respective common areas, such as toilets.
DPA Data Center	The areas (as determined by DPA at its sole discretion) in which DPA makes DPA Data Center Data Cabinet(s) available for its Customers. DPA Data Center Spaces may be located in a DPA Data Center or in areas in reasonable proximity to a
Spaces	DPA Data Center.
Wireless Interconnect	The physical data cable connection between the Customer's Wireless Equipment that is collocated on a Wireless Access Colocation tower or high site, which connects the wireless equipment with the Customer's Equipment within a Rack, Cabinet or Cage inside a respective DPA Data Centre
Wireless Access Equipment Power	Any power that is supplied to the Customer's Equipment, in the form of a single feed (A), and may not be guaranteed.

