



## TERMS AND CONDITIONS OF CONTRACT

### DEFINITIONS

In this Service Agreement the following words and phrases shall have the following meanings unless the context otherwise requires:

"Addendums" – The Addendums are any documents annexed to the Service Agreement in respect of related matters, including without limitation, pricing, service, listing and the specification of equipment and service level agreements, which are attested to by both parties;

"Internet" - The Internet is the global data network comprising interconnected networks using TCP/IP ("Transmission Control Protocol/Internet Protocol");

"Initial Term" – The Initial Term is the period during which SYSCOM shall provide the Service as defined in the relevant Proposal and which commences on the Completion of the Connection;

"ISPA" – The Internet Service Providers' Association;

"Proposal" – The Proposal is the document containing the description of the Service to be provided by SYSCOM to the Customer at the applicable fees charged by SYSCOM from time to time, which Proposal shall be an addendum to this Service Agreement and hence be governed by the terms of this Service Agreement;

"SAIX" - The South African Internet Exchange;

"Service" – Services refer to the provision of Internet services, IT services and other related services provided by or on behalf of SYSCOM to the Customer;

"Service Agreement" – The Service Agreement is the agreement between the Customer and SYSCOM incorporating the Terms and Conditions of Contract, Proposal and any Addendums, which by the signature of the Parties, binds the Customer and SYSCOM in terms of this Service Agreement, in terms with clause 2 below;

"Subscription Charge" – The Subscription Charge is the total charge specified in the Service Agreement plus Value Added Tax;

"SYSCOM Network" – The SYSCOM Network means the computer infrastructure which is owned and/or controlled by SYSCOM;

"SYSCOM Website" – The file or collection of files established by SYSCOM and accessible on the Internet by means of the Uniform Resource Locator ("URL"): [www.SYSCOM.co.za](http://www.SYSCOM.co.za);

"Telkom" – Telkom SA Limited.

### 1. HEADINGS AND INTERPRETATION

The clause headings contained herein are for reference purposes only and shall not be used in the interpretation of this Service Agreement. Words importing any one gender include the other two genders, the singular includes the plural and vice versa, the natural persons includes created entities (corporate and unincorporate) and vice versa.

### 2. APPLICATION OF THE TERMS AND CONDITIONS

These Terms and Conditions, together with the Service Agreement, Proposal and Addendums hereto, whether physically or by electronic means, shall constitute the entire agreement between SYSCOM and the Customer relating to the subject matter hereof, notwithstanding anything in any Customer's inquiry, specification, acceptance, order or other documentation to the contrary. If there shall be any provision of any Addendum which conflicts with any provision of the Standard Terms and Conditions of this document, the latter shall prevail. Notwithstanding anything to the contrary in any document completed or supplied by the Customer, the Agreement will only come into being between SYSCOM and the customer when the Service Agreement has been signed by a duly authorised representative of the Customer and has been accepted in writing by a duly authorised representative of SYSCOM.

### **3. COMMENCEMENT DATE**

This agreement will come into force between SYSCOM and the Customer on the first day that the following have been fulfilled:

- 3.1. the Customer has furnished SYSCOM with this agreement duly signed by the Customer (either by hand or by electronic signature) or, where this agreement is being entered into by means of the electronic order form displayed on the SYSCOM website, after the Customer has clicked on the icon on the SYSCOM website indicating his or her acceptance to these terms and conditions, and
- 3.2. SYSCOM has provided the Customer or the Customer's nominated dealer with a word, device, sign or combination of words, devices or signs ("login ID") which, when keyed in by the Customer or the Customer's nominated dealer, will entitle the Customer to gain access to the SYSCOM Network, and
- 3.3. SYSCOM has advised the Customer that this agreement has been accepted by SYSCOM.

### **4. TERM AND TERMINATION**

- 4.1. The provision of the Services shall be for the Initial Term or as otherwise agreed to in writing commencing on the Commencement Date, subject to 10.8 below.
- 4.2. This agreement may be terminated forthwith:
  - 4.2.1. by SYSCOM in terms of clauses 10.13.5 or 19.2;
  - 4.2.2. either party may terminate the Service Agreement during the Initial period by giving the other party written notice at least 30 (thirty) days prior to the end of the Initial period, whereafter the Service Agreement shall remain in force until the last day of the Initial period when it shall terminate;
  - 4.2.3. either party may terminate the Service Agreement during any renewal period by giving the other party at least 30 (days) written notice, whereafter the Service Agreement shall remain in force until the last day of the month following the month in which the notice was served.
- 4.3. Should notice to terminate at the end of the Initial Term not be given in terms of clause 4.2.2 above this Agreement shall automatically be renewed on a month-to-month basis until terminated by either party in terms of clause 4.2.3 above.
- 4.4. If the Customer terminates the Agreement prior to the end of the term agreed for the Service, the Customer shall pay to SYSCOM all charges for the Services provided up to and including the actual date of the cancellation plus a charge equal to the balance of the applicable charges (in effect at the time of cancellation) for such cancelled Services that otherwise would have become due for the unexpired portion of the term.
- 4.5. If the Customer terminates this Service Agreement in order to upgrade to a "higher level" of SYSCOM service at any time, the Customer shall not be liable to pay the termination fees as prescribed and provided for in this Service Agreement. This clause shall be subject on the Customer entering into a new agreement for the similar or higher level of SYSCOM service, which is determined at SYSCOM's sole discretion, for a period at minimum, equal to the Initial Term.
- 4.6. In the event of any expiration, termination or cancellation of this Agreement:
  - 4.6.1. any clauses hereof which are intended to continue and survive such expiration, termination or cancellation shall so continue and survive;
  - 4.6.2. SYSCOM will not be required to refund to the Customer any pre-payments which may have been made to SYSCOM prior to the date of termination;
  - 4.6.3. all outstanding balances shall be valid and shall require to be settled by the Customer forthwith on the date of termination;
  - 4.6.4. SYSCOM shall be entitled to recover all bank charges and legal costs including all costs on the attorney and own client scale.

## **5. PROVISION OF SERVICE**

- 5.1. SYSCOM shall use its reasonable endeavours to provide the Service as defined in the Service Agreement to the Customer on a continuous, uninterrupted, and error free basis, subject to the terms and conditions set out herein.
- 5.2. The Customer shall be solely responsible for provisioning, configuring and maintaining all equipment which may be required in order for the Customer to receive the Service, as may be specified by SYSCOM from time to time in its sole discretion, including, without limitation, all computer hardware equipment, telecommunication equipment and modems. The Customer shall further be liable for all telecommunications costs and other costs which SYSCOM may incur in connecting the Customer to a point of presence on the SYSCOM Network, and in maintaining or operating such connection.
- 5.3. SYSCOM shall be entitled to alter the Customer's log-in ID from time to time, and the Customer hereby indemnifies SYSCOM against any loss or liability which may arise from such alterations.

## **6. WARRANTIES**

6. 1. Save as expressly set out in this Service Agreement, SYSCOM does not make any representations nor gives any warranties or guarantees of any nature whatsoever in respect of the SYSCOM Equipment or Services and all warranties which are implied or residual at common law are hereby expressly excluded.
6. 2. Without limitation to the generality of clause 6.1, SYSCOM does not warrant or guarantee that the information transmitted or available to Customers by the way of the Services or the SYSCOM Equipment:
  - 6.2.1. will be preserved or sustained in their entirety;
  - 6.2.2. will be suitable for any purposes;
  - 6.2.3. will be free of inaccuracies, defects, bugs or viruses of any kind; and SYSCOM assumes no liability, responsibility or obligations in regard to any of the exclusions set forth in this clause 6.2, and 6.1 above.

## **7. SUSPENSION OF SERVICE**

- 7.1. SYSCOM may from time to time suspend the Service in the event of a technical failure, modification, maintenance, upgrade or improvement of either the Service or the technical infrastructure by means of which the Service is provided and shall provide prior notice thereof to the Customer where it is reasonably practicable in the circumstances. SYSCOM shall use its reasonable endeavours to restore the operation of the SYSCOM Network as the case may be, as soon as is reasonably possible.
- 7.2. SYSCOM may also from time to time suspend the Service without notice to the Customer if the Customer fails to comply with any term of this agreement.
- 7.3. All liability on the part of SYSCOM for any loss or damage (whether directly or consequential) thereby incurred or for any costs, claims, or demands of any nature arising there from, is excluded and the provision of clause 7.1 above shall apply mutatis mutandis to such exclusion.
- 7.4. Notwithstanding any suspension of the service, the Customer shall remain liable for all charges due hereunder throughout the period of the suspension.
- 7.5. The Customer shall not be entitled to any set-off, discount, refund, reduction, or any other credit in respect of any unavailability of the service.
- 7.6. Should the provision of the Services be suspended by SYSCOM for the purpose aforementioned for a period in excess of 48 (forty eight) consecutive hours, SYSCOM shall give the Customer credit in an amount which represents a pro rata portion of the Customer's basic monthly SYSCOM charges for the month during which the said suspension occurred.

## 8. EXCLUSION OF LIABILITY

8. 1. Notwithstanding any provision of this agreement, the Customer acknowledges that it is aware of the limitations of the Service and that service quality and coverage is dependant on a number of factors, including but not limited to the Internet, the SYSCOM Network and the networks of its service providers, including Telkom, and that the service may from time to time be adversely affected by a number of different causes. Accordingly, SYSCOM does not provide any warranties or accept any liability in respect of the functionality or continuous operation or provision of the SYSCOM Network or the Service, and SYSCOM shall not be liable for any damages of any kind in respect of any interruption in the provision of the Service.
8. 2. Notwithstanding anything to the contrary contained in this agreement, SYSCOM shall not be liable to the Customer or any other person (and the Customer hereby waives all claims against SYSCOM and indemnifies SYSCOM) in respect of any claim, loss or damage of whatsoever nature caused by or arising from:
  - 8.2.1 any fact or circumstance beyond the reasonable control of SYSCOM;
  - 8.2.2 any breakdown in any of the services provided by any person which provides services to SYSCOM (including, but not limited to, a line failure of Telkom and/or SAIX);
  - 8.2.3 the performance or unavailability of communications networks to which the server or modem of the Customer or any other person or the SYSCOM Network is connected;
  - 8.2.4 any technical failure in the connectivity services provided by SYSCOM to the Customer or any other person, or a suspension or interruption in performance of any of SYSCOM's obligations in terms of this agreement, as a direct or indirect result of any technical problems, including but not limited to denial of access to other websites or information;
  - 8.2.5 any breach of privacy or security by any person or entity or breach of confidentiality by any person or entity arising from any access obtained by any person or entity to the information, data or content of the Customer;
  - 8.2.6 the loss, damage, destruction, theft, contamination or corruption of the data, information or content of the Customer or any other person;
  - 8.2.7 the preservation and integrity of any text or any other form of the data, information or content of the Customer or any other person;
  - 8.2.8 the Customer's breach of any law or regulation;
  - 8.2.9 the incorrectness or invalidity of any information obtained by the Customer in the performance of a transaction initiated, concluded or finalised by means of its website;
  - 8.2.10 any breach of security in respect of, or any unauthorised access to or use of, any information transmitted by means of the SYSCOM Network, including but not limited credit card details;
  - 8.2.11 any fact, cause or circumstance whatsoever if SYSCOM shall have substantially performed its obligations under this agreement.
8. 3. Except for any deliberate act or gross negligence on the part of SYSCOM, its servants or agents, and except as otherwise expressly provided herein to the contrary, SYSCOM shall not be liable to the Customer or any third party for any loss or damage of whatsoever nature and/or arising (including consequential or incidental loss or damage which shall include but shall not be limited to loss to property or of profit, business, goodwill, revenue or anticipated savings) or for any costs, claims or demands of any nature whether asserted against SYSCOM or against the Customer by any party arising directly or indirectly out of the SYSCOM Equipment or Services, their use, access, withdrawal or suspension or out of any information or materials provided or not provided, as the case may be, or from their use.
8. 4. The Customer expressly recognises that SYSCOM does not operate, control or endorse any information, products or service offered or accessible by means of the Internet, and that any entity that does offer or provide such information, products or service, is not in any way affiliated with SYSCOM. SYSCOM further does not act as an agent of such entity, not does SYSCOM provide any express or implied warranties or endorsements to the Customer or any

other person whatsoever in respect of such information, products or service. In particular, SYSCOM disclaims any liability for and the Customer hereby indemnifies SYSCOM against, any claim or liability which may arise from any information, products or service advertising for sale, associated with or displayed on SYSCOM's website or accessible by means of the SYSCOM Network.

8. 5. Subject to clause 8.3 above, the entire liability of SYSCOM, and the Customer's exclusive remedy for damages from any cause related to or arising out of this Service Agreement, regardless of the form of action, whether in contract or in delict, will not exceed the average aggregate of the fees and charges paid by the Customer to SYSCOM under this Agreement over any continuous period of 3 (three) months.

## **9. SUPPORT SERVICE**

In the event that the Customer encounters a problem in the provision of the Service, SYSCOM shall use its reasonable endeavours to ensure that the Customer or the Customer's nominated dealer may contact SYSCOM at support@SYSCOM.co.za or by telephone, where suitably qualified SYSCOM personnel shall use reasonable endeavours to render such online or telephonic support service to the Customer or the Customer's nominated dealer pertaining to the identification and, if possible, solution of problems encountered by the Customer in the provision of the Service. In the event that the Customer requires further support services, which SYSCOM agrees to provide, the Customer shall pay SYSCOM for such additional services at SYSCOM's hourly rate, together with all other amounts which may be charged by SYSCOM, in respect of such services, and shall comply with such terms as SYSCOM may specify from time to time. SYSCOM however does not give any warranty, guarantee or any other similar undertaking that it will be able to solve or rectify all or any such problems.

## **10. PAYMENT**

- 10.1. The Customer shall be responsible for any and all of SYSCOM fees and charges as set out in this Service Agreement, which fees and charges shall be payable in South African Rand, without deduction or set-off of any amount of whatsoever nature or for whatsoever reason.
- 10.2. In the event of any dispute arising as to the amount or calculation of any fee or charge, which is due and payable by the Customer, the said dispute shall then be determined in accordance and in terms of clause 21 below.
- 10.3. All payments due to SYSCOM shall be effected:
  - 10.3.1. by way of a debit order drawn on a registered bank; or
  - 10.3.2. in cash, free of the cost transfer of funds and without any deductions or set-off.
- 10.4. The Customer shall pay to SYSCOM the monthly Subscription Charges and all other charges which may be due to SYSCOM in terms of this agreement as follows:
  - 10.4.1. the initial port fee specified in the Service Agreement on or before the Commencement Date;
  - 10.4.2. the Subscription Charges in respect of the first month of this agreement or part thereof shall be paid by the Customer to SYSCOM on or before the Commencement Date;
  - 10.4.3. the monthly Subscription Charge monthly in advance (on or before the first day of each month);
  - 10.4.4. where the Customer has selected in the Service Agreement to receive any extra services, the Customer shall pay the Subscription Charges set out in the Service Contract in respect of such extra services monthly in advance (on or before the first day of each month).
- 10.5. In the event that the Customer has selected in the Service Agreement to pay the monthly Subscription Charges by means of a monthly direct debit order (drawn against the Customer's banking account, the details of which are specified in the Service Agreement) or by credit card in favour of SYSCOM, the Customer shall sign all forms and do all such things that may be necessary to ensure that the monthly Subscription Charges are received in SYSCOM's bank account on or before the due date for such payment. The Customer further agrees that, by furnishing his or her bank account details, he or she consents to SYSCOM deducting the

amount of the monthly Subscription Charges, and all other charges which may become due to SYSCOM under this agreement, from the banking account so specified.

- 10.6. In the event that the Customer has selected in the Service Agreement to make payment of the Subscription Charges by means of any other method of payment, the Customer shall ensure that payment of such monthly Subscription Charges have been received by SYSCOM on or before the due date therefore.
- 10.7. The first invoice for each Service will be in respect of the forthcoming month and the portion of the month during which such Service was connected.
- 10.8. Notwithstanding anything to the contrary contained herein, SYSCOM shall be entitled to start charging the Customer as from the Signature Date in instances when the Customer is in contravention of any of the Terms and Conditions of the Service Agreement, irrespective of whether the Customer is able to utilize the Service or not. In all remaining instances, when the Customer is not in contravention of any of the Terms and Conditions of the Service Agreement, SYSCOM shall start charging the Customer as from the Commencement Date.
- 10.9. The Customer shall be liable for any and all expenses incurred by SYSCOM, and if legal on an attorney and own client scale whether incurred prior to or during the institution of legal proceedings or if judgment has been granted, in connection with the satisfaction of such judgment, in regards to the enforcement of the Terms and Conditions of this Service Agreement.
- 10.10. In the event that the Customer's bank dishonours any payment offered by the Customer to SYSCOM, SYSCOM shall be entitled to claim from the Customer, over and above the dishonoured payment, as well as all bank charges and other legal charges in regard thereto, a reasonable administration fee, which the customer shall be liable to pay to SYSCOM on demand.
- 10.11. The Customer acknowledges that in the event of SYSCOM being in possession of any of the Customer's property, and in the event of any monies being outstanding by the Customer to SYSCOM at any time, SYSCOM shall have a bone fide lien over such property and shall have the right to retain same until such time that all outstanding amounts have been paid by the Customer to SYSCOM in full.
- 10.12. Notwithstanding anything to the contrary contained herein,
  - 10.12.1. any increase in charges from third parties payable in terms of this contract will be passed on to the Customer when those charges become effective;
  - 10.12.2. SYSCOM is entitled to adjust the SYSCOM charges set forth by way of 90 (ninety) days written notice to the Customer;
  - 10.12.3. the Customer shall be bound to pay such amended Subscription Charges.
- 10.13. In the event that the Customer fails to pay any amount which may become due by the Customer to SYSCOM in terms of this agreement on the due date of such payment, then, without prejudice to any of the rights which SYSCOM may have, SYSCOM shall be entitled to:
  - 10.13.1. charge interest on any such amount not paid on its due date at the maximum interest rate permissible in law from time to time from the due date until date of payment; and/or
  - 10.13.2. to take all such further steps, without notice to the Customer, as may be necessary to recover such monies from the Customer; and/or
  - 10.13.3. to suspend the service until such time as the Customer has fulfilled his or her obligation in terms of this agreement, and/or
  - 10.13.4. recover forthwith from the Customer all costs of and damages suffered by SYSCOM thereby; and/or
  - 10.13.5. terminate this agreement in accordance with 4.2.1.

## **11. DETERMINATION OF USAGE**

Nothing in this agreement shall oblige SYSCOM to ensure that the Customer is able to access the Service for any specific period of time, or to utilise any specific amount of bandwidth, in any one month. Furthermore, the Subscription charges referred to in 10.4 above shall be payable monthly irrespective of the time spent or bandwidth utilised by the Customer in receiving the Service each month. The actual amount of time spent, or megabytes utilised, by the Customer in receiving the Service in any month shall be calculated, monitored and determined by SYSCOM in its sole discretion and, in the event of any dispute in regard to such time spent or megabytes utilised, same shall be determined and proved by a certificate signed by a duly authorised representative of SYSCOM, whose appointment, qualification and authority need not be proved.

## **12. CERTIFICATE OF INDEBTEDNESS**

The amount of the Customer's indebtedness to SYSCOM from time to time and the fact that such indebtedness is due and payable shall be determined and proved by a certificate signed by a duly authorised representative of SYSCOM, whose appointment, qualification and authority need not be proved. The certificate shall be binding on the Customer, be prima facie proof of the amount due, owing and payable by the Customer to SYSCOM and shall be deemed to be a liquid document for the purpose of obtaining provisional sentence and/or any other judgement against the Customer.

## **13. SYSCOM EQUIPMENT AND MAINTENANCE**

- 13.1. The Customer is responsible for any SYSCOM Equipment while it is located at the Customer's premises and the Customer will only use the SYSCOM Equipment and any associated software in accordance with any instructions and/or software licence, which SYSCOM might provide to the Customer from time to time. Furthermore, SYSCOM shall not be liable for any damage or loss resulting from a fault of any kind within the hardware or software supplied.
- 13.2. Where it is necessary for SYSCOM to install and/or maintain the Service at the Customer's premises, the Customer will provide SYSCOM and/or SYSCOM appointed agent or subcontractors with such access as is reasonably required and any technical/personnel assistance reasonably necessary for the installation and maintenance of the Service including, without limitation, electricity supply and suitable accommodation and environmental conditions for the housing of the SYSCOM equipment. SYSCOM and/or SYSCOM appointed agent or subcontractors will notify the Customer in advance where SYSCOM requires the Customer to make such access available. All installation and maintenance services will be carried out by SYSCOM personnel or appointed agents and subcontractors who shall liaise with the representative of the Customer.
- 13.3. All risk of loss or damage regarding all SYSCOM Equipment on the Customer's premises will reside in the Customer for an amount equal to the full replacement value of the SYSCOM Equipment. The SYSCOM Equipment, together with any Internet Protocol address(es), is and shall remain SYSCOM's property at all times.
- 13.4. The Customer will be liable to SYSCOM for any loss or damage to the SYSCOM Equipment except in so far as any such loss or damage is attributable to the negligent or wilful act or omission of SYSCOM, its agents or subcontractors or any damage due to Force Majeure.
- 13.5. All vendor-supplied equipment shall carry that vendor's warranty and guarantees where applicable. Should any faults arise outside this warranty and guarantee period, or as a result of the Customer's action which are in any way a contravention of the said warranties and guarantees irrespective of date of such contravention, the Customer shall bear the costs of the repairs, replacements and extended warranties and guarantees.

## **14. NAME AND INTERNET PROTOCOL ADDRESS**

- 14.1. The Customer hereby confirms and warrants that is the owner of, or that it has been and is duly authorised by the owner to use any trade mark or Name requested or allocated as the Customer's Name. The Customer indemnifies SYSCOM and holds it harmless against any and all claims or losses arising out of any action brought by a third party whose rights in respect of a logo, business name or trade mark have been infringed.
- 14.2. The Customer acknowledges that SYSCOM cannot guarantee that any Name the Customer requests will be available or approved for the Customer's use.
- 14.3. If the Service includes the registration of an Internet domain Name, the Customer acknowledges and agrees that:
- 14.4. SYSCOM does not represent, warrant or guarantee that any domain Name applied for by the Customer or on the Customer's behalf, will be registered in the Customer's requested Name or is capable of being registered by the Customer or that the use of such domain Name by the Customer will not infringe any third party rights. Accordingly, the Customer should take no premature action in respect of the Customer requested domain Name(s) until the Customer has been notified in writing, by SYSCOM, that the Customer's requested domain Name has been duly registered. SYSCOM will not be liable for any such premature action taken by the Customer.
- 14.5. The registration of the domain Name and its ongoing use by the Customer is subject to the relevant naming authority's terms and conditions of use and the Customer undertakes to comply with such terms and conditions. The Customer hereby irrevocably waives any claims that the Customer may have against SYSCOM, in respect of any decision of a naming authority to refuse to register a domain Name and, without limitation, the Customer acknowledges and agrees that any administration or other charge paid by the Customer in respect of the registration of the domain Name is non-refundable in any event.
- 14.6. All fees including, in no manner restricted to, fees incurred in the registration and renewal of domain Names, Internet Protocol addresses and other Internet or otherwise related due fees are incurred for the Customer's account.
- 14.7. Any Internet Protocol address allocated by SYSCOM to the Customer shall at all times remain the sole property of SYSCOM and the Customer will have a non-transferable license to use such address for the duration of this Service Agreement. If the Service Agreement is terminated for whatsoever reason, the Customer's license to use the Internet Protocol address shall immediately without prejudice, automatically terminate.

## **15. SECURITY**

- 15.1. The Customer is exclusively responsible for ensuring that any transaction to which the Customer is a party, and any information passing between the Customer and any other person, will conform with generally accepted encryption standards and are adequately encrypted, and the Customer hereby indemnifies SYSCOM against any loss or liability suffered by SYSCOM, or any claims made against SYSCOM, arising from any compromise of encryption of any message or data, or any breach of security which may occur in respect of such transaction and/or information.
- 15.2. In order to ensure the security and reliable operation of the SYSCOM Network to all Customers, SYSCOM hereby reserves the right to take whatever action SYSCOM may deem appropriate in order to preserve the security and reliability of the SYSCOM Network.
- 15.3. The Customer acknowledges that he or she is prohibited from utilising the service to compromise the security of or to tamper with the SYSCOM Network, or any information contained on the SYSCOM Network or any computer utilised by SYSCOM, or any other person.
- 15.4. The Customer expressly recognises that SYSCOM cannot and does not guarantee or warrant that files downloaded or information transmitted by means of the SYSCOM Network will be free of infection, and the Customer shall be solely responsible for implementing measures in respect of protection against infection, accuracy of data input and data output and for maintaining a means external to the SYSCOM Network for the reconstruction or retrieval of lost data.

## **16. ACCEPTABLE USE POLICY**

- 16.1. The Customer may use the SYSCOM Network and/or the Service for lawful purposes only and at the domicilium chosen by the Customer on the Service Agreement.
- 16.2. The Customer will not (nor will the Customer authorise or permit any other person to) use the Service or Network:
  - 16.2.1. to send or receive any material which is in violation of any law or regulation or which is defamatory, offensive, abusive, indecent, obscene or menacing, or in breach of confidence, privacy, trade secrets, or in breach of any third party intellectual property rights;
  - 16.2.2. to cause any annoyance or inconvenience;
  - 16.2.3. in breach of any instructions SYSCOM has provided to the Customer in respect of the use of the Service;
  - 16.2.4. other than in conformance with the rules of any regulatory authority.
- 16.3. The Customer will not use a Name so as to infringe the rights of any other person or company whether in statute or common law.
- 16.4. The Customer unconditionally accepts and will abide by SYSCOM's Acceptable Use Policy (available on request) or may be reviewed at <http://www.syscom.co.za/usepolicy.htm>, the salient terms with which the Customer declares itself familiar. The Customer hereby indemnifies SYSCOM, and holds SYSCOM free from liability, in respect of any loss or damage of whatever nature caused as a result of any breach of such warranties.

## **17. CESSION**

- 17.1. The Customer shall not be entitled to cede or assign any rights and/or obligations, which it may have in terms of this Service Agreement to any third party unless, agreed to in writing by SYSCOM.
- 17.2. SYSCOM shall be entitled to cede or assign any of its rights and/or obligations, which it may have in terms of this Service Agreement to any third party, provided that the Service remains within comparable service levels as previously provided by SYSCOM.

## **18. DOCUMENTATION, PROPRIETARY RIGHTS AND CONFIDENTIALITY**

- 18.1. All trade marks, logos, brands, domain names and other marks ("marks") belonging to SYSCOM or held by SYSCOM under any licensing agreement with any third parties or developed by SYSCOM in respect of this agreement shall remain the sole property of SYSCOM and the relevant licensors and the Customer shall not be entitled to use the marks in any way.
- 18.2. Any specifications, descriptive matter, drawings and other documents, which may be furnished by SYSCOM to the Customer from time to time, apart from the Service Agreement, the Proposal or the Addendums:
  - 18.2.1. Do not form part of this Service Agreement and may not be relied upon unless otherwise agreed in writing by both parties hereto;
  - 18.2.2. Shall remain the property of SYSCOM and shall be deemed to have been imparted by it in trust to the Customer for the sole use of the Customer.
- 18.3. Nothing in any of the documentation between SYSCOM and the Customer confers or shall be deemed to confer on any party any rights in or licence to use any Intellectual Property Rights of the other party except and so far as is necessary to utilise the Services provided thereunder.
- 18.4. Both parties agree that the Customer agrees and warrants to SYSCOM that it shall at all times keep the terms and conditions of this Agreement confidential and shall not disclose the same to any other third party (save to its legal advisors and accountants solely for the purposes of obtaining professional advice thereon). Each party acknowledges that it will exchange proprietary and confidential information with the other, as reasonably necessary for each to perform its obligations under this Agreement. All information relating to this Agreement provided by either party to the other, whether oral or written, shall be deemed to be confidential and proprietary information unless indicated to the contrary in writing.

## **19. BREACH**

If the Customer breaches any provision of this agreement (which shall be determined in SYSCOM's sole discretion and which decision shall be final and binding on the Customer) and fails to remedy such breach within 24 (twenty four) hours after written notice has been given by SYSCOM requiring the breach to be remedied, SYSCOM shall, without prejudice to its rights, forthwith and without notice be entitled to:

- 19.1. terminate the Customer's access to the Service; and/or
- 19.2. terminate this agreement in accordance with 4.2.1 and/or
- 19.3. hold the Customer to the terms of this agreement and claim specific performance, or claim from the Customer an additional charge equivalent to twice the monthly subscription charge due by the Customer in the month in which the breach occurred; and/or
- 19.4. claim such damages as SYSCOM may have suffered or may suffer in the future arising from such breach; and/or
- 19.5. claim from the Customer all costs and expenses incurred as a result of or in connection with the breach, including, but not limited to bandwidth costs, administration costs, downtime costs, CPU cycle costs and legal costs on an attorney and own client scale; and/or
- 19.6. notify all persons who may be adversely affected by the breach or the conduct of the Customer, of the personal and public information of the Customer; and/or
- 19.7. in the event that the breach has an adverse technical effect on the SYSCOM Network, require the Customer to take such steps as may be necessary to rectify the situation at the cost of the Customer.
- 19.8. The Customer shall not be entitled during the currency of this agreement to withhold payment of any amount due to SYSCOM in terms hereof, by reason of any alleged breach by SYSCOM.

## **20. DOMICILIUM AND NOTICES**

- 20.1. The parties hereby accept their addresses as more fully set out on the opening page of the Service Agreement as their *domicilium citandi et executandi* addresses for all matters in connection with this Agreement and for the service of any legal processes.
- 20.2. Either party shall be entitled from time to time on written notice to the other party, within ten days of the said change, to vary its Domicilium to any other address within the Republic of South Africa, which is not a post office box or poste restante.
- 20.3. Any notice required or permitted to be given in terms of this agreement shall be valid and effective only if written and transmitted by hand, prepaid registered post, facsimile or e-mail, or, in respect of any notice to be given by SYSCOM, if posted to the SYSCOM website.

## **21. DISPUTE RESOLUTION**

- 21.1. This agreement shall be governed by and interpreted according to the laws of the Republic of South Africa and, in the event of any conflict between or inconsistency in the laws applicable in the various provinces of the Republic of South Africa, the law as applied and interpreted in the Province of the Western Cape shall prevail.
- 21.2. The parties hereby assent to the non-exclusive jurisdiction of the Magistrate's Court in the Republic of South Africa in respect to all proceedings in connection with the Service Agreement. The Customer consents that SYSCOM shall be entitled, in its sole discretion, to institute any proceedings in the High Court of South Africa and, in such event, the Customer consents to the jurisdiction of the said court.

## **22. NO VARIATION OR AMENDMENT**

- 22.1. No amendment or consensual cancellation of this Service Agreement or any provision or term thereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Service Agreement shall be binding unless recorded in a written document, signed by a duly authorised representative from both SYSCOM and the Customer.
- 22.2. No extension of time or waiver or relaxation of any of the provisions or terms of this Service Agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Service Agreement, shall operate as an estoppel against the other parties hereto in respect of its right under this Service Agreement, nor shall it operate so as to preclude either of the parties thereafter from exercising its rights strictly in accordance to this Service Agreement.
- 22.3. Neither party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it included the contract between Customer and SYSCOM or not. This Service Agreement supersedes any other agreement tacit or implied, in discussions as part of or prior to the signing of this Service Agreement, Proposal and Addendums without any restrictions or limitations whatsoever.

## **23. FORCE MAJEURE**

- 23.1. None of the parties shall be liable for failure to perform any of its obligations under any Accepted Order if such failure is caused by or arises as a result of an event of force majeure including, but not limited to, fire, flood, lightning, civil unrest and acts of governmental or military authorities.
- 23.2. The party victim of a force majeure event shall as soon as reasonably possible notify the other party in writing of the occurrence of an event of force majeure and the estimated extent and duration of its inability to perform its obligations under the Accepted Order.
- 23.3. In the event of a force majeure event, both parties shall use all reasonable endeavours to minimise the effects of the force majeure event.
- 23.4. The parties hereby agree that should a force majeure last more than 14 (fourteen) days, the party who has not invoked force majeure to excuse any non-performance of its obligations may terminate this Agreement by giving 10 (ten) days written notice to the other.