



entered into by and between

Hymax SA (Pty) Ltd

("Hymax")

Description and Registration Number	A private company registered in accordance with the laws of the Republic of South Africa with registration number 2000/006285/07		
Physical Address	239 Howick Close, Waterfall Office Park, Midrand		
Postal Address	PO Box 6458, Halfway House, Midrand, 1685		
Tel No.	(011) 266-4000	email	legalnotices@eoh.com
Signed at		Date	
<p>.....</p>			
Name	Kim Sacree	who warrants that they are duly authorised to sign	
Designation	Managing Director		

(hereinafter referred to as "**HYMAX**")

and

insert company name

Description and Registration Number	A private company registered in accordance with the laws of the Republic of South Africa with registration number insert		
Physical Address			
Postal Address			
Tel No.			
Signed at		Date	
<p>.....</p>			
Name		Who warrants that they are duly authorised to sign	
Designation			

(hereinafter referred to as the "**Client**")

IN TERMS OF WHICH THE PARTIES AGREE AS FOLLOWS:

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Standard Terms and Conditions

These Standard Terms and Conditions and the Schedule of Services collectively comprise the Agreement between the Parties.

1. RULES OF INTERPRETATION

- 1.1. In this Agreement
 - 1.1.1. clause headings are for convenience and are not to be used in its interpretation;
 - 1.1.2. unless the context indicates a contrary intention, an expression which denotes:
 - 1.1.2.1. any gender includes the other genders;
 - 1.1.2.2. a natural person includes a juristic person and vice versa;
 - 1.1.2.3. the singular includes the plural and vice versa;
 - 1.1.3. references to clauses, schedules, annexes and sections are, unless otherwise provided, references to clauses, schedules, annexes and sections of this Agreement;
 - 1.1.4. cross-references to clauses in a specific schedule, annex or section shall be a cross-reference to clauses in such schedule, annex or section unless specifically stated otherwise;
 - 1.1.5. 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 Saturdays, Sundays and South African public holidays shall be excluded from the calculation;
 - 1.1.6. the rule of construction that an agreement shall be interpreted against the Party responsible for the drafting or preparation of the Agreement, shall not apply;
 - 1.1.7. any reference to an enactment contained in the Agreement is to the enactment as at the Effective Date of this Agreement, and as amended or re-enacted from time to time;
 - 1.1.8. where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
 - 1.1.9. 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;
 - 1.1.10. any substantive provision, notwithstanding that it is only in this clause 1, conferring rights or imposing obligations on a Party, shall be given effect to as if it were a substantive provision in the body of the Agreement;
 - 1.1.11. use of the words "includes" or "including" means 'includes without limitation' or 'including without limitation' and the use of these or similar words shall not be limited to the meaning of the general words;
 - 1.1.12. any reference to "days" shall be construed as being a reference to calendar days unless qualified by the word "Business";
 - 1.1.13. effect shall be given to the contents of clause 2 below as substantive provisions of this Agreement;
 - 1.1.14. a reference to a Party shall include the permitted successors and assigns of that Party;
 - 1.1.15. any notice required to be given by either Party to the other Party in terms of this Agreement shall, unless otherwise provided herein, be in writing;
 - 1.1.16. any consent, approval and/or authorisation required to be obtained by one Party from the other Party shall not be unreasonably withheld or delayed. Any consent, authorisation and/or approval between the Parties shall, unless otherwise specifically stated, be in writing and signed by duly authorised persons on behalf of each Party; and
- 1.2. This Agreement shall be interpreted so that all the provisions are given as full an effect as possible. In the event of a conflict between any provision of the various schedules or sections to this Agreement, the order of precedence shall be:
 - 1.2.1. Standard Terms and Conditions;
 - 1.2.2. Schedule of Services; and
 - 1.2.3. any other schedules or annexures.

2. DEFINITIONS

- 2.1. In this Agreement the following expressions and words have the meanings assigned to them and derivative expressions and words will have a corresponding meaning:
 - 2.1.1. "**Account Manager**" means the representative from each Party responsible for managing the provision of the Services by HYMAX to the Client in terms of this Agreement, as appointed in terms of clause 13;

- 2.1.2. "**Affiliate**" means any company which is a subsidiary of a Party, a holding company of a Party or a subsidiary of any holding company of a Party (where the terms "**subsidiary**" and "**holding company**" shall have the meaning ascribed to them in Section 1 of the Companies Act, 2008 (Act No. 71 of 2008)), provided that they shall also include any foreign entity which, had it been registered in terms of the aforesaid Act, would fall within the ambit of such term;
- 2.1.3. "**AFSA**" means the Arbitration Foundation of Southern Africa, or its successors in title provided that should AFSA or a successor not be in existence at any time, any appointment required to be made by AFSA shall be made by the Chairman of the Johannesburg Bar Council;
- 2.1.4. "**Agreement**" means collectively:
- 2.1.4.1. The terms and conditions of this Service Agreement;
 - 2.1.4.2. The Schedule of Services/s; and
 - 2.1.4.3. any other schedules or annexures, and any amendments thereto,;
- 2.1.5. "**Anti-Corruption Laws**," means *the Prevention and Combating of Corrupt Activities Act, 2004*, as amended (Republic of South Africa);
- 2.1.6. "**Business Day**" means any day other than a Saturday, Sunday or public holiday within the meaning of the Public Holidays Act, 1994, in the Republic of South Africa;
- 2.1.7. "**Business Hours**" means from 08h00 to 17h00 on a Business Day;
- 2.1.8. "**Client Input**" means the inputs of the Client reasonably required in order to enable HYMAX to provide the Services to the Client, as set out in clause 6 and expanded upon in the Service Definitions thereunder.
- 2.1.9. "**Client Third Party Contracts**" means contracts between the Client and third parties and "**Client Third Party Contractor**" shall refer to the third party with whom the Client has contracted in terms of any Client Third Party Contract; to which HYMAX is not a party thereto and does not have any liability in respect thereof;
- 2.1.10. "**Confidential Information**" means Intellectual Property, Proprietary Information, Personal Data and Trade Secrets of a Party ("**Disclosing Party**"), in whatever format, (including in oral, written, electronic and visual format), whether or not marked as "confidential", "restricted" or "proprietary" (or any similar designation), and to which a Party ("**Receiving Party**") may have access to, or of which the Receiving Party may have knowledge of, in the course of the Agreement;
- 2.1.11. "**Core Services**" means services provided by HYMAX and which the Client procures directly from HYMAX and thus excludes all products and/or services that are provided by 3rd parties and/or licensed to HYMAX from a 3rd party.
- 2.1.12. "**CPI**" means the Consumer Price Index (metropolitan areas, all items) published in the Statistical News Release compiled by Statistics South Africa, or, in the absence thereof, a similar index nominated or prepared by HYMAX's auditors. The escalation factor used shall be the year on year increase in the CPI published immediately preceding the effective date of increase which escalation factor may be adjusted to take into account the average increase of salaries over such period in the Information Technology Industry as reflected in the South African remuneration survey for Information Technology and Support Services published on the RemChannel website (www.remchannel.co.za) by Channel Consulting (Pty) Ltd, or any similar survey as may be agreed to by the Parties in writing from time to time;
- 2.1.13. "**Data**" means any data, including Personal Data, supplied to HYMAX by the Client or Processed on behalf of the Client by HYMAX;
- 2.1.14. "**Data Breach**" shall mean any breach of security leading to unauthorized or unlawful destruction, loss, alteration or disclosure of Data;
- 2.1.15. "**Data Protection Laws**" means *the Protection of Personal Information Act, 2013 (Act No. 4 of 2013)* (Republic of South Africa);
- 2.1.16. "**Deliverable**" means any tangible or intangible product that is provided by HYMAX to the Client pursuant to this Agreement;
- 2.1.17. "**Destructive Element**" means any "back door", "time bomb", "time lock", "trojan horse", "worm", "drop dead device", "virus" or other computer software routine or code intended or designed to: (i) permit access to or the use of a computer system by an unauthorised person, or (ii) disable, damage, erase, disrupt or impair the normal operation of a computer system; (iii) damage, erase or corrupt data, storage media, programmes, equipment or communications, or (iv) otherwise interfere with operations of a computer system;
- 2.1.18. "**Effective Date**" means the earlier of:
- 2.1.18.1. the Signature Date;
 - 2.1.18.2. the date of signature by the Client of the initial Schedule of Services;
 - 2.1.18.3. the date of the initial itemised invoice issued by HYMAX and accepted by the Client;

- 2.1.19. **"HYMAX Technology"** means the various concepts, ideas, methods, methodologies, procedures, processes, know-how, and techniques; models (including, without limitation, function, process, system and data models); templates; general purpose consulting and software tools, utilities and routines; and logic, coherence and methods of operation of systems which HYMAX has created, acquired or otherwise has rights in;
- 2.1.20. **"Excusing Cause"** means:
- 2.1.20.1. a force majeure event as contemplated in clause 21 hereof; or
 - 2.1.20.2. a failure by the Client, or its Staff, to provide Client Input to HYMAX:
 - 2.1.20.2.1. within the timeframes contemplated in this Agreement, or failing such contemplation within a reasonable period stipulated by HYMAX in any written request for such Client Input or within any period agreed by the Parties in writing; or
 - 2.1.20.2.2. which is of the required accuracy, standard or quality, including, without limitation, where such Client Input is defective, corrupted (in the case of data) or inaccurate;
 - 2.1.20.3. where the Client breaches any term of this Agreement; or
 - 2.1.20.4. where any bona fide dispute arises between the Parties;
- 2.1.21. **"Fees"** means the fees and charges to be paid by the Client to HYMAX from time to time in terms of this Agreement, being Service Fees, Setup Fees and any other fees as may be chargeable under this Agreement from time to time as detailed in the applicable Schedule of Services;
- 2.1.22. **"Initial Term"** means the initial period over which particular Service/s will be provided, commencing on the Service Commencement Date and enduring for the period set out in the Schedule of Services;
- 2.1.23. **"Installation Procedure"** means the structured project management process and steps for the implementation of Services as defined in a Schedule of Services ;
- 2.1.24. **"Intellectual Property Rights"** includes, patents, rights in inventions (whether or not patented), rights in designs, trademarks, trade and business names, logos, service marks and trademarks (whether or not registered), internet domain names, and all associated goodwill, rights to sue for passing off or for unlawful competition, copyright (whether or not registered), moral rights and related rights, rights in information (including know-how and Trade Secrets), rights in databases, data, methodology, source codes, reports, drawings, specifications, business methods, applications for registration (or the right to apply for registration) and all other intellectual property with an equivalent or similar forms of protection;
- 2.1.25. **"Line-item Service"** means each line item of the Services to be provided by HYMAX pursuant to this Agreement, as set out in the relevant Schedule of Services and which together comprise the Services;
- 2.1.26. **"Network"** means all the equipment and/or network infrastructure used by HYMAX to provide the Services to the Client;
- 2.1.27. **"Network Maintenance"** means planned repairs and improvements carried out from time to time to the Network by HYMAX;
- 2.1.28. **"Parties"** means, collectively, HYMAX and the Client, and **"Party"** refers to either one of the Parties, as the context may require;
- 2.1.29. **"Personal Data"** means personal information as defined in the Protection of Personal Information Act, 2013 (Act No. 4 of 2013) and the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002). Personal data shall include any information relating to an identified or identifiable individual (including, but not limited to, name, postal address, email address, telephone number, date of birth, social security number, driver's license number, other government-issued identification number, financial account number, credit or debit card number, insurance ID or account number, health or medical information, consumer reports, background checks, biometric data, digital signatures, any code or password that could be used to gain access to financial resources, or any other unique identifier) that is Processed by HYMAX under the Agreement;
- 2.1.30. **"Premises"** means the premises at which the Services will be supplied by HYMAX as detailed in the Schedule of Services;
- 2.1.31. **"Prime Rate"** means the publicly quoted prime rate of interest (percent, per annum) from time to time charged by Standard 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;
- 2.1.32. **"Process"** means any operation, or set of operations, performed on Data, by any means, such as by collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction and "Processing" shall have a corresponding meaning;
- 2.1.33. **"Products"** means hardware and/or software, provided by HYMAX to the Client in terms of this Agreement from time to time;
- 2.1.34. **"Pro rata Service Fees"** means the initial Service Fee payable by the Client in respect of the first month of a Line Item Service, in respect the period between the Service Commencement Date and the end of the first calendar month;

- 2.1.35. **"Ready for Service Certificate"** means a document in substantially the form set out in Annexure 5;
- 2.1.36. **"Renewal Period"** means a period of **12 (twelve) months**;
- 2.1.37. **"Schedule of Services"** means a document substantially in the form of Annexure 6 stipulating the specific Services and Products to be provided by HYMAX to the Client in terms of this Agreement, together with the applicable Fees, Initial Term and other information relevant to the Services, as such Schedule of Services may be amended or supplemented in writing, from time to time by the Parties in terms of the Variation Procedure;
- 2.1.38. **"Service Commencement Date"** means the date on which specific Line-item Services will commence, being the date on which the Ready for Service Certificate in respect of a Line-item Service is signed off, or deemed to have been signed off, by the Client in terms of clause 5.2;
- 2.1.39. **"Service Definitions"** means the definitions of the Services to be provided by HYMAX to the Client in terms of specific Schedule of Services, as attached to Annexure 7;
- 2.1.40. **"Service Fee"** means the monthly fee payable by the Client in respect of the Line-item Services provided in terms of this Agreement, as set out in the Schedule of Services;
- 2.1.41. **"Service Level Agreement"** means the document set out in Annexure 2 hereto describing the service levels to be provided by HYMAX to the Client and the service level credits due in respect of performance failure if and where applicable, as same may be amended or supplemented in writing from time to time by the parties in terms of the Variation Procedure;
- 2.1.42. **"Signature Date"** means the date of signature thereof by the Party signing last;
- 2.1.43. **"Services"** means the Services to be provided by HYMAX to the Client in terms of this Agreement, as set out in the relevant Schedule of Services and Service Definitions from time to time;
- 2.1.44. **"Setup Fee"** means the fees related to the initial setup of the Products and/or Services, as specified in the Schedule of Services;
- 2.1.45. **"Service Levels"** mean the qualitative and quantitative standards according to which the Services are to be provided, as set out in the Service Definitions read together with the Service Level Agreement;
- 2.1.46. **"Site"** means the sites to or at which the Services will be provided as set out in the Schedule of Services;
- 2.1.47. **"Staff"** means any director, employee, agent, consultant, contractor or other representative of a Party involved in the provision or acquisition of the Services;
- 2.1.48. **"Support Procedure"** means the defined support processes, structure and functions as detailed in Annexure 3.
- 2.1.49. **"Time and Material Basis"** means the method of billing based on actual time spent and materials used, based on HYMAX's standard rates applicable from time to time;
- 2.1.50. **"Trade Secrets"** means formulas, practices, processes, designs, instruments, patterns, or compilations of information that have inherent economic value because they are not generally known or readily ascertainable by others, the HYMAX's methodologies and know-how, and which the Disclosing Party takes reasonable measures to keep secret; and
- 2.1.51. **"Variation Procedure"** means the Agreement variation procedure set out in clause 11.
- 2.1.52. **"VAT"** means Value Added Tax imposed in terms of section 7 of the Value Added Tax Act, 1991 (Act No 89 of 1991), including any similar tax which may be imposed in place thereof from time to time.

3. APPOINTMENT

- 3.1. HYMAX is skilled in the supply of certain information and technology services.
- 3.2. The Client wishes to appoint the HYMAX to supply the Services as described in the Schedule of Services.
- 3.3. The HYMAX hereby accept its appointment to supply the Services in accordance with the terms and conditions set forth in this Services Agreement, and the Schedule of Services.
- 3.4. The Client acknowledges that in order for a HYMAX to properly and timeously carry out the Services in terms of the Schedule of Services(s), there rests a reciprocal obligation on the part of the Client to carry out its obligations, as detailed in the Schedule of Services. The HYMAX and the Client recognise the reciprocal nature of the Agreement and the Schedule of Services, and undertake to act consciously and in good faith.

4. DURATION

- 4.1. This Agreement shall commence on the Effective Date and, subject to the rights of termination stipulated herein, continue thereafter until the termination or lapsing of all Services listed in the Schedule of Services.

- 4.2. Each Line-item Service contemplated in a Schedule of Service shall commence on the relevant Service Commencement Date and shall endure for the relevant Initial Term, whereafter it shall be automatically renewed for further Renewal Periods, subject to the right of either Party to terminate the specific Line-item Service at the end of its relevant Initial Term or any Renewal Period on no less than **90 (ninety) days** written notice to the other Party prior to the expiry of the Initial Term or any Renewal Term.

5. SERVICES

- 5.1. **Provision of Services.** HYMAX shall during the term of this Agreement provide the Services to the Client in accordance with the terms of this Agreement, as read with the relevant Schedule of Services.

5.2. Setup of Services.

- 5.2.1. HYMAX shall commence setup of the Services upon signature of the relevant Schedule of Services by the Client. The set-up of the Services shall be undertaken by HYMAX in accordance with the network design submitted by HYMAX to the Client, based on the information provided by the Client.

- 5.2.2. Whilst HYMAX shall use reasonable commercial endeavours to design an appropriate solution for the Client, such design is strictly based on the information and requirements provided by the Client and accordingly HYMAX cannot be held responsible for any error resulting from incorrect, inaccurate or incomplete information provided by the Client. The Client hereby indemnifies HYMAX against any loss or damage that the Client may suffer as a result thereof.

- 5.2.3. Upon completion of the setup of each Line-item Services, HYMAX shall present the Client with a Ready for Service Certificate for signature by the Client to confirm that the relevant Line-item Services are ready for commencement.

5.2.4. Should the Client:

- 5.2.4.1. fail to sign-off the Ready for Service Certificate in respect of the Deliverables within **5 (five) Business Days** of the submission of the Ready for Service Certificate by HYMAX and fail to inform HYMAX of any problems with the setup or configuration of specific Deliverables within such period; or

- 5.2.4.2. commence use of any Deliverables,

it shall be deemed to have signed-off on the relevant Deliverables on the earlier of the date on which it commences use of the Deliverables or the relevant period lapses.

- 5.2.5. The risk in, and to, the Deliverables shall pass to the Client upon delivery to the Client of the Deliverables. Delivery shall be deemed to have taken place upon signature by the Client of HYMAX' acceptance documentation, or upon the commencement of beneficial use of the Deliverables by the Client.

- 5.2.6. Ownership of any Deliverables shall only pass to the Client upon payment of the full Fees to HYMAX in respect of the Deliverables in question, provided it is intended by both Parties for ownership in the Deliverables to pass in terms of the applicable Schedule of Services. For the purposes of clarity, nothing in this clause shall be construed so as to imply that any HYMAX Intellectual Property rights shall be transferred to the Client under this Agreement.

6. CLIENT INPUT

- 6.1. In order to enable HYMAX to provide the Services in terms of this Agreement, the Client shall, to the extent required by HYMAX and at the Client's cost:-

- 6.1.1. allow HYMAX and its Staff reasonable access to all necessary Sites which are under the control of the Client or its Staff, which access is required to enable HYMAX to fulfil its obligations in terms of this Agreement;

- 6.1.2. provide electricity services, telephone services and other connectivity (including access to networks, information) at each Site;

- 6.1.3. make available sufficiently competent and authorised resources, with appropriate access rights and permissions, to assist HYMAX and consider all requests by HYMAX for consent or authorisation without any delay, having regard to the nature of the request and the impact which any delay in such consent or authorisation may have on the provision of Services pursuant to this Agreement;

- 6.1.4. comply with all reasonable policies, procedures and instructions of HYMAX in respect of the provision of Services pursuant to this Agreement;

- 6.1.5. take commercially reasonable measures to ensure that no Destructive Element is introduced into the Client's or HYMAX's systems by the Client's Staff or any third party; and

- 6.1.6. provide all such other assistance and support as may be contemplated in this Agreement and/or required by HYMAX to perform its obligations under the Agreement.

7. CLIENT OBLIGATIONS

- 7.1. **Supply Chain Management.** The Client undertakes that it:
 - 7.1.1. has all the necessary rights, powers and authority to enter into the Agreement.
 - 7.1.2. will perform its obligations diligently, in a timely manner, and in accordance with the instructions and requirements of HYMAX, and in accordance with any time schedules set forth in this Agreement.
 - 7.1.3. shall do all things reasonably required to provide HYMAX with free and uninterrupted access to the Sites during office hours, as required by HYMAX in order to fulfil its obligations in terms hereof, provide the necessary information, documentation, personnel records, medical records, research reports and data as may be reasonably required by HYMAX to enable the Service Provider to provide the Services and comply with its obligations set out in this Agreement;
 - 7.1.4. shall ensure that any third party, over which it has direct control, performs its duties and functions as may be reasonably required by the Service Provider to enable the Service Provider to provide the Services.
- 7.2. **Regulatory compliance.** The Client has sole responsibility to ensure that the information it, its Staff and users transmit and receive over the Network complies with all applicable laws and regulations. The Client hereby indemnifies HYMAX and holds it harmless against any claims by third parties in respect of prohibited activities conducted by the Client, its Staff its users.
- 7.3. **Acceptable Use.** The Client hereby agrees that in using the Services it shall at all times comply and shall procure that its Staff at all times comply, with HYMAX's Acceptable Use Policy (AUP).
- 7.4. **Security.** The Client shall at all times adhere to HYMAX security and safety measures applicable to its premises and/or networks from time to time. In particular, the Client shall not engage in any of the following:
 - 7.4.1. misuse, unauthorised use, abuse of or interference with any of HYMAX's or any third party's equipment or other property located at HYMAX's data centres;
 - 7.4.2. the harassment of any person including HYMAX personnel or authorised representatives, or personnel or representatives of any of HYMAX other clients;
 - 7.4.3. any unlawful activity or assisting therein, while on HYMAX property and premises.
- 7.5. **General Client obligations.** The Client shall not take any steps or fail to take any steps which directly or indirectly:
 - 7.5.1. damages the Network or any part thereof;
 - 7.5.2. impairs or precludes HYMAX from being able to provide Products and/or Services in a professional manner;
 - 7.5.3. constitutes an abuse or malicious misuse of the Products and/or Services provided by HYMAX (including but not limited to spamming etc); or
 - 7.5.4. is calculated to have one or more of the above-mentioned effects.
- 7.6. **Effect of non-compliance.** To the extent that the Client is in breach of any provision of this clause, HYMAX reserves the right to suspend all its obligations under the Schedule of Services until such time as the Client remedies the situation, and if HYMAX incurs any expense in remedying the effects of any of the acts or omissions referred to above, the Client agrees to reimburse HYMAX on demand in the amount necessary to cover such expenses.

8. STAFF

- 8.1. **Compliance with procedures.** HYMAX shall comply, and ensure that its Staff comply with any practices and procedures including (but not limited to) any policies, security and access policies, safety, health and environmental policies which are of general application to the Client's Staff at any Site to which or at which the Services are provided. The Client shall notify HYMAX of all such policies and procedures prior to the Effective Date, as the case may be and give HYMAX and the relevant Staff no less than 5 (five) days written notice of any change in existing policies or the implementation of new policies.
- 8.2. **Staff shall work under HYMAX direction.** Unless specifically agreed otherwise between the Parties, HYMAX's Staff shall at all times be subject to and work under the direction and control of HYMAX.

8.3. **Disciplinary action and incapacity counselling.** HYMAX will be exclusively responsible for taking disciplinary action against its Staff in accordance with its own disciplinary code and counselling procedures.

9. EXCUSING CAUSES

9.1. In the event of an Excusing Cause arising:

9.1.1. HYMAX will notify the Client, in writing, of the Excusing Cause within a reasonable period of becoming aware of such Excusing Cause;

9.1.2. the time for HYMAX performance shall be extended on a reasonable basis in proportion to the prejudice caused by the Excusing Cause and HYMAX may charge for any additional hours required to execute the Services or remedy the Excusing Cause on a Time and Materials Basis;

9.1.3. any milestone affected by the Excusing Cause (hereinafter referred to as "the **Affected Milestone**"), as well as all other milestones on the affected critical path of the Affected Milestone, if any, shall be extended by a period equal to the period by which the Affected Milestone is de facto impacted as agreed by the Parties in writing, or, failing agreement as determined in terms of the Dispute Resolution Procedure;

9.1.4. if an amount would have been payable to HYMAX by the Client had it not been due to an Excusing Cause, HYMAX shall be entitled to invoice the Client for work actually completed at a milestone date, notwithstanding the fact that a milestone has not been achieved; and

9.1.5. HYMAX shall not be liable for any failure to provide any Services in terms of this Agreement where such failure is a result of any Excusing Cause.

10. CLIENT THIRD PARTY CONTRACTORS

10.1. **Applicable provisions.** Where HYMAX is required to manage or liaise with Client Third Party Contractors, the following provisions will apply:-

10.1.1. the Client shall notify HYMAX in writing of the applicable terms and conditions of the Client Third Party Contracts insofar as they relate to or have an impact on HYMAX obligations in terms of this Agreement; and

10.1.2. the Client shall be responsible for obtaining and maintaining all necessary licences, consents or authorities under the Client Third Party Contracts (including, without limitation, any consents or licences required to enable HYMAX to fulfil its obligations in terms of this Agreement) and shall be liable for all fees and other charges payable to any third party pursuant to the Client Third Party Contracts.

10.2. **No liability.** HYMAX shall not be liable for any act or omission of a Client Third Party Contractor.

11. VARIATION PROCEDURES

11.1. **No Variation.** Subject to the provisions of this clause 11, no variation, addition or consensual cancellation of this Agreement or any component thereof shall be of any force or effect unless reduced to writing and signed by the Parties or their duly authorised representatives. For the purposes of clarity no amendment or variation to this Agreement may be concluded via email.

11.2. **Amendments to Services.** Further, during the currency of this Agreement, events may occur which require an amendment to the nature or scope of Services provided by HYMAX to the Client. Such amendments shall be implemented on the following basis:

11.3. **Party desiring amendment.** Should either Party wish to propose any amendment to the nature or scope of Services, such amendment shall be requested in the formal manner by way of a written proposal to the other Party, detailing the desired amendments.

11.4. **Proposal.** Should such proposal be made by:-

11.5. the Client, it shall specify the reasons for that amendment and describe the amendment in sufficient detail to enable HYMAX to formulate a response. HYMAX shall investigate the likely impact of any proposed amendments upon the Services and the provision thereof and shall provide the Client with a document setting out such impact, including amended pricing and timeframes, in respect thereof (a "**Variation Note**"); or

11.6. HYMAX, it shall detail in a Variation Note the reasons for and impact of the amendment, the services required to implement the amendment and the effect that the amendments, if implemented, will have on the relevant Services, setting out sufficient detail to enable the Client to formulate a response.

- 11.7. **Sign-off.** The Parties shall discuss the proposed amendments and shall effect such amendments to HYMAX's Variation Notes as may be agreed. The Variation Notes shall then be considered by the Client and approved or rejected in its discretion, provided that if a Variation Note:-
- 11.7.1. is accepted by the Client, it shall be signed off by duly authorised representatives of the Parties and incorporated into this Agreement; or
- 11.7.2. is rejected by the Client, the Services shall continue to be provided by HYMAX on the existing terms of this Agreement.
- 11.8. **No amendment effective until sign-off.** Neither HYMAX nor the Client shall be entitled to proceed or require the implementation of any amendment to the Services pursuant to this clause 11 until such amendment and all matters relating thereto have been agreed in writing between the Parties in accordance with the provisions of this clause 11. Pending sign-off as aforesaid, the Parties will continue to perform their obligations without taking account of the proposed amendments. Neither Party shall be obliged to agree to any amendment proposed by the other Party but the Parties will not unreasonably delay or withhold their agreement to a proposed amendment.

12. CONSIDERATION

- 12.1. **Consideration.** As consideration for the provision of the Services pursuant to this Agreement, the Client shall pay HYMAX the Setup Fee, any Pro rata Services Fees and the Service Fees set out in the relevant Schedule of Services.
- 12.2. **Exchange Rate Fluctuations.** All amounts due and payable by the Customer shall be paid to the Service Provider in **South African Rand**. Where the Services are paid for in a foreign currency, any variation between the foreign exchange rate at the date of invoice and the foreign exchange rate at the actual date of payment by the Client shall be for the Client's account. As such the Setup Fees, Pro Rata Service Fees and the Services Fees shall be adjusted accordingly to take into account such exchange rate fluctuations .
- 12.3. **VAT.** The Fees exclude VAT, rates or other levies or taxes payable in respect of the Services, all of which shall be payable by the Client in addition to the Fees stipulated herein.
- 12.4. **Withholding Tax**
- 12.4.1. Unless otherwise stated in an order, all amounts shall exclude taxes, rates or other levies, all of which shall be payable by the Client, in addition to the prices for the Goods and / or Services, to ensure the full prices payable are received without deductions of any kind.
- 12.4.2. Where a double taxation agreement exists between the Parties respective jurisdictions, the Client may deduct the applicable taxes and provide the Service Provider with a withholding tax certificate and proof that it has made the applicable payments therein to the relevant tax authority, not later than the end of the month following the month in which such payment is made by the Client.
- 12.4.3. If the Service Provider is unable to claim relief (either by way of credit relief, expense relief, unilateral relief or other similar double tax relief system), the Service Provider shall have the right to notify the Client and provide the Client with documentary evidence thereof. The Client shall then be required to pay to refund the Service Provider the amounts reflected in the withholding tax certificate without further deduction of withholding tax
- 12.5. **Setup Fees and Pro rata Service Fees.** Setup Fees and Pro rata Service Fees are due by the Client on the relevant Service Commencement Date and are payable in arrears, within 7 (seven) days of HYMAX date of invoice in respect thereof, or as may otherwise be provided on the applicable Schedule of Services.
- 12.6. **Service Fees.** Service Fees are due by the Client monthly in advance, payable on or before the 30th day of the month in which the relevant Services are to be provided.
- 12.7. **Invoices.** HYMAX shall provide the Client with a detailed VAT invoice in respect of all Fees payable pursuant to this Agreement. Such invoice may be in electronic or hardcopy format.
- 12.8. **Payments.** All payments by the Client must be made in South African Rand, free of set-off and bank charges, by electronic fund transfer, unless otherwise agreed in writing. Payments must be paid directly into HYMAX nominated bank account, the details of which will be provided on the relevant VAT invoice and may change from time to time or such other bank account as HYMAX may notify the Client of in writing from time to time.
- 12.9. **Overdue amounts.** If the Client fails to make any payment on the due date, HYMAX may, without prejudice to any of its rights, charge the Client interest on the overdue amounts at the Prime Rate, plus any additional costs incurred by HYMAX related to collections as a result of Client's failure to make any payment on the due date.
- 12.10. **Suspension of Services.** In addition, HYMAX shall be entitled, without liability, to suspend the Services for any period during which any Fees (including all interest thereon) are outstanding or in arrears, provided that HYMAX shall give the Client no less than five Business Days written notice (which shall include by way of e-mail) of its intention to suspend the Services.

12.11. Escalations.

- 12.11.1. HYMAX pricing is made up of pricing related to the Core Services, and pricing related to Services provided to HYMAX by third party telecommunication providers, such as Telkom, Neotel and the cell phone providers.
 - 12.11.2. HYMAX pricing related to the Core Services will not change during the initial term, unless otherwise agreed between the Parties in writing.
 - 12.11.3. HYMAX pricing related to Services provided by third parties may fluctuate during the Initial Term (or Renewal Period). Should the pricing fluctuate during the term of the Agreement, HYMAX will endeavour to provide the Client with 30 (thirty) days written notice, or such reasonable notice that it may receive from such third party, and together with such notice provide a reasonable level of detail regarding the reason for the fluctuation in the pricing, which reasons the Client agrees may include for example (i) change in Consumer Price Index etc. Notwithstanding the above, in the event the Service Fees payable by the Client are subject to a rate of exchange other than South African Rands and such rate of exchange during the term of the Agreement increases by more than the base rate used to calculate the initial Service Fees, the Client agrees that HYMAX shall be entitled to amend its pricing accordingly, with or without notice, within the month in which the exchange rate fluctuation occurs.
- 12.12. **No set-off.** The Client will not be entitled to withhold payment of any amount payable in terms of this Agreement to satisfy any claim against HYMAX arising from this or any other agreement with HYMAX, nor will the Client be entitled to set off any such amount payable in terms of this Agreement against any amount owing to it by HYMAX in terms of this or any other agreement.

13. GOVERNANCE STRUCTURES

- 13.1. In order to facilitate the smooth and effective management of the relationship, the Parties shall each appoint a suitably qualified and responsible person to act as their Account Manager in respect of the relationship between the Parties and the management of the provision by HYMAX of Services in terms of this Agreement. In respect of such Account Managers:-
- 13.1.1. they will have the power and authority to make decisions with respect to actions to be taken by them in the ordinary course of day-to-day management of this Agreement, but for the purposes of clarity it is recorded that the Account Managers shall not be entitled to vary the terms of this Agreement;
 - 13.1.2. all invoices, communications, documentation and materials relating to this Agreement shall be sent by each Party to the appropriate Account Manager; and
 - 13.1.3. either Party may, on 7 (seven) days written notice to the other, appoint an alternative Account Manager who is suitably qualified and responsible.

14. INTELLECTUAL PROPERTY

- 14.1. The Client acknowledges that any and all Intellectual Property Rights proprietary to HYMAX are and shall remain the property of HYMAX. The Client shall not for the duration of this Agreement, or at any time after termination or cancellation or expiration of this Agreement, acquire or be entitled to claim any right or interest therein or in any way question or dispute the ownership thereof
- 14.2. Except as otherwise agreed to the extent that HYMAX utilizes any its Intellectual Property in connection with the performance of its obligations and/or to the extent that HYMAX' Intellectual Property forms part of any Services or deliverable provided by HYMAX pursuant to this Agreement same shall remain the property of HYMAX and Client shall acquire no right or interest in such property.

15. HYMAX WARRANTIES

15.1. Intellectual Property Warranties:

- 15.1.1. HYMAX warrants that the Deliverables will not infringe any Intellectual Property Rights of any 3rd party valid in the Republic of South Africa.
- 15.1.2. If the Client is threatened with any action alleging that the use of the Deliverables infringes any patent, copyright, registered design or other intellectual property rights of a third party in the Republic of South Africa, provided that the Client promptly notifies and fully cooperates with HYMAX in allowing HYMAX to defend any action on the Client's behalf and permits HYMAX to have the sole control of any and all negotiations for settlement (with the Client's reasonable assistance), then HYMAX shall indemnify the Client against any and all damages and costs
- 15.1.3. Should any third party succeed in its claim for the infringement of any Intellectual Property Rights, in addition to settling the claim, HYMAX shall, at its discretion and within a reasonable period,-

- 15.1.3.1. obtain for the Client the right to continue using the infringing item or the parts thereof which constitute the infringement;
- 15.1.3.2. replace the infringing item or the parts thereof which constitute the infringement with another product which does not infringe and which in all respects operates substantially in accordance with the specifications thereof;
- 15.1.3.3. alter the infringing item in such a way as to render it non-infringing while still in all respects operating substantially in accordance with the specifications thereof; or failing any of the above, and
- 15.1.3.4. withdraw the infringing item and refund to the Client all fees already paid by it to HYMAX in respect of such item, pro-rated on a 3-year straight line depreciation;

provided that the above remedies shall be the Client's sole remedies in respect of any valid 3rd party infringement claims.

15.1.4. Notwithstanding the provisions of this clause, HYMAX shall not be liable for any 3rd party infringement claims where:

- 15.1.4.1. The infringing Deliverable belongs to a third-party supplier;
- 15.1.4.2. The Client alters, modifies, or revises any of the Deliverables;
- 15.1.4.3. The Client uses the Deliverable in combination with other product(s) and / or service(s);
- 15.1.4.4. The Client fails to implement any update or upgrade to the Deliverables provided by HYMAX, which update or upgrade would have prevented the infringement claim;
- 15.1.4.5. HYMAX's supplies the Deliverable in accordance with specifications stipulated by the Client;
- 15.1.4.6. HYMAX modified the Deliverables as requested by the Client;
- 15.1.4.7. HYMAX's uses any hardware, software or services provided by the Client;
- 15.1.4.8. The unauthorised use of the Deliverables by the Client (including any use in violation of or contrary to any limitations, restrictions, or prohibitions on the use thereof); or
- 15.1.4.9. The Client continues to use an allegedly infringing Deliverable after being notified by HYMAX to cease such use.

15.2. **Service warranties.** HYMAX warrants that in relation to each Managed Network Service provided in terms of this Agreement it will provide same in accordance with all applicable laws and regulations.

15.3. **Disclaimer of warranties.** HYMAX hereby excludes and disclaims all warranties, whether express or implied, statutory or otherwise, except those warranties expressly made in this clause . Without limiting the foregoing HYMAX hereby disclaims all warranties of fitness for purpose and in respect of third party software applications and hardware utilised by or licensed to the Client by any third party or by HYMAX pursuant to this Agreement.

15.4. **No representations.** The Client warrants that it has not been induced to enter into this Agreement by any prior representations, warranties or guarantees, whether oral or in writing, except as expressly contained in this clause .

15.5. **Survival.** This clause shall survive termination of this Agreement.

16. CONFIDENTIAL INFORMATION

16.1. **Confidentiality obligation.** The Receiving Party warrants and undertakes that it shall:

- 16.1.1. not use the Confidential Information, whether directly or indirectly, for its benefit or the benefit of any person, other than that of the Disclosing Party; and
- 16.1.2. not use, disclose or divulge, directly or indirectly, the Confidential Information in any manner to any third party for any reason or purpose whatsoever without the prior written consent of the Disclosing Party, which consent may be withheld in the sole and absolute discretion of the Disclosing Party.

16.2. Confidential Information shall include:

- 16.2.1. the Disclosing Party's past, present and future research;

- 16.2.2. the Disclosing Party's business activities, financial affairs, products, services, customers and clients, as well as its Intellectual Property;
- 16.2.3. the terms and conditions of this Agreement and any dispute that may emanate from this Agreement;
- 16.2.4. insofar as HYMAX is the Disclosing Party, HYMAX's information, data, methodologies and know-how; and
- 16.2.5. insofar as the Client is the Disclosing Party, the Client's information, data, medical records of Personnel and know-how.
- 16.3. All written instructions, drawings, notes, memoranda and records of whatever nature relating to the Confidential Information of the Disclosing Party which have or will come into the possession of the Receiving Party and its Personnel, will be, and will at all times remain, the sole and absolute property of the Disclosing Party and shall be promptly handed over to the Disclosing Party when no longer required for the purposes of this Agreement.
- 16.4. Upon termination or cancellation or expiry of this Agreement, or upon written demand from the Disclosing Party, The Receiving Party shall, at its own expense, return or destroy (as stipulated by the Disclosing Party), and procure the return or destruction of all Confidential Information and all copies of it (whether in paper, electronic or other format) held by the Receiving Party without keeping any copies or partial copies thereof. The Receiving Party shall not be required to return, destroy or delete Confidential Information to the extent that it is required to retain such Confidential Information by law or to satisfy the rules and regulations of a regulatory body to which the Receiving Party is subject. For the avoidance of doubt, the obligations of confidentiality contained in this Agreement will continue to apply to such retained Confidential Information.
- 16.5. **Exceptions.** The confidentiality undertakings given by the Receiving Party in this Agreement shall exclude any information which -
- 16.5.1. is, at the time of disclosure to the Receiving Party by the Disclosing Party, within the public domain and could be obtained by any person with no more than reasonable diligence; or
- 16.5.2. comes into the public domain and could be obtained after such disclosure, otherwise than by reason of a breach of any of the undertakings contained in this Agreement; or
- 16.5.3. is, at the time of such disclosure, already within the possession of the Receiving Party, or it has been independently developed by the Receiving Party; or
- 16.5.4. is subsequently provided to the Receiving Party by a person who has not obtained such information from the Disclosing Party, provided that, in any such case, such information was not obtained illegally or disclosed by any person in breach of any undertaking or duty as to confidentiality, whether express or implied; or
- 16.5.5. is disclosed with the written approval of the Disclosing Party; or
- 16.5.6. is or becomes available to a third party from the Disclosing Party on an unrestricted basis; or
- 16.5.7. is obliged to be reproduced under order of a court or government agency of competent jurisdiction or in satisfaction of the requirements of any stock exchange or other regulatory authority.
- 16.6. **Duties of Parties.** The onus shall at all times rest on the Receiving Party to establish that information used or disclosed by it falls within the exclusions. In the event that the Receiving Party is required to disclose Confidential Information pursuant to a requirement or request by operation of law, regulation or court order, it will:
- 16.6.1. advise the Disclosing Party thereof in writing prior to disclosure, if possible;
- 16.6.2. take such steps to limit the disclosure to the minimum extent required to satisfy such requirement and to the extent that it lawfully and reasonably can;
- 16.6.3. afford the Disclosing Party a reasonable opportunity, if possible, to intervene in the proceedings;
- 16.6.4. comply with the Disclosing Party's reasonable requests as to the manner and terms of any such disclosure; and
- 16.6.5. notify the Disclosing Party of the recipient of, and the form and extent of, any such disclosure or announcement immediately after it is made.
- 16.7. **Survival.**
- 16.7.1. The confidentiality obligations of the Receiving Party with respect to each item of Proprietary Information shall endure for an uninterrupted period of **2 (two) years** from the date on which such information is disclosed or otherwise received (whether before or after the Signature Date).

16.7.2. The confidentiality obligations of the Receiving Party with respect to each item of Trade Secret information shall endure for perpetuity from the date on which such information is disclosed or otherwise received (whether before or after the Signature Date), or for so long as such information remains a Trade Secret under applicable law, whichever occurs first.

16.8. The provisions and restrictions contained in this clause 11 shall continue in force notwithstanding termination of this Agreement.

16.9. **Obligation prior to disclosure.** The Receiving Party acknowledges that the Confidential Information is a valuable, special and unique asset of the Disclosing Party and the Disclosing Party may suffer irreparable harm or substantial economic and other loss in the event of any unauthorized disclosure of the Confidential Information by the Receiving Party. The Receiving Party hereby agrees that:

16.9.1. it will only make the Confidential Information available to those of its Personnel who are actively involved in the execution of its obligations under this Agreement and then only on a "need to know" basis; and

16.9.2. it will initiate internal security procedures reasonably acceptable to the Disclosing Party to prevent unauthorised disclosure and will take all practical steps to impress upon those Personnel who need to be given access to Confidential Information, the secret and confidential nature thereof.

17. HYMAX LIABILITY

17.1. HYMAX indemnifies the Client against any and all claims, including reasonable attorney's fees, caused by, relating to, or arising from a material breach of the Agreement by HYMAX or its Staff or consultants and subcontractors, in the performance of their obligations under this Agreement, provided that the Client promptly notifies HYMAX of the claims and permits HYMAX to have sole control of any and all negotiations for settlement of the claims.

17.2. **Direct damages limited.** HYMAX's total liability to the Client, regardless of whether the action is brought in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise, arising out of or in connection with the performance of its obligations under the Agreement, shall not exceed the insurance amounts as agreed in a Schedule of Services (in respect of insurable events), and the amount of Fees paid to the HYMAX under a Schedule of Services within the preceding **12 (twelve) months** period, or the value of a purchase order, whichever is the lesser amount (in respect of non-insurable events).

17.3. **Consequential damages excluded.** HYMAX shall not be liable to the Client for any loss of profits, loss of business, depletion of goodwill or similar losses, loss of anticipated savings, loss of goods, loss of use, interruption or reduction of operation, loss or corruption of data (including the recovery thereof), loss of production, loss of contracts or for any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses that may be suffered by the Client, even if advised of the possibility of such damages and regardless of whether the action is brought in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise

17.4. The HYMAX shall not be liable for any claims of whatsoever nature, arising out of or in connection with the Client's material breach of this Agreement or a Service Annexure, or any fraud, unlawful acts, willful misconduct and gross negligence breach of confidentiality obligations, infringement of intellectual property rights, by the Client its Staff or consultants and subcontractors, or where it would be contrary to, or prohibited by law for the Client to limit its liability, or unlawful for the Client to attempt to do so.

17.5. Nothing contained in in this clause shall limit the HYMAX's liability in respect of death or injury of any person or damage to property, fraud, unlawful acts, willful misconduct, gross negligence, breach of confidentiality obligations, infringement of intellectual property rights, by the HYMAX or its Staff, or where it would be contrary to, or prohibited by law for the HYMAX to limit its liability, or unlawful for the HYMAX to attempt to do so.

18. BREACH AND TERMINATION

18.1. Should either Party (hereinafter referred to as the "**Defaulting Party**") commit a material breach, then the other Party (hereinafter referred to as the "**Aggrieved Party**"), shall be entitled to:

18.1.1. suspend its obligations;

18.1.2. sue for immediate specific performance of any of the Defaulting Party's obligations under this Agreement; or

18.1.3. cancel the Agreement, in which case written notice of the cancellation shall be given to the Defaulting Party, and the cancellation shall take effect on the giving of the notice,

18.1.3.1. without prejudice to, and in addition to any other rights and remedies that the Aggrieved Party may have to claim damages.

18.2. **Material Breach.** A material breach shall occur if:

- 18.2.1. the Defaulting Party fails to pay any amount by the due date; and/or
- 18.2.2. the Defaulting Party breaches any material term of this Agreement and such breach is incapable of remedy or, if the breach is remediable, it continues for a period of **14 (fourteen) days** after written notice requiring the same to be remedied has been given to the Defaulting Party;
- 18.2.3. A winding-up order or resolution is made or passed;
- 18.2.4. is placed in provisional or final liquidation or under provisional or final receivership or administration or Business Rescue within the meaning of section 128(1)(f) of the Companies Act, 71 of 2008 or equivalent legislation in a foreign jurisdiction;
- 18.2.5. the Defaulting Party effects or attempt to effect a compromise or composition with its creditors;
- 18.2.6. the Defaulting Party ceases or threaten to cease to carry on its normal line of business or default or threatens to default in the payment of its liabilities generally, or commit any act or omission which would, in the case of an individual, be an act of insolvency in terms of section 8 of the Insolvency Act, 1936 (Act No. 24 of 1936) or equivalent legislation in a foreign jurisdiction; or
- 18.2.7. suspends, or threatens to suspend, payment of its debts or is *Financially Distressed* within the meaning of section 128(1)(f) of the Companies Act, 71 of 2008.

18.3. Effect of Termination

- 18.3.1. Without prejudice to any other rights and remedies set out in this Agreement, on termination of this Agreement for any reason whatsoever, all amounts due and payable, including unamortised expenses and reasonable costs incurred as a consequence of the termination, and all amounts for Services rendered prior to termination shall become due and payable even if they have not been invoiced. Such amounts may not be withheld for any reason other than as required by law.
- 18.3.2. Upon the termination, cancellation or expiry of this Agreement:
 - 18.3.2.1. the provision of all Services by HYMAX shall forthwith cease; and
 - 18.3.2.2. the Receiving Party will deliver to the Disclosing Party, or at the Disclosing Party's option, destroy and procure the delivery of or destruction of all originals or copies of Confidential Information in its possession or under its control,. The Receiving Party shall not be required to return, destroy or delete Confidential Information to the extent that it is required to retain such Confidential Information by law or to satisfy the rules and regulations of a regulatory body to which the Receiving Party is subject. For the avoidance of doubt, the obligations of confidentiality contained in this Agreement will continue to apply to such retained Confidential Information.
- 18.3.3. Any termination hereunder shall not release either Party from any liability that, as of the date of termination had already accrued or is attributable to a period prior to termination, nor shall termination preclude either Party from pursuing any rights or remedies it may have under applicable law with respect to a breach of this Agreement.
- 18.3.4. All provisions which are intended to endure beyond termination including but not limited to confidentiality, intellectual property, limitation of liability, disclaimers of warranties, and consequences of termination, dispute resolution and governing law shall survive termination of this Agreement.

18.4. Undue Hardship

- 18.4.1.1. If the application of any of the provisions of this Agreement should result in any undue hardship for either Party, the affected Party shall be entitled to require the unaffected Party to renegotiate those terms and conditions of the Agreement related to such hardship, in which case the Parties shall be obliged to negotiate in good faith to address and overcome such undue hardship for the affected Party. If the Parties are unable to address or overcome the undue hardship within a reasonable time after the commencement of such negotiations, the affected Party shall be entitled to terminate the Schedule of Services on **90 (ninety) days** written notice. Such termination shall be without prejudice to the rights of the Parties in respect of any material breach of this Agreement occurring prior to such termination.

18.5. Impossibility of Performance

- 18.5.1.1. In the event that HYMAX is prevented from using any HYMAX Intellectual Property necessary to supply the Services, or if any other grounds arise making it objectively impossible for HYMAX to supply the Services to a Client under a Schedule of Services, the applicable Schedule of Services shall terminate with immediate effect on written notice to the Client, and the HYMAX shall refund to the Client any Fees paid in advance by it to the HYMAX in respect of the Schedule of Services.

19. DISPUTE RESOLUTION

- 19.1. In the event of a dispute arising in terms of this Agreement, the Parties shall firstly submit such dispute to their respective executives or authorised representatives for purpose of resolution. Should the executives or authorised representatives of the Parties fail to resolve the dispute referred to them within 10 (ten) Business Days, the Parties agree to attempt to resolve the dispute by mediation;
- 19.2. The Parties shall, by agreement to be reached within 10 (ten) Business Days following the decision of the Parties to refer the dispute to mediation, appoint an expert to act as a mediator, and not as an arbitrator, to mediate in the resolution of the dispute. Should the Parties not be able to agree on the mediator, then the mediator shall be selected by the chairman for the time being of AFSA. Such mediation shall be held in English, in Sandton, and in accordance with the rules determined by the mediator and the timeframes agreed to by the Parties and the mediator;
- 19.3. In the event that the Parties fail to resolve the dispute by way of mediation then that dispute shall be submitted to a court of competent jurisdiction.

20. DOMICILIA AND NOTICES

- 20.1. **Addresses.** The Parties select as their respective *domicilia citandi et executandi* the physical addresses set out on the cover sheet. Likewise the Parties choose all the addresses set out on the cover sheet for the purposes of giving or sending any other notice provided for or required hereunder, or such other address or fax number as may be substituted by notice given as herein required.
- 20.2. **Change of Address.** Either Party may give written notice to the other, change its domicilium to any other physical address in the Republic of South Africa and its fax number to any other South African number, provided that such change shall take effect fourteen (14) days after delivery of such written notice.
- 20.3. **Deemed Receipt.** Any notice to be given by either Party to the other shall be deemed to have been duly received by the other Party –
- 20.3.1. if addressed to the addressee at its domicilium and posted by pre-paid registered post on the 10th day after the date of posting thereof, or
- 20.3.2. if delivered to the addressee's domicilium by hand to a responsible person apparently in charge of the addressee's premises, during Business Hours on a Business Day, on the date of delivery thereof, or
- 20.3.3. if sent by fax to the addressee on the first Business Day following the date of sending thereof.
- 20.4. **Use of email.** The Parties record that whilst they may correspond via email during the currency of this Agreement for operational reasons, no formal notice required in terms of this Agreement, may be given via email, save where a legal notice is sent electronically and also delivered by hand to a responsible person.
- 20.5. It is recorded that nothing in this clause shall operate so as to invalidate the giving or receipt of any written notice which is actually received by the addressee other than by a method referred to in this clause.

21. FORCE MAJEURE

- 21.1. If any Party is delayed in performing or fails to perform any of its obligations under this Agreement as a consequence of a force majeure event, provided that the affected Party complies with this clause, then those obligations shall be deemed to have been suspended to the extent that and for so long as the affected Party is so prevented from fulfilling them and the corresponding obligations of the unaffected Party shall be suspended to the corresponding extent;
- 21.2. A "force majeure event" means any event or circumstances, or combination of events or circumstances, occurring on or after the Signature Date, the occurrence of which is beyond the reasonable control (directly or indirectly) of, and could not have been avoided by steps which might reasonably be expected to have been taken by the affected Party acting as a reasonable and prudent party. Without prejudice to the generality of the foregoing, such events or circumstances shall include:
- 21.2.1. an act of nature, act of public enemy, act or threat of terrorism, war, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, explosions, lightning, fire, flood, storm, drought, earthquake or extreme weather;
- 21.2.2. governmental restraint or other legislation, by-law, regulation or directive (such restraint, Act, other legislation, by-law or directive arising or coming into effect after the Signature Date hereof) of any authority having jurisdiction over such Party or any inability to obtain or cancellation of any consent, approval or licence rendering it unlawful for such Party to comply with its obligations hereunder; and
- 21.2.3. strikes, lockout, work stoppage or other industrial action or disturbance by workers or employees irrespective of whose employees are involved.
- 21.3. During the continuance of a force majeure event, the affected Party shall:

21.3.1. As soon as reasonably practicable after the start of the force majeure event, but no later than **30 (thirty) days** from its start, give written notice of the occurrence of the force majeure event to the other Party, such notice including information about the circumstances, the likely duration of such circumstances (if known), the extent to which the Party giving such notice shall be prevented from or impeded in carrying out any of its obligations under this Agreement and a statement of the steps necessary to remedy such occurrence; and

21.3.2. Take all reasonable steps to remedy the force majeure event and to minimize the effect of such circumstances upon the performance of its obligations under this Agreement.

21.4. If the force majeure in question prevails for a continuous period of **30 (thirty) days** the unaffected Party shall be entitled to, but is not obliged to, terminate this Agreement without incurring any liability towards the affected Party, at the end of **5 (five) days'** written notice to this effect given to the affected Party.

22. NON – SOLICITATION

22.1. The Client shall not during the currency of the Agreement and for a period of **12 (twelve) months** following the termination thereof directly or indirectly solicit, engage, employ or offer employment to any Staff member of HYMAX who was involved in the implementation or execution of the Agreement, and shall not engage, employ or contract in any manner with any such Staff.

23. DATA PROTECTION

23.1. Notwithstanding any other provision in this Agreement, the Client acknowledges that, for HYMAX to provide the Services, the Client's Data may be:

23.1.1. held on a variety of systems, networks and facilities worldwide including systems and databases used by HYMAX help desks, service desks and/or network management centres used for providing the Service/s and/or used for billing, sales, technical, commercial and/or procurement purposes

23.1.2. located, hosted, managed, accessed or transferred worldwide; and

23.1.3. provided or transferred by HYMAX to any subcontractor or supplier worldwide to the extent necessary to allow that subcontractor or supplier to perform its obligations in respect of the Service/s.

23.2. The Client undertakes to advise HYMAX what Personal Data, if any, is included in the Data provided by the Client ("**Client Personal Data**").

23.3. HYMAX shall comply with any Data Protection Laws applicable to it in its Processing of Client Personal Data under or by virtue of this Agreement.

23.4. HYMAX will only Process Client Personal Data to the extent necessary to provide the Services in accordance with this Agreement and will implement and take appropriate and reasonable technical and organisational measures, in accordance with its security policies as amended from time to time, to protect Client Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access of Client Personal Data transferred outside of South Africa, including to subcontractors or suppliers where required to provide the Services.

23.5. The Client shall provide sufficient notice and obtain sufficient consent and authorisation, under any applicable laws, from any relevant data subject (as defined in terms of Data Protection Laws) to permit the Processing of any Client Personal Data by HYMAX, its subcontractors or suppliers as provided for in this Agreement

23.6. The Client agrees that HYMAX, to the extent permitted by law, will not be liable for any complaint, claim or action brought by a data subject (as defined in terms of Data Protection Laws) arising from any action or omission by HYMAX to the extent that such action or omission:

23.6.1. resulted from any failure by the Client to comply with this clause 25; or

23.6.2. resulted from HYMAX complying with any instructions of Client or acting on behalf of the Client in accordance with those instructions,

and the Client shall indemnify, hold harmless and defend HYMAX from and against any such claims or actions brought against HYMAX;

23.7. In the event of any unauthorised use of the Client's Data, which is or is reasonably likely to constitute a breach of this clause, HYMAX shall, immediately notify the Client in writing. To the extent the Data Protection Laws require that an individual or authority be notified of a Data Breach, HYMAX shall at the Client's request and subject to the Client's prior approval of the content, form and timing, provide any notices to such an individual or governmental authority containing the information as mandated by the Data Protection Laws. HYMAX shall provide remediation services and other reasonable assistance to individuals impacted by the Data Breach directly or through a third party as required under the Data Protection Laws, or required by governmental authorities, or agreed by the Parties in writing. Upon Client's request, HYMAX shall cooperate and provide the Client with information about the nature, circumstances and

causes of the event at issue. HYMAX will take all necessary actions to prevent further losses and otherwise limit the consequences of the event at issue.

23.8. At any time during the term of this Agreement at the Client's written request or upon the termination or expiration of this Agreement for any reason, HYMAX shall promptly return to the Client all copies, whether in written, electronic or other form or media, of Client Personal Data in its possession, or securely dispose of all such copies, and certify in writing to the Client that such Client Personal Data has been returned to Client or disposed of securely. HYMAX shall comply with all reasonable directions provided by Client with respect to the return or disposal of Client Personal Data.

23.9. HYMAX indemnifies the Client and holds it harmless against any and all direct claims or causes of action for loss or damage, brought against, or any direct loss, expense, damages or costs suffered or incurred by the Client as a result of any breach by HYMAX of its obligations set out in this clause.

24. ASSIGNMENT AND SUB-CONTRACTING

24.1. **No Assignment.** Neither Party shall be entitled to cede, assign, delegate or otherwise transfer the benefit or burden of all or any part of this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

24.2. Notwithstanding the foregoing, HYMAX may cede any or all of its rights in terms of this Agreement to an Affiliate without the Client's consent, provided that it makes the Client aware of such an occurrence as soon as practicably possible after such an occurrence. For the avoidance of doubt, some and not all of such rights and obligations may be ceded and delegated to any such Affiliate at any time during the term of this Agreement.

24.3. **Sub-contractors.** HYMAX may sub-contract its obligations under this Agreement to third parties, provided that in such event HYMAX shall remain liable for the performance by such subcontractor of HYMAX's obligations in terms of this Agreement.

25. RELATIONSHIP AND DUTY OF GOOD FAITH

25.1. **No temporary employment service.** Nothing in this Agreement shall be construed as constituting a temporary employment service as contemplated in section 198 of the Labour Relations Act, 1995.

25.2. **Good Faith.** The Parties shall at all times owe each other a duty of good faith and shall, in all dealings with each other and in respect of the provision of the Services, act according to such standard.

25.3. **No authority.** Nothing in this Agreement shall be construed as creating a legal partnership between the Parties and neither Party shall have any authority to incur any liability or obligation on behalf of the other or to pledge or bind the credit of the other Party.

26. ANTI-CORRUPTION

26.1. Neither Party shall engage in any unlawful trade practices or any other practices that are in violation of the Anti-Corruption Laws in connection with any actions or activities associated with this Agreement or in connection with the relationship between the Parties.

26.2. Each Party shall ensure that neither it nor its subcontractors and agents: either directly or indirectly, seek, receive, accept, give, offer, agree or promise to give any money, facilitation payment, or other thing of value from or to anyone (including but not limited to government or corporate officials or agents) as an improper inducement or reward for or otherwise on account of favourable action or forbearance from action or the exercise of influence; or fail to establish appropriate safeguards to protect against such prohibited actions.

26.3. Each Party shall, upon request from the other Party, provide evidence of the steps being taken to avoid prohibited actions, including the establishment of policies, practices, and/or business controls with respect to these laws.

26.4. The offending Party shall indemnify, keep indemnified and hold harmless the other Party and its directors, officers, employees, consultants and agents from and against all losses, damages, costs (including but not limited to legal costs and disbursements) arising from or incurred by reason of the offending Party's, or any Staff's breach of the Anti-Corruption Laws.

26.5. The provisions of this clause 26 as well as any other clauses in relation thereto shall survive the termination of this Agreement for any reason whatsoever.

27. CODE OF CONDUCT

27.1. The Parties agree to:

27.1.1. act at all times in a fair, honest and reputable manner and to ensure that all of its employees also act in such a manner;

- 27.1.2. avoid deceptive, misleading or unethical practices that are or might be detrimental to itself and the other Party;
- 27.1.3. refrain from making any false or misleading representation with regards to itself or the other party;
- 27.1.4. refrain from engaging in any act or omission that might adversely affect, or damage the other Party's good name, brand, goodwill and/or reputation.

28. GENERAL

- 28.1. **Survival of terms.** The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this. Notwithstanding termination of this Agreement any clause which, from the context, contemplates ongoing rights and obligations of the Parties, shall survive such termination and continue to be of full force and effect.
- 28.2. **Non-exclusivity.** Nothing in this Agreement shall be construed as precluding or limiting in any way the right of HYMAX from supplying services of whatsoever nature to other clients.
- 28.3. **Entire Agreement.** This Agreement and the documents, records or attachments referred to herein or therein, constitute the entire agreement between the Client and HYMAX in respect of the subject matter hereof, and supersedes all previous Agreements in respect thereof. No variation, inclusive of this clause 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. 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, lawful, and enforceable. If any term or condition held to be invalid, unlawful, or unenforceable is capable of amendment to render it valid, lawful, or enforceable the Parties agree to negotiate an amendment to remove the invalidity, unlawfulness, or unenforceability.
- 28.4. **Waiver.** No granting of time or forbearance shall be or be deemed to be a waiver of any term or condition of this Agreement and no waiver of any breach shall operate a waiver of any continuing or subsequent breach.
- 28.5. **Applicable Law.** This Agreement shall be governed and construed according to **the laws of the Republic of South Africa**.
- 28.6. **Jurisdiction.** Subject to clause 19, the Parties hereto hereby consent and submit to the jurisdiction of **Gauteng Local Division of the High Court of South Africa, Johannesburg**, in any Dispute arising from or in connection with this Agreement.
- 28.7. **Certificate of indebtedness.** A certificate of indebtedness signed by any director or manager of HYMAX, whose authority or appointment it shall not be necessary to prove, in respect of any indebtedness of the Client in terms of this Agreement, shall be *prima facie* evidence of the Client's indebtedness to HYMAX.
- 28.8. **Publicity.** Neither Party shall make or issue any formal or informal announcement, advertisement or statement to the press in connection with this Agreement or otherwise disclose the existence of this Agreement or the subject matter thereof to any other person, other than a professional advisor or its Staff involved in the provision of the Services, without the prior written consent of the other Party, provided that:-
 - 28.8.1. HYMAX may cite the Client as one of its clients in its accounting, marketing and associated material, and
 - 28.8.2. the Client may cite HYMAX as one of its service providers in its accounting, marketing and associated material.
- 28.9. **Costs.** Each Party shall bear and pay its own fees and costs of and incidental to the negotiation, drafting, preparation and execution of this Agreement.

ANNEXURE 1 - INDEX OF ANNEXURES AND SERVICE DEFINITIONS

This Agreement contains the following additional Annexures, Service Definitions and related documents.

Please mark applicable Annexures and Service Definitions with an "X"

INDEX

Please tick if applicable	Annexure No	Description
	Annexure 1	This Index is of Schedules and Service Definitions
	Annexure 2	Service Level Agreement
	Annexure 3	Support Procedure
	Annexure 4	Service Definitions

ANNEXURE 2 - SERVICE LEVEL AGREEMENT (SLA)

HYMAX Objective: HYMAX will use its reasonable endeavours to achieve the delivery, availability, restoration time and network performance service levels, applicable to the Services as defined below. In the event that HYMAX fails to achieve this, the Client may claim service credits in accordance with this SLA. These credits will be based on the Fees applicable for the Services in respect of which the service level failure occurred.

1. Service Description

1.1. HYMAX Services and their descriptions are as follows:

- 1.1.1. **Metro E Access and Metro E Core Networks** – The Metro Ethernet and the Metro Ethernet core network is based on the Ethernet standard. It is used as a metropolitan access network to connect subscribers and businesses to larger networks or the Internet. Businesses can also use the Metro Ethernet to connect branch offices to their Intranet.
- 1.1.2. **Local / International Internet Transit** – Internet Transit or also called Internet bandwidth is the transmission of data from your network to other locations on the Internet. The amount of Internet Transit that you get is the speed of your connection to the Internet such as 100Mbps, 1,000Mbps or 10,000Mbps. The Internet is built by connecting network to networks on a worldwide grid that enables you to transfer various kinds of data such as voice data, video or just to view this web page.
- 1.1.3. **National / International MPLS** - is a mechanism in high-performance telecommunications networks which directs and carries data from one network node to the next. MPLS makes it easy to create "virtual links" between distant nodes. It can encapsulate packets of various network protocols.

2. Availability

2.1. HYMAX undertakes the delivery of monthly availability to the HYMAX core network services. These services include:

- 2.1.1. Metro E Access and Metro E Core Network
- 2.1.2. Local Internet Transit
- 2.1.3. International Internet Transit
- 2.1.4. National MPLS
- 2.1.5. International MPLS

2.2. HYMAX will count downtime (unavailability of service) accumulated at any period of a month (total downtime – scheduled downtime = site downtime (excluding restoration)), by Service, per minute, for each month. Such calculations will only be measured when the cause of the network downtime is a direct result of the HYMAX equipment or core network service component failures (excluding last mile services), node to node.

3. Availability Undertakings per Service

3.1. Availability of the network "node to node" undertaken and committed by HYMAX measured over a calendar month will be as follows:

Name of Service	Service Hours	Availability	Downtime
Metro E Access Core Ring	24X7	99.90%	40 Min
Metro E Access last mile (spur)	24X7	99.00%	7 Hrs
Metro E Access with Wireless backup	24X7	99.90%	40 Min
Local Internet Transit	24X7	99.80%	1.34 Hrs
International Internet Transit (No Restoration)	24X7	99.50%	3.34 Hrs
International Internet Transit (With Restoration)	24X7	99.90%	40 Min
National MPLS	24X7	99.90%	40 Min
International MPLS	24X7	99.90%	40 Min

4. Service Credits

- 4.1. If the cumulative average monthly downtime, measured over a three month period, exceeds the stipulated downtime thresholds, then the Client may claim service credits as shown below in the Service Level Availability undertaking and compensation:

Cumulative Unavailability per month	Service Level Credit as % of Monthly Recurring Charge (MRC) of Failed Service
00:00:01 – Min Service Level	No Credit
Min Service Level – 02:00:00	5.00%
02:00:01 – 03:59:99	7.50%
04:00:01 – 05:59:99	10.00%
06:00:01 – 07:59:99	12.50%
08:00:01 or greater	15.00%

- 4.2. Downtime is calculated from when a qualifying incident is logged by the Client and allocated a problem ticket number by the HYMAX SMC/support centre, to the time the incident is cleared.
- 4.3. HYMAX will inform the Client representative when the incident is resolved.
- 4.4. The Client will have a 60 minute period to dispute the resolution of the incident, after which time HYMAX will close the incident.

5. General Exclusions

- 5.1. HYMAX shall utilise the service level data available on its problem logging system and shall determine any Service Level Credits due to the Client in consultation with the Client.
- 5.2. If the Client does not provide access, or unreasonably delays providing access permission to HYMAX or its gents to repair the Service.
- 5.3. During a trial period.
- 5.4. Due to a Relief Event.

6. Service Reliability

- 6.1. Due to the nature of HYMAX's network, and its reliability on last mile providers such as Telkom and Neotel, any issues generated by last mile services fall outside the control of HYMAX. However, HYMAX will manage last mile service issues on a reasonable endeavours basis with the equivalent last mile provider to ensure quick resolution of any issues reported by either the Client or the last mile vendor that relate to the use of the HYMAX network.
- 6.2. Where last mile providers are being used, HYMAX will extend the SLA, to the Client. This excludes the Dark Fibre provided and owned by HYMAX. The Dark Fibre will be governed by the HYMAX SLA.

7. Service Level Performance Targets

- 7.1. The following table includes HYMAX network performance targets, against which performance of the Services will be measured on an ongoing basis. The performance targets relate to performance on the HYMAX core network, from node to node and exclude third party or last mile services that do not form part of the core network or Services.
- 7.2. HYMAX does not provide service guarantees on these parameters, but will endeavour to ensure that these targets are met on an ongoing basis. They include:
- 7.2.1. National Core Router to National Core Router
- 7.2.2. National Core Router to International Core Router
- 7.2.3. Metro E Node to Node

7.3. Service Level Performance Targets

Core Network Measurement	Latency	Packet Loss
JHB-CPT	50 ms	0.005
JHB-DBN	40 ms	0.005
JHB-PE	50 ms	0.005
JHB-London	200 ms	0.005
CPT-London	170 ms	0.005
JHB Metro Node to Node	10 ms	0.005
CPT Metro Node to Node	10 ms	0.005
JHB Metro Node to Teraco	10 ms	0.005
CPT Metro Node to Teraco (CPT)	10 ms	0.005

8. Service Reporting

8.1. General Reporting

Availability and performance reports will be generated by HYMAX for the Client on a scheduled basis to ensure transparency from HYMAX's service delivery and to ensure the Client is receiving agreed service levels.

ANNEXURE 3 - SUPPORT PROCEDURE

1. The Service Management Centre (SMC) is Hymax SA (Pty) Ltd's (HYMAX) command centre for the provision of the services and management of the client data and voice network, including SDWAN.
2. Any and all support services, request for changes and new service requests are being delivered from the Service management centre including but not limited to:
 - 2.1. Enterprise networking
 - 2.2. MPLS
 - 2.3. Wireless/Microwave
 - 2.4. SDWAN
 - 2.5. LAN
 - 2.6. Wired and WiFi
 - 2.7. Security
 - 2.8. Firewall Management
 - 2.9. Voice
 - 2.10. MiCloud
 - 2.11. Mitel PBX
 - 2.12. SIP connectivity
 - 2.13. Full management and monitoring of last mile connectivity, WAN Infrastructure including SDWAN, LAN devices, WiFi,
3. **Hours of operation.** The HYMAX Service Management Centre (SMC) is available on a 24 x 7 x 365 basis.
4. **Call logging methods.** Clients can log a call via telephone or e-mail on the details below:
5. **Electronic mail:** support@eoh-ns.co.za.

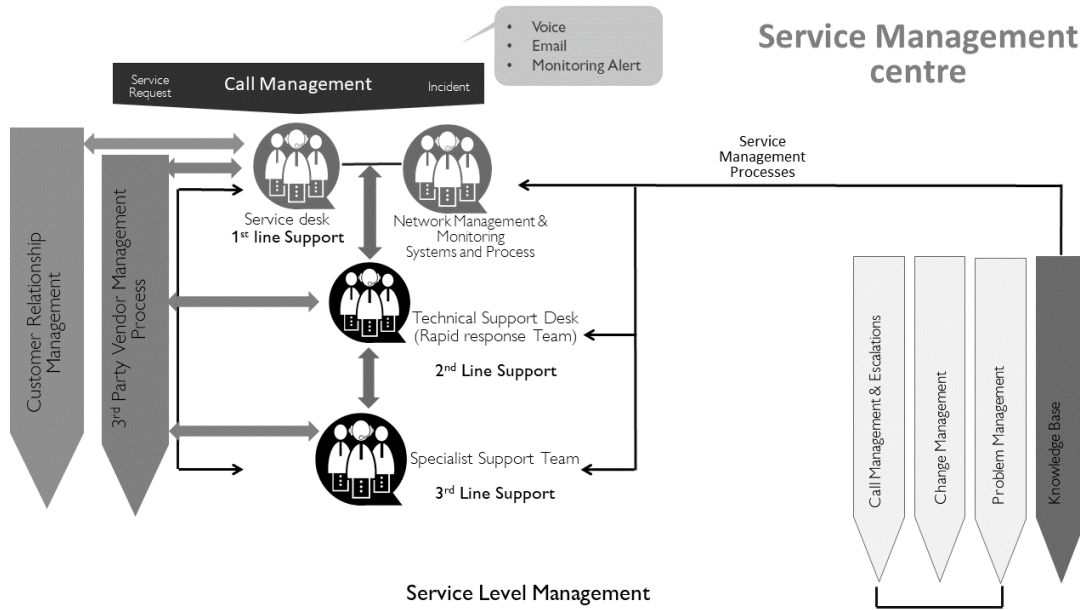
Every mail sent will automatically generate a confirmation ticket with a reference number.
6. **SMC / NOC support telephone no:** 08600 HYMAX (08600 364 67)
 - 6.1. A reference number will be supplied telephonically and again via e-mail once logged in the system.
 - 6.2. Only authorized technical contacts, as per the list submitted in the administrative pack, may log a call with the SMC. It is the customer's responsibility to ensure that HYMAX is updated with any new authorised users as well as users that may have left the company. All user additions and changes should be communicated to support@eoh-ns.co.za
7. **Structure and Functions**
 - 7.1. **Proactive Network Monitoring Team.** The pro-active network monitoring team is the team responsible for the pro-active monitoring and management of the network infrastructure for the detection of device down status, alarms, triggers and thresholds. The team is also responsible for all last mile related service requests, problems or other issues, and the tickets relating thereto.
 - 7.2. **Service Management Centre (SMC).** The SMC is responsible for the registration of all telephonic and e-mail support requests and is the 1st level support arm that aims to remedy customer support requests as quickly as possible within the service level timelines. To ensure effective change control security, SMC engineers have no access to change any configuration on all network devices, but via read access are able to effectively troubleshoot incidents and problems with the aim of restoring service in the shortest timeframe possible.
 - 7.3. **2nd Level Support.** The 2nd Level support function associated with the SMC consists of specialized engineers responsible for higher level incidents. In general, when the SMC are unable to resolve an incident within the severity level allocated time frame the call/ticket is escalated to 2nd level support. 2nd level support engineers have full access

to all networking elements, devices and configurations and are able to resolve almost any hardware and/or software related issues.

- 7.4. **3rd Level Support.** Focuses on advanced support, core network management, core failures and are responsible for receiving, restoring and resolving more complex service requests, incidents, problems, other issues, and the tickets relating thereto, escalated from 2nd Level Support.

8. One Stop Service Management

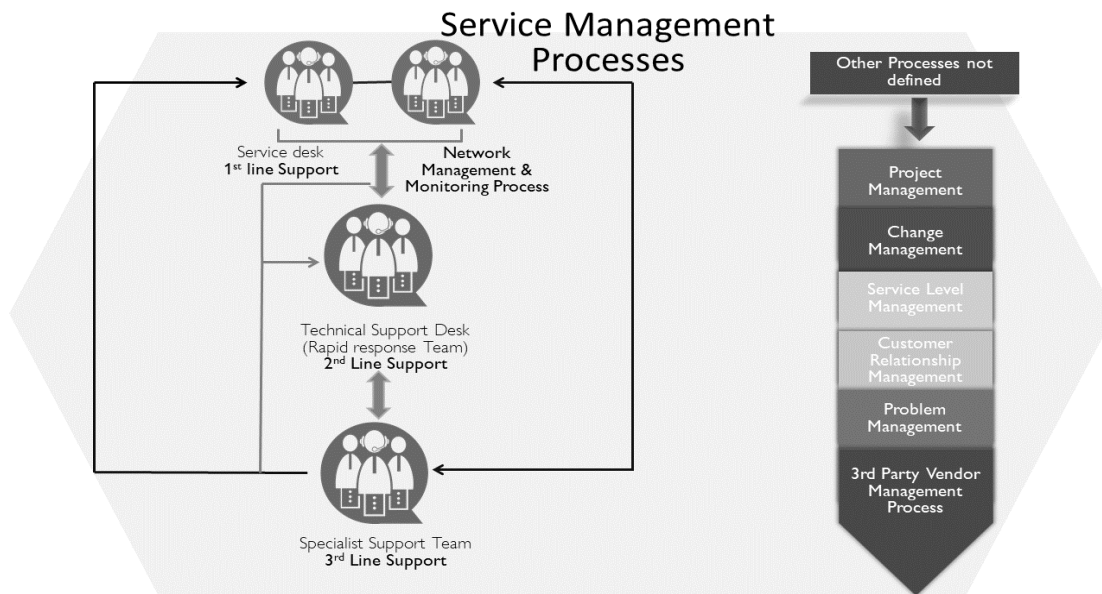
- 8.1. The objective of the HYMAX Service Delivery Methodology is to provide customers with Information Technology services that support all customer’s business processes as well as respond to evolving business requirements, growth in business and changes in technology with relative ease. Services are tailored to align with the unique business requirements of each client.



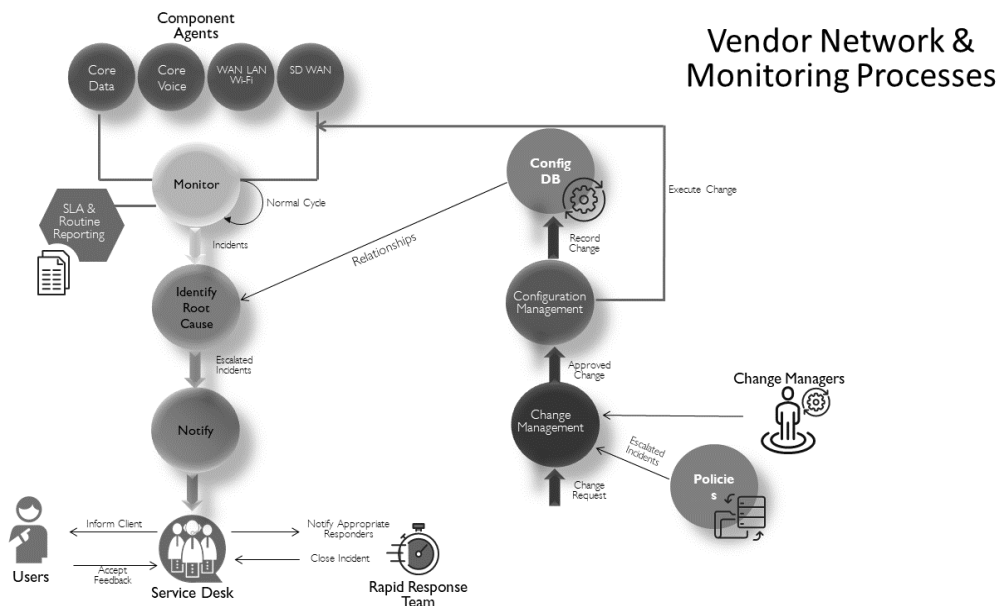
9. The Service Management Centre

- 9.1. The Service Management Centre (SMC) is the heart of the HYMAX service operation providing a range of flexible and customizable infrastructure management solutions using tools, best practice processes and methodologies. These include:

- 9.1.1. A single point of contact for service desk management
- 9.1.2. Wide Area Network monitoring, administration and management including SDWAN
- 9.1.3. Local Area Network monitoring and management
- 9.1.4. Voice / PBX Network monitoring, administration and management
- 9.1.5. Vender Management and Change Control



10. SMC COE Processes



10.1. The above shows the high-level process model of the SMC Centre of Excellence (“COE”).

10.2. It is specifically recorded that the unification of all technology silos is under a single monitoring system. All functions beyond the monitoring process are also common across all silos. This consolidation of Event Management enables a more straightforward task.

10.3. Once the root cause is remedied, HYMAX's final task is to route the remedy through the standard Change and Configuration Management Processes, regardless of the urgency of the response. Failure to enforce the Change Management and Configuration Management processes will result in inaccurate configuration information and overall process disruptions which HYMAX aims to avoid at all times as such disruptions are contrary to the basic goals of the SMC COE.

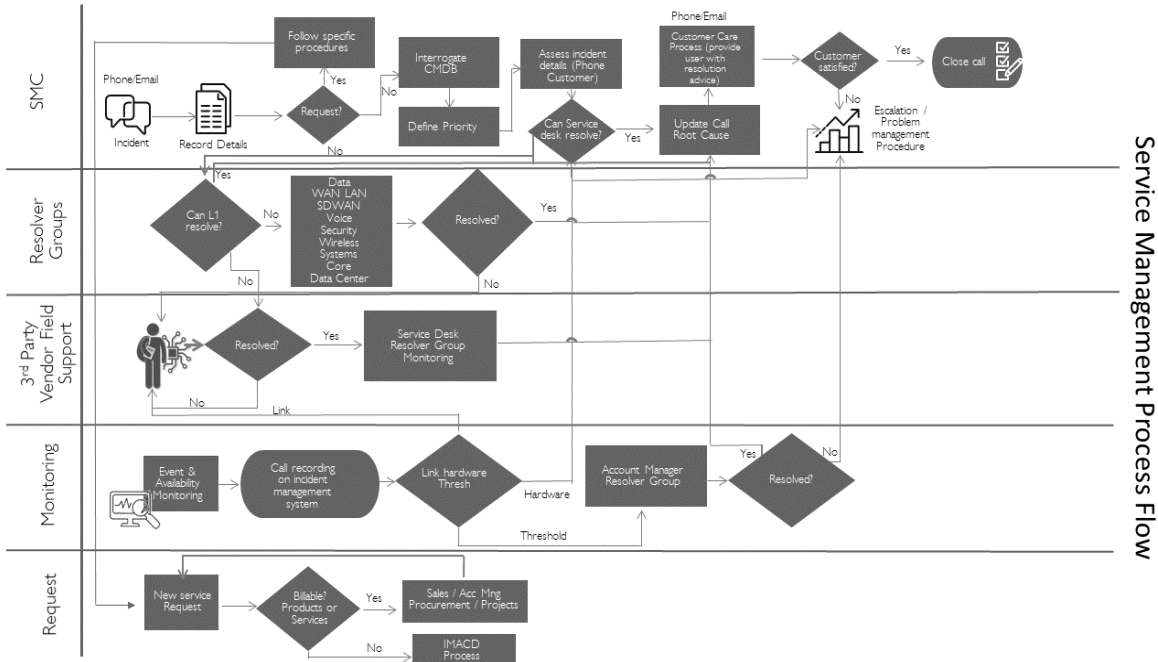
10.4. HYMAX aims to continuously review its infrastructure management capabilities to remain abreast with new and evolving Tools and IT business solutions.

11. The SMC Incident Management Process

11.1 The objective of the Incident Management Procedure is to restore normal operations as quickly as possible with the least possible impact on the client and the client's business. *Table* below indicates the service desk tiers that carry out the various activities.

ACTIVITY	1 st Level Support	2 nd Level Support	3 rd Level Support	4 th Level Support
Incident detection and recording	✓			✓
Classification, prioritizing and initial Support	✓			✓
Investigation and diagnosis	✓	✓	✓	✓
Escalation	✓	✓		✓
Restoring and Resolving	✓	✓	✓	✓
Incident closure	✓	✓	✓	✓
Ownership / communication	✓	✓	✓	✓

The Procedure is illustrated below.



12. Call Severity

12.1. All logged calls are categorized as either an Incident or a Service Request and are assigned a severity level rating based on the impact of that problem. Tables below defines the severity levels and is used by SMC support when categorizing a call.

12.2. Time measurement start. In the case of a link failure, this starts at the time when the monitoring system reports it to be unavailable. In the case a client reported call, the time when the SMC receives the call from the client.

12.3. Time measurement end. In the case of a link failure the time when the monitoring system reports it to be available again after a failure. In the case of a client reported call, the time when the HYMAX SMC resolves the call.

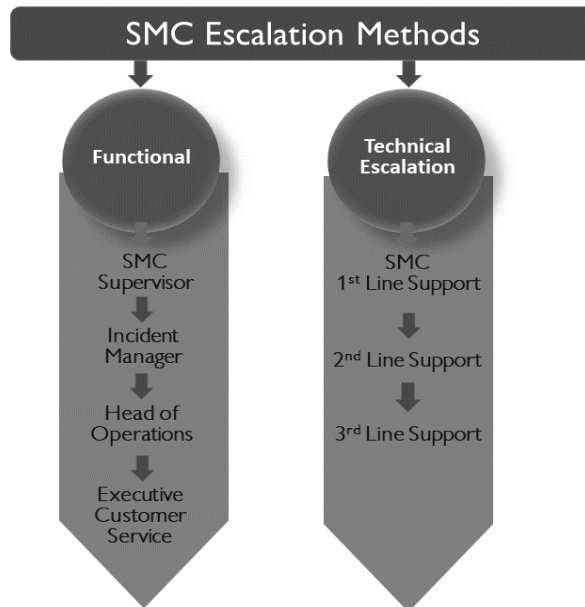
Data - Networking Communications

Call Type	Severity Name	Severity Level	Severity Description	Time to Resolve
Incident	Business Critical	1	Core Network Failure or Provider Edge Failure	2 hours
			Core IP Connect Network Equipment Failure	
			Local or International Internet connectivity Failure	
			Power Outage or Switch fabric failure at a data centre	
			Total Failure of any value-added service/product	
			Failure of THE CLIENT specific main/hosted VPN firewall	
Incident	High Impact	2	Slow connectivity to the Internet, data centre or across the VPN (MPLS and IP Connect)	4 hours
			Failure of customer edge firewall or rented CPE from HYMAX *excludes delivery time	
			APN failure	
			Degradation of value added or 3 rd party products or services	
			Loss of connectivity to a node due to access circuit failures *excludes Telco time to resolve	
Incident	Limited Impact	3	Single user cannot connect to APN	8 hours
			Isolated SIM, 3G card problems	
			User problems relating to value added services such as mail, mail filtering	
Service Request	No Impact	RFC	Client initiated changes	< 48 hours
			Domain management changes	
			Usage reports	

Call Type	Severity Name	Severity Level	Severity Description	Time to Respond	Time to Resolve
Incident	Business Critical	1	Client is unable to do business as a result of a complete or partial system failure. This has a major impact on the business operation. Initial telephonic support and or remote support will be provided within one hour.	1 Hour	4 hours
Incident	High Impact	2	The problem has high visibility and impacts the way the Client does business with their clients a result of partial system failure. The service is disrupted but not halted. System performance may be degraded or functionality limited. The problem is not visible to the Client.	2 Hours	8 hours
Incident	Limited Impact	3	A single user or small numbers of users are affected with or without a work around. The problem may affect the Client's efficiency but is not limited in visibility and does not prevent work from being completed.	4 Hours	24 hours
RFC	Low	4	All adds, changes and removes	8 Hours	48 Hours

13. Support Call Escalation

13.1. Subject to the severity of the call logged, calls are automatically escalated within the service desk management system and will follow 2 escalation paths namely functional and hierarchal as per figure 4.



14. Escalation Matrix

14.1. As per the times show in table 3, call co-ordinators will be notified when calls have not been closed (resolved) with the specified time frames. If these severity's times are not archived in table 3, the escalation table 3a for Data Services or table 3b for Voice Services can be used below.

Escalation Level	Support Tier	Severity	On Logging	50% SLA Time Passed	75% SLA Time Passed
1	SMC Supervisor	1			
		2			
		3			
		4			
		SR			
2	Incident Manager	1			
		2			
		3			
		4			
3	Head of Operations	1			
		2			
		3			
		4			
4	Executive Customer Service	1			
		2			
		3			
		4			

Data Services

Escalation Level	Position	Responsibility
Level 1	SMC Supervisor	Network Monitoring 3rd Party Management Infrastructure Management
Level 2	Incident Manager	Escalations from Level 1
Level 3	Head of Operations	Escalations from <u>Level 2</u> Core network failures
Level 4	Executive Client Service	Escalations from <u>Level 3</u> Core network failures

Voice/UC Services

Escalation Level	Position	Responsibility
Level 1	SMC Supervisor	Voice Monitoring 3rd Party Management Infrastructure Management
Level 2	SNR Operation Manager	Escalations from <u>Level 1</u>
Level 3	Head of Operations	Escalations from <u>Level 2</u> Voice network failures
Level 4	Executive Head: Client Service	Escalations from <u>Level 3</u> Voice network failures

15. Technical

15.1. As per table below, the high severity calls which are not being resolved will be escalated to more senior engineers.

Escalation Level	Support Tier	Severity	On Logging	50% SLA Time Passed	75% SLA Time Passed
1	SMC Supervisor	1			
		2			
		3			
		4			
		SR			
2	Incident Manager	1			
		2			
		3			
		4			
3	Head of Operations	1			
		2			
		3			
		4			
4	Executive Voice and Wireless	1			
		2			
		3			
		4			

16. Patch Management

16.1. Processes shall be established and implemented for vulnerability and patch management. The process shall ensure that all network devices managed by HYMAX within the environment are:

16.1.1. Firmware upgraded bi-annually (every 6 months)

16.1.2. Updated to stable releases which are generally N-1 (latest release – 1)

16.1.3. Documented and well understood by support staff

16.1.4. Executed in a manner applicable vendor-supplied tools on a regularly

16.1.5. Communicated schedule

16.2. Should OEM announce a vulnerability with a stable release, HYMAX will timeously apply a patch and/or upgrade to the next recommended stable firmware release

17. Network Change Control

17.1. In order to ensure a high level of quality of service and to avoid installations done without proper planning, **no ad hoc network changes or configurations will be dealt with during business hours, on weekends or public holidays.** All network changes must be approved via e-mail notifications and not just telephonically. The client is responsible for their own internal change control and communication of the impact of such changes within their own company.

17.2. HYMAX will endeavor to provide a < 48-hour notice period on all standard network maintenance changes required. Any emergency maintenance will not form part of this notice time frame.

17.3. Where the Client will be impacted by a change, the Client's change procedures will be adhered to. The Parties will work together and coordinate the change to fit in with the Client's change control procedure.

18. Notifications and Reporting

18.1. HYMAX monitors all circuits and devices for which it is responsible. Due to the fact that lines "flap", the monitoring software will only trigger an alert for "confirmed down status" after 5 minutes. The engineer will first conduct internal trouble shooting to confirm the source of the fault -power, telco or equipment related. The call is only logged with Telkom once confirmed and is then logged into the service management system.

ANNEXURE 4 - SERVICE DEFINITIONS