

## 1. MEANINGS OF CERTAIN WORDS AND PHRASES

- 1.1. Unless it appears differently from the context or under this clause 1, words, terms and phrases used in the Contract shall have the same meaning as the definitions set out in the Electronic Communications Act, 36 of 2005.
- 1.2. Words importing the singular shall include the plural and vice versa.
- 1.3. Words denoting persons shall include natural human beings, legal entities and unincorporated associations of persons, and vice versa.
- 1.4. The headings in these terms and conditions shall not affect their interpretation.
- 1.5. Unless inconsistent with the context, the words and phrases set out below shall mean as follows:
  - 1.5.1. **"Anticipatory Costs"** has the meaning as set out in clause 9.2.7;
  - 1.5.2. **"Activation Date"** means the date that a Service is configured and made available to the Customer.
  - 1.5.3. **"Applicable Law"** means any of the following, to the extent it applies to the provision of the Services by BareMetal and the use thereof by the Customer:
    - a) any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time. Without limiting the generality, statutes include the ECA, CPA and RICA;
    - b) the common law;
    - c) any binding court order, judgment or decree;
    - d) any applicable industry code, policy or standard enforceable by law;
    - e) any relevant direction, rule, pronouncement, policy or order that is given by a regulator.
  - 1.5.4. **"AUP"** means the BareMetal acceptable use policy, available at <https://www.BareMetal.co.za/pdf/AcceptableUsePolicy.pdf>
  - 1.5.5. **"Business Day"** means Monday to Friday, excluding Saturday, Sunday or public holiday as defined under the Public Holiday Act, 36 of 1994;
  - 1.5.6. **"Circuit(s)"** means the telecommunications circuit(s) provided by BareMetal (or on behalf of BareMetal by a duly licensed third-party), installed at the Customer's premise(s) at the addresses set out in the Contract. **"Excluded Circuits"** are circuits that the Customer has procured itself from a party other than BareMetal ;
  - 1.5.7. **"Connection Date"** means the date when BareMetal installs the Circuit at the Customer's premises;
  - 1.5.8. **"Consumer"** means a Customer who is a consumer as defined in the CPA. **"Individual Consumer"** means a Consumer who is a natural person – i.e. not a company;
  - 1.5.9. **"Contract"** means collectively, the documents with headings 'Subscriber Agreement', 'Quote' and 'General Terms and Conditions', together with any Product Terms, service level agreements and product rules concluded between Customer and BareMetal ;
  - 1.5.10. **"Charges"** means the amounts charged by BareMetal for Services as set out in clause 9.2 below, which charges are set out in a quote and/or Subscriber Agreement or as notified by BareMetal from time to time per the terms of the Contract;
  - 1.5.11. **"CPA"** means the Consumer Protection Act, 68 of 2008 and regulations published in terms thereof, as amended or replaced from time to time;
  - 1.5.12. **"Commencement date"** means the date when BareMetal has accepted and processed the Subscriber Agreement or notified the Customer that it has agreed to provide the Customer with the Services set out in a Subscriber Agreement;
  - 1.5.13. **"Customer"** means the person described in the Subscriber Agreement and where such description is not wholly accurate, as further described in any documentation provided to BareMetal according to the requirements of RICA;
  - 1.5.14. **"Due date"** means the date on which any amounts owed by Customer to BareMetal in respect of the Services become due and payable, and which is reflected on the invoice;
  - 1.5.15. **"ECA"** means the Electronic Communications Act 36 of 2005 and its regulations, as amended or replaced from time to time;
  - 1.5.16. **"Fixed Term Agreement"** refers to a Subscriber Agreement in terms of which the provision of Services is for a duration greater than one month;
  - 1.5.17. **"General Terms"** means these general terms and conditions without the Subscriber Agreement, Quote or the Product Terms, but including any addendum to these terms;
  - 1.5.18. **"ICASA"** means the Independent Communications Authority of South Africa and its successors;
  - 1.5.19. **"Initial Period"** means the number of months applicable to the Fixed Term Agreement and which for any avoidance of doubt will be limited in the case of a Consumer, to a maximum of 2 (two) years;
  - 1.5.20. **"Interest Rate"** means an annual rate equal to 5% above the prime lending rate charged by BareMetal's bankers, calculated daily and capitalized monthly;
  - 1.5.21. **"Office hours"** means 8h00 to 17h00 on Business Days;
  - 1.5.22. **"Parties"** means BareMetal and the Customer and **"Party"** means either BareMetal or Customer, as the context requires;
  - 1.5.23. **"Personal Data"** means all identifiable personal details conveyed to BareMetal by the Customer for lawful processing;
  - 1.5.24. **"Product Terms"** means the specific terms and conditions applicable to particular Services provided to the Customer.
  - 1.5.25. **"Renewal Period"** means a period of 12 (twelve) months, which period will start on the day following the last day of the Initial Period;
  - 1.5.26. **"RICA"** means the Regulation of Interception of Communication and Provision of Communication Regulated Information Act 70 of 2002, as amended/replaced from time to time;
  - 1.5.27. **"Services"** means the Services as listed in the Subscriber Agreement, and where applicable includes the Managed Service Equipment and the Circuit;
  - 1.5.28. **"Software"** means any computer program provided to Customer, either through BareMetal acting as a principal, agent or distributor of the software licensor. Software may be embedded into Managed Service Equipment, supplied as a stand-alone application, or accessed via the internet or other web browsing method.
  - 1.5.29. **"Subscriber Agreement"** means the document describing the Customer, the Services to be provided, and other administrative data;
  - 1.5.30. **"Subscriber Equipment"** means the equipment as defined in section 1 of the ECA, but excludes Managed Service Equipment;
  - 1.5.31. **"Managed Service Equipment"** means equipment managed by BareMetal in the provision of the Service;
  - 1.5.32. **"BareMetal"** means BareMetal Computer Traders (Pty) Ltd, Registration number 2011/112893/07, a private company incorporated in terms of the laws of the Republic of South Africa;
  - 1.5.33. **"BareMetal Networking"** the electronic communications network operated by BareMetal to render electronic communications services in terms of BareMetal's electronic communications network and services licenses. BareMetal Network includes Circuits that are self-provisioned by BareMetal under its licenses or procured by BareMetal from third-party licensees;
  - 1.5.34. **"BareMetal Portal"** any BareMetal approved extranet(s) or system(s) with web-based access (or a combination thereof) where Customer and its authorized employees, agents and representatives may access to, amongst other things and where applicable:
    - a) view measurement data of selected Services;
    - b) have access to control panels and management interfaces to provision, upgrade, downgrade, increase, decrease (in general to manage) the Services;
    - c) process termination of Services;
- 1.6. When several days are provided for between the happening of one event and another, the number of days must be calculated by:
  - 1.6.1. excluding the day on which the first such event occurs;
  - 1.6.2. including the day on or by which the second event is to occur; and
  - 1.6.3. Excluding any public holiday, Saturday or Sunday.
- 1.7. In the event of a conflict between a Subscriber Agreement, Product Terms or the General Terms, the conflict shall be resolved by applying the following order of preference:
  - 1.7.1. A Subscriber Agreement; thereafter
  - 1.7.2. Product Terms; thereafter
  - 1.7.3. General Terms.

## 2. NATURE OF THE GENERAL TERMS AND CONDITIONS

- 2.1. These General Terms govern the provision of all services and the relationship between Customer and BareMetal in general.
- 2.2. If BareMetal and Customer conclude multiple Subscriber Agreements, but only one set of General Terms, then that set of General Terms will apply to all Subscriber Agreements, regardless of whether the system generated contract numbers on the documents are not the same.
- 2.3. If BareMetal and Customer conclude multiple Subscriber Agreements, each with its version of General Terms, then the General Terms will apply only to the relevant Subscriber Agreement – as evidenced by the system generated contract number.

## 3. DURATION, RENEWAL AND TERMINATION FOR CONVENIENCE

- 3.1. **Commencement and duration of the Contract, billing start dates and renewal**
  - 3.1.1. The Contract will become binding on the Parties on the Commencement date and will continue to be binding on each Party up to the end of the Initial Period or any Renewal Period, unless this Contract is terminated earlier by either of the Parties for cause on the grounds set out in the Contract.
  - 3.1.2. In respect of a Service that does not involve the provision of a Circuit, or is provided over an Excluded Circuit, the Initial Period will commence on the Activation Date of such Service. In respect of each Circuit, the Initial Period for Services provided over that Circuit (whether bundled with the Circuit or not) will commence from the Activation Date. Where the Services require the provision of multiple Circuits, the Initial Period will begin on the Connection Date of the last Circuit.
  - 3.1.3. When services are bundled with a Circuit, the cost of the Circuit is the single most significant component of the bundled Service, and accordingly, Customer agrees that BareMetal will be entitled to charge Customer from the Connection Date, regardless of whether any bundled value-added services had been activated or not.
  - 3.1.4. If Customer is a juristic person then Customer must
    - a) give BareMetal written notice of its election not to renew the Contract at least 90 (ninety) days before the expiration of the Initial Period; or

- b) conclude a revised Subscriber Agreement,
- c) Failing which the agreement shall automatically renew for the Renewal Period.

**3.2. Cancellation or variation of the Services before the Connection / Activation date**

Where the Customer cancels or varies any of the BareMetal services before the Connection Date for any reason other than a breach on the part of BareMetal, BareMetal will have the right to charge the Customer Anticipatory Costs which BareMetal has incurred because of the cancellation or variation, which amount shall be payable by the Customer on demand.

**3.3. Termination of a Fixed Term Agreement by an Individual Consumer for no cause**

3.3.1. Where an Individual Consumer has concluded a Fixed Term Agreement, the Individual Consumer will have the right to terminate the Fixed Term Agreement, for no particular reason or cause, at any time, provided the Consumer gives BareMetal at least 20 (Twenty) Business days written notice of its election to terminate the Contract. Such termination will be subject to payment of a reasonable cancellation fee that will be determined and calculated at the time when the notice to terminate is given by the consumer, using the guidelines set out under section 14 and regulation 5(2) of the CPA.

3.3.2. On receipt of the termination notice BareMetal will advise the Individual Consumer of the amounts which are still owed to it, namely all the arrears amounts owing to BareMetal in terms of the Contract up to date of termination and the cancellation fee. The Individual Consumer will pay BareMetal such amounts by the Due Date.

**4. INSTALLATIONS AND PROVISION OF THE BAREMETAL SERVICES**

**4.1. Installation of Services, Managed Service Equipment, Subscriber Equipment and use of unauthorized devices**

4.1.1. Unless agreed to the contrary in a Subscriber Agreement, the BareMetal Service is exclusive of any required Subscriber Equipment. The Managed Service Equipment and where applicable the Subscriber Equipment will be either leased or sold to the Customer at the prices, fees or rates set out in the Subscriber Agreement.

4.1.2. Where Customer has agreed to purchase Subscriber Equipment from BareMetal, Customer shall not be entitled to withhold payment for the sale of Subscriber Equipment for trivial reasons.

4.1.3. In respect of the provision of electronic communications services, BareMetal shall install the Circuit and the Managed Service Equipment at the Customer's premises against payment of the relevant installation fee and deposit as set out in the Subscriber Agreement.

4.1.4. If the Customer requests that an installation be attended to after office hours, BareMetal may, if it can perform such after-hours work, charge an after-hours maintenance charge on a time-and-material basis as determined by BareMetal from time to time.

4.1.5. LAN cabling pricing is deemed to be budgetary unless a physical site survey has taken place to confirm cable routes.

4.1.6. If no conduit-pipes are available for BareMetal's use in any building where BareMetal must install a Service requiring conduit pipes, BareMetal may, at its discretion:

- a) refuse to provide the Service in that building or any part thereof until such conduit-pipes or other facilities have been so installed; or
- b) quote an installation cost in respect of the required conduit pipes, and if accepted by the Customer, install at the Customer's cost the required conduit pipes or other facilities.

4.1.7. BareMetal's duty to install the Circuit and the Managed Service Equipment or Subscriber Equipment will terminate once the Circuit and where applicable the Managed Service Equipment or Subscriber Equipment have been supplied, installed and the Customer can receive the Services.

4.1.8. Only Subscriber Equipment that has been type approved by ICASA may be used in conjunction with the BareMetal Service. Type approved equipment obtained from authorised dealers will have an ICASA type approved label affixed to the equipment and/or packaging.

4.1.9. If the Subscriber Equipment is modified, it may not be used in conjunction with the BareMetal Service until such time that ICASA has approved the modification.

4.1.10. BareMetal reserves the right to suspend or disconnect from the BareMetal Network any Subscriber Equipment that has not been approved by ICASA or that has been licensed or approved but has been modified without the approval of ICASA.

4.1.11. If the Customer is not the owner of the premises where the BareMetal Service and/or where applicable the Managed Service Equipment is to be installed, the Customer must before any installation by BareMetal, at its own cost and expense, obtain written permission from the owner of such premises for any such installation. The Customer indemnifies BareMetal against damages or claims resulting from the failure to obtain such permission including Anticipatory Costs which may have to be incurred by BareMetal should BareMetal have to remove any circuit and/or the selected Subscriber Equipment from the

premises.

4.1.12. The Customer must at its own cost and expense ensure that optimum environmental conditions as may be required for the proper management and/or functioning of the Circuit and Managed Service Equipment or Subscriber Equipment are provided, such as adequate power supply, ventilation, lighting and wall/rack space.

**4.2. Use of the Services, Managed Service Equipment and related equipment**

4.2.1. The provision of any Service to the Customer does not confer on the Customer any right to resell the Service unless the Customer has been granted a license or license exemption by ICASA and Customer has entered into a reseller agreement with BareMetal.

4.2.2. The service may not be used to:

- a) knowingly create, store or disseminate any illegal content;
- b) infringe on any third parties' intellectual property or copyright; and
- c) send unsolicited email.

4.2.3. For BareMetal to ensure the provision of the Service, to protect the integrity of the BareMetal Network or to deal with emergencies, the Customer must always whilst this Contract is in place:

- a) comply with any instructions issued by BareMetal which concern the Customer's use of the Services;
- b) provide BareMetal with all information relating to the Customer's use of the Services that BareMetal may reasonably require from time to time; and
- c) allow BareMetal free access to the Customer's premises during reasonable hours to install, inspect, maintain or remove the Circuit, Managed Service Equipment or Subscriber Equipment.

**4.3. Failure and unavailability of the Services, Managed Service Equipment or Subscriber Equipment obtained from BareMetal**

4.3.1. Customer recognizes that the Internet and data networks consist of multiple participating networks that are separately owned and not subject to BareMetal's control.

4.3.2. Because of the position set out in clause 4.3.1 above, BareMetal does not warrant that the BareMetal services will be operational on a 24 (twenty-four) hour 365 (three hundred and sixty-five) days per year basis.

4.3.3. Furthermore, BareMetal expressly advises, and the Customer acknowledges and accepts that the Subscriber Equipment is not manufactured by BareMetal, but by third parties. In most cases, BareMetal will not be able to open certain Subscriber Equipment or to test or operate the selected Subscriber Equipment to ensure that they are fit for purpose and/or are intact before they are handed to the Customer.

4.3.4. Considering the disclosures housed under clauses 4.3.1 - 4.3.3 BareMetal expressly stipulates and the Customer acknowledges that BareMetal cannot warrant or guarantee that the Services and/or the Subscriber Equipment will:

- a) be free of errors or interruptions;
- b) be available;
- c) be fit for any purpose;
- d) not infringe on any third-party rights;
- e) be secure and reliable,

Except where the Services, the Circuit and/or Subscriber Equipment are found to be defective and such defect has been solely caused by BareMetal under sections 54, 55 and 56 of the CPA, where applicable.

4.3.5. Considering the above disclosures, Customer agrees that it will not be allowed to:

- a) Withhold any amounts due and owing to BareMetal; or
- b) Deduct any monies, or
- c) Allege a breach of contract

in respect of any temporary unavailability of the Services, the Circuit or the Managed Service Equipment, except and to the degree that BareMetal is solely responsible for any such unavailability, or failure.

4.3.6. Notwithstanding the provisions of clause 4.3.4 above, BareMetal will use its best endeavors where BareMetal can do so to notify the Customer of any failure of, or interruption to the Services and/or Circuit and where applicable any required maintenance and repairs which may result from such failure, interruption or unavailability.

4.3.7. Where the Circuit, Managed Service Equipment or where relevant the Subscriber Equipment are defective, or faulty, then in such an event the Consumer's rights will be limited to those set out under clause 10.

**4.4. Theft and Loss of BareMetal Circuit, Managed Service Equipment and Subscriber Equipment provided by BareMetal**

4.4.1. Whenever any Circuit, Managed Service Equipment or Subscriber Equipment purchased from BareMetal has been delivered but is not yet paid for in full is lost, stolen or destroyed, the Customer must immediately notify BareMetal and any police officer at any police station in writing that the Circuit, Managed Service Equipment and or any other BareMetal equipment has been lost, stolen, misplaced or destroyed.

4.4.2. Risk in the loss, theft or damage of the Circuit, Managed Service Equipment and where relevant the Subscriber Equipment will pass to the Customer on the date of delivery to the Customer's premises. BareMetal reserves the right to hold the Customer liable for the full replacement cost of the Managed Service Equipment or the relevant Subscriber Equipment and or any other BareMetal equipment (and where the same equipment has been discontinued, then the full replacement cost of the most comparable available equipment).

**4.5. Maintenance of the Services and Managed Service Equipment**

4.5.1. Throughout the term of the Contract the Service, any Circuit or Managed Service Equipment used by the Customer will be deemed to be in good working order until BareMetal is advised otherwise.

4.5.2. Unless clauses 4.5.5 or 4.5.6 apply, or unless expressly stated to the

- contrary, the costs in respect of any repair and/or maintenance of the Circuit and the Service will be incurred and covered by BareMetal.
- 4.5.3. BareMetal will attend to faults reported by the Customer during Office hours and will apply its reasonable

Endeavors to have the affected Circuit and/or the Service restored in the shortest possible time.

- 4.5.4. The Customer is responsible for maintaining all Managed Service Equipment and Subscriber Equipment unless BareMetal has agreed to provide maintenance for the Managed Service Equipment, which will be charged out at the rate set out in the Subscriber Agreement.
- 4.5.5. If the Customer requests that a fault be attended to immediately and requires that repair work be carried out after office hours, BareMetal may, if it can perform such after-hours work, charge an after-hours maintenance charge on a time-and-material basis as determined by BareMetal from time to time.
- 4.5.6. If BareMetal determines that the fault reported by the Customer was caused by the Customer or by any Subscriber Equipment or by any other equipment that BareMetal has not agreed to cover, the Customer will be liable for payment of the applicable call-out charges, as determined by BareMetal from time to time.

## 5. USE OF SOFTWARE

- 5.1. The Customer shall use any Software provided to it by BareMetal only for the purposes for which it is intended.
- 5.2. The Customer shall not nor permit anyone else to reverse engineer, decompile, modify, tamper with, amend, enhance, copy, sell, lease, license, sub-license or otherwise deal with the software or any part, variation, modification, release or enhancement thereof or have any software or any program written or developed for it based on the Software.
- 5.3. All rights of whatever nature in and to the Software and all upgrades, updates, modifications and variations thereto from time to time, shall vest in BareMetal or its licensors and no rights in and to the software, its upgrades, updates, modifications and variations thereto are granted or assigned to the Customer. The Customer shall not, at any time in any way, question or dispute the ownership of the Software and undertakes not to infringe or prejudice any rights of BareMetal or its licensors in and to the Software.
- 5.4. BareMetal shall upgrade any Software provided to the Customer under the Subscriber Agreement (and if not explicitly dealt with in the Subscriber Agreement at its sole discretion).

## 6. USE AND STORAGE OF DATA

The Customer acknowledges that BareMetal may establish generally acceptable use practices and limits concerning the use of the Services, including — for example: the period that the Customer's email messages and other content uploaded on to BareMetal's server is retained, the quantity and size of material that may be sent from or received by the Customer and available disk space that will be allocated to BareMetal's servers on the Customer's behalf.

## 7. BAREMETAL PORTAL

- 7.1. BareMetal grants Customer a non-exclusive, non-transferable right to BareMetal Portal(s).
- 7.2. Access to any such BareMetal Portal shall be through an approved User ID or other authentication mechanism provided by BareMetal to Customer.
- 7.3. Any adjustments by Customer to Services on BareMetal Portal are binding, and Customer assumes full responsibility for payment obligations arising out of modifications made on BareMetal Portal.
- 7.4. Customer acknowledges that the documentation and information that accessible by Customer through BareMetal Portal shall be deemed to be classified as Confidential Information of BareMetal and, as such, disclosure and use of such documentation and information shall be governed by the terms of this Agreement relating to Confidential Information.
- 7.5. Customer shall take all necessary steps to maintain the security and integrity of all User IDs used in connection with accessing BareMetal Portal.
- 7.6. Customer shall inform BareMetal if Customer has any reason to believe that a User ID used in connection with accessing BareMetal Portal has or is likely to become known to someone not authorized to use it or is being or is expected to be used in an unauthorized way.
- 7.7. BareMetal reserves the right to suspend User ID access to BareMetal Portal of Customer if at any time BareMetal reasonably considers, after consulting with Customer whenever practicable, that there has been or is likely to be a breach of security in respect of a User ID. BareMetal may issue replacement User IDs or cease suspension when BareMetal is satisfied that the breach of security or threat of breach of security is resolved.
- 7.8. Customer understands that BareMetal may amend User ID's periodically to prevent unauthorized access to BareMetal Portal and Customer will appoint an employee to whom BareMetal may communicate any such amended IDs.

## 8. GENERAL OBLIGATIONS OF EACH PARTY

- 8.1. In addition to its obligations as set out in the rest of these General Terms, BareMetal undertakes to:
- 8.1.1. adhere to the Applicable Law;

- 8.1.2. exercise the reasonable skill and care of a competent provider of the Services;
- 8.1.3. uphold and abide by the respective codes of conduct (as amended from time to time) of ISPA and WASPA, available at <http://ispa.org.za/code-of-conduct/> and <http://waspa.org.za/coc/14-3/>; and
- a) abide by and uphold its Code of Conduct, available at <https://www.BareMetal.co.za/pdf/CodeOfConduct.pdf>.

- 8.2. In addition to the Customer's specified obligations as set out in the rest of these General Terms, Customer undertakes that it, or where relevant its employees will:
- 8.2.1. adhere to the Applicable Law;
- 8.2.2. deal with BareMetal employees and designated contractors in a courteous, respectful and professional manner and not in any manner act in an abusive way;
- 8.2.3. raise any issues that it is experiencing through a trouble ticket using the relevant telephonic, email or online facilities and provide BareMetal with any pertinent information that it may require resolving the trouble ticket; and
- 8.2.4. abide by the BareMetal acceptable use policy, available at <https://www.BareMetal.co.za/pdf/AcceptableUsePolicy.pdf>.

## 9. CHARGES AND PAYMENT

- 9.1. In return for the supply of and access to the Services, the Customer agrees and undertakes to pay BareMetal the Charges.
- 9.2. Any invoice will, where applicable, detail the following types of Charges:
- 9.2.1. installation charge: the installation charge and any other charges levied as a once-off initial charge in respect of the connection of the Services;
- 9.2.2. reconnection charge: levied, where the Customer's right to use the Services is suspended due to non-payment, and which fee is in respect of any restoration of the Service, is payable in advance, together with any outstanding amounts which are due to BareMetal ;
- 9.2.3. ad-hoc / time and material charges: levied on each occasion for the provision of miscellaneous services requested by the Customer;
- 9.2.4. recurring/rental charges: levied periodically, usually monthly – but in any event, as indicated in the Subscriber agreement – in respect of the use and availability of the Services. Recurring charges are payable in advance for the first and any subsequent rental period on the first day of the month, with effect from the Activation Date;
- 9.2.5. cancellation fee: a fee raised by BareMetal to place it in the position it would have been had the Customer fulfilled the Contract;
- 9.2.6. call/usage charges: levied on the use of the Service where such use is metered. Call charges and usage charges are billed to the Customer at the end of each billing period.
- 9.2.7. anticipatory costs: levied to recover the charges that BareMetal would have billed for the duration of the Fixed Term Agreement if the Contract had run its full term.
- 9.2.8. interest on overdue amounts: any amount due by the Customer to BareMetal not paid on or before the Due date indicated on the invoice shall bear interest from the date that an Invoice became due.
- 9.3. **Billing**
- 9.3.1. BareMetal will periodically provide the Customer, usually monthly, with a statement and an invoice for the amounts payable by the Customer. The invoice will be sent to the Customer by email.
- 9.3.2. Where there is an event which prevents an accurate determination of the number of units on which the call or usage charges are determined for a billing period, the call charge or usage charges for the period in question shall be set as the average call or usage charges for the preceding 6 (six) billing periods (or lesser billing periods if the Service has been provided for a shorter time).
- 9.3.3. The invoice sent by BareMetal to the Customer is on the face of it, and until the contrary is proved, proof of the amount due by the Customer to BareMetal. The Customer is, however, entitled to query or dispute any part of the invoice per the provisions set out under clause 13. All undisputed portions of the invoice must, however, be paid by the Due date.
- 9.3.4. If BareMetal determines that the disputed amount is in error, BareMetal shall credit the amount incorrectly debited. Should BareMetal determine and inform the Customer that the disputed amount was billed correctly such payment, together with interest at the Interest Rate shall be paid by no later than the Due date of the next invoice.
- 9.4. **Payments**
- 9.4.1. Unless BareMetal expressly agrees to the contrary in writing, invoices are payable on presentation by way of a monthly debit order or using a credit card.
- 9.4.2. Invoices and statements are available for download in BareMetal Portal. Non-receipt of an invoice by the Customer shall therefore not be considered as a valid reason for late or non-payment.
- 9.4.3. The Customer shall be liable and responsible for payment until payment has been received into BareMetal's bank account.
- 9.4.4. The Customer shall be in breach of the Contract by cancelling any debit order without the prior written consent of BareMetal or where any debit order is returned unpaid or stopped or should any charge card account or credit card account of the Customer be rejected. In such a case, BareMetal will have the right to suspend the Customer's account until such arrears amounts together with interest thereon have been received and paid in full.

## 9.5. Changes to Charges

- 9.5.1. BareMetal shall be entitled to increase any of the amounts reflected in the Subscriber agreement, which increase will be relative to the Consumer Price Index. Increases linked to the Consumer Price Index usually are done once per year between January and April.
- 9.5.2. If there is a price increase on components of the Services beyond the control of BareMetal (*for example: foreign exchange fluctuations, increased pricing on third-party products or services like software license fees, surcharges, taxes, import duties, rates or levies,*

*increased charges from other network operators or delay caused by any instruction of Customer*), then BareMetal shall be entitled to increase the Charges of the affected Service in proportion to the increase in cost.

- 9.5.3. Any increase as per clause 9.5.1 and 9.5.2 will be given to the Customer in writing.
- 9.5.4. A Consumer will have the right to terminate the Contract without penalty or charge where any such increases render the Service unaffordable to the Consumer, on condition that it gives BareMetal 20 (twenty) Business days' notice of its election to cancel the Contract. Where a Consumer terminates the Contract as per its rights under this clause 9.5.4 such termination will be without penalty, except where the Consumer has been given or has purchased but not yet paid for Subscriber Equipment. In such a case the Consumer will have a legal duty, and BareMetal will have a legal right to demand from the Consumer full payment in respect of the Subscriber Equipment less any amounts that have already been paid to BareMetal in respect thereof before such termination.

## 9.6. Unpaid accounts – Suspension of Services

- 9.6.1. Where any amounts due to BareMetal by the Customer are not paid on Due date, BareMetal shall give the Customer 7 (seven) days' notice to pay all arrears/outstanding amounts and start charging interest at the Interest Rate.
- 9.6.2. If the Customer's account remains unpaid or no written agreement is concluded to settle the arrears, BareMetal shall suspend the Customer's services, and the suspension will stay in place until the Customer has paid all arrear amounts, interest and any applicable reconnection charges or the Contract is terminated by BareMetal.
- 9.6.3. If the Customer's account is in arrears, then BareMetal shall be entitled to suspend all Services linked to the Customer's account, regardless of whether the suspended Services are delivered according to multiple Subscriber Agreements or not.

## 9.7. Credit Limit and payment terms

- 9.7.1. BareMetal reserves the right to impose a monetary limit on the maximum value of Charges incurred by the Customer during each billing period, and BareMetal shall be entitled after the Customer has been given 20 (Twenty) days' notice of such overspend to which the Customer has not responded, to suspend the Services should the Customer exceed the maximum amount.
- 9.7.2. If BareMetal and Customer agree on payment terms that are different to those set out in clause 9.4 and BareMetal had to provide Customer with a notice in terms of clause 9.6.1 twice in any rolling 12 calendar month period, then BareMetal shall be entitled to revert to the default payment terms set out in this clause 9.

## 10. SUSPENSION, WITHDRAWAL OR TERMINATION OF THE BAREMETAL SERVICE

- 10.1. BareMetal may from time to time, and on notice where this is possible, suspend the BareMetal Service and where applicable the right to use the Managed Service Equipment, or in its discretion disconnect the Managed Service Equipment from the BareMetal Network in any of the following circumstances:
- 10.1.1. for routine maintenance, modifications to, or unplanned maintenance of the BareMetal Network and/or any other systems involved in the delivery of the Services;
- 10.1.2. to mitigate against fraudulent or suspected fraudulent use of the Customer's Service;
- 10.1.3. per clause 9.6 or 9.7.1 above;
- 10.1.4. because of problems on third parties' infrastructure which has affected or disrupted the BareMetal Service;
- 10.1.5. where certain Services are being abused by the Customer; and/or
- 10.1.6. where the BareMetal Service or Managed Service Equipment is found to contain a security risk or shortcoming which enables the Customer to exploit the BareMetal Service to the detriment of BareMetal ;
- 10.1.7. where the Customer uses Subscriber Equipment that is not approved by ICASA for such use;
- 10.1.8. Where the Service is removed because of a take-down notice that BareMetal is obliged to act on.
- 10.2. The Customer accepts that the right to suspend the Services is necessary to maintain the quality of Services, the integrity of the BareMetal Network, and to protect the interest of both the Customer and BareMetal and that it will remain liable for all Charges which may be levied by BareMetal during the period of suspension.
- 10.3. BareMetal may from time to time, and on notice where this is possible, and without prejudice to any other claims or remedies which BareMetal may

have in terms hereof or in law, discontinue and/or terminate any part of the Contract, or in its discretion disconnect the Managed Service Equipment from the BareMetal Network in any of the following circumstances:

- 10.3.1. where the BareMetal Service or Managed Service Equipment has reached the end of its lifespan and is uneconomical to maintain or continue;
- 10.3.2. where there has been an insignificant interest in the use of a Service;
- 10.3.3. in response to an instruction from ICASA or in terms of the ECA or some other law or any authority competent to issue such instruction;
- 10.3.4. if the Customer has received the Service because of fraud or misrepresentation;
- 10.3.5. if the Customer makes or offers to make any arrangement or composition with its creditors or commits any act of insolvency in terms of the Insolvency Act or any other applicable legislation;
- 10.3.6. if the Customer is using or permitting the use of the Service or any element thereof for any illegal purpose or in contravention of Applicable Law;
- 10.3.7. for any other reason incidental to 10.3.1 - 10.3.6 inclusive.

## 11. BREACH AND TERMINATION

- 11.1. Should the Customer breach:
- 11.1.1. its payment obligations and have been suspended for non-payment for a period longer than 7 (seven) days; or
- 11.1.2. any other term of this Contract and fails to rectify the breach within the notice period provided by BareMetal (which shall be a reasonable period given the circumstances of the breach);
- then BareMetal will have the right to either suspend or to cancel the Contract(s), without diminishing its right to claim any Anticipatory Costs or early termination penalties.
- 11.2. Should BareMetal breach any material term of this Contract, then the Customer will have the right to provide BareMetal with a letter requiring BareMetal to rectify the breach within a period of 20 (twenty) Business Days. Should BareMetal neglect or fail to remedy such breach within the 20 (twenty) Business Days' notice period, then the Customer may cancel the Contract without penalty.
- 11.3. The Customer shall be liable for all costs, including legal costs on an attorney and client scale, tracing cost and collection commission incurred by BareMetal in respect of the enforcement of any obligations of the Customer in terms of this Contract.
- 11.4. Without diminishing any other claims or remedies which BareMetal may have against the Customer in terms of this Contract or law, BareMetal may terminate the Contract if the Customer has delayed the installation of the Service for longer than 3 (three) months and hold the Customer liable for Anticipatory Costs incurred by BareMetal in this regard.

## 12. SUPERVENING IMPOSSIBILITY

Except as expressly provided under the Contract, BareMetal shall not be liable to the Customer for failure to perform any obligation because of any acts of God, government restrictions or prohibitions or any other Government act or omission, any act or default of any supplier, industrial disputes, strikes, lockouts or work stoppages of any kind or any other similar or dissimilar cause, in so far as these were not foreseeable and beyond BareMetal's reasonable control. Should any event contemplated in this clause prevent the provision of uninterrupted Service for a period exceeding four weeks, the Customer shall be entitled to terminate the affected Service without penalty.

## 13. CUSTOMER ASSISTANCE, DISPUTES OR COMPLAINTS

### 13.1. Technical Complaints and Billing Queries

- 13.1.1. BareMetal can be contacted for technical support and account queries at the details provided at <https://www.BareMetal.co.za/support/>.
- 13.1.2. If the Customer experiences any trouble with any of the Services or with the Charges, it must bring the problem to BareMetal's attention by raising a trouble ticket with BareMetal by telephone, email or in the BareMetal Portal. The issue will then be logged and detailed, and the Customer will be provided with a reference number.
- 13.1.3. BareMetal will use its best endeavors to attend to the trouble tickets as soon as it is possible, which will depend on the complexity and nature of the problem as well as resource availability.
- 13.1.4. Where Customer has exhausted all levels of escalation and remains of the view that the matter has not been resolved to the satisfaction of the Customer, the Customer will have the right to refer the matter to ISPA, which can be done via the complaints form at <http://ispa.org.za/code-of-conduct/complaints-form/>.

13.2. **Complaints:** If Customer has a complaint that is not related to the performance of the Service or related to a billing query, the Customer must follow the BareMetal complaints process as amended from time to time and made available on the BareMetal website.

13.3. **Single Forum Resolution:** The above rights are without prejudice to both Parties' respective rights to pursue a complaint or action in any other forum that has jurisdiction over the matter including the rights to submit the complaint to ICASA, provided that the same complaint shall not be lodged at more than one forum.



## 14. CONSEQUENCES OF TERMINATION

After termination of the Contract for whatever reason:

- 14.1. BareMetal may, on reasonable notice and in the Customer's presence enter the Customer's premises to remove the Managed Service Equipment which is owned by BareMetal; and
- 14.2. Customer will remain liable for and will pay on demand all charges and/or costs outstanding at the time of termination or accrued thereafter because of the termination.

## 15. LIMITED LIABILITY AND INDEMNITY

- 15.1. In respect of internet-based services, BareMetal only provides access to the Internet. BareMetal does not operate or control the information, services, opinions or other content of the Internet. BareMetal reserves the right to take measures as may be necessary, in BareMetal's sole discretion, to ensure security and continuity of service on the BareMetal Network, including but not limited to identification and blocking or filtering of internet traffic sources which BareMetal deems to pose a Security risk or operational risk or a violation of its AUP. In addition, the Customer understands that BareMetal does not own or control other third-party networks outside of the BareMetal Network, and BareMetal is not responsible or liable for filtering or access restrictions imposed by such networks or for the performance (or non-performance) within such networks or within interconnection points between BareMetal Network and other third-party networks.
- 15.2. The Customer is responsible for maintaining the security of its internal network from unauthorized access through the Internet. BareMetal shall not be liable for unauthorized access to the Customer's network or other breaches of the Customer's network security. The Customer shall remain fully responsible to BareMetal for any usage billing billed to Customer's account up to 30 minutes after Customer had logged an official support ticket with BareMetal requesting suspension of the Services impacted by unauthorized access to the Services.
- 15.3. BareMetal assumes no responsibility for the integrity, correctness, retention or content of electronic data transported via the BareMetal Network.
- 15.4. Subject to the provisions of clause 15.6 below, BareMetal shall not be liable to the customer or to any third party for claims that arise or occur because of the customer's use of the services, whether such claim, action or damage is direct or indirect, consequential or contingent. BareMetal shall not be liable for any loss of life; injury; medical expenses; support; financial loss or financial support; loss of earnings; loss of profit and/or income; loss of revenue; loss of business or goodwill; any other special damages; or any general damages – regardless of whether it was foreseeable or flowed naturally from the use of the Services.
- 15.5. Customer indemnifies BareMetal against any claim or action which may be brought by any third party arising out of Customer's use of the Services or out of the use of the Customer's Services.
- 15.6. Where a Consumer suffers any loss or damages because of the use of the BareMetal Service, the Consumer in this case will be allowed to avail it to the provisions housed under section 61 of the CPA, but subject always to the defenses and exceptions permissible and available to BareMetal and its service providers under section 61 of the CPA.
- 15.7. The limitation on liability set out above is in addition to any limitation of liability set out elsewhere under the Contract.

## 16. PROCESSING OF PERSONAL INFORMATION, RIGHTS TO PRIVACY AND RICA

- 16.1. BareMetal reserves the right to make general credit reference enquiries about the Customer and to check the correctness of the information that has been supplied. BareMetal shall also be entitled to furnish any information relating to the Customer's account and compliance with these conditions to any registered credit bureau.
- 16.2. The Customer warrants and represents that all information supplied by it is accurate, correct and complete.
- 16.3. BareMetal will use the Customer's Personal Data strictly in accordance with the Regulations promulgated in terms of Section 69 of the ECA or the Protection of Personal Information Act, whichever is applicable.
- 16.4. Customer will provide BareMetal with all required Personal Data and other details which BareMetal is required to obtain from the Customer in terms of section 39 or 40 of RICA.
- 16.5. Customer shall not transfer the Service to another person, other than a family member or dependent.
- 16.6. The Customer acknowledges and accepts that where the Customer does not comply with these provisions, it will amount to a material breach by the Customer of the Contract.

## 17. GENERAL

- 17.1. **Cession, delegation, assignment:** Neither Party may cede, delegate, assign, charge, transfer or otherwise dispose of this Contract or any rights or obligations therein in whole or in part, without the written consent of the other Party. Such consent shall not be unreasonably withheld or unduly delayed. Notwithstanding the foregoing, BareMetal may assign any and all of its rights and obligations hereunder: (i) to any BareMetal affiliate (as defined the Companies Act, 71 of 2008); (ii) to a third party pursuant to any

sale or transfer of substantially all the assets or business of BareMetal or a BareMetal affiliate; or (iii) to a third party pursuant to any financing, merger, or re-organization of BareMetal or a BareMetal affiliate.

- 17.2. **Applicable laws and Jurisdiction:** This Contract will be interpreted and governed by the laws of South Africa.
- 17.3. **Variation and Amendment:** Subject to and save where the right to amend the Contract, has been mentioned explicitly under the Contract, neither party may vary the terms of the Contract unless the other party agrees to such variation and the variation is reduced to writing and signed by both parties.
- 17.4. **Consumer status:** Certain rights have been granted to a Customer who is a Consumer. BareMetal reserves the right to withhold any of these rights and/or resultant benefits until the Customer can prove to BareMetal, which proof may be in the form of a set of Financial statements or an identity document, that it is a Consumer (and in the case of a right which it wants to exercise under section 14 of the CPA, that it is an Individual Consumer). Where the Customer is unable to show that it is a Consumer or Individual Consumer, BareMetal reserves the right to reverse or call for a refund of any rights or benefits which are permitted under the CPA and which the Customer has unlawfully taken advantage of.
- 17.5. **Customer details and changes thereto:** The Customer agrees to supply BareMetal with such information, documentation and signatures that BareMetal may reasonably require at the time that the Contract is concluded, to give effect To the payment arrangements of the Contract. Any subsequent changes that affect the information supplied to BareMetal such as bank account or legal service address must be brought to the immediate attention of BareMetal in writing.
- 17.6. **Whole Contract:** The Contract contains the sole and entire record of the agreement between the Parties. No Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded in writing and signed by both Parties or otherwise created by operation of law. For clarity, where it appears from the context of multiple Subscriber Agreements concluded between the Parties that they are intended to be read as one Contract, then the Subscriber Agreements shall not be deemed to constitute separate and divisible Contracts, and in such event, conflicting provisions of General Terms shall be resolved with the ordinary rules of interpretation.
- 17.7. **Indulgences:** No indulgence, leniency or extension of time which either Party ("the grantor") may grant or show to the other, shall in any way prejudice the grantor or preclude the grantor from exercising any of its rights in the future. Any indulgence or the relaxing of the provisions of the Contract by the grantor shall not prejudice the right of the grantor to insist on the strict compliance by the defaulting Party of its undertakings and obligations in terms of the Contract.
- 17.8. **Severability:** In the event of any one or more of these terms and conditions being unenforceable, the offending clauses will be severed from the remainder of the Contract, which will nevertheless continue to be binding and enforceable.

## 18. LEGAL ADDRESS FOR SERVICE

- 18.1. The Parties choose the addresses set out below as their chosen place to receive legal notices:
  - 18.1.1. BareMetal Computer Traders (PTY) LTD at 64 Ajax Way Woodlands Mitchells Plain Cape Town South Africa 7785 Notices must also be emailed to [accounts@baremetal.co.za](mailto:accounts@baremetal.co.za); and
  - 18.1.2. The Customer at the physical or residential address specified in the Subscriber Contract. Where Customer has entered into multiple Subscriber Contracts, then the physical address specified in the Subscriber Contract most recently signed by the Customer or its authorized representative.
- 18.2. All notices given in terms of this Contract shall be in writing. General notices that do not commence legal proceedings shall be sufficiently provided to either Party by way of email, or where applicable by any other electronic messaging service.

## 19. CANCELLATION PROCESS

- 19.1. Unless BareMetal expressly agrees to the contrary in writing, Customer must cancel services on at least 90 days' advance notice to take effect at the end of the Initial Period or the Renewal Period, failing which BareMetal may charge the Customer a cancellation fee.
- 19.2. Cancellations must be processed through the cancellation request form in the BareMetal Portal, or Customer must send a cancellation request to [accounts@BareMetal.co.za](mailto:accounts@BareMetal.co.za). The online cancellation request form will reflect the duration that is left for each Service as well as the cancellation fee (if any) of each Service. Cancellations received by email will be followed up with a quote setting out the cancellation fee (if any) of each Service.
- 19.3. Email cancellations must contain at least the following information:
  - 19.3.1. The Customer's account number; and
  - 19.3.2. The description of the Service/s to be cancelled as is described on the Customer's invoice.
- 19.4. BareMetal will not be deemed to have received a cancellation notice unless it has issued Customer with written confirmation of receipt and a unique reference number. If Customer is not furnished with a unique reference number within 48 hours of transmitting its cancellation notice, Customer must escalate to [accounts@BareMetal.co.za](mailto:accounts@BareMetal.co.za).
- 19.5. BareMetal's processing of a cancellation request shall be without prejudice to its right to any claim that it may have in terms of this Contract. Customer acknowledges that in many instances cancellation of Services is not reversible or may attract financial penalties, and therefore BareMetal may delay the actual termination of Services after acknowledging receipt

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of a cancellation notice to communicate to Customer the consequences of termination and to allow Customer to withdraw a cancellation notice.

- 19.6. Customer shall remain liable for any Charges raised by BareMetal against the Customer's account after the Customer has sent BareMetal a cancellation notice that is not processed in the manner set out herein.

