



Service Level Agreement (SLA) *between*

“the Client”

and the Service Provider:

Mr Backup (Pty) Ltd Registration number 2010/015898/07, referred to herein as *“the Company”*, and jointly with the Client referred to herein as *“the Parties”*.

Effective Date: _____

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Managed Data Services

Mr Backup (Pty) Ltd registration number 2010/015898/07

Directors: Nic Thorburn (Managing), Alan Falck, Simon Gilbert, David Abbott, Debbie Millar, Willi Zaaiman, Jeremy Thorburn

Alternate Directors: Abe Gordon (for D Abbott), Roy Clarke (for S Gilbert)

P O Box 31006, Tokai, 7966, Republic of South Africa

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1. Agreement Overview

This Agreement represents a Service Level Agreement (“SLA” or “Agreement”) between the Parties for the provisioning of IT Data Services (“services”) required by the Client, and provided by the Company in terms of the quotation signed by the Parties as pertaining hereto (“sales order”). This Agreement remains valid until cancelled by written notice between the Parties, or superseded by a revised agreement mutually endorsed by the Parties. This Agreement outlines the parameters of the services covered as they are mutually understood by the Parties.

2. Goals & Objectives

The **purpose** of this Agreement is to ensure that the proper elements and commitments are in place to provide the services, and support and delivery thereof, to the Client by the Company in terms of the Sales Order. The **goal** of this Agreement is to obtain mutual agreement for the services between the Company and Client.

The **objectives** of this Agreement are to:

- Provide clear reference to service ownership, accountability, roles and/or responsibilities.
- Present a clear, concise and measurable description of service provision to the Client.
- Match perceptions of expected service provision with actual service support & delivery.

3. Duration and review

This Agreement is valid from the **Effective Date** outlined herein and will remain in effect until renewed or cancelled in writing in terms of the Standard Condition of Sale as signed by the client. The **parties** are mutually responsible for facilitating regular reviews of the services contemplated herein, and if amendments are agreed between the parties, then such amendments must be made to this agreement forthwith.

4. Services

The following agreed detailed service parameters are the responsibility of the Company. However, the Company is dependent on **the Client** in the efficient execution of the services in terms of this SLA by any inherent limitations of the systems, networks, internet connectivity, and software utilized on **the Client** site(s), and secondly by the efficiency of the response of **the Client** in terms of **the Client’s** responsibilities and obligations recorded in this agreement, and the Company cannot be held responsible for losses incurred by **the Client** if due to the factors mentioned herein.

Annexure A hereto is an additional description of each of the services rendered to the Client in terms hereof if the standard service descriptions in Clause 4.1 and 4.2 do not adequately describe the service agreed to by the Parties in terms of the Sales Order

4.1. The following Management Services are covered by this Agreement if indicated by a circled YES confirmation alongside each Service, and charged appropriately as Monthly Management Fees. The backup environment referred to herein is attached as Annexure B hereto.

A. Alive and well monitoring – backup unit only, excludes the backup environment		NO
B. Basic monitoring – the backup environment		NO
C. Advanced monitoring – the backup environment		NO
D. Daily management – the backup environment		NO
E. Physical media rotation to offsite storage, quantity per month		NO
F. Managed end to end seeding, synchronization and reporting of daily data backup		YES
G. Data Centre data storage; either Mr Backup	MR	YES
H. Data backup archiving		NO
I. Client Rackmount hosting space at Mr Backup Data Centre		NO
J. Company International Support Desk (“ISD”) support at labour rates		YES
K. Business Continuity Plans and Services		NO
L. Disaster Recovery and Failover services		NO
M. Full Maintenance Agreement services onsite - see Annexure A if this service is applicable		YES
N. Monthly system health check and change management assistance at labour rates		NO
O. Other services – specify in 4.2(O)		NO

4.2. Service descriptions: This section provides a detailed description of each of the standard services outlined in 4.1 above. Each description is provided as an outline of the service provided by the Company to the Client, and any additional description of the service is to be provided in the section “Additional Services” at the end of this SLA.

It is duly noted and clearly understood by the parties hereto that the integrity of the data backed up and stored by the company is the responsibility of the client. The company has no access to the origins of the data set and the client acknowledges by signature hereto that the change management, integrity checks, virus checks and general maintenance of this data is the responsibility of the client, although the company will assist the client in such actions.

- A. Alive and well monitoring: This is a simple form of daily heartbeat monitoring which informs the Parties that the backup system deployed in terms hereof is powered on and is operating, and that the disk is fully operational. It also reports on available disk space.

- B. Backup systems basic monitoring: Monitoring is described as the daily receipt of backup notifications pertaining to the service provided in terms hereof, and the subsequent correlation of the information received. Email notification is received from the backup devices on Client site(s), or alternatively via software installed at the Client offices on Client computer systems. The Company is reliant on Client owned and managed internet and network connections to provide this service and cannot be held responsible for the provision of the services if the Client connections are not in working order.
- C. Backup systems advanced monitoring: As in B. above but with added features providing in depth information about the data set and backup statuses, usually through a console based software program.
- D. Daily Management with basic reporting: This task entails the management of the data set as agreed with the Client, from source servers and systems to file level on a daily basis. This function involves the adherence to the Data Retention Policies and the backup methodology as agreed between the Parties. The reporting is as per the backup agent used by the Client and its log file report which is mainly sent to the Client via an emailed PDF document.
- E. Drive rotation: This involves the physical swopping of secondary backup copies on hard disk media within Mr Backup Systems on the Client sites. The rotations are carried out periodically as indicated in 4.1 above and this service requires the co-operation of Client with respect to access rights for Mr Backup technical staff, and with respect to ensuring the management of the backup to the secondary hard disk drives by assistance to ISD.
- F. Seeding and synchronization: This seeding service entails the physical movement of replicated copies of Client specified data sets to a secure offsite location, and the daily synchronization service is the mirrored image replication of this data set to the offsite location of the via internet/network services.
- G. Data Centre storage: This pertains to the storage of Client data at the Company's or Client's specified Data Centre and is valued in slots of 500 Gigabytes of data actually stored on physical media in the allocated data centre.
- H. Archiving: This is a service which entails the copying of older data, as classified by the Client's Data Retention Policy, at specified intervals from storage media onto tape drive media or external hard disk media for the purposes of longer term offline storage by the Company. Live archiving is the same process but data is kept on systems that are connected at all times to the internet or company wide area network.
- I. Rackmount hosting: This service entails a charge to the Client for the physical hosting of Client hardware systems pertaining to data backup in the mounting racks of the Company in a Mr Backup Data Centre.
- J. ISD support: This is the live vocal or remote connection support provided to the Client by the ISD.
- K. Business Continuity and Disaster Recovery plans pertain to the assistance in the creation of the documents and the implementation of the plans as per the IT policies of the Client.
- L. Disaster Recovery and Failover services are available onsite and in our secure cloud DRaaS offering.
- M. Maintenance Agreement: This is a monthly charged service which is effectively an insurance against further charges for on or off-site support or maintenance of hardware purchased from the Company in terms of Annexure B hereto
- N. Change Management and Health Checks: This is a preventative maintenance service provided as a fixed charge per month to conduct a monthly health check on the Client backup systems relevant to changes which may have occurred in the operating servers or computer systems of the Client. This service prevents changed data sets from not copying due to the incomplete process of Client change management of such data sets for backup purposes.
- O. Other specified services: **(fill in)**

4.3. Client Requirements. Client responsibilities and/or requirements in support of this Agreement include:

- Payment for all support costs at the agreed interval in advance of the month in which the service is due
- Reasonable availability to the Company of Client representative(s) for all issues relative to the service provided, and especially when resolving a service related incident or for any or all of the services above.
- Daily emails notification of any onsite problems which may hinder or nullify the services provided by the Company in terms hereof.
- Maintenance of computer servers, networking equipment and other related hardware and software items belonging to the Client which are relative to the provision of the services envisaged in this agreement.
- Timeous notification of any change in the data set which is being backed up in terms hereof.
- Provision of safe storage positions for Company data backup equipment installed at the Client site(s).
- Provision of working electrical outlets at all times for Company data backup equipment at the Client site(s)
- Provision of adequate network and external connections in accordance with the service provided.
- Provision of a reserved static IP address for each unit of the Company equipment at the Client site(s).
- Provision of remote access to the Mr Backup onsite units.
- Opening of all necessary outgoing firewall ports for example outgoing port 587 for secure SMTP transmission.
- Timeous notification to the company of any change or adjustment or occurrence in terms of any requirement or responsibility of the client in terms of this agreement.

4.4. Company responsibilities and obligations in support of this Agreement include:

- Provision of the services, remote or otherwise, in an efficient and well managed manner at all times in accordance with the provisions of this agreement.
- Meeting response times associated with service related incidents.
- Appropriate notification to Client for all scheduled maintenance.
- Reporting to Client on the backup status weekly as per the services listed herein.
- Making Company representatives available to the Client for meetings or tele-calls when required.
- Relative to the service charges to the client, good service provision at its own cost, risk and expense and in accordance with Good Industry Practice and applicable Law.
- Utilizing goods, stocks, consumables, materials and equipment that are of the same quality and brands as those provided in equipment tested and approved by the client prior to signature of the sales order.
- Provide the services mindful of health and safety concerns in order to protect life, health, property and the environment;
- Provide the services in compliance with the reasonable policies, procedures, protocols and directives of the client relative to the charges to the client for such services. The company reserves the right to charge the client for the cost of delays, diversions, obstruction of service provision and other such acts by the client, their customers or their representatives in the compliance envisaged herein.
- The company shall in the provision of the Services, avoid undue hindrance, interruption or interference with the operations of the client or otherwise hinder the activities of the client and its employees, save to the extent entitled to do so in terms of this Agreement or as may be reasonably necessary for the performance of the services under this agreement.
- The company shall not be relieved of any obligation, responsibility or liability under this agreement by the company's appointment of any subcontractor to carry out any part of the services.

4.5. Service Assumptions

Assumptions related to in-scope services and/or components include:

- Changes to services will be communicated and documented to all Parties.
- Changes are not in effect until signed by the Parties hereto.
- Services which are not paid timeously by the Client in terms of this agreement will be turned off until such payment is received by the Company.
- The parties will ensure compliance to data protection acts such as GDPR and POPI.

5. Service Management

Effective support of in-scope services is a result of maintaining consistent service levels. The following sections provide relevant details on service availability, monitoring of in-scope services and related components.

5.1. Service Availability and Coverage parameters specific to the service(s) covered in this Agreement are as follows:

- Telephone support: 8:00 A.M. to 5:00 P.M. Monday – Friday
 - Calls received out of office hours will be forwarded to mobile phones and best efforts will be made to answer / action the calls.
- Email support: Monitored 8:00 A.M. to 5:00 P.M. Monday – Friday
 - Emails received outside of office hours will be collected, however no action can be guaranteed until the next working day
- Onsite assistance guaranteed within 24 working hours during the business week

5.2. Service Requests

In support of services outlined in this Agreement, the Company will respond to service related incidents and/or requests submitted by the Client to email ISD@mrbackup.biz within the following time frames, and remote assistance will be provided in-line with these timescales dependent on the priority of the support required, and Maintenance Agreement Clients will receive priority response within the first 4 hours after reporting of the incident:

- 0-8 hours (during business hours) for issues classified as **High** priority – Server backups.
- 0-24 hours for issues classified as **Medium** priority – network/external connections.
- Within 5 working days for issues classified as **Low** priority – failed day user backup or skipped files.

5.3. Client service monitoring

The Client may from time to time at its discretion review the provision of the services by the company. This review may include the conducting of quality assessments and an audit of the company's ability to provide the services, and in this regard the client retains the right to organize periodic performance meetings with the company to discuss, review and assess performance and identify trends, problem areas and remedial actions to be undertaken by the company.

5.4. Performance monitoring

The company shall conduct regular physical inspections and audits of its operational activities to determine the quality and standard of performance of the Services, and shall regularly review and assess its management and mitigation of failures in this regard so as to implement improvements in the provision of the Services and the reduction of Failures. On the notification of any failure or complaint regarding the quality of services, the company shall attend to such notification with the speed and urgency appropriate to the nature of the failure or complaint.

6. Warranties

The parties hereto warrant that -

- their obligations and requirements in terms hereof are legal, valid and binding and enforceable against them in accordance with the terms of the Agreement;
- they have satisfied themselves as to the nature and extent of the services to be provided in terms of the agreement;
- they have agreed by proof of concept that the necessary resources, skills, expertise and experience required to carry out the services are in place in terms of this agreement, and the parties undertake to use reasonable care and skill in the execution of the services under this agreement.

7. EXCLUSION OF LIABILITY

To ensure the success of any negligence claim is the responsibility of the parties hereto in proving such negligence, and the decision of the company's insurers and the subsequent amount payable to the client in this regard represents the full and final settlement of the claim of negligence against the company.

8. BREACH AND TERMINATION

8.1 Subject to any other provision of this Agreement providing for the remedy of any breach of any provision hereof, should either party ("defaulting party") commit a material breach of a provision of this Agreement and fail to remedy such breach within 14 (fourteen) days of receiving written notice from the other party ("aggrieved party") requiring the defaulting party to do so, then the aggrieved party shall be entitled, without prejudice to its other rights in terms of this Agreement or in law to:

- 8.1.1. cancel this Agreement, provided the breach in question is a material breach of this agreement; or
- 8.1.2. claim specific performance of all of the defaulting party's obligations without prejudice to the aggrieved party's right to claim damages.

8.2. Should either party commit any act which would constitute an act of insolvency in terms of section 8 of the Insolvency Act, 24 of 1936, as amended if that party were a natural person, or commit any act which deems it unable to pay its debts in terms of section 345 of the Companies Act 61 of 1973, as amended or suffers any material default judgement against it to remain unsatisfied for more than 30 (thirty) days after having become aware thereof, or does not institute proceedings within 30 (thirty) days of such judgement to have it set aside, or is liquidated, whether compulsorily or voluntarily or provisionally or finally, or compromises with any of its creditors, or endeavours or attempts to do so, then the other party shall be entitled to cancel this Agreement without notice to the other party.

9. DISPUTE

9.1. Save as otherwise provided in this Agreement, should any dispute of whatever nature arise in regard to the interpretation or effect of, or the validity, enforceability or rectification (whether in whole or in part) of, or the respective rights or obligations of the Parties under, or a breach or termination or cancellation of, this Agreement, then the Parties shall meet as soon as possible after such dispute arises in order to attempt to negotiate an amicable settlement of such dispute. Such meeting shall take place at such time and such place as is agreed upon between the Parties or, failing such agreement within 7 (seven) days after the Parties become aware of such dispute, at the Company's domicilium by not later than 30 (thirty) days after the Parties become aware of such dispute. Such negotiations shall be conducted in good faith.

9.2. If the Parties are unable to resolve the dispute in question within 14 (fourteen) days after the commencement of the negotiations referred to in 9.1, then the dispute shall, unless the Parties otherwise agree in writing, be referred by notice by one of the Parties for determination to an arbitrator ("arbitrator") in accordance with the remaining provisions of clause 9. The arbitrator shall be agreed upon between the Parties within 7 (seven) days of arbitration having been demanded, or failing agreement, be appointed by the Chairperson of the Law Society of South Africa.

9.3. Any dispute shall be referred to arbitration in terms of the arbitration laws for the time being of the RSA as amplified by this clause.

9.4. The arbitration shall be held as quickly as possible after it is demanded with a view to its being completed within thirty days after it is demanded, shall be final and binding on the Parties and may, at the instance of either party, be made an order of Court.

10. ASSIGNMENT

10.1. Neither party shall be entitled to cede, assign or otherwise transfer (collectively referred to as "transfer") all or any of its rights or obligations in terms of this Agreement without the prior written consent of the Company.

11. FORCE MAJEURE

11.1. If either party is prevented from carrying out any of its obligations as a result of an act of God, strikes, lockout, fire, riot, flood, drought, war (whether declared or not), civil disturbance, state of emergency, inability to secure power, materials or supplies, embargoes, export control, international restrictions, shortage of transport facilities, any order of any international authority, any court order, any requirements of any authority or other competent local authority, or any other circumstances whatsoever which are not within the reasonable control of such party ("force majeure"), such party will be deemed to have been released from its obligations to perform under this Agreement to the extent that, for so long as it is so prevented from performing, and to such extent, this Agreement will be deemed to have been suspended for the period concerned;

11.2 as soon as a party becomes aware that an act of force majeure is likely to cause a suspension of this Agreement, it shall give notice in writing to the other party, estimating the approximate duration of such suspension.

12. GENERAL

12.1 This Agreement is the entire record of the agreement between the Parties concerning the subject matter thereof.

12.2 Neither party shall be bound by any express or implied term, undertaking, representation (whether negligent or innocent), warranty, promise or the like not recorded herein.

12.3 No alteration, variation, or cancellation by agreement of, addition, amendment to, or deletion from this Agreement shall be of any force or effect unless in writing and signed by or on behalf of the Parties.

12.4 No indulgence, extension of time, relaxation or latitude which either party ("the grantor") may show, grant or allow to the other ("the grantee") shall constitute a waiver by the grantor of any of its rights and the grantor shall not thereby be prejudiced or stopped from exercising any of its rights against the grantee which may have then already arisen or which may thereafter arise.

12.5 The provisions of this Agreement shall be binding upon the successors-in-title and permitted assigns of the Parties.

12.6 To the extent that any provision of this Agreement is held to be illegal, invalid or unenforceable for any reason, such provision shall be severed from the remaining provisions of this Agreement, but without affecting or invalidating any of the remaining provisions of this Agreement, which shall continue to be of full force and effect.

13. Additional terms relative to this agreement:

PLEASE NOTE:

Mr Backup, its agents, staff, associates or Directors ("Mr Backup") are not liable for the Data required to be backed up by the client. The responsibility to keep the data set which is required for backup, on the backup schedule, is the sole responsibility of the client, and no responsibility therefor rests with supplier Mr Backup. Mr Backup requires a change management request to bring into effect any data set changes. Clients are particularly notified that these requests must be made in writing to Mr Backup and followed up by the client to ensure the data set is up to date. Furthermore, clients are notified that there are ever increasing numbers of Ransomware and Cryptolocker virus attacks being made on our clients which cause serious harm to the backup environment. Mr Backup cannot be held responsible for damage to the backed up data if the client has not immediately notified it of the attack.

14. Labour rates – updated from time to time as shown on our website www.mrbackup.biz

LABOUR & RESTORE	PRICE R	TERMS
Rate - on site / normal hours	400	Per hour, minimum 1/2 hour plus 1/2 hour travel
Rate - on site / after hours	800	Per hour, minimum 1/2 hour plus 1/2 hour travel
Rate – remote assist / normal hours	100	Per fault ticket – per 15 minute slot, double charge after hours
After hours restore charges	1500	Minimum charge in disaster + ADD labour rates after 1 hr
On site / Help desk restore charges	600	Per hours including travel
Rotation drive - unscheduled	300	Per recalled drive, add further R300 if out of hours

15. Domiciles of the Parties:

CLIENT: _____

COMPANY: UNIT E7, PRIME PARK, MOCKE ROAD, DIEP RIVER, 7801, CAPE TOWN and HAMMETS CROSSING OFFICE PARK, BLOCK 816/5, GROUND FLOOR, 2 SELBOURNE ROAD, FOURWAYS, GAUTENG, REPUBLIC of SOUTH AFRICA

16. CONFIDENTIALITY

- 16.1 The Parties intend that the details of this Agreement all be kept confidential
- 16.2 The Parties acknowledge that any information supplied in connection with this Agreement or in connection with each other’s business affairs which has or may in any way whatsoever be transferred or come into the possession or knowledge of the other of them (“the receiving party”) may consist of confidential or proprietary information, disclosure of which to or use by third Parties may be damaging to the party disclosing the information (“the disclosing party”).
- 16.3 The receiving party therefore agrees to hold such information in the strictest confidence, to prevent any copying thereof by whatever means and not to make use thereof other than for the purposes of this Agreement and to release it only to such properly authorised directors, employees or third Parties requiring such information on a “need to know” basis for the purposes of this Agreement and who themselves agree not to release or disclose it to any other party who has not signed an agreement expressly binding itself not to use or disclose it.
- 16.4 The undertaking and obligations contained in this clause 11 do not apply to information which is publicly available at the date of disclosure or thereafter becomes publicly available from sources other than the Parties; or is already in possession of the receiving party prior to its receipt by or disclosure to such receiving party; or is required by law or any regulatory authority to be disclosed; or after being disclosed to the receiving party is disclosed by any other person to the receiving party otherwise than in breach of any obligation of confidentiality.
- 16.5 The Parties shall take such precautions as may be necessary to maintain the confidentiality of such information in respect of its directors, employees, agents and representatives and in respect of any assignee, sub-contractor or distributor or any other person to whom such confidential information may have been or will be disclosed.

17. Approval

By signing below, the Parties hereto agree to all terms and conditions outlined in this Agreement and its Annexures and agree that they are duly authorized to sign respectively on behalf of the company and the client.

SIGNED AT _____ THIS _____ DAY OF _____ 2018

_____ for the company

_____ for the client

_____ Sign _____ Name AS WITNESS TO THE ABOVE SIGNATURES

ANNEXURE A

BACKUP SYSTEMS

OPTIONAL MAINTENANCE AND SUPPORT CONTRACT

1 SERVICES

Notwithstanding the signature date, THE COMPANY and THE CLIENT agree that THE COMPANY shall, with effect from the effective date of this SLA agreement, provide maintenance and support free of any charges for labour or travel ("the Services") to THE CLIENT in respect of the systems purchased or hired in terms of the sales order pertaining to this SLA Agreement upon the terms and conditions stipulated in this agreement and hereunder. In terms hereof, the services will be carried out by the Company telephonically, remotely via internet connection, or by physical visit to the Client's site.

2 SERVICE FEES

The fees payable in terms of this maintenance contract form part of the monthly Management Fees as indicated in the sales order pertaining to this SLA Agreement. All data traffic transfers from the site to the Data Centre will be charged at the appropriate rate per GB on a quarterly basis, in arrears.

3. SERVICE EXCLUSIONS

3.1 Services do not include:

3.1.1 Repairs required which are due to any event beyond the reasonable control of either party, such as natural disasters, lightning, fire, water, acts of war, riots and strikes;

3.1.2 Repairs required where site conditions that do not conform to the product manufacturer's specifications, work performed or modifications made by non-Company personnel, abuse, malicious damage or any causes other than ordinary use of the Equipment by the Client, its contractors, employees, directors, agents or visitors;

3.1.3 Any IT or electrical work, reticulation or repairs to equipment which does not form part of the systems purchased in terms of the sales order pertaining to this SLA Agreement

3.1.4 Replacement of, or the recovery and reinstatement of any systems and/or data sets not pertaining to the systems purchased in terms of this SLA Agreement.

3.1.5 Change management of the data sets backed up in terms of this SLA agreement.

3.1.6 Restoration of data in the event of loss of data for any reason whatsoever.

3.1.7 Hard drives which were not sold to the customer by Mr Backup Pty Ltd

3.2 All excluded services in 3.1 above will be chargeable in terms of clause 14 of the SLA Agreement of which this Annexure forms part.

4. RESPONSIBILITIES OF THE PARTIES

4.1 THE COMPANY agrees and undertakes to provide the Services described in this Annexure B, to THE CLIENT in respect of the Equipment as it may be from time to time in accordance with the terms and conditions contained in this SLA Agreement and its Annexures.

4.2 THE CLIENT agrees and undertakes to:

4.2.1 inform THE COMPANY of any faults in or damage to the Equipment forthwith upon discovery of such faults or damage by logging a call with ISD and receiving an incident number;

4.2.2 make available to the Company's representatives, upon their start of the repair process, such facilities and immediate access as may be necessary to enable THE COMPANY to render the Services;

4.2.3 not to allow any person other than a representative of THE COMPANY to carry out repairs or make adjustments to the systems purchased in terms of this sales order and SLA Agreement

4.2.4 allow the Equipment to be removed from the Premises by THE COMPANY for the purpose of performing their obligations in terms of this Agreement, subject to THE COMPANY returning the Equipment and re-installing it on completion of the Services;

4.2.5 care for the Equipment in a manner, which accords with any reasonable recommendations and/or directions issued by the manufacturer of the Equipment and to store the Equipment in premises and conditions, which accord with such reasonable recommendations and/or directions;

4.2.6 adhere to and comply with the terms and conditions stipulated by the manufacturer and/or supplier of any Equipment;

4.2.7 not solicit directly or indirectly for employment any employee or agent of the other party for a period of twelve (12) months following the termination of this Agreement.