

Terms & Conditions

1. INTRODUCTION

- 1.1. As of the Effective Date, One Eighty shall be responsible for the remote support of Customer's Equipment.

2. INTERPRETATION AND DEFINITIONS

- 2.1. In this agreement, unless clearly inconsistent with or otherwise indicated by the context –
- 2.1.1. "the/this agreement" means the agreement set out in this document and the appendices hereto and any agreed amendments thereto;
- 2.1.2. "the date of signature" means the date of signature of this agreement by the last party to sign;
- 2.1.3. "Customer" means any party to whom ONE EIGHTY will provide services in terms of this Agreement.
- 2.1.4. "Effective date" means the date of signature of the acceptance of installation document by the Customer.
- 2.1.5. "the equipment" means the items of hardware at the customer's premises and as amended from time to time in writing in terms of this agreement;
- 2.1.6. "fault logging procedure" means the procedure of registering faults with ONE EIGHTY and as amended from time to time by ONE EIGHTY in writing;
- 2.1.7. "The Supplier" means ONE EIGHTY SOUTH AFRICA (PTY) LTD with registration number 2020/099502/07 and includes its subsidiaries, partners, resellers and agents selling its products and services.
- 2.1.9. "the intellectual property rights" means any and all trade secrets of whatsoever nature, including but not limited to, patents, trademarks, service marks, designs, design rights, copyright (including all copyright in any designs and computer software) source codes, inventions, trade secrets, systems, methodologies, software, plans, pricing, hardware usage, configurations and data/information of a proprietary nature, and/or confidential information and all other intellectual property rights and rights of a similar character whether registered or capable of registration and all application and rights to apply for protection of any of the same and that the parties should reasonably have known to be proprietary or confidential;
- 2.1.10. "the prime rate" means the nominal, monthly compounded annual rate of interest from time to time publicly quoted as such by FNB Bank Limited as certified by any manager of that bank whose appointment as such shall not be necessary to prove, the contents of which certificate shall be prima facie proof of the contents thereof;
- 2.1.11. "the site" means the customer's address as set out on the face hereof.
- 2.1.13. "Party" refers to ONE EIGHTY and the Customer and party refers to either one of them as so determined by context.
- 2.1.14. "SLA" means Service Level Agreement.
- 2.1.15. "Products and Services" means the services set out herein.
- 2.1.16. "Normal Business Hours" means the hours between 08h00 and 17:00 during the week excluding public holidays, Saturdays and Sunday.
- 2.1.17. "Remote support" includes telephonic support, email support and remote access to all links and all other support.
- 2.1.18. "Service cost" means the costs set out herein.
- 2.1.19. "the Services" means Remote support & monitoring of Aruba solution and excludes onsite requirements. Aruba RMA's will be included.
- 2.1.20. "Uptime Service" means the Aruba equipment that is dependent on the ISP.
- 2.1.21. "VAT" means Value-Added Tax as defined in the Value-Added Tax Act 89 of 1991 (as amended).
- 2.1.22. "third party products" means any hardware and/or software not supplied by One Eighty and/or any services not rendered by ONE EIGHTY, but by a third party;
- 2.1.23. This agreement shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa.

3. APPOINTMENT

- 3.1. The customer hereby appoints ONE EIGHTY as its exclusive service provider to render the remote support services to the customer with effect from the effective date for the duration of this agreement and ONE EIGHTY accepts such appointment on the terms and conditions set out in this agreement.

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4. TERMS

- 4.1. Services provided in terms of this SLA shall commence on **1 June 2024** and continue on a 12-month basis.

5. CONDITIONS

- 5.1. The customer understands and accepts that the provision of the Service(s) as set out herein, shall be subject to the provisions of the Electronic Communications Act, 36 of 2005 (the Act).

6. NATURE AND SCOPE OF THE SERVICE

- 6.1. It is recorded that the remote support services to be rendered pertain only to the equipment agreed in writing from time to time between the parties requiring such services.

7. SERVICE COSTS

- 7.1. The customer shall pay all charges on or before the due date indicated on the account rendered by ONE EIGHTY
- 7.2. The service costs payable by the customer are as specified on the face of the agreement and may be amended from time to time in writing and in accordance with this agreement, and agreed upon by both parties which amendments shall be attached as an addendum hereto.
- 7.3. All service costs in respect of the equipment shall be payable in advance, **30 days from statement**.
- 7.4. ONE EIGHTY undertakes to give the customer 30 (thirty) days prior written notice of any increases in service costs.
- 7.5. All amounts due by one party to the other (including damages) in terms of or arising out of this agreement shall, unless paid on due date, bear interest from the due date to date of payment. The Subscriber shall be charged interest calculated from the due date for payment thereof until date of payment, at a rate equal to three [3] percent above the prime overdraft rate charged by FNB Bank from time to time, per annum, monthly in arrears
- 7.6. Any onsite services will be quoted for according to the scope of work.

8. SERVICE EXCLUSIONS

The service shall not include –

- 8.1. Excluded from this SLA are defects in products that are caused by the Manufacturer, neglect, improper use and/or use outside its specified range as well as defects on Copper and Fibre cables, which relate to broken, dirty and/or damaged cables.
- 8.2. Travel to and from “Customer” sites, including call out requests are excluded from the agreement. Accommodation to be provided by client.
- 8.3. Exclusions are any products that have been installed and/or maintained that have been modified without permission of ONE EIGHTY SOUTH AFRICA.
- 8.4. In conclusion, the cost of repairing/replacement of cabling and Infrastructure will be charged separately according to Industry Standards.
- 8.5. It is recommended that the client retains hospital stock – costing to be provided separately
- 8.6. repairs, remote support and site visits as a result of third party products, maintenance of accessories, attachments, machines or other devices not supplied by ONE EIGHTY;
- 8.7. Communication cable work external to the equipment and not installed by ONE EIGHTY and/or its sub-contractors, and which does not constitute standard necessary interconnection cables between items of equipment supplied by ONE EIGHTY;
- 8.8. repairs or service calls made necessary as a result of damage due to causes external to the equipment, including but not limited to acts of God, fire, flood, theft, power fluctuations, lightning strikes, explosion and storm;
- 8.9. Service as a result of malicious damage or misuse by the customer, its employees, agents, contractors or any one on the customer’s premises, irrespective of the equipment location;
- 8.10. due to equipment and/or software being modified maintained or attempts being made to do so by someone other than ONE EIGHTY personnel;
- 8.11. as a result of damage caused by furnishing accessories or supplies, painting or refurbishing the equipment;
- 8.12. as a result of cable damage due to moving or renovating;
- 8.13. as a result of cleaning of equipment, except if authorized by ONE EIGHTY personnel;
- 8.14. network related problems caused by equipment and/or software not expressly authorized by ONE EIGHTY or configuration problems due to the provision of inaccurate system configuration or specifications by the customer;
- 8.15. ONE EIGHTY may, in its sole discretion, refuse to provide the service where a condition exists that represents a hazard to the safety of ONE EIGHTY employees or agents.
- 8.16. If in ONE EIGHTY’s reasonable opinion, the problem reported by the customer is not due to equipment Supplied by ONE EIGHTY, the customer may request that ONE EIGHTY render the requested service. In the event that ONE EIGHTY agrees in writing to provide such requested service, the customer agrees to pay ONE EIGHTY current market related prices for the services rendered to correct the problem.

9. CHANGES TO SERVICES

- 9.1. The parties record and acknowledge that the services will of necessity change from time to time according to the nature of the equipment in use by the customer from time to time, whether as a result of new equipment acquired by the customer or equipment which becomes redundant or out of date or uneconomical to continue or maintain.
- 9.2. The customer may terminate the services by giving ONE EIGHTY 3 months written notice of its intention to terminate.
- 9.3. If ONE EIGHTY is of the view that –
 - 9.3.1. any of the equipment is at the end of its useful life and should be discontinued;
 - 9.3.2. continued service in respect of certain equipment and/or software would serve no purpose without either replacing the equipment or effecting certain changes thereto; or
 - 9.3.3. any equipment in respect of which ONE EIGHTY is of the reasonable opinion that it would be commercially unsound to continue rendering services in respect thereof; ONE EIGHTY shall notify the customer thereof in sufficient detail in writing and shall give the customer 30 days to replace such defunct equipment failing which the services in respect of the affected equipment shall be discontinued within 30 (thirty) days written notice and the list of equipment fees shall be amended accordingly.

10. CHANGES AND/OR ADDITIONS TO EQUIPMENT AND/OR SOFTWARE

- 10.1. If the customer requires changes to be made to the equipment of any nature which is beyond the scope of the remote services agreed between the parties in terms of this agreement, the customer shall first consult with ONE EIGHTY to discuss the nature and scope of the requested change wherefore the customer shall formalize its request in writing to ONE EIGHTY setting out as much detail as possible.
- 10.2. Upon receiving the written request, ONE EIGHTY shall in writing confirm–
 - 10.2.1. the extent to which the requested changes can be effected either by ONE EIGHTY or its appointed agent, if at all;
 - 10.2.2. details concerning its requirements, limitations, exclusions and estimate time for completion; and
 - 10.2.3. the additional fees and costs required to be paid to effect the changes,

11. RELOCATION OF THE EQUIPMENT

- 11.1. If the customer intends relocating any of the equipment and/or software to a location other than the site, the customer shall inform ONE EIGHTY in writing 90 (ninety) days prior to such relocation and shall provide ONE EIGHTY with the equipment serial number, the software description, the current and new addresses, contact people and their telephone numbers, date of relocation and other information as may reasonably be required by ONE EIGHTY. ONE EIGHTY reserves the right to adjust in its sole discretion the response times and the service fees in any event or relocation. ONE EIGHTY will further supply the Customer with a quotation to relocate the equipment. No equipment and software relocated by third parties or the Customer will be covered in terms of this agreement.

12. SCHEDULED SERVICE INTERRUPTIONS

- 12.1. ONE EIGHTY will provide the Customer with written notice of any scheduled service interruption.

13. SERVICES TO BE PERFORMED BY ONE EIGHTY

- 13.1. Uptime Service:
 - 13.1.1. Uptime service is per the conditions of this SLA.

14. GENERAL EXCEPTIONS

- 14.1. ONE EIGHTY has no obligation to support the following:
 - 14.1.1. In instances, where uptime disruptions is as a result of power outage, and the Customer has not implemented preventative measures such as uninterruptible power supplies or generators.
 - 14.1.2. Should the customer not provide ONE EIGHTY with business hours access to the buildings to reach the equipment, then the turnaround time on the SLA will not apply.

15. OBLIGATIONS OF ONE EIGHTY

- 15.1. ONE EIGHTY shall –
 - 15.1.1. rectify faults and maintain the equipment to normal optimal operational conditions;
 - 15.1.2. make remote facility changes on systems equipped with a remote maintenance jump box;

16. OBLIGATIONS OF THE CUSTOMER

- 16.1. The customer shall –
- 16.1.1. keep the equipment's environment in accordance with the manufacturer's specifications as originally supplied to the customer and free of dust, dirt and water leakage, fair wear and tear expected;
 - 16.1.2. report all equipment failures in accordance with the fault logging procedures as soon as possible;
 - 16.1.3. not permit any work to be carried out to eliminate faults or to alter the physical or software configuration of the equipment by any person other than ONE EIGHTY;
 - 16.1.4. ensure remote access at all times for remote programming purposes as set out in 17. Failure to comply with this clause will result in a time and material callout with a 24 (twenty-four) hour response and chargeable according to the prevailing ONE EIGHTY rates.

17. MAINTENANCE WARRANTIES

- 17.1. All warranties shall be null and void should any goods be tampered with or should seals on goods be broken by anyone other than ONE EIGHTY or should the goods be operated or stored outside the Manufacturer's specifications.
- 17.2. The Customer has manufacturer's warranty on all goods supplied by ONE EIGHTY.

18. DURATION

- 18.1. Upon the expiration of the fixed term contract, it will automatically be renewed on a month-to-month basis, subject to the updated material terms that were given to the customer by way of notification.

This shall occur unless: the Customer directs the Supplier to terminate the contract on the expiry date; alternatively, the customer agrees to the renewal of the agreement for a further fixed term.

19. EXCLUSION OF DAMAGES AND LIMITATION OF LIABILITY

- 19.1. Save as otherwise provided in this agreement under no circumstances will ONE EIGHTY be liable for any consequential, indirect, special, punitive or incidental damages, whether foreseeable or unforeseeable, based on claims of the customer (including, but not limited to, claims for loss of data, goodwill, profits, use of money or use of the equipment or software, interruption in use or availability of data, the equipment or software, stoppage of other work or impairment of other assets), arising out of breach or failure of express or implied warranty, breach of contract, misrepresentation, negligence, strict liability in delict or otherwise whether based on this agreement, any commitment performed or undertaken under or in connection with this agreement, or otherwise.

20. TERMINATION

- 20.1. In the event that the Customer should wish to cancel the agreement. Written notification would need to be sent to cancellations@oneeightysa.com on the Customer's letterhead giving 3 month notice.

21. FORCE MAJEURE

- 21.1. If either Party is prevented or restricted directly or indirectly from carrying out all or any of its obligations under this Agreement by any cause beyond the reasonable control of that Party, including without limitations, acts of God, civil commotion, riots, insurrection, Lock-outs, acts of government, fire, theft, explosion, the elements, epidemics, governmental embargoes or like causes, the Party so affected shall be relieved of its obligations hereunder during the period of such events and its consequences, but only to the extent so prevented and shall not be liable for any delay or failure in the performance of any obligations hereunder or loss or damage either general, special or consequential which the other Party may suffer due to or resulting from such delay or failure provided always that written notice shall within twenty four (24) hours of the occurrence constituting such an event (force majeure) be given of any such inability to perform by the affected Party and provided further that the obligation to give such notice shall be suspended to the extent necessitated by such force majeure.
- 21.2. The Parties hereby agree that should force majeure last more than ninety (90) days, the Party who has not invoked force majeure to excuse any non-performance of its obligations may terminate this Agreement by giving ten (10) days written notice to the other.

22. DOMICILIUM

- 22.1. The Parties choose as domicilium citandi et executandi ("domicilium") and for the delivery of all notices arising out of this Agreement or its termination or cancellation, these addresses:

22.2. Either of the Parties shall be entitled from time to time, by written notice to the other, to vary its domicilium to any other address within the Republic of South Africa which is not a post office box or post restante.

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22.3. _____
All notices and any payment made by any Party to any other ("the addressee") which: 24.3.1. is delivered by hand during the normal business hours of the addressee at the addressee's domicilium shall be deemed, until the contrary is proved by the addressee, to have been received by the addressee at the time of delivery;

22.3.1. is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at

22.3.2. the addressee's domicilium shall be deemed, until the contrary is proved by the addressee, to have been received by the addressee on the 10th day after the date of posting;

22.3.3. is sent by e-mail, be deemed, until the contrary is proved by the addressee, to have been received within one hour of transmission where it is transmitted during business hours at noon on the following Business day (excluding Saturdays and Sundays) where it is transmitted outside such business hours.

23. STANDARD CLAUSES

23.1. No waiver or indulgence which either Party may allow to the other Party shall be valid unless made in writing and such waiver or indulgence shall be strictly construed as applying only to the matter in respect whereof it was allowed.

23.2. This Agreement constitutes the whole Agreement between the parties and no addition to, variation, modification or agreed cancellation of this Agreement shall be of any force or effect unless recorded in a written document and signed by or on behalf of the duly authorized representatives of both parties.

23.3. No failure by a party to enforce any provision of this agreement shall constitute a waiver of such provision or affect in any way a party's right to require performance of any such provision at any time in the future, nor shall the waiver of any subsequent breach nullify the effectiveness of the provision itself.

23.4. In the event that any of the terms of this agreement are found to be invalid, unlawful or unenforceable, such terms will be severable, provided that the remaining provisions shall remain of full force and effect. If any invalid term is capable of amendment to render it valid, the parties agree to negotiate an amendment to remove the invalidity.