

# Service Terms and Conditions (Hosting and VDC)

## 1. Introduction

These Service Terms and Conditions are specific to Hosting and Virtual Data Centre (VDC) Services and shall be read together with the Service Schedule Terms and Conditions, all of which form part of the applicable Service Schedule.

## 2. Definitions

In these Service Terms and Conditions, the following terms relating to the Hosting and VDC Services shall bear the following meanings: -

- 2.1. **"Client Software"** means software that is installed on a Device that allows the Device to access or utilise the Services/products;
- 2.2. **"Device"** means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, "smart phone," server or any other hardware where software can be installed that would allow End User to interact with the Service/product;
- 2.3. **"Dedicated Infrastructure"** – the infrastructure that is dedicated to Customer on-premises or off-premises, which remains the property of Echo or Echo's supplier. Dedicated infrastructure may include, servers, storage, switches and/or firewalls;
- 2.4. **"Hosting and Access"** The installation, operation, and hosting of the Service Element. The facilitating and maintaining access to the Service Element;
- 2.5. **"Microsoft"** means Microsoft Corporation;
- 2.6. **"Service Elements"** means/includes the following IAAS: VPN (including national connectivity via a dedicated access link); perimeter firewalls (being devices configured to permit, deny, encrypt, or proxy all computer traffic between different security domains based upon a set of rules and other criteria); Virtual Machine(s) (meaning a computer simulated environment inclusive of an operating system and its allocated resources; and Onsite Services such as the provisioning of servers to the sites of the Customer.

## 3. Hosting and Virtual Data Centre Services – Backups and Storage

- 3.1. Echo provides Hosting and VDC Services through its strategic partnerships with industry-leading providers. These services include physical hosting in secure, carrier-neutral facilities, as well as virtualised infrastructure solutions, offering the Customer robust, scalable, and reliable platforms for hosting applications, managing critical data, and optimizing business operations. Hosting and VDC Services are designed to deliver high availability, energy efficiency, and advanced security measures to support the Customer's mission-critical needs.
- 3.2. The Services shall be rendered from a primary location only and will not include application licensing; on-site support, backups at a secondary location (off-site), and replication/disaster recovery of services to a secondary location.
- 3.3. Backups are scheduled to run once a day and after hours. Backups are monitored daily and in the event of a backup job failing, Echo and/or its supplier and/or Partner will endeavour to rectify the backup in the next backup job run.
- 3.4. The backup management and cloud backup retention period is automatically set to 21 days. Customised backup and retention options are available at an additional cost.
- 3.5. Backups are scheduled to run once a day and after hours. Echo's supplier/vendor monitors backups daily and in the event of a backup job failing, Echo's vendor will endeavour to rectify the backup in the next backup job run. Neither Echo or its vendor will be liable for any loss or destruction of Customer's data.
- 3.6. Backup management for on premise or customer hosted servers includes a daily email report detailing servers backed up and the success or failure of the backup. Backup management for on premise or Customer hosted servers includes backup software for virtual or physical servers.
- 3.7. Customer acknowledges and agrees that the Service/system is hosted in a third-party data centre. Customer acknowledges and agrees to comply with the applicable acceptable use policies (from time to time) of the data centre in which the Service/system is hosted.
- 3.8. Cloud backups are kept at the same location as the cloud servers and virtual data centres unless otherwise recorded in this Service Schedule. Nothing herein contained constitutes a representation on Echo's part that any backups of data implemented, by Echo and/or its supplier and/or partner, shall be successful or of any restoration times. It is specifically recorded that neither Echo nor its suppliers will be liable for any loss or destruction of the Customer's data.
- 3.9. The following Services are based on an allocated amount/capacity and shall be invoiced by Echo accordingly: - Cloud server vCPU and vRAM; Virtual data centres (based on an allocation of CPU vGhz, vRAM and vStorage); and Cloud server storage and Cloud storage (based on hard drives (7.2K, 10K, 15K) or solid-state drives).
- 3.10. The Customer acknowledges that it has the sole responsibility to periodically test cloud servers that are used as failover or disaster recovery servers.
- 3.11. Neither Echo, nor its partners nor its suppliers will be held liable in respect of any out-of-date software, patches, application versions et cetera.

## 4. Dedicated Infrastructure Storage

- 4.1. Dedicated Infrastructure storage as a Service is based on allocated capacity with RAID 5 or 6 configured in the underlying storage system, with the minimum monthly commitment on allocated capacity. Dedicated Infrastructure storage as a Service is managed and maintained by Echo's supplier. The management and maintenance are carried out in respect of the underlying storage system only and does not include storage switches and servers/hosts. Customer is required to manage storage and data at the server/host level. Customer shall not be granted access to the underlying storage system.
- 4.2. The Customer agrees that on-premises Dedicated Infrastructure provided by Echo and/or its partner and/or supplier will be housed in a secure data centre with redundant power through UPS's, sufficient cooling, secure physical access, fire suppression system and CCTV security surveillance. The Customer agrees to provide Echo and/or its supplier and/or partner with physical access to the dedicated infrastructure when needed. The Customer agrees to provide remote access to the Customer's network to access the Dedicated Infrastructure.
- 4.3. VMware vSphere Management for Dedicated Infrastructure includes MACD's of vSphere as/if specified in the Service Schedule.
- 4.4. Virtual Machine Management for Dedicated Infrastructure includes the status monitoring of the virtual machine and MACD's relating to the Virtual Machine at a hypervisor level for dedicated Infrastructure as/if specified in the Service Schedule.
- 4.5. Hardware Monitoring includes hardware component up/down status monitoring of the Dedicated Infrastructure as/if specified in the Service Schedule.

- 4.6. Operating System Management includes Operating System Monitoring of CPU, RAM and Storage, Operating System Patch updates as agreed with Customer Schedules and Operating System related MACDs as/if specified in the Service Order.
- 4.7. Customer is responsible for Anti-Virus software and keeping same updated on their Hosted Cloud Servers or Dedicated Infrastructure.
- 4.8. Where on-site support is required, such support shall be charged at the standard rate applied by Echo.
- 4.9. Power costs may vary dependant on customer's power consumption (power usage increases in increments of 1.1. KVA). It is the Customer's responsibility to ensure that its own equipment can draw power from either the A feed or B feed at any time to ensure resilience. Unless otherwise agreed to by Echo in writing, power consumption per standard cabinet may not exceed 3.3 KVA (excess power and cabinet costs may be charged where this cap is exceeded).

## **5. Hosted Content**

- 5.1. Customer agrees that is the sole author, editor and/or publisher of all data/content/material which is hosted and/or stored on, or otherwise is processed through/on the Hosting Services/Service Elements. It is Customer's sole responsibility to ensure the integrity, validity, and completeness of any such data/content/material. Echo shall not be liable for monitoring the any data/content/material which is hosted, stored, or processed using the Hosting Services and Customer indemnifies Echo against any claims which arise and/or any costs/losses/damages suffered by any person or entity arising directly or indirectly from any the said data/content/material. Echo reserves the right to suspend or prevent access to the Hosting Services where any data/content/material stored/processed using the Services or otherwise on any Service Elements is illicit or otherwise infringes upon a third party's rights.
- 5.2. Echo is not liable for any failure or interruption in software or services provided by third parties. Provision of the Hosting Services does not imply any representation or warranty by Echo that it will be able to assist Customer in achieving any results which are not technically feasible.
- 5.3. Despite anything to the contrary, Echo shall not be liable to Customer or any other person or entity in respect of any loss, costs, penalties, claims or damage of any nature as a result of or in connection with, without limitation, necessary hardware or software maintenance or upgrades, provided Customer is given reasonable notice thereof; planned maintenance or agreed system downtime for any reason (including a move in premises); any breakdown in any of the Services provided by any of Echo's suppliers beyond Echo's reasonable control; the performance or unavailability of external communications networks (including the cellular and fixed-line networks) to which the Echo's Server or the Hosting Service and components are connected; a suspension or interruption in accordance with the Agreement, and/or which arise as a direct or indirect result of any technical problems, including denial of access to other sites or information; the loss, destruction, theft, damage, contamination or corruption of a server or any customer data, material, information and/or content; Customer's failure to obtain any license, consent or authority necessary or required for Hosting Services offered by Echo, a breach by Customer of any law or regulation; any fraud committed by Customer or a third party, cyber-crimes committed by a third party, circumstances beyond Echo's reasonable control.
- 5.4. Neither Echo nor its supplier have any knowledge, or interest, in, and do not have any liability for, nor do they consent to and/or contribute to, without limitation, any content which is hosted for the Customer by Echo; data stored or accessed on the Hosting Services system; or data published by, or on the Customer's behalf, in using the Hosting Services.
- 5.5. The Customer indemnifies Echo and/or its partners and/or suppliers and/or agents, and holds them harmless against any liability, claims, fines or other penalties of whatsoever nature imposed by any person arising either directly or indirectly out of the above.

## **6. Termination and Migration of Hosting Services**

- 6.1. Upon termination of a Hosting Service, all property belonging to Echo and/or its vendor will be returned to Echo by Customer.
- 6.2. Subject to payment by Customer of all amounts due and payable under the Agreement, Customer may request migration assistance by sending a written request to Echo at least 3 (three) full calendar months prior to the termination of the Hosting Service. After receiving said written request, Echo may in its discretion, render such reasonable assistance to Customer to enable Customer to migrate any Hosting Services to a service provider of Customer's choice. Any costs associated with the migration of the Services shall be for Customer's account. Save for the foregoing, upon expiration or termination of any Hosting Services, neither Echo nor its vendor shall be required to maintain or store any customer content hosted and may delete same upon termination of the services.

## **7. Rights of Use and Security**

- 7.1. The Customer acknowledges that in providing the Customer with the Hosting Services, Customer will be provided with a limited, revocable, non-transferable, non-exclusive license to access and use the Hosting Service, and the Customer acknowledges and agrees that it has specific obligations and/or responsibilities under the Agreement and agrees to use said license only for its own business purpose, and further acknowledges that it obtains no rights of ownership of the Hosting Services or any part thereof whatsoever. Customer shall be responsible for ensuring that any authorised users of the Services comply with the Agreement and shall always remain solely liable for the acts and omissions of such authorised users as if they were the acts and omissions of the Customer.
- 7.2. The Customer agrees that it shall not: - save for its authorised users, grant any third party, access to the Hosting Services; sub-license, lease and/or in any way sell or cede, or otherwise transfer the use of the Hosting Services, whether in whole or in part, to any third party; and/or remove or suppress any proprietary notices on the Hosting Services.
- 7.3. Customer shall take all reasonable measures necessary to ensure that no unlawful or unauthorised access is gained to the Hosting Services/system. If an unauthorised person attempts to gain, or gains, access to the Hosting system or if there is any other security violation, or if the Customer reasonably considers there to be a potential security violation, it shall immediately notify Echo thereof in writing. In the event of a security violation, or if Echo, determines that there is a potential security violation, Echo may take whatever steps it deems necessary to protect the Hosting Services/system. Customer shall give reasonable cooperation to Echo and its suppliers in any investigation which may be carried out relating to a security violation or potential security violation.
- 7.4. Customer hereby unconditionally and irrevocably indemnifies and holds harmless Echo or its supplier ("Indemnified Party") from and against all claims, liabilities, losses, costs, expenses (including, without limitation, reasonable attorney's fees) and damages, which an Indemnified Party may suffer and/or incur arising out of and/or resulting from any breach of security of the Services/system.

## **8. Data Centre**

- 8.1. If Echo provides co-location/cage Services, Customer will be granted reasonable access to the premises where such services are provisioned for the purposes of installation, testing, commissioning, operation, repair, upgrade and maintenance of the Customer's collocated equipment, provided that such access shall be subject to the data centre's access, security, health and safety policies applicable from time to time. Echo and/or the data centre reserve the right to deny any person access who fails to, or whom they believe may fail to, adhere to such policies. Without limiting the foregoing, data centre personnel reserve the right to search any person entering or leaving the data centre.
- 8.2. Echo and/or personnel of the data centre may relocate the Customer within the data centre on no less than 7 (seven) days' notice to the Customer.

- 8.3. Echo and/or personnel of the data centre on prior written notice to the Customer inspect the Customer's installation and Co-located Equipment to ensure compliance with the building regulations and restrictions agreed between the Parties.
- 8.4. The Customer shall maintain the Site in a neat and tidy state and shall, upon termination of the Service Order in respect of any such area return the Site to its original state, fair wear and tear excepted.
- 8.5. The Customer acknowledges that it is solely responsible for the actions and behavior of their staff, contractors, or representatives while on the premises of the data center and shall ensure that they comply with all applicable rules, regulations, and guidelines.
- 8.6. Equipment to be Installed according to supplier's recommendations, but with no less than 1U clearance between rack mounted units.
- 8.7. The Customer agrees to indemnify Echo and hold it harmless from and against any and all claims, demands, liabilities, expenses, damages, and losses, including but not limited to legal fees and costs arising out of or related to the Customer's access to the premises of the data center, as well as any acts or omissions of their staff, contractors, or representatives while present in the data center facility. This indemnification extends to, but is not limited to, any damage to property, personal injury, or any violations of the data center's policies or procedures caused by the Customer's personnel.

#### **9. Microsoft Products**

- 9.1. To the extent applicable, this Service Schedule governs access to, and use of, Microsoft software, which may include associated software, media, printed materials, and "online" or electronic documentation ("Products") provided by Echo to Customer. Customer acknowledges and agrees that Microsoft is a third-party beneficiary in relation to the MSA and this Service Schedule. Echo does not own the Products, as the Products are licensed by Microsoft. Customer accepts that access to, and use of, the Products and Client Software licensed by Microsoft may only be used subject to, and in accordance with the relevant EULA, the terms and conditions of this Service Schedule, the MSA and any additional requirements that Microsoft may prescribe from time to time in relation to the Products.
- 9.2. Notwithstanding any provision to the contrary contained in the Agreement, and without prejudice to any other rights that Microsoft and/or Echo may have, Microsoft and/or Echo's vendor may terminate Customer's rights to use and/or access the Products, with or without notice, if Customer fails to comply with the terms and conditions contained herein.
- 9.3. In the event of termination or cancellation of this Service Schedule, the MSA, or the Services/Products, Customer must immediately cease use of and/or access to the Products and destroy all copies of, and information relating to, the Products and their component parts within 30 (thirty) days of the termination. Termination or expiration of this Service Schedule and/or the Services automatically terminates all rights to use the Products.
- 9.4. Customer shall not and shall ensure that End User does not modify or use the Client Software/Products in any manner that is not expressly authorised in this Service Schedule. Customer is responsible to Microsoft and/or Echo for any unauthorised installation, use, copying, access, or distribution of supplemental software by an End User.
- 9.5. Customer shall ensure that it and any End User accessing the Products and Client Software comply with the terms and conditions of this Service Schedule and the applicable EULA. If Microsoft, and/or Echo reasonably believe that any End User is not complying with the terms of this Service Schedule, Customer must cooperate in good faith with Microsoft and/or Echo and/or its vendor to investigate and remedy the non-compliance and provide all required assistance in this regard.

#### **10. Privacy and Compliance with Laws**

- 10.1. Third party software is used to provide, without limitation, infrastructure-as-a-service Services. The use of such software is subject to the respective licensor's terms and conditions, legal requirements and reporting requirements that are applicable from time to time. By signing this Service Schedule, Customer expressly consents to Echo providing the relevant licensor with such information as it may require from time to time in terms of the applicable licensor terms (which may include, without limitation, information in respect of software usage and/or services relying on the applicable software, Customer information, and any relevant end user/User information). Customer further acknowledges and agrees that such disclosure is necessary and required for the purposes of enabling Echo to provide the Services/Products to Customer in terms of this Service Schedule, and any refusal to comply with such request may result in Customer's access and/or use rights in and to the Services/Products being revoked or suspended, without liability to Echo.
- 10.2. Customer and its End Users/Users must adhere to and comply with the vendor specific terms and conditions including any applicable End User License Terms (EULA) as may be applicable from Echo's vendors from time to time, including but not limited to those provided by Microsoft, Azure, AWS, and/or Silicon Sky. In respect of Silicon Sky Consulting, end users/User are required to comply with the end user license terms located at <https://siliconsky.com/za/end-user-license-terms/>. Failure to comply with this clause may result in the termination of service without prior notice.
- 10.3. Customer permits, upon Microsoft's and/or Echo's request, disclosure of the End User's name and address to Echo, and/or its vendors, including Microsoft. Customer consents to the processing of personal information/data by Echo and/or Echo's vendors and/or their agents to facilitate the access to, and use of, the Services/Products in accordance with the MSA, this Service Schedule, any applicable EULA, and all matters incidental thereto (including the enforcement of any party's rights thereunder). Customer hereby consents and shall obtain all required consents from third parties in accordance with the applicable data protection laws before providing said information to Echo and/or its vendors.
- 10.4. Personal Information collected in terms of this Service Schedule may be transferred, stored, and processed in the United States, or in any country which Echo and/or Echo's vendor(s) maintain facilities, and will be subject to applicable privacy rights.
- 10.5. The Products are subject to U.S. export jurisdiction. Customer must comply with, and ensure that its End Users will comply with, all applicable laws including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>. Customer acknowledges its obligation to comply with its vendor policies, which include any sanctions compliance policies provided by Microsoft from time to time.
- 10.6. In addition to any liability Customer may have to Echo, Customer agrees that it will also be legally responsible directly to Echo's vendor/supplier for any breach of the terms and conditions as contained herein. In this regard, Customer hereby indemnifies and holds Echo harmless from and against any and all claims, allegations (whether threatened or asserted), liabilities, damages, losses, charges, costs or expenses (including the reasonable costs and fees of attorneys and other consulting professionals) claimed to be caused by or resulting from Customer or End User's acts or omissions arising out of, or incidental to, this Service Schedule, and/or the access to and/or use of the Products.