



**Standard Terms and Conditions for  
GigaBiz a division of  
MetroFibre Networx (Pty) Ltd**

## 1. DEFINITIONS AND INTERPRETATION

- 1.1 Unless a contrary intention is clear from the context, the following words and phrases shall have the following meanings:
- 1.1.1 “Acceptable Fair Use and Access Policy” means the MetroFibre Acceptable Fair Use and Access Policy attached hereto as Annexure 2;
- 1.1.2 “Access Build” means civil construction and maintenance works required at the Customer’s Premises to connect the Network Service to the Customer by installation of a Termination Point in the Customer Premises,;
- 1.1.3 “Activation” means the enabling of a Service to the Customer’s Premises;
- 1.1.4 “Agreement” means the current version of these Standard Terms and Conditions for GigaBiz services, the Order Form signed by the Customer, and all annexures and addenda to these documents, as amended from time to time and available at [www.metrofibre.co.za](http://www.metrofibre.co.za);
- 1.1.5 “Authority” means the Independent Communications Authority of South Africa established in terms of the Independent Communications Authority of South Africa Act 13 of 2000, as amended, and its successors who oversee the telecommunications and electronics industry in the Republic of South Africa;
- 1.1.6 “Business Day” means any day which is not a Saturday Sunday or a day which is defined as a public holiday in terms of the Public Holidays Act, Act 36 of 1994;
- 1.1.7 “Charges” means installation charges, monthly service charges, usage and all other charges relating to the provision of the services by MetroFibre to the Customer or relating to the cancellation of the Agreement;
- 1.1.8 “**Confidential Information**” shall mean all information (in whatever format) which: (i) relates to the Agreement; (ii) is designated as confidential by either Party; or (iii) relates to the business, affairs, networks, customers, products, developments, trade secrets, know-how and personnel of either Party (including without limitation, Personal Information) and which may reasonably be regarded as the confidential information of the disclosing Party.
- 1.1.9 “Contractor” means a contractor appointed by MetroFibre to install, maintain, repair, connect, disconnect or perform any similar tasks related to the provisioning of the CPE or the Services by MetroFibre to the Customer;
- 1.1.10 “Customer” means the person, legal entity and/or organisation entering into this Agreement with MetroFibre for the provision of GIGABIZ Services and/or the use of the Customer Premises Equipment;
- 1.1.11 “Customer Premises” means the office, shop or business premises specified in the Order Form at which the Services are to be provided;
- 1.1.12 “Customer Premises Equipment” or “CPE” means all devices supplied by MetroFibre to the Customer to enable MetroFibre to provide the Services to the Customer, including but not limited to the optical network terminal (ONT), router, hardware, cables and connections;
- 1.1.13 “Event of Force Majeure” means any event or circumstance, other than a lack of funds required for payment, which is not within the reasonable control of the affected Party including, without limitation, war, national emergency, state of emergency, epidemic, pandemic, plague, national lockdown, strike, civil disturbance, theft, fire, flood, explosion, natural disaster, unusually severe weather conditions, prohibitive legislation or regulations, unpredictable delays caused by traffic congestion, diversion or road works, inability to secure materials or services and failure of power or utility supplies (including electronic communications);
- 1.1.14 “Installation” means the physical act of providing the GIGABIZ service to the Customer Premises and shall include all Access Builds;
- 1.1.15 “GPON” means defined as gigabyte passive optical network as fully detailed in ITU-T Recommendation G.984 as amended from time to time;
- 1.1.16 “Internet Services Provider” means a company that provides customers with internet access;
- 1.1.17 “MetroFibre” means Metro Fibre Network (Proprietary) Limited and GigaBiz a division of MetroFibre, with registration number 2007/024366/07, a company incorporated in terms of the laws of the Republic of South Africa, which is a Network Provider and Internet Services Provider;
- 1.1.18 “Month” means a calendar month beginning at 0h00 on the first day of the calendar month in question;
- 1.1.19 “Network Provider” means an entity authorised by the Authority to provide telecommunication services including, but not limited to, fixed network operators, mobile operators, wireless operators, or any other operator that provides access and network services (including value added services);

- 1.1.20 “Network Services” means any services provided by a Network Provider and which are made accessible to the Customer in terms of this Agreement;
- 1.1.21 “Order Form” means the document which is completed by the Customer in writing, electronically or telephonically, which contains the Customer’s details and the Customer’s request that MetroFibre provides it with Services, and may reference and include additional terms and conditions and any other annexures or schedules or documents referred to in the Order Form document from time to time;
- 1.1.22 “Parties” means the parties to this Agreement, being MetroFibre and the Customer collectively, and “Party” means either one of them;
- 1.1.23 “Personal Information” shall mean “personal information” as defined in POPIA;
- 1.1.24 “POPIA” means the Protection of Personal Information Act, No. 4 of 2013, as amended and its applicable regulations from time to time;
- 1.1.25 “Process” shall mean any operation or activity or any set of operations, whether or not by automatic means, concerning Personal Information, including:
  - 1.1.25.1 the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use;
  - 1.1.25.2 dissemination by means of transmission, distribution or making available in any other form; or
  - 1.1.25.3 merging, linking, as well as restriction, degradation, erasure or destruction of information;
- 1.1.26 “RICA” means the Regulation of Interception of Communications and Provision of Communications Related Information Act 70 of 2003, as amended from time to time, and its related regulations as published in the Government Gazette;
- 1.1.27 “Service(s)” means the optic fibre and internet connectivity GPON based services provided by MetroFibre to its GIGABIZ’ Customer together with the with provision of any CPE required for such services, as detailed in the body of this Agreement as well as any additional services set out in any of the Annexures hereto, which the Customer subscribes for;
- 1.1.28 “SLA” means the Service Level Agreement annexed to this Agreement as Annexure 1;
- 1.1.29 “Social Media Platforms” shall mean internet-based social media platforms and/or blog sites, such as (but not limited to) Facebook, Twitter, Instagram and all similar sites which grants a user a platform from which to air an opinion, whether moderated or not, which is accessible to the general public, whether now in existence or which may come into existence in future;
- 1.1.30 “Termination Point” means the point where the Customer is connected to the fibre broadband network and includes the optical network terminal point (“ONT”);
- 1.1.31 “Use Charges” means the costs charged by MetroFibre to the Customer for access to the Network Services; and
- 1.1.32 “VOIP” means voice over IP technology for placing and transmitting telephone calls over an Internet Protocol network including the Internet, as set out in Annexure 3 hereto.
- 1.2 In this Agreement, unless a contrary intention is clear from the context:
  - 1.2.1 the singular includes the plural and vice versa;
  - 1.2.2 a reference to any gender includes the other genders and a reference to a person includes any individual, body corporate, unincorporated entity or any other entity recognised in law as having a separate legal existence;
  - 1.2.3 when any number of days is prescribed, this shall be calculated by excluding the first and including the last day, unless the last day is not a Business Day in which case the days shall be calculated up to the next Business Day;
  - 1.2.4 headings of clauses have been inserted for convenience only and shall not be taken into account in the interpretation of this Agreement;
  - 1.2.5 if there is any conflict between the provisions of this Agreement and any annexure, the provisions of this Agreement shall prevail over the provisions of Annexure 1 and Annexure 2, however, provisions of Annexure 3 will prevail in the event of any conflict with this Agreement;
  - 1.2.6 words defined in this clause shall have the same meaning in the annexures and any word defined in a clause or annexure shall have that meaning in the clause or annexure concerned and if used elsewhere in this Agreement.

## 2. PROVISION OF SERVICES AND AUTHORISATION

- 2.1 The Customer wishes to acquire the Services from MetroFibre, which Services MetroFibre agrees to provide to the Customer subject to the terms of this Agreement.
- 2.2 In order to provide the Services:
  - 2.2.1 MetroFibre may be required to conduct an economic and network feasibility process to determine the viability of any Installation including Access Builds;
  - 2.2.2 MetroFibre may require information from other Network Providers. The Customer authorises MetroFibre to approach any Network Provider or other party in order to obtain such information;
  - 2.2.3 METROFIBRE MAY NEED TO ENTER INTO AGREEMENTS OR ARRANGEMENTS WITH THIRD PARTIES WHICH MAY BE NECESSARY FOR METROFIBRE TO DELIVER THE SERVICES. THE CUSTOMER HEREBY AUTHORISES METROFIBRE TO ENTER INTO ANY SUCH AGREEMENT OR ARRANGEMENT ON HIS/HER BEHALF AS MAY BE NECESSARY;
  - 2.2.4 if so required, the Customer shall provide MetroFibre with such written authorisation as may be necessary for MetroFibre to obtain the information referred to in clause 2.2.2 or to enter into an agreement or arrangement referred to in clause 2.2.3; and
  - 2.2.5 THE CUSTOMER UNDERTAKES TO PROVIDE METROFIBRE WITH ALL INFORMATION AND DOCUMENTATION REQUIRED UNDER RICA PRIOR TO THE SERVICE BEING ACTIVATED. THE CUSTOMER ACKNOWLEDGES THAT METROFIBRE MAY NOT PROVISION ANY SERVICE TO THE CUSTOMER UNTIL SUCH A TIME AS THE CUSTOMER HAS COMPLIED WITH THIS CLAUSE. THE CUSTOMER UNDERTAKES TO UPLOAD THE REQUIRED RICA DOCUMENTATION ONTO METROFIBRE'S CUSTOMER PLATFORM ON THE GIGABIZ [CLIENTPORTAL.METROFIBRE.CO.ZA](http://CLIENTPORTAL.METROFIBRE.CO.ZA). THE CUSTOMER ACCEPTS AND AGREES THAT IT/HE/SHE WILL BE REQUIRED TO PROVIDE HARD COPIES OF THE RICA DOCUMENTATION TO THE INSTALLERS OF THE CPE WHEN THE CPE IS INSTALLED AT THE CUSTOMER'S PREMISES AS WELL AS UPLOAD SOFT COPIES OF THE RELEVANT RICA DOCUMENTS ONTO [CLIENTPORTAL.METROFIBRE.CO.ZA](http://CLIENTPORTAL.METROFIBRE.CO.ZA).
- 2.3 Where an electronic Order Form is placed through the MetroFibre portal/ website, the order as selected and executed by MetroFibre will be billed to the person whose name is set out at the top of the Order Form.
- 2.4 Except as expressly set out in this Agreement, all warranties, representations or agreements, with respect to the provision of a Service or otherwise, whether oral or in writing and whether express or implied, either by operation of law, statute or otherwise, are excluded to the extent permitted by law. Without limiting the generality of the foregoing MetroFibre does not warrant that the Services will fit or suited for Customer's purpose, be uninterrupted or error free, or that defects in the Services will be remedied. Customer assumes and accepts all risk associated with the use of the Services.
- 2.5 The GIGABIZ service is a purely layer 3 (three) service with a limitation of 1 x Static IP situate on the WAN interface of the CPE device deployed at the premises. The Customer acknowledges that the installation of this specific service limits the physical address where it is installed to the GIGABIZ product suite which may change from time to time, without prior written notice to the Customer. All registered Resellers of MetroFibre and MetroFibre itself can sell the GIGABIZ product suite to the Customer.
- 2.6 The GIGABIZ product as a business product is not available as a layer 2 (two) product.

### 3. TERM

- 3.1 The Agreement shall apply to each Order Form and any Services provided in terms thereof, calculated from the date of Activation.
- 3.2 The Customer may terminate the Agreement at any time by giving 30 (thirty) calendar days' notice in writing to MetroFibre.
- 3.3 If the conclusion of the Agreement is as a result of direct marketing, the Customer has the right to terminate the Agreement without reason or penalty within 5 (five) Business Days of the later of the date upon which the Agreement was entered into or the Service or the CPE are delivered to the Customer. If the CPE are not returned to MetroFibre in their original, unopened packaging, MetroFibre shall be entitled to claim a reasonable amount from the Customer for the use of the CPE.

### 4. ACCESS BUILD

- 4.1 Where an Access Build is included in any Service order, marketing materials, package or quote, the Access Build shall encompass the civil works relating to the installation of a Termination Point in the Customer Premises.
- 4.2 The Access Build shall be limited to reasonable civil construction costs of not more than R10 000 (ten thousand Rand) and no more than 15 (fifteen) running metres of cable infrastructure including trenching and reticulation. To the extent that the parameters of the Access Build will be exceeded, MetroFibre shall be entitled to charge an increased cost based on labour and materials

## **5. DELIVERY AND INSTALLATION**

- 5.1 Subject to the result of the feasibility process and payment of any Access Build (where applicable), MetroFibre shall deliver the CPE required for the provision of the Services and as specified in the Order Form, to the Customer Premises against payment of the Charges and deposit, if any, as set out in the Order Form.
- 5.2 MetroFibre will use its reasonable endeavours to comply with the installation date requested by the Customer. However, the Customer acknowledges that this will depend on the availability of the Services, service providers and Contractors and MetroFibre gives no undertaking that it will meet any requested installation date. MetroFibre will not be liable in any manner to the Customer for any loss arising from any delay in the provision of the Services or the supply of CPE or any failure of the Services or CPE, whether arising from an Event of Force Majeure or from any other reason whatsoever.
- 5.3 The Customer shall, at its own cost and expense, be responsible for:
  - 5.3.1 ensuring that the communication services and facilities, including, without limitation, installation areas, electrical outlets, are suitable for the installation, passage and electrical connection of the equipment and Services when they are delivered for installation and thereafter. Where any device or equipment is required which is not provided by MetroFibre, the Customer shall be responsible for installing it at its own cost, risk and expense. Only devices and equipment which are approved by the Authority and which have all the technical and operational characteristics and modifications which have been approved by MetroFibre may be used in conjunction with the Services and the CPE; and
  - 5.3.2 obtaining all the necessary permissions, approvals and authorities necessary for the purposes of the supply and installation of the equipment and Services, including permission from the owner of the Customer Premises where the Customer is not the owner. **THE CUSTOMER HEREBY INDEMNIFIES METROFIBRE AGAINST ANY LIABILITY OR COSTS WHICH METROFIBRE MAY INCUR BECAUSE OF THE CUSTOMER'S FAILURE TO OBTAIN ANY APPROVAL OR PERMISSION.**
- 5.4 After installation acceptance, any subsequent callout will be subject to a callout fee.
- 5.5 Unless the Customer advises MetroFibre of any problems with the installation or the Services within 5 Business Days from the time of Activation, the Customer shall be deemed to have accepted that the Services work, as intended.

## **6. USE OF THE EQUIPMENT**

- 6.1 The Customer acknowledges that the CPE are and remain the property of MetroFibre and shall use the CPE only for the purpose for which it is intended and in accordance with any laws or regulations.
- 6.2 Should the Customer not be the owner of the Customer Premises, the Customer shall notify the owner of the Customer Premises of MetroFibre's ownership of the CPE.
- 6.3 Upon delivery to the Customer, or collection by the Customer, of the CPE, risk in respect of the CPE, but not ownership thereof, shall pass to the Customer who shall ensure that:
  - 6.3.1 the CPE is kept in the Customer's possession and control in the Customer Premises, and protected against any material loss or damage and free from any attachment, lien, hypothec or other encumbrance;
  - 6.3.2 the CPE is used with due care and diligence. The Customer specifically acknowledges that the fly-lead is extremely fragile and may not be bent, tightly coiled or manhandled;
  - 6.3.3 should the Customer move from the Customer's Premises, the CPE, shall be returned to MetroFibre or collected by MetroFibre, if so elected, by MetroFibre. In the event that the CPE is to be collected by MetroFibre, the Customer undertakes to inform the new owner or tenant of the Customer's Premises that MetroFibre owns the CPE. Notwithstanding the relocation of the Customer from the Customer's Premises, the Customer remains responsible for the safekeeping of the CPE until the CPE is returned to MetroFibre or collected by MetroFibre, as the case may be.

- 6.4 In the event of theft of or loss or damage to the CPE, the Customer shall immediately inform MetroFibre thereof in writing. The Customer shall be solely responsible for the cost of repairing or replacing the CPE.
- 6.5 The Customer shall ensure that the CPE remains at the Customer's Premises. Only MetroFibre is allowed to relocate the CPE. The Customer will be charged a relocation fee if relocation is requested by the Customer after having accepted the Service.
- 6.6 MetroFibre may, at any time during the Agreement, reconfigure, upgrade or exchange any part of the CPE should MetroFibre, in its sole discretion, deem it necessary to do so in order to meet its obligation to provide the Services. MetroFibre shall not be obliged to undertake any upgrades of the CPE unless it deems it necessary in its sole discretion, to do so.

## **7. USE OF SERVICE**

- 7.1 The Customer warrants and undertakes in favour of MetroFibre, that the Customer:
- 7.1.1 shall not use or permit the Service to be used for improper or unlawful purposes;
- 7.1.2 shall not use the Service to cause any harm or physical damage MetroFibre's CPE or network or to any third-party network or Network Provider;
- 7.1.3 shall not resell capacity arising from the Service;
- 7.1.4 shall comply with relevant legislation, including any regulations by the Authority or other legislative bodies, and any directives or instructions from MetroFibre, including MetroFibre's Acceptable Fair Use and Access Policy, annexed hereto and available on MetroFibre's website, relating to the use of the CPE or the Service; and
- 7.1.5 acknowledges that the Service is not designed nor intended to provide a Customer with Active Ethernet connectivity solutions and that the Services are provided on a best efforts basis and "as is", and cannot be modified, changed or amended to provide the Customer with alternate individual connectivity solutions.
- 7.2 THE CUSTOMER WARRANTS AND REPRESENTS TO METROFIBRE THAT THE CUSTOMER SHALL USE THE SERVICE IN TERMS OF CLAUSE 7.1 AND SHALL FULLY INDEMNIFY METROFIBRE AGAINST ANY THIRD PARTY CLAIM RESULTING FROM ANY DAMAGE CAUSED TO A THIRD PARTY NETWORK (WHETHER PHYSICAL DAMAGE AND/OR DAMAGE TO THE LOGICAL BASIS OF THE NETWORK) AND AGAINST ANY BREACH BY THE CUSTOMER OF THE PROVISIONS OF CLAUSE 7.1.
- 7.3 THE CUSTOMER WARRANTS THAT IT HOLDS AND SHALL CONTINUE TO HOLD SUCH LICENCES AND/OR OTHER AUTHORISATIONS AS ARE REQUIRED UNDER ANY RELEVANT LEGISLATION, REGULATION OR ADMINISTRATIVE ORDER, TO OPERATE ITS BUSINESS AND TO RECEIVE THE SERVICES AND TO RUN AND CONNECT THE CUSTOMER EQUIPMENT TO THE NETWORK AND SERVICE EQUIPMENT. METROFIBRE RESERVES THE RIGHT TO DISCONNECT ANY CUSTOMER EQUIPMENT WHERE THE CUSTOMER HAS FAILED TO COMPLY WITH THE PROVISIONS OF THIS CLAUSE 7.3 AND METROFIBRE SHALL IN NO EVENT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY IN RESPECT OF THE CUSTOMER'S FAILURE TO COMPLY WITH THIS CLAUSE .

## **8. FEES AND PAYMENT**

- 8.1 The Use Charges for the Services are payable in advance unless otherwise specifically agreed in the Order Form and the Customer shall make payment within 7 (seven) days from the date of invoice, into the bank account nominated by MetroFibre for this purpose, in full, without deduction or set-off and free of bank charges for the supply and delivery of Services, irrespective of whether or not the Service is used.
- 8.2 THE CUSTOMER SHALL BE LIABLE FOR THE APPLICABLE REACTIVATION CHARGES TO RESTORE ANY SERVICES SUSPENDED DUE TO NON-PAYMENT OR LATE PAYMENT OF CHARGES THAT ARE DUE AND PAYABLE IN TERMS OF THIS AGREEMENT.
- 8.3 MetroFibre shall be entitled to change the fees payable by the Customer upon 30 (thirty) days' notice.
- 8.4 THE CUSTOMER ACCEPTS AND AGREES THAT SHOULD THE CPE NOT BE RETURNED TO METROFIBRE OR COLLECTED BY METROFIBRE, AS THE CASE MAY BE, WITHIN 14 DAYS OF THE TERMINATION DATE, METROFIBRE WILL CHARGE THE CUSTOMER FOR THE REPLACEMENT COST OF THE CPE AND THE CUSTOMER WILL BE LIABLE FOR SUCH PAYMENT. THE COST OF THE CPE MAY BE AN AMOUNT OF UP TO R 2 200 (TWO THOUSAND TWO HUNDRED RAND), DEPENDING ON THE SPECIFIC CPE DEPLOYED AT THE CUSTOMER'S PREMISES. IN THE EVENT THAT THE CUSTOMER PAYS FOR THE SERVICES VIA DEBIT ORDER, THE CUSTOMER HEREBY

AGREES THAT METROFIBRE MAY DEBIT THE CUSTOMER'S ACCOUNT IN AN AMOUNT EQUIVALENT TO THE VALUE OF THE UNRETURNED CPE. THE CUSTOMER CAN CONTACT METROFIBRE ON 087 151 4000 TO ASCERTAIN THE PURCHASE PRICE OF THE CPE. IN THE EVENT THAT THE CUSTOMER TAKES UP A SERVICE WITH ANOTHER SERVICE PROVIDER ON THE METROFIBRE NETWORK, METROFIBRE WILL DEPLOY ADDITIONAL CPE ALLOWING ANY APPROVED RESELLERS TO SELL CONNECTIVITY SERVICES OVER THE METROFIBRE NETWORK. THE ADDITIONAL CPE REMAINS THE PROPERTY OF METROFIBRE AT ALL TIMES.

- 8.5 A CERTIFICATE SIGNED BY ANY DIRECTOR OF METROFIBRE SHALL BE PRIMA FACIE PROOF OF THE AMOUNT OWING BY THE CUSTOMER FOR THE PURPOSES OF OBTAINING PROVISIONAL SENTENCE OR SUMMARY JUDGMENT. THE BURDEN OF PROOF SHOULD THE CUSTOMER DISPUTE THE CORRECTNESS OF SUCH SIGNED CERTIFICATE, SHALL REST WITH THE CUSTOMER.

## **9. SUSPENSION OF SERVICES**

- 9.1 MetroFibre may, upon notice to the Customer, suspend the Customer's full use of Services, if the Customer fails to perform any obligation under this Agreement or breaches any term of this Agreement.
- 9.2 BILLING OF ALL FEES AND CHARGES MAY CONTINUE TO ACCRUE DURING SUSPENSION IN ACCORDANCE WITH CLAUSE 9.1.
- 9.3 SHOULD THE CUSTOMER'S FAILURE TO MEET OBLIGATIONS IN TERMS OF THIS AGREEMENT CONTINUE FOR LONGER THAN 30 (THIRTY) DAYS, METROFIBRE RESERVES THE RIGHT TO TERMINATE THIS AGREEMENT WITHOUT ANY FURTHER NOTICE TO THE CUSTOMER.

## **10. CANCELLATION AS A RESULT OF FORCE MAJEURE**

- 10.1 If either Party is rendered unable, in whole or in part, by an Event of Force Majeure to perform or comply with any obligation or condition of this Agreement, such obligation or condition shall be suspended to the extent and for the duration of the continuance of the inability so caused and such Party shall be relieved of any liability during such period, provided that the Event of Force Majeure will not operate to suspend the obligation of a Party to make payment if such payment becomes due and payable for services rendered in terms of this Agreement.
- 10.2 The Party declaring an Event of Force Majeure shall give prompt written notice to the other Party specifying the exact nature of the intervening circumstances and its estimated duration.
- 10.3 The Party declaring an Event of Force Majeure shall use all reasonable endeavours and employ all reasonable means to overcome or abate the Event of Force Majeure as quickly as possible.
- 10.4 If an Event of Force Majeure continues for a period of more than 30 (thirty) days, the Parties will consult with each other with a view to the future implementation of this Agreement. If no agreement is reached by the Parties in this regard within a period of 7 (seven) days thereafter, either Party may terminate the Agreement forthwith upon 14 (fourteen) days' prior written notice to the other.

## **11. OBLIGATIONS ON TERMINATION**

- 11.1 THE CUSTOMER REMAINS RESPONSIBLE FOR ALL AMOUNTS DUE IN TERMS OF THE AGREEMENT UP UNTIL THE DATE OF TERMINATION, TOGETHER WITH ANY COSTS OR EXPENSES RELATING TO THE TERMINATION OF THE AGREEMENT AND THE CANCELLATION OF THE SERVICES, INCLUDING, BUT NOT LIMITED TO THE REPLACEMENT COST OF ANY PRODUCT AND/OR CPE WHICH METROFIBRE IS UNABLE TO RECOVER FOR ANY REASON.
- 11.2 MetroFibre is entitled to immediately deactivate the Services on the date of termination or cancellation and shall have no further obligation to the Customer after such termination or cancellation of this Agreement.
- 11.3 The Customer has the option to either return the CPE to MetroFibre at the Customer's cost or purchase the CPE from MetroFibre, upon termination of this Agreement. A Customer who elects to return the CPE upon termination, should return it to MetroFibre at the physical address stipulated in clause 14.1 below or to such other locations as may be determined by MetroFibre from time to time. A Customer who wishes to purchase the CPE or who wishes to enquire about any other locations where a CPE may be returned, can contact MetroFibre on 087 151 4000 to determine the purchase price of the CPE or alternate locations to which the CPE may be returned, as the case may be. SHOULD THE CPE NOT BE RETURNED TO METROFIBRE BY THE CUSTOMER OR COLLECTED BY METROFIBRE, AS THE CASE MAY BE, WITHIN 14 DAYS

AFTER TERMINATION OF THIS AGREEMENT, THE CUSTOMER MAY BE DEEMED TO HAVE PURCHASED THE CPE AND THE CUSTOMER'S ACCOUNT MAY BE DEBITED FOR AN AMOUNT EQUIVALENT TO THE VALUE OF THE UNRETURNED CPE. WHERE THE CUSTOMER CHOOSES TO RETURN THE CPE, THE CUSTOMER SHOULD CONTACT METROFIBRE FOR GUIDANCE ON HOW TO SAFELY REMOVE THE CPE WITHOUT DAMAGING THE CPE. SAVE FOR FAIR WEAR AND TEAR, THE CUSTOMER WILL BE LIABLE TO METROFIBRE FOR ANY DAMAGE CAUSED TO THE RETURNED CPE THAT AFFECTS THE USABILITY OF SUCH CPE.

- 11.4 In the event that MetroFibre in its sole and unfettered discretion, elects to collect the CPE from the Customer's Premises, the Customer shall grant reasonable access to MetroFibre, or shall ensure that suitable access is granted, to enable MetroFibre to remove the CPE or any other equipment related thereto from the Premises.

## **12. GUARANTEES, EXCLUSION AND LIMITATION OF LIABILITY**

- 12.1 IT IS SPECIFICALLY AGREED THAT METROFIBRE SHALL NOT BE LIABLE FOR ANY DAMAGES OR LOSSES INCURRED BY THE CUSTOMER BECAUSE OF:
- 12.1.1 THE SERVICES BEING INTERRUPTED, SUSPENDED OR TERMINATED FOR WHATSOEVER REASON; OR
- 12.1.2 COMMUNICATIONS TO OR FROM THE CUSTOMER NOT BEING SENT AND/OR RECEIVED AT ALL OR ON TIME FOR ANY REASON WHATSOEVER (AND INCLUDING WITHOUT LIMITATION ANY LOSS OF DATA); OR
- 12.1.3 THE CUSTOMER USING THE SERVICES FOR ILLEGAL OR IMPROPER PURPOSES OR CAUSING DAMAGE TO ANY NETWORK SERVICE OR NETWORK PROVIDER.
- 12.2 SUBJECT TO CLAUSES 12.3, METROFIBRE'S TOTAL LIABILITY TO CUSTOMER IN CONNECTION WITH ANY CLAIM, LOSS, DAMAGES OR EXPENSES AND COSTS ARISING OUT OF ANY EVENT OF SERIES OF EVENTS IN CONNECTION THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY BREACH HEREOF, SHALL BE LIMITED TO A MAXIMUM AMOUNT IN AGGREGATE IN ANY TWELVE (12) MONTH ROLLING PERIOD TO THE SUM OF TWELVE TIMES THE VALUE OF THE AVERAGE MONTHLY CHARGES AND FEES PAID BY CUSTOMER TO METROFIBRE,
- 12.3 METROFIBRE SHALL NOT BE LIABLE TO CUSTOMER FOR ANY INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE (INCLUDING WITHOUT LIMITATION ANY LOSS OF PROFIT/CONTRACT/OPPORTUNITY AND / OR LOSS OF DATA) WHICH MAY BE SUFFERED BY THE CUSTOMER AND/OR ITS CUSTOMERS UNDER OR IN CONNECTION WITH THIS AGREEMENT.

## **13. CESSION, ASSIGNMENT AND SUB-CONTRACTING**

- 13.1 The Customer may not cede or assign any of its rights or obligations under this Agreement, nor transfer the CPE or any part thereof to any third party or permit any third party to use the CPE or any part thereof without MetroFibre's prior written consent.
- 13.2 MetroFibre shall be entitled to cede and/or assign any of its rights or obligation under the Agreement or to appoint Contractors to carry out any of its obligations under the Agreement, without consent from the Customer.

## **14. DOMICILIA AND NOTICES**

- 14.1 The Parties select as their respective *domicilia citandi et executandi*, and for the purposes of giving or sending any notice or communication provided for or required in terms of this Agreement, the addresses (including email addresses) as set out below:

**MetroFibre:**

Physical Address:

Eco Square, 298 Witch-Hazel Avenue, Highveld Ext. 71, Centurion, 0157

Postal Address: P O Box 50112, Randjiesfontein, 1683

E-mail: [legal@metrofibre.co.za](mailto:legal@metrofibre.co.za)



The Customer: As per the Order Form.

- 14.2 The physical address and the e-mail address specified in the Order Form will be utilised to contact the Customer. The Customer must notify MetroFibre in writing of any change in any one or more of its details set out in the Order Form within 7 days of any such change taking effect.
- 14.3 MetroFibre may change its domicilium address by updating its domicilium details on [www.metrofibre.co.za](http://www.metrofibre.co.za).
- 14.4 Any notice required or permitted to be given in terms of this Agreement shall be given in writing and shall be delivered by hand to the physical domicilium address of the other Party or sent via e-mail to the chosen e-mail address.
- 14.5 Notwithstanding anything to the contrary in this clause, a written notice or communication actually received by any Party, shall be adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen address.

## 15. DISCLOSURE

- 15.1 THE CUSTOMER WARRANTS AND REPRESENTS THAT ALL INFORMATION PROVIDED IN THE ORDER FORM OR ELSEWHERE RELATING TO THIS AGREEMENT, IS TRUE, CORRECT AND COMPLETE AND THE CUSTOMER INDEMNIFIES METROFIBRE AGAINST ANY CLAIM THAT MAY ARISE AS A RESULT OF A BREACH OF THIS WARRANTY.
- 15.2 THE CUSTOMER AUTHORISES METROFIBRE TO MAKE GENERAL CREDIT REFERENCE ENQUIRIES ABOUT THE CUSTOMER AND TO DISCLOSE ANY INFORMATION, WHICH HAS BEEN SUPPLIED, OR ANY INFORMATION RELATING TO THE CUSTOMER'S ACCOUNT TO ANY REGISTERED CREDIT BUREAU.
- 15.3 METROFIBRE SHALL FURTHER BE ENTITLED TO DISCLOSE ANY INFORMATION OF THE CUSTOMER TO ENABLE THE PROVISION OF EMERGENCY SERVICES, DIRECTORY OR REPAIR SERVICES TO THE CUSTOMER AND FOR ANY PURPOSE FOR WHICH SUCH INFORMATION IS REQUIRED IN LAW.
- 15.4 MetroFibre undertakes not to disclose any of the Customer's information for any purpose, except as provided for in this clause or as agreed to elsewhere in this Agreement or in writing by the Customer.

## 16. PERSONAL INFORMATION

- 16.1 THE CUSTOMER ACKNOWLEDGES THAT METROFIBRE AND ITS RESPECTIVE CONTRACTORS WILL, BY VIRTUE OF THE PROVISION OF SERVICES, COME INTO POSSESSION OF THE CUSTOMER'S PERSONAL INFORMATION AND THAT OF ITS CUSTOMERS.
- 16.2 THE CUSTOMER ACKNOWLEDGES THAT METROFIBRE AND ITS RESPECTIVE CONTRACTORS MAY USE OR PROCESS ALL PERSONAL INFORMATION:
  - 16.2.1 IN CONNECTION WITH THE DELIVERY AND PROVISION OF SERVICES;
  - 16.2.2 TO INCORPORATE PERSONAL INFORMATION INTO DATABASES CONTROLLED BY METROFIBRE FOR THE PURPOSE OF ADMINISTRATION, PROVISIONING, BILLING AND RECONCILIATION, VERIFICATION OF CUSTOMER IDENTITY AND SOLVENCY, MAINTENANCE, SUPPORT AND PRODUCT DEVELOPMENT, FRAUD DETECTION AND PREVENTION.
- 16.3 MetroFibre undertakes that it shall comply with all provisions of POPIA relating to the Processing of Customer Personal Information and shall only Process Personal Information in accordance with clause 16.2 above. Customer shall be responsible for ensuring compliance with its obligations under POPIA. MetroFibre shall not verify Customer's compliance with the terms of POPIA
- 16.4 THE CUSTOMER CONSENTS AND AGREES TO THE USE AND PROCESSING OF PERSONAL INFORMATION BY METROFIBRE AND ITS CONTRACTORS, AS CONTEMPLATED IN THIS CLAUSE 16.2. THE CUSTOMER CONSENTS TO METROFIBRE USING CLOUD-BASED COMPUTER STORAGE FACILITIES TO STORE HIS/HER PERSONAL INFORMATION AND FURTHER CONSENTS TO THE STORAGE OF ITS DATA

AND THAT OF ITS CUSTOMERS OUTSIDE OF THE BORDERS OF THE REPUBLIC OF SOUTH AFRICA, TO THE EXTENT REQUIRED AND AS MAY BE APPLICABLE.

- 16.5 The Customer warrants that it has obtained and will obtain all legally required consents and permissions from relevant parties (including data subjects) for the use, processing and transfer of its customer data as described in this clause 17.
- 16.6 Metrofibre is not responsible for Customer Personal Information and data and that of its customers stored or transmitted on our system.
- 16.7 Customer is solely responsible for determining that any data transfer across a border by Customer complies with POPIA and applicable laws.
- 16.8 Customer agrees to indemnify, defend and hold MetroFibre harmless (and our employees, directors, agents and shareholders) from and against any claim, loss, damage, cost or liability (including legal costs on an attorney on own client basis) arising out of or in connection with your obligations under this clause howsoever arising and for whatsoever cause of action.
- 16.9 On reasonable notice, a party shall provide the other with the information that it has regarding data and its processing that is necessary for a party to comply with applicable legislation. Both parties shall take required precautions to secure the integrity of data and prevent unauthorised access, corruption, and loss of data.

## 17. CONFIDENTIALITY

- 17.1 Subject to clause 17.2, each Party hereunder, shall:
  - 17.1.1 only use Confidential Information for the purposes of the Agreement;
  - 17.1.2 only disclose Confidential Information to a third party with the prior written consent of the disclosing Party (except that either Party may disclose Confidential Information on a need to know-basis, to its employees, agents or contractors, including professional advisors or auditors; and
  - 17.1.3 ensure that any third party to whom Confidential Information is disclosed executes a confidentiality undertaking substantially similar to the terms of this clause 12.
- 17.2 The provisions of clause 17.2 shall not apply to any Confidential Information which: (i) is in or comes into the public domain other than by breach of this clause 12; or (ii) is or has been independently generated by the recipient Party; or (iii) is properly disclosed pursuant to a separate written consent or a statutory obligation, the order of a court of competent jurisdiction or the requirement of a competent regulatory body.

## 18. GENERAL

- 18.1 This Agreement constitutes the whole agreement between the Parties relating to the subject matter hereof and no Party shall be bound to any express or implied term nor to any representation or warranty nor to any extension, relaxation or waiver of any provision hereof, unless reduced to writing and agreed to by the Parties. Any such extension, relaxation or waiver will be strictly interpreted as applying only to the matter in respect of which it is made or given.

- 18.2 The Customer acknowledges that MetroFibre seeks, on an on-going basis, to improve the services that it offers to its Customers. This, together with other changes which may be required as a result of legislation or regulation or arising from the environment in which MetroFibre operates, may require MetroFibre to amend the terms and conditions of this Agreement from time to time. ANY REVISED OR UPDATED VERSION OF THIS AGREEMENT WILL BE AVAILABLE ON METROFIBRE'S WEBSITE AT [WWW.METROFIBRE.CO.ZA](http://WWW.METROFIBRE.CO.ZA) AND NO NOTIFICATION OF SUCH AMENDMENT WILL BE PROVIDED TO THE CUSTOMER. IT IS THE CUSTOMER'S RESPONSIBILITY TO ENSURE THAT CUSTOMER HAS THE LATEST VERSION OF THIS AGREEMENT. SHOULD THE CUSTOMER NOT BE COMFORTABLE WITH ANY REVISIONS TO THIS AGREEMENT, THE CUSTOMER MAY TERMINATE THE AGREEMENT AT ANY TIME BY GIVING 30 (THIRTY) CALENDAR DAYS' NOTICE IN WRITING TO METROFIBRE.
- 18.3 If any part of this Agreement is found to be invalid, the balance of the provisions shall remain enforceable. The rule that, in the case of any ambiguity in an agreement, the agreement shall be interpreted against the party responsible for the preparation thereof, shall not apply to this Agreement.
- 18.4 This Agreement shall be subject to and shall be governed by the laws of the Republic of South Africa.
- 18.5 THE CUSTOMER AGREES, IN ACCORDANCE WITH THE PROVISIONS OF THE MAGISTRATES COURT ACT OF 1944, AS AMENDED FROM TIME TO TIME, TO THE JURISDICTION OF THE MAGISTRATES COURT HAVING JURISDICTION OVER ITS PERSON IN CONNECTION WITH ANY ACTION OR PROCEEDING INSTITUTED AGAINST THE CUSTOMER IN TERMS OF OR ARISING OUT OF THIS AGREEMENT.
- 18.6 Dispute resolution and escalation:
- 18.6.1 Subject to clause 18.6.2 below, the Customer shall be entitled to refer any dispute between itself and MetroFibre regarding the installation and/or accessibility of Services to the Authority or to refer any matter to any other regulatory body having jurisdiction in respect thereof.
- 18.6.2 However, the Customer shall first exhaust MetroFibre's internal escalation route for dispute resolution and fault reporting before escalating any such matter to the Authority or other regulatory body having jurisdiction.
- 18.6.3 The Customer shall refrain from attacking MetroFibre or its Contractors on any Social Media Platforms for delays in installation and/or Service interruption repairs, without first following the escalation routes and remedies stated above. Failure to comply with this clause shall entitle MetroFibre to cancel the Agreement without any further notice to the Customer. MetroFibre furthermore reserves the right to take legal action for slander/defamation against the Customer for any untrue statements made on Social Media in addition to cancelling the Agreement as aforementioned.
- 18.7 The Customer warrants that it has obtained and will obtain all legally required consents and permissions from relevant parties to enter into this agreement and that the person signing any documentation on Customer's behalf shall be duly authorised thereto.

## ANNEXURE 1 TO GIGABIZ STANDARD TERMS AND CONDITIONS – SERVICE LEVEL AGREEMENT

### 1. OVERVIEW

This is the Service Level Agreement between MetroFibre and the Customer for the support and maintenance of the Services provided by MetroFibre to the Customer.

This SLA outlines the parameters of all Services as mutually understood by the Parties. This SLA does not supersede current processes and procedures unless explicitly stated.

This SLA forms an Annexure to MetroFibre Network Standard Terms and Conditions and shall be incorporated therein. Words and phrases defined in the MetroFibre Network Standard Terms and Conditions bear the same meaning in this Annexure.

### 2. PURPOSE AND OBJECTIVES

The purpose of the SLA is to ensure that the proper elements and commitments are in place to provide consistent support and delivery to the Customer by MetroFibre.

The objectives of the SLA 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 Customer; and
- match perceptions of expected service provision with actual service support and delivery.

### 3. DURATION AND APPLICABILITY

The SLA shall commence on the date of Activation and shall remain in force for the duration of the Agreement.

The Parties agree that the SLA may be updated if circumstances dictate. Any reference to the SLA in the Agreement or in this Annexure, shall be a reference to such current version of the SLA, as amended from time to time, and available at [www.metrofibre.co.za](http://www.metrofibre.co.za).

### 4. COMMITMENT

MetroFibre is committed to providing a reliable, high quality network to support its GIGABIZ services to the Customer.

### 5. METROFIBRE GIGABIZ SERVICE LEVELS

#### 5.1 Planned Network Availability

The MetroFibre GIGABIZ GPON network is designed to provide an average availability of GIGABIZ services of **95%** per year.

#### 5.2 GIGABIZ Service Hours

MetroFibre operates a Network Operations Centre (NOC) specifically for its network. The following table indicates the operating hours of the Customer Care and NOC departments.

<b>GIGABIZ Customer Care Hours of Operation</b>		
Monday – Saturday		08:00 – 17:00
Sunday		Closed
Public Holidays		Closed
<b>GIGABIZ Fault Reporting</b>		
Telephonically (0871514000)	Monday – Saturday	08:00 – 17:00
Via Online Portal: [link to be inserted]	Monday – Sunday	24/7 availability
<b>Physical Repairs on Customer Premises</b>		
<b>Monday to Saturday, subject to Customer availability, agreed SLA, and safe work conditions.</b>		

### 5.3 GIGABIZ Service Level Definitions

Service levels for the GIGABIZ Network are divided into two levels based on the nature of the faults:

(i) **Serious Faults**

Serious faults are faults that cause a Customer to still be completely offline after all remote, first line diagnostics have been completed. Events of Force Majeure, Customer caused damage, as well as negligent or malicious damage by third parties, may be excluded from this service level.

(ii) **Minor Faults**

Minor faults are faults that cause service impairment in the quality of the Services. With minor faults, the Services remain connected, operational and usable, but materially lower than the agreed quality parameters on the fibre, after all remote diagnostics have been completed. **WI-FI ISSUES ARE EXPRESSLY EXCLUDED FROM THE SERVICE LEVELS FOR MINOR FAULTS, DUE TO THE LACK OF CONTROL OVER CUSTOMERS' WI-FI USE AND PHYSICAL ENVIRONMENTS.**

Service Level	Serious Faults	Minor Faults
<b>Mean Time To Repair (MTTR)</b>	95% within 24 Business Hours 5% within 36 Business Hours	Within Business Days
<b>Service Times</b>	08:00-17:00	08:00-17:00
<b>Days</b>	Monday to Saturday <b>Excluding</b> Public Holidays	Monday to Friday <b>Excluding</b> Public Holidays
<b>INSTALLATIONS &amp; ACTIVATIONS</b>		
<b>Installation after PO (provided that the park / office / office complex / Customer Premises live and in production)</b>	95% within 15 Business Days 5% within 18 Business Days	
<b>Activation (after ONT has been installed and provided that the park / office / office complex / Customer Premises is live and in production)</b>	95% within 4 Business Days 5% within 8 Business Days	
<b>Network IP limitation</b>	All GIGABIZ Customers can add 1 x Static IP only to their network. In the event that the customer requires more than 1 x static IP allocation the customer acknowledges that the Customer will have to apply for an enterprise service which is delivered per quote basis and on a higher cost than the GIGABIZ prices listed on the order form.  This will be the following: 1 x single /32 public IP to the GPON WAN interface allowing the customer to use port forwarding to form a "virtual DMZ" which the customer can use for inbound connections.	

### 5.4 GIGABIZ Contact Details

**1<sup>st</sup> Line Support:**

E-mail: [support@gigabiz.co.za](mailto:support@gigabiz.co.za)

**Finance / Accounts:**

Email: [finance@gigabiz.co.za](mailto:finance@gigabiz.co.za)

**Sales:**

Email: [sales@gigabiz.co.za](mailto:sales@gigabiz.co.za)

E-mails to these addresses will be responded to within two Business Days.

The MetroFibre Gigabiz Service is a contended service of 1:10..

MetroFibre does not give any guarantees with regards to the availability, quality, speed and consistency of the WiFi performance of the CPE.

**6. REPAIRS AND MAINTENANCE**

- 6.1 Scheduled maintenance of the MetroFibre network, or any portion thereof, will not normally result in Service interruption or outage. MetroFibre will exercise commercially reasonable efforts to provide the Customer with prior notice of scheduled maintenance that requires a service interruption or outage.
- 6.2 MetroFibre will arrange for any necessary repairs arising in terms of this Agreement. Unless specifically otherwise provided in the Agreement, MetroFibre will be responsible for the costs of any repairs arising from faults in MetroFibre's equipment, except where such fault was due to Customer activity or negligence, which costs shall be for the Customer's account.
- 6.3 Should a fault be on Customer's own equipment, or as a result of Customer's equipment connected to the ONT, a call-out fee may be charged.

**ANNEXURE 2 TO GIGABIZ STANDARD TERMS AND CONDITIONS - METROFIBRE NETWORK ACCEPTABLE****FAIR USE AND ACCESS POLICY****1. PURPOSE**

- 1.1 This policy serves to define the accepted behaviour of users on MetroFibre's network.
- 1.2 The policy is intended to allow MetroFibre to:
  - 1.2.1 maintain the integrity and quality of its service;
  - 1.2.2 protect its Customers and infrastructure from abuse;
  - 1.2.3 adhere to current laws and regulations governing organisations and service providers in the Republic of South Africa;
  - 1.2.4 co-exist with the global internet community as a responsible service provider.

**2. THE NETWORK**

- 2.1 The Customer acknowledges that MetroFibre is unable to exercise control over the data passing over the infrastructure and the Internet including, but not limited to, any websites, electronic mail transmissions, news groups or other material created or accessible over its infrastructure. Therefore, MetroFibre is not responsible for data transmitted over its infrastructure.
- 2.2 The MetroFibre infrastructure may be used to link into other networks worldwide and the Customer agrees to abide by the acceptable use policies of these networks.
- 2.3 The Customer is prohibited from obtaining, disseminating or facilitating any unlawful materials over the MetroFibre network including, but not limited to:
  - 2.3.1 copying or dealing in intellectual property without authorisation;
  - 2.3.2 child pornography;
  - 2.3.3 any unlawful hate-speech materials; and/ or
  - 2.3.4 facilitation or funding of terrorist activities.
- 2.4 In order to ensure that all Customers have fair and equal use of the Service and to protect the integrity of the network, MetroFibre reserves the right, and will take whatever steps MetroFibre deems necessary, to prevent improper or excessive usage of the Service. These steps may include but are not limited to:
  - 2.4.1 any action required to prevent prohibited usage (whether intended or unintended) i.e. actions to prevent the spread of viruses, worms, malicious code, *etc*;
  - 2.4.2 limiting throughput;
  - 2.4.3 preventing or limiting services through specific ports or communication protocols;
  - 2.4.4 complete termination of service to Customers who grossly abuse the network through improper or excessive usage;
  - 2.4.5 suspending the Customer's account;
  - 2.4.6 charge the offending Customer for administrative costs incurred as well as for machine and human time lost due to the incident;
  - 2.4.7 implement appropriate mechanisms in order to prevent usage patterns that violate this policy; and/or
  - 2.4.8 share information concerning the incident with other Internet access providers or publish the information and/or make available the Customer's details to law enforcement agencies.

**3. SYSTEM AND NETWORK SECURITY**

- 3.1 Any reference to systems and networks under this section refer to all systems and networks to which the Customer is granted access through MetroFibre, including, but not limited to, the infrastructure of MetroFibre itself and the Internet.
- 3.2 The Customer may not circumvent user authentication or security of any host, device, network or account (referred to as "hacking" or "cracking"), nor interfere with service to any user, host, device or network (referred to as "denial of service attacks"). The host, device, network or account shall also not be used for any illegal purpose, including phishing.

- 3.3 Violations of system or network security by the Customer are prohibited and may result in civil or criminal liability. MetroFibre will investigate incidents involving any violation or suspected violation and shall involve and co-operate with law enforcement officials if a criminal violation is suspected. Examples of system or network security violations include, without limitation, the following:
- 3.3.1 unauthorised access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of any system or network or to breach any security or authentication measures without the express authorisation of MetroFibre;
  - 3.3.2 unauthorised monitoring of data or traffic on the network or systems without the express authorisation of MetroFibre;
  - 3.3.3 interference with service to any user, device, host or network including, without limitation, mail bombing, flooding, deliberate attempts to overload a system and broadcast attacks; and
  - 3.3.4 forging of any TCP-IP packet header (spoofing) or any part of the header information in an e-mail or a newsgroup posting.

#### **4. INTERCEPTION**

The Customer acknowledges that MetroFibre is lawfully required to intercept communications in accordance with the provisions of the Regulation of Interception and Provision of Communication-Related Information Act 70 of 2002. Any interception of communications shall be strictly in accordance with the provisions of the said Act.

#### **5. GENERAL**

- 5.1 This policy forms part of MetroFibre's standard terms and conditions in respect of any of MetroFibre's Services and the usage of any MetroFibre Service shall be subject to this Annexure 2.
- 5.2 Any cases pertaining to violation of this Acceptable Fair Use and Access Policy, must be reported to [legal@metrofibre.co.za](mailto:legal@metrofibre.co.za).



**ANNEXURE 3 - METRO FIBRE NETWORK PTY LTD STANDARD TERMS AND CONDITIONS FOR  
(GIGABIZ) VOIP SERVICES**

## **1. INTRODUCTION**

The Terms and Conditions set out in this Annexure apply to MetroFibre's VOIP Service offering which is an additional service available on existing MetroFibre GIGABIZ data and connectivity packages. These Terms and Conditions shall be read in conjunction with the Agreement.

## **2. DEFINITIONS AND INTERPRETATION**

- 2.1. Unless a contrary intention is clear from the context, the following words and phrases shall have the following meanings:
- 2.1.1. "Acceptable Fair Use and Access Use Policy" means MetroFibre's Acceptable Fair Use and Access Policy, attached as Annexure 2 to the Agreement;
- 2.1.2. "Activation" means the enabling of a service to the Customer's Premises;
- 2.1.3. "Agreement" / "GIGABIZ Terms and Conditions" means MetroFibre's GIGABIZ Standard Terms and Conditions, including all Annexures, to which this VOIP Services Annexure is attached, available at [www.gigabiz.co.za](http://www.gigabiz.co.za);
- 2.1.4. "Authority" means the Independent Communications Authority of South Africa established in terms of the Independent Communications Authority of South Africa Act 13 of 2000, as amended, and its successors who oversee the telecommunications and electronics industry in the Republic of South Africa;
- 2.1.5. "Business Day" means any day which is not a Saturday, Sunday or a day which is defined as a public holiday in terms of the Public Holidays Act, Act 36 of 1994, as amended;
- 2.1.6. "Charges" means installation charges, monthly service charges, usage and all other charges relating to the provision of the VOIP Services by the MetroFibre to the Customer or relating to the cancellation of these Terms and Conditions;
- 2.1.7. "Customer" means the person entering into these Terms and Conditions with MetroFibre for the provision of VOIP Service and/or the use of equipment;
- 2.1.8. "Customer Premises" means the premises specified in the Order Form at which the Services are to be provided;
- 2.1.9. "Customer Device" means an analogue telephone device installed by Customer on the GIGABIZ Network at Customer's own risk, expense and cost;
- 2.1.10. "Event of Force Majeure" means any event or circumstance, other than a lack of funds required for payment, which is not within the reasonable control of the affected Party including, without limitation, war, plague, epidemic, pandemic, national emergency, strike, civil disturbance, theft, fire, flood, explosion, natural disaster, national lockdown, unusually severe weather conditions, prohibitive legislation or regulations, unpredictable delays caused by traffic congestion, diversion or road works, inability to secure materials or services and failure of power or utility supplies (including electronic communications);
- 2.1.11. "GPON" means architecture of electronic communication to the Customer's Premises where the final connection to the Customer's Premises is optical fibre to the Premises;
- 2.1.12. "GIGABIZ Network" means the GPON network provided by MetroFibre which is made accessible to the Customer in terms of the Agreement;

- 2.1.13. "MetroFibre" means Metro Fibre Network Proprietary Limited, registration number: 2007/024366/07, a company incorporated in terms of the laws of the Republic of South Africa;
- 2.1.14. "Month" means a calendar month beginning at 0h00 on the first day of the calendar month in question;
- 2.1.15. "Order Form" means any order or quote in relation to the VOIP Services signed by Customer or electronic record of a telephone conversation made by Customer to order the VOIP Services;
- 2.1.16. "Parties" means the parties to these VOIP Terms and Conditions, being MetroFibre and the Customer collectively, and "Party" means either one of them;
- 2.1.17. "RICA" means the Regulation of Interception of Communications and Provision of Communications Related Information Act 70 of 2003, as amended from time to time, and its related regulations as published in the Government Gazette;
- 2.1.18. "VOIP" means voice over IP technology for placing and transmitting telephone calls over an Internet Protocol network including the Internet.
- 2.1.19. "VOIP Service/(s)" means the VOIP services provided by MetroFibre to the Customer in terms of these VOIP Terms and Conditions;
- 2.1.20. "Termination Point" / "TP" means the point where the Customer is connected to the fibre broadband network including and includes the optical network terminal point ("ONT");
- 2.1.21. "Uptime" means the total number of minutes available to a Customer via the network services in a calendar month; and
- 2.1.22. "VOIP Terms and Conditions" means the VOIP Terms and Conditions set out in this Annexure, as amended from time to time, and the Order Form signed by the Customer.
- 2.2. In these VOIP Terms and Conditions, unless a contrary intention is clear from the context:
- 2.2.1. the singular includes the plural and vice versa;
- 2.2.2. a reference to any gender includes the other genders and a reference to a person includes any individual, body corporate, unincorporated entity or any other entity recognised in law as having a separate legal existence;
- 2.2.3. when any number of days is prescribed, this shall be calculated by excluding the first and including the last day, unless the last day is not a Business Day in which case the days shall be calculated up to the next Business Day; and
- 2.2.4. headings of clauses have been inserted for convenience only and shall not be considered in the interpretation of these VOIP Terms and Conditions.
- 2.3. Any defined terms utilised in these VOIP Terms and Conditions, which are not defined herein will bear the same meaning as in the Agreement.

### **3. PROVISION OF VOIP SERVICE**

- 3.1. The VOIP Service is an additional service offered by MetroFibre to existing GIGABIZ Customers who have previously subscribed for data and connectivity fibre packages with MetroFibre and are in good standing with MetroFibre.
- 3.2. By connecting a Customer Device to a MetroFibre Termination Point and ONT, or by establishing a VOIP account with MetroFibre, the Customer agrees to be bound by these VOIP Terms and Conditions and to the terms and conditions in the Agreement, to which these VOIP Terms and Conditions are annexed. For the avoidance of doubt, any aspect not regulated in these VOIP Terms and Conditions will be regulated in accordance with the terms and conditions set out in the Agreement and all Annexures

thereto, as amended from time to time.

- 3.3. In the event of inconsistency or conflict between these VOIP Terms and Conditions and the Agreement, these VOIP Terms and Conditions shall supersede any conflicting terms in the Agreement, to the extent of the conflict.

#### **4. LIMITATIONS OF VOIP SERVICE**

- 4.1. The VOIP Service is dependent on the installation of an ONT / TP at the Customers Premises and connectivity to the GIGABIZ Network.
- 4.2. THE CUSTOMER ACKNOWLEDGES THAT THE VOIP SERVICE WILL NOT FUNCTION DURING A POWER OUTAGE AND MAY FURTHER NOT FUNCTION RELIABLY DURING PERIODS OF GIGABIZ NETWORK CONGESTION. VOIP ADAPTORS DO NOT WORK WITHOUT POWER, IN THE EVENT OF A POWER FAILURE THE VOIP SERVICE WILL NOT WORK WITHOUT THE CUSTOMER PROVIDING ELECTRICITY LOCALLY TO POWER THE CUSTOMER DEVICE.
- 4.3. FURTHERMORE, THE VOIP SERVICE MAY BE SUBJECT TO INTERFERENCE AND DISRUPTION OF SERVICES AND EQUIPMENT. METROFIBRE MAKES NO GUARANTEE IN RESPECT OF THE VOIP SERVICE'S UPTIME AND AVAILABILITY.
- 4.4. METROFIBRE'S VOIP SERVICE IS A DATA PACKET PRIORITISED SERVICE THAT RELIES ON THE INTERNET AND VOIP SERVICE PROVISIONING AVAILABILITY WHICH IS OUTSIDE OF THE CONTROL OF METROFIBRE. METROFIBRE DOES NOT GUARANTEE THE AVAILABILITY OF THE VOIP SERVICE, THE INTERNET, THE SERVICE OF MODEMS / FAXES AND CUSTOMER DEVICES ON THE GIGABIZ NETWORK, AND/OR THE CONNECTIVITY OF ANY ONT OR TP TO A CUSTOMER DEVICE.
- 4.5. Because of the need to conduct repair and maintenance activity on the GIGABIZ Network from time to time, the VOIP Service may be suspended without notice.

#### **5. DURATION**

- 5.1. The duration of any VOIP Service is as per the Order Form.
- 5.2. The Customer may terminate these VOIP Terms and Conditions at any time by giving one Month's notice in writing to MetroFibre, which notice must be given to MetroFibre on or before the first day of the Month.
- 5.3. If the conclusion of these VOIP Terms and Conditions is as a result of direct marketing, the Customer has the right to terminate these VOIP Terms and Conditions without reason or penalty within 5 Business Days of the later of the date upon which these VOIP Terms and Conditions was entered into or the date on which any ONT or TP was delivered to the Customer.

#### **6. BILLING AND PAYMENT**

- 6.1. The Customer shall select any one of MetroFibre's VOIP Service packages on the Order Form ("Service Package").
- 6.2. There are three bundled packages ("Bundled Package"), which are the, MetroVoice - Arise, MetroVoice - Talus and MetroVoice – Edge and one out of bundle package, namely the Metro Voice - Accord.
- 6.3. The **MetroVoice – Edge** bundle:
  - 6.3.1. is limited to one active voice call at any given time;

- 6.3.2. includes the applicable line fee rental (“Line Rental”);
- 6.3.3. has unlimited local South African calls;
- 6.3.4. excludes calls from outside of South Africa, which will incur default international rate costs. These default rate costs can be found at <https://info.metrofibre.co.za/retail-international-pricing>.
- 6.4. The **MetroVoice – Arise** bundle:
  - 6.4.1. is limited to one active voice call at any given time;
  - 6.4.2. includes Line Rental;
  - 6.4.3. includes 250 local South African minutes and any calls over the 250 minutes threshold will be charged at the out of bundle rate; and
  - 6.4.4. excludes calls from outside of South Africa, which will incur international default rate costs;
- 6.5. The **MetroVoice – Talus** bundle:
  - 6.5.1. is limited to one active voice call at any given time;
  - 6.5.2. includes Line Rental;
  - 6.5.3. includes 1 000 local South African minutes and any calls over the 1 000 minute threshold will be charged at the out of bundle rate; and
  - 6.5.4. excludes calls from outside of South Africa, which will incur international default rate costs;
- 6.6. The standard fees for the VOIP Service for the **MetroVoice - Accord**, which is an out of bundle package includes the following costs:
  - 6.6.1. Line Rental;
  - 6.6.2. the fee for usage calculated with reference to the standard out of bundle rate per minute; and
  - 6.6.3. a free voicemail to email service.
- 6.7. Charges for calls to International destinations outside of South Africa are excluded from the all VOIP Service Packages and charges can be found at <https://info.metrofibre.co.za/retail-international-pricing>. MetroFibre reserves the right to change international billing charges from time to time without notice to the Customer. International calls shall be charged separately at the default rate and falls outside of unlimited package rates.
- 6.8. Local rates apply to all standard telephone numbers in South Africa including mobile/cellular numbers for the MetroVoice – Accord service. Share calls, premium calls, SA toll free numbers and other reserved and categorised numbers are excluded from all VOIP Service Packages and the Customer shall be charged the applicable default shared call rate.
- 6.9. The Customer may be billed in advance depending on the terms of the applicable Service Package selected by Customer in the Order Form. Any usage Charges over and above the bundle usage rate in the selected Bundled Service Package shall be billed at the out of bundle rates, in arrears, and such additional charges shall be carried over into the following month’s invoice and statement.
- 6.10. The Customer shall pay the VOIP fees and charges within seven (7) days from the date of invoice and statement, into the bank account nominated by MetroFibre for this purpose, in full, without deduction or set-off and free of bank charges for the supply and delivery of VOIP Services, irrespective of whether or not the VOIP Service is used.
- 6.11. MetroFibre shall be entitled to change the fees payable by the Customer upon 30 (thirty) days’ notice.
- 6.12. A CERTIFICATE SIGNED BY ANY DIRECTOR OF METROFIBRE SHALL BE *PRIMA FACIE* PROOF OF THE AMOUNT OWING BY THE CUSTOMER FOR THE PURPOSES OF OBTAINING PROVISIONAL SENTENCE OR SUMMARY JUDGMENT. THE BURDEN OF PROOF SHOULD THE CUSTOMER DISPUTE THE CORRECTNESS OF SUCH SIGNED CERTIFICATE, SHALL REST WITH THE CUSTOMER.

## **7. SUSPENSION AND TERMINATION OF SERVICES**

- 7.1. Each VOIP Service package, whether bundled or unbundled, contains an automatic limit or cap of R3 000 (three thousand Rand) per month (or such other cap as may be determined in the Order Form) to protect the Customer against unlawful and unauthorised usage of the VOIP Service. However, the Customer may elect an alternate higher or lower limit or cap. ON REACHING THE AUTOMATIC CAP OR CUSTOMER ELECTED CAP, METROFIBRE SHALL BE ENTITLED TO SUSPEND THE VOIP SERVICE UNTIL SUCH TIME AS IT HAS CONFIRMED USAGE AND FEES WITH THE CUSTOMER. SHOULD CUSTOMER NOT SELECT A LIMIT OR CAP, CUSTOMER AGREES TO BE LIABLE FOR ALL VOIP USAGE HOWSOEVER ARISING.
- 7.2. MetroFibre may, upon notice to the Customer, suspend the Customer's full use of the VOIP Services, if the Customer fails to perform any obligation under these VOIP Terms and Conditions or breaches any term of these VOIP Terms and Conditions or of Agreement.
- 7.3. BILLING OF ALL FEES AND CHARGES MAY CONTINUE TO ACCRUE DURING SUSPENSION.
- 7.4. SHOULD THE CUSTOMER'S FAILURE TO MEET OBLIGATIONS IN TERMS OF THESE TERMS AND CONDITIONS CONTINUE FOR LONGER THAN 30 (THIRTY) DAYS, METROFIBRE RESERVES THE RIGHT TO TERMINATE THESE VOIP TERMS AND CONDITIONS AND ANY ASSOCIATED GIGABIZ SERVICE OBTAINED UNDER THE AGREEMENT WITHOUT ANY FURTHER NOTICE TO THE CUSTOMER.

## **8. CANCELLATION AS A RESULT OF FORCE MAJEURE**

- 8.1. If either Party is rendered unable, in whole or in part, by an Event of Force Majeure to perform or comply with any obligation or condition of these VOIP Terms and Conditions, such obligation or condition shall be suspended to the extent and for the duration of the continuance of the inability so caused and such Party shall be relieved of any liability during such period, provided that the Event of Force Majeure will not operate to suspend the obligation of a Party to make payment if such payment becomes due and payable for services rendered in terms of these VOIP Terms and Conditions.
- 8.2. The Party declaring an Event of Force Majeure shall give prompt written notice to the other Party specifying the exact nature of the intervening circumstances and its estimated duration.
- 8.3. The Party declaring and Event of Force Majeure shall use all reasonable endeavours and employ all reasonable means to overcome or abate the Event of Force Majeure as quickly as possible.
- 8.4. If an Event of Force Majeure continues for a period of more than 30 (thirty) days, the Parties will consult with each other with a view to the future implementation of this Agreement. If no agreement is reached by the Parties in this regard within a period of 7 (seven) days thereafter, either Party may terminate the Agreement forthwith upon 14 (fourteen) days' prior written notice to the other.

## **9. LIMITATION OF LIABILITY**

- 9.1. IT IS SPECIFICALLY AGREED THAT METROFIBRE SHALL NOT BE LIABLE FOR ANY DAMAGES OR LOSSES INCURRED BY THE CUSTOMER RELATING TO THE UNAVAILABILITY (TEMPORARY OR OTHERWISE) OF THE GIGABIZ NETWORK DUE TO NETWORK MALFUNCTION AND /OR FAILURE OF ANY THIRD-PARTY NETWORK ON WHICH THE GIGABIZ NETWORK IS DEPENDENT, OR FOR ANY OTHER REASON WHATSOEVER.
- 9.2. Service credits (as detailed and provided for in the GIGABIZ Terms and Conditions) shall not apply to VOIP Services.

- 9.3. WHILE METROFIBRE SHALL MAKE EVERY EFFORT TO ASSIST THE CUSTOMER IN THE PORTING OF GEOGRAPHIC NUMBERS FROM OTHER SERVICE PROVIDERS, METROFIBRE SHALL NOT BE LIABLE FOR ANY LOSS OF SERVICE OR INCOME AS A DIRECT OR INDIRECT RESULT OF SUCH PORTING OR AS A RESULT OF THE CUSTOMER CANCELLING THE SERVICE WITH ANY CURRENT VOICE PROVIDER BEFORE ALLOWING METROFIBRE TO COMPLETE AND TAKE CONTROL OF THE NUMBER THROUGH THE PORTING PROCESS

#### **10. DOMICILIA AND NOTICES**

As per the GIGABIZ Terms and Conditions. As per the Order Form for Customer.

#### **11. DISCLOSURE**

- 11.1. THE CUSTOMER WARRANTS AND REPRESENTS THAT ALL INFORMATION PROVIDED IN THE ORDER FORM OR ELSEWHERE RELATING TO THESE VOIP TERMS AND CONDITIONS, IS TRUE, CORRECT AND COMPLETE AND THE CUSTOMER INDEMNIFIES METROFIBRE AGAINST ANY CLAIM THAT MAY ARISE AS A RESULT OF A BREACH OF THIS WARRANTY.
- 11.2. THE CUSTOMER AUTHORISES METROFIBRE TO MAKE GENERAL CREDIT REFERENCE ENQUIRIES ABOUT THE CUSTOMER AND TO DISCLOSE ANY INFORMATION, WHICH HAS BEEN SUPPLIED, OR ANY INFORMATION RELATING TO THE CUSTOMER'S ACCOUNT TO ANY REGISTERED CREDIT BUREAU.
- 11.3. METROFIBRE SHALL FURTHER BE ENTITLED TO DISCLOSE ANY INFORMATION OF THE CUSTOMER TO ENABLE THE PROVISION OF EMERGENCY SERVICES, DIRECTORY OR REPAIR SERVICES TO THE CUSTOMER AND FOR ANY PURPOSE FOR WHICH SUCH INFORMATION IS REQUIRED IN LAW.
- 11.4. MetroFibre undertakes not to disclose any of the Customer's information for any purpose, except as provided for in this clause or as agreed to elsewhere in this Agreement or in writing by the Customer.