



FIBRE TO THE BUSINESS

STANDARD TERMS AND CONDITIONS

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1. DEFINITIONS AND INTERPRETATION

1.1. In these Terms and Conditions, the following terms and phrases shall have the following meaning, unless the context otherwise requires:

1.1.1 **“Activation Date”** the date on which enabling of the Services to the Customer Site takes place;

1.1.2 **“Billing Start Date”** is 5 (five) days from the Confirmation Date if the Services are new services and/or requires on-site installation to be performed; and
is the same date as the Confirmation Date if the current Services are being updated by way of a billing change and/or system configuration change;

1.1.3 **“Business Day”** every day excluding Saturdays, Sundays and any gazetted public holidays in the Republic of South Africa;

1.1.4 **“Charges”** Call Charges, Usage Charges, Installation Charge, Start Up Charge, Rental Charges, Monthly Fees, Reconnection Fees and any other charges or fees payable by the Customer to MetroFibre in respect of the Services, as set out or referred to in a Quotation Order, Services Detail and/or Services Confirmation, as revised from time to time;

1.1.5 **“Call Charges”** the charges for circuit or packet switched electronic communications services payable in accordance with clause 4 including without limitation termination charges and managed services fees for VOIP Services as set out below:

“Installation Charge” or **“Start Up Charge”** or **“Connection Charge”** a non-recurring charge for installation of the Services (including installation of any Services Equipment, third party links and switches and construction of fibre infrastructure) payable in accordance with clause 4. Installation Charges shall include for the avoidance of doubt any costs associated with a civil construction works for the installation of fibre optic cabling to the Customer Site, if applicable;

“Monthly Fee” the monthly recurring charges for the Services payable in accordance with clause 4;

“Usage Charges” the usage-based charges for the Internet Services payable in accordance with clause 4; and

“Reconnection Fee” the fee charged by MetroFibre to re-activate and/or reconnect the Services to the Network after any Services suspension in accordance with clause 6;

1.1.6 **“Commencement Date”** the earlier of the Confirmation Date or the Activation Date. Notwithstanding the foregoing, billing shall be calculated from the Billing Start Date;

- 1.1.7 **“Confidential Information”** all information (in whatever format) which: (i) relates to these Terms and Conditions; (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, (iv) Customer Data and (v) any information which may reasonably be regarded as the confidential information of the disclosing Party;
- 1.1.8 **“Confirmation Date”** the date indicated as per the Service Confirmation;
- 1.1.9 **“Content”** any content, personal information, game, message or similar service that is supplied to any person by means of the Network or by means of a third party’s network in the form of data, information, graphics, pictures, text, video or any other relevant format, which has the potential to become lost or corrupted from time to time;
- 1.1.10 **“Customer”** the person or the legal entity that enters into an Order for Services;
- 1.1.11 **“Customer Data”** includes, but not be limited to, Personal Information (including the originating and destination numbers and IP addresses, date, time and duration of voice or data transmissions, and other data necessary for the establishment, billing or maintenance of the transmission), data containing personal and/or private information of the Customer, its employees or authorised users of the Services, and other data provided to or obtained by MetroFibre and their respective agents in connection with the provision of the Services;
- 1.1.12 **“Customer Equipment”** any telephony device, computer, hardware, software, systems, cabling and facilities provided by the Customer and used in conjunction with the Services Equipment in order to receive the Services;
- 1.1.13 **“Customer Site”** the physical location specified in the Quotation or Order at which the Services are to be provided;
- 1.1.14 **“Emergency Works”** works, the execution of which, at the time it is proposed to execute them, is required to put an end to, or prevent the arising of circumstances, then existing or imminent that are likely to cause: (i) danger to persons or property; (ii) the interruption of any service provided by the Network or the network generated by a third party; (iii) substantial loss to MetroFibre or any third party;
- 1.1.15 **“Force Majeure”** any event or circumstance other than a lack of funds required for payment, which is not within the reasonable control of a Party and shall include without limitation, acting on instructions from the Authority or any other regulatory authority, acts of God, war, epidemic, pandemic, national lockdown, state of emergency, riots, floods, fire, natural disaster, explosion, prohibitive legislation or regulations, failure of power or utility supplies (including electronic communications) and acts or omissions of other providers of electronic communications service;

1.1.16	“Internet”	the international interconnected network of networks using the TCP/IP protocol to exchange data communications;
1.1.17	“Internet Services”	the services providing access to the Internet across the Network together with any related Services Equipment or support services;
1.1.18	“Network”	the optical fibre infrastructure and routes (and associated hardware installations), points of presence, network hubs and host computers, owned, operated or used by MetroFibre in connection with the provision of the Services;
1.1.19	“MetroFibre”	Metro Fibre Networx Proprietary Limited, a company duly registered under the company laws of the Republic of the South Africa with registration number 2007/024366/07 and having its principal place of business at Eco Square, 298 Witch-Hazell Avenue, Highveld Ext. 71, Centurion, 0157, Gauteng, South Africa;
1.1.20	“Order”	a MetroFibre sales order or purchase order for the Services which has been signed by the Parties, and which incorporates by reference, these Terms and Conditions;
1.1.21	“Party”	MetroFibre or the Customer (as the context requires), and “Parties” shall mean both MetroFibre and Customer;
1.1.22	“Personal Information”	any information relating to a Party, its holding company, subsidiaries and divisions, directors, officers, employees, agents, contractors and customers, including (without limitation) information of the nature contemplated in the definition of “personal information” in POPIA and information processed by a Party pursuant to or as a result of this Agreement;
1.1.23	“POPIA”	the Protection of Personal Information Act 4 of 2013, including any regulations thereto, as amended;
1.1.24	“Quotation”	MetroFibre’s quotation for new Services as signed by and accepted by the Customer which incorporates by reference these Terms and Conditions;
1.1.25	“RICA”	the Regulation of Interception of Communications and Provision of Communication-Related Information Act 70 of 2002, and any regulations thereto, as amended;
1.1.26	“Services”	the specific electronic communications service provided by MetroFibre to the Customer, and as detailed in the Services Confirmation or in any applicable Order and/or Quotation;
1.1.27	“Services	a confirmation of the Services detailed in any Quotation or Order or Services Detail (and any future amendments or additions thereto)

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| | Confirmation | detailing the specific Services to be provided to the Customer by MetroFibre; |
| 1.1.28 | “Services Detail” | any Quotation or Order for the Services, signed and delivered by the Customer to MetroFibre, and any Services Confirmation detailing the specific service to be provided to the Customer; |
| 1.1.29 | “Services Equipment” | the hardware, software, systems, cabling, and facilities provided by MetroFibre at the Customer Site to make available the Services to the Customer. Services Equipment shall not include the Network or any hardware or software that is the subject of a separate supply contract between MetroFibre and the Customer, which Services Equipment will remain the property of MetroFibre at all times; |
| 1.1.30 | “Services Term” | the total period for which the Services are provided as indicated in the Order or Services Confirmation. The “Initial Services Term” or “Initial Term” is the agreed term as stated on the Services Confirmation commencing from the Billing Start Date or, if not stated, a minimum of 1 (one) year from the Billing Start Date, unless the contrary is clearly indicated in the Services Confirmation; |
| 1.1.31 | “Terms and Conditions” | these Terms and Conditions, any Services Detail signed by Customer and/or any Quotation, Order Form, Services Confirmation or Services Detail issued by MetroFibre, and include Annexure A hereto; |
| 1.1.32 | “Telecommunications Services” | telephony services utilising the Network including without limitation VOIP Services. Additional terms and conditions relating to VOIP Services are set out in Annexure A hereto which terms and conditions shall be incorporated by reference into the terms of these Terms and Conditions; and |
| 1.1.33 | “VOIP” | voice-over-internet protocol using and analogue telephony device. |
- 1.2. Unless the context otherwise requires, in these Terms and Conditions, a reference to:
- 1.2.1. a person includes a reference to a body corporate, association or partnership;
 - 1.2.2. a person includes a reference to that person’s legal personal representatives, successors and permitted assigns;
 - 1.2.3. any statute or statutory provision includes references to that statute or provision as amended, modified or re-enacted; and
 - 1.2.4. a document, is a reference to that document as supplemented or varied from time to time.
- 1.3. These Terms and Conditions govern the relationship between MetroFibre and the Customer, in all instances where: (i) no written Retail or Wholesale Master Services Agreement has been formally executed between the Parties; or (ii) where MetroFibre has delivered or is about to deliver its Services based on the issue of a Quotation for New Services, a completed Order, Services Detail or Services Confirmation; or (iii) where MetroFibre Services may have been requested or ordered via telephone or through MetroFibre’s website.

- 1.4. MetroFibre's relationship with the Customer, without exception, is premised on the fact that the Customer conducts a bona fide business. MetroFibre reserves the right to enter into a different contractual relationship with any Customer who does not conduct a business. If you are a "**Consumer**", as defined in the Consumer Protection Act 68 of 2008 ("**CPA**") your attention is drawn the provisions of clauses 6, 7, 8, 8.9.2, 9 and 15 which may limit the risk or liability of MetroFibre or impose obligations on the Consumer or be an acknowledgement of a fact.
- 1.5. No provision in these Terms and Conditions are intended to contravene the applicable provisions of the CPA and therefore all provisions of these Terms and Conditions, to the extent that these Terms and Conditions or any goods and services provided under these Terms and Conditions are governed by the CPA, must be treated as qualified, to the extent necessary, to ensure that the applicable provisions of the CPA are complied with.
- 1.6. In the event of any inconsistency between these Terms and Conditions, any Quotation, Order, Services Detail or Confirmation, the order of precedence shall be these Terms and Conditions then the Services Detail or Services Confirmation, and finally the Quotation and/or Order. For the avoidance of doubt, the Services Confirmation issued by MetroFibre shall supersede any Quotation or Order issued by MetroFibre. These Terms and Conditions, any Services Detail, Quotation and/or Order will supersede and prevail over any documents issued by the Customer.

2. SERVICE PROVISION

- 2.1. By countersigning or signing any Quotation or Order and returning same to MetroFibre, the Customer agrees and accepts that it has entered into a valid and binding contractual agreement with MetroFibre on such terms and conditions as set out in the Quotation or Order together with the provisions of these Terms and Conditions.
- 2.2. MetroFibre shall provide the Services to the Customer as indicated in the Quotation or Order, as confirmed in the Services Confirmation. Services levels shall be specified in the Services Confirmation and shall include the basic service levels as set out at clause 5.5 below.
- 2.3. Notwithstanding the foregoing, the Customer may at any time, enter into a bespoke Retail or Wholesale Master Services Agreement ("**MSA**") and Services Level Agreement ("**SLA**") to receive designated levels of service, 24-hour telephonic support and fault logging as provided for in the relevant SLA, as the case may be.
- 2.4. Before delivery of the Services commences, MetroFibre is entitled to carry out, to its satisfaction, appropriate credit checks against the Customer, to which the Customer hereby consents. In addition to the terms set out in these Terms and Conditions, the Services shall be subject to all mandatory legal requirements in the jurisdiction where the Services are to be provided, including but not limited to the regulatory environment as well as POPIA.
- 2.5. Without releasing it from any of its obligations, MetroFibre shall be entitled at any time, and without notice, to use subcontractors to perform some or all of its obligations.
- 2.6. These Terms and Conditions and any Order or Services Confirmation for Services provided hereunder are agreed expressly on the condition that the Customer shall not resell, charge, transfer or otherwise dispose of the Services (or any part thereof) to any third party.
- 2.7. MetroFibre reserves the right from time to time to vary, suspend or terminate the Services provided, if the Services are unavailable or if any agreement allowing MetroFibre to render the Services is terminated, or to change the configuration of the Network or the Services Equipment, or to change any applicable access code for receipt of the Services. MetroFibre shall use commercially reasonable endeavours to give the Customer timeous notice of any such changes, variations or changes to access codes.

- 2.8. These Terms and Conditions shall apply to any Services Detail effective from the Commencement Date and shall continue until the terms for all Services set out in each Order or Services Confirmation have expired or terminated, unless terminated earlier under these Terms and Conditions. Notwithstanding the forgoing, these Terms and Conditions shall be replaced to the extent provided by the entry of the Parties into a bespoke MSA and SLA, if applicable.
- 2.9. Upon termination of the Initial Services Term, these Terms and Conditions shall automatically renew for further 1 (one) year periods ("**Renewal Term**") on the same terms and conditions as set out herein (save for variations in pricing) or on any amended terms if mutually agreed in writing or as provided for in any Quotation, Order or Services Confirmation, unless the Customer gives 90 (ninety) days written notice of termination 90 (ninety) days before the expiry of the Initial Services Term or Renewal Term, as the case may be. If the Customer is a Consumer as defined in the CPA these Terms and Conditions shall automatically renew on a month-to-month basis after expiry of the Initial Services Term, on the same terms and conditions as set out herein (save for variations in pricing) or on any amended terms if mutually agreed in writing or as provided for in any Quotation, Order or Services Confirmation.
- 2.10. The Customer accepts and agrees that it shall not have any claims for damages, losses or the like against MetroFibre, nor will the Customer be entitled to withhold payment for any temporary Services failure or malfunction or loss of data or Content or failure of the Network, MetroFibre networks, facilities, Services, or coverage.

3. SERVICE ACTIVATION

After installation of the Services, but prior to the activation of the Services, MetroFibre shall conduct such tests, as it considers appropriate, to determine that all necessary work has been done to provide the Services to the Customer and, upon successful completion of such tests, MetroFibre shall use reasonable endeavours to deliver the Services Confirmation to the Customer.

4. CHARGES AND PAYMENT TERMS

- 4.1 The Customer shall pay all Charges from the Billing Start Date in accordance with this clause 4.
- 4.2 The Customer will be liable to pay the fees and charges specified in any Quotation, Order or Services Confirmation within 30 (thirty) days of the date stated on any valid tax invoice but no later than the last day of the respective month.
- 4.3 Subject to the provisions of clauses 4.4 and 4.9, the Charges shall not be increased during the Initial Services Term.
- 4.4 Call Charges to:
- 4.4.1 South African numbers shall be determined with regards to the relevant call termination rates as applicable from time to time;
- 4.4.2 international numbers shall be determined in accordance with the rates and billing methodologies as charged by the upstream international termination partners from time to time, which shall be set out in the invoice.
- 4.5 Charges shall accrue from the Billing Start Date and will be invoiced by MetroFibre for:
- 4.5.1 Call Charges and/or Usage Charges - monthly in arrears or advance as determined in the applicable Quotation, Order or Services Confirmation;
- 4.5.2 Installation Charges and/or Start Up Charges - on or at any time after the Commencement Date;

- 4.5.3 Monthly Fees - monthly in advance. Services provided for part of a month will be charged on a pro-rata basis; and
- 4.5.4 Reconnection Charges, where applicable - from the date of reconnection.
- 4.6 The Customer may not withhold or offset any payment due to MetroFibre in respect of any Charge, except where the Customer has informed MetroFibre of a good faith query on MetroFibre's invoice or statement of account prior to the due date for payment of such invoice or statement. Where the query is declared valid by MetroFibre in writing, the Customer may withhold such fees that are the subject of the query until the matter has been resolved by MetroFibre. Any other item on an invoice or statement that is not queried prior to the due date for payment must be paid on the due date.
- 4.7 A certificate signed by MetroFibre's Financial Director of the amount due by the Customer and the date on which it is to be paid will be *prima facie* evidence of the correctness of the amount owed.
- 4.8 To the extent permitted in terms of applicable law, any amount not paid by the Customer on the due date of statement or invoice will bear interest from the due date until the date of payment. The rate of interest is the published rate of interest by the Standard Bank of South Africa Limited or 15% (fifteen percent) per annum whichever is the higher.
- 4.9 All Charges or other sums which may from time to time be due or owing to MetroFibre are stated exclusive of value added tax and any similar sales tax, levy or duty which shall be payable by the Customer and invoiced by MetroFibre at the then prevailing tax rate.

5. METROFIBRE OBLIGATIONS

- 5.1 In performing its obligations under these Terms and Conditions, MetroFibre shall at all times exercise the reasonable skill and care of a competent provider of electronic communications services.
- 5.2 MetroFibre shall use reasonable endeavours to ensure that each Service will conform to any service descriptions and/or service levels as set out, or referred to, in the Quotation, Order or Services Confirmation and/or any applicable ancillary SLA. Where no service levels are agreed, the service levels provided for in these Terms and Conditions shall apply to the Services.
- 5.3 Except as expressly set out herein, all warranties, representations or agreements, with respect to the provision of the Services or otherwise, whether oral or in writing and whether express or implied, either by operation of law, statute or otherwise, are excluded to the fullest extent permitted by law. Without limiting the generality of the foregoing, MetroFibre does not warrant that the Services will be uninterrupted or error free, or that defects in the Services will be remedied. The Customer assumes and accepts all risks associated with the Services. Under no circumstances will MetroFibre be responsible for any loss or corruption of information, data or Content, howsoever such loss was caused.
- 5.4 MetroFibre warrants that it is duly organised, validly existing and in good standing under the laws of South Africa and possesses all the authority and necessary licenses and/or permits as required under law to enter into and perform its obligations hereunder.
- 5.5 The basic service levels for Internet Services are premised on the following:
- there is no redundancy offered in access or network ports at the Services Equipment;
 - single fibre entry;
 - NID has 1 x access port configured;

- NID has 1 x network port configured; and
- NID has option of one power supply either AC or DC.

5.6 MetroFibre guarantees:

- 8-hour response time;
- mean time to respond – 24 hours; and
- uptime availability of 96%.

5.7 If Services are disrupted, the Customer must phone 087 151 4049 or log a fault at BusinessSupport@metrofibre.co.za to report the problem and MetroFibre shall attend to resolution thereof in a reasonable time period.

6. SERVICE SUSPENSION

6.1 MetroFibre may, in its sole and unfettered discretion and without prejudice to any right which it might have to terminate these Terms and Conditions, elect to immediately suspend the provision of the Services (or part thereof) at any time if MetroFibre:

6.1.1 has reasonable grounds to believe it is entitled to terminate the Services pursuant to clause 7;

6.1.2 is obliged to comply with an order, instruction or request of a court, government agency, emergency service organisation or other administrative or regulatory authority;

6.1.3 needs to carry out Emergency Works to the Network or Services Equipment;

6.1.4 has reasonable grounds to consider that the Services is being used fraudulently or illegally or in violation of clause 8;

6.1.5 has reasonable grounds to believe that the Customer has not or will not or is unable to make any payment which is due or is to fall due to MetroFibre hereunder.

6.2 If MetroFibre exercises its right to suspend the Services (or part thereof) pursuant to clauses 6.1.2 or 6.1.3 it shall, whenever reasonably practicable, give prior notice of such suspension to the Customer which notice will state the grounds of such suspension and its expected duration. MetroFibre shall in such circumstances use all reasonable endeavours to resume the Services as soon as reasonably possible.

6.3 If the Services (or part thereof) is suspended because of the breach, fault, act or omission of the Customer, the Customer shall pay to MetroFibre all reasonable costs and expenses incurred by the implementation of such suspension and/or recommencement of the provision of the Services.

6.4 MetroFibre shall not be liable for any loss, damage or inconvenience suffered by the Customer as a result of any suspension made pursuant to clause 6.1, except to the extent that such suspension is made pursuant to clause 6.1.3 and for reasons which are solely and directly attributable to the negligence of MetroFibre.

6.5 The Customer shall pay to MetroFibre a Reconnection Fee to re-activate the Services after any Services suspension in terms of these Terms and Conditions.

7. TERM AND TERMINATION

7.1 The Customer agrees to comply with any Initial Services Term commitment set out in the Quotation or Order or in these Terms and Conditions.

- 7.2 Notwithstanding the provisions of this clause 7, if the provisions of the Electronic Communications and Transactions Act 25 of 2002, as amended, applies to these Terms and Conditions and the Customer is a Consumer as defined in the CPA, the Customer may terminate these Terms and Conditions on notice to this effect within 5 (five) days after the transaction is concluded if Customer has procured the Services as a result of direct marketing.
- 7.3 Either Party may terminate these Terms and Conditions:
- 7.3.1 subject to the provisions of the Services Detail and clause 7.4, on at least 90 (ninety) days prior written notice to take effect on expiry of the relevant Initial Services Term or Renewal Term, as the case may be;
- 7.3.2 immediately by notice if, in relation to the Services, the other Party has committed a material breach which is incapable of remedy;
- 7.3.3 immediately by notice if, in relation to the Services, the other Party has committed a material breach capable of remedy, but which it fails to remedy within 10 (ten) days of having been notified in writing to remedy such breach;
- 7.3.4 if the other Party has a receiver or an administrative receiver appointed over it or over any part of its undertaking or assets or passes a resolution for winding up (other than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect or if the other becomes subject to an administration order or enters into any voluntary arrangement with its creditors or ceases or threatens to cease to carry on business, or undergoes or is subject to any analogous acts or proceedings under any foreign law or if the other Party contemplates business rescue proceedings (with the Party contemplating such proceedings being obliged to inform the other Party thereof in writing immediately).
- 7.4 The termination by the Customer of the Services after installation of the Services, but prior to the activation of the Services, or termination during the Initial Services Term shall, in addition to constituting a material breach of these Terms and Conditions, entitle MetroFibre to charge an early termination penalty ("**Termination Charge**"). If the Services are terminated after installation of the Services, but prior to the activation of the Services, the Customer shall be liable for all non-recurring costs including but not limited to access build, site survey and any planning conducted. If the Services are terminated subsequent to the Activation Date or Services Commencement Date the Customer shall be liable for all incurred Usage Charges, third party termination fees or costs and 100% of the Monthly Fee for the remainder of the Initial Services Term or subsequent Renewal Term, as applicable.
- 7.5 Where the Customer is a Consumer, as this term is defined in the CPA, the Customer may terminate any Services on the giving of 20 (twenty) Business Days' written notice. The Customer shall be liable for a reasonable Termination Charge, notwithstanding the Customer's account not being in arrears at the time of early cancellation.
- 7.6 If the Customer requests a cancellation while its account is in arrears, or where it has breached any part of these Terms and Conditions, MetroFibre may cancel the Services and claim payment for the full remainder of the Initial Term or Renewal Period, as the case may be. MetroFibre will only grant the Customer early cancellation after the Customer has paid and MetroFibre has received the early Termination Charge.
- 7.7 MetroFibre may in its sole and unfettered discretion, terminate these Terms and Conditions immediately by notice if a suspension of the Services to a Customer pursuant to clauses 6.1.4 or 6.1.5 has continued for a period of at least 10 (ten) Business Days.
- 7.8 Notwithstanding the provisions of clause 6, MetroFibre may terminate these Terms and Conditions on 7 (seven) days' prior notice if the Customer fails to make any payment, when due, in accordance with these

Terms and Conditions.

- 7.9 Without prejudice to any rights or obligations, upon termination of these Terms and Conditions all Services shall terminate immediately and:
- 7.9.1 notwithstanding the provisions of clause 4, all accrued Charges not yet invoiced shall become due and payable by the Customer immediately on receipt of an invoice;
- 7.9.2 where the termination is as a result of breach of the Customer, any applicable early Termination Charges will become due and payable immediately;
- 7.9.3 each Party shall promptly return to the other Party all copies of the other Party's Confidential Information and, if requested, verify to the other Party that it has done so;
- 7.9.4 the Customer shall return the Services Equipment to MetroFibre at the Customer's cost.
- 7.10 Termination of these Terms and Conditions shall not affect any clauses that of necessity or due by its context must survive these Terms and Conditions.

8. CUSTOMER OBLIGATIONS

- 8.1 The Customer shall grant or shall procure the grant to MetroFibre or its authorised representatives of such rights of access to each Customer Site, including any necessary consents to enable it to perform its obligations or exercise its rights under these Terms and Conditions. If the Services are not activated due to fault on the part of the Customer, including but not limited to, the Customer failing to obtain any necessary consents within 14 (fourteen) days from the date the Order was submitted, then MetroFibre will be allowed to cancel these Terms and Conditions and levy an early cancellation penalty in the amount of R20 000 from the Customer, which early cancellation penalty must be paid within 30 (thirty) days of the date of invoice.
- 8.2 The Customer shall advise MetroFibre in writing of all health and safety rules and regulations and any other reasonable security requirements applicable at the Customer Site, and MetroFibre shall use all reasonable endeavours to observe and ensure that its employees and authorised representatives observe such regulations and requirements as advised whilst at the Customer Site.
- 8.3 The Customer shall provide MetroFibre with such facilities and information as MetroFibre may reasonably require, to enable it to perform its obligations or exercise its rights under these Terms and Conditions. The Customer shall provide all documentation required by MetroFibre to comply with applicable laws. MetroFibre shall not be obliged to deliver any Services until all required documentation has been provided in terms of RICA.
- 8.4 THE CUSTOMER UNDERTAKES TO PROVIDE METROFIBRE WITH ALL INFORMATION AND DOCUMENTATION REQUIRED UNDER RICA, BEING A CERTIFIED PHOTOCOPY OF THE IDENTIFICATION DOCUMENT OF THE CUSTOMER'S BUSINESS REPRESENTATIVE AS WELL AS A CERTIFIED PHOTOCOPY OF THE CUSTOMER'S BUSINESS LETTERHEAD; PRIOR TO THE SERVICES BEING ACTIVATED. THE CUSTOMER ACKNOWLEDGES THAT METROFIBRE MAY NOT PROVISION ANY SERVICES TO THE CUSTOMER UNTIL SUCH TIME AS THE CUSTOMER HAS COMPLIED WITH THIS CLAUSE 8.4.
- 8.5 The Customer warrants and undertakes that it shall:
- 8.5.1 use the Services Equipment only for the purpose of receiving the Services and in accordance with MetroFibre's reasonable instructions from time to time and/or any software licence that may be provided with the Services Equipment;

- 8.5.2 not move, modify, relocate, or in any way interfere with the Services Equipment (or any words or labels on the Services Equipment) or the Network;
- 8.5.3 not cause the Services Equipment to be repaired or serviced except by an authorised representative of MetroFibre;
- 8.5.4 insure and keep insured all Services Equipment installed at each Customer Site against theft, damage and destruction;
- 8.5.5 not create or allow any charges, liens, pledges or other encumbrances to be created over the Services Equipment. Title to the Services Equipment shall at all times belong and remain with MetroFibre, any MetroFibre affiliate or their subcontractors;
- 8.5.6 permit MetroFibre access to inspect, test, maintain and replace the Services Equipment at all reasonable times;
- 8.5.7 comply with MetroFibre's reasonable instructions in relation to the modification of the Customer Equipment to enable the Customer to receive the Services, at its own expense; and
- 8.5.8 upon termination of the Services, shall return any Customer Equipment to MetroFibre and allow MetroFibre access to each Customer Site to remove the Services Equipment. Should any construction or alteration to the Customer Site have occurred to facilitate any Services, MetroFibre is not obliged to restore the Customer Site to the same physical state as prior to the delivery of the Services. MetroFibre shall be entitled to charge the Customer the full replacement cost of any Customer Equipment not returned on termination for any reason whatsoever.
- 8.6 The Customer shall be liable for any and all damage to the Services Equipment, the Network and/or any third-party network which is caused by:
 - 8.6.1 the act or omission of the Customer (including but not limited to Customer's employees, agents, contractors, suppliers or officers) or the Customer's breach of the provisions of these Terms and Conditions; or
 - 8.6.2 malfunction or failure of any equipment or facility provided by the Customer or its agents, employees, or suppliers, including but not limited to the Customer Equipment.
- 8.7 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 receive the Services and to run and connect the Customer Equipment to the Network and Services Equipment and benefit from the Services. MetroFibre reserves the right to disconnect any Customer Equipment where the Customer has failed to comply with the provisions of this clause 8 and MetroFibre shall in no event be liable in respect of the Customer's failure to comply with this clause 8.
- 8.8 The Customer warrants and undertakes that it shall in its use of the Services comply with:
 - 8.8.1 any relevant legislative and regulatory provisions and shall not use the Services for any illegal or immoral purpose and/or shall not cause damage to the Network or any third-party network; and
 - 8.8.2 the current version of the MetroFibre Acceptable Use Policy (the "**Policy**"). The applicable Policy shall be available on the MetroFibre website. The Customer shall, prior to commencing its use of the Services, read and understand the Policy. MetroFibre reserves the right to change the Policy from time to time, effective upon posting of the revised Policy on its website without notice to the Customer.
- 8.9 The Customer agrees to indemnify, defend and hold MetroFibre (including its employees, agents, directors

and shareholders) harmless from and against any claim for any losses, damages, costs and expense (including costs on an attorney and own client scale) incurred by Customer or by any third party as a result of any:

- 8.9.1 liability, fine, cost and/or damage resulting from the Customer's failure to comply with the provisions of clause 8.3 above;
- 8.9.2 liability arising out of the causing of any physical harm or damage to the Network or network of any third party fixed network operator, including without limitation intentional or negligent acts or omissions of the Customer and any its agents, contractors, representatives and employees;
- 8.9.3 any liability for any Content conveyed via the Network; and
- 8.9.4 liability arising out any breach of the Customer of any warranty or provisions of these Terms and Conditions.

9. LIABILITY AND DISCLAIMER

- 9.1 THE CUSTOMER USES THE METROFIBRE NETWORK AND THE SERVICES AT ITS OWN RISK.
- 9.2 Subject to clauses 9.4 and 9.5, MetroFibre's total liability to the Customer arising in connection with these Terms and Conditions shall be limited, for any event or series of connected events, to a value equal to 6 (six) times the value of the average Monthly Fee of the affected Services; and notwithstanding the aforementioned, a maximum amount in aggregate in any twelve (12) month period of 12 (twelve) times the value of the average Monthly Fee of the affected Services.
- 9.3 The average amount referred to in clause 9.2 will be calculated utilising the (3) three months of billing prior to the aforementioned event or series of connected events.
- 9.4 Subject to clause 9.2 but otherwise notwithstanding anything else in these Terms and Conditions, neither Party shall in any event be liable to the other for indirect or consequential losses or otherwise for harm to business, loss of revenues, loss of data, loss of Content, loss of anticipated savings or lost profits, whether or not reasonably foreseeable at the time when these Terms and Conditions was entered into.
- 9.5 The Customer acknowledges that MetroFibre is unable to exercise editorial or other control over any Content placed on or accessible through the Customer's use of the Services and MetroFibre shall have no liability as to the quality or accuracy of any Content received through or as a result of the use of the Services.
- 9.6 Notwithstanding anything to the contrary in these Terms and Conditions, no provision of these Terms and Conditions shall serve to limit either Party's liability in respect of death or personal injury caused by or arising from its negligence, or any liability arising pursuant to the clauses 4, 8.7, 8.8, and 11.

10. 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 these 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 Terms and Conditions.
- 10.2 The Party declaring the event Force Majeure shall give written notice to the other Party specifying the exact nature of the intervening circumstances and its estimated duration.

- 10.3 The Party declaring 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 these Terms and Conditions. If no agreement is reached by the Parties in this regard within a period of 7 (seven) days thereafter, either Party may terminate these Terms and Conditions forthwith upon 7 (seven) days' prior written notice to the other Party.

11. INTELLECTUAL PROPERTY, IP ADDRESSES AND DOMAIN NAMES

The Customer acknowledges:

- 11.1 that all patents, registered and unregistered designs, copyrights, trademarks and all other intellectual property rights whatsoever and wherever enforceable, which are used in connection with the Services and/or Services Equipment, shall remain the sole property of MetroFibre, its contractors or suppliers; and
- 11.2 without limitation to the foregoing, that the Customer shall not be entitled to use the name, trademarks, trade names or other proprietary identifying marks or symbols of MetroFibre without MetroFibre's prior written consent.

12. CONFIDENTIALITY

Each Party hereunder, shall:

- 12.1 only use Confidential Information for the purposes of these Terms and Conditions;
- 12.2 only disclose Confidential Information to a third party with the prior written consent of the other 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
- 12.3 ensure that any third party to whom Confidential Information is disclosed executes a confidentiality undertaking substantially similar to the terms of this clause 12. The provisions of clause 12 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 receiving 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.

13. ASSIGNMENT

The Customer may not assign, charge, transfer or otherwise dispose of any of its rights or obligations herein in whole or in part, without the prior written consent of MetroFibre. MetroFibre may cede or assign any or all of its rights and obligations hereunder: (i) to any MetroFibre affiliate; (ii) to a third party pursuant to any sale or transfer of substantially all the assets or business of MetroFibre or a MetroFibre affiliate; or (iii) to a third party pursuant to any financing, merger, or reorganisation of MetroFibre or a MetroFibre affiliate.

14. GOOD FAITH, ANTI-BRIBERY AND CORRUPTION

- 14.1. In the implementation of these Terms and Conditions, the Parties undertake to observe the utmost good faith in their dealings with each other, and they warrant that they will not do anything which might prejudice or detract from the rights, assets or interests of the other Party. No Party shall make any oral or written statement about the other Party which is intended or reasonably likely to disparage the other Party, or otherwise degrade the other Party's reputation in the business, legal or ICT sector or the public in general, except for notifications required in terms of section 22 of POPIA or other statements of fact made during the course of business.

- 14.2. For the purpose of clauses 14.3 to 14.6, “**Associated Person**” means in relation to the Customer, a person who (by reference to all the relevant circumstances) performs services for or on behalf of the Customer in any capacity and including, without limitation, employees, agents, subsidiaries, representatives and sub-contractor/s.
- 14.3. The Customer undertakes at all times to ensure that nothing which may be detrimental to the image, good name and reputation of MetroFibre is done or published by the Customer or any of its employees, agents, subsidiaries, representatives or sub-contractors, and furthermore to take all reasonable steps to avoid any unfavourable publicity for MetroFibre and shall procure that any Associated Person does the same.
- 14.4. The Customer undertakes to comply with all applicable anti-bribery and corruption laws (collectively the “**Anti-Bribery Laws**”) and shall procure that any Associated Person does the same.
- 14.5. The Customer warrants and undertakes that:
- 14.5.1. it has and will at all times implement adequate procedures designed to prevent it or any Associated Person from engaging in any activity which would constitute an offence under or violate the Anti-Bribery Laws;
- 14.5.2. no financial or other advantage has been, will be or is agreed to be given to any person (whether working for or engaged by MetroFibre or any third party) by or on behalf of the Customer in connection with this Agreement, unless details of any such arrangement has been disclosed to and approved by MetroFibre in writing;
- 14.5.3. it will not, and shall procure that any Associated Person does not, enter into a financial or other relationship with any employee of MetroFibre which creates an actual or potential conflict of interest, unless previously approved by MetroFibre; and
- 14.5.4. it will not, and shall procure that any Associated Person does not, make any type of political contribution or charitable donation on behalf of MetroFibre whether directly or indirectly.
- 14.6. The Customer shall promptly report to MetroFibre in writing upon becoming aware that it or any of its Associated Persons is in contravention of this clause 14.

15. PROTECTION OF PERSONAL INFORMATION

- 15.1 IN ORDER TO RENDER THE SERVICES OR TO COMPLY WITH THE OBLIGATIONS IMPOSED ON METROFIBRE IN TERMS OF THIS AGREEMENT, METROFIBRE WILL NEED TO PROVIDE, COLLECT, USE, STORE OR PROCESS THE PERSONAL INFORMATION OF THE CUSTOMER. THE CUSTOMER HEREBY AUTHORISES SUCH COLLECTION, USE, STORAGE AND PROCESSING WHERE THE NEED ARISES, SUBJECT TO COMPLIANCE WITH THE FURTHER PROVISIONS OF THIS CLAUSE 15.
- 15.2 METROFIBRE SHALL COMPLY WITH ITS OBLIGATIONS UNDER POPIA IN RESPECT OF ALL PERSONAL INFORMATION PROCESSED BY IT IN CONNECTION WITH THIS AGREEMENT AND THE SERVICES.
- 15.3 METROFIBRE SHALL ONLY PROVIDE, COLLECT, USE, STORE OR PROCESS PERSONAL INFORMATION:
- 15.3.1 AS IS NECESSARY FOR THE PURPOSES OF THIS AGREEMENT AND THE SERVICES;
- 15.3.2 FOR MAINTAINING ITS INTERNAL ADMINISTRATIVE PROCESSES, INCLUDING QUALITY, RISK AND CUSTOMER MANAGEMENT PROCESSES WHICH INCLUDES VERIFYING YOUR FINANCIAL AND OTHER PERSONAL INFORMATION AND CONDUCTING ALL SUCH

INVESTIGATIONS AS MAY BE REQUIRED IN LAW INCLUDING BUT NOT LIMITED TO INVESTIGATIONS TO DETERMINE, VERIFY OR MONITOR YOUR IDENTITY/OWNERSHIP AND CONTROL STRUCTURE (AS MAY BE APPLICABLE), BANK ACCOUNT DETAILS, RISK PROFILE AND SOURCE OF FUNDS;

- 15.3.3 FOR INTERNAL AND EXTERNAL BUSINESS-RELATED PURPOSES AND STATISTICAL OR RESEARCH PURPOSES;
- 15.3.4 IN ACCORDANCE WITH THE LAWFUL AND REASONABLE INSTRUCTIONS OF THE CUSTOMER PROVIDING THE PERSONAL INFORMATION.
- 15.4 METROFIBRE SHALL:
 - 15.4.1 COMPLY WITH THE SPECIFIC SECURITY AND PERSONAL INFORMATION PROTECTION OBLIGATIONS IMPOSED ON IT IN TERMS OF POPIA;
 - 15.4.2 WHERE APPLICABLE, COMPLY WITH THE SPECIFIC OBLIGATIONS IMPOSED ON IT IN TERMS OF POPIA IN RESPECT OF THE SPECIFIC ROLE IT FULFILLS IN TERMS OF PROVIDING THE SERVICES AS AGREED BETWEEN THE PARTIES; AND/OR
 - 15.4.3 TAKE, IMPLEMENT AND MAINTAIN ALL SUCH TECHNICAL AND ORGANISATIONAL SECURITY PROCEDURES AND MEASURES NECESSARY OR APPROPRIATE TO PRESERVE THE SECURITY AND CONFIDENTIALITY OF THE PERSONAL INFORMATION IN ITS POSSESSION AND TO PROTECT SUCH PERSONAL INFORMATION AGAINST UNAUTHORISED OR UNLAWFUL DISCLOSURE, ACCESS OR PROCESSING, ACCIDENTAL LOSS, DESTRUCTION OR DAMAGE.
- 15.5 METROFIBRE MAY SHARE THE CUSTOMER'S PERSONAL INFORMATION WITH ITS CONTRACTORS, EMPLOYEES, PROFESSIONAL ADVISORS OR OTHER THIRD PARTIES WHERE NECESSARY IN ORDER TO PROTECT THE LEGITIMATE INTERESTS OF ANY OF THE PARTIES OR IN CONNECTION WITH THIS AGREEMENT AND THE SERVICES.
- 15.6 METROFIBRE MAY NOTIFY THE CUSTOMER ABOUT IMPORTANT DEVELOPMENTS, PROPOSALS AND SERVICES WHICH IT THINKS MAY BE RELEVANT TO THE CUSTOMER, INCLUDING ADVISING THE CUSTOMER ON CURRENT OFFERINGS, SENDING THE CUSTOMER NEWSLETTERS, INVITATIONS TO SEMINARS AND SIMILAR MARKETING MATERIAL. THE CUSTOMER SHALL NOTIFY METROFIBRE IF IT DOES NOT WISH TO RECEIVE ANY ELECTRONIC OR OTHER COMMUNICATIONS FROM METROFIBRE.
- 15.7 COMMUNICATIONS BETWEEN METROFIBRE AND THE CUSTOMER WHETHER ELECTRONIC, TELEPHONIC OR OTHERWISE, MAY BE MONITORED BY METROFIBRE TO ENSURE COMPLIANCE WITH ITS OWN PROFESSIONAL STANDARDS AND INTERNAL COMPLIANCE POLICIES AND IN TERMS OF RICA SHOULD METROFIBRE HAVE REASONABLE SUSPICION TO BELIEVE THAT THE CUSTOMER IS USING THE SERVICES FOR PURPOSES CONTRARY TO THE INTERESTS OF METROFIBRE.
- 15.8 METROFIBRE MAY FOR PURPOSES OF THE COLLECTION, USE, STORAGE OR PROCESSING THEREOF, NEED TO TRANSFER THE CUSTOMER'S PERSONAL INFORMATION TO:
 - 15.8.1 OUTSOURCED INFORMATION TECHNOLOGY SERVICE PROVIDERS; OR
 - 15.8.2 ANOTHER COUNTRY FOR LEGITIMATE PURPOSES, INCLUDING THE USE OF CLOUD-BASED SOLUTIONS.

- 15.9 THE CUSTOMER CONSENTS TO METROFIBRE USING OUTSOURCED INFORMATION TECHNOLOGY SERVICE PROVIDERS AND CLOUD-BASED COMPUTER SOLUTIONS TO PROCESS THE PERSONAL INFORMATION OF THE CUSTOMER AND THE CUSTOMER FURTHER CONSENTS TO THE STORAGE OF THE CUSTOMER'S PERSONAL INFORMATION OUTSIDE OF THE BORDERS OF THE REPUBLIC OF SOUTH AFRICA, TO THE EXTENT REQUIRED AND AS MAY BE APPLICABLE.
- 15.10 METROFIBRE WILL IN RELATION TO CLAUSE 15.8.2, REQUIRE THAT ANY THIRD PARTY, OUTSOURCED SERVICE PROVIDER OR FOREIGN LEGAL ENTITY INVOLVED IN THE COLLECTION, USE, STORAGE OR PROCESSING, UNDERTAKES TO ENSURE THAT SUCH PERSONAL INFORMATION IS PROTECTED WITH THE SIMILAR LEVEL OF PROTECTION AS IS REQUIRED IN TERMS OF CLAUSE 15.4.
- 15.11 THE CUSTOMER CONFIRMS THAT IT HAS, WHERE RELEVANT, PROCURED THE CONSENT OF ITS HOLDING COMPANY AND ITS SUBSIDIARY/IES WHOSE PERSONAL INFORMATION IS PROVIDED TO METROFIBRE FOR THE PROCESSING OF SUCH INFORMATION BY METROFIBRE FOR THE AFOREMENTIONED AND RELATED PURPOSES. THE CUSTOMER INDEMNIFIES METROFIBRE AGAINST ANY LOSS, LIABILITY, DAMAGE OR EXPENSE (INCLUDING INTEREST AND PENALTIES) SUFFERED OR INCURRED BY METROFIBRE DUE TO THE CUSTOMER'S FAILURE TO OBTAIN THE NECESSARY CONSENT.
- 15.12 THE CUSTOMER UNDERTAKES TO NOTIFY METROFIBRE OF ANY CHANGES OR ERRORS TO THE PERSONAL INFORMATION WHICH THE CUSTOMER PROVIDED TO METROFIBRE. METROFIBRE WILL UPDATE THE CUSTOMER'S PERSONAL INFORMATION WITHIN A REASONABLE PERIOD OF BEING NOTIFIED OF ANY CHANGES OR ERRORS.
- 15.13 SHOULD THE CUSTOMER BELIEVE THAT METROFIBRE HAS UTILISED ITS PERSONAL INFORMATION CONTRARY TO THE DIRECTIVES OF POPIA, THE CUSTOMER UNDERTAKES TO FIRST ATTEMPT TO RESOLVE ANY CONCERNS WITH METROFIBRE BY ADDRESSING A COMPLAINT IN WRITING TO THE METROFIBRE INFORMATION OFFICER'S EMAIL ADDRESS AT INFOOFFICER@METROFIBRE.CO.ZA OR BY CALLING 087 151 4000. IF THE CUSTOMER IS NOT SATISFIED WITH THE OUTCOME OF SUCH PROCESS, THE CUSTOMER HAS THE RIGHT TO LODGE A COMPLAINT WITH THE INFORMATION REGULATOR AS ESTABLISHED IN TERMS OF THE POPIA.

16. DISPUTE RESOLUTION

- 18.1 If the Customer wishes to dispute any invoice or part of an invoice falling due in accordance with clause 4.6, the Customer shall, before the invoice is due for payment, deliver a notice in writing to MetroFibre setting out the nature of its dispute, including: (i) date and number of disputed invoice; (ii) amount in dispute; (iii) reason for dispute; and (iv) supporting documentation, as appropriate. Any undisputed part of a disputed invoice shall be paid by the Customer in accordance with clause 4.6. The Parties shall use all reasonable endeavours to resolve such payment disputes as soon as is reasonably practicable.
- 18.2 In the event of there being any dispute or difference between the Parties arising out of these Terms and Conditions the Customer hereby consents, in terms of section 45 of the Magistrates Court Act 32 of 1944, to the jurisdiction of the Magistrate Court in respect of any action to be instituted against the Customer in terms of these Terms and Conditions. It shall nevertheless be entirely within the discretion of MetroFibre as to whether to proceed against the Customer in such Magistrate Court or in any other court having jurisdiction.

17. NOTICES

- 17.1 The Parties select as their respective *domicilia citandi et executandi* for the purpose of giving or sending any notice provided for or required under these Terms and Conditions, the following addresses:

17.1.1. MetroFibre

298 Witch-hazel Avenue,

Highveld Ext. 71, Centurion, 0157

For legal notices- Email: legal@metrofibre.co.za.

For cancellations - Email: finance@metrofibre.co.za.

For Personal Information matters - Email: infoOfficer@metrofibre.co.za.

17.1.2. Customer

As per the Order Form.

17.2 A Party may change its domicilium address to another physical address in the Republic of South Africa or change its e-mail address for the purposes of notice to another valid e-mail address, by written notice to the other Party. Such change of address will be effective 5 (five) Business Days after receipt of such notice.

17.3 Any notice to a Party which is:

17.1.3. delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or

17.1.4. sent by email to its chosen e-mail address stipulated on the cover page, shall be deemed received on the next Business Day immediately following the date of delivery.

A written notice or communication actually received by a Party shall be an adequate written notice or communication to it for all purposes, notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

18. GENERAL

18.1 These Terms and Conditions set out the entire understanding between MetroFibre and the Customer, superseding all prior or contemporaneous representations, agreements or understandings concerning the subject matter addressed herein.

18.2 These Terms and Conditions shall be governed and construed in accordance with South African law.

18.3 Severability. If any provision of these Terms and Conditions is rendered void, illegal or unenforceable in any respect under any law, such provision shall be severed by from these Terms and Conditions and the remaining provisions of these Terms and Conditions shall nevertheless remain valid and enforceable.

18.4 No Waiver. Failure or delay by either Party to exercise or enforce any right or benefit conferred by these Terms and Conditions , including MetroFibre's right to deliver invoices in accordance with clause 4, shall not be deemed to be a waiver of any such right or benefit nor operate so as to bar the exercise or enforcement thereof or of any other right or benefit on any later occasion.

18.5 Relationship. Nothing in these Terms and Conditions and no action taken by the Parties pursuant to these Terms and Conditions shall constitute or be deemed to constitute a partnership, agency, association, joint venture or other co-operative entity between the Parties.

18.6 Third Party Beneficiaries. Except as otherwise contemplated by these Terms and Conditions, nothing

contained herein will create or confer any rights or other benefits in favour of any person other than the Parties.

- 18.7 Variation. MetroFibre reserves the right to amend and change these Terms and Conditions from time to time (or any part thereof) and shall notify the Customer that the Terms and Conditions have been revised and that such revised Terms and Conditions are available on its website for access by the Customer. For purposes of clarity, it is hereby recorded that the Customer's consent will not be required for any amendments to the MetroFibre Terms and Conditions.
- 18.8 Costs. Any costs, including all legal costs on an attorney and own client basis, incurred by MetroFibre arising out of or in connection with a breach by the Customer shall be borne by the Customer and in the event that MetroFibre employs the services of counsel in any action, application or proceedings, which decision will be within the sole discretion of MetroFibre, the Customer hereby agrees to pay counsel's fees in any action or application brought by MetroFibre against it, on the Bar Council Tariff as determined by the relevant bar council and such costs are to include counsel's preparation costs, costs of preparing pleadings and legal hearing attendance.
- 18.9 THE CUSTOMER SHALL REFRAIN FROM ATTACKING METROFIBRE OR ITS CONTRACTORS ON ANY SOCIAL MEDIA PLATFORMS FOR DELAYS IN INSTALLATION AND/OR INTERRUPTIONS OF THE SERVICES AND/OR REPAIRS, WITHOUT FIRST FOLLOWING THE ESCALATION ROUTES AND REMEDIES STATED ABOVE. FAILURE TO COMPLY WITH THIS CLAUSE SHALL ENTITLE METROFIBRE TO CANCEL THESE TERMS AND CONDITIONS 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 TERMS AND CONDITIONS AS AFOREMENTIONED.

ANNEXURE A - VOIP TERMS AND CONDITIONS

1. INTRODUCTION

These FTTB VOIP Terms and Conditions set out in this Annexure apply to MetroFibre's VOIP Services offering which is an additional service available on existing MetroFibre FTTB data and connectivity packages. These FTTB VOIP Terms and Conditions shall be read in conjunction with the respective Terms and Conditions entered into between MetroFibre and the Customer for FTTB data and connectivity services.

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 Use Policy"** MetroFibre's **Acceptable Use Policy**, which may be found at www.metrofibre.co.za;
- 2.1.2. **"Activation"** the enabling of a service to the Customer's Premises;
- 2.1.3. **"Terms and Conditions"/ "FTTB Terms and Conditions"** the Fibre to the Business Terms and Conditions, to which this VOIP Services Annexure is attached as Annexure A;
- 2.1.4. **"Authority"** 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"** 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 36 of 1994, as amended;
- 2.1.6. **"Charges"** installation charges, monthly service charges, usage charge, reconnection fee 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"** the legal entity entering into these VOIP Terms and Conditions with MetroFibre for the provision of VOIP Services and/or the use of equipment;
- 2.1.8. **"Customer Device"** an analogue telephone device installed by Customer on the FTTB Network at Customer's own risk, expense and cost;
- 2.1.9. **"Customer Premises"** the premises specified in the Order Form at which the Services are to be provided;

- 2.1.10. **“Event of Force Majeure”** 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, inability to secure materials or services and failure of power or utility supplies (including electronic communications);
- 2.1.11. **“FTTB”** the Fibre-to-the-Business architecture of electronic communication made accessible to the Customer in terms of these VOIP Terms and Conditions;
- 2.1.12. **“MetroFibre”** Metro Fibre Network Proprietary Limited, registration number: 2007/024366/07, a company incorporated in terms of the laws of the Republic of South Africa;
- 2.1.13. **“Month”** a calendar month beginning at 0h00 on the first day of the calendar month in question;
- 2.1.14. **“ONT”** the optical network terminal point;
- 2.1.15. **“Order Form”** 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”** 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”** the Regulation of Interception of Communications and Provision of Communication-Related Information Act 70 of 2003, and its related regulations, as amended from time to time;
- 2.1.18. **“VOIP”** voice over IP technology for placing and transmitting telephone calls over an Internet Protocol network including the Internet;
- 2.1.19. **“VOIP Services/(s)”** the VOIP services provided by MetroFibre to the Customer in terms of these VOIP Terms and Conditions;
- 2.1.20. **“Termination Point” / “TP”** the point where the Customer is connected to the fibre broadband network including and includes the ONT;
- 2.1.21. **“Uptime”** 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”** 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;
- 2.2.4. headings of clauses have been inserted for convenience only and shall not be considered in the interpretation of these Terms and Conditions; and
- 2.2.5. any defined terms utilised in these VOIP Terms and Conditions, which are not defined herein will bear the same meaning as in FTTB Terms and Conditions.

3. PROVISION OF VOIP SERVICE

- 3.1. The VOIP Services is an additional service offered by MetroFibre to existing FTTB 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 Terms and Conditions and to the terms and conditions in these Terms and Conditions, to which these Terms and Conditions are annexed. For the avoidance of doubt, any aspect not regulated in these Terms and Conditions will be regulated in accordance with the terms and conditions set out in these Terms and Conditions 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 these Terms and Conditions, these VOIP Terms and Conditions shall supersede any conflicting terms in these Terms and Conditions, to the extent of the conflict.

4. LIMITATIONS OF VOIP SERVICE

- 4.1. The VOIP Services is dependent on the installation of an ONT/TP at the Customer's Premises and connectivity to the 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 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 BEST EFFORTS 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 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 Network from time to time, the VOIP Services may be suspended without notice. The VOIP Services is dependent on Customer being in good standing as a customer of MetroFibre FTTB Services from time to time.

5. DURATION

- 5.1. The duration of any VOIP Services is as per the Order.
- 5.2. The Customer may terminate these VOIP Terms and Conditions at any time by giving one Month's prior 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 Consumer Protection Act 68 of 2008, as amended applies and these VOIP Terms and Conditions are accepted as a result of direct marketing, the Customer has the right to terminate these VOIP Terms and Conditions without reason or penalty within 5 (five) 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 Services packages on the Order Form ("**Services Package**").
- 6.2. For the avoidance of doubt, all Packages excludes calls from outside of South Africa, which will incur default international rate costs. Charges for calls to International destinations outside of South Africa are excluded from all VOIP Services 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.
- 6.3. Local rates apply to all standard telephone numbers in South Africa. Share calls, premium calls, SA toll free numbers and other reserved and categorised numbers are excluded from all VOIP Services Packages and the Customer shall be charged the applicable default shared call rate.
- 6.4. The Customer may be billed in advance depending on the terms of the applicable Services Package selected by Customer in the Order Form. Any usage Charges over and above the bundle usage rate in the selected Bundled Services 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.
- 6.5. The Customer shall pay the VOIP fees and charges within 30 (thirty) 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 VOIP Services, irrespective of whether or not the VOIP Services is used.
- 6.6. MetroFibre shall be entitled to change the fees payable by the Customer upon 30 (thirty) days' notice to the Customer.
- 6.7. 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 Services 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 Services Order) to protect the Customer against unlawful and unauthorised usage of the VOIP Services. HOWEVER, THE CUSTOMER MAY ELECT AN ALTERNATE HIGHER OR LOWER CAP OR NOT

SELECT A LIMIT OR CAP AT ALL. THE CUSTOMER AGREES TO BE LIABLE FOR ALL CHARGES 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 Terms and Conditions.
- 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 VOIP TERMS AND CONDITIONS CONTINUE FOR LONGER THAN 60 (SIXTY), METROFIBRE RESERVES THE RIGHT TO TERMINATE THESE VOIP TERMS AND CONDITIONS AND ANY ASSOCIATED BUSINESS SERVICE OBTAINED UNDER THE FTTB TERMS AND CONDITIONS WITHOUT ANY FURTHER NOTICE TO THE CUSTOMER.

8. CANCELLATION AS A RESULT OF IMPOSSIBILITY OF PERFORMANCE

- 8.1. If any Party is restricted or prevented from carrying out any or all of its obligations as a result of an Event of Force Majeure, unpredictable delays caused by traffic congestion, diversion or road works, or any other event or circumstance giving rise to impossibility or performance delay by either Party, then that Party will be relieved of its affected obligations during the period that such event continues and will not be liable for any costs or damages arising from such delay or the failure in performance of any obligations, as a result of such event.
- 8.2. If the event in clause 8 continues for a period more than 30 (thirty) days, either Party may cancel these Terms and Conditions with immediate effect by written notice to the other Party.

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, because of:
 - 9.1.1. any suspension of the VOIP Services and/or the FTTB service due to maintenance and/or repair work conducted on the FTTB Network,
 - 9.1.2. the unavailability (temporarily or otherwise) of the FTTB Network due to network malfunction and/or failure of any third-party network on which the FTTB Network is dependent for whatsoever reason;
 - 9.1.3. the VOIP Services being interrupted, interfered with, suspended or terminated for whatsoever reason; and
 - 9.1.4. any power outage or power failure (which may be in a different geographic area to that of Customers' Premises), or FTTB Network failure for any reason whatsoever.
- 9.2. Services credits shall not apply to the 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.

10. DOMICILIA AND NOTICES

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 these VOIP Terms and Conditions or in the FTTB Terms and Conditions or as agreed to in writing by the Customer.

12. PORTING OF NUMBERS

- 12.1. MetroFibre, as "ported to" operator (recipient), may refuse to port a short number or a number used for information or other such services.
- 12.2. MetroFibre, as "ported to" operator, may refuse to port a number that would clash with another number or code that is in use, or is planned to be used, in its Network.
- 12.3. MetroFibre, as "ported from" operator (donor) may refuse to port a number for the following reasons:
 - 12.3.1. the Customer has not submitted all the RICA information and documents, required by the MetroFibre;
 - 12.3.2. the number is not a valid number on their network;
 - 12.3.3. the number is excluded from number portability as provided for by the relevant Regulations;
 - 12.3.4. for a post-paid Customer; the number, account number and/or account holder's identification number does not match;
 - 12.3.5. the classification of the account does not match, for example a request is made under the prepaid procedure for a post-paid account;
 - 12.3.6. Customer is already subject to suspension of outgoing or incoming calls because of failure to pay a bill;
 - 12.3.7. the number is already subject to a porting process;
 - 12.3.8. the number has already been ported in the last two months;

- 12.3.9. the number and account number do not match, or the port request is unauthorised; and
- 12.3.10. any other reason agreed to by the Authority and notified to MetroFibre and other operators in writing.