



FIBRE TO THE HOME

STANDARD TERMS AND CONDITIONS

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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 Use Policy”** the MetroFibre Acceptable Use Policy available at www.metrofibre.co.za and attached hereto as Annexure 2;
- 1.1.2 **“Access Build”** civil construction and maintenance works required at the Customer’s Premises to connect the Network Services to the Customer by Installation of a Termination Point on the Customer Premises;
- 1.1.3 **“Activation”** the enabling of the Services to the Customer Premises;
- 1.1.4 **“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;
- 1.1.5 **“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;
- 1.1.6 **“Charges”** 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;
- 1.1.7 **“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;
- 1.1.8 **“Contractor”** a contractor appointed by MetroFibre to install, maintain, repair, connect, disconnect or perform any similar tasks related to the provision of the CPE or the Services by MetroFibre to the Customer;

- 1.1.9 **“Customer”** the person entering into the Terms and Conditions with MetroFibre for the provision of FTTH Services and/or the use of Customer Premises Equipment;
- 1.1.10 **“Customer Premises”** the premises specified in the Order Form at which the Services are to be provided;
- 1.1.11 **“Customer Premises Equipment” or “CPE”** 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, which Customer Premises Equipment remains the property of MetroFibre at all times;
- 1.1.12 **“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, 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);
- 1.1.13 **“FTTH”** the architecture of electronic communication to the Customer Premises where the final connection to the Customer Premises is optical fibre;
- 1.1.14 **“Installation”** the physical act of providing the FTTH service to the Customer Premises and shall include all Access Builds;
- 1.1.15 **“Internet Services Provider”** a company that provides Customers with internet access;
- 1.1.16 **“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, which is a Network Provider and Internet Services Provider;
- 1.1.17 **“Month”** a calendar month beginning at 0h00 on the first day of the calendar month in question;

- 1.1.18 **“Network Provider”** 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;
- 1.1.19 **“Network Services”** any services provided by a Network Provider and which are made accessible to the Customer in terms of this Agreement;
- 1.1.20 **“Order Form”** the document which is completed and signed by the Customer in writing, electronically or telephonically, which contains the Customer’s details and the Customer’s request that MetroFibre provides it with the 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;
- 1.1.21 **“Parties”** the parties to this Agreement, being MetroFibre and the Customer collectively, and “Party” means either one of them;
- 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, as amended from time to time and its applicable regulations;
- 1.1.24 **“Process”** in relation to Personal Information shall mean any operation or activity or any set of operations, whether or not by automatic means, concerning Personal Information, including:
- 1.1.23.1 the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use;
- 1.1.23.2 dissemination by means of transmission, distribution or making available in any other form; or

- 1.1.23.3 merging, linking, as well as restriction, degradation, erasure or destruction of information;
- 1.1.25 **“RICA”** 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;
- 1.1.26 **“Services”** the electronic communications service provided by MetroFibre to the Customer together with the provision of any CPE required for such services, as detailed in the body of these Terms and Conditions as well as any additional services set out in any of the Annexures hereto, which the Customer subscribes for;
- 1.1.27 **“SLA”** the Service Level Terms and Conditions annexed to these Terms and Conditions as Annexure 1;
- 1.1.28 **“Social Media Platforms”** internet-based social media platforms and/or blog sites, including 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;
- 1.1.29 **“Terms and Conditions Agreement”** means the current version of these standard terms and conditions for Fibre to the Home 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;
- 1.1.30 **“Termination Point”** the point where the Customer is connected to the fibre broadband network and includes the ONT;
- 1.1.31 **“Use Charges”** the costs charged by MetroFibre to the Customer for access to the Network Services; and
- 1.1.32 **“VOIP”** 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; and
- 1.2.5 if there is any conflict between the provisions of this Agreement, its annexure and the Order Form, the provisions of the Order Forms shall prevail over these Terms and Conditions and these Terms and Conditions 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 these Terms and Conditions and all the Annexures.
- 1.3 No provision in these Terms and Conditions is intended to contravene the applicable provisions of the Consumer Protection Act 68 of 2008 as amended from time to time, and its related regulations (“CPA”) and therefore all provisions of these Terms and Conditions to the extent that the 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.

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, MetroFibre may be required to conduct an economic and network feasibility process to determine the viability of any Installation including Access Builds. MetroFibre may also require information from other Network Providers and the Customer subsequently authorises MetroFibre to approach any Network Provider or other party in order to obtain such information.
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 THE CUSTOMER’S BEHALF, WHICH MAY REQUIRE METROFIBRE TO SHARE CERTAIN OF THE CUSTOMER’S PERSONAL INFORMATION WITH SUCH THIRD PARTIES.
- 2.3 **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 OR TO ENTER INTO AN AGREEMENT OR ARRANGEMENT**

REFERRED TO IN CLAUSE 2.2.

- 24 **THE CUSTOMER UNDERTAKES TO PROVIDE METROFIBRE WITH ALL THE INFORMATION AND DOCUMENTATION REQUIRED UNDER RICA, BEING A CERTIFIED PHOTOCOPY OF THE IDENTIFICATION DOCUMENT OF THE CUSTOMERS AS WELL AS PROOF OF RESIDENCE, 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 <https://clientportal.metrofibre.co.za/>. THE INFORMATION PROVIDED TO METROFIBRE AS PER THIS CLAUSE 2.4 WILL BE PROCESSED ON ACCORDANCE WITH THE PRINCIPLES AS SET OUT IN CLAUSE 16 (PERSONAL INFORMATION) BELOW.**
- 25 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.

3. TERM

- 3.1 These Terms and Conditions 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 these Terms and Conditions at any time by giving 30 (thirty) calendar days' notice in writing to MetroFibre.
- 3.3 If the conclusion of these Terms and Conditions is as a result of direct marketing, the Customer has the right to terminate these Terms and Conditions without reason or penalty within 5 (five) Business Days of the later of the date upon which these Terms and Conditions was entered into or the Service was provided or the CPE was delivered to the Customer. **IF THE CPE IS 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 meters of cable infrastructure including trenching and reticulation. To the extent that the parameters of the Access Build will be exceeded (site survey to be conducted) MetroFibre shall be entitled to charge an increased cost based on labour and materials.
- 4.3 MetroFibre reserves the right from time to time to vary, suspend or terminate the Services provided, if

the Services are unavailable or if the Terms and Conditions allowing MetroFibre to render the Services are terminated, or to change the configuration of the Network or the Service Equipment, or to change any applicable access code for receipt of a Service, provided always that such change does not materially affect the relevant Service. MetroFibre shall use commercially reasonable endeavours to give the Customer timeous notice of any such changes, variations or changes to access codes.

- 4.4 **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 SERVICE FAILURE OR MALFUNCTION OR LOSS OF DATA OR CONTENT OR FAILURE OF THE NETWORK, FACILITIES, SERVICES, OR COVERAGE.**

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 Once the Order Form has been successfully received by MetroFibre's sales department, the Customer will receive an email confirming the order. If the Customer has not received an email or been contacted by an installer within 4 (four) business days of submitting the order, the onus rests on the Customer to contact MetroFibre immediately at 0871514000.
- 5.3 If the Premises contains a Termination Point (small white box for the fibre router to plug into), a CPE installation will be required. Once the Customer has received the order confirmation email, contact will be made with the Customer within 2 (two) Business Days by an installer to arrange a convenient date and time for the Installation, subject to the availability of equipment and installers. The installer will provide the Customer with the standard router to activate the Services for internet connectivity.
- 5.4 If the Premises requires a Termination Point, an Access Build will be required. Once the Customer has received the order confirmation email, contact will be made with the Customer within 2 (two) Business Days to arrange an access build installation. The Customer must ensure that the required Installation area in the Customer Premises is suitable for Installation and that the Customer is satisfied with the chosen Installation area.
- 5.5 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 and the, service providers and contractors used by MetroFibre 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 the CPE or any failure of the Services or the CPE, whether arising from an Event of Force Majeure or due to any other reason whatsoever.

- 5.6 The Customer shall, at its own cost and expense, be responsible for:
- 5.6.1 ensuring that the communication services and facilities, including, without limitation, Installation areas electrical outlets, passages and electrical connections of the equipment and the Services are all suitable for the Installation during 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
 - 5.6.2 obtaining all the necessary permissions, approvals and authorities necessary for the purposes of the supply and installation of the CPE 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.**
- 5.7 After Installation acceptance, any subsequent callout will be subject to a callout fee charged by MetroFibre to the Customer.
- 5.8 Unless the Customer advises MetroFibre of any problems with the Installation or the Services within 5 (five) Business Days from the time of Activation, the Customer shall be deemed to have accepted that the Installation was successful and the Services work, as intended.

6. USE OF THE EQUIPMENT

- 6.1 The Customer acknowledges that the CPE is and remains the property of MetroFibre and the Customer 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 in writing as soon as possible before the activation date.
- 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 on 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 in any way; and

- 6.3.3 should the Customer move from the Customer Premises, the Customer will inform MetroFibre of the move in writing and the Customer shall elect to move the CPE to the new Customer Premises or to terminate the Services in accordance with clause 11. The Customer undertakes to inform the new owner or tenant of the old Customer Premises that MetroFibre owns the CPE and shall ensure that suitable access is granted, to enable MetroFibre to remove the CPE or any other equipment related thereto from the Customer Premises for relocation. Notwithstanding the relocation of the Customer from the Customer Premises, the Customer remains responsible for the safekeeping of the CPE until the CPE is moved to the new Customer Premises.
- 6.4 Should the Customer elect to relocate the CPE to another Customer Premises MetroFibre will charge the Customer a relocation fee. Only MetroFibre is allowed to relocate the CPE to another Customer premises or other location.
- 6.5 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.
- 6.6 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 Services to be used for improper or unlawful purposes;
- 7.1.2 shall not use the Services to cause any harm or physical damage MetroFibre's CPE or network or to any third party network or Network Operator;
- 7.1.3 shall not resell capacity arising from the Services;
- 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 Use 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 Services are not designed nor intended for business use.
- 7.2 **THE CUSTOMER WARRANTS AND REPRESENTS TO METROFIBRE THAT THE CUSTOMER SHALL USE THE SERVICES 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.**8. FEES AND PAYMENT**

- 8.1 The Customer will be billed by MetroFibre Monthly in advance, unless otherwise specifically agreed in the Order Form, but MetroFibre may activate the Services before the first payment is processed and reflecting in MetroFibre's bank account.
- 8.2 On activation of the CPE, MetroFibre will issue a prorated invoice for the remainder of the first Month and thereafter at the beginning of each Month on a month-to-month basis. Customers must settle invoices received within 3 (three) days of invoice date, without deduction or set-off and free of bank charges, to avoid suspension.
- 8.3 The Customer must contact MetroFibre immediately on 0871514000 if the Customer does not receive an invoice within 2 (two) days after activation or within 2 (two) days of the beginning of any subsequent Month, this may mean MetroFibre has incorrect contact details and the Customer's Service may be suspended.
- 8.4 The Customer's first invoice will consist of the prorated Monthly fee as well as an Access Build fee (if an Access Build was required) and the configuration activation fee.
- 8.5 Payment for services can be made via EFT into MetroFibre's current account at:
- | | |
|------------------------|--------------------------|
| Bank Name: | ABSA |
| Branch Name: | ABSA Menlyn Maine |
| Branch Code: | 632005 |
| Account Number: | 4093072466 |
- 8.6 The Order Form also makes provision for signing a debit order in favour of MetroFibre. If the Customer opted for this method of payment, MetroFibre will submit the debit order to the Customer's account at Month end, and on successful receipt of the debit order, MetroFibre will process the payment to the Customer's connectivity account.
- 8.7 The reference number to be used by the Customer will be the Customer's connectivity account number, which will be sent to the Customer via email when the equipment was activated.
- 8.8 Different payment methods have different time implications depending on the process involved to record and account for the payments. Payments may take up to 48 (forty-eight) hours to reflect in MetroFibre's bank account, depending on which Bank holds the Customer's account. After the Customer's payment reflects in MetroFibre's bank, it can take 48 (forty-eight) hours to process the payment against the Customer's connectivity account. The responsibility rests with the Customer as the user to ensure that the EFT payment is made in time for effective processing, and to avoid suspension of the Customer's connectivity account.

- 8.9 In order to speed up the processing of the order, MetroFibre will accept proof of payment. MetroFibre will, however, validate the received proof of payment against the deposit reflecting in MetroFibre's account within 48 hours. If the validation fails, the Customer's Service will be suspended.
- 8.10 **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.**
- 8.11 MetroFibre shall be entitled to change the Charges payable by the Customer upon 30 (thirty) days' notice. Should the Customer not be amendable to paying the amended Charges the Customer may terminate these Terms and Conditions with MetroFibre in accordance with clause 3.2 of this Agreement.
- 8.12 **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.**

9. SUSPENSION OF SERVICES

- 9.1 MetroFibre may, upon notice to the Customer, suspend the part of or the full use of the Services provided to the Customer, if the Customer fails to perform any obligation under these Terms and Conditions or breaches any of the provision in these Terms and Conditions.
- 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 THESE TERMS AND CONDITIONS CONTINUE FOR LONGER THAN 30 (THIRTY) DAYS, METROFIBRE RESERVES THE RIGHT TO TERMINATE THESE TERMS AND CONDITIONS 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 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 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 THESE TERMS AND CONDITIONS UP UNTIL THE DATE OF TERMINATION, TOGETHER WITH ANY COSTS OR EXPENSES RELATING TO THE TERMINATION OF THESE TERMS AND CONDITIONS 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 the Services.
- 11.3 The Customer has the option to either return the CPE to MetroFibre at his/her cost or purchase the CPE from MetroFibre, upon termination of these Terms and Conditions. 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 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 ANY REASON WHATSOEVER;

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 OR CORRUPTION OF DATA OR CONTENT HOWSOEVER CAUSED); OR

12.1.3 THE CUSTOMER USING THE SERVICES FOR ILLEGAL OR IMPROPER PURPOSES OR CAUSING DAMAGE TO ANY NETWORK SERVICES OR NETWORK PROVIDERS.

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 these Terms and Conditions 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

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

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

For complaints – Email: complaints@metrofibre.co.za

The Customer: As per the Order Form.

- 14.2 The physical or residential 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.
- 14.4 Any notice required or permitted to be given in terms of these Terms and Conditions 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 Personal Information for any purpose, except as provided for in this clause or as agreed to elsewhere in these Terms and Conditions or in writing by the Customer.

16. PERSONAL INFORMATION

- 16.1 **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 16.**

- 16.2 **METROFIBRE SHALL COMPLY WITH ITS OBLIGATIONS UNDER POPIA IN RESPECT OF ALL PERSONAL INFORMATION PROCESSED BY IT IN CONNECTION WITH THIS TERMS AND CONDITIONS AND THE SERVICES.**
- 16.3 **METROFIBRE SHALL ONLY PROVIDE, COLLECT, USE, STORE OR PROCESS PERSONAL INFORMATION:**
- 16.3.1 **AS IS NECESSARY FOR THE PURPOSES OF THIS TERMS AND CONDITIONS AND THE SERVICES;**
 - 16.3.2 **FOR MAINTAINING ITS INTERNAL ADMINISTRATIVE PROCESSES, INCLUDING QUALITY, RISK, CLIENT OR VENDOR MANAGEMENT PROCESSES;**
 - 16.3.3 **FOR INTERNAL AND EXTERNAL BUSINESS-RELATED PURPOSES AND STATISTICAL OR RESEARCH PURPOSES; AND**
 - 16.3.4 **IN ACCORDANCE WITH THE LAWFUL AND REASONABLE INSTRUCTIONS OF THE CUSTOMER PROVIDING THE PERSONAL INFORMATION.**
- 16.4 **METROFIBRE SHALL:**
- 16.4.1 **COMPLY WITH THE SPECIFIC SECURITY AND PERSONAL INFORMATION PROTECTION OBLIGATIONS IMPOSED ON IT IN TERMS OF POPIA; AND/OR**
 - 16.4.2 **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;**
 - 16.4.3 **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.**
- 16.5 **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 TERMS AND CONDITIONS AND THE SERVICES.**
- 16.6 **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.

- 16.7 **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.**
- 16.8 **THE CUSTOMER CONSENTS TO METROFIBRE USING CLOUD-BASED COMPUTER STORAGE FACILITIES TO STORE 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.**
- 16.9 **METROFIBRE MAY FOR PURPOSES OF THE COLLECTION, USE, STORAGE OR PROCESSING THEREOF, NEED TO TRANSFER THE CUSTOMER'S PERSONAL INFORMATION TO:**
- 16.9.1 **OUTSOURCED INFORMATION TECHNOLOGY SERVICE PROVIDERS; OR**
- 16.9.2 **ANOTHER COUNTRY FOR LEGITIMATE PURPOSES, INCLUDING THE USE OF CLOUD-BASED SOLUTIONS.**
- 16.10 **METROFIBRE WILL IN RELATION TO CLAUSE 16.9, 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 16.4.**
- 16.11 **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 OF BEING NOTIFIED OF ANY CHANGES OR ERRORS.**
- 16.12 **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.**

17. GENERAL

- 17.1 These Terms and Conditions 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.
- 17.2 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 provisions of these Terms and Conditions from time to time. **ANY REVISED OR UPDATED VERSION OF THESE TERMS AND CONDITIONS WILL BE AVAILABLE ON METROFIBRE'S WEBSITE AT www.metrofibre.co.za AND NOTICE OF ANY SUCH REVISED OR UPDATED VERSION WILL BE PROVIDED TO THE CUSTOMER. SHOULD THE CUSTOMER NOT BE COMFORTABLE WITH ANY REVISIONS TO THESE TERMS AND CONDITIONS, THE CUSTOMER MAY TERMINATE IN ACCORDANCE WITH THE PROVISIONS OF CLAUSE 3.2 ABOVE.**
- 17.3 If any part of these Terms and Conditions 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 these Terms and Conditions.
- 17.4 These Terms and Conditions shall be subject to and shall be governed by the laws of the Republic of South Africa.
- 17.5 **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 THESE TERMS AND CONDITIONS.**
- 17.6 Dispute resolution and escalation:
- 17.6.1 Subject to clause 17.6.2 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.
- 17.6.2 However, the Customer shall first exhaust MetroFibre's internal escalation route for dispute resolution and fault reporting in accordance with MetroFibre's Service Level Terms and Conditions before escalating any such matter to the Authority or other regulatory body having jurisdiction.
- 17.6.3 **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 1– SERVICE LEVEL AGREEMENT

1. OVERVIEW

- 1.1 This is the Service Level Terms and Conditions (“**SLA**”) between MetroFibre and the Customer for the support and maintenance of the Services provided by MetroFibre to the Customer.
- 1.2 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.
- 1.3 This SLA forms an Annexure to FTTH Standard Terms and Conditions and shall be incorporated therein. Words and phrases defined in the FTTH Standard Terms and Conditions bear the same meaning in this Annexure.

2. PURPOSE AND OBJECTIVES

- 2.1 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.
- 2.2 The objectives of the SLA are to:
- 2.2.1 provide clear reference to service ownership, accountability, roles and/or responsibilities;
 - 2.2.2 present a clear, concise and measurable description of service provision to the Customer; and
 - 2.2.3 match perceptions of expected service provision with actual service support and delivery.

3. DURATION AND APPLICABILITY

- 3.1 The SLA shall commence on the date of Activation and shall remain in force for the duration of the Agreement.
- 3.2 The Parties agree that the SLA may be updated if circumstances dictate. Any reference to the SLA in the Terms and Conditions 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.

4. COMMITMENT

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

5. METROFIBRE FTTH SERVICE LEVELS

- 5.1 Planned Network Availability

The MetroFibre FTTH GPON network is designed to provide an average availability of FTTH services

of 95% per year provided on a best effort's basis.

5.2 FTTH Service Hours

MetroFibre operates a Network Operations Centre (“NOC”) specifically for its FTTH network. The following table indicates the NOC’s operating hours.

FTTH Customer Care Hours of Operation		
Monday – Friday		07:00 – 21:00
Saturday & Sunday		07:00 – 17:00
Public Holidays		08:00 – 14:00
FTTH Fault Reporting		
Telephonically	Monday – Friday	07:00 – 21:00
	Saturday & Sunday	07:00 – 21:00
	Public holidays	08:00 – 14:00
Customer Portal	Tickets for Faults can be logged 24/7 on the Customer Portal but attendance will only commence during the above stipulated times.	
Physical Repairs on Customer Premises		
Monday to Saturday, subject to Customer availability, and safe work conditions		

5.3 FTTH Service Level Definitions

Service Levels for the FTTH Network are divided into two levels based on the nature of the faults, with the understanding that the Services is intended solely for home use:

Serious Faults

Serious faults are faults that cause the 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.

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 the Customers' Wi-Fi use and physical environments.

Service Level	Serious Faults	Minor Faults
Maximum Time To Repair	90% within 4 Business Days	Within 3 Business Days
Service Times	08:00-18:00	08:00-18:00
Days	Monday to Friday Excluding Public Holidays	Monday to Friday Excluding Public Holidays
INSTALLATIONS & ACTIVATIONS		
Installation after order form confirmation (provided the complex is live and in production)	90% within 15 Business Days 10% within 18 Business Days	
Activation (after ONT has been installed and provided the complex is live and in	90% within 4 Business Days 10% within 8 Business Days	

5.4 FTTH Contact Details

1st Line Support:

E-mail: sales.support@metrofibre.co.za

Finance / Accounts

Email: ftthfinance@metrofibre.co.za

Sales:

Email: ftthsales@metrofibre.co.za

E-mails to these addresses will be responded to within 3 (three) Business Days.

The MetroFibre FTTH Service is a best effort service which means the potential speed that can be obtained will depend on the overall load on the line and the speeds achieved via third party networks.

MetroFibre does not give any guarantees with regards to the availability, quality, speed and consistency of the Wi-Fi 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 the 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 the Customer's equipment connected to the ONT, a call-out fee may be charged.

ANNEXURE 2 - ACCEPTABLE USE POLICY

1. PURPOSE

- 1.1 This Acceptable Fair Use and Access Policy (the “**Policy**”) serves to define the accepted behaviour of users on the MetroFibre 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; and
 - 1.2.4 co-exist with the global internet community as a responsible service provider.

2. GOVERNING LEGISLATION

- 2.1 The Customer undertakes to use MetroFibre's Network and Services in accordance with any restrictions imposed under the following legislation:
 - 2.1.1 Electronic Communications and Transactions Act 25 of 2002;
 - 2.1.2 Electronic Communications Act 36 of 2005;
 - 2.1.3 Regulation of Interception and Provision of Communication-Related Information Act 70 of 2003 (“**RICA**”)

3. THE NETWORK

- 3.1 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.
- 3.2 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.
- 3.3 The Customer is prohibited from obtaining, disseminating or facilitating any unlawful materials over the MetroFibre Network including, but not limited to:
 - 3.3.1 copying or dealing in intellectual property without authorisation;
 - 3.3.2 child pornography or unlawful interactions with minors;
 - 3.3.3 any threatening or offensive material which is harmful, obscene, discriminatory, defamatory, constitutes hate speech or the unlawful incitement to commit criminal acts; and
 - 3.3.4 promotion, facilitation or funding of terrorist activities.
- 3.4 The Customer is prohibited from using the MetroFibre Network in any way that:
 - 3.4.1 constitutes criminal activity or the aiding of criminal activity;

- 3.4.2 constitutes Spam/E-mail abuse, a security risk or a violation of privacy; and
- 3.4.3 interferes with the use or enjoyment of the MetroFibre Network by others.
- 3.5 In order to ensure that all Customers have fair and equal use of the Service and to protect the integrity of the MetroFibre 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:
 - 3.5.1 any action required to prevent prohibited usage (whether intended or unintended) i.e., actions to prevent the spread of viruses, worms, malicious code, etc;
 - 3.5.2 limiting throughput;
 - 3.5.3 preventing or limiting Services through specific network ports or communication protocols;
 - 3.5.4 complete termination of Service to Customers who grossly abuse the MetroFibre Network through improper or excessive usage;
 - 3.5.5 suspending the Customer's account;
 - 3.5.6 charging the offending Customer for administrative costs incurred as well as for machine and human time lost due to the incident;
 - 3.5.7 implementing appropriate mechanisms in order to prevent usage patterns that violate this Policy and/or any applicable laws; and/or
 - 3.5.8 sharing 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.

4. SYSTEM AND NETWORK SECURITY

- 4.1 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.
- 4.2 The Customer may not circumvent 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 but not limited to phishing.
- 4.3 Violations of system or network security by the Customer are prohibited and may result in civil and/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:
 - 4.3.1 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;
 - 4.3.2 unauthorised monitoring of data or traffic on the network or systems without the express authorisation of MetroFibre;
 - 4.3.3 interference with Service to any user, device, host or network including, without limitation, email bombing, flooding, deliberate attempts to overload a system and broadcast attacks;

- 4.3.4 forging of any TCP-IP packet header (spoofing) or any part of the header information;
- 4.3.5 knowingly uploading or distributing files that contain malware, including but not limited to viruses, spyware, Trojan horses, worms, time bombs, cancel bots, corrupted files, root kits or any other similar software or programs that may damage the operation of another's computer, network system or other property, or be used to engage in session or system hi-jacking;
- 4.3.6 engaging in the promotion or transmission of pirated software;
- 4.3.7 using manual or automated means to avoid any use limitations placed on the Services;
- 4.3.8 providing guidance, information or assistance with respect to causing damage or security breach to MetroFibre's network or systems, or to the network of any other service provider;
- 4.3.9 impersonating others or secretly or deceptively obtaining personal information of third parties (phishing, social engineering, etc.); and
- 4.3.10 failure to take reasonable security precautions to help prevent violations of this Policy.

5. INTERCEPTION

The Customer acknowledges that MetroFibre is lawfully required to intercept communications in accordance with the provisions of RICA. Any interception of communications shall be strictly in accordance with the provisions of the said Act.

6. GENERAL

- 6.1 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 Services shall be subject to this Policy.
- 6.2 Any cases pertaining to violation of this Policy, must be reported to abuse@metrofibre.co.za.

ANNEXURE 3 - STANDARD TERMS AND CONDITIONS FOR FTTH VOIP SERVICES

1. INTRODUCTION

The Terms and Conditions set out in this Annexure apply to MetroFibre's VOIP Services offering which is an additional service available on existing MetroFibre FTTH 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 Use Policy”	MetroFibre's Acceptable Use Policy, attached as Annexure 2 to the Agreement;
2.1.2	“Activation”	the enabling of a service to the Customer's Premises;
2.1.3	“Agreement” / “FTTH Terms and Conditions”	MetroFibre's FTTH Standard Terms and Conditions, including all Annexures, to which this VOIP Services Annexure is attached, available at www.metrofibre.co.za ;
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 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 person entering into these 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 FTTH 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, 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	“FTTH”	architecture of electronic communication to the Customer Premises where the final connection to the Customer Premises is optical fibre to the home;
2.1.12	“FTTH Network”	the FTTH network provided by MetroFibre which is made accessible to the Customer in terms of the Agreement;
2.1.13	“MetroFibre”	Metro Fibre Networx Proprietary Limited, registration number: 2007/024366/07, a company incorporated in terms of the laws of the Republic of South Africa;
2.1.14	“MetroVoice”	MetroFibre’s VOIP landline offering;
2.1.15	“Month”	a calendar month beginning at 0h00 on the first day of the calendar month in question;
2.1.16	“Order Form”	any order or quote in relation to the VOIP Services signed by Customer or electronic record of a telephone conversation made by the Customer to order the VOIP Services;
2.1.17	“Parties”	the parties to these VOIP Terms and Conditions, being MetroFibre and the Customer collectively, and “Party” means either one of them;
2.1.18	“RICA”	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;
2.1.19	“Termination Point” / “TP”	the point where the Customer is connected to the fibre broadband network including and includes the optical network terminal point (“ ONT ”);
2.1.20	“Uptime”	the total number of minutes available to a Customer via the Network Services in a calendar month;
2.1.21	“VOIP”	voice over IP technology for placing and transmitting telephone calls over an Internet Protocol network including the Internet;

- 2.1.22 **“VOIP Service(s)”** the VOIP services provided by MetroFibre to the Customer in terms of these VOIP Terms and Conditions; and
- 2.1.23 **“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 recognized 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 utilized 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 FTTH 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 TP 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 Services are dependent on the installation of an ONT/TP at the Customers Premises

and connectivity to the FTTH 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 FTTH 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 FTTH 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 Service may be suspended without notice.

5. DURATION

- 5.1. The duration of any VOIP Services are as per the Order Form.
- 5.2. The Customer may terminate these VOIP Terms and Conditions at any time by giving one calendar months' notice in writing to MetroFibre.
- 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: 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 utilized by home users only (i.e. not for business purposes) and 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; and

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 utilized by home users only (i.e. not for business purposes) and 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 utilized by home users only (i.e. not for business purposes) and 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 service.

6.7. Charges for calls to International destinations outside of South Africa are excluded from all VOIP Service Packages and charges can be found on MetroFibre’s website at www.metrofibre.co.za 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 categorized 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 3 (three) 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 Charges payable by the Customer upon 30 (thirty) days' notice. Should the Customer not be amendable to paying the amended Charges the Customer may terminate the Agreement with MetroFibre in accordance with clause 3.2 of this Agreement.
- 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 unauthorized 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 FTTH 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 endeavors 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 FTTH NETWORK DUE TO NETWORK MALFUNCTION AND/OR FAILURE OF ANY THIRD-PARTY NETWORK ON WHICH THE FTTH NETWORK IS DEPENDENT, OR FOR ANY OTHER REASON WHATSOEVER.
- 9.2. Service credits (as detailed and provided for in the FTTH 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.

10. DOMICILIA AND NOTICES

As per the FTTH Terms and Conditions for MetroFibre.

As per the Order Form for the 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.

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 number is not a valid number on their network;
- 12.3.2. the number is excluded from number portability as provided for by the Regulations;
- 12.3.3. for a post-paid Customer; the number, account number and/or account holder's identification number does not match;

- 12.3.4. the classification of the account does not match, for example a request is made under the prepaid procedure for a post-paid account;
- 12.3.5. Customer is already subject to suspension of outgoing or incoming calls because of failure to pay a bill;
- 12.3.6. the number is already subject to a porting process;
- 12.3.7. the number has already been ported in the last two months;
- 12.3.8. the number and account number do not match, or the port request is unauthorized; and
- 12.3.9. any other reason agreed to by the Authority (ICASA) and notified to MetroFibre and other operators in in writing.