



**STANDARD TERMS AND CONDITIONS**

**FOR**

**METROFIBRE BIZ**

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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 Biz Acceptable Use Policy, available on the MetroFibre Biz website at [www.metrofibre.co.za](http://www.metrofibre.co.za);
- 1.1.2 **“Access Build”** civil construction and maintenance works required at the Customer Premises to connect the Services to the Customer by installation of a Termination Point in the Customer Premises;
- 1.1.3 **“Activation Date”** the date on which commissioning of the Services to the Customer Premises takes place which date includes without limitation the date from which Customer billing commences;
- 1.1.4 **“Applicable Laws”** any and all: (i) laws, statutes, regulations, decisions, rulings, government policies, enactments or instruments, (ii) requirements or regulations, and (iii) codes of practice, policies and decisions of any relevant regulator, which may from time to time be in force in the Republic of South Africa and be relevant to any rights or obligations under this Agreement;
- 1.1.5 **“Authority”** the Independent Communications Authority of South Africa established in terms of the Independent Communications Authority of South Africa Act 13 of 2000 and its applicable regulations, as amended, and its successors who oversee the electronic communications industry in the Republic of South Africa;
- 1.1.6 **“Biz Services”** or **“Services”** or **“MetroFibre Biz Services”** the GPON electronic communication services or Internet services provided by MetroFibre to the Customer, and as detailed in any applicable Order Form and/or Service Confirmation;
- 1.1.7 **“Business Day”** every day excluding Saturdays, Sundays and any gazetted public holidays in the Republic of South Africa;
- 1.1.8 **“Charges”** Installation charges, Access Build charges (if applicable) monthly service fees and charges, usage and all other charges relating to the provision of the Biz Services by MetroFibre to the Customer or relating to the cancellation of these Terms and Conditions;
- 1.1.9 **“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) Personal information; and (v) any information which may reasonably be regarded as the confidential information of the disclosing Party;

- 1.1.10      **“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;
- 1.1.11      **“Contractor”**                         a contractor appointed by MetroFibre to install, maintain, repair, connect, disconnect or perform any similar tasks related to the provisioning of the CPE or the Biz Services to the Customer;
- 1.1.12      **“Customer”**                             the person or the legal entity that enters into an Order Form for Biz Services with MetroFibre under these Terms and Conditions;
- 1.1.13      **“Customer Premises”**                 the premises specified in the Order Form at which the Services are to be installed and provided;
- 1.1.14      **“Customer Premises Equipment” or “CPE”**     all devices supplied by MetroFibre to the Customer to enable MetroFibre to provide the Biz Services to the Customer, including but not limited to the optical network terminal (“**ONT**”), router, hardware, cables, telephony device and connections, which Customer Premises Equipment remains the property of MetroFibre at all times;
- 1.1.15      **“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;
- 1.1.16      **“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 telecommunications services;
- 1.1.17      **“G-PON”**                                 the gigabyte passive optical network as fully detailed in ITU-T

Recommendation G.984, as amended from time to time;

1.1.18	<b>“Installation”</b>	the physical act of providing the Biz Service to the Customer Premises including all Access Builds;
1.1.19	<b>“Internet”</b>	the international interconnected network of networks using the TCP/IP protocol to exchange data communications;
1.1.20	<b>“MetroFibre”</b>	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;
1.1.21	<b>“Network”</b>	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 Biz Services;
1.1.22	<b>“Order Form” or “Order”</b>	the MetroFibre Biz Services order form, which is completed by the Customer in writing, electronically or telephonically (as the case may be), which contains the Customer’s details and the Customer’s request that MetroFibre provides it with the Biz Services, and may reference and include additional terms and conditions;
1.1.23	<b>“Party”</b>	MetroFibre or the Customer (as the context requires), and <b>“Parties”</b> shall mean both MetroFibre and the Customer;
1.1.24	<b>“Personal Information”</b>	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 these Terms and Conditions;
1.1.25	<b>“POPIA”</b>	the Protection of Personal Information Act 4 of 2013, including any regulations thereto, as amended from time to time;
1.1.26	<b>“Process”</b>	any operation or activity or any set of operations, whether or not by automatic means, concerning Personal Information, including: <ul style="list-style-type: none"> <li>the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use;</li> <li>dissemination by means of transmission, distribution or</li> </ul>
	1.1.26.1	

- 1.1.26.2 making available in any other form; or
- 1.1.26.3 merging, linking, as well as restriction, degradation, erasure or destruction of information;
- 1.1.27 **“RICA”** the Regulation of Interception of Communications and Provision of Communications-Related Information Act 70 of 2003, including any regulations thereto, as amended from time to time;
- 1.1.28 **“Services Confirmation”** the written confirmation of the Biz Services detailed in any Order (and any future amendments or additions thereto) delivered *via* email to the email address contained in the Order Form detailing *inter alia* (i) the specific Biz Service(s) to be provided to the Customer by MetroFibre and (ii) the Activation Date;
- 1.1.29 **“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 Activation Date or, if not stated, a minimum of one year from the Activation Date; unless the contrary is clearly indicated in the Services Confirmation;
- 1.1.30 **“SLA”** the Service Level Annexure annexed to these Terms and Conditions as Annexure 1;
- 1.1.31 **“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;
- 1.1.32 **“Termination Point”** the point where the Customer is connected to the fibre broadband Network and includes the ONT;
- 1.1.33 **“Terms and Conditions”** the agreement between MetroFibre and the Customer, consisting of *inter alia* these MetroFibre Biz Terms and Conditions, all Annexures hereto, and any Order and/or Services Confirmation issued by MetroFibre; and
- 1.1.34 **“VOIP”** voice over IP technology for placing and transmitting telephone calls over an Internet Protocol network including the Internet, as set out in Annexure 2 hereto.
- 1.2 In these Terms and Conditions, 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 these Terms and Conditions;
- 1.2.5. words defined in this clause shall have the same meaning in the annexures and any word defined in a clause or annexure shall have that meaning in the clause or annexure concerned and if used elsewhere in these Terms and Conditions; and
- 1.2.6. if there is any conflict between the provisions of these Terms and Conditions, its annexures, the Order Form and Services Confirmation the provisions of the Service Confirmation shall prevail over these Terms and Conditions and these Terms and Conditions shall prevail over the provisions of Annexure 1. However, the provisions of Annexure 2 will prevail in the event of any conflict with these Terms and Conditions and all the annexures to the extent of the conflict only.
- 1.3 MetroFibre's relationship with the Customer, is without exception, 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 Customer is a "**Consumer**", as defined in the Consumer Protection Act 68 of 2008 as amended from time to time and including any regulations thereto ("**CPA**") it's attention is drawn the provisions of clauses 2, 4, 5, 6, 7, 8, 9, 11, 12, 15, 16 and 19 which may limit the risk or liability of MetroFibre or impose obligations on the Consumer or be an acknowledgement of a fact.
- 1.4 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.

## **2 PROVISION OF SERVICES AND AUTHORISATION**

- 2.1 The Customer wishes to acquire the Biz Services from MetroFibre, which Biz Services MetroFibre agrees to provide to the Customer subject to these Terms and Conditions.
- 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 require information from other Network providers. **THE CUSTOMER HEREBY AUTHORISES METROFIBRE TO APPROACH ANY NETWORK PROVIDER OR OTHER PARTY IN ORDER TO OBTAIN SUCH INFORMATION.**
- 2.3 **METROFIBRE MAY NEED TO ENTER INTO AGREEMENTS OR ARRANGEMENTS WITH THIRD PARTIES IN ORDER FOR METROFIBRE TO DELIVER THE SERVICES WHICH MAY REQUIRE METROFIBRE TO SHARE CERTAIN OF THE CUSTOMER'S PERSONAL INFORMATION WITH SUCH THIRD PARTIES. THE CUSTOMER HEREBY AUTHORISES METROFIBRE TO ENTER INTO ANY SUCH AGREEMENT OR ARRANGEMENT ON THE CUSTOMER'S BEHALF AS MAY BE NECESSARY.**
- 2.4 **THE CUSTOMER UNDERTAKES TO PROVIDE METROFIBRE WITH ALL INFORMATION**

**AND DOCUMENTATION REQUIRED UNDER RICA, INCLUDING 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 A TIME AS THE CUSTOMER HAS COMPLIED WITH THIS CLAUSE 2.4.**

- 2.5 Where an electronic Order Form is placed through the MetroFibre portal/website, the order as selected and executed by MetroFibre will be billed to the person whose name is set out at the top of the Order Form.
- 2.6 Except as expressly set out in these Terms and Conditions, all warranties, representations or agreements, with respect to the provision of the Biz Service or otherwise, whether oral or in writing and whether express or implied, either by operation of law, statute or otherwise, are excluded to the extent permitted by law. Without limiting the generality of the foregoing MetroFibre does not warrant that the Services will fit for or suitable for Customer's purposes, be uninterrupted or error free, or that defects in the Services will be remedied. The Customer assumes and accepts all risk associated with the use of the Services.
- 2.7 The Biz Service is a purely layer 3 GPON service with a limitation of 1 x Static IP situated on the WAN interface of the CPE device deployed at the Customer Premises. The Customer acknowledges that the installation of this specific service limits the physical address where it is installed to the MetroFibre product suite which may change from time to time, without prior written notice to the Customer. All registered resellers of MetroFibre and MetroFibre itself may sell the MetroFibre Biz Services product suite to Customers. The MetroFibre Biz Services product is a business product and is not available as a layer 2 (two) product or service.
- 2.8 By countersigning, signing or completing any Order Form in whatever format 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 Order Form together with the provisions of these Terms and Conditions.
- 2.9 In addition to the terms set out in these Terms and Conditions, the Services shall be subject to all mandatory legal requirements in South Africa, including but not limited to the regulatory environment as well as POPIA.

### **3 TERM AND TERMINATION**

- 3.1 The Customer agrees to comply with any Initial Services Term commitment set out in the Order Form.
- 3.2 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 the Order Form, unless the Customer gives 90 (ninety) days written notice of termination 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 but is not a juristic person, 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 an Order Form. The Customer as Consumer that is a non-juristic person may terminate any Biz Service(s) on the giving of 20 (twenty) Business Days' written notice during the Renewal Term.
- 3.3 Either Party may terminate these Terms and Conditions:



- 3.3.1. immediately by notice if, in relation to the Services, the other Party has committed a material breach which is incapable of remedy;
- 3.3.2. 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) calendar days of having been notified in writing of such breach; and/or
- 3.3.3. 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).
- 3.4 The termination by the Customer of the Biz Service after Installation of the Services, but prior to the Activation Date 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 Installation and Access Build costs, site survey and any planning conducted. If the Services are terminated subsequent to the Activation Date, the Customer shall be liable for all incurred Charges, third party network, linking and switching fees or costs and 100% of the monthly service charges for the remainder of the Initial Services Term or subsequent Renewal Term as applicable.
- 3.5 The Customer shall be liable for a reasonable Termination Charge, notwithstanding that the Customer's account may not be in arrears at the time of early cancellation. 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. MetroFibre will only grant the Customer early cancellation after the Customer has paid and MetroFibre has received the early Termination Charge.
- 3.6 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 9.1.3 or 9.1.4 has continued for a period of at least 10 (ten) Business Days.
- 3.7 Notwithstanding the provisions of clause 9, MetroFibre may terminate these Terms and Conditions on 7 (seven) calendar days' notice if the Customer fails to make any payment, when due, in accordance with the provisions of these Terms and Conditions.
- 3.8 Without prejudice to accrued rights or obligations, upon termination of these Terms and Conditions, all Services shall terminate immediately and:
  - 3.8.1. notwithstanding the provisions of clause 8, all accrued Charges not yet invoiced shall become due and shall be paid by the Customer immediately upon receipt of an invoice;
  - 3.8.2. where the termination is as a result of breach of the Customer, any applicable early Termination Charges will become due and payable immediately; and
  - 3.8.3. 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.

- 3.9 Termination of these Terms and Conditions shall not affect any clauses that of necessarily or by its context requires survival of these Terms and Conditions.
- 3.10 Notwithstanding the provisions of this clause 3, if the provisions of the Electronic Communications and Transactions Act 25 of 2002, as amended, applies to the provisions of 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.

#### **4 ACCESS BUILD**

- 4.1 Where an Access Build is included in any Order Form, the Access Build shall encompass the civil works relating to the Installation of a Termination Point in the Customer's 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 Biz Services provided, if the Services are unavailable or if the Terms and Conditions allowing MetroFibre to render the Services are terminated, to change the configuration of the Network or the CPE, or to change any applicable access code for receipt of the Biz Service, provided always that such change does not materially affect the relevant Biz 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 NETWORK UNAVAILABILITY, TEMPORARY SERVICE FAILURE OR MALFUNCTION OR LOSS OF 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 Biz 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 If the Customer's Premises contains an existing Termination Point (small box for the fibre router to plug into) then contact will be made with the Customer within 2 (two) Business Days of submission of the Order Form 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.
- 5.3 If the Premises requires a Termination Point, an Access Build will be required. Contact will be made with the Customer within 2 (two) Business Days of the submission of an Order Form to arrange for the Installation and Access Build. 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.
- 5.4 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 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 Biz Services or the supply of the CPE or any failure of the Biz Services or the CPE, whether arising from an event of Force Majeure or due to any other reason whatsoever.

5.5 Once the Order Form has been received and processed by MetroFibre, and applicable Access Builds and/or Installations have taken place, the Customer will receive a Service Confirmation *via* email confirming the Order on completion of MetroFibre's commissioning process. If the Customer has not received a Service Confirmation email or been contacted by an installer within 4 (four) Business Days of submitting the Order Form, the onus rests on the Customer to contact MetroFibre immediately at 087 151 4000.

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 Biz Services and the CPE; and

5.6.2. **OBTAINING ALL THE NECESSARY PERMISSIONS, APPROVALS AND AUTHORISATIONS 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 Biz Services within 5 (five) Business Days from the time of the Activation Date, 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 shall use the CPE only for the purpose for which it is intended and in accordance with any laws or regulations.

6.2 Should the Customer not be the owner of the Customer Premises, the Customer shall notify the owner of the Customer Premises of MetroFibre's ownership of the CPE.

6.3 Upon delivery to the Customer, or collection by the Customer, of the CPE, risk in respect of the CPE, but not ownership thereof, shall pass to the Customer who shall ensure that:

6.3.1. the CPE is kept in the Customer's possession and control in the Customer Premises, and protected against any material loss or damage and free from any attachment, lien, hypothec or other encumbrance;

- 6.3.2. the CPE is used with due care and diligence. The Customer specifically acknowledges that the fly-lead is extremely fragile and may not be bent, tightly coiled or manhandled;
- 6.3.3. should the Customer move from the Customer Premises, the Customer will inform MetroFibre of the cancellation of the Service in writing. 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 or retrieve the CPE or any other equipment related thereto from the old Customer Premises; and
- 6.3.4. 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.
- 6.4 **IN THE EVENT OF THEFT OF OR LOSS OR DAMAGE TO THE CPE, THE CUSTOMER SHALL IMMEDIATELY INFORM METROFIBRE THEREOF IN WRITING. THE CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR THE COST OF REPAIRING OR REPLACING THE CPE.**
- 6.5 MetroFibre may, at any time during these Terms and Conditions, 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 Biz 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 that it:
- 7.1.1. shall use the Biz Services in compliance with 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;
- 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 Biz Services;
- 7.1.4. shall use the Services in compliance with the current version of the MetroFibre's Acceptable Use Policy. **THE CUSTOMER SHALL, PRIOR TO COMMENCING ITS USE OF THE SERVICES, READ AND UNDERSTAND THE ACCEPTABLE USE POLICY. METROFIBRE RESERVES THE RIGHT TO CHANGE THE ACCEPTABLE USE POLICY FROM TIME TO TIME, EFFECTIVE UPON POSTING OF THE REVISED ACCEPTABLE USE POLICY ON ITS WEBSITE WITHOUT NOTICE TO THE CUSTOMER;** and
- 7.1.5. 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.
- 7.2 The Customer agrees to indemnify, defend and hold MetroFibre (including its employees, agents, directors and shareholders) harmless from an 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:
- 7.2.1. any liability, fine, cost and/or damage resulting from the Customer's failure to comply with the provisions of clause 7.1 above;

- 7.2.2. any 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; and
- 7.2.3. any liability arising out any breach of the Customer of any warranty or term of these Terms and Conditions.

## **8 FEES AND PAYMENT**

- 8.1 The Customer will be billed by MetroFibre monthly in advance, unless otherwise specifically agreed in the Order Form.
- 8.2 On activation of the CPE and with effect from the Activation Date, 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 7 (seven) 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 087 151 4000 IF THE CUSTOMER DOES NOT RECEIVE AN INVOICE WITHIN 2 (TWO) DAYS AFTER ACTIVATION DATE OR WITHIN 2 (TWO) DAYS OF THE BEGINNING OF ANY SUBSEQUENT MONTH, AS THIS MAY MEAN THAT METROFIBRE HAS INCORRECT CONTACT DETAILS FOR THE CUSTOMER AND THE CUSTOMER'S SERVICE MAY BE SUSPENDED, IF ANY DUE AND OWING AMOUNTS ARE NOT TIMEOUSLY RECEIVED.**
- 8.4 The Customer's first invoice will consist of the prorated monthly Charges 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 makes provision for signing a debit order in favour of MetroFibre. If the Customer opts for this method of payment, MetroFibre will submit the debit order to the Customer's bank at month end and will instruct that payment be deducted on the date stipulated on the Order Form, 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 CPE 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 account, it can take up to 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 (forty-eight) hours. If the validation fails, the Customer's Service will be suspended.
- 8.10 **THE CUSTOMER SHALL BE LIABLE FOR THE APPLICABLE REACTIVATION/RECONNECTION CHARGES TO RESTORE ANY SERVICES SUSPENDED DUE TO NON-PAYMENT OR LATE PAYMENT OF CHARGES THAT ARE DUE AND PAYABLE IN TERMS OF THESE TERMS AND CONDITIONS.**
- 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 these Terms and Conditions.
- 8.12 **A CERTIFICATE SIGNED BY ANY FINANCIAL MANAGER 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, at its sole discretion and without prejudice to any right which it might have to terminate these Terms and Conditions, or elect to immediately suspend the provision of the Services (or part thereof) at any time if MetroFibre:
- 9.1.1. is obliged to comply with an order, instruction or request of a court, government agency, emergency service organisation or other administrative or regulatory authority;
- 9.1.2. needs to carry out Emergency Works to the Network or CPE;
- 9.1.3. has reasonable grounds to consider that the Biz Services are being used fraudulently, illegally and/or against the principles of the Acceptable Use Policy; and
- 9.1.4. 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.
- 9.2 If MetroFibre exercises its right to suspend the Biz Services (or part thereof) pursuant to clause 9.1 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 Biz Services as soon as is practically possible.
- 9.3 If the Biz 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.
- 9.4 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 9.1.
- 9.5 Billing of all fees and charges shall continue to accrue during suspension in accordance with clause 9.1.

- 9.6 The Customer shall pay to MetroFibre, a reconnection fee to re-activate the Biz Services after any suspension in terms of these Terms and Conditions.

## **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 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 **METROFIBRE SUBSIDISES THE INITIAL COSTS RELATING TO THE ADMINISTRATION, INSTALLATION AND DELIVERY OF THE SERVICE TO THE CUSTOMER. THE CUSTOMER ACCEPTS AND AGREES THAT IF THE CUSTOMER TERMINATES THE SERVICE EARLIER THAN 12 (TWELVE) MONTHS AFTER THE SERVICE ACTIVATION DATE, THEN METROFIBRE MAY LEVY A REASONABLE RECOUPMENT CHARGE ON THE CUSTOMER TO RECOUP COSTS RELATING TO ADMINISTRATION, INSTALLATION, DELIVERY AND OTHER REASONABLE RELATED CHARGES INCURRED BY METROFIBRE IN RELATION TO PROVIDING THE SERVICE TO THE CUSTOMER.**
- 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 Customer 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 BIZ SERVICES BEING UNAVAILABLE, INTERRUPTED, SUSPENDED OR TERMINATED FOR ANY REASON WHATSOEVER; OR**
- 12.1.2. **COMMUNICATIONS TO OR FROM THE CUSTOMER NOT BEING SENT AND/OR RECEIVED AT ALL OR ON TIME FOR ANY REASON WHATSOEVER (AND INCLUDING WITHOUT LIMITATION ANY LOSS OF DATA OR CONTENT); 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 these Terms and Conditions, 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 Terms and Conditions, 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 these Terms and Conditions, 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, Randjesfontein, 1683

For legal notices - Email: [legal@metrofibre.co.za](mailto:legal@metrofibre.co.za)

For cancellations - Email: [biz.cancellations@metrofibre.co.za](mailto:biz.cancellations@metrofibre.co.za) or [biz.finance@metrofibre.co.za](mailto:biz.finance@metrofibre.co.za)

For complaints – Email: [biz.complaints@metrofibre.co.za](mailto:biz.complaints@metrofibre.co.za)

For Personal Information queries – Email: [infoOfficer@metrofibre.co.za](mailto:infoOfficer@metrofibre.co.za)

The Customer: As per the Order.

- 14.2 The physical address and the e-mail address specified in the Order Form will be utilised to contact the Customer. The Customer must notify MetroFibre in writing of any change in any one or more of its details set out in the Order Form within 7 (seven) days of any such change taking effect.
- 14.3 MetroFibre may change its *domicilium* address by updating its *domicilium* details on [www.metrofibre.co.za](http://www.metrofibre.co.za).
- 14.4 Any notice required or permitted to be given in terms of 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 THESE TERMS AND CONDITIONS AND/OR THE BIZ SERVICES, IS TRUE, CORRECT AND COMPLETE AND THE CUSTOMER INDEMNIFIES METROFIBRE AGAINST ANY CLAIM THAT MAY ARISE AS A RESULT OF A BREACH OF THIS WARRANTY.**
- 15.2 **THE CUSTOMER AUTHORISES METROFIBRE TO MAKE GENERAL CREDIT REFERENCE ENQUIRIES ABOUT THE CUSTOMER AND TO DISCLOSE ANY INFORMATION, WHICH HAS BEEN SUPPLIED, OR ANY INFORMATION RELATING TO THE CUSTOMER'S ACCOUNT TO ANY REGISTERED CREDIT BUREAU.**
- 15.3 **METROFIBRE SHALL FURTHER BE ENTITLED TO DISCLOSE ANY INFORMATION OF THE CUSTOMER TO ENABLE THE PROVISION OF EMERGENCY SERVICES, DIRECTORY OR REPAIR SERVICES TO THE CUSTOMER AND FOR ANY PURPOSE FOR WHICH SUCH INFORMATION IS REQUIRED IN LAW.**
- 15.4 MetroFibre undertakes not to disclose any of the Customer's information for any purpose, except as provided for in this clause or as agreed to elsewhere in 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 ACCORDANCE WITH THESE TERMS AND CONDITIONS, 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 THESE TERMS AND CONDITIONS AND THE BIZ SERVICES.**
- 16.3 **METROFIBRE SHALL ONLY PROVIDE, COLLECT, USE, STORE OR PROCESS PERSONAL INFORMATION:**
- 16.3.1 **AS IS NECESSARY FOR THE PURPOSES OF THESE TERMS AND CONDITIONS AND THE SERVICES;**
- 16.3.2 **FOR MAINTAINING ITS INTERNAL ADMINISTRATIVE PROCESSES, INCLUDING QUALITY, RISK AND CUSTOMER MANAGEMENT PROCESSES WHICH INCLUDES VERIFYING 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 IDENTITY/OWNERSHIP AND CONTROL STRUCTURES (AS MAY BE APPLICABLE), BANK ACCOUNT DETAILS, RISK PROFILE AND SOURCE OF FUNDS;**
- 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;**
  - 16.4.2. **WHERE APPLICABLE, COMPLY WITH THE SPECIFIC OBLIGATIONS IMPOSED ON IT IN TERMS OF POPIA IN RESPECT OF THE SPECIFIC ROLE IT FULFILS IN TERMS OF PROVIDING THE SERVICES AS AGREED BETWEEN THE PARTIES; AND/OR**
  - 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 THESE 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 STANDARDS AND INTERNAL COMPLIANCE POLICIES.**
- 16.8 **METROFIBRE MAY FOR PURPOSES OF THE COLLECTION, USE, STORAGE OR PROCESSING THEREOF, NEED TO TRANSFER THE CUSTOMER'S PERSONAL INFORMATION TO:**
  - 16.8.1. **OUTSOURCED INFORMATION TECHNOLOGY SERVICE PROVIDERS; OR**
  - 16.8.2. **ANOTHER COUNTRY FOR LEGITIMATE PURPOSES, INCLUDING WITHOUT LIMITATION THE USE OF CLOUD-BASED SOLUTIONS.**
- 16.9 **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.**
- 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 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 YOUR FAILURE TO OBTAIN THE NECESSARY CONSENT.**
- 16.12 **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.**
- 16.13 **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](mailto:infoOfficer@metrofibre.co.za) OR BY CALLING 087 151 4000. IF YOU ARE NOT SATISFIED WITH THE OUTCOME OF SUCH PROCESS, YOU HAVE THE RIGHT TO LODGE A COMPLAINT WITH THE INFORMATION REGULATOR AS ESTABLISHED IN TERMS OF THE POPIA.**

## **17 CONFIDENTIALITY**

- 17.1 Each Party hereunder, shall:
- 17.1.1. only use Confidential Information for the purposes of these Terms and Conditions;
- 17.1.2. 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
- 17.1.3. ensure that any third party to whom Confidential Information is disclosed executes a confidentiality undertaking substantially similar to the terms of this clause 17. The provisions of clause 17 shall not apply to any Confidential Information which: (i) is in or comes into the public domain other than by breach of this clause 17; 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.

## **18 GOOD FAITH, ANTI-BRIBERY AND CORRUPTION**

- 18.1 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.

- 18.2 For the purposes of clauses 18.3 to 18.6 “**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.
- 18.3 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 subcontractors, and furthermore to take all reasonable steps to avoid any unfavourable publicity for MetroFibre and shall procure that any Associated Person does the same.
- 18.4 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.
- 18.5 The Customer warrants and undertakes that:
- 18.5.1. 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;
- 18.5.2. 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 these Terms and Conditions, unless details of any such arrangement has been disclosed to and approved by MetroFibre in writing;
- 18.5.3. 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
- 18.5.4. 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.
- 18.6 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 18.

## 19 GENERAL

- 19.1 These Terms and Conditions constitutes the entire understanding between the Parties, superseding all prior or contemporaneous representations, agreements or understandings concerning the subject matter addressed herein.
- 19.2 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 THE TERMS AND CONDITIONS IN ACCORDANCE WITH THE PROVISIONS SET OUT IN THESE TERMS AND CONDITIONS.**
- 19.3 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.

- 19.4 These Terms and Conditions shall be subject to and shall be governed by the laws of the Republic of South Africa.
- 19.5 **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 THESE TERMS AND CONDITIONS.**
- 19.6 Dispute resolution and escalation:
- 19.6.1. Subject to clause 19.6.2 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.
- 19.6.2. However, the Customer shall first exhaust MetroFibre 's internal escalation route for dispute resolution and fault reporting before escalating any such matter to the Authority or other regulatory body having jurisdiction.
- 19.6.3. **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.**
- 19.7 The Customer warrants that it has obtained and will obtain all legally required consents and permissions from relevant parties to enter into these Terms and Conditions and that the person signing any documentation on Customer's behalf shall be duly authorised thereto.

**ANNEXURE 1 - METROFIBRE BIZ SERVICE LEVEL ANNEXURE**

**1. OVERVIEW**

This is the Services Level Annexure (“**SLA**”) between MetroFibre and the Customer for the support and maintenance of the Services provided by MetroFibre to the Customer.

This SLA outlines the parameters of all Services as mutually understood by the Parties.

**2. PURPOSE AND OBJECTIVES**

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

The objectives of the SLA are to:

- provide clear reference to service ownership, accountability, roles and/or responsibilities;
- present a clear, concise and measurable description of service provision to the Customer; and
- match perceptions of expected service provision with actual service support and delivery.

**3. DURATION AND APPLICABILITY**

The SLA shall commence on the Activation Date and shall remain in force for the duration of the Terms and Conditions.

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

**4. COMMITMENT**

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

**5. METROFIBRE SERVICE LEVELS**

**5.1 Planned Network Availability**

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

**5.2 MetroFibre Services Hours**

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

<b>MetroFibre Customer Care Hours of Operation</b>	
Monday – Sunday	07:00 – 19:00
Public Holidays	08:00 – 14:00

MetroFibre Fault Reporting		
Telephonically (087 151 4000)	Monday – Sunday	07:00 – 19:00
Via Online Portal: <a href="https://clientportal.MetroFibre.co.za/Account/Login?ReturnUrl=%2F">https://clientportal.MetroFibre.co.za/Account/Login?ReturnUrl=%2F</a>	Monday – Sunday	24/7 availability
Physical Repairs on Customer Premises		
<b>Monday to Saturday, subject to Customer availability, agreed SLA, and safe work conditions.</b>		

### 5.3 MetroFibre Services Level Definitions

Services levels for the MetroFibre Network are divided into two levels based on the nature of the faults:

#### (i) Serious Faults

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

#### (ii) Minor Faults

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

Services Level	Serious Faults	Minor Faults
<b>Mean Time To Repair (MTTR)</b>	95% within 24 Business Hours 5% within 36 Business Hours	Within 3 Business Days
<b>Services Times</b>	08:00-17:00	08:00-17:00
<b>Days</b>	Monday to Saturday <b>Excluding</b> Public Holidays	Monday to Friday <b>Excluding</b> Public Holidays
INSTALLATIONS & ACTIVATIONS		

<b>Installation after PO (provided that the park / office / office complex / Customer Premises live and in production)</b>	95% within 15 Business Days 5% within 18 Business Days
<b>Activation Date (after ONT has been installed and provided that the park / office / office complex / Customer Premises is live and in production)</b>	95% within 4 Business Days 5% within 8 Business Days
<b>Network IP limitation</b>	<p>All MetroFibre Customers can add 1 x Static IP only to their network. In the event that the Customer requires more than 1 x static IP allocation the Customer acknowledges that the Customer will have to apply for an enterprise service which is delivered per quote basis and on a higher cost than the MetroFibre prices listed on the order form.</p> <p>This will be the following:</p> <p>1 x single/32 public IP to the GPON WAN interface allowing the customer to use port forwarding to form a "virtual DMZ" which the customer can use for inbound connections.</p>

#### 5.4 MetroFibre Contact Details

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

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

##### **Finance / Accounts:**

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

##### **Sales:**

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

E-mails to these addresses will be responded to within 2 (two) Business Days.

Biz Services are Network contended services with contention ratio 1:10.

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 Services 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 these Terms and Conditions. Unless specifically otherwise provided in these Terms and Conditions, MetroFibre will be responsible for the costs of any repairs arising from faults in MetroFibre's equipment, except where such fault was due to Customer activity or negligence, which costs shall be for the Customer's account.
- 6.3 Should a fault be on Customer's own equipment, or as a result of Customer's equipment connected to the ONT, a call-out fee may be charged.

## ANNEXURE 2 - STANDARD TERMS AND CONDITIONS FOR METROFIBRE 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 data and connectivity packages. These terms and conditions shall be read in conjunction with the MetroFibre Biz Services Standard Terms and Conditions.

### 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, available on MetroFibre's website at [www.metrofibre.co.za](http://www.metrofibre.co.za);

2.1.2. **"Activation"** the enabling of a service to the Customer's Premises;

2.1.3. **"Terms and Conditions"** MetroFibre's Biz Services Standard Terms and Conditions, including all Annexures, to which this VOIP Services Annexure is attached, available at [www.metrofibre.co.za](http://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 VOIP Terms and Conditions with MetroFibre for the provision of VOIP Services and/or the use of equipment;

2.1.8. **"Customer Premises"** the premises specified in the Order Form at which the Services are to be provided;

2.1.9. **"Customer Device"** an analogue telephone device installed by Customer on the Network at Customer's own risk, expense and cost;

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. **"MetroFibre Network"** the MetroFibre network provided by MetroFibre which is made accessible to the Customer in terms of the Terms and Conditions;

- 2.1.12. “**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;
- 2.1.13. “**MetroVoice**” MetroFibre’s VOIP landline offering;
- 2.1.14. “**Month**” a calendar month beginning at 0h00 on the first day of the calendar month in question;
- 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 the 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**” 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 optical network terminal point (“**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 2, 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 utilised in these VOIP Terms and Conditions, which are not defined herein will bear the same meaning as in the Terms and Conditions.

### 3. PROVISION OF VOIP SERVICE

- 3.1. The VOIP Service is an additional service offered by MetroFibre to its existing 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 Terms and Conditions, 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 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 the Terms and Conditions, these VOIP Terms and Conditions shall supersede any conflicting terms in the Terms and Conditions, to the extent of the conflict only.

#### **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 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. METROFIBREMETROFIBRE MAKES NO GUARANTEE IN RESPECT OF THE VOIP SERVICE'S UPTIME AND AVAILABILITY.**
- 4.4. **METROFIBREMETROFIBRE'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 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 (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 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** bundle:
  - 6.3.1. is utilised 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 utilised 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 utilised 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](http://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 categorised numbers are excluded from all VOIP Service Packages and the Customer shall be charged the applicable default shared call rate.
- 6.9. The Customer may be billed in advance depending on the terms of the applicable Service Package selected by Customer in the Order Form. Any usage Charges over and above the bundle usage rate in the selected Bundled Service Package shall be billed at the out of bundle rates, in arrears, and such additional charges shall be carried over into the following month's invoice and statement.
- 6.10. The Customer shall pay the VOIP fees and charges within 7 (seven) 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 Terms and Conditions with MetroFibre in accordance with clause 3.2 of this Terms and Conditions.
- 6.12. **A CERTIFICATE SIGNED BY ANY DIRECTOR OF METROFIBRE SHALL BE *PRIMA FACIE* PROOF OF THE AMOUNT OWING BY THE CUSTOMER FOR THE PURPOSES OF OBTAINING PROVISIONAL SENTENCE OR SUMMARY JUDGMENT. THE BURDEN OF PROOF SHOULD THE CUSTOMER DISPUTE THE CORRECTNESS OF SUCH SIGNED CERTIFICATE, SHALL REST WITH THE CUSTOMER.**

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

- 7.1. Each VOIP Service package, whether bundled or unbundled, contains an automatic limit or cap of R3 000 (three thousand Rand) per month (or such other cap as may be determined in the Order Form) to protect the Customer against unlawful and unauthorised usage of the VOIP Service. However, the Customer may elect an alternate higher or lower limit or cap. **ON REACHING THE AUTOMATIC CAP OR CUSTOMER ELECTED CAP, METROFIBRE SHALL BE ENTITLED TO SUSPEND THE VOIP SERVICE UNTIL SUCH TIME AS IT HAS CONFIRMED USAGE AND FEES WITH THE CUSTOMER. SHOULD CUSTOMER NOT SELECT A LIMIT OR CAP, CUSTOMER AGREES TO BE LIABLE FOR ALL VOIP USAGE HOWSOEVER ARISING.**
- 7.2. MetroFibre may, upon notice to the Customer, suspend the Customer's full use of the VOIP Services, if the Customer fails to perform any obligation under these VOIP Terms and Conditions or breaches any term of these VOIP Terms and Conditions or of 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 30 (THIRTY) DAYS, METROFIBRE RESERVES THE RIGHT TO TERMINATE THESE VOIP TERMS AND**

**CONDITIONS AND ANY ASSOCIATED SERVICE OBTAINED UNDER THE TERMS AND CONDITIONS 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 these VOIP 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 VOIP Terms and Conditions 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 NETWORK DUE TO NETWORK MALFUNCTION AND/OR FAILURE OF ANY THIRD PARTY NETWORK ON WHICH THE NETWORK IS DEPENDENT, OR FOR ANY OTHER REASON WHATSOEVER.
- 9.2. Service credits (as detailed and provided for in the 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 Terms and Conditions for MetroFibre. 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, ARE 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 Terms and Conditions 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 unauthorised; and
  - 12.3.9. any other reason determined to by the Authority (ICASA) and notified to MetroFibre and other operators in in writing.