



ANNEXURE 5 TO THE FTTH TERMS AND CONDITONS

STANDARD TERMS AND CONDITIONS FOR MetroUp SERVICE



MetroFibre



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1. INTRODUCTION

This Annexure 5 to Metro Fibre Network Pty Ltd's Standard FTTH Terms and Conditions governs the Customer's use of MetroFibre's UPS service offering (the "**MetroUp Service**"). You agree to be bound to these MetroUp Terms and Conditions by signing up as a customer for the MetroUp Service and for the duration of the provision of the MetroUp Service.

2. DEFINITIONS AND INTERPRETATION

2.1. In these MetroUp Terms and Conditions, unless a contrary intention is clear from the context, the following words and phrases shall have the following meanings:

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|-------|---------------------------------------|--|
| 2.1.1 | "Device" | UPS device, mesh extender and gateway router and any CPE as may be provided by MetroFibre to Customer from time to time; |
| 2.1.2 | "FTTH Terms and Conditions" | MetroFibre standard terms and conditions for its fibre to the home internet connectivity products and services, to which this Annexure is attached; |
| 2.1.3 | "MetroFibre Customer Portal" | the web-based portal available to MetroFibre customers; |
| 2.1.4 | "MetroUp Charges" | subscription and all other charges relating to the provision of the MetroUp Service to the Customer as amended by MetroFibre from time to time; |
| 2.1.5 | "MetroUp Order Form" | the Customer order form duly completed by Customer or agent in a format determined by MetroFibre and submitted to MetroFibre in respect of the MetroUp Service via telesales, the MetroFibre website or by other acceptable means; |
| 2.1.6 | "MetroUp Service" or "Service" | an in the power line UPS solution for Customers; and |

- 2.1.7 **“UPS”** uninterruptable power supply, being a continual power system that provides automated backup electric power to a load when the input power source or mains power fails.
- 2.2. In these MetroUp 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;
- 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 MetroUp Terms and Conditions.
- 2.3. If there is any conflict between the provisions of these MetroUp Terms and Conditions and a MetroUp Order Form, the provisions of these MetroUp Terms and Conditions shall prevail to the extent of such conflict. If there is any conflict in terms of these MetroUp Terms and Conditions and the FTTH Terms and Conditions, then the MetroUp Terms and Conditions shall prevail to the extent of the conflict.
- 2.4. No provision in these MetroUp 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 MetroUp Terms and Conditions to the extent that the MetroUp Terms and Conditions or any goods and services provided under these MetroUp 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.
- 2.5. To the extent required, the provisions of the FTTH Terms and Conditions are incorporated by reference into these MetroUp Terms and Conditions. Any capitalised word that this not defined above shall be defined with reference to the FTTH Terms and Conditions.

3. PROVISION OF THE MetroUp SERVICE

- 3.1. The MetroUp Service is an additional/value added service offered by MetroFibre to



Customers for the provision of an uninterrupted power supply/ source for their Customer Premises Equipment at the Customer's Premises.

- 3.2. MetroFibre shall make the MetroUp Service available to the Customer for the duration specified herein and subject to the FETH Terms and Conditions and the MetroUp terms and conditions set out herein ("**MetroUp Terms and Conditions**").
- 3.3. Where an electronic MetroUp Order Form is placed through the MetroFibre Customer Portal, the order as selected and executed by MetroFibre will be billed to the person whose name is set out at the top of the MetroUp Order Form.
 - 3.3.1. MetroFibre shall procure that the Device shall be delivered and/or installed at the Customer Premises during the processing of any order.
 - 3.3.2. On termination of any MetroFibre FETH service or the MetroUp Service for whatever reason, the Customer shall procure the return of the Device to MetroFibre at Customer's sole cost and expense.

4. DURATION

Notwithstanding the date of signature of the MetroUp Order Form, the commencement date of the MetroUp Service shall be deemed to be the date of installation of the Device at the Customer Premises and shall endure on a month-by-month basis until terminated by the Customer in writing on the giving of 1 month's written notice.

5. THE MetroUP SERVICE

- 5.1. Ownership in and to any UPS Device obtained by Customer from MetroFibre shall remain with MetroFibre at all times without exception.
- 5.2. The MetroUp Service provides for the provision of an inline UPS solution to MetroFibre customers for their ONT during power outages. The Device will: (i) supply battery backup to support ONT's, (ii) recharge when electricity supply is restored, and (iii) safely comply with regulations around battery use and connection.
- 5.3. **METROFIBRE DOES NOT WARRANT THAT THE DEVICE WILL BE OPERATIONAL ON A 24 (TWENTY-FOUR) HOURS 365 (THREE HUNDRED AND SIXTY-FIVE) DAYS PER YEAR BASIS. FURTHERMORE, METROFIBRE EXPRESSLY ADVISES, AND THE CUSTOMER ACKNOWLEDGES AND**



ACCEPTS, THAT THE UPS DEVICES ARE NOT MANUFACTURED BY METROFIBRE, BUT BY THIRD PARTIES. METROFIBRE WILL NOT BE ABLE TO OPEN UPS DEVICES OR TO TEST OR OPERATE THE SELECTED UPS DEVICE'S TO ENSURE THAT THEY ARE FIT FOR PURPOSE AND/OR ARE INTACT BEFORE THEY ARE HANDED TO THE CUSTOMER.

- 5.4. CONSIDERING THE DISCLOSURES HOUSED UNDER CLAUSE 5.3 ABOVE, METROFIBRE EXPRESSLY STIPULATES AND THE CUSTOMER ACKNOWLEDGES THAT METROFIBRE CANNOT WARRANT OR GUARANTEE THAT THE UPS DEVICE WILL BE (I) BE FREE OF ERRORS OR INTERRUPTIONS; (II) BE AVAILABLE, (III) BE FIT FOR ANY PURPOSE, (III) NOT INFRINGE ON ANY THIRD-PARTY RIGHTS, AND (IV) BE RELIABLE.
- 5.5. CUSTOMER'S SOLE REMEDY AGAINST METROFIBRE FOR A DEFECTIVE DEVICE WHERE THE DEVICE IS SUBJECT TO THE ORIGINAL EQUIPMENT MANUFACTURERS (OEM) WARRANTIES GIVEN TO METROFIBRE, SHALL BE REPLACEMENT BY METROFIBRE AT ITS OWN COST OF SUCH DEFECTIVE DEVICE. NOTWITHSTANDING THE FOREGOING, CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR THE REPLACEMENT COST OF THE DEVICE TOGETHER WITH ASSOCIATED COSTS THERETO WHERE THE DEVICE IS DISABLED /RENDERED FAULTY DUE TO LOCAL LIGHTNING STRIKE /ACTIVITY OR BY THE WILFUL CONDUCT OR NEGLIGENCE OF THE CUSTOMER.
- 5.6. CUSTOMER INDEMNIFIES METROFIBRE AND HOLDS IT HARMLESS AGAINST ANY CLAIM OR ACTION WHICH MAY BE BROUGHT BY ANY THIRD PARTY ARISING OUT OF CUSTOMER'S USE OF THE UPS DEVICE.
- 5.7. THE MetroUp SERVICE IS A BEST-EFFORTS SERVICE THAT RELIES ON THE PROVISION OF ELECTRICAL UTILITY SUPPLIES WHICH ARE OUTSIDE OF THE CONTROL OF METROFIBRE. METROFIBRE DOES NOT GUARANTEE THE AVAILABILITY OF THE MetroUp SERVICE AND DEVICE.

6. PROCESSING OF PERSONAL INFORMATION

In order to render the services or to comply with the obligations imposed on MetroFibre in terms of these MetroUp 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 PROVISIONS**



OF CLAUSE 6 OF THE FTTH TERMS AND CONDITIONS AND FURTHER SUBJECT TO THE TERMS AND CONDITIONS OF METROFIBRE PRIVACY POLICY, A COPY OF WHICH MAY BE OBTAINED AT [HTTPS://METROFIBRE.CO.ZA/PRIVACY-POLICY](https://metrofibre.co.za/privacy-policy).

7. BILLING AND PAYMENT

- 7.1. The Customer will be billed by MetroFibre Monthly in advance, unless otherwise specifically agreed in the MetroUp Order Form, but MetroFibre may provision the MetroUp Services before the first payment is processed and reflecting in MetroFibre's bank account.
- 7.2. The Customer shall pay the MetroUp Charges within 3 (three) days from the date of invoice, into the bank account nominated by MetroFibre for this purpose, in full, without deduction or set-off and free of bank charges for the supply and delivery of the MetroUp Services, irrespective of whether or not the MetroUp Service is used.
- 7.3. MetroFibre shall be entitled to change the fees payable by the Customer upon 30 (thirty) days-notice to the Customer.
- 7.4. The provisions of clause 7 of MetroFibre's FTTH Terms and Conditions shall *mutatis mutandis* apply to the provision of the MetroUp Service.

8. CANCELLATION AS A RESULT OF IMPOSSIBILITY OF PERFORMANCE

- 8.1. If MetroFibre is restricted or prevented from carrying out any or all of its obligations as a result of an Event of Force Majeure, unavailability of any power utility electricity provision service or any applicable network service or any other event or circumstance giving rise to impossibility or performance delay, then MetroFibre will be relieved of its affected obligations during the period that such event continues and will not be liable for any costs or damages arising from such delay or the failure in performance of any obligations, as a result of such event.
- 8.2. If the event in clause 8.1 continues for a period more than 30 (thirty) days, either Party may cancel with immediate effect by written notice to the other Party.

9. DISCLAIMER, LIMITATION OF LIABILITY AND INDEMNITY

- 9.1. **CUSTOMER USES THE MetroUp SERVICE AT HIS/HER OWN RISK AND THE MetroUp SERVICE IS PROVIDED ON AN "AS IS" BASIS WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES**



OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. METROFIBRE DOES NOT WARRANT THAT ANY INFORMATION PROVIDED BY US IS ACCURATE, COMPLETE, OR USEFUL, THAT OUR MetroUP SERVICES WILL BE OPERATIONAL, ERROR FREE, SECURE, OR SAFE, OR THAT OUR MetroUp SERVICES WILL FUNCTION WITHOUT DISRUPTIONS, DELAYS, OR IMPERFECTIONS. WE DO NOT CONTROL, AND ARE NOT RESPONSIBLE FOR, CONTROLLING HOW OR WHEN OUR CUSTOMERS USE OUR MetroUp SERVICES AND INTERFACES OUR MetroUp SERVICES PROVIDED. METROFIBRE IS NOT RESPONSIBLE FOR AND IS NOT OBLIGATED TO CONTROL THE ACTIONS OF OUR CUSTOMERS OR OTHER THIRD PARTIES. CUSTOMER RELEASES US, OUR SERVICES PROVIDERS, AND OUR AND THEIR DIRECTORS, OFFICERS, EMPLOYEES, PARTNERS, AND AGENTS FROM ANY CLAIM, COMPLAINT, CAUSE OF ACTION, CONTROVERSY, OR DISPUTE (TOGETHER, "CLAIM") AND DAMAGES, KNOWN AND UNKNOWN, RELATING TO, ARISING OUT OF, OR IN ANY WAY CONNECTED WITH ANY SUCH CLAIM CUSTOMER HAS AGAINST ANY THIRD PARTIES.

- 9.2. METROFIBRE WILL NOT BE LIABLE TO CUSTOMER FOR ANY LOST PROFITS OR CONSEQUENTIAL, SPECIAL, INDIRECT, OR INCIDENTAL DAMAGES RELATING TO, ARISING OUT OF, OR IN ANY WAY IN CONNECTION WITH OUR FTTH TERMS AND CONDITIONS, THESE MetroUp TERMS AND CONDITIONS OR THE USE OF OUR MetroUp SERVICE. THE FOREGOING DISCLAIMER OF CERTAIN DAMAGES AND LIMITATION OF LIABILITY WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY LAW.
- 9.3. 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 ANY DEVICE AND/OR NETWORK MALFUNCTION AND/ OR FAILURE OF ANY POWER UTILITY PROVISION ON WHICH THE MetroUp SERVICE IS DEPENDENT, OR FOR ANY OTHER REASON WHATSOEVER.
- 9.4. CUSTOMER AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS METROFIBRE FROM AND AGAINST ALL LIABILITIES, DAMAGES, LOSSES, AND EXPENSES OF ANY KIND (INCLUDING REASONABLE LEGAL FEES AND COSTS) RELATING TO, ARISING OUT OF, OR IN ANY WAY IN CONNECTION WITH ANY OF THE FOLLOWING: (A) CUSTOMER'S ACCESS TO OR CONTINUED USE OF THE MetroUp SERVICE (B) CUSTOMER'S BREACH OR ALLEGED



BREACH OF THESE MetroUp TERMS AND CONDITIONS; OR (C) ANY MISREPRESENTATION MADE BY THE CUSTOMER OR INCORRECT INFORMATION PROVIDED BY THE CUSTOMER. CUSTOMER AGREES TO COOPERATE AS FULLY AS REQUIRED BY METROFIBRE IN THE DEFENSE OR SETTLEMENT OF ANY CLAIM.

10. DOMICILIA AND NOTICES

As per the MetroUp Order Form for Customer.

For MetroFibre:

Physical address: Metro Fibre Network Pty Ltd, Eco Square, 298 Witch-Hazel Avenue, Highveld, Ext.71, Centurion, 0157.

Emails to legal@metrofibre.co.za marked for the attention of the Head of Legal.

11. DISCLOSURE

- 11.1. THE CUSTOMER WARRANTS AND REPRESENTS THAT ALL INFORMATION PROVIDED DURING REGISTRATION OR ELSEWHERE RELATING TO THESE MetroUp 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 these MetroUp Terms and Conditions or in writing by the Customer.



12. GENERAL

- 12.1. Customer shall not be entitled to transfer any of his/her/its rights or delegate any of his/her/its obligations under these MetroUp Terms and Conditions to anyone without Metro Fibre's prior written consent.
- 12.2. The Customer acknowledges that MetroFibre seeks, on an on-going basis, to improve the services that it offers to its Customers. This, together with other changes which may be required as a result of legislation or regulation or arising from the environment in which MetroFibre operates, may require MetroFibre to amend the terms and conditions of these MetroUp Terms and Conditions from time to time. **ANY REVISED OR UPDATED VERSION OF THESE MetroUp 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 MetroUp TERMS AND CONDITIONS, THE CUSTOMER MAY TERMINATE THESE MetroUp TERMS AND CONDITIONS AT ANY TIME BY GIVING THE REQUIRED NOTICE IN CLAUSE 4 ABOVE.**
- 12.3. If any part of these MetroUp Terms and Conditions are 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 MetroUp Terms and Conditions.
- 12.4. This MetroUp Terms and Conditions shall be subject to and shall be governed by the laws of the Republic of South Africa.
- 12.5. **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 MetroUp TERMS AND CONDITIONS.**
- 12.6. Dispute resolution and escalation:
- 12.6.1. Subject to clause 12.6.2 below, the Customer shall be entitled to refer any dispute between itself and MetroFibre regarding the installation and/or accessibility of MetroUp Services to the Authority or to refer any matter to any other regulatory body having jurisdiction in respect thereof.

- 12.6.2. 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.

- 12.7. These MetroUp Terms and Conditions constitute the entire agreement between the parties with regard to the subject matter hereof and supersedes and/or replaces any contemporaneous understandings or agreement, written or oral, regarding such subject matter.

