

# Terms of Service

## 1. Recital

- 1.1. Internet Fibre will provide the Goods and Services to End-Users on the basis agreed set out in the following documents:
- 1.1.1. These Master Terms & Conditions (that explains the general terms for business between Internet Fibre and the Customer and/or the End-Users); and
  - 1.1.2. Either a Business Contract or a Residential Contract (that explains the specific Goods and Services that Internet Fibre will provide to each of these classes of Customers and the terms and conditions that apply to that customer); and / or
  - 1.1.3. A Master Reseller Agreement (that explains how a Business Customer will contract with Internet Fibre to resell the Goods and Services to its own End-Users).

## 2. Definitions

In this Agreement, the following terms shall have the meanings set out below:

- 2.1. "AFSA" means the Arbitration Foundation of Southern Africa, or its successors in title provided that should AFSA or a successor not be in existence at any time, any appointment required to be made by AFSA shall be made by the Chairman of the Cape Bar Council;
- 2.2. "Agreement" means the signed documents listed in clause 1.1 above, as pertains to each Customer and all annexures, attachments or schedules to such documents;
- 2.3. "Annexures" means:
- 2.3.1. Annexure 1 – Shopping List, which means a general description or price list of all Services that Internet Fibre can provide to a Customer or End-User;
  - 2.3.2. Annexure 2 – Shopping Basket, which means the document stipulating the specific Services and Products to be provided by Internet Fibre to the Customer or the End-User in terms of this Agreement, together with the applicable Fees, Initial Term and other information relevant to the Services. This will be provided in the form of an online quote accepted by the Customer clicking through, or, if requested by the Customer, in the form of an agreed, signed document;
  - 2.3.3. Annexure 3 – Service Level Agreement, which means the document describing the service levels to be provided by Internet Fibre to the Customer or the End-User;
  - 2.3.4. Annexure 4 – Support Procedure, which means the defined support processes, structure and functions of Internet Fibre and where relevant the Business Customer;
  - 2.3.5. Annexure 5 – Installation Procedure, which means the structured project management process and steps for the implementation of Services;
  - 2.3.6. Annexure 6 – Ready for Service Certificate, which means a document stipulating that the services are ready to commence, –
- and such other annexes as may be agreed to between the Parties from time to time.
- 2.4 "Business Contract" means the terms of the contract between a business Customer and Internet Fibre which will include these Master Terms and Conditions, and may further include one or more of the Annexures;
- 2.5 Business Day; means any day other than a Saturday, Sunday or public holiday within the meaning of the Public Holidays Act, 1994, in the Republic of South Africa;
- 2.6 Business Hours; means from 08h00 to 17h00 on a Business Day;
- 2.7 Customer Data; means all data provided to Internet Fibre by the Customer, or generated in the course of the provision of the Services, but excludes any derivative data which is created by Internet Fibre for its own internal purposes or which is proprietary or confidential to Internet Fibre or its suppliers;
- 2.8 Customer Input; means what could reasonably be expected of the Customer in order to enable Internet Fibre to provide the Services to the Customer and/or the End-User, as set out in clause 7 and expanded upon in the Shopping List;
- 2.9 Confidential Information; means information or data, whether disclosed orally or in writing, that is identified as being confidential or proprietary at the time of disclosure or which by its nature would generally be deemed in the information technology or telecommunications industry to be of a confidential nature;
- 2.10 "Core Services" mean services provided directly by Internet Fibre, excluding all products and/or services that are provided by third parties and/or licensed to Internet Fibre from a third party;
- 2.11. "CPA" means the Consumer Protection Act, 68 of 2008;
- 2.12. "CPI" means the Consumer Price Index (metropolitan areas, all items) published in the Statistical News Release compiled by Statistics South Africa, or, in the absence thereof, a similar index nominated or prepared by Internet Fibre's auditors. The escalation factor used shall be the year-on-year increase in the CPI published immediately preceding the effective date of increase;
- 2.13. "Destructive Element" means any "back door", "time bomb", "time lock", "trojan horse", "worm", "drop dead device", "virus" or other computer software routine or code intended or designed to: (i) permit access to or the use of a computer system by an unauthorised person, or (ii) disable, damage, erase, disrupt or impair the normal operation of a computer system; (iii) damage, erase or corrupt data, storage media, programmes, equipment or communications, or (iv) otherwise interfere with operations of a computer system;
- 2.14. "Effective Date" means the earlier of:
- 2.14.1. The date of signature of this Agreement by the Party signing last in time;
  - 2.14.2. The date of signature by the Customer of the initial Shopping Basket; or
  - 2.14.3. The date on which Services commenced (the Service Commencement Date) in terms of this Agreement, as evidenced by an itemised invoice issued by Internet Fibre that was paid by the Customer;
- 2.15. "End-User" means the practical End-User of the Internet Fibre Technology and the Services, whether that is the Customer or a third party purchasing the Internet Fibre Technology and the Services from the Customer;
- 2.16. "Internet Fibre Technology" means the various concepts, ideas, methods, methodologies, procedures, processes, know-how, and techniques; models (including, without limitation, function, process, system and data models); templates; Products and equipment; general purpose consulting and software tools, utilities and routines; and logic, coherence and methods of operation of systems which Internet Fibre has created, acquired or otherwise has rights in;
- 2.17. "Excusing Cause" means:
- 2.17.1. A force majeure event as contemplated in clause 20 hereof; or
  - 2.17.2. A failure by the Customer to provide Customer Input to Internet Fibre in timely manner, or with reasonable accuracy;

- 2.17.3. Where the Customer breaches any term of this Agreement; or
- 2.17.4. Where any bona fide dispute arises between the Parties;
- 2.18. "Fees" means the fees and charges to be paid by the Customer to Internet Fibre from time to time in terms of this Agreement, being Service Fees, Setup Fees and any other fees as may be chargeable under this Agreement from time to time as detailed in the applicable Shopping Basket;
- 2.19. "Initial Term" means the period over which particular Services will be provided, commencing on the Service Commencement Date and enduring for the period set out in the Shopping Basket;
- 2.20. "Intellectual Property Rights" means any and all rights in the nature of intellectual property rights anywhere in the world (whether registered or unregistered) owned, possessed or controlled by a Party, directly or indirectly, including, without limitation, patents, trademarks, service marks, design rights, copyright (including all copyright in any designs and computer software), source codes, moral rights, databases, trade or business names, whether capable of registration or not, but including any right to register same;
- 2.21. "Line-item Service" means each line item of the discrete Services to be provided by Internet Fibre pursuant to this Agreement, as set out in the relevant Shopping Basket and which together comprise the Services;
- 2.22. "Network" means all the equipment and/or network infrastructure used by Internet Fibre to provide the Services to the Customer;
- 2.23. "Network Maintenance" means planned repairs and improvements carried out from time to time to the Network by Internet Fibre;
- 2.24. "Parties" means, collectively, Internet Fibre and the Customer; and "Party" refers to either one of the Parties, as the context may require;
- 2.25. "Prime Rate" means the publicly quoted prime rate of interest (percent, per annum) from time to time charged by Standard Bank, as certified by any manager of such bank, whose appointment and authority it shall not be necessary to prove, calculated daily and compounded monthly in arrears;
- 2.26. "Products" means hardware and software, provided by Internet Fibre to the Customer in terms of this Agreement from time to time;
- 2.27. "Pro-Rata Service Fees" means the initial Service Fee payable by the Customer in respect of the first month of a Line Item Service, in respect of the period between the Service Commencement Date and the end of the first calendar month;
- 2.28. "Renewal Period" means a period of 12,24 (twelve, twenty-four) months;
- 2.29. "Residential Contract" means the terms of the contract between a residential Customer (normally an End-User) and Internet Fibre which will include these Master Terms and Conditions, and may further include one or more of the Annexures;
- 2.30. "Service Commencement Date" means the date on which specific Line-item Services will commence, being the date on which the Ready for Service Certificate in respect of a Line-item Service is signed off, or deemed to have been signed off, by the Customer or the End-User in terms of clause 4.2;
- 2.31. "Service Fee" means the monthly fee payable by the Customer in respect of the Line-Item Services provided in terms of this Agreement, as set out in the Shopping Basket;
- 2.32. "Services" means the Services and other services to be provided by Internet Fibre to the Customer in terms of this Agreement, as set out in the relevant Shopping Basket and Shopping List from time to time;
- 2.33. "Setup Fee" means the fees related to the initial setup of the Products and/or Services, as specified in the Shopping Basket;
- 2.34. "Service Levels" mean the qualitative and quantitative standards according to which the Services are to be provided, as set out in the Shopping List read together with the Service Level Agreement;
- 2.35. "Site" means the sites to or at which the Services will be provided as set out in the Shopping Basket;
- 2.36. "Time-and-Material Basis" means the method of billing based on actual time spent and materials used, based on Internet Fibre's standard rates from time to time; and
- 2.37. "Variation Procedure" means the Agreement variation procedure set out in clause 10.

### **3. Important Notice to Consumers**

- 3.1. Consumers. These Master Terms and Conditions contain certain terms and conditions on which Internet Fibre sells the Goods and Services to Customers and End-Users who are consumers for the purposes of the CPA. Any Customer of Internet Fibre who is not a consumer for the purposes of the CPA is not entitled to the benefits of these CPA-specific terms and conditions and any Goods and/or Services provided by Internet Fibre to such a person shall be provided on the basis of these standard terms and conditions excluding the CPA specific terms and conditions.
- 3.2. This Agreement contains terms and conditions which appear in similar text style to this clause and which:
- 3.2.1. May limit the risk or liability of Internet Fibre or a third party; and/or may create risk or liability for the Customer / End-User; and/or
- 3.2.2. May compel the Customer / End-User to indemnify Internet Fibre or a third party; and/or
- 3.2.3. Serves as an acknowledgement by the Customer / End-User, of a fact. The Customer's attention is drawn to these terms and conditions because they are important and should be carefully noted. Nothing in this Agreement is intended to or must be understood to unlawfully restrict, limit or avoid any rights or obligations, as the case may be, created for either of the Customer / End-User or Internet Fibre in terms of the CPA.

### **4. Duration**

- 4.1. Commencement of Agreement. This Agreement shall commence on the Effective Date and, subject to the rights of termination stipulated herein, continue thereafter until the termination or lapsing of all Services listed in the Shopping Basket.
- 4.2. Commencement of Services. Each Line-item Service contemplated in a Schedule of Service shall commence on the relevant Service Commencement Date and shall endure for the relevant Initial Term, where after it shall be automatically renewed for further Renewal Periods, subject to the right of either Party to terminate the specific Line-item Service at the end of its relevant Initial Term or any Renewal Period on no less than 90 (ninety) days written notice to the other Party prior to the expiry of the Initial Term or any Renewal Term.

### **5. Provision of Products & Services**

Internet Fibre shall during the term of this Agreement provide Products and Services to the Customer and/or the End-User in accordance with the terms of this Agreement, as read with the relevant Shopping Basket(s).

## 6. Setup of Services

6.1. Commencement of Set-up. Internet Fibre shall commence setup of the Products and Services upon signature of the relevant Shopping Basket by the Customer.

6.2. Network Design. The set-up of the Products and Services shall be undertaken by Internet Fibre in accordance with the network design submitted by Internet Fibre to the Customer, based on the information provided by the Customer. Whilst Internet Fibre shall use reasonable commercial endeavours to design an appropriate solution for the Customer, such design is strictly based on the information and requirements provided by the Customer and accordingly Internet Fibre cannot be held responsible for any error resulting from incorrect, inaccurate or incomplete information provided by the Customer.

6.3. Ready for Service Certificate. Upon completion of the setup of each Line-item Services, Internet Fibre shall present the Customer with a Ready for Service Certificate for signature by the Customer to confirm that the relevant Line-item Services are ready for commencement.

6.4. Deemed Acceptance. Should the Customer:

6.4.1. Fail to sign off the Ready for Service Certificate in respect of any Line-item Services within 10 (ten) Business Days of the submission of the Ready for Service Certificate by Internet Fibre and fail to inform Internet Fibre of any problems with the setup or configuration of specific Line-item Services within such period; or

6.4.2. Commence use of any Line-item Services, – it shall be deemed to have signed-off on the relevant Line-item Services on the earlier of the date on which it commences use of the Services or the relevant period lapses.

6.5. Waiver of Claim. The Customer / End-User must inform Internet Fibre of any errors by way of written notice, to be received by Internet Fibre within 10 (ten) days of receipt of the Goods by the Customer / End-User. Should the Customer / End-User fail to notify Internet Fibre of any claim the Customer / End-User may have in terms hereof within the specified 10 (ten) day period such failure shall constitute

## 7. Customer Input

Reasonable Co-operation. In order to enable Internet Fibre to provide the Services in terms of this Agreement, the Customer shall, to the extent required by Internet Fibre and at the Customer's cost:-

7.1. Allow Internet Fibre and its Staff reasonable access to all necessary Sites which are under the control of the Customer, which access is required to enable Internet Fibre to fulfil its obligations in terms of this Agreement;

7.2. Provide all such other assistance and support as may be contemplated in this Agreement.

## 8. Customer Obligations

8.1. Regulatory Compliance. The Customer has sole responsibility to ensure that the information it and its users transmit and receive over the Network complies with all applicable laws and regulations. The Customer hereby indemnifies Internet Fibre and holds it harmless against any claims by third parties in respect of prohibited activities conducted by the Customer or its users.

8.2. Fair Use Policy. The Customer hereby agrees that in using the Services it shall at all times comply, and shall procure that its Staff at all times comply, with Internet Fibres' Fair Use Policy.

8.3. Acceptable Use Policy. The Customer hereby agrees that in using the Services it shall at all times comply, and shall procure that its Staff at all times comply, with Internet Fibre' Acceptable Use Policy. This policy includes the following rules:

8.3.1. Internet Fibre prohibits Customers from using Internet Fibres' service to harm or attempt to harm a minor, including, but not limited to hosting, possessing, disseminating, distributing or transmitting material that is unlawful, including child pornography and cyber bullying;

8.3.2. Internet Fibre prohibits Residential Customers from using Internet Fibres' service to host sexually explicit or pornographic material of any nature;

8.3.3. The Residential Customer will not use the Service, directly or indirectly, in a way that:

8.3.3.1. Spreads viruses or other computer or communications or equipment;

8.3.3.2. Interferes with any third party's use of the Service;

8.3.3.3. Transmits unsolicited bulk messages; and/

or

8.3.3.4. In Internet Fibres' sole discretion constitutes abuse of the Service or of Internet Fibres' systems;

8.3.4. Upon receipt of a complaint, or having become aware of an incident, Internet Fibre may, in its sole and reasonably-exercised discretion take any of the following steps:

8.3.4.1. Warn the Customer, suspend the Customer's account and/ or revoke or cancel the Customer's Service access privileges completely;

In the case of an abuse emanating from a third party, inform the third party's network administrator of the incident and request the network administrator or network owner to address the incident in terms of this acceptable use policy and/or the ISPA Code of Conduct (if applicable). The Code of Conduct may be found at <https://ispa.org.za/code-of-conduct/the-code/>;

8.3.4.3. In severe cases suspend access of the third party's entire network until abuse can be prevented by appropriate means;

8.3.4.4. Assist other networks or website administrators in investigating credible suspicions of any activity listed in these terms and conditions;

8.3.4.5. Institute civil or criminal proceedings; administrative costs as well as for machine and human time lost due to the incident may be recovered from the Customer in a civil claim;

8.3.4.6. Share information concerning the incident with other internet access providers, publish the information, and/or make available the users' details to law enforcement agencies;

8.3.5. This policy applies to and will be enforced for intended and unintended (e.g., viruses, worms, malicious code, or otherwise unknown causes) prohibited usage.

8.4. Security. The Customer shall not engage in any of the following:

8.4.1. Misuse, unauthorised use, abuse of or interference with any of Internet Fibre's or any third party's equipment or other property located at Internet Fibre's data centres;

8.4.2. The harassment of any person including Internet Fibre's personnel or authorised representatives, or personnel or representatives of any of Internet Fibre's other End-Users;

8.4.3. Any unlawful activity or assisting therein, while on Internet Fibre's property.

8.5. General Customer Obligations. The Customer shall not take any steps or fail to take any steps which directly or indirectly:

8.5.1. Damages the Network or any part thereof;

8.5.2. Impairs or precludes Internet Fibre from being able to provide Products and/or Services in a professional manner;

8.5.3. Constitutes an abuse or malicious misuse of the Products and/or Services provided by Internet Fibre (including but not limited to spamming etc); or

8.5.4. Is calculated to have one or more of the above mentioned effects.

8.6. Effect of non-compliance. To the extent that the Customer is in breach of any provision of this clause 8, Internet Fibre reserves the right to suspend all Services to the Customer until such time as the Customer remedies the situation and if Internet Fibre incurs any expense in remedying the effects of any of the acts or omissions referred to above, the Customer shall reimburse Internet Fibre on demand in the amount necessary to cover such expense.

## **9. Excusing Causes**

In the event of an Excusing Cause arising:

9.1. Internet Fibre will notify the Customer, in writing, of the Excusing Cause within a reasonable period of becoming aware of such Excusing Cause;

9.2. The time for Internet Fibre's performance shall be extended on a reasonable basis in proportion to the prejudice caused by the Excusing Cause and Internet Fibre may charge for any additional hours required to execute the Services or remedy the Excusing Cause on a Time and Materials Basis;

9.3. Any milestone affected by the Excusing Cause (hereinafter referred to as the "Affected Milestone"), as well as all other milestones on the affected critical path of the Affected Milestone, if any, shall be extended by a period equal to the period by which the Affected Milestone is de facto impacted as agreed by the Parties in writing, or, failing agreement as determined in terms of the Dispute Resolution Procedure;

9.4. If an amount would have been payable to Internet Fibre by the Customer had it not been due to an Excusing Cause, Internet Fibre shall be entitled to invoice the Customer for work actually completed at a milestone date, notwithstanding the fact that a milestone has not been achieved; and

9.5. Internet Fibre shall not be liable for any failure to provide any Services in terms of this Agreement where such failure is a result of any Excusing Cause.

## **10. Variation Procedures**

10.1. No Verbal Variation to Agreement Terms. Subject to the provisions of this clause 10, no variation, addition or consensual cancellation of this Agreement or any component thereof shall be of any force or effect unless reduced to writing and signed by the Parties or their duly authorised representatives. For the purposes of clarity, no amendment or variation to this Agreement may be concluded via email.

10.2. Amendments to Services. Notwithstanding the provisions of clause 10.1 above, during the currency of this Agreement events may occur which require an amendment to the nature or scope of the Products and/or Services provided by Internet Fibre to the Customer. Such amendments may be agreed by e-mailed exchange, containing an offer and acceptance from the Parties, and shall include the variation in the Services and/or Products and the amended pricing, where relevant. Such amendments shall be considered to have been completed upon receipt of the emailed acceptance of the offer into the mail server of the offeror. The amendment to the scope and nature of the Products and/or Services will be formalised by way of an amended Shopping Basket being issued by Internet Fibre

## **11. Consideration**

11.1. Consideration. As consideration for the provision of the Products and the Services, the Customer shall pay Internet Fibre the Setup Fee, any Pro Rata Services Fees and Service Fees set out in the relevant Shopping Basket.

11.2. Exchange Rate Fluctuations. The Customer understands that certain pricing for Products and/ or Services as set out in the Shopping Basket was quoted to the Customer in South African Rand but may be subject to rate of exchange adjustments. In this regard the pricing would have been converted on the basis of the official exchange rate as at the Effective Date of this Agreement and the Customer agrees that any increase in price caused by a fluctuation of the exchange rate occurring at the time the Service Provider places an order for such Products and/or Services from the relevant supplier or third party provider shall be borne by the Customer. As such the Setup Fees, Pro Rata Service Fees and Services Fees shall be adjusted accordingly to take into account such exchange rate fluctuations and may depending on the nature of the Services being provided be adjusted during the term of the Agreement in accordance with the provisions of clause 11.10.

11.3. VAT. All amounts stipulated in this Agreement are, unless otherwise indicated, stipulated exclusive of Value-Added Tax, which shall be payable by the Customer at the applicable rate.

11.4. Setup Fees. Setup Fees and Pro rata Service Fees are due by the Customer on the relevant Service Commencement Date and are payable in arrears, within 7 (seven) days of Internet Fibre's invoice in respect thereof, or as may otherwise be provided on the applicable Shopping Basket.

11.5. Service Fees. Service Fees are due by the Customer monthly in advance, payable on or before the 30th day of the month in which the relevant Services are to be provided.

11.6. Invoices. Internet Fibre shall provide the Customer with a detailed VAT invoice in respect of all Fees payable pursuant to this Agreement. Such invoice may be in electronic or hardcopy format.

11.7. Payments. All payments by the Customer must be made in South African Rand, free of set-off and bank charges, by electronic fund transfer, unless otherwise agreed in writing. Payments must be paid directly into Internet Fibre's bank account, the details of which will be provided on the relevant VAT invoice and may change from time to time or such other bank account as Internet Fibre may notify the Customer of in writing from time to time.

11.8. Overdue Amounts. If the Customer fails to make any payment on the due date, Internet Fibre may, without prejudice to any of its rights, charge the Customer interest on the overdue amounts at the Prime Rate, plus any additional costs incurred by Internet Fibre related to collections as a result of Customer's failure to make any payment on the due date.

11.9. Suspension of Services. In addition, Internet Fibre shall be entitled, without liability, to suspend the Services for any period during which any Fees (including all interest thereon) are outstanding or in arrears, provided that Internet Fibre shall give the Customer no less than five Business Days written notice (which shall include by way of e-mail) of its intention to suspend the Services.

11.10. Escalations.

11.10.1. Internet Fibre's pricing is made up of pricing related to the Core Services, and pricing related to Services provided to Internet Fibre third party telecommunication providers, such as Telkom, Neotel and the cell phone providers

11.10.2. Internet Fibre's pricing related to the Core Services will not change during the initial term, unless otherwise agreed between the Parties in writing.

11.10.3. Internet Fibre's pricing related to Services provided by third parties may fluctuate during the Initial Term (or Renewal Period). Should the pricing fluctuate during the term of the Agreement, Internet Fibre will endeavour to provide the Customer with 30 (thirty) days written notice, or such reasonable notice that it may receive from such third party, and together with such notice provide a reasonable level of detail regarding the reason for the fluctuation in the pricing, which reasons the Customer agrees may include for example (i) change in Consumer Price Index etc. Notwithstanding the above, in the event the Service Fees payable by the Customer are subject to a rate of exchange other than South African Rands and such rate of exchange during the term of the Agreement increases by more than the base rate used to calculate the initial Service Fees, the Customer agrees that Internet Fibre shall be entitled to amend its pricing accordingly, with or without notice, within the month in which the exchange rate fluctuation occurs.

11.11. No set-off. The Customer will not be entitled to withhold payment of any amount payable in terms of this Agreement to satisfy any claim against Internet Fibre arising from this or any other agreement with Internet Fibre, nor will the Customer be entitled to set off any such amount payable in terms of this Agreement against any amount owing to it by Internet Fibre in terms of this or any other agreement.

## 12. Intellectual Property

The Customer acknowledges that any and all Intellectual Property Rights are proprietary to Internet Fibre and shall remain the property of Internet Fibre. The Customer shall not for the duration of this Agreement, or at any time after termination or cancellation or expiration of this Agreement, acquire or be entitled to claim any right or interest therein or in any way question or dispute the ownership thereof.

## 13. Internet Fibre Warranties

13.1. Intellectual Property Warranties:

13.1.1. Internet Fibre warrants that no aspect of the provision of the Services or any Internet Fibre Technology will infringe any Intellectual Property Rights of any third party, and Internet Fibre shall, at its cost, defend the Customer against any such claim, provided that in respect of all such claims, the Customer:-

13.1.1.1. Gives prompt notice to Internet Fibre of such claim and Internet Fibre has the election to control the defence thereof;

13.1.1.2. Takes all reasonable steps to mitigate any loss or liability in respect of the claim; and

13.1.1.3. Does not compromise or settle the claim in any way without Internet Fibre's prior written consent.

13.1.2. Should any third party succeed in its claim for the infringement of any Intellectual Property Rights, Internet Fibre shall, at its discretion and within 30 (thirty) days of the infringing item having been found to so infringe, undertake one or more of the following actions:-

13.1.2.1. Obtain for the Customer the right to continue using the infringing item or the parts thereof which constitute the infringement;

13.1.2.2. Replace the infringing item or the parts thereof which constitute the infringement with another product which does not infringe and which in all respects operates substantially in accordance with the specifications thereof;

13.1.2.3. Alter the infringing item in such a way as to render it non-infringing while still in all respects operating substantially in accordance with the specifications thereof; or failing any of the above, and

13.1.2.4. Withdraw the infringing item and refund to the Customer all fees paid by it to Internet Fibre in respect of such item, prorated on a 3-year straight line depreciation, – provided that the above remedies shall be the Customer's sole remedies in respect of any breach of this warranty.

13.2. Product Warranties. Internet Fibre gives only the following warranties in respect of the Goods –

13.2.1. It has title to the Goods and has the unencumbered right to sell and install the Goods; and

13.2.2. Unless otherwise agreed in writing, Internet Fibre will at its sole discretion and at its expense replace or repair any Goods manufactured and installed by Internet Fibre, on a carry in basis only, within a reasonable time, if the Customer / End-user notifies Internet Fibre in writing of any defects in respect of the Goods within 12 (twelve) months from the date of installation and such Goods are determined by Internet Fibre on a good faith inspection thereof, to be defective in respect of materials and/or workmanship. Internet Fibre will not be liable to compensate the Customer /End-User for any damages sustained by it whilst the Goods are being repaired, nor shall it be liable for any other damages, including consequential damages, relating to the replacement or repair of the Goods.

13.2.3. In addition, and concurrent to the warranty given in 13.2.2 above, the Goods are supplied with a six month warranty of quality against defects, within the meaning of the CPA.

13.2.4. Notwithstanding any other provisions herein:

13.2.4.1. Unless Internet Fibre designed the solution incorporating the Goods, Internet Fibre does not warrant that the Goods purchased by the Customer / End-User will be fit for the purpose that the Customer / End-User intends using the Goods for;

13.2.4.2. If any defect in the Goods, or the components of the Goods, relates to alterations contrary to the instructions or after leaving the control of Internet Fibre, then Internet Fibre will not be liable for those defects, including in respect of any possible liability in terms of the implied warranty of quality contained in the CPA ;

13.2.4.3. Any warranty provided by Internet Fibre will cease to apply if any material information provided by the Customer / End-User, specifically insofar as the intended use of the Goods is concerned, is incomplete or incorrect or if there is any material change in operating conditions or any misuse, abuse or material neglect of the Goods by the Customer / End-User.

13.3. Service Warranties. Internet Fibre warrants that in relation to each Managed Network Service provided in terms of this Agreement it will provide same in accordance with all applicable laws and regulations.

13.4. Disclaimer of Warranties. To the extent permitted by the CPA, Internet Fibre hereby excludes and disclaims all warranties, whether express or implied, statutory or otherwise, except those warranties expressly made in this clause 13. Without limiting the afore going Internet Fibre hereby disclaims all warranties of fitness for purpose and in respect of third party software applications and hardware utilised by or licensed to the Customer by any third party or by Internet Fibre pursuant to this Agreement.

13.5. Return. In accordance with the CPA, the Customer is entitled to return the Goods, if unsatisfied, within 10 (ten) days from delivery of the Goods to the Premises, provided that the Goods are defective or not of the standard or description as agreed to or don't satisfy their intended purpose. This return of Goods will be at Internet Fibre' risk and expense.

13.6. No Representations. The Customer warrants that it has not been induced to enter into this Agreement by any prior representations, warranties or guarantees, whether oral or in writing, except as expressly contained in this clause 13.

13.7. Survival. This clause 13 shall survive termination of this Agreement.

## **14. Confidential Information**

14.1. Confidentiality Obligation. Each Party (the "Receiving Party") must treat and hold as confidential all Confidential Information of the other Party (the "Disclosing Party") to which they have access or which otherwise becomes known to them during the currency of this Agreement.

14.2. Exceptions. The obligations of confidentiality contained herein shall not apply to any confidential information which the Receiving Party thereof can show (and it shall be for the Receiving Party to prove this by documentary evidence) –

14.2.1. Is, at the time of disclosure to the Receiving Party by the Disclosing Party, within the public domain and could be obtained by any person with no more than reasonable diligence; or

14.2.2. Comes into the public domain and could be obtained after such disclosure, otherwise than by reason of a breach of any of the undertakings contained in this Agreement; or

14.2.3. Is, at the time of such disclosure, already within the possession of the Receiving Party, or it has been independently developed by the Receiving Party; or

14.2.4. Is subsequently provided to the Receiving Party by a person who has not obtained such information from the Disclosing Party, provided that, in any such case, such information was not obtained illegally or disclosed by any person in breach of any undertaking or duty as to confidentiality, whether express or implied; or

14.2.5. Is disclosed with the written approval of the Disclosing Party; or

14.2.6. Is or becomes available to a third party from the Disclosing Party on an unrestricted basis; or

14.2.7. Is obliged to be reproduced under order of a court or government agency of competent jurisdiction or in satisfaction of the requirements of any stock exchange or other regulatory authority.

14.3. Duties of Parties. The Receiving Party therefore agrees to hold such Confidential Information in the strictest confidence, not to make use thereof other than for the performance of the obligations under this Agreement, to release it only to Staff and professional advisors requiring such information on a need-to-know basis and not to release or disclose it to any other person.

14.4. Survival. The Parties agree that the provisions of this clause will survive the termination of this Agreement for a period of 2 (two) years from date of termination of this Agreement.

14.5. Obligation Prior to Disclosure. Internet Fibre shall procure that any party to whom it validly discloses the confidential information of the Customer, as contemplated in clause, 14.2 undertakes to respect the secret, confidential and proprietary nature thereof.

## **15. Limitation of Liability**

15.1. Direct damages limited. Notwithstanding the form (whether in contract, delict, or otherwise) in which any legal action may be brought, Internet Fibre's maximum liability for general and /or direct damages for any breach of this Agreement or any wilful or negligent misconduct or omission arising during the course and scope of fulfilling its obligations in terms of this Agreement, shall, in respect of the Services, be equal to an aggregate amount of the Service Fees paid by the Customer over the previous 12 (twelve) months pursuant hereto, save to the extent that such loss or damage is contemplated in section 61 of the CPA, and provided that nothing in these terms and conditions must be construed as in any way limiting the rights of Internet Fibre to raise such defences as may be available to it at common law or in terms of any statute . Such maximum amount shall be an aggregate amount for all claims arising out of this Agreement.

15.2. Consequential damages excluded. Save to the extent that such loss or damage is contemplated in section 61 of the CPA, neither Party shall be liable for any loss of profits, goodwill, business, End-Users, contracts, revenue, the use of money, contractual penalties imposed by third parties, anticipated savings or data; or any special, indirect or consequential loss and such liability is excluded whether it is foreseen, foreseeable, known or otherwise. For the purposes of clarity it is recorded that the provisions of this clause 15.2 apply whether such loss is direct, indirect, consequential or otherwise, but shall not apply to any claim by Internet Fibre in respect of any fees payable by the Customer for services rendered, or in respect direct contractual damages as a result of a breach by the Customer of any provision of this Agreement.

## **16. Breach**

16.1. Material Breach. Save as expressly provided to the contrary in the Service Level Agreement, either party may terminate this Agreement on 14 (fourteen) days' written notice to the other in the event that the other party:

16.1.1. Fails to pay any amount validly due hereunder; and/or

16.1.2. Breaches any material term of this Agreement and such breach is incapable of remedy or, if the breach is remediable, it continues for a period of 14 (fourteen) days after written notice requiring the same to be remedied has been given to the party in breach;

16.2. Winding Up. Either party may terminate this Agreement on 30 (thirty) Business Days' written notice to the other in the event that in respect of the other party:

16.2.1. A winding-up order or resolution is made or passed;

16.2.2. A provisional liquidator is appointed, an administration order is made, a receiver is appointed in respect of it or all or any of its assets, it is unable to pay any of its debts within the meaning of applicable insolvency laws, or any voluntary arrangement is proposed or in any situation which is the same as the foregoing;

## **17. Effect of Termination**

17.1. Without prejudice to any other rights and remedies set out in this Agreement, on termination of this Agreement for any reason whatsoever, all amounts due and payable, including unamortised expenses and reasonable costs incurred as a consequence of the termination, and all amounts for Services rendered prior to termination shall become due and payable even if they have not been invoiced. Such amounts may not be withheld for any reason.

17.2. Upon termination, cancellation or expiry of this Agreement:

17.2.1. The provision of all Services shall forthwith cease; and

17.2.2. Each Party will deliver to the other Party, or at the other Party's option destroy, and procure the delivery of or destruction of all originals or copies of Confidential Information and proprietary materials in its possession or under its control.

17.3. Termination of this Agreement shall not affect the enforceability of the provisions which are intended to operate after such expiry or termination.

## **18. Dispute Resolution**

18.1. In the event of a dispute arising in terms of this Agreement, the Parties shall firstly submit such dispute to their respective chief executive officers or authorised representatives for purpose of resolution. Should the chief executive officers or authorised representatives of the Parties fail to resolve the dispute referred to them within 10 (ten) Business Days, the Parties agree to attempt to resolve the dispute by mediation;

18.2. The Parties shall, by agreement to be reached within 10 (ten) Business Days following the decision of the Parties to refer the dispute to mediation, appoint a third party to act as a mediator, and not as an arbitrator, to mediate in the resolution of the dispute. The Parties agree that the mediator shall be an advocate of the Cape Bar of not less than 10 (ten) years in practice. Should the Parties not be able to agree on the mediator, then the mediator shall be selected by the chairman for the time being of AFSA. Such mediation shall be held in English, in Cape Town, and in accordance with the rules determined by the mediator and the timeframes agreed to by the Parties and the mediator;

18.3. In the event that the Parties fail to resolve the dispute by way of mediation then that dispute shall be submitted to a court of competent jurisdiction.

## **19. Domicilia & Notices**

19.1. Addresses. The Parties select as their respective domicilia citandi et executandi the physical addresses set out on the cover sheet. Likewise, the Parties choose all the addresses set out on the cover sheet for the purposes of giving or sending any other notice provided for or required hereunder, or such other address as may be substituted by notice given as herein required.

19.2. Change of Address. Either Party may give written notice to the other, change its domicilium to any other physical address in the Republic of South Africa, provided that such change shall take effect fourteen 14 (fourteen) days after delivery of such written notice.

19.3. Deemed Receipt. Any notice to be given by either Party to the other shall be deemed to have been duly received by the other Party –

19.3.1. If addressed to the addressee at its domicilium and posted by pre-paid registered post on the 10th day after the date of posting thereof, or

19.3.2. If delivered to the addressee's domicilium by hand to a responsible person apparently in charge of the addressee's premises, during Business Hours on a Business Day, on the date of delivery thereof.

19.4. Use of email. The Parties record that whilst they may correspond via email during the currency of this Agreement for operational reasons, no formal notice required in terms of this Agreement, may be given via email.

19.5. Actual Receipt. It is recorded that nothing in this clause shall operate so as to invalidate the giving or receipt of any written notice which is actually received by the addressee other than by a method referred to in this clause.

## **20. Force Majeure**

20.1. Failure to Fulfil Obligations. Neither Party shall be liable for any failure to fulfil its obligations under this Agreement if such failure is caused by any circumstances beyond its reasonable control, including flood, fire, earthquake, war, tempest, hurricane, industrial action, government restrictions or acts of God;

20.2. Right to Cancel the Agreement. Should either Party be unable to fulfil a material part of its obligations under this Agreement for a period in excess of 30 (thirty) days due to circumstances beyond its reasonable control, as recorded in clause 20.1 above, the other Party may cancel this Agreement forthwith by written notice.

## **21. Non – Solicitation**

21.1. The Customer shall not during the currency of the Agreement and for a period of 24 (months) months following the termination thereof directly or indirectly solicit, engage, employ or offer employment to any Staff member of Internet Fibre who was involved in the implementation or execution of the Agreement, and shall not engage, employ or contract in any manner with any such Staff.

## **22. Data Protection**

22.1. The Parties. The Customer and the Service Provider acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and the Service Provider is the data processor of any Customer Data.

22.2. Data Protection Legislation. The Service Provider warrants that it will process the Customer Data at all times in compliance with all applicable Data Protection Legislation and will not do any act or omit to do any act which would place the Customer in breach of the Data Protection Legislation.

22.3. Service Provider Obligations. The Service Provider shall:

22.3.1. Process the Customer Data only to the extent, and in such a manner, as is strictly necessary for the purpose of fulfilling its obligations under this Agreement and in accordance with the Customer's lawful and reasonable instructions from time to time (including instructions regarding the amendment, transfer, deletion and destruction of the Customer Data). Notwithstanding anything to the contrary contained in this clause 22.3.1, the Customer agrees that the Customer is responsible for determining the purposes and means of the Service Provider's Processing of Customer Data under this Agreement, including that such Processing will not place the Service Provider in breach of any applicable Data Protection Legislation;

22.3.2. Give the Customer reasonable assistance as the Customer reasonably requires in connection with giving notice of the Service Provider's Processing activities to Data Subjects (insofar as such Data Subjects' Personal Information is embodied in or forms part of the Customer Data) and any applicable governmental or regulatory authority and responding to requests relating to the Service Provider's Processing activities made by any applicable governmental or regulatory authority and shall abide by the advice of any regulatory authority with regard to the Processing of the Customer Data;

22.3.3. Not transfer the Customer Data to any other country or allow the Processing of such Customer Data from another country without the prior written consent of the Customer, unless such transfer or Processing is permitted in such other country by the relevant Data Protection Legislation;

22.3.4. Ensure that access to the Customer Data is limited to those of its Personnel who need access to the Customer Data to meet the Service Provider's obligations under this Agreement and who are informed of the confidential nature of the Customer Data;

22.3.5. Notify the Customer in writing within 48 (forty eight) hours if it receives a request from a Data Subject for access to that person's Personal Information (as is embodied in any Customer Data) and shall comply with the Customer's lawful and reasonable instructions and provide the Customer, at the Customer's expense, with full co-operation and assistance (including providing any relevant documents or files) in relation to any such request;

22.3.6. (On receipt of reasonable notice) give the Customer and its representative or independent auditors (bound by a duty of confidentiality and subject to the provisions of the Service Provider's internal security, information security and data protection policies, procedures and codes of practice) and any regulatory authority access to its records and facilities so as to allow the Customer or its representatives or independent auditors, or the regulatory authority, to inspect all facilities, equipment, documents and electronic data relating to the Processing of the Customer Data by the Service Provider;

22.3.7. Ensure that there are implemented at all times appropriate technical and organisational security measures against the unauthorised or unlawful Processing of the Customer Data, including (without limitation) against the accidental or unlawful loss or destruction of, alteration of, damage to, unauthorised disclosure of or access to the Customer Data ("Security Measures"). The Security Measures implemented by the Service Provider shall provide at least the same level of protection for the Customer Data as is provided for by the Customer's internal corporate security, information security and data protection policies, procedures and codes of practice in force (and as updated and provided to the Service Provider) from time to time;

22.3.8. Monitor the Security Measures (and compliance with them) and shall notify the Customer immediately if it becomes aware of any unauthorised or unlawful Processing, loss of, damage to, corruption or destruction of the Customer Data ("Security Breach"). The Service Provider shall co-operate with any reasonable Customer investigation of such Security Breach, restore (in so far as is possible) such Customer Data and mitigate, remediate and otherwise respond to the Security Breach and associated risks as the Customer reasonably requests and at the expense of the Service Provider;

22.3.9. Promptly upon reasonable notice from the Customer, provide to the Customer a summary of the Security Measures which it has in place in order to satisfy its obligations in terms of this clause; and

22.3.10. If requested by the Customer (such request to be on reasonable notice and made no more than once a year), an authorised representative of the Service Provider shall certify to the Customer that it has complied (and all of its Personnel who process the Customer Data have complied) with the terms of this clause 22.

22.4. Notice to Customer. The Service Provider shall (if permitted by law) promptly notify the Customer if it receives any legally binding request for disclosure of the Customer Data by a law enforcement authority.

22.5. Third Party Processing. Notwithstanding anything to the contrary in this Agreement, the Service Provider may not authorise any third party to process the Customer Data without the prior written consent of the Customer, which consent shall not be unreasonably delayed or withheld.

22.6. Indemnity. The Service Provider agrees to indemnify and keep indemnified the Customer and its Data Subjects (insofar as such Data Subjects' Personal Information is embodied in or forms part of the Customer Data) against all losses, costs, claims, damages, fines, penalties or expenses (including reasonable lawyers' and experts' fees) directly incurred by the Customer (and its Data Subjects) or for which the Customer (and its Data Subjects) may become liable due to any failure by the Service Provider or its Personnel to comply with any of its obligations under this clause 22 and any subsequent agreement entered into by the Parties relating to the processing of the Customer Data.

22.7. Termination. Upon termination of this Agreement and, specifically, any data Processing services, the Service Provider and its Personnel shall (at the choice of the Customer) either return all the Customer Data processed by the Service Provider or its Personnel and the copies thereof to the Customer or shall destroy all the Customer Data and certify to the Customer that it has done so (unless legislation imposed on the Service Provider or its Personnel prevents it or them from returning or destroying all or part of the Customer Data, in which event the Service Provider agrees that it will keep such Customer Data confidential and will not actively process the Customer Data after the termination of this Agreement).

22.8. Continuing Obligations. The terms of this clause shall survive the expiration or sooner termination of this Agreement, howsoever arising.

22.9. Breach. A breach of this clause shall be deemed to be a material breach of this Agreement incapable of remedy, entitling (but not obligating) the Customer to terminate this Agreement with immediate effect.

## **23. Assignment and Sub-Contracting**



23.1. No Assignment. Neither Party shall be entitled to cede, assign, delegate or otherwise transfer the benefit or burden of all or any part of this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed,

23.2. Sub-contractors. Internet Fibre may sub-contract its obligations under this Agreement to third parties, provided that in such event Internet Fibre shall remain liable for the performance by such subcontractor of Internet Fibre's obligations in terms of this Agreement.

## **24. Relationship and Duty of Good Faith**

24.1. No temporary employment service. Nothing in this Agreement shall be construed as constituting a temporary employment service as contemplated in section 198 of the Labour Relations Act, 1995.

24.2. Good Faith. The Parties shall at all times owe each other a duty of good faith and shall, in all dealings with each other and in respect of the Services act according to such standard.

24.2.3 No authority. Nothing in this Agreement shall be construed as creating a legal partnership between the Parties and neither Party shall have any authority to incur any liability or obligation on behalf of the other or to pledge or bind the credit of the other Party.

## **25. Interpretation**

This Agreement shall be subject to the following rules of interpretation.

25.1. Headings. Headings and sub-headings are inserted for information purposes only and shall not be used in the interpretation of this Agreement.

25.2. Parts of the Agreement. Unless otherwise stated:

25.2.1 References to clauses, sub-clauses, schedules or paragraphs are to be construed as references to clauses, sub-clauses, schedules or paragraphs of this Agreement;

25.2.2. References in Schedules to clauses shall, unless expressly provided otherwise, be deemed to be a reference to clauses in such Schedule.

25.3. Enactments. References to any enactment shall be deemed to include references to such enactment as re-enacted, amended or extended from time to time.

25.4. References to persons. References to:-

25.4.1 Persons shall include companies, corporations and partnerships;

25.4.2 Any Party shall, where relevant, be deemed to be references to, or to include, as appropriate, their respective successors or permitted assigns;

25.4.3. The singular shall include the plural and vice versa;

25.4.4. Any one gender shall include a reference to all other genders.

25.4.5. Days shall be deemed to be to calendar days, unless specifically stipulated as being business days.

25.5. Survival of terms. The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

25.6. Substantive provisions. If any provision in a definition is a substantive provision conferring rights or imposing duties on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in this Agreement.

25.7 Calculation of days. When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day which is not a business day, in which case the last day shall be the next business day.

25.8. Approvals and consents. Where the approval or consent of any Party is required in terms of this Agreement, the Parties hereby agree that such approval or consent shall not, unless expressly provided to the contrary, be unreasonably withheld or delayed by the Party who is required to give same

25.9. Neutral construction. The rule of construction that the Agreement shall be interpreted against the Party responsible for the drafting or preparation of the Agreement, shall not apply.

25.10. The term "including". The words "include", "includes", and "including" means "include without limitation", "includes without limitation", and "including without limitation". The use of the word "including" followed by a specific example shall not be construed as limiting the meaning of the general wording preceding it.

25.11. Common meaning. Terms other than those defined within the Agreement will be given their plain English meaning, and those terms, acronyms, and phrases known in general commercial or industry-specific practice, will be interpreted in accordance with their generally accepted meanings.

25.12. Conflicting Articles. In the event of any conflict between the terms of:

25.12.1. These Master Terms and Conditions and the terms of a Business Contract or a Residential Contract, the terms of the Business Contract or the Residential Contract will prevail;

25.12.2. The Business Contract or the Residential Contract and annexes to the Business Contract or Residential Contract, the terms of the annexes will prevail; and

25.12.3. These Master Terms and Conditions and the terms of annexes to the Business Contract or Residential Contract, the terms of the annexes will prevail.

## **26. General**

26.1. Non-exclusivity. Nothing in this Agreement shall be construed as precluding or limiting in any way the right of Internet Fibre from supplying services of whatsoever nature to other End-Users.

26.2. Entire Agreement. This Agreement and the documents, records or attachments referred to herein or therein, constitute the entire agreement between the Customer and Internet Fibre in respect of the subject matter hereof, and supersedes all previous Agreements in respect thereof.

26.3. Waiver. No granting of time or forbearance shall be or be deemed to be a waiver of any term or condition of this Agreement and no waiver of any breach shall operate a waiver of any continuing or subsequent breach.

26.4. Applicable Law. This Agreement shall be governed and construed according to the laws of the Republic of South Africa.  
26.5. Jurisdiction. Subject to clause 18, the Parties hereto hereby consent and submit to the jurisdiction of High Court of South Africa.

26.6. Certificate of indebtedness. A certificate of indebtedness signed by any director or manager of Internet Fibre, whose authority or appointment it shall not be necessary to prove, in respect of any indebtedness of the Customer in terms of this Agreement, shall be prima facie evidence of the Customer's indebtedness to Internet Fibre.

26.7. Publicity. Neither Party shall make or issue any formal or informal announcement, advertisement or statement to the press in connection with this Agreement or otherwise disclose the existence of this Agreement or the subject matter thereof to any other person, other than a professional advisor or its Staff involved in the provision of the Services, without the prior written consent of the other Party, provided that:-

26.7.1. Internet Fibre may cite the Customer as one of its End-Users in its accounting, marketing and associated material, and  
26.7.2 The Customer may cite Internet Fibre as one of its service providers in its accounting, marketing and associated material.

26.8. Costs. Each Party shall bear and pay its own fees and costs of and incidental to the negotiation, drafting, preparation and execution of this Agreement.