
Subscriber Terms & Conditions

1. Definitions

1.1. "Acceptable Use Policy" means the document with that heading available at the FibreStream's Website, as amended from time to time.

1.2. "Agreement" means these Subscriber Standard Terms and Conditions, as well as the relevant Service Order(s) and any schedules or annexures relating to them or to this document, which all form part of the Agreement.

1.3. "Business Day" means any day other than a Saturday, a Sunday or a public holiday in the Republic of South Africa.

1.4. "Calendar Month" means the period from, and including, the 1st day of a month to the last day of that month.

1.5. "Charges" means charges related to the provision of the Services including but not limited to, monthly Service charges, usage charges activation of Services, installation fees, costs of subsidizing the Hardware, administration costs, postage charges, Hardware restoration costs, packaging costs and any other charges pertaining to the provision of the Services.

1.6. "CPA" means the Consumer Protection Act No. 68 of 2008.

1.7. "Data" means electronic representations of information in any form.

1.8. "Direct Marketing" means to approach a person, either in person or by mail or electronic communication, for the direct or indirect purpose of promoting or offering to supply, in the ordinary course of business, any goods or service to the person; or requesting

the person to make a donation of any kind for any reason, as provided for in the Consumer Protection Act No. 68 of 2008.

1.9. “Effective Date” means:

1.9.1. in respect of the Agreement, the date stipulated as such on the cover sheet hereof; and

1.9.2. in respect of each Service Order, the effective date stipulated on the cover sheet of such Service Order, and failing such stipulation the date of acceptance of such Service Order by FibreStream;

1.10. “Early Cancellation Charges” means the charges due to FibreStream including but not limited to a cooling off period, cancellation charges to be determined by FibreStream, administrations costs, outstanding usage charges, costs of subsidizing the Hardware, Hardware restoration and packaging costs and outstanding Monthly Subscription Fees.

1.11. “Hardware” means any hardware supplied to the Subscriber by FibreStream in terms of this Agreement but which the Subscriber does not own, or any hardware possessed by FibreStream.

1.12. “Installation” means the installation of Hardware at a location or Subscriber laptop/desktop or similar device specified by the Subscriber in a Service Order.

1.13. “Internet” means the interconnected system of networks that connect computers around the world via the TCP/IP protocol.

1.14. “Monthly Allocation” means the commencement value of the Subscriber’s Data balance at the commencement of each Calendar Month according to the Subscriber’s selected Service Package.

1.15. “Monthly Subscription Fee” means the service fee payable by the Subscriber to FibreStream, monthly, in advance.

1.16. “Personal Information” means any information such as a name, identification number, an online identifier or information pertaining to an individual’s physical, physiological, genetic, mental, economic, cultural or social identity relating to that natural person, that can be used to directly or indirectly identify such person.

1.17. “Personnel” means any director, employee, agent, consultant, contractor or other representative of a Party.

1.18. “Parties” means FibreStream and the Subscriber and “Party” refers to either of them as so determined by the context.

1.19. “Regulatory Authority” means the Independent Communications Authority of South Africa/ICASA”.

1.20. “RICA” means the Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2003.

1.21. “Services” means the broadband wireless Internet access services, value-added Internet Protocol (“IP”) services, virtual private network (“VPN”) services, corporate managed Data network services, closed user group and video conferencing services made accessible to the Subscriber by FibreStream in terms of the Agreement.

1.22. “Service Packages” means the Data Service Packages offered by FibreStream.

1.23. “Service Order” means an order placed by a Subscriber on FibreStream for the provision of the Services and/or Hardware.

1.24. “FibreStream” means FibreStream PTY Ltd, registration number 2017/152676/07, a company registered in terms of the laws of the Republic of South Africa.

1.25. "FibreStream Website" means the Internet website published at the URL "http://www.fibrestream.co.za/" or another URL that FibreStream notifies the Subscriber of from time to time.

1.26. "Standard Terms" means the Subscriber Standard Terms and Conditions (this document) and includes the Acceptable Use Policy and Privacy Policy.

1.27. "Subscriber Application Form" means either the physical or online application form completed by either a Business or Individual Subscriber and forms part of the Agreement.

1.28. "Subscriber" means either the Business or Individual Subscriber to whom the Hardware and Services are provided in terms of this Agreement and whose details appear on the Subscriber Application Form, their successors or authorised assignees.

1.29. "Time and Materials Rate" means FibreStream's standard time and materials fees and charges applicable from time to time, including all expenses reasonably and actually incurred by FibreStream, including for travel, accommodation and subsistence.

1.30. "Top-up" means to purchase additional Services from FibreStream such as Data.

1.31. "VAT" means Value Added Tax as provided for in the Value Added Tax Act 89 of 1991.

2. Agreement

2.1. The Services that FibreStream will provide to the Subscriber will be described in Service Orders.

2.2. These Standard Terms apply to all Service Orders.

2.3. Each Service Order and this document together form the Agreement between FibreStream and the Subscriber. If the Parties agree to an annexure to any of these documents, these will also form part of the Agreement.

2.4. These Standard Terms include the Privacy Policy and Acceptable Use Policy, which is included herein by reference.

2.5. If there is any conflict between any of these documents, they will be interpreted in descending order of precedence as follows: Standard Terms, Service Order, and Acceptable Use Policy, unless otherwise expressly stated in writing.

2.6. By completing Service Order, the Subscriber agrees to adhere to the provisions of these Standard Terms. If the Subscriber does not agree to these Standard Terms, he/she must cease their use of FibreStream's Services immediately.

3. Amendment of Terms

3.1. If the Agreement is fixed-term, then FibreStream may amend these Standard Terms, these changes will come into force effective at the beginning of the first Calendar Month.

3.2. If the Agreement is renewable monthly, then:

3.2.1. FibreStream must give at least 1 (one) Calendar Months' notice of an amendment, which will become effective at the beginning of the first Calendar Month after the notice period has expired; and

3.2.2. If the Subscriber objects to any amendment, they may terminate the Agreement immediately during the notice period. However, if the Subscriber chooses to terminate the Agreement, all cancellation procedures and policies stipulated in clause 25 of this agreement will apply. This clause is to be read in conjunction with Clause 25 of FibreStream's Terms' and Conditions.

3.3. The amended documents will be posted on the FibreStream Website, and FibreStream will as soon as possible after posting the amendments make reasonable efforts to advise the Subscriber of them by email. The Subscriber has a duty to keep itself informed of the latest version of the above documents by accessing the FibreStream Website on a regular basis. By accepting these Terms and Condition's the Subscriber is acknowledging their responsibility to remain up to date with any amendments and the Subscriber is also hereby agreeing to these amendments.

4. Initiation

4.1. FibreStream reserves the right to refuse to commence provision of Services based on the Subscriber's prior conduct.

4.2. FibreStream cannot guarantee the provision of the requested Service upon the receipt of a Subscriber Application Form. Provision of the Service is subject to FibreStream confirming that it is technically feasible to do so.

4.3. A Subscriber Application Form must be submitted via the FibreStream Website. Once a Subscriber Application Form is accepted by FibreStream, it becomes a Service Order.

4.4. Services will only work in the coverage area and FibreStream will provide coverage on a reasonable endeavours basis.

4.5. Delivery of Services is dependent on signal availability and demand for Services in any particular area. FibreStream does not warrant or guarantee Service for any specific areas, whilst every effort will be made to give Subscriber's an indication of possible Service.

4.6. THE SUBSCRIBER CONSENTS TO FIBRESTREAM CARRYING OUT A CREDIT CHECK ON THE SUBSCRIBER AT ANY APPLICABLE CREDIT BUREAU, AND MAY MAKE THE PROVISION OF THE SERVICES DEPENDANT ON ITS SATISFACTION WITH THE RESULTS. FIBRESTREAM MAY PROVIDE INFORMATION ON THE SUBSCRIBER'S PAYMENT RECORD TO A CREDIT BUREAU.

4.7. If the Subscriber is a juristic person, FibreStream may require one or more of its officers to stand surety for the Subscriber's obligations under this Agreement. Even if the Agreement has commenced, FibreStream may withhold providing the Services until the surety has been signed.

4.8. Depending upon the Service provided, FibreStream may be obliged under RICA to obtain certain information from the Subscriber, and FibreStream may withhold or suspend providing Services until the Subscriber has provided the necessary information and/or documents to FibreStream.

4.9. If the Subscriber has not complied with a requirement of this clause, FibreStream may delay providing the Services until the Subscriber has complied. If the Subscriber does not comply within a reasonable period, FibreStream may terminate this Agreement and will not be liable for any damage that the Subscriber may suffer as a result.

4.10. Commencement of the Services is subject to a 7 (seven) day cooling-off period from the Effective Date which will be interrupted if the Service in question is made available to the Subscriber during this period with the Subscriber's consent.

5. Choice of Services and Products

5.1. FIBRESTREAM OFFERS ONLINE APPLICATION AND SIGN UP FOR ALL SERVICES VIA THE FIBRESTREAM WEBSITE. THE SUBSCRIBER IS SOLELY RESPONSIBLE FOR ENSURING THAT THEIR CHOICE OF SERVICE CONFORMS TO THEIR REQUIREMENTS OR DESIRED OUTCOME. FIBRESTREAM WILL NOT BE LIABLE FOR COMPENSATION, COSTS OR DAMAGES RESULTING FROM INCORRECT SELECTION OF SERVICES, OR RESULTANT DELAYS IN RECTIFYING SUCH ERRORS.

5.2. FIBRESTREAM PROVIDES SERVICES ON THE BASIS OF INFORMATION PROVIDED BY THE SUBSCRIBER, AND FIBRESTREAM OFFERS NO WARRANTY AS TO THE SUITABILITY OF THE SERVICES BEYOND THE REQUIREMENTS AS EXPRESSED BY THE SUBSCRIBER.

5.3. FibreStream reserves the right to stop offering particular Services if it deems it necessary. FibreStream will then provide the Service for the remainder of the time that has been paid for that specific package or offer an alternative package to the Subscriber.

5.4. In the instance where one of FibreStream's "suppliers" discontinues a certain package, FibreStream reserves the right to remove that specific package from their available services and either upgrade the Subscriber to a new package, with reasonable notice, or offer the client an alternative package. Please note that these packages may vary in price.

6. Term of Agreement and Renewal

6.1. The Agreement will be in force from the Effective Date or the date on which the Subscriber signs or indicates acceptance of a Service Order in some other way, and will continue in force for the period stated on the Service Order. If the Service Order does not specify a time period, the Agreement will be in force for 24 (twenty four) months (“Term”).

6.2. Where the commencement of a Service is delayed, the termination date of the Agreement will be calculated from the date that the Service commenced.

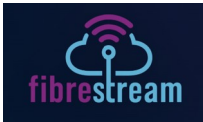
6.3. This Agreement may be terminated by the Subscriber, without reason or penalty, within a period of 5 (five) calendar days from the Effective Date of the Service Order, if the Agreement resulted from any form of direct marketing in terms of the Consumer Protection Act. The Subscriber must return any or all Hardware which was received from FibreStream in its original packaging within 5(five) calendar days from termination of this Agreement.

6.4. If the Subscriber is a natural person, and doesn't either terminate or renew the Agreement, it will automatically renew on a 24 month basis, until terminated by either Party on a calendar months notice period.

6.5. If the Subscriber is not a natural person, then the Agreement will automatically renew on a 24 month basis at the end of its period, until terminated by either Party on a 3 (Three) calendar months notice period.

6.6. The Subscriber acknowledges that, upon termination of the Agreement and where there has been unused Data, airtime or related service, FibreStream shall not be obliged to in any way, convert such unused Data, airtime or related service into credit on the Subscriber's account and or refund same to the Subscriber.

7. Service Orders



7.1. FibreStream will provide the Services to the Subscriber as described in Service Orders in terms of the Agreement.

7.2. A Service Order may be signed in hard copy (in counterparts or not), entered into via the FibreStream Website, per email or by another method made available by FibreStream.

7.3. The Service Order placed by the Subscriber to FibreStream is subject to FibreStream's acceptance.

7.4. EACH SERVICE ORDER WILL BE A SEPARATE CONTRACT BETWEEN THE SUBSCRIBER AND FIBRESTREAM (UNLESS THE SERVICE ORDER IS AMENDED OR RENEWED BY ANOTHER SERVICE ORDER).

7.5. THE TERMS OF ONE SERVICE ORDER WILL NOT APPLY TO ANOTHER, UNLESS A SERVICE ORDER AMENDS OR RENEWS AN EXISTING SERVICE ORDER OR ADDS SERVICES TO AN EXISTING SERVICE ORDER.

8. Risk and Ownership in Hardware

8.1. Ownership of all Hardware is retained by FibreStream (or the supplier of the Hardware as the case may be) and nothing in this Agreement must be interpreted as creating any expectation with regard to the transfer of ownership to the Subscriber.

8.2. The Subscriber may purchase Hardware only by agreeing to do so in writing in a Service Order or by way of a separate agreement, in which case ownership in the Hardware will pass to the Subscriber only once payment has been made for it in full.

8.3. Should the Subscriber discover any fault or defect in the Hardware, the Subscriber must within 6 (six) months after purchase return the Hardware to FibreStream in the same condition and packaging as the Hardware was purchased along with the proof of purchase. FibreStream will replace the damaged or faulty Hardware. In the event of the Subscriber not returning the Hardware packaging to FibreStream, FibreStream may charge the Subscriber a packaging fee.

8.4. Delivery of Hardware will take place when FibreStream passes possession of the Hardware to the Subscriber, its Freight Forwarder, or a third party nominated by the Subscriber, or when FibreStream delivers it to any location indicated in writing by the Subscriber where the Hardware is not under the control of FibreStream.

8.5. RISK IN THE HARDWARE WILL PASS TO THE SUBSCRIBER ON DELIVERY, FROM WHICH MOMENT ALL RISK OF DAMAGE AND LOSS IN THE HARDWARE WILL FALL ON THE SUBSCRIBER, WHICH MUST TAKE RELEVANT STEPS TO INSURE THE HARDWARE AND OTHERWISE MITIGATE ITS RISK OF LOSS THEREIN.

8.6. If the Subscriber requires that the Hardware set out in a Service Order be delivered to a third party, the Subscriber must procure the services of an appropriate Freight Forwarder for the purpose, and risk of loss or damage to the Hardware will pass to the Subscriber upon FibreStream's delivery of such Hardware to the nominated Freight Forwarder.

8.7. FibreStream cannot be held accountable for the period of time in which it takes the courier to deliver the Hardware to and from the Parties.

8.8. Should the Subscriber return the Hardware for any reason whatsoever, the Subscriber must furnish FibreStream with the original tax invoice provided on purchase of the Hardware.

8.9. FibreStream's obligations in terms of any warranties pertaining to the Hardware shall be limited to that which is stated on the packaging provided by the manufacturer. However, FibreStream does offer a 7-day "out the box" warrantee on selected Hardware where if the Hardware is faulty within the first 7 days of use, FibreStream will replace the Hardware.

8.10. FibreStream reserves its right to limit the number of Hardware devices that may be linked to a Subscriber account. The Subscriber may only log onto the network once from each account and may not establish multiple log-on sessions simultaneously from the same account. FibreStream reserves its right to charge an additional subscription Charge to allow multiple simultaneous log-ons to the network from the same account.

8.11. If the Subscriber migrates from one Service Package option to another, FibreStream may vary the amount of the subsidy applied at the time of the sale of the Hardware to the Subscriber. If the subsidy amount is reduced, FibreStream shall be entitled to require the Subscriber to pay to FibreStream the amount by which the subsidy has been reduced. It being understood that this charge does not constitute a migration but enables FibreStream to adjust the subsidy amount to the amount that would have been applicable at the time of sale of the Hardware if the Subscriber had first chosen the package option to which the Subscriber is changing.

9. Use and Maintenance of Hardware

9.1. This clause 9 applies only where the Subscriber is not the owner of the Hardware but risk has passed to the Subscriber as described in clause 8.5, for example where FibreStream has leased the Hardware to the Subscriber, or the Subscriber is paying for the Hardware in instalments, or has been supplied free to use Hardware.

9.2. FibreStream may in its discretion refer the Subscriber to a third party who may undertake the installation of the Hardware in its own name and behalf and not as an agent of FibreStream.

9.3. The Subscriber must:

9.3.1. ensure that the Hardware remains in a safe environment that is conducive to its continued operation;

9.3.2. ensure that the Hardware is used with care and that reasonable precautions are taken to avoid accidents and to safeguard it from loss or damage and excessive wear and tear;

9.3.3. notify FibreStream immediately of any loss of, or damage to, the Hardware or part thereof or any failure of the

Hardware to function;

9.3.4. ensure that no part or component for the Hardware is used

which has not been supplied by FibreStream or its authorised sub-contractors;

9.3.5. ensure that the Hardware is insured at a reasonable value

against any damage or loss;

9.3.6. not rent, sell, mortgage or otherwise encumber the Hardware without the prior written consent of FibreStream;

9.3.7. provide FibreStream with all such information as it may reasonably require to protect its right of ownership

in the Hardware;

9.3.8. ensure that the Hardware does not leave the Subscriber's possession, and no person other than its Personnel is permitted to use the Hardware without FibreStream's prior written consent;

9.3.9. provide reasonable access to the Hardware by FibreStream or its agents (upon request) for maintenance and/or repairs; and

9.3.10. reimburse FibreStream for any repairs and/or maintenance needed to the Hardware at the Time and Materials Rate, provided that the Subscriber authorises the cost of such repairs and/or maintenance prior to implementation.

9.4. Where Hardware is installed or stored on or at a premises which is leased from a third party or otherwise not owned by the Subscriber then the Subscriber undertakes to:

9.4.1. obtain all such consents and permissions as may be necessary so as to allow the installation and maintenance of the Hardware; and

9.4.2. IN THE CASE OF A DISPUTE WITH THE LANDLORD OR OWNER OF THE PREMISES, INFORM THE LANDLORD OR OWNER OF THE PREMISES IN WRITING OF THE FACT THAT THE HARDWARE IS THE PROPERTY OF FIBRESTREAM AND DOES NOT BELONG TO THE SUBSCRIBER. THE SUBSCRIBER SPECIFICALLY INDEMNIFIES AND HOLDS HARMLESS FIBRESTREAM IN RESPECT OF ANY BREACH OF THIS CLAUSE.

9.5. Under no circumstances is the Subscriber permitted to authorise or carry out technical maintenance on any Hardware without the prior written permission of FibreStream. Any modification or re-configuration carried out or attempted by the Subscriber or any third party authorised to do so by the Subscriber without the express prior written approval of FibreStream is strictly prohibited and FibreStream specifically reserves its right to claim damages should this clause be breached.

9.6. The Subscriber will be responsible for obtaining all necessary approvals and authorities imposed by any competent authority or body (this includes but is not limited to body corporates, provincial and local municipalities) and required for the purpose of any such supply and/ delivery and/installation, the Subscriber hereby indemnifies FibreStream against any claim or liability suffered by reason of such approval and authorities not having been obtained.

10. Identity Verification Requirements

10.1. FibreStream (and any of its agents) can only perform RICA checks on natural persons (individuals), and as a result the Agreement for provision of the Service will always be with a natural person. FibreStream assumes that the

Subscriber will apply for and make use of the Service in its capacity as a natural person, and not as the representative of a juristic person (such as a company). The Subscriber will be personally responsible for its use of the Service and all obligations under this Agreement.

10.2. Use of the Services is subject to ID verification and/or proof of address, required by RICA, and will not be provided before such process has been completed to FibreStream's satisfaction. Subscribers are required to present their original valid Identity Document, as well as a clear, legible copy. Non-South African citizens may submit a copy of their valid Passport along with supporting documents upon request. Verification documents must contain photo identification. Failure to produce ID verification for an account will result in the product not being activated or handed over, regardless of any pro-rata amounts billed.

10.3. Should the Subscriber cancel all current valid Services, ID verification will be required to sign up for new Services. ID verification will not be requested as long as verified Services remain active.

10.4. If a Subscriber sells or in any manner provides an activated SIM to any other person who is not a family member, then the Subscriber must immediately notify FibreStream so that the RICA process can be carried out for that other person.

11. Fees and Payment

11.1. The Subscriber must pay the Monthly Subscription Fee set out in the Service Order for the Services, or if the Monthly Subscription Fee has been changed, that new Fee.

11.2. FibreStream may insist that the Subscriber pays by way of debit order.

11.2.1 The subscriber, acknowledges that during the month of December debit orders will be processed on the 15th of December or the preceding working day.

11.3. Unless otherwise agreed in writing:

11.3.1. Billing will commence on the date that Service provision commences.

11.3.2. The Subscriber shall effect payment to FibreStream for Monthly Subscription Fees monthly in advance, within 7 (seven) days from date of the relevant invoice.

11.3.3. Fees in respect of the procurement and installation of Hardware will be invoiced upon receipt of the applicable Service Order and must be paid before FibreStream will provide the Service.

11.3.4. All amounts payable are quoted exclusive of VAT, unless otherwise specified.

11.4. Interest will be charged on any amount that remains unpaid by the Subscriber beyond the due date of payment:

11.4.1. The interest rate will be 2% (two percent) above the prime overdraft rate (percent, per annum), up to a maximum

of 2% per month.

11.4.2. The prime overdraft rate will be as charged by FibreStream's bankers at the time, which will be evidenced by a certificate issued by any manager of that bank, whose authority it shall not be necessary to prove.

11.4.3. The interest will be calculated from the due date of payment to the date of actual payment, both days inclusive, and will be compounded monthly in arrears. The Subscriber agrees and undertakes to pay the interest.

11.5. FibreStream may suspend providing Services for which any amount is outstanding after 7 (seven) days of date of invoice on written notice to the Subscriber, unless the Subscriber has lodged a billing complaint with FibreStream. If a Service is suspended for any reason, the Subscriber will still have to make payment of further Fees for that Service or any other amounts due to FibreStream.

11.6. If a particular Service is provided by Calendar Month, and the commencement date for that Service is not the beginning of a Calendar Month, the Monthly Subscription Fee for that first month will be reduced proportionately.

11.7. FibreStream may decrease the Monthly Subscription Fees charged for Services at any time, and will increase Fees only with reasonable notice to the Subscriber:

11.7.1. FibreStream must give at least one Calendar Months' notice of a price increase, which will become effective at the beginning of the first Calendar Month after the notice period has expired;

11.8. If FibreStream perform any task that is not listed in a Service Order, then the Subscriber must reimburse FibreStream for all reasonable expenses that are necessarily and actually incurred by FibreStream and FibreStream's Personnel in doing so. These expenses will include but are not limited to traveling, subsistence, goods and services purchased on the Subscriber's behalf, communications, stationery, report and presentation material, data usage, service provisioning and any direct applicable charges.

11.9. FIBRESTREAM MAY AT ANY TIME ON WRITTEN NOTICE TO THE SUBSCRIBER VARY ITS INVOICING AND PAYMENT PROCEDURES AND REQUIREMENTS.

11.10. IN THE EVENT THAT FIBRESTREAM REQUIRES PAYMENT FOR THE SERVICES PROVIDED TO THE SUBSCRIBER TO BE MADE BY DEBIT ORDER, THE SUBSCRIBER WILL COMMIT A MATERIAL BREACH OF THE AGREEMENT IF THE SUBSCRIBER CANCELS SUCH DEBIT ORDER WITHOUT THE WRITTEN CONSENT OF FIBRESTREAM OR CHANGES HIS/HER BANKING DETAILS ON WHICH THE DEBIT ORDER RELIES, WITHOUT GIVING FIBRESTREAM PRIOR NOTIFICATION OF SUCH CHANGE AND PROVIDING FIBRESTREAM WITH INCORRECT BANKING DETAILS.

11.11. FibreStream may charge an admin fee for failed or returned payments, regardless of the method of payment or the reason for non-payment. Such admin fees are payable immediately and in conjunction with the outstanding fees which resulted in non-payment. Admin fees will be calculated on a sliding scale based on the number of incidents of non-payment on the Subscriber's payment record. Non-payment of admin fees will be considered non-payment and will be subject to the same terms. Once levied, admin fees are not recoverable or reversible, regardless of whether payment is made within the prescribed period.

11.12. The monthly invoices shall be sent by FibreStream to the Subscriber to the email address supplied by the Subscriber to FibreStream and the Subscriber agrees to accept invoices in such format.

11.13. Any migration from one Service Package option to another during the Term shall be subject to FibreStream's approval, in its discretion, and FibreStream shall be entitled to levy fees for migrations, which fees may not exceed the amounts approved or fixed by the responsible Regulatory Authority from time to time. The Subscriber acknowledges that there will be no Data carried over in the event of any type of migration.

11.14. The Subscriber agrees that it will at all times be responsible for payment of any and all Charges incurred by it arising from the use of the voice services provided to it in terms of this Agreement. Such usage Charges may include without limitation:

11.14.1. Charges incurred by the Subscriber (or any other person or entity) regardless of whether or not the use was permitted or even known to the Subscriber;

11.14.2. Charges incurred as a result of any soft cap or credit limit imposed being exceeded.

11.15. In the case of billing disputes, the onus is upon the Subscriber to raise such disputes in good time at accounts@FibreStream.co.za to prevent interruption of Services while the billing is in dispute. Reparations will be made to Subscribers with successful disputes by means of an account credit at FibreStream's discretion.

11.16. FibreStream will not, under any circumstance, offer any refunds, however, should it be applicable, FibreStream will pass a credit onto the Subscriber's account for future invoices.

11.17. FibreStream will not offer any account credit in instances pertaining to downtime, as this is often out of FibreStream's control, and the Subscriber hereby agrees to accept that no refunds or credit will be given as a result of downtime. FibreStream reserves the right to use their own discretion in situations relating to downtime.

11.18 FibreStream will be entitled to recover any billing which has not been billed throughout the term of the agreement.

11.19 The subscriber is responsible for any use/misuse of the Service, even if the use/misuse was committed by a friend, family member, or guest, staff member or any user with access to your Service account.

12. Suspension

12.1. FibreStream may suspend providing the use of Services to the Subscriber if:

12.1.1. a court of competent jurisdiction so orders;

12.1.2. FibreStream needs to carry out emergency maintenance;

12.1.3. the Subscriber fails to perform any of the Subscriber's obligations, or breaches any terms of the Agreement;

12.1.4. where the Subscriber is in consistent breach of the Acceptable Usage Policy;

12.1.5. FibreStream has reasonable grounds to believe that the Services are being used fraudulently, or illegally, or in violation of the terms of this Agreement.

12.2. If the Subscriber's Services are suspended or terminated for any reason, including non-payment, FibreStream may charge a reasonable reconnection fee for subsequent reactivation of Services. Reconnection fees are payable in full before any Services can be reactivated, once suspended. FibreStream may charge multiple reconnections fees where multiple products are affected, and may charge "escalating" penalties for repeated non-payment offenses. Any prior leniency shown in this regard will not prejudice FibreStream's right to enforce such penalties in full at any time

(within their discretion).

12.3. Reconnection of Services may be subject to a waiting period of up to 72 hours, at FibreStream's discretion, regardless of when payment is received or cleared.

12.4. FibreStream reserves the right to levy both reconnection fees and admin fees (as charged in terms of clause 11.11). Any and all penalty fees must be settled in full, prior to reconnection of affected Services. Both admin and reconnection fees will be charged on a sliding scale based on the number of incidents of non-payment, and this amount is based on (but not limited to) a reasonable estimation of accumulated administrative costs (such as labour), bank penalties and resubmission charges levied by payment carriers.

12.5. The period of suspension will be that which is reasonable under the particular circumstances that gave rise to the suspension.

13. Use of the Services

13.1. THE SUBSCRIBER ACCEPTS THAT IT IS RESPONSIBLE FOR ALL OF THE CONSEQUENCES OF ITS OWN ACTIVITIES AND THOSE OF ITS EMPLOYEES, OFFICERS, AGENTS, INDEPENDENT CONTRACTORS AND ALL OTHERS UNDER ITS CONTROL WHEN USING THE SERVICES.

13.2. The Subscriber must make use of the Services in a considerate and lawful way, and FibreStream has developed an Acceptable Use Policy that contains reasonable rules of conduct for the use of the Service. The Acceptable Use Policy as amended is available for viewing on the FibreStream Website. It is the Subscriber's responsibility to ensure that he/she is up to date with the newest amendments to FibreStream's Terms' and Conditions which can be found on FibreStream's website.

13.3. THE SUBSCRIBER MUST COMPLY WITH THE ACCEPTABLE USE POLICY AND ENSURE THAT ANYONE UNDER ITS CONTROL THAT USES THE SERVICES ALSO DOES SO. A BREACH OF THE ACCEPTABLE USE POLICY IS A BREACH OF THE SUBSCRIBER'S DUTY TO ACT IN A CONSIDERATE AND LAWFUL WAY.

13.4. Network security threats evolve quickly, and behaviours change as technology changes. As a result, FibreStream must be able to amend the Acceptable Use Policy at any time and reserves the right to do so. Because the Subscriber has a general duty to act in a considerate and lawful way, an amendment to the Acceptable Use Policy is not an amendment of this Agreement.

13.5. FibreStream may use upstream suppliers in providing certain Services, which may maintain their own acceptable use policies. FibreStream will inform the Subscriber if this is the case. The Subscriber agrees to abide by these policies in using the relevant Services. FibreStream may treat a breach of a supplier's acceptable use policy as if it were a breach of FibreStream's Acceptable Use Policy.

14. Allocation of Data

14.1. Subscribers will be allocated a monthly amount of Data (bandwidth) each month in accordance with their selected Service Package.

14.2. FibreStream will not default a Subscriber onto out-of-bundle Data charges upon depletion of the Subscriber's Data bundles.

14.3. The Subscriber consents to FibreStream allocating the Subscriber's Monthly Allocation and setting up threshold usage notifications.

15. Rollover of Data

15.1. Any unused Monthly Allocation of Data will be rolled over on the last day of that month and be available for use in the following Calendar Month.

15.2. Data will first be consumed from the rolled over Data, before using the new Monthly Allocation or any newly purchased Data in the same month.

15.3. Subscribers who request a package change will forfeit any rolled over Data from their previous package.

16. Topping Up of Data

16.1. IF THE SUBSCRIBER EXHAUSTS THE PURCHASED DATA OR REACHES THE FIXED CAP, THE SUBSCRIBER WILL BE HARD-CAPPED. THIS MEANS THAT NO FURTHER ACCESS WILL BE PROVIDED THEREAFTER.

16.2. Subscribers can manually Top-up via FibreStream. There is no limit to the aggregate of manual Top-ups that a Subscriber may perform during a Calendar Month.

16.3. The minimum threshold may also be used for threshold usage notifications to be sent by FibreStream to the Subscriber.

16.4. A Top-up may be subject to different terms and conditions and any pricing or promotions applicable to the monthly purchased package may not necessarily apply to the Top-up.

17. Uncapped Shaped Services

17.1. In order to provide a reasonable service to all of its Subscribers using the resources at its disposal, FibreStream may employ selective shaping and throttling depending upon the capacity and load on its network at any given time.

17.2. If FibreStream's network capacity is stretched it may dynamically shape and throttle certain Subscriber's uncapped accounts to relieve congestion. Should the network congestion reduce, the level of shaping and throttling will be reduced or removed.

17.3. The uncapped Subscribers to be shaped and throttled will be chosen based on their historic bandwidth usage, and those who have used the most bandwidth will be throttled first if there is network congestion.

17.4. Capped accounts will not be throttled or shaped. Capped accounts will always get as much speed as their line and FibreStream's network allow.

17.5. THE SUBSCRIBER CONSENTS TO SHAPING AND THROTTLING AS SET OUT IN THIS CLAUSE 17.

18. Service Levels

18.1. FibreStream may make use of upstream providers to itself provide the Service, and consequently service levels may be subject to the performance of such upstream providers. Other factors may also impact the quality of the Service, including network availability, quality of signal, interference and speed limitations. As a result, FibreStream can only provide the Service on a "reasonable effort" basis and makes no warranties with regards to quality of the Service, including Data throughput and availability of the Service.

18.2. The Service provides access to the internet, which is subject to bandwidth constraints, system failures and all other manner of factors that may impact on the Subscriber's access, for which FibreStream accepts no responsibility.

18.3. The contention ratio applicable to the Service will fluctuate depending upon the time of day and other factors. The Subscriber accepts that due to the contention ratio the throughput on the Service will rarely reach the maximum theoretical level.

19. Support

19.1. The Subscriber will be responsible for reporting faults in the Service to FibreStream to support@fibrestream.co.za.

19.2. FibreStream will provide support for the Service during Business Hours either telephonically or as set out on the FibreStream Website and will resolve faults relating to the Services on a reasonable effort basis.

19.3. FibreStream will attempt to resolve all faults within 72 hours but the Subscriber understands that this is not reasonably possible in all circumstances.

19.4. For the avoidance of doubt, support will not include anything which is out of the reasonable control of FibreStream, including without limitation:

19.4.1. faults in the Subscriber's Hardware such as its computer or modem;

19.4.2. faults with the Subscriber's telecommunication service provider's system or Hardware; and

19.4.3. faults in FibreStream's service providers' networks or Hardware.

19.5. Should the fault lie with another party, FibreStream will make reasonable efforts to advise that other party of the fault. However, FibreStream cannot be held responsible for the other party's performance or lack thereof.

19.6. Should FibreStream attend the Subscriber's premises to repair a fault, FibreStream will then charge the Subscriber a call-out fee.

20. Consent/Authority

20.1. The Subscriber hereby consents/authorises FibreStream at any time, without notice to the Subscriber to obtain information about the Subscriber's profile from any authorised and registered credit reference agency in the Republic of South Africa. The Subscriber consents/authorises FibreStream to provide regular reports in respect of Subscriber's payment conduct to any authorised and registered credit reference agency in the Republic of South Africa.

20.2. The Subscriber consents to receive marketing, promotional updates and client satisfaction surveys from FibreStream.

21. Statutory Compliance

21.1. FibreStream is obliged to comply with certain statutory provisions including, but not limited to, those set out in the following Acts (and their associated regulations):

21.1.1. the Film and Publications Act 65 of 1996;

21.1.2. the Electronic Communications and Transactions Act 25 of 2002;

21.1.3. the Regulation of Interception of Communications and Provision of Communication-related Information Act

(Act 70 of 2003), and

21.1.4. the Electronic Communications Act 36 of 2005.

21.1.5. the Protection of Personal Information Act 4 of 2013.

21.1.6. the Companies Act 71 of 2008.

21.2. FibreStream's compliance with these statutory provisions may require measures that would otherwise be infringements of the Subscriber's privacy, such as interception of the Subscriber's communications. No action will lie against FibreStream for any damages that it may suffer as a result of these measures.

22. Limitation of Liability

22.1. FIBRESTREAM WILL NOT BE LIABLE TO THE SUBSCRIBER OR ANY THIRD PARTY FOR ANY LOSS THAT RELATES TO OR ARISES FROM THE SERVICES OR THIS AGREEMENT. LOSS INCLUDES DAMAGES AND LEGAL OR OTHER COSTS. DIRECT DAMAGES ARE EXCLUDED, AS ARE INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES, AND FIBRESTREAM WILL NOT BE LIABLE WHETHER THE LOSS WAS THE RESULT OF THE ACT OR OMISSION OF ANY FIBRESTREAM EMPLOYEE, BREACH OF CONTRACT, VICARIOUS OR STRICT LIABILITY.

22.2. IN PARTICULAR, FIBRESTREAM WILL NOT BE LIABLE FOR LOSS ARISING FROM ANY OF THE FOLLOWING:

22.2.1. TERMINATION OF THE AGREEMENT BEFORE COMMENCEMENT OF A SERVICE, DUE TO TECHNICAL INFEASIBILITY;

22.2.2. THE SUBSCRIBER'S FAILURE TO TAKE ADEQUATE SECURITY MEASURES;

22.2.3. ANY ACT OR OMISSION RELATING TO THE TRANSMISSION OF DATA TO AND FROM THE FIBRESTREAM SYSTEM, ITS STORAGE ON THE FIBRESTREAM SYSTEM OR ITS PUBLICATION USING THE FIBRESTREAM SYSTEM TO THIRD PARTIES, INCLUDING FALSE POSITIVES IN SPAM FILTERING;

22.2.4. COMPLIANCE WITH ANY STATUTE DESCRIBED IN CLAUSE 20 (STATUTORY COMPLIANCE);

22.2.5. THE INTERRUPTION, SUSPENSION OR TERMINATION OF THE SERVICES THROUGH NO FAULT OF THE FIBRESTREAM; AND/OR

22.2.6. LOSS OF DATA (INCLUDING FAILURE IN BACKUP OR DISASTER RECOVERY), DAMAGED OR CORRUPTED DATA OR A DELAY OR FAILURE IN TRANSMISSIONS.

22.3. IF FIBRESTREAM IS NONETHELESS FOUND TO BE LIABLE FOR LOSS SUFFERED BY THE SUBSCRIBER, THE TOTAL AMOUNT OF FIBRESTREAM'S LIABILITY RELATING TO OR ARISING FROM THE SERVICES OR THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT OF THE MONTHLY SUBSCRIPTION FEES PAID BY THE SUBSCRIBER FOR THE SERVICE FROM WHICH THE DAMAGE AROSE IN THE 12 (TWELVE) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT THAT CAUSED THE DAMAGE.

22.4. If the CPA is applicable to this Agreement, and any provision of this clause 22 is found by a court or tribunal with jurisdiction over FibreStream to be unfair, unreasonable or unjust, then that provision (whether it be a word, phrase or sub-clause) will be severed, and the remainder of this clause 22 will have full force and effect.

22.5. FIBRESTREAM SHALL NOT BE LIABLE FOR ANY FRAUDULENT ACTIVITIES THAT MAY OCCUR DUE TO ACCESS BY THIRD PARTIES INTO THE SUBSCRIBER'S ACCOUNT/ CONNECTION/PREMISES/VOICE PLATFORM.

22.6. THE SUBSCRIBER SHALL REMAIN LIABLE FOR THE VOICE ACCOUNT IN THE EVENT OF SUCH FRAUDULENT ACTIVITY TAKING PLACE IN THE SUBSCRIBER'S ACCOUNT.

22.7. FIBRESTREAM RESERVES ITS RIGHT TO SCAN THE SUBSCRIBER'S VOICE PLATFORM/HARDWARE FOR ANY EXTERNAL VULNERABILITIES/RISKS.

22.8. NOTHING CONTAINED IN THIS CLAUSE 22 WILL LIMIT THE SUBSCRIBER'S LIABILITY IN RESPECT OF CHARGES INCURRED FOR ONGOING SERVICES.

22.9. In the case of ambiguity, this clause 22 will take precedence over any expression of the Parties' intention, whether express or implied, that may be contained elsewhere in this Agreement.

23. Indemnity

23.1. THE SUBSCRIBER, UNLESS HE/SHE IS A NATURAL PERSON USING THE SERVICE FOR PRIVATE PURPOSES, WILL INDEMNIFY, DEFEND, AND HOLD FIBRESTREAM HARMLESS FROM ALL CLAIMS BROUGHT AGAINST FIBRESTREAM BY THIRD PARTIES AS A RESULT OF:

23.1.1. THE SUBSCRIBER'S USE OF THE SERVICES OTHER THAN AS ALLOWED IN THIS AGREEMENT OR ACCEPTABLE

USE POLICY;

23.1.2. BREACH OF PRIVACY RIGHTS, OR INFRINGEMENT OF ANY LAW (WHETHER SOUTH AFRICAN OR FOREIGN) GOVERNING DATA PROTECTION OR THE CROSS-BORDER DATA FLOWS BY THE SUBSCRIBER;

23.1.3. THE INFRINGEMENT OF ANY RIGHT IN INTELLECTUAL PROPERTY BY THE SUBSCRIBER;
OR

23.1.4. ANY OTHER WRONGFUL ACT OR OMISSION BY THE SUBSCRIBER.

23.2. THE INDEMNIFIED CLAIMS WILL INCLUDE LEGAL COSTS ON THE SCALE AS BETWEEN
ATTORNEY AND OWN SUBSCRIBER AND ANY ADDITIONAL LEGAL COSTS.

24. Warranties

24.1. FibreStream warrants that:

24.1.1. it has the facilities, infrastructure, capacity and capability to provide the Services;

24.1.2. it will provide the Services:

24.1.2.1. with promptness and diligence and in a workmanlike manner and in accordance with the practices and professional standards of well-managed companies performing services similar to the Services; and

24.1.2.2. in accordance with all applicable laws and regulations.

24.2. Hardware is guaranteed under the manufacturer's product specific warranties only, and all other guarantees and warranties including common law guarantees and warranties in relation to Hardware are hereby specifically excluded by FibreStream.

24.3. Unless expressly set out in this clause and elsewhere in this Agreement and to the maximum extent permitted by law, FibreStream does not make any representations nor does it give any warranties or guarantees of any nature whatsoever in respect of the Hardware or Services, which are provided on a “reasonable effort” basis, and all warranties which are implied or residual at common law are hereby expressly excluded.

24.4. For the avoidance of doubt, FibreStream does not warrant connection quality (including throughput, availability, jitter, latency and packet loss).

25. Cancellation

25.1. The Subscriber may cancel this Agreement:

25.1.1. upon the expiry of its fixed term, without penalty or charge on:

25.1.1.1. A calendar months notice if the Subscriber is a natural person, or

25.1.1.2. if the Subscriber is not a natural person 3 (three) calendar month's notice.

25.1.2. at any other time, by giving FibreStream a calendar months notice in writing subject to 25.1.3 and 25.2.

25.1.3. FibreStream reserves the right to charge a reasonable cancellation fee on all contract terminations.

25.2. The Subscriber must submit his/her request for cancellation and the completed cancellation request form which is available on the FibreStream website ([download business cancellation form](#)) ([download user cancellation form](#)). Completed forms should be emailed to cancellations@Fibrestream.co.za.

25.3. FibreStream may cancel this Agreement 20 (twenty) Business Days after giving written notice to the Subscriber of a material failure by the Subscriber to comply with the Agreement, unless the Subscriber has rectified the failure within that time.

25.4. THE SUBSCRIBER ACKNOWLEDGES THAT SHOULD HE/SHE/THEY TERMINATE THIS AGREEMENT FOR ANY REASON WHATSOEVER PRIOR TO THE EXPIRY OF THE TERM, HE/SHE/THEY SHALL BE OBLIGED TO PAY FIBRESTREAM REASONABLE EARLY CANCELLATION CHARGES AS WELL AS ANY OTHER APPLICABLE CHARGES DUE AT THE TIME OF CANCELLATION. ANY HARDWARE RETURNED AS A RESULT OF THE SUBSCRIBER TERMINATING THIS AGREEMENT IN TERMS OF THIS CLAUSE, HAS TO BE RETURNED AT THE SUBSCRIBER'S EXPENSE AND IN ITS ORIGINAL CONDITION AND PACKAGING.

25.5. The Subscriber may under no circumstances terminate this Agreement without penalty and demand reimbursement for Hardware or any damages of whatsoever nature as a result of the Subscriber's relocation to an area outside of FibreStream's coverage area. It remains the responsibility of the Subscriber to ensure that he/she/it is satisfied with coverage in the area where the Services are provided by FibreStream. Should the Subscriber opt to terminate the Agreement before the expiry date, FibreStream reserves its right to impose an Early Cancellation Charge on the Subscriber.

25.6. An early cancellation fee will also apply to the Subscriber from the moment FibreStream receives confirmation of a service order which has been placed for the Subscriber.

25.7. The Subscriber acknowledges that on a Month 2 Month agreement various fees are billed at R0, should the client cancel the service, he/she/it will be liable to the cost of R1999.

26. Breach

26.1. If either Party:

26.1.1. fails to comply with any of its obligations or commits a breach of this Agreement and fails to remedy the default or breach within 5 (five) Business Days after having received a written notice to do so,

26.1.2. resolves to begin business rescue proceedings as contemplated in chapter 6 of the Companies' Act 71 of 2008,

26.1.3. is placed in provisional or final liquidation or sequestration, or judicial management,

26.1.4. enters into any compromise arrangements with its creditors, or

26.1.5. fails to satisfy a judgment taken against it within 10 (ten) Business Days, the other Party will be entitled either:

26.1.6. to hold the Party in breach to the Agreement; or

26.1.7. to cancel the Agreement.

26.2. The provisions of this clause will not affect the rights of either Party to claim damages in respect of a breach of any of the provisions of this Agreement.

27. Personal information

27.1. THE SUBSCRIBER HEREBY EXPRESSLY AGREE THAT FIBRESTREAM MAY COLLECT, USE AND SHARE YOUR PERSONAL INFORMATION THAT HE/SHE HAS PROVIDED ON THE BASIS AND WITH THE PEOPLE AS SET OUT IN OUR PRIVACY POLICY AVAILABLE and as per the regulations of the POPI Act.

28. Assignment, Subcontracting and Reselling

28.1. FibreStream will 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. However, the Subscriber will require written consent from FibreStream should he/she/they choose to cede, assign, delegate or otherwise transfer the benefit or burden of all or any part of this Agreement which consent will not be unreasonably withheld or delayed.

28.2. FibreStream may sub-contract its obligations in terms of this Agreement to a third party, provided that:

28.2.1. such sub-contracting will not absolve FibreStream from responsibility for the provision of the Service or complying with its obligations in terms of this Agreement; and

28.2.2. FibreStream will at all times remain the sole point of contact for the Subscriber.

29. Relationship between the Parties

29.1. The Parties agree that the relationship between them is one of commissioner and independent contractor, and nothing in this Agreement will be construed as giving rise to a relationship of employer and employee, whether between Subscriber and FibreStream or between Subscriber and any officer, employee or agent of FibreStream.

29.2. This Agreement does not give rise to a relationship of principal and agent. Neither Party will be entitled to conclude any agreement on behalf of the other, nor to sign any document on behalf of the other, unless this is specifically authorised in writing by the other.

29.3. FibreStream's right to terminate this Agreement will be regulated by the law of contract alone and neither FibreStream or its employees, officers or agents is "an employee" of the Subscriber as defined in the Labour Relations Act 66 of 1995, s1 of the Basic Conditions of Employment Act 75 of 1997 or any similar statute.

29.4. The relationship between the Parties will not be an exclusive one and both Parties will be free to enter into agreements similar to this one with third parties.

29.5. Both Parties to this Agreement (including the employees, officers and agents of the Parties) undertake to use their best endeavours and exercise good faith in implementing the provisions of this Agreement according to its intent and purpose and they further undertake to pass such resolutions and do all such acts and deeds as may be necessary, to this end.

29.6. In order to facilitate the effective provision of the Services, the Subscriber will:

29.6.1. allow FibreStream reasonable access to its premises in order for FibreStream to provide the Services, and the Subscriber will procure that its employees, officers and agents

co-operate with and give FibreStream any necessary assistance in the provision of the Services

29.6.2. comply with any reasonable instructions given by FibreStream relating to the provision of the Services, as well as

FibreStream's relevant policies and procedures, which will be made available to the Subscriber on request;

29.6.3. enter into any agreement with a supplier necessary to allow FibreStream to provide the Services; and

29.6.4. respond to any request for information, access or authorisation as soon as reasonably possible, having regard to the circumstances of the request.

30. Force Majeure

30.1. Neither Party will be liable for any delay or failure in performing any obligation under this Agreement due to any cause beyond its reasonable control, including without limitation: industrial action, sabotage, terrorism, civil commotion, riot, war, fire, explosion, storm, flood, or other natural physical disaster, any act or policy of any state or government or other authority having jurisdiction over either Party, sanctions, boycott or embargo, termination or suspension of upstream service.

31. Notices

31.1. The Parties choose their addresses where they will accept service of any notices/documents for all purposes arising from this Agreement (domicilium citandi et executandi):

31.1.1. in the case of FibreStream, 79 Hennie Alberts Street, Brackenhurst, Alberton, 1448, and

31.1.2. in the case of the Subscriber the addresses set out in the Subscriber Application Form.

31.2. Either Party may vary its given address or other contact details by notifying the other Party in writing.

31.3. Any notice given in terms of this Agreement must be in writing and any notice given by any Party to another ("the addressee") which:

31.3.1. is delivered by hand will be deemed to have been received by the addressee on the date of delivery; or

31.3.2. is transmitted by email will be deemed to have been received upon confirmation of receipt (not automated receipt) thereof by the addressee; or

31.4. Despite the above:

31.4.1. any notice that FibreStream sends by email to an email account hosted on the FibreStream System by the Subscriber will be deemed to have been received by the Subscriber on the date of transmission; and

31.4.2. if a written notice or communication is actually received by one of the Parties from the other, this will be adequate written notice or communication to that Party.

32. Acknowledgments

32.1. The Subscriber acknowledges that the display of products is not a guarantee of the availability of any Hardware and that certain Hardware products may not be in stock at the time of submitting your order and delivery thereof may be delayed. The display of any product will not constitute an offer from FibreStream.

32.2. The Subscriber acknowledges that the Service is provided on a best effort basis, FibreStream may not be held liable for any consequence/s as a result of the failure of the Service to fulfil the Subscriber's expectations.

32.3. The Subscriber acknowledges having read the voice rates as published on <http://www.FibreStream.co.za>.

33. Interpretation

33.1. This Agreement will be governed by and construed in accordance with the law of the Republic of South Africa.

33.2. In this Agreement, unless the context requires otherwise: – words importing any one gender will include the other gender; the singular will include the plural and vice versa; a reference to natural persons will include created entities incorporated (corporate or unincorporate) and vice versa.

33.3. Words and expressions defined in any clause will, for the purposes of that clause, bear the meanings assigned to such words and expressions in such clause.

33.4. If any provision is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only a definitions clause, effect will be given to it as if it were a substantive provision in the body of the agreement.

33.5. Clause headings have been inserted for convenience only and will not be used for nor assist or affect its interpretation; where a clause number is cited, it will be deemed to include reference to all subclauses of that numbered clause.

33.6. The rule of construction that an agreement will be interpreted against the Party responsible for its drafting or preparation will not apply.

34. General

34.1. This Agreement is the whole of the agreement between the parties, and no document or statement not mentioned above will form part of it. Only a written variation, waiver or cancellation agreed to and signed by both Parties will be of any effect.

34.2. If one Party chooses not to enforce any part of this Agreement, that does not mean that the Party cannot enforce that part at a later time. If any part of the Agreement is found to be unenforceable, the rest will still

be enforceable.

34.3. The signatories hereto acting in representative capacities warrant that they are authorised to act in such capacities and accept personal liability under this Agreement should they prove not to be so authorised.

34.4. In the event that any part of this Agreement is found to be partially or fully unenforceable for any reason, this will not affect the application or enforceability of the remainder of this Agreement.

34.5. If the CPA applies to this Agreement, the provisions of this Agreement will not be interpreted in such a way as to exclude the Subscriber's rights under sections 54 (Right to quality service), 55 (Right to safe, good quality goods),

or 56 (Implied warranty of quality) of the CPA. These sections however apply only to the minimum possible extent. Unless the contrary is stated elsewhere in this Agreement, the Subscriber will have no rights in respect of quality of service, safe & good quality goods or implied warranty of quality beyond those explicitly stated in this agreement.

35. Contact Information

35.1.1. Relevant contact information for FibreStream's departments are available on FibreStream's Website.