

1. INTRODUCTION AND INTERPRETATION

- 1.1 The Customer Agreement (as defined below) comprises of the following –
- 1.1.1 the Fibre Subscription Form by way of digital copy on the ISP website or hand-held copy;
 - 1.1.2 the Debit Order Authorisation Form or digital debit order or card authorisation made via the Customer Portal;
 - 1.1.3 the Standard Terms and Conditions; and
 - 1.1.4 the Product Terms as defined in the fibre subscription form or by way of additional information provided in writing to the Customer on an official Gigawave letterhead.
- 1.2 To the extent of any inconsistency between the Fibre Subscription Form, the Debit Order Authorisation Form, the Product Terms (if applicable) and the Standard Terms and Conditions, the provisions of all sections apply concurrently to the extent that it is possible to apply and comply with one or more of the inconsistent provisions without contravening the other(s) and, to the extent that it is not possible to apply or comply with one or more of the inconsistent provisions without contravening any other, the conflict shall be resolved by applying the following order of preference –
- 1.2.1 the Fibre Subscription Form; thereafter
 - 1.2.2 the Debit Order Authorisation Form; thereafter
 - 1.2.3 the Standard Terms and Conditions; thereafter
 - 1.2.4 the Product Terms.
- 1.3 Terms and Conditions not separately defined in the Fibre Subscription Form shall bear the meanings given to them in the Standard Terms and Conditions.
- 1.4 **Parties**
- This Customer Agreement is made between the ISP, FFS and the Customer.

2. DEFINITIONS

- 2.1 The following expressions shall bear meanings assigned to them below and cognate expressions shall bear corresponding meanings -
- 2.1.1 "**Activation Date**" means the date that the Services are configured and made available for use to the Customer;
 - 2.1.2 "**Anticipatory Costs**" means those costs levied to the Customer to recover the charges that the ISP would have billed for the duration of this Customer Agreement had this Customer Agreement run its full term;
 - 2.1.3 "**Applicable Laws**" means (in relation to a Party and to the extent that it applies to the provision of the Services by the ISP and the use thereof by the Customer) all and any -
 - 2.1.3.1 statutes (including, but not limited to, the ECA, CPA and RICA) and subordinate legislation and common law; and
 - 2.1.3.2 regulations; and
 - 2.1.3.3 ordinances and by laws; and
 - 2.1.3.4 directives, codes of practice, circulars, guidance notices, judgments and decisions of any competent authority, or any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation; and
 - 2.1.3.5 other similar provisions,
 - 2.1.3.6 from time to time, compliance with which is mandatory for that Party;
 - 2.1.4 "**AUP**" means the ISP's acceptable use policy, available at www.gigawave.co.za/aup;
 - 2.1.5 "**Business Day**" means any day which is not a Saturday, a Sunday or an official public holiday in South Africa;
 - 2.1.6 "**Commencement Date**" means the date when the ISP has accepted and processed the Customer Agreement or notified the Customer that it has agreed to provide the Customer with the

Services set out in a Customer Agreement or from the date that a new agreement is concluded;

- 2.1.7 "**Connection Date**" means the date on which the relevant fibre network operator (or such other person approved to do so by the ISP) installs and activates the fibre line at the Customer's premises;
- 2.1.8 "**CPA**" means the Consumer Protection Act No 68 of 2008;
- 2.1.9 "**Customer**" means the customer or end-user of the Services as **described** in the Fibre Subscription Form and "**Consumer**" shall be a reference to the Customer where the Customer is a 'consumer' as defined in the CPA. "Individual Consumer" means a Consumer who is a natural person;
- 2.1.10 "**Customer Agreement**" means, collectively, the Fibre Subscription Form, the Debit Order Authorisation Form and the Standard Terms and Conditions, together with any applicable Product Terms concluded between the Customer and the ISP;
- 2.1.11 "**Customer Portal**" means the digital portal used by the client to manage and view data about their account with the ISP
- 2.1.12 "**Debit Order Authorisation Form**" means the written debit order authorisation and mandate for payment instructions to which these Standard Terms and Conditions are attached and in terms of which the Customer authorises payments by way of monthly debit order;
- 2.1.13 "**Due Date**" means the date on which any outstanding amounts owed by the Customer to the ISP become due and payable, which amounts will be reflected on the relevant invoice;
- 2.1.14 "**ECA**" means the Electronic Communications Act No 36 of 2005;
- 2.1.15 "**FFS**" means Fibre Funding Solutions Proprietary Limited (registration number 2021/650814/07), its successors and assigns;
- 2.1.16 "**Fibre Subscription Form**" means the written or digital fibre application subscription form to which these Standard Terms and Conditions are attached or available digitally and which set outs the details of the Customer, the Services and any other administrative data. For the sake of clarity, this includes the ISP website where a client may sign up digitally;
- 2.1.17 "**ICASA**" means the Independent Communications Authority of South Africa, and its successors;
- 2.1.18 "**Initial Period**" means the initial period of 24 consecutive months;
- 2.1.19 "**Interest Rate**" the variable interest which Investec Bank Limited (or any other bank nominated stipulated by the ISP from time to time) charges from time to time as its prime rate, which shall be a nominal annual compounded monthly rate, as calculated and charged by that bank and as certified by any manager or director of that bank, whose appointment need not be proved and whose certificate shall, in the absence of manifest error, be final and binding on the Parties;
- 2.1.20 "**ISP**" means Gigawave Solutions (Pty) Ltd;
- 2.1.21 "**ISPA**" means the Internet Service Providers Association;
- 2.1.22 "**ISP Network**" means the electronic communications network operated by the ISP to render electronic communications services in terms of the ISP's electronic communications network and services licences. The ISP Network includes circuits that are self-provisioned by the ISP under its licenses or procured by the ISP from third-party licensees;
- 2.1.23 "**ISP Portal**" means any extranet(s) or system(s) with web-based access (or a combination thereof) approved by the ISP where the Customer and its authorised employees, agents and representatives may have access to, amongst other things and where applicable, -
 - 2.1.23.1 measurement data of selected Services;
 - 2.1.23.2 control panels and management interfaces to provision, upgrade, downgrade, increase, decrease (in general to manage) the Services;
 - 2.1.23.3 process termination of Services;
- 2.1.24 "**Managed Service Equipment**" means equipment managed and used by the ISP in the provision of the Services;

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- 2.1.25 "NCA" means the National Credit Act No 34 of 2005;
- 2.1.26 "Office Hours" means 8h00 to 22h00 on Business Days and 08h00 to 17h00 on weekends;
- 2.1.27 "Parties" means the ISP, FFS and the Customer and "Party" shall be a reference to either one of them, as the context may require;
- 2.1.28 "Product Terms" means the specific terms and conditions applicable to the product selected by the Customer as part of the Services provided to the Customer;
- 2.1.29 "Renewal Period" means a period of equal to that of the Initial Period, which renewal period shall commence on the day immediately following the last day of the Initial Period;
- 2.1.30 "RICA" means the Regulation of Interception of Communications and Provision of Communication Related Information Act, No 70 of 2002;
- 2.1.31 "Service(s)" means the fibre product service(s) as listed and described in the Fibre Subscription Form;
- 2.1.32 "Standard Terms and Conditions" means the standard terms and conditions set out in this document;
- 2.1.33 "Subscriber Equipment" has the meaning ascribed thereto in section 1 of the ECA and, for the avoidance of doubt, excludes the Managed Service Equipment;
- 2.1.34 "Downgrade" means any change in package or service that results in a lower monthly recurring cost to the end user that is not as a result of price reductions implemented voluntarily by the ISP
- 2.2 any reference to any statute, regulation, other legislation, directives, codes of practice, circulars, guidance notices or judgments shall be a reference to that statute, regulation, other legislation, directive, code of practice, circular, guidance notice or judgment as at the Commencement Date, and as amended or substituted from time to time;
- 2.3 where any number of days is to be calculated from a particular day, such number shall be calculated as excluding such particular day and commencing on the next day. If the last day of such number so calculated falls on a day which is not a Business Day, the last day shall be deemed to be the immediately preceding day which is a Business Day;
- 2.4 any reference to days (other than a reference to Business Days), months or years shall be a reference to calendar days, months or years, as the case may be;
- 2.5 where any day for the performance of any obligation and/or the payment of any amount in terms of this Customer Agreement falls on a day other than a Business Day, such obligation shall be performed and/or such amount shall be paid on the immediately succeeding day which is a Business Day;
- 2.6 the use of the word "includes" or "including" followed by a specific example/s shall mean "includes without limitation" or "including without limitation" (as applicable) and shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example/s.
- ### 3. COMMENCEMENT, DURATION, RENEWAL, TERMINATION & DOWNGRADES
- 3.1 This Customer Agreement will become binding on the Parties on the Commencement Date and will continue to be binding until the end of the Initial Period, unless renewed in terms of 3.4 or terminated in terms of 3.6 or as otherwise provided in this Customer Agreement.
- 3.2 With the Services commencing from the Activation Date.
- 3.3 The Customer agrees that the ISP will be entitled to charge the Customer from the Connection Date in respect of any services bundled with a circuit, regardless of whether any bundled value-added services have been activated or not, as the cost of the circuit is the most significant component of the bundled Service.
- 3.4 This Customer Agreement shall automatically renew for the Renewal Period, unless -
- 3.4.1 the Customer gives the ISP six (6) months written notice of its election not to renew this Customer Agreement prior to the expiration of the Initial Period; or
- 3.4.2 the Parties conclude a new Agreement.
- 3.5 Should the Customer terminate or vary the Services prior to the end of the Initial Period, the Customer will be liable for the Anticipatory Costs that the ISP has incurred owing to such termination or variation, which Anticipatory Costs shall be payable by the Customer on demand.
- 3.6 The Customer will have the right to terminate this Customer Agreement, for any reason whatsoever, provided that -
- 3.6.1 the Customer gives the ISP at least six (6) months' notice to take effect at the end of the Initial Period or the Renewal Period;
- 3.6.2 such termination shall be subject to a cancellation fee, which cancellation fee will be determined by the ISP in accordance with the provisions of the CPA at the time of the notice of cancellation and includes but is not limited to any costs the ISP incurred on behalf of the Customer, such as installation, connection and activation fees;
- 3.6.3 the Customer pays to the ISP any arrear amounts outstanding by no later than the Due Date; and
- 3.6.4 the Customer completes a cancellation request to help@gigawave.co.za. Cancellations received by email will be followed up with an invoice setting out the cancellation fee (if any) of each Service, which is due and payable prior to the cancellation being processed by the ISP,
- 3.7 Email cancellations must contain, -
- 3.7.1 the Customer's full name;
- 3.7.2 the description of the Service(s) to be cancelled;
- 3.7.3 reason for cancellation
- 3.8 The ISP shall not be deemed to have received a cancellation notice unless it has issued the Customer with written confirmation of receipt.
- 3.9 The ISP's processing of a cancellation request shall be without prejudice to its right to any claim that it may have in terms of this Customer Agreement. The Customer acknowledges that in many instances cancellation of Services is not reversible or may attract financial penalties, and therefore the ISP may delay the actual termination of the Services after acknowledging receipt of a cancellation notice to communicate to the Customer the consequences of termination and to allow the Customer to withdraw a cancellation notice if so desired.
- 3.10 The Customer shall remain liable for any charges raised by the ISP against the Customer's account after the Customer has sent the ISP a cancellation notice that is not processed in the manner set out herein.
- 3.11 Notwithstanding 3.6, in the event that the Customer continues use of the Services despite the termination of this Customer Agreement, the Customer will remain liable for and promptly pay on demand all amounts that would have been due to the ISP as a result of the use of the Services (which, for the avoidance of doubt, are separate and distinct from the Anticipatory Costs) and this Customer Agreement shall be deemed to continue to apply until such time as all amounts due to the ISP have been paid in full.
- 3.12 After termination of this Customer Agreement for whatever reason -
- 3.12.1 the ISP may, on reasonable notice and in the Customer's presence, enter the Customer's premises to remove the Managed Service Equipment which is owned by the ISP; and
- 3.12.2 the Customer will remain liable for and will pay on demand all charges and/or costs outstanding at the time of termination or accrued thereafter because of the termination.
- 3.13 The Customer may Downgrade their line for a fee of R750.00 incl VAT only after the Initial Period by providing six (6) calendar months' notice to the ISP by email to accounts@gigawave.co.za
- 3.14 The Customer may move their connection to a new address (subject to feasibility and availability at the new address). Each move of the connection constitutes a new agreement between the ISP and the Customer and is subject to a new Initial Period from the date that the services are activated at the new address. In the event that the new address is not feasible for services, the Customer will be subject to the provisions of 3.5 for termination of services

4. INSTALLATION, USE, FAILURE OF THE SERVICES, THEFT & MAINTENANCE

4.1 Installation

- 4.1.1 Except for that portion of the Managed Service Equipment that the Customer has fully paid for, all equipment installed or provided by the ISP remains the property of the ISP.
- 4.1.2 The Services are, unless otherwise agreed in the Product Terms, exclusive of any required Subscriber Equipment. The Managed Service Equipment (and Subscriber Equipment, if applicable) will be either leased or sold to the Customer at the prices, fees or rates set out in the Product Terms on the ISP's website or product brochures.
- 4.1.3 The Customer authorises the ISP and its representatives to enter or have access to its premises as reasonably necessary, at mutually agreed upon times, to install, maintain, inspect, repair or remove the Equipment or to maintain, investigate, protect, modify or improve the operation of any services or the facilities.
- 4.1.4 The ISP shall install the circuit and the Managed Service Equipment at the Customer's premises against payment of the relevant installation fee and deposit as set out in the Product Terms.
- 4.1.5 If the Customer requests that an installation be attended to after Office Hours, the ISP may, if possible, charge an after-hours maintenance charge on a time-and-material basis as determined by the ISP from time to time.
- 4.1.6 Should there be no conduit-pipes available for the ISP's use in any building where the ISP is required to install a Service requiring conduit pipes, the ISP may, at its discretion, -
 - 4.1.6.1 refuse to provide the Service in that building or any part thereof until such time as the conduit-pipes or other facilities have been so installed; or
 - 4.1.6.2 quote an installation cost in respect of the required conduit pipes, and if accepted by the Customer, install at the Customer's cost the required conduit pipes or other facilities.
- 4.1.7 The ISP's duty to install the Managed Service Equipment (and Subscriber Equipment, if applicable) will be discharged upon such installation and the Customer has access to the Services.
- 4.1.8 Should the Customer not be the owner of the premises where the Services and/or where applicable the Managed Service Equipment is to be installed, the Customer must, before any installation by the ISP, at its own cost and expense, obtain written permission from the owner of such premises for any such installation. The Customer indemnifies the ISP against damages or claims resulting from the failure to obtain such permission including Anticipatory Costs which may have to be incurred by the ISP should the ISP have to remove any circuit and/or the selected Subscriber Equipment from the premises.
- 4.1.9 The Customer must, at its own cost and expense, ensure that optimum environmental conditions as may be required for the proper management and/or functioning of the circuit and Managed Service Equipment or Subscriber Equipment be provided, such as adequate power supply, ventilation, lighting and wall/rack space.

4.2 Use of the Services

- 4.2.1 The Service may not be used to -
 - 4.2.1.1 knowingly create, store or disseminate any illegal content;
 - 4.2.1.2 infringe on any third parties' intellectual property or copyright; and
 - 4.2.1.3 send unsolicited email.
- 4.2.2 For the ISP to ensure the provision of the Service, to protect the integrity of the ISP Network or to deal with emergencies, the Customer must always whilst this Customer Contract is in place -
 - 4.2.2.1 comply with any instructions issued by the ISP which concern the Customer's use of the Services; and
 - 4.2.2.2 provide the ISP with all information relating to the Customer's use of the Services that the ISP may reasonably require from time to time.
- 4.2.3 The Customer may not sell the ISP's services to any third party.

4.3 Failure and/or unavailability of the Services

- 4.3.1 The Customer recognises that the internet and data networks consist of multiple participating networks that are separately owned and not subject to the ISP's control. Accordingly, the ISP does not warrant that the ISP services will be operational on a 24 (twenty-four) hour 365 (three hundred and sixty-five) days per year basis.
- 4.3.2 Furthermore, the ISP expressly advises, and the Customer acknowledges and accepts that the Subscriber Equipment is not manufactured by the ISP, but by third parties. In most cases, the ISP will not be able to open certain Subscriber Equipment or to test or operate the selected Subscriber Equipment to ensure that it is fit for purpose and/or are intact before they are handed to the Customer.
- 4.3.3 Considering the disclosures in 4.3.1 and 4.3.2, the ISP expressly stipulates and the Customer acknowledges that the ISP cannot warrant or guarantee that the Services and/or the Subscriber Equipment will -
 - 4.3.3.1 be free of errors or interruptions;
 - 4.3.3.2 be available;
 - 4.3.3.3 be fit for any purpose;
 - 4.3.3.4 not infringe on any third-party rights;
 - 4.3.3.5 be secure and reliable,
except where the Services, the circuit and/or Subscriber Equipment are found to be defective and such defect has been solely caused by the ISP under sections 54, 55 and 56 of the CPA, where applicable.
- 4.3.4 Considering the above disclosures, the Customer agrees that it will not be allowed to -
 - 4.3.4.1 withhold any amounts due and owing to the ISP; or
 - 4.3.4.2 deduct any monies, or
 - 4.3.4.3 allege a breach of contract in respect of any temporary unavailability of the Services, the circuit or the Managed Service Equipment, except and to the degree that the ISP is solely responsible for any such unavailability, or failure.

4.4 Theft and/or Loss

- 4.4.1 If such Managed Service Equipment or Subscriber Equipment is lost, stolen or damaged or sold, leased, mortgaged, transferred, assigned, encumbered or not returned, the Customer shall pay to the ISP the full replacement cost of such Managed Service Equipment or Subscriber Equipment (as applicable), together with any costs incurred by the ISP in seeking possession of such Managed Service Equipment or Subscriber Equipment.
- 4.4.2 Risk in the loss, theft or damage of the Managed Service Equipment and where relevant the Subscriber Equipment will pass to the Customer on the date of delivery to the Customer's premises.

4.5 Maintenance

- 4.5.1 The ISP shall attend to any faults reported by the Customer during Office Hours and shall apply its reasonable endeavours to have the affected Service restored in the shortest possible time.
- 4.5.2 Should the ISP determine that the fault reported by the Customer was caused by the Customer or by any Subscriber Equipment or by any other equipment that the ISP has not agreed to cover, the Customer will be liable for payment of the applicable call-out charges, as determined by the ISP from time to time.

5. GENERAL UNDERTAKINGS

The Customer undertakes -

- 5.1 to adhere to all Applicable Laws;
- 5.2 to take reasonable care with the Managed Service Equipment and/or Subscriber Equipment;
- 5.3 not to sell, lease, mortgage, transfer, assign or encumber such Managed Service Equipment and/or Subscriber Equipment;

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- 5.4 not to re-locate such Managed Service Equipment and/or Subscriber Equipment without the ISP's permission;
- 5.5 to inform any landlord that such Managed Service Equipment and/or Subscriber Equipment (as applicable) is owned by the ISP and therefore not subject to any landlord's hypothec;
- 5.6 to return such Managed Service Equipment and/or Subscriber Equipment (as applicable) to the ISP at its own expense upon termination of the services to which the Equipment relates;
- 5.7 to engage with the ISP employees and designated contractors in a courteous, respectful and professional manner;
- 5.8 to raise any issues that it may be experiencing through a trouble ticket using the relevant telephonic, email or online facilities available to it and provide the ISP with any pertinent information that it may require in resolving the trouble ticket; and
- 5.9 to abide by the ISP's AUP.

6. PAYMENT TERMS

6.1 Billing

- 6.1.1 In consideration for the supply of and access to the Services, the Customer agrees and undertakes to pay to the ISP the amounts notified by the ISP from time to time. Unless otherwise agreed, billing will commence on the Activation Date.
- 6.1.2 The ISP will provide the Customer with statements and invoices for the amounts payable by the Customer for the billing period. Such statements and invoices shall be sent by way of email and are available for download from the ISP Portal.
- 6.1.3 Should an event arise which prevents the ISP from determining an accurate evaluation of the usage charges for the billing period in question, the usage charges shall be set as the average usage charges for the preceding six (6) billing periods.
- 6.1.4 The invoice sent by the ISP to the Customer shall be prima facie proof of the amount due by the Customer to the ISP. The Customer is entitled to query or dispute any part of the invoice as set out in 10.
- 6.1.5 Should the ISP determine that the disputed amount is an error, the ISP shall credit the amount incorrectly debited. Should the ISP determine and inform the Customer that the disputed amount was billed correctly, the disputed amount shall gain interest at the Interest Rate and shall be paid no later than the Due Date of the following invoice.

6.2 Payments by Debit Order

- 6.2.1 Invoices are payable by the Customer on presentation by way of a monthly debit order, save where the Customer pays annually in advance. The initial invoice is issued upon activation of the Services and becomes payable upon presentation.
- 6.2.2 All amounts due and payable in terms of this Customer Agreement shall be paid free of exchange and without deduction or set-off.
- 6.2.3 Unless otherwise agreed the debit order authorisation will, subject to 6.2.2 above, in terms of the default billing procedure, -
 - 6.2.3.1 commence on the Activation Date and will continue and not be revoked until termination of this Customer Agreement or until all amounts due and owing to the ISP have been fully and finally discharged;
 - 6.2.3.2 in the first instance be collected immediately or within five (5) Business Days following the Activation Date and immediately collect -
 - 6.2.3.2.1 any pro rata subscription charges due in advance for the current month; and
 - 6.2.3.2.2 any subscription charges due in advance for the following month; and
 - 6.2.3.2.3 any outstanding setup and/or hardware charges (whether delivered or to be delivered) or the like; and
 - 6.2.3.2.4 will thereafter be collected on the date nominated in the Debit Order Authorisation Form.

6.2.4 The Customer shall be liable and responsible for payment until such time as payment has been received into the ISP's bank account.

6.2.5 The Customer shall be in breach where, -

6.2.5.1 the Customer cancels the debit order without the ISP's prior written consent; and/or

6.2.5.2 the debit order is returned unpaid or stopped and/or the credit card account be rejected,

and the ISP shall have the right to temporarily suspend the Customer's account until such time as the arrear amounts together with any interest thereon have been settled in full.

6.3 Changes to charges

6.3.1 The ISP shall be entitled to increase any amounts billable relative to the Consumer Price Index, between January and April annually.

6.3.2 Should there be any price increase on the components of the Services beyond the control of the ISP, the ISP shall be entitled to increase the charges of the affected Services in proportion to such increase in cost.

6.3.3 Any increase contemplated by this 6.3 shall be communicated to the Customer in writing.

6.3.4 The Customer shall be entitled to terminate this Customer Agreement without penalty where any increase contemplated by this 6.3 render the Services unaffordable by the Customer, provided that the Customer gives the ISP no less than twenty (20) Business Days written notice of its election to terminate this Customer Agreement.

6.4 Arrear accounts

6.4.1 Where any amounts due to the ISP remain unpaid on the Due Date, all arrear amounts outstanding will begin to run at the Interest Rate.

6.4.2 The ISP shall be entitled, without prejudice to any of its rights, to temporarily suspend the Services should the account remain in arrears for 14 days or longer and the Customer has not entered into a written settlement agreement, until such time as the outstanding arrear amount is settled.

6.4.3 Suspension of services to the Customer will not result in any discounts to the Customer in any way

6.4.4 A cancellation request will not be processed while the Customer remains in arrears to the ISP for any amount

6.4.5 A Downgrade request will not be processed while the Customer remains in arrears to the ISP for any amount

7. SUSPENSION OF THE SERVICES

The ISP may, from time to time, and on notice where possible, -

7.1 suspend the Services, in the following circumstances, -

7.1.1 for the purposes of routine maintenance, modifications to, or unplanned maintenance of the ISP's network and/or any other systems involved in the delivery of the Services;

7.1.2 to mitigate against fraudulent or suspected fraudulent use or abuse of the Services;

7.1.3 for the purposes set out in 6.4 above;

7.1.4 should there be a third-party infrastructure related problem which has affected the use of the Services;

7.1.5 where the Services are found to contain a security risk or shortcoming which enables the Customer to exploit the Services to the detriment of the ISP; and

7.1.6 where the ISP is obliged to act on a take-down notice;

7.1.7 The ISP may discontinue and/or terminate any part of this Customer Agreement, in the following circumstances, -

7.1.7.1 where the Services have reached the end of their lifespan and is uneconomical to maintain or continue;

7.1.7.2 where there has been an insignificant interest in the use of the Services;

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- 7.1.7.3 in response to an instruction from ICASA or in terms of the ECA or some other law or any authority competent authority to issue such instruction;
- 7.1.7.4 if the Customer has received the Services due to fraud or misrepresentation;
- 7.1.7.5 if the Customer makes or offers to make any arrangement or composition with its creditors or commits any act of insolvency in terms of the Insolvency Act or any other applicable legislation;
- 7.1.7.6 if the Customer is using or permitting the use of the Services or any element thereof for any illegal purpose or in contravention of any Applicable Law;
- 7.1.7.7 for any other reason incidental to any of the above.

8. BREACH

8.1 Should the Customer breach -

- 8.1.1 its payment obligations in terms of 6 and has been suspended for non-payment for a period longer than seven (7) days; or
- 8.1.2 any other term of this Customer Agreement and fails to rectify the breach within the notice period provided for by the ISP,

then the ISP shall have the right to either suspend or cancel this Customer Agreement.

- 8.2 Should the ISP breach any material term of this Customer Agreement, then the Customer shall have the right to provide the ISP with a letter requiring the ISP to remedy the breach within a period of twenty (20) Business Days. Should the ISP neglect or fail to remedy such breach within the twenty (20) Business Day notice period, then the Customer may cancel this Customer Agreement without penalty.
- 8.3 The Customer shall be liable for all costs, including costs on an attorney and client scale, tracing costs and collection commission incurred by the ISP in respect of the enforcement of any obligations of the Customer in terms of this Customer Agreement.
- 8.4 Without diminishing any other claims or remedies which the ISP may have against the Customer in terms of this Customer Agreement or at law, the ISP may terminate this Customer Agreement if the Customer has delayed the installation of the Services for longer than three (3) months and may hold the Customer liable for Anticipatory Costs incurred by the ISP in this regard.

9. SUPERVENING IMPOSSIBILITY

Except as expressly provided for in terms of this Customer Agreement, the ISP shall not be liable to the Customer for failure to perform any obligation because of any acts of God, government restrictions or prohibitions or any other Government act or omission, any act or default of any supplier (including any utility provider), industrial disputes, strikes, lockouts or work stoppages of any kind or any other similar or dissimilar cause, in so far as these were not foreseeable and beyond the ISP's reasonable control.

10. CUSTOMER ASSISTANCE, DISPUTE RESOLUTION AND COMPLAINT HANDLING

10.1 Technical Complaints and Billing Queries

- 10.1.1 The ISP can be contacted for technical support at help@gigawave.co.za and account queries at accounts@gigawave.co.za
- 10.1.2 If the Customer experiences any trouble with any of the Services or with the charges, it must bring the problem to the ISP's attention by raising a trouble ticket with the ISP by email. The issue will then be logged and detailed, and the Customer will be provided with a reference number.
- 10.1.3 The ISP will use its best endeavours to attend to the trouble tickets as soon as it is possible, which will depend on the complexity and nature of the problem as well as resource availability.
- 10.1.4 Where the Customer has exhausted all levels of escalation and remains of the view that the matter has not been resolved to the satisfaction of the Customer, the Customer will have the right to refer the matter to the ISPA, ICASA or any other relevant authority, court or other dispute resolution body.

10.2 Complaints

If the Customer has a complaint that is not related to the performance of the Services or related to a billing query, the Customer must submit a formal complaint to the following email address: complaints@gigawave.co.za

10.3 Single Forum Resolution

The above rights are without prejudice to the Parties' respective rights to pursue a complaint or action in any other forum that has jurisdiction over the matter including the rights to submit the complaint to ISPA or ICASA, provided that the same complaint shall not be lodged at more than one forum.

11. LIMITED LIABILITY AND INDEMNITY

- 11.1 The ISP reserves the right to take measures as may be necessary, in its sole discretion, to ensure security and continuity of service on the ISP's network, including but not limited to identification and blocking or filtering of internet traffic sources which the ISP deems to pose a security risk or operational risk or a violation of its AUP. In addition, the Customer understands that the ISP does not own or control other third-party networks outside of the ISP Network, and is not responsible or liable for filtering or access restrictions imposed by such networks or for the performance (or non-performance) within such networks or within interconnection points between the ISP's network and other third-party networks.
- 11.2 The Customer is responsible for maintaining the security of its internal network from unauthorised access through the Internet. The ISP shall not be liable for unauthorised access to the Customer's network or other breaches of the Customer's network security. The Customer shall remain fully responsible to the ISP for any usage billing billed to the Customer's account up to 30 minutes after the Customer had logged an official support ticket with the ISP requesting suspension of the Services impacted by unauthorised access to the Services.
- 11.3 The ISP assumes no responsibility for the integrity, correctness, retention or content of electronic data transported via its network.
- 11.4 The ISP shall not be liable to the Customer or to any third party for claims that arise or occur because of the Customer's use of the Services, whether such claim, action or damage is direct or indirect, consequential or contingent. The ISP shall not be liable for any loss of life, injury, medical expenses, support, financial loss or financial support, loss of earnings, loss of profit and/or income, loss of revenue, loss of business or goodwill, any other special damages, or any general damages – regardless of whether it was foreseeable or flowed naturally from the use of the Services.
- 11.5 The Customer indemnifies the ISP against any claim or action which may be brought by any third party arising out of Customer's use of the Services or out of the use of the Customer's Services.
- 11.6 The limitation on liability set out above is in addition to any limitation of liability set out elsewhere under this Customer Agreement.

12. PROCESSING OF PERSONAL INFORMATION, RIGHTS TO PRIVACY, RICA AND NCA

12.1 It is recorded that -

- 12.1.1 this Customer Agreement is not a credit agreement as contemplated in the NCA; and
- 12.1.2 this Customer Agreement may be subject to a credit referencing or risk assessment process.
- 12.2 The ISP reserves the right to make general credit reference enquiries about the Customer and to check the correctness of the information that has been supplied. The ISP shall also be entitled to furnish any information relating to the Customer's account and compliance with these conditions to any registered credit bureau.
- 12.3 The Customer warrants and represents that all information supplied by it is accurate, correct and complete.
- 12.4 The ISP will be entitled to decline to activate a product or service that the Customer has applied for if the ISP subsequently reasonably determines that it may not be able to meet its commitments under this Customer Agreement. The ISP is entitled to perform such assessments each time the Customer applies for a service or product.
- 12.5 Customer will provide the ISP with all required personal data and other details which the ISP is required to obtain from the Customer in terms of section 39 or 40 of RICA.

GIGAWAVE STANDARD TERMS AND CONDITIONS

- 12.6 The Customer acknowledges and accepts that where the Customer does not comply with these provisions, it will amount to a material breach by the Customer of this Customer Agreement.
- 12.7 The ISP may under the circumstances as prescribed in RICA, be required to intercept, lock, filter, read, delete, disclose and use communications sent or posted via its network. The ISP shall not be liable to the Customer for any losses, liabilities, damages and claims and for any related costs and expenses suffered by the Customer as a result of the ISP performing any activity referred to in this clause where it is obliged by operation of law to perform such acts.

13. RETURN, EXCHANGE AND REFUNDS

- 13.1 The ISP's policy in respect of exchanges, returns and refunds depends on, inter alia, the type goods and the policy of the manufacturer or supplier thereof. Where the CPA is applicable, the ISP's policy in this regard will comply with the requirements of the CPA in relation to exchanges, returns and refunds.
- 13.2 Warranties, if any, will ordinarily be included in the hardware packaging.
- 13.3 Where the CPA is applicable, the ISP will provide the warranties, undertakings and assurances as required under the CPA but subject to any limitations and restrictions as allowed under the CPA.

14. GENERAL

14.1 Cession, delegation, assignment

The Customer may not cede, delegate, assign, charge, transfer or otherwise dispose of this Customer Agreement or any rights or obligations therein in whole or in part, without the written consent of the ISP and FFS. Notwithstanding the foregoing, the ISP and/or FFS may assign any and all of its rights and obligations hereunder to any third party.

14.2 Applicable laws and Jurisdiction

This Customer Agreement will be interpreted and governed by the laws of South Africa.

14.3 Variation and Amendment

Subject to and save where the right to amend this Customer Agreement, has been mentioned explicitly under this Customer Agreement, no Party may vary the terms of this Customer Agreement unless the other Parties agrees to such variation and the variation is reduced to writing and signed by the Parties.

14.4 Consumer status

Certain rights have been granted to the Customer who is a Consumer. The ISP reserves the right to withhold any of these rights and/or resultant benefits until the Customer can prove to the ISP, which proof may be in the form of a set of financial statements or an identity document, that it is a Consumer (and in the case of a right which it

wants to exercise under section 14 of the CPA, that it is an Individual Consumer). Where the Customer is unable to show that it is a Consumer or Individual Consumer, the ISP reserves the right to reverse or call for a refund of any rights or benefits which are permitted under the CPA and which the Customer has unlawfully taken advantage of.

14.5 Customer details and changes thereto

The Customer agrees to supply the ISP with such information, documentation and signatures that the ISP may reasonably require at the time that this Customer Agreement is concluded, to give effect to the payment arrangements of this Customer Agreement. Any subsequent changes that affect the information supplied to the ISP such as bank account or legal service address must be brought to the immediate attention of the ISP in writing.

14.6 Whole Agreement

This Customer Agreement contains the sole and entire record of this Customer Agreement between the Parties. No Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded in writing and signed by both Parties or otherwise created by operation of law.

14.7 Indulgences

No indulgence, leniency or extension of time which either Party ("the grantor") may grant or show to the other, shall in any way prejudice the grantor or preclude the grantor from exercising any of its rights in the future. Any indulgence or the relaxing of the provisions of this Customer Agreement by the grantor shall not prejudice the right of the grantor to insist on the strict compliance by the defaulting Party of its undertakings and obligations in terms of this Customer Agreement.

14.8 Severability

In the event of any one or more of these terms and conditions being unenforceable, the offending clauses will be severed from the remainder of this Customer Agreement, which will nevertheless continue to be binding and enforceable.

15. LEGAL ADDRESS FOR SERVICE

15.1 The Parties choose the addresses set out below as their chosen place to receive legal notices -

15.1.1 the ISP, at Unit 13 Sunninghill Office Park, Sunninghill, Sandton, Gauteng, 2191;

15.1.2 FFS, at 78 Corlett Drive, 1st Floor, Birnam, Johannesburg ; and

15.1.3 the Customer, at the address set out in the Fibre Subscription Form.

15.2 All notices given in terms of this Customer Agreement shall be in writing. General notices that do not commence legal proceedings shall be sufficiently provided to either Party by way of email, or where applicable by any other electronic messaging service