



ZOOM FIBRE – LINE INSTALLATION

TERMS AND CONDITIONS

1. DEFINITIONS

Unless the context clearly indicates to the contrary, the following words bear the meanings ascribed thereto:

- 1.1. "The Act" - means the Electronic Communications Act 36 of 2005, as amended from time to time, and any regulations, as may be amended or replaced from time to time.
- 1.2. "Agreement" - means the Installation Application Form and these Terms and Conditions which shall apply to the Subscriber.
- 1.3. "Authority" - means the Independent Communications Authority of South Africa established in terms of section 3 of the Independent Communications Authority of South Africa Act, 2000 and its successors who govern and oversee the telecommunications and electronic communications industry.
- 1.4. "Business Day" - means the days Monday to Friday excluding any public holiday as defined under the Public Holiday Act, 36 of 1994.
- 1.5. "Office Hours" - means the days Monday to Friday from 08:00 to 17:00, Saturday 09:00 to 13:00 excluding any public holiday as defined under the Public Holiday Act, 36 of 1994.
- 1.6. "Installation date" - means the date on which ZOOM FIBRE has completed its installation at the Subscriber's premises.
- 1.7. "Installation Fees" - means the once off fee payable by the Subscriber to ZOOM FIBRE in respect of the installation.
- 1.8. "CPA" - means the Consumer Protection Act, 68 of 2008, as amended and any regulations published in terms thereof, as amended or replaced from time to time;
- 1.9. "CPE" - means the Consumer Premises Equipment and associated fibre cable, which shall include, software, hardware, cables, connectors, programmes, interfaces, associated media, printed materials, and/ or on-line or electronic documentation associated with it, and which meets the requirements of the Services selected by Subscriber in the Application Form, and which CPE is provided and owned by ZOOM FIBRE;
- 1.10. "Subscriber" - means the person who has applied for and for whom ZOOM FIBRE has agreed to provide the Fibre Line and CPE.
- 1.11. "Device" - means any equipment used by Subscribers to connect to the CPE, to access, use or receive electronic communications services as defined in section 1 of the Act.
- 1.12. "ECS" - means any system of electronic communications facilities, as defined under section 1 of the Act, including without limitation:
 - 1.12.1. satellite systems;
 - 1.12.2. fixed systems (circuit-and packet-switched);
 - 1.12.3. mobile systems;
 - 1.12.4. fibre optic cables (undersea and land-based);
 - 1.12.5. electricity cable systems (to the extent used for electronic communications services); and
 - 1.12.6. other transmission systems, used for conveyance of electronic communications.
- 1.13. "ECNS" - means a service as defined under section 1 of the Act, whereby a person makes available an electronic communications network, whether by sale, lease or otherwise, for that person's own use for the provision of an electronic communications service or broadcasting service; to another person for that other person's use in the provision of an electronic communications service or broadcasting service; or for resale to an electronic communications service licensee, broadcasting service licensee or any other service contemplated in the Act, and 'network services' is construed accordingly.
- 1.14. "Fibre Line" - means a single Fibre Line provided by ZOOM FIBRE to the Subscriber which is a open, secure, high quality fibre connection between the Subscriber and ZOOM FIBRE's infrastructure over a fibre transmission network to provide the ZOOM FIBRE Services and shall include any software, hardware, cables, connectors, programmes, interfaces, associated media, printed materials, and/or on-line or electronic documentation associated with it.
- 1.15. "Installation" - means the physical act and labour of providing a Fibre Line and CPE to the Subscriber's premise, and includes all physical labour and materials required such as trenching, reticulation, splicing, termination and mounting of the CPE.
- 1.16. "Installation Application Form" - means the agreement signed by the Subscriber in terms of which ZOOM FIBRE is authorised to install, manage and maintain the Fibre Line and CPE at the Subscriber's premises subject to the terms and conditions set forth herein.
- 1.17. "Installation Date" - means the appointed date on which the Installation is booked to take place and /or the date the Installation is completed, whichever takes place later.
- 1.18. "Installation Fees" - means the once-off fees payable to the Service Provider by the Subscriber for the installation of the Fibre Line.
- 1.19. "Parties" - means ZOOM FIBRE and the Subscriber, collectively.
- 1.20. "Personal Data" - means all personal details conveyed to ZOOM FIBRE by the Subscriber such as his/her identity, address, credit levels, financial status, earning capabilities, family members, likes, preferences and dislikes, which are required in order to process the application and required to determine current and future Subscriber requirements.
- 1.21. "RICA" - means the Regulation of Interception of Communication and Provision of Communication Regulated Information Act 70 of 2002, as amended/replaced from time to time, and its related provisions, as such apply to ZOOM FIBRE and to the Subscriber;
- 1.22. "Service Fees" - means the fees payable by the Service Provider from time to time to ZOOM FIBRE in respect of all fees and charges levied by ZOOM FIBRE to the Service Provider attributable to the use of the Fibre Line and ZOOM FIBRE Network.

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- 1.23. "Service Level Agreements" - means the service level agreement entered into between ZOOM FIBRE and the Service Provider.
- 1.24. "Service Provider" – any ECS and or ECNS licensed entity approved by ZOOM FIBRE to provide its services to the Subscriber over the ZOOM FIBRE Network.
- 1.25. Site Survey Agreement – the agreement in terms of which ZOOM FIBRE is authorised to deploy fibre infrastructure within a certain property or location.
- 1.26. "ZOOM FIBRE" - means ZOOM FIBRE (Pty) Limited, Registration number **2019/288514/07** private company incorporated in terms of the laws of the Republic of South Africa;
- 1.27. "ZOOM FIBRE Network" - means the electronic communications network, Fibre Lines and CPEs used by ZOOM FIBRE to render electronic communications services to Service Providers to provide their respective services to the Subscriber.
- 1.28. "ZOOM FIBRE Services" - means any of the services available and supplied by Service Providers on the ZOOM FIBRE Network to the Subscriber, which the Subscriber may elect to purchase and use, and for which the Subscriber requires a Fibre Line and CPE.

2. AGREEMENT TO INSTALL FIBRE LINE & CPE

- 2.1. The Subscriber accepts and agrees that the terms and conditions set out under the Agreement will become binding upon it once ZOOM FIBRE and/or the Service Provider has processed the Installation Application Form and the Site Survey Agreement and agreed to provide the Subscriber with the Fibre Line and the CPE.
- 2.2. In terms of the Site Survey Agreement, ZOOM FIBRE shall be granted access to the property and / or location required for the installation of the Fibre Line and CPE and shall be granted permission to conduct a site survey deploy the fibre network as is necessary for said installation. Once the network is deployed, the final details as built shall be submitted to the relevant Body Corporate / Home Owner Association.
- 2.3. ZOOM FIBRE reserves the right to amend these terms and conditions from time to time.
- 2.4. ZOOM FIBRE will give written notice to each Subscriber of any amendments to these terms and conditions and will place the amended terms and conditions on the ZOOM FIBRE website with address www.zoomfibre.co.za and file such amended terms and conditions with the Authority, subsequent to which the amendment will be deemed to be incorporated into the Agreement and bind the Subscriber from the date that the amendment has been filed with the Authority.
- 2.5. Where, as a result of any amendment in terms of clause 2.3, a Subscriber is of the view that such amendment is to its detriment, the Subscriber may terminate the Agreement without penalty provided that it gives ZOOM FIBRE written notice of its decision, with 30 (Thirty) business days' notice.
- 2.6. Where a Consumer terminates the Agreement as per his rights under clause 2.4, such termination will be without penalty, save where the

Subscriber has been given or has purchased but not yet paid for the Fibre Line and/or the CPE. In such a case, the Subscriber will have a legal duty and ZOOM FIBRE will possess a legal right to demand full payment in respect of the Fibre Line and/or CPE, less any amount already paid to ZOOM FIBRE, from the Subscriber.

3. INSTALLATION OF THE FIBRE LINE & CPE

- 3.1. The Installation Fees is inclusive of the required Fibre Line and CPE.
- 3.2. The Fibre Line and CPE will at all times remain the property of ZOOM FIBRE.
- 3.3. Where any other Device is required for the use of ZOOM FIBRE Services, which is not provided by ZOOM FIBRE, the Subscriber shall be responsible for the installation of such device and shall bear the risk, cost and expense of such.
- 3.4. ZOOM FIBRE shall install the connections required for the use of the Fibre Line and the CPE at the Subscriber's premises against payment of the relevant Installation Fees as quoted by ZOOM FIBRE.
- 3.5. ZOOM FIBRE shall make reasonable endeavours to meet the Installation Date as requested by the Subscriber. However, ZOOM FIBRE gives no undertakings that it will be able to meet any Installation Date requested by the Subscriber and the Subscriber shall accept that ZOOM FIBRE will install the Fibre Line and CPE when it is in a position to do so, depending on the availability of equipment and service providers or contractors, whatever the case may be.
- 3.6. ZOOM FIBRE will give the Subscriber notice of the Installation Date once it has received the CPE and secured the services of its ZOOM FIBRE contractors and service providers for the purposes of installing the Fibre Line and CPE.
- 3.7. ZOOM FIBRE's duty to physically install the Fibre Line and the CPE will terminate once the connections and the CPE have been supplied, installed and the Subscriber is able to receive ZOOM FIBRE Service via the CPE.
- 3.8. Only Devices that has been type approved by the Authority may be utilised in conjunction with the Fibre Line and CPE, and said Device must have all the technical and operational characteristics and modifications of the type that has been approved.
- 3.9. If the Device is modified, it may not be used in conjunction with the ZOOM FIBRE Services until such time that the modification has been approved by the authority.
- 3.10. ZOOM FIBRE reserves the right to disconnect the Subscriber from the ZOOM FIBRE Network and suspend or terminate the Fibre Line and CPE, in the event that:
 - 3.10.1. the Device has not been approved by the authority; or
 - 3.10.2. the Device has been licensed or approved but has been modified without the approval of the authority in terms of section 35 of The Act has been used in connection with the ZOOM FIBRE Services; or
 - 3.10.3. the Device has been incorrectly installed or connected to the CPE.

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- 3.11. The Subscriber indemnifies ZOOM FIBRE against any liability, loss or damage which ZOOM FIBRE and/or the Subscriber may incur as a result of the unlawful or incorrect usage of such Device or the incorrect installation of the Device, whatever the case may be.
- 3.12. In the event the Subscriber is not the owner of the premises where the Fibre Line and CPE is to be installed, the Subscriber must, prior to any installation on the part of ZOOM FIBRE, obtain permission from the owner of the premises for the installation.
- 3.13. The Subscriber indemnifies ZOOM FIBRE against damages or claims resulting from the failure to obtain such permission as per clause 3.12 above, including any and all costs which may have to be incurred by ZOOM FIBRE should ZOOM FIBRE have to remove the CPE and/or Fibre Line from the premises.
- 3.14. The Subscriber must, at its own cost and expense, provide suitable and adequate electrical power supply as may be required for the proper functioning of the Fibre Line and the CPE.
- 3.15. The Subscriber 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 Fibre Line and the CPE are provided.
- 4. USE OF THE FIBRE LINE, CPE AND RELATED EQUIPMENT**
- 4.1. The provision of any Fibre Line to the Subscriber does not confer on the Subscriber any right to use the ZOOM FIBRE Service, the CPE or any element thereof.
- 4.2. The provision of any Fibre Line to the Subscriber does not confer on the Subscriber any right to make the CPE, the Fibre Line or any element thereof available to other parties, for purposes for which a license or license exemption is required under the Act, unless the Subscriber where applicable, and required in terms of the Act, has been granted such a license or license exemption, and such a license or license exemption is in effect.
- 4.3. The Subscriber agrees to only use the ZOOM FIBRE Services, CPE or Device approved by the Authority and to comply with all relevant legislation applicable to the use of the ZOOM FIBRE Services, CPE, and Device, including, without limitation, any license or license exemption that may be required in terms of the Act, and to use the ZOOM FIBRE Services in accordance with such license, the Act, the Regulations, any applicable and relevant legislation and any notices or directives issued by the Authority from time to time.
- 4.4. The Subscriber will ensure and warrants that the ZOOM FIBRE Services, the CPE, or the Fibre Line shall not be used for improper, immoral or unlawful purposes.
- 4.5. The Subscriber shall not resell capacity on any communications facility obtained from ZOOM FIBRE including the ZOOM FIBRE Services and CPE and Fibre Line or cede or assign his/her rights to use the aforementioned services and equipment or any element thereof or otherwise part control of them, without ZOOM FIBRE's written consent.
- 4.6. The Subscriber shall not do anything or omit to do anything or allow anything to be done or omitted which infringes or may infringe ZOOM FIBRE's rights as set out in the Act and ZOOM FIBRE's license conditions.
- 4.7. The Subscriber must at all times whilst this Agreement is in place:
- 4.7.1. Comply with any instructions issued by ZOOM FIBRE and/or its Service Provider in respect of the Subscriber's use of the ZOOM FIBRE Services, the CPE, the Fibre Line, or matters related thereto, and which may be required to ensure the provisioning of the ZOOM FIBRE Services as a whole, or to protect the integrity of the ZOOM FIBRE Network or to deal with emergencies;
- 4.7.2. provide ZOOM FIBRE with all information in respect of the Subscriber's use of the ZOOM FIBRE Services, CPE, the Fibre Line, and/or the ZOOM FIBRE Network where the ZOOM FIBRE Services are installed and being used and any other matters related thereto that ZOOM FIBRE may reasonably require from time to time and which may be required to ensure the adequate provisioning of the ZOOM FIBRE Service, to protect the integrity of the ZOOM FIBRE Network, or to deal with emergencies;
- 4.7.3. allow ZOOM FIBRE unrestricted access to his or her premises during reasonable hours to install, inspect, maintain or remove the Fibre Line and/or CPE.
- 4.7.4. Should ZOOM FIBRE determine that an installation of Fibre Line and CPE requires unreasonable work or excessive cost on the part of ZOOM FIBRE, it has a discretion to:
- 4.7.4.1. refuse to provide the Fibre Line and/or CPE at the site of the installation until the Subscriber have made at its own cost the necessary modifications to allow ZOOM FIBRE to provide the Fibre Line and CPE;
- 4.7.4.2. quote an installation cost in respect of the required modification, and if accepted by the Subscriber, install at the Subscriber's cost the required modifications.
- 4.7.5. The ZOOM FIBRE Network is designed to provide one Fibre Line per Subscriber, per Subscriber's premise. In the event that the Subscriber requires additional Fibre Line/s to his or her premise, ZOOM FIBRE reserves the right to quote an installation cost in respect of the required additional Fibre Line/s separately, and if accepted by the Subscriber, install at the Subscriber's cost the required additional Fibre Line/s.
- 5. FAILURE OF THE ZOOM FIBRE SERVICES OR CPE**
- 5.1. Whilst ZOOM FIBRE operates the ZOOM FIBRE Network, ZOOM FIBRE hereby advises the Subscriber that it does not operate in isolation but relies on certain services, equipment and/or infrastructure provided by a number of third parties who provide separate but interrelated and connected services which as a whole, enable the ZOOM FIBRE Network and the CPE to function. These third parties operate as independent service providers who are not necessarily contracted by ZOOM FIBRE and the Subscriber accepts and acknowledges this fact.

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- 5.2. Whilst ZOOM FIBRE will comply with and meet the Service Level Agreements and use its best endeavours to ensure that the ZOOM FIBRE services and any CPE are operational at all times, ZOOM FIBRE does not warrant that the ZOOM FIBRE Services will be operational on a 24 (twenty four) hour, 365 (three hundred and sixty five) days per year basis.
- 5.3. The disclosures under clauses 5.1 and 5.2 above are a consequence of the nature of the telecommunications industry and the network, which is dependent on the actions and/ or input of a number of independent third parties over whom ZOOM FIBRE has no direct control.
- 5.4. ZOOM FIBRE advises and the Subscriber acknowledges and accepts that the CPEs are not manufactured by ZOOM FIBRE, but by third parties. Due to the provisions of the Act read together with the authority code of practice and guidelines, ZOOM FIBRE will for the most part not be in a position to open certain CPEs or to test or operate the CPE before they are handed to the Subscriber in order to ensure that they are fit for purpose and / or are intact.
- 5.5. In light of the disclosures housed under clauses 5.1-5.4 above, ZOOM FIBRE stipulates and the Subscriber acknowledges that ZOOM FIBRE cannot warrant or guarantee that the ZOOM FIBRE Services and / or the CPE will:
- 5.5.1. at all times be free of errors or interruptions;
 - 5.5.2. be perpetually available;
 - 5.5.3. be fit for any purpose;
 - 5.5.4. not infringe on the rights of any third parties;
 - 5.5.5. be secure and reliable, save where the ZOOM FIBRE Services, the Fibre Line and / or CPE are found to be defective and such defect has been solely caused by ZOOM FIBRE.
- 5.6. Notwithstanding the provisions of clause 5.5 above, ZOOM FIBRE will endeavour to notify the Subscriber in advance of any failure of, or interruption to the ZOOM FIBRE Services, Fibre Line and / or the CPE and, where applicable, any required maintenance and repairs which may result from such failure, interruption or unavailability, where ZOOM FIBRE is in a position to do so.
6. **CHANGE OF PREMISES**
- 6.1. In the event that Subscriber decides to move and/or relocate to a different location and/or premises, ZOOM FIBRE shall move the Subscriber's Fibre Line and CPE to the new premises and/or location, provided ZOOM FIBRE operates a ZOOM FIBRE Network in the area and Installation Fee shall be payable in respect of such.
7. **RISK, THEFT AND LOSS OF FIBRE LINE, CPE AND RELATED EQUIPMENT**
- 7.1. Whenever any Fibre Line, Equipment and in particular the CPE is lost, stolen or destroyed, the Subscriber must immediately notify ZOOM FIBRE and any police official at any police station in writing that the Fibre Line, the CPE and or any other ZOOM FIBRE equipment has been lost, stolen, misplaced or destroyed.
- 7.2. Risk in and to the use of the ZOOM FIBRE Services, the Fibre Line and CPE will pass to the Subscriber on the Installation Date. ZOOM FIBRE reserves the right to hold the Subscriber liable for the cost to replace the Fibre Line, CPE and or any other ZOOM FIBRE equipment, regardless of the cause of any such loss or destruction.
8. **MAINTENANCE OF THE ZOOM FIBRE SERVICES, FIBRE LINE AND CPE**
- 8.1. The Fibre Line and the CPE used by the Subscriber will always be regarded to be in good working order unless and until ZOOM FIBRE is advised otherwise.
- 8.2. The costs in respect of any repair and/or maintenance of the ZOOM FIBRE Network, the Fibre Line and the CPE will be incurred and covered by ZOOM FIBRE. Provided clauses 8.5 to 8.7 do not apply, or save where expressly stated to the contrary,
- 8.3. The Subscriber must report all faults to his Service Provider and not to ZOOM FIBRE directly.
- 8.3.1. The Subscriber's Service Provider is responsible for first line support.
 - 8.3.2. The Service Provider will then contact ZOOM FIBRE if the problem has been discovered to be one deriving from the ZOOM FIBRE Network.
 - 8.3.3. ZOOM FIBRE will attend to faults reported by the Service Provider during Office Hours and/or as recorded in the Service Level Agreements, and will apply its reasonable endeavours to have the affected ZOOM FIBRE Services restored in the shortest possible time, and in line with its Service Level Agreements.
- 8.4. The Subscriber is responsible for maintaining the CPE that is used in connection with the ZOOM FIBRE Services. The Subscriber shall allow ZOOM FIBRE and its agents reasonable access to its premises for the sole purposes of maintenance and repair of the ZOOM FIBRE Fibre Line and CPE.
- 8.5. The Subscriber acknowledges that ZOOM FIBRE Services cannot be restored until access to the premises has been given.
- 8.6. The Subscriber endeavours to provide all reasonable access to ZOOM FIBRE and its agents to attend to any faults that the Subscriber requests be attended to.
- 8.7. If ZOOM FIBRE investigates the fault and determines that the fault reported by the Subscriber was caused by the Subscriber or by any Device, which ZOOM FIBRE has not agreed to cover in terms of the Agreement, the Subscriber will then be liable for payment of the relevant call-out charges of ZOOM FIBRE employees / agents, as determined by ZOOM FIBRE from time to time.
9. **RISK AND OWNERSHIP**
- 9.1. Ownership of The Fibre Line, the CPE, and access to the ZOOM FIBRE Services will remain vested in ZOOM FIBRE.
- 9.2. Notwithstanding the provisions of clause 15.1 and 15.2, risk in and to the ZOOM FIBRE Services, the Fibre Line and the CPE will pass

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to the Subscriber on the date on installation, including risk of loss, theft, destruction or damage.

10. DEFECTS, LIABILITY, WARRANTIES, REPAIRS AND SUSPENSION OF THE ZOOM FIBRE SERVICES

- 10.1. ZOOM FIBRE stipulates and the Consumer acknowledges that ZOOM FIBRE cannot warrant or guarantee that the CPE will at all times be available, suitable for the intended purpose, are of good quality and in good working order, free of defects, free of errors or interruptions, fit for any purpose, do not infringe on any third party rights, or that they are secure and reliable.
- 10.2. Notwithstanding the disclosure at paragraph 12.1 below, should the CPE not be in accordance with the standards set out under section 55(2) of the CPA, the Subscriber should notify ZOOM FIBRE of the defect within 6 (six) months after delivery of the CPE and allow a ZOOM FIBRE employee / agent to inspect the CPE at his or her premises.
- 10.3. Upon inspecting the device and in the event it is found that the CPE is not in accordance with the standards set out in section 55(2) of the CPA as the case may be, ZOOM FIBRE, either itself, or on behalf of the supplier and / or manufacturer of the CPE will either repair or replace the failed, unsafe or defective part of the CPE;
- 10.4. Where any failed, unsafe or defective CPE is found to fall outside of the 6 (six) month warranty period set out under section 55(2) of the CPA where applicable, then the supplier, manufacturer and, in particular, ZOOM FIBRE will have no further responsibility or liability in relation to the CPE, save that it has the right to offer to repair or to replace the CPE, and ZOOM FIBRE reserves the right to do this at the Subscriber's cost.
- 10.5. ZOOM FIBRE may from time to time, and on notice if possible, or without if not possible, suspend the ZOOM FIBRE Service and where applicable the right to use the CPE, or in its discretion disconnect the CPE from the ZOOM FIBRE Network in any of the following circumstances:
- 10.5.1. for modifications to the ZOOM FIBRE Network;
- 10.5.2. for planned maintenance of the ZOOM FIBRE Network;
- 10.5.3. for routine maintenance of the ZOOM FIBRE Network;
- 10.5.4. if the Service Provider has defaulted in its' payments of any amounts due to ZOOM FIBRE; or on the Service Providers instruction to disconnect the Subscriber from the ZOOM FIBRE Services;
- 10.5.5. where the ZOOM FIBRE Services are suspended or discontinued as a result of 3rd parties experiencing problems on their infrastructure which has affected or disrupted the ZOOM FIBRE Service;
- 10.5.6. where certain ZOOM FIBRE Services are being abused by the Subscriber/s

- 10.5.7. where the ZOOM FIBRE Service or CPE is found to contain a security risk or shortcoming which enables the Subscriber to exploit the ZOOM FIBRE Service to the detriment of ZOOM FIBRE;
- 10.6. No interruption of the ZOOM FIBRE Service referred to under clause 10.5 shall be deemed to have occurred during any modifications and/or maintenance window or any authorised suspension of a service and the Subscriber acknowledges that it shall have no claim against ZOOM FIBRE in respect of all or any of the interruptions described under clause 10.5.
- 10.7. ZOOM FIBRE may from time to time, and on notice if possible, or without notice if not possible, and without prejudice to any other claims or remedies, which ZOOM FIBRE may have in terms hereof or in law, discontinue or terminate any part of the ZOOM FIBRE Service and where applicable the right to use the CPE, or in its discretion disconnect the CPE from the ZOOM FIBRE Network in any of the following circumstances:
- 10.7.1. where the ZOOM FIBRE Service or CPE is found to contain a fault which enables the Subscriber to exploit the ZOOM FIBRE Service to the detriment of ZOOM FIBRE;
- 10.7.2. where the ZOOM FIBRE Service or CPE has reached the end of its lifespan and is uneconomical to maintain or continue;
- 10.7.3. where there has been an insignificant interest in the use of a particular ZOOM FIBRE Service or CPE; and/or
- 10.7.4. in response to an instruction from the Authority or in terms of the Act or some other law or body the ZOOM FIBRE Service or CPE is discontinued.
- 10.7.5. where the Subscriber uses Devices that is not permitted by the Authority for such use;
- 10.7.6. if the Subscriber has received the ZOOM FIBRE Fibre Line and CPE as a result of fraud or misrepresentation;
- 10.7.7. if the Subscriber uses in connection with the ZOOM FIBRE Service, CPE or Device that the Subscriber has obtained illegally;
- 10.7.8. if the Subscriber 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;
- 10.7.9. if the Subscriber does or allows to be done any act or omission, which in ZOOM FIBRE's opinion will or may have the effect of negatively affecting the operation of the ZOOM FIBRE Network and ZOOM FIBRE Services;
- 10.7.10. if the Subscriber is using, or permitting the use of the ZOOM FIBRE Service or any element thereof for any illegal purpose or in contravention of the Act, CPA and/or any act of Parliament;
- 10.7.11. if ZOOM FIBRE has been instructed to do so by any authority competent to issue such instruction;

11. LIMITED LIABILITY AND INDEMNITY

- 11.1. ZOOM FIBRE assumes no responsibility for the integrity, correctness, retention or content of information transported via the ZOOM FIBRE Network.

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- 11.2. Subject to the provisions of clause 11.4 below, ZOOM FIBRE shall not be liable to the Subscriber or any other person whomsoever, under any circumstances whatsoever, or incur any liability for any loss or damages (be they direct or indirect, consequential or contingent, to the Subscriber or any other person or user) which occurs as a result of the use of or arises from the provision of ZOOM FIBRE Services, the Fibre Line, CPE or the installation or maintenance or removal thereof. the ZOOM FIBRE services, damage is direct or indirect, consequential or contingent and in particular ZOOM FIBRE shall not be liable for any:
- 11.2.1. loss of life,
 - 11.2.2. injury,
 - 11.2.3. medical expenses,
 - 11.2.4. support,
 - 11.2.5. financial loss or financial support,
 - 11.2.6. loss of earnings,
 - 11.2.7. loss of profit and/or income,
 - 11.2.8. loss of revenue,
 - 11.2.9. loss of business or goodwill,
 - 11.2.10. any other special damages, or
 - 11.2.11. any general damages
- 11.3. ZOOM FIBRE shall not be liable for any item under clause 11.2 above, incurred by the Subscriber, any user or any other person who may be using the ZOOM FIBRE services, Fibre Line, CPE, to whatever extent arising, and the Subscriber indemnifies ZOOM FIBRE against any claim or action, as described in clause 11.2, which may be brought by any person in this regard.
- 11.4. Where a Consumer suffers any loss or damages as a result of the use of the Fibre Line, or the CPE, the Subscriber in this case will be allowed to avail itself to the provisions housed under section 61 of the CPA, but subject always to the defenses and exceptions permissible and available to ZOOM FIBRE and its service providers under section 61 of the CPA.
- 11.5. ZOOM FIBRE only provides access to the Service Providers. ZOOM FIBRE does not operate or control the information, services, opinions or other content of the Internet, and ZOOM FIBRE makes no warranties or representation regarding any such information, services, opinions or other content. The Subscriber agrees that it shall make no claim whatsoever against ZOOM FIBRE relating to the content of the Internet or respecting any information, product, service or software ordered through or provided by virtue of the Internet.
- 11.6. ZOOM FIBRE reserves the right to take measures as may be necessary, in ZOOM FIBRE's sole discretion, to ensure security and continuity of service on the ZOOM FIBRE network, including but not limited to identification and blocking or filtering of internet traffic sources which ZOOM FIBRE deems to pose a security risk or operational risk or a violation of its acceptable use policy. In

addition, the Subscriber understands that ZOOM FIBRE does not own or control other third party networks outside of the ZOOM FIBRE network, and ZOOM FIBRE 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 ZOOM FIBRE network and other third party networks.

- 11.7. The Subscriber is responsible for maintaining the security of its internal network from unauthorised access through the Internet. ZOOM FIBRE shall not be liable for unauthorised access to the Subscriber's network or other breaches of the Subscriber's network security.
- 11.8. The limitation on liability set out above is in addition to any limitation of liability set out elsewhere under the Agreement.

12. SUBSCRIBER ASSISTANCE, COMPLAINTS AND DISPUTES

- 12.1. The Service Provider provides Subscriber care to all Subscribers during Office hours, excluding times when it is unable to assist due to circumstances beyond its reasonable control.
- 12.2. For faults, the Subscriber must, once it experiences any trouble with any of the ZOOM FIBRE Services and/or CPE bring the suspected problem to his or her Service Provider's attention.
- 12.3. ZOOM FIBRE will endeavour to attend to the complaint from the Service Provider as soon as it is possible, which will depend on the complexity and nature of the suspected problem, as logged, as well as resource/manpower availability, but subject always to the Service Level Agreements.
- 12.4. Where a Subscriber is of the view that the matter has not been resolved to the satisfaction of the Subscriber, the Subscriber will have the right to elevate the matter to the Authority, which can be done by contacting either:
- 12.4.1. the complaints website <http://www.icasa.org.za> and selecting the tab "complaints"; or
 - 12.4.2. by email at Subscribers@icasa.org.za.
- 12.5. The above rights set out under clauses 12.1 to 12.4 are without prejudice to both parties' respective rights to pursue a complaint or action in any other forum, which has jurisdiction over the matter including the rights to submit the complaint, dispute or action to the National Consumer Commission or to arbitration.

13. PERSONAL INFORMATION & RICA

- 13.1. ZOOM FIBRE reserves the right to make general credit reference enquiries about the Subscriber and to check the correctness of the information that has been supplied at any time.
- 13.2. The Subscriber acknowledges that, ZOOM FIBRE shall be entitled to provide any information relating to the Subscriber's account to any registered credit bureau.

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- 13.3. The Subscriber warrants and represents that all information supplied by it is true, correct and complete and indemnifies and holds ZOOM FIBRE blameless against all claims, of whatsoever nature, that may arise, directly or indirectly, as a result of any incorrect information being supplied.
- 13.4. ZOOM FIBRE will use the Subscriber's information strictly in accordance with the Regulations promulgated in terms of Section 69 of the Act and undertakes to use the Subscriber personal data only for the purpose for which it has been collected and undertakes that this processing will be carried out in accordance with any notice, consent or other requirement which may be required by any applicable law in force in South Africa from time to time. ZOOM FIBRE furthermore will use the Subscriber's information strictly in accordance with the provisions housed under its ZOOM FIBRE's ECNS and ECS license.
- 13.5. The Subscriber accepts that RICA applies to the Fibre Line and the CPE which the Subscriber has requested ZOOM FIBRE to provide under this Agreement, and agrees that it must, where applicable, comply with the requirements of RICA, including, without generalising:
- 13.5.1. To provide ZOOM FIBRE with all required Personal Data and additional information which ZOOM FIBRE is required to obtain from the Subscriber, in terms of section 39 of RICA.
- 13.5.2. Not to transfer the Fibre Line or CPE to another person, other than a family member or dependant without providing ZOOM FIBRE with the Personal Data and additional information of the person who is taking over the Fibre Line and/or the CPE.
- 13.5.3. The Subscriber acknowledges and accepts that where it does not comply with these provisions that this will amount to a material breach of this agreement by the Subscriber and ZOOM FIBRE will accordingly be entitled to cancel the agreement and to claim damages as a result of said cancellation.
- 13.5.4. The Subscriber acknowledges and accepts that where it does not comply with the provisions set out under clause 13.5 above, that this will constitute a breach of RICA and this will give rise to a possible criminal charge and sanction being imposed against the Subscriber as per the requirements of RICA.
14. **DURATION**
- 14.1. Notwithstanding the Installation Date, the Agreement will start on the Commencement Date and will be on a month to month basis, save for where the Agreement is terminated earlier by either of the Parties in accordance with their respective rights set out under clause 15 of the Agreement.
15. **BREACH AND TERMINATION**
- 15.1. Should the Subscriber breach any term of this Agreement, then ZOOM FIBRE shall give the Subscriber 30 (Thirty) Business Days notice to rectify the breach.
- 15.2. Should the Subscriber neglect or fail to rectify the breach within the 30 (Thirty) Business Days notice period, then ZOOM FIBRE will have the right to either suspend or to cancel the Agreement, without prejudice to ZOOM FIBRE's rights to claim all and any damages which ZOOM FIBRE has incurred in consequence of such breach.
- 15.3. Should ZOOM FIBRE breach any material term of this Agreement, then the Subscriber will have the right to provide ZOOM FIBRE with a letter requiring ZOOM FIBRE to rectify the breach within a period of 30 (Thirty) Business Days. Should ZOOM FIBRE neglect or fail to rectify such breach within the 30 (Thirty) Business Days notice period, then the Subscriber may cancel the Agreement, which will be without prejudice to the Subscriber's rights to claim any damages which it may have incurred in consequence of ZOOM FIBRE's breach.
- 15.4. Should the Subscriber be sequestrated, liquidated, ZOOM FIBRE shall be entitled to immediately cancel this Agreement upon notice to the Subscriber.
- 15.5. The Subscriber agrees that ZOOM FIBRE may register the details of the manner in which payments have been conducted by it or its agent, with any registered credit bureau.
- 15.6. The Subscriber shall be liable for all costs, including legal costs on the attorney an client scale, and collection cost incurred by ZOOM FIBRE in respect of the enforcement of any obligations of the Subscriber in terms of this agreement and in the case of a Consumer, subject to the provisions housed under Regulation 44 (3) (aa) of the CPA.
- 15.7. Without prejudice to any other claims or remedies which ZOOM FIBRE may have against the Subscriber in terms of this Agreement or in law, ZOOM FIBRE may on 30 (Thirty) Business Days notice terminate the Agreement if the Subscriber has delayed the installation of the Selected ZOOM FIBRE Service for longer than 3 (Three) months and hold the Subscriber liable for all and any abortive costs incurred by ZOOM FIBRE in this regard.
16. **CONSEQUENCES OF ANY TERMINATION**
- 16.1. After termination of the Agreement for whatever reason, ZOOM FIBRE may, on reasonable notice and in the Subscriber's presence enter the Subscriber's premises to remove the CPE and / or Fibre Line, the Subscriber will remain liable for and will pay on demand all charges and/or costs out-standing at the time of termination, or accrued thereafter as a result of the termination.
17. **LEGAL**
- ADDRESS FOR SERVICE (DOMICILIUM AND NOTICES)

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17.1. The parties choose the addresses set out below as their chosen place to receive legal

notices (domicilium citandi et executandi)

ZOOM FIBRE at: 34 Suzanne Crescent,
Northcliff,
Randburg,
2194

17.2. the Subscriber's domicilium citandi et executandi shall be at the physical or residential address specified in the Installation Application Form.

17.3. All notices given in terms of this Agreement shall be in writing.

18. PAYMENT

18.1. The Service Provider shall provide the Subscriber with a tax invoice once the installation has been completed.

18.2. The Subscriber shall pay the Service Provider the Installation Fees specified in the Installation Application in accordance with the provisions set out below.

18.3. The Installation Fees are to be paid either by EFT (Electronic Funds Transfer) to the Service Provider's account stipulated on the Installation Application Form before or after the Installation Date; or by online credit card once the installation has been completed.

18.4. For the avoidance of doubt, the monthly Service Fees are payable by the Subscriber directly to the Service Provider for the ZOOM FIBRE Services selected.

18.5. The Installation Fee will be charged by ZOOM FIBRE directly to the Service Provider.

18.6. In the event that the Subscriber moves and/or relocates to a different location and/ or premises where ZOOM FIBRE operates a network, ZOOM FIBRE shall charge the Service Provider the Installation fees for the moving and/or relocation of the Fibre Line and CPE. The Subscriber is to ensure that it makes payment to its Service Provider accordingly.

19. GENERAL

19.1. Consumer Status – As a consequence of the recently released CPA, certain rights have been granted to a Subscriber who is a Consumer, as defined under the CPA. ZOOM FIBRE reserves the right to withhold any of these rights and / or resultant benefits until such time as the Subscriber is able to prove to ZOOM FIBRE, which proof may be in the form of a set of Financial statements or an identity document, that it is a Consumer / and or in the case of a right which it is wanting to exercise under section 14 of the CPA, that it is an Individual Consumer. Where the Subscriber is unable to show that it is a Consumer or Individual Consumer, in such an event ZOOM FIBRE reserves the right to reverse or call for restitution (a refund) of any rights benefits which are permitted

under the CPA and which the Subscriber has unlawfully taken advantage of.

19.2. Subscriber Details and Changers Thereto - The Subscriber agrees to supply ZOOM FIBRE with such information, documentation and signatures that ZOOM FIBRE may reasonably require at the time that the Agreement is concluded, in order to give effect to the payment arrangements of the Agreement. Any subsequent changes that affect the information supplied to ZOOM FIBRE such as bank account, legal service address referred to under clause 17 and credit card details must be brought to the immediate attention of ZOOM FIBRE by the Subscriber in writing.

19.3. Cession - ZOOM FIBRE shall be entitled to transfer (cede) its rights and/or to delegate its obligations arising from the Agreement and/or (hand over) assign the Agreement, wholly or partly, to any third party and it will give the Subscriber reasonable notice of this fact. The Subscriber shall not be entitled to cede, assign, encumber or delegate his obligations arising out of the Agreement without the prior written consent of ZOOM FIBRE, which will not be unreasonably withheld.

19.4. Variation and Amendment - Subject to and save where the right to amend the Agreement, has been specifically mentioned under the Agreement, neither party may vary the terms of the Agreement unless the other party agrees to such variation and the variation is reduced to writing and signed by both parties.

19.5. Whole Agreement - This document read with the relevant Installation Application Form (which is deemed incorporated herein by reference), contains the sole and entire record of the Agreement between the parties. No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein or otherwise created by operation of law and 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.

19.6. Authority - Where ZOOM FIBRE is represented by any duly authorised representative, ZOOM FIBRE's authority need not be proved.

19.7. Duplicate and Scanned Versions in Place of the Original - The Subscriber agrees that the Installation Application Form and the Agreement, in particular the face page may be scanned and the paper version destroyed, and agrees to the scanned version and waives his right to dispute the authenticity of the scanned version.

19.8. Unsolicited Marketing and the Right to Opt Out - The Subscriber understands that, in terms of section 45 of the Electronic Communications and Transactions Act 25 of 2002, the Subscriber and in terms of the provisions of the CPA in the case of a Consumer, the Consumer or the Subscriber has the option to request ZOOM FIBRE to remove its relevant contact particulars from its data base in respect of direct marketing and/or unsolicited commercial and/or marketing communications by ZOOM FIBRE.

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- 19.9. Severability - In the event of any one or more of these terms and conditions being unenforceable, these clauses will be deleted and severed from the remainder of the Agreement, which will nevertheless continue to apply, be binding and enforceable.
- 19.10. Acts of God - Except as specifically provided under the Agreement, ZOOM FIBRE shall not be liable to the Subscriber for any breach of these conditions or failure to perform any obligation as a result of any force majeure (event beyond its reasonable control) event, including but not limited to technical problems relating to the ZOOM FIBRE Network, acts of God, Government controls, restrictions or prohibitions or any other Government act or omission, whether local or national, any act or default of any supplier, agent or sub-contractor, industrial disputes, strikes, lockouts or work stoppages of any kind or any other similar or dissimilar cause, in so far as these are beyond ZOOM FIBRE's reasonable control.
- 19.11. Indulgences and Relaxing - The failure of ZOOM FIBRE to enforce at any time the Agreement or any part thereof, or any right with regard thereto, must in no way be construed to be a waiver of the provision of the Agreement or to be an estoppel or novation or in any way to affect the validity of the Agreement. Any indulgence towards the Subscriber or the relaxing of the provisions of the Agreement must not prejudice the right of ZOOM FIBRE to insist on the strict compliance by the Subscriber of its undertakings and obligations in terms of the Agreement.
- 19.12. Intellectual property rights - any intellectual property rights vesting in ZOOM FIBRE, whether by statute or common law, will remain vested in ZOOM FIBRE and the Subscriber agrees not to do anything or allow anything to be done that may infringe ZOOM FIBRE's rights and the Subscriber hereby INDEMNIFIES ZOOM FIBRE against any claims, actions and proceeding that may arise as a result of the Subscriber infringing or violating ZOOM FIBRE's intellectual property rights.
- 19.13. Applicable laws and Jurisdiction - this Agreement will be interpreted and governed by the Laws of South Africa.

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