

## FIBRE GEEKS (PTY) LTD TERMS & CONDITIONS

\*THE CUSTOMER ACKNOWLEDGES THAT BY SIGNING THE INSTALLATION AGREEMENT THAT THE CUSTOMER UNDERSTANDS THE CONTENT HEREOF AND AGREES THERETO ACCORDINGLY.

### 1. DEFINITIONS

Unless the context clearly indicates to the contrary, the following terms bear the meanings ascribed thereto.

**"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.

**"Agreement"** means the Registration Form and these terms and conditions which will apply to the Customer.

**"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.

**"Business Day"** means Monday to Friday excluding any public holiday as defined under the Public Holiday Act, 36 of 1994

**"Commencement date"** means the date when FIBRE GEEKS has processed the Registration Form and notified the Customer that it has agreed to provide the Customer with the FIBRE GEEKS Fibre Line and where applicable the CPE.

**"Connection Fees"** means the one off fees which are payable by the Service Provider from time to time to FIBRE GEEKS in respect of all fees and charges levied by FIBRE GEEKS to the Service Provider attributable to the connection of the Customer to the FIBRE GEEKS Network.

**"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;

**"CPE"** means the Consumer Premises Equipment and associated fibre cable (including software, hardware, cables, connectors, programmes, interfaces, associated media, printed materials, and/or on-line or electronic documentation associated with it, which meets the requirements of the Services selected by Customer in the Application Form, and which CPE is provided by and owned by FIBRE GEEKS;

**"Customer"** means the person who has applied for and who FIBRE GEEKS has agreed to provide the Fibre Line and CPE, where applicable, and who will be liable for the payment of the Installation Fees and for compliance with the Agreement.

**"Device"** means any equipment used by Customers to connect to the CPE, to access, use or receive electronic communications services as defined in section 1 of the Act.

**"ECS"** means any system of electronic communications facilities (as defined under section 1 of the Act, including without limitation satellite systems; fixed systems (circuit- and packet-switched); mobile systems; fibre optic cables (undersea and land-based); electricity cable systems (to the extent used for electronic communications services); and other transmission systems, used for conveyance of electronic communications;

**"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'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;

**"Fibre Line"** means a single Fibre Line provided by FIBRE GEEKS to the Customer which is an open, secure, high quality fibre connection between the Customer and FIBRE GEEKS's infrastructure over a fibre transmission network to provide the FIBRE GEEKS 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;

**"FIBRE GEEKS"** means FIBRE GEEKS (Pty) Limited, Registration number 2014/138808/07a private company incorporated in terms of the laws of the Republic of South Africa;

**"FIBRE GEEKS Network"** means the Fibre Lines and CPEs used by FIBRE GEEKS to render electronic communications services to Service Providers to provide their respective services to the Customer.

**"FIBRE GEEKS Services"** means any of the services available and supplied by Service Providers on the FIBRE GEEKS Network to the Customer, which the Customer may elect to purchase and use, and for which the Customer required a Fibre Line and CPE.

**"Installation"** means the physical act and labour of providing a Fibre Line and CPE to the Customer's premise, and includes all physical work and materials required such as trenching, reticulation, splicing, termination and mounting of the CPE.

**"Registration Form"** means the agreement signed by Customer which authorises FIBRE GEEKS to install, manage and maintain the FIBRE GEEKS Fibre Line and CPE at the Customer's premises subject to the terms and conditions set out herein.

**"Installation Date"** means the appointment date on which the Installation is booked to take place and /or the date the Installation is completed whichever is later.

**"Installation Fees"** means the one-off fees which are payable to FIBRE GEEKS by the Customer for the installation of the FIBRE GEEKS Fibre Line.

**"No Show"** Cancellation fee means the one off cancellation fee payable from the Customer to FIBRE GEEKS in the event that the Customer is not available for the "Installation".

**"Office Hours"** means 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.

**"Parties"** means collectively, FIBRE GEEKS and the Customer;

**"Personal Data"** means all personal details conveyed to FIBRE GEEKS by the Customer such as his/her identity, whereabouts, 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 customer requirements;

**"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, which apply to FIBRE GEEKS and to the Customer;

**"Service Fees"** means the fees payable which are payable by the Service Provider from time to time to FIBRE GEEKS in respect of all fees and charges levied by FIBRE GEEKS to the Service Provider attributable to the use of the FIBRE GEEKS Fibre Line and FIBRE GEEKS Network.

**"Service Provider"** means any FIBRE GEEKS approved ECS and or ECNS licensed entity entitled to provide its services to the Customer over the FIBRE GEEKS Network.

### 2. AGREEMENT TO INSTALL THE FIBRE LINE AND CPE

2.1. The Customer accepts and agrees that the terms and conditions set out under the Agreement will become binding on it once FIBRE GEEKS has processed the Registration Form, undertook the technical and commercial survey to determine feasibility and agreed to provide the Customer with the Fibre Line and the CPE.

2.2. FIBRE GEEKS reserves the right to amend these terms and conditions from time to time. FIBRE GEEKS will give written notice to each Consumer of such amendments and will place the amended terms and conditions on [www.fibregeeks.co.za/terms](http://www.fibregeeks.co.za/terms) and file such amended terms and conditions with the Authority, which amendment will be deemed to be incorporated into the Agreement and bind the Customer from the date that the amendment has been filed with the Authority.

2.3. Where, as a result of any amendment anticipated under clause 1.2, a Customer is of the view that such amendment is to its detriment; the Customer may terminate the Agreement without penalty provided that it gives FIBRE GEEKS 30 (Thirty) Business days notice in writing of its decision to terminate the Agreement.

2.4. Where a Consumer terminates the Agreement as per his rights under this clause, such termination will be without penalty, save where the Customer has been given or has purchased but not yet paid for the Fibre Line and/or the CPE. In such a case the Customer will have a legal duty and FIBRE GEEKS will have a legal right to demand from the Customer, full payment in respect of the Fibre Line and/or CPE, less any amounts which have already been paid to FIBRE GEEKS in respect thereof prior to such termination

### 3. PERSONAL INFORMATION, RIGHTS TO PRIVACY AND RICA

3.1. FIBRE GEEKS at any time reserves the right to make general credit reference enquiries about the Customer and to check the correctness of the information that has been supplied. FIBRE GEEKS shall be entitled to provide any information relating to the Customer's account to any registered credit bureau.

3.2. The Customer warrants and represents that all information supplied by it is true, correct and complete and indemnifies and holds FIBRE GEEKS harmless against all claims, of whatsoever nature, that arise, directly or indirectly, as a result of any incorrect information being supplied

3.3. FIBRE GEEKS will use the Customer's information strictly in accordance with the Regulations promulgated in terms of Section 69 of the Act and undertakes to use the Customer 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. FIBRE GEEKS furthermore will use the Customer's information strictly in accordance with the provisions housed under its FIBRE GEEKS' ECNS and ECS license.

3.4. The Customer accepts that RICA applies to the Fibre Line and the CPE which the Customer has requested FIBRE GEEKS to provide under this Agreement, and agrees that it must, where applicable, comply with the requirements of RICA, including, without generalising:

3.4.1. To provide FIBRE GEEKS with all required Personal Data and other details which FIBRE GEEKS is required to obtain from the Customer, in terms of section 39 of RICA.

3.4.2. Not to transfer the Fibre Line or CPE to another person, other than a family member or dependant without providing FIBRE GEEKS with the Personal Data and other details of the person who is taking over the Fibre Line and/or the CPE.

3.5. The Customer acknowledges and accepts that where it does not comply with these provisions that this will amount to a material breach by the Customer of this agreement which will allow FIBRE GEEKS to cancel the agreement and to claim damages as a result of the cancellation.

3.6. The Customer also acknowledges and accepts that where it does not comply with the provisions set out under clause 3.4, that this will be a breach of RICA and this will give rise to a possible criminal charge and sanction being imposed against the Customer as per the requirements of RICA.

### 4. DURATION OF AGREEMENT

4.1. 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.

### 5. INSTALLATIONS OF THE FIBRE LINE AND CPE

The Installation Fees is inclusive of the required Fibre Line and CPE.

The Fibre Line and CPE will at all times remain the property of FIBRE GEEKS.

Where any other Device is required for the use of a service provider services, which is not provided by FIBRE GEEKS, the Customer will be responsible for installing such device at its own risk, cost and expense.

FIBRE GEEKS shall install the connections required for the use of the Fibre Line and the CPE at the Customer's premises against payment of the relevant Installation Fees as quoted by FIBRE GEEKS.

FIBRE GEEKS shall make reasonable endeavours to meet the Installation Date as requested by the Customer. However FIBRE GEEKS gives no undertakings that it will be able to meet any Installation Date requested by the Customer, the Customer accepting that FIBRE GEEKS will install the Fibre Line and CPE when it is in a position to do so, which will depend on the availability of equipment and service providers or contractors, whatever the case may be.

FIBRE GEEKS will give the Customer notice of the Installation Date once it has received the CPE and secured the services of its FIBRE GEEKS contractors and service providers for the purposes of installing the FIBRE GEEKS Fibre Line and CPE.

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If the Customer fails to make him/herself available for the Installation date and confirmed time and fails to notify FIBRE GEEKS at least 48 hours in advance, of their unavailability, FIBRE GEEKS reserves the right to charge a "No Show" Cancellation fee. The "No Show" Cancellation Fee will be added to the Installation invoice after the installation is completed.

5.9. Only Devices that has been type approved by the Authority may be used in conjunction with the Fibre Line and CPE, and which Device must have all the technical and operational characteristics and modifications of the type that has been approved.

If the Device is modified, it may not be used in conjunction with the FIBRE GEEKS Service until such time that the Authority has approved the modification.

FIBRE GEEKS reserves the right to terminate the Fibre Line and CPE, where any Device that has not been approved by the authority or that 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 FIBRE GEEKS Services or where the Device has been incorrectly installed or connected to the CPE and the Customer indemnifies FIBRE GEEKS against any liability, loss or damage which FIBRE GEEKS and/or the Customer may incur as a result of the unlawful or incorrect usage of such Device or the incorrect installation of the Device, what ever the case may be.

If the Customer is not the owner of the premises where the Fibre Line and the CPE is to be installed, the Customer must prior to any installation by FIBRE GEEKS, obtain permission from the owner of the premises for the installation and the Customer indemnifies FIBRE GEEKS against damages or claims resulting from the failure to obtain such permission including all and any costs which may have to be incurred by FIBRE GEEKS should FIBRE GEEKS have to remove the CPE and/or Fibre Line from the premises.

The Customer 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

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 Fibre Line

### 6. USE OF THE FIBRE LINE, CPE AND RELATED EQUIPMENT

6.1. The provision of any Fibre Line to the Customer does not confer on the Customer any right to use the FIBRE GEEKS Service, the CPE or any element thereof.

6.2. The provision of any Fibre Line to the Customer does not confer on the Customer 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 Customer 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.

6.3. The Customer agrees to only use the FIBRE GEEKS CPE or Device approved by the Authority and to comply with all relevant legislation applicable to the use of the FIBRE GEEKS CPE, and Device, including, without limitation, any license or license exemption that may be required in terms of the Act.

6.4. The Customer will ensure and warrants that the FIBRE GEEKS CPE, or the Fibre Line shall not be used for improper, immoral or unlawful purposes.

6.5. The Customer shall not resell capacity on any communications facility obtained from FIBRE GEEKS including the FIBRE GEEKS CPE and Fibre Line or cede or assign his/her rights to use the aforementioned

equipment or any element thereof or otherwise part control of them, without FIBRE GEEKS's written consent.

6.6. The Customer shall not do anything or omit to do anything or allow anything to be done or omitted which infringes or may infringe FIBRE GEEKS's rights as set out in the Act and FIBRE GEEKS's license conditions.

6.7. The Customer must at all times whilst this Agreement is in place:

6.7.1. comply with any instructions issued by FIBRE GEEKS which concern the Customer's use of FIBRE GEEKS CPE, the Fibre Line, or matters related thereto, and which may be required to ensure the provisioning of the FIBRE GEEKS Services as a whole, or to protect the integrity of the FIBRE GEEKS Network or to deal with emergencies;

6.7.2. provide FIBRE GEEKS with all information relating to the Customer's use of the FIBRE GEEKS CPE, the Fibre Line, and/or the FIBRE GEEKS Network where the FIBRE GEEKS Services are installed and any other matters related thereto that FIBRE GEEKS may reasonably require from time to time; and which may be required to ensure the adequate provisioning of the FIBRE GEEKS Service, to protect the integrity of the FIBRE GEEKS Network, or to deal with emergencies;

6.7.3. allow FIBRE GEEKS free access to his/her premises during reasonable hours to install, inspect, maintain or remove the Fibre Line and/or CPE.

6.7.4. If, in any building where FIBRE GEEKS must install the Fibre Line and/or CPE, the existing infrastructure is the opinion of FIBRE GEEKS is of such a nature that it requires unreasonable work to be performed and/or excessive cost to install the Fibre Line and CPE, FIBRE GEEKS may, at its discretion:

6.7.4.1. refuse to provide the Fibre Line and/or CPE in that building or in any part thereof until the Customer have made at its own cost the necessary modification to allow FIBRE GEEKS to provide the Fibre Line and CPE;

6.7.4.2. quote an installation cost in respect of the required modification, and if accepted by the Customer, install at the Customer's cost the required modifications.

6.7.5. The FIBRE GEEKS Network is designed to provide one Fibre Line per Customer per Customer's premise. It is the event that the Customer requires additional Fibre Line/s to his or her premise, FIBRE GEEKS reserves the right to quote an installation cost in respect of the required additional Fibre Line/s separately, and if accepted by the Customer, install at the Customer's cost the required additional Fibre Line/s.

### 7. FAILURE OF THE FIBRE GEEKS SERVICES OR CPE

7.1. Whilst FIBRE GEEKS operates the FIBRE GEEKS Network, FIBRE GEEKS hereby advises the Customer that FIBRE GEEKS does not operate in isolation but relies on certain services, equipment and/or infrastructure which are provided by a number of 3rd parties who provide separate but interrelated and connected services which as a whole, allows the FIBRE GEEKS Network and the CPE to function. These 3rd parties operate as independent service providers who are not necessarily contracted by FIBRE GEEKS and the Customer accepts and acknowledges this fact.

7.2. Whilst FIBRE GEEKS will comply with and meet the Service Level Agreements and use its best endeavours to ensure that the FIBRE GEEKS CPE are operational at all times, FIBRE GEEKS does not warrant that the FIBRE GEEKS Services will be operational on a 24 (twenty four) hour 365 (three hundred and sixty five) days per year basis, this being due to the nature of the telecommunications industry and the network, which is dependent on the actions and/or input of a number of independent 3rd parties whom FIBRE GEEKS has no direct control over.

7.3. FIBRE GEEKS also advises and the Customer acknowledges and accepts that the CPEs are not manufactured by FIBRE GEEKS, but are manufactured by third parties. In most cases, due to the provisions of the Act read together with the authority code of practice and guidelines, FIBRE GEEKS will not be in a position to open certain CPEs or to test or operate the CPE before they are handed to the Customer in order to ensure that they are fit for purpose and / or are intact.

In light of the disclosures housed under clauses 7.1- 7.3 FIBRE GEEKS stipulates and the Customer acknowledges that FIBRE GEEKS cannot warrant or guarantee that the FIBRE GEEKS CPE will:

7.4.1. at all times be free of errors or interruptions;

7.4.2. always be available;

7.4.3. be fit for any purpose;

7.4.4. not infringe on any third party rights;

7.4.5. be secure and reliable, save where the FIBRE GEEKS Fibre Line and / or CPE are found to be defective and such defect has been solely caused by FIBRE GEEKS.

7.5. Notwithstanding the provisions of clause 7.4 above, FIBRE GEEKS will use its best endeavours to notify the Customer in advance of any failure of, or interruption to the FIBRE GEEKS Fibre Line and / or the CPE and where applicable any required maintenance and repairs which may result from such failure, interruption or unavailability, where FIBRE GEEKS is in a position to do so.

### 8. CHANGE OF PREMISES

8.1. In the event that Customer decides to move and/or relocate to a different location and/or premises, FIBRE GEEKS shall, provided the new location is in an area, where FIBRE GEEKS operates a FIBRE GEEKS Network and subject to the provisions of this agreement move the Customer's Fibre Line and CPE to the new premises and/or location in which case the Installation Fees will be payable.

### 9. RISK, THEFT AND LOSS OF FIBRE LINE, CPE AND RELATED EQUIPMENT

9.1. Whenever any Fibre Line, Equipment and in particular the CPE is lost, stolen or destroyed, the Customer must immediately notify FIBRE GEEKS and any police official at any police station in writing that the Fibre Line, the CPE and or any other FIBRE GEEKS equipment has been lost, stolen, misplaced or destroyed.

9.2. Risk in and to the use of the FIBRE GEEKS Fibre Line and CPE will pass to the Customer on the Installation Date. FIBRE GEEKS reserves the right to hold the Customer liable for the cost to replace the Fibre Line, CPE and or any other FIBRE GEEKS equipment, regardless of the cause of any such loss or destruction.

### 10. MAINTENANCE OF THE FIBRE GEEKS FIBRE LINE AND CPE

10.1. The Fibre Line and the CPE used by the Customer will be deemed to be in good working order until FIBRE GEEKS is advised otherwise.

10.2. Unless clauses 10.5 or 10.6 apply, or save where expressly stated to the contrary, the costs in respect of any repair and/or maintenance of the FIBRE GEEKS Fibre Line and the CPE will be incurred and covered by FIBRE GEEKS.

10.3. The Customer must report all faults to his Service Provider and not to FIBRE GEEKS directly. The Service Provider is responsible for first line support and will contact FIBRE GEEKS if the problem has been identified as originating from the FIBRE GEEKS CPE or fibre lines. FIBRE GEEKS will attend to faults reported by the Service Provider during Office Hours and will apply its reasonable endeavours to have the affected FIBRE GEEKS CPE restored in the shortest possible time.

10.4. The Customer is responsible for maintaining the CPE, used.

- 10.5. The Customer shall allow FIBRE GEEKS and its agents all reasonable access to its premises for the purposes of the maintenance and repair of the FIBRE GEEKS Fibre Line and CPE. If the Customer requests that a fault be attended to, and if the repair work needed requires access to the Customer's premises the Customer will make all reasonable efforts to provide FIBRE GEEKS with access to the premises and acknowledges that the FIBRE GEEKS CPE and/ or Fibre lines cannot be restored until access has been provided.
- 10.6. If FIBRE GEEKS determines that the fault reported by the Customer was caused by the Customer or by any Device, which FIBRE GEEKS has not agreed to cover, in terms of the agreement the Customer will be liable for payment of the relevant call-out charges, as determined by FIBRE GEEKS from time to time
11. **RISK AND OWNERSHIP**
- 11.1. Ownership of The Fibre Line and the CPE will remain vested in FIBRE GEEKS.
- 11.2. The risk of the Fibre Line and the CPE will pass to the Customer on the Installation Date, including risk of loss, theft, destruction or damage.
12. **DEFECTS, LIABILITY, WARRANTIES, REPAIRS AND SUSPENSION**
- 12.1. FIBRE GEEKS stipulates and the Consumer acknowledges that FIBRE GEEKS 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.
- 12.2. Notwithstanding the above exclusions, should the CPE not meet the standards set out under section 55(2) of the CPA, and such defect or fault becomes apparent within 6 (Six) months after the CPE has been delivered by FIBRE GEEKS to the Customer, then the Customer must immediately notify FIBRE GEEKS of the defect and /or failure and where possible the Consumer must describe what caused the CPE to malfunction or to stop functioning; and allow a FIBRE GEEKS representative to inspect the CPE at his or her premises.
- 12.3. Where an inspection it has been 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, FIBRE GEEKS, 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;
- 12.4. Where any failed, unsafe or defective CPE is found to fall outside of the minimum warranty period set out under section 55(2) of the CPA where applicable, then the supplier, manufacturer and in particular FIBRE GEEKS 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 FIBRE GEEKS reserves the right to do this at the Customer's cost.
- 12.5. FIBRE GEEKS may from time to time, and on notice where possible, or without notice where not possible, suspend the FIBRE GEEKS right to use the CPE, or in its discretion disconnect the CPE from the Service Providers Network in any of the following circumstances:
- 12.6.1. for routine maintenance;
- 12.6.2. if the Service Provider has failed to pay any amounts due to FIBRE GEEKS by Due date as reflected in the invoice; or on their instruction to disconnect the Customer from the FIBRE GEEKS Services;
- 12.6.3. where certain FIBRE GEEKS CPE are being abused by the Customer or by Customers in general; and/or
- 12.6.4. where the FIBRE GEEKS CPE is found to contain a security risk or shortcoming which enables the Customer to exploit the FIBRE GEEKS Service to the detriment of FIBRE GEEKS;
- 12.7. No interruption of the Service Provider referred to under clause 12.6 shall be deemed to have occurred during any modifications and/or maintenance window or any authorised suspension of a service and the Customer acknowledges that it shall have no claim against FIBRE GEEKS in respect of all or any of the interruptions described under clause 12.6;
- 12.8. FIBRE GEEKS may from time to time, and on notice where this is possible, or without notice where this is not possible, and without prejudice to any other claims or remedies, which FIBRE GEEKS may have in terms hereof or in law, discontinue or terminate any part of the right to use the CPE, or in its discretion disconnect the CPE from the FIBRE GEEKS Network in any of the following circumstances:
- 12.8.1. where the FIBRE GEEKS CPE is found to contain a defect which enables the Customer to exploit the FIBRE GEEKS Service to the detriment of FIBRE GEEKS;
- 12.8.2. where the FIBRE GEEKS CPE has reached the end of its lifespan and is uneconomical to maintain or continue;
- 12.8.3. where there has been an insignificant interest in the use of a particular FIBRE GEEKS CPE; and/or
- 12.8.4. in response to an instruction from the Authority or in terms of the Act or some other law or body the FIBRE GEEKS CPE is discontinued.
- 12.8.5. where the Customer uses Devices that is not approved by the Authority for such use;
- 12.8.6. if the Customer has received the FIBRE GEEKS Fibre Line and CPE as a result of fraud or misrepresentation;
- 12.8.7. if the Customer uses in connection with the FIBRE GEEKS CPE or Device that the Customer has obtained illegally;
- 12.8.8. 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;
- 12.8.9. if the Customer does or allows to be done any act or omission, which in FIBRE GEEKS's opinion will or may have the effect of negatively affecting the operation of the FIBRE GEEKS Services;
- 12.8.10. if the Customer is using, or permitting the use of the FIBRE GEEKS CPE or any element thereof for any illegal purpose or in contravention of the Act, CPA and/or any act of Parliament;
- 12.8.11. if FIBRE GEEKS has been instructed to do so by any authority competent to issue such instruction;
13. **LIMITED LIABILITY AND INDEMNITY**
- 13.1. FIBRE GEEKS assumes no responsibility for the integrity, correctness, retention or content of information transported via the FIBRE GEEKS Network.
- 13.2. Subject to the provisions of clause 13.3 below, FIBRE GEEKS shall not be liable to the Customer or any other person whomsoever, under any circumstances whatsoever, or incur any liability for any loss or damages to the Customer or any other person or user, which arises or occurs as a result of the use of, or arising out of the provision of the FIBRE GEEKS Fibre Line; the CPE; or the installation, maintenance or removal of the connection, the FIBRE GEEKS services, damage is direct or indirect, consequential or contingent and in particular FIBRE GEEKS shall not be FIBRE GEEKS fibre line installation | Terms and conditions 3 liable for any:
- 13.2.1. loss of life,
- 13.2.2. injury,
- 13.2.3. medical expenses,
- 13.2.4. support,
- 13.2.5. financial loss or financial support,
- 13.2.6. loss of earnings,
- 13.2.7. loss of profit and/or income,
- 13.2.8. loss of revenue,
- 13.2.9. loss of business or goodwill,
- 13.2.10. any other special damages, or
- 13.2.11. any general damages incurred by the Customer, any user or any other person who may be using the FIBRE GEEKS Fibre Line and CPE, to whatever extent arising, and the Customer indemnifies FIBRE GEEKS against any claim or action, as described above, which may be brought by any person in this regard.
- 13.3. Where a Consumer suffers any loss or damages as a result of the use of the Fibre Line, or the CPE, the Customer 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 FIBRE GEEKS and its service providers under section 61 of the CPA.
- 13.4. FIBRE GEEKS only provides access to the Service Providers. FIBRE GEEKS does not operate or control the information, services, opinions or other content of the Internet, and FIBRE GEEKS makes no warranties or representation regarding any such information, services, opinions or other content. The Customer agrees that it shall make no claim whatsoever against FIBRE GEEKS relating to the content of the Internet or respecting any information, product, service or software ordered through or provided by virtue of the Internet. FIBRE GEEKS reserves the right to take measures as may be necessary, in FIBRE GEEKS's sole discretion, to ensure security and continuity of service on the FIBRE GEEKS network, including but not limited to identification and blocking or filtering of internet traffic sources which FIBRE GEEKS deems to pose a security risk or operational risk or a violation of its acceptable use policy. In addition, the Customer understands that FIBRE GEEKS does not own or control other third party networks, and FIBRE GEEKS is not responsible or liable for filtering or access restrictions imposed by such networks or for the performance (or non performance) within such networks.
- 13.5. The Customer is responsible for maintaining the security of its internal network from unauthorised access through the Internet. FIBRE GEEKS shall not be liable for unauthorised access to the Customer's network or other breaches of the Customer's network security.
- 13.6. The limitation on liability set out above is in addition to any limitation of liability set out elsewhere under the Agreement.
14. **CUSTOMER ASSISTANCE, COMPLAINTS AND DISPUTES**
- 14.1. FIBRE GEEKS provides customer care to all Customers during Office hours, excluding times when it is unable to assist due to reasons beyond its reasonable control.
- 14.2. For faults however, the Customer must, once it experiences any trouble with any of the FIBRE GEEKS CPE bring the suspected problem to his or her Service Provider's attention.
- 14.3. FIBRE GEEKS will use its best endeavours 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.
- 14.4. Where a Customer is of the view that the matter has not been resolved to the satisfaction of the Customer, the Customer will have the right to elevate the matter to the Authority, which can be done by contacting either:
- 14.4.1. the complaints website <http://www.icasa.org.za> and selecting the tab "complaints"; or
- 14.4.2. by email at [customers@icasa.org.za](mailto:customers@icasa.org.za).
- 14.5. The above rights set out under clauses 10.1 to 10.4 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.
15. **BREACH AND TERMINATION**
- 15.1. Should the Customer breach any term of this Agreement including any failure to pay FIBRE GEEKS any monies on due date, then FIBRE GEEKS shall give the Customer 30 (Thirty) Business Days notice to rectify the breach. Should the Customer neglect or fail to rectify the breach within the 30 (Thirty) Business Days notice period, then FIBRE GEEKS will have the right to either suspend or to cancel the Agreement, without prejudice to FIBRE GEEKS's rights to claim all and any damages which FIBRE GEEKS has incurred in consequence of such breach.
- 15.2. Should FIBRE GEEKS breach any material term of this Agreement, then the Customer will have the right to provide FIBRE GEEKS with a letter requiring FIBRE GEEKS to rectify the breach within a period of 30 (Thirty) Business Days. Should FIBRE GEEKS neglect or fail to rectify such breach within the 30 (Thirty) Business Days notice period, then the Customer may cancel the Agreement, which will be without prejudice to the Customer's rights to claim any damages which it may have incurred in consequence of FIBRE GEEKS's breach.
- 15.3. Should the Customer be sequestered, liquidated, FIBRE GEEKS shall be entitled to immediately cancel this Agreement upon notice to the Customer.
- 15.4. The Customer agrees that FIBRE GEEKS may register the details of the manner in which payments have been conducted by it or its agent, with any registered credit bureau.
- 15.5. The Customer shall be liable for all costs, including legal costs, and collection cost incurred by FIBRE GEEKS in respect of the enforcement of any obligations of the Customer 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.
- 15.6. Without prejudice to any other claims or remedies which FIBRE GEEKS may have against the Customer in terms of this Agreement or in law, FIBRE GEEKS may on 30 (Thirty) Business Days notice terminate the Agreement if the Customer has delayed the installation of the Selected FIBRE GEEKS Service for longer than 3 (Three) months and hold the Customer liable for all and any abortive costs incurred by FIBRE GEEKS in this regard.
16. **CONSEQUENCES OF ANY TERMINATION**
- 16.1. After termination of the Agreement for whatever reason,
- 16.2. FIBRE GEEKS may, on reasonable notice and in the Customer's presence enter the Customer's premises to remove the CPE and / or Fibre Line owned; and;
- 16.3. 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 as a result of the termination.
17. **LEGAL ADDRESS FOR SERVICE (DOMICILIUM AND NOTICES)**
- 17.1. The parties choose the addresses set out below as their chosen place to receive legal notices (domicilium citandi et executandi)
- 17.1.1. FIBRE GEEKS (Pty) Ltd at: Bronz Office, Nooitgedacht Village, Stellenbosch the Customer at the physical or residential address specified in the Registration Form.
- 17.2. All notices given in terms of this Agreement shall be in writing.
18. **PAYMENT**
- 18.1. FIBRE GEEKS shall provide the customer with a tax invoice once the installation has been completed. The Customer agrees and undertakes to pay to FIBRE GEEKS the Installation Fee as advised by FIBRE GEEKS and as set out under the Invoice.
- 18.2. The Installation Fees are to be paid by EFT (Electronic Funds Transfer) to FIBRE GEEKS's account stipulated on the Registration Form before or after the Installation Date
- 18.3. For the avoidance of doubt, the monthly Service Fees are payable by the Customer directly to the Service Provider for the FIBRE GEEKS Services selected.
- 18.4. Any Connection Fees charged for the FIBRE GEEKS Services by the Service Provider are payable by the Customer to the Service Provider.
- 18.5. In the event that the Customer moves and/or relocates to a different location and/or premises where FIBRE GEEKS operates a network, FIBRE GEEKS shall charge the Customer the installation fees for the moving and/or relocation of the Fibre Line and CPE.
19. **GENERAL**
- 19.1. Consumer status in consequence of the recently released CPA, certain rights have been granted to a Customer who is a Consumer, as defined under the CPA. FIBRE GEEKS reserves the right to withhold any of these rights and / or resultant benefits until such time as the Customer is able to prove to FIBRE GEEKS, 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 Customer is unable to show that it is a Consumer or Individual Consumer, in such an event FIBRE GEEKS reserves the right to reverse or call for restitution (a refund) of any rights or benefits which are permitted under the CPA and which the Customer has unlawfully taken advantage of.
- 19.2. Customer details and changes thereto The Customer agrees to supply FIBRE GEEKS with such information, documentation and signatures that FIBRE GEEKS 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 FIBRE GEEKS such as bank account, legal service address referred to under clause 13 and credit card details must be brought to the immediate attention of FIBRE GEEKS by the Customer in writing.
- 19.3. Cession FIBRE GEEKS 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 Customer reasonable notice of this fact. The Customer shall not be entitled to cede, assign, encumber or delegate his obligations arising out of the Agreement without the prior written consent of FIBRE GEEKS, 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 Registration 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 FIBRE GEEKS is represented by any duly authorised representative, FIBRE GEEKS's authority need not be proved.
- 19.7. Duplicate and scanned version in place of original The Customer agrees that the Registration 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. Unlicensed marketing and right to opt out The Customer understands that, in terms of section 45 of the Electronic Communications and Transactions Act 25 of 2002, the Customer and in terms of the provisions of the CPA in the case of a Consumer, the Consumer or the Customer has the option to request FIBRE GEEKS to remove its relevant contact particulars from its data base in respect of direct marketing and/or unsolicited commercial and/or marketing communications by FIBRE GEEKS.
- 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. Vis Major Except as specifically provided under the Agreement, FIBRE GEEKS shall not be liable to the Customer 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 FIBRE GEEKS Network, vis major, 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 FIBRE GEEKS's reasonable control.
- 19.11. Indulgence and relaxing The failure of FIBRE GEEKS 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 Customer or the relaxing of the provisions of the Agreement must not prejudice the right of FIBRE GEEKS to insist on the strict compliance by the Customer of its undertakings and obligations in terms of the Agreement.
- 19.12. Intellectual property rights Any intellectual property rights vesting in FIBRE GEEKS, whether by statute or common law, will remain vested in FIBRE GEEKS and the Customer agrees not to do anything or allow anything to be done that may infringe FIBRE GEEKS's rights and the Customer hereby INDEMNIFIES FIBRE GEEKS against any claims, actions and proceeding that may arise as a result of the Customer infringing or violating FIBRE GEEKS's intellectual property rights.
- 19.13. Applicable laws and Jurisdiction This Agreement will be interpreted and governed by the Laws of South Africa.