

Standard Terms & Conditions

Fibre to the Home (FTTH) Network Installation & related Services

1. DEFINITIONS AND INTERPRETATION

- 1.1 Unless a contrary intention is clear from the context, the following words and phrases shall have the following meanings:
- 1.1.1 "Acceptable Fair Use and Access Policy" means the FIBREHOOD'S Acceptable Fair Use and Access Policy attached hereto as Annexure 2;
 - 1.1.2 "Access Build" means civil construction & maintenance works of the Passive Optical Fibre Network at the Customer's Premises required to connect the Customer by means of installation of a Termination Point in the Customer Premises;
 - 1.1.3 "Activation" means the enabling of a Service to the Customer's Premises;
 - 1.1.4 "Agreement" means the current version of these Standard Terms & Conditions, the customer signed Order Form, and all annexures and addenda to these documents, as amended from time to time and available on www.fibrehood.co.zw;
 - 1.1.5 "Regulator" means refers to the Postal & Telecommunications Regulatory Authority of Zimbabwe (POTRAZ);
 - 1.1.6 "Business Day" means any day which is not a Saturday, Sunday or a day which is defined as a public holiday in terms of the Public Holidays Act, Act 36 of 1994;
 - 1.1.7 "Charges" means installation charges, monthly service charges, usage and all other charges relating to the provision of the services by Fibrehood to the Customer or relating to the cancellation of the Agreement;
 - 1.1.8 "Contractor" means a contractor appointed by Fibrehood to install, maintain, repair, connect, disconnect or perform any similar tasks related to the provision of the CPE or the Services by Fibrehood to the Customer;
 - 1.1.9 "Customer" means the person entering into this Agreement with Fibrehood for the provision of FTTH Access Services and/or the use of Customer Premises Equipment;
 - 1.1.10 "Customer Premises" means the premises specified in the Order Form at which the Services are to be provided;
 - 1.1.11 "Customer Premises Equipment" or "CPE" means all devices supplied by Fibrehood to the Customer to enable Fibrehood to provide the Services to the Customer, including but not limited to the optical network terminal (ONT) i.e Access Termination Box (ATB), Router, DSTV Fibre Termination Unit (FTU), hardware, cables and connections;
 - 1.1.12 "Event of Force Majeure" means any event or circumstance, other than a lack of funds required for payment, which is not within the reasonable control of the affected Party including, without limitation, war, national emergency, state of emergency, epidemic, pandemic, plague, national lockdown, strike, civil disturbance, theft, fire, flood, explosion, natural disaster, unusually severe weather conditions, prohibitive legislation or regulations, unpredictable delays caused by traffic congestion, diversion or road works, inability to secure materials or services and failure of power or utility supplies (including electronic communications);
 - 1.1.13 "FTTH" means architecture of electronic communication to the Customer's Premises where the final connection to the Customer's Premises is optical fibre;
 - 1.1.14 "Installation" means the physical act of the building the last mile access network for the FTTH service;

- 1.1.15 "Internet Services Provider" means a company that provides customers with internet access;
 - 1.1.16 "Month" means a calendar month beginning at 0h00 on the first day of the calendar month in question;
 - 1.1.17 "Network Operator" means an entity authorised by the Regulator to provide telecommunication services including, but not limited to, fixed network operators, mobile operators, wireless operators, or any other operator that provides access and network services (including value added services);
 - 1.1.18 "Network Services" means any services provided by a Network Operator and which are made accessible to the Customer in terms of this Agreement;
 - 1.1.19 "Order Form" means the document which is completed by the Customer in writing, electronically or telephonically, which contains the Customer's details and the Customer's request that Fibrehood provides it with Services, and may reference and include additional terms and conditions and any other annexures or schedules or documents referred to in the Order Form document from time to time;
 - 1.1.20 "Parties" means the parties to this Agreement, being Fibrehood and the Customer collectively, and "Party" means either one of them;
 - 1.1.21 "Personal Information" shall mean "personal information" as by the Regulator;
 - 1.1.22 "Process" shall mean any operation or activity or any set of operations, whether or not by automatic means, concerning Personal Information, including:
 - 1.1.22.1 the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use;
 - 1.1.22.2 dissemination by means of transmission, distribution or making available in any other form; or
 - 1.1.22.3 merging, linking, as well as restriction, degradation, erasure or destruction of information;
 - 1.1.23 "Service/(s)" means the residential services provided by Fibrehood to the Customer together with the with provision of any CPE required for such services, as detailed in the body of this Agreement as well as any additional services set out in any of the Annexures hereto, which the Customer subscribes for;
 - 1.1.24 "SLA" means the Service Level Agreement annexed to this Agreement as Annexure 1;
 - 1.1.25 "Social Media Platforms" shall mean internet-based social media platforms and/or blog sites, such as (but not limited to) Facebook, Twitter, Instagram and all similar sites which grants a user a platform from which to air an opinion, whether moderated or not, which is accessible to the general public, whether now in existence or which may come into existence in future;
 - 1.1.26 "Termination Point" means the point where the Customer is connected to the fibre broadband network and includes the optical network terminal point ("ONT");
 - 1.1.27 "Use Charges" means the costs charged by Fibrehood to the Customer for access to the Network Services; and
 - 1.1.28 "VOIP" means voice over IP technology for placing and transmitting telephone calls over an Internet Protocol network including the Internet, as set out in Annexure 3 hereto.
- 1.2 In this Agreement, unless a contrary intention is clear from the context:
- 1.2.1 the singular includes the plural and vice versa;
 - 1.2.2 a reference to any gender includes the other genders and a reference to a person includes any individual, body corporate, unincorporated entity or any other entity recognised in law as having a separate legal existence;

- 1.2.3 when any number of days is prescribed, this shall be calculated by excluding the first and including the last day, unless the last day is not a Business Day in which case the days shall be calculated up to the next Business Day;
- 1.2.4 headings of clauses have been inserted for convenience only and shall not be taken into account in the interpretation of this Agreement;
- 1.2.5 if there is any conflict between the provisions of this Agreement and any annexure, the provisions of this Agreement shall prevail over the provisions of Annexure 1 and Annexure 2, however, provisions of Annexure 3 will prevail in the event of any conflict with this Agreement;
- 1.2.6 words defined in this clause shall have the same meaning in the annexures and any word defined in a clause or annexure shall have that meaning in the clause or annexure concerned and if used elsewhere in this Agreement.

2. PROVISION OF SERVICES AND AUTHORISATION

- 2.1 The Customer wishes to receive the Services from FIBREHOOD, which Services FIBREHOOD agrees to provide to the Customer subject to the terms of this Agreement.
- 2.2 In order to provide the Services:
 - 2.2.1 FIBREHOOD may be required to conduct an economic and feasibility process to determine the viability of the Installation;
 - 2.2.2 FIBREHOOD may require information from Network Operators. The Customer authorises FIBREHOOD to approach any Network Operator or other party in order to obtain such information;
 - 2.2.3 FIBREHOOD MAY NEED TO ENTER INTO AGREEMENTS OR ARRANGEMENTS WITH THIRD PARTIES WHICH MAY BE NECESSARY FOR FIBREHOOD TO DELIVER THE SERVICES. THE CUSTOMER HEREBY AUTHORISES FIBREHOOD TO ENTER INTO ANY SUCH AGREEMENT OR ARRANGEMENT ON HIS/HER BEHALF AS MAY BE NECESSARY;
 - 2.2.4 if so required, the Customer shall provide FIBREHOOD with such written authorisation as may be necessary for FIBREHOOD to obtain the information referred to in clause 2.2.2 or to enter into an agreement or arrangement referred to in clause 2.2.3; and
- 2.3 Where an electronic Order Form is placed through the FIBREHOOD portal/ website, the order as selected and executed by FIBREHOOD will be billed (**where applicable**) to the person whose name is set out at the top of the Order Form.

3. TERM

- 3.1 This Agreement shall apply to each Order Form.
- 3.2 The Customer may not terminate this Agreement from the date of signing of the Service Order subject to the provisions of Clause 9 force Marjorie.
- 3.3 The agreement is automatically transferred on sale of the property to third parties or their association.

4. ACCESS NETWORK BUILD

- 4.1 The Access Network Build shall encompass the civil works relating to the installation of a Termination Point in the Customer Premises.
- 4.2 No service provider shall be restricted access to their subscribers through the Access Network. However, the network shall remain the property of FIBREHOOD.

- 4.3 The Customer shall retain the right to grant permission to any other network service provider or operator to build a separate network shall they wish to so.

5. DELIVERY AND INSTALLATION

- 5.1 Subject to the result of the feasibility process and payment for the Access Network Build (where applicable), FIBREHOOD shall deliver the CPE required for the provision of the Services and as specified in the Order Form, to the Customer Premises against payment of the Charges and deposit, if any, as set out in the Order Form.
- 5.2 FIBREHOOD will use its reasonable endeavours to comply with the installation date requested by the Customer. However, the Customer acknowledges that this will depend on the availability of the Services, service providers and Contractors and FIBREHOOD gives no undertaking that it will meet any requested installation date. FIBREHOOD will not be liable in any manner to the Customer for any loss arising from any delay in the provision of the Services or the supply of CPE or any failure of the Services or CPE, whether arising from an Event of Force Majeure or from any other reason whatsoever.
- 5.3 The Customer shall, at its own cost and expense, be responsible for:
- 5.3.1 ensuring that the communication services and facilities, including, without limitation, installation areas, electrical outlets, are suitable for the installation, passage and electrical connection of the equipment and Services when they are delivered for installation and thereafter. Where any device or equipment is required which is not provided by FIBREHOOD, the Customer shall be responsible for installing it at its own cost, risk and expense. Only devices and equipment which are approved by the Regulator and which have all the technical and operational characteristics and modifications which have been approved by FIBREHOOD may be used in conjunction with the Services and the CPE; and
- 5.3.2 obtaining all the necessary permissions, approvals and authorities necessary for the purposes of the supply and installation of the equipment and Services, including permission from the owner of the Customer Premises where the Customer is not the owner. THE CUSTOMER HEREBY INDEMNIFIES FIBREHOOD AGAINST ANY LIABILITY OR COSTS WHICH FIBREHOOD MAY INCUR BECAUSE OF THE CUSTOMER'S FAILURE TO OBTAIN ANY APPROVAL OR PERMISSION.
- 5.4 After installation acceptance, any subsequent callout will be subject to a callout fee.
- 5.5 Unless the Customer advises FIBREHOOD of any problems with the installation or the Services within 5 Business Days from the time of Activation, the Customer shall be deemed to have accepted that the Services work, as intended.

6. USE OF THE EQUIPMENT

- 6.1 The Customer acknowledges that the CPE are and remain the property of FIBREHOOD unless purchased by and shall use the CPE only for the purpose for which it is intended and in accordance with any laws or regulations.
- 6.2 Should the Customer not be the owner of the Customer Premises, the Customer shall notify the owner of the Customer Premises of FIBREHOOD'S ownership of the CPE.
- 6.3 Upon delivery to the Customer, or collection by the Customer, of the CPE, risk in respect of the CPE, but not ownership thereof, shall pass to the Customer who shall ensure that:
- 6.3.1 the CPE is kept in the Customer's possession and control in the Customer Premises, and protected against any material loss or damage and free from any attachment, lien, hypothec or other encumbrance;
- 6.3.2 the CPE is used with due care and diligence. The Customer specifically acknowledges that the fly-lead is extremely fragile and may not be bent, tightly coiled or manhandled;

- 6.3.3 should the Customer move from the Customer's Premises, the CPE, shall be returned to FIBREHOOD or collected by FIBREHOD, if so elected, by FIBREHOOD. In the event that the CPE is to be collected by FIBREHOOD, the Customer undertakes to inform the new owner or tenant of the Customer's Premises that FIBREHOOD owns the CPE. Notwithstanding the relocation of the Customer from the Customer's Premises, the Customer remains responsible for the safekeeping of the CPE until the CPE is returned to FIBREHOOD or collected by FIBREHOOD, as the case may be.
- 6.4 In the event of theft of or loss or damage to the CPE, the Customer shall immediately inform FIBREHOOD thereof in writing. The Customer shall be solely responsible for the cost of repairing or replacing the CPE.
- 6.5 The Customer shall ensure that the CPE remains at the Customer's Premises. Only FIBREHOOD is allowed to relocate the CPE. The Customer will be charged a relocation fee if relocation is requested by the Customer after having accepted the Service.
- 6.6 FIBREHOOD may, at any time during the Agreement, reconfigure, upgrade or exchange any part of the CPE should FIBREHOOD, in its sole discretion, deem it necessary to do so in order to meet its obligation to provide the Services. FIBREHOOD shall not be obliged to undertake any upgrades of the CPE unless it deems it necessary in its sole discretion, to do so.

7. USE OF SERVICE

- 7.1 The Customer warrants and undertakes in favour of FIBREHOOD, that the Customer:
- 7.1.1 shall not use or permit the Service accessed to be used for improper or unlawful purposes;
 - 7.1.2 shall not use the Service accessed to cause any harm or physical damage FIBREHOOD'S CPE or network or to any third-party network or Network Operator;
 - 7.1.3 shall not resell capacity arising from the Service;
 - 7.1.4 shall comply with relevant legislation, including any regulations by the Regulator or other legislative bodies, and any directives or instructions from FIBREHOOD, including FIBREHOOD'S Acceptable Fair Use and Access Policy, annexed hereto and available on FIBREHOOD'S website, relating to the use of the CPE or the Service; and
 - 7.1.5 acknowledges that the Service is not designed nor intended for business use.
- 7.2 THE CUSTOMER WARRANTS AND REPRESENTS TO FIBREHOOD THAT HE/SHE SHALL USE THE SERVICE IN TERMS OF CLAUSE 7.1 AND SHALL FULLY INDEMNIFY FIBREHOOD AGAINST ANY THIRD PARTY CLAIM RESULTING FROM ANY DAMAGE CAUSED TO A THIRD PARTY (WHETHER PHYSICAL DAMAGE AND/OR DAMAGE TO THE LOGICAL BASIS OF THE NETWORK) AND AGAINST ANY BREACH BY THE CUSTOMER OF THE PROVISIONS OF CLAUSE 7.1.

8. FEES AND PAYMENT

- 8.1 THE ACCESS NETWORK BUILD AND ITS MAINTENANCE SHALL BE AT NO COST TO THE CUSTOMER.
- 8.2 AN IN-HOME INSTALLATION FEE WILL BE CHARGED IF NOT DONE AT THE TIME OF ACCESS BUILD.
- 8.3 FIBREHOOD shall charge Access & other applicable service fees to the Service Provider and /or Subscriber where applicable.

9. CANCELLATION AS A RESULT OF FORCE MAJEURE

- 9.1 If either Party is rendered unable, in whole or in part, by an Event of Force Majeure to perform or comply with any obligation or condition of this Agreement, such obligation or condition shall be suspended to the extent and for the duration of the continuance of the inability so caused and such

Party shall be relieved of any liability during such period, provided that the Event of Force Majeure will not operate to suspend the obligation of a Party to make payment if such payment becomes due and payable for services rendered in terms of this Agreement.

- 9.2 The Party declaring an Event of Force Majeure shall give prompt written notice to the other Party specifying the exact nature of the intervening circumstances and its estimated duration.
- 9.3 The Party declaring an Event of Force Majeure shall use all reasonable endeavours and employ all reasonable means to overcome or abate the Event of Force Majeure as quickly as possible.
- 9.4 If an Event of Force Majeure continues for a period of more than 30 (thirty) days, the Parties will consult with each other with a view to the future implementation of this Agreement. If no agreement is reached by the Parties in this regard within a period of 7 (seven) days thereafter, either Party may terminate the Agreement forthwith upon 14 (fourteen) days' prior written notice to the other.

10. GUARANTEES, EXCLUSION AND LIMITATION OF LIABILITY

10.1 IT IS SPECIFICALLY AGREED THAT FIBREHOOD SHALL NOT BE LIABLE FOR ANY DAMAGES OR LOSSES INCURRED BY THE CUSTOMER BECAUSE OF:

10.1.1 THE SERVICES BEING INTERRUPTED, SUSPENDED OR TERMINATED FOR WHATSOEVER REASON; OR

10.1.2 COMMUNICATIONS TO OR FROM THE CUSTOMER NOT BEING SENT AND/OR RECEIVED AT ALL OR ON TIME FOR ANY REASON WHATSOEVER (AND INCLUDING WITHOUT LIMITATION ANY LOSS OF DATA); OR

10.1.3 THE CUSTOMER USING THE SERVICES FOR ILLEGAL OR IMPROPER PURPOSES OR CAUSING DAMAGE TO ANY NETWORK SERVICE OR NETWORK OPERATOR.

11. CESSION, ASSIGNMENT AND SUB-CONTRACTING

11.1 The Customer may not cede or assign any of its rights or obligations under this Agreement, nor transfer the CPE or any part thereof to any third party or permit any third party to use the CPE or any part thereof without FIBREHOOD'S prior written consent.

11.2 FIBREHOOD shall be entitled to cede and/or assign any of its rights or obligation under the Agreement or to appoint Contractors to carry out any of its obligations under the Agreement, without consent from the Customer.

12. DOMICILIA AND NOTICES

12.1 The Parties select as their respective domicilia citandi et executandi, and for the purposes of giving or sending any notice or communication provided for or required in terms of this Agreement, the addresses (including email addresses) as set out below:

FIBREHOOD:

Physical Address: 17 Malcolm Road, Borrowdale, Harare

Postal Address: 17 Malcolm Road, Borrowdale, Harare

E-mail: admin@fibrehood.co.zw

The Customer: As per the Order Form.

- 12.2 The physical or residential address and the e-mail address specified in the Order Form will be utilised to contact the Customer. The Customer must notify Fibrehood in writing of any change in any one or more of set out in the Order Form within 7 days of any such change taking effect.
- 12.3 FIBREHOOD may change its domicilium address by updating its domicilium details on www.fibrehood.co.zw.
- 12.4 Any notice required or permitted to be given in terms of this Agreement shall be given in writing and shall be delivered by hand to the physical domicilium address of the other Party or sent via e-mail to the chosen e-mail address.
- 12.5 Notwithstanding anything to the contrary in this clause, a written notice or communication actually received by any Party, shall be adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen address.

13. DISCLOSURE

- 13.1 THE CUSTOMER WARRANTS AND REPRESENTS THAT ALL INFORMATION PROVIDED IN THE ORDER FORM OR ELSEWHERE RELATING TO THIS AGREEMENT, IS TRUE, CORRECT AND COMPLETE AND THE CUSTOMER INDEMNIFIES FIBREHOOD AGAINST ANY CLAIM THAT MAY ARISE AS A RESULT OF A BREACH OF THIS WARRANTY.
- 13.2 FIBREHOOD SHALL FURTHER BE ENTITLED TO DISCLOSE ANY INFORMATION OF THE CUSTOMER TO ENABLE THE PROVISION OF EMERGENCY SERVICES, DIRECTORY OR REPAIR SERVICES TO THE CUSTOMER AND FOR ANY PURPOSE FOR WHICH SUCH INFORMATION IS REQUIRED IN LAW.
- 13.3 FIBREHOOD undertakes not to disclose any of the Customer's information for any purpose, except as provided for in this clause or as agreed to elsewhere in this Agreement or in writing by the Customer.

14. PERSONAL INFORMATION

- 14.1 THE CUSTOMER ACKNOWLEDGES THAT FIBREHOOD AND ITS RESPECTIVE CONTRACTORS WILL, BY VIRTUE OF THE PROVISION OF SERVICES, COME INTO POSSESSION OF THE CUSTOMER'S PERSONAL INFORMATION.
- 14.2 THE CUSTOMER ACKNOWLEDGES THAT FIBREHOOD AND ITS RESPECTIVE CONTRACTORS MAY USE OR PROCESS PERSONAL INFORMATION:
- 14.2.1 IN CONNECTION WITH THE DELIVERY AND PROVISION OF SERVICES;
- 14.2.2 TO INCORPORATE PERSONAL INFORMATION INTO DATABASES CONTROLLED BY FIBREHOOD FOR THE PURPOSE OF ADMINISTRATION, PROVISIONING, BILLING AND RECONCILIATION, VERIFICATION OF CUSTOMER IDENTITY AND SOLVENCY, MAINTENANCE, SUPPORT AND PRODUCT DEVELOPMENT, FRAUD DETECTION AND PREVENTION.
- 14.3 FIBREHOOD undertakes that it shall comply with all provisions relating to the Processing of Customer Personal Information and shall only Process Personal Information in accordance with clause 16.2 above.
- 14.4 THE CUSTOMER CONSENTS AND AGREES TO THE USE AND PROCESSING OF PERSONAL INFORMATION BY FIBREHOOD AND ITS CONTRACTORS, AS CONTEMPLATED IN THIS CLAUSE 16. THE CUSTOMER CONSENTS TO FIBREHOOD USING CLOUD-BASED COMPUTER STORAGE FACILITIES TO STORE HIS/HER PERSONAL INFORMATION AND FURTHER CONSENTS TO THE STORAGE OF HIS/HER DATA OUTSIDE OF THE BORDERS OF THE ZIMBABWE, TO THE EXTENT REQUIRED AND AS MAY BE APPLICABLE.

15. GENERAL

- 15.1 This Agreement constitutes the whole agreement between the Parties relating to the subject matter hereof and no Party shall be bound to any express or implied term nor to any representation or warranty nor to any extension, relaxation or waiver of any provision hereof, unless reduced to writing and agreed to by the Parties. Any such extension, relaxation or waiver will be strictly interpreted as applying only to the matter in respect of which it is made or given.
- 15.2 The Customer acknowledges that FIBREHOOD seeks, on an on-going basis, to improve the services that it offers to its Customers. This, together with other changes which may be required as a result of legislation or regulation or arising from the environment in which FIBREHOOD operates, may require FIBREHOOD to amend the terms and conditions of this Agreement from time to time. ANY REVISED OR UPDATED VERSION OF THIS AGREEMENT WILL BE AVAILABLE ON FIBREHOODS'S WEBSITE AT WWW.FIBREHOOD.CO.ZW AND NO NOTIFICATION OF SUCH AMENDMENT WILL BE PROVIDED TO THE CUSTOMER. IT IS THE CUSTOMER'S RESPONSIBILITY TO ENSURE THAT HE/SHE HAS THE LATEST VERSION OF THIS AGREEMENT. SHOULD THE CUSTOMER NOT BE COMFORTABLE WITH ANY REVISIONS TO THIS AGREEMENT, THE CUSTOMER MAY TERMINATE THE AGREEMENT AT ANY TIME BY GIVING 30 (THIRTY) CALENDAR DAYS' NOTICE IN WRITING TO FIBREHOOD.
- 15.3 If any part of this Agreement is found to be invalid, the balance of the provisions shall remain enforceable. The rule that, in the case of any ambiguity in an agreement, the agreement shall be interpreted against the party responsible for the preparation thereof, shall not apply to this Agreement.
- 15.4 This Agreement shall be subject to and shall be governed by the laws of the Zimbabwe.
- 15.5 THE CUSTOMER AGREES, IN ACCORDANCE WITH THE PROVISIONS OF THE MAGISTRATES COURT ACT, AS AMENDED FROM TIME TO TIME, TO THE JURISDICTION OF THE MAGISTRATES COURT HAVING JURISDICTION OVER ITS PERSON IN CONNECTION WITH ANY ACTION OR PROCEEDING INSTITUTED AGAINST THE CUSTOMER IN TERMS OF OR ARISING OUT OF THIS AGREEMENT.
- 15.6 Dispute resolution and escalation:
- 15.6.1 Subject to clause 17.6.2 below, the Customer shall be entitled to refer any dispute between itself and FIBREHOOD regarding the installation and/or accessibility of Services to the Authority or to refer any matter to any other regulatory body having jurisdiction in respect thereof.
- 15.6.2 However, the Customer shall first exhaust FIBREHOOD'S internal escalation route for dispute resolution and fault reporting before escalating any such matter to any regulatory body having jurisdiction.
- 15.6.3 The Customer shall refrain from attacking FIBREHOOD or its Contractors on any Social Media Platforms for delays in installation and/or Service interruption repairs, without first following the escalation routes and remedies stated above. Failure to comply with this clause shall entitle FIBREHOOD to cancel the Agreement without any further notice to the Customer. FIBREHOOD furthermore reserves the right to take legal action for slander/defamation against the Customer for any untrue statements made on Social Media in addition to cancelling the Agreement as aforementioned.