

Userverse General Terms and Conditions for Broadband Services

1. 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 Use and Access Policy” means Userverse acceptable fair use and access policy attached hereto as Annexure 2;
 - 1.1.2. “Access Build” means civil construction and maintenance works required at the Premises to connect the Network Service to the Premises by installation of a Termination Point in the Premises;
 - 1.1.3. “Activation” means the enabling of a Service to the Premises;
 - 1.1.4. “Agreement” means the current version of these Terms and Conditions, the Application Form signed by the Customer, and all schedules and addenda to these documents, as amended from time to time;
 - 1.1.5. “Application 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 Userverse 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 Application Form document from time to time;
 - 1.1.6. “Authority” means the Independent Communications Authority of South Africa established in terms of the Independent Communications Authority of South Africa Act 13 of 2000 and its successors who oversee the telecommunications and electronics industry in the Republic of South Africa;
 - 1.1.7. “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;
 - 1.1.8. “Charges” means installation charges, activation charge, monthly service charges, usage and all other charges relating to the provision of the services by the Userverse to the Customer or relating to the cancellation of the Agreement;
 - 1.1.9. “Contractor” means a contractor appointed to install, maintain, repair, connect, disconnect or perform any similar tasks related to the provision of the CPE or the Services rendered by Userverse to the Customer;
 - 1.1.10. “Customer” means the person entering into this Agreement with Userverse for the provision of the Services and/or the use of equipment;
 - 1.1.11. “Customer Premises Equipment” or “CPE” means all devices supplied to the Customer to enable Userverse to provide the Services to the Customer, including the optical network terminal (“ONT”), 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, strike, civil disturbance, theft, fire, flood, explosion, natural disaster, unusually severe weather conditions, prohibitive legislation or regulations, 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 Premises where the final connection to the Premises is optical fibre;
 - 1.1.14. “Installation” means the physical act of providing the FTTH to the Customer Premises and shall include all Access Builds;
 - 1.1.15. “Month” means a calendar month beginning at 0h00 on the first day of the calendar month in

- question;
- 1.1.16. “Network Provider” means an entity authorised by the Authority to provide telecommunication services including, but not limited to, fixed line operators, mobile operators, wireless operators or any other operator that provides access and network services (including value added services);
 - 1.1.17. “Network Services” means any services provided by a Network Provider and which are made accessible to the Customer in terms of this Agreement;
 - 1.1.18. “Parties” means the parties to this agreement, being Userverse and the Customer, and “Party” means either one of them;
 - 1.1.19. “Premises” means the premises specified in the Application Form at which the Services are to be provided;
 - 1.1.20. “Product” means any combination of equipment and services provided by Userverse to the Customer;
 - 1.1.21. “RICA” means the Regulation of Interception of Communications and Provision of Communications Related Information Act 70 of 2003, as amended from time to time, and its related regulations as published in the Government Gazette;
 - 1.1.22. “Services” means the broadband services provided by Userverse to the Customer, excluding VOIP;
 - 1.1.23. “SLA” means the Service Level Agreement annexed to this Agreement as Annexure 1;
 - 1.1.24. “Social Media Platforms” shall mean internet-based social media platforms and/or blog sites, such as (but not limited to) Facebook, Twitter, Instagram, Pinterest 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;
 - 1.1.25. “Termination Point” means the point where the Customer is connected to the fibre broadband network including and includes the ONT;
 - 1.1.26. “Uptime” means the total number of minutes available to a Customer via the Network services in a calendar month;
 - 1.1.27. “Use charges” means the costs charged by Userverse to the Customer for recorded use of the Services;
 - 1.1.28. “Userverse” means Userverse (Proprietary) Limited, registration number 2018/343043/07, a company incorporated in terms of the laws of the Republic of South Africa;
 - 1.1.29. “VOIP” means voice over IP technology for placing and transmitting telephone calls over an Internet Protocol network including the Internet.
- 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 or unincorporated 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 the Agreement;
 - 1.2.5. if there is any conflict between the provisions of this Agreement and any schedule or annexure, the provisions of this Agreement shall prevail;
 - 1.2.6. words defined in this clause shall have the same meaning in the schedules and any word defined

in a clause or schedule shall have that meaning in the clause or schedule concerned and if used elsewhere in this Agreement.

2. PROVISION OF SERVICES AND AUTHORISATION

- 2.1. The Customer wishes to acquire Services and Product from Userverse, which Services and Product Userverse agrees to provide to the Customer, the Services and Products shall be provided to the Customer subject to these General Terms and Conditions.
- 2.2. In order to provide the Services:
 - 2.2.1. Userverse may be required to conduct an economic and network feasibility process to determine the viability of any installation including Access Builds;
 - 2.2.2. Userverse may require information from other Network Providers. The Customer authorises Userverse to approach any Network Provider or other party in order to obtain such information;
 - 2.2.3. Userverse may need to enter into agreements or arrangements with third parties which may be necessary for Userverse to deliver the Services. The Customer authorises Userverse to enter into any such agreement or arrangement as may be necessary;
 - 2.2.4. If so required, the Customer shall provide such written authorisation as may be necessary for Userverse to obtain the information referred to in 2.2.1 or to enter into an agreement or arrangement referred to in 2.2.2; and
 - 2.2.5. the Customer undertakes to provide Userverse with all information and documentation required under RICA prior to the Service being activated. The Customer acknowledges that Userverse may not provision any Service to the Customer until such a time as the Customer has complied with this sub-clause.
- 2.3. Where an electronic Application Form is placed through the Userverse portal/ website, the charges as selected and executed by Userverse will be billed to the person/ entity whose name is set out at the top of the Application Form.

3. TERM

- 3.1. The Agreement shall apply to each Application Form and any Services provided in terms thereof, calculated from the date of Activation of the related Service.
- 3.2. The Customer may terminate the Agreement at any time by giving 30 calendar days' notice in writing to Userverse.
- 3.3. If the conclusion of the Agreement is as a result of direct marketing, the Customer has the right to terminate the Agreement without reason or penalty within 5 business days of the later of the date upon which the Agreement was entered or the CPE or any other goods to be supplied to the Customer are delivered to the Customer. If such goods are not returned in their original, unopened packaging, Userverse shall be entitled to claim a reasonable amount from the Customer for the use and/or depletion of the CPE or other goods.

4. ACCESS BUILD

- 4.1. Where an Access Build is included in any Application Form, marketing materials, package or quote, the Access Build shall encompass the civil works relating to the installation of a Termination Point in the Customer Premises.
- 4.2. The Access Build shall be limited to reasonable civil construction costs of not more than R10,000 (ten thousand Rand) and no more than 15 (fifteen) running metres of cable infrastructure including trenching and reticulation. To the extent that the parameters of the Access Build will be exceeded, Userverse shall be entitled to charge an increased cost based on labour and materials.

5. DELIVERY AND INSTALLATION

- 5.1. Subject to the result of the feasibility process and payment of any Access Build (where applicable),

Userverse shall deliver the CPE required for the provision of the Services and as specified in the Application Form, to the Customer Premises against payment of the Installation Fee and deposit, if any, as set out in the Application Form.

- 5.2. Userverse will use its reasonable endeavours to meet any installation date requested by the Customer but gives no undertaking that it will meet such installation date due to dependencies. Userverse will not be liable in any manner to the Customer for any loss arising from failure in delay in the provision of the services or the CPE irrespective of the reason for the delay.
- 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 Userverse, the Customer shall be responsible for installing it at its own cost, risk and expense. Only devices and equipment which are approved by the Authority and which have all the technical and operational characteristics and modifications which have been approved 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 at the Premises, including permission from the owner of the premises where the Customer is not the owner. The Customer hereby indemnifies Userverse against any liability or costs which Userverse may incur because of the Customer's failure to obtain any approval or permission.
 - 5.3.3. Should the installation require an Access Build in excess of 15 running metres, an additional installation charge shall apply.
 - 5.3.4. After installation acceptance, any subsequent callout will be subject to a callout fee.
 - 5.3.5. Unless the Customer advises Userverse 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 Installation as intended.

6. USE OF THE EQUIPMENT

- 6.1. The Customer acknowledges that the CPE is and remains the property of Userverse and shall use the CPE only for the purpose for which it is intended and in accordance with any laws or regulations.
- 6.2. 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:
 - 6.2.1. the CPE is kept in the Customer's possession and control, protected against any material loss or damage and free from any attachment, lien, hypothec or other encumbrance;
 - 6.2.2. 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; and
 - 6.2.3. should the Customer move from the Customer's premises, the CPE shall be returned to Userverse, unless otherwise agreed in writing.
- 6.3. Should the Customer not be the owner of the Premises the Customer shall notify the owner of such premises of Userverse's ownership of the equipment.
- 6.4. In the event of theft of or loss or damage to the CPE, the Customer shall immediately inform Userverse thereof in writing. The Customer shall be responsible for the cost of repairing or replacing the CPE.
- 6.5. The Customer shall ensure that the CPE remain at the Premises. Only Userverse 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. Userverse may, at any time during the Agreement, reconfigure, upgrade or exchange any part of the CPE should Userverse, in its sole discretion, deem it necessary to do so in order to meet its obligation to provide the Services. Userverse shall not be obliged to make any upgrades unless it deems it necessary to do so.

7. **USE OF SERVICE**

7.1. The Customer warrants and undertakes in favour of Userverse, that the Customer:

7.1.1. shall not use or permit the services to be used for improper, immoral or unlawful purposes;

7.1.2. shall not use the services to cause any harm or physical damage Userverse's CPE or network or to any third party network;

7.1.3. shall not resell capacity arising from the Services;

7.1.4. shall comply with relevant legislation, including any regulations by the Authority, and any directives or instructions from Userverse, including Userverse's Acceptable Fair Use and Access Policy, annexed hereto and available on Userverse's website, relating to the use of the equipment or Services; and

7.1.5. acknowledges that the service is not designed for business use.

7.2. The Customer warrants and represents to Userverse that he/she/it shall use the service in terms of 7.1 and shall fully indemnify Userverse against any third party claim resulting from any damage caused to third party network (whether physical damage and/or damage to the logical basis of the network) and any breach of the provisions of 7.1.

8. **FEES AND PAYMENT**

8.1. Unless otherwise specifically agreed in the Application Form and accepted by Userverse, the Installation of the Customer shall pay the installation charge within 2 business days from date of Activation. All pro rata charges will be billed on date of activation. A once-off R500 (Five Hundred Rand) activation fee is payable 2 business days before activation.

8.2. Unless otherwise agreed in writing, the Customer shall make payment a once-off activation fee of on or before the last business day of the month in which of the date of invoice is raised which payment shall be made into the bank account nominated by Userverse for this purpose,

8.3. For the supply and delivery of monthly Services, payment shall be made within 5 days from date of invoice, irrespective of whether the Service is used or not. A pro rata Service charge will be levied for the period after activation until the end of that month, which must be paid by the Customer, by the 1st of the following month.

8.4. All charges shall be paid into the bank account nominated by Userverse in the relevant invoice and all payments must be made in full, without deduction or set-off and free of bank charges.

8.5. The Customer shall be liable for the applicable reactivation charges to restore any services suspended due to non-payment or late payment of charges due and payable in terms of this Agreement.

8.6. Userverse shall be entitled to change the fees payable by the Customer upon 30 (thirty) days' notice.

8.7. A certificate signed by any director of Userverse shall be prima facie proof of the amount owing by the Customer for the purposes of obtaining provisional sentence or summary judgment. The burden of proof should the Customer dispute the correctness of such signed certificate, shall rest with the Customer.

9. SUSPENSION OF SERVICES

- 9.1. Userverse may, upon notice to the Customer, suspend the Customer's full use of Services, if the Customer fails to perform any obligation under or breaches any term of this Agreement.
- 9.2. Billing of all fees and charges will continue to accrue during suspension in accordance with 9.1.
- 9.3. Should the Customer's failure to meet obligations in terms of this Agreement continue for longer than thirty (30) days, Userverse reserves the right to terminate this Agreement without any further notice.

10. CANCELLATION AS A RESULT OF IMPOSSIBILITY OF PERFORMANCE

- 10.1. If any party is restricted or prevented from carrying out any or all of its obligations as a result of an Event of Force Majeure, unpredictable delays caused by traffic congestion, diversion or road works, or any other event or circumstance giving rise to impossibility or performance delay by either Party, then that Party will be relieved of its affected obligations during the period that such event continues and will not be liable for any costs or damages arising from such delay or the failure in performance of any obligations as a result of such event.
- 10.2. If the event in 10.1 continues for a period more than 21 (twenty-one) days, either Party may cancel this Agreement with immediate effect by written notice to the other Party.

11. OBLIGATIONS ON TERMINATION

- 11.1. The Customer remains responsible for all amounts due in terms of the Agreement up until the date of termination, together with any costs or expenses relating to the termination of the Agreement and the cancellation of the Services, including, but not limited to: the replacement cost of any CPE which Userverse is unable to recover for any reason.
- 11.2. Userverse is entitled to immediately deactivate the Services on date of termination or cancellation and shall have no further obligation to the Customer after such termination or cancellation of this Agreement.
- 11.3. Userverse may remove the CPE and the Customer shall ensure that such access is granted, to enable Userverse to remove the CPE or any other equipment related thereto from the Premises.

12. GUARANTEES, EXCLUSION AND LIMITATION OF LIABILITY

- 12.1. It is specifically agreed that Userverse shall not be liable for any damages or losses incurred by the Customer because of:
 - 12.1.1. the Services being interrupted, suspended or terminated for whatsoever reason; or
 - 12.1.2. 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);
 - 12.1.3. the Customer using the Services for illegal, immoral or improper purposes or causing damage to any Network Service or Network Provider.

13. CESSION, ASSIGNMENT AND SUB-CONTRACTING

- 13.1. The Customer may not transfer, 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 Userverse's prior written consent.
- 13.2. Userverse 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.

14. DOMICILIA AND NOTICES

- 14.1. 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:

14.1.1. Userverse

Physical address: Unit B12, Ground floor, Eco Fusion 4, 300 Witch-Hazel Avenue, Highveld Ext 59, Centurion, 0046V

Postal address: Private Bag X108, Centurion, 0046

Email address: Info@userverse.net

14.1.2. **The Customer:** The physical or residential address and the e-mail address specified in the Application Form. The Customer must notify Userverse in writing of any change in any one or all of these details within 7 days of any such change taking effect.

14.2. Userverse may change its domicilium address by written notice to the Customer, provided that any such change shall only become effective on the 7th (seventh) day after the giving of such notice.

14.3. 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 if a chosen e-mail address is selected.

14.4. 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.

15. DISCLOSURE

15.1. The Customer warrants and represents that all information provided in the Application Form or elsewhere relating to this Agreement, is true, correct and complete and the Customer indemnifies Userverse against any claim that may arise as a result of a breach of this warranty.

15.2. The Customer authorises Userverse to make general credit reference enquiries about the Customer and to disclose any information, which has been supplied, or any information relating to the Customer's account to any registered credit bureau.

15.3. Userverse 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.

15.4. Userverse 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.

16. GENERAL

16.1. 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.

16.2. The Customer acknowledges that Userverse 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 Userverse operates, may require Userverse to amend the terms and conditions of this Agreement from time to time. Subject always to the Customer's rights to terminate this Agreement, Userverse shall have the sole discretion to amend this Agreement and to modify or discontinue any function or component of the Services. Any use by the Customer of such Services after such amendment has been implemented and notified to the Customer in writing, shall be deemed to be an acceptance by the Customer of such amendment.

16.3. 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.
- 16.4. This Agreement shall be subject to and shall be governed by the laws of the Republic of South Africa.
- 16.5. The Customer agrees, in accordance with the provisions of the Magistrates Court Act of 1944, 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, provided that either party may institute any action or proceedings in any division of the High Court of South Africa which has the necessary jurisdiction. In the case of either party (“the aggrieved party”) taking legal action against the other party (“the defaulting party”) for the recovery of any amounts due or any other legal action in terms of this Agreement, the aggrieved party will be entitled to recover legal costs from the defaulting party on the scale as between an attorney and its own client.
- 16.6. Dispute resolution and escalation:
- 16.6.1. The Customer shall be entitled to refer any dispute between itself and Userverse 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.
- 16.6.2. However, the Customer shall first exhaust Userverse’s internal escalation route for dispute resolution and fault reporting before escalating any such matter to the Authority or other regulatory body having jurisdiction.
- 16.6.3. The Customer shall refrain from attacking Userverse or its sub-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 Userverse to cancel the Agreement without any further notice to the Customer. Userverse 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.