

## GENERAL TERMS AND CONDITIONS OF USE

### 1. DEFINITIONS

In this Agreement, the following expressions will have the following meanings, unless inconsistent with the context:

- 1.1. **"Acceptable Use Policy"** is the acceptable use policy found at <https://faircom.co.za/>;
- 1.2. **"Agreement"** is the agreement between Faircom and the Subscriber comprising of these Terms and Conditions, and its annexures, any additional terms and conditions pertaining to promotional offers and/or upgrades, the Acceptable Use Policy, Application Form, and any other policies that Faircom makes available on its website;

Annexures:	1. FNO Fees Annexure
	2. Residential FTTH SLA
	3. Commercial FTTB SLA

- 1.3. **"Application Form"** means the Application Form found at <https://faircom.co.za/>;
- 1.4. **"Business Day"** is a day which is not a Saturday or Sunday or public holiday;
- 1.5. **"Business Hours"** means 8am to 5pm on each Business Day;
- 1.6. **"Commencement Date"** means the date upon which the Services are first made available to the Subscriber;
- 1.7. **"Terms and Conditions"** refer to these general terms and condition of use;
- 1.8. **"Fault"** means any failure of the Services to function properly;
- 1.9. **"Faircom"** shall mean Faircape Communications CC, Registration Number 2010/062642/23;
- 1.10. **"Fees"** means the charges, fees or penalties due to Faircom by the Subscriber under this Agreement, including any FNO Fees as applicable, and the Monthly Service Fee ;
- 1.11. **"Free to Use Equipment"** means, where the FNO is Internect, the free to use equipment provided to the Subscriber by Faircom, and includes either one or more of the following:-

- a uninterruptible power supply ("UPS");
- a router;
- VOIP handset;
- mesh wireless extender kit, and
- related power supply and ethernet cables;

1.12. **"Equipment"** means the respective internet access equipment purchased by the Subscriber from Faircom, which shall include either one or more of the following:-

- a uninterruptible power supply ("UPS");
- a router;
- VOIP handset;
- mesh wireless extender kit; and
- related power supply and ethernet cables.

1.13. **"Installation Fee"** means the installation fee charged by the Fibre Network Operator to initiate a standard connection from the respective fibre Network to the Subscriber, which fee is recoverable by Faircom and payable by the Subscriber;

1.14. **"Intellectual Property Rights"** means any and all patents, trademarks, service marks, copyright, rights in design, knowhow, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration;

1.15. **"Monthly Service Fee"** means the monthly charges due to Faircom by the Subscriber under this Agreement in relation to the Services, the equipment, installation, and the debit order;

1.16. **"Network"** means the fibre optic networks, last mile and infrastructure installed (including cables and leads) on or at the Premises, over which the Services are provided, including all active switching equipment, fibre to copper converter and fibre termination boxes;

1.17. **"ONT"** means an optical network terminal and is also commonly referred to as a "fibre box". The ONT enables the fibre optic cable to be connected at the Premises to the fibre Network.

1.18. **"Fibre Network Operator"** or **"FNO"** shall mean Century City Connect (Thinkspeed), Frogfoot, Internect, Octotel, Openserve and/or Teralink as more fully described below:

1.18.1. "Century City Connect" OR "Thinkspeed" means Century City Connect (Pty) Ltd, bearing registration number 2011/121954/07, with its registered address situated at Mazars House, Rialto Road, Grand Moorings Precinct, Century City;

- 1.18.2. "Frogfoot" means Frogfoot Networks (Pty) Ltd, bearing registration number 2006/011693/07, with its physical address situated at Suite 302, Building 20, The Waverley Business Park, Kotzee Road, Mowbray, Cape Town;
- 1.18.3. "Internect" means Internect South Africa CC t/a Internect, bearing registration number 2009/131514/23, having its registered address at 6th Floor, The Terraces, 25 Protea Road, Claremont, Cape Town;
- 1.18.4. "Octotel" means Octotel (Pty) Ltd, bearing registration number 2015/051236/07, having its registered address at suite 6, 602 The Point, 76 Regent Street, Sea Point, Cape Town;
- 1.18.5. "Openserve" means Telkom SA SOC Limited t/a Openserve, bearing registration number 1991/005476/06, having its registered office situated Telkom Park, 61 Oak Avenue, Highveld, Gauteng;
- 1.18.6. "Teralink" means Teralink Networks (Pty) Ltd, bearing registration number 2007/031721/07, having its physical address at Unit 10 Oxford Office Park, 3 Bauhinia Street, Highveld, Centurion;
- 1.18.7. "Vumatel" means Vumatel (Pty) Ltd, bearing registration number 2014/138808/07, having its registered office situated at 17 Petunia Street, Corner of Petunia Street and Main Road, Bryanston, Gauteng;
- 1.19. **"Parties"** means the parties to this Agreement as identified on the Application Form and "Party" shall, as the Agreement requires, be a reference to either one of them;
- 1.20. **"Premises"** shall mean the address where the Services are supplied, as identified on the Application Form;
- 1.21. **"Services"** means hosting, fibre, LTE wireless, DSL, Voice over Internet Protocol (VoIP), and other internet access related services (if any) provided to the Subscriber pursuant to the selected subscription details in the Application Form, together with any Support Services;
- 1.22. **"Subscriber"** is the individual or entity as identified on the Application Form;;
- 1.23. **"Subscriber Content"** means all data, text, images, graphics, videos, logos and other content displayed or otherwise used by the Subscriber in connection with the Services;
- 1.24. **"Subscriber System"** is the Subscriber's computer system used and/or owned by the Subscriber in connection with the Services;

- 1.25. **"Support Hours"** means the hours during which Faircom will provide the Support Services, namely 8am to 9pm every day of the week;
- 1.26. **"Support Services"** means those support and maintenance services that may be provided to the Subscriber pursuant to the Agreement.

## **2. COMMENCEMENT AND DURATION**

This Agreement shall commence and be of full force and effect between the parties on the Commencement Date and shall endure on a month to month basis until such time as it is terminated in accordance with this Agreement.

## **3. SERVICES**

Faircom agrees to supply the Services to the Subscriber on the terms and conditions outlined in this Agreement. These conditions are not an offer to provide Services but merely a statement of the terms on which Faircom would provide them:

- 3.1. Faircom reserves the right at any time and from time to time, to improve, correct, add to, delete, terminate, or otherwise modify all or any of the Services without notice to the Subscriber;
- 3.2. Any additional terms and conditions applicable to promotional offers and/or upgrades shall, upon the Subscriber's acceptance of the promotional offers and/or upgrades with Faircom, be incorporated into this Agreement.
- 3.2.1. Special and/or promotional offers shall only be valid for 30 (thirty) days from the date of the advertisement, unless otherwise advertised and stated .
- 3.2.2. Faircom updates and revises its package offerings from time to time. Packages that are no longer offered, and are no longer available, are referred to as **"Legacy Packages"**. Should a Subscriber, once signed up for a special and/or promotional offer, upgrade from a Legacy Package and later wish to switch, downgrade and/or roll back to their previous Legacy Package for whatever reason, the Subscriber will not be able to do so.
- 3.3. Without prejudice to its other rights and remedies, Faircom may at any time in its sole discretion suspend the provision of the whole or any part of the Services (temporarily or permanently) with or without notice and will have no liability to provide the Services on the occurrence of any of the following events, as determined by Faircom in its sole discretion:
- 3.3.1. the upgrade, repair, scheduled or emergency maintenance of Faircom's IT systems;

- 3.3.2. if the Subscriber fails to pay any Fees or any other sums owing to Faircom by the Subscriber when they fall due;
  - 3.3.3. if an event occurs and Faircom deems it to be appropriate to terminate the Agreement;
  - 3.3.4. if the bandwidth used by the Subscriber in relation to the Services exceeds any agreed or stipulated level and Faircom determines in its sole discretion that suspension is necessary to protect all and any internet solutions provided by Faircom from time to time;
  - 3.3.5. failure or deficiencies in the Subscriber System relating but not limited to hardware, server corruption and security breaches; or
  - 3.3.6. failure by the Subscriber to adhere to any of the provisions of the Agreement, including without limitation the terms of Faircom's Acceptable Use Policy.
- 3.4. Where Faircom suspends provision of the Services in accordance with the Agreement, any recommencement of the Services shall only occur after the Subscriber has paid all relevant outstanding amounts together with any relevant reconnection fee and has accepted any revised payment terms as requested by Faircom (such as prepayment). Proof of payment for the outstanding balance and reconnection fee must be emailed to [faircomaccounts@faircape.co.za](mailto:faircomaccounts@faircape.co.za) before the Services will be reconnected.

#### 4. FAULT HANDLING

Upon reporting any fault the Subscriber shall pay an upfront call-out fee to Faircom, which call-out fee shall be charged at the prevailing rate which amount can be obtained on enquiry by the Subscriber. Faircom shall dispatch a technician to investigate and attend to the reported fault, and should it later be determined by the technician that the fault was due to the malfunctioning of Faircom equipment or network elements, the call-out fee paid will be refunded to the Subscriber in full.

#### 5. NO WARRANTY OR GUARANTEE

- 5.1. The Subscriber acknowledges that, given the nature of such services, Faircom cannot guarantee that the Services, when delivered via the Internet, will be uninterrupted or error free.
- 5.2. To the fullest extent permitted by law, the Services are provided by Faircom to the Subscriber on an "as is" and "as available" basis and no warranty or representation (express or implied) of any kind are given in connection with the Agreement including without limitation as to

satisfactory quality and fitness for a particular purpose. In particular, Faircom gives no warranty or representation that:

- 5.2.1. the Services will meet the Subscriber's requirements;
  - 5.2.2. the Services will be provided on an uninterrupted, timely, secure or error-free basis; or
  - 5.2.3. any results obtained from use of the Services will be accurate, complete or current.
- 5.3. The Subscriber's only recourse in the event of a failure by Faircom to provide and deliver the Services will be a refund of any Fees paid during a period that Services related to such Fees were not provided. Any such refund shall be at the sole and absolute discretion of Faircom.

## 6. SUBSCRIBER'S OBLIGATIONS

- 6.1. The Subscriber agrees that it shall:
- 6.1.1. immediately notify Faircom on becoming aware of any unauthorised use of all or any of the Services;
  - 6.1.2. promptly reporting any incident or fault in the Services to Faircom;
  - 6.1.3. ensure that it has all necessary consents, permissions, waivers, and licenses to make use of the Services;
  - 6.1.4. be entirely liable for all activities conducted and charges incurred under its passwords and usernames whether authorised by it or not and the Subscriber acknowledges that Faircom shall not be liable for any loss of confidentiality or for any damages arising from the Subscriber's inability to comply with these Terms and Conditions;
  - 6.1.5. comply with any security policy notified to it from time to time by Faircom and, in particular, ensure that all passwords and usernames provided to it by Faircom are at all times kept confidential, used properly and not disclosed to unauthorised people. If the Subscriber has any reason to believe that any password or username has become known to someone not authorised to use it or is being or is likely to be used in an unauthorised way or of any other breach of security then the Subscriber will change all such passwords and inform Faircom immediately;
  - 6.1.6. Provide to Faircom accurate and up to date contact information, including full legal name, mailing address, telephone number, and e-mail address, and ensure



that all such contact information which it provides to Faircom are at all times true, current, accurate and complete. The Subscriber will promptly notify Faircom of any change to such details and acknowledges that Faircom will not be liable for any loss suffered or incurred by the Subscriber as a result of its failure to notify such changes to Faircom; and

- 6.1.7. promptly provide to Faircom and/or its consultants, employees and agents such information and assistance as they may reasonably require in order to be able to carry out the Services and any other obligations under the Agreement and will appoint a representative who is fully empowered and authorised to provide same;
  - 6.1.8. promptly return Faircom's Free to Use Equipment to Faircom, in good condition and working order, when required in accordance with the terms of this Agreement;
  - 6.1.9. comply with the terms and conditions of any promotional offer, as applicable.
- 6.2. The Subscriber agrees that it shall not:
- 6.2.1. use the Services or allow them to be used for any unlawful purpose or for the publication, linking to, issue or display of any unlawful material (including any pirated software or any material which is obscene, pornographic, threatening, malicious, harmful, abusive, defamatory or which breaches the rights including Intellectual Property Rights of any third party or which is or encourages criminal acts or contains any virus, worm, trojan horse or other harmful code);
  - 6.2.2. use the Services or allow them to be used for the publication, linking to, issue or display of any material which in the absolute discretion of Faircom may harm Faircom or any of its associated companies or Subscribers or bring Faircom into disrepute;
  - 6.2.3. use the Services and/or Subscriber System or allow them to be used to send spam;
  - 6.2.4. do anything which may be dangerous or a nuisance or inconvenience or to disturb, threaten or abuse any Faircom personnel or other Faircom Subscribers.
- 6.3. At Faircom's sole discretion, the Subscriber agrees that it shall not have more than 4 (four) device connections linked to the Services at any given time. In the event that the Subscriber requires an additional device connection, the Subscriber is required to inform Faircom by logging a technical support request by email to: [support@faircom.co.za](mailto:support@faircom.co.za), which support request must include the Mac unique identifier address of the device to be allowed and the reason for it being added.

## **7. PAYMENT TERMS AND THE MONTHLY SERVICE FEE/FEES**

- 7.1. The Monthly Service Fee is payable 30 (thirty) days in advance via debit order and will not be refundable in whole or part if the Agreement or any relevant part is terminated during the period to which the payment relates, unless it is terminated by Faircom without cause.
- 7.2. In the event that the date upon which the Subscriber first connects to the Network falls prior to the last 7 days of the month, the debit order will be processed on the 1st business day of the following month. However, should this date fall within the last 7 (seven) days of the month, the debit order will be processed on the 5th (fifth) business day of the following month. The debit order shall include:
- 7.2.1. a pro-rata charge of the Monthly Service Fee calculated from the Commencement Date up until the last day of the preceding month;
  - 7.2.2. the full Monthly Service Fee for the month in which the debit order is processed;
  - 7.2.3. Our service provider's debit order charge, as paid by Faircom, which charge shall not exceed R5.00 (five rand);
  - 7.2.4. the total cost of the router (if applicable);
  - 7.2.5. The total cost of other Equipment (if applicable);
  - 7.2.6. the Installation Fee or the Installation Fee instalment (as applicable); and
  - 7.2.7. the once-off router delivery fee;
- 7.3. Procedure regarding unpaid debit orders:
- 7.3.1. if the Subscriber's debit order is returned unpaid, a notice stating that the Subscriber's account is in arrears, will be sent to the Subscriber and the debit order shall be processed for a second time;
  - 7.3.2. If the Subscriber's debit order is returned unpaid twice in the same month, then in such event, the Subscriber's Services shall be disconnected and the Subscriber shall be liable to pay such unpaid fees prior to the services being reconnected;
  - 7.3.3. Should the Subscriber's account still remain in arrears 7 days after the Services has been disconnected, the Subscriber's Services shall be cancelled. The cancellation clause will take effect if within the first 12 months.
- 7.4. Should the Subscriber request the Services to be reconnected after it had been cancelled, the Subscriber shall be liable for payment of all unpaid Monthly Service Fees and the balance



owing in respect of the Installation Fee, and interest, together with a reconnection fee of R870.00 (Eight Hundred and Seventy Rand), which amounts must be paid prior to the Services being reinstated:

- 7.5. Any sums payable by the Subscriber to Faircom under this Agreement are inclusive of any applicable taxes, levies or duties payable by the Subscriber at the appropriate rate.
- 7.6. If the Monthly Service Fees/Fees are not paid when due, the Subscriber will be liable to pay interest on any sum outstanding from the due date for payment accruing at the prime rate plus 2% per month until paid, without prejudice to Faircom's other rights and remedies (including the right to disconnect the Services).
- 7.7. The Subscriber will be liable for all costs connected with the collection activities of an overdue balance on the Subscriber's account. Collection costs will include, but are not limited to, unpaid debit order penalties, admin fees and/or third party collection fees, and these costs will be payable by the Subscriber as they fall due either via debit order or upon presentation of an invoice.
- 7.8. The Subscriber shall be liable for payment of a downgrade fee should the Subscriber downgrade his/her subscription package. The value of the downgrade fee is dependent on the Fibre Network Operator.
- 7.9. A reconnection fee shall apply to the reconnection and/or reactivation of Services at the Premises, for whatever reason. Further, should the Subscriber cancel the Services and subsequently sign up for Services, at the Premises, within 12 (twelve) months from the date of termination of the previous Services subscription, the Subscriber shall be liable to pay a reconnection fee of R750.00 (Seven Hundred and Fifty Rand) to Faircom.
  - 7.9.1. The Subscriber, or an associated party, signing up for the Services at the Premises, as the case may be, shall be liable to pay the reconnection fee to Faircom prior to the Services being supplied and/or reactivated at the Premises.
- 7.10. All sums payable to Faircom under the Agreement must be paid in full without set off or deduction.
- 7.11. The following provisions shall apply with regard to Fee increases:
  - 7.11.1. Faircom shall be entitled to increase the Monthly Service Fees/Fees stipulated in this Agreement, which increase will be relative to the consumer price index;
  - 7.11.2. If there is a price increase on components of the Services beyond the control of Faircom (for example: foreign exchange fluctuations, increased pricing on

third-party products or services like software license fees, surcharges, taxes, import duties, rates or levies, increased charges from other network operators or delay caused by any instruction of Subscriber), then Faircom shall be entitled to increase the Fees of the affected Service in proportion to the increase in cost;

- 7.11.3. Any increase as per the above will be given to the Subscriber in writing;
- 7.11.4. A Subscriber will have the right to terminate the Agreement with immediate effect if any such increases render the Service unaffordable to the Subscriber. The Subscriber is to dispatch its notification in this regard via email to info@faircom.co.za. Where a Subscriber terminates the Agreement as per its rights under this clause 7.11.4, the Subscriber will remain liable for the payment of the Installation Fee, any other fees charged by the respective FNO, and shall return any Free to Use Equipment to Faircom in accordance with this Agreement.

#### **FNO INSTALLATION FEE**

- 7.12. The Subscriber acknowledges that Faircom will be required to initiate a standard connection from the Network to the Subscriber and that such connection will incur a cost ("**Installation Fee**") with the Fibre Network Operator ("**FNO**"). The Installation Fee is recoverable and payable by the Subscriber. The Subscriber shall be given the option to either settle the Installation Fee upfront or to settle the Installation Fee s in equal monthly instalments over a 12 (twelve) month period from the Commencement Date ("**FNO Initial Period**"). With the latter option, for clarity, the instalment towards the Installation Fee shall be paid in addition to the Monthly Service Fee.

- 7.12.1. Subject to clause 7.13 below:-

- 7.12.1.1. Where the Subscriber has opted to pay the Installation Fee by way of monthly instalments, and the Services are suspended and/or cancelled prior to settling the full Installation Fee, Faircom shall immediately be entitled to the full balance owing on the Installation Fee at the date of the suspension and/or cancellation, and this amount shall be paid via debit order and the Subscriber consents to his/her account being debited for this purpose.
- 7.12.1.2. Should the Subscriber terminate this Agreement, for any reason, prior to the expiry of the FNO Initial Period, or prior to settling the full Installation Fee, as the case may be, the Subscriber shall be liable for the remaining

balance of the Installation Fee, and any other applicable Fee, as set out in the **FNO Fees Annexure** to this Agreement.

- 7.12.1.3. Any balance owing on the Installation Fee shall be paid via debit order and the Subscriber hereby consents that his/her account be debited for this purpose.

#### **FNO MIGRATION AND/OR RECONNECTION FEE**

- 7.12.1.4. Should the Subscriber require a migration and/or reconnection of the Services, the Subscriber shall be liable for the applicable Fee set out in the FNO Fees Annexure to this Agreement.
- 7.12.1.5. The FNO Fees shall be paid via debit order and the Subscriber hereby consents that his/her account be debited for this purpose.

- 7.13. While Faircom endeavours to update the FNO Fees Annexure within a reasonable time from when an FNO updates its fees, however, the Subscriber acknowledges that the FNO Fees are subject to change at any time. Notwithstanding, the Subscriber acknowledges and accepts that the Installation Fee, migration, reconnection and any other Fees actually charged by an FNO in relation to the Subscriber's connection to the Network, and incurred by Faircom, will be recoverable and payable by the Subscriber.

- 7.13.1. FNO Fees shall be paid via debit order and the Subscriber consents to his/her account being debited for this purpose.

#### **RELOCATION OF THE ONT**

- 7.14. Relocation of the ONT will incur a cost with the Fibre Network Operator which FNO Fee will be for the Subscriber's account. Where relocation of the ONT is requested by the Subscriber, or where a fibre re-installation is necessary due to any damage, whether by way of, but not limited to, negligence or a force of nature, the cost will be recovered directly from the Subscriber upon approval by the Subscriber, prior to the relocation of the ONT. For clarity, all costs associated with the relocation of the ONT in this regard are for the Subscriber's account.

### **8. CONFIDENTIAL INFORMATION**

- 8.1. The Subscriber shall:

- 8.1.1. keep confidential all information obtained from Faircom under or in connection with the Agreement ("Information");

- 8.1.2. not disclose any Information to any third party without the prior written consent of Faircom except to such persons and to such extent as may be strictly necessary for the performance of the Agreement, in which case the Subscriber shall provide prompt notice of such mandated disclosure to Faircom;
- 8.1.3. not use any Information otherwise than for the purposes of the Agreement.
- 8.2. The provisions of clause 8.1 do not apply to Information which:
  - 8.2.1. is or becomes public knowledge (otherwise than by breach of this clause); or
  - 8.2.2. was in the possession of the party concerned without restriction as to its disclosure before receiving it from the disclosing party; or
  - 8.2.3. is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure.
- 8.3. The provisions of this clause 8 will continue to apply notwithstanding termination of the Agreement.

## **9. INTELLECTUAL PROPERTY**

- 9.1. The Subscriber acknowledges and agrees that it will not own or acquire any rights under this Agreement in any Intellectual Property in or relating to the Services or created in performing the Services and that it will have no other rights in or to the Services other than the rights expressly granted by the Agreement.
- 9.2. The Subscriber will indemnify Faircom from and against any and all costs, expenses (including without limitation) reasonable attorney fees, liabilities, injuries, losses, damages, claims, demands, and judgments that Faircom incurs or suffers as a result of any actual or alleged infringement of any Intellectual Property Right of any third party arising directly or indirectly from:
  - 9.2.1. the provision by Faircom of Services making use of information or specifications supplied by the Subscriber;
  - 9.2.2. the Subscriber's failure to procure all necessary rights from third parties which are from time to time required in order for Faircom to be able legally to provide the Services; or
  - 9.2.3. the use by Faircom in connection with the Agreement of the Subscriber System and the Subscriber Content.

## 10. LIMITATION OF LIABILITY

10.1. The Subscriber expressly understands and agrees that, to the fullest extent under applicable law, Faircom shall not be liable for:

10.1.1. any direct, indirect, incidental, punitive, special, consequential, exemplary or other damages or losses sustained by the Subscriber, including without limitation, for loss of profits, goodwill, use, data, business or other intangible losses (even if Faircom has been advised of the possibility of the corresponding liability), resulting from:

10.1.1.1. the use of or the inability to use the Services;

10.1.1.2. the cost of procurement of substitute goods and services resulting from any goods, data, information, or services purchased or obtained or messages received or transactions entered into through or from the Services provided hereunder;

10.1.1.3. unauthorised access to or alteration of your transmissions, data, user configured settings, or upload content;

10.1.1.4. statements or conduct of any third party on the service; or

10.1.1.5. any other matter relating to the Agreement or the Services.

## 11. FORCE MAJEURE

Other than with respect to the Subscriber's payment obligations, neither Party shall be liable to the other Party for any failure to meet its obligations under the Agreement arising by reason of force majeure, which means, in relation to either Party, circumstances beyond the reasonable control of that Party including acts of God, acts of any governmental authority, war or national emergency, riots, civil commotion, fire, network failure, systems fault, unauthorised use or access to the IT systems of Faircom or the Subscriber, explosion, flood, epidemic, lock outs (whether or not by that Party), strikes and other industrial disputes (in each case, whether or not relating to that Party's workforce), restraints or delays affecting shipping or carriers, inability or delay in obtaining supplies of adequate or suitable materials and currency restrictions, to the extent outside of its reasonable control.

## 12. BREACH

Should the Subscriber commit a breach of any of the provisions of this Agreement and fail to remedy such breach within seven (7) days after receiving written notice from Faircom requiring it to do so then Faircom shall be entitled, without prejudice to its other rights in law, to cancel this Agreement or to claim specific performance, in either event, without prejudice to Faircom's rights to claim damages.

### 13. LEGAL COSTS

- 13.1. The Subscriber shall be responsible and liable for all and / or any legal costs on an attorney and own client scale, incurred by Faircom to recover any monies due by the Subscriber and / or occasioned by a breach of any of the terms and conditions contained herein by the Subscriber, which legal costs shall include tracing costs, collection commission and any related cost or expenses.
- 13.2. The parties hereby agree that this agreement is subject to the Law of South Africa and consent to the jurisdiction of the Magistrate's Court should any claim arising out of the terms and conditions of this Agreement be beyond the jurisdiction of the Magistrate's Court. Notwithstanding the aforesaid, Faircom shall have the right to take legal action against the Subscriber in any other Court of competent jurisdiction.

### 14. NOTICES AND DOMICILIA

- 14.1. All notices to be given to Faircom in terms of this Agreement shall be given in writing and shall be addressed and delivered as follows:-
- 14.1.1. either by electronic mail to info@faircom.co.za; or
- 14.1.2. by hand delivery to 6th floor, 25 Protea Road, Claremont Terraces, Claremont, 7780.
- 14.2. The Subscriber hereby chooses the email address and billing address inserted on the Application Form as its domicilium citandi et executandi for all purposes.

### 15. TERMINATION

- 15.1. Subject to clause 7 above and any promotional offer, either Party may terminate this Agreement by serving one calendar month's prior written notice to the other Party. Written notice must be given by no later than the 1st (first) calendar day of the month. The Services shall then terminate on the last calendar day of that same month.
- 15.2. Should the Subscriber terminate this Agreement prior to the expiry of the FNO Initial Period, or prior to settling the full Installation Fee, the Subscriber shall be liable for the remaining balance of the Installation Fee, and/or any other Fee, as the case may be, as set out in the FNO Fees Annexure to this Agreement.
- 15.3. Should the Subscriber have Free to Use Equipment, the Subscriber shall return this Free to Use Equipment to Faircom within 3 (three) business days of the Services being terminated.



- 15.4. On the 5th (fifth) business day of the month following the termination of the Services, Faircom shall be entitled to debit the Subscriber, via debit order, for the full retail cost of the Free to Use Equipment in any of the following scenarios pursuant to clauses 22 and 23 below:-
- 15.4.1. Should any Free to Use Equipment while returned to Faircom, not be in good condition and/or good working order; or
- 15.4.2. Should the Free to Use Equipment not be returned to Faircom within 3 (three) business days of the Services being terminated.
- 15.5. Pursuant to clause 15.4 above, and successful payment from the Subscriber, the applicable Free to Use Equipment shall become the Subscriber's property.
- 15.6. Notwithstanding any provision contained in this Agreement and any payments made in terms thereof, the Parties acknowledge that upon termination of this Agreement for whatsoever reason, ownership of the fibre optic networks, last mile and infrastructure shall remain the sole property of Faircom and/or the FNO as applicable.

## **16. PROTECTION OF PERSONAL INFORMATION ACT**

The Subscriber consents to the collection and processing of its personal information by Faircom and / or any of its associated businesses and acknowledges that the personal information collected and processed by Faircom, in accordance with its privacy policy, is required by law and is necessary for Faircape to give effect to this Agreement.

## **17. ASSIGNMENT**

- 17.1. The rights and obligations of the Subscriber may not be assigned, charged, delegated or transferred in any manner without the prior written consent of Faircom.
- 17.2. Faircom shall have the right to assign, in whole or part, its rights and obligations under the Agreement.

## **18. VARIATION AND FAIRCOM'S RIGHT TO UPDATE THESE TERMS & CONDITIONS**

This Agreement constitutes the entire agreement between Faircom and the Subscriber and supersedes all prior agreements between Faircom and the Subscriber.

Faircom reserves the right to change and update these Terms and Conditions from time to time in order to reflect changes in our procedures or for other reasons at our sole discretion. All changes are effective

immediately and shall apply to the use of the Services at all times. Your continued use of the Services following posting of any revised Terms and Conditions on <https://faircom.co.za/> constitutes acceptance of any changes. The Subscriber is required to visit <https://faircom.co.za/> on a regular basis so that you are aware of the Agreement between you and Faircom.

#### 19. WAIVER

No relaxation which either Party may give in regard to the performance of the other Party's obligations in terms of this Agreement shall constitute a waiver of rights unless reduced to writing and signed by such Party.

#### 20. SEVERABILITY

Any provision which in any way contravenes applicable laws or regulations shall be deemed severable to the extent of such contravention, and the legality, validity or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

#### 21. CONSENT TO MARKET

Faircom and/or any of its associated businesses shall at all times be entitled to communicate with and market its products and services to the Subscriber by way of flyers, email and/or SMS campaigns. The Subscriber consents to receiving correspondence and marketing material and shall have the right to opt-out of such communication and marketing at any time and shall provide Faircom with written notice to this effect.

#### 22. ROUTERS AND OTHER EQUIPMENT

**EXCLUSIONS: SUBSCRIBERS AT SELECTED BUILDINGS, AT FAIRCOM'S SOLE DISCRETION, SHALL NOT BE ELIGIBLE FOR THE USE OF A FREE-TO-USE ROUTER OR ANY OTHER FREE-TO-USE EQUIPMENT:**

22.1. If the Fibre Network Operator is Internet:

22.1.1. Faircom shall supply the Subscriber with a free-to use Router and other Free to Use Equipment as applicable to the Services;

22.1.2. The Free to Use Equipment shall at all times be owned by, and shall remain Faircom's property;

22.1.3. The Free to Use Equipment shall be returned to Faircom upon termination of this Agreement, and should the Free to Use Equipment be returned in a faulty or damaged condition, the Subscriber shall be liable to Faircom for the full retail cost of the Free to Use Equipment;

- 22.1.4. Should the Free to Use Equipment not be returned to Faircom upon termination of this Agreement, the Subscriber shall be liable to Faircom for the full retail cost of the Free to Use Equipment;
- 22.1.5. In the event of any package upgrades and/or accepted promotional offers, whether made available by Faircom for free or at an additional fee to the Subscriber, and should the free-to-use router capacity be below the package threshold, Faircom shall not be responsible for supplying the Subscriber with a suitable router. The Client shall be required to return the free-to-use router to Faircom, in good condition and working order, and shall purchase, at the Subscriber's cost, a suitable upgraded router.
- 22.1.6. Further, in the event that the free-to-use Router does not function optimally at any point and for any reason including, but not limited to, a WiFi coverage issue, technical or signal capabilities, and a router upgrade is recommended by Faircom, the purchase of an upgraded router shall be at the Subscriber's cost, and the Client shall return the free-to-use router to Faircom in good condition and working order.
- 22.1.7. Pursuant to clauses 22.1.5 and 22.1.6 above, Faircom shall be entitled to debit the Subscriber, via debit order, for the full retail cost of the free-to-use router should it not be returned to Faircom in good condition and working order or should it not be returned at all.
- 22.1.8. Faircom shall be entitled to refuse, and not grant, the Subscriber access to a free-to use Router due to, among any other reasons, router-hacking security risks,
- 22.2. If the Fibre Network Operator is not Internet:
- 22.2.1. The Subscriber agrees to purchase the router and other Equipment directly from Faircom and further agrees:-
- 22.2.1.1. to pay to Faircom the once-off charge in respect of the router and other Equipment;
- 22.2.1.2. that in the event of an Equipment failure, Faircom shall, in its sole discretion, repair or replace the Equipment where such failure is covered by the manufacturer's warranty in accordance with clause 24 below;
- 22.2.1.3. to accept liability for any costs incurred by Faircom as a result of the repair or replacement of the Equipment where the manufacturer's warranty is void due to the Subscriber's misuse or negligence as per clause 24 below.;

22.2.1.4. acknowledges and accepts that, should the Subscriber require access to the router, access shall be granted at the Subscriber's sole risk. Under no circumstances shall Faircom be held responsible or liable for any issues arising from compromised routers including, but not limited to, security breaches, or damage to the Subscriber's connected devices.

22.3. Should the Subscriber request delivery of the router instead of collecting same from the Faircom offices, the Subscriber shall be liable for a once-off delivery fee to be advised and which shall be paid with the first debit order processed, and the Subscriber accordingly hereby consents to his/her account being debited for this purpose.

22.4. Should the Subscriber choose not to be supplied with a Faircom free-to use Router or choose not to purchase a router directly from Faircom, as applicable, then the Subscriber expressly acknowledges and accepts that Faircom cannot support, manage, or access, and does not provide any technical support at all in respect of the Subscriber's private router ("**Third-Party Router**").

22.4.1. The Subscriber understands and agrees that Faircom cannot support, manage or access the Subscriber's Third-Party Router and Faircom will not be able to provide any remote technical support to the Subscriber, including, but not limited to, configuration, installation, or troubleshooting. The Subscriber shall be solely responsible for all technical requirements of any Third-Party Routers or third-party equipment.

## 23. **FREE TO USE EQUIPMENT** *(only applicable if the FNO is Internect)*

23.1. For the purposes of this clause, all free to use equipment such as an uninterruptible power supply ("**UPS**"), router, VOIP handset, mesh wireless extender kit, and related power supply and ethernet cables, shall be referred to as "**Free to Use Equipment**" unless referred to individually.

23.2. Faircom shall supply the Subscriber with the Free to Use Equipment applicable to, and in accordance with, the Subscriber's subscription details and the Services to be provided.

23.3. The Free to Use Equipment shall: -

23.3.1. at all times be owned by, and shall remain Faircom's property;

- 23.3.2. be returned to Faircom upon termination of this Agreement, and should the Free to Use Equipment be returned in a faulty or damaged condition, the Subscriber shall be liable to Faircom for the full retail cost of the Free to Use Equipment.
- 23.4. Should the Free to Use Equipment not be returned to Faircom upon termination of this Agreement, the Subscriber shall be liable to Faircom for the full retail cost of the Free to Use Equipment.
- 23.5. Further to the termination provisions above, clause 15, no Free to Use Equipment will be accepted after 3 (three) business days of the Services being terminated.
- 23.6. Faircom may collect the Free to Use Equipment as requested by the Subscriber, and the cost of collection will be quoted. All courier costs involved in returning the Free to Use Equipment are for the Subscriber's account.
- 23.7. Should the Subscriber choose to keep any Free to Use Equipment and pay for it, it will become the Subscriber's property. All risk in and to the Free to Use Equipment shall pass to the Subscriber once fully paid for.

## **24. EQUIPMENT FAILURE AND DAMAGE TO EQUIPMENT**

**For the purposes of this clause 24, Equipment and Free to Use Equipment shall collectively be referred to as "Equipment".**

**This clause applies equally to both Free to Use Equipment and the Equipment purchased by the Subscriber.**

- 24.1. In the event of a product failure, Faircom at its sole discretion shall repair or replace the Equipment found to be defective during the manufacturer's warranty period.
- 24.1.1. Where Equipment is replaced, the Subscriber must return the original Equipment to Faircom.
- 24.2. Due to external factors, power supplies are excluded from product warranties.
- 24.3. Faircom will not repair nor replace Equipment where the warranty is void or out of warranty.
- 24.4. The warranty will be void where Equipment has been damaged due to abnormal physical or electrical stress, including but not limited to lightning strikes, power surges, water damage, misuse, negligence, or accidents,
- 24.5. The Subscriber shall be liable for all costs of repair or replacement of the Equipment where the damage is attributed to the Subscriber's misuse or negligence,

- 24.6. The costs of repair or replacement of the Equipment shall be paid via debit order., and the Subscriber hereby consents to his/her account being debited for this purpose.

## 25. MEDIA CONVERTER

- 25.1. A media converter shall be provided when installation is completed.
- 25.2. The Subscriber shall be liable for all costs of repair or replacement of the media converter where the damage is attributed to the Subscriber's misuse or negligence, and such costs of repair or replacement shall be paid via debit order., and the Subscriber hereby consents to his/her account being debited for this purpose.
- 25.3. The media converter shall be provided at no charge, however should the Subscriber terminate the Services, the media converter shall remain in the property/unit it was installed. Should the media converter be removed, the Subscriber shall be charged a fee of R700.00 (Seven Hundred Rand), which fee shall be paid via debit order and the Subscriber hereby consents to his/her account being debited for this purpose.



**ANNEXURE 1**

**GENERAL TERMS AND CONDITIONS OF USE**

**FIBRE NETWORK OPERATOR ("FNO") FEES ANNEXURE**

**1. OCTOTEL**

**Initial Period:** 12 (twelve) months

**Installation Fee:** R1,725.00 (One Thousand Seven Hundred and Twenty Five Rand)

**Reactivation/Reconnection Fee:** R870.00 (Eight Hundred and Seventy Rand).

**2. VUMATEL**

**Initial Period:** 12 (twelve) months

**Installation Fee:** R 0 (Zero Rand)

**Service Activation Fee:** R1058.15 (one thousand and fifty eight rand and fifteen cents) incl VAT

**Reactivation/Reconnection Fee:** R 0 (Zero Rand)

**Migration Fee:** R1035.00 (one thousand and thirty five rand) incl. VAT

**3. OPENSERVE**

**Initial Period:** 12 (twelve) months

**Installation Fee:** R2,875.00 (Two Thousand Eight Hundred and Seventy Five Rand)

**Service Activation Fee:** R575 (Five Hundred and Seventy Five Rand)

**Call out fee:** R1,500.00 (One Thousand Five Hundred Rand)

**Rre-grading fee:** R100.00 (One Hundred Rand)

**Reconnection fee:** R870.00 (Eight Hundred and Seventy Rand),

**Migration Fee:** R870.00 (Eight Hundred and Seventy Rand),

#### 4. FROGFOOT

**Initial Period:** 12 (twelve) months

**Installation Fee:** R1,725.00 (One Thousand Seven Hundred and Twenty Five Rand)

**Call out Fee:** R750.00 (Seven Hundred and Fifty Rand)

**Reconnection fee:** R1,725.00 (One Thousand Seven Hundred and Twenty Five Rand)

**Migration Fee:** R1,725.00 (One Thousand Seven Hundred and Twenty Five Rand)

#### 5. CENTURY CITY CONNECT (THINKSPEED)

**Initial Period:** 12 (twelve) months

**Installation Fee:** R1,840.00 (One Thousand Eight Hundred and Forty Rand),

**Reconnection fee:** R575.00 (Five Hundred and Seventy Five Rand),

**Migration Fee:** R575.00 (Five Hundred and Seventy Five Rand),

#### 6. INTERNET

**Initial Period:** 12 (twelve) months

**Installation Fee:** R1,725.00 (One Thousand Seven Hundred and Twenty Five Rand),

**Reconnection fee:** R750.00 (Seven Hundred and Fifty Rand).

**Migration Fee:** R750.00 (Seven Hundred and Fifty Rand).

**Downgrade Fee:** R750.00 (Seven Hundred and Fifty Rand).

## **GENERAL TERMS AND CONDITIONS OF USE**

### **RESIDENTIAL FTTH SLA**

## **RESIDENTIAL SUBSCRIBER (FIBRE) SLA**

### **1. Definitions**

- 1.1. "Fault" is defined as a system affecting interruption that is classified as one of 3 Severity levels; S1, S2 or S3.
- 1.2. "Firmware Upgrades" are limited to equipment rented from Faircape Communications.
- 1.3. "Guaranteed Uptime" is the amount of Service availability measured as a percentage of 43200 minutes (30 days).
- 1.4. "Monthly Service Fee" shall be the annuity billing amount of the underlying Service after any discounts.
- 1.5. "Physical fibre" refers to the last-mile between the Client and Faircape Communications that provides the infrastructure for the Service.
- 1.6. "Response time" refers to the time taken by Internect to act on a fault / interruption affecting the Service.
- 1.7. "S1": Severity 1 – Ethernet or Fibre optic cable is down or use is severely impacted.
- 1.8. "S2": Severity 2 – Ethernet or Fibre optic cable network is active with problems that can be circumvented.
- 1.9. "S3": Severity 3 – Query to be logged.
- 1.10. "Service": is defined as the internet and / or data facility provided to the Client by Internect.
- 1.11. "Software Upgrades": are limited to equipment rented from Faircape Communications.
- 1.12. "Office hours" refers to the period 8h00 to 17h00, excluding weekends and public holidays.

### **2. Conditions of Service**

- 2.1. Faircom offers a twenty-four office hour response time on the physical ethernet or fibre;
- 2.2. Faircom support staff are on standby to resolve any Service issues;
  - 2.2.1. Support staff are to be contacted on support@faircom.co.za or in the following order:
    - 2.2.1.1. Email Support Ticket on support@faircom.co.za
    - 2.2.1.2. Support Centre: 021 815 5870
- 2.3. Faircom monitors the fibre link if a Faircom router is in use by the client.
  - 2.3.1. A management system is in place to inform Support of any issues regarding the link and/or dropping of the link.

2.3.2. Reporting of incidents will be logged according to Severity levels; see **table** below setting out the response times of logging of an incident.

	Support staff assigned to resolve issues	Connection restored to working condition (even if temporary)	The fault cleared on a permanent basis within the following period
<b>S1 - Severity 1</b>	8 office hours	3 working days	7 days
<b>S2 – Severity 2</b>	8 office hours	6 working days	10 days
<b>S3 – Severity 3</b>	Next business day	N/A	N/A

### 3. Scheduled and emergency maintenance

- 3.1. The Customer acknowledges that in order to meet its obligations herein; Faircom may from time to time be required to perform maintenance on equipment used in the provision of the Services.
- 3.2. Any impact on the Services as a result of the need to conduct maintenance shall be considered a scheduled event, provided that:
  - 3.2.1. Faircom informs the Client, with as much notice as operationally possible in the circumstances, of the maintenance schedule, including:
    - 3.2.1.1. Scheduled start time;
    - 3.2.1.2. Expected duration; and
    - 3.2.1.3. Anticipated impact on the Services.
  - 3.2.2. Faircom endeavours, whenever circumstances permit, to seek approval from the Client of the maintenance schedule, so as to allow the Client to plan and inform its users of any impact on the Services.
  - 3.2.3. Any other impact on Services where maintenance is required, and no notice is given, will be deemed an emergency

## ANNEXURE 3

### GENERAL TERMS AND CONDITIONS OF USE

#### COMMERCIAL FTTB SLA

## COMMERCIAL SUBSCRIBER (FIBRE) SLA

### 1. Definitions

- 1.1. "Fault" is defined as a system affecting interruption that is classified as one of 3 Severity levels; S1, S2 or S3.
- 1.2. "Firmware Upgrades" are limited to equipment rented from Faircom.
- 1.3. "Guaranteed Uptime" is the amount of Service availability measured as a percentage of 43200 minutes.
- 1.4. "Monthly Service Fee" shall be the annuity billing amount of the underlying Service after any discounts.
- 1.5. "Physical fibre" refers to the last-mile between the Client and Faircom that provides the infrastructure for the Service.
- 1.6. "Response time" refers to the time taken by Faircom to act on a fault / interruption affecting the Service.
- 1.7. "S1": Severity 1 – Metro Ethernet or Fibre optic cable is down or use is severely impacted.
- 1.8. "S2": Severity 2 – Metro Ethernet or Fibre optic cable network is active with problems that can be circumvented.
- 1.9. "S3": Severity 3 – Query to be logged.
- 1.10. "Service": is defined as the internet and / or data facility provided to the Client by Faircom.
- 1.11. "Software Upgrades": are limited to equipment rented from Faircom.
- 1.12. "Office hours" refers to the period 8h00 to 17h00, excluding weekends and public holidays.

### 2. Conditions of Service

- 2.1. Faircom offers a four-hour response time on the physical fibre;
- 2.2. Faircom' support staff are on standby 24/7 to resolve any Service issues;
  - 2.2.1. Support staff are to be contacted in the following order:
    - 2.2.1.1. Support Centre: 021 815 5700



- 2.3. Faircom monitors both ends of the physical fibre link
- 2.3.1. An alert system is in place to inform Support of any issues regarding the link and/or dropping of the link;
- 2.3.2. Reporting of incidents will be logged according to Severity levels; see **table** below setting out the response times of logging of an incident.

	Support staff assigned to resolve issues	Connection restored to working condition (even if temporary) *	The fault cleared on a permanent basis within the following period
<b>S1</b> - <b>Severity 1</b>	1 hour	4 office hours 12 hours (after hours)	10 days
<b>S2</b> - <b>Severity 2</b>	1 hour	16 office hours 32 hours (after hours)	10 days
<b>S3</b> - <b>Severity 3</b>	Next business day	N/A	N/A

### 3. Scheduled and emergency maintenance

- 3.1. The Customer acknowledges that in order to meet its obligations herein; Faircom may from time to time be required to perform maintenance on equipment used in the provision of the Services.
- 3.2. Any impact on the Services as a result of the need to conduct maintenance shall be considered a scheduled event, provided that:
- 3.2.1. Faircom informs the Client, with as much notice as operationally possible in the circumstances, of the maintenance schedule, including:
- 3.2.1.1. Scheduled start time;
- 3.2.1.2. Expected duration; and
- 3.2.1.3. Anticipated impact on the Services.
- 3.2.2. Faircom endeavours, whenever circumstances permit, to seek approval from the Client of the maintenance schedule, so as to allow the Client to plan and inform its users of any impact on the Services.
- 3.2.3. Any other impact on Services where maintenance is required, and no notice is given, will be deemed an emergency.