

## UNIFYBR TERMS AND CONDITIONS FOR AFRIHOST CLIENTS

### ("Unifybr Terms")

#### 1. INTERPRETATION

- 1.1. These Unifybr Terms should be read together with the Afrihost Agreement, which may change from time to time. Both the Unifybr Terms and the Afrihost Agreement are binding on a Client.
- 1.2. clause headings are for convenience purposes only and shall not be used in its interpretation;
- 1.3. unless the context clearly indicates a contrary intention –
  - 1.3.1. an expression which denotes any gender includes the other genders, a natural person includes an artificial person (whether incorporated or unincorporated and including the State) and vice versa and the singular includes the plural and vice versa;
  - 1.3.2. where any term is defined within a particular clause, other than this interpretation clause, that term shall bear the meaning assigned to it in that clause wherever it is used in these Unifybr Terms;
  - 1.3.3. the following expressions shall bear the following meanings and related expressions shall bear corresponding meanings –
    - 1.3.3.1. "**Act**" means the Electronic Communications Act 36 of 2005, as amended or replaced from time to time;
    - 1.3.3.2. "**Afrihost Agreement**" means the agreement entered into between the Client and Afrihost and which include the terms and conditions contained on Afrihost's website, comprising the General Terms, Glossary, Fibre Terms, Acceptable Use Policy and Sanctions Policy, including any amendments thereto;
    - 1.3.3.3. "**Applicable Laws**" means all national, provincial, local and/or municipal legislation, regulations, statutes, by-laws, ordinances, consents and/or other laws of any relevant Governmental Authority and/or any other instrument having the force of law as may be issued and in force from time to time relating to or connected with the activities or the Client Services and Network Services contemplated under these Unifybr Terms;
    - 1.3.3.4. "**Authority**" means the Independent Communications Authority of South Africa, established in terms of section 3 of the Independent Communications Authority of South Africa Act 13 of 2000, or its successor in title and includes any other body which assumes its functions;

- 1.3.3.5. **“Business Day”** means any day other than a Saturday, Sunday or official public holiday in Territory;
- 1.3.3.6. **“Client”** means a company or individual who signs an agreement with Afrihost for the delivery of Client Services which are or are intended to be distributed over the Network;
- 1.3.3.7. **“Client Services”** means the service provided by Afrihost to the Client in terms of the Afrihost Agreement and for each specific service offering that a Client selects, the meaning will be specified in more detail, as provided in the additional Service Terms and/or the Client interface for each of the listed options;
- 1.3.3.8. **“Consumer Protection Act”** or **“CPA”** means the Consumer Protection Act 68 of 2008, as amended or replaced from time to time;
- 1.3.3.9. **“Content”** means any content, information, game, message or similar service that is supplied to any person by means of the Network or by means of a third party’s network in the format of text, data, graphics, pictures, video or any other relevant format (other than voice);
- 1.3.3.10. **“Electronic Communication”** means electronic communication as defined in the ECTA;
- 1.3.3.11. **“Electronic Communications and Transactions Act”** or **“ECTA”** means the Electronic Communications and Transactions Act 25 of 2002, as amended or replaced from time to time;
- 1.3.3.12. **“Equipment”** means a device used by the Client to access the Client Services and Network Services and includes ONT or OLT devices;
- 1.3.3.13. **“Fault”** means a fault which occurs when a Client is affected by service outage or when the functionality, features, interfaces, availability and / or quality differ significantly from these Unifybr Terms;
- 1.3.3.14. **“Network”** means the communications network used for the distribution of Client Services that Unifybr at the time owns and/or operates. The Network can comprise several different geographical locations.
- 1.3.3.15. **“Network Services”** means the services to be supplied by Unifybr to Afrihost and/or directly to the Clients in terms of these Unifybr Terms through the Network;
- 1.3.3.16. **“Network Facility”** means a physical component of the Network and includes, but is not limited to, a circuit, cable, and wireless antenna;
- 1.3.3.17. **“Parties”** means collectively Unifybr and the Client and **“Party”** refers to either one of them, as the context may require;

- 1.3.3.18. **“Personal Information”** has the same meaning given in the Protection of Personal Information Act 4 of 2013 (“POPI”);
  - 1.3.3.19. **“RSA”** means the Republic of South Africa;
  - 1.3.3.20. **“Termination Date”** means the date of termination of the Afrihost Agreement for any reason whatever;
  - 1.3.3.21. **“Territory”** means the RSA;
  - 1.3.3.22. **“Third Party”** means any Person which is not a Party;
- 1.4. should any provision in a definition be a substantive provision conferring rights or imposing obligations on a Party, effect shall be given to that provision as if it were a substantive provision in the body of these Unifybr Terms;
  - 1.5. any reference to an enactment, regulation, rule or by-law is to that enactment, regulation, rule or by-law as at date of entering into the Afrihost Agreement by the Client, and as amended or replaced from time to time;
  - 1.6. when any number of days is prescribed, such number shall exclude the first and include the last day, unless the last day falls on a day other than a Business Day in which case the last day shall be the next succeeding Business Day;
  - 1.7. any schedule or annexure to these Unifybr Terms shall form part of, and be deemed to be incorporated in, these Unifybr Terms;
  - 1.8. the use of the word “including” or “includes” followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it;
  - 1.9. the expiration or termination of these Unifybr Terms shall not affect those provisions of these Unifybr Terms which expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination notwithstanding the fact that the clauses themselves do not expressly provide for this;

## **2. DURATION**

- 2.1. Subject to the Afrihost Terms, these Unifybr Terms will apply for as long as the agreement between Afrihost and the Client in respect of the Service continues.

## **3. SUSPENSION / TERMINATION OF SERVICES**

- 3.1. Unifybr will suspend the Network Services if the Client does not keep its account up to date with Afrihost as per Afrihost’s Terms.
- 3.2. If the Network Services in respect of a Client are suspended for more than 30 (thirty) uninterrupted days, Unifybr will terminate the Network Services.
- 3.3. Further suspension and termination terms are contained in the Afrihost Agreement.

3.4. Upon termination of the Client Service with Afrihost by the Client or by Afrihost, the Client shall return the Equipment to Unifybr as soon as possible.

#### **4. CHARGES**

4.1. If Unifybr determines that a Fault has been caused by any equipment belonging to the Client or installed at the Client's home and which is not covered by the warranty provisions, which are set out in these Unifybr Terms, Unifybr may charge the Client to repair the Fault and is entitled to charge the Client directly and collect a call-out fee of R450.00.

4.2. Unless the Equipment purchased or received by the Client is altered or tampered with in any way without the consent of Unifybr, such Equipment shall be reasonably suitable for the purpose for which it was generally intended, of good quality, in good working order, free of defects and usable and durable for a reasonable period of time.

4.3. If the Equipment fails to meet the standards set out in 4.2, within 6 (six) months of the Client receiving the equipment, the Client may return the Equipment to Unifybr and request Unifybr to repair or replace the Equipment or refund the Client the Equipment fee in question.

4.4. Unifybr reserves the right to charge the Client any repair or replacement fees if an Equipment fault is caused after 6 (six) months.

#### **5. GENERAL**

5.1. The Client should refer to Afrihost for billing, monitoring and customer support.

5.2. To protect the Network or to deal with emergencies, the Client agrees to comply with any specific and reasonable instructions issued by Afrihost or Unifybr related to the Network Services, Equipment, Network Facilities, Client Services or matters related thereto.

5.3. Unifybr will supply and/or install Equipment which is purchased by the Client from Unifybr.

5.4. The Client may not use any Equipment that is not provided by Unifybr at the Client's premises unless the Equipment has been approved by the Authority. Unifybr reserves the right to suspend Client Services or Network Services until such time as the Equipment has been properly approved by the Authority or the Equipment is removed or replaced.

5.5. Ownership of the Equipment supplied by Unifybr to the Client remains the property of Unifybr.

5.6. The Client shall allow Unifybr and its agents reasonable access to the Client's premises for the purposes any maintenance and repair of the Unifybr Equipment including the ONT, provided that reasonable notice is given by Unifybr or any designated individual representing Unifybr.

#### **6. HANDLING OF PERSONAL INFORMATION**

- 6.1. The Client consents to the processing of its Personal Information in order to render the Client Services and Network Services through the Network.
- 6.2. Unifybr complies with the Protection of Personal Information Act (“**POPI**”) and gives effect to the principles contemplated in POPI.
- 6.3. All requests for personal information by a Client will be referred to Afrihost.
- 6.4. Unifybr does not give out Personal Information relating to a Client unless explicitly instructed by Afrihost.

## **7. INDEMNIFICATION**

- 7.1. The Client agrees to indemnify, hold harmless and defend Unifybr and its officers, employees, agents and representatives from and against the following damages, losses and liabilities (“**liability**”) arising as a result of:
  - 7.1.1. any liability with regard to claims by governmental authorities or others for non-compliance by the Client with any act of Parliament, law, ordinance, regulation or by-law made by a lawful authority provided that such compliance therewith was required to give effect to these Unifybr Terms;
  - 7.1.2. any liability arising out of intentional or negligent acts, or omissions to act, of the Client;
  - 7.1.3. any liability arising out of the rendering of the Client Services attributable to the negligent acts or omissions of the Client;
  - 7.1.4. any claims by Afrihost and/or its Clients if the Network Services becomes unavailable as a result of –
    - 7.1.4.1. any person making unauthorised and/or improper use of the Network Services and/or Client Services with or without Afrihost’s or Unifybr’s knowledge and/or consent;
    - 7.1.4.2. any person causing damage to or stealing any element of the Network;
    - 7.1.4.3. any Fault caused as a result of Client equipment that was not supplied by Unifybr;
    - 7.1.4.4. any liability arising from claims with regard to the insolvency, business rescue, liquidation or winding up of the Client or the death of, or injury to, Third Parties due to the Client’s negligence (excluding Unifybr’s employees in respect of whom Unifybr holds the Client harmless); and
    - 7.1.4.5. any liability arising from any loss of, or damage to, the Client’s property (including Unifybr property attributable to the negligent acts or omissions of the Client and/or Equipment belonging to Afrihost);
  - 7.1.5. any liability for Content conveyed via the Network.

- 7.2. The Client shall, at its own cost and expense, defend any action instituted by such third party against Unifybr. Unifybr shall assist the Client by providing such information as the Client may require in order to defend any legal proceedings instituted against Unifybr.
- 7.3. The Client's obligation to indemnify Unifybr will survive the termination of the Afrihost Agreement for any reason.

## **8. DISCLAIMERS**

- 8.1. Unifybr only provides access to the Network and Network Services. Unifybr does not operate or control Content. The Client will have no claim against Unifybr relating to any Content or relating to any information, product, services or software ordered through or provided over the Internet. However, Unifybr may take measures to ensure security and continuity of the Services on the Network within Unifybr's discretion, including the identification of Internet traffic.
- 8.2. Should the Network infrastructure or any part thereof be damaged or destroyed to the extent that the Client is prevented from having beneficial use thereof, the Client will have no claim of whatsoever nature against Unifybr and Unifybr's sole obligation will be to repair the damaged or destroyed section of the Network infrastructure on a best effort basis.
- 8.3. If the damage to the Network infrastructure is so severe that such damages are not capable of being repaired on a best effort basis, the Client will not be liable for payment of the *pro rata* portion of the fee for as long as the Client is deprived of beneficial use of the Network infrastructure or any particular optical fibre strands.