



## BANDWIDTH CONNECTIVITY:TERMS AND CONDITIONS

### 1. INTRODUCTION

It is recorded that:

- 1.1. Gigazone is an internet service provider and/or bandwidth provider.
- 1.2. The Subscriber wishes to subscribe to the Services.
- 1.3. The Parties have agreed on the terms and conditions of the provision of the Services by Gigazone to the Subscriber and wish to reduce their agreement to writing.

### 2. DEFINITIONS AND INTERPRETATION

- 2.1. In these Terms and Conditions the following expressions shall have the meanings assigned to them below:

(a)	<b>"Acceptance Date"</b>	The date on which Gigazone accepts the Subscriber's Application for Services.
(b)	<b>"Acceptable Use Policy"</b>	A Fair Use Policy, the policy, which is available on Gigazone's website and is incorporated by reference in these Terms and Conditions, that regulates the use of the Services
(c)	<b>"Agreement"</b>	This agreement between the Parties, as set out in these Terms and Conditions, and/or amended or substituted in writing from time to time.
(d)	<b>"Annexure"</b>	Any annexure to the main body of this Agreement.
(e)	<b>"Application for Services"</b>	A request for initiation of a Service(s) and/or provision of Good(s) as set out in the Schedule.
(f)	<b>"Days"</b>	Calendar days.
(g)	<b>"Effective Date"</b>	The date set out in C1 of the Schedule.
(h)	<b>"Gigazone"</b>	Jacqco Management CC Trading as Gigazone (Registration number 2000/0027271/23), a close corporation duly incorporated in accordance with the laws of South Africa, or any other entity which Gigazone may assign cede or delegate any of its rights or obligations to.
(i)	<b>"Network"</b>	The chosen medium over which Gigazone is providing the Services to the Subscriber. Those include but are not limited to fibre, wireless, DSL, Diginet, mobile and satellite connections.
(j)	<b>"Parties"</b>	Gigazone and the Subscriber, their respective successors-in- title and, if permitted in this Agreement, their respective cessionaries and assignees. Any reference to <b>"a Party"</b> shall refer to one of the relevant Parties as required by the context
(k)	<b>"Schedule"</b>	The schedule to which these Terms and Conditions are attached.
(l)	<b>"Services"</b>	The services described in B of the Schedule.
(m)	<b>"Subscriber"</b>	The party described in A of the Schedule.
(n)	<b>"Terms and Conditions"</b>	The terms and conditions set out in this document and amended by Gigazone from time to time.
(o)	<b>"VAT"</b>	Means Value Added Tax as provided for in the Value Added Tax Act, 1991.
(p)	<b>"Beneficiary Address"</b>	2 Granleigh Crescent, Durban North, 4051
(q)	<b>"Abbreviated name with bank"</b>	Gigazone

- 2.2. Unless the context indicates otherwise, in these Terms and Conditions:

- (a) references to any other contract or document shall include a reference to that contract or document as lawfully amended, varied, novated or substituted from time to time;
- (b) the headings of clauses, sub-clauses and schedules are included for convenience only and shall not affect the interpretation of this Agreement;
- (c) the annexures to these Terms and Conditions are an integral part of the Terms and Conditions and references to this Agreement shall include the annexures;
- (d) the Parties acknowledge that each of them has had the opportunity to take legal advice concerning this Agreement, and agree that no provision or word used in this Agreement shall be interpreted to the disadvantage of either Party because that Party was responsible for or participated in the preparation or drafting of this Agreement or any part of it;
- (e) words importing the singular number shall include the plural and vice versa, and words importing either gender or the neuter shall include both genders and the neuter; and
- (f) the number of days indicated to commit an act or indicated for any other purpose, is calculated by excluding the first day and including the lastday.

### 3. SERVICES

- 3.1. The Subscriber subscribes and Gigazone undertakes to provide the Services. Subject to the Terms and Conditions, Gigazone will register the Subscriber for use on the Network as soon as reasonably possible from the Acceptance Date and will thereafter for the term of this Agreement provide the Service/s.
- 3.2. Gigazone shall advise the extent of service and coverage to the Client.
- 3.3. The Services may be adversely affected by physical features (i.e. buildings, atmospheric conditions, topography and other cases of interference). Whilst every effort is made to uphold good quality of service, the service may be dependent on other providers for connectivity, satellite and other bandwidth etc. The local network is constantly monitored, however connectivity problems upstream (external to our network) may adversely affect all broadband service providers.
- 3.4. Notwithstanding the provisions of clause 3.1 above the Subscriber acknowledges:
  - (a) Gigazone cannot and does not guarantee coverage, speed or capacity over any particular area to or from any particular place.
  - (b) Upon signature of any acceptance of delivery, Gigazone and the Subscriber shall both be deemed for all purposes to have tested the equipment and the service provided and satisfied itself with regard to the coverage, speed or capacity furnished thereby.
  - (c) Whilst there are thousands of internet applications, Gigazone, cannot and does not guarantee that they will all work.
  - (d) Once the Subscriber reached the applicable Fair Usage Quota, the Service provided will be speed limited to 1Mbps.

#### 4. DURATION AND TERMINATION

- 4.1. This Agreement shall commence on the Acceptance Date and will endure for the initial period specified in C1 of the Schedule. Thereafter, unless terminated by either Party, the Agreement shall continue on a month to month basis and either Party may terminate the Agreement or a particular Service by giving one calendar month's notice to the other.
- 4.2. In the event that the Service/s applied for is/are not activated within 30 (thirty) days of the Acceptance Date due to an uncontrollable event, the Agreement will automatically terminate and neither Party shall have any liability to the other as a result of such termination.
- 4.3. Gigazone shall be entitled to terminate this Agreement by written notice, including email, and without liability in the event of the termination of its agreement with a third party in respect of the provision of any connectivity service.
- 4.4. Notwithstanding the termination of the agreement, in the event that the Subscriber continues to use the Services despite the termination of the Agreement, the Subscriber will remain liable for and promptly pay on demand and all amounts that would have been due to Gigazone as a result of the use of or access to the Services and this Agreement shall be deemed to continue to apply until such time as all amounts due to Gigazone have been paid in full.
- 4.5. If the Agreement results from any direct approach to the Subscriber by Gigazone or is an electronic transaction as contemplated in the Electronic Communications and Transactions Act 25 of 2002, the Subscriber will be entitled to cancel the Agreement on written notice to Gigazone without reason or penalty within 5 (five) Business Days of, in the case of Services only being provided in terms of the Agreement, the Acceptance Date.

#### 5. FEES AND PAYMENT TERMS

- 5.1. The Subscriber agrees to pay all amounts due under this Agreement.

##### Payment of Fees and Charges

- 5.2. The Subscriber undertakes to make payment of the charges as specified in the Agreement as follows:
- (a) The first month's fees and charges on the Acceptance Date;
  - (b) All subsequent fees and/or charges will be paid on or before the 25th day of each subsequent month following the Acceptance Date and in advance (Gigazone has committed to pay its bandwidth fees in advance);
  - (c) All other charges are cash on delivery unless otherwise agreed to in writing in advance;
  - (d) All charges will, unless Gigazone (or its cessionary) advise the Subscriber to the contrary, be payable by means of a direct debit order;
  - (e) All payments in terms of this Agreement shall be made free of exchange and without deduction of set off in such manner as and at such other place as Gigazone or its cessionary may direct in writing;
  - (f) The Subscriber shall not be entitled to withhold any payment for any reason whatsoever and neither shall the Subscriber be entitled to claim a remission of its fees.

#### Debit Order Authorisation

- 5.3. By accepting these terms, the Subscriber agrees that Gigazone will be entitled and authorized to draw from the Subscribers nominated bank account or credit card any variable amount in respect of the Services they have selected, on acceptance, for a calculated pro-rata and thereafter on the nominated Debit order date. This sum being the amount for settlement of the monthly amount due by the Subscriber in respect of Services.
- 5.4. The subscriber acknowledges that all payment instructions issued by Gigazone shall be treated by my above mentioned bank as if instructions have been issued by me / us personally.
- 5.5. If the payment day falls on a Sunday or recognised South African public holiday, the payment day will automatically be the very next ordinary business day.
- 5.6. Payment instructions due in December may be debited from my account on the preceding working day should the nominated Debit order date fall on a Sunday or Public Holiday
- 5.7. I/We understand that the withdrawals hereby authorised will be processed through a computerised system provided by the South African Banks. I also understand that details of each withdrawal will be printed on my Bank Statement. Such must contain a number, which must be included in the said payment instruction, and if provided to me should enable me to identify the agreement. This number must be added to this form in Section H before issuing of any payment instruction.
- 5.8. The debit order will commence on the Acceptance Date and will continue and not be revoked until termination of this Agreement or until all amounts due and owing to Gigazone have been fully and finally discharged;
- 5.9. The Subscriber will sign all such forms and do all such things as may be necessary to give effect to the debit order as contemplated in clause 5.3;
- 5.10. the Subscriber's first bill may be for part of a month and the Subscriber will be charged for the number of days left in the month in which the Subscriber signed up or switched over, plus the subscription for the next month.

#### Tariff Charges

- 5.11. Gigazone shall be entitled to amend its charges at any time subject to 30 (thirty) days' prior written notice to the Subscriber.

#### Failing to Pay Fees / Charges

- 5.12. Should the Subscriber fail to pay any amount on the due date for payment then Gigazone may, without prejudice to any of its other rights and remedies:
- (a) take all such further steps as may be necessary to recover the outstanding amount from the customer, including without limitation the use of debt collection mechanisms;
  - (b) suspend the Subscriber's access to the Service/s with notice to the Subscriber until such time as the outstanding amount has been paid in full; or
  - (c) terminate this Agreement with immediate effect.

- 5.13 Should the Subscriber's debit order not be honoured for whatever reason, Gigazone will be entitled to charge the Subscriber a reasonable administrative fee. The subscriber also agrees to pay penalty bank charges relating to this Debit order instruction.
- 5.14 Gigazone will use reasonable endeavours to inform the Subscriber well in advance, and in any event prior to disconnection, about the possibility of disconnection in the case of non-payment.
- 5.15 I/We agree that although this Authority and Mandate may be cancelled by me / us, such cancellation will not cancel the Agreement. I/We shall not be entitled to any refund of amounts which you have withdrawn while this Authority was in force if such amounts were legally owing to you.

The Subscriber shall on demand pay all expenses actually incurred by Gigazone either on behalf of the Subscriber or as a result of the Subscribers non-compliance with any provisions of this Agreement, including tracing costs, all legal costs calculated on the scale as between attorney and its own client.

#### Assignment

- 5.17 I / We acknowledge that this Authority may be ceded or assigned to a third party if the Agreement is also ceded or assigned to that third party, but in the absence of such assignment of the Agreement, this Authority and Mandate cannot be assigned to any third party.

#### 6. SUBSCRIBER'S OBLIGATIONS

- 6.1. In addition to its other obligations in terms of this Agreement, the Subscriber agrees to:
- provide Gigazone with all necessary information for the provision of the Services, which information shall be true and accurate as far as is reasonably possible;
  - comply with any reasonable instructions issued by Gigazone, its employees, agents and/or subcontractors related to the use of the Services;
  - use only compliant or Gigazone approved equipment for the utilisation of the Services;
  - be responsible for its own internet security and privacy and acknowledges having been advised to install firewalls and anti-virus software for the Subscriber's protection.
- 6.2. The Subscriber shall not:
- use and/or not allow others to use the Services for any improper, immoral or unlawful purpose;
  - act or omit to act in any way which may damage or impair the quality of the Network;
  - do or omit to do anything that may jeopardize the licenses granted to the Network Operator by using the Network contrary to end-user instructions as published by the Network Operator from time to time;
  - host illegal, pornographic or other offensive websites;
  - use the Services to conduct illegal, offensive or SPAM business;
  - use the Services to publish illegal or offensive content in any way using FTP, web, email, VOIP service or by any other means, using the Network.
- 6.3. In the event of a breach of 6.1 and/or 6.2 above, Gigazone reserves the right to:
- Immediately block offenders;
  - Cancel this Agreement;
  - Institute legal action against offenders.

#### 7. SUSPENSION / DISCONNECTION/RE-CONNECTION

- 7.1. Gigazone may without notice, suspend the Services and/or disconnect the Subscriber from the Network:
- during the period of a technical failure or modification of the Network;
  - in the event of a breach of the Agreement by the Subscriber;
  - if the Subscriber does or fails to do something which in the reasonable opinions of the Network operator jeopardizes or impairs the quality of the Network.

Subscribers with suspended Services will be liable for a re-connection fee.

#### 8. NATIONAL CREDIT ACT 34 OF 2005 ("NCA")

- 8.1. Although this Agreement is not a credit agreement as contemplated in the NCA, the Subscriber's application for Services may be subject to a credit referencing or risk assessment process. Gigazone may accordingly utilise the information provided by the Subscriber and the credit record from registered credit bureaus in order to assess whether the Subscriber will be able to meet the obligations under the intended Agreement. Gigazone shall be entitled at its sole discretion, to decline to accept or activate any Service/s applied for.
- 8.2. Gigazone will be entitled to perform these assessments each time the customer applies for services or equipment.

#### 9. VOETSTOETS

- 9.1. While every effort is made by Gigazone and its providers to ensure that all Services retain a constant uptime and high level of service quality, given the nature of the Services, technology, infrastructure and number of this parties involved in the provision of such Services, this is not always achievable. As such all Services, unless otherwise agreed to in writing are based on the best effort premise where no guarantees on throughput, latency or uptime can be provided.
- 9.2. Gigazone will use reasonable endeavours to make the Services available to the Subscriber, and to maintain the availability for use by Subscribers. However, Gigazone will provide the Services "as is" and "as available" and do not warrant or guarantee that the Services will at all times be free of errors or interruptions, be always available, fit for any purpose, not infringe any third party rights, be secure and reliable, or will conform to the customer's delivery timeline requirements, subject always to the provisions of the CPA, where applicable, and subject to any other service level agreement, where applicable.
- 9.3. Gigazone will use its best endeavours to notify the Subscriber in advance of any maintenance and repairs which may result in the unavailability of a service, but cannot always guarantee this.

#### 10. EQUIPMENT

Except for equipment and/or hardware that the Subscriber has fully paid for, all equipment and/or hardware installed or provided by Gigazone remains the property of Gigazone and the Subscriber agrees:

- to take reasonable care of such equipment and/or hardware;
- not to sell, lease, mortgage, transfer, assign or encumber such equipment and/or hardware;
- not to re-locate such equipment and/or hardware without Gigazone's knowledge and permission;
- to inform any landlord that such equipment and/or hardware is owned by Gigazone and is therefore not subject to any landlord's hypothec; and
- to return such equipment to Gigazone, at the Subscriber's expense, upon termination of the services to which the equipment and/or hardware is related, if applicable.

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## 11. PRIVACY AND PROTECTION OF INFORMATION

- 11.1. Gigazone shall observe all privacy of information best practices, in accordance with the applicable laws of South Africa and shall not distribute your personal information ("Personal Information") (as defined in the Protection of Personal Information Act, 2013) to any third party with the exception of its suppliers, credit checking service providers or where such information is required in order to provide the Services or as required by law or order of court.
- 11.2. The Subscriber hereby agrees to and consent to:
- Gigazone processing Personal Information transmitted to Gigazone in a way which is consistent with the Service being provided; and
  - receiving marketing material, notices and announcements or other communications deemed of interest to the Subscriber by Gigazone.
- 11.3. The Subscriber agrees to defend, indemnify and hold harmless Gigazone from any and all expenses, losses, liabilities, damages or third party claims resulting any third parties obtaining the Subscriber's Personal Information without Gigazone's consent.

## 12. LIEN

The Parties agree that in the event of a breach of this Agreement by the Subscriber, resulting in damages to Gigazone, Gigazone shall be entitled to retain a lien over the Subscriber's hardware in reduction of debt due by the Subscriber.

## 13. BREACH

- 13.1. Should either Party breach any of the terms and conditions of this Agreement and remain in breach after having received seven (7) days written notice to remedy such breach, the aggrieved party shall be entitled either to sue for specific performance in terms of this Agreement or to cancel this Agreement and claim damages.
- 13.2. In addition to the afore going, should the Subscriber be in breach of any provision of this Agreement, then Gigazone shall be entitled, without prejudice to any other rights that it may have and to the extent, required or permitted, as the case may be, by law, to forthwith:
- afford the Subscriber a reasonable opportunity to remedy the breach taking into account the nature of the breach in question; or
  - suspend the provision of the Services to the Subscriber;
  - cancel all agreements concluded between Gigazone and the Subscriber; or
  - claim immediate performance and/or payment of all obligations in terms hereof.
- 13.3. Should Gigazone suspend, disconnect or terminate the Services to the Subscriber, Gigazone will be entitled to charge the Subscriber a reasonable reconnection fee if applicable.
- 13.4. Should the aggrieved party instruct an attorney to take any action against the offending party in respect of any breach of the offending party's obligations in terms of this Agreement, the offending party shall be liable for and shall pay all such attorneys' fees, including collection charges, as between attorney and client.

## 14. LIMITATION OF LIABILITY AND INDEMNITY

- 14.1. Gigazone shall not be liable to the Subscriber or any third party in respect of any and all damages, loss, claims or costs, of whatever nature, however and whenever arising, suffered by the Subscriber or by a third party.
- 14.2. For the avoidance of doubt, the Subscriber agrees to indemnify and hold harmless Gigazone, its members, employees, servants, subcontractors and partners from any demand and, action or application or other proceedings, including for attorney's fees and other related costs made by any third party and arising out of or in connection with this Agreement.
- 14.3. In no event will Gigazone be liable for any incidental or consequential loss or damages resulting from any failure or suspension of operation of the Network or interference with the Services.
- 14.4. Save to the extent otherwise provided for in this Agreement or where the Subscriber is entitled to rely on or receive, by operation of law, any representations, warranties or guarantees, Gigazone does not make or provide any express or implied representations, warranties or guarantees regarding the availability, accuracy, reliability, timeliness, quality, security of any product or services.
- 14.5. Without limiting the indemnity in 14.1 and 14.2 above, the Subscriber agrees to defend, indemnify and hold harmless Gigazone from any and all expenses, losses, liabilities, damages or third party claims resulting from:
- the Subscriber's breach or alleged breach of any obligations set forth in this Agreement, any other agreement between the Parties or any government regulation or rule of law in connection with the Subscriber's use of the Services;
  - any unavailability of, or interruption in the services due to an uncontrolled event;
  - any damage, loss, cost or claim which the Subscriber may suffer or incur from any suspension or termination of the service/s for any reason contemplated in the Agreement.
  - loss of data or any part thereof for any reason and cause whatsoever.
- 14.6. If the Consumer Protection Act is applicable to this Agreement, any provision of this clause is found by a court or tribunal with jurisdiction over Gigazone to be unfair, unreasonable or unjust, then that provision (whether it be a word, phrase or sub-clause) will be severed and the remainder of this clause will have full force and effect.

## 15. DOMICILIUM AND NOTICES

- 15.1. Each of the Parties chooses *domicilium citandi et executandi* for all purposes arising from or in connection with this Agreement, including the service of notices, the addresses set out in the Schedule.
- 15.2. Each Party will be entitled from time to time by written notice to the other Party to change any of its *domicilium* addresses to any other address within the Republic of South Africa, provided that one of the addresses shall always be a street address at which the service of legal processes can be effected.
- 15.3. Any notice which:
- (a) is delivered by hand at the addressee's street address *domicilium* shall be deemed to have been received by the addressee at the time of delivery; or
  - (b) is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee's *domicilium* shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee on the seventh Day after the date of posting; or
  - (c) if transmitted by email to the addressee at the addressee's *domicilium* shall be deemed to have been received by the addressee on the date of transmission or, if the transmission is made out of normal business hours, on the first business day following after the date of transmission.

## 16. GENERAL

- 16.1. This Agreement contains the **entire understanding** of the Parties as to its subject matter. No party shall be bound by any condition warranty, representation or undertaking of any kind, whether express or implied, unless agreed to by each of the Parties will be of any effect.
- 16.2. Gigazone shall be entitled, on written notice to the Subscriber, to **delegate, assign, cede, transfer or in any way alienate or dispose** of any of its rights or obligations in terms of this Agreement to any other person.
- 16.3. The Subscriber may not **delegate, assign, cede, transfer or in any way alienate or dispose** of any of its rights or obligations in terms of this Agreement to any other person without the prior written consent of Gigazone.
- 16.4. The **failure of either Party at any time to require performance** of any provision of this agreement shall not affect the right of such party to require performance of that provision or of any other provision in the future. **No waiver** by either Party with respect to a breach of any provision of this Agreement shall be construed as a waiver with respect to any continuing or subsequent breach of that provision, or as a waiver of any other right under this Agreement.
- 16.5. This Agreement may be executed in any number of identical **counterparts** and by the Parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same Agreement.
- 16.6. **Each provision in this agreement is severable** from all others, notwithstanding the manner in which they may be linked together or grouped grammatically. If any provision is found to be defective or unenforceable for any reason, the remaining provisions shall nevertheless continue to be of full force.
- 16.7. This Agreement will be governed by and construed in accordance with the laws of the Republic of South Africa. The Parties hereby consent in terms of Section 45 of the Magistrates' Court Act of 1944 to any legal proceedings being instituted in the Magistrates' Court of any district having **jurisdiction** in respect of the other by virtue of the provisions of Section 28(1) of the said Act. Notwithstanding such consent, an aggrieved Party shall have the option of instituting proceedings against the other Party in the High Court of South Africa.
- 16.8. If applicable, the persons signing this Agreement on behalf of the Parties warrant that they are **authorised to sign** on behalf of their principals.
- 16.9. The Parties agree to do all things as may be required by law or necessary to **implement** this Agreement.
- 16.10. By entering into this Agreement, the Parties warrant that there are **no impediments or restrictions** to their doing so and that this Agreement does not violate the provisions of any agreement between any of the Parties and any third party.
- 16.11. For the avoidance of doubt, any provision of this Agreement that anticipates any right or duty extending beyond the termination or expiry of this Agreement will survive the termination or expiry of this Agreement and continue in full force and effect.

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