

## MIDDELBURG FIBRE TO THE HOME TERMS AND CONDITIONS

### PARTIES AGREE THAT –

#### 1. INTRODUCTION

- 1.1 With effect from the date of acceptance hereof by Bioniq (Pty) Ltd (“Bioniq”), (“Subscriber”) identified on the face page hereof appoints Bioniq to provide telecommunications and related services requested by the Subscriber and from time to time (“the services”) to and/or on behalf of the Subscriber in accordance for the provisions hereof.
- 1.2 The Subscriber agrees to be bound by the provisions contained in any notice, directive or applicable tariff plan issued or derived by Bioniq from time to time.
- 1.3 The Subscriber acknowledges that this document constitutes an offer by the Subscriber, which may be accepted or refused by Bioniq in its sole discretion. The offer will be considered once received by Bioniq, at Bioniq’s premises, which premises will be the offices of Bioniq at Regus Business Centre, Corner of Cedar and Fourways Boulevard, Fourways, Johannesburg, 2191, South Africa. Activation of the services of the Subscriber shall be deemed to constitute acceptance of the offer by Bioniq and commencement of this Contact. This Contact shall become binding between Bioniq and the Subscriber whether or not the Subscriber was notified of the acceptance of the offer. The Subscriber herewith expressly dispenses with notification of acceptance of the offer by Bioniq.
- 1.4 This Agreement applies to all accounts, sub-accounts, and alternative account names associated with the Subscriber’s principal account. The Account Holder is responsible for the use of each account, whether used under any name or by any person, and for ensuring full compliance with this Agreement by all users of that account
- 1.5 In circumstances of the Consumer Protection Act, 2008 “the CPA”) being applicable to this Agreement, the provisions of the CPA shall prevail in the event of a conflict between any provision of this Agreement and the provisions of the CPA.

#### 2. DURATION

- 2.1 This Contact shall continue for the contract period as defined in the most recent approved contract application and reckoned from the date of acceptance hereof by Bioniq (“the initial period”) and thereafter shall continue unless terminated by either party by the giving of at least one calendar month’s written notice of termination as set out in clause 2.5.
- 2.2 Any notice of termination or any other notice whatsoever by the Subscriber to Bioniq shall be in writing by on a letter head, signed by a duly authorised representative of the Subscriber and delivered via email as an attachment to account@bioniq.co.za.
- 2.3 In the event of death of the Subscriber or in the event that either party is provisionally or finally liquidated, wound up or declared insolvent or in the event that either party enters into a scheme of arrangement or compromise with its creditors or allows a judgment to be entered against the name of the party and does not take steps for the rescission thereof within a period of 21 (twenty-one) business days after the date of the judgment then the other party shall be entitled immediately to terminate this Contact.
- 2.4 Termination of this Contact does not relieve the Subscriber from the liability to pay charges for the initial period plus notice period.
- 2.5 The Subscriber may discontinue a service before the relevant initial period has expired by advising Bioniq of such discontinuation with at least one calendar months’ notice in writing in which event such service shall be discontinued on the required termination date specified in the said notice. In such event Bioniq shall invoice and the Subscriber shall pay to Bioniq an early cancellation charge (“the early cancellation charge”) calculated as set out in 2.6 below.
- 2.6 The early cancellation charge calculated as follows:
- 2.6.1 A Month-to-Month Contract may be cancelled at any time on no less than 30 days’ Calendar Month notice, but such cancellation shall be subject to a cancellation charge if the full installation charge due of a Link has not yet expired. The cancellation charge in respect of each Contract is the balance of the value that would have become due and payable for the remainder of the contract installation charge unless the installation has been paid in full.
- 2.6.2 A 24 (twenty-four) month Contract may be cancelled at any time on no less than 30 days’ Calendar Month notice, but such cancellation shall be subject to a cancellation charge if the full contract term of a Link has not yet expired. The cancellation charge in respect of each Contract is the balance of the value that would have become due and payable for the remainder of the contract installation term for that Link unless the Month-to-Month term has been reached.
- 2.6.3 Any delay of uninstillation and collection of Bioniq owned equipment caused by the Subscriber will result in the Subscriber being responsible for the equipment rental and or monthly internet service until the equipment is collected by Bioniq. In such event Bioniq shall invoice and the Subscriber shall pay to Bioniq the outstanding amount.

#### 3. CANCELLATION PRIOR TO INSTALLATION OF EQUIPMENT

- 3.1 The Subscriber hereby understands and agrees that this clause applies exclusively to the set-out circumstances as contained in this clause and which clause shall not detract and/or affect any other clause contained herein this Contact. The Subscriber hereby acknowledges that acceptance of any Bioniq quotation confirms a binding commitment and an order placed on Bioniq for the quoted services. The Subscriber further acknowledges, accepts and confirms that any cancellation requested by the Subscriber of Bioniq’s services, subsequent to the signing thereof, but prior to the physical installation of the equipment, will result in a penalty fee of twenty-five percent (25%) of the total contract value, which payment shall be due and payable by the Subscriber immediately upon demand.

#### 4. PROVISION OF SERVICES

- 4.1 Access Build
- 4.1.1 The Standard activation fee includes Access Build up to 30 meters, unless otherwise specified.
- 4.1.2 If the Access Build exceeds 30 meters, the standard Activation fee will apply as well as an additional installation fee of R 50 per meter. The Additional installation will be quoted by the appointed subcontractor and must be accepted by the subscriber before installation.
- 4.2 Service Level Agreement
- 4.2.1 Bioniq Network service availability guarantee of 99%.
- 4.2.2 Access service availability guarantees not available on this service.
- 4.2.3 Bioniq guarantees next business day resolution for any valid faults
- 4.2.4 Bioniq guarantees a contention ratio of 1:1 for all voice channels.
- 4.2.5 Link redundancy not available on these services.
- 4.2.6 The Subscriber acknowledges that Bioniq is a service provider that operates and manages the network and the functioning, operation, regulation and coverage area of the network and certain related services provided to the Subscriber in terms hereof. The Subscriber further acknowledges that to enable Bioniq to provide certain services, Bioniq is dependent on third party service providers and the delivery of these services may be affected by circumstances beyond either the supplier or Bioniq’s control.
- 4.2.7 The Services, are provided to the Subscriber as a best effort service and Bioniq will not be held liable for any downtime or degraded line speed whatsoever. Bioniq will however endeavour to provide the Subscriber a minimum line speed of 50% of the service taken (when cabled directly into the router), Bioniq will however not guarantee any line speeds over Wi-Fi.
- 4.2.8 **Best Effort** means that the advertised speed is the upper limit of what the Client may actually get. If the Subscriber purchases a 10 Mbps best-effort plan, for example, the Subscriber will occasionally not reach the 10 Mbps, depending on neighbour usage.
- 4.2.9 Bioniq makes no guarantees regarding the time to repair a fault or an outage and the Subscriber must be aware that certain faults are beyond Bioniq’s control and may take up to two weeks to repair.
- 4.2.10 The Subscriber shall not be entitled to set-off or deduct any monies in respect of temporarily unavailable services and other services.
- 4.3 Upgrades & Downgrades
- 4.3.1 Definition - “A downgrade occurs when changing the Subscriber’s current package to a package with a lower cost”. Example: Changing from an Uncapped 10Mbps account at R1209 to a Uncapped 8Mbps account at R854 would be considered a downgrade.
- 4.3.2 Upgrades or Downgrades must be requested by and email [accounts@bioniq.co.za](mailto:accounts@bioniq.co.za).
- 4.3.3 We require notification of upgrades and downgrades on or before the 20th of each month, for the upgrade / downgrade to take effect from the first day of the next month. If the Subscriber do not provide this notice, the Subscriber will be charged rate for the existing package in the following month.
- 4.3.4 A Once-Off fibre port upgrade/downgrade fee of R 1 000 will be charged for upgrading/downgrading a Service.

#### 5. ACCEPTABLE USAGE POLICY

- 5.1 Bioniq reserves the right to establish and impose reasonable policies, rules and limitations as defined in our Acceptable and Fair Use Policy (AUP) which may be amended from time to time. The latest AUP will be available on <https://www.bioniq.co.za/acceptable-and-fair-use-policy/>
- 5.2 By using our services, the Subscriber agree to comply with our Policies and Procedures, including our AUP.
- 5.3 General and Acceptable Use
- 5.3.1 The Subscriber are expected to use the Internet and other networks and services access through the services with respect, courtesy, and responsibility, giving due regard to the rights of other Internet users. We expect the Subscriber to have a basic knowledge of how the Internet functions, the types of uses which are generally acceptable, and the types of uses which are to be avoided. Common sense is the best guide as to what is considered acceptable use.
- 5.4 Unacceptable Use

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- 5.4.1 Illegality in any form, including but not limited to activities such as unauthorized distribution or copying of copyrighted material, violation of export restrictions, harassment, fraud, trafficking in obscene material, child sexual abuse imagery, drug dealing, and other illegal activities.
- 5.4.2 Bioniq services and servers may be used only for lawful purposes. Transmission, distribution or storage of any material in violation of any applicable law or regulation is prohibited. This includes, without limitation, material protected by copyright, trademark, trade secret or other intellectual property right used without proper authorization, and material that is obscene, defamatory, constitutes a legal threat, or violates export control laws. Examples of unacceptable content or links: "Pirated software", "Hackers programs or archives", "Warez Sites", "Irc Bots", "Illegal Mp3's" etc.
- 5.4.3 Aggregation of any kind is strictly forbidden when using any "home" defined service, "home" services are intended for individuals within a single dwelling.
- 5.4.4 Posting of defamatory, scandalous, violent or private information about a person without their consent, intentionally inflicting emotional distress, or violating trademarks, copyrights, or other intellectual property rights.
- 5.4.5 Any unacceptable use of the services constitutes a material breach of these Terms and Conditions of Use and Bioniq fully and strictly reserves its rights in this regard.
- 5.5 Business Use
- 5.6 Violations of system or network security are prohibited and may result in criminal and civil liability. Examples include, but are not limited to the following:
- 5.6.1 Bioniq defines a Business Customer as a business entity, when said entity is operating with more than 5 registered employees.
- 5.6.2 The distinction is in place on the basis that home/residential solutions are designed for a specific requirement < 5 users on average.
- 5.6.3 A Business which is then over this number of users would attract a higher cost to service based on our business priority traffic model thus making the service unfeasible by design.
- 5.6.4 Business customers over the 5-employee threshold have the option to select a FTTB solution in the same area.
- 5.6.5 Bioniq has full discretion to immediately suspend or terminate any service not operating within these requirements without notice.
- 5.7 Interpretation
- 5.7.1 The provisions of this Policy are intended as guidelines and are not meant to be exhaustive. Generally, conduct that violates law, regulation, or the accepted norms of the Internet community, whether or not expressly mentioned in this Policy, is prohibited. Bioniq reserves the right at all times to prohibit activities that damage its commercial reputation and goodwill.
- 5.8 System and Network Security
- 5.8.1 Violations of system or network security are prohibited and may result in criminal and civil liability. Examples include, but are not limited to the following:
- 5.8.1.1 unauthorized access, use, probe, or scan of a systems security or authentication measures, data or traffic;
- 5.8.1.2 interference with service to any user, host or network including, without limitation, mail bombing, flooding, deliberate attempts to overload a system and broadcast attacks;
- 5.8.1.3 forging of any TCP-IP packet header or any part of the header information in an e-mail or a newsgroup posting; and
- 5.8.1.4 employing posts or programs which consume excessive CPU time or storage space, permits the use of mail services, mail forwarding capabilities, POP accounts, or auto responders other than for their own account; or resale of access to CGI scripts installed on our servers.
- 5.9 Spamming
- 5.9.1 Sending unsolicited mail messages, including, without limitation, commercial advertising and informational announcements, is expressly prohibited. A user shall not use another site's mail server to relay mail without the express permission of the site or distributing, advertising or promoting products or software or services that have the primary purpose of encouraging or facilitating unsolicited commercial E-mail or spam.
- 5.9.2 It is contrary to Bioniq policy for customers to use our servers to effect or participate in any of the following activities:
- 5.9.2.1 To post to any Usenet or other newsgroup, forum, e-mail mailing list or other similar group or list articles which are off-topic according to the charter or other owner-published FAQ or description of the group or list;
- 5.9.2.2 To send unsolicited mass e-mailings, if such unsolicited e-mailings provoke complaints from the recipients;
- 5.9.2.3 To engage in any of the foregoing activities using the service of another provider, but channelling such activities through a Bioniq provided server, or using a Bioniq provided server as a maildrop for responses;
- 5.9.2.4 To falsify user information provided to Bioniq or to other users of the service in connection with use of a Bioniq service.
- 5.10 Determination of a breach of this Policy
- 5.10.1 Bioniq will be the sole arbiters and have a sole and unfettered discretion in determining what constitutes a violation of this Policy.
- 5.11 Consequences of breach of this Policy
- 5.11.1 When Bioniq becomes aware of an alleged violation of its AUP, Bioniq will initiate an investigation (within 24-48 hours). During the investigation Bioniq may restrict the Subscriber's access in order to prevent further possible unauthorized activity. If the Subscriber are found in violation of our SPAM policy, Bioniq may, at its sole discretion, restrict, suspend, or terminate the Subscriber's account and/or pursue other civil remedies. Also, Bioniq reserves the right to pursue civil remedies for any costs associated with the investigation of a substantiated policy violation. If such violation is a criminal offence, Bioniq will notify the appropriate law enforcement department of such violation.
- 5.11.2 Bioniq does not issue service credits for any outages incurred through service disablement resulting from Policy violations.
- 5.11.3 The Subscriber shall be held liable for any and all costs incurred by Bioniq as a result of the Subscriber's violation of these terms and conditions. This is including, but is not limited to, attorney fees and costs resulting from Postmaster responses to complaints from and the clean-up of unsolicited commercial mailings and/or unauthorized bulk mailings and/or news server violations.
- 5.11.4 First violations will result in a Clean-up Fee of R1500 and the Subscriber's account will be reviewed for possible immediate termination.
- 5.11.5 A second violation will result in Clean-up Fee of R3500 and immediate termination of the Subscriber's account.
- 5.11.6 The Customer who violates this policy agrees to also pay Investigation Fees of no more than R1500 per hour that Bioniq personnel must spend to investigate any violations.
- 5.12 Modification
- 5.12.1 Bioniq may, at times with reasonable notice to Customers, revise or amend its current Service offerings relating to price, features, traffic and bandwidth allocations.
- 5.12.2 Bioniq reserves the right to add, delete, or modify any provision of this Policy at any time without notice.
- 5.13 Reporting Network Abuse
- 5.13.1 Any party seeking to report any violations to Bioniq's policy may contact via e-mail: [abuse@bioniq.co.za](mailto:abuse@bioniq.co.za)
- 5.14 Non-transferability of services
- 5.14.1 The Subscriber's rights and privileges under this Agreement cannot be sold or transferred without the prior written consent of Bioniq.
- 5.15 Passwords
- 5.15.1 The Subscriber are responsible for maintaining the confidentiality of the Subscriber's password. In the event of a breach of security through the Subscriber's account, the Subscriber will be liable for any unauthorized use of Bioniq services, including any damages resulting there from, until the Subscriber notify Bioniq customer service.
- 5.15.2 The responsibility of all passwords and other related sensitive information is assumed by the Subscriber, should any additional fees arise from resource consumption due to poor credentials (such as, but not limited to blank passwords or "test" accounts) no fault shall be levied on Bioniq
- 5.16 Assignment of IP addresses
- 5.16.1 If Bioniq assigns the Subscriber an Internet Protocol address in connection with the Subscriber's use of the Bioniq services, the right to use that Internet Protocol address will remain with and belong only to Bioniq, and the Subscriber will have no right to use that Internet Protocol address except as allowed by Bioniq in its sole and absolute discretion.
6. **CHARGES**
- 6.1 The Subscriber shall pay to Bioniq:
- 6.1.1 upon commencement hereof, the initial installation and set-up charge and any other introductory or commencement charges; and
- 6.1.2 monthly in advance, the monthly subscription charges; and
- 6.1.3 monthly in arrears, or as and when billing is passed on, the total usage charges and/or generated by the Subscriber in conjunction with each billing period and any other charges payable in respect of the services requested by the Subscriber or other charges levied by Bioniq from time to time; and
- 6.1.4 upon demand, a deposit of an amount determined by Bioniq in its sole discretion which shall not bear interest; and
- 6.1.5 Value Added Tax at the applicable rate on all VAT charges and services. All charges, unless otherwise stated exclude Value Added Tax.
- 6.2 The charges payable by the Subscriber to Bioniq for the provision or facilitation of the services shall be stipulated in any notice, directive, promotion or applicable tariff plan issued or derived by Bioniq.
- 6.3 The Subscriber agrees that Bioniq shall be entitled, by mutual Contact, to from time to time vary the charges payable by the Subscriber to Bioniq for the services providing the Subscriber with 30 (thirty) days written notice.

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- 6.4 The Subscriber acknowledges that data and other services are rendered to the Subscriber by means of which are issued to the Subscriber personally and which facilitates access to the network and the services. The Subscriber will be liable for all charges applicable to hardware issued to the Subscriber, irrespective of whether or not such hardware has been used by the Subscriber or whether any other has been requested by the Subscriber. Until Bioniq has received notification in writing from the Subscriber and confirmed such notification that the equipment has been stolen or destroyed, the Subscriber shall be liable for all data and other charges howsoever and by whomsoever for the replacement costs thereof.
- 6.5 Bioniq's monthly statement of charges shall be prima facie proof of the amounts owed by the Subscriber to Bioniq in terms hereof and of the other facts stated therein and should the Subscriber dispute the number, duration or amount charged in respect of any services rendered by Bioniq, then the Subscriber shall bear the onus of proving that Bioniq statement is incorrect in respect of such charges.
- 6.6 Notwithstanding anything to the contrary contained in this Contact, the Subscriber shall be entitled to cancel an order prior to the provision of a particular service by Bioniq, the Subscriber will still be liable for any cost as set out in clause 3.
- 6.7 Upon such cancellation as stated in clause 6.6, Bioniq shall be entitled to charge the Subscriber such costs and expenses as have been incurred by Bioniq up to the date of receipt of such notice of cancellation.
- 6.8 A reconnection fee will be levied, where the Subscriber's right to use the services is suspended due to non-payment. This fee is in respect of any restoration of the services. This fee is payable in advance, together with any outstanding amounts which are due to Bioniq and any deposit which Bioniq requests to be paid.
- 6.9 The 'Reconnection Fee' for residential services is R150 inclusive of VAT.
- 6.10 A 'Debit Order Return Fee' of R75 inclusive of VAT will be levied should any debit order be returned unsuccessful from the Subscriber's bank account.
- 6.11 These fees are subject to change with 30 (thirty) days written notice.

## 7. BILLING TERMS

### 7.1 General

- 7.1.1 Bioniq will provide the Subscriber with an itemised bill or invoice on request or where this is specified as part of the services provided to the Subscriber.
- 7.1.2 Accounts are due on invoice presentation date "Due Date" shown on all invoices received from Bioniq, unless agreed otherwise. Bioniq retains the right to impose, subject to a notice period of 7 business days, a credit limit on any of its customers as and when it sees fit.
- 7.1.3 All monies payable by the Subscriber to Bioniq in terms hereof shall be paid timeously on due date, free of deduction or set-off to Bioniq's principal place of business.
- 7.1.4 Bioniq products and services are pro-rated from the date of the start of service.
- 7.1.5 Bioniq will provide a service to the Subscriber, as chosen by the Subscriber, for the period of time "the Term" corresponding with the payment plan specific to the Subscriber or as otherwise specific in the product terms and conditions relating to the particular product or service supplied by Bioniq. This contract will be automatically renewed at the end of the Term and each successive renewal term, unless terminated.
- 7.1.6 Bioniq only accepts payments via Debit Order and Online Payment via the Customer Portal. Electronic Transfer will only be accepted if arrangements are made.
- 7.1.7 The Subscriber agrees that payment shall only have been made to Bioniq when the monies remitted by the Subscriber have been received into Bioniq's bank account.
- 7.1.8 If the preferred method of payment used by the Subscriber is EFT, it will be the Subscriber's sole responsibility to ensure the Subscriber's payments are made using the correct beneficiary reference as indicated on all invoicing. Failure to comply may result in an incorrect allocation of the Subscriber's payment which may cause service disruption as a result of the account being suspended due to non-payment.
- 7.1.9 Should any debit order or cheque payment be returned unpaid or stopped or should any charge card account or credit card account of the Subscriber be rejected for whatsoever reason or should Bioniq exercise its right to suspend the provision of the services due to late or non-payment of any monies due in terms hereof by the Subscriber, then the Subscriber shall pay an administration charge, including but not limited to reconnection fees, debit order fees, as may be levied by Bioniq from time to time for each such non-payment, suspension or any other breach of this Contact which amount shall be payable upon demand and recoverable by Bioniq.
- 7.2 Effect of non-payment
- 7.2.1 In the event of non-payment of an invoice by the stipulated Due Date, without prejudice to any other rights that Bioniq has in terms of this Agreement or in law, Bioniq reserves the right to hold the Subscriber liable for the total amount due pursuant to such invoice.
- 7.2.2 All arrear payments shall attract interest at the rate of the prime lending rate of First Rand Bank Limited as it may be from time to time, calculated from due date to date of payment.
- 7.2.3 Bioniq may stop the supply of new services to the Subscriber and/or terminate current services held by the Subscriber if payment of any invoice is not made by the Due Date, or if an application for business rescue proceedings or liquidation is filed by or against the customer, or if the customer goes out of business or announces intention to do so.
- 7.2.4 Should the service be suspended for non-payment the Subscriber is still liable for all charges as stated in clause 6.1.
- 7.2.4.1 The Subscriber will still be charged for services if the service is suspended.
- 7.2.5 Bioniq shall be entitled to apply the deposit as per clause 6.1.4 or any portion thereof towards any monies which are owing by the Subscriber. The Subscriber shall upon demand reinstate the deposit.
- 7.2.6 If the supply of new services is stopped or the existing services are terminated in accordance with clause 6, the full outstanding balance becomes due and payable immediately.
- 7.2.7 If the Subscriber pay the amount due in full, the Subscriber may have their existing services re-activated and purchase new services.
- 7.2.8 If the Subscriber neglect to pay the amount due in full, Bioniq will submit the full delinquent amount for Collections. In the event of the account being handed over to an outside collection agency, any costs incurred as such will be for the Subscriber's account.
- 7.3 The Subscriber agrees and acknowledges that a certificate given under the hand of a financial manager or controller of Bioniq whose status and authority need not be proved shall be considered prima facie proof of the amount due and shall entitle Bioniq to apply for judgement against the Subscriber and to obtain summary judgment or provisional sentence, as the case may be.
- 7.4 Save where otherwise provided for in this Agreement, if the Subscriber:
- 7.4.1 fail to pay any amount payable under this Agreement within ten days after receipt of written demand requiring such payment; or
- 7.4.2 commit a breach of any provision (other than a payment obligation) of this Agreement and, if such breach is capable of remedy, fail to remedy such breach within thirty days after receipt of written demand requiring the Subscriber to do so;
- 7.4.3 are placed under liquidation, judicial management, business rescue proceedings or any similar disability, whether provisionally or finally and whether voluntarily or compulsorily;
- 7.4.4 commit any act which if committed by a natural person would constitute an act of insolvency;
- 7.4.5 become insolvent;
- 7.4.6 compromise or attempt to compromise generally with any of the Subscriber's creditors;
- 7.4.7 have a final judgment taken against the Subscriber which is not satisfied within 30 days after the granting of such judgment, then Bioniq shall be entitled, without prejudice to any of its other rights under this Agreement and/or in law and by giving written notice, to immediately cancel this Agreement or to claim immediate specific performance of all the Subscriber's obligations whether or not due for performance, in either event without prejudice to Bioniq's right to claim damages.
- 7.5 The interpretation and enforcement of this Agreement shall be governed according to the laws of the Republic of South Africa (excluding its choice of law rules).
- 7.6 The Subscriber consent to the jurisdiction of the South Africa courts.
- 7.7 The Bioniq services are provided from Johannesburg, South Africa, and this Agreement is deemed to have been entered into at this location.
- 7.8 Notices required by this Agreement shall be in writing and shall be delivered either by personal delivery, fax or by email. If delivered by mail, notices shall be sent by any express mail service; or by certified or registered mail, return receipt requested, with all postage and charges prepaid, and shall be deemed to have been received on the 5th Business Day after posting. Emails and faxes shall be deemed to be received on the Business Day they are sent if sent before 16h00 on that day or on the next Business Day thereafter is sent after 16h00 on a Business Day or if sent on a non-Business Day.

### 7.9 Refunds

- 7.10 Bioniq will only refund a customer in the event of their account having a credit balance.
- 7.11 Bioniq will process authorised refunds to customers each Wednesday and Friday.
- 7.12 All refunds pertaining to link downs or issues with the Services are subject to approval by Bioniq.

## 8. DISPUTE RESOLUTION

### 8.1 General Dispute Resolution

- 8.1.1 The parties shall attempt to resolve all disputes arising out of this Agreement in a spirit of cooperation and with a problem-solving mind set, without formal proceedings and in accordance with the various dispute resolution procedures provided. Dispute procedures can be found on our website [www.bioniq.co.za/legal](http://www.bioniq.co.za/legal).
- 8.1.2 In the event of the dispute not being resolved, please follow the general complaint procedure as stipulated by ICASA for all complaints excepts Billing disputes: The Subscriber are required to direct a general complaint to [complaints@bioniq.co.za](mailto:complaints@bioniq.co.za)

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- 8.1.3 The complaint is required to be accompanied by the following;
- 8.1.3.1 The Subscriber's full particulars and contact details;
- 8.1.3.2 The Subscriber's relationship with Bioniq and any customer reference which may be applicable;
- 8.1.3.3 A statement of the reasons for the complaint with enough detail to allow us to assess these; and
- 8.1.3.4 Any relevant evidence or documentation the Subscriber wish to submit in support of the Subscriber's complaint.
- 8.1.3.5 Under the ICASA Code of Conduct Regulations Bioniq is required to:
- 8.1.3.5.1 Acknowledge receipt of the Subscriber's complaint within three working days; and
- 8.1.3.5.2 Determine an outcome for the complaint and communicate this to the Subscriber within fourteen (14) working days.
- 8.2 Referral of Complaints to ICASA
- 8.2.1 If the Subscriber are not happy about the outcome of the Complaint the Subscriber have the right to escalate it to ICASA. If ICASA are not able to resolve the matter it may be referred to the ICASA Complaints and Compliance Committee for adjudication.
- 8.2.2 Please note that under the ICASA Code of Conduct Regulations 2008 the Subscriber must give us an opportunity to resolve the matter within the 14-day period before the Subscriber have the right to escalate the Subscriber's complaint to ICASA.
- 8.2.3 ICASA can be contacted in the following ways:
- 8.2.3.1 Telephone - +27 11 566 3000,
- 8.2.3.2 Fax - +27 11 444 1919 or
- 8.2.3.3 Email - [consumer@icasa.org.za](mailto:consumer@icasa.org.za)
- 8.2.4 Any dispute, which cannot be so resolved, shall be subject to binding arbitration upon the written demand of either party. Arbitration shall take place in South Africa. Should any legal action permissible under this Agreement be instituted to enforce the terms and conditions of this Agreement, in particular the right to collect money due on unpaid invoices, the prevailing party shall be entitled to recover reasonable attorney's fees and expenses incurred at both the trial and appellate levels. The terms of this Section will survive any termination of this Agreement.
9. **CREDIT LIMIT**
- 9.1 Bioniq shall be entitled in its sole and absolute discretion from time to time to determine and amend the maximum amount of fees and charges ("credit limit") which may be used and/or accumulated by the Subscriber during each billing period and Bioniq shall be entitled to suspend the services should the Subscriber exceed such maximum amount.
- 9.2 Bioniq shall be entitled to demand that the Subscriber pay a deposit in an amount determined at Bioniq's sole discretion. Any portion of such deposit not consumed shall be credited towards the Subscriber's future liabilities for amounts owed in terms of this Contact.
10. **EQUIPMENT**
- 10.1 All Bioniq Equipment shall be and remain the property of Bioniq.
- 10.2 Accordingly, where Bioniq Equipment is in the possession, or under the control, of the Subscriber the Subscriber agrees:
- 10.2.1 not to remove or allow the Bioniq Equipment to be removed from the site without Bioniq consent;
- 10.2.2 to keep the Bioniq Equipment in good condition and complete;
- 10.2.3 not to allow the Bioniq Equipment to be encumbered by operation of law or otherwise;
- 10.2.4 to allow Bioniq to inspect the Bioniq Equipment at reasonable times;
- 10.2.5 take reasonable steps to protect the Bioniq Equipment from loss and/or damage; and
- 10.2.6 to return such Bioniq Equipment to Bioniq on the termination of the Contract Term of the applicable Services.
- 10.3 All risk of loss, theft, destruction or damage to or malfunction of the equipment, being the property of Bioniq, and which is provided to the Subscriber, shall vest in the Subscriber.
- 10.4 All Bioniq Equipment, cabling and additional routers etc. that are installed at his premises. The Subscriber is responsible for its safety and insurance from theft, loss, damage and acts of god, unless the equipment is insured by Bioniq as selected on Page 2 (two). **Initial** \_\_\_\_\_
- 10.5 Where the Subscriber purchased equipment from Bioniq then the manufacturer's warranty will apply to such equipment. Such warranty is normally for 12 months from date of purchase and normally covers defective equipment as a result of faulty design, manufacture or workmanship provided that such equipment has not been misused, over-loaded, modified or repaired by an unauthorised party. Bioniq may require the Subscriber to make available the equipment to Bioniq or its nominee for inspection of the equipment at a time and place to be arranged by Bioniq or its nominee.
- 10.6 Should Bioniq accept the equipment for repairs and maintenance it shall be deemed to do so as agent on behalf of the manufacturer or local supplier of the equipment and Bioniq shall not be liable for any loss, damage, destruction, theft or negligent workmanship howsoever or by whomsoever caused.
- 10.7 Should the Subscriber fail to pay any monies due in respect of equipment or accessories purchased, leased or loaned from Bioniq then Bioniq shall be entitled without prejudice to any other rights it may have at law forthwith and without notice to suspend, interrupt or disconnect the services or any part thereof.
- 10.8 Should Bioniq loan equipment to the Subscriber whilst the Subscriber's owned or leased equipment is being repaired, then the Subscriber shall upon demand return the equipment to Bioniq and all risk in and to such loaned equipment shall vest in the Subscriber until the Subscriber returns it to Bioniq at the Subscriber's own cost. Should the Subscriber fail to return any Bioniq owned equipment to Bioniq when asked to, then Bioniq shall be entitled to charge and recover from the Subscriber (who shall pay such charges upon demand) a rental of R1 000 (one thousand rand) excluding VAT per day reckoned from the due date of return or demand, whichever is the earlier, until the equipment is returned to Bioniq. The provisions of this Contact shall mutatis mutandis apply to such loaned equipment and its use.
11. **INSURANCE**
- 11.1 Customer Premise Equipment ("CPE") refers to devices such as Telephone, Router, Network Switch, Access Point, Wireless Antenna and/or ONU that enable the Subscriber to access Bioniq' services and distribute them around their premises via a local area network (LAN).
- 11.2 Bioniq will insure the CPE, supplied to the Subscriber if selected on Page 2 (two).
- 11.3 The insurance provided only covers the supplied equipment and is subject to Bioniq's Insurance Terms and Conditions, <https://www.bioniq.co.za/BioInsure>.
12. **DATA AND USAGE**
- 12.1 Quality of Service is active on the network and certain protocols (p2p, file sharing) will take lower preference and Bioniq reserves the right to alter or limit the customers' connection when it sees fit.
- 12.2 Viewing of illegal material, websites and the download of illegal software or music is at the user' own risk and liability. Users herewith consent and acknowledge all onus of disproving guilt for any breach of law rests with the end user, and Bioniq will not be held liable for any losses, claims, or prosecution stemming thereof.
- 12.3 IP spoofing, sending bulk email, hosting of web or email services, intercepting of IP packets is prohibited.
- 12.4 The Subscriber is responsible for all content sent and received on the Subscriber's user account and is bound by South African and international law. **Initial** \_\_\_\_\_
- 12.5 The sharing of the customers' username and password and sharing of the Internet connection to members outside of the household or business is not allowed and will lead to termination of this service.
13. **SERVICE AND SUPPORT**
- 13.1 All faults will be reported to Bioniq within 24 hours and Bioniq endeavors to rectify all faults as soon as possible.
- 13.2 Support hours are between 08h00 - 17h00 on Weekdays.
- 13.3 After Hour Support is only provided if selected on page 2 (two). Dedicated Response times can be negotiated separately.
- 13.4 Bioniq cannot be held liable for non or poor service delivery due factors out if its control caused by upstream service providers. **Initial** \_\_\_\_\_
- 13.5 If a fault is caused by customer equipment e.g. computer operating system problems, client hardware issues etc. a rate of R850 per hour will apply for repairs
- 13.6 Only MikroTik Routers will be supported by Bioniq.
- 13.7 Users will be informed when scheduled network downtime is expected in writing, from time to time emergency maintenance is required and the network might be unavailable without prior notice.
- 13.8 Various factors man-made and natural can degrade or affect the performance of the Subscriber's Service. Whilst all measures are taken to provide the best possible Service Bioniq can in no way be held responsible for the degraded performance of the Subscriber's connection due to these or other factors.
- 13.9 Support contacts:
- 13.9.1 Email - [support@bioniq.co.za](mailto:support@bioniq.co.za)
- 13.9.2 Support Number - +27 87 135 3676
- 13.9.3 Customer Portal - <https://portal.bioniq.co.za>
14. **DISCLAIMERS AND LIMITATION OF LIABILITY**
- 14.1 Bioniq shall not be liable under any circumstances whatsoever for any loss or damage of any nature whatsoever (including loss of profit or any other special damages or indirect or consequential loss or damages) which the Subscriber or any other person may suffer, whether caused directly or indirectly by the Subscriber's equipment or the use thereof, or any other circumstance whether caused by any person, animal or naturally occurring event, which causes any of the networks to temporarily or otherwise fail, malfunction, provide no or poor coverage, or should any of the services or facilities provided by any network operator or Bioniq be temporarily unavailable for any reason beyond Bioniq's control.

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- 14.2 We and our contractors shall not be liable for any direct, indirect, incidental, special or consequential damages resulting from the use or inability to use any of the Services or for the cost of procurement of substitute services.
- 14.3 We disclaim any and all loss or liability resulting from, but not limited to:
- 14.3.1 loss or liability resulting from access delays or access interruptions;
- 14.3.2 loss or liability resulting from data non-delivery or data mis-delivery;
- 14.3.3 loss or liability resulting from acts of God;
- 14.3.4 loss or liability resulting from the unauthorized use or misuse of the Subscriber's account identifier or password;
- 14.3.5 loss or liability resulting from errors, omissions, or misstatements in any and all information or services(s) provided under this Agreement;
- 14.3.6 loss or liability resulting from the interruption of the Subscriber's Service.
- 14.4 Subject always to the provisions of the CPA, to the extent that it is applicable, Bioniq services are provided on an as is, as available, basis without warranties of any kind, either express or implied, including, but not limited to, warranties of merchantability, fitness for a particular purpose or non-infringement. Bioniq expressly disclaims any representation or warranty that the Bioniq services will be error-free, secure or uninterrupted.
- 14.5 No oral advice or written information given by Bioniq, its employees, licensors of the like, will create a warranty; nor may the Subscriber rely on any such information or advice as if it were a warranty.
- 14.6 Bioniq will use its best efforts to maintain a full time Internet presence for the Account Holder. The Subscriber hereby acknowledge that the network may, at various time intervals, be down due, but not restricted to, utility interruption, equipment failure, natural disaster, acts of God, or human error.
- 14.7 Responsibility for content and Account Holder indemnities
- 14.7.1 The Subscriber agree to indemnify and hold Bioniq harmless from any and all Claims resulting from or connected with any activities conducted by the Subscriber. The Subscriber and Bioniq will promptly notify the other upon receipt of any Claim or legal action arising out of activities conducted pursuant to this Agreement.
- 14.7.2 The Subscriber agree not to store, transmit, link to, advertise or make available any images containing pornography through any Bioniq service. Bioniq reserves the right to refuse service if any of the content within, or any links from, the Subscriber's Service is deemed illegal, misleading, or obscene, or is otherwise in breach of these terms or Bioniq then current AUP, in the sole and absolute opinion of Bioniq.
- 14.7.3 Bioniq will not change passwords to any account without proof of identification, which is satisfactory to Bioniq, which may include written authorization with signature. In the event of any partnership break-up, divorce or other legal problems that includes the Subscriber, the Subscriber understand that Bioniq will remain neutral and may put the account on hold until the situation has been resolved. Under no circumstances will Bioniq be liable for any losses incurred by the Subscriber during this time of determination of ownership, or otherwise. The Subscriber agree to indemnify and hold harmless Bioniq from any and all Claims arising from such ownership disputes.
- 14.7.4 The Subscriber agree to indemnify and hold harmless Bioniq and any other Account Holder from any and all Claims resulting from the Subscriber's use of the services provided by Bioniq.
- 14.8 The Subscriber agree not to harm Bioniq, its reputation, computer systems, programming and/or other persons using Bioniq services.
- 14.9 The terms of this Section will survive any termination of this Agreement.
15. **BREACH**
- 15.1 Should the Subscriber breach any provision of this Contact including failing to pay Bioniq any monies due in terms of hereof on due date, then Bioniq shall be entitled, without prejudice to any of its other rights arising out of this Contact forthwith and without any liability towards the Subscriber, to suspend its provision to the Subscriber of the services in whole or in part and/or to disconnect the Subscriber and/or the equipment from the network and/or to render the equipment inoperable by whatever means having provided the Subscriber with 24 hours written notice of such suspension.
16. **LEGAL COSTS**
- 16.1 Should Bioniq instruct its attorneys to enforce any of Bioniq's rights arising from this Contact or to institute action against the Subscriber, then the Subscriber shall be liable for all legal costs on attorney and own client scale including any collection commission incurred by Bioniq and the Subscriber shall upon demand pay such costs.
17. **DOMICILIUM**
- 17.1 Bioniq chooses as it's domicilium citandi et executandi ("domicilium") the address set out on Page 1.
- 17.2 The Subscriber appoints their physical or residential address specified on Page 1.
- 17.3 the signatory hereby appoints the same address as chosen by the Subscriber as specified on Page 1;
- 17.4 either party shall be entitled from time to time, by written notice to the other, to vary its domicilium to any other address within the Republic of South Africa which is not a post office box or poste restante.
18. **UNDERTAKING AS CO-PRINCIPAL DEBTOR ON BEHALF OF THE SUBSCRIBER BY THE SIGNATORY**
- 18.1 If the Subscriber as identified on the face page hereof is a company, close corporation, trust or a division or entity thereof or any other entity with juristic personality, then the signatory hereto who signs on behalf of the Subscriber ("the signatory") warrants that he is duly authorised to enter into this Contact on behalf of the Subscriber and, if applicable, to sign the debit authorization on the Subscriber's bank account. By his signature hereto, the signatory hereby binds himself as co-principal debtor for the Subscriber unto and in favour of Bioniq for the due and punctual fulfilment of all of the Subscriber's obligations to Bioniq arising out of this Contact including the payment of all charges, fees, penalties and liquidated damages. The signatory as co-principal debtor hereby renounces and waives the benefits of the legal defences of excision, division and cession of actions and hereby acknowledges that he understands the full meaning of such defences and the effect of such renunciation and waiver.
19. **GENERAL**
- 19.1 The Subscriber hereby consents to Bioniq conducting an investigation into the creditworthiness of the Subscriber utilising the information contained on the face page, which information the Subscriber warrants is true and correct, and such information forms the basis of this Contact. The Subscriber agrees that should such information turn out not to be correct in all respects, Bioniq shall be entitled to, immediately and without prejudice to any other rights that Bioniq may have, terminate this Contact in terms of clause 2.1
- 19.2 Any subsequent changes that affect the information supplied to Bioniq such as bank account details must be brought to the immediate attention of Bioniq.
- 19.3 The Subscriber hereby agrees to abide by Bioniq's acceptable and fair usage policy, which is made available on Bioniq's website and can be supplied on request by the Subscriber. Should Bioniq suspect or find evidence of violation of the acceptable and fair usage policy or network traffic that interferes with Bioniq's network, the Subscriber hereby agrees to be immediately disconnected without notice until the violation and / or interfering network traffic is removed.
- 19.4 The Subscriber hereby agrees that Bioniq may, in addition to any of its other rights in terms of this Contact or otherwise, list any default information of the Subscriber with any credit information bureau, and the Subscriber agrees to the disclosure by Bioniq to any third party, of any information pertaining to the Subscriber or this Contact, to the extent that such disclosure is necessary for the conduct of Bioniq's business, or is required by any relevant statute, regulation or license.
- 19.5 Bioniq shall be entitled to cede its rights and/or to delegate its obligations arising from this Contact and/or assign this Contact, wholly or partly, to any other third party. The Subscriber shall not be entitled to cede or delegate his rights and/or obligations arising out of this contract, unless accepted in writing by the credit control manager or a director of Bioniq.
- 19.6 Any alteration, variation, or addition to this Contact or this clause shall be of no force or effect unless reduced to writing and placed as an addendum and signed by a director of Bioniq and by a duly authorised representative of the Subscriber. This document and any signed addenda contains the sole and entire record of the Contact between the parties.
- 19.7 No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein or otherwise created by operation of law and no indulgence, leniency or extension of time which either party ("the grantor") may grant or show to the other, shall in any way prejudice the grantor or preclude the grantor from exercising any of its rights in the future.
- 19.8 Where Bioniq is represented by any duly authorised representative, his authority need not be proved.
- 19.9 This Agreement constitutes the entire agreement between the Subscriber and Bioniq with respect to the Bioniq services and supersedes all prior agreements between the Subscriber and Bioniq. Bioniq reserves the right to amend this Agreement from time to time. Any new version of the Agreement will be displayed on our Website together with the date on which it will become effective, which will never be less than 30 (thirty) days after the date on which it is first published. It is the Subscriber's obligation to visit our web site on a regular basis in order to determine whether any amendments have been made. Any use by the Subscriber of the Bioniq services after the effective date of any such amendment, shall be deemed to constitute acceptance by the Subscriber of such amendment on the continued use of Bioniq's Services. The latest Terms and Conditions will be available on [www.bioniq.co.za/legal](http://www.bioniq.co.za/legal).
- 19.10 The parties agree that notices shall be in writing meaning the reproduction of information or data in physical form (includes handwritten documents, hard copy printouts and fax transmissions) or any mode of reproducing information or data in electronic form that the parties agree to use (such as pdf) but excludes information or data in the form of email.
- 19.11 Bioniq failure to enforce any provision of this Agreement shall not be construed as a waiver of any provision or right.
- 19.12 If a portion of this Agreement is held unenforceable, the unenforceable portion will be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties, and the remainder of the provisions will remain in full force and effect.

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- 19.13 The Subscriber agrees that this Contact, in particular the face page hereof, may be scanned and the paper version destroyed, and hereby agrees to the scanned version of this Contract
- 19.14 Clause headings are inserted for convenience only and shall not be used in interpreting this Contact
20. **FORCE MAJEURE**
- 20.1 A Party shall not be deemed in default of any of its obligations under this Contact, if, and to the extent that, performance of such obligation is prevented or delayed by an event of force majeure, provided that such event is not caused by the negligence of that Party, and that Party has notified the other in writing of the event of force majeure. The notifying Party shall use all reasonable endeavours to avoid or minimise the effects and if an event of force majeure continues for a continuous period of more than 45 days, the other Party shall be entitled to terminate this Contact.
21. **CONFIDENTIALITY**
- 21.1 During the course of this Contact, each Party may disclose to another Party certain proprietary information (including trade secrets, know-how, software, techniques, product plans, marketing plans, customers, inventions, improvements and research data) ("Confidential Information") of a character regarded by the disclosing Party as confidential. Each Party and each of its Associates, directors, officers, employees, representatives, agents or professional advisers to whom disclosure is made shall hold all Confidential Information and the terms of this Contact in confidence and shall not disclose such information to any third party or apply it to uses other than the recipient's performance of this Contact.
22. **REGULATION OF INTERCEPTION OF COMMUNICATIONS AND PROVISION OF COMMUNICATION-RELATED INFORMATION ACT (RICA)**
- 22.1 Required Documents According to Regulation of Interception of Communications and Provision of Communication-Related Information Act (RICA).
- 22.2 RICA requires validation prior to Line Activation. We require the following documents in order to ensure you comply with RICA:
- 22.2.1 - South African ID or Passport
- 22.2.2 - Proof of address (not older than 3 months)
- 22.3 What is RICA?
- 22.3.1 The customer registration section of the RICA, as set out by the South African Government, requires everyone who has an active HSDPA contract, ADSL, iBurst, Fibre and VoIP service to register their Service and/or user details from 1 July 2009.
- 22.4 Why must you register?
- 22.4.1 RICA registration is a legislative requirement from the South African Government
- 22.4.2 This new legislation aims to help law enforcement agencies to track criminals using cell phones and other telecommunication services for illegal activities, thereby contributing to make South Africa safer for everyone.
- 22.5 Who must register?
- 22.5.1 All current and new HSDPA, ADSL and Fibre customers must register their SIM cards, broadband services and VoIP SIP accounts.
- 22.5.2 Existing customers: Current subscribers, who have activated their services prior to 1st July 2009, need to register their personal details against that service in order to comply with the RICA Act. This must be done within 18 months from the 1st of July 2009.
- 22.5.3 New customers: When purchasing a new ECNS service, customers are required to register the new service and provide their personal details. New services will only be activated on the relevant network, once the relevant service has been registered.
23. **NON-SOLICITATION**
- 23.1 No Party shall, during the continuance of this Contact and for a period of 2 years immediately following the date of termination of this Contact, directly or indirectly offer employment or solicit any other form of contract for services to another Party's employees, or to the employees of an Associate of another Party.

## Bank Debit Order Instruction

<b>Abbreviated Name as Registered with the Bank</b>		BIONIQ PTY	
<b>Name (Debtor)</b>			
<b>Date</b>	<b>Debit Amount</b>	<b>Commencement Date</b>	
<b>Physical Address</b>			
<b>Contact Number</b>			
Dear Sir / Madam The details of my / our / company account are as follow:			
<b>Bank</b>			
<b>Branch Town</b>			
<b>Branch No</b>		<b>Account No</b>	
<b>Type of Account</b>			

This signed Authority and Mandate refers to our contract as dated as on signature hereof ("the Initial \_\_\_\_\_ User Agreement"). I / We hereby authorize you to issue and deliver payment instructions to the bank for collection against my / our abovementioned account at my / our above-mentioned bank (or any other bank or branch to which I / We may transfer my / our account) on condition that the sum of such payment instructions will never exceed my / our obligations as agreed to in the User Agreement, and commencing on the commencement date and continuing until this Authority and Mandate is terminated by me / us by giving you notice in writing of no less than 20 ordinary working days, and sent by prepaid registered post or delivered to your address indicated above.

The individual payment instructions so authorized to be issued must be issued and delivered as follows:

On the 1<sup>st</sup> day ("payment day") of each and every month commencing on the above-mentioned commencement date. In the event that the payment day falls on a Saturday, Sunday or recognized South African public holiday, the payment day will automatically be the very next ordinary business day. Further, if there are insufficient funds in the nominated account to meet the obligation, you are entitled to track my account and re-present the instruction for payment as soon as sufficient funds are available in my account;

Monthly; on or after the dates when the obligation in terms of the User Agreement is due and the amount of each individual payment instruction may not be more or less that the obligation due;

I / We understand that the withdrawals hereby authorized will be processed through a computerized system provided by the South African Banks and I also understand that details of each withdrawal will be printed on my bank statement. Each transaction will contain a number, which must be included in the said payment instruction and if provided to you should enable you to identify the User Agreement. A payment reference is added to this form before the issuing of any payment instruction. 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.

### MANDATE

I / We acknowledge that all payment instructions issued by you shall be treated by my/our above-mentioned bank as if the instructions had been issued by me/us personally.

### CANCELLATION

I / We agree that although this Authority and Mandate may be canceled by me / us, such cancellation will not cancel the User 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.

### ASSIGNMENT

I / We acknowledge that this Authority may be ceded to 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.

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2020

<b>Signature</b> (SIGNATURE AS USED FOR SIGNING CHEQUES OR CREDIT CARD VOUCHERS)	
<b>Assisted by</b> (For Office Use)	
<b>Agreement Reference Number</b> (For Office Use)	

Initial \_\_\_\_\_