

## GVI'S STANDARD TERMS FOR COMMUNICATION SERVICES

### 1. INTERPRETATION

- 1.1 In the Agreement the terms set out below shall have the corresponding meaning except where the context clearly indicates otherwise:
- 1.1.1 **"Acceptable Use Policy"** means the Grapevine policy for appropriate use of the Services.
  - 1.1.2 **"Agreement"** means the agreement for the provision of the GVI Communication Services which may be concluded in writing or by a Customer using the GVI Communication Services, and shall incorporate, the Particular Terms and Pricing applicable to the relevant GVI Communication Services, these GVI Standard Terms and any Special Terms, together with all related schedules and addenda, as may be amended from time to time in accordance with these GVI Standard Terms;
  - 1.1.3 **"Affiliates"** in respect of a person:
    - 1.1.3.1 all persons controlled by that person;
    - 1.1.3.2 all persons controlling that person and all persons controlled by such controlling persons; and
    - 1.1.3.3 in the case of GVI shall include, without limitation, the Grapevine Group, and for the purposes of this definition, control shall include the ability to materially influence the policy of another person or entity;
  - 1.1.4 **"Business Day"** means any day other than a Saturday, Sunday or public holiday officially recognised as such in the Republic of South Africa;
  - 1.1.5 **"Communication"** means a communication to be communicated using the GVI Communication Services which depending on the service may include text, images, video or other media or data to be transmitted or made available or accessible through or via a Network using the relevant Network Bearer and includes both Customer Communications and End User Communications and Website content where the GVI Communication Services relate to a Website;
  - 1.1.6 **"CSD"** Circuit-Switched Data as the term is commonly used in the electronic communications industry in the South Africa;
  - 1.1.7 **"Customer"** means the person that has requested or uses GVI Communication Services;
  - 1.1.8 **"Customer Communication"** means a Communication that the Customer sends or makes available or accessible (or requests GVI to send or make available or accessible) using or in connection with the GVI Communication Services;
  - 1.1.9 **"Customer's End Users"** means the persons that receive, access or respond to Customer Communications and the persons which are offered, access, use or respond to the services or information the Customer (directly or indirectly through GVI) offers, provides or makes available to persons in connection with the GVI Communication Services;
  - 1.1.10 **"Customer's User Services"** means any services, products or goods the Customer (directly itself or indirectly through GVI) offers, provides or makes available to Customer's End Users in connection with the GVI Communication Services;
  - 1.1.11 **"Data"** means any unit of data or information transmitted or made available through a Network to or from Customer End Users and without limitation sent by any means, including but not limited to SMS, MMS, WAP, USSD, e-mail, fax or using Internet Protocols;
  - 1.1.12 **"EC Act"** means the Electronic Communications Act of 2005;
  - 1.1.13 **"ECT Act"** means the Electronic Communications and Transactions Act 25 of 2002;
  - 1.1.14 **"GPRS"** means General Packet Radio Service as the terms is commonly used in the South African electronic communications industry with reference to the related wireless transfer protocol;
  - 1.1.15 **"Grapevine Group"** means any person under the control of, or controlling GVI including without limitation any holding company or subsidiary of GVI or its holding company at the relevant time, with holding and subsidiary having the meaning ascribed thereto in the South African Companies Act 61 of 1973 as amended or substituted from time to time, including the anticipated substitution thereof by the South African Companies Act 71 of 2008;

- 1.1.16 **"GSM"** means Global System for Mobile Communications as defined in the European Telecommunications Standard Institute structure of technical specifications or other relevant standard used in South Africa;
- 1.1.17 **"GVI"** means Grapevine Interactive (Proprietary) Limited, a limited liability company incorporated in the South Africa under registration number 2000/015137/07;
- 1.1.18 **"GVI API"** means the latest version of GVI's proprietary binary library made available by GVI for purposes of enabling the GVI Communication Services.
- 1.1.19 **"GVI Standard Charge Out Fees"** means the GVI's standard fees and hourly rates prevailing at the relevant time that GVI generally charges its clients for services (failing which, a reasonable fee) plus reimbursement for all materials, disbursements and other costs at cost, its current 'Standard Charge-out Fees' are available on request and on GVI's Website and it shall be the Customer's responsibility to make sure it is familiar with them from time to time before requesting or making use of any GVI Communication Services;
- 1.1.20 **"GVI Communication Services"** means the GVI communication's services (including SMS, MMS, MMS Light, USSD, in-app notifications, rich media pushes, vouchers, profiling, GSM, Wireless Application Protocol hosting service, mass voice messaging service and the Web Hosting Services) that the Customer requests or makes use of from time to time, and GVI reserves the right to decline to provide any requested services;
- 1.1.21 **"GVI Standard Terms"** means these GVI Standard Terms for Communication Services to the provision of the GVI Communication Services by GVI to the Customer;
- 1.1.22 **"GVI Use Rules"** means use rules for any particular GVI Communication Services that GVI may notify the Customer or make available on the GVI Website from time to time
- 1.1.23 **"GVI Website"** means GVI's Website currently accessible on the Internet at <http://www.grapevineinteractive.com>, as same may be amended or replaced from time to time;
- 1.1.24 **"Intellectual Property"** the subject matter of any Intellectual Property Rights;
- 1.1.25 **"Intellectual Property Rights"** means all intellectual property rights of whatsoever nature in South Africa or anywhere else in the world (and whether or not such rights are registered or capable of being registered) including without limitation, copyright, trademarks, patents, design rights, domain names, Moral Rights, know-how, trade secrets, rights to confidentiality and any other similar, related or pending rights (for example, without limitation, any application or right to apply for registration of any of such rights);
- 1.1.26 **"Internet"** shall have the meaning commonly attributed to the word with reference to the globally inter-connected networks and systems connecting computers and electronic devices around the world via the Transmission Control Protocol/Internet Protocol including, without limitation, the 'mobile internet' as changed and developed from time to time;
- 1.1.27 **"Network"** means any electronic communications network which is accessed or used by GVI in connection with the provision of the GVI Communication Services which may include a combination of fixed line and/or wireless communications systems including, without limitation, digital cellular mobile telecommunications using the GSM standard and/or the Internet;
- 1.1.28 **"Network Access"** means access and connection of GVI's or the Customer's information systems to a port (or other means of connection) on the relevant Network, through which access to the GVI Communication Services will be provided;
- 1.1.29 **"Network Bearers"** means SMS, MMS, GPRS, CSD and USSD and any other types or ways of communications or information are borne or transmitted, communicated or made accessible to persons via the Networks from time to time;
- 1.1.30 **"Network Licenses"** means all the licenses granted to the various Network Providers;
- 1.1.31 **"Network Provider"** means the licensed provider of a mobile or fixed Network or part thereof (including Internet Service Providers in regard to the Internet) currently including those operating under the following brands: Vodacom, MTN, Telkom, CellC and Neotel;
- 1.1.32 **"Network Provider Agreements"** means the respective agreements GVI has with the various Network Providers to access their Networks and/or provide related services from time to time;
- 1.1.33 **"Moral Rights"** means the right of integrity of authorship to object to any distortion mutilation or other modification of a work as defined in the Copyright Act, 98 of 1978 and any similar right elsewhere in the world;

- 1.1.34 **"MMS"** means a Multi-media Message Service message comprising an integrated or related combination of rich media including text, sounds, images and/or video;
- 1.1.35 **"MMS Light"** means the MMS Light service as described in the Particular Terms and Pricing;
- 1.1.36 **"Particular Terms and Pricing"** means the terms and conditions and services fees applicable to the particular GVI Communication Services from time to time as may be published, notified or made available on request (the current version may be included or attached to the Agreement as **Schedule 2**), which particular terms supplement these GVI Standard Terms and are subject to change by GVI from time to time, and it shall be the Customer's responsibility to request and ensure that it is familiar with such terms and pricing prior to using or requesting any GVI Communication Services;
- 1.1.37 **"Prevailing Service Fee"** means GVI's service fees prevailing at the relevant time for the respective GVI Communication Services as set out in its Particular Terms and Pricing, failing which, GVI's Standard Charge Out Fees;
- 1.1.38 **"Prime Rate"** means the publicly quoted rate of interest per annum at which GVI's principal bank lends from time to time on overdraft to its most favoured corporate customers in the private sector and calculated in the same manner, as certified by any manager of a branch of the said bank whose authority it shall not be necessary to prove, which certification of such rate shall be conclusive proof thereof unless the contrary is proved;
- 1.1.39 **"Relevant Codes of Conduct"** mean the various Codes of Conduct for VAS Services adopted by the relevant Network Providers as contemplated by the ECT Act, such other codes of conduct as may be adopted by the relevant Network Providers and the WASPA Code of Conduct and any other code of conduct applicable to GVI in connection with the provision of the GVI Communication Services;
- 1.1.40 **"Service Fee"** shall have the meaning attributed thereto in clause 3.1
- 1.1.41 **"South Africa"** means the Republic of South Africa;
- 1.1.42 **"Special Conditions"** means any special conditions agreed to in writing and signed by GVI's duly authorised agent, such signature being essential for the validity thereof including any set out in **Schedule 1** to the Agreement;
- 1.1.43 **"Telecommunications Act"** means the Telecommunications Act 103 of 1996 as amended and/or substituted from time to time;
- 1.1.44 **"USSD"** means Unstructured Supplementary Services Data as the terms is commonly used in the South African electronic communications industry generally being a 'Global System' for transmitting messages using the relevant USSD protocol;
- 1.1.45 **"VAS Services"** means a value added service through a Network;
- 1.1.46 **"VAT"** means Value Added Tax as contemplated under the Value Added Tax Act No 89 of 1991 as amended or substituted from time to time and any similar tax applicable to the GVI Communication Services that may apply;
- 1.1.47 **"WAP"** means Wireless Application Protocol
- 1.1.48 **"WASP"** means a Wireless Application Service Provider;
- 1.1.49 **"WASPA"** means the Wireless Application Service Provider Association in South Africa;
- 1.1.50 **"Web Hosting Services"** means requested domain name registration, website hosting (including on the 'mobile internet') and any other associated web hosting or mobile internet service or facility provided by GVI to the Customer;
- 1.1.51 **"Website"** means one or more related sites on the Internet (including the 'mobile internet'), including without limitation, home and associated pages, a portal and depending on the context will may include related Internet links and software.
- 1.2 Words importing the singular shall include the plural and vice versa and words importing any gender shall include the other genders. Any reference to a person shall include created entities (corporate or unincorporated) including, without limitation, juristic persons, trusts, partnerships and associations.
- 1.3 The Agreement shall be binding on and enforceable by the estates, heirs, executors, administrators, trustees, permitted assigns or liquidators of the parties as fully and effectually as if they had signed the Agreement in the first instance and reference to any party shall be deemed to include such party's estate, heirs, executors, administrators, trustees, permitted assigns or liquidators, as the case may be.

- 1.4 If any provision in clauses 1 and 2 is a substantive provision conferring rights or imposing obligations on any party, then notwithstanding that such provision is contained in such clauses, effect shall be given thereto as if such provision were a substantive provision in the body of the Agreement.
- 1.5 When any number of days (including Business Days) is prescribed in the Agreement, same shall be reckoned exclusively of the first and inclusively of the last day or Business Day, as the case may be.
- 1.6 Should the day for the performance of any obligation in terms of the Agreement fall on a day which is not a Business Day, then such obligation shall be performed on the immediately succeeding Business Day.
- 1.7 Save where clearly indicated to the contrary, expressions defined in the Agreement, these GVI Standard Terms or any schedule thereto they shall bear the same meanings in the Agreement and annexures and schedules, unless such terms, annexure, schedule or document contains an alternative definition for the expression.
- 1.8 The headings to the clauses of the Agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate. The rule of interpretation that an agreement will be interpreted against the party responsible for the drafting and any similar rules of interpretation shall, in so far as is lawful, not apply to the Agreement and the parties waive any rights they have to rely on such rules.
- 1.9 Any provision of the Agreement that contemplates performance or observance subsequent to any cancellation, termination or expiration of the Agreement shall survive any cancellation, termination or expiration of the Agreement and continue in full force and effect.
- 1.10 These GVI Standard Terms should in so far as possible be read together with the Particular Terms and Pricing and any Special Terms. In the event of an irreconcilable conflict, then the Special Terms shall prevail over these GVI Standard Terms and the Particular Terms and Pricing.

## **2. INTRODUCTION AND DURATION**

- 2.1 These terms apply to any GVI Communication Services requested or used by a Customer. GVI reserves the right to decline to provide any requested GVI Communication Service.
- 2.2 The GVI Communication Services are provided in consideration of the Service Fees.
- 2.3 Subject to any expressly specified duration for a particular GVI Communication Service in the Particular Terms and Prices, unless terminated earlier in accordance with the terms of the Agreement, the Agreement shall endure indefinitely and Customer will be bound by the terms for as long as Customer uses any of the GVI Communication Services from time to time until the Agreement is terminated by either party on 30 Calendar Days written notice to the other party, whereafter no further services may be requested or used by the Customer and, except if the Agreement terminated earlier in accordance with clause 12 and 18, the Agreement shall endure until GVI has completed providing the GVI Communication Services for a particular duration accepted by GVI prior to the receipt (or deemed receipt) of the notice of termination and the Customer has paid in full all due Service Fees. Notwithstanding the termination of the Agreement, all responsibilities of the Customer and all warranties and indemnities provided by the Customer in favour of GVI in respect of GVI Communication Services and the Agreement shall survive termination of the Agreement.
- 2.4 Where the Particular Terms and Prices provides an initial or minimum duration for a particular GVI Communication Service, then such initial or minimum duration shall apply but is exclusively for GVI's benefit and GVI can nevertheless terminate this Agreement or the particular GVI Communication Service on 30 days written notice to the Customer to such effect or terminate the Agreement earlier in accordance with clause 12 and 18.
- 2.5 In the event of the Agreement terminating early for any reason prior to the full completion of all GVI Communication Services accepted by GVI, then the Customer shall immediately pay all amounts due in respect to any completed GVI Communication Services and a pro rata portion of the relevant Service Fees in respect of any partially completed GVI Communication Services.
- 2.6 In the event of the Agreement having been concluded 'electronically' it is noted that Customer is in terms of section 44 of the ECT Act entitled to cancel without reason and without penalty such electronic transaction and any related credit agreement:
  - 2.6.1 in respect of the supply of products, within 7 days after the date of receipt of the goods; and
  - 2.6.2 in the case of services, within 7 days after the date of the conclusion of the agreement,

subject to the exclusions in section 42(2) of the ECT Act which include (without limitation), services that began with your consent before the end of the aforementioned 7 day period, goods which by their nature cannot be returned, or computer software which is unsealed by you.

- 2.7 You acknowledge that in the event of the Agreement having been concluded 'electronically' GVI will provide you with an opportunity to review the entire electronic transaction, correct any mistakes, and withdraw from the transaction, before finally placing an order.
- 2.8 GVI is in terms of section 43 of the ECT Act required to make its contact details, its domicilia citandi et executandi and certain other information available to its customers who enter into electronic transactions with it. This information is available on the GVI Website.

### 3. GVI SERVICE FEES AND PAYMENT

- 3.1 In consideration for the GVI Communication Services the Customer shall (subject to any changes in terms of clause 3.3, 3.5, 3.5 or 3.6) pay GVI the corresponding service fees and charges for the applicable service requested or used, which shall, unless agreed otherwise in writing and signed by GVI's duly authorised representative, be GVI's Prevailing Service Fees at the time the particular service is used (eg at the time the Customer Communication is sent) (the "**Service Fees**"). It shall be the Customer's responsibility to from time to time request and ensure that it is familiar with GVI's current Prevailing Services Fees prior to using any GVI Service.
- 3.2 The Customer shall pay the Service Fees plus VAT to GVI on the due date. Unless agreed otherwise in writing, the due date for payment of the Service Fees shall be the date specified in GVI's Particular Terms and Prices, failing such specification or agreement, within 30 calendar days of the date of the invoice from GVI. All payments shall be made without deduction, set-off or counter claim and free of all bank or other charges by way of:
  - 3.2.1 where so agreed, by way of debit order into GVI's nominated bank account from time to time; otherwise
  - 3.2.2 by way of electronic transfer into the bank account nominated in writing by GVI for such purpose so as to ensure that the funds are unconditionally and irrevocably cleared and available to GVI by the due date and should the option of electronic transfer not be possible payment shall be made in cash at GVI principal business premises.
- 3.3 Customer instructs and authorises GVI to draw by way of debit order all amounts payable by the Customer in terms of the Agreement from Customer's bank account upon furnishing GVI with details thereof and warrants that it is duly authorised to do so. Customer undertakes to on request from GVI sign all documents and do all such things as may be necessary to give effect to such debit order.
- 3.4 In addition to the adjustment to the Service Fees in clause 3.6:
  - 3.4.1 any Service Fee agreed to in writing (as opposed to application of GVI's Prevailing Service Fees) may be amended by GVI from time to time by way of notice to the Customer or amending or replacing such fee; and
  - 3.4.2 GVI's Prevailing Services Fees may be, from time to time, amended by GVI by way of notice to the Customer or amending or replacing GVI's Prevailing Services Fees on the GVI Website,

provided that the Customer shall be entitled to not accept such increase by cancelling this Agreement by way of written notice to GVI within 30 calendar days of such change. If the Customer does not cancel this Agreement or continues to use any of the GVI Communication Services after 30 calendar days of such change, then the Customer shall be deemed to have accepted such change.
- 3.5 If any additional or corrective work is required to be done by GVI a result of the Customer failing to timeously provide full, complete and accurate information, specifications and/or requirements, or comply with any applicable specifications, then GVI shall, in addition and without limitation to any other rights it may have in law or under the Agreement, have the right to increase the Service Fees for the relevant GVI Service by an amount equal to its GVI Standard Charge-out Fees applicable to such additional or corrective work. Further, in addition and without limitation to any other remedies GVI may have in law or under the Agreement, GVI shall be entitled to charge its GVI Standard Charge-out Fee for the period of time, measured in hours, during which the GVI staff are not able to perform the GVI Communication Services due to the Customer's negligence, fault or delay.

- 3.6 In addition to this, the Service Fees shall automatically increase without notice by an amount equal to any increase in the fees and costs that any Network Provider or other supplier charges GVI in respect of the particular GVI Communication Services.
- 3.7 All Service Fees are exclusive of VAT which shall be payable by the Customer.
- 3.8 Except for GVI's own Network Access required to provide the relevant GVI Communication Services, unless expressly agreed otherwise in writing the Service Fees do not, without limitation, include any of the Customer's internal costs or its costs of procuring any equipment, Intellectual Property or Intellectual Property Rights (including licenses), Internet access, voice telephone services, all of which costs are for the Customer's own account. Customer shall be responsible for ensuring such equipment and access is compatible with the GVI Communications Services from time to time and properly maintained.
- 3.9 Should any amount due in terms of the Agreement not be paid on the due date for payment, GVI shall be entitled to charge interest on such amount at 2% per month from the due date until the date of payment (both dates inclusive), which interest, if charged, will be capitalised monthly. Services may be terminated without notice should accounts be more than 60 (sixty) days in arrears
- 3.10 The amount due and payable by Customer to GVI in terms of the Agreement or any particular services shall, in the absence of proof to the contrary, be determined and deemed to be provided by a certificate signed by one of GVI's directors, whose appointment, qualification and authority need not be proved. Such certificate shall be deemed to be a liquid document for the purpose of obtaining summary judgement, provisional sentences and/or any other judgment against the Customer.

#### **4. GVI COMMUNICATION SERVICES**

- 4.1 In consideration for the Service Fees, GVI undertakes to provide the GVI Communication Services to the Customer on an 'as is' and 'reasonable endeavours' basis. The GVI Communication Services are all provided subject to the Customer's compliance with any GVI Use Rules from time to time.
- 4.2 Unless expressly agreed as a Special Term in writing, the Customer shall be solely responsible for compilation of the Customer Communications. Where the GVI Communication Services include the dispatch and/or receipt of Communications via one or more Networks (for example SMS and MMS services), unless expressly and specifically agreed otherwise in writing in each instance, the GVI Communication Services and GVI's responsibility (as between the Customer and GVI) shall be exclusively limited to:
  - 4.2.1 in regard to the dispatch by GVI of Communications – attending, on a 'reasonable endeavours basis', to prepare the required Data and sending it to the Network Access in the required format having regard to the selected Network Bearer with the destination details provided by the Customer, it shall not however be GVI's responsibility to ensure that the relevant Network does transmit the Communications via the relevant Networks using the selected Network Bearer to the destination provided by the Customer; and
  - 4.2.2 in regard to the receipt by GVI of Communications, attending, on a 'reasonable endeavours basis', to the receipt of any relevant incoming Data received and addressed to the relevant Customer destination from the relevant Network Access, upon receipt of such Data by GVI or after GVI has been informed by a Network that such Data is available for receipt.
- 4.3 Unless expressly agreed otherwise in writing, the Customer shall be solely responsible for the provision of any Customer's User Services and shall not unless expressly and specifically agreed otherwise in writing by GVI and signed by GVI's duly authorised agent, require any payments to be made by the Customer End Users directly or indirectly through GVI or via any Network.
- 4.4 Notwithstanding that GVI may agree to assist with the design or compilation of any Communication, as between the parties, the Customer shall be solely responsible for the content of the Communication and any information provided and any services or goods promoted or offered to any Customer's End Users by way of the Communications.
- 4.5 In addition to these GVI Standard Terms, GVI's additional terms applicable to the particular GVI Communications Services set out in the Particular Terms and Pricing, from time to time, shall also apply to the relevant GVI Communication Services and shall be deemed to be incorporated by reference into the Agreement. If any Special Terms are agreed to in writing and signed by GVI's duly authorised representative, then such Special Terms and conditions shall prevail over these GVI Standard Terms and the Particular Terms and Pricing.
- 4.6 Any changes by a Customer to a request for GVI Communication Services (prior to their performance) will require the acceptance of such change in writing by GVI of the new revised request or by GVI performing the

changed GVI Communication Services, and unless otherwise agreed in writing GVI's Standard Charge-Out Fees shall apply in respect of any additional work required pursuant to such change.

- 4.7 GVI will be entitled to suspend any of the GVI Communications Services from time to time to carry out any maintenance, repairs or upgrades but will use its reasonable endeavours to notify you in advance but can not guarantee this.

## 5. WEB-HOSTING SERVICES

- 5.1 In addition to the provisions applicable to Communications, the terms set out in this clause shall apply to GVI's Web-Hosting Services. For the purposes of this clause the following terms shall have the corresponding defined meaning unless the context clearly indicates otherwise:
- 5.1.1 **"Hosting Server"** means the computer Hosting Server equipment operated by GVI (or its supplier) in connection with the provision of the Web Hosting Services;
  - 5.1.2 **"Hosted Website"** means the 'area' on the Hosting Server allocated by GVI to Customer for use by Customer as a site on the Internet;
  - 5.1.3 **"bandwidth"** means the allocated transmission capacity, measured in bits per second, of the Network connection;
  - 5.1.4 **"data transfer"** means all traffic that passes through the Website including specifically but not exclusively web traffic, email, FTP transfers and any other data; and
  - 5.1.5 **"Website User"** means the Customer, or any person who makes use of the Web Hosting Services though the Customer or on Customer's behalf and all persons accessing the Hosted Website through the Internet or communicating with or through the Hosted Website.
- 5.2 GVI shall host the Customer's agreed Website on the Hosting Server, subject to and on the terms of the Agreement. The Hosted Website shall have an URL address specified by GVI. Unless GVI agrees in writing to register a unique customised domain name (and excluding any reference to GVI in the domain name) for the Customer to be 'owned' by the Customer, the Customer's sole right with respect to the domain name shall be to use such name for the duration and upon the terms and conditions stated in this Agreement. GVI's responsibility with respect to the Hosted Website is strictly limited to the provision of storage capacity for the Hosted Website on the Hosting Server and excludes access to the Internet for which the Customer is responsible.
- 5.3 Unless otherwise agreed in writing, Customer is solely and exclusively responsible for design, development, content, update, refreshment, modification, etc., with respect to the Hosted Website. GVI will use the 'basic core' software required for the hosting of the Hosted Website as set out in the Particular Terms and Prices and to the extent necessary for receipt of the Web-Hosting Services, Customer shall be licensed to use such software on the terms set out in clause 12. GVI may from time to time change or replace such software as contemplated in clause 12. Unless otherwise agreed in writing, Customer must provide all other software and material necessary to create and maintain the Hosted Website and all telecommunications, computer hardware and software and equipment necessary to access the Hosted Website. GVI will modify the content on the Hosted Website so as to enable it to be accessed by people using appropriately enabled mobile phones.
- 5.4 GVI makes no representations and gives no warranty as to the accuracy or quality of information received by any person via the Hosting Server or Hosted Website.
- 5.5 Customer will not use, and shall ensure that no other Website User shall use, the Hosted Website in any manner which infringes any law or which infringes the rights of any third party, nor will Customer authorise or permit any other person to do so.
- 5.6 Customer is solely responsible for Content of the Hosted Website, and shall monitor and ensure that it will not, and no other Website User shall, directly or indirectly, in connection with the Hosted Website or Service post, link to (including links to other Websites or pages that have any of the prohibited material referred to below), receive or transmit or otherwise facilitate the transmission, make available, or store:
- 5.6.1 any material which is unlawful, threatening, abusive, malicious, defamatory, obscene, pornographic, blasphemous, profane, blatant expressions of bigotry, racism or hate or otherwise objectionable in any way;

- 5.6.2 any material containing a virus or other hostile computer program or pirated software, ROMS, emulators, instructions or software for phreaking, hacking, password cracking or IP spoofing, or the like;
- 5.6.3 any material which constitutes, or encourages the commission of, a criminal offence or which infringes any Intellectual Property Right or similar rights of any person which may subsist under the laws of any jurisdiction.
- 5.7 GVI reserves the right to determine whether any material or use is prohibited and to remove any such material without warning or suspend or terminate the relevant accounts without refund or notice.
- 5.8 Customer shall keep secure any identification, password and other confidential information relating to Customer's account and shall notify GVI immediately of any known or suspected unauthorised use of Customer's account or breach of security, including loss, theft or unauthorised disclosure of Customer's password or other security information.
- 5.9 Customer shall observe the procedures and GVI Use Rules prescribed by GVI from time to time.
- 5.10 All Customers should remain within the data transfer (bandwidth) allowance for the Hosted Website reasonably specified by GVI from time to time.
- 5.11 Many domains have to share the various resources (processors, memory, etc) available on the Server and GVI shall have the right to allocate such resources in such reasonable manner as it regards as appropriate or desirable.
- 5.12 Customer shall procure that any e-mail functionality shall comply with all with applicable legislation (including, without limitation, data protection and privacy legislation).
- 5.13 The Customer shall ensure that any accesses to GVI or other information systems have been approved by GVI in writing and that any such approved access to other information system networks connected in connection with the Web Hosting Services complies with the rules appropriate for those networks.
- 5.14 While GVI uses reasonable endeavours to maintain the integrity and security of its Hosting Server, GVI does not guarantee that the Hosting Server will be free from unauthorised users or hackers or from corruption by virus and, in addition and without limitation to any other exclusions or limitations of GVI's liability in the Agreement, GVI shall be under no liability for non-receipt or misrouting of email or for any other failure of email or damage to data or operations and the provisions of clause 16 shall apply.
- 5.15 GVI will use its reasonable endeavours to maintain the integrity of any data or content uploaded onto the Hosting Server from time to time, such as (without limitation) photographs, websites, videos and e-mail messages however, it is Customers obligation to keep copies and back-ups of such data. IN ADDITION AND WITHOUT LIMITATION TO ANY OTHER EXCLUSIONS OR LIMITATIONS OF GVI'S LIABILITY IN ANY OTHER PROVISION OF THE AGREEMENT, GVI WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE TO SUCH DATA, OR ANY PART THEREOF, FOR ANY REASON WHATSOEVER (INCLUDING AS A RESULT OF GVI'S NEGLIGENCE). GVI WILL DELETE ALL CUSTOMER'S DATA FROM ITS SERVER UPON TERMINATION OF THE GVI WEB HOSTING SERVICES.
- 5.16 Customers are restricted to the data storage, number of domain names, and bandwidth quota according to Customer's web hosting package. Web hosting package details can be sent to Customer upon request. Unless agreed otherwise in writing, additional bandwidth usage will be charged at the prices in GVI's then prevailing Particular Terms and Pricing.
- 5.17 IN ADDITION AND WITHOUT LIMITATION TO ALL OTHER LIMITATIONS AND EXCLUSIONS OF LIABILITY AND INDEMNITIES IN THE AGREEMENT, IN SO FAR AS IS LAWFUL THE CUSTOMER ACKNOWLEDGES AND AGREES THAT GVI WILL INCUR NO LIABILITY FOR ANY CLAIM, WHETHER BASED ON CONTRACT, DELICT, WARRANTY, STRICT LIABILITY, PRODUCT LIABILITY OR ANY OTHER THEORY OF RECOVERY (INCLUDING NEGLIGENCE BUT EXCEPTING ONLY INTENTIONAL MALFEASANCE) RELATING IN ANY MANNER TO CUSTOMER'S HOSTED WEBSITE. CUSTOMER HEREBY INDEMNIFIES AND HOLDS GVI HARMLESS FROM AND AGAINST ALL CLAIMS, DAMAGES, COSTS (INCLUDING ACTUAL COSTS OF ANY DEFENCE) FROM ANY SOURCE OR FOR ANY REASON RELATING DIRECTLY OR INDIRECTLY TO CUSTOMER'S HOSTED WEBSITE.



## 6. WASPA CODE OF CONDUCT

- 6.1 The Customer hereby agrees to be bound by and comply with the WASPA Code of Conduct (as amended or replaced from time to time) and hereby submits to and accepts all WASPA processes and sanctions as applied to a WASP member. The Customer warrants in favour of GVI that all Communications and Customer's User Services shall fully comply with both the letter and spirit of the WASPA Code of Conduct, all other Relevant Codes of Conduct, legislation and other laws. The Customer represents that it has read and is familiar with the terms of the WASPA Code of Conduct as currently constituted and shall continue to ensure it remains familiar with the WASPA Code of Conduct as same may be changed from time to time. It is recorded that the WASPA Code of Conduct is currently available on WASPA Website at "<https://waspa.org.za/code-of-conduct/>" and shall be deemed to be incorporated into the Agreement.
- 6.2 IN ADDITION AND WITHOUT LIMITATION TO ANY OTHER INDEMNITIES IN THE AGREEMENT, THE CUSTOMER HEREBY INDEMNIFIES AND HOLDS GVI AND ITS DIRECTORS, OFFICE BEARERS AND EMPLOYEES HARMLESS AGAINST ALL LOSSES, DAMAGES, EXPENSES, FINES, CLAIMS OR OTHER NEGATIVE CONSEQUENCES INCLUDING, WITHOUT LIMITATION, ALL CONSEQUENTIAL AND SPECIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED TO ANY LACK OF COMPLIANCE WITH THE WASPA CODE OF CONDUCT OR ANY OTHER RELEVANT CODES OF CONDUCT OR LAWS.
- 6.3 The Customer's agreement, undertakings, warranty and indemnity in this clause 6 in favour of GVI shall also be for the benefit of its Affiliates, WASPA and each Network, each of their directors, office bearers and employees and shall constitute an irrevocable undertaking in favour of each of them (a *stipulatio alteri*), capable of acceptance by each and any of them at any time.

## 7. CUSTOMER OBLIGATIONS

- 7.1 In addition and without limitation to the Customer's other obligations set out in elsewhere in the Agreement the Customer shall:
- 7.1.1 promptly respond to any queries or requests made by GVI;
  - 7.1.2 ensure that all Customer Communications and Customer's User Services are not unlawful in any manner and comply with all relevant laws and regulations and the Relevant Codes of Conduct as amended from time to time;
  - 7.1.3 immediately upon receipt, forward to GVI any notification the Customer receives of unlawful activity in respect of the Customer Communications or Customer's User Services, including pursuant to the provisions of section 77 of the ECT Act or any other legislation, and it is recorded that GVI may report such unlawful activity to any relevant Network Provider or authority;
  - 7.1.4 immediately comply with any 'takedown' notice or other notice that GVI gives it to cease any unlawful or undesirable Communications or activity;
  - 7.1.5 obtain and pay for all such rights, authorisations, licenses, royalties, consents and permissions as may be required in order to enable it to receive the GVI Communication Services and provide the Customer's User Services;
  - 7.1.6 ensure that all Communications and Customer's User Services do not infringe any copyright or other Intellectual Property Rights;
  - 7.1.7 take all such steps as may be required in order to ensure that the Communications and Customer's User Services are accurate, correct and not misleading;
  - 7.1.8 make freely available and include in all promotional material in connection with the Customer's User Services, information which will enable the Customer's End Users and the public in general to readily ascertain the full retail prices if any, and terms and conditions upon which the Customer's User Services are provided and shall separately state the Network's Bearer fee and if applicable where GVI has agreed separately in writing to the charging thereof, the VAS Service fee (ie Customer User Fee);
  - 7.1.9 not in any promotional material use GVI's or any Network Provider's name or any other trade marks, logos or other Intellectual Property which belongs to GVI or any Network Provider, without first obtaining the prior written consent of GVI or the relevant Network Provider, as the case may be;
  - 7.1.10 ensure that, unless specifically agreed to by GVI, no Communication shall:
    - 7.1.10.1 contain any adult content including extreme violence, pornography or other content inappropriate for young children to receive; or

- 7.1.10.2 promote a competition for which participants have to pay a fee or incur an expense other than the standard Network Bearer Fee for the communication; or
- 7.1.10.3 promote or conduct any gambling.
- 7.1.11 comply with GVI's Privacy Policy (as amended from time to time) and ensure that any information the Customer obtains or receives in respect of Customer's End Users is kept confidential and not disclosed, communicated or made accessible to any third parties without the Customer's End Users prior writing consent;
- 7.1.12 ensure that in providing the Customer's User Services to the Customer's End Users the Customer shall not in any way incur obligations for GVI or any Network Provider nor bind GVI or any Network Provider in any way and that in all its communications, advertising, promotions and/or dealings with the Customer's End Users, and or any other third parties, it is made clear that the Customer is responsible for the Communications, Customer's User Services and that GVI and the Network Providers do not in any manner have any responsibilities in respect of the Customer's User Services and that the Customer's End User shall only have recourse to the Customer;
- 7.1.13 not transmit or request the transmission of unsolicited Customer's User Services without the express consent of the existing or potential Customer's End User (ie addressee) and shall ensure that appropriate mechanisms exist to enable the Customer's End Users to withdraw or cancel such consent at any time, whereupon the Customer shall immediately cease providing and offering such Customer's User Service;
- 7.1.14 promptly discharge all its obligations to the Customer's End Users;
- 7.1.15 ensure that the Customer's User Services and Communications are of such a nature that they are not likely to bring GVI or any of the relevant Network Providers into disrepute and which contain nothing which is likely in the light of generally prevailing standards of decency to cause offence. In this respect suitability may be determined by GVI and in respect of a Network, the Network, and such determination shall be final and binding;
- 7.1.16 at its own cost and expense be responsible in all respects for the content and the accuracy of all Customer Communications and the Customer's User Services provided to the Customer's End Users, and guarantees and warrants that same shall at all times conform to the terms and conditions of the Agreement and the Relevant Codes of Conduct and laws;
- 7.1.17 provide GVI with relevant Communications in the format requested by GVI from time to time in order for GVI to provide the GVI Communication Services;
- 7.1.18 co-operate with GVI and promptly, at its own cost, provide GVI with all reasonable assistance GVI may require in connection with the performance of GVI's obligations under the Agreement;
- 7.1.19 ensure that it, and all users of the GVI Communication Services comply with any GVI Use Rules for the particular GVI Communication Services that GVI may notify it of from time to time;
- 7.1.20 keep, and maintain for a period of not less than two years (or such longer period as may be required by the WASPA Code of Conduct), such statistics in regard to complaints received by it;
- 7.1.21 keep and maintain for the periods required by the WASPA Code of Conduct or other laws all information and records required to be kept by a WASP and/or VAS Service provider in relation to the Communications and Customer's User Services;
- 7.1.22 promptly provide GVI with such access to the Customer's computer systems, other information systems and personnel as GVI requires from time to time for the purpose of providing GVI Communication Services and performing any other obligations under the Agreement;
- 7.1.23 promptly provide GVI with such copies of all documentation and accurate information as to its information systems, procedures, Communications and Customer's User Services as GVI requires from time to time for the purpose of providing and monitoring the GVI Communication Services, attending to customer care and Customer End User complaints and performing any other obligations under the Agreement or duties it has in law;
- 7.1.24 be responsible for procuring and maintaining electrical power, the required information systems and software and network connectivity and the Customer accepts that the GVI Communication Services may be limited or dependant upon the information systems, related software and network connectivity used by the customer;
- 7.1.25 not resell an of the GVI Communication Services;
- 7.1.26 not take any action aimed at deceiving or misleading any person, attempt to impersonate or misrepresent Customer's or any other person's affiliation to any person or forge headers or otherwise

manipulate identifies in order to disguise the origin of anything posted or transmitted or made available through the GVI Communication Services;

7.1.27 not use any GVI Communication Services to make fraudulent offers to sell or buy products, items or services or to offer or solicit for any type of financial scam such as a “pyramid schemes” and “chain letters”;

7.1.28 not use the services in a manner that may damage, impair, overburden or disable the GVI Communications Services or interfere with any other persons use or enjoyment of the GVI Communication Services; and

7.1.29 promptly comply with all reasonable instructions given by GVI.

7.2 The Customer warrants that any of its directors, employees or representatives requesting or using any GVI Communication Services from time to time are duly authorised to do so. Where the Customer is a natural person, he/she warrants that he/she is over the age of 18.

7.3 Customer agrees that GVI may from time to time send Customer communications regarding (without being limited to) its products, offers, operational changes, services or products from time to time

7.4 Where GVI provides a password in connection with access to any GVI Communication Services it shall be Customer's responsibility to keep such password secure and any access by means of such password shall be deemed to have been duly authorised by the Customer. If Customer requires a reminder or a new password GVI will send the password to the e-mail address or cell phone number provided by Customer at Customer's risk.

## **8. Revenue Share:**

8.1 Any revenue share due that is not invoiced within 6 months of statement will be forfeited unless written instruction is received by Grapevine to hold such revenue for future purposes. No revenue share can be held for longer than 9 months after statement.

## **9. Virtual Instant Prizes (VIP) terms and conditions**

9.1 All VIP prizes must be ordered from Grapevine and paid for in full by Client at least 10 working days before the campaign live date

9.2 Grapevine will be responsible for procuring the relevant vouchers from the supplier; loading the vouchers onto the Grapevine VIP campaign platform; issuing the vouchers to recipients cell phones; monitoring the redemption process and reporting the prize transaction details to Client.

9.3 Purchased but unused airtime and movie ticket vouchers are non-refundable for cash or for discounts on currently-running campaigns, but can be offset against the prize cost of future campaigns provided such future campaigns go live within 6 months of the termination date of the campaign for which such airtime or ticket vouchers were originally purchased, and provided further that such airtime vouchers and/or ticket vouchers are still valid tender during these future campaigns.

9.4 Any Awarded but Unredeemed airtime, movie ticket, shopping and Spa vouchers are non-refundable.

9.5 Awarded but Unredeemed cash vouchers that exceed 10% of the total purchase/issue value of all the cash vouchers for a particular campaign or competition, will be refunded to the client net of transaction fees.

9.6 Grapevine may withhold any of or all of the refunds or credits should it believe that there may still be future subscriber redemptions against said refunds or credits, until such time as it is satisfied that there will be no further end-subscriber claims against these refunds / credit amounts.

9.7 Notwithstanding the above, the Client indemnifies Grapevine against end-subscriber claims against Client's VIP prizes, should such claims in aggregate exceed the total value of such Client VIP prizes purchased by the Client for any campaign / competition.

## 10. NETWORKS AND SYSTEM LIMITATIONS

- 10.1 The Customer acknowledges that the GVI Communication Services will, amongst other things, involve transmissions over various Networks, telecommunication and information systems (including possibly the Internet) controlled by third parties and will ultimately have to be received by various devices. Such transmissions may be by means of a variety of electronic or other means of communication and accordingly they are likely to change to conform and adapt to the technical requirements of various Networks, telecommunication and information systems and devices, and the speed and success of such transmissions are dependant on, amongst other things, the ability and capacity of such Networks, telecommunication and information systems and devices to receive, transmit and despatch the relevant transmissions. Accordingly, the provision of the GVI Communication Services requires GVI to access and use various Networks and GVI's ability to provide the GVI Communication Services and the speed and quality of the GVI Communication Services is dependant on the proper functioning and limitations of the relevant Networks and related telecommunication and information systems and accordingly, the Customer accepts that the GVI Communication Services are limited to the access, capacity and ability of the Networks and related telecommunication and information systems (including GVI's owns telecommunication and information systems) used or accessed by and/or made available to GVI, and GVI is not responsible for any inaccessibility, interruptions, delays or failings arising out of or in connection with such Networks, telecommunication and information systems and devices.
- 10.2 It is disclosed by GVI and accepted by the Customer that:
- 10.2.1 the provision of the GVI Communication Services are subject to GVI, at the relevant time, having permission from the relevant Network Providers to provide VAS Services using their Networks and subject to the Relevant Network Providers access and interface specifications and the Relevant Codes of Conduct and Network Licenses and all governing laws and regulations including the EC Act, ECT Act and Telecommunications Act; and
- 10.2.2 GVI has no control over the Networks or Network Access which are controlled by the Network Providers and made available by them on an "as is" basis and that such Networks are:
- 10.2.2.1 sometimes prone to, amongst other things: interruptions, down time for maintenance, unavailability, delays, errors, interception and the corruption or loss of data or information and therefore may be unreliable or unavailable and may not preserve the integrity of transmissions; and
- 10.2.2.2 are not necessarily secure and communications on Networks can be monitored and accessed by the providers and managers of Networks and certain of their employees and may be intercepted or accessed by third parties;
- 10.2.3 GVI will rely on various Network Providers to send the relevant Data using the relevant Network Bearer to the intended destination and shall not be responsible should any Data not reach its intended destination or if it is intercepted, corrupted, delayed or not be sent or received for any reason whatsoever or if GVI unintentionally provides an incorrect address;
- 10.2.4 The receipt of the Data carried via the relevant Network Bearer and their transformation into the Communication intended to be received by the Customer's End User is dependant upon, amongst other things, the Customer's End User's Network Access, information system, mobile phone or other relevant device being able and having the necessary access and software to receive the Data carried by the relevant Network Bearer and convert the Data into the intended Communication. Accordingly, while GVI will use the agreed upon Network Bearer, it shall not be responsible for the Customer's End User's receipt and conversion of the Communication or use of the relevant Customer's User Service. It is further noted that different applications and software may alter the format or nature of the content of Communications.
- 10.3 The Customer accepts the use of the Networks and telecommunication and information systems are on an 'as is' and 'as provided and available' basis and agrees that GVI shall not be liable or responsible for the availability or proper performance of the Networks and third party telecommunication and information systems including, without limitation, if they do not meet the Customer's requirements, do not operate timeously, securely, error free or without interruption or if they limit or have a negative effect on the GVI Communication Services. While GVI may (but is not obliged to) notify Networks and third parties of any defective performance, GVI shall not be responsible for procuring any remedial action.
- 10.4 It is further disclosed by GVI and accepted by the Customer that GVI's own telecommunication and information systems and software have finite capacity and the speed of transmission of Communications will

be determined and limited by such telecommunication and information systems and the total demand from all GVI's customers and unless specifically agreed otherwise in writing, GVI shall be entitled to allocate its system capacity and bandwidth between its various customers in such manner as it in its sole discretion deems fit and disclaims all representations in regard the capacity and speed of such telecommunication and information systems.

## 11. MONITORING AND CUSTOMER CARE

- 11.1 GVI provides customer care to end users (including the Customer's End Users) in respect of its GVI Communication Services giving end users the opportunity to report and resolve complaints. Further GVI reserves the right to (but is not obliged to), in so far as is lawful, monitor Customer Communications and the GVI Communication Services for, inter alia, the purpose of ensuring compliance with the Agreement and the Relevant Codes of Conduct and laws. The Customer accepts and shall co-operate with GVI's customer care related investigations and any lawful monitoring of Communications that GVI may elect to conduct. The Customer shall respond promptly to all queries and complaints made by GVI or made directly by Customer End Users. The Customer shall promptly (but by no later than 36 hours after receiving a request therefor) provide GVI with all related information, Communications, documents and records requested in relation to compliance, monitoring and complaints received and consents to such information and documents being disclosed or made available to WASPA, any other regulators and any Network Providers.
- 11.2 Notwithstanding any other provision to the contrary, nothing in the Agreement shall place an obligation in favour of the Customer (as opposed to any obligations in law or under any code) on GVI to monitor the GVI Communication Services or Customer's User Services; or actively seek acts or circumstances indicating any unlawful activity in respect of the GVI Communication Services, Communications or Customer's User Services.

## 12. LICENCE

- 12.1 Unless the Particular Terms and Pricing provide otherwise, if the Particular Terms and Pricing provide that a GVI Communication Service includes access to or the use by the Customer of software, computer programs, information system tool or other Intellectual Property (collectively "**Licensed IP**"), then in consideration for the corresponding Service Fees, GVI grants the Customer, and the Customer accepts, a terminable, non-exclusive, non-transferable licence on the terms set out this clause 12 to use such Licensed IP on an 'end-user basis' for the intended purpose only.
- 12.2 The licence shall terminate on termination or cancellation (for any reason whatsoever) of the Agreement or the related GVI Communication Service. The license excludes, without limitation, any rights whatsoever to access any programme, object or source codes in relation to the Licensed IP.
- 12.3 The Customer shall not to allow any third party, other than its duly licensed users, to obtain access to or use the Licensed IP.
- 12.4 GVI currently is licensed to use or sub-license software, products and other Intellectual Property from a number of third parties, and may in future use other third party Intellectual Property, (collectively "**Third Party Products**") in connection with the GVI Communications Services, including without limitation, by way of interfacing the Third Party Products with, or incorporating them into, GVI's information systems and computer programmes. In so far as GVI does so, the licence granted to the Customer to use Licensed IP will include a sub-licence to in so far as is necessary use the Third Party Products subject to the terms of the Third Party Product licence GVI has and the Customer shall at GVI's request be required to execute the relevant third party licensor's end-user terms/license. The Customer hereby indemnifies and holds GVI and the third party licensor harmless against any claims arising out of or in connection with any breach by the Customer of the terms and conditions of Third Party Product sub-licence. The provisions of this clause 12.4 shall also constitute an unconditional irrevocable undertaking in favour of the third party licensor (*stipulatio alteri*) capable of acceptance at any time by the third party licensor.
- 12.5 The above-mentioned sub-licence to use any Third Party Products shall terminate on the earlier of termination of the Agreement for any reason whatsoever and termination of the license granted to GVI to use the Third Party Product. If the licence to use the Third Party Product is terminated and the Third party Product is material to or forms a substantial part of the relevant GVI Communication Services used by the Customer, then:

- 12.5.1 the parties shall meet to discuss an alternative arrangement being made in regard to the Third Party Product and pending the parties agreeing on an alternative arrangement, the operation and the Customer's use of the relevant GVI Communication Service shall be suspended;
- 12.5.2 notwithstanding any discussions, GVI shall have the right to terminate either the particular GVI Communication Service or the entire Agreement by way of 3 calendar days written notice to the Customer; and
- 12.5.3 the Customer shall have no claim against GVI of whatsoever nature arising out of or in connection with the termination of a Third Party Product licence, notwithstanding (without limitation) that such termination may prevent the Customer from using or receiving a GVI Communication Service or that it results in a termination of the Agreement or GVI Communication Service.
- 12.6 The Customer agrees that GVI may, from time to time, as GVI may in its sole discretion deem appropriate, modify and/or replace the Licensed IP used in connection with the GVI Communication Services and any of its systems and hardware. GVI will use reasonable endeavours to try and limit the negative impact as a result of such modification or replacement.
- 12.7 The Customer undertakes that it shall not, and shall ensure that no user shall, without GVI's prior specific written consent in each instance:
  - 12.7.1 sell, lease, licence or sublicense any or all of the Intellectual Property it is licensed to use, the subject matter relating thereto, nor any materials provided pursuant to this Agreement; nor
  - 12.7.2 interface any other software or systems with the Licensed IP or GVI's systems.
- 12.8 To the best of GVI's knowledge, the use of Licensed IP in the contemplated manner and in accordance with the provisions of the Agreement will not infringe any third party's intellectual property rights, however, in addition and without limitation to any other limitations or exclusions of liability in this Agreement, the Customer shall not have any claim against GVI of whatsoever nature and howsoever arising in connection with any infringement of any third parties Intellectual Property Rights. If any third party does allege that any Licensed IP infringes its rights, then the Customer shall immediately provide GVI with written notice of any such allegation. In the event of any allegation or claim by a third party that the Licensed IP infringes the third party's rights, then GVI may, at its sole discretion, either:
  - 12.8.1 immediately suspend the associated GVI Communication Service and/or investigate the allegation;
  - 12.8.2 at its expense, procure for the Customer the right to use the alleged infringing intellectual property as provided herein;
  - 12.8.3 at its expense, replace the alleged infringing intellectual property with non-infringing, functionally, equivalent product;
  - 12.8.4 at its expense, modify the relevant intellectual property, if technically and economically feasible, to remove the alleged infringement; and/or
  - 12.8.5 terminate the Agreement by way of 3 calendar days written notice to the Customer.

### **13. INTELLECTUAL PROPERTY**

- 13.1 Unless expressly agreed otherwise in writing, except for the provision of the licence in terms of clause 12, the provision of the GVI Communication Services shall not include the provision or granting by GVI to the Customer of any Intellectual Property or Intellectual Property Rights and GVI shall exclusively own all Intellectual Property Rights created or existing in respect of the GVI Communication Services. In this regard all Intellectual Property Rights (and any modifications and additions thereto) in or related to the GVI Communication Services and the Agreement, including without limitation in respect of all Intellectual Property used by GVI to provide the GVI Communication Services or produced by GVI pursuant to the provision of the GVI Communication Services shall be exclusively owned by and vest in GVI (or where relevant its third party licensor, in so far as the licence so provides).
- 13.2 The Customer agrees that it shall not, and it shall ensure that its users shall not, without GVI's prior specific signed written consent in each instance, directly or indirectly copy, transmit, disclose, reproduce, make available, edit, modify, reformat, conduct inverse-process analysis, translate to other programming language, decompile, disassemble, re-program, analyze, reverse engineer or attempt to write or develop any derivative

work or any other programme or Intellectual Property based on any programme or Intellectual Property used or owned by GVI or permit or assist others to conduct the above-mentioned activities or to attempt to do so.

#### 14. UNCONTROLLABLE EVENTS

- 14.1 If GVI is prevented from, or unable to, or delayed in, performing (whether in whole or in part) any of its duties, functions or obligations under the Agreement (other than a payment of money), due to a cause beyond its reasonable direct control or an act of God, or Force Majeure event, which for the purposes hereof shall be deemed to include, without limitation, war or acts of war (whether declared or not) or public or foreign enemies, riots, civil commotions or strife, civil war, insurrection, revolution, strikes (including by GVI's employees), blockades, embargo, sanctions, lack of resources or supplies, failure or delay of suppliers, non-supply, or defect by a third party or a Network, sabotage, explosion, breach or cancellation of contract by third party, legal prohibitions, inconsistent or defective or abnormal power supply, power or data cable failure or theft, Internet or electronic communications failure or restrictions, fire, lightning, floods, storms, earthquakes, perils of sea, adverse weather conditions or other similar natural or human created disasters or act of local or national Government or other authority, Martial Law and compliance with orders, demands or regulations by a government, authority or court, any act or omission on the part of a third party and any criminal act (including by any of GVI's officers, employees or agents) (collectively an **"Uncontrollable Event"**), then such failure shall not constitute a breach under the Agreement, and the obligation to perform shall be suspended to the extent and for the duration that the Uncontrollable Event renders it impossible or onerous to perform the relevant duties, functions or obligations.
- 14.2 Notwithstanding anything to the contrary contained or implied in this clause, should the abovementioned delay endure for a period of 30 calendar days or more, then either party shall be entitled (but not obliged) to terminate the Agreement on 14 calendar days' written notice to the other party to such effect and the Customer shall not have any claim against GVI arising from such termination and GVI shall not be obliged to perform any suspended obligation that has not been performed.

#### 15. CONDITIONAL WARRANTY WITH SLA AND LIMITED REMEDY

- 15.1 If GVI enters into a Service Level Agreement with the Customer, then and only then, does GVI warrant that it shall use its reasonable endeavours to remedy any faults in respect of the GVI Communication Services in accordance with such Service Level Agreement and such warranty shall terminate on the earlier of the date of termination of the Service Level Agreement and the date of termination of the relevant GVI Communication Services. In the absence of a Service Level Agreement between the parties, GVI gives no warranties or guarantees in connection with the GVI Communication Services and does not provide support or maintenance in relation to such GVI Communication Services.
- 15.2 In addition and without limitation to the exclusions and limitations of liability in elsewhere in the Agreement, in the event of a breach of the warranty in clause 15 of the Agreement, the Customer's sole remedy, to the exclusion of all other remedies, shall be to require any defects to be remedied in so far as reasonably possible and in the event of GVI giving notice that it cannot remedy the fault or provide an alternative solution, the Customer's sole and exclusive remedy shall be an entitlement to reduce the Service Fee corresponding to the relevant defective GVI Service by an amount proportionate to the amount the defect detracts from the GVI Service, but such reduction shall under no circumstances exceed the corresponding Service Fee.

#### 16. DISCLOSURES, DISCLAIMERS, EXCLUSIONS AND LIMITATIONS OF LIABILITIES AND INDEMNITIES INTRODUCTION

##### 16.1 IN THIS CLAUSE:

- 16.1.1 **"DAMAGES"** MEANS ALL DAMAGES AND LOSSES OF WHATEVER NATURE AND INCLUDES (WITHOUT LIMITATION) ALL DAMAGES, LOSSES, CLAIMS, EXPENSES, OBLIGATIONS AND PREJUDICES SUFFERED OR INCURRED WHETHER DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL (INCLUDING, WITHOUT LIMITATION, LOSS OF DATA, CONTRACTUAL DAMAGES, LOSS OF PROFITS, CUSTOM OR BUSINESS FOREGONE) OR OTHERWISE AND WHETHER OR NOT:

- 16.1.1.1 BASED IN CONTRACT, DELICT, STATUTE OR OTHERWISE;
  - 16.1.1.2 ARISING OUT OF NEGLIGENCE, GROSS NEGLIGENCE, BREACH OF CONTRACT, STATUTE, STRICT LIABILITY OR OTHERWISE;
  - 16.1.1.3 FORESEEABLE OR CONTEMPLATED BY THE PARTIES; AND
  - 16.1.1.4 GVI IS ADVISED THEREOF IN ADVANCE.
- 16.1.2 **"CLAIM"** INCLUDES WITHOUT LIMITATION ANY ACTUAL OR THREATENED CLAIM, ACTION, PROCEEDING, DEMAND, ALLEGATION, SUMMONS OR RIGHT;

#### **DISCLOSURES, DISCLAIMER OF WARRANTIES, EXCLUSIONS OF LIABILITY AND INDEMNITIES**

- 16.2 WHILE GVI WILL USE ITS REASONABLE ENDEAVOURS TO PROVIDE THE GVI COMMUNICATION SERVICES IN ACCORDANCE WITH ITS ABILITIES, THE CUSTOMER AGREES THAT THE USE AND PROVISION OF THE GVI COMMUNICATION SERVICES IS AT THE CUSTOMER'S SOLE RISK AND IS PROVIDED AND RECEIVED ON AN 'AS IS', 'AS AVAILABLE' AND 'REASONABLE ENDEAVOURS' BASIS. EXCEPT FOR THE CONDITIONAL WARRANTY SET OUT IN CLAUSE 15 IN THE EVENT OF SERVICE LEVELS BEING AGREED TO IN WRITING, GVI GIVES NO OTHER WARRANTIES AND MAKES NO REPRESENTATIONS IN RESPECT OF THE GVI COMMUNICATION SERVICES OR IN CONNECTION WITH THE AGREEMENT.
- 16.3 GVI, IN SO FAR AS IS LAWFUL, EXPRESSLY DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND IN CONNECTION WITH THE AGREEMENT AND THE GVI COMMUNICATION SERVICES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY OF GOODS OR SERVICES, EXPERTISE, LEVEL OF SKILL AND NON-INFRINGEMENT. WITHOUT LIMITATION TO THE GENERALITY OF THE AFOREGOING, GVI DOES NOT WARRANT, GUARANTEE OR REPRESENT THAT THE GVI COMMUNICATION SERVICES OR COMMUNICATIONS ARE OR WILL BE:
- 16.3.1 FREE OF ERRORS, DEFECTS OR INTERRUPTIONS OR THAT THEY ARE FIT FOR THE INTENDED PURPOSE OR WILL MEET THE CUSTOMER'S NEEDS, REQUIREMENTS OR EXPECTATIONS OR CONFORM TO THE CUSTOMER'S TIMELINES;
  - 16.3.2 TIMELY, AVAILABLE, RELIABLE, ACCURATE OR SECURE; OR
  - 16.3.3 SAFE IN THE EVENT OF A DISASTER.
- 16.4 WHILE GVI HAS SOME SECURITY AND BACK UP MEASURES IN PLACE THESE ARE NOT INFALLIBLE. THE CUSTOMER ACKNOWLEDGES AND ACCEPTS THAT IT IS THE CUSTOMER'S RESPONSIBILITY TO ENQUIRE INTO GVI'S SECURITY AND BACK UP ARRANGEMENTS IN RELATION TO THE GVI COMMUNICATION SERVICES (INCLUDING IN RESPECT OF ANY INFORMATION OR DATA PROVIDED TO GVI OR TRANSMITTED BY GVI) AND DECIDE WHETHER IT IS SATISFIED WITH SUCH MEASURES. IT IS DISCLOSED THAT SUCH SECURITY AND BACK-UPS MAY NOT BE SUFFICIENT. THE CUSTOMER FURTHERMORE ACKNOWLEDGES AND AGREES THAT, UNLESS EXPRESSLY AGREED OTHERWISE IN WRITING, GVI MAY NOT ENCRYPT ANY CONTENT OR COMMUNICATIONS, AND THAT GVI ALSO MAY NOT PROVIDE DIGITAL AUTHENTICATION AND, WHERE IT DOES AGREE TO DO SO, GVI DOES NOT WARRANT OR REPRESENT THAT SUCH ENCRYPTION OR DIGITAL AUTHENTICATION WILL PREVENT INTERCEPTION OR ACCESS TO COMMUNICATIONS. AS A RESULT, NETWORK PROVIDERS AND OTHER THIRD PARTIES MAY INTERCEPT OR ACCESS COMMUNICATIONS AND, IN SO FAR AS IS LAWFUL, THE CUSTOMER AGREES THAT GVI SHALL NOT BE RESPONSIBLE FOR SUCH INTERCEPTION OR ACCESS AND THE CUSTOMER INDEMNIFIES AND HOLDS GVI HARMLESS AGAINST ANY DAMAGES OR CLAIMS IT SUFFERS OR INCURS IN CONNECTION WITH ANY INTERCEPTION OR ACCESS OF COMMUNICATIONS OR BREACH OF SECURITY OR LOSS OF DATA OR INFORMATION IN ANY WAY CONNECTED TO THE GVI COMMUNICATION SERVICES.
- 16.5 ANY COMMUNICATIONS RECEIVED, MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE GVI COMMUNICATION SERVICES IS ACCESSED AND RECEIVED AT THE CUSTOMER'S OWN DISCRETION AND RISK, AND THE CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO THE CUSTOMER'S COMPUTER SYSTEM OR LOSS OR CORRUPTION OF INFORMATION OR DATA THAT RESULTS FROM THE RECEIPT OR DOWNLOAD OF ANY SUCH MATERIAL.
- 16.6 IN SO FAR AS IS LAWFUL, THE CUSTOMER AGREES THAT GVI SHALL NOT BE LIABLE TO THE CUSTOMER OR ANY THIRD PARTY FOR ANY DAMAGES SUFFERED BY THE CUSTOMER, CUSTOMER END USER OR A THIRD PARTY HOWSOEVER ARISING IN ANY WAY CONNECTED TO THE



CUSTOMER'S RECEIPT OR USE OF, OR RELIANCE ON, ANY OF THE GVI COMMUNICATION SERVICES, EXCEPT IF DIRECTLY ATTRIBUTABLE TO GVI'S INTENTIONAL FRAUDULENT CONDUCT OR GROSS NEGLIGENCE. THE CUSTOMER HEREBY INDEMNIFIES AND HOLDS GVI HARMLESS AGAINST ANY CLAIMS OR DAMAGES IN ANY WAY CONNECTED TO THE GVI COMMUNICATION SERVICES OR THE AGREEMENT, EXCEPT IF DIRECTLY ATTRIBUTABLE TO GVI'S INTENTIONAL FRAUDULENT CONDUCT OR GROSS NEGLIGENCE.

- 16.7 EXCEPT AS PROVIDED FOR IN CLAUSE 15 WHERE A SERVICE LEVEL AGREEMENT IS CONCLUDED WITH GVI, THE CUSTOMER AGREES THAT IF IT IS DISSATISFIED WITH ANY OR PART OF A GVI SERVICE, THE CUSTOMER'S ONLY REMEDY (NOTWITHSTANDING THAT IT MAY HAVE SUFFERED DAMAGE) IS TO STOP USING THE GVI COMMUNICATION SERVICES OR TO COMPLAIN TO WASPA.
- 16.8 THE CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR ANY CUSTOMER USERS SERVICES AND GVI SHALL NOT BE RESPONSIBLE FOR ANY ACTS OR OMISSIONS OF THE CUSTOMER END USERS. ACCORDINGLY THE CUSTOMER HEREBY INDEMNIFIES AND HOLDS GVI HARMLESS AGAINST ANY CLAIM FOR DAMAGES INCURRED OR SUFFERED BY GVI ARISING FROM OR IN CONNECTION WITH THE CUSTOMER'S USER SERVICES OR THE RELATIONSHIP WITH THE CUSTOMER END USER, INCLUDING WITHOUT LIMITATION ANY FAILURE BY THE CUSTOMER TO COMPLY WITH ITS RESPONSIBILITIES OR OBLIGATIONS OR ANY FAILURE BY THE CUSTOMER END USER TO COMPLY WITH ITS RESPONSIBILITIES OR OBLIGATIONS.
- 16.9 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE AGREEMENT AND WITHOUT LIMITATION TO ANY OTHER LIMITS OR EXCLUSIONS OF LIABILITY, TO THE FULL EXTENT PERMITTED BY LAW THE CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR, AND GVI SHALL NOT BE LIABLE TO, ANY OF THE CUSTOMER'S END USERS, CUSTOMER'S CLIENTS, EMPLOYEES, SUB-CONTRACTORS, BUSINESS ASSOCIATES OR THE RECIPIENTS OF ANY COMMUNICATIONS. ACCORDINGLY, THE CUSTOMER INDEMNIFIES AND HOLDS GVI HARMLESS AGAINST ANY CLAIM OF WHATSOEVER NATURE AND HOWSOEVER ARISING BY ANY OF THE CUSTOMER'S END USERS, THE CUSTOMER'S EMPLOYEES, SUB-CONTRACTORS, ASSOCIATES OR ANY RECIPIENTS OF COMMUNICATIONS IN ANY WAY CONNECTED TO THE AGREEMENT OR THE GVI COMMUNICATION SERVICES.

#### **LIMITATIONS ON LIABILITY AND TIME FRAME FOR MAKING CLAIMS**

- 16.10 IN THE EVENT THAT NOTWITHSTANDING THE EXCLUSIONS AND LIMITATIONS OF LIABILITY, DISCLAIMERS AND INDEMNITIES CONTAINED IN THE AGREEMENT, GVI'S IS NEVERTHELESS FOUND TO BE LIABLE, THEN:
- 16.10.1 WITHOUT LIMITATION TO ANY OTHER LIMITATIONS OR EXCLUSIONS OF LIABILITY AND NOTWITHSTANDING ANY WARRANTY, REPRESENTATION, UNDERTAKING OR OTHER PROVISION TO THE CONTRARY, IN SO FAR AS IS LAWFUL, THE AGGREGATE LIABILITY OF GVI UNDER THE AGREEMENT AND IN RESPECT OF ALL CLAIMS ARISING OUT OF OR IN ANY WAY CONNECTED TO THE GVI COMMUNICATION SERVICES, SHALL NOT IN ANY CIRCUMSTANCES EXCEED R20 000,00 (TWENTY THOUSAND RAND).
- 16.10.2 WITHOUT LIMITATION TO ANY OTHER LIMITATIONS OR EXCLUSIONS OF LIABILITY AND NOTWITHSTANDING ANY WARRANTY, REPRESENTATION OR UNDERTAKING OR OTHER PROVISION TO THE CONTRARY CONTAINED IN THE AGREEMENT, GVI SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, COLLATERAL, EXEMPLARY, INCIDENTAL SPECIAL OR CONSEQUENTIAL, LOSS, DAMAGE, INJURY, EXPENSE OR CLAIM OF ANY KIND WHATSOEVER IN ANY WAY CONNECTED TO THE AGREEMENT OR GVI COMMUNICATION SERVICES OR ANY GOODS SUPPLIED OR PROVIDED IN CONNECTION WITH THE AGREEMENT, HOWSOEVER ARISING, WHETHER FORSEEABLE OR NOT AND WHETHER OR NOT CAUSED BY OR BASED ON NEGLIGENCE, GROSS NEGLIGENCE, RECKLESSNESS, STRICT LIABILITY, BREACH OF THE AGREEMENT OR OTHER ACT OR OMISSION ON THE PART OF OR APPLICABLE TO GVI, ITS EMPLOYEES, AGENTS, REPRESENTATIVES OR SUBCONTRACTORS, AND WHETHER OR NOT IN THE CONTEMPLATION OF THE PARTIES AT THE TIME OF THE CONCLUSION OF THE AGREEMENT. THE FOLLOWING SHALL, WITHOUT LIMITATION BE DEEMED TO BE DAMAGES OF A CONSEQUENTIAL NATURE: WASTED EXPENDITURE, LOSS OF PROFITS OR REVENUE OR OTHER ECONOMIC LOSS; LOSS OF PRODUCTION, CUSTOM OR GOODWILL; BUSINESS FOREGONE; CONTRACTUAL DAMAGES OR LOSSES IN RESPECT OF CONTRACTS WITH THIRD PARTIES; LOSS OF ANTICIPATED SAVINGS; LOSS OF (OR CONSEQUENT UPON) THE LOSS OR CORRUPTION OF DATA OR INFORMATION.

16.10.3 SUBJECT TO THE LIMITATIONS AND EXCLUSIONS OF GVI'S LIABILITY IN THE AGREEMENT, NO CLAIM BY THE CUSTOMER AGAINST GVI SHALL BE VALID UNLESS FORMAL LEGAL PROCEEDINGS IN RESPECT OF THE CLAIM HAVE BEEN INSTITUTED WITHIN SIX MONTHS OF THE EARLIER OF:

16.10.3.1 THE DATE OF THE CUSTOMER BECOMING AWARE OF THE FACTS GIVING RISE TO THE CLAIM;

16.10.3.2 THE DATE THE CUSTOMER OUGHT REASONABLY TO HAVE BECOME AWARE OF THE FACTS GIVING RISE TO THE CLAIM; AND

16.10.3.3 THE DATE OF COMPLETION OF THE PROVISION OF THE RELATED GVI SERVICE.

16.11 THE ABOVE LIMITATIONS OF LIABILITY AND INDEMNITIES SHALL APPLY IN SO FAR AS IS LAWFUL TO ANY CLAIMS AND LIABILITIES WHETHER BASED ON CONTRACT, DELICT, STATUTE, OR OTHERWISE, AND WHETHER FOR ANY DAMAGES, LOSSES, INJURY, EXPENSE, PREJUDICE OR OTHER CLAIM OF ANY KIND WHATSOEVER, HOWSOEVER ARISING IN THE WIDEST SENSE POSSIBLE.

16.12 THE CUSTOMER AGREES TO ONLY LOOK TO GVI IN CONNECTION WITH THE AGREEMENT AND ACCORDINGLY, EXCEPT AND TO THE EXTENT OF ANY WILLFUL CRIMINAL CONDUCT ON THE RELEVANT PERSON'S PART, THE CUSTOMER SHALL NOT MAKE ANY CLAIMS AGAINST ANY OF GVI'S AFFILIATES, SHAREHOLDERS, OFFICERS, AGENTS, EMPLOYEES, SUB-CONTRACTORS, PARTNERS AND LICENSORS IN ANY WAY CONNECTED TO OR ARISING OUT OF THE GVI COMMUNICATION SERVICES OR THE AGREEMENT. THE PROVISION OF THIS CLAUSE AND WITHOUT LIMITATION TO THE APPLICATION OF THIS CLAUSE, ALL OTHER DISCLAIMERS AND CLAUSES LIMITING OR EXCLUDING OR INDEMNIFYING GVI'S LIABILITY UNDER THE AGREEMENT ARE IRREVOCABLY STIPULATED (AS A STIPULI ALTERI) BY THE CUSTOMER ALSO FOR THE BENEFIT OF GVI'S AFFILIATES, SHAREHOLDERS, OFFICERS, AGENTS, EMPLOYEES, SUB-CONTRACTORS, PARTNERS AND LICENSORS AND THE NETWORK PROVIDERS AND MAY BE ACCEPTED BY ANY OF THEM AT ANY TIME.

16.13 SOME JURISDICTIONS AND LAWS DO NOT ALLOW OR LIMIT THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY, ACCORDINGLY, THE ABOVE EXCLUSIONS, LIMITATIONS AND INDEMNITIES SHALL:

16.13.1 BE READ DOWN AND LIMITED TO THE EXTENT NECESSARY TO RENDER THEM LAWFUL;

16.13.2 WHERE IT IS NOT POSSIBLE TO READ DOWN OR LIMIT THEM SO AS TO RENDER THEM LAWFUL THEY SHALL NOT APPLY ONLY IN SO FAR AS THEY ARE UNLAWFUL.

16.14 EACH OF THE INDEMNITIES, LIMITATION AND EXCLUSIONS OF LIABILITY IN THE AGREEMENT ARE SEPARATE AND SEVERABLE FROM ONE ANOTHER AND THE REST OF THE AGREEMENT AND SHALL APPLY SEPARATELY IN RESPECT OF EACH CAUSE OF ACTION, EACH CATEGORY, AND EACH TYPE OF ACT OR CIRCUMSTANCE.

16.15 THE INDEMNITIES, LIMITATIONS AND EXCLUSIONS OF LIABILITY IN THE AGREEMENT SHALL SURVIVE TERMINATION OR CANCELLATION OF THE AGREEMENT.

## **17. RIGHT TO CHANGE TERMS AND CONDITIONS**

17.1 GVI shall from time to time be entitled to amend the terms of the Agreement by way of 30 calendar days' notice to the Customer and should the Customer not accept such change the Customer shall be entitled to terminate the Agreement within 30 calendar days of receipt of the notice of the amendment by way of written notice to GVI. If the Customer does not terminate the Agreement within 30 calendar days of receipt of GVI's notice of amendment of the Agreement, it shall be deemed to have accepted the amendment.

## **18. EARLY TERMINATION**

18.1 If any of the following events occur ("**Non-Default Termination Event**"):

**18.1.1** any Network Provider terminates GVI's Network Access or its agreement with GVI that enables GVI to provide the GVI Communication Services or any other VAS Services for any reason whatsoever (including without limitations GVI's default or non-compliance);

**18.1.2** any other right, supply arrangement or authorisation GVI requires in order to provide the GVI Communication Services is terminated or challenged;

then, GVI shall be entitled to, by way of written notice to such effect, immediately terminate the Agreement or part of the GVI Communication Services affected by the Non-Default Termination Event and the Customer shall have no Claim whatsoever against GVI arising out of or in connection with such Non-Default Termination Event or termination of the Agreement or part of the GVI Communication Services.

## **19. SUSPENSION AND BREACH**

19.1 If the Customer commits a breach of the Agreement, and/or fails to comply with any of the provisions hereof, then GVI shall be entitled to immediately and without notice withhold performance of its obligations under the Agreement and suspend the GVI Communication Services. In addition, GVI may at any time suspend the provision of all or part of the GVI Communication Services:

19.1.1 pending an investigation as to whether there has been a breach of the Agreement;

19.1.2 if the Customer does anything which affects, or may affect the quality any of the Networks or GVI'S telecommunication and information systems, or may overload or disrupt such Networks or systems; or

19.1.3 it wishes to carry out maintenance work, up-grade or replace software or hardware or has any other reasonable grounds for doing so,

and in such circumstances the Customer shall have no Claim whatsoever against GVI arising out of or in connection with such suspension.

19.2 Customer is required to provide GVI with an opportunity to resolve any complaint before Customer approaches any authority or WASPA.

19.3 If either party fails to remedy a breach and/or failure within 7 (seven) calendar days of receipt of a notice from the non-defaulting party requiring remedial action, then the non-defaulting party shall, without prejudice to any other rights or remedies which it may have in law (including the right to claim damages, subject to the limitations and exclusions of liability in the Agreement) to either claim specific performance or cancel the Agreement or the affected particular GVI Communication Services to which the breach relates.

## **20. NOTICES AND DOMICILIA**

20.1 For the purposes of the giving of notices and the serving of legal process in terms of the Agreement, the Customer chooses the address set out in **Schedule 1** as its notice address ("**Notice Address**"), with the physical address included in the Notice Address to be its domicile and notice address for the purpose of formal legal service. Any party may at any time, by notice in writing to the other parties, change its Notice Address to any other address in the same country which is not a post office box or *post restante* but must include a physical address.

20.2 A notice given as set out above shall be deemed to have been duly given (unless the contrary is proved):

20.2.1 if delivered by hand, on the date of delivery; or

20.2.2 if sent by prepaid registered post, on the 7th day after posting; or

20.2.3 if sent by courier, on the date of delivery by the courier service concerned; or

20.2.4 if sent by telefax supported by the telefax machines confirmation of despatch, on the expiration of 24 hours after the time of transmission; or

20.2.5 if sent by e-mail supported by a print out of the e-mail indicated as having been sent, on the expiration of 24 hours after the time of transmission.

## **21. GENERAL**

- 21.1 The parties submit to the jurisdiction of the South African High Courts. The Agreement shall in all respects be governed by and construed in accordance with the laws of the Republic of South Africa, and all disputes, actions and other matters in connection therewith shall be determined in accordance with such law ignoring its private international law principles of conflicts of law.
- 21.2 The Customer shall not be entitled to cede or delegate any of the Customer's rights or obligations in terms of or arising from the Agreement, without the prior written consent of GVI. GVI shall be entitled to cede or delegate any of its rights or obligations in terms of or arising from the Agreement to any person whatsoever.
- 21.3 No relaxation, indulgence or extension of time granted by any party ("**the Grantor**") to another shall be construed as a waiver of any of the Grantor's rights in terms hereof (including this clause), or a novation of any of the terms of the Agreement or estop the Grantor from enforcing strict and punctual compliance with the terms of the Agreement, unless this is specifically and expressly stated and recorded in a written agreement signed by or on behalf of the Grantor.
- 21.4 No variation of, addition to, consensual cancellation of or waiver of any right arising in terms of the Agreement (including its schedules and this clause) shall be of any force or effect unless it is reduced to writing and signed by a duly authorised representative of each of the parties.
- 21.5** The Agreement together with these GVI Standard Terms its schedules and other terms incorporated by reference constitute the whole agreement between the parties in relation to the subject matter thereof and no party shall accordingly be bound by any undertaking, representation or warranty not recorded therein.
- 21.6 The parties shall respectively cause all resolutions (including those in respect of the Company) to be passed and undertake to sign all such other documents and do such other things as shall be necessary or requisite to give proper and due effect to the terms of the Agreement, or any other matter arising therefrom, according to its intent and purpose.
- 21.7 The Agreement may be concluded by using the GVI Communications Services or be agreed to in writing by way of any number of counterparts, including, without limitation telefaxed or electronic counterparts, which shall collectively form one agreement. Any telefaxed or electronic copy of a counterpart may be submitted as proof of the terms of the Agreement and shall be deemed to be the same as the original unless proved otherwise.
- 21.8 Each provision of the Agreement and schedules is severable from the other provisions. If any provision is found to be invalid or unenforceable, the remainder of the Agreement and schedules will remain enforceable.
- 21.9 To the extent that any of the provisions of the terms are in favour of any of GVI's Affiliates, shareholders, officers, agents, employees, partners and licensors or any Network, they constitute irrevocable rights and agreements in their favour (stipulatio alteri) capable of acceptance at any time.
- 21.10 Each party shall bear its own costs in connection with the recording of the Agreement and the attendances incidental thereto.

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