

MASTER SERVICES AGREEMENT

Customer Number: _____

Parties	
<p>MFN: Metro Fibre Networkx (Pty) Ltd (“MFN”)</p> <p>PHYSICAL OFFICE ADDRESS: Eco Square, 298 Witch-Hazel Avenue, Highveld Ext. 71, CENTURION 0157</p> <p>REGISTERED NO. 2007/024366/07</p> <p>ADDRESS FOR NOTICES: Same as above, for the attention of Legal Services and at legal@metrofibre.co.za</p>	<p>Customer: _____ (“Customer”)</p> <p>PHYSICAL OFFICE ADDRESS: _____ _____ South Africa</p> <p>REGISTERED NO. [_____ <i>pls insert</i>]</p> <p>ADDRESS FOR NOTICES: Same as above, for the attention of _____</p>

Terms and Conditions

1. Definitions and Interpretation

- 1.1. In this Agreement the following terms and phrases shall have the following meaning, unless the context otherwise requires:
 - 1.1.1. “**Agreement**” shall mean, as between MFN and Customer, this Master Services Agreement read together with Services Detail (Annexure A) and the Service Level Agreement (Annexure B), and where applicable any Customer approved Services Quotation.
 - 1.1.2. “**Billing Start Date**” shall mean, in relation to a Service, the “Service Activation Date” or “Acceptance Date” or date of “Completion of Connection”, whichever is the earlier date, as described in clause 3.2.
 - 1.1.3. “**Business Day**” shall mean, in respect of a Service, every day excluding Saturdays, Sundays and any national holidays.
 - 1.1.4. “**Charges**” shall mean Call Charges, Usage Charges, Installation Charge, Start Up Charge, Rental Charges, Monthly Fees and any other charges or fees payable by the Customer to MFN in respect of a Service, as set out or referred to in a Service Detail and revised from time to time in accordance with clause 4.3 and/or clause 4.8.

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- 1.1.4.1. **“Call Charges”** shall mean the charges for circuit or packet switched telecommunications services payable in accordance with clause 4, including without limitation charges for voice services.
- 1.1.4.2. **“Installation Charge”** or **“Start Up Charge”** or **“Connection Charge”** shall mean a non-recurring charge (collectively referred to as **“NRC”**) for installation of a Service (including installation of any Service Equipment) payable in accordance with clause 4.
- 1.1.4.3. **“Rental Charge”** or **“Monthly Fee”** shall mean monthly recurring charges for a Service payable in accordance with clause 4.
- 1.1.4.4. **“Usage Charges”** shall mean the usage-based charges for Internet Services payable in accordance with clause 4.
- 1.1.5. **“Confidential Information”** shall mean all information (in whatever format) which:
 - (i) relates to the Agreement; (ii) is designated as confidential by either Party; or
 - (iii) relates to the business, affairs, networks, customers, products, developments, trade secrets, know-how and personnel of either Party (including, in the case of the Customer, Customer Data) and which may reasonably be regarded as the confidential information of the disclosing Party.
- 1.1.6. **“Customer Data”** shall include, but not be limited to, data transmissions (including the originating and destination numbers and IP addresses, date, time and duration of voice or data transmissions, and other data necessary for the establishment, billing or maintenance of the transmission), data containing personal and/or private information of the Customer, its employees or authorised users of the Services, and other data provided to or obtained by MFN and their respective agents in connection with the provision of Services. **“Regulated Customer Data”** is that Customer Data of which the use, processing or transfer is regulated by law or regulation as “personal data” where MFN or their respective agents come into possession of such Customer Data.
- 1.1.7. **“Customer Equipment”** shall mean any hardware, software, systems, cabling and facilities provided by the Customer and used in conjunction with the Service Equipment in order to receive the Service.
- 1.1.8. **“Customer Site”** shall mean the physical location specified in a Service Detail at which a Service is to be provided.
- 1.1.9. **“Effective Date”** shall mean the date of signature of the Party signing this Agreement last in time.
- 1.1.10. **“Emergency Works”** mean works, the execution of which, at the time it is proposed to execute them, is required to put an end to, or prevent, the arising of circumstances then existing or imminent that are likely to cause: (i) danger to persons or property; (ii) the interruption of any service provided by the Network or the network generated by a third party; (iii) substantial loss to MFN or any third party; and such other works as in all the circumstances it is reasonable to execute with those works.

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- 1.1.11. "**Force Majeure Event**" shall mean any cause beyond a Party's reasonable control affecting the performance of its obligations, including, but not limited to, fire, flood, explosion, accident, war, acts of terrorism, power outages, strike, embargo, governmental requirement, civil or military authority, Act of God, changes to laws or regulations, inability to secure materials or services, industrial disputes and acts or omissions of other providers of telecommunications services.
- 1.1.12. "**Internet**" shall mean the international interconnected network of networks using the TCP/IP protocol to exchange data communications.
- 1.1.13. "**IP Network**" shall mean the optical fibre infrastructure and routes (and associated hardware installations), points of presence, network hubs, and host computers owned, operated or used by MFN in connection with the provision of the Service.
- 1.1.14. "**Party**" shall mean MFN or the Customer (as the context requires), and "**Parties**" shall mean both MFN and Customer.
- 1.1.15. "**Ready for Service Notification**" means a notification that may be provided in accordance with clause 3.1 that, with respect to MFN obligations hereunder, the Service is ready for use.
- 1.1.16. "**Service**" shall mean the specific Telecommunications Service or Internet Service provided by MFN to the Customer, and as detailed in the Annexure A - Service Detail.
- 1.1.17. "**Internet Service**" shall mean a service providing access to the Internet across the IP Network together with any related Service Equipment or support services.
- 1.1.18. "**Telecommunications Service**" shall mean a service providing telephony services utilising the IP Network.
- 1.1.19. "**Service Confirmation Schedule**" means a MFN service confirmation schedule signed by both Parties confirming that the Services ordered in the Services Detail have been implemented and completed , and that necessary tests have been carried out to the satisfaction of the Customer.
- 1.1.20. "**Services Detail**" shall mean Annexure A and/or any applicable sales order, purchase order and Service Confirmation Schedule (which shall for the avoidance of doubt be annexed hereto and the content of which shall incorporate by reference herein) (and any future amendments or additions thereto) detailing the specific Service to be provided to the Customer.
- 1.1.21. "**Service Equipment**" shall mean the hardware, software, systems, cabling, and facilities provided by MFN at the Customer Site in order to make available the Service to the Customer. Service Equipment shall not include the IP Network or any hardware or software that is the subject of a separate supply contract between MFN and the Customer.

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- 1.1.22. “**Service Level Agreement**” or “**SLA**” means the service level agreement annexed to this Master Services Agreement as Annexure B;
- 1.1.23. “**Service Term**” shall mean the total period for which the Service is provided as indicated in the Service Detail. The “**Initial Service Term**” shall mean the agreed term as stated on the Service Detail commencing from the Billing Start Date or, if not stated, a minimum of one year from the Billing Start Date, unless the contrary is clearly indicated in the Service Detail.
- 1.1.24. “**Signature Date**” means the date of signature of this Agreement by the Party last signing in time.
- 1.2. Unless the context otherwise requires, in this Agreement, a reference to:
- 1.2.1. a person includes a reference to a body corporate, association or partnership;
- 1.2.2. a person includes a reference to that person’s legal personal representatives, successors and permitted assigns;
- 1.2.3. any statute or statutory provision includes references to that statute or provision as amended, modified or re-enacted; and
- 1.2.4. a document is a reference to that document as supplemented or varied from time to time.
- 1.3. No provision of the Agreement is intended to contravene the applicable provisions of the Consumer Protection Act with respect to a defined “Consumer”, and therefore all provisions of the Agreement to the extent that the Agreement or any goods and services provided under the Agreement documents are governed by the Consumer Protection Act of 2008, must be treated as qualified, to the extent necessary, to ensure that the applicable provisions of the Consumer Protection Act are complied with.
- 1.4. In the event of any inconsistency between this Master Services Agreement and any Annexure, the order of precedence shall be Annexure A, Service Detail form, the main body of this Master Services Agreement and then the Service Level Agreement.

2. Service Provision

- 2.1. MFN shall provide the Service to the Customer as indicated in the Service Detail or applicable Services Confirmation Schedule, and Customer agrees to acquire the Services from MFN. MFN will provide the Services in accordance with the provisions of the Service Level Agreement attached hereto as Annexure B.
- 2.2 Before Service delivery commences, MFN is entitled to carry out, to MFN’s satisfaction, appropriate credit checks against the Customer, to which the Customer hereby consents.
- 2.2 In addition to Agreement terms, the Services shall be subject to all mandatory legal requirements in the jurisdiction where the Service is to be provided, including but not limited to the regulatory and data protection requirements.

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- 2.3 Without releasing it from any of its obligations, MFN shall be entitled at any time, and without notice, to use subcontractors to perform some or all of its obligations.
- 2.4 The terms and conditions of this Service Agreement and the Charges for a Service provided hereunder are agreed expressly on the condition that the Customer shall not resell, charge, transfer or otherwise dispose of the Service (or any part thereof) to any third party.
- 2.5 MFN reserves the right from time to time to change the configuration of the IP Network or the Service Equipment, or to change any applicable access code for receipt of a Service, provided always that such change does not materially affect the relevant Service. MFN shall use commercially reasonable endeavours to give the Customer timeous notice of any such changes to access codes.
- 2.6 This Agreement shall commence on the Signature Date and shall continue until the service terms for all Services set out in each Service Detail have expired or terminated, unless terminated earlier in terms of this Agreement.
- 2.7 After the Initial Service Term, a Service shall be automatically renewed on a monthly basis on the same terms and conditions (except for pricing) or on any amended terms if mutually agreed in writing or as provided for in a Service Detail.

3 Service Activation

- 3.1 After installation of a Service, but prior to the activation of a Service, MFN shall conduct such tests as it considers to be appropriate to determine that all necessary work has been done to provide the Service to the Customer and, upon successful completion of such tests, MFN shall use reasonable endeavours to deliver a Ready for Service Notification to the Customer.
- 3.2 The Billing Start Date for the Service shall be:
 - 3.2.1 where the Service as set out in the Service Detail can be implemented by means of a billing change and/or system configuration changes, the commencement date as indicated on the Service Detail.
 - 3.2.2 where the Service is a new service and/or requires on-site installation to be performed, the event described below that occurs first in time: -
 - 3.2.2.1 The date on which the Customer delivers to MFN a signed confirmation schedule, being the "Acceptance Date"; or
 - 3.2.2.2 The date the Customer first uses the Service, being the deemed "Acceptance Date" and "Service Activation Date"; or
 - 3.2.2.3 In the case where Customer through no fault of MFN fails to deliver a confirmation schedule to MFN, to use the Service or to complete its obligations necessary to use the Service, then the date on which MFN delivers a ready for Service Notification (which shall also be the "Completion of Connection" or deemed "Service Activation" date);

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4 Charges and Payment terms

- 4.1 The Customer shall pay the Charges in accordance with this clause 4.
- 4.2 Subject to the provisions of clauses 4.3 and 4.8, the Charges shall not be increased during the Initial Service Term.
- 4.3 Call Charges to:
 - 4.3.1 South African numbers shall be determined with regards to the relevant call termination rates as applicable from time to time.
 - 4.3.2 International numbers shall be determined in accordance with the rates and billing methodologies as charged by the upstream international termination partners from time to time which shall be set out in the invoice
- 4.4 Charges shall accrue from the Billing Start Date and may be invoiced by MFN for:
 - 4.4.1 Call Charges and/or Usage Charges monthly in arrears or advance, as the case may be as determined in the Service Detail or Service Confirmation Schedule.
 - 4.4.2 Installation Charges and/or Start Up Charges MFN on or at any time after the Effective Date.
 - 4.4.3 Rental Charges and/or Monthly Fees monthly in advance. Service(s) provided for part of a month will be charged on a pro-rata basis.
- 4.5 Any invoice for Charges shall be due on issue of the invoice and shall be paid by the Customer within seven (7) days of delivery of a statement to the Customer without deduction or demand, free of exchange in the MFN account for payment.
- 4.6 Interest shall accrue on any overdue invoice from the due date until payment (whether before or after judgement) at the maximum rate permissible to be charged under the provisions of the National Credit Act in relation to incidental credit.
- 4.7 All Charges or other sums which may from time to time be due, owing or incurred to MFN are stated exclusive of value added tax and any similar sales tax, levy or duty which shall be payable by the Customer and invoiced by MFN at the then prevailing rate where the Service is provided.
- 4.8 The Customer agrees to comply with any Initial Service Term commitment. Any breach by the Customer of its obligation under this clause 4.8 shall, in addition to constituting a material breach of this Agreement, shall entitle MFN to levy an early termination fee ("Termination Fee") equal to:
 - 4.8.1 in the event that the Service is terminated prior to the Service Commencement Date, the Customer shall be liable for all Call Charges, Usage Charges and NRC plus the Monthly Fee for 3 (three) months;
 - 4.8.2 in the event that a Service is terminated subsequent to the Service Commencement Date and the term for the Services is 12 (twelve) months or less, 100% of the Monthly Fee for the remainder of the Service Term;

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- 4.8.3 in the event that a Service is terminated subsequent to the Service Commencement Date and the term for the Services is greater than 12 (twelve) months, 100% of the Monthly Fee for the terminating Service for the remainder of the first 12 months and 50% of the Monthly Fee for terminating Service for each month of the remaining Service Term thereafter.
- 4.9 In each case provided that should Customer be a “Consumer” as this term is defined in the Consumer Protection Act and regulations, then Metrofibre shall be entitled to charge Customer all Voice Charges, Call Charges, data charges, Set-up and Installation Charges plus the Monthly Fee for a period of not less than 3 (three) months for a Service term of 12 months or a Monthly Fee of 6 (six) months for a Service term of greater than 12 (twelve) months. The Customer hereby acknowledges such amount to be reasonable and a genuine estimate of MFN’s loss.
- 4.10 The Parties acknowledge that the termination charges above shall not be construed as “penalties” or “conventional penalties” for the purposes of interpretation of this Agreement.

5 MFN Obligations

- 5.1 In performing its obligations under this Agreement, MFN shall at all times exercise the reasonable skill and care of a competent provider of Internet related services.
- 5.2 MFN shall use reasonable endeavours to ensure that each Service will conform to any service descriptions and/or service levels as set out, or referred to, in the Service Detail and/or any applicable ancillary Service Level Agreements. MFN shall procure that the Services shall be made available to Customer on the Service Activation Date.
- 5.3 Customer shall inform MFN of any problems with the Services within 48 (forty eight) hours of the Service Activation Date, failing which the Services shall be deemed to be accepted by Customer.
- 5.4 Except as expressly set out in this Services Agreement, all warranties, representations or agreements, with respect to the provision of a Service or otherwise, whether oral or in writing and whether express or implied, either by operation of law, statute or otherwise, are excluded to the extent permitted by law. Without limiting the generality of the foregoing MFN does not warrant that the Services will be uninterrupted or error free, or that defects in the Services will be remedied. Customer assumes and accepts all risk associated with the use of the Services.**
- 5.5 MFN warrants that it is duly organised, validly existing and in good standing under the laws of South Africa and possesses all the authority and necessary licenses and/or permits as required under law to enter into and perform its obligations hereunder.

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6 Service Suspension

- 6.1 MFN may, at its sole discretion and without prejudice to any right which it might have to terminate this Agreement, elect to immediately suspend the provision of the Service (or part thereof) in any of the following circumstances:
- 6.1.1 MFN has reasonable grounds to consider it is entitled to terminate the Service and/or this Agreement pursuant to clause 7;
 - 6.1.2 MFN is obliged to comply with an order, instruction or request of a court, government agency, emergency service organisation or other administrative or regulatory authority;
 - 6.1.3 MFN needs to carry out Emergency Works to the IP Network or Service Equipment;
 - 6.1.4 MFN has reasonable grounds to consider that the Service is being used fraudulently or illegally or in violation of clause 8.6;
 - 6.1.5 MFN has reasonable grounds to consider that the Customer will not or is unable to make any payment which is due or is to fall due to MFN hereunder;
- 6.2 If MFN exercises its right to suspend the Service (or part thereof) pursuant to clauses 6.1.2 or 6.1.3 it shall, whenever reasonably practicable, give prior notice of such suspension to the Customer, such notice to state the grounds of such suspension and its expected duration. MFN shall in such circumstances use all reasonable endeavours to resume the Service as soon as is practically possible.
- 6.3 If the Service (or part thereof) is suspended as a consequence of the breach, fault, act or omission of the Customer, the Customer shall pay to MFN all reasonable costs and expenses incurred by the implementation of such suspension and/or recommencement of the provision of the Service.
- 6.4 MFN shall not be liable for any loss, damage or inconvenience suffered by the Customer as a result of any suspension made pursuant to clause 6.1, except to the extent that such suspension is made pursuant to clause 6.1.3 and for reasons which are solely and directly attributable to the negligence of MFN.

7 Term and Termination

- 7.1 This Agreement shall take effect on the Effective Date and continue in force for the Term described in the Service detail, which will be calculated from the Billing Commencement Date.
- 7.2 Either Party may terminate this Agreement:
- 7.2.1 subject to the provisions of the Service Detail, on at least 90 days written notice to take effect on or at any time after expiry of the relevant Initial Service Term;
 - 7.2.2 immediately by notice if, in relation to the Service, the other Party has committed a material breach which is incapable of remedy;
 - 7.2.3 immediately by notice if, in relation to the Service, the other Party has committed a material breach capable of remedy, but which it fails to remedy within ten (10) Business Days of having been notified of such breach; or

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- 7.2.4 immediately by notice if, in relation to the Service, a Force Majeure Event subsists for a continuous period exceeding three (3) months;
- 7.2.5 if the other has a receiver or an administrative receiver appointed over it or over any part of its undertaking or assets or passes a resolution for winding up (other than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect or if the other becomes subject to an administration order or enters into any voluntary arrangement with its creditors or ceases or threatens to cease to carry on business, or undergoes or is subject to any analogous acts or proceedings under any foreign law, or commences business rescue proceedings.
- 7.3 MFN may terminate the Agreement immediately by notice if a suspension of a Service pursuant to clauses 6.1.4 or 6.1.5 has continued for a period of at least two (2) consecutive months.
- 7.4 If MFN has reasonable grounds to consider that there has been a violation of clause 8.6.2, MFN may notify the Customer and require it to remedy the violation in the event of an incident involving a violation of public law or regulation or an imminent threat to the IP Network, immediately; or in all other cases, within forty-eight (48) hours. If the Customer fails to notify MFN that such a remedy has been effected in accordance with this clause 7.4 or if MFN reasonably determines that the violation is continuing or is likely to occur again, MFN may terminate this Agreement (or relevant Service) immediately upon notice to the Customer.
- 7.5 Notwithstanding the provisions of clauses 7.2 and 7.1, MFN may terminate the Agreement on five (5) Business Days' notice if the Customer fails to make any payment, when due, in accordance with the terms of this Agreement.
- 7.6 Without prejudice to accrued rights or obligations, upon termination of the Agreement:
- 7.6.1 all Services shall terminate immediately;
- 7.6.2 notwithstanding the provisions of clause 4, all accrued Charges not yet invoiced shall become due and shall be paid by the Customer immediately on receipt of an invoice;
- 7.6.3 where the termination is as a result of breach of the Customer, any applicable early termination charges will become due and payable immediately; and
- 7.6.4 each Party shall promptly return to the other Party all copies of the other Party's Confidential Information and, if requested, verify to the other Party that it has done so.
- 7.7 Termination of this Agreement shall not affect a clause that necessarily or by its context requires survival of this Agreement.

8 Customer Obligations

- 8.1 The Customer shall grant or shall procure the grant to MFN or its authorised representatives of such rights of access to each Customer Site, including any necessary licences, waivers or consents to enable it to perform its obligations or exercise its rights under this Agreement. The Customer shall advise MFN in writing of all health and safety

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rules and regulations and any other reasonable security requirements applicable at the Customer Site, and MFN shall use all reasonable endeavours to observe and ensure that its employees and authorised representatives observe such regulations and requirements as advised whilst at the Customer Site. Customer is responsible for maintaining the Customer site.

- 8.2 The Customer shall provide MFN with such facilities and information as MFN may reasonably require, to enable it to perform its obligations or exercise its rights under the Agreement.
- 8.3 The Customer warrants and undertakes that it shall:
- 8.3.1 use the Service Equipment only for the purpose of receiving the Service and in accordance with MFN's reasonable instructions from time to time and/or any software licence that may be provided with the Service Equipment;
 - 8.3.2 not move, modify, relocate, or in any way interfere with the Service Equipment (or any words or labels on the Service Equipment) or the Network;
 - 8.3.3 not cause the Service Equipment to be repaired or serviced except by an authorised representative of MFN;
 - 8.3.4 insure and keep insured all Service Equipment installed at each Customer Site against theft and damage;
 - 8.3.5 not create or allow any charges, liens, pledges or other encumbrances to be created over the Service Equipment. Title to the Service Equipment shall at all times belong and remain with MFN, an MFN affiliate or their subcontractors;
 - 8.3.6 permit MFN to inspect, test, maintain and replace the Service Equipment at all reasonable times;
 - 8.3.7 comply with MFN's reasonable instructions in relation to the modification of the Customer Equipment to enable the Customer to receive the Service, at its own expense; and
 - 8.3.8 upon termination of a Service, allow MFN access to each Customer Site to remove the Service Equipment. Should any construction or alteration to the Customer Site have occurred to facilitate any Service, MFN is not obliged to restore the Customer Site to the same physical state as prior to Service delivery.
- 8.4 The Customer shall be liable for any and all damage to Service Equipment or the IP Network which is caused by:
- 8.4.1 the act or omission of the Customer (including but not limited to Customer's employees, agents, contractors, suppliers or officers) or the Customer's breach of the terms of this Agreement; or
 - 8.4.2 malfunction or failure of any equipment or facility provided by the Customer or its agents, employees, or suppliers, including but not limited to the Customer Equipment;
- 8.5 The Customer warrants that it holds and shall continue to hold such licences and/or other authorisations as are required under any relevant legislation, regulation or administrative order, to receive the Services and to run and connect the Customer Equipment to the Network and Service Equipment. MFN reserves the right to disconnect any Customer Equipment where the Customer has failed to comply with the provisions of this clause 8.5

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and MFN shall in no event be liable in respect of the Customer's failure to comply with this clause 8.5.

8.6 The Customer warrants and undertakes that it shall in its use of the Services comply with:

8.6.1 any relevant legislative and regulatory provisions and shall not use the Services for any illegal or immoral purpose, the requirements and obligations imposed on Customer in terms of the Protection of Personal Information Act (as amended) and any regulations thereto; and

8.6.2 the current version of the MFN Acceptable Use Policy (the "Policy"). The applicable Policy shall be available on the MFN website. The Customer shall, prior to commencing its use of the Service(s), read and understand the Policy. MFN reserves the right to change the Policy from time to time, effective upon posting of the revised Policy on its website and by notice to the Customer.

8.7 Customer indemnifies and holds MFN harmless against any and all liabilities, losses, claims, damages judgements, causes of action, and costs (including attorney fees on an attorney and own client basis and disbursements) which MFN may hereafter incur, suffer, or be required to pay, defend, settle (subject to any limitations set out in this Agreement), or satisfy as a result of Customer's use of the Services or any breach by Customer of its warranties set out herein or the terms any provision of this Agreement or any third party claim or allegation arising out of or relating to the use of the Service, and which relates to any act or omission of the Customer which is, or if substantiated would be, a breach of this clause 8.6.

9 Liability

9.1 Subject to clauses 9.4 and 10 each Party's total liability to the other arising in connection with the Agreement shall be limited to:

9.1.1 For any event or series of connected events a value equal to six times the value of the average monthly billing of the affected Service(s); and

9.1.2 notwithstanding clause 9.1.1, a maximum amount in aggregate in any twelve (12) month period of twelve times the value of the average monthly billing of the affected Service(s);

the average being calculated using three months of billing prior to the aforementioned event or series of connected events.

9.2 Subject to clause 9.4 but otherwise notwithstanding anything else in this Agreement, neither Party shall in any event be liable to the other for indirect or consequential losses or otherwise for harm to business, loss of revenues, loss of anticipated savings or lost profits, whether or not reasonably foreseeable at the time when the Agreement was entered into.

9.3 The Customer acknowledges that MFN is unable to exercise editorial or other control over any content placed on or accessible through the Customer's use of the Services and MFN shall have no liability as to the quality, content or accuracy of information received through or as a result of the use of the Services.

9.4 Nothing in this Agreement shall serve to limit either Party's liability in respect of death or personal injury caused by or arising from its negligence, or any liability arising pursuant to the clauses 4, 8.5, 8.6, and 11.

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10 Force Majeure

Notwithstanding anything herein to the contrary, neither Party shall be liable to the other for any delay, failure in performance of any part of this Agreement (other than for payment obligations set out in clause 4) or damages suffered to the extent that such delay or failure is attributable to a Force Majeure Event. Subject to clause 7.2.4, any such delay or failure shall suspend the Agreement until the Force Majeure Event ceases and the length of the suspension shall extend the affected Initial Service Term(s).

11 Intellectual Property, IP Addresses and Domain Names

11.1 The Customer acknowledges:

11.1.1 that any and all patents, registered and unregistered designs, copyrights, trademarks and all other intellectual property rights whatsoever and wherever enforceable, which are used in connection with the Service and/or Service Equipment, shall remain the sole property of MFN, its contractors or suppliers; and

11.1.2 without limitation to the foregoing, that the Customer shall not be entitled to use the name, trademarks, trade names or other proprietary identifying marks or symbols of MFN without MFN's prior written consent.

12 Confidentiality

12.1 Subject to clause 12.2, each Party hereunder, shall:

12.1.1 only use Confidential Information for the purposes of the Agreement;

12.1.2 only disclose Confidential Information to a third party with the prior written consent of the other Party (except that either Party may disclose Confidential Information on a need to know-basis, to its employees, agents or contractors, including professional advisors or auditors; and

12.1.3 ensure that any third party to whom Confidential Information is disclosed executes a confidentiality undertaking substantially similar to the terms of this clause 12.

12.2 The provisions of clause 12.1 shall not apply to any Confidential Information which: (i) is in or comes into the public domain other than by breach of this clause 12; or (ii) is or has been independently generated by the recipient Party; or (iii) is properly disclosed pursuant to a separate written consent or a statutory obligation, the order of a court of competent jurisdiction or the requirement of a competent regulatory body.

13 Assignment

Neither Party may assign, charge, transfer or otherwise dispose of the Agreement or any rights or obligations therein in whole or in part, without the written consent of the other Party (which consent shall not be unreasonably withheld or unduly delayed or conditioned), except that MFN may assign any and all of its rights and obligations hereunder: (i) to any MFN affiliate; (ii) to a third party pursuant to any sale or transfer of substantially all the assets or business of MFN or an MFN affiliate; or (iii) to a third party pursuant to any financing, merger, or reorganisation of MFN or an MFN affiliate.

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14 General

- 14.1 **Severability:** If any provision of the Agreement, including any limitation, is held by a court or any governmental agency or authority to be invalid, void or unenforceable, the remainder of this Agreement shall nevertheless remain legal, valid, and enforceable.
- 14.2 **No Waiver:** Failure or delay by either Party to exercise or enforce any right or benefit conferred by the Agreement, including MFN'S right to deliver invoices in accordance with clause 4, shall not be deemed to be a waiver of any such right or benefit nor operate so as to bar the exercise or enforcement thereof or of any other right or benefit on any later occasion.
- 14.3 **Relationship:** Nothing in this Agreement and no action taken by the Parties pursuant to this Agreement shall constitute or be deemed to constitute between the Parties a partnership, agency, association, joint venture or other co-operative entity.
- 14.4 **Third Party Beneficiaries:** Except as otherwise contemplated by this Agreement, nothing herein will create or confer any rights or other benefits in favour of any person other than the Parties.
- 14.5 **Variation:** This Agreement (or any part thereof) shall be modified only by the written agreement of the Parties.

15 Notices

- 15.1 Except as otherwise expressly provided for herein, any notice required or authorised to be given under the Agreement shall be delivered by hand, prepaid registered post, by facsimile transmission or by email to the address stated on the first page of this Agreement and shall be deemed to have been served (unless the contrary is proven):
- 15.1.1 If delivered by hand, on the next Business Day;
 - 15.1.2 If sent by registered post, 10 Business Days after such posting;
 - 15.1.3 If sent by facsimile transmission, the next Business Day;
 - 15.1.4 If sent by email and the message is not returned, the next Business Day.
- 15.2 Notwithstanding the provisions of this clause, any legal notice that has been sent or transmitted and that have been received by the other party shall be deemed to have been delivered in accordance with the terms of this Agreement.

16 Entire Agreement

This Agreement sets out the entire agreement between MFN and the Customer, superseding all prior or contemporaneous representations, agreements or understandings concerning the subject matter addressed herein.

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17 Dispute Resolution

- 17.1 If the Customer wishes to dispute any invoice or part of an invoice falling due in accordance with clause 4.5, the Customer shall, before the invoice is due for payment, deliver a notice in writing to MFN setting out the nature of its dispute, including: (i) date and number of disputed invoice; (ii) amount in dispute; (iii) reason for dispute; and (iv) supporting documentation, as appropriate. Any undisputed part of a disputed invoice shall be paid by the Customer in accordance with clause 4.5. The Parties shall use all reasonable endeavours to resolve such payment disputes as soon as is reasonably practicable.
- 17.2 In the event of there being any dispute or difference between the Parties arising out of this Agreement the said dispute or difference shall on written demand by MFN be submitted to arbitration in Pretoria in accordance with the AFSA rules, which arbitration shall be administered by AFSA
- 17.3 Nothing herein contained shall be deemed to prevent or prohibit a Party to the arbitration from applying to the appropriate court for urgent relief or for judgment in relation to a liquidated claim.
- 17.4 The Parties agree that the commencement of arbitration proceedings shall be deemed to be a legal process for the purpose of interrupting extinctive prescription in terms of the Prescription Act, 1969.

18 Customer Data and Privacy

- 18.1 The Customer acknowledges that MFN and its respective contractors will, by virtue of the provision of Services, come into possession of Customer Data.
- 18.2 MFN has implemented and maintains appropriate technical and organisational measures to protect Customer Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access and against other unlawful forms of processing. The Customer acknowledges that it has a right to access Regulated Customer Data upon written notice and have any agreed errors in such Regulated Customer Data rectified.
- 18.3 The Customer acknowledges and agrees that MFN and its respective subcontractors may use or process Customer Data:
- 18.3.1 in connection with the provision of Services;
 - 18.3.2 to incorporate Customer Data into databases controlled by MFN for the purpose of administration, provisioning, billing and reconciliation, verification of Customer identity and solvency, maintenance, support and product development, fraud detection and prevention, sales, revenue and customer analysis and reporting, market and customer use analysis, and
 - 18.3.3 to communicate to the Customer by voice, letter, fax or email regarding products and services of MFN.

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The Customer may withdraw consent for such use, processing or transfer of Customer Data as set out above by sending a written notice to MFN to such effect, unless it is required to (i) provision, manage, account and bill for the Services; (ii) carry out fraud detection; or (iii) comply with any statutory obligation, regulatory requirement or court or other public authority order.

18.4 The Customer warrants that it has obtained and will obtain all legally required consents and permissions from relevant parties (including data subjects) for the use, processing and transfer of Customer Data as described in this clause 18.

19 Governing Law and Jurisdiction

This Agreement shall be governed and construed in accordance with South African law, and the Parties hereto irrevocably agree to the exclusive jurisdiction of the South African courts.

Executed as an agreement by the Customer and MFN, intending hereby to be legally bound, by their authorised officers, on the date written here.

Metro Fibre Networx Proprietary Limited:	Customer:
/s/: _____	/s/: _____
Name: Hendrik Opperman	Name: _____
Title: Chief Operations Officer	Title: _____
Date: _____	Date: _____

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Annexure A

Service Detail

Voice and data bundled services as detailed in the Sales Order which is attached hereto, and the content of which is incorporated into this Agreement by reference.

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Annexure B

Service Level Agreement