



## WHOLESALE MASTER SERVICES AGREEMENT

Between

**METRO FIBRE NETWORK (PROPRIETARY) LIMITED**

(Registration No. 2007/024366/07)

(Herein after "Metrofibre")

And

\_\_\_\_\_

(Registration No. \_\_\_\_\_)

(Herein after the "Customer")

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## 1. DEFINITIONS AND INTERPRETATION

- 1.1. In this Agreement, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings:
- 1.1.1. **"AFSA"** means the Arbitration Foundation of Southern Africa;
- 1.1.2. **"Agreement"** means this Master Services agreement, including all annexures hereto, and any Service Confirmation Schedule executed pursuant to the terms of this Agreement;
- 1.1.3. **"Customer"** means \_\_\_\_\_ a company duly registered under the company laws of the Republic of the South Africa with registration number \_\_\_\_\_ and having its principal place of business at \_\_\_\_\_;
- 1.1.4. **"Charges"** shall mean all charges and/or fees payable by the Customer to Metrofibre for the Services;
- 1.1.5. **"Confidential Information"** means any information or data which by its nature or content is identifiable as confidential and/or proprietary to a Party and/or any third party, or which is provided or disclosed in confidence;
- 1.1.6. **"Customer Equipment"** means customer premises equipment (modems, routes etc), or any networks or network equipment not owned or controlled by Metrofibre;
- 1.1.7. **"Consumer Protection Act"** means the Consumer Protection Act, No. 68 of 2008, as amended from time to time, and any regulations thereto;
- 1.1.8. **"Documentation"** means the documentation supplied by Metrofibre to the Customer;
- 1.1.9. **"Effective date"** means \_\_\_\_\_ 201\_\_ notwithstanding the date of signature of this Agreement by the last Party signing;
- 1.1.10. **"ECA"** means the Electronic Communications Act 36 of 2006, as amended from time to time;
- 1.1.11. **"End User"** means those persons or entities with whom the Customer concludes End User Agreements for the resale or lease of the Services;
- 1.1.12. **"End User Agreement"** means the agreement concluded between the Customer and the End User;
- 1.1.13. **"End User Premises"** shall mean the location or locations occupied by the Customer and/or its End Users to which the Services are delivered as specified in the SCS;

- 1.1.14. "**Facilities**" shall mean any property owned, licensed or leased by Metrofibre, including points of presence ("POP"), but does not include Customer Equipment, and used to deliver the Services;
- 1.1.15. "**Force Majeure Event**" means any circumstances beyond the Parties' reasonable control including, without limitation, war, national emergency, civil disturbance, theft, fire, flood, explosion, natural disaster, unusually severe weather conditions, prohibitive legislation or regulations and failure of power or utility supplies (including electronic communications);
- 1.1.16. "**Intellectual Property**" means any know-how (not in the public domain), invention (whether or not patented), design, trademark, or copyright material (whether or not registered), goodwill, processes, process methodology and all other identical or similar intellectual property as may exist anywhere in the world and any applications for registration of such intellectual property, which specifically includes all copyright, design rights and any other proprietary rights in and to any business plans and proposals, business processes and functional and technical specifications and any related material;
- 1.1.17. "**MRC**" means monthly recurring cost as set out in the applicable Order Form;
- 1.1.18. "**Metrofibre**" means Metro Fibre Networx (Proprietary) Limited, a company duly registered under the company laws of the Republic of the South Africa with registration number 2007/024366/07 and having its principal place of business at Eco Square, 298 Witch-Hazell Avenue, Highveld Ext. 71, Centurion, 0157, Gauteng, South Africa;
- 1.1.19. "**Metrofibre Equipment**" means any Metrofibre equipment or products, including any Facilities, or any other equipment or products which are supplied to the Customer by Metrofibre (for use in conjunction with the Services) for lease to End Users;
- 1.1.20. "**NRC**" means non-recurring charge and includes all installation costs, access build costs and third party connection costs;:
- 1.1.21. "**Order Form**" shall mean a request for Services submitted by Customer to Metrofibre, submitted on the "Quote for New Services Form attached hereto as Annexure B;
- 1.1.22. "**Party**" means either of the signatories to this Agreement and "Parties" means both of them collectively and shall be deemed to mean and include their respective successors and permitted assigns;
- 1.1.23. "**Prime Rate**" means the prime rate published by Metrofibre's principle bankers, as certified by any representative of that bank whose appointment and designation it will not be necessary to prove;
- 1.1.24. "**Services**" means the services provided by Metrofibre to the Customer as more fully described in the Service Confirmation Schedule, including the provision of Metrofibre Equipment and Facilities;

- 1.1.25. "**Service Activation Date**" means the service activation date set forth in the Service Confirmation Schedule or the date that the Services actually commence, whichever is the earlier;
- 1.1.26. "**Service Confirmation Schedule or SCS**" means a schedule signed by both Parties in confirmation that the service ordered has been implemented and completed. and the necessary tests have been executed, and the wholesaler accepts this as the formal handover document attached hereto as Annexure D.
- 1.1.27. "**Service Levels**" means the specific performance levels applicable to the provision of the Services selected by Customer in a Service Confirmation Schedule as detailed in the Service Level Agreement attached as Annexure C to this Agreement;
- 1.1.28. "**Service Term**" means the time period, including periods of renewal, specified in each Service Confirmation Schedule during which the Services specified therein are to be provided;
- 1.1.29. "**Territory**" means Republic of South Africa; and
- 1.1.30. "**VAT**" means value-added tax, chargeable under the VAT Act of 1991.
- 1.2. In this Agreement:
- 1.2.1. headings and the heading of the Agreement are for convenience only and are not to be used in its interpretation;
- 1.2.2. a natural person includes a juristic person and vice versa;
- 1.2.3. the singular includes the plural and vice versa; and
- 1.2.4. a Party includes a reference to that Party's successors in title and assigns allowed at law.
- 1.3. Any reference in this Agreement to:
- 1.3.1. "business hours" shall be construed as being the hours between 08h30 and 17h00 on any business day. Any reference to time shall be based upon South African Standard Time;
- 1.3.2. "days" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;
- 1.3.3. "person" means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality; and
- 1.3.4. "writing" means legible writing and in English and excludes any form of electronic communication contemplated in the Electronic Communications and Transactions Act, No 25 of 2002.

- 1.4. The words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 1.5. Terms, other than those defined in this agreement, will be given their plain English meaning, and those acronyms and phrases known in the information technology and telecommunications industries will be interpreted in accordance with their general accepted meanings;
- 1.6. Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.
- 1.7. The rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply.
- 1.8. No provision of this Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (*stipulatio alteri*) who is not a Party to this Agreement.
- 1.9. In the event that there is a conflict between the provisions of any Service Order, Purchase Order, the terms of the SLA and the Master Services Agreement, the order of precedence shall be any SCS, the SLA and then this Agreement.

## **2. COMMENCEMENT AND DURATION**

- 2.1. This Agreement shall come into effect on the Effective Date and shall continue in force for an indefinite period unless terminated by either Party in accordance with its terms.
- 2.2. The initial term of each Order Confirmation Schedule shall commence on the Service Activation Date and shall expire on the date set forth in the applicable Service Confirmation Schedule ("Initial Service Term"). After the expiry of the Initial Service Term, the Service Confirmation Schedule shall automatically renew on a month-to-month basis unless terminated by either Party on thirty (30) days' written notice.
- 2.3. Notwithstanding the termination of this Agreement for any reason whatsoever, a Service Confirmation Schedule shall remain in force until termination thereof and shall remain subject to the terms of this Agreement.

## **3. APPOINTMENT**

- 3.1. Metrofibre hereby grants the Customer the right, on a non-exclusive basis, to resell the Services within the Territory, which appointment the Customer accepts, subject to the terms and conditions of this Agreement.

- 3.2. The Customer shall not, whether directly or indirectly, for the duration of this Agreement, by itself or with others, participate in any illegal, deceptive, misleading or unethical practices including, but not limited to, disparagement of the Services or Metrofibre or other practices which may be detrimental to Metrofibre or the public interest;
- 3.3. Metrofibre reserves the right, in its absolute discretion to market, promote, sell, resell and support the Services and/or any similar products or services directly and/or through other Customers of its products.

#### **4. METROFIBRE OBLIGATIONS**

- 4.1. Metrofibre shall make the Services available to the Customer for resale as specified in each Service Confirmation Schedule.
- 4.2. Metrofibre agree to implement, follow up and support Services, in accordance with any Service Level Agreement as the Parties deem appropriate in order to foster satisfactory business relationship between Metrofibre and the Customer and the End Users;
- 4.3. Metrofibre shall designate and maintain an Account Manager for the Customer who will liaise closely with the Customer and act as primary interface for the Customer with Metrofibre.
- 4.4. Metrofibre shall inform the Customer about new developments and modifications to the Services or required equipment.
- 4.5. In terms of the Metrofibre Equipment necessary to provide the Service, where required:
  - 4.5.1. Metrofibre shall ensure that the Metrofibre equipment and, in the event where the equipment consist of more than one component, that each component shall be delivered for installation only at the End User Location on or before the estimate delivery date; and
  - 4.5.2. Metrofibre shall ensure that all equipment shall be installed at the End User location in accordance with the manufactures specifications at Metrofibre's standard rates.
- 4.6. Metrofibre shall be responsible for 2<sup>nd</sup> and 3<sup>rd</sup> line support services to the Customer as set out in the Service Level Agreement;

#### **5. OBLIGATIONS OF THE CUSTOMER**

- 5.1 The Customer agrees to at all times during the term of this Agreement and in the performance of its obligations hereunder conform and adhere to industry and professional standards and use all reasonable skill and care of a professional distributor of the Service. In particular, but without prejudice to the generality of the above, the Customer shall:

- 5.1.1. Comply with any and all relevant legislation applicable to an internet service provider, value added seller or Customer of services, as the case may be, and notwithstanding the generality of the foregoing, shall further comply with the requirements imposed on Customer in terms of the Protection of Personal Information Act, No. 4 of 2013 (as amended) and any regulations thereto;
  - 5.1.2. when selling the Service, provide prospective End Users with complete and detailed information about the Services and refrain from making or giving any promises, warranties, guarantees or representations, whether express or implied, concerning the Services except such as are consistent with any Documentation supplied by Metrofibre to the Customer under this Agreement;
  - 5.1.3. ensure that it possesses all necessary skills, experience and qualifications to perform their duties in a professional manner;
  - 5.1.4. Maintain an electronic communications network as may be reasonably required by applicable laws and Metrofibre so that it may discharge its obligations in terms of this Agreement. The Customer shall keep its network connected that of Metrofibre;
  - 5.1.5. Warrant, as it hereby does by its signature hereto, that it either possesses an electronic communications service license or is exempted from licensing under section 6 of the ECA. The Customer further warrants that it shall remain authorised to maintain and operate an electronic communications network for the purposes of connecting with Metrofibre's network for the duration of this Agreement.
- 5.2 The Customer shall be responsible for and hereby undertakes to:
- 5.2.1 co-ordinate and enter into the End User Agreements with each End User which shall impose on its End Users Customer' obligations imposed in terms of this Agreement, and comply with its obligations specified therein;
  - 5.2.2 ensure that all the equipment, systems and operations which it uses to resell the Services to End Users shall at all times be of a minimum standard required by law and further be of a standard no less than the standards which are in compliance with the best practice for similar services;
  - 5.2.3 not to enter into any transaction or conclude any agreement or other arrangement on behalf of Metrofibre, save for any transactions contemplated in this Agreement;
  - 5.2.4 at all times to honestly, fairly, accurately, and in good faith portray Metrofibre's Service to prospective End Users;
  - 5.2.5 provide 1<sup>st</sup> and 2<sup>nd</sup> line support to the End User, problems relating to the Service that cannot be resolved shall be escalated to Metrofibre; and
  - 5.2.6 use adequate numbers of properly qualified personnel with suitable training, education, experience and skill to perform its obligations under the Agreement.

## **6. CUSTOMER ORDER PROCEDURE**

- 6.1. The Customer shall order new Services or change existing Services by submitting an Order Form to Metrofibre specifying the new and/or changed Services required.



- 6.2. Metrofibre will submit a Service Confirmation Schedule to the customer acknowledging acceptance of the signed quotation/order and is thereby obliged to provide the requested services.
- 6.2.1. Metrofibre shall be entitled to request, on receipt of an Order Form and prior to the issuing of the Service Confirmation Schedule in terms of clause 6.2, information related to the Customer's creditworthiness. For the avoidance of doubt the Parties agree that Metrofibre is authorised to conduct all reasonable credit checks and searches.
- 6.3. Each SCS shall create, subject to the terms and conditions of this Agreement, an individual contractual relationship between the Parties for the provision of the Services for the duration of the applicable Service Term. The provisions of the SCS, once signed by the Customer, shall prevail over the terms and conditions of this Agreement to the extent that there is any conflict between the provisions of the SCS and this Agreement.

## **7. CONNECTION AND SERVICE COMMENCEMENT**

- 7.1. Metrofibre shall use best effort to ensure that the Services are made available to the Customer and/or End User on the Service Activation Date and shall promptly inform the Customer of any delay in meeting the Service Activation Date.
- 7.2. Notwithstanding anything in this Agreement, the Services shall only commence on the Service Activation Date and there will be no obligation on Metrofibre to commence provision of the Services prior to the Service Activation Date.
- 7.3. The Customer shall notify Metrofibre of any problems with the Services within fortyeight (48) hours of the Service Activation Date, failing which, the Services shall be deemed to be accepted by the Customer. In the event that the Customer notifies Metrofibre of a problem regarding the Services within the specified time period in this clause 7.3, Metrofibre shall rectify such problem within a reasonable period of time. Metrofibre will commence billing for the service 120 hours after the Service Activation Date, unless the Customer has notified Metrofibre of a problem with the Service as per this clause.

## **8. ACCESS TO THE CUSTOMER AND/OR END USER PREMISES**

- 8.1. The Customer shall provide Metrofibre with reasonable access to the Customer and/or End User Premises to enable Metrofibre to exercise its rights and fulfil its obligations under this Agreement, subject only to the Customer and End User's reasonable security policies.
- 8.2. The Customer shall remain responsible for providing and maintaining the Customer and/or End User Premises at its own expense. In the event that the Customer and/or End User fails to maintain the Premises, the Customer shall reimburse Metrofibre for the any costs incurred to repair or replace

any Metrofibre Equipment and/or Facilities damaged or destroyed as a result of the Customer and/or End User's failure to maintain the premises.

## **9. ACCEPTABLE USE OF NETWORK AND SERVICES**

9.1. The Customer is solely responsible for ensuring that End Users use the Services lawfully and that the Customer and its End Users comply with all applicable laws and with Metrofibre's Acceptable Use Policy published on <http://www.Metrofibre.co.za>.

9.2. The Customer indemnifies Metrofibre and holds it harmless against any claims:

9.2.1. arising from a breach of this clause 9; and/or

9.2.2. by third parties in respect of prohibited or unlawful activities conducted by the Customer or its End Users.

9.3. The Customer shall not (and shall ensure that the End Users and other third parties, shall not) take any steps or fail to take any steps which directly or indirectly:

9.3.1. rearrange, disconnect, remove, attempt to repair, or otherwise tamper with the Services, without the prior written consent of Metrofibre;

9.3.2. damage Metrofibre's network (or any networks interconnected to Metrofibre) or any part thereof;

9.3.3. cause Metrofibre to breach any of its licence terms or any provision of applicable legislation;

9.3.4. cause the imposition of any lien or encumbrance on the Facilities and/or Metrofibre Equipment;

**9.3.5.** Constitutes an abuse of the Services (in the reasonable opinion of Metrofibre).

## **10. SUSPENSION OF SERVICES**

10.1. Metrofibre may lawfully suspend, withdraw all or part of any Service at any time until further notice to the Customer if, in Metrofibre's reasonable discretion:

10.1.1. the continued provision of the Services will cause Metrofibre to breach an applicable law or be in contravention of its Licenses;

10.1.2. the Customer and/or the End User is in breach of or otherwise is not complying with any of the provisions of this Agreement; and

10.1.3. Any overdue tax invoice for charges billed by Metrofibre to the Customer remains unpaid for longer than 7 (seven) days after written notice to the effect has been served on the customer.

10.2. The exercise of Metrofibre's right to suspend the Services under this clause 10 is without prejudice to any other remedy available to Metrofibre under this Agreement and does not constitute a waiver of Metrofibre's right to subsequently terminate the Agreement.

10.3. Where Metrofibre has suspended the Services in terms of clause 10.1, Metrofibre may:

10.3.1. refuse to reconnect the Services unless precluded by any law or order of court; and

- 10.3.2. if it agrees to reconnect the Services, require the Customer to pay a reconnection fee in advance as a pre-condition to making the Services available again.
- 10.3.3. The Customer remains liable for the applicable fees payable in terms of this agreement during any period of suspension in the circumstances contemplated in 10.3.2 , provided that any suspension in terms shall be subject to the provisions of the SLA.

## **11. FEES AND CHARGES**

- 11.1. All payments payable by the Customer in terms of each Service Confirmation Schedule shall be paid in full without deduction or demand, free of exchange, to Metrofibre, and the Customer shall not be entitled to withhold any part of such payments or to make anything but the full payments due to Metrofibre in terms of each Service Confirmation Schedule.
- 11.2. Metrofibre shall be entitled to adjust the fees and Charges as a result of any regulatory, economical or government imposed factors that impact on such fees and Charges.
- 11.3. The rates payable by the Customer to Metrofibre as set out in each SCS hereof shall escalate annually on the annual anniversary date of the Service Commencement Date of the SCS to such rates as may be agreed between the Parties. Should the Customer not agree to the rate changes, the service may be cancelled with no further penalty payable by the Customer.
- 11.4. Any charges incurred by Metrofibre in the provision of the Service/s will be increased when increases are applied by the suppliers of these services and products to Metrofibre, notification will be provided in writing within 14 days of Metrofibre be made aware of any pending increases. Should the price increase not be agreed to by the Customer, the service may be cancelled without any further penalty payable by the Customer.

## **12. INVOICING**

- 12.1. Invoices rendered by Metrofibre in respect of the Services shall be rendered monthly in advance, except for Charges that are dependent upon usage of the Services, which shall be billed in arrears. Billing for partial months shall be pro-rated based on a calendar month.
- 12.2. All invoices are due payable within thirty (30) days after the date of statement.
- 12.3. If payment is not received by Metrofibre for any reason whatsoever by the due date for payment, then the Customer shall be liable to pay to Metrofibre (and without prejudice to any other right or remedy of Metrofibre):
- 12.3.1. any resulting bank or other charges incurred by Metrofibre consequent thereupon; and

- 12.3.2. any associated reasonable administrative charges including interest that has accrued on the unpaid amount up until the amount (as provided for in clause 12.4) has been received by Metrofibre.
- 12.4. If any amount is overdue, the Customer shall pay interest on the overdue amount at prime rate plus 2% (two percent), such interest to run from the date upon which payment of the relevant amount became due until payment thereof has been made in full (together with interest).
- 12.5. All Charges for the Services are exclusive of applicable taxes. Except for taxes based on Metrofibre's net income, the Customer will be responsible for all applicable taxes. All VAT is payable upon receipt of a valid VAT invoice.
- 12.6. In the event of any dispute arising as to the amount or calculation of any fee or Charge which is payable by Customer; the dispute shall first be referred to the Financial Directors of the Parties. Should the dispute not be resolved within 7 working days, then the matter shall be referred for determination to independent auditors. They shall act as experts and their decision shall be final and binding on Metrofibre. and Customer. The Party at fault, as determined by the independent auditors, shall make payment towards the expenses for the engagement of the independent auditors' services.

### **13. SERVICE LEVELS AND MAINTENANCE**

- 13.1. The SCS shall set forth the service levels specifically applicable to the Services ordered by the Customer.
- 13.2. Metrofibre. shall conduct scheduled maintenance in respect of the Services in such a manner that it does not cause unreasonable outage or interruption of the Services. In the event that scheduled maintenance requires a Service interruption or outage, Metrofibre. shall exercise commercially reasonable efforts to:
- 13.2.1. provide Customer with seven (7) days' prior written notice of such scheduled maintenance;
- 13.2.2. work with Customer in good faith to attempt to minimize any disruption in Customer's services that may be caused by such scheduled maintenance; and
- 13.2.3. perform such scheduled maintenance during the non-peak hours of 12:00 a.m. (midnight) until 6:00 a.m. local time where reasonably possible.

### **14. TERMINATION**

#### **14.1. Termination for Convenience**

- 14.1.1. Either Party shall be entitled to terminate this Agreement by providing the other Party with 30 (thirty) days' prior written notice to that effect.

14.1.2. Termination in accordance with clause 14.1.1 above shall not affect the Service Term of any SCS, which shall continue, in full force and effect, in accordance with the terms and conditions of this Agreement as if this Agreement had not been terminated, until the end of the Service Term of the SCS.

14.1.3. Notwithstanding the Service Term set out in the SCS, the Customer shall be entitled in its sole discretion and without cause, to terminate one or more OCS's (the "Terminating Services") by giving METROFIBRE 30 (thirty) days' prior written notice, which termination shall be subject to the early termination charges set out in clause 15 below.

#### 14.2. **Termination for cause**

14.2.1. In the event that there is a breach by either Party, the non-defaulting Party shall be entitled to provide the defaulting Party with 30 (thirty) days' written notice to remedy such breach, including but not limited to breaches set out below:

14.2.1.1. A meeting of that Party convened to consider or pass a resolution, or a declaration is made in respect of that Party, a petition is presented in respect of that Party, legal proceedings are commenced by or in respect of that Party or any other step is taken, for the provisional or final winding-up, sequestration, judicial management, curatorship or dissolution of that Party's assets, business, undertaking or estate or with a view to a composition, assignment or arrangement with such Party's creditors;

14.2.1.2. The Party being or becoming unable (or admitting its inability) to pay its debts generally as they fall due or being (or admitting to being) otherwise insolvent or stopping, suspending or threatening to stop or suspend payment of all or a material part of its debts or making a general assignment or arrangement or composition with, or for the benefit of, its creditors (or any class of them).

14.2.1.3. Any business rescue proceedings under the Companies Act, 2008, being commenced against it or a resolution being proposed to place the Party under supervision under the Companies Act, 2008, at any duly convened meeting of the shareholders or board of directors of the Party.

14.2.1.4. Any liquidator, curator, judicial manager, business rescue practitioner or similar officer being appointed in respect of the Party or any part of its assets, undertaking, business or estate or such entity (or any organ of that person or entity) requests such appointment.

14.2.1.5. the Party committing any act which, if it were a natural person, would be an act of insolvency as contemplated in the Insolvency Act.

- 14.2.2. The non-defaulting Party shall be entitled to terminate this Agreement, where the defaulting Party fails to remedy, where it is capable of remedy, or persists in, any breach of any of its obligations under this Agreement after having been required to do so within a period of 30 (thirty) days.

## **15. EARLY TERMINATION COSTS**

- 15.1 The termination fee shall be calculated on the outstanding fees and Charges for each of the terminating OCS ("Terminating Services") as at the termination date and will be determined as follows:
- 15.1.1 In the event that the Terminating Services are terminated prior to the Service Commencement Date thereof, the Customer shall be liable for the actual costs included in the Service Fee incurred by Metrofibre in implementing the Service, including without limitation, the NRC, costs incurred by Metrofibre in respect of third party links and switches, plus 3 (three) months of the MRC.
- 15.1.2 In the event that the Terminating Services are terminated subsequent to the Service Commencement Date thereof and the Term for the Terminating Services is 12 (twelve) months or less; 100% of the monthly MRC for the remainder of the Service Term of the Terminating Services plus costs incurred by Metrofibre in respect of third party links and switches.
- 15.1.3 In the event that the Terminating Services are terminating subsequent to the Service Commencement Date thereof and the Service Term for the Terminating Services is greater than 12 (twelve) months; 100% of the monthly MRC for the Terminating Services for the remainder of the first 12 (twelve) months and 50% of the MRC for the Terminating Services for each month of the remaining Service Term thereafter.
- Provided that should Customer be a "Consumer" as this term is defined in the Consumer Protection Act, then Metrofibre shall charge Customer the actual costs of implementation the service, including without limitation, the NRC, plus a reasonable cancellation fee of 3 (three) months of the MRC.
- 15.2 The Parties acknowledge that the early termination charges for the Terminating Services set forth in clause 15 are not construed as penalties for the purposes of this Agreement.
- 15.3 In the event where Metrofibre cannot restore service within 60 days after a force major incident has occurred, the customer will have the right to terminate services at no cost

## **16. EFFECTS OF TERMINATION**

- 16.1 Termination of this Agreement and/or a OCS in whole or in part, however caused, shall be without prejudice to any rights or liabilities accrued at the date of termination.

16.2 On termination of this Agreement and/or a OCS:

16.2.1 all benefits (including rights of use and licences) conferred upon the Customer in terms of this Agreement and/or a OCS, shall immediately cease and the Customer shall have no claim, whatsoever, against Metrofibre. for the loss of such benefits;

16.2.2 the Customer shall return all Facilities and/or Metrofibre equipment located on the Customer Premises and/or End User premises or facilitate Metrofibre's removal of such Facilities and/or Metrofibre. Equipment; and

16.2.3 the Customer shall promptly return to Metrofibre or otherwise dispose of as Metrofibre may instruct all samples, technical pamphlets, catalogues, advertising materials, specifications and other materials, documents or papers whatsoever sent to the Customer and relating to Metrofibre's business (other than correspondence which has passed between the Parties) which the Customer may have in its possession or under its control. The Customer shall also return to Metrofibre its Confidential Information.

16.1 The termination of this Agreement and/or a SCS shall not of itself give rise to any liability on the part of Metrofibre. to pay any compensation to the Customer, including but not limited to, for loss of profits or goodwill.

16.2 Metrofibre shall be entitled to cancel all orders for Services placed by the Customer prior to the termination date, whether or not such orders have been accepted by Metrofibre, without incurring any liability of any nature to the Customer.

## **17 RELATIONSHIP**

17.1 Metrofibre undertakes to treat the Customer no less favourably than its other Customers offering substantially the same terms and conditions to similarly placed Customers.

17.2 The relationship of the Parties in terms of this Agreement shall be that of independent contractors and no partnership or joint venture is hereby created between Metrofibre and the Customer.

17.3 The Customer shall in all its dealings with regard to the provision of Metrofibre Services to End Users make it clear to the End Users that it is acting on its own account as a Customer reselling the Services and not as an agent of Metrofibre.

17.4 Save as specifically herein contemplated:

17.4.1 this Agreement does not constitute the Customer as the legal representative, employee or servant of Metrofibre;

17.4.2 this Agreement does not constitute the employees of the Customer as being the employees of Metrofibre; and

17.4.3 the Customer shall have no authority to assume any obligation of any kind on behalf of Metrofibre or to bind or commit Metrofibre in any way.

## **18 INTELLECTUAL PROPERTY RIGHTS**

18.1 Nothing contained in this Agreement shall be construed to confer or be deemed to confer on either Party the Intellectual Property Rights of the other Party.

18.2 Each party indemnifies the other party against all crimes, actions, damages, liabilities, costs and expenses, including reasonable attorney's fees and expenses, arising out of any claims of infringement of any patent, trade secret, copyright, trademark, service mark, trade name or similar proprietary right of any third party, which claim arises directly or indirectly out of the infringement by a Party of the intellectual Property Rights of the other Party

18.3 Metrofibre retains all right, title and interest in and to its Intellectual Property that is used in connection with the Services. In particular, Metrofibre retains all right, title and interest in all Intellectual Property rights in and to work products, deliverables, documentation, reports, designs, formulae, methodologies, software, proposals, specifications, feasibility reports and systems, whether used to provide or as are developed or created as part of the Services.

18.4 Metrofibre shall retain all right, title and interest in all Intellectual Property developed or generated pursuant to and as part of the performance of the Services provided under this Agreement.

## **19 CONFIDENTIALITY**

19.1 Each Party undertakes that it shall not at any time disclose to any person any Confidential Information, except as permitted by clause 19.2.

19.2 Each Party may disclose the other Party's confidential information:

19.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the Party's obligations under this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other Party's Confidential Information comply with this clause 19; and

19.2.2 as may be required by law, court order or any governmental or regulatory authority.

19.3 No party shall use any other party's Confidential Information for any purpose other than to perform its obligations under this agreement.

## **20 INSURANCE**

20.1 The Customer shall for the continued duration of this Agreement have and maintain in force sufficient insurance to cover both its obligations and liabilities under this Agreement and ensure that each End User likewise maintains sufficient insurance.



20.2 The Customer must ensure that the End User is aware of the Metrofibre interest in the equipment installed at their premises.

## **21 WARRANTIES**

21.1 Each Party hereby warrants unto and in favour of the other Party:

21.2 it is a company duly incorporated and validly existing under the Law;

21.3 it has full power, authority and legal right to execute this Agreement, to assume the obligations contained in this Agreement, and further to perform and observe the terms and provisions hereof;

21.4 the Party and its representative(s) has the requisite power, right and authority to enter into and perform the obligations to be assumed or performed by it in accordance with this Agreement and any other documents to be executed in accordance with this Agreement and the obligations assumed by it under this Agreement constitute legal, valid, binding and enforceable obligations in accordance with the terms hereof;

21.5 to the best of the Party's knowledge and belief, all facts and circumstances material to this transaction, or which would be material or would be reasonably likely to be material and which may affect the willingness of the Parties to enter into this Agreement are known to the Party, have been disclosed by the Party to the other Party;

21.6 as at the Signature Date, no legal proceedings of any kind or administrative proceedings in terms of any law, which shall prevent either Party from fulfilling its obligations in terms of this Agreement, have been instituted against such Party;

21.7 at all times during the currency of this Agreement neither Party has any obligations/duties to third parties which, if discharged, shall prevent the Party from fulfilling its obligations in terms of this Agreement; and

21.8 all necessary action has been taken to authorise the execution and performance of this Agreement and the execution and performance of this Agreement will not contravene any provision of, or constitute a default under, any other agreement or instrument to which it is a Party or by which it or its property may be bound.

21.1 Metrofibre does not make any representations or warranties in respect of the quality or functionality of the Metrofibre Equipment. The Customer shall only be entitled to rely on the warranties and indemnities provided by the original equipment manufacturer in respect of the Metrofibre Equipment, which warranties and indemnities shall be enforced directly against the original equipment manufacturer and not against Metrofibre.

## **22 INDEMNITIES**

22.1 The Customer hereby indemnifies and holds Metrofibre harmless against all loss, damage, costs and/or expenses which Metrofibre may suffer or incur and any and all claims which may be brought

against Metrofibre by any third party in respect of any loss, liability, damage, costs and/or expenses of any nature whatsoever as a consequence of or which may arise from or is attributable to the engagement of the Customer, the provision of the Services by the Customer or any acts or omissions on the part of the Customer.

22.2 The Customer shall be required to obtain an indemnity in the End User Agreement on substantially the same basis as clause 22.1 above in favour of Metrofibre from each and every End User, in terms of which each End User indemnifies Metrofibre against any and all losses, claims or damages which the End User or anyone who enters their property may suffer as a result of the Services.

### **23 LIMITATION OF LIABILITY**

23.1 Neither Party shall be liable to the other Party for any indirect or consequential loss or damage (including any loss of profit/contract/opportunity) which may be suffered by the other Party under or in connection with this Agreement.

23.2 Subject to Clauses 23.3 and 23.4, the total liability of Metrofibre under or in connection with this Agreement shall, to the extent permitted by Law, not exceed the aggregate value of the Services that have been carried out under this Agreement. over the previous 6(six)months from the date upon which the claim arose.

23.3 Where the insurance cover of any insurance policy that is procured by either Party under this Agreement, which is capable of being called upon to cover any liability/damage, exceeds the aggregate cap of liability specified in Clause 23.2., such aggregate cap of liability shall not compromise the insurance cover that can be claimed by either Party to cover the liability/damage in question. Accordingly, the imposition of such aggregate cap of liability shall not be construed as a *stipulatio alteri* in favour of any insurer who would otherwise be liable to make payment from the insurance cover to cover a claim that is in excess to such aggregate cap of liability under such insurance policy.

23.4 This Clause 23 shall not limit liability of either Party in any case of fraud, deliberate default or reckless misconduct by either Party.

### **24 FORCE MAJEURE**

24.1 A force majeure event shall occur when either Party is prevented or restricted directly or indirectly from performing all or any of that Party's obligations in terms of this Agreement by reason of Force Majeure, which shall constitute a "Force Majeure Event" for the purposes hereof.

24.2 The exclusive remedy of a Party affected by a Force Majeure Event ("the Affected Party") constitutes that:

24.3 it shall be relieved of performance of its obligations in terms of this Agreement during the period that such event and its consequences continue (but only to the extent it is so delayed or prevented from performing partially or at all by the Force Majeure Event), and, provided that

notice has been given in terms of Clause 24.1, shall not be liable for any delay or failure in the performance of any of its obligations in terms of this Agreement or losses or damages whether general, special or consequential which the other Party ("the Unaffected Party") may suffer due to or resulting from any such delay or failure; or

24.4 The Affected Party shall give written notice to the Unaffected Party at the earliest possible opportunity in writing of the occurrence of the event constituting the Force Majeure Event, together with details thereof and a good faith estimate of the period of time for which it shall endure.

24.5 At all times whilst a Force Majeure Event continues, the Parties shall meet at regular intervals to discuss and investigate, and if possible, to implement other practical ways and means to overcome the consequences of such a Force Majeure Event, with the objective of achieving the import and intent of this Agreement without unreasonable delay.

24.6 The Affected Party shall use all reasonable endeavours to mitigate the effects of the Force Majeure Event on its ability to perform under this Agreement and to terminate the circumstances giving rise to a Force Majeure Event as soon as reasonably possible and upon termination of the event giving rise thereto, shall forthwith give written notice thereof to the Unaffected Party.

## **25 DISPUTE RESOLUTION**

25.1 In the event of there being any dispute or difference between the Parties arising out of this Agreement and/or any SCS, the matter shall be referred to the CEO's of each Party for resolution in the first instance. If the matter cannot be resolved within 7 (seven) days of such referral the said dispute or difference shall on written demand by either party be submitted to arbitration in Sandton in accordance with the AFSA rules, which arbitration shall be administered by AFSA. The decision of the arbitrator shall be final and binding on the Parties.

25.2 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.

25.3 The Parties agree that the written demand to the dispute in terms of clause 25.1 that the dispute or difference be submitted to arbitration is to be deemed to be a legal process for the purpose of interrupting extinctive prescription in terms of the Prescription Act, 1969.

## **26 NOTICES AND DOMICILIA**

26.1 The Customer selects as *its domicilium citandi et executandi* the physical addresses, fax numbers and email addresses as specified in Annexure A for the purposes of giving or sending any notice provided for or required under this Agreement.

26.2 Metrofibre selects as its *domicilia citandi et executandi* the physical addresses, fax numbers and email addresses as specified below for the purposes of giving or sending any notice provided for or required under this Agreement.

Physical Address

Eco Square, 298 Witch-Hazell Avenue,

Highveld Ext. 71,

Centurion, 0157

Gauteng

Marked for attention of Barry Ashman

Email : [Legal@metrofibre.co.za](mailto:Legal@metrofibre.co.za)

provided that a Party may change its domicilium or its address for the purposes of notices to any other physical address or telefax number by written notice to the other Party to that effect. Such change of address will be effective 5 (five) business days after receipt of the notice of the change.

26.3 All notices to be given in terms of this Agreement will be given in writing and will:

26.3.1 be delivered by hand, courier or sent by email;

26.3.2 if delivered by hand during business hours, be presumed to have been received on the date of delivery. Any notice delivered after business hours or on a day which is not a business day will be presumed to have been received on the following business day; and

26.3.3 if sent by email during business hours, be presumed to have been received on the date of successful transmission of the email. Any email sent after business hours or on a day which is not a business day will be presumed to have been received on the following business day.

26.4 Notwithstanding the above, any notice given in writing, and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause 26.

## **27 APPLICABLE LAW AND JURISDICTION**

27.1 This Agreement will in all respects be governed by and construed under the laws of the Republic of South Africa.

27.2 The Parties hereby consent and submit to the non-exclusive jurisdiction of the South Gauteng High Court, Johannesburg in any dispute arising from or in connection with this Agreement.

## **28 GENERAL**

28.1 This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no warranty, undertaking, representation, term or condition relating to the subject matter of this Agreement (not incorporated in this Agreement) shall be binding on either of the Parties. This Agreement supersedes and replaces

any and all agreements between the Parties (and other persons, as may be applicable) and undertakings given to or on behalf of the Parties (and other persons, as may be applicable) in relation to the subject matter hereof.

- 28.2 No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this Agreement will be of any force or effect unless in writing and signed by the Parties.
- 28.3 No waiver, suspension or postponement by any Party of any right arising out of or in connection with this Agreement shall be of any force or effect unless in writing and signed by such Party. Any such waiver, suspension or postponement will be effective only in the specific instance and for the purpose given.
- 28.4 Any provision or clause of this Agreement which is or becomes unenforceable for any other reason whatsoever, shall (only and only to the extent that it is so unenforceable) be treated as pro non scripto and the remaining provisions and clauses of this Agreement shall remain of full force and effect.
- 28.5 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 28.6 Neither this Agreement nor any rights or obligations hereunder may be ceded, delegated or assigned by the Customer without the prior written consent of Metrofibre.

SIGNED at \_\_\_\_\_ on the \_\_\_\_\_ of \_\_\_\_\_ 2019

Duly authorised for and on behalf of  
**METRO FIBRE NETWORKX (PTY)  
LTD**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Signatory

\_\_\_\_\_  
Designation of Signatory

SIGNED at \_\_\_\_\_ on the \_\_\_\_\_ of \_\_\_\_\_ 2019

Duly authorised for and on behalf of  
the Customer

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Signatory

\_\_\_\_\_  
Designation of Signatory

ANNEXURE A – AGREEMENT PARTICULARS

CUSTOMER PARTICULARS	
Name	
Company Registration No	
Registered Address	
CUSTOMER DOMICILIUM CITANDI ET EXECUTANDI	
Physical Address	
Postal Address	
Fax No	
Email	
Marked for attention of	
Effective Date	
Service Representative	
Email	
Telephone numbers	

ANNEXURE B – ORDER FORM



# QUOTE FOR NEW SERVICE

EXAMPL

Quote No: xxx  
 Customer Name: xxx  
 Customer Contact: \_\_\_\_\_  
 Customer Contact No: \_\_\_\_\_  
 Part of the annexure to the MSA:  
 ISP Name: xxx  
 ISP MSA No: \_\_\_\_\_  
 Customer: xxx  
 Referral Partner: \_\_\_\_\_  
 MFN Account Manager: xxx  
 MFN Account Manager No: xxx  
 Date Created: xxx  
 Validity for days: xxx  
 On/Off-Net: xxx  
 Estimated Weeks: xxx  
 POC: xxx

Metro Fibre Networx (Pty) Ltd  
 MFN VAT No: 4540241066  
 Registration No: 2007/024366/07  
 P O Box: 50112 Randjesfontein Gauteng 1683  
 Eco Square, 298 Witch-Hazel street, Highveld Ext 71, Centurion, 0157  
 Telephone No: +27 87 151 4000  
 Fax No (011) 314 7974  
 Email: information@metrofibre.co.za  
 Email: accounts@metrofibre.co.za

Service Detail	Connection (NRC)	Monthly (MRC)
Product Type	xxx	
Wholesale Broadband Access	-	
Origin (End Point) Name	xxx	
Origin (End Point) Address	xxx	
Destination Point (Peering)	xxx	
Desitination Address (Peering)	xxx	
Service Level Agreement (SLA)	xxx	
Quality of Service (QOS)	N/A	xxx
Bandwidth	N/A	xxx
Bandwidth (Voice)	N/A	
Terms in months	N/A	xxx
Charge for connection (NRC) and (MRC)	R xxx	R xxx
VAT applicable on the charge	R xxx	R xxx
Total Including VAT	R xxx	R xxx

**Comments:** *N/A - Not Applicable*

**Customer Acceptance by Duly Authorized Person:**

**MFN Acceptance and Approved by:**

Official's Name: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Signature: \_\_\_\_\_

Official's Name: **XXX** \_\_\_\_\_  
 Date: **XXX** \_\_\_\_\_  
 Signature: **XXX** \_\_\_\_\_

**NB** Term and Conditions  
 The Metrofibre Networx standard terms and conditions as per the MSA will apply. Go-Live dates are best estimate and may vary, in such instances MFN will not be held responsible in any way for delays. Connections are either the customer equipment or service provider including any cross connects & interface cabling etc. is for the customer account. Contract will automatically convert to a month to month contract at the end of the quoted term.

# SERVICE LEVEL AGREEMENT (SLA)

between

---

and

**METRO FIBRE NETWORKX (PROPRIETARY) LIMITED**

for

<TYPE OF SERVICE>

<DAY> <MONTH> <YEAR>

## 1. DEFINITIONS

- 1.1 **“End User”** means those persons or entities with whom the Customer concludes End User Agreements for the resale or lease of the Services;
- 1.2 **“Degradation”** means the presence of anomalies or defects in the absence of a fault.
- 1.3 **“Degraded Service”** means the presence of anomalies or defects that cause a degradation in QoS, but do not result in total failure of the service.
- 1.4 **“Force Majeure”** means any circumstances beyond the Parties' reasonable control including, without limitation, war, national emergency, civil disturbance, theft, fire, flood, explosion, natural disaster, unusually severe weather conditions, prohibitive legislation or regulations and failure of power or utility supplies (including electronic communications).
- 1.5 **“Incident”** means a fault that directly affects the Service levels by substantially or completely reducing them. This excludes any faulty Customer equipment.
- 1.6 **“METROFIBRE”**, means Metro Fibre Networkx (Proprietary) Limited, registration number 2007/024366/07, a limited liability private company duly incorporated in the Republic of South Africa.
- 1.7 **“Monthly Recurring Charge”** means the fixed, recurring charge invoiced by METROFIBRE to Customer on a monthly basis for the Service, exclusive of any variable charges.
- 1.8 **“MTTRs’ (Mean Time to Respond)** means the average time from when the ticket is logged with the METROFIBRE NOC to the time a METROFIBRE Support Representative attends to the incident or trouble ticket.
- 1.9 **“MTRS” (Mean Time to Restore Service)** means average time from the first detection or reporting of service interruption to METROFIBRE NOC by the Customer until the time when the

service is restored.

- 1.10 **“Network Unavailability”** means the time where the service is unavailable or degraded to such an extent that it is unusable, measured from the first detection or reporting of service interruption to METROFIBRE NOC by the Customer until the time when the service is restored and excluding any service interruption outside of METROFIBRE’s contracted services supplied to the Customer. Network Unavailability will not include Scheduled Maintenance/Emergency Maintenance or any unavailability resulting from (a) any local loop provider, (b) Customer’s applications, equipment or facilities, (c) acts or omissions of Customer or any use of the service authorised by Customer, (d) reasons of Force Majeure, or (e) power loss and/or interruptions at the Customer Premises.
- 1.11 **“NNI”** means Network to Network Interface between distinct MEN operated by one or more carriers.
- 1.12 **“Off-Net Services”** means those Services provided at any Customer or End User premises that are not on METROFIBRE’s electronic communications network and where an infrastructure build will be required to connect the Customer and/or End User to METROFIBRE’s electronic communications network.
- 1.13 **“On-Net Services”** means those Services provided at Customer or End User premises that are on METROFIBRE’s electronic communications network.
- 1.14 **“Parties”**, means the parties to this Agreement and "Party" shall mean either one of them.
- 1.15 **“QoS”** means quality of service
- 1.16 **“Customer”** means the Party who has entered into a Master Services Agreement with METROFIBRE, and whose particulars are specified in Annexure A thereto.
- 1.17 **“Customer Premises”** shall mean the location or locations occupied by Customer and/or its End Users to which the Services are delivered.
- 1.18 **“Services”** means the services provided by METROFIBRE to the Customer as more fully described in the Service Confirmation Schedule, including the provision of METROFIBRE Equipment and Facilities.
- 1.19 **“Service Credit”** means:
  - One (1) day Service Credit = 1/30th of Customer’s Monthly Recurring Charges.
  - One (1) week Service Credit = 7/30ths of Customer’s Monthly Recurring Charges.
  - One (1) month Service Credit = Full amount of Customer’s Monthly Recurring Charges.
- 1.20 **“SLA”** means service level agreement.
- 1.21 **“UNI”** means the physical interface or port that is the demarcation between the Customer and the service provider (METROFIBRE)
- 1.22 **“Uptime”** means total number of available minutes in a calendar month.

## **2. INTRODUCTION**

### **2.1 Overview**

- 2.1.1 This Agreement constitutes a Service Level Agreement (“SLA” or “Agreement”) between METROFIBRE and CUSTOMER for the support and maintenance of the Services provided by METROFIBRE to the Customer and End User.
- 2.1.2 This SLA shall form part of the Master Services Agreement between the Customer and METROFIBRE dated ..... to which this service level agreement is attached.
- 2.1.3 All of the terms and conditions contained in the SLA shall, unless the context otherwise requires, bear the same meaning as defined in the Master Services Agreement.
- 2.1.4 In the event that there is a conflict between the provisions of this SLA and the Master Services Agreement, the provisions of this SLA shall prevail.
- 2.1.5 This Agreement outlines the parameters of all services covered as they are mutually understood by both Parties. This Agreement does not supersede current processes and procedures unless explicitly stated herein.

### **2.2 Purpose & Objectives**

- 2.2.1 The purpose of this Agreement is to ensure that the proper elements and commitments are in place to provide consistent service support and delivery to the Customer by METROFIBRE.
- 2.2.2 The objectives of this Agreement are to:

- Provide clear reference to service ownership, accountability, roles and/or responsibilities.
- Present a clear, concise and measurable description of service provision to the Customer.
- Match perceptions of expected service provision with actual service support and delivery.

## 2.3 Duration & Validity

- 2.3.1 This SLA shall commence on the agreed date and continue for the duration of the Master Services Agreement, unless terminated in accordance with the Master Services Agreement, as signed.
- 2.3.2 This SLA shall remain valid until superseded by a revised SLA mutually agreed in writing between the Parties.

## 2.4 Scope

This SLA covers the availability and support of the Services as described in clause 3.

Should Customer claim a Service Credit as provided for herein, this shall be Customer's sole remedy against Metrofibre and Customer shall not be entitled to any further or additional remedy provided in the MSA.

## 2.5 Disclaimer

METROFIBRE WILL HONOUR AND ABIDE BY ITS SERVICE LEVEL COMMITMENTS CONTAINED HEREIN EXCEPT FOR AND SAVE WHERE METROFIBRE MAKES USE OF A THIRD PARTY NETWORK INFRASTRUCTURE PROVIDER FOR LAYER 1 AND LAYER 2 SERVICES IN DELIVERING ITS SERVICES TO CUSTOMER AS THE TERMS HEREOF ARE NOT ENFORCEABLE AGAINST SUCH THIRD PARTY PROVIDERS BY METROFIBRE.

## 3. SERVICES AND SERVICE LEVEL DEFINITION

### 3.1 Commitment

3.1.1 METROFIBRE will provide Customer with a comprehensive warranty for contracted services provided by METROFIBRE to Customer. This Service Level Agreement (SLA) defines specific representations and guarantees provided to Customer for individual services. The SLA clearly identifies available recourse to Customer for any specific breaches of the SLA by METROFIBRE.

3.1.2 METROFIBRE is committed to providing a reliable, high quality network to support its services offered. Accordingly, METROFIBRE offers the following guarantees:

- Network Availability Guarantee
- Network Latency Guarantee
- Packet Delivery Guarantee

3.1.3 If METROFIBRE fails to meet any of these guarantees, it will provide eligible Customers with a Service Credit as set forth below in the Service Level Agreement.

### 3.2 Network Availability & Response Times

**GOLD PREMIUM SERVICE - 4 hours response time with 99.90% uptime.**

**SILVER PREMIUM SERVICE - 8 hours response time with 99.55% uptime.**

**BRONZE PREMIUM SERVICE - 10 hours response time with 98.00% uptime.**

**STANDARD SERVICE - 12 hour response time with no uptime guarantee.**

3.2.1 Network Availability scope provides that the METROFIBRE network (as defined in the

applicable Service Confirmation Schedule) will be available for the specified percentage of the time, dependant on the type of Service taken.

- 3.2.2 **“Network Unavailability”** consists of the number of minutes that the METROFIBRE Network is not available to the Customer, and includes unavailability associated with any maintenance at the METROFIBRE hub to which Customer’s circuit is connected other than Scheduled Maintenance (defined below 7.1). Outages will be counted as Network Unavailability only if Customer opens a trouble ticket with METROFIBRE Customer Support.
- 3.2.3 **Network Availability Process.** To receive credit for Network Availability non-compliance, Customer must request such credit within 7 business days from the date of the non-compliance.
- 3.2.4 **Network Availability Remedy.** For each cumulative hour of Network Unavailability or fraction thereof in any calendar month, at Customers request, Customer’s account shall be credited for the pro-rated charges for one day of METROFIBRE’s Monthly Recurring Charge with respect to which a Network Availability has been non-compliant. The maximum credits for Network Availability shall not exceed 20% of Customer’s Monthly Recurring Charge for the affected Service.
- 3.2.5 **Response Time** – this is the time taken for METROFIBRE to respond (acknowledge) that there is a fault on the Network. METROFIBRE will inform the Customer of the Network failure and give estimated times for the Network to be restored.

### 3.3 Network Latency

**Real Time – 10 milliseconds or less**

**Priority Data – 10 milliseconds or less**

**Basic – 100 milliseconds or less**

- 3.3.1 Latency is the average time for a packet to make a trip between network terminations on the METROFIBRE Network (Gauteng only). Aggregate latency will be monitored by monitoring trip times between NNI to UNI and/or UNI to UNI on an ongoing basis.
- 3.3.2 After notification of Network Latency being in excess of rates applicable as stated above, METROFIBRE will use commercially reasonable efforts to determine the source of such excessive latency and to correct such problem. If METROFIBRE fails to remedy such Network Latency within two (2) hours of being notified of any excessive Network Latency and average Network Latency for the preceding 30 days has exceeded the rates specified above, Customer will receive, at Customer’s request, a Service Credit for the period from the time of notification by the Customer until the average Network Latency for the preceding 30 days is less than the rates specified above. Customer may obtain no more than 20% of one (1) month Service Credit for any given month.

### 3.4 Packet Delivery

**Real Time - Monthly packet loss no greater than 0.01%**

**Priority Data - Monthly packet loss no greater than 0.01%**

**Basic Services - Monthly packet loss no greater than 0.5%**

- 3.4.1 Packet Loss is defined as the percentage of packets that are dropped between NNI to UNI and/or UNI to UNI on the METROFIBRE Network (Gauteng only). METROFIBRE monitors this aggregate packet loss and compiles the collected data into a monthly average packet loss measurement for the Network.
- 3.4.2 After being notified by Customer of Packet Loss in excess of rates applicable as stated above, METROFIBRE will use commercially reasonable efforts to determine the source of such excess Packet Loss and to correct such problem to the extent that the source of the

problem is on the Network. If METROFIBRE fails to remedy such excess Packet Loss within two (2) hours of being notified of any excessive Packet Loss on the Network and average Packet Loss for the preceding 30 days exceeds rates applicable as stated above, Customer will receive, at Customer's request, a Service Credit for the period from the time of notification by the Customer until the average Packet Loss for the preceding 30 days is less than those applicable rates as stated above. Customer may obtain no more than 20% of one (1) month Service Credit for any given month.

#### **4. SERVICE CREDIT CLAIM PROCESS**

4.1 In order to initiate a claim for Service Credit, Customer must contact METROFIBRE's customer service group within seven (7) business days after the end of the month for which credit is requested. The Service Credit request must include:

- a) the Customer/End User name and contact information;
- b) the date and beginning/end time of the claimed outage or failed metric; and
- c) a brief description of the characteristics of the claimed outage or failed metric.

4.2 Customer will be notified via e-mail upon resolution of the request. If rejected, the notification will specify the basis for rejection. If approved, METROFIBRE will issue Service Credit to Customer's account, appearing on the next invoice issued. Multiple Service Credits will not be given for the same period of time, i.e., failure to meet multiple criteria during a period of time generates only a single Service Credit. The total number of all Service Credits for all failures to meet Guarantees occurring in a given month may not exceed 20% of the total Monthly Recurring charge actually paid by Customer for Service during that month. Service Credits will be credited against Customer's monthly payment for Monthly Recurring Charges and will not be received in the form of a refund.

4.3 The Guarantees and Service Credits provided for in this SLA assume compliance by Customer with the terms and conditions of its MSA with METROFIBRE, and the failure of Customer to comply with those terms and conditions may invalidate METROFIBRE's guarantees provided herein. No credit is available for a Customer that:

- a) restricts METROFIBRE from monitoring Customer's premises router;
- b) does not provide the necessary reasonable access to personnel and facilities at the Customer's premises to enable METROFIBRE to perform comprehensive troubleshooting; or
- c) whose account is not in good financial standing with METROFIBRE.

4.4 METROFIBRE is not liable for failure to fulfil its obligations hereunder if such failure is due to Customer's tampering with any equipment, or due to acts beyond METROFIBRE's reasonable control, such as Force Majeure.

#### **5. CUSTOMER SUPPORT**

5.1 METROFIBRE will establish at its own cost and expense, a Technical Service Desk which will be staffed on a 24 (twenty-four)-hour-seven-days-a-week basis and equipped with the necessary infrastructure to facilitate efficient communication in order to manage and support all user- and or network-related issues reported by the Customer.

5.2 The METROFIBRE Technical Service Desk will be available 24 hours per day, 365/6 days per year to attend to all telephonic, e-mail and web-based support queries. The Technical Service Desk can be contacted telephonically on 087 151 4049. Additional information can be sent to the Technical Service Desk via e-mail at [helpdesk@metrofibre.co.za](mailto:helpdesk@metrofibre.co.za). If for any reason the Technical Service Desk cannot be reached telephonically, the Customer shall follow the agreed escalation procedure.

5.3 The Customer shall report all faults to METROFIBRE in accordance with the notification procedure set out in clause 6, using either telephonic, e-mail or web-based media.

5.4 80% of incoming telephone calls to the METROFIBRE Technical Service Desk will be answered within an estimated 45 seconds.

5.5 All e-mail requests to the METROFIBRE NOC ([helpdesk@metrofibre.co.za](mailto:helpdesk@metrofibre.co.za)) will be answered within an estimated 8 hours.

- 5.6 Where assistance is required by either Party, this shall be requested through the METROFIBRE Technical Service Desk in the Network Operations Centre (NOC).
- 5.7 A copy of all contact telephone numbers and escalation matrix shall be made available by each Party to the other Party and must be updated as and when changes occur.
- 5.8 From time to time testing and routine maintenance will be required on the network infrastructure and will normally be performed during off-peak times (00:00 – 06:00).
- 5.9 Where testing or maintenance is required during the times stipulated in 5.8 above, a standard service interruption notification will be communicated to the Customer at least 7 (seven) calendar days prior, where possible.

## **6. FAULT REPORTING**

- 6.1 METROFIBRE shall monitor the infrastructure platform and notify the Customer in the event of disruptions that will affect the delivery of service to the Customer.
- 6.2 METROFIBRE will use an automated Trouble Ticketing System to log all Customer and network-related faults.
- 6.3 Each trouble ticket logged shall be linked to a unique reference number for all such reported faults or failures.
- 6.4 METROFIBRE shall keep a fault log which includes at least the following details:
- reference number;
  - time reported;
  - reported by whom;
  - service affected;
  - symptoms;
  - action taken;
  - time restored;
  - root cause of the problem;
  - comments.
- 6.5 The Customer shall supply METROFIBRE with the following details when logging a fault:
- reference number;
  - start time of the fault;
  - service affected;
  - symptoms and nature of the downtime;
  - first line support performed by the Customer

## **7. REPAIRS & MAINTENANCE**

- 7.1 Scheduled maintenance of the METROFIBRE network (or portion thereof) will not normally result in Service interruption or outage. However, in the event scheduled maintenance should require a Service interruption or outage, METROFIBRE will exercise commercially reasonable efforts to (a) provide Customer with seven (7) days' prior written notice of such scheduled maintenance, (b) work with Customer in good faith to attempt to minimise any disruption to Customer's services that may be caused by such scheduled maintenance, and (c) to perform such schedule maintenance during the non-peak hours of 0:00 (midnight) until 06:00 local time.
- 7.2 METROFIBRE will arrange for the necessary repairs arising in terms of this Agreement. METROFIBRE will carry the costs for faults arising in/from METROFIBRE's equipment. For faults arising in/from the Customer's equipment, the Customer shall be liable for all costs incurred in effecting repairs.

## **8. REPORTS**

- 8.1 METROFIBRE will provide the Customer with an incident report for any Service Affecting faults within twenty-four (24) hours (in the business window) of such fault occurring.
- 8.2 METROFIBRE will indicate, in the incident report, measures taken or to be taken in rectifying the fault, and to prevent recurrence of the fault.
- 8.3 Reports will be provided by METROFIBRE at monthly intervals to the Customer.

## **9. ESCALATION PROCEDURE**

- 9.1 Should the Customer wish to escalate a problem, either because of the urgency of the problem, or

because the Customer does not feel it is being given the priority it deserves, the Customer may contact the METROFIBRE Technical Service Desk with the reference number and request that the problem be escalated.

9.2 If for whatever reason the Customer feels this to be insufficient, the METROFIBRE escalation matrix must be followed.

9.3 Each Party shall follow the sequence of escalation in accordance with the agreed Escalation Matrix, as included in Annexure A.

9.4 The METROFIBRE NOC/Service Manager will take the necessary steps to ensure that the call receives the appropriate priority and/or attention.

## **10. CHANGE MANAGEMENT PROCEDURE**

10.1 Notification of all planned changes or maintenance schedules will be emailed to the Customer.

10.2 METROFIBRE NOC shall try and inform the Customer of any change or scheduled maintenance that will affect service at least seven (7) calendar days before the planned implementation date.

10.3 If the Customer requires that the planned changes or maintenance to be stalled, postponed or rescheduled because of business-affecting reasons, these reasons must be reported to the METROFIBRE NOC within 24 hours of receiving notification from METROFIBRE.

10.4 METROFIBRE Technical Service Desk will inform and consult with the Customer regarding any emergency change or maintenance to correct a fault that will affect service, at least one (1) hour before the implementation, if possible.

10.5 If and to the extent an emergency change is required and, after all attempts to inform the appropriate Customer representative as the Customer escalation matrix failed, METROFIBRE may make such a change provided it is otherwise in compliance with the Master Services Agreement, and shall as soon as reasonably practicable after making such a change and again upon termination of the emergency concerned, provide the Customer representative with full written details of such change and the reason or reasons therefore.

10.6 All changes are managed by the Technical Service Desk. The start of the change is logged, the change is implemented by trained technical personnel and overseen by a METROFIBRE supervisor. The end of the change is logged and the success thereof logged and recorded.

## **11. SERVICE PERFORMANCE REVIEWS**

11.1 Service targets shall be reviewed every month at which time formal review meetings can be held to discuss conformance to targets.

11.2 METROFIBRE hereby appoints the following Account/Service Manager, for the purposes of this Agreement:

11.3 The Customer hereby appoints the following Account/Service Manager, for the purposes of this Agreement:

11.4 Either party may amend the Account/Service Managers from time to time, in their sole discretion on written notice to the other party.

## **12. EXECUTION**

SIGNED at \_\_\_\_\_ on \_\_\_\_\_ 201

For and on behalf of  
**METRO FIBRE NETWORKX (PTY) LTD**

\_\_\_\_\_  
Signature



Name of Signatory

Designation of Signatory

SIGNED at

on

2012

For and on behalf of the Customer

Signature

Name of Signatory

Designation of Signatory

**END**

**ANNEXURE A ESCALATION MATRICES**

**SUMMARY OF SEVERITY LEVELS**

Severity Level	2 hours	4 hours	12 hours	Response Time	Update Interval
1	The end-to-end service is in production and is mission critical to the business. Both primary and, if applicable, protection circuits are non-functional.			1 hour	1 hour
2	A single circuit is unavailable.			1 hour	4 hours
3	The service does not work as designed, it is either impaired or degraded, but still usable.			12 hours	12 hours

**LOGGING A TICKET**

The following channels are available for the logging of a support ticket:

**Email** helpdesk@metrofibre.co.za

**Web** <https://helpdesk.metrofibre.co.za>

**NOC Telephone** 087 151 4049

**INTERNAL MFN ESCALATION**

All MFN personnel in the Escalation Matrix in are automatically notified when a Severity 1 or Severity 2 fault occurs.

**MFN CONTACT LIST**

Title	Name	Phone	Email
NOC Supervisor	Supervisor	087 151 4049	noc@metrofibre.co.za

NOC Operational Engineer	Army Mavuso	081 497 0144	armym@metrofibre.co.za
NOC Technical Manager	Rory Lane	078 3094 797	roryl@metrofibre.co.za
NOC Manager	Luis Chin	083 279 1334	luisc@metrofibre.co.za
CTO	Johan van der Lith	082 460 4299	johanvl@metrofibre.co.za

**METROFIBRE ESCALATION MATRIX**

Should the times stated in the Summary of Severity Levels be exceeded, or any update intervals are exceeded by one hour, the service provider may contact the escalation personnel in priority order as below with the fault reference number.

<b>If no response received within the said time frame, contact the following person ins order of escalation:</b>				
	<b>SEVERITY</b>	<b>If no response received within:</b>		
		<b>1</b>	<b>2</b>	<b>3</b>
1	NOC Supervisor	1 hour	1 hour	6 hours
2	NOC Operational Engineer	1.5 hours	2 hours	8 hours
3	NOC Technical Manager	2 hours	4 hours	12 hours
4	NOC Manager	3 hours	5 hours	16 hours
5	CTO	4 hours	6 hours	

ANNEXURE D – SERVICE CONFIRMATION SCHEDULE

# SERVICE CONFIRMATION

**EXAMPL  
E**

Service Confirmation No:	xxx	Metro Fibre Networx (Pty) Ltd
Date Created:	xxx	MFN VAT No: 4540241066
Customer No:	xxx	Registration No: 2007/024366/07
Customer Name:	xxx	P O Box: 50112 Randjesfontein Gauteng 1683
Customer Contact:		Eco Square, 298 Witch-Hazel street, Highveld Ext 71, Centurion, 0157
Customer Contact No:		Telephone No: +27 87 151 4000
Part of the annexure to the MSA:		Fax No (011) 314 7974
ISP Name:	xxx	Email: information@metrofibre.co.za
ISP MSA No:	xxx	Email: accounts@metrofibre.co.za
MFN Account Manager:	xxx	
MFN Account Manager No:	xxx	
On/Off-Net:	xxx	
Description:	xxx	

Service Detail	Connection (NRC)
Product Type	
Origin (End Point) Name	xxx
Origin (End Point) Address	xxx
Destination Point (Peering)	xxx
Desitination Address (Peering)	xxx
Service Level Agreement (SLA)	xxx
Quality of Service (QOS)	xxx
Bandwidth	xxx
Terms in months	xxx
Proof of Concept	xxx
Confirmation Date	xxx
Activation Date	
Service Circuit	MFN xxx
VLAN	
Gateway IP	
Network IP	
Subnet Mask	
DCHP Ports	
DNS	
Static Ports	
Voice Connection	

N/A - Not Applicable

**Acceptance** **Sign** **off:**  
 By signing this document, the MFN Official, guarantees the following:  
 - The Services, as described above, have been installed and commissioned accordingly.  
 - All Tests, as defined by our internal OTDR and ECPA Specification, were completed and the installation complies in all aspects. (Test Results available on request)  
 - If this document is not signed and returned to MFN within forty eight (48) hours, then it shall be deemed properly accepted by the Customer and billing will commence.

**Customer Acceptance by Duly Authorized Person:**

**MFN Acceptance and Approved by:**

Customer Official's Name:

MFN Official's Name:

Date:

Confirmation Date:

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

**NB** **Terms** **and** **Conditions**  
 - The Customer shall notify MFN of any problems with the Services within forty eight (48) hours of the Confirmation Date, failing which the Services shall be deemed to be accepted by the Customer.

