



MetroFibre Network Standard Terms and Conditions

1. INTERPRETATION

- 1.1. Unless a contrary intention is clear from the context, the following words and phrases shall have the following meanings:
- 1.1.1. "The Act" means the Electronic Communications Act 36 of 2005 together with any regulations in terms of the Act, as amended from time to time;
 - 1.1.2. "Activation" means the enabling of a service to the customer's site on one or more networks.
 - 1.1.3. "Agreement" means these Terms and Conditions, the Purchase Order signed by the Customer and all schedules and addenda to these documents, as amended from time to time;
 - 1.1.4. "The Authority" means the Independent Communications Authority of South Africa established in terms of the Independent Communications Authority of South Africa Act 13 of 2000 and its successors who oversee the telecommunications and electronics industry in the Republic of South Africa;
 - 1.1.5. "Business Day" means any day which is not a Saturday, Sunday or a day which is defined as a public holiday in terms of the Public Holidays Act, Act 36 of 1994;
 - 1.1.6. "Business Hours" shall mean a period calculated by counting the number of hours between 8:00 and 19:00 on Business Days during a calculation period;
 - 1.1.7. "Charges" means installation charges, monthly service charges, usage and all other charges relating to the provision of the services by the MFN to the Customer or relating to the cancellation of the Agreement;
 - 1.1.8. "CPA" means the Consumer Protection Act 68 of 2008 together with any regulations in terms of the CPA, as amended from time to time;
 - 1.1.9. "Contractor" means a contractor appointed by MFN to install, maintain, repair, connect, disconnect or perform any similar tasks related to the provision of the CPE or the Services by MFN to the Customer;
 - 1.1.10. "Customer" means the person entering into this Agreement with MFN for the provision of Services and/or the use of Equipment;
 - 1.1.11. "Customer Premises" means the premises specified in the Purchase Order at which the Services are to be provided;
 - 1.1.12. "Customer Premises Equipment" or "CPE" means all devices and software supplied by MFN to the Customer to enable MFN to provide the services to the Customer, including the optical network termination device, software, hardware, cables and connections;



- 1.1.13. "Event of Force Majeure" means any event or circumstance, other than a lack of funds required for payment, which is not within the reasonable control of the affected party including, without limitation, war, national emergency, strike, civil disturbance, theft, fire, flood, explosion, natural disaster, unusually severe weather conditions, prohibitive legislation or regulations, inability to secure materials or services and failure of power or utility supplies (including electronic communications);
- 1.1.14. "FTTB" means architecture of electronic communication to the Customer's place of business where the final connection to the Customer's Premises is optical fibre;
- 1.1.15. "FTTH" means architecture of electronic communication to the Customer's residence where the final connection to the Customer's Premises is optical fibre;
- 1.1.16. "Initial period" means the number of months as agreed in the Purchase Order or the Product Specific Terms and Conditions Schedule, as the minimum period for which such services will be provided, commencing on the date of Activation of a Service;
- 1.1.17. "Initial services" mean the first services supplied by MFN to the Customer in terms of a Purchase Order;
- 1.1.18. "Installation" means the physical act of providing the CPE and the FTTB or FTTH to the Customer Premises
- 1.1.19. "MFN" means Metro Fibre Network (Proprietary) Limited, registration number 2007/024366/07, a company incorporated in terms of the laws of the Republic of South Africa;
- 1.1.20. "Metrofibre NOC" means the National Operations Centre or call centre operated by MFN;
- 1.1.21. "Month" means a calendar month beginning at 0h00 on the first day of the calendar month in question;
- 1.1.22. "Monthly Recurring Charge" means the fixed recurring charge for the services, exclusive of any variable charges;
- 1.1.23. "MTRS" means Mean Time to Restore Service, being the average time from the first detection or reporting of the Service interruption to Metrofibre NOC by the Customer until the time when the Service is restored;
- 1.1.24. "Network provider" means an entity authorised by the Authority to provide telecommunication services including, but not limited to, fixed line operators, mobile operators, wireless operators or any other operator that provides access and network services (including value added services);
- 1.1.25. "Network services" means any services provided by a Network provider and which are made accessible to the Customer in terms of this agreement;
- 1.1.26. "Network Unavailability" means the time when 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;
- 1.1.27. "NNI" means Network to Network Interface between distinct MEN operated by one or more carriers;

- 1.1.28. "Off-Net Services" means services provided at any Customer Premises that are not on MFN's electronic communications network and where an infrastructure build will be required to connect the Customer to MFN's electronic communications network;
 - 1.1.29. "On-Net Services" means services provided at any Customer Premises that are on MFN's electronic communications network;
 - 1.1.30. "ONT" means the optical network termination device located at the Customer Premises which forms part of the CPE and to which the rest of the CPE is connected;
 - 1.1.31. "Parties" means the parties to this agreement, being MFN and the Customer, and "Party" means either one of them;
 - 1.1.32. "Product" means any combination of equipment and services provided by;
 - 1.1.33. "Proposal" means the Purchase Order form signed by the Customer, read together with terms and conditions and any other annexures or schedules or documents referred to in the Purchase Order form;
 - 1.1.34. "Republic" means the Republic of South Africa;
 - 1.1.35. "Services" means the products and/or services provided by MFN to the Customer as specified in the Proposal;
 - 1.1.36. "Service provider" means any person appointed by MFN to supply any Service or part thereof to the Customer;
 - 1.1.37. "SLA" means the Service Level Agreement annexed to this Agreement;
 - 1.1.38. "Software" means any programme or application used to operate computers and related devices, whether included as part of a package, provided as a stand-alone application or accessible via the internet or any other web browsing method;
 - 1.1.39. "UNI" means the physical interface or port that is the demarcation between the ONT and the rest of the CPE;
 - 1.1.40. "Uptime" means the total number of minutes available to a Customer via the Network services in a calendar month;
 - 1.1.41. "Use charges" means the costs charged by MFN to the Customer for recorded use of the Network services.
- 1.2. In this agreement, unless a contrary intention is clear from the context:
- 1.2.1. the singular includes the plural and vice versa;
 - 1.2.2. a reference to any gender includes the other genders and a reference to a person includes any individual, body corporate or unincorporated or any other entity recognised in law as having a separate legal existence;
 - 1.2.3. when any number of days is prescribed, this shall be calculated by excluding the first and including the last day, unless the last day is not a Business Day in which case the days shall be calculated up to the next Business Day;
 - 1.2.4. headings of clauses have been inserted for convenience only and shall not be taken into account in the interpretation of the agreement;
 - 1.2.5. if there is any conflict between the provisions of this agreement and any proposal, schedule or annexure, the provisions of this agreement shall prevail;

- 1.2.6. words defined in this clause shall have the same meaning in the schedules and any word defined in a clause or schedule shall have that meaning in the clause or schedule concerned and if used elsewhere in this Agreement;
- 1.2.7. if the CPA applies to this agreement and there is any conflict between the provisions of this agreement and the CPA, the provisions of the CPA shall prevail.

2. PROVISION OF SERVICES AND AUTHORISATION

- 2.1. The Customer wishes to acquire Services and Product from MFN, which Services and Product MFN agrees to provide to the Customer subject to these Standard Terms and Conditions and the Proposal relating to each Service.
- 2.2. In order to provide the Services:
 - 2.2.1. MFN may require information from other Network providers. The Customer authorises MFN to approach any Network provider or other party in order to obtain such information;
 - 2.2.2. MFN may need to enter into agreements or arrangements with third parties which may be necessary for MFN to deliver the Services. The Customer authorises MFN to enter into any such agreement or arrangement as may be necessary; and
 - 2.2.3. if so required, the Customer shall provide MFN with such written authorisation as may be necessary for MFN to obtain the information referred to in 2.2.1 or to enter into an agreement or arrangement referred to in 2.2.2.

3. TERM

- 3.1. Subject to 3.4, the Agreement shall apply to each Purchase Order and any services provided in terms thereof for the Initial period as specified in the Purchase Order, calculated from the date of Activation.
- 3.2. Any new or additional services or any extension of the Initial services provided by MFN to the Customer, shall be supplied as provided for in the Purchase Order or in an addendum to the Purchase Order or a new Purchase Order, and the Agreement shall apply to same from the date of Activation of such new, additional or extended Services.
- 3.3. After the Initial period, or if no Initial period is specified in the Purchase Order, unless the parties agree to the renewal of the Agreement for a further fixed term, the Agreement shall continue on a month to month basis until cancelled in writing by either party by 30 days written notice to the other party.
- 3.4. In the event of the Activation of any service being delayed as a result of any act or omission on the part of the Customer, it is specifically agreed that, notwithstanding the fact that the Initial period has not yet commenced, MFN shall be entitled to recover the minimum monthly charge as set out in the Purchase Order, or a pro rata portion thereof, for the period of such delay together with any reasonable wasted costs incurred by MFN as a result of such delay.
- 3.5. If the Customer is a natural person:
 - 3.5.1. The Customer may terminate the Agreement at any time, including during the Initial period, by giving 30 calendar days notice in writing to MFN. In the event of the Customer terminating the Agreement prior to the expiry of the Initial period, MFN shall be entitled to recover all amounts due in terms of the Agreement until the termination

date together with any cancellation or early settlement fee provided for in the Proposal or a reasonable fee. The Parties agree that for this purpose, a reasonable fee determined in accordance with the guidelines prescribed in the CPA, shall be 20% (twenty per centum) of the aggregate monthly charge for the remainder of the term of the Agreement.

- 3.5.2. Not more than 80, nor less than 40, Business days before the expiry of the Initial period, if any, MFN shall notify the Customer in writing of the impending expiry date, which notice will include details of the Customer's options to extend or renew the Agreement as well as any material changes that will apply if the Agreement is extended or continues after the expiry date.
- 3.6. Unless otherwise expressly stated in the Agreement, at the expiration of the Initial period or any renewal period, MFN, in its sole discretion but subject to clause 3.4.2, may remove or change any discounts which applied to the Initial period or the renewal period, as the case may be.
- 3.7. If the conclusion of the Agreement is as a result of direct marketing and the provisions of the CPA apply to the Agreement, the Customer has the right to terminate the Agreement without reason or penalty within 5 business days of the later of the date upon which the Agreement was entered into or the CPE or any other goods to be supplied to the Customer are delivered to the Customer. If such goods are not returned in their original, unopened packaging, MFN shall be entitled to claim a reasonable amount from the Customer for the use and/or depletion of the CPE or other goods.

4. DELIVERY AND INSTALLATION

- 4.1. MFN shall deliver the CPE required for the provision of the Services and as specified in the Purchase Order to the Customer Premises against payment of the Installation Fee and deposit, if any, as set out in the Proposal.
- 4.2. MFN will use its reasonable endeavours to comply with the installation date requested by the Customer. However, the Customer acknowledges that this will depend on the availability of equipment, service providers and contractors and MFN gives no undertaking that it will meet any installation date. MFN will not be liable in any manner to the Customer for any loss arising from failure in delay in the provision of the services or the CPE whether arising from an Event of Force Majeure or for any other reason whatsoever, unless such failure is directly attributable to gross negligence or fraudulent intent on the part of MFN.
- 4.3. If the Customer fails to make arrangements for MFN to supply and install the CPE and the Services at the Customer's Premises on the confirmed date and at the confirmed time for installation and fails to provide MFN with at least 48 hours notice of this fact, MFN shall be entitled to charge a fee for the cancellation which fee shall be added to the installation fee.
- 4.4. The Customer shall, at its own cost and expense, be responsible for:
- 4.4.1. ensuring that the communication services and facilities, including, without limitation, telephone lines, installation areas, electrical outlets, connection requirements and access ways are suitable for the installation, passage and electrical connection of the equipment and services when they are delivered for installation and thereafter. Where any device or equipment is required which is not provided by MFN, the Customer shall be responsible for installing it at its own cost, risk and expense. Only devices and equipment which are approved by the Authority and which have all the technical

and operational characteristics and modifications which have been approved may be used in conjunction with the Services and the CPE; and

- 4.4.2. obtaining all the necessary permission, approvals and authorities necessary for the purposes of the supply, delivery and installation of the equipment and Services, including permission from the owner of the premises where the Customer is not the owner. The Customer hereby indemnifies MFN against any liability costs, damage or liability which MFN may incur as a result of the Customer's failure to obtain any approval or permission.
- 4.5. The installation may be subject to feasibility which can only be confirmed by a physical site survey after the signing of the Agreement. In this event:
 - 4.5.1. additional installation charges may apply, subject to the results of the physical site survey. The Customer will be informed of any such charges before installation takes place.
 - 4.5.2. after obtaining the results of the site survey, MFN may determine that the installation is not feasible, in which event MFN shall be entitled to cancel the Agreement and neither party shall have any further obligations, including financial obligations, in terms thereof.
- 4.6. Once the installation is complete, any subsequent callout of engineers or technicians will be charged to the Customer at the applicable charge out rate, with a minimum charge of one hour plus travel expenses.
- 4.7. Where the Agreement is governed by the CPA, this clause 4.7 shall be subject to the provisions of the CPA.
 - 4.7.1. Any acceptance certificate or similar document signed by the Customer and provided to MFN or any Contractor shall, unless the Customer proves otherwise, be deemed to be an admission by the Customer that it has fully inspected and approved the equipment and all its components and that the equipment and the components have been received to the satisfaction of the Customer. The Customer shall have no claim against MFN of any nature whatsoever if, after such acceptance by the Customer, it transpires that the equipment or any component thereof is unacceptable to the Customer for any reason.
 - 4.7.2. Unless the Customer advises MFN of any problems with the installation or the Services within 48 hours from the time of Activation, the Customer shall be deemed to have accepted the Services.

5. SOFTWARE

- 5.1. The Customer may only use any software provided to it by or on behalf of MFN under the Agreement for the purpose for which it is intended and licenced in terms hereof.
- 5.2. The Customer shall not, and shall not permit anyone else to, reverse engineer, decompile, modify, tamper with, enhance, copy, sell, lease, licence, sub-licence or otherwise deal with the software or any part, variation, modification, release or improvement thereof. This provision shall extend to any other software or program which may be written for the Customer based upon software referred to in 5.1.

- 5.3. All rights in and to the software, including all upgrades, updates, modifications and variations thereto from time to time, remain with MFN and nothing in the Agreement shall be construed as granting or assigning such rights to the Customer. The Customer shall have no basis upon which to claim any rights in or to the software and undertakes not to infringe upon or prejudice any rights of MFN in and to the software.
- 5.4. Unless specifically provided for in the Agreement, there is no obligation upon MFN to upgrade the software and any such upgrade will be at MFN's sole discretion.
- 5.5. It is the Customer's responsibility to notify MFN if and when it requires renewing any software licence provided in terms of or as a consequence of the Agreement.

6. USE AND STORAGE OF INFORMATION

- 6.1. The Customer acknowledges that MFN has established general practices and limits concerning the use of the Services including the period of time which the Customer's e-mail messages and other content uploaded on the server is retained, the quantity and size of content that may be sent from or received by the Customer and the available space which is made available to the Customer on the hard drive of MFN's servers.
- 6.2. MFN shall not be obliged to delete, in any way, any message and/or other electronic communication or exchange that MFN maintains or transmits.
- 6.3. MFN shall be entitled, by written notice to the Customer, to terminate the provision of Services should the Customer fail to use the services for a continuous period of 12 (twelve) months.

7. USE OF THE EQUIPMENT

- 7.1. The Customer shall use the CPE only for the purpose for which it is intended and in accordance with any laws or regulations and shall ensure that its employees, agents and sub-contractors comply with these obligations.
- 7.2. Upon delivery to the Customer, or collection by the Customer, of the CPE, risk in and to the CPE shall pass to the Customer who shall ensure that:
 - 7.2.1. the CPE is kept in the Customer's possession and control, protected against any material loss or damage and free from any attachment, lien, hypothec or other encumbrance;
 - 7.2.2. only clean power is provided to the CPE;
 - 7.2.3. the CPE is used with due care and diligence;
 - 7.2.4. the CPE is protected against any form of lightning through the installation of lightning protection;
 - 7.2.5. the CPE is adequately insured for full replacement value and that MFN's interest in the equipment is noted on the insurance policy. The Customer shall comply fully with the terms and conditions of such insurance policy.
- 7.3. The Customer shall ensure that the CPE is maintained in a clean and serviceable condition and in good working order and that, upon termination of the Agreement in respect of such CPE, it is returned to MFN in the same condition as at date of activation, fair wear and tear only excepted.

- 7.4. The Customer acknowledges that the CPE and any other equipment provided by MFN or its service providers under this Agreement and will not accede to any other property or the Customer's Premises and, unless the Customer has purchased the equipment and paid for it in full, the equipment shall at all times remain the property of MFN or its service providers, as the case may be. MFN, or the service provider who is the owner of the equipment, shall have the right to inspect the equipment at all reasonable times and to remove it on termination of the Agreement relating to such equipment.
- 7.5. Should the Customer not be the owner of the Customer's Premises or any other premises where the equipment may be kept at any time, the Customer shall notify the owner of such premises of MFN or its service provider's ownership of the equipment. The Customer shall obtain all any permission required from the owner or any other person for or relating to the installation of the CPE at the Customer's Premises.
- 7.6. The Customer will provide:
- 7.6.1. provide MFN and its Contractors and service providers with free access to the Customer's Premises, equipment, software, phone ports and/or network during reasonable hours, for the purpose of installing, connecting, maintaining, monitoring, removing or replacing the equipment and/or software or for any other purpose contemplated in the Agreement;
- 7.6.2. MFN with any plans, charts, diagrams, user lists, company procedures or any other documentation or information which MFN may require in order to properly provide the Services;
- 7.6.3. its own security procedures in order to protect the integrity of its systems. It is specifically agreed that MFN shall not be liable for any loss relating to the integrity or the Customer's systems unless such loss is a direct result of gross negligence or fraudulent intent on the part of MFN.
- 7.7. In the event of theft of or loss or damage to the CPE, the Customer shall immediately inform MFN in writing. The Customer shall be responsible for the cost of repairing or replacing the CPE and it is the Customer's responsibility to lodge a claim with their insurers in order to mitigate this loss. MFN shall be obliged to assist the Customer by providing any information or documentation relating to the damaged or lost CPE which may be required by the Customer in order to submit such claim.
- 7.8. The Customer shall ensure that the CPE remain at the Customer's Premises. Should the Customer wish to move the CPE or any part thereof, the Customer shall give MFN 4 months written notice. If MFN approves the relocation, the Customer will be charged a site relocation fee, at the relevant prices charged by MFN or its service provider, as the case may be, at the time of such relocation.
- 7.9. MFN may, at any time during the Agreement, reconfigure, upgrade or exchange any part of the CPE should MFN, in its sole discretion, deem it necessary to do so in order to meet its obligation to provide the Services. MFN shall not be obliged to make any upgrades unless it deems it necessary to do so.
- 7.10. Unless the prior written consent of MFN is obtained:
- 7.10.1. the Customer shall not be entitled to, nor shall it allow any other person to, repair, modify, alter or add to the equipment in any manner;
- 7.10.2. the Customer shall ensure that only equipment marketed and sold by MFN or its preferred suppliers shall be installed on or attached to the CPE. Any component installed on or attached to the CPE shall become the property of MFN without

compensation or reimbursement to the Customer or any other person. The Customer hereby indemnifies MFN against any loss resulting from a breach of its obligations in term of this clause.

8. USE OF SERVICE

- 8.1. The Customer warrants and undertakes in favour of MFN, that the Customer:
- 8.1.1. shall not use or permit the services to be used for improper, immoral or unlawful purposes;
 - 8.1.2. not resell capacity arising from the Services or cede or assign any rights to use the Services without the prior written consent of MFN and subject to such conditions as MFN may impose in respect of such consent;
 - 8.1.3. shall only use the Services for the purpose for which they are intended in terms of the Agreement and shall not use the Services to route, or to assist another party to route, transit traffic from other networks to MFN nor use the Services in any way which may cause injury or damage to persons or property or cause an impairment to or interruption of the services;
 - 8.1.4. shall comply with the Act and any other relevant legislation, including any regulations by the Authority, and any directives or instructions from MFN, including MFN's Fair Access Policy, annexed hereto and available on MFN's website, relating to the use of the equipment or Services;
 - 8.1.5. shall specifically, without in any way derogating from the generality of 8.1.4, ensure compliance with all laws and regulations from time to time regulating the sending of unsolicited commercial communications ("SPAM") including but not limited to the Act and the Authority's Code of Conduct.
- 8.2. The Customer indemnifies MFN against any losses, expenses, damages or other amount for which MFN may become liable relating to the use of the Services in contravention of this Agreement and specifically, but not limited to, 8.1 or any claims by any third party arising out of the Customer's use of the services, unless such loss, expense, damage, harm or liability is directly attributable to the gross negligence or fraudulent intent of MFN.

9. FEES AND PAYMENT

- 9.1. Unless otherwise specifically agreed in the Proposal, the Customer shall make payment into the bank account nominated by MFN for this purpose, in full, without deduction or set-off and free of bank charges, on date of invoice:
- 9.1.1. for the supply and delivery of Services, including equipment and installation;
 - 9.1.2. for the monthly service fee and all other periodical charges, including monthly and annual charges, as specified in the Proposal, which fees shall be payable in advance;
 - 9.1.3. the usage charges as specified in the proposal, which amounts shall be payable in arrears.
- 9.2. MFN shall be entitled to increase the fees and/or charges payable by the Customer upon 30 (thirty) days written notice to the Customer, where:
- 9.2.1. this is specifically provided for in the Proposal;

- 9.2.2. the direct costs to MFN in providing the Services including, but not limited to, the costs charged by the network service provider(s) in respect of such services, is increased, in which case the increase in fees or charges by MFN shall be commensurate with the increased of providing the Services; or
- 9.2.3. there is a change in the regulatory environment which increases the costs of providing the Services.
- 9.3. Unless stated otherwise, all amounts payable by the Customer to MFN in terms of this Agreement are exclusive of Value Added Tax ("VAT") and any other taxes, levies or other statutory charges that may be imposed in respect of the Services from time to time. The Customer shall be liable for the payment of VAT or such other taxes, levies or charges.
- 9.4. If payment is to be made by debit order, the Customer shall execute a debit order for the payment of all amounts payable in terms of the Agreement and shall sign and deliver whatever documents may be required for the purposes of such debit order. Any cancellation of such debit order without the prior written consent of MFN shall constitute a breach of this Agreement. Where payment is made by debit order, electronic funds transfer or any similar method, the Customer's bankers or any other intermediary will act as the Customer's agents and the Customer will only have discharged its obligation to make payment upon the funds being received by MFN's bankers.
- 9.5. A certificate signed by any director of MFN shall be sufficient proof of the amount owing by the Customer for the purposes of obtaining provisional sentence or summary judgment.
- 9.6. If the Customer purchases the equipment or any part thereof outright, the full amount payable in respect thereof shall be due and payable upon delivery of the equipment to the Customer. If the Customer cancels an order for such equipment after MFN has ordered the equipment from its supplier but before delivery to the Customer, MFN shall be entitled to charge the Customer a fee equal to 7% of the transaction value of the equipment, which the parties acknowledge and agree constitutes a reasonable charge within the meaning of section 17 of the CPA.
- 9.7. Any fees payable by the Customer to a network provider in terms of a contract between the Customer and such Network provider, shall be payable directly to the Network provider in accordance with the terms of such contract.

10. SUSPENSION OF SERVICES

- 10.1. MFN may, upon 5 (five) days written notice to the Customer, suspend the Customer's use of Services, if
- 10.1.1. any alteration, maintenance or remedial work is required to be undertaken in relation to the services; or
- 10.1.2. the Customer fails to perform any obligation under or breaches any term of this Agreement;
- 10.1.3. the Customer exceeds the credit limit which MFN, in its sole discretion, shall set and notify the Customer of from time to time and fails to rectify this situation within the notice period provided in this clause 10.1.
- 10.2. The Customer shall be liable for the applicable reconnection charges to restore any services suspended in terms of this clause, unless such services are suspended in terms on 10.1.1.

- 10.3. The Customer remains liable for the applicable fees payable in terms of this Agreement during any period of suspension in the circumstances contemplated in 10.1, provided that any suspension in terms of 10.1.1 shall be subject to the provisions of the SLA.

11. DEFAULT

- 11.1. Except where otherwise specifically provided in the proposal or elsewhere in this Agreement, a default shall occur if either party ("the defaulting party"):
- 11.1.1. fails to pay any amount due under this Agreement within 7 (seven) days of receipt of written demand requiring such payment;
 - 11.1.2. commits a breach of any provision of this Agreement which breach is not capable of remedy;
 - 11.1.3. commits a breach of any provision, other than a payment obligation, of this Agreement which is capable of remedy and fails to remedy such breach within 14 (fourteen) days of receipt of written demand from the other party requiring it to do so;
 - 11.1.4. commit any act of insolvency or any act which, if committed by a natural person, would constitute an act of insolvency in terms of the insolvency laws of the Republic of South Africa;
 - 11.1.5. be sequestered or liquidated whether provisionally or finally, voluntarily or compulsorily or compromise or attempt to compromise with any of its creditors;
 - 11.1.6. has a final judgment taken against it, which judgment is not satisfied within 30 (thirty) days of the granting of same.
- 11.2. In the event of a default, the other party ("the aggrieved party") shall be entitled, without prejudice to any other right which it may have in terms of this Agreement or in law, to, at the option of the aggrieved party, immediately cancel this Agreement or to demand specific performance of the defaulting party, whether or not such performance would otherwise be due.

12. CANCELLATION AS A RESULT OF IMPOSSIBILITY OF PERFORMANCE

- 12.1. If any party is restricted or prevented from carrying out any or all of its obligations as a result of an Event of Force Majeure, unpredictable delays caused by traffic congestion, diversion or road works, or any other event or circumstance giving rise to impossibility or performance by either party, then that party will be relieved of its affected obligations during the period that such event continues and will not be liable for any costs or damages arising from such delay or the failure in performance of any obligations as a result of such event.
- 12.2. If the event in 11.1 continues for a period in excess of 21 (twenty-one) days, either party may cancel this Agreement with immediate effect by written notice to the other party.

13. OBLIGATIONS ON TERMINATION

- 13.1. The Customer remains responsible for all amounts due in terms of the Agreement up until the date of termination, together with any costs or expenses relating to the termination of the Agreement and the cancellation of the Services, including, but not limited to:

- 13.1.1. any cancellation fees, all of which shall become due and payable immediately upon cancellation; and
- 13.1.2. the replacement cost of any CPE which MFN is unable to recover for any reason.
- 13.2. MFN is entitled to immediately deactivate the Services on date of termination or cancellation and shall have no further obligation to the Customer after such termination or cancellation of this Agreement.
- 13.3. The Customer shall grant access to MFN or its service provider, or shall ensure that such access is granted, in order to enable them to remove the CPE or any other equipment related thereto from the Customer's Premises.

14. GUARANTEES, EXCLUSION AND LIMITATION OF LIABILITY

- 14.1. MFN shall make all reasonable effort to ensure that the CPE and any other equipment provided by it or its service providers are in accordance with the Agreement and the Customer's requirements. Unless explicitly granted in writing, MFN does not, except to the extent required by the CPA if the CPA applies to this Agreement, make any representations or give any guarantee or warranty of any nature whatsoever, either express or implied, with regard to the CPE or the Services including, but not limited to, any implied warranty of merchantability or fitness or suitability for any intended purpose.
- 14.2. Subject to the any applicable provision of the CPA, to the extent that the CPA is applicable to this Agreement, MFN will not be liable to the Customer or to any third party for any loss or damage, direct, special, incidental, consequential or otherwise, which may be suffered as a consequence of utilising the CPE or Services, unless such loss or damage was directly attributable to the gross negligence or fraudulent intent of MFN.
- 14.3. Without limiting the generality of 14.2, it is specifically agreed that MFN shall not, unless this is the result of MFN's gross negligence or fraudulent intent, be liable for any damages or losses incurred by the Customer as a result of:
 - 14.3.1. the Services being interrupted, suspended or terminated for whatsoever reason; or
 - 14.3.2. any failure to suspend the Services where the Customer has specifically requested the Services to be suspended for a period of time;
 - 14.3.3. communications to or from the Customer not being sent and/or received at all or on time for any reason whatsoever;
 - 14.3.4. the Customer's failure to perform any obligation under this Agreement;
 - 14.3.5. changes to the Customer's operating environment unless these have been communicated to MFN and any necessary changes to the Services as a result thereof have been agreed to between the parties;
 - 14.3.6. any failure or delay by the Customer to report any problem to Metrofibre NOC;
 - 14.3.7. the server or equipment of any recipient party being non-functioning for any reason whatsoever;
 - 14.3.8. the failure of any hardware, software, operating system, application, network, telecommunication line or any computer system, or component thereof, of any third party upon whom MFN or the Customer relies, directly or indirectly, in order to utilise the Services;
 - 14.3.9. the unavailability of MFN's website for any reason whatsoever;

- 14.3.10. the Customer using the Services for illegal, immoral or improper purposes; and/or
 - 14.3.11. illegal or fraudulent accessing of the Customer's telecommunication lines, PABX or other telecommunications equipment by any third party. In such circumstances, the Customer will remain liable to MFN for all charges incurred as a result of such illegal or fraudulent access and indemnifies MFN against any loss, liability, damage or expense which MFN may suffer or incur as a result.
- 14.4. Notwithstanding any other provision of this Agreement, any liability of MFN to the Customer or any third party will be limited to an amount equal to the fixed monthly costs payable by the Customer during the Initial period.

15. CESSION, ASSIGNMENT AND SUB-CONTRACTING

- 15.1. The Customer may not cede or assign any of its rights or obligations under this Agreement, nor transfer the CPE or any part thereof to any third party or permit any third party to use the CPE or any part thereof without MFN's prior written consent.
- 15.2. MFN shall be entitled to cede and/or assign any of its rights or obligation under the Agreement or to appoint Contractors to carry out any of its obligations under the Agreement, provided that, if the Customer is a consumer in terms of the CPA, the assignment of any obligation is not to the Customer's detriment as contemplated in regulation 44 (3) (t) or any other regulation of the CPA.
- 15.3. Subject to 15.1, this Agreement shall be binding on the successors-in-title and assigns of the Parties.

16. DOMICILIA AND NOTICES

- 16.1. The Parties select as their respective domicilia citandi et executandi, and for the purposes of giving or sending any notice or communication provided for or required in terms of this Agreement, the addresses (including email addresses) as set out below.
- 16.2. MFN
Physical Address:
82 Roan Crescent
Corporate Park North
Old Pretoria Road
Randjesfontein
E-mail: accounts@metrofibre.co.za
- 16.3. The Customer
The physical or residential address and the e-mail specified in the Purchase Order.
- 16.4. Either party may change its domicilium address by written notice to the other party, provided that any such change shall only become effective on the 7th (seventh) day after the giving of such notice.
- 16.5. Any notice required or permitted to be given in terms of this Agreement shall be given in writing and shall be delivered by hand to the physical domicilium address of the other party or sent via e-mail to the chosen e-mail address.

- 16.6. Notwithstanding anything to the contrary in this clause 16, a written notice or communication actually received by any Party, shall be adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen address.

17. DISCLOSURE

- 17.1. The Customer warrants and represents that all information provided in the Purchase Order or elsewhere relating to this Agreement, is true, correct and complete and the Customer indemnifies MFN against any claim which may arise as a result of a breach of this warranty.
- 17.2. The Customer authorises MFN to make general credit reference enquiries about the Customer and to disclose any information which has been supplied or any information relating to the Customer's account to any registered credit bureau.
- 17.3. MFN shall further be entitled to disclose any information of the Customer to enable to provision of emergency services, directory or repair services to the Customer and for any purpose for which such information is required in law.
- 17.4. MFN undertakes not to disclose any of the Customer's information for any purpose, except as provided for in this clause 17 or as agreed to elsewhere in this Agreement or in writing by the Customer.

18. GENERAL

- 18.1. This Agreement constitutes the whole agreement between the parties relating to the subject matter hereof and, subject to the provisions of the CPA to the extent that the CPA may be applicable to this Agreement, no party shall be bound to any express or implied term nor to any representation or warranty nor to any extension, relaxation or waiver of any provision hereof, unless reduced to writing and agreed to by the parties. Any such extension, relaxation or waiver will be strictly interpreted as applying only to the matter in respect of which it is made or given.
- 18.2. The Customer acknowledges that MFN seeks, on an on-going basis, to improve the services which it offers to its customers. This, together with other changes which may be required as a result of legislation or regulation or arising from the environment in which MFN operates, may require MFN to amend the terms and conditions of this Agreement from time to time. Subject always to the Customer's rights to terminate this Agreement, MFN shall have the sole discretion to amend this Agreement and to modify or discontinue any function or component of the Services. Any use by the Customer of such Services after such amendment has been implemented and notified to the Customer in writing, shall be deemed to be an acceptance by the Customer of such amendment.
- 18.3. If any part of this Agreement is found to be invalid, the balance of the provisions shall remain enforceable. The rule that, in the case of any ambiguity in an agreement, the agreement shall be interpreted against the party responsible for the preparation thereof, shall not apply to this Agreement.
- 18.4. This Agreement shall be subject to and shall be governed by the laws of the Republic of South Africa.
- 18.5. The Customer agrees, in accordance with the provisions of the Magistrates Court Act of 1944, as amended from time to time, to the jurisdiction of the Magistrates Court having jurisdiction over its person in connection with any action or proceeding instituted against the Customer in terms of or arising out of this Agreement, provided that either party may institute any action or

proceedings in any division of the High Court of South Africa which has the necessary jurisdiction. In the case of either party (“the aggrieved party”) taking legal action against the other party (“the defaulting party”) for the recovery of any amounts due or any other legal action in terms of this Agreement, the aggrieved party will be entitled to recover legal costs from the defaulting party on a the scale as between an attorney and its own client.

- 18.6. The Customer shall be entitled to refer any dispute between itself and MFN with regard to the accessibility of Services to the Authority or to refer any matter to any other regulatory body having jurisdiction in respect thereof.

ANNEXURE TO GENERAL TERMS AND CONDITIONS

SERVICE LEVEL AGREEMENT

1. OVERVIEW

- 1.1. This is a Service Level Agreement between MFN and the Customer for the support and maintenance of the Services provided by MFN to the Customer.
- 1.2. This SLA outlines the parameters of all Services as mutually understood by the Parties. This SLA does not supersede current processes and procedures unless explicitly stated.
- 1.3. This SLA forms an Annexure to Metrofibre Network Standard Terms and Conditions and shall be incorporated therein. Words and phrases defined in the Metrofibre Network Standard Terms and Conditions bear the same meaning in this Annexure.

2. PURPOSE AND OBJECTIVES

- 2.1. The purpose of the SLA is to ensure that the proper elements and commitments are in place to provide consistent support and delivery to the Customer by MFN.
- 2.2. The objectives of the SLA are to:
 - 2.2.1. provide clear reference to service ownership, accountability. Roles and/or responsibilities;
 - 2.2.2. present a clear, concise and measurable description of service provision to the Customer;
 - 2.2.3. match perceptions of expected service provision with actual service support and delivery.

3. DURATION AND APPLICABILITY

- 3.1. The SLA shall commence on the date of Activation and, subject to 3.2, shall remain in force for the duration of the Agreement.
- 3.2. The parties agree that the SLA shall be reviewed annually, or more often if circumstances dictate. Any reference to the SLA in the Agreement or in this Annexure, shall be a reference to such SLA as reviewed and amended from time to time.

4. COMMITMENT

- 4.1. MFN will provide the Customer with a warranty for contracted services provided by MFN to the Customer.
- 4.2. This SLA provides specific representations and guarantees in respect of individual services and identifies the recourse available to the Customer for any specific breaches of the SLA by MFN.
- 4.3. MFN is committed to providing a reliable, high quality network to support its FTTH and FTTB services to the Customer.

5. NETWORK AVAILABILITY AND REPAIR TIMES



- 5.1. MFN undertakes to provide an FTTH and FTTB best effort service in terms of which the MTRS shall be 48 (forty-eight) business hours.
- 5.2. MFN guarantees an average Uptime of 95% during any 12 month period calculated from the Activation date
- 5.3. The MFN FTTH Service is a Best Effort service which means the potential speed that can be obtained will depend on the load on the line and the speeds achieved via 3rd Party networks.
- 5.4. MFN does not give any guarantees to the quality and consistency of the Wi-Fi performance of the CPE.

6. CUSTOMER SUPPORT AND CONTACT DETAILS

- 6.1. MFN has established the Metrofibre NOC equipped with the necessary infrastructure to facilitate efficient communication in order to support all user and network related issues reported by the Customer.
- 6.2. The Metrofibre NOC will be available from 8:00 to 19:00 Monday to Friday on and from 8:00 to 13:00 on Saturdays, but shall be closed on Sundays and any day which is a public holiday.
- 6.3. The Customer can report a fault to the Metrofibre NOC via the following means:
 - 6.3.1. Trouble Ticket, MFN's online call logging system;
 - 6.3.2. telephonically on 087 151 4049;
 - 6.3.3. e-mail on noc@metrofibre.co.za.
- 6.4. The Customer will provide MFN with an e-mail address to be used for access to MFN's Trouble Ticketing Portal. All queries logged on the portal shall fall within the service level times in 5.1
- 6.5. E-mail requests will have a best effort answer time of 2 business days.

7. REPAIRS AND MAINTENANCE

- 7.1. Scheduled maintenance of the MFN network, or any portion thereof, will not normally result in Service interruption or outage. Should scheduled maintenance require a Service interruption or outage, MFN will exercise commercially reasonable efforts to:
 - 7.1.1. provide the Customer the 7 (seven) days prior written notice of the scheduled maintenance;
 - 7.1.2. co-operate with the Customer in good faith to attempt to minimise any disruption to the Service that may be caused by such scheduled maintenance; and
 - 7.1.3. perform such scheduled maintenance where possible during the non-peak hours of 0:00 and 0:00
- 7.2. Emergency maintenance of the MFN network, or any portion thereof, may result in Service interruption or outage. To the extent that this is practical and taking into account the severity of the fault, MFN take whatever action is required to effect the repair and will attempt, at best effort, to contact the Customer and advise of the impending outage and the expected time to repair same.
- 7.3. MFN will arrange for any necessary repairs arising in terms of this Agreement. Unless specifically otherwise provided in the Agreement, MFN will be responsible for the costs of any

repairs arising from faults in MFN's equipment and the Customer shall be liable for the cost incurred in effecting any repairs arising from equipment belonging to the Customer or any third party and which equipment is not provided in terms of the Agreement.

8. CHANGE MANAGEMENT PROCEDURE

- 8.1. Metrofibre NOC shall inform the Customer of any change or scheduled maintenance that will affect services at least 7 (seven) calendar days before the planned implementation date.
- 8.2. All changes are managed by the Metrofibre NOC. The start of the change is logged, the change is implemented by trained technical personnel and overseen by an MFN supervisor. The end of the change is logged and the success thereof logged and recorded.

ANNEXURE TO STANDARD TERMS AND CONDITIONS

METROFIBRE NETWORKX ACCEPTABLE FAIR ACCESS POLICY

1. PURPOSE

- 1.1. This policy serves to define the accepted behaviour of users on the Metrofibre Metworx ("MFN") network.
- 1.2. The policy is intended to allow MFN to:
 - 1.2.1. maintain the integrity and quality of its service;
 - 1.2.2. protect its customers and infrastructure from abuse;
 - 1.2.3. adhere to current laws and regulations governing organizations and service providers in the countries in which it operates;
 - 1.2.4. co-exist with the global internet community as a responsible service provider.

2. THE NETWORK

- 2.1. Any person using the MFN network ("the User") acknowledges that MFN is unable to exercise control over the data passing over the infrastructure and the Internet including, but not limited to, any websites, electronic mail transmissions, news groups or other material created or accessible over its infrastructure. Therefore, MFN is not responsible for data transmitted over its infrastructure.
- 2.2. The MFN infrastructure may be used to link in to other networks worldwide and the User agrees to abide by the acceptable use policies of these networks.
- 2.3. Users of the MFN network include not only MFN customers but, in the case of resellers of the MFN services, the customers of such resellers. Resellers are responsible for the activities of their customers and their customers are expected to comply with this Fair Access Policy.
- 2.4. The User may obtain and download any materials marked as available for download off the Internet, but the User may not use his or her Internet access to distribute any copyright materials unless the owner of the materials grants permission for such distribution to the User.
- 2.5. The User is prohibited from obtaining, disseminating or facilitating any unlawful materials over the MFN network including, but not limited to:
 - 2.5.1. copying or dealing in intellectual property without authorisation;
 - 2.5.2. child pornography; and/or
 - 2.5.3. any unlawful hate-speech materials.

- 2.6. In order to ensure that all customers have fair and equal use of the service and to protect the integrity of the network, MFN reserves the right, and will take whatever steps MFN deems necessary, to prevent improper or excessive usage of the service including, but not limited to:
 - 2.6.1. Any action required to prevent prohibited usage, whether intended or unintended, e.g. the spread of viruses, worms, malicious code or other unknown causes;
 - 2.6.2. Limiting throughput;
 - 2.6.3. Preventing or limiting services through specific ports or communication protocols; and/or
 - 2.6.4. Complete termination of service to customers who grossly abuse the network through improper or excessive usage.
- 2.7. Online activity will be subject to the available bandwidth, data storage and other limitations of the service provided, which MFN may, from time to time, revise at its own discretion and without prior notice to its customers.

3. SYSTEM AND NETWORK SECURITY

- 3.1. Any reference to systems and networks under this section refer to all systems and networks to which the User is granted access through MFN, including, but not limited to, the infrastructure of MFN itself and the Internet.
- 3.2. The User may not circumvent user authentication or security of any host, device, network or account (referred to as "hacking" or "cracking", nor interfere with service to any user, host, device or network (referred to as "denial of service attacks"). The host, device, network or account shall also not be used for any illegal purpose, including phishing.
- 3.3. Violations of system or network security by the User are prohibited and may result in civil or criminal liability. MFN will investigate incidents involving any violation or suspected violation and shall involve and co-operate with law enforcement officials if a criminal violation is suspected. Examples of system or network security violations include, without limitation, the following:
 - 3.3.1. Unauthorised access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of any system or network or to breach any security or authentication measures without the express authorisation of MFN
 - 3.3.2. Unauthorised monitoring of data or traffic on the network or systems without the express authorisation of MFN
 - 3.3.3. Interference with service to any User, device, host or network including, without limitation, mail bombing, flooding, deliberate attempts to overload a system and broadcast attacks
 - 3.3.4. Forging of any TCP-IP packet header (spoofing) or any part of the header information in an e-mail or a newsgroup posting
- 3.4. Users should, before using the service, familiarise themselves with the contents of the following newsgroups: news.newusers.questions; news.announce.newusers; news.answers.
- 3.5. Excessive cross-posting, i.e. posting the same article to a large number of newsgroups, is prohibited
- 3.6. Posting of irrelevant (off-topic) material to newsgroups (also known as USENET spam) is forbidden

- 3.7. Posting binaries to a non-binary newsgroup is forbidden
- 3.8. MFN reserves the right to delete and/or cancel posts which violate any of the above conditions.

4. INTERCEPTION

The User acknowledges that MFN is lawfully required to intercept communications in accordance with the provisions of the Regulation of Interception and Provision of Communication-Related Information Act 70 of 2002. Any interception of communications shall be strictly in accordance with the provisions of the said Act.

5. MANAGING ABUSE

In the event of MFN receiving a complaint of abuse or having becoming aware of an incident which amounts to abuse, MFN reserves the right to take any one or more of the actions listed below. In this regard MFN shall have absolute discretion as to what steps may be necessary:

- 5.1. Inform the User's network administrator of the incident and require the network administrator or network owner to deal with the incident according to this Acceptable Fair Access Policy
- 5.2. If the User is an individual user, suspend the User's account and withdraw the user's network access privileges completely
- 5.3. Charge the offending part or parties for administrative costs incurred as well as for machine and human time lost due to the incident
- 5.4. In severe cases, suspend access of the user's entire network until abuse can be prevented by appropriate means
- 5.5. Take such action as may be necessary to protect the integrity of the system, including, but not limited to, system monitoring, protocol management and shutting down ports affected by viruses, worms or other malicious code
- 5.6. Implement appropriate mechanisms in order to prevent usage patterns that violate this policy
- 5.7. Share information concerning the incident with other Internet access providers or publish the information and/or make available the user's details to law enforcement agencies

6. LAWS AND LEGISLATION

- 6.1. The MFN infrastructure may only be used for lawful purposes. Users must abide by all applicable laws and regulations in the Republic of South Africa. In the event that the User resides or uses the infrastructure in any other country, the User shall abide by any applicable laws of that country.
- 6.2. The transmission, distribution or storage of any material on or through the infrastructure in violation of any applicable law or regulation is prohibited. This includes, without limitation, material protected by copyright, trademark, trade secret or any other intellectual property right used without authorisation and any material that is obscene, defamatory, constitutes an illegal threat or violates export control laws.
- 6.3. The User undertakes to use the MFN infrastructure and services in accordance with the requirements of, and any restrictions imposed under, the following legislation as amended from time to time:

- 6.3.1. the Electronic Communications and Transactions Act 25 of 2002
- 6.3.2. the Electronic Communications Act 36 of 2005
- 6.3.3. the Films and Publications Act 65 of 1996
- 6.3.4. the Regulation of Interception of Communications and Provision of Communication-Related Information Act 70 of 2002

7. GENERAL

- 7.1. This policy forms part of MFN's standard terms and conditions in respect of any of MFN's services and the usage of any MFN service shall be subject to these terms and conditions.
- 7.2. All cases of violation of this Acceptable Fair Access Policy should be reported to abuse@metrofibre.co.za