

## SERVICES AGREEMENT

entered into between

**DARK FIBRE AFRICA PROPRIETARY LIMITED**  
**REGISTRATION NUMBER: 2007/013968/07**  
**(“DFA”)**

and

.....  
**REGISTRATION NUMBER: .....**  
**(“CUSTOMER”)**

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### 1 DEFINITIONS

In this Agreement, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them hereunder and cognate expressions bear corresponding meanings -

- 1.1 “Agreement” means this Services Agreement (including schedules, annexures and/or addenda thereto), as amended from time to time.
- 1.2 “Annexure” means the annexures executed under this Agreement which specify the terms and conditions applicable to each of the Services offered by DFA to the Customer, which annexures supplement the terms

contained in this Agreement as they relate to the Services and as they may each be amended, supplemented or superseded from time to time.

- 1.3 “Business Days” means all days, excluding Saturdays, Sundays and proclaimed public holidays in the Republic of South Africa.
- 1.4 “COF” means a Customer Order Form submitted to DFA by the Customer in writing or in electronic format and accepted by DFA.
- 1.5 “Customer” means the Customer, the particulars of which are set out in Annexure A.
- 1.6 “DFA” means Dark Fibre Africa Proprietary Limited, a company duly registered and incorporated in terms of the Companies Act, 2008 under number 2007/013968/07, having its principal place of business at:
- DFA Building  
59 Regency Drive  
Route 21 Corporate Park  
Nellmapius Avenue  
Irene 0157.
- 1.7 “Due Date” means the date of payments specified in the relevant invoice, or if no such date is specified, then the date which is 30 (thirty) days from the date of the invoice.

- 1.8 “ECA” means the Electronic Communications Act, 2005 (Act 36 of 2005).
- 1.9 “ECNS Licence” means an Electronic Communications Network Service Licence issued to the Customer in terms of the ECA.
- 1.10 “ECN Licence” means an Electronic Communications Network Licence issued to the Customer in terms of the ECA.
- 1.11 “ICASA” means the Independent Communications Authority of South Africa.
- 1.12 “Intellectual Property Rights” means –
- 1.12.1 rights in and in relation to any patent, design, trademark, trade or business name (including all goodwill associated with any trademark, or any trade or business name), copyright, database, domain name, circuit topography design and/or utility model and including the benefit of registrations or applications to register and the right to apply for registration of any of the foregoing items and all rights in the nature of any of the foregoing items, each for their full term and wherever in the world enforceable;

- 1.12.2 all other intellectual property rights and forms of protection of a similar nature or having equivalent or similar effect and which may subsist anywhere in the world.
- 1.13 “Month” means a calendar month commencing on the first day of a month and terminating on the last day of the same month.
- 1.14 “Network” means the communication network and network components owned and/or operated by DFA, including points of presence and equipment located at the Customer premises, but does not include any networks or network equipment not owned or controlled by DFA.
- 1.15 “Parties” means DFA and the Customer and “Party” means any one of them.
- 1.16 “Prime Rate” means the Prime Rate of interest levied by Barclays Africa on overdraft facilities to its corporate clients as certified by any manager of the Bank whose appointment DFA shall not need to prove.
- 1.17 “Services” means the suite of service offerings provided by DFA to the Customer as further specified in the relevant Annexures and delivered by DFA in accordance with any applicable SLA specified in the relevant Annexures.

- 1.18 “Service Commencement Date” means the date on the Service Handover form.
- 1.19 “Service Handover Form” means the form provided by DFA to the Customer confirming completed installation and testing of the Service.
- 1.20 “Service Levels” means the service levels applicable to the Services as set out in any relevant Annexure.
- 1.21 “SLA” means a Service Level Agreement executed as an Annexure, or executed as part of an Annexure, that sets out the Service Levels applicable to the Services.
- 1.22 “Signature Date” means the date of signature of this Agreement by the Party signing it last in time.
- 1.23 “VAT” means value added tax levied in terms of the VAT Act.
- 1.24 “VAT Act” means the Value Added Tax Act, 1991 (Act 88 of 1991).

## **2 INTERPRETATION**

- 2.1 The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof. Unless a contrary intention clearly appears –
- 2.1.1 words importing;
- 2.1.1.1 any one gender include the other two genders;
- 2.1.1.2 the singular include the plural and vice versa; and
- 2.1.1.3 natural persons include created entities (corporate or unincorporate) and the State and vice versa.
- 2.2 Any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment or legislative measure of government (including local or provincial government), statutory or regulatory body which has the force of law means the relevant enactment or legislative measure as at the Signature Date and as amended or re-enacted from time to time.
- 2.3 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement.
- 2.4 When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or Public holiday, in which case the last

day shall be the succeeding day which is not a Saturday, Sunday or Public holiday.

- 2.5 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 2.6 Expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own conflicting definitions.
- 2.7 Reference to day/s, month/s or year/s shall be construed as Gregorian calendar day/s, month/s or year/s.
- 2.8 The use of any expression in this Agreement covering a process available under South African Law, such as a winding-up (without limitation eiusdem generis) shall, if any of the Parties to this Agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such defined jurisdiction.
- 2.9 If any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in the interpretation clause.
- 2.10 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.

- 2.11 The rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply.
- 2.12 Any reference in this Agreement to a Party shall include a reference to that Party's assigns expressly permitted under this Agreement and, if such Party is liquidated or sequestrated, be applicable also to and binding upon that Party's liquidator or trustee, as the case may be.
- 2.13 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.
- 2.14 Any reference in this Agreement to any other agreement or document shall be construed as a reference to such other agreement or document as same may have been, or may from time to time be amended, varied, novated or supplemented.
- 2.15 Where any amount/values are referred to, same shall be exclusive of VAT.
- 2.16 All provisions and the various clauses of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, in such jurisdiction 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. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.



2.17 Where the consent of any Party is required for any purpose, same shall, unless the context indicates otherwise -

2.17.1 refer to the prior written consent of such Party (the “grantor”); and

2.17.2 the consent shall not be unreasonably withheld.

In the event of the refusal or withholding of such consent, the onus shall be on the Party seeking same (the “grantee”), to prove that the refusal or withholding of the consent was unreasonable in all the circumstances.

2.18 Reference to “consent” shall be deemed to include a reference to any consent, approval or permission which may be required of the grantor.

2.19 Unless otherwise provided, defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.

2.20 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.

2.21 In this Agreement the words “clause” or “clauses” and “schedule” or “schedules” refer to clauses of and schedules to this Agreement.

2.22 This Agreement shall be construed and governed in accordance with the laws of the Republic of South Africa.

### **3 INTRODUCTION**

- 3.1 The Customer hereby appoints DFA to provide the Services, subject to the terms and conditions contained in this Agreement, which appointment DFA hereby accepts.
- 3.2 DFA shall be entitled to appoint any third party to provide the Services on written notice to the Customer to such effect, provided that DFA shall be and remain liable with such appointee for the due and proper performance by it of all of its duties, functions and obligations under this Agreement.

### **4 COMMENCEMENT AND DURATION**

- 4.1 This Agreement shall come into operation on, and be effective from, the Signature Date.
- 4.2 Subject to any contrary provisions of this Agreement, it shall endure for an indefinite period of time subject to the right of either Party to terminate it on 3 (three) Months' written notice to the other Party provided that, notwithstanding such termination, this Agreement shall continue to apply to any COF which has not expired.

### **5 PROVISION OF SERVICES**

- 5.1 When the Customer wishes to obtain the Services, it shall submit to DFA in writing or online a COF in the format specified in the relevant Annexures. DFA shall, within 5 (five) Business Days of receipt of a COF either accept or reject it in writing. If accepted by DFA, the COF shall be deemed incorporated into this Agreement.

- 5.2 DFA shall not be obliged to undertake any Services until a COF in respect of the required Services has been received and accepted by DFA.
- 5.3 DFA reserves the right to utilise any spare capacity or equipment that it has installed to provide the Services to the Customer for the purpose of providing services to other DFA customers, provided that such use of spare capacity or equipment does not have an adverse effect on the provision of the Services to the Customer.
- 5.4 The Customer shall only use the Services in accordance with this Agreement and in accordance with an ECNS Licence or ECN Licence, if applicable or appropriate, issued to it by ICASA in terms of the ECA.
- 5.5 The Customer shall ensure that the Services are not used in a manner which constitutes an infringement of any rights of DFA or any third party, or for any illegal, fraudulent or unauthorised activities.
- 5.6 The Customer shall further ensure that it and its customers do not by any act or omission, damage, interfere with or impede the operation of the Services or Network provided by DFA.
- 5.7 Where the Customer becomes aware that any violation or contravention of this Clause 5 has, or is likely to, occur, it will co-operate and provide DFA with the necessary information to assist in identifying, preventing or remedying or rectifying such violation or contravention.
- 5.8 Each COF shall constitute an agreement between the Parties subject to the terms and conditions of this Agreement.

5.9 It is anticipated that at times during the currency of this Agreement DFA will determine that COF's be submitted electronically using methods including e-mail, mobile applications, web portals and/or machine-to-machine interfaces. To give effect to electronically issuing and accepting COFs, DFA and the Customer shall execute an Annexure detailing the methods to be utilised, including the electronic authorisation of a COF by both Parties and the information to be included in such a COF.

## **6 FEES AND CHARGES**

6.1 The Customer shall pay to DFA, on or before the Due Date, the fees and charges specified in each COF.

6.2 The fees and charges, as specified, in respect of any period which is less than a full month, shall be adjusted proportionately.

6.3 Subject only to 6.4 below, the monthly fees and charges set out in each applicable COF shall be fixed for the duration of the term thereof.

6.4 DFA shall be entitled to adjust the monthly fees and charges as a result of any regulatory or government imposed factors that impact on such fees and charges.

## **7 SERVICE LEVEL AGREEMENT**

7.1 DFA shall provide and maintain the Services in accordance with any applicable Service Level Agreements.

## **8 INVOICING**

- 8.1 DFA shall invoice the Customer for each Service provided under this Agreement from the Service Commencement Date.
- 8.2 On the last day of every month, DFA shall submit to the Customer an invoice and statement reflecting the fees and charges payable for the immediately succeeding month. The Customer shall pay the fees and charges so reflected within 30 (thirty) days of date of the invoice and statement whichever is the latest. All payments made by the Customer to DFA in terms of this Agreement shall be deposited into the bank account stipulated by DFA from time to time.
- 8.3 If the monthly rental, or any other amount due in terms of this Agreement, is not paid or paid in full, as stipulated, then such arrear amount shall bear interest at the Prime Rate plus 5% ( five percent ) calculated from the date on which such amount became due and payable until the date on which it is actually paid.
- 8.4 The rental, as specified, in respect of any period during the currency of this Agreement which is less than a full month, shall be adjusted proportionately.
- 8.5 The rental payable shall be paid free of deduction and set-off. It is specifically recorded that, should the Customer wish DFA to build the access to its property, the cost thereof shall be payable by the Customer to DFA within 30 (thirty) days of DFA submitting an invoice to the Customer.

## **9 DISPUTES RELATING TO PAYMENT**

- 9.1 If any Party (“Disputing Party”) disputes the amount reflected as being payable by it in terms of any invoice from the other Party (the “Invoicing Party”) or any component thereof, the Disputing Party shall, within 10 (ten) Business Days after receipt by it of the invoice, deliver a notice in writing to the Invoicing Party, containing details of such dispute; and;
- 9.1.1 within 5 (five) Business Days of receipt of such notice, the Invoicing Party shall furnish the Disputing Party with whatever documents or materials may be reasonably required by the Disputing Party to verify the amount reflected as being payable; and
- 9.1.2 the Disputing Party may refer the dispute for investigation and determination by a firm of auditors agreed to between the Parties or, failing agreement, by a firm of auditors nominated by the President for the time being of the South African Institute of Chartered Accountants. Such auditors shall, in their determination of the dispute, act as experts and not as arbitrators and their decision shall be final and binding on the Parties except for manifest error. The Parties shall cooperate in any such investigation and any sum found by the auditing firm to be due or overpaid shall promptly be paid or refunded (together with any interest payable) within 5 (five) Business Days of the date of determination.
- 9.2 The Parties shall maintain, keep and retain invoices, accurate books of account and other relevant payment and accounting information in terms of applicable statutory provisions.

9.3 Notwithstanding any dispute between the Parties as to any payment, the Parties shall, throughout the term of this Agreement, remain obliged to observe and perform their obligations in terms of this Agreement and to pay any amounts due.

## **10 DESTRUCTION, INDEMNITIES AND LIMITATION OF LIABILITY**

10.1 Should cable strands or cables utilised by DFA to deliver any of the Services to the Customer be destroyed or damaged to an extent which prevents the Customer from having the beneficial use thereof, the Customer shall, provided that the destruction or damage was not caused by the negligence and/or wilful acts or omissions on the part of DFA, have no claim of any nature whatsoever against DFA as a result thereof, no matter how such destruction or damage was caused. DFA shall, however, at its cost and as rapidly as circumstances allow, repair the affected cable strands or cables.

10.2 If the total or partial destruction of cable strands or cables utilised by DFA to deliver any of the Services to the Customer, is caused by any wilful act or omission of the Customer or of any person for whose acts or omissions the Customer is vicariously liable at law, the Customer shall be liable to DFA for all damages suffered by DFA as a result of and in connection with such total or partial destruction.

## **11 INDEMNIFICATION AND LIMITATION OF LIABILITY**

11.1 Each Party (the "Indemnifying Party") hereby indemnifies the other ("Innocent Party") against all liability, damages or loss, including any civil or criminal fines imposed by any relevant government or regulatory authority, arising directly from (and any reasonable cost, charge or expense incurred

in connection with) any action, claim, suit or demand by any person against the Innocent Party pursuant to –



- 11.1.1 any unlawful act or omission of the Indemnifying Party or its employees, sub-contractors, directors or agents in connection with this Agreement; or
- 11.1.2 a breach by the Indemnifying Party of any of the terms of this Agreement.
- 11.2 If any action, claim, suit or demand (“Claim”) is made by any person against the Innocent Party which, if satisfied or paid by the Innocent Party, would result in any liability of the Indemnifying Party pursuant to the provisions of clause 11.1, the Innocent Party shall give written notice of the Claim to the Indemnifying Party as soon as practical of becoming aware thereof.
- 11.3 Neither Party shall be obliged to indemnify the other Party according to the provisions of this clause 11 to the extent that the loss, liability, cost, charge or expense suffered or sustained by such other Party is the direct result of any breach, act or omission by such other Party of any of its obligations in terms of this Agreement.
- 11.4 Notwithstanding the provisions of this clause 11, the Indemnifying Party shall not, under any circumstances, be liable for any indirect, special and/or consequential damages, including, but not limited to, loss of profits, suffered by the Innocent Party.
- 11.5 Provided that there was no unlawful, negligent and/or wilful acts or omissions on the part of DFA, its agents, sub-contractors and/or employees:
  - 11.5.1 the Customer shall not have any claim of any nature whatsoever against DFA for any loss, damage (whether general, special or consequential), expense or injury which may be suffered by the Customer, directly or indirectly;

- 11.5.2 DFA shall have no liability to the Customer in respect of any loss, damage, expense or injury which may be suffered by the Customer by reason of any latent defects in the ducts constructed by it which may affect the cable strands or cables leased by the Customer, or any theft of any part of such ducts, or arising out of vis majeure or casus fortuitous.
- 11.6 The provisions of the foregoing sub-clauses shall not avail DFA, where DFA has received notice from the Customer to remedy a material breach of this Agreement and DFA has failed to respond thereto or to remedy or rectify such breach within a period of 7 (seven) Business Days from date of receipt of such written notice from the Customer, and the Customer shall, in such circumstances, not be restricted from enforcing any rights or remedies which are available to it.
- 11.7 Any liability for damages (excluding rental payable) by either Party in terms of this clause 11 shall be limited to the value of the relevant COF.

## **12 SUSPENSION OF SERVICES**

- 12.1 DFA may lawfully suspend all or part of any Service until further notice to the Customer if, in the opinion of DFA –
- 12.1.1 the continued provision of the Service will cause DFA to breach any law or a contravention of its licence;
- 12.1.2 the continued provision of the Service will cause material harm or damage to the Network of DFA or part thereof; or
- 12.1.3 any undisputed tax invoice for fees and charges submitted to the Customer remains unpaid for 30 (thirty) days beyond the Due Date.

12.2 The exercise by DFA of its right to suspend the Services is without prejudice to any other remedy available to DFA under this Agreement and does not constitute a waiver of the right of DFA to subsequently terminate the Agreement and/or relevant COF.

### **13 DEFAULT**

13.1 If a Party takes steps to -

13.1.1 place itself, or is placed, in liquidation, whether voluntary or compulsory, in either case whether provisionally or finally:

13.1.2 deregister itself or is deregistered; or

13.1.3 initiates business rescue operations;

such Party shall be in default.

13.2 If a Party is in default as envisaged in clause 13.1, the aggrieved Party may, without prejudice to any other rights or remedies to which it may be entitled at law, or in terms of this Agreement, forthwith terminate this Agreement and all COF's.

### **14 BREACH**

14.1 Should either Party (the "Defaulting Party"):

14.1.1 fail to pay any amount due by it in terms of this Agreement within a period of 10 (ten) Business Days after receipt of a notice from the Party not in default (the "Non-Defaulting Party") to effect such payment;

- 14.1.2 commit any breach of any term of this Agreement, whether such breach goes the root of this Agreement or not, and fail to remedy that breach within a period of 20 (twenty) Business Days after receipt of written notice to that effect from the Non-Defaulting Party; or
- 14.1.3 breach any of the terms of this Agreement on more than 4 (four) occasions within any period of 12 (twelve) months, and thereafter again breach any term of this Agreement (irrespective as to whether the breach relates to the same term as breached on the previous occasion, or otherwise); then and in any of such events, the Non-Defaulting Party shall be entitled, without prejudice to any other rights or remedies to which it may be entitled at law or in terms of this Agreement to either terminate the COF in respect of which the breach occurred, demand specific performance or to remedy such breach and recover the total cost incurred in doing so from the Defaulting Party, who shall be obliged to pay the amount therefor forthwith.
- 14.2 Should DFA terminate this Agreement and the Customer disputes DFA's right to do so and continues to make beneficial use of the Services, then, pending the determination of the dispute, the following shall apply:
  - 14.2.1 the Customer shall continue to pay amounts due by it in terms of this Agreement on the due dates thereof;
  - 14.2.2 DFA shall be entitled to recover and accept such payments;
  - 14.2.3 the acceptance by DFA of such payments shall be without prejudice to and shall not in any manner whatsoever affect DFA's claim to termination of this Agreement or any COF.

14.2.4 should the dispute between DFA and the Customer be determined in favour of DFA, then the payments made to DFA in terms of clause 14.2.1 shall be regarded as amounts paid by the Customer on account of the loss sustained by DFA as a result of the holding-over by the Customer.

## **15 ARBITRATION**

15.1 Save as otherwise provided for in this Agreement, should any dispute arise between the Parties in connection with –

15.1.1 the formation or existence of;

15.1.2 the implementation of;

15.1.3 the interpretation or application of the provisions of;

15.1.4 the Parties' respective rights and obligations in terms of or arising out of this Agreement or its breach or termination;

15.1.5 the validity, enforceability, rectification, termination or cancellation, whether in whole or in part of;

15.1.6 any documents furnished by the Parties pursuant to the provisions of this Agreement or which relates in any way to any matter affecting the interests of the Parties in terms of this Agreement, that dispute shall, unless resolved amongst the Parties to the dispute, be referred to and be determined by arbitration in terms of this clause.

15.2 Any Party to this Agreement may demand that a dispute be determined in terms of this clause by written notice given to the other Party.

- 15.3 This clause shall not preclude any Party from obtaining interim relief on an urgent basis from a Court of competent jurisdiction pending the decision of the arbitrator.
- 15.4 The arbitration shall be held –
- 15.4.1 at Pretoria;
- 15.4.2 with only the legal and other representatives of the Parties to the dispute present thereat;
- 15.4.3 mutatis mutandis in accordance with the provisions of the Supreme Court Act, 1959 (Act 59 of 1959), the rules made in terms of that Act and the practice of the division of the High Court referred to in 15.10;
- 15.4.4 otherwise in terms of the Arbitration Act, 1965 (Act 42 of 1965), it being the intention that the arbitration shall be held and completed as soon as possible.
- 15.5 The arbitrator shall be, if the matter in dispute is principally -
- 15.5.1 a legal matter, a practising advocate or attorney of at least 10 years' standing or a retired Judge of the High Court of South Africa or the Supreme Court of Appeal or the Constitutional Court;
- 15.5.2 an accounting matter, a practising chartered accountant of at least 10 years' standing;
- 15.5.3 any other matter, any independent person, agreed upon between the Parties to the dispute.

- 15.6 Should the Parties to the dispute fail to agree whether the dispute is principally a legal, accounting or other matter within 7 (seven) days after the arbitration was demanded, the matter shall be deemed to be a legal matter.
- 15.7 Should the Parties fail to agree on an arbitrator within 14 (fourteen) days after the giving of notice in terms of clause 15.2, the arbitrator shall be appointed at the request of the Parties to the dispute by the President for the time being of the Law Society of the Northern Provinces according to the provisions of clause 15.5.
- 15.8 The decision of the arbitrator may be made an order of the Court referred to in clause 15.10 at the instance of any of the Parties to the dispute.
- 15.9 Any decision given shall be subject to appeal on notice given within 7 (seven) Business Days of the decision having been given by the arbitrator. In the event of an appeal being lodged, each of the Parties shall be entitled to nominate one appeal arbitrator according to clause 15.5.
- 15.10 The Parties hereby consent to the jurisdiction of the High Court of South Africa; North Gauteng Division in respect of the proceedings referred to in clause 15.3.
- 15.11 The Parties agree to keep the arbitration, including the subject matter of the arbitration and the evidence heard during the arbitration, confidential and not to disclose it to anyone except for purposes of an order to be made in terms of clause 15.8.
- 15.12 The provisions of this clause –
- 15.12.1 constitute an irrevocable consent by the Parties to any proceedings in terms hereof and no Party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions;

15.12.2 are severable from the rest of this Agreement and shall remain in effect despite the termination of or invalidity for any reason of this Agreement.

## **16 NOTICES AND DOMICILIA**

16.1 The Parties select as their respective domicilia citandi et executandi the following physical addresses, and for the purposes of giving or sending any notice provided for or required under this Agreement, the said physical addresses as well as the following telefax numbers –

16.1.1 in the case of the Customer, to its address reflected in Schedule A:

16.1.2 in the case of DFA to:

59 Regency Drive,  
Route 21 Corporate Park,  
Nellmapius Avenue,  
IRENE, Gauteng 0157  
Fax: 012 443 1003

For the attention of: Group Head Legal and Corporate

provided that a Party may change its domicilium or its address for the purposes of notices to any other physical address by written notice to the other Party to that effect. Such changes of address will be effected 5 (five) Business Days after receipt of the notice of the change.

16.2 All notices to be given in terms of this Agreement will be given in writing and will 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.

16.3 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 16.

## **17 FORCE MAJEURE**

17.1 Force Majeure in respect of any Party means an event beyond the reasonable control of that Party, its contractors or sub-contractors without the fault or negligence of that Party and was not reasonably foreseeable and providing that such event materially and adversely affects the ability of such Party to perform its obligations under this Agreement, including but not limited to, war or civil war (whether declared or undeclared and including the serious threat of same) or armed conflict, invasion and acts of foreign enemies, riots, sabotage, blockage and embargos, civil unrest, commotion or rebellion, or any act or credible threat of terrorism, any act of God, earthquake, flood, extraordinary storm, nuclear, chemical or biological contamination or explosion, plaque, epidemic, theft, damage not caused by that Party, its contractors or sub-contractors, strikes not caused by that Party, its contractors or sub-contractors, lock-outs or other industrial action of general application; any act of any authority , explosion and fire.

17.2 If a Force Majeure event prevents a Party (“Affected Party”) from performing any of its obligations under the Agreement (“Force Majeure Event”), the affected Party will be granted an extension to perform the relevant obligation.

- 17.3 The Affected Party is obliged to notify the other Party about the material adverse effect of a Force Majeure Event on the performance of obligations under the Agreement to the reasonable satisfaction of the other Party.
- 17.4 Upon the cessation of the Force Majeure Event, the Affected Party shall immediately notify the other Party of such cessation and resume performance of the affected obligations.
- 17.5 If, as a result of a Force Majeure Event, the performance by the Affected Party of some but not all of its obligations under the Agreement are affected, the Affected Party shall nevertheless remain liable for the performance of those obligations not affected by Force Majeure.
- 17.6 If the Customer is the Affected Party and a Force Majeure Event continuous for a period of 4 (four) months or longer, then the Customer may at the expiry of such period, provided the Force Majeure Event is still subsisting, give notice in writing to the Affected Party terminating the applicable COF.
- 17.7 Where DFA is the Affected Party and:
- 17.7.1 a Force Majeure Event continues for a period of 4 (four) months;
  - 17.7.2 the Customer has not exercised its rights under clause 17.6;
  - 17.7.3 the Force Majeure Event is subsisting;
- DFA may give a written notice to the Customer terminating the Agreement and/or applicable COF.

## **18 CONFIDENTIALITY**

- 18.1 Each Party shall keep confidential all information concerning the other Party and any of the other Party's subsidiaries, agents, assigns or representatives, their business activities, subscribers, business, operation systems, software and any other information ("Confidential Information").
- 18.2 The Parties shall not disclose, and shall ensure that their employees, sub-contractors, subsidiaries, agents or representatives do not disclose, the Confidential Information referred to in clause 18.1, without the prior written consent of the other Party.
- 18.3 The Parties shall ensure that each of its employees, sub-contractors and agents and any other person involved in the performance of this Agreement will comply with the terms of this clause 18 as if they were parties thereto and a Party shall be responsible for any breach of this clause 18.3 by any of its employees, sub-contractors and agents and any other person involved in the performance of this Agreement as if such breach were committed by such Party.
- 18.4 The Parties undertake to procure that each sub-contractor executes an undertaking to be bound by provisions substantially the same as those contained in this clause 18.
- 18.5 The obligations of confidentiality under this clause shall not apply to –
- 18.5.1 information disclosed to employees, shareholders, auditors, consultants, attorneys, professional advisors, banks or other lenders, agents and sub-contractors on a need-to-know basis, provided that the receiving Party shall take all reasonable precautions necessary (for example, by executing an appropriate non-disclosure undertaking) to safeguard the confidentiality of the information (in the same standard as it protects its own confidential

information and if such standard falls short of best industry practice, at standards conforming to best industry practice);

- 18.5.2 information which is required to be disclosed in compliance with any regulation, law, court order or direction of competent authorities;
  - 18.5.3 information already placed in the public domain prior to disclosure or obtained from an independent third party without confidentiality obligation known to the receiving Party;
  - 18.5.4 is developed by the receiving Party or its related companies independent of any confidentiality undertaking;
  - 18.5.5 is approved for release by the disclosing Party.
- 18.6 Each Party indemnifies the other and its subsidiaries against all loss (including reasonable legal costs) or liability directly or indirectly incurred or suffered as a result of any breach of this clause 18 by itself or any of its subsidiaries, employees, representatives, sub-contractors or agents, without limitation.

## **19 INTELLECTUAL PROPERTY RIGHTS**

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.

## **20 CESSION AND ASSIGNMENT**

20.1 The Customer may not cede, assign, transfer, convey or otherwise dispose of its rights, duties or liabilities under this Agreement or any COF without the prior written consent of DFA.

20.2 The Customer acknowledges that DFA may enter into financing arrangements with finance parties and that the finance parties may require a cession and assignment of DFA's rights and obligations under this Agreement.

## **21 COOPERATION**

The Parties shall co-operate and consult with each other in good faith regarding the implementation of this Agreement with a view to achieving the aims and objectives of this Agreement.

## **22 INDEPENDENT CONTRACTORS**

The Parties agree that their relationship to one another is that of independent contractors and that nothing in this Agreement may be construed so as to create a partnership between the Parties in any manner or form. Neither Party shall have power or authority to bind the other Party.

## **23 REPRESENTATIONS**

The Parties admit that no representations and/or warranties other than those included in this Agreement have been made inducing either of the Parties to enter into this Agreement.

**24 VARIATION**

No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any right arising from this Agreement, or its breach or termination shall be of any force or effect unless reduced to writing and signed by the Parties or their duly authorised representatives.

**25 RELAXATION**

No latitude, extension of time or other indulgence which may be given of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any Party arising from this Agreement and no single or partial exercise of any right by any Party under this Agreement, shall in any circumstances be construed to be an implied consent or election by such Party or operate as a waiver or a novation of or otherwise affect any of the Party's rights in terms of or arising from this Agreement or estop or preclude any such Party from enforcing at any time, and without notice, strict and punctual compliance with each and every provision or term hereof.

**26 COSTS**

Each Party shall pay its own costs of and incidental to the preparation, drawing, finalising and execution of this Agreement, including incidental negotiations, consultations and attendances.

**27 ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the Parties as to the subject matter and supersedes all previous agreements between the Parties, whether oral or written.

**28 SIGNATURE**

28.1 This Agreement is signed by the Parties on the dates and at the places indicated.

28.2 This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument. Any electronic, faxed or scanned counterpart will be deemed to be a valid counterpart to this Agreement.

28.3 The persons signing this Agreement in a representative capacity warrant their authority to do so.

28.4 Each Party warrants to the other that it has the necessary rights, licences and authorities to enter into and perform its obligations in terms of the Agreement.

**FOR: DARK FIBRE AFRICA PROPRIETARY LIMITED**

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

\_\_\_\_\_

Who warrants that he/she is  
duly authorised thereto

Who warrants that he/she is  
duly authorised thereto

Name: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

Place: \_\_\_\_\_

\_\_\_\_\_

Witness: \_\_\_\_\_

\_\_\_\_\_



**FOR:** .....

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

Who warrants that he/she is  
duly authorised thereto

\_\_\_\_\_

Who warrants that he/she is  
duly authorised thereto

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Witness: \_\_\_\_\_

\_\_\_\_\_

**THE CUSTOMER:**

1. **Name:** .....
2. **Registration Number:** .....
3. **Physical Address:** .....
4. **Postal Address:** .....
5. **Telephone Number:** .....
6. **Telefax Number:** .....
7. **E-Mail Address:** .....
8. **Contact person:** .....

## **ANNEXURE B TO SERVICES AGREEMENT FOR MAGELLAN METRO ETHERNET SERVICES**

### **1 DEFINITIONS**

Words and expressions defined in the agreement to which this annexure serves as an annexure shall bear the same meanings in this annexure. In addition thereto, the following words and expressions shall bear the meanings assigned to them hereunder and cognate expressions shall bear corresponding meanings.

- |     |                    |   |
|-----|--------------------|---|
| 1.1 | “Access”           | means the fibre last mile access link that connects the Customer Site to the nearest Aggregation Node.  |
| 1.2 | “Agreement”        | means the Services Agreement (including schedules, annexures and/or addenda thereto) to which this annexure serves as an annexure.  |
| 1.3 | “Aggregation Node” | means a location within the Network where DFA aggregates fibre from multiple Customer Sites and connects the fibre and the Customer Site to the Network and includes pre-aggregation nodes. |
| 1.4 | “Annexure”         | means this annexure that shall constitute an annexure to the Agreement.   |

1.5	“CPE”	means the customer premises equipment that is owned and managed by DFA and located at the Customer Site and is used by DFA in conjunction with the Network to deliver a Metro Ethernet Service to the Customer.
1.6	“Coverage and Feasibility Rules”	means the DFA coverage and feasibility rules defined in clause 6.4.
1.7	“CSS”	means a customer specific solution as defined in clause 5.5.
1.8	“C-Tag”	means a Customer VLAN ID Inner Tag which is implemented according to standard 802.1QSTagType.
1.9	“Customer Network”	means the Customer’s network in whatever form and excludes any components of the Network.
1.10	“Current Site”	means the Customer Site at which a Service is currently delivered by DFA.
1.11	“Customer Site”	means the site at which the Customer requires a Service to be delivered as set out in the relevant COF.
1.12	“Data Centre”	means a data centre owned by DFA or a third party which is connected to the Network and where DFA has elected to provide Metro Ethernet Services.

1.13	“Discount”	means any amount reflected as a reduction in billing as a percentage of the MRC or NRC reflected on a COF for a Service.
1.14	“ENNI”	means an External Network-to-Network Interface as defined in MEF CE2.0.
1.15	“ENNI Locations”	means the Aggregation Nodes and other defined locations selected by DFA at which ENNI’s may be established between the Network and the Customer Network.
1.16	“EPL”	means Ethernet Private Line as defined in MEF CE2.0.
1.17	“Ethernet”	means interfaces and services conforming to The Institute of Electrical and Electronics Engineers Standards Association (IEEE-SA) standards including the 802.3, 802.1Q, 802.1D and 802.1ad standards, as amended from time-to-time.
1.18	“EVPL”	means Ethernet Virtual Private Line as defined in MEF CE2.0.
1.19	“Gbps”	means Gigabits per second, where 1 (one) Gbps is 1 024 (one thousand and twenty-four) Mbps.

1.20	“Guaranteed Services”	means the Services for which DFA is providing a guaranteed Service Level as specified in clauses 8.1 and 8.2.
1.21	“IEEE-SA”	means the Institute of Electrical and Electronics Engineers Standards Authority.
1.22	“L2CP”	means Layer 2 Control Protocols as defined in MEF CE2.0.
1.23	“Magellan”	means the product name assigned by DFA to the Metro Ethernet Services.
1.24	“Magellan Access Bandwidth Service”	means the component of the Magellan Access service defined in clauses 4.2.1.2 and 5.1.3.
1.25	“Magellan Access Service”	means the group of Metro Ethernet Services as defined in clauses 4.2.1 and 5.1.
1.26	“Magellan Data Centre Interconnect Service”	means the Metro Ethernet Services defined in clauses 4.2.4 and 5.4.
1.27	“Magellan ENNI Bandwidth Service”	means the component of the Magellan Access service defined in clauses 4.2.1.4 and 5.1.4.
1.28	“Magellan ENNI Port Service”	means the component of the Magellan Access service defined in clauses 4.2.1.3 and 5.1.2.

1.29	“Magellan EPL Service”	means the Metro Ethernet Services defined in clauses 4.2.2 and 5.2.
1.30	“Magellan EPL Bandwidth Service”	means the component of the Magellan EPL service defined in clauses 4.2.2.2 and 5.2.2.
1.31	“Magellan Fibre Access Service”	means the component of the Magellan Access and Magellan EPL services defined in clauses 4.2.1.1 and 5.1.1.
1.32	“Magellan Fibre Access Service Configuration Level”	means the configuration level of a Magellan Fibre Access Service, Magellan Transport or Magellan Data Centre Interconnect service as defined in clauses 5.7, 5.8 and 5.9.
1.33	“Magellan Transport Service”	means the Metro Ethernet Services defined in clauses 4.2.3 and 5.3.
1.34	“Mbps”	means 1 048 576 (one million forty-eight thousand five hundred and seventy-six) bits per second.
1.35	“MEF”	means the Metro Ethernet Forum, an international industry consortium, dedicated to adoption and standardisation of Ethernet networks and services.
1.36	“MEF 33”	means the MEF 33 standard included in the MEF CE2.0 Standard.

1.37	“MEF 45”	means the MEF 45 standard included in the MEF CE2.0 Standard.
1.38	“MEF CE 2.0 Standard”	means version 2.0 of the Carrier Ethernet standard defined by the MEF.
1.39	“Metro Ethernet Services”	means services provided by DFA to the Customer, which services are compliant with the MEF CE2.0 Standard.
1.40	“MRC”	means Monthly Recurring Charge.
1.41	“Network Coverage”	means the geographical areas to which DFA has extended the Network and in which DFA is able to deliver Magellan Metro Ethernet services.
1.42	“NRC”	means non-recurring charge.
1.43	“Rebate”	means any fixed monthly amount reflected as a reduction in billing against the MRC as reflected on the COF for a Service;
1.44	“Retermination”	means a change in the Customer Site for a particular Service where DFA delivers a new Service at the Retermination Site.
1.45	“Retermination Site”	means the Customer Site to which the Customer is requesting DFA to transfer a Service from the Current Site;



1.46	“Service Availability”	means the percentage of time for which a Service was available to the Customer in a given Month as defined in clauses 8.7, 8.8 and 8.9.
1.47	“Service Availability Guarantee”	means the Service Availability that DFA guarantees per Service in a given Calendar Month as defined in clause 8.9.
1.48	“Service Credits”	means service credits due to the Customer for Service Downtime calculated in accordance with clause 8.
1.49	“Service Downtime”	means that period of time for which the Service was unavailable to the Customer in a given Month.
1.50	“Service Level Area”	means the geographic areas in which particular Service Levels for Magellan Services are applicable, which Service Level Areas shall be determined and published by DFA, as amended from time to time by DFA.
1.51	“Service Period”	means the number of minutes in a given Month during which a Service was delivered by DFA to the Customer.
1.52	“SOP”	means the Standard Operating Procedures, as specified by DFA and

defined in clause 8.16, governing the operational relationship between DFA and the Customer, as amended from time to time by DFA.

- 1.53 “S-Tag” means a service VLAN ID Outer Tag which is implemented according to standard 802.1QTagType.
- 1.54 “UNI” means User Network Interface as defined in MEF CE2.0.
- 1.55 “VLAN” means a virtual local area network. A VLAN is a method of creating independent logical networks within a physical network. VLAN tagging is the practice of inserting a VLAN ID into a packet header in order to identify which VLAN the packet belongs to.
- 1.56 “802.1ad” means the IEEE 802.1ad standard as defined by IEEE-SA.
- 1.57 “802.1Q” means the IEEE 802.1Q standard as defined by the IEEE-SA.

## **2 INTRODUCTION**

- 2.1 This Annexure is concluded in terms of the Agreement.

2.2 This Annexure covers the provision of Magellan Metro Ethernet Services by DFA to the Customer.

2.3 The Magellan Metro Ethernet Services covered in this Annexure shall constitute part of the Services contemplated in the Agreement.

### **3 COMMENCEMENT AND DURATION**

3.1 This Annexure shall come into operation on, and be effective from, the Signature Date.

3.2 Subject to any contrary provisions of this Annexure, it shall endure for an indefinite period of time subject to the right of either Party to terminate it on 3 (Three) Months' written notice to the other Party provided that, notwithstanding such termination, this Annexure shall continue to apply to any COF which has not expired. Such notice to terminate this Annexure shall not constitute termination of the Agreement, nor shall it constitute termination of any other annexures executed under the Agreement.

### **4 DESCRIPTION OF MAGELLAN SERVICES**

4.1 Magellan is a group of Metro Ethernet Services delivered across the Network enabling connectivity between the Customer's network and Customer Sites, or between two Customer Sites.

4.2 Magellan Metro Ethernet Services are delivered in four different configurations:

4.2.1 **Magellan Access** provides for multiple Customer Sites to be connected to the Customer's Network in a hub-and-spoke configuration. Magellan

Access is compliant with the MEF CE2.0 Access EPL and Access EVPL services as defined in MEF 33. Magellan Access consists of the following components:

- 4.2.1.1 **Magellan Fibre Access Service** which connects the Customer Site to an appropriate Aggregation Node and includes the fibre from the Customer Site to the Aggregation Node, the CPE at the Customer Site and the necessary ports on the Network;
- 4.2.1.2 **Magellan Access Bandwidth** which provides bandwidth from the Customer Site over the Magellan Fibre Access Service into the Network;
- 4.2.1.3 **Magellan ENNI Port** which provides a port on the Network to support an ENNI between the Network and the Customer Network; and
- 4.2.1.4 **Magellan ENNI Bandwidth** which provides bandwidth on the ENNI port to aggregate all the relevant Magellan Access Bandwidth services into the Customer Network.
- 4.2.2 **Magellan EPL** provides for two Customer Sites to be connected together over the Network in a point-to-point configuration. Magellan EPL is compliant with the MEF CE2.0 EPL service as defined in MEF 33. Magellan EPL consists of the following components:
  - 4.2.2.1 Two Magellan Fibre Access Services that connect the two Customer Sites to the Network. Each Customer Site is connected to the Network with a separate Magellan Fibre Access Service.
  - 4.2.2.2 **Magellan EPL Bandwidth** which provides bandwidth through the Network between the two Customer Sites.

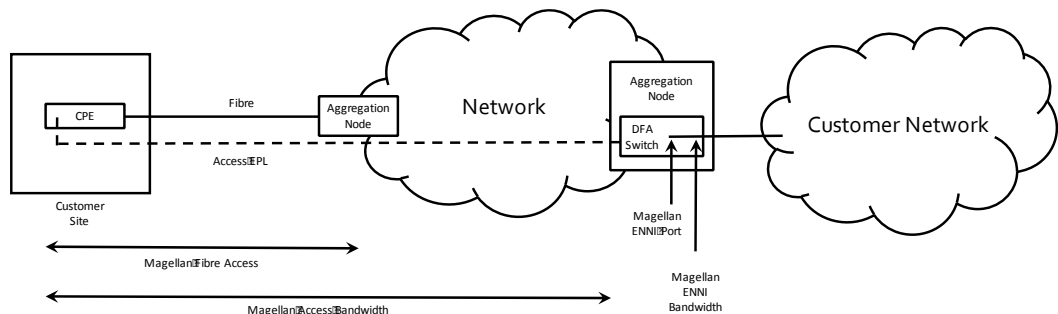
4.2.3 **Magellan Transport Services** provides for high-speed connectivity between two Customer Sites in a point-to-point configuration. Magellan Transport Services is compliant with the MEF CE2.0 EPL service as defined in MEF33. Magellan Transport Services is provided as an all-inclusive end-to-end service at defined bandwidth configurations with a single price dependent on the bandwidth configured on the service.

4.2.4 **Magellan Data Centre Interconnect Services** provides for high-speed connectivity between defined Data Centres in a point-to-point configuration. Magellan Data Centre Interconnect Services is provided on the same basis as Magellan Transport Services with the limitation that it is only provided between defined Data Centres and has a separate pricing model to Magellan Transport Services.

## 5 MAGELLAN CONFIGURATION AND SERVICE PARAMETERS

### Magellan Access

5.1 The high-level configuration of Magellan Access is shown in Figure 1.



**Figure 1: Magellan Access**

Magellan Access is configured as follows:

5.1.1 Each Customer Site is connected to the Network by a Magellan Fibre Access Service consisting of:

- 5.1.1.1 Fibre between the Customer Site and an Aggregation Node. The Aggregation Node is determined by DFA. The fibre is routed and configured to support the Magellan Fibre Access Service Configuration Level selected by the Customer;
  - 5.1.1.2 A CPE located either at the Customer Site or a suitable location determined by DFA. The CPE provides a single 1Gbps copper RJ45 interface as standard, with the option to be configured with a 1Gbps single mode fibre optical interface with an LC/PC connector. Each CPE interface will support a maximum of 800Mbps of traffic; and
  - 5.1.1.3 An appropriate Ethernet port(s) on the Network at the Aggregation Node(s) configured to support the Magellan Fibre Access Service Configuration Level selected by the Customer.
- 5.1.2 One or more Magellan ENNI Ports provisioned as follows:
- 5.1.2.1 A 1Gbps or 10Gbps optical Ethernet port provided on the Network in an appropriate Aggregation Node;
  - 5.1.2.2 ENNI Ports shall only be provided in a defined set of Aggregation Nodes determined by DFA. ENNI Ports may be provided in other locations as part of a CSS;
  - 5.1.2.3 The ENNI Port is configured to support multiplexed Access EPL's and/or Access EVPL's in accordance with MEF 45, IEEE 802.1Q and IEEE 802.1ad. The standard configuration will be with an outer S-Tag of EtherType 88A8 and will be compliant with MEF CE2.0. Where a Customer requires an outer C-Tag of EtherType 8100, the configuration is not MEF CE2.0 compliant and DFA will not guarantee the handling of L2CP within the MEF CE2.0 specifications;

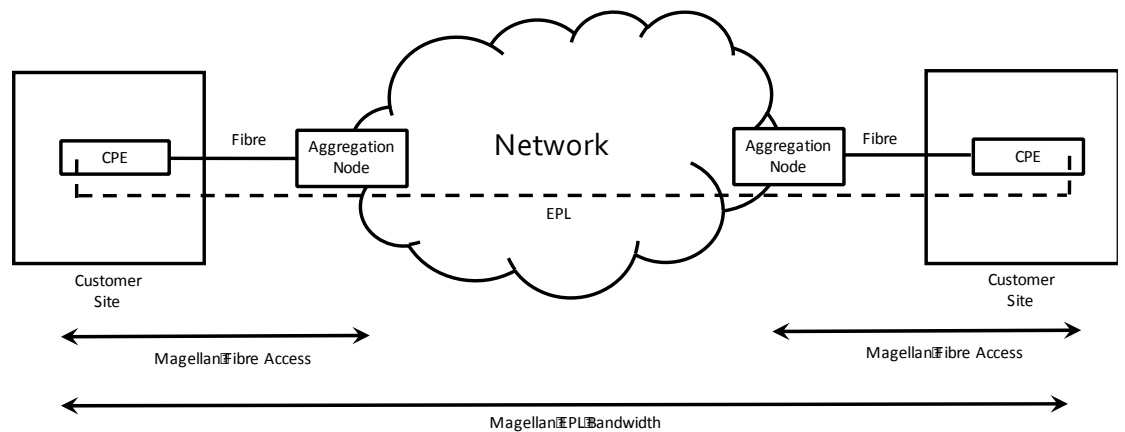
- 5.1.2.4 Any Customer requirement for configuration of Magellan Access Bandwidth services other than as defined in clause 5.1.2.3 shall be handled as a CSS.
- 5.1.2.5 A Magellan ENNI Port configured to support Magellan Access services may not be configured to support services other than Magellan Access services.
- 5.1.3 One or more Magellan Access Bandwidth services provisioned as follows:
  - 5.1.3.1 A bandwidth speed specified in Mbps. This bandwidth speed is selectable from a list of bandwidth speeds specified by DFA. These bandwidths will always include the following values:
    - 5.1.3.1.1 Multiples of 5Mbps from 5Mbps to 100Mbps inclusive. For the avoidance of doubt, the minimum bandwidth speed for the Magellan Access Bandwidth service is 5Mbps;
    - 5.1.3.1.2 Multiples of 50Mbps from 50Mbps to 500Mbps inclusive; and
    - 5.1.3.1.3 Multiples of 100Mbps from 500Mbps to 800Mbps inclusive;
  - 5.1.3.2 The Magellan Access Bandwidth is provisioned as a port-based Access EPL as defined in MEF33 with the following configuration:
    - 5.1.3.2.1 The Access EPL is configured from the CPE to the appropriate Magellan ENNI Port as a port-based service at the UNI;
    - 5.1.3.2.2 At the ENNI the Access EPL's are multiplexed as per clause 5.1.2.3; and
    - 5.1.3.2.3 Any Customer requirement for configuration of Magellan Access Bandwidth services other than as defined in clauses 5.1.3.2.1 and 5.1.3.2.2 shall be handled as a CSS.

- 5.1.4 For each Magellan ENNI Port, a Magellan ENNI Bandwidth Service is required and is configured as follows:
  - 5.1.4.1 A bandwidth speed specified in Mbps. This bandwidth speed is selectable from a list of bandwidth speeds specified by DFA. These bandwidths will always include the following values:
    - 5.1.4.1.1 Multiples of 5Mbps from 5Mbps to 100Mbps inclusive. For the avoidance of doubt, the minimum bandwidth speed for the Magellan ENNI Bandwidth service is 5Mbps;
    - 5.1.4.1.2 Multiples of 50Mbps from 50Mbps to 500Mbps inclusive;
    - 5.1.4.1.3 Multiples of 100Mbps from 500Mbps to 1Gbps inclusive;
    - 5.1.4.1.4 Multiples of 1Gbps from 1Gbps to 5Gbps; and
    - 5.1.4.1.5 10Gbps.
  - 5.1.4.2 The specified bandwidth speed will be applied as a limit to the physical Magellan ENNI port. For the avoidance of doubt, no bursting will be allowed above the specified bandwidth and any Ethernet frames exceeding the specified bandwidth speed will be discarded in accordance with the provisions of clause 5.6

## **Magellan EPL**

- 5.2 The high level configuration of Magellan EPL is shown in Figure 2.





**Figure 2: Magellan EPL**

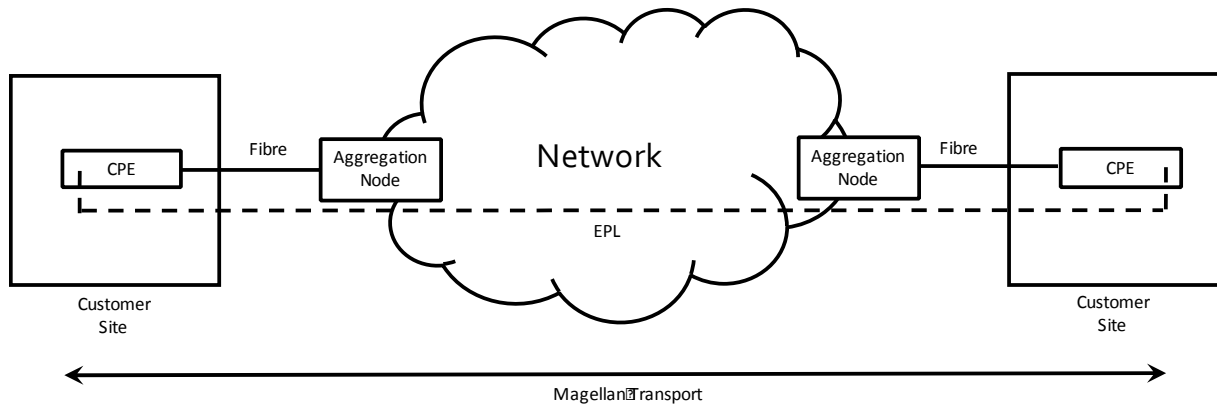
Magellan EPL is configured as follows:

- 5.2.1 Each of the two Customer Sites is connected to the Network by a Magellan Fibre Access service.
- 5.2.2 A Magellan EPL Bandwidth service between the two Customer Sites with the following configuration:
  - 5.2.2.1 A bandwidth speed specified in Mbps. This bandwidth speed is selectable from a list of bandwidth speeds specified by DFA. These bandwidths shall always include the following values:
    - 5.2.2.1.1 Multiples of 5Mbps from 5Mbps to 100Mbps inclusive. For the avoidance of doubt, the minimum bandwidth speed for the Magellan EPL Bandwidth service is 5Mbps;
    - 5.2.2.1.2 Multiples of 50Mbps from 50Mbps to 500Mbps inclusive; and
    - 5.2.2.1.3 Multiples of 100Mbps from 500Mbps to 800Mbps inclusive;

5.2.2.2 The Magellan EPL Bandwidth is provisioned between two Customer Sites as a port-based EPL as defined in MEF 33.

## Magellan Transport

5.3 The high-level configuration of Magellan Transport is shown in Figure 3.



**Figure 3: Magellan Transport**

Magellan Transport Services is provisioned as follows:

5.3.1 Each of the two Customer Sites is connected to the Network with a configuration equivalent to a Magellan Fibre Access Service with the following change:

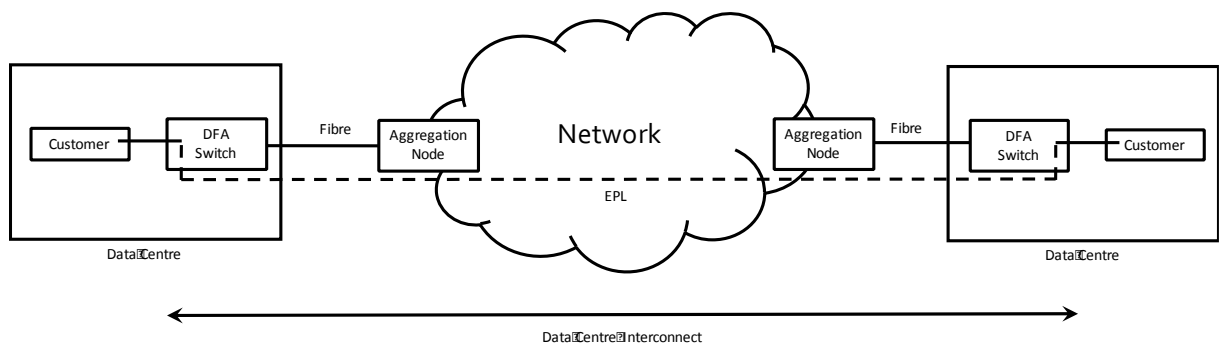
5.3.1.1 Where a Magellan Transport Service is configured with more than 1Gbps of bandwidth, the CPE shall be replaced with a CPE supporting an optical 10Gbps client-facing interface. The optical 10Gbps will support single mode fibre with an LC/PC connector.

5.3.2 A bandwidth speed specified in Mbps is configured for the service. This bandwidth speed is selectable from a list of bandwidth speeds specified by DFA. These bandwidths shall always include the following values:

- 5.3.2.1 Multiples of 100Mbps from 100Mbps to 900Mbps inclusive. For the avoidance of doubt, the minimum bandwidth speed for the Magellan Transport Service is 100Mbps; and
- 5.3.2.2 Multiples of 1Gbps from 1Gbps to 10Gbps inclusive.
- 5.3.3 The Magellan Transport Service is provisioned between the two Customer Sites as a port-based EPL as defined in MEF 33.
- 5.3.4 Where a Customer requires multiple Magellan Transport Services to be terminated at the same Customer Site, the Customer may request that the services be multiplexed onto a single interface in the Network. Such a requirement will be subject to a CSS.

**Magellan Data Centre Interconnect**

5.4 The high-level configuration of Magellan Data Centre Interconnect Services is shown in Figure 4.



**Figure 4: Magellan Data Centre Interconnect**

Magellan Data Centre Interconnect Services is provisioned as follows:

- 5.4.1 DFA has identified a set of Data Centres that it has connected to the Network. DFA has deployed equipment on the Network in appropriate locations in each of these Data Centres. The Magellan Data Centre Interconnect Services are delivered within these data centres by connecting

the Customer's equipment located in the Data Centre directly to the Network in the Data Centre. DFA will from time-to-time publish the list of Data Centres at which Data Centre Interconnect Services are available.

- 5.4.2 No CPE is deployed to connect to the Network. A cable cross connecting the Customer's equipment in the Data Centre to the Network equipment located in the Data Centre is provided by the operator of the Data Centre. It is the responsibility of the Customer to arrange the cross connecting cable from the operator of the Data Centre and to carry all associated charges.
- 5.4.3 Magellan Data Centre Interconnect Services are provided on a 1Gbps or 10Gbps port on the Network.
- 5.4.4 A bandwidth speed specified in Mbps is configured for the service. This bandwidth speed is selectable from a list of bandwidth speeds specified by DFA. These bandwidths shall always include the following values:
  - 5.4.4.1 Multiples of 1Gbps from 1Gbps to 10Gbps inclusive.
- 5.4.5 The Magellan Data Centre Interconnect Service is provisioned between the two Data Centres as a port-based EPL as defined in MEF 33.
- 5.4.6 Where a Customer requires multiple Magellan Data Centre Interconnect Services to be terminated at the same Data Centre, the Customer may request that the services be multiplexed onto a single interface in the Network. Such a requirement will be subject to a CSS.

### **Customer Specific Solution**

- 5.5 Where the Customer's requirements cannot be met by the Magellan Metro Ethernet Services configuration and services parameters as defined in

clause 5.1, 5.2, 5.3 and 5.4, the Customer may request a CSS. A CSS shall be attached to the associated COF and subject to the following:

- 5.5.2 A feasibility assessment conducted by DFA as per clause 6.4.
- 5.5.1 A design documenting all components of the CSS and including any service levels;
- 5.5.2 Any pricing and commercial terms associated with the CSS.

### **Class of Service**

- 5.6 Class of Service are supported in the Network in the following way:
  - 5.6.1 Three classes of service are honoured. The classes are high, medium and low implemented as COS1, COS2 and COS3 respectively in the Ethernet frames;
  - 5.6.2 In the event of congestion on any Magellan Access Bandwidth Service at the UNI or ENNI interface, where the utilisation exceeds the defined bandwidth, class of service will be honoured in the precedence of COS1, then COS 2 and then COS3 on the UNI or ENNI interface as appropriate;
  - 5.6.3 In the event of congestion on the Magellan ENNI Port where the utilisation of the port exceeds the associated Magellan ENNI bandwidth, class of service will not be honoured across all the Magellan Access Bandwidth Services multiplexed on the Magellan ENNI Port; and
  - 5.6.4 In the event of congestion on a UNI interface of any Magellan EPL, Magellan Transport or Magellan Data Centre Interconnect service, class of service will be honoured in the precedence of COS1, then COS2 and then COS3 on the affected UNI interface.

## Fibre Access and ENNI Configuration

5.7 Magellan Services may be provisioned with the following Magellan Fibre Access Service Configuration Levels at the Customer Site:

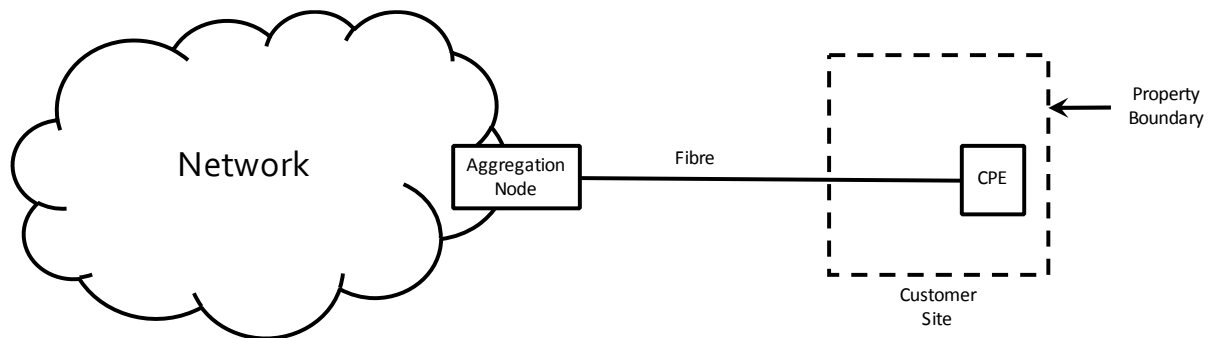
5.7.1 Level 1, where the fibre access is configured as shown in Figure 5 with:

5.7.1.1 a single port at the Aggregation Node;

5.7.1.2 a single fibre path between the Aggregation Node and the Customer Site;

5.7.1.3 a single CPE at the Customer Site; and

5.7.1.4 a single customer facing port on the CPE;



**Figure 5: Level 1 Fibre Access**

5.7.2 Level 2, where the fibre access is configured as shown in Figure 6 with:

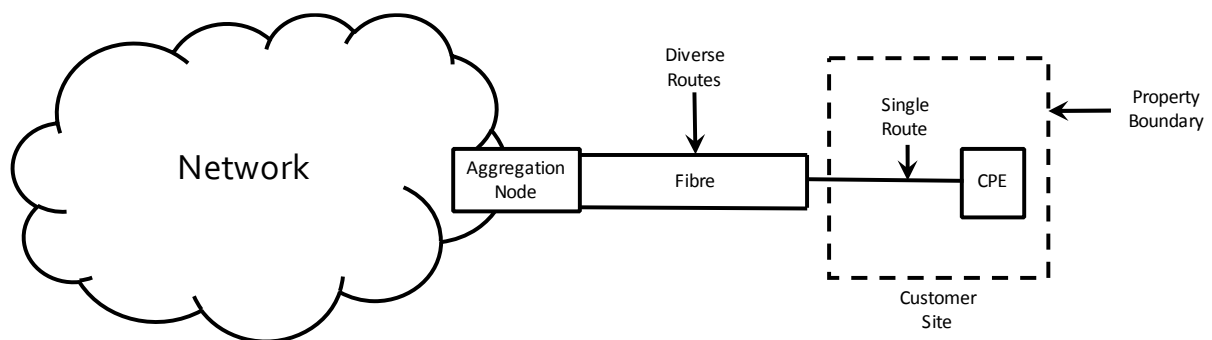
5.7.2.1 two ports at the Aggregation Node, which ports shall be on separate devices in the Network;

5.7.2.2 two fibre paths between the Aggregation Node and the Customer Site that will be diverse from the Aggregation Node to a maximum of 10 (ten) metres outside the boundary of the property on which the Customer Site is located. From a maximum of 10 (ten) metres outside of and within the property on

which the Customer Site is located, the fibre path will not be diverse. For the avoidance of doubt, the fibre paths from a maximum of 10 (ten) metres outside of and within the property on which the Customer Site is located will either be in the same duct or in ducts separated by less than 3 (three) metres;

5.7.2.3 a single CPE at the Customer Site; and

5.7.2.4 a single customer facing port on the CPE;



**Figure 6: Level 2 Fibre Access**

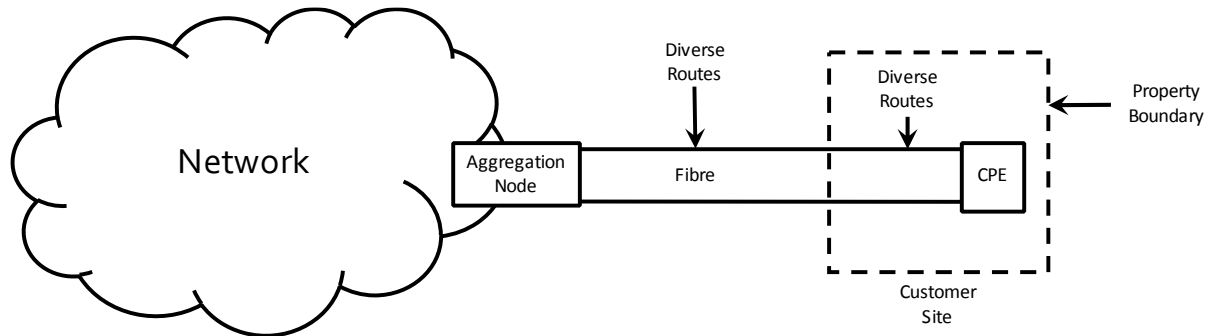
5.7.3 Level 3, where the fibre access is configured as shown in Figure 7 with:

5.7.3.1 two ports at the Aggregation Node, which ports shall be on separate devices in the Network;

5.7.3.2 two fibre paths between the Aggregation Node and the Customer Site that will be diverse from the Aggregation Node to the boundary of the property on which the Customer Site is located. Within the property on which the Customer Site is located, the two fibre paths will be separated by a minimum of 3 (three) metres from the property boundary to the room in which the CPE is located. Within the room where the CPE is located, the fibre paths will of necessity converge at the single CPE;

5.7.3.3 a single CPE at the Customer Site; and

5.7.3.4 a single customer facing port on the CPE;



**Figure 7: Level 3 Fibre Access**

5.7.4 Level 4, where the fibre access is configured as shown in Figure 8 with:

5.7.4.1 The service provided from two separate Aggregation Nodes;

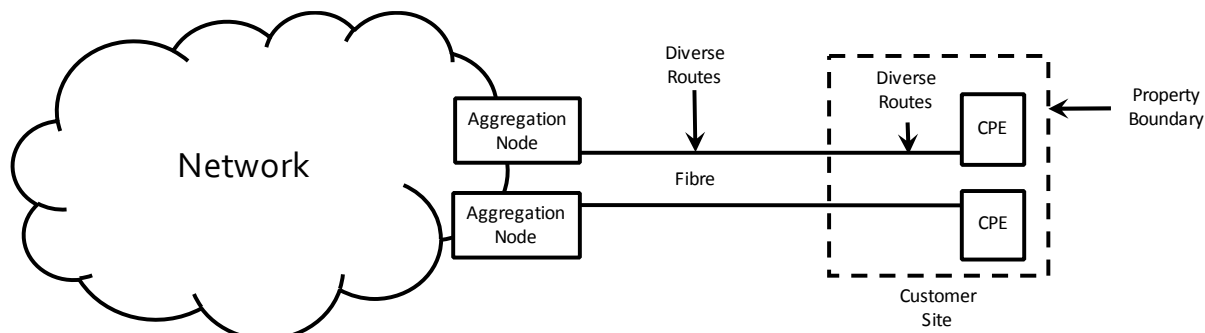
5.7.4.2 a port at each of the Aggregation Nodes;

5.7.4.3 two fibre paths, one between each of the Aggregation Nodes and the Customer Site, that will be diverse from the individual Aggregation Nodes to the boundary of the property on which the Customer Site is located. Within the property on which the Customer Site is located, the two fibre paths will be separated by a minimum of 3 (three) metres from the property boundary to the room in which the CPE is located. Within the room where the CPE is located, the fibre paths will of necessity converge at the single CPE;

5.7.4.4 Two CPEs at the Customer Site; and

5.7.4.5 a single customer facing port on each of the two CPE's;





**Figure 8: Level 4 Fibre Access**

5.8 The Magellan Fibre Access Configuration Levels shall be combined with the Magellan Metro Ethernet Services as follows:

5.8.1 For the Magellan Fibre Access Service Configuration Levels 1, 2, and 3 as defined in clause 5.7.1, 5.7.2 and 5.7.3 respectively, a single Magellan Access Bandwidth service shall be required and configured. This service shall be presented on a single customer facing port on the CPE.

5.8.2 For the Magellan Fibre Access Service Configuration Level 4 as defined in clause 5.7.4, two Magellan Access Bandwidth services shall be required and configured. These services shall each be configured between a separate Aggregation Node and CPE and each presented on a single customer facing port on the CPE on the which the service is terminated. For the avoidance of doubt, the full MRC and NRC shall be applicable to each of the Magellan Access Bandwidth services.

5.8.3 For Magellan EPL and Magellan Transport Services, the Magellan Fibre Access Service Configuration Level shall be the same at each of the Customer Sites comprising the service. Where multiple Magellan Transport Services are multiplexed on an ENNI interface, this requirement shall not apply.

5.8.4 For Magellan Data Centre Interconnect Services, the Fibre Access Service Configuration Level shall be determined by the level of infrastructure that

DFA has deployed in connecting the Data Centre to the Network. DFA shall from time-to-time publish the Fibre Access Service Configuration Level available at each Data Centre.

5.8.5 For Magellan Fibre Access Service Configuration Levels 2, 3 and 4, the CSS process shall be followed and the Coverage and Feasibility Rules applied to determine whether it is feasible for DFA to provide the Service.

5.9 Where a Customer requires redundancy across ENNI's, the CSS process shall be followed to determine an appropriate solution, if feasible, based on the Customer's requirement. Redundancy across ENNI's shall only be configured within a single geographic region in the Network as defined by DFA.

## **6 PROVISIONING OF SERVICES**

6.1 All Magellan Metro Ethernet Services shall be provisioned within the provisions of clause 5 of the Agreement.

6.2 COF's for the Magellan Metro Ethernet Services shall be submitted by the Customer to DFA in the format specified by DFA.

6.3 To determine whether it is feasible for DFA to deliver services at a particular Customer Site, DFA applies its Coverage and Feasibility Rules as follows:

6.3.1 Where a Customer Site is not situated within Network coverage, DFA declares the Customer Site as not being feasible;

6.3.2 Where a Customer Site is situated within Network coverage, DFA conducts a feasibility study to assess the cost of connecting the Customer Site to the Network. The result of this feasibility study indicates either:

- 6.3.2.1 that the Customer Site is feasible and the service can be delivered within DFA's standard price for the service;
  - 6.3.2.2 that the service can be delivered to the Customer Site but with additional NRC or MRC charges; or
  - 6.3.2.3 that it is not feasible for DFA to deliver the service at the Customer Site.
- 6.4 DFA shall at its sole discretion apply its applicable Coverage and Feasibility Rules to determine whether to accept any COF submitted by a Customer to DFA.

## **7 COMMERCIAL**

### **Term**

- 7.1 Each COF shall specify the term of the Services required. The term of a Magellan Metro Ethernet Service shall be:
- 7.1.1 24 (twenty-four) months for any Magellan Fibre Access or Magellan ENNI Port service;
  - 7.1.2 24 (twenty-four) months for any Magellan Data Centre Interconnection Service;
  - 7.1.3 60 (sixty) months for any Magellan Transport Service; and
  - 7.1.4 there shall be no term associated with any Magellan Access Bandwidth, Magellan ENNI Bandwidth or Magellan EPL Bandwidth service.

- 7.2 For any Services on a COF with a 24 (twenty-four) month term the following shall apply:
- 7.2.1 The MRC and any Rebates and Discounts shall be fixed for the full duration of the COF;
- 7.2.2 Should the DFA list price for any Service on the COF increase or decrease during the term of the COF, the new pricing shall not be applicable to the Service for the period of the COF;
- 7.2.3 Should DFA apply any Rebates for a Magellan Fibre Access Service at the Customer Site where the Service is delivered, DFA shall apply such Rebates to the COF for any Magellan Fibre Access Services at the Customer Site;
- 7.2.4 Should DFA apply any discounts or other promotions at the Customer Site after the COF has been accepted by DFA, these shall not be applicable; and
- 7.2.5 Subject to the Retermination conditions, the Customer shall not be able to request early termination of a Service.
- 7.3 The specific terms and conditions for duration terms other than 24 (twenty-four) months shall be specified in the relevant COF.

#### **Continuation of Services after the end of the term of a COF**

- 7.4 In instances where the term of a Magellan Metro Ethernet Service specified in the applicable COF reaches its end the following shall apply:
- 7.4.1 The Service shall continue indefinitely, at the charges specified in such COF, until terminated by either Party on thirty (30) days' written notice; or

- 7.4.2 The Customer shall have the option to renew the Service at a fee equal to the prevailing price in effect at the time of renewal, for a period to be specified in a new COF.

### **Rebates, Discounts and Other Promotional Offers**

- 7.5 At various times DFA may offer Rebates, Discounts or other promotional offers at particular locations, for specific periods or for specific volumes or term commitments. Such Rebates, Discounts and promotional offers shall:
- 7.5.1 only apply if they appear on a COF accepted by DFA;
- 7.5.2 be offered solely at the discretion of DFA; and
- 7.5.3 be withdrawn at any time at the sole discretion of DFA, subject to the provision that once accepted by DFA on a COF, be applicable for the term of the COF.

### **CSS**

- 7.6 Where a COF is accepted for the delivery of a CSS, the COF shall include the specific terms and conditions applicable to the CSS.

### **Billing**

- 7.7 DFA shall bill the Customer for the Magellan Metro Ethernet Services as follows:
- 7.7.1 For Magellan Access Bandwidth, Magellan ENNI Bandwidth and Magellan EPL bandwidth, billing shall be monthly in arrears; and

7.7.2 For Magellan Fibre Access, Magellan ENNI Port, Magellan Transport and Magellan Data Centre Interconnect, billing shall be monthly in advance.

### **Retermination of Services**

7.8 In the event that the Customer requires the transfer of a Magellan Metro Ethernet Service from a Current Site to a Retermination Site within the term of the applicable COF, the following options are available to the Customer, subject to DFA's Coverage and Feasibility Rules:

7.8.1 Where 12 (twelve) months of the term of the COF have already lapsed and it is determined by DFA that the Retermination Site is already connected to the Network, DFA shall reterminate the Service at the Retermination Site subject to the following conditions:

7.8.1.1 The Customer shall remain responsible for the associated MRC for the relevant Magellan Metro Ethernet Service for the remainder of the term of the COF as if the relocation had not taken place;

7.8.1.2 The Customer shall be responsible for the relevant NRC and any additional costs applicable as per clause 9; and

7.8.1.3 For the avoidance of doubt, the determination that the Retermination Site is already connected to the Network shall be solely at DFA's discretion.

7.8.2 Where less than 12 (twelve) months of the COF have already lapsed and it is determined by DFA that the Retermination Site satisfies the Coverage and Feasibility Rules, DFA shall reterminate the Service at the Retermination Site subject to the following conditions:

7.8.2.1 The Customer shall be required to submit a new COF for a term equal to the term applicable to the Service as defined in clause 7.1 plus 12 (twelve)

months for the same MRC and NRC specified on the original COF. Such COF shall replace the original COF for the Service;

- 7.8.3 Where the Retermination Site does not satisfy the Coverage and Feasibility Rules, DFA shall reject the Customer's request to reterminate the Service and the COF shall remain in effect for the balance of the term of the COF.

## **8 SERVICE LEVELS AND SERVICE CREDITS**

### **Guaranteed Services**

- 8.1 DFA shall guarantee service availability on the Network for the following Magellan Metro Ethernet Services:

8.1.1 Magellan Fibre Access Services;

8.1.2 Magellan Transport Services; and

8.1.3 Magellan Data Centre Interconnect Services.

- 8.2 For the avoidance of doubt, DFA shall not guarantee the availability of, and nor shall any Service Credits be applicable for, any Magellan Metro Ethernet Services not included in the Guaranteed Services.

### **Service Unavailability**

- 8.3 A Guaranteed Service shall be regarded as unavailable when:

8.3.1 For a Magellan Fibre Access Service, Ethernet frames cannot be passed from the customer-facing port on the CPE at the Customer Site to the port on the DFA switch at the associated Aggregation Nodes; and

- 8.3.2 For a Magellan Transport Service or a Magellan Data Centre Interconnect Service, Ethernet frames cannot be passed between the two UNI interfaces, or between the UNI and ENNI interfaces, associated with the Magellan Transport Service or Magellan Data Centre Interconnect Service.
- 8.4 For the avoidance of doubt, DFA's network management systems shall be the sole determinant of whether a Guaranteed Service is available or not.
- 8.5 For each individual Service that falls within the Guaranteed Services, DFA shall implement a timer that accumulates the total time in minutes that the Service was unavailable during a given Month. The timer shall operate as follows:
- 8.5.1 When a Service becomes unavailable, the timer shall start accumulating time in minutes;
- 8.5.2 When any of the exclusions included in clause 8.6 occur, the timer shall stop accumulating time until the applicable exclusion is no longer applicable;
- 8.5.3 When the DFA network management systems record that the fault is no longer present and the DFA network management systems record that the Service has been restored, the timer shall stop accumulating time;
- 8.5.4 At 23:59:59 on the last day of each Month, the Service Downtime for the Month shall be set to the value of the timer; and
- 8.5.5 At 00:00:00 on the first day of each Month the timer shall be reset to zero.
- 8.6 Service Downtime shall not include any unavailability resulting from:
- 8.6.1 Scheduled downtime for planned maintenance;



- 8.6.2 A DFA representative not being able to gain access to the applicable Customer Site and/or the DFA equipment located at such Customer Site;
- 8.6.3 Any failure of supplies, power, equipment or local access facilities provided by the Customer or its suppliers which is required in the provision of the Service;
- 8.6.4 Any incident that affects the Service during any period when the Customer elects not to allow planned maintenance on the Service at the request of DFA, acting reasonably;
- 8.6.5 Failure of Customer applications, equipment, or facilities;
- 8.6.6 Acts or omissions of the Customer, its agents, contractors or vendors, including the provision of inaccurate information knowingly or unknowingly, or outages or disruptions caused by the Customer or users of the Service;
- 8.6.7 Faults reported by the Customer where DFA and the DFA network management systems are unable to confirm the existence of the faults;
- 8.6.8 Interruptions in service due to the implementation by DFA of changes to the Service requested by the Customer;
- 8.6.9 Suspensions due to non-payment of any amount payable by the Customer to DFA under the Agreement;
- 8.6.10 Failure of third party cross-connects required for a Magellan ENNI Port Service, Magellan Transport Service or Magellan Data Centre Interconnect Service; or
- 8.6.11 Force Majeure.

## Service Availability

8.7 The Service Period for any given Month shall be calculated as follows:

Service Period = 60 minutes x 24 hours per day x number of days in the month

8.8 The Service Availability for any given Month shall be calculated as follows:

Service Availability % =  $\frac{\text{Service Period} - \text{Service Downtime}}{\text{Service Period}}$

8.9 The Service Availability Guarantee for each Guaranteed Service is dependent on the Magellan Fibre Access Service Configuration Level at the Customer Site(s) and the Service Level Area within which the Customer Site(s) are located. The Service Availability Guarantees are the same for all the Guaranteed Services and are given in Table 1.

<b>Magellan Fibre Access Service Level</b>	<b>Service Availability Guarantee in Service Level Area 1</b>	<b>Service Availability Guarantee in Service Level Area 2</b>
Level 1	99.5%	99.0%
Level 2	99.9%	99.5%
Level 3	99.9%	99.5%
Level 4	As per CSS	As per CSS

**Table 1: Service Availability Guarantees**

## Service Credits

8.10 In those instances where DFA fails to meet the Service Availability Guarantees for a specific Guaranteed Service, the Customer shall be eligible for Service Credits as detailed in Table 2. The Service Credits payable as a percentage of MRC are the same irrespective of the Magellan Fibre Access Service Level. For the avoidance of doubt, the Service Availability % below Service Availability Guarantee specified in Table 2 is an absolute percentage and a percentage of the Service Availability Guarantee.

<b>Service Availability % below Service Availability Guarantee</b>	<b>Service Credit (% of MRC)</b>
Up to 1%	5%
Up to 2%	10%
Up to 3%	15%
Up to 4%	20%
More than 4%	25%

**Table 2: Service Credits**

8.11 Service Credits shall be given to the Customer in the form of a credit against the MRC reflected on the COF for the affected Service.

8.12 In no event shall the total amount of all Service Credits issued to the Customer in respect of a particular Service in a given Month exceed 25% (twenty five percent) of the MRC reflected in the COF for the Service.

8.13 Service Credits are calculated after the deduction of all Rebates, Discounts and other promotional offers and may not be applied to governmental fees, taxes, surcharges, local access charges or any other charges other than the MRC reflected on the COF for the Service.

- 8.14 To initiate a claim for Service Credits the following process shall be followed:
- 8.14.1 The Customer shall submit a request for a Service Credit in writing to DFA within 30 (thirty) days after the end of the Month in which DFA failed to meet the Service Availability Guarantee for the affected Service.
- 8.14.2 If DFA approves the claim, DFA shall notify the Customer of the amount of the Service Credit to which the Customer is entitled.
- 8.15 DFA's failure to achieve or maintain the Service Level Guarantees shall not constitute a breach of the Agreement, and the award of Service Credits shall be the Customer's sole remedy and DFA's sole liability for any such failure or corresponding degradation, interruption or loss of the Services.

### **Standard Operating Procedures**

- 8.16 DFA shall provide the Customer with a copy of the SOP as amended from time to time. The Customer shall report and handle any faults within the provisions of the SOP.

### **Handed Back Faults**

- 8.17 Where it is determined by DFA that the Customer has reported a fault to DFA and that the fault constitutes service unavailability as defined in clauses 8.6.2, 8.6.3, 8.6.5, 8.6.6, 8.6.7 and/or 8.6.8, then DFA shall charge the customer the prevailing call-out fees of DFA in isolating the cause of the fault, including, but not limited to, the costs of dispatching DFA employees or subcontractors to test the affected Service(s).

## **9. CUSTOMER REPSONSIBILITIES**

- 9.1 The Customer shall be responsible for making available, at no cost to DFA, accommodation, power, mast space, ducting and other facilities for each Customer Site, for the term of the applicable COF, for the purposes of housing DFA's transmission equipment required for the provision of the Services to Customer.
- 9.2 The Customer shall, where appropriate, be responsible for assisting DFA to obtain all third party approvals and consents necessary for installation and use of the Services.
- 9.3 The Customer shall ensure that Customer Sites at either end of a Service for which the request has been made are accessible at any reasonable time as may be required by DFA to fulfil its obligations in terms hereof.
- 9.4 Where a UNI or an ENNI Port is provided in a location owned by a third party, the Customer shall be responsible for ordering and the cost of any cross connect cables between the Network and the Customer Network and for any costs associated with the hosting of any component of the Customer Network at the third party location. For the avoidance of doubt, these costs include any once-off, activation, installation and/or setup charges and include any monthly recurring charges from the third party to the Customer.
- 9.5 The Customer shall be responsible for ensuring that sufficient bandwidth is ordered with a Magellan Metro Ethernet Service to allow for frame and packet overheads to ensure that the Customer's expectations of bandwidth throughput are met.

## **10 ENTIRE ANNEXURE**

This Annexure constitutes the entire agreement between the Parties as to the subject matter and supersedes all previous agreements between the Parties, whether oral or written.