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Interoute terms and conditions

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1. DEFINITIONS

In this Agreement, unless expressly stated otherwise, capitalised terms shall have the meaning ascribed to them below:

“Acceptable Use Policy” means Interoute’s acceptable use policy which is available on the Interoute website, at www.interoute.com as amended from time to time;

“Additional Terms” means the terms applicable to each Service, in addition to these standard terms and conditions which are available on the Interoute website at www.interoute.com ;

“Agreement” means the Purchase Order, these terms and conditions, Additional Terms, and if relevant, any change orders;

“Associated Company” in relation to a Party means any other person controlling, controlled by or under common control with that Party where “control” and related terms means the ability to direct the affairs of the relevant Party or person whether by means of the holding of shares, or the possession of voting power, by virtue of any powers conferred by its constitutional or corporate documents, or otherwise;

“Charges” means the charges, fees, costs and expenses payable under this Agreement including recurring and non-recurring charges as set out on the Purchase Order;

“Customer” means the person, firm, company or corporation or other entity identified in the Purchase Order;

“Customer Committed Date” means the date assigned by Interoute for the delivery of the Service. Interoute shall communicate this date to the Customer after a signed order form has been accepted by Interoute;

“Customer Equipment” means any equipment either belonging to the Customer or leased to the Customer by any third party (other than Interoute);

“Customer Premises” means a location owned or controlled by the Customer where equipment is sited for the purpose of delivery of the Service;

“Customer Premise Equipment or CPE” means any equipment that is sited on the Customer Premises that is supplied and managed by Interoute or suppliers of Interoute;

“Customer Service Centre” means Interoute’s fault management centre, which operates the Interoute Network management system;

“Emergency Maintenance” means works necessary to restore or repair the Interoute Network or the Service upon damage or disruption to the Interoute Network or the Service;

“Equipment” means equipment (which may include CPE) owned or managed by Interoute or suppliers of Interoute, including Licensed Software which is owned by Interoute or by suppliers of Interoute;

“HICP” means the Harmonised Index of Consumer Prices;

“Initial Term” with respect to each Service means the 12 month period from the Ready for Service Date, unless otherwise stated on the Purchase Order;

“Installation Charge” means the non-recurring Charges payable by the Customer for the installation of the Service(s) as provided in the Purchase Order;

“Intellectual Property Rights” means any patent, copyright, trademark, trade name, service mark, moral right, database right, know how and any and all other intellectual property right whether registered or not or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with any and all goodwill relating thereto;

“Interoute” means the supplier of the Services as identified in the Purchase Order;

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“Interoute Hub” means the Interoute online tool that includes the Customer account details and Service(s) portfolio;

“Interoute Network” means the fibre optic communications network which is owned or operated by Interoute and its Associated Companies from time to time;

“Liability” shall mean liability in or for breach of contract, misrepresentation, restitution or any other cause of action whatsoever relating to or arising under or in connection with this Agreement, including without limitation liability expressly provided for under this Agreement or arising by reason of the invalidity or unenforceability of any term of this Agreement (and for the purposes of this definition, all references to "this Agreement" shall be deemed to include any collateral contract);

“Licensed Software” means computer software in object code format made available to the Customer by Interoute for the use of any Services;

“Monthly Charge” means the monthly recurring charges (or where monthly charge is payable over a period that is longer than a month, a pro-rata portion thereof) payable by the Customer for the provision of the Service(s) by Interoute, as set out in the Purchase Order;

“Monthly Review Period” means the calendar monthly periods commencing on the 1st of each month during the Term;

“Network Management System” means Interoute’s network integrated fault management system;

“Parties” means Interoute and Customer, and **“Party”** shall mean either Interoute or the Customer, as the context requires;

“Planned Outage” means any routine maintenance or upgrade work, which may affect the availability of Service;

“Premises” means the space occupied by Customer and/or Interoute where the Customer requires the Service or for the purposes of installing any Customer Premise Equipment required to provide the Services to the Customer;

“Professional Service Charges” means the professional service charges detailed on the Purchase Order and calculated according to the fee table available on the Interoute website at www.interoute.com;

“Purchase Order” means an order form in Interoute’s standard form, for specific Services which has been signed and accepted by both Parties (together with any change orders or renewal orders signed and accepted by both Parties);

“Ready for Service Date” shall be the date when the Service is handed over to the Customer;

“Renewal Term” is the twelve (12) month period commencing upon expiry of the Initial Term or any subsequent anniversary thereof;

“Service Handover Document” means a document made available to the Customer by Interoute indicating that the Service is ready for use and, if applicable, for testing by the Customer;

“Services” means the communications or related services identified in the Purchase Order to be provided to the Customer by Interoute under this Agreement;

“Service Credit” means an amount credited by Interoute for the failure to achieve the relevant Service Levels;

“Service Levels” means the service level agreement governing the quality of the Service set out in the Additional Terms;

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“**Site**” means the space occupied by Customer and/or Interoute where the Customer requires the Service or for the purposes of installing any Customer Premise Equipment required to provide the Service(s) to the Customer;

“**Term**” shall mean the Initial Term and the Renewal Term under clause 5.1 where applicable;

“**Taxes**” means any tax, duty or other charges of whatever nature (but excluding any tax, duty or other charged levied on income accruing to Interoute hereunder) imposed by any taxing or government authority including, without limitation VAT;

“**VAT**” means Value Added Tax or any other similar sales or transaction tax;

“**Withholding Tax**” means any amount on account of tax on sources of income which the payer is obliged to deduct from payments due to the recipient and account for to any tax authority; and

“**Working Day**” means 9.00 am to 5.00 pm on any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or other statutory or national holiday in the jurisdiction in which the relevant notice is to be given or where the relevant activity is to be performed.

Any other capitalised terms have the meaning set out in the applicable Additional Terms.

2. ORDERING A SERVICE

- 2.1 To request a Service, the Customer must complete an order form which shall include the name of the Customer, a description of the Service, the applicable Charges and the Initial Term. Interoute is under no obligation to accept an order form.
- 2.2 An order form shall only become a Purchase Order binding on both Parties and subject to the terms and conditions set out in this Agreement on signature by Interoute and the Customer. However, Interoute reserves the right to reject or, subject to Clause 2.3, amend details for any one or more Services in a Purchase Order, including the expected delivery date for a Service, if:
- a. the cost of any third party services required for a Service change from those used in Interoute’s calculation of the Charges in a Purchase Order; and/or,
 - b. a Service is supplied subject to survey and such survey reveals information that was unknown to Interoute at the time of quoting and which could affect the availability, performance, delivery timeframes and/or Charges offered.
- 2.3 If Interoute amends the details of a Service on a Purchase Order in accordance with Clause 2.2, Interoute will notify the Customer and provide Customer with a new order form for the affected Service only. Customer shall have five (5) Working Days to accept the changes or to cancel the affected Service. If the Customer does not accept the revised order form within five (5) Working Days of notification, Interoute reserves the right to cancel the affected Service in Purchase Order without any liability to the Customer by notice in writing to the Customer. If there are any other Services on the Purchase Order, these shall remain unaffected.
- 2.4 Any terms and conditions contained in a Customer order form, purchase order (other than a Purchase Order, these standard terms and conditions or the Additional Terms), letter or other document generated or managed by the Customer shall be invalid with respect to the Services provided hereunder unless agreed to in writing by Interoute.
- 2.5 The following terms apply to the Customer’s use of the Interoute Hub:
- a. Interoute is entitled to act upon and rely on any communication (including orders) received through the Interoute Hub and to treat such communications as authorised by the Customer without conducting any further verification. This clause shall apply whether or not the information contained in the communication is, in fact, correct or the communication is authorised.

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- b. Customer accepts full responsibility for all Interoute Hub usernames and passwords. These usernames and passwords are to be kept confidential and only accessed or used by persons authorised by the Customer.
- c. Interoute is not liable for any loss whatsoever arising in connection with the sending or receipt of information through the Interoute Hub.

3. CREDIT APPROVAL AND DEPOSIT

3.1 Acceptance of an order form by Interoute shall be subject to credit approval. The Customer agrees to provide Interoute with such credit information as Interoute may reasonably request.

3.2 Where;

- a. the Customer has insufficient credit rating;
- b. the Customer has suffered a material and negative change in its financial or trading condition (as determined by Interoute in its reasonable discretion); or
- c. the Customer has failed to make payment to Interoute of any undisputed amount when due;

Interoute may require the Customer to provide a pre-payment, deposit or bank guarantee equivalent to three (3) months' Charges, actual or projected or other security satisfactory to Interoute. Any deposit shall be held by Interoute as security for the payment of Charges and any other amounts due under this Agreement. On the termination of this Agreement, Interoute may apply such deposit or bank guarantee to any amounts owed by the Customer to Interoute with any remaining credit balance being refunded to the Customer. Any deposit paid by the Customer pursuant to this sub-clause will not carry any interest and will be held by Interoute in accordance with the applicable law governing such deposit.

3.3 Interoute may, at any time, by notice in writing impose a credit limit on the Customer to an amount to be determined by Interoute. Any Services required by the Customer in excess of any such credit limit will require the Customer to pre-pay or deposit with Interoute an amount equal to or greater than the amount by which the Customer will exceed the credit limit.

4. CUSTOMER COMMITTED DATE AND READY FOR SERVICE DATE

4.1 Interoute shall use reasonable endeavours to ensure the Ready for Service Date occurs on or before the Customer Committed Date. Interoute shall hand over the Service to the Customer and deliver to Customer a Service Handover Document. The Service Handover Document shall state the Ready for Service Date.

4.2 The Customer shall have five (5) Working Days from the date of delivery of the Service Handover Document to notify Interoute of any material non-compliance of the Service with the relevant Additional Terms by performance testing, and shall provide Interoute with the results evidencing such non-compliance, if any.

4.3 If the Customer notifies Interoute in accordance with Clause 4.2, Interoute will take such action as is reasonably necessary to provide the Service in accordance with the Additional Terms. The process in clause 4.2 shall be repeated until the performance testing has been successfully completed.

4.4 In the event that any deviation or non-compliance with the Additional Terms is attributable to the Customer's system or network or otherwise due to the act or omission of Customer, Interoute shall be entitled to invoice the Customer for any costs reasonably incurred in investigating the matter.

4.5 Unless the Customer notifies Interoute of any non-compliance within the timescales set out in clause 4.2, the Customer shall be deemed to have accepted the Service as of the Ready for Service Date set out in the Service Handover Document and Interoute shall commence billing.

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Notwithstanding anything contained herein, the Customer's use of the Service other than for testing purposes will be deemed to constitute acceptance of that Service.

- 4.6 If the Ready for Service Date of the Service is delayed due to an act or omission of the Customer, including but not limited to:
- a. a failure to provide information reasonably requested by Interoute; or
 - b. the information provided by the Customer is incomplete, incorrect and/or illegible necessary; or
 - c. a failure to permit access to Site, Customer Equipment or Equipment in order for Interoute to undertake installation or performance testing,

then Interoute reserves the right to commence charging the Charges from the date Interoute has informed the Customer that Interoute is ready to deliver the Service(s), but is unable to do so due to an act or omission of the Customer for the reasons set out in this clause.

5. TERM AND TERMINATION

- 5.1 A Purchase Order shall be valid from the date of signature of both Parties, until the expiry of the Initial Term or any Renewal Term thereafter (unless terminated earlier in accordance with the terms of this Agreement). The Initial Term shall commence on the Ready for Service Date. At the expiration of the Initial Term (or any Renewal Term), the Purchase Order shall automatically be renewed for Renewal Terms until terminated by either Party providing at least sixty (60) days notice in writing, in advance of the expiry of the Initial Term or a subsequent Renewal Term effective at the end of the Initial Term or at the end of any subsequent Renewal Term.
- 5.2 Either Party may terminate this Agreement with immediate effect by written notice to the other Party on or any time after the occurrence of any of the following events:
- a. The other Party ceases to trade (either in whole, or as to any part involved in the performance of this Agreement), or becomes insolvent, has a receiver, administrative receiver, administrator or manager appointed of the whole or any part of its assets or business, makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt, is unable to pay its debts when due, or any order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction) under the laws applicable to that Party;
 - b. The other Party commits a material breach of this Agreement which is not capable of remedy and, if capable of remedy, the breach is not remedied within thirty (30) days following a written notice by the non-breaching Party to the other Party; or
- 5.3 Interoute may terminate all or any Service under any Purchase Order(s) and/or this Agreement with immediate effect by written notice to the Customer with no liability or penalty where the Customer:
- a. provides materially incorrect, false, illegible or incomplete information to Interoute;
 - b. is likely to defraud Interoute, interfere with Interoute's services or create harm to the Interoute Network, Equipment or any third party's property;
 - c. fails to make any payment due under any Purchase Order in accordance with the terms and conditions set out in this Agreement and fails to do so within 72 hours following written notice by Interoute;
 - d. fails to use, or ensure the use of, any of the Services in accordance with the Acceptable Use Policy; or

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e. is using or allowing (or in the reasonable opinion of Interoute is likely to be using or allowing) any of the Services to be used for fraud, misconduct or any other illegal purpose.

5.4 Interoute shall be entitled to immediately suspend this Agreement and/or the provision of any Services on giving notice to the Customer in the event that it is entitled to terminate this Agreement. Any exercise of such right of suspension shall not prejudice Interoute's right to payment hereunder nor Interoute's right to subsequently terminate this Agreement.

5.5 If Interoute suspends any Service in accordance with Clause 5.4 above, Interoute may claim and Customer shall pay upon demand, a reasonable charge for re-commencing the provision of the Services if applicable.

6. CONSEQUENCES OF TERMINATION

6.1 Termination or expiry of a Purchase Order and/or this Agreement for any reason is without prejudice to any rights or remedies available to, or any obligations or liabilities accrued to the Parties as at the date of termination or expiry.

6.2 On expiry or termination of the Agreement:

a. all sums due to Interoute up to the date of termination shall become immediately due and payable to Interoute;

b. the Customer must immediately return to Interoute in good condition all Equipment which Interoute has leased or loaned to the Customer. Interoute may charge the Customer for all costs incurred in repossessing or acquiring replacement Equipment which the Customer has failed to return to Interoute or which is returned to Interoute in a damaged or defective condition; and

c. Interoute will have the right to retain any Customer Equipment which is used in respect of the Service and which is on premises made available by Interoute, until receipt of all sums due or and payable to Interoute. If Interoute has not received such sums due and/or payable within a reasonable time frame to be determined by Interoute, Interoute reserve the right to sell any Customer Equipment necessary, at such price as it is able to obtain in the open market, to recoup all sums due and payable to it.

6.3 In the event that this Agreement is terminated by the Customer prior to the Ready for Service Date in breach of this Agreement or by Interoute pursuant to clause 5.3, the Customer shall reimburse Interoute for any third party cancellation/termination charges associated with the Service/s so terminated and shall pay the equivalent of three (3) Monthly Charges, actual or projected, for the cancelled Services. If this Agreement is terminated after the Ready for Service Date for that Service, the Customer shall either, reimburse Interoute for any third party cancellation/termination charges associated with the Service/s so terminated or shall pay the equivalent of seventy five percent (75%) of the Monthly Charges, actual or projected, for each month remaining in the Initial Term or the relevant Renewal Term, whichever is greater.

6.4 The Customer agrees that the termination charges in clause 6.3 are a genuine pre-estimate of loss and are not a penalty.

6.5 The following clauses shall survive the termination or expiration of this Agreement in addition to those whose provisions by their content or nature will so survive: Equipment and Access, Liability and Indemnity, Intellectual Property Indemnity, Severability, Waiver, Notices, Confidentiality, Press Announcements, Associated Company Orders and Rights of Third Parties and Governing Law and Jurisdiction.

7. CHARGES AND TERMS OF PAYMENT

7.1 Unless stated otherwise in the Purchase Order:

a. Interoute will invoice installation charges and any other non-recurring initial Charges, upon the coming into force of a Purchase Order.

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- b. Interoute will invoice all recurring Charges as of the Ready for Service Date and monthly in advance thereafter.
 - c. Interoute shall invoice any other Charges not covered by (a) and (b) above as and when incurred.
 - d. The Customer shall pay all Charges, within thirty (30) days of the date of the relevant invoice.
- 7.2 Twelve (12) months from the Ready for Service Date and annually thereafter, Interoute reserves the right to review the Charges and may increase any Charge in line with the European 25 HICP (EU-25) index for the previous twelve (12) months.
- 7.3 All amounts in respect of Charges shall be paid in Euros or as specified on the Purchase Order and shall be paid free of currency exchange costs, bank charges, withholding or deductions. To the extent that any deduction or withholding is required by applicable law, Customer shall increase the amount of such payment to ensure that Interoute receives the amount it would have received had no deduction or withholding been required.
- 7.4 Interoute may levy an additional service charge on any amount invoiced and not paid at the rate of one and a half percent (1.5%) per month, or if lower, the highest interest rate permitted to be charged by law (whether before or after judgement), from (but not including) the due date for payment of such invoice, until the date on which such invoice is paid in full. Such charge shall accrue day by day, shall be compounded and payable on demand.
- 7.5 In the event that Customer in good faith disputes any portion of the Charges contained in an invoice, Customer will pay the undisputed portion of the invoice on the due date in full and submit a documented claim for the disputed amount. As a minimum such documented claim shall set out the amount in dispute, the reason for such dispute and provide such evidence as shall be reasonably necessary to support the dispute. The Parties shall negotiate in good faith in an attempt to resolve the dispute, provided that if the dispute cannot be resolved within thirty (30) days of the date of the invoice, either Party may institute legal proceedings. If Customer does not submit a documented claim prior to the due date for payment of the invoice, Customer waives all rights to dispute the invoice.
- 8. TAXES**
- 8.1 All Charges and any other fees under this Agreement are exclusive of Value Added Tax (VAT) or any similar indirect or sales taxes that may be applicable. If any VAT or similar sales tax is chargeable by Interoute, this will be added to the agreed price (by way of separate invoice, if those charges have already been invoiced) and shall be paid in addition by the Customer.
- 8.2 If Withholding Tax applies to any payments for supplies made under this Agreement, the Customer may withhold that element that is required under the applicable legislation but must pay an additional amount in accordance with clause 7.3 and must notify Interoute prior to payment that Withholding Tax is required to be paid. The Parties undertake to co-operate, where possible, to minimise the amount of Withholding Tax due by making advance clearance applications under the relevant double taxation treaties (where applicable) to the relevant tax authority to reduce the rate of Withholding Tax or exempt entirely this amount if applicable. In any event, the Customer undertakes to account for any tax withheld to the tax authorities on a timely basis.
- 8.3 Neither Party shall be liable for the other Party's taxes based on income (including gains from the disposal of capital).
- 8.4 Any other taxes or levies arising from the use of the Services (including local profits taxes) (if any) shall be the liability of the Customer and Interoute reserves the right to recharge these to the Customer.
- 8.5 Any stamp duties or registration taxes or other taxes relating to documentation of the individual transactions entered into under this contract shall be borne by the Customer.

9. SERVICE LEVELS AND SERVICE CREDITS

- 9.1 Interoute shall provide the Service(s) in accordance with the Service Levels set out in the Additional Terms.
- 9.2 The Customer's sole and exclusive remedy for a cause of action that results in a deviation from the Service Levels is the Service Credits as set out in the relevant Additional Terms. The Customer agrees that the compensation provided under the Additional Terms represents a reasonable pre-estimate of all of its losses and Interoute shall have no further liability to Customer for the failure to achieve the Service Levels. Customer shall not be able to claim for more than one failure to meet a target arising from the same occurrence.
- 9.3 Claims will be paid only against validated claims, provided the Customer has paid Interoute all sums due under the Agreement, any credit balance due to the Customer will be carried forward to the next billing period.
- 9.4 In the event that a Service Credit is due to the Customer, Interoute will issue a credit note upon Customer's request. The Customer shall not be entitled to any Service Credits in respect of a claim unless and until Interoute has received notice of the claim in writing within twenty one (21) days of the end of the month for which a credit is requested. Customer must submit a documented claim, setting out the reason for the claim and providing such evidence as shall be reasonably necessary to support the claim. Service Credits will be calculated and credited to the Customer on a monthly basis.
- 9.5 For the first Monthly Review Period of a Service, the Service Levels and the Charges used to calculate the Service Credits will be prorated from the Ready for Service Date until the end of the first Monthly Review Period. If a Service is cancelled during a Monthly Review Period, no Service Credit will be payable in respect of that Service for that Monthly Review Period.
- 9.6 Service Credits will not be payable by Interoute to the Customer where the failure to meet a Service Level is caused by any of the following:
- a. The fault or negligence of the Customer, its employees, agents or contractors;
 - b. The Customer failing to comply with the terms of this Agreement;
 - c. Any event of Force Majeure described in clause 20;
 - d. A failure by the Customer to give Interoute necessary access to any Equipment or Customer Equipment and/or Site after being requested to do so by Interoute;
 - e. Maintenance during any Planned Outage;
 - f. A fault in, or any other problem associated with, equipment connected on the Customer's side of the Interoute Network Termination Point or Interoute Demarcation Point. E.g. Customer LAN;
 - g. Any outages or degradation to existing Service that may be the result of Customer requested Service changes or upgrades or;
 - h. Any damage or disruption to subsea cables or;
 - i. Failure to provide spare parts for Customer Equipment or;
 - j. Any malfunction of Customer serviced software including a failing shutdown or boot of Customer serviced software;
 - k. DNS issues outside the direct control of Interoute. For instance, in all cases in which a domain is not managed by Interoute on its own DNS servers.

10. OPERATION AND MAINTENANCE

- 10.1 Should any condition exist that may impair the integrity of the Interoute Network or otherwise damage or disrupt Interoute's Network, Interoute shall initiate and co-ordinate Emergency Maintenance, which may include disconnection of all or any part of the Service. Save in case

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of emergency Interoute shall give the Customer advance notice of Emergency Maintenance works.

- 10.2 From time to time planned maintenance will be carried out which may affect the Customer's Service. Interoute shall, to the extent reasonably practicable, give the Customer ten (10) days prior notice in writing (or such shorter period as may be necessary) of the timing and scope of such planned maintenance, if it is or is likely to cause a Planned Outage.
- 10.3 Interoute shall use reasonable efforts to conduct any Planned Outage of the Interoute Network during the hours of 11pm and 5am Greenwich Mean Time Monday to Sunday.
- 10.4 Interoute's Customer Service Centre shall endeavour to inform the Customer if the Customer's Service experiences any outage. This information will be provided twenty-four (24) hours a day, seven (7) days a week. Interoute shall endeavour to notify the Customer of any Service affecting outage within two (2) hours of Interoute's first awareness of such disruption.

11. COMPLIANCE WITH LAWS

- 11.1 Customer shall obtain all necessary licences, approvals, permits and consents including building permits and landlords' consent required by any applicable governmental or regulatory authority or body necessary for Customer to use the Services. Customer shall use the Services in accordance with and subject to all provisions of applicable law and any order or determination of any competent authority.
- 11.2 Both Parties acknowledge their respective duties under the applicable data protection legislation, and hereby undertake to comply with their obligations and duties under such legislation and shall give all reasonable assistance to each other where appropriate or necessary to comply with any obligations arising under such legislation. The Customer acknowledges that Interoute may, in the course of performing its obligations under this Agreement, process 'personal data' in accordance with the relevant legislation. In so far as such personal data is obtained from the Customer, the Customer consents and undertakes to procure that any relevant data subjects consent, to such processing by Interoute. The Parties shall at all times ensure that appropriate technical and organisational security measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to personal data.
- 11.3 Customer shall at all times use the Services in accordance with Interoute's Acceptable Use Policy.
- 11.4 Each Party will comply with all relevant laws in providing or using (as appropriate) the Services.

12. SOFTWARE

- 12.1 If and to the extent that the Customer requires the use of Licensed Software in order to use the Services, the Customer will be provided with a non-exclusive non-transferable licence for the Term to use such Licensed Software solely for its internal purposes and solely to the extent required to use the Services. To the extent such Licensed Software is sourced from a third party provider, such licence shall be subject to the terms of the applicable software licence embedded in the relevant software.
- 12.2 Customer will not, and shall use all its reasonable endeavours to ensure that others do not:
 - a. obtain or claim any ownership in any Licensed Software (or in any derivation thereto or improvement thereof);
 - b. copy the Licensed Software except as agreed in writing by Interoute and in accordance with the terms of the applicable software licence;
 - c. save as permitted by law, reverse engineer, decompile or disassemble Licensed Software;

- d. sell, lease, licence or sublicense the Licensed Software;
- e. create, write or develop any derivative software or any other software based on the Licensed Software; or
- f. take any action prohibited by the applicable software license.

13. EQUIPMENT AND ACCESS

- 13.1 Interoute may require to locate Equipment on the Customer's Premises to enable Interoute to provide the Services. Subject to the provisions of this Agreement, Customer hereby grants to Interoute the right to locate, install and operate such Equipment at the Customer's Premises and shall provide Interoute, its employees, representatives and authorised agents, as may be reasonably required, access to the Equipment via the Interoute Network or otherwise, 24 hours a day, 7 days a week in accordance with the access procedures agreed between the Parties.
- 13.2 Customer shall furnish reasonable, appropriate environmental conditions for the Equipment (including, without limitation, protection from weather, security, availability of power, including a back-up generator, ventilation, heating, and cooling). If Customer reasonably requires to temporarily disconnect the power supply to the Equipment, except in an emergency, Customer will give Interoute at least fourteen (14) written days notice in advance of such disconnection and will use all reasonable endeavours to ensure minimum disruption. Interoute shall not be liable for disruption to Services under this clause.
- 13.3 The Customer undertakes (a) not to replace Equipment located on the Customer Premises, (b) not to make any modification, alteration or connection to the same other than by prior agreement in writing with Interoute nor (c) make any disconnection therefrom otherwise than in accordance with the terms and conditions of this Agreement.
- 13.4 Save where title passes to Customer as set out in the Purchase Order, ownership and title in Equipment provided by Interoute under this Agreement shall at all time remain with Interoute or the Interoute supplier (if the Equipment was supplied by an Interoute supplier), and the Customer shall exercise commercially reasonable efforts to prevent third parties from asserting any rights in relation to such Equipment.
- 13.5 On the expiry or termination of this Agreement, the Customer shall allow Interoute or Interoute's supplier, reasonable access, without charge, to its premises to recover Equipment where title has not transferred to Customer pursuant to this Agreement.

14. NATURE OF RIGHTS

- 14.1 Save to the extent expressly set out in this Agreement, nothing in this Agreement shall vest in or confer on the Customer:
- a. any patent or any other right or licence in the Intellectual Property arising from or relating to any apparatus, system or method used by Interoute or by the Customer in connection with the use of the Services; or
 - b. any ownership or property rights or liens of any nature in or over Equipment or property, including the Interoute Network.
- 14.2 All rights granted hereby and obligations entered into under this Agreement are purely contractual. Nothing in this Agreement shall grant to the Customer any ownership, proprietary or possessory rights in any of the subject-matter of the Agreement.

15. ASSIGNMENT AND NOVATION

- 15.1 Except as provided below neither Interoute nor the Customer may assign, sub-contract, sublicense or otherwise dispose of all or any of its rights or obligations under this Agreement, without the prior written consent of the other Party (not to be unreasonably withheld or delayed).

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- 15.2 Interoute may transfer any of its rights and obligations under this Agreement to any of its Associated Companies (or its or their successors, through merger or acquisition of substantially all of their or its assets), without the prior written consent of the other Party.
- 15.3 Interoute may sub-contract any or all of its obligations under this Agreement to a third party or an Associated Company, provided that Interoute shall remain liable to the Customer for the performance of those obligations.
- 16. LIABILITY AND INDEMNITY**
- 16.1 Except as otherwise set forth in this Agreement, Interoute shall have no Liability (a) for any transaction, which the Customer may enter into with a third party using the Services; (b) for the contents of any communications transmitted via Services or for any information or content on the Internet.
- 16.2 Interoute gives no warranties, nor makes any representations or other agreements, express or implied with respect to the Services in particular Interoute does not warrant that any Service shall be uninterrupted or fault free or that such Service will interoperate effectively with Customer Equipment, or Customer's network or services.
- 16.3 These terms are in lieu of all other conditions, warranties or other terms concerning the supply or purported supply of, failure to supply or delay in supplying the Services which might but for this Clause 16 have effect between Interoute and the Customer or would otherwise be implied into or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise, all of which are hereby excluded (including, without limitation, the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or as to the use of reasonable skill and care).
- 16.4 Subject to clause 16.5, neither Party shall have any Liability for (a) loss of revenue; (b) loss of actual or anticipated profits; (c) downtime costs (d) loss of contracts; (e) loss of the use of money; (f) loss of anticipated savings; (g) loss of business; (h) loss of opportunity; (i) loss of goodwill; (j) loss of reputation; (k) loss of, damage to or corruption of data; or (l) any indirect or consequential loss and such Liability is excluded whether it is foreseeable, known, foreseen or otherwise. For the avoidance of doubt, 16.4 (a) – 16.4 (l) apply whether such losses are direct, indirect, consequential or otherwise.
- 16.5 Nothing in this clause 16 shall exclude or limit the Liability of the Customer to:
- a. Pay the Charges and/or
 - b. Repair (or if repair is not practicable, replace) any tangible physical property intentionally or negligently damaged by the Customer or its employees or agents.
- 16.6 Except where explicitly stated otherwise in the applicable Additional Terms, and subject to clauses 16.5, 16.7, 16.8 and 16.9, the Liability of each Party for any claim, loss, expense, or damage under this Agreement shall be limited to the equivalent of the total amount of Charges owed by Customer to Interoute in the twelve months immediately preceding the cause of action. If the Service(s) have been in service for less than twelve (12) months, then liability shall be limited to the estimated Charges for twelve (12) months of service. The liability set out in this clause 16.6 is subject to a maximum of Euro 250,000 for any one incident or a series of related incidents and to Euro 500,000 for all incidents in any period of twelve (12) months.
- 16.7 The limitation of Liability under Clause 16.6 above has effect in relation both to any Liability expressly provided for under this Agreement and to any Liability arising by reason of the invalidity or unenforceability of any term of this Agreement.
- 16.8 Nothing in this Agreement shall exclude or limit either Party's Liability:
- a. for fraud or fraudulent misstatement;
 - b. for death or personal injury;
 - c. in relation to the intellectual property indemnity set out in clause 18 below; or

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d. for any other Liability which cannot be excluded or limited by applicable law.

16.9 The Customer shall indemnify and hold harmless Interoute against all actions, losses, costs, damages, awards, expenses, fees (including legal fees incurred and/or awarded against Interoute) proceedings, claims or demands in any way connected with this Agreement, including claims, brought or threatened against Interoute by a third party related to content or arising out of the use by Customer of the Services, or any wilful or negligent act or omission of the Customer or Customer's customer(s) and /or agents. The Customer shall also provide, at the Customer's sole expense, Interoute with full authority, information and assistance as is reasonably necessary for the defence, compromise or settlement of such claim.

16.10 Customer hereby agrees that it shall use its best endeavours to mitigate any losses that may arise from this Agreement.

17. ENTIRE AGREEMENT

17.1 This Agreement contains all the terms agreed among the Parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between the Parties, whether oral or in writing. In entering into this Agreement, the Customer agrees it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations among the Parties prior to this Agreement except as expressly stated in this Agreement and Interoute shall have no Liability to the Customer other than pursuant to the express terms of this Agreement.

18. INTELLECTUAL PROPERTY INDEMNITY

18.1 Each Party will defend and hold the other Party harmless against any claim, suit or proceeding brought against that Party so far as it is based on any actual or threatened infringement of any Intellectual Property Rights by it, provided that it is given prompt notice in writing of any such claim and is given full authority and such information and assistance as is reasonably necessary for the defence of such claim.

18.2 Interoute shall have no liability in respect of any alleged infringement which is based on the sale or use of any Service in combination with any other products not supplied by Interoute (unless expressly agreed by Interoute).

18.3 Interoute shall have no liability in respect of any unauthorised modifications, changes or alterations by the Customer or its agents of the Services supplied by Interoute, other than in respect of modifications, changes or alterations carried out by Interoute.

19. INSURANCE

19.1 Each Party will maintain in effect at all times during the performance of this Agreement such insurance policies with a reputable insurance company as it is required to hold under applicable law and such other policies as a prudent business conducting similar operations in the region would maintain. Coverage limits will be sufficient to cover the Party's liabilities under this Agreement.

19.2 With specific regard to Equipment, during the continuance of this Agreement, it shall be the Customer's responsibility to insure at its own expense, and keep insured Equipment which is on Customer Premises, with a reputable insurer against loss, theft, damage or destruction howsoever arising (unless such damage or destruction is caused by Interoute or its agents) at an amount not less than the full replacement value of the Equipment. Such Equipment shall at all times be at the Customer's risk.

19.3 Each Party will, at the request of the other Party, provide copies of such documentation as the requesting Party reasonably requires in evidence of the other Party's compliance with this Agreement.

20. **FORCE MAJEURE**

A Party shall not be deemed in default of any of its obligations under this Agreement if, and to the extent that, performance of such obligation is prevented or delayed by acts of God or public enemy, civil war, insurrection or riot, fire, flood, explosion, earthquake, labour dispute causing cessation slowdown or interruption of work, national emergency, act or omission of any governing authority or agency thereof, inability after reasonable endeavours to procure equipment, data or materials from suppliers, damage or disruption to subsea cables, or any other circumstances beyond its reasonable control ("Event of Force Majeure"), provided that such Event of Force Majeure is not caused by the negligence of that Party, and that Party has notified the other in writing of the Event of Force Majeure. The Party notifying an Event of Force Majeure shall use all reasonable endeavours to avoid or minimise the effects of an Event of Force Majeure. Upon the occurrence of an Event of Force Majeure, the time for performance shall be extended for the period of delay or inability to perform due to such occurrence, but if an Event of Force Majeure continues for a continuous period of more than one month the other Party shall be entitled to terminate this Agreement.

21. **SEVERABILITY**

If any of the provisions of this Agreement is held by an appropriate arbitral, judicial or regulatory authority to be void, invalid or unenforceable, such provision shall, to the extent permitted by applicable law, be deemed to be deleted from this Agreement to the intent that the remaining provisions shall continue in full force and effect.

22. **WAIVER**

The waiver by either Party, in whole or in part, of a breach of or a default under any of the provisions of this Agreement, or the failure, in whole or in part, of the other Party, upon one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder shall not thereafter be construed as a waiver of any subsequent breach or default of a similar nature or as a waiver of any such provision, right of privilege hereunder.

23. **NOTICES**

23.1 Any notice, given or made under this Agreement shall be in writing, signed by an authorised representative and shall be delivered personally or sent by post, recorded delivery, courier, or facsimile transmission to the registered address of the Party or such other address as each Party may notify in writing to the other. Notices, other than notices of dispute or termination for breach of contract may also be sent by electronic communication to the address details set out in the Purchase Order. Any such notice, demand or other communication shall be deemed to have been received:

- a. if delivered personally, at the time of delivery; or
- b. if sent by post, 5.00 pm on the second Working Day after posting; or
- c. if sent by commercial courier, on the date and at the time of signature of the courier's delivery receipt; or
- d. if sent by recorded delivery, 9.00 am on the second Working Day after posting; or
- e. if sent by fax, on the date confirmation of successful transmission is received; or
- f. if sent by airmail, 9.00 am on the fifth Working Day after posting; or
- g. if sent by electronic communication, 5:00 pm on the first Working Day after the electronic communication is sent.

24. AMENDMENTS

This Agreement and any of its provisions may be altered or added to only by agreement in writing signed by a duly authorised person on behalf of each of the Parties.

25. CONFIDENTIALITY

- 25.1 Each Party shall keep confidential all information (including the terms of this Agreement) and documentation, including (without limitation) information concerning the business or trade secrets, processes, know-how or methods used by the other Party in carrying on business ("Confidential Information"), obtained from the other Party pursuant to or in connection with this Agreement. In order to protect the other Party's rights and interests hereunder, a Party may only disclose Confidential Information regarding the other Party to those of its personnel and its Associated Companies personnel who require such Confidential Information for the purpose of this Agreement. Each Party shall take the same care to avoid disclosing Confidential Information of the other Party to any third party as the receiving Party takes with similar information of its own which it does not wish so to disclose.
- 25.2 Each Party agrees that it shall not use any Confidential Information regarding the other Party for any purpose other than the performance of its respective obligations or enforcing its rights under this Agreement or as otherwise permitted hereunder, nor copy or disclose any such Confidential Information to any third party without the written consent of the other Party's authorised representative. However, both Parties shall be permitted to disclose this Agreement to their personnel or their Associated Companies professional advisers, agents or representatives (including those who are assisting it in connection with this Agreement) subject to appropriate confidentiality obligations.
- 25.3 The provisions of this Clause shall not apply to Confidential Information which the recipient can show to the disclosing Party's reasonable satisfaction:
- a. was known to the recipient (without obligation to keep the same confidential) at the date of its disclosure;
 - b. is after the date of disclosure lawfully acquired by the recipient in good faith from an independent third party who is not subject to any obligation of confidentiality in respect of such Confidential Information;
 - c. was in its entirety at the time of disclosure or has become public knowledge otherwise than by reason of the recipient's neglect or breach of the restrictions set out in this or any other Agreement;
 - d. is independently developed by or on behalf of the recipient without access to any or all of the Confidential Information;
 - e. is required by process of law, judicial action, recognised stock exchange, governmental department or agency or other regulatory authority to be disclosed in which event the recipient shall take all reasonable steps to consult and take into account the reasonable requirements of the other Party in relation to such disclosure; or
 - f. agreement in writing was given for disclosure.

26. PRESS ANNOUNCEMENTS

- 26.1 No press or public announcements, circulars or communications relating to this Agreement or the subject matter of it shall be made or sent by either of the Parties without the prior written approval of the other Party such approval not to be unreasonably withheld or delayed.
- 26.2 Notwithstanding clause 26.1, Interoute may refer to the Customer in its marketing materials, including, without limitation, on its website and in correspondence with prospective customers.

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27. **RIGHTS OF THIRD PARTIES.**

27.1 The Parties do not intend any term of this Agreement to create any rights or obligations on any third party.

28. **GOVERNING LAW AND JURISDICTION**

28.1 This Agreement shall be construed in accordance with and shall be governed by the laws of England and Wales,

28.2 Any dispute arising out of or in connection with this Agreement, including a dispute regarding its existence, validity or termination or the consequences of its nullity, shall be subject to the non-exclusive jurisdiction of the English courts provided that Interoute may commence proceedings in any jurisdiction in which the Customer is incorporated, resident or domiciled.