

## **EUNETWORKS GENERAL TERMS AND CONDITIONS FOR PORTAL USAGE AND PORTAL ORDERS**

**1 PURPOSE.** These General Terms and Conditions for Portal Usage and Portal Orders ("**the Portal GTCs**") provide the terms and conditions governing Portal Orders.

## **2 DEFINITIONS AND INTERPRETATION**

2.1 In these Portal GTCs:

(a) "**Acceptable Use Policy**" or "**AUP**" means Supplier's Acceptable Use Policy, at Schedule 1 to these Portal GTCs. The Acceptable Use Policy is only applicable to Internet Services (and does not apply to any other types of Service).

(b) "**Affiliate**" means any person now or in the future that directly or indirectly controls, is controlled by or under common control with a party. For the purposes of this definition, "control" means (i) ownership of 50% of the voting power to elect the directors of a company, or (ii) greater than 50% of the ownership interest of a company.

(c) "**Bulk Fibre**" means multiple Dark Fibre pairs.

(d) "**Bulk Fibre Service**" means Bulk Fibre sold as a single Service.

(e) "**Confidential Information**" means all information disclosed (in any form) by either party to the other which is marked confidential or which is reasonably apparent should be treated as confidential, including information relating to the disclosing party's products, operations, processes, plans or intentions, know-how, design rights, trade secrets and business affairs.

(f) "**Customer**" has the meaning given to it clause 3.2.1(c) below.

(g) "**Customer Representative**" means a representative of an Onboarded Company who: (i) completes the Portal User Activation Process on behalf of that Onboarded Company (and any Customer Representative that does so is authorised to do so by that Onboarded Company); and/or (ii) completes the Portal Ordering Process and enters into a Portal Order on behalf of an Onboarded Company (and any Customer Representative that does so is authorised to do so by that Onboarded Company);

(h) "**Customer Representative Portal Login Details**" has the meaning given to it clause 3.1.5 below.

(i) "**Customer Representative User Profile**" has the meaning given to it in clause 3.1.2 below.

(j) "**Customer Representative Email Address**" has the meaning given to it in clause 3.1.4(c) below.

(k) "**Dark Fibre**" means non-monitored unlit point-to-point fibre.

(l) "**Dark Fibre Service**" means Dark Fibre sold as a single Service.

(m) "**Early Termination Charge**" has the meaning given to it in clause 7.4 below.

(n) "**Emergency Maintenance**" shall mean unplanned maintenance required as a result of a situation which has or will have an adverse effect on Supplier's infrastructure and which is caused by a third party beyond the control of Supplier (and carried out by Supplier with as much notice to Customer as reasonably practicable in the circumstances).

(o) "**euNetworks Portal**" means the euNetworks portal accessible via euNetworks' website (by a Customer Representative using an active Customer Representative User Profile and Customer Representative Portal Login Details).

(p) "**Force Majeure Event**" means any event arising due to causes beyond such party's reasonable control, including by way of example, but not limited to act of God, insurrection or civil disorder, acts of governmental or military authorities, strikes, civil unrest, terrorism, war, fire, flood, lightning, inclement weather, prolonged general power outages, changes of the regulatory environment, or acts or omissions of any third party for whom the affected party is not

responsible including acts and omissions by other telecommunication providers.

(q) "**Internet Service**" means an internet Service (as detailed in the relevant Portal Order).

(r) "**Minimum Term**" means the duration of time (measured starting on the Ready for Service Date of each Service delivered under a Portal Order) for which a Service is ordered, as specified in a Portal Order.

(s) "**Onboarded Company**" has the meaning given to it in clause 3.1.1 below.

(t) "**Onboarded Company Email Address**" has the meaning given to it in clause 3.1.4(d) below.

(u) "**Portal Order**" means a portal order entered into by Supplier and Customer via the Portal Ordering Process and pursuant to these Portal GTCs (and recorded in a Portal Order Confirmation Email).

(v) "**Portal Order Confirmation Email**" means a confirmation email sent to the relevant Customer Representative Email Address and the relevant Onboarded Company Email Address following Supplier and Customer entering into a Portal Order pursuant to the Portal Ordering Process. The Portal Order Confirmation Email will include the name, registered number, address and email address of Supplier and Customer, an exact description of the Service(s) (including a location A end demarcation point and a location Z end demarcation point) ordered and to be delivered by Supplier to Customer, a Minimum Term for Service(s), the charges payable by Customer for such Service(s), the Portal Order reference number, as well as reference to these Portal GTCs and the relevant SLA(s).

(w) "**Portal Ordering Process**" means the process described in clause 3.2 (Portal Ordering Process) below.

(x) "**Portal User Activation Process**" means the process described in clause 3.1 (Portal User Activation Process) below.

(y) "**Ready for Service Date**" means the date of an RFS Notice in respect of the particular Service unless Customer gives notice in accordance with clause 4.3.

(z) "**Ready for Service Notice**" or "**RFS Notice**" means written Ready for Service Notice provided by Supplier to Customer indicating that the Service ordered by Customer has been installed, tested and is functioning in accordance with the specifications set out in the Portal Order and applicable SLA.

(aa) "**Required Customer Information**" has the meaning given to it in clause 3.1.4 below.

(bb) "**Service Summary**" has the meaning given to it in clause 3.2.1(b).

(cc) "**Sanctions**" means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by: (i) the U.S. government, including the list of Specially Designated Nationals and Blocked Persons and other sanctions administered by the Office of Foreign Assets Control of the United States Department of the Treasury ("OFAC"); (ii) the Canadian government; (iii) the United Nations Security Council; (iv) the European Union; (v) His Majesty's Treasury of the United Kingdom (as extended to the Cayman Islands by Statutory Instrument); or (vi) any other applicable Sanctions Authority;

(dd) "**Sanctions Authority**" means the United Nations Security Council (as a whole and not its individual members), OFAC, the United States Department of Commerce Bureau of Industry and Security, the United States Department of State, the European Union (as a whole and not its individual member states), His Majesty's Treasury of the United Kingdom, and any other governmental authority with regulatory authority over a party and their respective operations from time to time;

(ee) "**Sanctions List**" means the "Specially Designated Nationals and Blocked Persons" list maintained by OFAC, the "Consolidated List of Financial Sanctions Targets" maintained by HMT



and any similar list maintained by, or public announcement of Sanctions designation made by, any Sanctions Authority;

(ff) **"Sanctions Target"** means (i) any individual or entity identified on any list maintained by a Sanctions Authority of parties with whom or with which transactions are prohibited; or (ii) any entity majority-owned or controlled by any of the foregoing;

(gg) **"Scheduled Maintenance"** shall mean maintenance carried out by Supplier during a planned works window (and with ten (10) days advance written notice to Customer where such Scheduled Maintenance will affect Customer's Services).

(hh) **"Service"** means any service ordered by Customer pursuant to the Portal Ordering Process and a Portal Order. Each Portal Order may be placed for one or more Services (for example, a separate port or circuit).

(ii) **"Service Level Agreement"** or **"SLA"** means a service level agreement agreed to by Customer Representative on behalf of Customer during the Portal User Activation Process and referenced in the Portal Order Confirmation Email, which sets out, amongst other things, the Service Levels applicable to a particular Service.

(jj) **"Service Levels"** means the specific performance targets and exclusive remedies Supplier provides regarding installation and performance of a Service as set out in the particular SLA applicable to the relevant Service.

(kk) **"Supplier"** has the meaning given to it clause 3.2.1(c) below.

(ll) **"Term"** means the Minimum Term plus any extensions to that Minimum Term agreed by the parties in the form of a further Portal Order (or otherwise in writing)

(mm) **"Working Day"** means a day which is not a weekend or a public holiday in England or, in the case of an act to be undertaken outside England, the country in which that act is to be undertaken.

2.2 Each of Supplier and Customer is sometimes referred to in these Portal GTCs as a **"party"** or collectively as the **"parties"**.

2.3 All headings are for convenience only and do not affect the interpretation of these Portal GTCs.

2.4 A reference to a party includes a reference to that party's successors in title, permitted assignees and transferees (if any).

2.5 In the event of any conflict between these Portal GTCs, any Portal Order or Service Level Agreement, the order of precedence shall be: (a) the Portal Order; (b) the SLA; and (c) these Portal GTCs.

## 3 ACTIVATION AND ORDERING PROCESS

### 3.1 Portal User Activation Process.

**3.1.1** A company must be onboarded by euNetworks as a customer pursuant to euNetworks' standard customer onboarding processes before that company can order Services via the euNetworks Portal. A company that has been successfully onboarded is referred to in these Portal GTCs as **"an Onboarded Company"**.

**3.1.2** A user profile must be created for a Customer Representative (**"Customer Representative User Profile"**) and activated by Customer Representative before a Customer Representative can order Service(s) on behalf of an Onboarded Company via the euNetworks Portal (each Customer Representative User Profile will be linked to a single Onboarded Company).

**3.1.3** A Customer Representative User Profile may be created by: (a) euNetworks, as more particularly set out in clause 3.1.3, 3.1.4 and 3.1.5 below; or (b) by a Customer Representative with an existing Customer Representative User Profile, in accordance with the process more particularly set out in the euNetworks Portal.

**3.1.4** To enable euNetworks to create a Customer Representative User Profile, a Customer Representative shall provide euNetworks with: (a) their first name; (b) their surname; (c) a contact email address for the Customer Representative (**"Customer Representative Email Address"**); and (d) a general email address for the relevant Onboarded Company (**"Onboarded Company Email Address"**) (together **"the Required Customer Information"**).

**3.1.5** Upon receipt of the Required Customer Information, euNetworks will create a Customer Representative User Profile for the Customer Representative and send a link to the Customer

Representative Email Address. Upon clicking on the link, the Customer Representative will be asked, amongst other things, to: (a) set their password and username (**"Customer Representative Portal Login Details"**); and (b) click to accept these Portal GTCs and the relevant SLA(s) and confirm that they will apply to all Services ordered (and Portal Orders entered into) via the euNetworks Portal by the Customer Representative via the Customer Representative User Profile on behalf of the relevant Onboarded Company.

**3.1.6** Following completion of the actions detailed in 3.1.5 above, the Customer Representative User Profile will be activated.

### 3.2 Portal Ordering Process.

**3.2.1** Once a Customer Representative User Profile has been created and activated, the Customer Representative may access the euNetworks Portal using the Customer Representative Portal Login Details and order Services on behalf of the relevant Onboarded Company by: (a) selecting the required services; (b) reviewing the summary of the selected services (which will include: (i) an exact description (including a location A end demarcation point (**"Location A"**) and a location Z end demarcation point) of the Service(s) offered and available to be ordered; (ii) a Minimum Term for all such Service(s); and (iii) the charges to be paid by Onboarded Company for such Service(s) (**"the Service Summary"**)); and (c) clicking to order the Service(s) described in that Service Summary on behalf of the relevant Onboarded Company (**"Customer"**) from the euNetworks company incorporated in the jurisdiction in which Location A is situated, to be determined by reference to the table in Schedule 4 (Supplier Entity) to these Portal GTCs (**"Supplier"**). euNetworks will subsequently send a Portal Order Confirmation Email to the Customer Representative Email Address and the Onboarded Company Email Address.

**3.2.2** It is agreed that: (a) a Service Summary constitutes a valid offer from Supplier; (b) Customer Representative clicking to order the Service(s) described in the Service Summary in the euNetworks Portal constitutes a valid acceptance by Customer of the Service(s) detailed in the Service Summary; (c) the Portal Order is binding upon Supplier and Customer upon Customer Representative clicking to order the Services detailed in the Service Summary; and (d) such Portal Order is subject to these Portal GTCs and relevant SLA(s) accepted by the Customer Representative during the Portal User Activation Process.

**3.2.3** Each Portal Order shall represent a stand-alone contract between Supplier and Customer and the terms and conditions of these Portal GTCs shall be incorporated into and made a part of any such Portal Order.

3.2.4 Customer Representative may be requested to click to agree updated versions of these Portal GTCs and/or the SLA(s) in the event that they are amended by euNetworks.

## 4 SERVICE PROVISION

**4.1** Services. Supplier shall provide Services in accordance with the applicable Portal Order and SLA(s).

### 4.2 Service Level Agreement.

(a) Notwithstanding anything else agreed between the parties, the Service Levels applicable to a Service are set out in the relevant SLA. In the event that Supplier fails to satisfy any Service Level, Supplier will upon Customer's request issue a credit note to Customer in accordance with the applicable SLA. All requests for credit notes pursuant to this clause 4.2 must be received in writing within 30 days of the event giving rise to the credit, or if later, the date on which Customer ought reasonably to have been aware of such event.

(b) All credits notes shall be credited against (i) the next invoice payable for the affected Service, (ii) if none, the next invoice payable by Customer, (iii) if none, Supplier shall credit Customer's oldest unpaid invoice and (iv) if none, Supplier shall make payment against the credit note to Customer within 30 days. The total amount credited to Customer for any month shall not exceed the amount of charges for the affected Service for that month. Supplier shall not be responsible for any failure to satisfy a Service Level to the extent such failure arises out of or is caused by: (i) Scheduled Maintenance or Emergency Maintenance; (ii) actions or inactions of Customer, its customer or their respective end-users, (including: (1) failure to provide any information or permit which Customer is obliged to provide, or failing to provide access to Customer locations so that



Supplier can install or maintain a Service; and/or (2) connecting inappropriate equipment to the network); (iii) Customer provided facilities, power or equipment; (iv) a Force Majeure Event; or (v) such other matters as may be identified in an SLA.

(c) Except as expressly provided in these Portal GTCs or any applicable SLA, no statements are or shall be construed as warranted characteristics, implied terms as to condition, quality, performance or fitness for purpose or guarantees, and any implied terms as to condition, quality, performance or fitness for purpose or guarantees are, to the fullest extent permitted by law, excluded from these Portal GTCs and any applicable SLA(s) and/or Portal Order(s).

**4.3 Service Commencement.** Upon installation and testing of any Service, Supplier will provide Customer with an RFS Notice. Upon delivery of the RFS Notice, Customer shall have a period of 5 Working Days to confirm that the Service has been installed and is functioning in accordance with specifications set out in the Portal Order and applicable SLA ("Acceptance Period"). Unless Customer gives to Supplier within the Acceptance Period written notice that the Service is not installed and functioning in accordance with the Portal Order and SLA, such Service shall be deemed accepted and billing shall commence on the date of the RFS Notice, regardless of whether Customer is prepared to accept delivery and begin use of the Service. In the event that Customer notifies Supplier within the Acceptance Period that the Service is not installed and functioning properly, then Supplier shall correct any deficiencies in the Service and deliver a new RFS Notice to Customer, after which the process in this clause shall be repeated.

**4.4 Service Delivery.** In the event that Customer orders more than one Service under one Portal Order, Supplier will be entitled to deliver separate Services on different dates. In such case, Supplier will only invoice for those Services which have been delivered.

## 5 BILLING AND PAYMENT

**5.1 Charges.** Supplier shall invoice Customer by sending all invoices to the invoicing email address provided by the Customer when placing the Portal Order (and set out in the relevant Portal Order Confirmation Email) unless otherwise agreed, and Customer shall pay Supplier for Services at the rates agreed in the Portal Order, except as otherwise provided in these Portal GTCs. Supplier shall invoice Customer (i) for non-recurring charges, on RFS Date of the relevant Service (unless agreed differently in a Portal Order); and (ii) for recurring charges, in advance on a monthly basis starting on the Ready for Service Date, unless quarterly, annual or other advance billing is agreed in a Portal Order. Supplier shall be entitled to pro rate invoices to allow for invoices to be rendered at the commencement of a calendar month.

**5.2 Indexation.** As described in Schedule 2 (Indexation) to these Portal GTCs.

**5.3 Payment.** Customer shall pay all invoices, unless disputed in accordance with clause 5.3, within 30 days of the date of invoice in the currency agreed in the relevant Portal Order free of all bank charges, withholding or other deduction. Unless Customer notifies Supplier to the contrary, Supplier shall be entitled to apply any payment made to the earliest undisputed outstanding charges payable by Customer.

**5.4 Payment Disputes.** If Customer disputes an invoice in good faith, Customer must pay the undisputed amount and submit written notice of the disputed amount with supporting details, including invoices and Services in dispute, reasons for the dispute and reasonably supporting documentation. Disputes must be submitted in writing within 30 days from the date of an invoice; otherwise, such invoice shall be deemed accepted by Customer. Any amounts disputed pursuant to this clause and resolved in favour of Supplier shall be due and payable by Customer within 10 Working Days of the resolution of the dispute.

**5.5 Interest.** If the Customer fails to make payment of an invoice on or before the due date, Supplier shall be entitled to charge the Customer interest (after as well as before judgment) on the amount unpaid, on a daily basis at the rate of 4% above the 1 month Euribor rate from the date payment is due, until such date as payment in full is made.

**5.6 Taxes.** Customer is responsible for the payment of all taxes arising out of or in connection with the provision of Service.

## 6 CUSTOMER OBLIGATIONS

**6.1 Cooperation and Information.** Customer undertakes to provide cooperation in the provision and continued operation of Service as reasonably requested by Supplier from time to time. Customer shall supply Supplier with all the information and/or documentation required for provision of the Service. If the information or documentation supplied by Customer proves, in Supplier's reasonable opinion, to be inaccurate, incomplete or objectively impossible to implement, Customer shall make the necessary corrections or additions without delay after notification by Supplier. If Customer has failed to provide cooperation, information, access, equipment or inhouse cabling (or otherwise fails to comply with clause 6.1 or 6.2) after two or more requests from Supplier, Supplier shall make a final request for such assistance and if it is not provided within 5 Working Days, Supplier shall be entitled to deliver the Service so far as it is able, and such Service shall be deemed accepted and billing shall commence, regardless of whether Customer is prepared to, or able to, accept delivery and begin use of the Service.

### 6.2 Access, Installation and Equipment.

(a) If access to premises or facilities to which Supplier does not already have access is required for the installation, maintenance or removal of Supplier's equipment, Customer shall, at its expense, secure such right of access as reasonably requested by Supplier from time to time for the proper operation of such equipment. If Customer requires any space in any premises or facilities that is not to be provided by Supplier under a Portal Order, Customer shall arrange for the provision and maintenance of space (including rack space), inhouse cabling, power, cooling and environmental services, and cross-connects.

(b) Title to equipment (including software and inhouse cabling) provided by Supplier remains with Supplier. Customer will not, and will not permit others to (i) disconnect, repair, or tamper in any way with Supplier's equipment or (ii) create or permit to be created any encumbrances on Supplier's equipment. Customer will only connect compatible equipment to the network infrastructure and/or equipment provided to it by Supplier in order to avoid risking damage to or actually damaging network infrastructure or network operations, including that provided by third-party providers.

**6.3 Access Data Security.** Customer undertakes to comply with the principles of data security. Customer must, for example, keep confidential access data or passwords provided by or through Supplier. If Customer passes this information to third parties or gives third parties access to this information, Customer is responsible for use of the Services by third parties.

**6.4 Disruption.** Customer undertakes to use reasonable endeavours to notify Supplier without delay of defects or faults arising in the Services and to assist Supplier to a reasonable extent in correcting any failures. If Customer notifies Supplier that a Service is not installed and functioning properly in circumstances where:

(a) the Services have been properly installed by Supplier; and

(b) (i) the failure has occurred as a result of Customer's implementation of the Service; or (ii) where Customer has actual knowledge that (or ought reasonably to have known that) no actual failure existed in respect of the Service(s);

Customer shall be liable for the costs incurred by Supplier in correcting any such failures. Supplier will be entitled to invoice Customer for this work at a rate calculated based on actual costs incurred (including any third-party costs) plus an uplift of twenty percent (20%).

**6.5 Investigation.** Customer shall reasonably cooperate at its own cost to investigate alleged illegal or criminal use by Customer or its end-users or customers of the Services provided by or through Supplier.

**6.6 Acceptable Use Policy.** Customer's use of Internet Service(s) shall comply with the Acceptable Use Policy.

## 7 TERM AND TERMINATION

**7.1 Minimum Term.** The term of a Portal Order shall commence on the date on which the Portal Order becomes binding on the parties (as detailed in clause 3 above) and continue until the latest of the end of the Minimum Terms for all Services ordered under the Portal Order and any extension periods in accordance with clause 7.2 unless otherwise terminated in accordance with these Portal GTCs. The Term of a Service shall commence on the Ready for Service Date of that





Service and continue until the end of the Minimum Term for that Service and any extension periods in accordance with clause 7.2 unless otherwise terminated in accordance with these Portal GTCs.

**7.2 Extension of Term.** Unless otherwise specified in the Portal Order, the Portal Order/Services shall extend after the Minimum Term for an indefinite period, unless either party gives notice to terminate the Portal Order/Service at least ninety (90) days prior to expiry of the Minimum Term. Portal Orders/Services that have extended beyond the Minimum Term may be terminated at any time on either party giving 90 days' notice to terminate to the end of a month.

### **7.3 Default.**

**7.3.1** In the event that Customer fails to pay to Supplier any amounts greater in total than the recurring charges payable under a Portal Order in respect of two months' Services (whether in respect of this Portal Order or another Portal Order or another customer order (whether governed by these Portal GTCs or otherwise) in place between the parties) when due and such failure continues for 10 Working Days following written notice from Supplier then Supplier may, in its sole discretion and upon 14 calendar days advance written notice, suspend delivery of any Services in accordance with clause 7.3.2 and/or terminate: (a) the affected Portal Order, and/or (b) all or any other Portal Orders and/or all or any other customer orders in place between the Customer (or its Affiliates) and Supplier (or its Affiliates) (whether governed by these Portal GTCs or otherwise).

**7.3.2** In the event that:

- a) either party commits a material breach of these Portal GTCs and such failure is not remedied within 30 days following written notice of the breach from the non-defaulting party;
- b) Customer fails to comply with its obligations under clause 6.1 or 6.2 after two or more requests by Supplier;
- c) (if applicable) Customer uses an Internet Service in a manner contrary to Supplier's Acceptable Use Policy or in a manner which is likely to cause damage to Supplier's (or its supplier's) network or equipment and does not immediately cease such use following written notice from Supplier; or
- d) except as prohibited by law, if bankruptcy, insolvency or other form of winding up proceedings are brought against the other party, the other party ceases business, a receiver or administrator is appointed over any of the other party's assets or the other party goes into liquidation or enters into a voluntary arrangement with its creditors other than for the purposes of reorganisation (or any similar event in its country of incorporation takes place),

then the non-defaulting party may, upon 14 calendar days advance written notice terminate any or all Portal Orders or customer orders in place between the Customer and Supplier (whether governed by these Portal GTCs or otherwise) in whole or in part. Supplier shall also be entitled to suspend provision of any Services, on 14 calendar days advance written notice, in circumstances where it is entitled to terminate any Portal Order or other customer order under this clause.

**7.4 Early Termination.** Customer may terminate any Service for convenience following the date on which the relevant Portal Order becomes binding on the parties (as detailed in clause 3 above) and prior to the expiration of the then current Minimum Term upon ninety (90) days' prior written notice to Supplier. Upon termination by Customer pursuant to this clause 7.4 or termination by Supplier as a result of Customer's default under clause 7.3 above, Supplier shall be entitled to invoice Customer for (and Customer shall pay), in addition to all amounts due and owing for the Service already provided and notwithstanding clause 5.1 above: (a) a sum equal to the greater of: (i) the Early Termination Charge; or (ii) any third-party costs payable by Supplier in connection with the terminated Service (provided that Supplier can evidence these third party costs); and (b) any non-recurring charge agreed in the applicable Portal Order for the terminated Service (that Customer is yet to pay to Supplier). **"Early Termination Charge"** means the total monthly recurring charge agreed in the applicable Portal Order for the terminated Service *multiplied by* the number of months between the termination date and the expiration of the then current Minimum Term of the terminated Service (**"Remaining Term"**) *less* (if the terminated Service has a Minimum Term that is greater than 12 months) 25% of the total monthly recurring charge agreed in the applicable Portal Order for the terminated Service *multiplied by* the number of months of the Remaining Term that fall between (and include) month 13 of the then current

Minimum Term for the terminated Service and the expiration of that Minimum Term.

No termination charge shall be payable where the Service has already automatically renewed on a monthly basis following expiry of the Minimum Term. Customer acknowledges that the charges payable in accordance with clause 7.4 represent a fair and reasonable estimate of Supplier's actual damages and loss caused by early termination and is not a penalty or subject to mitigation (notwithstanding clause 10.6 (Mitigation)).

**7.5 Effect of Termination.** Termination or expiry of a Service and/or Portal Order shall be without prejudice to the accrued rights, remedies and obligations of the parties.

**7.6 Customer Equipment Removal.** Immediately following termination of any Service, Customer shall remove all Customer's provided equipment and other Customer materials used in connection with such Service from premises or facilities operated or otherwise provided by Supplier. If Customer fails to remove such equipment and materials then on expiry of the Term Supplier is entitled to remove and deliver to Customer such equipment and materials and charge the Customer the costs associated with such removal and delivery.

**7.7 Supplier Equipment Removal.** Following termination of any Service, Supplier shall make arrangements to remove any Supplier equipment from Customer's premises and Customer shall provide assistance as reasonably requested by Supplier.

## **8 PERMITS AND APPROVALS**

**8.1** In the event that Supplier is unable to secure a wayleave agreement or other building access rights necessary to provide a Service on terms which, in its sole discretion, it considers acceptable, it will be entitled to terminate any Service without liability. Customer acknowledges and agrees that in some circumstances it may be required to be a party to such wayleave agreements. If necessary for the provision of Service, Supplier will obtain all other approvals required for building access and entry to all Customer locations, including, without limitation, access to electrical wiring, service risers and other necessary fixtures for the installation, maintenance, repair and laying of cables and equipment at such times as are necessary for Supplier to install a Service or to undertake maintenance in respect of a Service. Customer will use all commercially reasonable endeavours to assist Supplier in this process when appropriate and as reasonably requested by Supplier. Customer will at its own expense obtain any permits, approvals or third-party services such as cross connects required to facilitate its use of the Service from the point of demarcation of the Service as specified in the relevant Portal Order.

**8.2** Subject to clause 8.1, Supplier shall obtain and maintain all telecommunications permits and approvals required for Supplier to operate its network. If any permits or approvals are amended or cancelled and the loss of these permits or approvals threatens to cause or actually causes substantial financial loss to Supplier or if Supplier's right to operate its network and/or provide Service to Customer is hindered or significantly limited, Supplier may, in its sole discretion, either: (a) supply Customer with an alternative Service of the same quality; or (b) summarily terminate the affected Service without liability, provided that Supplier may only terminate in accordance with this clause 8.2 when it is not responsible for the loss of the permit or approval.

## **9 TECHNOLOGY CHANGE**

**9.1** In the event that during the term of a Service an element of its technology changes and/or the support of a Service by Supplier's supplier ceases and/or the Service will no longer be provided by Supplier's supplier (hereinafter called a **"Technology Change"**), Supplier shall be entitled to replace the affected Service with a new and/or equivalent Service (the **"Technology Change Replacement Service"**) in accordance with this clause.

**9.2** Supplier will notify the Customer in writing with no less than three (3) months' notice in the event of a Technology Change and will submit an offer to the Customer for a Technology Change Replacement Service. If the Customer rejects this offer or the parties fail to agree to the offer no less than six (6) weeks prior to the Technology Change, either party may, upon thirty (30) calendar days advance written notice terminate the affected Service.

**9.3** If during the transition to the Technology Change Replacement Service a change to the Customer's technical equipment



is required, the Customer will be required to obtain this new equipment at its own expense.

## 10 LIABILITIES AND LIMITATIONS

**10.1 Death, Personal Injury and Fraud.** Nothing in these Portal GTCs shall limit either party's liability for: (i) death or personal injury caused by such party's negligence; (ii) fraud or fraudulent misrepresentation; or (iii) such other liability which cannot be excluded or limited by applicable law.

**10.2** Subject to clause 10.1, neither party shall be liable whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, for any direct or indirect economic losses, loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of use or corruption of software, data or information, or loss or damage to goodwill or any other consequential damages arising out of or in connection with these Portal GTCs, or any Portal Order, or any Service, however caused and regardless of whether foreseeable.

**10.3 Limitation of Liability.** Subject to clause 10.1, Customer's sole and exclusive remedy in respect to any claim arising from Supplier's delivery or failure to deliver Service(s) or meet any Service Level(s) shall be a claim for Service Credits or any other remedy provided for in the relevant SLA.

**10.4** Supplier's liability for all other losses arising out of or in connection with these Portal GTCs (including all Portal Orders and Services) shall be limited as follows:

**10.4.1** for damage to Customer's property, up to two hundred and fifty thousand Euros (€250,000) in aggregate;

**10.4.2** for the cost to Customer of procuring replacement services where such costs arise directly from Supplier's failure to perform its obligations under these Portal GTCs and/or any Portal Order(s) and are not otherwise limited by clause 10.3, to the actual cost of such replacement services to a maximum of twice the aggregate monthly recurring charges payable for the affected Service(s) over a 12 month period at the then current rate for any one incident or series of events arising from a single incident; or

**10.4.3** otherwise to a maximum of the greater of €100,000 or the aggregate monthly recurring charges payable for the affected Service(s) over a 12 month period at the then current rate for any one incident or series of events arising from a single incident.

**10.5** Subject to the provisions of this clause 10 and except for Customer's obligations to pay all amounts due under these Portal GTCs and any Portal Order(s), the liability of Customer in contract, tort (including negligence or breach of statutory duty) or otherwise arising by reason of or in connection with these Portal GTCs and any Portal Orders shall be limited to the aggregate monthly recurring charges paid and payable for the affected Service over a twelve (12) month period at the then current rate for any one incident or series of events arising from a single incident.

**10.6 Mitigation.** Each party has a duty to mitigate damages for which the other party may be responsible.

**10.7 Force Majeure.** In the event of a Force Majeure Event Supplier shall have no liability or obligation in respect of any failure to deliver Services or breach of Service Level. Supplier reserves the right to restrict the Services temporarily due to a Force Majeure Event. Supplier shall notify Customer without delay of such occurrence. If the restriction of Services lasts longer than one (1) week, both parties are released from the payment and provision of Service obligations in respect of the affected Service under the relevant Portal Order from this date until the restriction ends. If the restriction lasts longer than four (4) weeks (in respect of a Force Majeure Event associated with a terrestrial Service) or 8 weeks (in respect of a Force Majeure Event associated with a sub-marine Service), either party may terminate the affected Service by notice in writing with no further liability; provided that Supplier shall refund any monthly recurring charges paid in advance which relate to the period following termination. Except for the obligation to refund any monthly recurring charges paid in advance following termination pursuant to this clause, Supplier shall have no liability in respect of Service restrictions or terminations caused as a result of a Force Majeure Event.

## 11 GENERAL TERMS

**11.1 Confidentiality.** Each party agrees to treat all Confidential Information it receives from the other as confidential and only to use it for the purpose of performing its obligations under each Portal Order. Each party shall use the same standards to protect the other party's Confidential Information as such party uses or ought reasonably to use to protect its own Confidential Information.

**11.2** This obligation of confidentiality does not apply:

- (a) where the disclosing party has given its prior written consent;
- (b) to disclosures to Affiliates, auditors and professional advisors or Supplier's disclosures to its agents and subcontractors, but only to the extent reasonably required in the performance and/or enforcement of these Portal GTCs or a Portal Order;
- (c) to disclosures which have to be made to comply with legal or regulatory obligations;
- (d) to information which has been independently generated by the receiving party; or
- (e) where the disclosing party comes into possession of the information other than by way of breach of this obligation of confidentiality.

Where Confidential Information is disclosed to a third party, each party shall ensure that the recipient gives a confidentiality undertaking which is at least as strict as the terms of clause 11.1 and 11.2.

**11.3** Upon request on or after termination of the last Service to which Confidential Information relates, a party shall return or take reasonable steps to delete or destroy Confidential Information of the other party.

**11.4** In the event of any conflict between these Portal GTCs and any non-disclosure agreement signed between the parties the non-disclosure agreement shall prevail unless such non-disclosure agreement has expired or been terminated, or by reason of its defined scope does not govern the relevant information.

**11.5 Assignment and Resale of Dark Fibre and Bulk Fibre Services.** Customer has the right to re-sell Services to third parties subject to the following restrictions (unless otherwise agreed in a Portal Order): (a) in respect of Bulk Fibre Services, Customer may not re-sell, assign, lease, sub-lease or transfer a Bulk Fibre Service as Bulk Fibre provided that Customer may re-sell, assign, lease, sub-lease or transfer individual Dark Fibre pairs out of a Bulk Fibre Service to a third party; and (b) in respect of Dark Fibre Services, Customer may not re-sell, assign, lease, sub-lease or transfer a Dark Fibre Service as Dark Fibre to third parties.

**11.6 Data Security.** Both parties agree to comply with their respective obligations under applicable data protection legislation or applicable codes in the provision and use of Service. Customer acknowledges and agrees that Supplier may, in the course of performing its obligations under these Portal GTCs, process personal data. If required for the performance of these Portal GTCs, Supplier and the Customer shall enter into separate data processing agreements or, in case of processing personal data into third countries, conclude required EU Standard Contractual Clauses. For further information you will find Supplier's data privacy notice at <https://www.eunetworks.com/privacy-statement/>.

**11.7 Anti-Bribery, Corruption, and Modern Slavery.** Both parties shall comply with all applicable anti-bribery, anti-corruption, anti-slavery, and human trafficking laws, statutes, and regulations from time to time in force (including, but not limited to, the Bribery Act 2010 and the Modern Slavery Act 2015). Each party confirms that it pays all legally required wages to its employees and contractors.

**11.8 Changes in Law.** If changes in applicable law, regulation, rule or order materially affect delivery of a Service the parties will negotiate in good faith appropriate changes to these Portal GTCs. If the parties are unable to reach agreement regarding these Portal GTCs within thirty (30) days after Supplier's written request of renegotiation: (i) Supplier may effective upon written notice to Customer pass through any increased costs of delivery, and (ii) Customer may, within thirty (30) days following receipt of such written notice pursuant to sub-paragraph (i) above, terminate the affected Service on upon thirty (30) days' written notice to Supplier without further liability.

**11.9 Third Parties.**



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**(a)** Customer may not assign, mortgage, charge or deal in its rights or obligations under these Portal GTCs or any Portal Order (other than to an Affiliate which assignment will not require Supplier's consent) without the prior written consent of Supplier, which will not be unreasonably withheld. These Portal GTCs shall apply to any permitted transferees or assignees.

**(b)** Supplier may subcontract any of its obligations under any Portal Order from time to time, including to an Affiliate of Supplier; provided Supplier shall remain primarily responsible for the performance of any such obligations.

**(c)** Supplier may not assign its rights or obligations under these Portal GTCs or any Portal Order (other than to an Affiliate which assignment will not require Customer's consent) without the prior written consent of Customer, which will not be unreasonably withheld. These Portal GTCs shall apply to any permitted transferees or assignees.

**(d)** These Portal GTCs shall be binding upon, inure solely to the benefit of and be enforceable by each party and their respective successors and assigns.

**(e)** Nothing in these Portal GTCs, express or implied, confers upon any third party any right, benefit or remedy under or by reason of these Portal GTCs, the Contracts (Rights of Third Parties) Act or otherwise.

**11.10 Relationship of the Parties.** The relationship between Customer and Supplier shall not be that of partners, agents, or joint ventures for one another, and nothing contained in these Portal GTCs shall be deemed to constitute a partnership or agency agreement between them for any purposes.

**11.11 Notices.** Any notice given in connection with these Portal GTCs, any Portal Order or Service shall be in writing to the addresses provided by Customer when placing that Portal Order and set out in the relevant Portal Order Confirmation Email, or as otherwise notified in writing. Notices shall be deemed received if delivered by hand, overnight courier, normal first-class post or electronic transmission. Notices shall be deemed to have been delivered (i) immediately if delivered in person before 5.00pm on a Working Day, otherwise on the next Working Day, (ii) the Working Day after dispatch if sent by overnight courier, (iii) two (2) Working Days after posting if sent by prepaid registered post; or (iv) immediately upon electronic transmission if sent before 5.00pm on a Working Day, otherwise on the next Working Day. For billing inquiries and disputes, or requests for Service Level credits or disconnection of Service (for reasons other than default), Customer shall follow Supplier then current process as communicated by Supplier from time to time, which may include a web-based portal.

**11.12 Press Release.** Following collaboration and discussion between the Parties as to its content and form, Supplier may issue any press release, advertisement or case study or make any other public comment relating to their business relationship or any Service (with Customer's consent). Supplier may list Customer as a reference Customer using its logo unless Customer notifies Supplier in writing to the contrary.

**11.13 Governing Law: Jurisdiction.** These Portal GTCs (and the relevant Portal Order and SLAs) and any dispute or claim arising out of or in connection with or with the subject matter of these Portal GTCs (and/or the relevant Portal Order and/or an SLA), shall be governed by, and construed in accordance with, the laws of England and Wales. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, or regarding the subject matter of, these Portal GTCs (and/or the relevant Portal Order and/or an SLA).

**11.14 Entire Agreement.** These Portal GTCs, including any addendums, SLAs and Portal Orders, constitute the entire and final agreement and understanding between the parties with respect to the Service and supersedes all prior written or oral agreements relating to

the Service. The parties confirm that no reliance has been placed on any representations other than those set out in these Portal GTCs or a Portal Order. These Portal GTCs and any SLA or Portal Order may only be modified or supplemented by way of a further Portal Order recording those changes or by an agreement in writing executed by an authorised representative of each party. Without limiting the generality of the foregoing, any conditions included in any Customer provided purchase order shall be void.

**11.15 No Set-Off.** Customer has no right of set-off of any claims or judgments against any amounts due and owing under these Portal GTCs or any Portal Order, unless for claims which are uncontested or the subject of a final court order which is not subject to appeal. The Customer has a right of retention only for claims under the same Portal Order.

**11.16 Waiver.** A failure or delay by either party to enforce any right or remedy available under these Portal GTCs shall not constitute a waiver of such right or remedy or a waiver of other right or remedy.

**11.17 Survival.** The provisions of Sections 3, 4, 5, 6, 8, 9, 10 and 11 and any other provisions of these Portal GTCs that by their nature are meant to survive the termination of any Portal Order shall survive termination.

**11.18 Severability.** If any provision of these Portal GTCs shall be declared invalid or unenforceable under applicable law, such provision shall be ineffective only to the extent of such declaration and such declaration shall not affect the remaining provisions of these Portal GTCs. In the event that a material and fundamental provision of these Portal GTCs is declared invalid or unenforceable under applicable law, the parties shall negotiate in good faith respecting an amendment that would preserve, to the fullest extent possible, the respective rights and obligations imposed on each party under these Portal GTCs as contained herein.

**11.19 Sanctions.**

- (a) Each party warrants that it: (i) is not contravening and has not contravened any Sanctions; and (ii) is not a Sanctions Target, has not been a Sanctions Target and nothing has occurred that could reasonably be expected to result in it becoming a Sanctions Target;
- (b) If at any time during the term of a Portal Order either party becomes a Sanctions Target, or contravenes Sanctions or anything occurs that could reasonably be expected to result in either of these things happening, the other party may, in its absolute discretion and without affecting any other right or remedy available to it: (i) treat such event as a Force Majeure Event; or (ii) terminate any and/or all Portal Orders with immediate effect by written notice to the other party without liability, including at any time during or following a suspension of the parties' obligations under Clause 10.7 (Force Majeure).
- (c) If there is any conflict between this Clause 11.19 and Clause 10.7 (Force Majeure), this Clause 11.19 shall take precedence.

**11.20 Copyright.** The terms and conditions of these Portal GTCs and any SLAs and Portal Orders are the property of Supplier and are protected by copyright. Supplier does not grant Customer a licence under its copyright to reproduce the contents of these Portal GTCs (or any SLAs and/or Orders) in any form whatsoever without the prior written authorisation of Supplier.

**11.21 Country Specific Terms.** The above provisions of these Portal GTCs are subject to the country specific terms detailed in Schedule 3.

## SCHEDULE 1 – SUPPLIER’S ACCEPTABLE USE POLICY / COMPLAINTS PROCEDURE

Use of Internet Services provided by Supplier (also referred to in this Schedule 1 as “euNetworks”) to Customer is subject to compliance with this Acceptable Use Policy.

If not defined, capitalised terms used in this AUP have the meaning in the Portal GTCs.

1. It is the Customer’s responsibility to ensure that no content or services are provided or made available by the Customer or to any customers or end-users of the Customer, which violate applicable laws. In this document, reference to the Customer shall always include the Customer’s customers.

2. Nothing in this policy shall constitute or be construed as constituting an obligation for euNetworks to monitor the legality of the Customer’s services or acknowledging any responsibility for the Customer’s actions or inactions.

3. The Customer agrees that it may be held liable for actions or inactions of its customers, in particular if the Customer fails to take action in the event that it obtains actual knowledge of an infringement of this AUP.

4. The Customer agrees that whilst the contractual relationship with euNetworks is governed by the law as specified in the relevant Portal GTCs, other national or international laws may be applicable. A violation of these laws also constitutes a violation of the Portal GTCs entitling euNetworks to impose the agreed sanctions on the Customer including those stated under 8(d) below. For example, in the case of electronic communication, the law of the recipient is applicable to determine whether electronic communication is spam or legitimate e-mail. In brief, it is the customer’s sole responsibility to ensure that domestic laws as well as laws applicable in the country of the addressee of the services are being abided by.

5. In the event that euNetworks identifies use of a Service by Customer which causes malware infection or system vulnerability which could be used to damage euNetworks’ or Customer’s network, it shall be entitled to request that Customer closes such exposures and/or removes the malware (as appropriate).

6. The Customer agrees that it will not, and will not allow third parties to, use the Services:

- a. to generate or facilitate unsolicited bulk commercial email (spamming);
- b. to violate, or encourage the violation of, the legal rights of others;
- c. for any unlawful, invasive, infringing, defamatory, or fraudulent purpose, including for any purpose related to illegal file sharing, gambling or gaming;
- d. to intentionally distribute viruses, worms, Trojan horses, corrupted files, hoaxes, or other items of a destructive or deceptive nature or to otherwise disseminate illicit code; or
- e. to alter, disable, interfere with or circumvent any aspect of the Services with the potential effect of endangering or detrimentally affecting the integrity of euNetworks’ network.

7. The Customer agrees that it will not under any circumstances use or allow use by third parties of euNetworks’ Services for making available, linking to or endorsing any of the following subject matter:

- a. child pornography or depictions of children and young people in an unnatural sexual pose including virtual depictions thereof;

- b. bestiality;
- c. Nazi propaganda or incitement to racial hatred;
- d. denial of Holocaust;
- e. illegal depictions of cruelty or glorification of violence against human beings or virtual depictions thereof;
- f. glorification of war; or
- g. depictions of people suffering in a manner that violates their human dignity

Breaches of sections 5, 6 and/or 7 of this AUP by the Customer shall constitute a material breach of this AUP.

8. The parties agree that the following complaints procedure shall apply in respect of breaches of sections 5, 6 and/or 7 of this AUP and the Customer authorises euNetworks to take such actions necessary to mitigate any liability or risk for euNetworks, its directors, employees or agents as is necessary as a result of a breach of this AUP by the Customer.

a. Communication under this complaints procedure shall be provided in writing which shall include e-mail. In the event that euNetworks obtains knowledge of use of its Services which is either a) in breach of this AUP, or b) otherwise unlawful, euNetworks will inform the Customer. The Customer must respond to this communication within 48 hours, unless a shorter response time is required (and in such circumstances euNetworks will specify the response time required).

b. Within its response, the Customer must state how it will remedy the alleged breach of sections 5, 6 and/or 7 and when it will do so.

c. The Customer will provide euNetworks with evidence that the breach has been remedied within the deadline proposed by the Customer in its response. Where required by third parties or otherwise appropriate, euNetworks may make the provision of Services dependent on the execution of a cease and desist declaration or evidence that a Customer’s own customer has been permanently excluded from using the Services where this Customer’s customer was responsible for the breach.

d. In the event that the Customer commits a breach of sections 5, 6 or 7 of this AUP, euNetworks is entitled at its sole discretion to suspend the provision of the Services, or to terminate summarily the relevant Portal Order (either totally or partially):

i. if the Customer fails to respond (in accordance with subsections 8 (a) and (b) of this AUP) to euNetworks’ communication that a breach has been committed, or

ii. if euNetworks is not satisfied with the time to remedy the breach proposed by the Customer, or

iii. if euNetworks reasonably considers that the breach is so serious as to warrant immediate suspension and/or termination of the Services or Portal Order (and in these circumstances euNetworks shall not be obliged to follow the notification procedure in subsections 8(a) and (b) of this AUP), provided that a suspension of Services or an early termination of a Portal Order will not affect the Customer’s obligation to pay any fees outstanding for the provision of Services.

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## SCHEDULE 2 - INDEXATION

1. **Fibre, Cross Connect and Duct Services.** Supplier is entitled, upon 30 days' advance written notice, to increase the recurring charges payable for fibre, cross connect and duct Services from the anniversary of the Ready For Service Date of the relevant Service and on an annual basis thereafter, by the greater of: (a) the average monthly increase in either: (i) the UK consumer price index (CPI) (if the Service is wholly or partially located in the UK); or (ii) the harmonized index of consumer prices (HICP) (if the Service is wholly located outside of the UK), over the preceding 12 month period; or (b) 3%.
2. **Colocation Services.** Supplier is entitled, upon 30 days' advance written notice, to increase:
  - 2.1 the recurring colocation space charge payable for a colocation Service from the anniversary of the Ready For Service Date and on an annual basis thereafter, by the greater of: (a) the average monthly increase in either: (i) the UK consumer price index (CPI) (if the colocation Service is located in the UK); or (ii) the harmonised index of consumer prices (HICP) (if the colocation Service is located outside of the UK), over the preceding 12 month period; or (b) 3%;
  - 2.2 the recurring colocation power charge or the usage-based price per kWh (whichever is applicable), payable for a colocation Service from the anniversary of the Ready For Service Date and on an annual basis thereafter, by the greater of: (a) the average monthly increase in either: (i) the UK consumer price index (CPI) (if the colocation Service is located in the UK); or (ii) the harmonised index of consumer prices (HICP) (if the colocation Service is located outside of the UK), over the preceding 12 month period; (b) 3%; or (c) the amount required so that the recurring colocation power charge or the usage-based price per kWh (whichever is applicable), matches the power charge that Supplier (or its Affiliate) pays to the underlying power provider regarding the colocation Service.



### SCHEDULE 3 - COUNTRY SPECIFIC TERMS

**Austria.** Where Supplier is incorporated in Austria:

1. all references to 'Austria' in the definition of Working Day and 'England and Wales' in clause 11.13 (Governing Law; Jurisdiction) shall be deemed to be replaced with 'Austria';
2. clause 10.1, 10.2, 10.3, 10.4, 10.5, 10.6 and 10.7 shall be deemed to be deleted and replaced with the following:

*"10.1 The liability of each party for slight negligence, irrespective of the legal grounds, shall be limited to in the event of a breach of an essential contractual obligation to the foreseeable damage typical for the contract or to the amount of the service provided by Supplier; for all other cases of slight negligence, liability between the parties is excluded.*

*10.2 The limitation of liability pursuant to Section 10.1 shall not apply in cases of mandatory statutory liability; in particular, this shall not apply to liability under the Product Liability Act, the assumption of independent guarantee promises and liability for culpably caused personal injury.*

*10.3 Notwithstanding clause 10.2, liability for indirect financial loss, loss of profit, loss of business or sales revenue, the non-realisation of contracts and agreements, loss of expected savings, loss of use or corruption of software, data or information, loss of or damage to goodwill and any other consequential damage arising from or in connection with the MSA is excluded, irrespective of the legal grounds.*

*10.4 Clauses 10.1 to 10.3 shall apply mutatis mutandis to each party's liability for reimbursement of wasted expenditure.*

*10.5 Notwithstanding the provisions in clauses 10.1 to 10.3, Supplier shall only be obliged to issue credit notes in the cases of poor performance or non-performance specified in the applicable SLA, unless the customer currently proves higher damages, in which case the credit notes issued shall be offset against these damages.*

*10.6 Liability for foreseeable damage typical of the contract in accordance with clause 10.1 is limited to [€ 250,000.00] per claim.*

*10.7 Each party is obliged to take all reasonable measures to avoid or minimise the occurrence of damage.*

*10.8 Force Majeure. In the event of a Force Majeure Event Supplier shall have no liability or obligation in respect of any failure to deliver Services or breach of Service Level. Supplier reserves the right to restrict the Services temporarily due to a Force Majeure Event. Supplier shall notify Customer without delay of such occurrence. If the restriction of Services lasts longer than one (1) week, both parties are released from the payment and provision of Service obligations in respect of the affected Service under the relevant Portal Order from this date until the restriction ends. If the restriction lasts longer than four (4) weeks (in respect of a Force Majeure Event associated with a terrestrial Service) or 8 weeks (in respect of a Force Majeure Event associated with a sub-marine Service), either party may terminate the affected Service by notice in writing with no further liability; provided that Supplier shall refund any monthly recurring charges paid in advance which relate to the period following termination. Except for the obligation to refund any monthly recurring charges paid in advance following termination pursuant to this clause, Supplier shall have no liability in respect of Service restrictions or terminations caused as a result of a Force Majeure Event."*

3. Clause 11.13 (Governing Law; Jurisdiction) shall be deemed to be replaced with the following:

*"This MSA (and all COs and SLAs) and any dispute or claim arising out of or in connection with or with the subject matter of this MSA (and/or a CO and/or an SLA), shall be governed by, and construed in accordance with, the laws of Austria excluding the provision of the United Nations Convention on Contracts for the International Sales of Goods dated 11th April 1980 (CISG). The place of fulfilment and the sole jurisdiction for all disputes or claim that arises out of, or in connection with, or regarding*

*the subject matter of this MSA (and/or a CO and/or an SLA) shall be the domicile of Supplier, Vienna, as long as the Customer is a businessman (Kaufmann) entered in the Commercial Register, a legal person under public law or special assets under public law."*

**Belgium.** Where Supplier is incorporated in Belgium, all references to 'England' in the definition of Working Day and 'England and Wales' in clause 11.13 (Governing Law; Jurisdiction) shall be deemed to be replaced with 'Belgium';

**France.** Where Supplier is incorporated in France:

1. 'England' in the definition of Working Day shall be deemed to be replaced with 'France';
2. 'the courts of England and Wales' in clause 11.13 (Governing Law; Jurisdiction) shall be deemed to be replaced with 'the commercial court of Paris'; and
3. clause 10.1, 10.2, 10.3, 10.4, 10.5 and 10.6 shall be deemed to be deleted and replaced with the following:

*"10.1. Death, Personal Injury and Fraud. Nothing in this MSA shall limit either party's liability for (i) death or personal injury caused by such party's negligence or wilful or gross misconduct; (ii) fraud or fraudulent misrepresentation; or (iii) such other liability which cannot be excluded or limited by applicable law.*

*10.2. Exclusion of Liability. In all other cases, the liability for any kind of damages, irrespective of their legal basis is expressly excluded. In particular, neither party shall be liable for any indirect or consequential damages, loss of profits, loss of data, loss of business opportunity, loss of reputation and/or any other damages, interest, penalties and legal costs arising out of or in connection with this MSA or any CO or Service, however caused and regardless of whether foreseeable and irrespective of the legal theory.*

*10.3 Limitation of Liability. Subject to clause 3, Customer's sole and exclusive remedy in respect to any claim arising from Supplier's delivery or failure to deliver Service(s) or meet any Service Level(s) shall be a claim for Service Credits or any other remedy provided for in the relevant SLA.*

*10.4 Subject to the provisions of this clause 10 and except for Customer's obligations to pay all amounts due under this MSA and any COs the liability of each party to the other in contract, tort (including negligence or breach of statutory duty) or otherwise arising by reason of or in connection with this MSA and any COs shall be limited to the aggregate monthly recurring charges payable for the affected Service over a twelve (12) month period at the then current rate for any one incident or series of events arising from a single incident.*

*10.5 Mitigation. Each party shall use all reasonable endeavours to mitigate damages for which the other party may be responsible."*

4. clause 10.7 (Force Majeure) shall be deemed to be renumbered as 10.6 and references to: (a) clause 10.6 (Mitigation) shall be deemed to be replaced with references to clause 10.5 (Mitigation); and (b) clause 10.7 (Force Majeure) shall be deemed to be replaced with references to clause 10.6 (Force Majeure).

**Germany.** Where Supplier is incorporated in Germany:

1. "England' in the definition of Working Day shall be deemed to be replaced with 'Germany';
2. clause 10.1, 10.2, 10.3, 10.4, 10.5, 10.6 and 10.7 shall be deemed to be deleted and replaced with the following:

*"10.1 Nothing in this MSA shall limit either party's statutory liability for (i) for damage from injury to life, limb or health due to negligent breach of duty caused by a party, its officers, employees or vicarious agents; (ii) for damages arising from a grossly negligent or wilful breach of duty caused by a party, its officers, employees or vicarious agents; (iii) a breach of a guarantee (Garantieversprechen) (if such guarantee is given under this MSA); (iv) fraud or fraudulent misrepresentation; (v) claims resulting from the German Product Liability Act (Produkthaftungsgesetz); or (vi) such other liability which*



cannot be excluded or limited by applicable law.

10.2 In all other cases, either party shall only be liable (i) for damages caused by slight negligence in case of breach of a material contractual obligation, the fulfilment of which makes the proper execution of the contract possible in the first place and on the fulfilment of which the contractual partner may regularly rely (Kardinalpflicht), and (ii) only be liable up to the amount of foreseeable damages typical for this type of contract or any Service provided by Supplier.

10.3 Subject to clause 10.1, neither party shall be liable, irrespective of its legal ground, for any indirect economic loss, loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of use or corruption of software, data or information, futile expenses or loss or damage to goodwill or any other consequential damages arising out of or in connection with this MSA.

10.4 Subject to clauses 10.1. to 10.3, Customer's sole and exclusive remedy in respect to any claim arising from Supplier's failure to meet any Service Level shall be a claim for Service Credits in accordance with the relevant SLA.

10.5 The parties agree that the typically foreseeable damages under clause 10.2, are limited to the amount of [€250.000] per damaging event.

10.6 Each party is obliged to take all reasonable measures to avoid or reduce damages.

10.7 Nothing in this Clause 10 shall be deemed as (i) establishing a liability for Supplier which exceeds the statutory limitation of liability resulting from Section 70 German Telecommunication Act (TKG) or any subsequent provisions replacing Section 70 TKG (if applicable) or (ii) as a contractual derogation from the amount of liability stated in Section 70 TKG or any subsequent provisions replacing Section 70 TKG.

10.8 Limitation of liability resulting from this Clause 10 shall also apply mutatis mutandis to the personal liability of the parties' officers and employees in relation to this MSA.

10.9 Force Majeure. In the event of a Force Majeure Event Supplier shall have no liability or obligation in respect of any failure to deliver Services or breach of Service Level. Supplier reserves the right to restrict the Services temporarily due to a Force Majeure Event. Supplier shall notify Customer without delay of such occurrence. If the restriction of Services lasts longer than one week, both parties are released from the payment and provision of services obligations in respect of the affected circuit under the relevant CO from this date until the restriction ends. If the restriction lasts longer than four (4) weeks (in respect of a Force Majeure Event associated with a terrestrial circuit) or eight (8) weeks (in respect of a Force Majeure Event associated with a sub-marine circuit), either party may terminate the CO insofar as it relates to the affected Service by notice in writing with no further liability; provided that Supplier shall refund any monthly fees paid in advance which relate to the period following termination. Except for the obligation to refund any fees paid in advance, Supplier shall have no liability in respect of Service restrictions or terminations caused as a result of a Force Majeure Event."

3. clause 11.13 (Governing Law; Jurisdiction) shall be deemed to be replaced with the following:

"This MSA (and all COs and SLAs) and any dispute or claim arising out of or in connection with or with the subject matter of this MSA (and/or a CO and/or an SLA), shall be governed by, and construed in accordance with, the laws of Germany excluding the provision of the United Nations Convention on Contracts for the International Sales of Goods dated 11th April 1980 (CISG). The place of fulfilment and the sole jurisdiction for all disputes or claim that arises out of, or in connection with, or regarding the subject matter of this MSA (and/or a CO and/or an SLA) shall be the domicile of Supplier, Frankfurt am Main, as long as the Customer is a businessman (Kaufmann) entered in the Commercial Register, a legal person under public law or special assets under public law"

**Ireland.** Where Supplier is incorporated in Ireland:

1. 'England' in the definition of Working Day and 'England and Wales' in clause 11.13 (Governing Law; Jurisdiction) shall be deemed to be replaced with 'Republic of Ireland';
2. clause 10.1, 10.2, 10.3, 10.4, 10.5 and 10.6 shall be deemed to be deleted and replaced with the following:

"10.1 Death, Personal Injury and Fraud. Nothing in this MSA shall limit either party's liability for (i) death or personal injury caused by such party's negligence; (ii) fraud or fraudulent misrepresentation; or (iii) such other liability which cannot be excluded or limited by applicable law.

10.2 No Special Damages. In all other cases, the liability for any kind of damages, irrespective of their legal basis is expressly excluded. In particular, neither party shall be liable for any indirect damages, loss of profits or any other consequential damages arising out of or in connection with this MSA or any CO or Service, however caused and regardless of whether foreseeable.

10.3 Limitation of Liability. Subject to clause 10.1, Customer's sole and exclusive remedy in respect to any claim arising from Supplier's delivery or failure to deliver Service(s) or meet any Service Level(s) shall be a claim for Service Credits or any other remedy provided for in the relevant SLA.

10.4 Subject to the provisions of this clause 10 and except for Customer's obligations to pay all amounts due under this MSA and any COs, the liability of each party to the other in contract, tort (including negligence or breach of statutory duty) or otherwise arising by reason of or in connection with this MSA and any COs shall be limited to the aggregate monthly recurring charges payable for the affected Service over a twelve (12) month period at the then current rate for any one incident or series of events arising from a single incident.

10.5 Mitigation. Each party has a duty to mitigate damages for which the other party may be responsible."

3. clause 10.7 (Force Majeure) shall be deemed to be renumbered as 10.6 and references to: (a) clause 10.6 (Mitigation) shall be deemed to be replaced with references to clause 10.5 (Mitigation); and (b) clause 10.7 (Force Majeure) shall be deemed to be replaced with references to clause 10.6 (Force Majeure).

**Netherlands.** Where Supplier is incorporated in the Netherlands:

1. 'England' in the definition of Working Day and 'England and Wales' in clause 11.13 (Governing Law; Jurisdiction) shall be deemed to be replaced with 'the Netherlands';
2. "Customer may terminate" in the first sentence of clause 7.5 shall be deemed to be replaced with the following "Customer may terminate (opzeggen)";
3. clause 10.1, 10.2, 10.3, 10.4, 10.5 and 10.6 shall be deemed to be deleted and replaced with the following (and clause 10.7 shall be deemed to be renumbered as 10.6):

"10.1 Death, Personal Injury and Fraud. Nothing in this MSA shall limit either party's liability for (i) death or personal injury caused by such party's negligence; (ii) fraud or fraudulent misrepresentation; or (iii) such other liability which cannot be excluded or limited by applicable law.

10.2 No Special Damages. In all other cases, the liability for any kind of damages, irrespective of their legal basis (whether breach of contract, tort or otherwise) is expressly excluded. In particular, neither party shall be liable for any indirect damages, loss of profits or any other consequential damages arising out of or in connection with this MSA or any CO or Service, however caused and regardless of whether foreseeable.

10.3 Limitation of Liability. Subject to clause 10.1 Customer's sole and exclusive remedy in respect to any claim arising from Supplier's delivery or failure to deliver Service(s) or meet any Service Level(s) shall be a claim for Service Credits or any other remedy provided for in the relevant SLA.

10.4 Subject to the provisions of this clause 10 and except for Customer's obligations to pay all amounts due under this MSA and any COs, the liability of each party to the other in contract, tort (including negligence or breach of statutory duty) or otherwise arising by reason of or in connection with this MSA and any COs shall be limited to the aggregate monthly recurring charges payable for the affected Service over a twelve (12) month period at the then current rate for any one incident or series of events arising from a single incident.

10.5 Mitigation. Each party has a duty to mitigate damages for which the other party may be responsible."

4. clause 10.7 (Force Majeure) shall be deemed to be renumbered as 10.6 and references to: (a) clause 10.6 (Mitigation) shall be deemed to be replaced with references to clause 10.5 (Mitigation); and (b) clause 10.7 (Force Majeure) shall be deemed to be replaced with references to clause 10.6 (Force Majeure).

**Spain.** Where Supplier is incorporated in Spain:

1. The definition of Working Day shall be deemed to be replaced with the following "means a day which is not a weekend or a public holiday in Madrid or, in the case of an act to be undertaken outside Madrid, the place in which that act is to be undertaken."
2. Clause 11.13 (Governing Law; Jurisdiction) shall be deemed to be replaced with the following: "This MSA (and all COs and SLAs) and any dispute or claim arising out of or in connection with or with the subject matter of this MSA (and/or a CO and/or an SLA), shall be governed by, and construed in accordance with, the laws of Spain (as applicable in Madrid). The parties irrevocably agree that the courts of Madrid shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, or regarding the subject matter of, this MSA (and/or a CO and/or an SLA)."

**Switzerland.** Where Supplier is incorporated in Switzerland:

1. 'England' in the definition of Working Day shall be deemed to be replaced with 'Switzerland';
2. clause 11.13 (Governing Law; Jurisdiction) shall be deemed to be replaced with: "This MSA (and all COs and SLAs) shall be governed by and construed in accordance with the substantive laws of Switzerland, to the exclusion of the principles of Swiss Private International Law. Any dispute, controversy or claim arising out of, or in relation to, this MSA (and/or a CO and/or an SLAs) or future non-contractual claims including the validity, invalidity, enforceability, interpretation, execution, breach, modification or termination thereof, shall be submitted to the exclusive jurisdiction of the Swiss courts at the seat of Supplier, with English as the procedural language".
3. clause 10.1, 10.2, 10.3, 10.4, 10.5 and 10.6 shall be deemed to be deleted and replaced with the following:

"10.1 Death, Personal Injury and Fraud. Nothing in this MSA shall limit either party's liability for (i) death or personal injury caused by such party's negligence; (ii) fraud or fraudulent misrepresentation; (iii) unlawful intent; (iv) gross negligence; or (v) such other liability which cannot be excluded or limited by applicable law.

10.2 No Special Damages. In all other cases, the liability for any kind of damages, irrespective of their legal basis is expressly excluded. In particular, neither party shall be liable for any indirect damages, loss of profits or any other consequential damages arising out of or in connection with this MSA or any CO or Service, however caused and regardless of whether foreseeable.

10.3 Limitation of Liability. Subject to clause 3, Customer's sole and exclusive remedy in respect to any claim arising from Supplier's delivery or failure to deliver Service(s) or meet any Service Level(s) shall be a claim for Service Credits or any other remedy provided for in the relevant SLA.

10.4 Subject to the provisions of this clause 10 and except for Customer's obligations to pay all amounts due under this MSA and any COs, the liability of each party to the other in contract, tort (including negligence or breach of statutory duty) or otherwise arising by reason of or in connection with this MSA and any COs shall be limited to the aggregate monthly recurring charges payable for the affected Service over a 12 month period at the then current rate for any one incident or series of events arising from a single incident.

10.5 Mitigation. Each party has a duty to mitigate damages for which the other party may be responsible."

4. clause 10.7 (Force Majeure) shall be deemed to be renumbered as 10.6 and references to: (a) clause 10.6 (Mitigation) shall be deemed to be replaced with references to clause 10.5 (Mitigation); and (b) clause 10.7 (Force Majeure) shall be deemed to be replaced with references to clause 10.6 (Force Majeure).
5. The following shall be deemed to be added to the foot of clause 7.4 (Early Termination): "Customer may terminate a Portal Order for Just Cause, with immediate effect. For the purpose of this MSA, "Just Cause" shall mean a breach of the Portal GTCs which causes the continuation of the contract impossible or unreasonable for the party invoking the Just Cause".

**United Kingdom (and other jurisdictions).** Where Supplier is incorporated in the United Kingdom, or another jurisdiction not listed in this Schedule 3, no changes are deemed to be made to the Portal GTCs.

#### SCHEDULE 4 – SUPPLIER ENTITY

Jurisdiction in which Location A is situated	Supplier
Austria	<b>euNetworks AT GmbH</b> Am Europlatz 2, 1120 Wien, Austria Registered in Austria number FN143264, UID: ATU 41690602
Belgium	<b>euNetworks Belgium BV</b> Blvd Louis Schmidtdaan 119, Bus 3, Brussels 1040, Belgium Registered in Belgium Number 0887 348 674 VAT Registration Number BE 0887.348.674
France	<b>euNetworks SAS</b> 16-18 rue de Londres, 75009 Paris, France Registered in France Number 490505 773 RCS Paris VAT Registration Number FR 74490505773
Germany	<b>euNetworks GmbH</b> Franklinstraße 61-63, 60486 Frankfurt, Deutschland Tel: +49 69 90554 0 Amtsgericht Frankfurt am Main, HRB 88224, Steuernummer 014 232 51639, Umsatzsteuer ID: DE 201 739 716
Ireland	<b>euNetworks Ireland – Private Fiber Limited</b> Unit 1, 2050 Orchard Avenue, Citywest Business Campus, Dublin, D24 VP28, Ireland Registered in Ireland Number 314398 VAT Registration Number IE 6334398A
Italy	<b>euNetworks S.r.l.</b> Viale Abruzzi, 94, 20131 Milan, Italy Registered in Italy Number 09883860968 VAT Registration Number 09883860968
The Netherlands	<b>euNetworks B.V.</b> Paul van Vlissingenstraat 16, 1096BK Amsterdam, The Netherlands Registered in the Netherlands Number 341 844 91 (Chamber of Commerce of Amsterdam) VAT Registration Number NL 8119.14.409.B.01
Spain	<b>euNetworks Fiber, S.L.</b> Calle de Velázquez, 10, 1ªPlanta, 28001 Madrid, Spain Registered in Spain Number B88155502
Switzerland	<b>euNetworks AG</b> c/o Kämpfen Rechtsanwälte Gerechtigkeitsgasse 23, 8001 Zürich, Switzerland Registered in the Commercial Register with number CH-100.978.219
The United Kingdom (and any jurisdiction not listed above)	<b>euNetworks Fiber UK Limited</b> 5 Churchill Place, London, E14 5HU, United Kingdom Registered in England Number 4840874 VAT Registration Number 288 2236 77