**DATE: \_\_\_ of \_\_\_\_\_\_ 20\_\_**

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**-and-**

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|  | **AGREEMENT FOR THE PROVISION OF A DARK FIBRE IRU AND ANCILLARY SERVICES** |  |

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**AGREEMENT FOR THE PROVISION OF A DARK FIBRE IRU AND ANCILLARY SERVICES**

The agreement concerns the implementation of the **EAST WEST GATE** project (Project number: 101133578) co-financed by the European Union on the basis of GRANT AGREEMENT no. Project 101133578 — 22-PL-DIG-EWG, date: 2023.12.14.

THIS AGREEMENT is entered into on [ ]

BETWEEN

(1) **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,** a company registered under the laws of \_\_\_\_\_\_\_\_ (company no. \_\_\_\_\_\_\_\_\_) whose registered office is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("**Contractor**"); and

(2) Netia S.A., a company incorporated under the laws of Poland whose registered office in Warsaw at ul. Poleczki 13, 02-822 Warsaw, registered in the District Court for Warsaw, Commercial Court, XIII Division of the National Court Register under KRS no. 0000041649, with the initial capital of PLN 335 578 344,00 fully paid, tax identification no. (NIP) 526-02-05-575, REGON no. 011566374, being a large entrepreneur within the meaning of Act of March 8th,2013 on the prevention of delays in commercial transactions

s("**Customer**"); RECITALS

1. The Customer now wishes to receive from the Contractor and the Contractor is willing to grant to Customer an Indefeasible Right of Use (IRU) of the Dark Fibre in part of the Contractor Network and where relevant, the Off-Net Network as described in Schedule 1 on the terms and conditions of this Agreement.
2. The Customer also desires that the Contractor provides operation and maintenance support for the Dark Fibre.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

# DEFINITIONS AND INTERPRETATION

## In this Agreement:

|  |  |
| --- | --- |
| **"Acceptance Tests"** | Means the tests conducted on Dark Fibre to confirm that the Dark Fibre meets the Specification as described in Clause 3 and Schedule 3. |
| **"Affiliate"** | means in relation to a Party, 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. |
| **"Agreement"** | Means this written agreement, including the schedules. |
| **"Authorisations"** | Means all material and applicable authorisations, leases, licences, easements, rights of way, franchises, approvals, permits, orders, consents and other rights required for the Contractor to operate and maintain the Contractor Network and provide Dark Fibre to Customer. |
| **“Charges”** | Means the charges, fees, costs and expenses payable under this Agreement including the IRU Payment, Facilities Charges, Access Charges and Maintenance Charges. |
| **"Confidential Information"** | Means in relation to either Party, information (whether in oral, written or electronic form) belonging or relating to that Party, its business affairs or activities which is not in the public domain.  |
| **"Customer Equipment"** | Means all equipment (including spare parts) which is either owned or leased by the Customer. |
| **"Customer System"** | Means the telecommunications infrastructure, including cables and equipment owned or operated by the Customer or any of its Affiliates. |
| **“Customer Committed Date”** | Each date described as such in Schedule 1, being the date by which the Customer desires and the Contractor intends to deliver the Acceptance Test Results for each Route and the Facilities pertaining to each Route.  |
| **"Dark Fibre"** | Means one pair of fibres further described in Schedule 1 (the technical specifications of which are set out in Schedule 3 (Specification of Dark Fibre – Testing & Handover)) on the Contractor Network delivered by the Contractor pursuant to Clause 3 and in respect of which Contractor grants to Customer the rights set out in this Agreement. For the avoidance of doubts, Dark Fibre includes also a Patch to the Customer Equipment installed in the Rack Space  |
| **"Effective Date"** | Means the date of execution of this Agreement. |
| **“Facilities”** | Means the Rack Space and access rights and associated services to be provided to the Customer by the Contractor as described in Schedule 1 and 5 and Facility shall mean any one of them.  |
| **"Force Majeure"** | Means war, acts of a public enemy revolution, civil commotion or riot, strikes (other than any strike involving predominantly employees of the Parties), epidemic, fire, flood, earthquake, explosion, material change in law, act of government, or act of God or any other cause which is beyond the reasonable control and which arises without the fault or negligence of the Party seeking to rely on the Force Majeure. |
| **“Interface Point(s)”** | Means the point of demarcation of the Dark Fibre where Contractor’s responsibilities to deliver and maintain the Dark Fibre end. The Interface Points on each Section are identified in Schedule 1. |
| **"Indefeasible Right of Use” or “IRU”** | Means an indefeasible right of use in the Dark Fibre for the purposes described herein, subject to the terms and conditions of this Agreement.  |
| **"IRU Payments"** | Means the IRU Non Recurring Charges (NRC) as further described in Schedule 2. |
| **“Liability”** | means 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). |
| **"Maintenance Charges"** | Means the maintenance charges specified in Schedule 2. |
| **"Maintenance Services"** | Means the maintenance services to be provided by the Contractor pursuant to Clause 7. |
| “**Patch**”  | Means the fibre patch from the Contractor Network ODFs or common termination point to the Customer Equipment installed in the designated Rack Spaces within the respective Facility.  |
| **"Party" or "Parties"** | Means the Contractor or the Customer or both. |
| **"POP"** | Means a Point of Presence where the Contractor exchanges telecommunications services with customers or with other telecommunications carriers.  |
| **"Rack Space"** | Means separated space in the respective Facility intended for the Customer’s exclusive use during the Term, in which the Customer will install Customer Equipment for optical signal transmission at its own expense. The size of the Rack Space and the requirement for the Contractor to provide it with power and Dark Fibers is specified in Schedule 5. |
|  |  |
| **"RFS Date"** | Means in respect of the Dark Fibre the date at which the Acceptance Tests have been successfully completed and the service has been accepted or deemed accepted by Customer as set out in Clause 3.3 and 3.6. |
| **“Route(s)”** | Means the Routes as described in Schedule 1  |
| **"Service Level Targets"** | Means the service level targets set out in the Schedule 4. |
| **“Section”** | Means those continuous portions of Dark Fibres service between successive Interface Points. The detailed description of Section is provided for in Schedule 3 Clause  |
| **“Service Handover Document”****"Contractor Network"****"Contractor Equipment"****“Contractor Premises”** | Means the service handover document to be provided at the time of delivery of the Dark Fibre, a sample of which is attached to Schedule 4.Means the Contractor’s fibre optic cable system.Means all equipment (including spare parts) which is either owned or controlled by the Contractor or customers of the Contractor (other than the Customer).means any premises containing the Facilities made available by the Contractor to Customer pursuant to this Agreement. |
| **"Specifications"** | Means the specification of the Dark Fibre as set out in Schedule 3. |
| **"Taxes"** | Means any applicable tax, duty or other charges of whatever nature as at the Effective Date (but excluding any tax, duty or other charged levied on income accruing to the Contractor hereunder) imposed by any taxing or government authority including, without limitation VAT. |
| **"Term"** |

|  |  |
| --- | --- |
| Means the period commencing on the Effective Date and ending fifteen (15) years after the RFS Date (subject to earlier termination in accordance with this Agreement). |  |

 |
| **“Extended Term”** | Means the period commencing right after the Term expires and lasts ten (10) years. |
|  |  |
| **"Working Day"** | Means 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. |
| **"Working Hours"** | Shall be 9am to 5pm each Working Day under the time zone of area where the relevant activity is to be performed. |
| **“Writing”** | Shall include traditional written form as well as electronic mail (and “written” shall be construed accordingly). |

## Where the context so admits or requires words denoting the singular include the plural and vice versa and words denoting any gender include all genders.

## Clause headings are purely for ease of reference and do not form part of or affect the interpretation of this Agreement.

## References to Clauses and Schedules are to Clause of and Schedules of this Agreement.

## References to each Party herein include references to its successors in title, permitted assigns and novatees.

## Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.

## In the event of any inconsistency between the provisions of any schedule hereto and the provisions of the main body of this Agreement, the latter shall prevail to the extent of the inconsistency.

# GRANT OF IRU

## Subject to the terms and conditions of this Agreement the Contractor grants to the Customer an IRU in the Dark Fibre more particularly described in Schedule 1 with effect from the RFS Date and continuing for the Term, unless this Agreement is terminated earlier under Clause 10, in which event the IRU in the Dark Fibre shall terminate automatically.

# ACCEPTANCE

## The Contractor shall procure that Acceptance Tests are conducted in respect of the Dark Fibre and that the Acceptance Tests shall be completed prior to the delivery of such Dark Fibre. The Customer shall be entitled to participate in Acceptance Tests and for such purpose shall be given 10 Working Days prior notice of Acceptance Tests by the Contractor. If the Customer does not attend in Acceptance Test after it was properly notified regarding it, the Contractor is entitled to perform Acceptance Tests without the Customer and results of such Acceptance Test shall be binding for the Customer. The Acceptance levels of these tests are set out in Schedule 3 (Dark Fibre Specification). Acceptance Tests will be carried out to the Contractor ODF at the Interface Point even if the Interface Point itself is specified as being Customer Equipment. Where the Contractor agrees to re-test the Dark Fibre once the Customer Equipment is installed such re-testing will be at an additional cost to the Customer and will not result in any change to the RFS Date.

## On completion of the Acceptance Tests in respect of the Dark Fibre the Contractor shall deliver to the Customer the Dark Fibre by delivering (via email or by mail if separately asked by Customer) the Service Handover Document specifying: an overview Route map indicating the Sections that the customer has purchased an allocation table including circuit references, fibre numbering and ODF positions, the measurement methodology and measurement results including OTDR traces. The Service Handover Document will also specify the RFS Date which shall be not earlier than two (2) months following the date of delivery of the Service Handover Document.

## The Customer shall within five (5) Working Days following the date of the Service Handover Document:

### confirm to the Contractor its acceptance of the Dark Fibre or the relevant Section, or

### notify the Contractor of any material deviation or non compliance of the Dark Fibre with the Specification and provide the Contractor arguments based on the Acceptance Test results.

## In the event that the Customer shall notify the Contractor of non-acceptance of the Dark Fibre in accordance with Clause 3.3 (b) the Contractor agrees to perform such works as it deems reasonably required to provide Dark Fibre to Specification within one (1) month of such notice. Upon completion of such works the provisions of Clause 3.3 to 3.6 shall apply.

## In the event that any deviation or non-compliance with the Specifications notified to the Contractor in accordance with Clause 3.3 (b) shall be attributable to the Customer System or otherwise due to the act or omission of the Customer, the Contractor shall be entitled to invoice Customer for any costs reasonably incurred in investigating and remedying such deviation or non-compliance in accordance with Clause 3.4 such invoice being payable in accordance with Clause 4.

## In the event that the Customer shall fail within the timescale set out in Clause 3.3 to deliver a notice to the Contractor, the Customer shall be deemed to have accepted the Dark Fibre on the fifth Working Day after the date of the Service Handover Document.

# PAYMENTS

## The Contractor will invoice the Customer for the Charges as set out in Schedule 2.

## All amounts set out in Schedule 2 are stated in Euro.

## All amounts payable under this Agreement are exclusive of value added tax or other relevant sales or turnover taxes ("VAT").

## The Contractor will invoice the Customer as follows:

### The IRU Payments and the non-recurring Facilities Charges will be invoiced six (6) months after the RFS Date in accordance with Schedule 2;

### The Maintenance Charges will be invoiced on the RFS Date and thereafter annually at least 30 days in advance of each anniversary of the RFS Date;

### the Recurring Facilities Charges will be invoiced monthly;

### any other Charges not covered by Clauses 4.4.(a) or (b) above will be invoiced as and when incurred.

## The Customer shall pay all amounts due under this Agreement within thirty (30) days of the date of delivery of the invoice. Time for payment shall be of the essence in this Agreement. The Customer will issue invoices in electronic form only, in accordance with Schedule 6 to the Agreement.

## The Customer shall make all payments under this Agreement by means of electronic wire transfer to an account designated by the Contractor in each invoice.

## In the event that any IRU Payments or Maintenance Charges to be paid under this Agreement remains unpaid for sixty (60) days after it has become due and such failure is not remedied within fifteen (15) days after written notice thereof the Contractor shall have the right, at its option to suspend the provision of Dark Fibre and Maintenance Services until the Customer pays all amount due or, at Contractor’s sole option, terminate this Agreement with immediate effect. Customer shall remain liable to pay the Charges during any period of suspension.

## All undisputed sums in respect of which the Contractor has duly performed the services under this Agreement and shall be paid by the Customer in full without deduction, withholding, set-off or counterclaim for any reason whatsoever, whether arising in contract tort (including negligence) breach of statutory duty or otherwise, save as maybe required by law.

## 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 delivery of the invoice, either Party may institute legal proceedings. If Customer does not submit a documented claim within 20 days after the Due Date for payment of the invoice, Customer waives all rights to dispute the invoice.

# TAXES, STAMP DUTIES

## All payments made by the Customer under this Agreement shall be made without any deduction, set-off or counterclaim and, except to the extent required by any law or regulation, free and clear of any deduction or withholding on account of any tax, duty or other charges of whatever nature imposed by any taxing or governmental authority (collectively "Taxes"). If the Customer is required by any law or regulation to make any such deduction or withholding the Customer shall, together with the relevant payment, pay such additional amount as will ensure that the Contractor or, as the case may be, its agent actually receives and is entitled to retain, free and clear of any such deduction or withholding, the full amount which it would have received if no such deduction or withholding had been required.

## All payments under this Agreement are exclusive of value added tax or other relevant sales or turnover taxes ("VAT"). The Customer shall pay to the Contractor all applicable VAT within 10 days of the date of delivery of the relevant VAT invoice.

## Any rates, levies, charges or Taxes (other than taxes on Contractor’s income) levied or assessed in relation to the use, ownership, possession or occupation of the Dark Fibre provided pursuant this Agreement (being rates, levies, charges or Taxes that are directly related to the use, ownership, possession or occupation by the Customer of the Dark Fibre) shall be borne by and shall be for the account of the Customer and, to the extent that the same are levied on and or are payable by the Contractor, shall be paid by the Customer to the Contractor in addition to the Purchase Price and the Maintenance Charges within twenty (20) days of the date on which written demand is made therefore by the Contractor.

## All invoices shall be in a format suitable to submission to the relevant tax authorities for reimbursement of VAT.

# AUTHORISATIONS AND RELOCATION OF THE CONTRACTOR NETWORK

## The Contractor will (i) obtain all required Authorisations prior to the RFS Date, and (ii) maintain or renew all such Authorisations throughout the Term.

## At the sole cost of the Contractor, the Contractor will have the right from time to time on not less than six (6) months prior written notice to require the Dark Fibre to be moved to a different Route. The Contractor will use its reasonable endeavours to ensure that such relocation will cause as little disruption and/or interference to the Customer as is reasonably practicable. Where in the opinion of the Customer the alternative Route is not suitable by virtue of (i) additional distance (i.e. the length of the alternative Dark Fibre) or (ii) lack of diversity compared to other routes used by the Customer (diversity to other routes), the Customer reserves the right to terminate this Agreement in writing with immediate effect and the Customer will be entitled to a *pro rata* refund of any IRU Payments, Maintenance Charges and associated Facilities Charges paid under the Agreement.

# FACILITIES MAINTENANCE AND SERVICE LEVELS

## In consideration of the Facilities Charges the Contractor shall provide the Facilities in accordance with Schedule 5 and the Maintenance Services for the Facilities as set out in this Clause 7.

## In consideration of the Maintenance Charge the Contractor shall during the Term provide the Maintenance Services as set out in this Clause 7 and as detailed in Schedule 4 and will to provide the Dark Fibre in accordance with the Service Level Targets as defined in Schedule 4.

## The Contractor or its agents shall perform all Maintenance Services in respect of the Dark Fibre and Facilities, including preventative maintenance, as the Contractor deems necessary to ensure proper functioning of the Dark Fibre and Facilities and/or the Contractor Network.

## Should any condition exist that may impair the integrity of the Contractor Network or Facilities, the Contractor shall initiate and co-ordinate planned maintenance, which may include disconnection of all or any part of the Dark Fibre. Where practicable, the Contractor shall give the Customer ten (10) Working Days notice in writing, prior to initiating a planned maintenance operation.

## The Contractor shall use reasonable endeavours to conduct any planned maintenance of the Contractor Network or Facilities during the hours of 11pm to 5am (local time) Monday to Sunday.

## If all or part of the Dark Fibre or Facilities requires restoration, replacement or repair by reason of an act or omission of the Customer, its employees, agents, or contractors, such repair, replacement and/or restoration may be made by the Contractor, at the Customer’s sole expense, in accordance with Contractor’s then current time and materials rates plus applicable taxes.

## The Customer may not, without the express written consent of the Contractor, interfere with the Contractor Network in any way, perform any repairs or maintenance to the Contractor Network, or contract with any third party to perform any repairs or maintenance to the Contractor Network.

## The Customer acknowledges and agrees that nothing in this Agreement will provide the Customer with any right to control any network or design, routing configuration or related functions with regard to the Contractor Network.

## The Contractor may from time to time during the Term, as a temporary measure for maintenance or repair purposes exchange the Dark Fibre(s) provided to the Customer with alternative Dark Fibre between the same Interface Points. This planned works will not be conducted during Working Hours. The Contractor will ensure that the planned works will not exceed 6 hours. The terms and conditions of this Agreement, in particular the Service Level Targets, shall apply to any alternative fibre.

# USE OF THE DARK FIBRES

## The Customer will use the Dark Fibre in full compliance with all applicable laws, rules and regulations. At the Customer’s sole cost and expense, the Customer will obtain and maintain in effect during the Term all rights, licences, and governmental or non-governmental approvals (other than those maintained by the Contractor under this Agreement) necessary for use of the Dark Fibre by the Customer.

## The Contractor is providing the Dark Fibre for the Customer’s exclusive use. The Customer has no right to sub-lease in its state, any or all parts of the Dark Fibre to a third party without the written approval of the Contractor. For the avoidance of doubt, nothing in this Article 8.2 shall restrict the Customer´s right to grant to third parties the right to telecommunication services, such as transmission capacity or similar rights deriving from the use of the Dark Fibre in the normal course of its business.

#  NON-INTERFERENCE AND COMPLIANCE WITH LAW

## The Customer’s use of the Dark Fibre in the Contractor Network and any equipment associated with it shall not:

### interfere, interrupt or impair service over any part of the Contractor Network or any circuits or facilities of any other user of the Contractor Network;

### impair privacy of any communications over such circuits or facilities;

### cause damage of any nature to the Contractor Network; or

### create hazards to any persons or any of the aforementioned users of the Contractor Network or of any owner of the aforementioned circuits or facilities or to the public.In order to achieve its obligation under clause 9.1 (a) – (d) the Customer shall not, including but not limited to, use equipment rated higher than 1 M as per the Laser class classification.

## The Customer shall comply with all reasonable rules and instructions from time to time notified by the Contractor to the Customer in relation to the use of the Dark Fibre. The aforementioned does not allow the Contractor to issue or implement any rules and/or regulations that could, even potentially, impact the Service Level Targets under the Agreement.

# TERM AND TERMINATION

## This Agreement shall have effect on the Effective Date and, subject to the remaining terms of this Clause 10, shall continue in full force and effect until expiry of the Term.

## Each Party may terminate this Agreement forthwith on written notice if the other Party ceases to trade (either in whole, or as to any part or division 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 or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation of reconstruction) under the laws applicable to the respective Party.

## If either Party commits a material breach of this Agreement or is otherwise in breach of any material representation, covenant or other obligation under this Agreement and such breach is not remedied within ninety (90) days following a written notice from the other party, unless other provisions of this Agreement indicates a different term, that other may terminate this Agreement with immediate effect.

## A material breach of this Agreement is a breach of the Agreement that is so substantial that it defeats the purpose of the Parties in making the Agreement (as described in the Recitals) and/or makes the performance of the Agreement entirely or partially impossible and gives the non-breaching Party the right to terminate the Agreement and take legal action for damages, after giving the breaching Party an appropriate time, but not less than 90 (ninety) calendar days to remedy the non-performance.

## If this Agreement is terminated for any reason except: (i) Customer’s fault or (ii) due to the Customer’s demand other than when the Customer terminates the Agreement in accordance with Clause 10.2 above, the Contractor will pay the Customer an amount equal to the IRU Payments multiplied by a fraction, the numerator of which is the number of months (whole or part) from the date of termination until the end of the final year of the Term and the denominator of which is the total number of months in the Term. For the avoidance of doubts the Parties confirm that the aforementioned does not exclude any claims for damages (including Service Credits – contractual penalties) provided for in the Agreement.

## At the Customer's request, submitted not later than twelve (12) months before the end of the Term, the Agreement is extended for the Extended Term. The Contractor and Customer will negotiate charges for the Extended Term based on the market price levels. In case of a disagreement between the Contractor and the Customer, the Agreement is terminated after the Term.

# NO LICENCE

## Nothing in this Agreement shall vest in or confer on the Customer any patent or any other right or licence in the intellectual property arising from or relating to any apparatus, the Contractor Network or method used by the Contractor or by the Customer in connection with the use of the Dark Fibre.

# ASSIGNMENT

## Subject to the provisions of this Clause 12, neither Party may assign any of its rights or obligations under this Agreement to any third party without the prior written consent of the other Party.

## The Contractor may assign its rights under this Agreement to one or more financial institutions, creditors, and export credit agencies as collateral security for debt.

## Either Party ("the Assigning Party") shall be permitted to assign, transfer or otherwise dispose of any of its rights or obligations hereunder to any of its Affiliates with the prior written consent of the other Party (not to be unreasonably withheld or delayed). The Assigning Party shall give the other Party thirty (30) days advance written notice of any such assignment, transfer or other disposition. Upon the assignment, the assignor shall procure that the assignee shall enter into an agreement with the remaining Party on the terms of this Agreement.

## No person other than a Party to this Agreement shall be entitled to enforce any term of it save that where an agreement is entered into pursuant to which any rights and/or obligations contained in this Agreement are permissibly assigned or novated to a third party, nothing in this Clause shall, of itself, operate to prevent the assignee from taking the benefit of, and enforcing, any rights so assigned.

## All rights, benefits and obligations of this Agreement will be binding upon and inure to any successor and permitted novatee of either Party.

## Either Party may subcontract its obligations under this Agreement to third parties, without the prior consent of the other Party, provided that the subcontracting Party will remain fully responsible for the performance of all its obligations under this Agreement.

# NATURE OF RIGHTS

## All rights granted hereby and obligations entered into hereunder are purely contractual. Nothing in this Agreement shall have effect to grant any ownership, proprietary or possessory rights in any of the subject-matter hereof to the other Party.

# WARRANTIES

## The Contractor hereby represents and warrants to Customer that:

### it is a corporation duly organised and validly existing under the laws of its jurisdiction of organisation is qualified to do business in all jurisdictions (domestic and foreign) in which such qualification is required by applicable law, and has the requisite authority to execute this Agreement and to perform its obligation thereunder; and

### it has taken all requisite corporate action to approve the execution, delivery and performance of this Agreement;

### its execution of and performance under this Agreement will not violate any applicable existing regulations, rules, statutes or orders of any local, state or national or European Union government agency, court or body of any country or any contract or other agreement the Party is subject to; and

### to its knowledge there are no pending or threatened actions, suits, claims, condemnations or other proceedings which would materially and adversely affect its ability to consummate the transactions and perform its obligations contemplated hereby.

## Except as expressly set forth therein the Contractor disclaims any and all warranties, express or implied, with respect to the Dark Fibre and Maintenance Services including but not limited to any warranties of merchantability or fitness for a particular purpose.

## The Customer represents and warrants to the Contractor that:

### it is a corporation duly organised and validly existing under the laws of its jurisdiction of organisation is qualified to do business in all jurisdictions (domestic and foreign) in which such qualification is required by applicable law, and has the requisite authority to execute this Agreement and to perform its obligation thereunder; and

### it has taken all requisite corporate action to approve the execution, delivery and performance of this Agreement;

### its execution of and performance under this Agreement will not violate any applicable existing regulations, rules, statutes or orders of any local, state or national or European Union government agency, court or body of any country or any contract or other agreement the Party is subject to;

### to its knowledge there are no pending or threatened actions, suits, claims, condemnations or other proceedings which would materially and adversely affect its ability to consummate the transactions and perform its obligations contemplated hereby;

### the Customer has obtained, and shall use commercially reasonable efforts to maintain in good standing, and shall ensure that all third parties with whom it has entered into an agreement for the purpose or use of part or all of the Dark Fibre have so obtained and so maintain all consents, approvals, licences, and other approvals, both governmental and private, as may be necessary (as at the date of performance) to permit the Customer to perform its obligations under this Agreement and to permit the Customer and such third parties to access, acquire and use the Dark Fibre.

## The foregoing representations and warranties shall survive the execution and delivery of this Agreement.

## Clauses 15, 23, 25, 27 and this Clause 14 shall continue in full force and effect notwithstanding termination of this Agreement.

# LIABILITY

## The Contractor will be liable to the Customer for any loss or damage caused by or arising out of any temporary or permanent failure or disruption of the Dark Fibre or for any interruption of any services according to Service Level Targets and other measurable criteria under the Agreement. Neither Party shall have any liability for (a) loss of revenue; (b) loss of actual or anticipated profits.

## Each Party’s liability arising from or related to the performance of their respective obligations under this Agreement in respect of any one claim or action (excluding: loss of profits) will be limited to the aggregate Charges paid or payable by the Customer (pro-rata IRU Payment, Maintenance Charges and Facilities Charges) in the 24 (twenty four) months preceding the event causing the claim or action.

## Except as otherwise set forth in this Agreement, the Contractor shall have no Liability (i) for any transaction, which the Customer may enter into with a third party using the services; (ii) for the contents of any communications transmitted via the Products and/or services or for any information or content on the Internet.

## Nothing in this Agreement shall exclude or limit either Party’s Liability:

### For fraud, death or personal injury caused by its negligence;

### In relation to the intellectual property indemnity or

###  Any other Liability which cannot be excluded or limited by applicable law.

# FORCE MAJEURE (FM)

## Upon the occurrence of an event of Force Majeure, the obligations of a Party are suspended without that Party incurring any liability, provided that such event of Force Majeure is not caused by the negligence or an intentional act of the Party. Any services or payments due by a Party for the performance of the said obligations shall be suspended for the same period. The Party affected by the event of Force Majeure will notify the other Party in writing of the event as soon as reasonably possible, and in any event within 2 (two) Working Days after commencement of the event which constitutes a Force Majeure.

## The affected Party shall use all reasonable endeavours to avoid or mitigate the effects of an event of Force Majeure upon the performance of its obligation under this Agreement.

## Upon the cessation of the Force Majeure, the affecting Party shall as soon as reasonably possible, and in any event within 2 (two) Working Days notify the other Party in writing of such cessation and shall resume its performance.

## If following forty (40) Working Days from the date of notification under Clause 16.1 the event of Force Majeure persists the unaffected Party may forthwith terminate this Agreement by reference to the Dark Fibre affected by service of notice in writing.

# RELATIONSHIP OF THE PARTIES

## The relationship between the Parties is that of independent contractors. Nothing in this Agreement shall constitute the Parties as partners, joint ventures or constitute any Party as the agent, employee or representative of the other Party or empower any Party to act for, bind or otherwise create or assume any obligation on behalf of any other Party, and no Party shall hold itself out as having authority to do the same.

# SEVERABILITY

## If any provision of this Agreement is held by an appropriate arbitral, judicial pr regulatory authority to be void, illegal, 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 with the reservation that if, without the void, illegal, invalid or unenforceable provision, the Agreement no longer meets the economic needs of the Parties and the void, illegal, invalid or unenforceable provision cannot be replaced, the Parties will enter into negotiations to terminate the Agreement.

# WAIVER

## The failure of any Party to enforce or to exercise at any time or for any period of time any term of or any right or remedy pursuant to this Agreement does not constitute, and shall not be construed as, a waiver of such term, or right or remedy and shall not prevent any further exercise of the term, right or remedy or the exercise of any other right or remedy.

# NO THIRD PARTY RIGHTS

## Save for each Party’s permitted successors and assigns, nothing in this Agreement, either express or implied is intended to confer upon any person other than the Parties hereto any rights.

# NOTICES

## Any notice or other communication pursuant to this Agreement shall be in writing and shall be deemed to have been duly given or served by the parties if sent by hand or facsimile or by registered mail addressed as follows:

If to Contractor: If to Customer:

|  |  |
| --- | --- |
| **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  |

 If notice is sent by hand or by registered mail (delivery receipt obligatory), it shall be deemed to have been received on the date of delivery, provided delivery receipt is obtained. If notice is sent by email, it shall be deemed to have been received upon the day it was sent always provided transmission has been successful.

# AMENDMENTS

## No alteration to or variation of this Agreement shall take effect unless and until the same is in writing and signed on behalf of each of the Parties by a duly authorised representative, otherwise null and void.

# CONFIDENTIALITY

## Subject to clause 23.2, each Party undertakes to the other that it will maintain and treat in confidence, and use its reasonable endeavours to procure that its directors, employees and professional advisers, sub-contractors and agents maintain and treat in confidence, the other Party’s Confidential Information.

## Clause 23.1 shall not apply to any information which:

### is in or comes into the public domain other than by default of the recipient Party; or

### is or has already been independently generated by the recipient Party; or

### is lawfully received by the recipient from a third Party on an unrestricted basis; or

### is in the possession of or is known by the recipient Party prior to the date of this Agreement, to the extent that such recipient Party is not bound by any existing obligation of confidentiality in respect of such information to the other Party hereto.

## Nothing in this Clause 23 shall prohibit or restrict either Party disclosing any Confidential Information to the extent to which the same is required to be disclosed by law, regulation or pursuant to an order of a competent authority, or to a professional adviser, provided the recipient provides, in the case of disclosure by law, regulation or order, the disclosing Party with reasonable written notice of such disclosure prior to any such disclosure and in the case of disclosure to a professional advisor that the professional advisor undertakes to treat the Confidential Information as confidential (in terms materially the same as this Clause 23).

## On termination of this Agreement for whatever reason the recipient Party shall return to the disclosing Party (or, at the discretion of the disclosing Party, destroy) all copies of Confidential Information of the other Party which it has in its possession. Nothing in this Clause 23 shall prohibit or restrict either Party from retaining a copy of any Confidential Information of the other Party to the extent and for the purpose of bookkeeping, tax, litigation or other reasonably and legally justified reasons.

## The provisions of this Clause 23 shall survive the termination or expiry of this Agreement for a period of five (5) years.

# ANNOUNCEMENTS

## No announcement shall be made or issued in respect of the subject matter of this Agreement without the prior written approval of the Parties (save for any announcement which is required to be made by the regulations of the European Union, any stock exchange or by any governmental authority, where the relevant Party shall (as far as practicable) make available the proposed announcement to the other Party for prior comment). The Parties will co-operate to establish a public position which they are entitled to present to third parties.

# GOVERNING LAW

## This Agreement shall be construed in accordance with and shall be governed by the laws of Poland and shall be subject to the jurisdiction of the Polish courts.

# COUNTERPARTS

## This Agreement may be executed in several counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document.

# ENTIRE AGREEMENT

## 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. 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. No Party shall have any remedy in respect of any untrue statement made by any other Party upon which that Party relied in entering into this Agreement (unless such untrue statement was made fraudulently) and that Party's only remedies shall be for breach of contract as provided in this Agreement.

# COSTS

## Each Party shall be responsible for all the costs and expenses incurred by it in connection with and incidental to the preparation and completion of this Agreement.

# FURTHER ASSURANCES

## The Parties shall do and execute all such further acts and things as are reasonably required to give full effect to the rights given and the transactions contemplated by this Agreement.

# DISCLOSURE DUTIES

## Either Party will, and at least within one month of such change, notify in writing any amendments to their company names and any change in their address (change of registered offices), paying agent and any change in their legal form and their Commercial Register number in accordance with Clause 21.

## If a Party fails to notify a change of address, and as a result it fails to receive a notice by the other Party which are sent to its last declared address, then the notice shall nevertheless be deemed to have been received. Invoices and warnings from one Party to the other shall be deemed to have been received subject to the same prerequisites, if they have been sent to the last declared address of the Party.

## In the event of written declarations for which certificate is not or cannot be provided, the sender shall bear the risk of receipt by the recipient.

## **IN WITNESS WHEREOF** the Parties have executed this Agreement effective on the date set forth herein.

Contractor Customer

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Signature) (Signature)

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

Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

**SCHEDULE 1**

Service Description

**1. Dark Fibre**

**1.1. Description of Dark Fibre:**

Dark Fibre on the route as described below is delivered as detailed in Clause 3.

**1.2. Route: \_\_\_ km.**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Route/Section No. | Interface Points  | Number of pairs | Fibre Type | Estimated fibre length [km] | SHD Delivery Date\* |
|  | A | B |  |  |  |  |
| 1 |  |  | 2JID  | G.652 / G.652D |  | …… days after execution of the Agreement |
|  |  |  |  |  |  |  |

\* not later than three (3) months following the date of execution of the Agreement

\* In a special case (e.g. difficult terrain in Praque), one regenerative section up to 120 km, last Facility is needed max 20km from Interface Point - B

**Dark Fibre Intermediate Interface points:**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Section Ref | Intermediate Dark Fibre Interface point/ Site Location | Address | GPSco-ordinates | Type | Dark Fibre Interface Access available? |
|  |  |  |  |  | LC/PC |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |

**2. Facilities**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Section Ref | Contractor Premises Name / address | Quantity | Footprint Size | Power | Term |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |

* Facility at Brno - it will be required two independent DC power lines, prepared to the collocation space and possibility to connect to other operator

**SCHEDULE 2**

IRU Payments, Maintenance Charges and Facilities Charges

**1. DARK FIBRE IRU PAYMENTS AND MAINTENANCE CHARGES**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Section Ref** | **From (Site)** | **To (Site)** | **IRU NRC (€)** | **Maintenance Charges (O&M) (€.p.a.)** |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

* 1. The Contractor shall render an invoice of the entire IRU Payment in accordance with Clause 4 of the Agreement.

1.2 The Contractor will invoice the Customer annually in advance for the Maintenance Charges upon the RFS Date and each annual anniversary of the RFS Date thereafter for the remainder of the Term.

**2. Facilities Charges**

Facilities Charges consist of two charges: (i) Facilities NRC (Non-Recurring Charge) - a set-up fee covering the costs of preparation of the Rack Space, the preparation of electricity power supply, the installation of Patches to the Rack Space and associated works and (ii) Facilities MRC (Monthly Recurring Charge)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Section Ref** | **Contractor Premises Name / address** | **Power** | **Facilities NRC (€)** | **Facilities MRC (€)** |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

2.1 Electricity costs shall be paid by Customer and shall be calculated based on consumption of power and in accordance to applicable fees of electricity. In case of a change in the price of 1 kWh of electricity provided to the Customer Equipment by an energy supplier, the Contractor shall have a unilateral right to proportionally increase the electricity charge on a pro-rata basis. For the avoidance of doubt: if the price of 1 kWh of electricity is increased by 5%, the Contractor is entitled to raise the electricity charge by 5%.

2.2 In the event that Contractor’s costs of providing Facilities (other than electricity costs as provided for in Clause 2.1 of this Schedule 2) are increased due to third party acts, the Contractor (acting reasonably) shall be entitled to charge an increase for any of the Facilities provided under the Agreement. It is not Contractor’s intention to profit from price increases from external bodies. In case such increases occur, the Contractor will inform the Customer by notice in writing, stating the reason for the price increase, the price increase amount and the effective date of such a price increase.

2.3 Escort and “remote hands” services (are set per operation):

The fees during working time: \_\_\_€ for works with duration up to 4 hours, and \_\_€ per hour, after 4 hours (Agreement 7.5)

The fees during nonworking time: \_\_\_€ for works with duration up to 4 hours, and \_\_€ per hour, after 4 hours (Agreement 7.5)

**SCHEDULE 3**

Specification of Dark Fibre, Testing & Handover

1. **FIBRE SPECIFICATION**

The Dark Fibre installed by Contractor under the Agreement will be of type conforming with the optical and mechanical characteristics listed below:

|  |  |
| --- | --- |
| Fibre Type  | ITU-T recommendation G.652/652D |
| The actual measured attenuation will be less then or equal to the calculated attenuation for the Dark Fibre Section under test   | Calculated Attenuation is {(0.20 x fibre length (Km)) + (0.06 x No. of splices) + (0.5 x No of connectors)} dB @ 1550nm  |
| Maximum individual splice loss at 1550nm  | ≤ 0.15dB  |
| Maximum individual connector loss  | ≤ 0.5dB  |
| Chromatic Dispersion\*  | ≤ 18ps/nm.km @ 1550nm  |
| Reflectance of a connector  | <-60dB  |

\*not tested as standard

**2. ACCEPTANCE PROCEDURE**

2.1 The Contractor will prepare the Customer’s Dark Fibre Sections along the agreed Route and perform tests to determine optical performance of the Dark Fibre within 3 months from the day this Agreement was signed.

2.2 The test results will be recorded with the handover form and forwarded to Customer.

2.3 Customer’s technical personnel will be given the opportunity to verify the results in accordance with Clause 3 of the Agreement.

2.4. Customer shall install all Customers Equipment to the Dark Fiber within two months from the day Contractor gave notice to Customer regarding preparation of Dark Fiber. If Customer fails to install Customers Equipment within said timeline, then the RFS Date shall be on the second day from the day when Customers Equipment had to be installed.

* 1. Each Section of Dark Fibre can be delivered and tested separately. However, delivery and acceptance of the entire Route is only completed when all Sections are handed over to and accepted by the Customer.
	2. The Customer is entitled to install and construct interconnections at the Interface Points and along the Route, if such an interconnection is technical and commercial feasible.
	3. In the event that prior to the Acceptance Tests the Contractor is required to relocate the Dark Fibre and/or related Facilities due to the valid and enforceable exercise of any applicable underlying ground or other superior rights or any third-party rights or restrictions, the Contractor will immediately notify the Customer of such requirement and use the same procedure as for planned work as set out in Clause 7.9 of the Agreement under the condition that the Customer approves the relocation in writing. The related cost will be borne by the Contractor according to Clause 6.2 of the Agreement.

**3. TESTING DELIVERABLES**

The following table denotes by way of a tick, the standard testing and handover deliverables provided to the Customer. Where the Customer requires testing outside the standard deliverables, the relevant charges are listed.

|  |  |
| --- | --- |
| Fibre type Test | Test |
| Bi directional OTDR span test at 1550nm | √ |
| Bi directional span loss test at 1550nm | √ |
| Allocation TableCovering fibre #’s, ODF points, Demarcation info | √ |
| GIS Maps (where available) | √ |

**4. OPTICAL ACCEPTANCE MEASUREMENTS**

1. All testing is performed in accordance with ITU-T G.650, Definition and Test Methods for the relevant parameters of single mode fibres. Test procedures will define required test set up, type of equipment to be used and parameters to be reported from each test. Where equipment used is subject to calibration, copies of equipment’s current calibration certificates are going to be supplied as part of the result packages.

2. The Contractor will perform tests as described in this Schedule to determine optical performance of the Dark Fibre.

3. Dark Fibre Section description

The diagram below depicts a typical Dark Fibre Section identifying the Interface Points between the Contractor and the Customer.



Picture 1: Interface points

4. The test results will be recorded with the notice of provision and forwarded to the Customer. The Contractor will provide the Customer with Dark Fibre product that has been prepared and tested according to guidelines as described in this Schedule and with acceptance levels as defined in the Agreement. The Dark Fibre Section parameters will be documented and handed-over to the Customer.

5. The Customer’s technical personnel will be given the opportunity to verify the results in accordance with this Schedule and Clause 3 of the Agreement.

**SCHEDULE 4**

Maintenance Services and Service Level Targets

**1. Definitions**

The following lists of definitions are in addition to the list of definitions given in Clause 1 of this Agreement. In case of any conflict between definitions, the following definitions shall apply to this Appendix only:

**"Availability" or “Available”** means the duration a customer can pass optical signals between Dark Fibre Interface Points, expressed as a percentage of the total time in the Measurement Period.

**“Measurement Period”** means a twelve month period from the RFS Date and on each subsequent anniversary thereof.

**“Repair”** means any repair of the Route.

**“Monthly Review Period”** means the period of measurement commencing at 0.00hrs on the first day of any month and concluding at 23.59hrs on the last day of the same month.

“**Non Service Affecting Fault”** means any fault, or condition on Dark Fibre or Facilities that is not a Service Affecting Fault but may or is likely to affect the ability of the Customer to convey electronic communications traffic over the Dark Fibre.

**“Section”** means line between dark fibre interface points and amplification points

**“Service Affecting Fault”** means any fault, or condition on Dark Fibre or Facilities as registered by the Customer or the Contractor by issue of an incident report that affects the ability of the Customer to convey electronic communications traffic over the Dark Fibre.

**"Target Time To Repair (TTTR)"** means the targeted length of time between the issue of a trouble ticket to restoration of service.

**2. Classification of Incidents**

2.1 The Contractor will provide a “Customer Call Centre” which is an assistance service centre available 24 hours a day, 7 days a week where the Customer can report faults on its Dark Fibre by telephone and confirm by fax and /or e-mail.

2.2 The Customer Call Centre will:

(a) receive and log calls from the Customer;

(b) call the on-duty maintenance manager; and

(c) open and close a trouble ticket with the consent of the Customer.

2.3 The Contractor and the Customer will classify incidents according to their severity as either a Service Affecting Fault or Non Service Affecting Fault.

2.4 In case of a Service Affecting Fault, the Contractor undertakes to dedicate resources to solve the problem and the Customer undertakes to provide reasonable assistance to the Contractor at all times.

2.5 In case of Non Service Affecting Fault, the Contractor undertakes to dedicate resources during Working Hours to solve the problem. Customer undertakes to provide reasonable assistance to the Contractor during Working Hours.

**3. Repair Costs**

3.1 The Contractor is obliged to cover all the cost of all Repairs and additional costs.

**4. Unnecessary Interventions**

4.1 Unnecessary interventions requested by Customer i.e. where no incident affecting customer service has been ascertained, will be invoiced to Customer based on Contractor’s manpower hourly charges and the cost of any evidenced work undertaken.

**5. Customers Obligations**

5.1 Customer undertakes to provide the Contractor with such information as may be deemed necessary by the Contractor for the performance of the Maintenance Services under this Agreement.

6. **Field Repair**

6.1 Upon notification of an incident by the Customer Call Centre, the on-duty maintenance manager and field maintenance teams (including teams through subcontractors) shall perform the following activities:

(a) Identify as precisely as possible where the incident is located on the Section;

(b) Liaise with the appropriate rights of ways owners and/or local authorities to obtain access to the Section, if applicable;

(c) Perform temporary repairs or final repairs as appropriate;

(d) Document the changes and feedback to the Customer Call Centre; and

(e) Propose permanent repairs if applicable.

6.2 The objective of the repair activities shall be to use reasonable endeavours to restore the Customer’s ability to use the Dark Fibre. This may include implementing temporary workarounds (for example using spare the Contractor or the Customer dark fibre, or performing temporary deviation.) where relevant final repairs shall be scheduled and performed according to the planned maintenance provisions.

**7. Service Level Targets**

7.1 The table below describes the service level targets the Contractor will endeavour to achieve for the Sections. The time starts running at the moment the Customer has given notification of the problem to the Contractor in accordance with this Agreement.

|  |  |  |
| --- | --- | --- |
| **Service**  | **Activity** | **Service Level Target**  |
| Customer Call Centre  | Availability | 24h/7d/365 |
| Maintenance of Dark Fibre | Time to repair- Service Affecting Fault | < 8 hours |
|  | Time to repair - Non Service Affecting Fault | < 10 days |
| Availability | Annual availability per Section | 99.7% |

7.2 **Service Credits (contractual penalties)**

Subject to Clause 7 of this Agreement, the Contractor will provide the Customer with Service Credits (contractual penalties), as set out below.

 (a) Delivery of the IRU

(i) If the Contractor fails to prepare Dark Fibre with time line set in the Schedule 3 to this Agreement clause 2.1, the Customer will be entitled to a Service Credit in accordance with this Clause.

(ii) If only part of an order is delayed, valid credits will be payable only in respect of the Dark Fibre Sections that are not delivered by the Customer Committed Date.

(iii) Service Credits will be calculated as follows:

|  |  |
| --- | --- |
| **Number of full Working Days by which the Contractor fails to meet Customer Committed Date for Dark Fibre Section:** | **Service Credits as % of current year Maintenance Charges of affected Dark Fibre Section:** |
| 0 to 5 days  | 5 |
| 6 to 10 days  | 10 |
| 11 to 30 days  | 15 |
| 31 days plus | 25 |

(b) Fault repair time for Service Affecting Faults

If the repair time for Service Affecting Faults falls below the thresholds as set out in the table below the Customer will have the right to claim Service Credits

(i) Where repair time exceeds 8 hours during the Monthly Review Period, the Customer will be entitled (for each exceeded repair time) to Service Credits on the applicable Route annual Maintenance Charges as follows:

|  |  |
| --- | --- |
| **repair time**  | **Service Credits as % of annual Maintenance Charges (O&M) pro rated for the relevant Route** |
| 8 to 12 hours | 4% |
| 12 to 16 hours | 10% |
| 16 to 20 hours | 15% |
| 20 to 24 hours | 20% |
| >24 hours | 25% |

**8. ESCALATION PROCEDURE**

The Customer shall be entitled to escalate missed corrective maintenance times to the Contractor management according to the escalation procedure below. The managers will be contacted at the Customer’s request by the Customer Call Centre.

|  |  |  |
| --- | --- | --- |
| **Elapsed Time (Service Affecting Faults)** | **Escalation Contact** | **Tel Number** |
| 6 hours |  |  |
| 10 hours |  |  |
| 16 hours |  |  |

**9. EXCLUSIONS OF SERVICE CREDITS**

9.1 Service Credits will not be payable by the Contractor to the Customer in relation to late delivery of the IRU, faults or disruptions to the service caused by any of the following:

(a) the fault or negligence of the Customer, its employees, agents or contractors;

(f) A failure by the Customer to give the Contractor access to any the Contractor provided and maintained Customer Premise Equipment after being requested to do so by the Contractor.

9.3 The maximum compensation payable by the Contractor pursuant to the Service Level Target each year of the term of the Agreement shall not exceed 100% of the aggregated Maintanance Charges payable by Customer to the Contractor for that year.

9.4 Payment of Service Credits shall be the Customer’s sole and exclusive remedy for any cause of action arising that results in a deviation from the Service Level Targets. The Customer agrees that the compensation provided above represents a reasonable pre-estimate of all of its losses and the Contractor shall have no further liability to Customer for the failure to achieve the Service Levels.

9.5 Where an RFS Date starts or a service ends at some time within the Monthly Review Period, any rebates for availability failures due within that partial month will be pro-rated accordingly.

9.6 All claims must be submitted to the Contractor within thirty (30) Working Days of the Measurement Period within which the failure occurred.

**SCHEDULE 5**

Additional terms for Facilities

**1. DEFINITIONS**

**“Access Charges”** means the charge for the provision of escorted site access to the Facilities.

**“Lease”** means any lease, licence or other documents conferring a right of occupation at any Contractor Premises.

**“Trusted Agent”** means an employee of the Customer and any contractor employed by the Customer who shall have been approved by the Contractor.

**“Other Customer”** means any person who shares the use of any Contractor Premises (including the Contractor) with the Customer.

**“Permits”** means all and statutory licences required by any authority or regulatory body permitting the Customer to provide any communications services or related services or to operate any Customer Equipment.

Any other capitalised terms have the meanings set out in the main body of the Agreement or Schedule 4.

**2. PROVISION OF FACILITIES**

 2.1. Prior to serving the Service Handover Document, the Contractor will prepare all Facilities along the Dark Fibre Route to allow the connection of Customer Equipment to Contractor’s Network, including, but not limited to:

2.1.1. provisioning of power feeds to the designated Rack Spaces of the Customer within the respective Facility;

2.1.2 provisioning of fibre Patches from the Contractor Network ODFs or common termination point to the Customer Equipment installed in the designated Rack Spaces within the respective Facility;

2.1.3 necessary rack fixing activities to floor/ raised floor where applicable.

2.1.4 The power supply shown by an ampere rating in this Agreement will be the total power available over either a single feed or a dual feed. i.e. 8A A+B feed = 8A total power draw.

2.2. The Contractor reserves the right to monitor a Customer’s power draw from time to time and bill any power in excess of the agreed power draw on a penalty basis of 2 x Contractor’s power price per KWH applicable at that time. Further, where the Customer’s power draw for any specific Facility exceeds that stated in this Agreement and the Contractor deems that the excessive power is compromising the existing power plant and air conditioning, the Contractor reserve the right to suspend the provision of the power supply to the offending Customer Equipment within a Facility on ten (10) Working Day’s prior written notice. That power shall be restored forthwith upon the Customer adjusting the Customer Equipment and undertaking to keep the Customer Equipment adjusted such that the power does not exceed that stated in this Agreement.

2.3. Subject to the provisions of this Agreement, the Contractor hereby grants Customer a right to use the Facilities in Contractor Premises together with necessary access as provided herein to install, operate and maintain adjust repair alter replace and renew the Customer Equipment for the Term. For the avoidance of doubt, any altered, replaced or renewed Customer Equipment is required to comply with the terms of this Agreement.

2.4. Save as provided otherwise in this Agreement, Customer shall install and use the Customer Equipment at Customer’s own risk and expense. All installations shall conform to all relevant industry standards and to any reasonable requirements stipulated by the Contractor. The Contractor may require Customer to provide and shall have the right to approve in advance Customer’s specifications and installation plans and may require Customer to re-install any Customer Equipment that is not installed in accordance with those specifications or plans.

2.5. Unless the Contractor has given its prior written consent, Customer may only use the Facilities at Contractor Premises for the placement replacement adjustment repair alteration renewal and maintenance of Customer Equipment that is connected to the Contractor Network.

**3. ACCESS**

3.1. Subject to any restrictions imposed by any Lease and the applicable Contractor Premises access procedure, the Contractor shall grant the Customer’s Trusted Agents access to Contractor Premises at all reasonable times 24/7/365 to inspect, alter, adjust, repair, replace renew and maintain the Customer Equipment.

3.2. The Contractor shall be entitled to refuse entry to any person who does not produce a suitable means of identification as a Trusted Agent. In any event, the Contractor may refuse entry to Contractor Premises to any person whose behaviour is reasonably considered by Contractor’s representative to be likely to disrupt the operation of Contractor Premises or endanger Contractor Premises or the property of Other Customers.

3.3. Customer shall be responsible to the Contractor for its Trusted Agents who visit Contractor Premises and shall ensure that such persons comply with these terms and conditions.

3.4. Acting reasonably the Contractor shall be entitled from time to time to modify the rights of access set out in this Schedule due to any works at Contractor Premises or for reasons of safety or for the management of Contractor Premises, provided that any such modifications shall be notified in advance to the Customer and shall not materially diminish the Customer’s rights to use the Facilities granted by these terms and conditions to the Customer under this Agreement.

3.5. Customer shall not cause, permit or do anything at Contractor Premises which might damage any of Contractor’s or its Associated Companies fixtures or fittings and shall ensure that it does not at any time electrically or physically impair, disrupt interfere with or interrupt the operation of Contractor’s or any Other Customer’s communications equipment and shall immediately repair any fault in Customer Equipment which causes or may cause such interference. Notwithstanding the foregoing, where Customer fails to or delays the prevention or remedy of such interference, the Contractor shall be entitled to take all-reasonable measures to prevent or remedy such interference and Customer shall reimburse the Contractor for any reasonable costs incurred by the Contractor in doing so.

3.6. Customer shall:

(a) not perform or permit any act, which causes or is likely to cause any interference, nuisance, annoyance, inconvenience, loss or damage to any non Customer Equipment.

(b) not display any signs or notices at Contractor Premises other than such signs or notices as may be required under any statute or regulations including the specific European Union requirements arising from any agreements entered into by the Customer; and

(c) remove all waste and rubbish generated by Customer or its officers, employees, servants or agents (including any Trusted Agent) and thereby keep the Contractor Premises neat and tidy at all times.

**4. RELOCATION**

At the cost of the Contractor, the Contractor shall have the right from time to time for operational reasons and on not less than three (3) month’s prior written notice (unless the Contractor is mandated by appropriate authority within shorter timescale) to require the Customer Equipment to be moved and to be installed in another suitable space at the Contractor Premises or with the agreement of the Customer at another suitable premises in the same city or locality. The Contractor shall use its reasonable endeavours to ensure that such relocation shall cause as little disruption and/or interference to the Customer as is reasonably practicable.

**5. THREAT TO PERSONS OR PROPERTY**

The Contractor shall be entitled to switch off the Customer Equipment:

(a) in a life or material property threatening emergency;

(b) if required to do so by any governmental or regulatory authority;

provided that in each case where reasonably practicable to do so, the Contractor shall take reasonable measures to contact and inform the Customer in advance and provided further that the Contractor shall switch on the Customer Equipment (if requested by Customer to do so and at Customer’s risk) as soon as the threat of emergency is removed.

**6. MAINTENANCE**

Where the Contractor plans to perform essential works at the Contractor Premises, the Contractor may require where this is essential to the completion of those works (such that this is not permitted simply to reduce time periods for carrying out the works or for convenience) Customer to switch off the Customer Equipment at the time required and keep the Customer Equipment (as the case may be) switched off until notified by the Contractor in accordance with the Planned maintenance procedures set out in Clause 7.9 of the Agreement.

**7. TERMINATION**

7.1. In addition to Clause 10 of the Agreement, the Contractor shall have the right to terminate Customer’s use of all or any part of the Contractor Premises according to where the breach or other event occurs if:

(a) the Contractor’s right to use the Facility at the Contractor Premises is terminated or expires in which case the relocation provision at Clause 4 of this Schedule shall first apply;

(b) Customer makes any alterations to the Facilities allocated to it at the Contractor Premises without the prior written consent of the Contractor;

(c) Customer allows personnel or contractors to enter the Contractor Premises without the consent of the Contractor; or

(d) Customer materially breaches any posted or otherwise communicated rules relating to use of, or access to, Contractor Premises.

7.2. The right to use Contractor Premises granted by this Agreement is a licence to occupy. Within ten (30) calendar days of the termination of the Agreement, Customer shall remove at its own risk and cost all Customer Equipment from Contractor Premises or the relevant part thereof. Customer shall leave the Facilities in a clean and tidy condition and shall make good any damage resulting from the removal of the Customer’s Equipment from and/or the Customer’s use of Contractor Premises (fair wear and tear excepted).

7.3. If Customer fails to comply with its obligations under Clause 7.2 of this Schedule, the Contractor may, without prejudice to any other remedies it may have under the Agreement or at law or equity, at the sole risk of the Customer, remove the Customer Equipment from the Facilities and shall make good any damage resulting from the removal of the Customer’s Equipment from and/or the Customer’s use of the Contractor Premises, deliver the Customer Equipment to Customer at the relevant Customer Contracting Party address given in this Agreement and Customer shall indemnify the Contractor against all reasonable costs incurred in doing so.

**8. NO TRANSFER OF OWNERSHIP**

8.1. The Parties agree that the ownership of the Contractor Premises shall remain with the Contractor or the suppliers of the Contractor and that nothing in this Agreement in any manner confers, or is intended to confer, such ownership on Customer. The Parties agree that the ownership of the Customer Equipment shall remain with the Customer or the suppliers of the Customer and that nothing in this Agreement in any manner confers, or is intended to confer, such ownership on Contractor.

**9. INSPECTION**

The Contractor reserves the right to make periodic inspections of any part of the Contractor Premises including the Rack Space, or anything located within or physically attached to the Contractor Premises. The Contractor shall give the Customer not less than ten (10) Working Days notice in Writing of such inspections, except in those instances where the Contractor reasonably determines that safety considerations require the need for such an inspection without the delay of providing notice. The making of periodic inspections or the failure to do so shall not operate to impose upon the Contractor any liability of any kind whatsoever nor relieve the Customer of any responsibility, obligation, or liability allocated to it in this Agreement.

**10. FAULT REPORTING AND MANAGEMENT**

**10.1. Faults**

Any suspected faults should be reported to the Contractor Customer Call Centre using the procedures detailed in the Service Handover Document. When reporting a fault, the Customer should identify the affected Facilities and provide details of the fault.

**10.2. Target Time to Repair (TTR)**

The Contractor will endeavour to rectify any Service Affecting Fault within the following timescales:

 (а) Eight (8) hours TTR on Service Affecting Faults within all other Co-location Facilities for un-manned Sites.

(b) Where the Contractor fails to rectify the Service Affecting Fault within the TTR timescales above, the Contractor will award the Customer Five (5) hours of pro rated Facilities ARC for every full hour in excess of the TTR.

**10.3. Fault Duration**

All faults recorded by Contractor’s network integrated fault management system will be reconciled against the corresponding fault ticket raised by the Contractor Customer Call Centre. The exact fault duration will be calculated as the elapsed time between the Fault Ticket being raised by the Contractor Customer Call Centre and the time when service is restored.

Contractor Customer

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Signature) (Signature)

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

Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

**SCHEDULE 6**

The Statement Of Acceptance Of Invoices Received In Electronic Form

**Netia S.A.**

**ul. Poleczki 13**

**02-822 Warszawa**

**NIP 526-02-05-575**

**Address for correspondence** :

Al. Stanów Zjednoczonych 61 A

04 -028 Warszawa

**Accounting Department**

**THE STATEMENT OF ACCEPTANCE OF INVOICES RECEIVED IN ELECTRONIC FORM**

According to art. 106n 1 of the Act of 11 March 2004 The Goods and Services Tax Act (Dz.U. z 2016 r., poz.710 as amended) we inform that from the date\* of receipt your copy of this Statement of Acceptance fulfilled with your e-mail adress (position nr 3):

1. Netia S.A.  agrees to transfer invoices, including corrective invoices and duplicates in an electric form as a pdf file (Portable Document Format) issued by:

Company Name:…………………………………………………………….

Address:………………………………………………………………………

tax identification number…………………………………….

1. e- invoices in a pdf file should be send to our e-mail: E-FAKTURY@NETIA.PL;

1. e- invoices in a pdf file will be send by the invoice issuer from the e-mail:

.…………………………………………… or domain …….…………………………………;\*\*

Sincerely,



Date/ Signature Place

……………….……..……….. ……………………………..……

\*the fact that we have received the copy of the Statement of Acceptance  will be confirmed by the feedback information send to your e-mail address or your address for correspondence.

\*\*after filling in, please send it to e-faktury@netia.pl e-faktury@netia.pl

**Instructions for sending INVOICES / CORRECTING INVOICES / DUPLICATES / INTEREST NOTES / ACCOUNTING DOCUMENTS to e-faktury@netia.pl:**

Invoice / .. (+ possibly protocols, attachments, etc.) - as one pdf file.

For each invoice + attachments - there will therefore be a separate ONE file in PDF

(invoice no. X + attachments is one PDF file, the second invoice no. Y + attachments is a second PDF file, etc.).

Please do not send attachments in separate PDF files or in a format other than pdf.

**SCHEDULE 7**

Information from Netia S.A. on the processing of personal data

INFORMATION FROM NETIA S.A. ON THE PROCESSING OF PERSONAL DATA
(A REPRESENTATIVE OF THE CONTRACTOR AND A CONTACT PERSON OF THE CONTRACTOR)

**Who is going to process the personal data and how to contact them**

1. Netia S.A. (hereinafter referred to as: the “Company”) with its registered seat in Warsaw at ul. Poleczki 13, 02-822 Warsaw is the Controller of your personal data within the meaning of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (hereinafter referred to as: the “GDPR”).
2. Any requests, statements and correspondence concerning personal data protection should be sent in writing to the above-mentioned address of the Company's registered seat or via e-mail to the following address: iod@netia.pl.
3. The Company has appointed a Data Protection Officer who can be contacted: electronically at iod@netia.plor in writing to the above-mentioned address of the Company's registered seat with an additional note “Inspektor Ochrony Danych” (“Data Protection Inspector”).

**Definitions**

1. Contractor – a natural person conducting business activity, a legal entity or other organizational unit with which the Company establishes business cooperation.
2. Representative – a representative or a proxy of the Contractor with whom the Company concluded an agreement, the aim of which is the cooperation between the Contractor and the Company.
3. Contact Person – any natural person who contacts the employees, representatives or proxies of the Company in order to establish or run business cooperation; a contact person may be in particular an employee of the Contractor or another person appointed by the Contractor or acting on their behalf.

**From whom the data was collected**

1. If you are a Representative of the Contractor, your personal data was obtained directly from you as part of the contract or contracts concluded between you and the Company (hereinafter referred to as: the “Contract”):
2. If you are a Contact Person, your personal data was obtained directly from you or from the Contractor as part of the cooperation with the Company.

**Scope of data processing**

1. The scope of data processing includes the following categories:
2. identification data (e.g. full name, NIP 9Tax Identification No.), workplace, position);
3. contact data (e.g. telephone number, e-mail address);
4. other data provided by the Contractor or provided directly by you in connection with the conclusion or performance of the Contract.
5. Providing personal data is necessary for the conclusion and performance of the Contract – without providing such data, it is not possible to conclude the Contract and carry out activities in connection with its performance.

**Purposes and legal grounds of the personal data processing**

1. Your personal data is or may be processed, as long as the processing is conducted for the following purposes:
2. conclusion and performance of the Contract – the legal basis for the processing of the personal data of the Representative is the premise of Contract conclusion (Art. 6(1)(b) of the GDPR);
3. enabling the performance of the Agreement – the legal basis for processing the data of the Contact Person is the legitimate interest of the Company (Article 6(1)(f) of the GDPR);
4. fulfilment of obligations arising from the provisions of law – the legal basis for processing the data of the Representative or the Contact Person is the legal obligation (Article 6(1)(c) of the GDPR);
5. ensuring the safety of the Company’s employees/partners, protecting the property or keeping secret the information the disclosure of which could expose the Company to damage, including by means of video monitoring – the legal basis for processing the data of the Representative or the Contact Person is the legitimate interest of the Company (Article 6(1)(f) of the GDPR);
6. establishing and exercising possible claims or defending the Company against such claims – the legal basis for processing the data of the Representative or the Contact Person is the legitimate interest of the Company (Article 6(1)(f) of the GDPR in relation to Article 9(2)(f) of the GDPR);
7. archiving (evidential purposes), consisting in the pursuing of the Company’s legitimate interest related to the protection of information in the event of a legal need to prove the facts – the legal basis for processing the data of the Representative or the Contact Person is the legitimate interest of the Company (Article 6(1)(f) of the GDPR in relation to Article 9(2)(f) of the GDPR).

**To whom personal data shall be transferred**

1. Your personal data may be transferred (only if justified by the purpose pursued), to the following categories of recipients: entities providing services to the Company, e.g. accounting, tax and auditing services, postal operators and couriers, providers of IT systems and services, insurers, entities providing technical, organizational and advisory support, entities providing legal services, entities providing archiving services, entities providing services within the scope of protection of persons and property, entities authorized under the law, companies from the Capital Group, within the meaning of the Act of 16 February 2007 on Competition and Consumer Protection, of which the Company is a part.

**How long the personal data shall be processed**

1. The duration of storage of your personal data depends on the purpose for which it is or may be processed. In general, the personal data shall be processed for the duration of the Contract (term) and, after its termination, for: a) the period necessary for the performance of obligations or rights under the law, b) the period of limitation of claims and until the conclusion of civil, enforcement, administrative and criminal proceedings requiring the processing of data.

**Your rights with regard to personal data**

1. You have the right to access, rectify and erase the data, the right to restrict the processing of personal data and to transfer of data (if the processing is carried out on the basis of consent or contract by automated means).
2. You have the right to object to the processing of data for the purposes pursued on the basis of the Company's legitimate interest for reasons related to your specific situation. We shall stop processing your data for these purposes unless we can prove there are legally valid grounds for us to process your data that take precedence over your interests, rights and freedoms or prove that your data is necessary for the establishment, exercise or defence of legal claims.
3. The above requests and statements should be submitted in the manner specified in item 2 above.

**Where to lodge a complaint concerning the processing of personal data**

1. If you believe that the processing of your personal data violates the provisions of the GDPR, you may lodge a complaint with the data protection supervisory authority. In the Republic of Poland, the supervisory authority is the President of the Personal Data Protection Office.