

# UNIFIBER Reference Offer Commercial B2C

MASTER SERVICES AGREEMENT  
ON WHOLESALE ODF ACCESS  
BETWEEN  
UNIFIBER SA/NV  
AND



20<sup>th</sup> of September 2023



## **Master Services Agreement on Wholesale ODF Access Services**

This Master Services Agreement ("**MSA**") is entered into between

### **THE PARTIES:**

- 1) **UNIFIBER SA/NV**, a company with registered office at Drève Richelle, 161D boîte 20 à 1410 Waterloo, Belgium, registered under Company number VAT BE 0771.870.372, RPM Brabant Wallon, duly represented by [\_\_\_],

hereinafter referred to as: "**Company**";

and

- 2) [\_\_\_], a company with its registered office at [\_\_\_], Belgium, registered under Company number VAT BE [\_\_\_], RPM [\_\_\_], duly represented by [\_\_\_],

hereinafter referred to as the "**Operator**"

Company and Operator are referred to individually as "**Party**" and collectively as "**Parties**";

### **WHEREAS:**

- 1) Company deploys and operates an open "Point to Point" fiber-to-the-x network in the Walloon region of Belgium and intends to offer passive (physical) wholesale access and ancillary services on the FTTX Network (as defined hereafter) on a non-exclusive, fair, reasonable and non-discriminatory basis and under the conditions of this Agreement to operators offering publicly available electronic communication services/networks.
- 2) Access to the FTTX Network is intended to be provided under an "Open Access" model in that access will be granted on a non-discriminatory basis to multiple operators enabling them to reach Subscribers or other Service Providers without the need for Operator to deploy a dedicated fiber access network.
- 3) Operator is a provider of wholesale and/or retail communication services and wishes to obtain passive access to the FTTX Network.
- 4) Operator intends to provide the Active Network Layer (as defined hereinafter) and will be in charge of this layer to design, build and operate the active equipment part of the network, and certain Retail and/or Wholesale Services once the Passive Network Layer (as defined hereinafter) and Active Network Layer are in place. Besides providing technical support, Operator shall also be in charge of customer acquisition, go-to-market strategies, and customer service directed to Subscribers.
- 5) Parties therefore wish to enter into this Agreement.

- 6) Building an access network involves material capital expenditures (capex) relating to laying the fiber in the ground underneath pathways that are already part of existing infrastructures but also, when the need arises, to building new infrastructure, often requiring new civil works to be carried out. Parties acknowledge that a long-term relationship and good planning will be key to success for establishing the passive infrastructure and the network elements required to build the FTTX network.

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**NOW, THEREFORE, THE PARTIES HERETO HAVE AGREED AS FOLLOWS:**

## **1. Definitions and Interpretation**

- 1.1 Unless the context requires otherwise, capitalised terms and expressions in this Agreement shall have the meaning as defined in Annex 1.
- 1.2 This Agreement shall be interpreted in accordance with the provisions set out in Annex 1.

## **2. Purpose of the Agreement and General Provisions**

- 2.1 The purpose of this Agreement is to determine the terms and conditions under which Company shall provide Access and Services (each as defined below) to Operator and Operator shall order and use the Access and Services to provide Retail Services to Subscribers and/or Wholesale Services to Service Providers.
- 2.2 The services to be provided by Company under this Agreement comprise:
  - (a) services related to the Access; and
  - (b) ancillary services including POP Servicesas each further detailed in Annex 3 - Service Description & Working Level Agreement (the "**Services**").
- 2.3 The Services may change from time to time as agreed between the Parties in writing in accordance with the change management procedure set forth in article 24.

## **3. Network Deployment**

- 3.1 Company shall design, build, maintain, upgrade and own the FTTX Network in accordance with:
  - (a) the roll-out process as set out in Annex 3 as developed by Company; and
  - (b) Good Industry Practice.

For the avoidance of any doubt, Company must fulfil its obligations under this Agreement itself and not by reselling (or otherwise making available) to Operator any capacity on an electronic communications network of a third party.

## **4. Operator's Access to the FTTX Network**

- 4.1 Company shall grant Operator access to the FTTX Network through:

- (a) A right to use a fiber connection between the Central POP (or the Area POP as the case may be upon agreement between the Parties) and a Fiber Termination Unit of the FTTX Network; and
- (b) A right to install, keep, access, maintain and repair its Operator Equipment at the POP Location in accordance with the provisions of Annex 3 - Service Description and Working Level Agreement.

on a non-discriminatory and non-exclusive basis subject to the terms and conditions of this Agreement and solely for the provision of Retail Services and/or Wholesale Services that Operator will deliver on the Active Network Layer in accordance with such registrations or licences as Operator may hold from time to time (the "Access").

4.2 During the Contract Term, Operator shall take ownership to design, install, operate and maintain its Active Network Layer (e.g. to install Operator Equipment to connect to the FTTX Network in the POP Location and install Customer Premises Equipment at an Access Point) to provide Retail and/or Wholesale Services to its Customers using the Access and Services provided by Company as input service. In particular, Operator shall provide technical support on the Active Network Layer and Operator (or in the event of Wholesale Services, the relevant Service Provider) shall be responsible for Operator customer acquisition, go-to-market strategies and customer service.

4.3 Nothing in this Agreement shall prevent (or otherwise limit) Operator from using the Access and the Services for the purpose of Operator providing Wholesale Services to wholesale customers under or in connection with Operator's regulated wholesale offers.

4.4 If as a result of a change of the Regulations becoming effective after the Contract Date, it becomes impossible or disproportionately burdensome for Operator to comply with its regulated wholesale offers using the Access and the Services, the Parties will in good faith negotiate and agree upon any changes to this Agreement (including, without limitation, changes to commercial and operational conditions applicable to the Wholesale Services) in accordance with the Change Management procedures set out in article 24.

## 5. Use of the FTTX Network

5.1 Operator shall use the FTTX Network only with due care in accordance with the standards of a reasonably diligent telecommunication operator and in accordance with the provisions of this Agreement.

5.2 Operator shall not:

- (a) make any changes to FTTX Network; or
- (b) carry out any work on the FTTX Network

without Company's prior consent. If changes or modifications to the FTTX Network are made by Operator without the consent of Company, Company shall be entitled at any time to undo the modifications and restore the FTTX Network to its original condition

at the expense and risk of Operator, irrespective of whether the modifications have been made to an Access Point serviced by Operator. In such case Operator shall immediately repay such costs to undo the modifications, without prejudice to any other compensation (or termination of Access and Services by Company).

5.3 Operator agrees to comply with the applicable legislation as well as the regulations, guidelines and procedures issued by the relevant Regulators with regard to the use of the FTTX Network and the delivery of its services to its Service Providers and Subscribers.

5.4 Operator may only use the FTTX Network for lawful purposes. Any use that violates Belgian or international law is prohibited.

5.5 As Operator is responsible for offering Retail Services to its Subscribers and Wholesale Services to its Service Providers, Operator shall take reasonable measures to prevent any abuse of the FTTX Network by the Subscribers, the Service Providers and any other end users. To this end, Operator shall ensure that the Subscribers and Service Providers will comply to the provisions of this article 5.

## **6. Ownership of the FTTX Network, Company Equipment**

6.1 Notwithstanding the fact that Company may make use of Infrastructure of third parties, the FTTX Network and all Company Equipment that is used to provide the Access and Services to Operator are always and remain the property of Company.

6.2 Company shall install and manage (including repair and replacement) the Access Point and the FTU ("Fiber Termination Unit"). Operator shall hold harmless and indemnify Company for any costs and expenses resulting from damage and (repair) costs to the Company Equipment, Access Point and/or FTU incurred by Company and which are caused by Operator, Subscriber, a Service Provider or any third party acting on its or their behalf. Company shall hold harmless and indemnify Operator for any costs and expenses resulting from damage and (repair) costs to the Network Termination Unit in the Home Passed incurred by Operator and which are caused by Company or a third party acting on behalf of Company.

6.3 Operator shall not move, add to, modify or in any way interfere with Company Equipment, nor permit any other person (other than a person authorised by Company) to do so. Operator shall be liable to Company for any loss of or damage to Company Equipment, except where the loss or damage is due to fair wear and tear or is caused by Company. If Operator moves or changes the location of any Company Equipment without Company's prior written consent, Company may recover any failed visits as a consequence or additional cost or expense incurred by Company as a result of any lost or wasted time locating Company Equipment.



## 7. Operator Equipment and Use of POP Location

- 7.1 Operator provides, installs, configures, monitors and maintains any Operator Equipment connected to the FTTX Network. Operator shall ensure that any Operator Equipment installed in the POP Location and installed at the Access Point to make a connection to the FTTX Network meets the Passive Network technical requirements set out in Annex 3 and is used in accordance with any instructions and safety and security procedures applicable to the use of that Operator Equipment.
- 7.2 Operator shall ensure that any Operator Equipment attached (directly or indirectly) to the FTTX Network by Operator is technically compatible with the FTTX Network and the Access. Company does not make any commitment with respect to the interoperability between the Service and Operator Equipment. In the case of malfunction, the Parties will consult about taking preventive and corrective measures.
- 7.3 Company shall implement security safeguards in accordance with Good Industry Practice to prevent any unauthorized access by third parties to any part of the FTTX Network.
- 7.4 Operator shall ensure that his employees and agents authorised to install and activate Operator Equipment on the FTTX Network comply with the provisions stated in this article 7 or any other access & safety regulation as may be communicated by Company in writing.
- 7.5 Except as reasonably required for Company to be able to provide Access and the Services to Operator in accordance with the terms of this Agreement or to any other operator in accordance with the terms of the applicable customer agreement, Company shall not move, add to, modify or in any way interfere with Operator Equipment, nor permit any other person (other than a person authorised by Operator) to do so. Company shall be liable to Operator for any loss of or damage to Operator Equipment, except where the loss or damage is due to fair wear and tear or is caused by Operator. If Company moves or changes the location of any Operator Equipment without Operator's prior written consent, Operator may recover any failed visits as a consequence or additional cost or expense incurred by Operator as a result of any lost or wasted time locating Operator Equipment.

## 8. Ordering and Provisioning

- 8.1 The ordering and provisioning of Access and the Services shall be governed by the provisions set out in Annex 3 - Service Description and Working Level Agreement. For the avoidance of any doubt, Operator shall be entitled to order Access within a Deployment Area prior to the Delivery of such Deployment Area, in accordance with the provisions set out in Annex 3.

## 9. Access Register

- 9.1 Company shall maintain an Access Register in which it shall specify, per Access Point, which is characterised by a unique fiber optic number, among other things, whether or not the Access Point is connected and/or active to enable an Operator to check on the status HP, HC and HA as set forth in Annex 3.
- 9.2 Based on the Access Register and other related systems and tools, Company shall make available to Operator, in accordance with the service levels set out in Annex 4, in a secure digital manner an availability checking tool that will allow Operator to verify whether an Access Point is either a Home Passed, a Home Connected or a Home Activated, without mentioning, for the avoidance of any doubt, the relevant operator which has ordered access with respect to such Access Point.

## 10. Minimum Uptake Commitment of Operator

- 10.1 To comply with its Uptake Commitment, at each moment throughout the entire Contract Term, Operator shall ensure that the number of Homes Activated shall be equal to
- (a) at least a percentage equal to the percentage of the Uptake Commitment subscribed to by Operator \* 90% of the total number of Homes Passed as designed for each Cohort that has a Cohort Uptake Start Date that is more than sixty (60) months old (but not more than seventy-eight (78) months old); and
  - (b) at least a percentage equal to the percentage of the Uptake Commitment subscribed to by Operator \* 100% of the total number of Homes Passed as designed for each Cohort that has a Cohort Uptake Start Date that is more than seventy-eight (78) months old.
- 10.2 The Uptake Commitment is an essential obligation of this Agreement. Regardless of whether (or not) Operator meets the Uptake Commitment, Company shall be entitled to claim and Operator shall pay the amounts as calculated and invoiced in accordance with the provisions of Annex 2, which shall at least be equal to the Charges for Access and related Services as if the Uptake Commitment had been complied with within the timelines set out in article 10.1.
- 10.3 If Operator intends to invoke a Market Disruption in the Fixed Broadband Market in a certain Cohort, it shall provide sufficient evidence to Company of (a) the existence of a Market Disruption in the Fixed Broadband Market and (b) the reasonably expected duration thereof, at the latest 5 Business Days prior to a Measurement Date (as defined in Annex 2).
- 10.4 If Operator intends to prolong the invocation of a Market Disruption in the Fixed Broadband Market in such Cohort (following the initial invocation pursuant to article 10.3), it shall provide sufficient evidence to Company of (a) such continued existence of a Market Disruption in the Fixed Broadband Market and (b) the reasonably expected

duration thereof, at the latest 5 Business Days prior to the earlier of (i) the last Measurement Date within the expected duration of the Market Disruption in the Fixed Broadband Market as indicated in accordance with article 10.3 or (ii) the last Measurement Date prior to the first anniversary of the Measurement Date referred to in article 10.3.

- 10.5 If the existence of a Market Disruption in the Fixed Broadband Market is established in a certain Cohort in accordance with article 10.3 or 10.4, the percentages mentioned in article 10.1 with respect to such Cohort shall be revised downwards as follows for a period ending on the earlier of (i) the last Measurement Date of the expected duration of the Market Disruption in the Fixed Broadband Market as established in accordance with article 10.3 or 10.4 or (ii) the last Measurement Date prior to the first anniversary of the Measurement Date referred to in article 10.3 or 10.4:
- (a) the percentage mentioned in article 10.1.(a) shall be lowered to [the relevant percentage of Uptake Commitment subscribed to by Operator \* 78,75%]; and
  - (b) the percentage mentioned in article 10.1.(b) shall be lowered to [the relevant percentage of the Uptake Commitment subscribed to by Operator \* 87,5%].

- 10.6 If Company exceeds the Penetration Target in a certain Cohort during the Market Disruption in the Fixed Broadband Market within such Cohort, Operator is given the first right to resell its unused capacity under its Uptake Commitment in such disrupted Cohort to a third-party operator / Service Provider.

## 11. Service Levels

- 11.1 Company shall provide the Services so as to meet or exceed the Service Levels. The Key Performance Indicators are a subset of the Service Levels. .
- 11.2 Notwithstanding the above, the Company shall continue to provide Access and the Services to the Operator, which will continue to pay for such Access and Services in accordance with Annex 2.
- 11.3 Company shall be exempted from any liability to comply with any of the provisions set forth in this article 11 in respect of Services that are wholly or partially provided by Operator in its capacity of subcontractor of Company and that are used as input service to provide the Service to Operator.

## 12. Subcontracting

- 12.1 Company shall have the right, without any form of notice to or approval from Operator, to use the infrastructure of third parties and to use third party infrastructure providers or service providers as subcontractors to build (any parts of) the FTTX Network, to grant Access and/or to provide all or part of the Services.
- 12.2 Operator may subcontract part of its obligations under this Agreement to subcontractors provided that Operator ensures that such subcontractors meet the required Good Industry Practice quality standards.

12.3 In case of subcontracting, the Parties shall not be relieved of any of their liabilities or obligations under this Agreement and Parties shall be liable to each other for the acts, defaults and neglects of any subcontractor or any employee or agent of the subcontractor as if these were acts, defaults or neglects of that Party or the employees of that Party.

### **13. Governance & Processes**

13.1 The Parties agree to set up and follow the processes for governance and operational aspects as set forth in Annex 3 - Service Description and Working Level Agreement.

### **14. Maintenance, Substitution or Relocation**

14.1 Company shall provide maintenance and support services in accordance with Annex 3 and Annex 4.

14.2 If Company is required by order or other lawful action of any government or public authority or for technical reasons to substitute or relocate any part of the FTTX Network, including any of the facilities used or required in providing the Service(s), Company is entitled to proceed with such substitution or relocation provided that any such substitution or relocation:

- (a) shall be performed and tested by Company to determine compliance with the specifications set forth in the relevant Service Description following substitution or relocation, and
- (b) shall not result in an unreasonable and material adverse change in the Access or the Services rendered to Operator.

For the avoidance of any doubt, all costs related to relocation on private property triggered by a request for relocation by Operator or its end user shall be borne by such Operator.

14.3 Operator shall be informed in advance by Company in the event of any substitution or relocation triggered by Company.

### **15. Charges and Payment**

15.1 Company offers passive access to the FTTX Network to all operators providing Fiber-to-the-Home/Premises/Building (wholesale and/or retail) network services on the basis of non-discriminatory pricing model set out in Annex 2 to allow the operators to compete on downstream markets.

15.2 In consideration for the Access and the Services, Operator shall pay the Charges according to the applicable pricing model (or a combination thereof) set forth in Annex 2. The Charges are, to the extent applicable, exclusive of VAT (or any other taxes whatever they are called), which to the extent applicable will be charged in addition.

15.3 Company shall issue and prepare the invoices based on the data in the Access Register and Annex 2. In the issuing of invoices, Company shall comply with the invoice specifications agreed upon between Parties in Annex 2.

15.4 Unless otherwise agreed upon, Company shall invoice the Charges in accordance with the invoicing terms or schedule as set forth in Annex 2.

15.5 Indexation of the Charges shall be done as follows:

(a) during the first five (5) Contract Years, Company shall have the right to adjust the Charges once in each calendar year as follows:

$P_1 = P_0 * 101.5\%$ , where:

$P_1$  = the new Price (applicable as from 1 January of such following calendar year);

$P_0$  = the current Price (applicable since the start of the Contract Term or the last indexed price (i.e.  $P_1$  of the year immediately preceding the new indexation), depending on which of these two events takes place last); and

(b) starting as of the sixth (6th) Contract Year, Company shall have the right to adjust the Charges once in each calendar year to adjust in line with the index for cost of reference wages ("*referteloonkost*") (country average level) ("*Wages Index*") published by Agoria in accordance with the following formula:

$P_1 = P_0 (0,2 + 0,8 * X_1/X_0)$ , where:

$P_1$  = the new Price (applicable as from 1 January of such following calendar year);

$P_0$  = the current Price (the last indexed price);

$X_1$  = Wages Index as published by Agoria for the month of September immediately preceding 1 January on which the new indexation will take place;

$X_0$  = Wages Index as published by Agoria for the month of September immediately preceding the month of September as referred to in  $X_1$ .

15.6 The indexation in accordance with article 15.5 shall be invoiced in the Charges that will be invoiced to Operator as from 1 January of the relevant calendar year to which the indexation applies with a two (2) month notice period and cannot be applied retroactively.

As from the moment a Deployment Area is Delivered and the first instalment of the Non-Recurring IRU Charges (as defined in Annex 2) is paid by Operator to Company, the Non-Recurring IRU Charges for that Delivered Deployment Area are frozen and no further future indexation may be applied to the Non-Recurring IRU Charge for the Access as ordered.

For the avoidance of any doubt, notwithstanding the preceding paragraph, (i) the renewal charges relating to existing IRUs that Operator may order in accordance with the terms of Annex 2, and (ii) the Recurring IRU Charges and/or the Rental Charges will be subject to indexation in accordance with this article 15.5

## 16. Term of the Agreement and the Service Orders

16.1 The Agreement shall commence on the Contract Date and, unless terminated earlier in accordance with article 16, will continue for a period of 40 years (the “**Initial Term**”) automatically renewable for additional periods of 20 years (each, a “**Renewal Term**”).

16.2 The term and termination of Service Orders shall be governed by the provisions set out in Annex 3.

## 17. Suspension and termination

17.1 Without prejudice to any other rights under the Agreement, Company may (the “**Suspending Party**”) suspend the Access and Services under this Agreement in accordance with the procedure set out in article 17.3:

- (a) upon the occurrence of an Event of Default attributable to Operator;
- (b) if Operator is not able to grant Company (timely) access to the relevant Access Points or if any Company Equipment and/or other FTTX Network components are not ready (in good time) so that Company is not able to grant Access or to deliver the Service(s);
- (c) upon the revocation or expiry of any regulatory approval (including but not limited to any telecommunications authorisation, registration or licence) which may be required for Operator to fulfil its obligations under the Agreement and/or a Service Order and/or to use the Service(s);
- (d) if Company thereby complies with or is thereby obliged to comply with an order, instruction or request of a court or any public authority; and
- (e) if Operator has filed a petition for its own bankruptcy or has requested protection against creditors under the Act on Continuity of Enterprises as embedded in Book XX of the Code Economical Law, if Operator has been declared bankrupt or granted a moratorium on payments, if an administrator or trustee has been appointed for Operator’s business, if Operator enters into liquidation, or if Operator is otherwise no longer able to fulfil its payment obligations towards its creditors  
(each a “**Suspension Event**”).

17.2 Without prejudice to any other rights under the Agreement, either Party (the “**Terminating Party**”) may terminate the Agreement in accordance with the procedure set out in article 17.3 if:

- (a) the other Party commits an Event of Default which is not remedied within thirty (30) days as of the receipt of a formal notice of default by the other Party. If the Terminating Party has already given a written notice requiring remedy of the

- same or a similar breach within the ninety (90) days preceding such new breach, it may give notice to terminate under this article without allowing an additional remedy period;
- (b) if the other Party has filed a petition for its own bankruptcy or has requested protection against creditors under the Act on Continuity of Enterprises as embedded in Book XX of the Code Economical Law, has been declared bankrupt or granted a moratorium on payments, if an administrator or trustee has been appointed for the other Party's business, if the other Party enters into liquidation, or is otherwise no longer able to fulfil its payment obligations towards its creditors;
  - (c) the other Party's regulatory approval is revoked or expired (including but not limited to any telecommunications authorisation, registration or licence) which may be required to fulfil its obligations under the Agreement and/or, solely with respect to Operator, to fulfil its obligations under a Service Order or to use the Services;
  - (d) the other Party's breach of this Agreement results in or contributes to a Regulator notifying the Terminating Party that it may consider imposing regulatory sanctions upon the Terminating Party or any of its affiliates (excluding Company if Operator is the Terminating Party) and the other Party has not remedied the breach within a reasonable time (or within the time stipulated in any notice from the Regulator);
  - (e) the other Party is liable for misconduct by reason of any fraudulent or criminal activity, which in the reasonable opinion of the Terminating Party, prejudicially affects the performance of this Agreement or the reputation of the Terminating Party; or
  - (f) if the Terminating Party thereby complies with or is thereby obliged to comply with an order, instruction or request of a court or any public authority (each a "**Termination Event**", each of the Suspension Events and Termination Events is referred to individually as a "**Suspension or Termination Event**", and each of the Terminating Party and Suspending Party is referred to individually as the "**Suspending or Terminating Party**").

17.3 Upon the occurrence of a Suspension or Termination Event, the Suspending or Terminating Party shall be entitled to:

- (a) send a notice in writing (which may be by email) to the other Party requesting the latter to comply with its contractual obligations and to remedy the Suspension or Termination Event (to the extent remediable) within a period of ten (10) Business Days from date of notice in writing or such other period as may be required given the circumstances; In sending such notice, the Suspending or Terminating Party shall also send a copy of such notice to the BIPT accompanied with all justification documents which are useful and relevant in this respect; and
- (b) if the Suspension or Termination Event is not remedied within such ten (10) Business Day period, escalate the Suspension or Termination Event to the CEOs of Company and Operator with a view to review the root causes and agree upon a plan to remediate the Suspension or Termination Event (to the extent remediable); and

- (c) if after 3 months (or such longer term as may be agreed in the remediation plan) after agreement of the remediation plan (the “**Remediation Plan Date**”), the Suspension or Termination Event is not resolved to the Suspending or Terminating Party’s satisfaction, the Suspending or Terminating Party shall be entitled to fully or partially suspend Access, the provision of one or more Services and its obligations under this Agreement with immediate effect and without judicial intervention provided that it will send a notice of suspension or termination in writing referring to the procedure set forth in this article 17.

17.4 The right of any party to suspend the Access or Services in accordance with article 17.1, and to terminate the Agreement in accordance with article 17.2, is without prejudice to BIPT’s rights set forth in article 61 § 1 of the Electronic Communications Act, in particular BIPT’s right to impose upon Company not to withdraw Access that has already been granted and to make such obligations subject to conditions of fairness, reasonableness and timeliness.

## 18. Consequences of Suspension

18.1 If and for so long as the performance of a Party’s obligations under this Agreement have been suspended, the other Party’s corresponding obligations will be suspended. For the avoidance of doubt, and without limiting the generality of the foregoing, if the provision of Access and relate Services is suspended:

- (a) Operator shall not be obliged to pay the Charges in relation to the Access and Services which are suspended as of the moment of their suspension;
- (b) Operator’s obligation to pay undisputed invoices is not affected; and
- (c) the IRU Term for the suspended Access Points will be extended by a period that is equal to the duration of the suspension of these Access Points

## 19. Consequences of Termination

19.1 In case of termination by Company pursuant to article 17:

- (a) Operator will pay to Company the decommissioning fees as described in Annex 2, as the case may be; and
- (b) Company will grant a period of 12 months starting from the end of the notice period to give Operator the opportunity to free up the FTTX Network *it being understood that* Operator will have paid to Company all invoices due; and
- (c) no new Services can be ordered under the Agreement.

19.2 Termination of the Agreement shall not relieve Operator of its obligations under the Agreement with respect to the payment of Access already granted and Services already performed by Company during the Agreement and of Access or Services ordered and accepted by Operator, nor shall it affect or prejudice any provisions of the Agreement, which are expressly or by implication provided to continue in effect after such termination and any other provision necessary for their interpretation or enforcement.



19.3 On termination of this Agreement, Company shall promptly delete or, at Operator's option, deliver up to Operator, all data, materials and documents belonging to Operator as well as any Intellectual Property Rights developed by Company in execution of the Agreement, and all data developed under this Agreement by Company.

19.4 Upon termination of this Agreement (including any affected Service Order executed under it):

- (a) the rights of the Parties accrued up to the date of such termination shall remain unaffected;
- (b) Operator shall co-operate in good faith with Company to recover any Company Equipment, and
- (c) Company shall cooperate in good faith with Operator to recover any Operator Equipment.

19.5 Any provisions of the Agreement which by their nature are intended to remain operative even after the termination of the Agreement and/or the Service Order shall remain in force even after the termination or expiration of the Agreement and/or the Service Order.

## 20. Warranties

20.1 Company shall, at its own expense, obtain all permits and licenses, pay all fees, where required by any law or regulation applicable to the Access and the Services, Company's performance under this Agreement, or to Company as an employer. Company hereby certifies compliance with all such laws. Operator reserves the right to ask Company to deliver a copy of such permits or licenses at any time.

20.2 Company warrants that the Access will be granted and the Services will be performed:

- (a) in accordance with Good Industry Practice;
- (b) in conformity with the terms and conditions of this Agreement and its Annexes;
- (c) using appropriately qualified, experienced and competent personnel.

20.3 Each Party represents and warrants to the other Party that, on the Contract Date:

- (a) it is a corporation validly organised and existing and in good standing under the laws of Belgium;
- (b) it has full capacity and authority to enter into and to perform this Agreement;
- (c) this Agreement is executed by a duly authorised representative of that Party;
- (d) the execution, delivery, and performance of this Agreement has been duly authorised by all necessary corporate action;
- (e) this Agreement has been duly executed, and constitutes a legal, valid, and binding obligation, enforceable in accordance with its terms;

- (f) it has the right, power, and authority to perform its obligations under this Agreement; and
- (g) there are no actions, suits or proceedings or regulatory investigations pending, or to that Party's knowledge, threatened against that Party that might adversely affect the ability of the Party to meet and carry out its obligations under this Agreement and that are unknown to the other Party.

20.4 Each Party shall notify the other Party in writing if it fail(s) or is anticipated to fail to meet the warranties contained in this article 20 as soon as reasonably practicable upon discovery of such failure.

20.5 Each Party shall through all its contacts with customers and third parties safeguard the other Party's brand name and any future brand name as well as its reputation its products or employees. Any action or activity in violation with this article 20.5 is considered an Event of Default.

## 21. Liability and indemnity

21.1 Subject to article 21.3 but otherwise notwithstanding any other provision of this Agreement, Operator nor the Company shall be liable to the other, whether in contract (including under any indemnity), in tort (including negligence), under any statute or otherwise under or in connection with this Agreement or the provision or receipt of the Services for or in respect of any indirect or consequential damages, (including in any case without this list being exhaustive loss of profit, loss of revenue, loss of goodwill, loss of business opportunities, and loss of anticipated savings).

21.2 Subject to article 21.3, either Party's aggregate liability per Contract Year vis-à-vis the other Party, whether in contract (including under any indemnity), in tort (including negligence), under statute or otherwise under or in connection with this Agreement or the provision or receipt of the Services shall be limited to four (4) million EUR.

21.3 The exclusions in article 21.1 and limits on liability set out in article 21.2 shall not apply in respect of:

- (a) any liability for death or personal injury by a Party or its personnel;
- (b) any liability for fraud ("*bedrog*" / "*dol*") or fraudulent misrepresentation by a Party or its personnel;
- (c) any liability arising from a Party's or its personnel's gross negligence ("*zware fout*" / "*faute grave*") or intentional failure ("*opzettelijke fout*" / "*faute intentionnelle*");
- (d) damage to tangible property;
- (e) fines, liabilities and expenses imposed upon a Party by a court, Regulator or other government body for breach of the law or regulations;

- (f) the obligation on Operator to pay undisputed Charges that have become due;
- (g) any indemnification obligations set out in this Agreement or any of its Annexes;
- (h) any other liability to the extent to which it cannot be lawfully excluded.

21.4 The right for Operator to claim compensation for failure to achieve Key Performance Indicators in accordance with Annex 4 will not prejudice Operator right to claim compensation for the total amount of damage or losses incurred by Operator, provided that (i) Operator shall be able to demonstrate a fault solely attributable to Company and the extent of the damages, (ii) Company shall be entitled to deduct the amount of the compensation due for failure to achieve Key Performance Indicators in accordance with Annex 4 from the total compensation claimed by Operator, and (iii) the claim shall be subject to the exclusions in article 21.1 and limits on liability set out in article 21.2.

21.5 If a Party becomes aware of anything (such as an event, a circumstance, a fact or a threatened claim by a third party) that may give rise to a claim against the other Party, such indemnified Party will forthwith give notice thereof to the indemnifying Party, with any details (including documents) available and an estimate of the amount of the damage or loss. Failure to provide such claim notice within a reasonable period of time, which will in any case not exceed six (6) months as from the event, circumstance or fact giving rise to a claim will not operate to relieve the indemnifying Party of any liability for such claim under this article 22, unless and to the extent that the indemnifying Party can prove it has been actually prejudiced by such failure in which case the indemnifying Party shall not be liable to the extent that the damage or loss is increased or not reduced as a result of such failure to notify within such reasonable period of time, which will in any case not exceed six (6) months as from the event, circumstance or fact giving rise to a claim.

21.6 Operator accepts that Company cannot be held liable for:

- (a) any hacking or compromise of the security of the Operator Equipment or the Operator's network or the Active Network Layer;
- (b) any Event of Default on the part of Company if such Event of Default is exclusively attributable to (i) an error on the part of Operator or a third party appointed by it, (ii) any defect in goods not supplied by Company.
- (c) the content of the communications and data transferred over the FTTX Network; Operator, its Service Providers and its Subscribers are responsible for making the necessary back-ups of such data and information.
- (d) any unauthorized or inappropriate use or misuse of the Services and/or the FTTX Network by Operator, its Service Providers or its Subscribers, including any use against Company's instructions or policies.

21.7 Company does not assume any responsibility towards third parties, including but not necessarily limited to, employees and agents of Operator, and if any, Service Providers and Subscribers. Operator shall indemnify Company against any claim from a third

party, including but not limited to, claims from Service Providers and Subscribers who have a contractual relationship with Operator, which is caused by any breach by Operator of its obligations under this Agreement or a breach of an applicable law and regulation related to this Agreement.

21.8 Either Party confirms that it has and will maintain in effect throughout the Contract Term and for a period of three (3) years from the date of expiration or termination of this Agreement at its own expense such comprehensive insurance policies with a reputable third party insurance company as it is required to hold under regulations applicable to it and such other policies, at such coverage limits, as a prudent business conducting similar operation would maintain.

21.9 The insurance policies of either Party shall include, at least, the following minimum cover:

- (a) public liability insurance in respect of loss or injury to persons or damage to tangible property (including but not limited to Operator/Company Equipment and any other materials or things owned or supplied by a Party while being in the possession of or under the control of the other Party) with a minimum level of cover of ten (10) million EUR for any one claim and in all;
- (b) professional faults and errors insurance with a minimum level of cover of ten (10) million EUR for any one claim and in all; and
- (c) mandatory occupational (work) accidents insurance.

Either Party shall on request provide copies or satisfactory evidence of such insurance to the other Party.

## 22. Force Majeure

22.1 Neither Party shall be liable for any delay or failure to perform its obligations under the Agreement if such delay is due to a Force Majeure Event, other than payment of the Charges.

22.2 If the delay or failure by a Party to perform its obligations due to a Force Majeure Event exceeds sixty (60) consecutive calendar days, either Party may immediately terminate the Service Orders affected by such Event of Force Majeure by providing notice in writing to the other Party.

## 23. Access Point Portability

23.1 In the event that a Subscriber in respect of an Access Point requests to change its Service Provider ("Access Point Portability"), Parties agree to comply with the procedure set forth in Annex 3 Services Description and WLA.

## 24. Change Management

- 24.1 Amendments or adjustment of this Agreement shall be valid only if in writing between the Parties in the form of an amendment to the Agreement, respectively the Service Order.
- 24.2 If the laws and/or regulations applicable to Company, including a binding decision or binding ruling by a regulatory authority or court, in accordance with the applicable regulations, necessitate an amendment to this Agreement, Operator shall in any case be obliged to accept such amendments. Amendments shall apply from the time Company notifies Operator of the amendments. Operator may dispute that an amendment is necessary, in which case it shall duly notify Company of this fact within ten (10) Business Days.
- 24.3 Either Party may request the other Party by written notification to agree on an amendment of (any provision of) this Agreement during the term of this Agreement. This notification shall specifically, properly, reasoned and reasonably detailed indicate which amendments are requested.
- 24.4 The request for amendment of the Agreement referred to in article 0 may be made if:
- (a) the technology or operational procedures applied by either Party or either Party in the implementation of this Agreement are changed in such a manner that it significantly affects the obligations of either Party or Parties under the Agreement;
  - (b) there is any other change in circumstances which is of such a nature that the other Party cannot reasonably and equitably expect this Agreement to be maintained unchanged; or
  - (c) the Parties have agreed that a particular circumstance gives cause to amend the Agreement.
- 24.5 If Company wishes to modify the Agreement, it shall notify the BIPT of the desired modification at least 90 days before the foreseen date of its entry into force. Within that period, the BIPT shall notify Company whether or not it will take a decision on the proposed modification. This notification suspends the entry into force of the proposed modification.
- 24.6 At the latest within one month of receipt of the notification referred to in article 0, the addressee will respond in writing, duly substantiated and reasonably detailed, to the request for amendment.

- 24.7 Unless the addressee of the notification immediately agrees in full with the request for amendment, the Parties will enter into negotiations with each other as soon as possible after receipt of the response referred to in article 24.5.
- 24.8 The Parties shall endeavour to reach full agreement on the content within three months of the notification referred to in article 0, or within the period of time separately agreed in this Agreement for the subject matter concerned.
- 24.9 If the negotiations referred to in article 24.8 have not resulted in agreement within the three-month period provided for this purpose, the Parties shall state the reasons for their failure to reach agreement and set out exhaustively the points on which they have failed to do so. With regard to the other issues, from that moment on, the points on which there is agreement will apply between them. With regard to the points in dispute, the Dispute Resolution Procedure will apply.
- 24.10 The provisions set forth in this article 24 are without any prejudice to BIPT's right to impose or refuse any modification it deems necessary, and to determine the modalities for the entry into force of the modification, in accordance with the provisions of article 59 § 5 of the Electronic Communications Act.

## 25. Intellectual Property Rights

- 25.1 All intellectual property rights with regard to goods (including in this context in any case also products, services and software, everything in the broadest sense of the word) that a Party uses in the context of this Agreement remain vested in that Party or with the party from whom that Party has received the user rights to this. This Agreement does not imply that a license or other right is given or obtained with regard to any Intellectual Property Right, unless expressly agreed in writing.

## 26. Confidentiality

- 26.1 Except to the extent set out in this article 26 or otherwise expressly permitted in this Agreement, each Party shall:
- (a) treat the other Party's Confidential Information as confidential;
  - (b) use the other Party's Confidential Information solely for the specific purpose or purposes for which it was disclosed;
  - (c) not publish or otherwise disclose to any person the other party's Confidential Information without the owner's prior written consent other than to its subsidiaries, its Affiliates, the Company's direct and indirect shareholders, its and their investors or proposed investors (whether directly or through a fund or other entity), its officers, staff, agents, consultants and contractors, which have a need to know in connection with this Agreement and have agreed to be bound by a

- duty of confidentiality relating to the Confidential Information at least as stringent as the obligations and covenants in this article 26.1 and
- (d) take all action reasonably necessary to secure the other party's Confidential Information against theft, loss or unauthorised disclosure.
- 26.2 Each Party may disclose Confidential Information which would otherwise be subject to article 26.1 but only if it can demonstrate that:
- (a) such disclosure is required by law or by order of a court of competent jurisdiction or pursuant to a binding order or direction of a regulatory, competition, tax or fiscal authority or other authority or regulator; or
  - (b) the Confidential Information is lawfully in the receiving Party's possession without an obligation restricting disclosure at the time of receipt from the disclosing Party; or
  - (c) on a date subsequent to disclosure being made, the Confidential Information becomes part of the public domain, other than through a breach of article 26.1; or
  - (d) disclosure to the receiving Party's professional advisors is necessary for the purposes of receiving professional advice in relation to the Agreement, provided always that the onus shall be on the Party disclosing the Confidential Information to prove that the disclosure is pursuant to article 26.2.
- 26.3 All Confidential Information shall remain the property of the disclosing Party, shall only be used by the receiving Party for the execution of the Agreement and/or a Service Order, and such Confidential Information, including all copies thereof, shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the first request of the disclosing Party.
- 26.4 Upon termination of this Agreement, each party's right to use the other Party's right Confidential Information terminates.

## 27. Compliance Regulations and Policies

- 27.1 Each Party shall comply with all applicable Regulations at all times during the Contract Term, insofar as such Regulations apply to such performance. Each Party shall ensure it has, and shall have throughout the Contract Term of this Agreement, all necessary permits, licences, authorisations and consents necessary to perform its obligations under this Agreement.
- 27.2 Either Party shall advise the other Party immediately if it becomes aware of any (actual or potential) non-compliance by the other Party with any Regulations that are relevant in the context of this Agreement. If such an event occurs, the Parties shall promptly share with each other any information that they reasonably require for the purposes of any further investigation of such (actual or potential) non-compliance.

27.3 Operator shall be registered with the BIPT/IBPT as a provider of a public electronic communications network and publicly available electronic communications services;

## 28. Audit

28.1 Operator may (itself or via authorised agents appointed in accordance with article 28.3) audit Company's compliance with article 18 (Charges and invoicing), article 31 (Personal data and privacy), article 11 (Service quality: Service Levels and compensation) and the Service Levels as set out in Annex 4 of this Agreement, and Company may (itself or via authorised agents appointed in accordance with article 28.3) audit Operator's compliance with article 4 (Operator's Access to the FTTX Network), article 5.5 (Use of the FTTX Network), article 10 (Minimum Uptake Commitment), and article 31 (Personal data and privacy), with a frequency limited to once every Contract Year (subject to a minimum interval between two audits of 6 months), unless such additional audit is requested by a Regulator.

28.2 Where an audit is requested by a Regulator, an audit may be carried out upon a reasonable prior notice as indicated by such Regulator. In all other circumstances the auditing Party shall provide at least ten (10) Business Days' notice to the audited Party prior to any audit being conducted. The notification shall indicate the subject of the audit, the objectives thereof, the full name of the Auditor(s), and the expected duration of the audit.

28.3 The auditing Party may engage third party advisers ("Auditors") that are nationally recognised who are not competitors of the audited Party, to undertake any audit amongst the following general auditing companies: KPMG, PWC, EY, Deloitte or BDO. The auditing Party shall require such third-party Auditors to be bound to respect professional secrecy and impartiality.

28.4 In exercising its rights under article 28.1 the auditing Party shall use reasonable endeavours to:

- (a) ensure that any audit, inspection or verification is conducted during Business Days and ordinary office hours (or as otherwise agreed by the Parties from time to time);
- (b) as far as is commercially practicable, use reasonable efforts to avoid any disruption to the audited Party's business; and
- (c) procure that any Auditor (other than its personnel or a Regulator) enters into a non-disclosure undertaking. In the non-disclosure undertaking the Auditors undertake not to communicate to the auditing Party any information to which they may have access during the performance of the audit and which may be covered by confidentiality under article 26, with the exception of that information pertaining to any Event of Default in its contractual obligations



which are the subject of the audit. The auditing Party shall send a copy of the non-disclosure undertaking to the audited Party at least five (5) Business Days prior to the date of the audit.

- 28.5 In addition to its right to conduct an audit under article 28.1 the auditing Party may, by twenty-four (24) hours' notice, at any time (and immediately by notice if a Regulator requires it), require the audited Party to allow the auditing Party to provide information to audit the internal control environment of the audited Party used to provide the Services. For the avoidance if any doubt, such access shall not include any internal quality control and internal audit documents and reports which are intended to be used by the audited party only. Intrusion tests into the Company's FTTX Network shall not be authorised and are excluded from the framework of any audit.
- 28.6 Subject to article 28.7, all audits, inspections or verifications referred to in this article 28 shall be at the auditing Party's cost and expense.
- 28.7 Each Party shall bear its own costs in rendering assistance required under this article 28 provided that the assistance by Company under this article 28 shall be limited to three (3) Business Days per Contract Year to the extent that the audit remains within the limits set out in this Agreement.
- 28.8 The audited Party shall promptly and fully address in good faith any adverse issues arising from an audit which relate to the audited Party's performance of its other obligations under this Agreement including addressing any revealed discrepancies, errors, inaccuracies or oversights of any kind.
- 28.9 Company and Operator will ensure throughout any audit process that may be conducted pursuant to this article 28 that no communication of confidential and/or commercially sensitive information related to third parties is exchanged or becomes available to the other Party. Company and Operator will ensure that this obligation is complied with when the audit process is conducted by an authorised agent or a third party auditor.

## 29. Invalidity

- 29.1 If a provision, covenant or conditions of this Agreement and/or a Service Order is deemed to be invalid or unenforceable by a court, Company may replace such provision with a similar provision which is enforceable at law, without this affecting the legal validity of the remaining provisions in the Agreement and/ or the Service Order.

## 30. No Partnership

30.1 Nothing contained in the Agreement and/or a Service Order may be deemed to constitute the establishment of a cooperation, a partnership, association, joint venture, any other co-operative entity or agency Agreement between the Parties for any purpose.

## 31. Personal Data and Privacy

31.1 Each party shall provide to the other correct contact data, such as, for example, name, address and contact details in respect of the collaborators of either Company or Operator that are required for the performance of this Agreement. Any changes shall be notified to Company in writing in a timely manner after Operator has become aware of the change.

31.2 The processing of Personal Data by Company as a processor on behalf of Operator as a controller shall be conducted in accordance with the provisions of the data procession agreement as attached in Annex 5.

31.3 In the event Company provides the use of IP addresses in order to facilitate the rendering of the Service, such IP addresses shall remain the property of Company and may be amended at any time. Company shall notify any amendment in advance.

31.4 In the event the Agreement and/or the Access or Service is terminated, for whatever reason, Company may, where applicable, withdraw all identification data, IP addresses and/or codes immediately following the termination of the Agreement and/or Service.

## 32. Dispute Resolution Procedure

32.1 Any dispute, claim or controversy arising out of or in connection with this Agreement or any document agreed or contemplated as being agreed pursuant to the Agreement (unless the relevant document or agreement expressly provides otherwise) (a "Dispute") or the breach, termination or invalidity hereof, whether any such disputes are contractual or non-contractual in nature, shall be resolved in accordance with this article.

32.2 The Parties shall use all reasonable efforts to amicably resolve any dispute. The Parties shall, at a minimum, use the following procedure in the event a dispute arises with respect to any aspect of this Agreement. Upon written notification by one Party to

the other that a dispute exists, working level managers of the respective Parties shall attempt in good faith to work out a resolution within thirty (30) calendar days following the day of written notification of a dispute.

- 32.3 If an Agreement cannot be reached by the end of such period, the Parties shall prepare a document containing information that is designed to assist resolution of the dispute containing what has been agreed and what remains in dispute between them. No later than ten (10) Business Days thereafter, or at some other time as mutually agreed by the Parties, representatives of the Parties at CEO level shall meet to further attempt to resolve the matter or to agree on a course of action to resolve the matter. Such course of action may include use of formal dispute resolution processes, including but not limited to non-binding mediation or binding or non-binding arbitration.
- 32.4 In the event that the Parties are unable to resolve the matter or agree on a course of action at this executive level within thirty (30) calendar days after it has been referred under article 32, the matter will be settled by final and binding arbitration under the rules of CEPANI by one or more arbitrators appointed in accordance with said rules. The arbitration will take place in Brussels, Belgium. The language of the arbitration will be English. The foregoing is however without prejudice to the right of any of the Parties to seek specific performance (including through summary proceedings) in case of a breach by the other Party or Parties of any obligations binding upon them pursuant to this Agreement.
- 32.5 This article does not exclude the right of any Party to ask for interim relief before any court having jurisdiction.
- 32.6 Any dispute relating to or concerning the Agreement shall be governed by and construed exclusively in accordance with the laws of Belgium.
- 32.7 The provisions set forth in this article 32 are without any prejudice to the rights of any party to invoke the reconciliation procedure and/or the dispute resolution procedure set forth in respectively the Royal Decree of 5 May 2006 on a conciliation procedure for the Belgian Institute for Postal Services and Telecommunications, and the Royal Decree of 26 January 2018 laying down the dispute resolution procedure referred to in Article 4 of the Act of 17 January 2003 on the legal remedies and dispute resolution procedures further to the Act on the status of the regulator of the Belgian postal and telecommunications sectors.

### **33. Assignment**

- 33.1 A Party will not assign, transfer, or otherwise dispose of the Agreement or all or part of its rights and obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any attempted assignment without such prior written consent shall be void ab initio.
- 33.2 Each Party is authorised - without the consent of the other Party - to assign, transfer, or otherwise dispose of this Agreement or all or part of its rights and obligations under this Agreement, to Affiliates or to a successor in interest, to substantiate all of its business to which the subject matter of the Agreement relates, or to a successor to more than one half of its assets or to a majority owner subsidiary or a majority owner of said Party.

### **34. Miscellaneous**

- 34.1 All notices given under this Agreement shall be in writing and in English, unless the Parties agree otherwise or local law and regulations provide otherwise, and shall be sent by prepaid post or by electronic mail to the other Party at the address, or email address set out in this Agreement, or any other address notified from time to time including as updated in an Order.
- 34.2 Notices given under this Agreement are deemed to be given by the sender and received by the addressee: (a) if sent by prepaid post, three (3) Business Days from and including the date of postage; or (b) if sent by electronic mail, when sent to the addressee.
- 34.3 A Party, nor anyone acting on its behalf, shall publish, distribute or otherwise disseminate any press release, advertising or publicity matter having any reference to the other Party or the other Party's names, marks, codes, drawings, specifications or other references to the latter Party, unless and until such matter shall have first been submitted to and approved in writing by the first Party. Unless explicitly otherwise agreed upon in writing, a Party shall not publicly refer to the other Party for its own commercial purposes.
- 34.4 The Agreement replaces all prior agreements, arrangements and commitments between the Parties regarding the Access and Service(s) concerned.

Drawn up in [1] on [1] in two (2) originals of which each Party acknowledges having received a copy,

By Company _____	By Operator _____
Name:	Name:
Function:	Function:
Date:	Date:

By Company _____	By Operator _____
Name:	Name:
Function:	Function:
Date:	Date:

## **35. Table of Annexes**

**Annex 1 – Definitions and Interpretation**

**Annex 2 – Commercial Conditions and Charges**

**Annex 3 - Service Description and Working Level Agreement**

**Annex 4 - Service Level Agreement (SLA)**

**Annex 5 – Data Protection**