

UNIFIBER Reference Offer Commercial B2C

Annex 1

Definitions & Interpretation 20th of September 2023



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1. Definitions

In this Agreement:

"Active Customer" means a Customer which has an active service with active equipment located at Customer's premises and administered by a Service Provider leveraging the FTTx network of the Company;

"Access" means access to the FTTx Network as set out in article 4.1;

"Access Point" means a unique address within a Deployment Area to which a fiber optic connection cable can be offered via a Service Order to the indoor installation and may be equipped with a Fiber Termination Unit ("FTU"), whereby in a multi-dwelling unit ("MDU"), each apartment is counted as one Access Point. Access Points can have three statuses:

1. "Home Passed",
2. "Home Connected" or
3. "Home Activated".

"Access Register" means a register of all Access Points managed by Company with description of status and history for each Access Point that allows Company to register, monitor and manage the Access Points;

"Active Network Layer" refers to the electronic network equipment needed to bring the passive FTTx infrastructure alive, as well as the operational support systems required to commercialise an FTTx product;

"Affiliate" means with respect to any person, as the case may be, any person that Controls, is under common Control with, or is Controlled by such person;

"Agreement" means this Master Services Agreement together with its Annexes and all Service Orders entered into hereunder, which shall constitute an integral part of the Agreement;

"Area POP" means a Point of Presence, physical area where passive Operator Equipment may be connected to the FTTx Network (depending on availability of space) and where each point-to-point connection terminates. The Area POP is connected in a ring architecture, providing access to the Central POP;

"Business Day" means any day (other than a Saturday or Sunday) when banks in Brussels are open to the general public for the transaction of normal business in Belgium;

"Central POP" means the physical area where active Operator Equipment at the POP location will be connected to the FTTx Network. From the Central POP each Area POP is connected in a ring architecture;

"Charges" means the fees and charges payable to Company in accordance with Annex 2;

"Cohort" means any of the following:

Cohort 1 consists of all the Deployment Areas in respect of which the Delivery occurred between the Initiation Period Expiry Date and the end of the second Working Year following the Initiation Period Expiry Date (such period "Cohort 1 Period");

Cohort 2 consists of all the Deployment Areas in respect of which the Delivery occurred during the Working Year immediately following the expiration of the Cohort 1 Period (such calendar year "Cohort 2 Period");

Cohort 3 consists of all the Deployment Areas in respect of which the Delivery occurred during the Working Year immediately following the expiration of the Cohort 2 Period (such calendar year "Cohort 3 Period");

Cohort 4 consists of all the Deployment Areas in respect of which the Delivery occurred during the Working Year immediately following the expiration of the Cohort 3 Period (such calendar year "Cohort 4 Period");

Cohort 5 consists of all the Deployment Areas in respect of which the Delivery occurred during the two (2) Working Years immediately following the expiration of the Cohort 4 Period (such calendar year "Cohort 5 Period");

"Cohort Period" means Cohort 1 Period, Cohort 2 Period, Cohort 3 Period, Cohort 4 Period or Cohort 5 Period and **"Cohort Periods"** means Cohort 1 Period, Cohort 2 Period, Cohort 3 Period, Cohort 4 Period and Cohort 5 Period;

"Cohort Uptake Start Date" means, in respect of a Cohort, the first day of the Working Year immediately following expiration of the Cohort Period for that Cohort;

"Confidential Information" means all information whether conveyed orally, in writing, in machine readable form or otherwise, including without being limited thereto, designs, concepts, drawings, ideas, inventions, specifications, techniques, discoveries, models, data, source code, object code, documentation, diagrams, flow charts, research, development, processes, procedures, know-how, new product or new technology information, marketing techniques and materials, marketing plans, timetables, strategies and development plans (including prospective trade names or trademarks), pricing policies, information which relates to a Party's and/or any of its Affiliate's business, financial situation, equipment, services, developments, trade secrets, know-how, personnel, suppliers, customers, prospects or end-users of each Party's customers, including Personal Data (whether or not designated as "confidential information" by the disclosing party) together with all information derived from the above, the existence and terms of this Agreement and all information designated as confidential or which ought reasonably to be considered confidential;

"Contract Year" means each consecutive twelve (12) month period from the Effective Date;

"Company Equipment" means the Equipment used and operated by Company to provide Access and the Services;

"Contract Date" means the date of signature of the Master Services Agreement and its Annexes;

"Contract Term" means a period starting on Contract Date and ending upon the later of (i) the end of the Initial Term and (ii) the end of the (last) Renewal Term;

"Customer" means the Subscriber or Service Provider with whom Operator has a contractual agreement for broadband connectivity and/or ancillary services;

"(Initial) Delivery" and **"(Initial) Delivery Date"** means the date at which eighty percent (80%) of the number of Homes Passed as designed for a Deployment Area have become actual Homes Passed as confirmed by Company through a "Ready for Service" notification as described in Annex 3. The term "Delivered" will be construed accordingly;

"**Deployment Area**" means a cluster of one or more Fiberzones which have been identified by the Company as an area within the Footprint for deployment of the FTTx Network, following detailed network design;

"**Dispute**" has the meaning given to it in article 32;

"**Dispute Resolution Procedure**" means the procedure for the resolution of Disputes specified in article 32;

"**Drop Cable**" means the physical fiber optic cable located on the Subscriber end which connects the Access Point to the FTTx Network;

"**Event of Default**" means (i) any breach by a Party of any of its material obligations under this Agreement or (ii) any breach by Party of one or more non-material obligation(s) under this Agreement occurring in each of at least 3 consecutive months;

"**Fiber Termination Unit**" or "**FTU**" means a passive socket outlet which is installed at the Access Point and allows Operator to connect Operator Equipment (Customer Premises Equipment or CPE) to the FTTx Network;

"**Fiberzone**" means an aggregated cluster of at least approx. 2,500 Homes Passed (as designed) in the Footprint that are covered by one (1) Area POP;

"**Final Delivery**" and "**Final Delivery Date**" of a Deployment Area means the date as from which Company achieves to connect ninety-five (95%) of the number of Homes Passed as designed for a Deployment Area have become actual Homes Passed as accepted or deemed accepted by Operator;

"**Footprint**" means the totality of all NIS zones within the Walloon Region of Belgium within which the FTTx Network will be deployed;

"**Force Majeure Event**" means any occurrence beyond a Party's reasonable control affecting the performance of its obligations under the Agreement, including but not limited to a refusal or failure by competent authorities to grant the necessary authorisations and/or permits in good time, a failure to obtain access to buildings (in a timely manner), a failure to organise the dependencies by or on behalf of the Operator (in due time), labour disputes, time lost through frost, epidemic, pandemic, war, riot, civil disturbance, sabotage, cable cuts, power blackouts (including those blackouts arising from the application of a power cut plan drawn up by the authorities), adverse weather conditions;

"**FTTx Network**" means the *fiber* access network to which Operator shall be granted Access for purposes such as Fiber-to-the-Home, Fiber-to-the-Premises, Fiber-to-the-Building, Fiber-to-the-Site (5G), IoT and Smart Cities as described in Annex 3, in accordance with the provisions of this Agreement. The FTTx Network is designed, built, operated and maintained by Company;

"**Good Industry Practice**" means the exercise of reasonable skill, care, prudence, efficiency, foresight and timeliness which would be expected from a reasonably and suitably skilled, trained and experienced person providing services similar to the Services to a customer similar to the Operator;

"**Home Activated**" refers to the Homes Connected that have an active product with an Active Customer;

"Home Connected" means the Homes Passed connected to the FTTx Network through a Drop Cable and an FTU, which is eligible to be activated by Operator;

"Home Passed" means any Access Point in the Footprint that is eligible to be connected to the FTTx Network through the installation of a Drop Cable and an FTU. For the avoidance of doubt, in case of MDUs where the façade deployment to the MDUs is not convenient the "Home Passed" comprises as the case may be the Drop Cable into the basement for smaller MDUs and the vertical cabling up to the floor box for large MDUs;

"Infrastructure" means the physical elements that are required to build the FTTx Network, including the ducts and poles on which the FTTx Network is deployed;

"Intellectual Property Rights" means all (i) patents, patent applications, patent disclosures and inventions (whether patentable or not), (ii) trademarks, service marks, trade dress, trade names, registered designs, logos, corporate names, rights in designs, internet domain names, and registrations and applications for the registration thereof together with all of the goodwill associated therewith, (iii) copyrights and copyrightable works (including mask works) and registrations and applications thereof, (iv) computer software programs (including source code and object code), data, database rights, databases and documentation thereof, (v) trade secrets, inventions and other confidential information (including ideas formulas, compositions, inventions, improvements, know-how, manufacturing and production processes and techniques, research and development information, drawings, specifications, blueprints, flowcharts, schematics, protocols, programmer notes, designs, design rights, developments, discoveries, plans, business plans, proposals, technical data, financial and marketing plans and customer and supplier lists and information), and (vi) all other forms of intellectual property;

"Key Performance Indicators" means those Service Levels identified as Key Performance Indicators in Annex 4;

"Market Disruption in the Fixed Broadband Market" means a material disruption in the fixed broadband market resulting in a reduction by five (5) percentage points of Operator's market share in the fixed broadband market in a Cohort over a period of twelve (12) months, justified by objective evidence from independent parties;

"Operator Equipment" means the equipment installed and operated by Operator linked to the FTTx Network and equipment that Operator shall install at the Access Points;

"Optical Distribution Frame" or **"ODF"** means the distribution frame in a rack in a POP Location installed by respectively Company and Operator to terminate each individual Home Activated;

"Passive Network Layer" means the physical elements that are required to build the FTTx Network. This includes a.o. the optical fiber cables, fiber enclosures, optical distribution frames, patch panels and splicing shelves;

"Penetration Rate" means the number of Homes Activated divided by the number of Homes Passed as designed for a Deployment Area, expressed as a percentage;

"Penetration Target" means a Penetration Rate of the FTTx Network on a per Cohort basis, equal to at least 55% as of the seventh (7th) anniversary and 70% as of the fifteenth (15th) anniversary of the Final Delivery of such Deployment Area;

"Personal Data" has the meaning set out in Annex 5;

"Point-to-Point" or **"PTP"** means a point-to-point fiber connection which runs between the FTU at a Access Point and the Area POP. Each individual connection is made up of a dedicated fiber pair;

"POP Location" means the space in the Central POP or Area POP where Operator shall install Operator Equipment and shall gain Access to the FTTx Network;

"Premise" means a home or place of business. In a multi-dwelling unit ("MDU") each apartment is therefore counted as one;

"Regulator" means a government department or regulatory authority, statutory or other body, entity or committee, which, whether under law, statute, rule, regulation, code of practice or otherwise, is entitled to regulate, investigate or influence the matters dealt with in this Agreement and / or the Parties to this Agreement (as the case may be), including any telecom regulatory, competition or tax authority;

"Regulations" means any laws, regulations, decisions, regulatory constraints, obligations or rules (including codes of conduct and statements of principle incorporated and contained in such rules, the regulatory framework on electronic communication networks and services in Belgium, and the Electronic Communications Act) that are applicable to, as the case may be, (i) a Party with respect to the existence, execution or operation of the Agreement, (ii) Company with respect to the provision of the Access and the Services, (iii) Operator with respect to the payment for the Services, the use of the Access and the Services and the provision of Retail Services and Wholesale Services (as applicable) from time to time;

"Renewal Period" shall have the meaning given to that term in article 16;

"Retail Services" means Fiber-to-the-Home/Premises/Building retail services offered by Operator or a Service Provider to one or more Subscribers;

"Services" has the meaning set out in article 2.2;

"Service Levels" means the service levels set out in Annex 4;

"Service Order" means an order to grant Access and/or provide Services in accordance with Annex 3;

"Service Provider" means a customer of Operator (including a telecoms operator) who purchases Wholesale Services from Operator and offers Retail services to the Subscriber;

"Service Term" means the term of a Service Order from ready for service date of the relevant Service;

"Subscriber" means an end customer of Operator or Service Provider;

"Suspending or Terminating Party" has the meaning given to it in article 17;

"Suspension or Termination Event" has the meaning given to it in article 17;

"Uptake Rate" means the number of Homes Activated divided by the number of Homes Passed as designed for a particular Deployment Area, Cohort or the Footprint (as the case may be), expressed as a percentage;

"Uptake Commitment" means Operator's obligations in article 10;

"Wholesale Services" means the provision of a Fiber-to-the-Home/Premises/Building wholesale services by Operator to a Service Provider.

2. Interpretation

1. Headings and titles used in this Agreement are for convenience only and shall not affect the construction or interpretation of this Agreement.
2. The words “include”, “includes” and “including” and all forms or derivations thereof shall mean including without limitation.
3. A time of day is a reference to Brussels time and a reference to a day (including within the term Business Day) shall mean a period of twenty-four (24) hours running from midnight to midnight; for the calculation of a period of time, such period shall start the next following day on which the event triggering such period of time has occurred and the expiry date shall be included in the period of time. If the expiry date is not a Business Day, the expiry date shall be postponed until the next Business Day. All periods of time consisting of a number of months (or years) shall be calculated from the next following day on which the event triggering such period of time has occurred until the eve of the same day in the following month(s) or year(s).
4. When using the words “*shall cause*” or “*shall procure that*” (or any similar expression or derivation thereof), the Parties intend to refer to the Belgian legal concept of “*sterkmaking*”.
5. When using the words “*shall use its best efforts*” or “*shall use its best endeavours*” (or any similar expression or derivation thereof), the Parties intend to refer to the Belgian legal concept of “*middelenverbintenis*”.
6. Whenever Dutch translations of certain words, expressions or legal concepts are contained in the Agreement, such translation shall be conclusive in determining the legal concept(s) to which Parties intended to refer. English language words used in this Agreement intend to describe Belgian legal concepts only and the consequences of the use of those words in English law or any other foreign law shall be disregarded.
7. In this Agreement, a reference to:
 - an article or Annex, unless the context otherwise requires, is a reference to an article of or annex to this Agreement;
 - a “*person*” includes a reference to any individual, firm, company, corporation or other body corporate, government, state, agency of a state, joint venture, association, partnership, works council or employee representative body (in each case whether or not having separate legal personality);
 - general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words.
8. The Delivery, respectively Final Delivery of a Deployment Area shall be accepted or deemed to be accepted by Operator upon fulfilment of both conditions mentioned below:
 - (1) Operator has received a delivery notice by Company stating that Company has deployed eighty percent (80%), respectively ninety-five percent (95%) of the Deployment Area by means of Homes Passed available for ordering via Availability Check tooling in accordance with the provisions of Annex 3; and

- (2) Operator has confirmed to Company Operator's acceptance that the conditions of eighty percent (80%), respectively ninety-five percent (95%) deployment of the Deployment Area are fulfilled or Operator has not responded within twenty (20) Business Days following Operator's receipt of the delivery notice mentioned in section 1) immediately above. "
9. If there is any conflict or inconsistency between a term in the main part of this Agreement and a term in any of the Annexes or other documents referred to or otherwise incorporated into this Agreement, the following order of priority shall apply (a document higher on the list prevailing over a document lower on the list):
- 1) The Agreement (excluding the Annexes);
 - 2) Annex 1 – Definitions and Interpretation;
 - 3) Annex 2 - Commercial Conditions and Charges;
 - 4) Annex 3 - Service Description and Working Level Agreement (WLA);
 - 5) Annex 4 - Service Level Agreement (SLA);
 - 6) Annex 5 – Data Processing Agreement (DPA); and
 - 7) The other documents referred to in this Agreement.

If the conflict remains incapable of resolution, the Parties shall negotiate in good faith to amend the conflicting provisions so as to render them consistent with the original intent of the Parties. If the Parties cannot reach an agreement, the conflicting provisions shall be severed from the document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.