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interoute standard terms and conditions

version 2 270104 (MSA)

1. DEFINITIONS

“**Additional Terms**” means the terms applicable to each service, as contained or deemed to be contained in Schedule 2 from time to time...

“**Agreement**” means this Master Agreement

“**Associated Company**” in relation to a Party means any subsidiary or holding company or any subsidiary of any such holding company.

“**Change Order**” means a variation to an existing Purchase Order which has been signed and accepted by Interoute.

“**Charges**” means the charges set out on the Purchase Order which are subject to an annual review after the Initial Term.

“**Customer**” means the person, firm, company or corporation or other entity, as identified in the Master Agreement who purchases Products and/or Services.

“**EURIBOR**” means in relation to any amount owing by the Customer on which interest for a given period is to accrue, the arithmetic mean (rounded upwards to four decimal places) of the rates being offered to prime banks in the European interbank market for deposits in Euro of an equivalent amount at or about 11.00 a.m. in London on the date on which EURIBOR is to be determined.

“**ICP**” means the Index of Consumer Prices as published by the Hungarian Statistics Office.

“**Initial Term**” with respect to a Purchase Order means the 12 month period from the Service Commencement Date, unless amended in the Purchase Order or the Purchase Order is terminated in accordance with this Agreement.

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

“**Interoute**” means Interoute Communications Limited (company number 4472687) and any Associated Company that enters into a Purchase Order under this Agreement.

“**Interoute Network**” means the communication network owned and/or provided by Interoute for the provision of Services.

“**Interoute Standard Terms & Conditions**” means these terms and conditions.

“**Licensed Software**” means computer software in object code format made available to Customer by Interoute for the use of any Products and/or Services.

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

“**Planned Outage**” means any routine maintenance or upgrade work, which may affect the availability of Service... Interoute will endeavour to give the Customer at least ten (10) days prior notice of any Planned Outage which will affect the availability of Service and will endeavour to perform such works during the hours in London of 23.00 Saturday and 06:00 Sunday.

“**Products**” means the equipment or materials sold, licensed or leased to the Customer by Interoute.

“**Purchase Order**” means an order for specific Products and/or Services by Customer, which has been signed and accepted by Interoute, or a Change Order.

“**Services**” means any telecommunications or related services provided to Customer by Interoute under this Agreement.

“**Service Commencement Date**” means the date from which the Service is provided to Customer.

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

“**Term**” means the period from the date of the Purchase Order until terminated in accordance with Clause 2.

“**VAT**” means Value Added Tax as set out in the respective Hungarian regulations. “**Withholding Tax**” means any amount on account of tax on sources of income which the payer is obliged to deduct from payments due to the recipient and account for to any tax authority.

“**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 09:00 to 17:00 in London each Working Day.

2. TERM AND TERMINATION

2.1. A Purchase Order shall have legal effect from the date the Purchase Order is signed and accepted by Interoute. At the expiration of the Initial Term, the Purchase Order shall automatically be renewed for a further period of twelve (12) months unless either Party gives not less than sixty (60) days written notice to expire on the end of the Initial Term or at the end of the next following anniversary of the date of the Purchase Order.

2.2. If Customer fails to make any payment due under the Purchase Order in accordance with the terms and conditions set out in this Agreement and fails to do so within 72 hours following written notice by Interoute, Without liability or penalty, Interoute may suspend provision of any or all of the Services until payment is made or, at Interoute's sole option, terminate this Agreement or any Purchase Order with immediate effect. Customer shall remain liable to pay the Charges during any period of suspension.

2.3. A Party may terminate this Agreement on written notice with immediate effect if the other Party ceases to trade (either in whole, or as to any part involved in the performance of this Agreement), or becomes insolvent, has a receiver or manager appointed of the whole or any part of its assets or business, or any enforceable order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction) under the laws applicable to that Party.

2.4. Either Party may terminate a Purchase Order with immediate effect if the other commits a material breach of this Agreement and, if capable of remedy, such breach is not remedied within thirty (30) days

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following a written notice by the non breaching Party to the other Party. Where such breach is not capable of remedy, the non breaching Party may terminate the Purchase Order by written notice with immediate effect.

2.5. In the event that a Purchase Order is terminated (other than for Interoute's breach), then if termination occurs prior to the Service Commencement Date for any Service, Customer shall reimburse Interoute for all reasonably incurred costs for the implementation of such Service; or (ii) if the termination occurs after the Service Commencement Date for that Service, Customer shall pay all amounts in respect to the Services provided prior to the date of termination and agrees to pay the minimum commitment that would have been payable by the Customer to the end of the Initial Term.

2.6. On the termination or expiry of a Purchase Order or this Agreement, without prejudice to any other rights accrued, the following clauses shall survive in addition to those whose provisions by their content or nature will so survive:

Equipment and Access, Liability and Indemnity, Confidentiality, Press Announcements and Governing Law and Jurisdiction.

3. PAYMENT AND INVOICING

3.1. Interoute will invoice all Charges at the frequency set out in the Purchase Order and the Customer shall pay all amounts in advance, within thirty (30) days of the date of the invoice unless stated otherwise in the invoice or the Purchase Order. With respect to installation charges and/or non recurring initial charges, Interoute will invoice such charges upon signature by both parties of the relevant Purchase Order and Customer shall pay such charges within 30 days such signature, unless otherwise stated in the Purchase Order.

3.2. On the expiry of the Initial Term or each subsequent anniversary of the Initial Term, Interoute will review the Charges and may increase any Charge in line with the Hungarian 15 ICP index for the previous twelve (12) months.

3.3. All amounts in respect of Charges shall be paid in forints or as specified on the Purchase Order and shall be paid free of any deduction or withholding (save to the extent provided for in Clause 4.2 below, or required by applicable law). For the avoidance of doubt, such payments shall be free of any bank charges. To the extent that any deduction or withholding is required by applicable law, Customer shall increase the amount of such payment to ensure that Interoute receives the amount it would have received had no deduction or withholding been required.

3.4. 3.4 In the event that Customer in good faith disputes any portion of the charges contained in an invoice, Customer will pay the undisputed portion of the invoice on the due date in full and

submit a documented claim for the disputed amount. As a minimum such documented claim shall set out the amount in dispute, the reason for such dispute and provide such evidence as shall be reasonably necessary to support the dispute. The Parties shall negotiate in good faith in an attempt to resolve the dispute, provided that if the dispute cannot be resolved within thirty (30) days of the date of the invoice, either Party may institute legal proceedings.

3.5. Interoute may levy an additional service charge on any amount invoiced and not paid at the rate of defined in the Hungarian Civil Code (whether before or after judgement) from (but not including) the due date for payment of such invoice, until the date on which such invoice is paid in full. Such charge shall accrue day by day, shall be compounded and payable on demand.

3.6. As a condition of Interoute's acceptance of any Purchase Order or the continuation of delivery of any Products and/or Services, Interoute may require Customer to provide a deposit or bank guarantee in an amount determined by Interoute from time to time in its sole discretion. Such deposit or bank guarantee shall be held by Interoute as security for the payment of Charges and any other amounts due under this Agreement. On the termination of this Agreement, Interoute may apply such deposit or bank guarantee to any amounts owed by the Customer to Interoute with any remaining credit balance being refunded to Customer.

4. TAXES

4.1. All fees for Services and any other fees or charges under this Agreement are exclusive of Value Added Tax (VAT) or any similar indirect or sales taxes that may be applicable. If any VAT or similar sales tax is chargeable by Interoute, this will be added to the agreed price (by way of separate invoice, if those charges have already been invoiced) and shall be paid in addition by the Customer.

4.2. Neither Party shall be liable for the other party's taxes based on income (including gains from the disposal of capital).

4.3. Any other taxes or levies arising from the use of the capacity (including local profits taxes) shall be the liability of the Customer.

4.4. Any stamp duties or registration taxes or other taxes relating to documentation of the individual transactions entered into under this contract shall be borne by the Customer.

5. COMPLIANCE WITH LAWS

5.1. Interoute shall obtain all necessary licences, approvals, permits and consents required by any applicable governmental or regulatory authority or body necessary for Interoute to provide the Products and/or Services to Customer.

5.2. Customer shall obtain all necessary licences, approvals, permits and consents required by any applicable governmental or regulatory authority or body necessary for Customer to use the Products and/or

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Services. Customer shall use the Products and/or Services in accordance with and subject to all provisions of applicable law.

5.3. Customer shall at all times use the Services in accordance with Interoute's then current Acceptable Use Policy, as amended from time to time, and which is available on Interoute's web-site (www.interoute.com).

5.4. Each Party will comply with all relevant laws (including, but not limited to, those relating to data protection) in providing or using (as appropriate) of the Products and/or Services.

6. SOFTWARE

6.1. If and to the extent that the Customer requires the use of Licensed Software in order to use the Products and/or Services, the Customer will be provided with a non-exclusive non-transferable licence to use such Licensed Software solely for its internal purposes and solely to the extent required to use the Products and/or Services. To the extent such Licensed Software is sourced from a third party provided, such licence shall be subject to the terms of the applicable software licence embedded in the relevant Products.

6.2. Customer will not, and shall use all reasonable endeavours to ensure that others do not:

6.2.1. obtain or claim any ownership in any Licensed Software (or in any derivation thereto or improvement thereof);

6.2.2. copy the Licensed Software except as agreed in writing by Interoute and in accordance with the terms of the applicable software licence;

6.2.3. save as permitted by law, reverse engineer, decompile or disassemble Licensed Software;

6.2.4. sell, lease, licence or sublicense the Licensed Software;

6.2.5. create, write or develop and derivative software or any other software based on the Licensed Software;

6.2.6. take any action prohibited by the owner of the Licensed Software.

7. EQUIPMENT AND ACCESS

7.1. In the event that Interoute requires to locate certain electronic equipment on the Customer's premises to enable Interoute to provide the Services then subject to the provisions of this Agreement, Customer hereby grants to Interoute the right to locate, install and operate such Interoute equipment at the Customer's premises and to access the Customer's premises as permitted herein 24 hours a day, 7 days a week in accordance the access procedures agreed between the Parties for the purpose of installing, inspecting and maintaining such equipment.

7.2. Customer shall furnish reasonable, appropriate environmental conditions for the Interoute equipment (including, without limitation, protection from weather, security, availability of power, including a back-up generator, ventilation, heating, and cooling). If Customer reasonably requires to

temporarily disconnect the power supply to the Interoute equipment, except in an emergency, Customer will give Interoute at least fourteen written days notice in advance of such disconnection and will use all reasonable endeavours to ensure the minimum of disruption. Interoute shall not be liable for disruption to Services under this clause.

7.3. Customer, its sub-contractors and agents shall not interfere with any Interoute equipment located on the Customer premises.

7.4. On the expiry or termination of a relevant Purchase Order or this Agreement, the Customer shall allow Interoute reasonable access, without charge, to its premises to recover the Interoute equipment.

8. NATURE OF RIGHTS

8.1. Save to the extent expressly set out in this Agreement, nothing in this Agreement shall vest in or confer on the Customer:

8.1.1. any patent or any other right or licence in the intellectual property arising from or relating to any apparatus, system or method used by Interoute or by the Customer in connection with the use of the Products and/or Services; or

8.1.2. any ownership or property rights or liens of any nature in or over Interoute's equipment or property.

8.2. All rights granted hereby and obligations entered into under this Agreement are purely contractual. Nothing in this Agreement shall grant to the Customer any ownership, proprietary or possessory rights in any of the subject-matter of the Agreement.

9. ASSIGNMENT

9.1. Except as provided below neither Interoute nor the Customer may at any time assign, sub-contract, sub-licence or otherwise dispose of all or any of its rights or obligations under this Agreement.

9.2. Either Party may assign any of its rights and obligations under this Agreement to any of its Associated Companies (or its or their successors, through merger or acquisition of substantially all of their or its assets), with the prior written consent of the other Party (not to be unreasonably withheld or delayed).

9.3. Interoute may sub-contract any or all of its obligations under this Agreement to a third party, provided that Interoute shall remain liable to the Customer for the performance of those obligations.

10. LIABILITY AND INDEMNITY

10.1. Except as otherwise set forth in this Agreement including its Schedules, in addition to the Service Credits Interoute shall be liable to the Customer for any decrease in the value of the existing assets of the Customer. Interoute shall not be liable for lost profits, loss of data.

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10.2. The statute of limitation for claims arising from any reason for which claims may be asserted is one (1) year commencing on the date of the event serving as basis for such claim.

10.3. The liability of Introute shall be limited to the Monthly Charge payable by Customer under this Agreement ; this limitation of liability is agreed considering the Charges payable for the Service. The liability of Interoute for death, personal injury, damages caused by criminal act, wilful or negligent conduct shall be unlimited in accordance with Section 314 (1) of the Hungarian Civil Code.

10.4. NOTHING IN THIS CLAUSE 10 SHALL EXCLUDE OR LIMIT THE LIABILITY OF CUSTOMER TO:

- a. PAY THE CHARGES; OR
- b. REPAIR (OR IF REPAIR IS NOT PRACTICABLE, REPLACE) ANY TANGIBLE PHYSICAL PROPERTY INTENTIONALLY OR NEGLIGENTLY DAMAGED BY THE CUSTOMER OR ITS EMPLOYEES WHILST ON INTERROUTE'S PREMISES

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

11. INTELLECTUAL PROPERTY INDEMNITY

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

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

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

12. FORCE MAJEURE

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

13. SEVERABILITY

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

14. WAIVER

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

15. NOTICES

Each notice, demand, certification or other communication given or made under this Agreement shall be in writing and shall be delivered by hand or sent by courier or facsimile transmission to the registered address of the Party or such other address as each Party may notify in writing to the other. Any such notice, demand or other communication shall be deemed to have been received, if delivered by hand, at the time of delivery or, if posted, on the expiration of three (3) Working Days after the notice has been provided to the courier company, or, if sent by facsimile, on the date confirmation of successful transmission is received. .

16. AMENDMENTS

This Agreement and any of its provisions may be altered or added

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to only by Agreement in writing signed by a duly authorised person on behalf of each of the Parties.

17. CONFIDENTIALITY

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

18. PRESS ANNOUNCEMENTS

- 18.1 No press or public announcements, circulars or communications relating to this Agreement or the subject matter of it shall be made or sent by either of the Parties without the prior written approval of the other Party such approval not to be unreasonably withheld or delayed.
- 18.2 Notwithstanding clause 18.1, Interoute may refer to the Customer in its marketing materials, including, without limitation, on its website and in correspondence with prospective customers.

19. ASSOCIATED COMPANY ORDERS AND RIGHTS OF THIRD PARTIES

- 19.1 Customer's Associated Companies may place Purchase Orders under this Agreement provided that Customer shall remain fully liable for the performance of the Purchase Order and this Agreement by such Associated Company. Unless expressly stated otherwise in the Purchase Order, the terms of this Agreement will apply to Purchase Orders placed by Customer's Associated Companies. Interoute may nominate any of Interoute's Associated Companies to accept a Purchase Order or perform Interoute's obligations hereunder.

20. GENERAL

- 20.1. Interoute shall have no liability or responsibility for the contents of any communications transmitted via the Products and/or Services or for any information or content on the Internet, and Customer will hold Interoute harmless from any and all claims related to such content or information as a result of the provision or use of the Products and/or Services.
- 20.2. Save as expressly agreed in writing by Interoute, Interoute does not undertake to transmit messages but offers the use of its Products and/or Services. Interoute does not warrant that any Service shall be continuous or fault free or that they will interoperate effectively with Customer equipment or the Customer's network...
- 20.3. Interoute shall have no liability for any transaction, which the Customer may enter into with a third party using the Products and/or Services.
- 20.4. Any terms and conditions comprised in a Customer order form, purchase order (other than a Purchase Order), letter or other document generated or managed by the Customer shall be null and void with respect to the Products and/or Services provided hereunder.

21. 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

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among the Parties prior to this Agreement except as expressly stated in this Agreement.

22. GOVERNING LAW AND JURISDICTION

This Agreement shall be construed in accordance with and shall be governed by the laws of Hungary, and shall be subject to the non-exclusive jurisdiction of the competent Hungarian courts.