

## Annex 1

### EITC General Terms and Conditions (*online*)

1. **Scope and Overview of the Agreement.** The Agreement consists of: (a) the EITC General Terms and Conditions (hereinafter, the "Standard Terms"); and (b) the Service Order (including the Service Schedule(s), (c) the Credit Documentation (if any) and (d) the Addendum (if any)) to the exclusion of any purchase order, confirmation, terms and conditions or other document issued or provided by Customer ("Agreement").
2. **Definitions.** In the Agreement the following terms and phrases will have the following meanings:
  - 2.1. **"Addendum"** means the specific agreement (if any) by which EITC may agree to vary the terms of the Agreement or provide specific obligations in relation to credit arrangements or the provision of Security. An Addendum may pertain to one or more Agreements.
  - 2.2. **"Affiliate"** means any entity or person Controlled by, Controlling, or under common Control with, a Party.
  - 2.3. **"Authorisations"** means any and all permissions, rights, licences, licence conditions, consents, approvals, authorities, registrations, filings, agreements, notices of non-objection, notarisations, certificates, exemptions and any and all analogous authorisations which may be required from time to time by Law or by any regulator or other competent authority or government agency.
  - 2.4. **"Business Day"** shall mean every day excluding Fridays, Saturdays, and any national holidays in the United Arab Emirates.
  - 2.5. **"Cause"** is defined as a breach by the other Party of any material provision of the Agreement.
  - 2.6. **"Charges"** means all fees and charges payable by Customer to EITC including monthly recurring, usage based, one time, set up, equipment or other charges as specified in the Service Order (or elsewhere in writing) and may include third party charges.
  - 2.7. **"Confidential Information"** is defined as information (in whatever form) (i) designated as confidential; (ii) relating to the Agreement or to potential changes to the Agreement; (iii) relating to the Party's business affairs, networks, customers, products, developments, trade secrets, know-how or personnel (including in the case of Customer, Customer Data); or (iv) received or discovered during the term by a Party (including through an Affiliate or other agent) which should reasonably have been understood as confidential to the Party (or one of its Affiliates or subcontractors), either because of legends or other markings, the circumstances of disclosure or the nature of the information itself. Confidential Information does not include information that: (a) is in the possession of the receiving Party free of any obligation of confidentiality at the time of its disclosure; (b) is or becomes publicly known other than by a breach of this provision; (c) is received without restriction from a third party free to disclose it; or (d) is developed independently by the receiving Party without reference to the Confidential Information.
  - 2.8. **"Control"** means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any such entity whether through the ownership of voting securities, by contract, or otherwise.
  - 2.9. **"Credit Documentation"** includes but is not limited to any documentation (including but not limited to an Addendum) by which credit arrangements are provided by EITC to Customer which documentation may include variations to payment terms or arrangements with respect to Security. Credit Documentation may pertain to one or more Agreements.
  - 2.10. **"Customer"** means the Party identified as Customer on the Service Order.
  - 2.11. **"Customer Data"** means data transmissions (including IP addresses, date, time and duration of data transmissions, and other data necessary for the establishment, billing or maintenance of the transmission), data containing personal and/or private information of Customer, its employees or authorised End Users of the Service, and other data provided to or obtained by EITC, its EITC Affiliates and their respective agents in connection with the provision of Service.
  - 2.12. **"Customer Equipment"** means equipment, systems, cabling and facilities provided by Customer and used in conjunction with the CPE and the Service Equipment (as applicable) in order to obtain and/or use the Service.
  - 2.13. **"CPE" or "Customer Premises Equipment"** means equipment (whether owned or rented by Customer), which is located at the Customer Site for the purposes of receiving the Service.
  - 2.14. **"Customer Site"** means the property or building specified in the Service Order to which the Service will be provided and may include, if the context requires, third party or EITC premises at which CPE or Customer Equipment is colocated.
  - 2.15. **"Effective Date"** means the date upon which EITC has accepted a Service Order.
  - 2.16. **"EITC", "Supplier" or "du"** means Emirates Integrated Telecommunications Company PJSC, registered at the Dubai Department of Economic Development with commercial register number 77967 and with its main office at Dubai Media City, Al Salam Tower, PO Box 502666, Dubai, United Arab Emirates, and will where the context requires, include EITC Affiliates and Provisioning Entities.
  - 2.17. **"EITC Indemnities", "Supplier Indemnities" or "du Indemnities"** means EITC, its Affiliates and Provisioning Entities and their respective, employees, officers, agents and subcontractors.
  - 2.18. **"Emergency Works"** means works undertaken by EITC to repair a fault in its Network, equipment or facilities as a result of any unplanned outage, to prevent a potential Network or customer outage, or to repair a chronic customer impacting problem that would result in unavailability of the service if the work are not undertaken or for any other reason beyond EITC's reasonable control.
  - 2.19. **"End Users"** means any user of the Service provided to Customer by EITC or a Provisioning Entity and may include third parties or Customer Affiliates.
  - 2.20. **"Force Majeure Event"** means an event beyond the reasonable control of the Party affected, including, but not limited to, acts of God, embargoes, governmental restrictions, strikes, riots, insurrection, wars or other military action, civil disorders, acts of terrorism, rebellion, fires, explosions, accidents, floods, vandalism, cable cuts

and sabotage. Market conditions or fluctuations are not a Force Majeure Event.

- 2.21. **"Initial Service Term"** means the initial period starting on the Service Commencement Date during which the Service will be provided to Customer as stated in the Service Order or, if not stated, the period starting on the Service Commencement Date and ending on the one year anniversary thereof.
- 2.22. **"Installation Charge" or "Non-Recurring Charge" or "NRC"** means the one-off Charge payable by the Customer to EITC for installation of the Service and for the commissioning and configuration of the Service as specified in a Service Order.
- 2.23. **"IP"** means Internet Protocol.
- 2.24. **"Local Access"** means the connection between the CPE and the Network and may be provided by EITC or a Provisioning Entity.
- 2.25. **"Network"** means any network or system, cable, transmission facility owned, leased, operated or managed by or on behalf of EITC.
- 2.26. **"Normal Business Hours"** means the hours of 9am to 5.00pm on a Business Day.
- 2.27. **"Party" and "Parties"** means individually as a Party: Customer and EITC as the context requires, or including Customer and EITC collectively: Parties.
- 2.28. **"Planned Outage"** means any routine maintenance or upgrade work to be performed by du which may affect the availability of a Service, notified by du to the Customer with at least 5 days prior written notice.
- 2.29. **"Provisioning Entity"** means the entity providing or assisting in the provision of the Service to Customer and may include any EITC Affiliate or sub-contractor, including licensed carriers or other service providers.
- 2.30. **"Security"** means a, parent company guarantee, direct debit guarantee or bank guarantee or any combination of these as determined by EITC.
- 2.31. **"Service"** means the specific service supplied by EITC or a Provisioning Entity to Customer identified in the Service Order and any related Service Schedule, Service Equipment, support, consulting or other ancillary services associated with a Service Order and provided hereunder. The Service will include any changes, modifications or variations made to the Service from time to time during the Term.
- 2.32. **"Service Commencement Date"** means, (a) with respect to internet, data and on-network services, the date the hub and data circuits are prepared to route packets or cells to the Customer Site; and with regard to other Services, the earliest of (i) the date identified in the relevant Schedule or Service Order, (ii) the date that EITC or its Provisioning Entity dispatches notice to Customer (or Customer's representative as stated in the Service Order) that the Service is ready for use; or (iii) the date Customer begins actual use of the Service.
- 2.33. **"Service Equipment"** means the equipment, systems, cabling and facilities provided by or on behalf of EITC at Customer Site in order to make the Service available to Customer and for the avoidance of doubt, excludes the Network. Ownership of the Service Equipment does not pass to Customer from EITC.

2.34. **"Service Level Agreement" or "SLA"** means the SLA, if any, applicable to the Service. SLAs are contained in the Service Schedule or may be provided on-line on an EITC or Provisioning Entity website.

2.35. **"Service Order"** means the EITC documents by which the Service may be ordered, naming the specific Service and Customer-specific details.

2.36. **"Service Schedule"** means the attachment to the Service Order which contains the description of the Service to be provided together. Service-specific terms and conditions may appear in the Service Schedule or in the Service Order.

2.37. **"Tax/Taxes"** means all taxes (whether existing or new), tax-like charges, and tax related and other surcharges, duty or other charges of whatever nature (but excluding any tax, duty or other charge levied on income accruing to EITC hereunder) imposed by any taxing or government authority including, without limitation, a value added tax (VAT) or withholding taxes.

2.38. **"Term"** means the period from the Service's Service Commencement Date until the Service is terminated in accordance with this Agreement and includes the Initial Term together with any agreed (whether express or implied) extension period.

- 3. **Precedence.** If there is a conflict between the documents incorporated in this Agreement, then the documents will be given the following order of priority (with paragraph 3.1 being the first in the order of priority) such that the conflicting provision in the document lower in the order of priority will be read down or, if necessary, severed to the extent necessary to resolve the conflict:

3.1. The Addendum (if any);

3.2. These Standard Terms;

3.3. The terms of each relevant Service Schedule;

3.4. A Service Order, inclusive of any Service-specific terms and conditions appearing thereon.

#### 4. **Service Orders and Delivery of Service**

4.1. **Ordering Services.** To order the Service, Customer will complete a Service Order and submit it to EITC. Customer warrants the accuracy of the Customer provided details contained in the Service Order.

4.2. **Acceptance of Service Orders by EITC.** EITC shall be deemed to have accepted a Service Order, thus creating a binding Agreement of the Parties and establishing an Effective Date upon the earlier of (i) written notice by EITC to Customer of acceptance of the Service Order, or (ii) EITC provisioning the service and issuing a Service Commencement Date notification. EITC reserves the right to reject any submitted Service Order for any reason, whether previously accepted by EITC or not, including but not limited to (a) inability or impracticality of providing the Service; or (b) the Service no longer being commercially offered by EITC.

4.3. **Concurrent Service Orders.** Each accepted Service Order constitutes an independent contract for the provision of Services. The Term of multiple Services may run concurrently, but shall not be co-terminus absent express provisions in an Addendum.

4.4. **Acceptance of Service by Customer.** Except as otherwise expressly stated in the Service Order or an Addendum, Customer is deemed to have accepted a Service upon the Service Commencement Date.

- 4.5. **Use of Provisioning Entities.** Without releasing it from any of its obligations, EITC may at any time, and without notice, utilise the services of one or more Provisioning Entities in connection with the performance of its obligations under the Agreement.
- 4.6. **Modification of Service.** EITC reserves the right to modify the Service including by substituting the Service Equipment used to furnish the Services or changing the configuration or routing of its Service Equipment and Network. If a change to the Service has a material adverse effect on its functionality, Customer may notify EITC in writing of the existence and nature of the material adverse effect within 30 days from the time the Service was modified. If EITC fails to correct the material adverse effect within 30 days of receiving Customer's notice, Customer may, within 10 Business Days thereafter, terminate the Service without any termination liability (except for payment of all Charges up to the effective date of such Service discontinuance) upon 30 days notice to EITC.
- 4.7. **EITC Performance.** In performing its obligations under the Agreement EITC will procure that the Services are provided to the Customer with due care and skill.
- 4.8. **Service Level Agreement.** EITC reserves the right to amend applicable SLAs from time to time effective upon posting of the revised SLA to the URL where the SLA is set out or otherwise providing the revised SLA to Customer in writing, provided that in the event of any amendment resulting in a material reduction of the SLA's service levels or credits, Customer may terminate the Service without early termination liability (except for payment of all Charges up to the effective date of such Service discontinuance) by providing EITC at least 30 days notice of termination during the 10 Business Days following notice of such amendment. The SLA sets forth Customer's sole remedies for any claim relating to the Service or the Network, including any failure to meet any guarantee set forth in the SLA. EITC's records and data shall be the basis for all SLA calculations and determinations. Notwithstanding anything to the contrary, the maximum amount of credit in any calendar month under the SLA shall not exceed the recurring monthly Charge and/or start-up Charge which, absent the credit, would have been charged for the Service that month.
- 4.9. **Credit.** The agreement of EITC to extend credit to Customer, or to vary credit limits already extended (whether up or down) from time to time during the Term shall be at the absolute discretion of EITC and any such credit will be provided in accordance with the Credit Documentation. At any time during the Term, EITC may carry out a credit check against Customer. Customer will co-operate in providing EITC with any financial information that may be reasonably required to assist EITC with such credit check.
- 4.10. **Security.** In order to reasonably secure payment from Customer, EITC may, at any time during the Term, request Customer to provide Security or increase existing Security. Customer must comply with any such request.
- 4.11. **Resale.** Unless the Service is a wholesale service or otherwise specified in the Service Order, Customer is not permitted to and will not resell, charge, transfer or otherwise dispose of the Service (or any part thereof) to any third party. The terms and conditions of the Agreement and the Charges for the Service are expressly agreed on the basis of this clause.
- 4.12. **Delivery of Service.** EITC will determine the most appropriate means of providing the Service including using a Provisioning Entity to deliver all or part of the Service and

the method, technology and route of delivery of the Service to Customer. Prior to the provision of the Service EITC may conduct such tests as it considers to be appropriate to determine that all necessary work has been done to provide the Service to Customer.

- 4.13. **Monitoring.** Customer acknowledges that EITC (a) may monitor Customer's use of the Service to the extent required by law or for the maintenance of the Network or Customer's Service; and (b) will intercept any Service or data being transmitted over the Service as required by law. Nothing in this clause shall be construed as obliging EITC to monitor Customer's use of the Service.

## 5. Term of Service Orders.

- 5.1. **Termination of Service, Generally.** Either Party may terminate the Service on the occurrence of any of the following events: (a) on 30 days notice to take effect on or at any time after the expiry of the Initial Service Term; (b) forthwith by notice for Cause which a Party fails to remedy within 10 Business Days of having been notified in writing of the Cause; or (c) immediately by notice if the other Party has a receiver or an administrative receiver appointed over it or over any part of its undertaking or assets or passes a resolution for winding up or a court of competent jurisdiction makes an order to that effect or if the other Party becomes subject to an administration order it enters into any voluntary arrangement with its creditors it ceases or threatens to cease to carry on business, or undergoes or is subject to any analogous acts or proceedings under foreign law.
- 5.2. **Early Termination of Service by EITC.** Notwithstanding any other provision of the Agreement, EITC may terminate the Service immediately on notice to Customer if: (a) a suspension made pursuant to sub clauses 11.1.4, 11.1.5, 11.1.6, 11.1.7 or 11.1.8 11 continues for a period of more than 10 Business Days; (b) Customer is past due on any invoice for the Service (excluding Disputed amounts) which has not been remedied within 20 Business Days after Customer receives written notice of such non-payment; or (c) Customer fails to provide or increase the Security as requested by EITC.
- 5.3. **Early Termination of Service by Customer.** Subject to sub-clause 5.4, Customer may by written notice to EITC terminate a Service.
- 5.4. **Early Termination Charges.** If the EITC terminates a Service prior completion of the Initial Term for any reason, Customer must pay EITC:
- 5.4.1. if terminated during the first 12 months of the Initial Term, 100% of the Monthly Charges for each cancelled Service for each month remaining in the first 12 months of the Initial Term, including a pro rata amount for each part month commencing from the effective date of termination; and
- 5.4.2. if terminated after the first 12 months of the Initial Term (where applicable), the Customer must pay due 50% of the Monthly Charges for each cancelled Service for each month remaining in the Initial Term, and on a pro rata basis for each part month commencing from the effective date of termination,
- 5.5. **Service Cessation.** EITC may terminate the Service on 60 days notice to Customer if it ceases to provide the Service on a commercial basis at the location where Customer is being provided the Service.

respect of Customer's failure to comply with this sub-clause 6.4.

## 6. Customer Obligations

6.1. **Access.** Where EITC requires access to a Customer Site in order to provide a Service, Customer shall grant or shall procure the grant to EITC at no cost to EITC of such rights of access to each Customer Site, including any necessary licenses, waivers or consents. Customer shall advise EITC in writing of all health and safety rules and regulations and any other reasonable security requirements applicable at a Customer Site, and EITC shall use all reasonable endeavours to observe and ensure that its employees and authorised representatives observe such regulations and requirements as advised whilst at a Customer Site.

6.2. **Assistance.** Customer shall provide EITC with such facilities and information as EITC may reasonably require to enable EITC to perform its obligations or exercise of its rights under the Agreement.

6.3. **Service Equipment.** Where EITC provides Service Equipment in order to make the Service available, Customer warrants and undertakes that it shall: (a) use the Service Equipment only for the purpose of receiving the Service and in accordance with reasonable instructions of EITC from time to time and/or any software license that may be provided with the Service Equipment; (b) not move, modify, relocate, or in any way interfere with the Service Equipment (or any words or labels on the Service Equipment) or the Network; (c) insure and keep insured all Service Equipment installed at each Customer Site against theft and damage; (d) not create or allow any charges, liens, pledges or other encumbrances to be created over the Service Equipment. Title to the Service Equipment shall at all times belong and remain with EITC, a EITC Affiliate or their subcontractor; (e) permit EITC to inspect, test, maintain and replace the Service Equipment at all reasonable times; (f) comply with the reasonable instructions of EITC in relation to the modification of Customer Equipment to enable Customer to receive the Service, at its own expense; and (g) upon termination of the Service, allow EITC access to each Customer Site to remove the Service Equipment. Should any construction or alteration to a Customer Site have occurred to facilitate the Service, EITC is not obliged to restore that Customer Site to the same physical state as prior to the Service being delivered. Customer shall be liable for any and all damage to Service Equipment or the Network which is caused by (i) the act or omission of Customer or Customer's breach of the terms of the Agreement; or (ii) malfunction or failure of any equipment or facility provided by Customer or its agents, employees, or suppliers, including but not limited to Customer Equipment. EITC is not liable for any costs incurred by Customer arising out of any malfunction or failure of any such equipment or facility, including Customer Equipment.

6.4. **Compliance with Law and Regulation.** The Service is provided subject to all applicable laws and regulations. Customer will comply, and ensure that End Users of the Service comply, with all applicable laws and regulations including without limitation: (a) local license or permit requirements; (b) the UAE's Federal Law by Decree No. 5 of 2012 (UAE Cyber Crime Law); and (c) applicable export/re-export, sanctions, import and customs laws and regulations. EITC makes no representation as to whether any regulatory approvals, if any, required by Customer to use the Service will be granted. EITC reserves the right to disconnect any Customer Equipment where Customer has failed to comply with the provisions of this sub-clause 6.4 and EITC shall in no event be liable in

## 6.5. Customer obligations in relation to End Users.

6.5.1. Customer is solely responsible for:

- 6.5.1.1. selecting, supplying and maintaining (at its expense) its equipment, facilities and networks, and (as between du and the Customer) the equipment, facilities and networks of its Resellers and End Users;
- 6.5.1.2. the results and consequences of its use of the Services and of the use by each End User and Reseller of the Services; and
- 6.5.1.3. the content of any data or information which the Customer, or any End User or Reseller, sends or receives using the Service;
- 6.5.1.4. its relationships with its End Users and Resellers;
- 6.5.1.5. serving as sole point of contact for its Resellers and End Users;
- 6.5.1.6. ensuring that any arrangements it makes with its Resellers and End Users (including the provisions in agreements with Resellers and End Users) comply with applicable Laws and reflect the Customer's responsibilities under this Agreement;
- 6.5.1.7. ensuring that Customer, End Users and Resellers do not, use Services for any purpose that may result in a virus, worm, "Trojan" or similar harmful or destructive code being sent via a Service;
- 6.5.1.8. ensuring that its End Users and Resellers comply, with du's instructions or requests in connection with the Services; and
- 6.5.1.9. ensuring that its use, and its End User's and Resellers use, of the Services conforms with any acceptable use policy published by du from time to time.

6.6. **Indemnification by Customer.** The Customer will pay all expenses and costs, including costs of investigation, court costs, and reasonable attorneys' fees and expenses (including allocable costs of in-house counsel) incurred by EITC Indemnities on demand, and releases EITC from all claims, arising out of or in connection with:

- 6.6.1. any proceedings instituted, demands or claims made, or action taken by any third party (including a Reseller or End User), regulator or government agency, relating to any re-supply, or use of the Services by the Customer or End Users;
- 6.6.2. the reproduction, broadcast, use, transmission, communication or making available of any material (including data and information of any kind) to or by the Customer or to or by the Customer's End Users or Resellers;
- 6.6.3. any breach of a person's rights or defamation by a person (or allegation of such a breach or

defamation) involving the use of a Service or a re-sold service;

- 6.6.4. Customer's connection of the Service to any third-party service or network;
- 6.6.5. violation, misuse or misappropriation by Customer, or End Users, of the trademarks, copyrights, trade secrets, or other proprietary rights or intellectual property rights of EITC, EITC Affiliate or of a third party (other than a third-party claim that EITC does not own EITC service marks or trademarks);
- 6.6.6. the unauthorized use of or access to the Service or the Network by any person using Customer's systems or network; and
- 6.6.7. any breach of sub-clause 6.4.

This clause 6.6 will survive termination of this Agreement, or any part of it.

## 7. Charges and Payment

- 7.1. **Accrual of Charges.** The Charges for a Service will be specified in the relevant signed Service Order for a Service, and are valid for the Initial Term of that Service. Where an element of the Service is rendered directly from a third party carrier to Customer and where that third party carrier does not have a "one stop" billing arrangement with EITC that allows EITC to invoice Customer on behalf of the third party, Customer shall pay for the element directly to the third party carrier.
- 7.2. **Variation of Charges.** EITC may vary its Charges at any time upon the expiration of the Initial Service Term upon 30 days prior written notice to Customer.
- 7.3. **Currency.** All rates are set out in US Dollars.
- 7.4. **Invoices.** All invoices will be in English and all Charges will be in US dollars. EITC will invoice the Customer for:
  - 7.4.1. The Charges monthly in advance (except for usage-based **Charges** which will be invoiced in arrears) via email (in PDF format);
  - 7.4.2. the Installation Charge on or after the Service Commencement Date via email (in PDF format), as soon as practicable in each month and before the start of the following month), for the next month during which the Services are to be provided; and
  - 7.4.3. any other Charges payable in accordance with this Agreement or a Service Schedule or Service Order, monthly in arrears.

Provided however, that the Service Schedule may set forth accelerated payment terms, and in such event EITC may invoice and Customer shall pay according to said accelerated payment terms.

- 7.5. **Delayed Invoicing.** EITC may invoice Customer up to 6 months after the date a Charge accrues and for Charges invoiced after that, Customer may request a credit (except that in cases involving fraud or third party charges, Charges may be invoiced without the time limitation stated above applying provided that they are invoiced within a reasonable period after EITC becomes aware of such Charges).
- 7.6. **Payment of Invoices.** Except in the case of a Disputed invoice (in which case clause 8 will apply) Customer will pay all invoices within 30 days of the invoice date as stated on the invoice, to the bank account of du as set out below:

<b>Party:</b>	<b>Emirates Integrated Telecommunications Company PJSC</b>
Bank Name:	Mashreq Bank, Media City Branch, Dubai, UAE
Bank account:	0448475077
Account Name:	Emirates Integrated Telecommunications Company PJSC
Swift Code:	BOMLAEDXXX
IBAN:	AE630330000010448475077

The Customer must pay all undisputed amounts invoiced without set-off, counterclaim or deductions, free and clear of any withholding or deduction, by direct deposit/wire transfer as cleared available funds.

- 7.7. **Payment by Customer's Affiliate.** At Customer's request, invoices may, at the discretion of EITC, be sent to and Charges may be collected from Customer Affiliates, but Customer shall remain fully responsible for payment of any such Charges whether in receipt of the invoice or not. EITC may specify the currency and method of remitting payment of Charges.

## 8. Disputed Invoices.

- 8.1. Subject to clause 8.2, if the Customer disputes any amount on an invoice on a bona fide basis it must notify EITC of the disputed amount no later than 10 Business Days prior to the due date for payment. If the Customer does not notify EITC of any objection within this period, an invoice from EITC will be deemed to be accepted by the Customer. Any billing dispute notification must clearly identify the disputed invoice, the disputed amount, the objection and include supporting data. The Parties will promptly investigate such disputes and use reasonable endeavours to resolve any disputes.
- 8.2. The undisputed amount of an invoice is due and payable on the invoice due date in accordance with clause 7.6 of this Agreement. A disputed amount may be withheld, but will be settled as soon as the disputed facts have been determined and mutually agreed by the Parties.
- 8.3. For the purpose of resolving an invoice dispute, if either Party requests in writing, the other Party is obliged to provide any relevant records within 15 Business Days after the date of such request.
- 8.4. In the event the dispute is not deemed valid by EITC (in its reasonable opinion) all withheld Charges will become due and payable on the later of: (a) the current due date under the relevant invoice; or (b) within 5 Business Days of notification by EITC to Customer of that determination.

## 9. Taxes and Interest.

- 9.1. All Charges are exclusive of all Taxes, unless otherwise specified in a Service Order.
- 9.2. Interest at a rate of 1.0% per month (or the highest rate permitted by applicable Law, whichever is lower) will be calculated daily on all overdue amounts which are not the subject of a bona fide invoice dispute raised by a Party in accordance with clause 8, starting the day after payment was due until payment is received by du in full.
- 9.3. All payment charges imposed in the Customer's country (for example, Taxes, clearing charges, commissions) must be borne by the Customer.
- 9.4. If any withholding is required by relevant government authorities, the Customer shall gross up the amount remitted such that du will receive full payment as stated on EITC's invoice.

## 10. Security

- 10.1. The Customer must provide financial statements, credit reports, and any other information requested by du to determine the Customer's creditworthiness.
- 10.2. If requested by EITC, the Customer must provide adequate security drawn on a financial institution, such as (and without limitation) a bank guarantee, acceptable to EITC, or such other security accepted by du ("Security"). EITC is not required to supply any Services under this agreement until the Security is in place to secure the Customer's payment during the term of the Agreement.
- 10.3. Failure to provide Security within 30 days after receipt of a request from EITC will be considered a material breach of this Agreement, amounting to Cause. If the Customer fails to comply with any terms related to the Security, EITC may suspend the Service or terminate this Agreement with immediate effect upon written notice to the Customer.
- 10.4. EITC may offset against the Security any amounts due under this Agreement that are not paid by the Customer when due. If du applies any or all of the Security against any invoice, the Customer must reinstate the Security to the full secured amount within 5 Business Days. EITC may suspend the Service or terminate this Agreement with immediate effect upon written notice to the Customer if the Customer fails to reinstate the Security as set out in this sub-clause 10.4.
- 10.5. If for any reason the Agreement or a Service Order is terminated, du has the right to offset against the Security any amounts owed to du by the Customer at the effective date of termination. The remaining Security amount (if such Security is held as a deposit) will be refunded, without interest.

## 11. Service Suspension

- 11.1. **Grounds for Suspension.** EITC may, without terminating this Agreement and without incurring any liability, immediately suspend all or part of the Services it provides under this Agreement if:
  - 11.1.1. EITC is obliged to do so to comply with a ruling, direction, directive, determination, decision/interim decision, order, instruction or request of a regulator, government agency, emergency services organisation or other competent authority;
  - 11.1.2. There is a Planned Outage, for the duration of the Planned Outage;
  - 11.1.3. EITC needs to carry out Emergency Works, for the duration of the Emergency Works (and the Customer acknowledges and agrees that EITC may not be able to give any prior notice of its need to suspend Services for this reason);
  - 11.1.4. EITC is entitled to terminate this Agreement for Cause;
  - 11.1.5. The Customer fails to make any payment due under this Agreement by the due date and fails to make such payment within 20 Business Days after being notified by EITC in writing that such payment is due and has not been made;
  - 11.1.6. Suspension of the Service is necessary to prevent or protect against fraud, or otherwise protect persons or property, EITC personnel, agents, facilities, or services;
  - 11.1.7. EITC has reasonable grounds to consider that use of the Service violates applicable law; or

- 11.1.8. EITC has reasonable grounds to believe that Customer is unable or otherwise will not make any payment which is due or is to fall due to EITC.

- 11.2. **Non-exclusive remedy.** Suspension of a Service under this clause does not exclude du's right to terminate this Agreement in respect of any event resulting in the suspension of the Services or any other event.
- 11.3. **Resumption of Service.** If EITC exercises its right to suspend the Service pursuant to clause 11.1 EITC will use reasonable endeavours to resume the Service as soon as practicable after the reason for suspension no longer exists (subject to the exercise of any termination right on the part of EITC).
- 11.4. **Reasonable Expenses.** If the Service (or part thereof) is suspended as a consequence of the breach, fault, act or omission of Customer or any Customer Affiliate, Customer will pay to EITC reasonable costs and expenses incurred by the implementation of such suspension and/or reconnection of the provision of the Service.

## 12. Limitations of Liability

- 12.1. Subject to sub-clauses 6.6 12.2, 12.3 and 12.6, each Party's liability in aggregate in any 12 month period during the term of this Agreement for all Loss arising out of or in relation to this Agreement, including all Service Orders, whether for breach of contract, in tort (including negligence), for breach of statutory duty or otherwise, will be limited the lesser of (a) direct damages proven by the moving Party or (b):
  - 12.1.1. in respect of liability arising within the first 12 months of the term of this Agreement, the monthly average of Charges then paid to date (including any Charges due, but not yet paid) under this Agreement multiplied by 12; and
  - 12.1.2. in respect of liability arising in each 12 month period occurring after the expiry of the first 12 months of the term of this Agreement, 100% of the Charges paid under this Agreement.
- 12.2. Subject to clause 12.7, neither Party will be liable, in contract, tort (including negligence), for breach of statutory duty or in any other way for any:
  - 12.2.1. economic loss, including any loss of goodwill, reputation, revenues, profits, contracts, business, or anticipated savings; or
  - 12.2.2. special, punitive, exemplary, indirect, consequential or incidental losses, regardless of whether such losses were within the contemplation of the Parties at the date of this Agreement, suffered or incurred by a Party arising out of or in connection with this Agreement, including the provision of the Services or any Contract entered into in accordance with this Agreement.
- 12.3. Neither Party excludes liability for death, personal injury or fraud.
- 12.4. Subject to clause 12.5, each Party (the "Indemnifying Party") indemnifies the other Party (the "Innocent Party") against:
  - 12.4.1. a claim against the Innocent Party arising out of a death of or personal injury to the Innocent Party's People or fraud, to the extent that such Loss is caused by a negligent or intentional act or omission of the Indemnifying Party or any of its People; and

12.4.2. all Loss directly and reasonably incurred in relation to making good any damage to or loss of the network, facilities, equipment or other tangible property of the Innocent Party, to the extent that such damage is caused by an act or omission of the Indemnifying Party or any of its People.

12.5. An Indemnifying Party is not liable to the Innocent Party:

12.5.1. for or in respect of a claim brought against the Innocent Party by a third Party (including an end user of the third party) with whom the Innocent Party has a contractual relationship to the extent that such Loss could reasonably have been excluded or reduced by the Innocent Party in its contract with the third party; nor

12.5.2. under this clause 12 to the extent that the liability the subject of the indemnity claim is the direct result of a breach of this Agreement by the Innocent Party, or a negligent or intentional act or omission of the Innocent Party.

12.6. The limitations of liability set out in this clause 12 do not apply to a Customer's obligation to pay Charges or EITC's obligation to pay any Service Credits, or Customer's indemnification obligations in sub-clauses 6.6 or 12.4.

12.7. The invalidity or unenforceability of any particular provision of this clause 12 will not affect or impair the remaining provisions of clause 12, and this Agreement will be construed in all respects as if such invalid or unenforceable provisions were omitted.

12.8. No cause of action, under any theory which accrued more than 1 year prior to the institution of a legal proceeding alleging such cause of action may be asserted by either Party against the other, to the extent permitted by law.

12.9. The liability of EITC with respect to the Service may also be limited pursuant to other terms and conditions of the Agreement. Customer acknowledges and accepts the reasonableness of the disclaimers, exclusions, and limitations of liability set forth in this clause 12 and the Agreement.

12.10. The provisions of this clause 12 will continue to apply notwithstanding the expiration or termination of this Agreement, regardless of the reasons for termination.

### 13. Representations and Warranties

13.1. Each Party represents, warrants and undertakes to the other that:

13.1.1. it is a corporation properly incorporated or registered under the Laws of its jurisdiction of incorporation or registration;

13.1.2. it has taken all necessary action to authorise the signing, delivery and performance of this Agreement in accordance with its terms;

13.1.3. it has power to enter into and perform its obligations under this Agreement and can do so without the consent of any other person;

13.1.4. the signing and delivery of this Agreement, and the performance by the Party of its obligations and exercise of its rights under it, complies with:

13.1.4.1. applicable law, regulation, and any Authorisations;

13.1.4.2. the Party's constitution, memorandum and articles of association or other document governing the Party; and

13.1.4.3. all security interests or documents binding on the Party;

13.1.5. there are no actions, suits or proceedings pending or, to such Party's knowledge, threatened, against such Party before any regulator or government agency that question or challenge such Party's right to enter into or perform this Agreement, or which question or challenge the validity of this Agreement;

13.1.6. no event has occurred and remains current in respect of the Party that has resulted or would result in the Party being insolvent or unable to pay its debts as they fall due, and there are no circumstances which could give rise to such an event; and

13.1.7. it has all Authorisations required by law in order to perform its obligations or exercise its rights under this Agreement, including any Authorisations required by the Customer to enable its proposed use and any re-supply of the Services.

13.2. Except as expressly set forth in the Agreement all warranties, representations or agreements whether oral or in writing and whether express or implied, either by operation of law, statutory or otherwise, are hereby expressly excluded to the maximum extent permitted by law.

### 14. Confidentiality, Customer Data & Privacy

14.1. **Confidentiality.** Each Party promises that during the Term and for 3 years after, it will use the other Party's Confidential Information only for purposes of the Agreement, not disclose it to third parties except as provided below, and protect it from disclosure using the same degree of care it uses for its own Confidential Information (but no less than a reasonable degree of care). A Party may disclose the other Party's Confidential Information only (a) to its employees, agents and subcontractors (including professional advisors and auditors), and to those of its Affiliates, who have a need to know for purposes of the Agreement and who are bound to protect it from unauthorized use and disclosure under the terms of a written agreement, or (b) pursuant to law, regulation or court order. In any case, a Party is responsible for the treatment of Confidential Information by any third party to whom it discloses it under part (a) of the preceding sentence. Before disclosing the other Party's Confidential Information pursuant to law, regulation or court order, a Party must notify the other Party as far in advance as commercially practicable (if not prohibited by law) to enable the other Party to seek a protective order, and must make reasonable efforts to assure the disclosed information is treated confidentially. Confidential Information remains the property of the disclosing Party and, upon request of the disclosing Party, must be returned or destroyed when the Agreement ends. If there is a breach or threatened breach of this confidentiality provision, the disclosing Party will be entitled to specific performance and injunctive or other equitable relief as a non-exclusive remedy. In the event the Parties have signed a separate confidentiality agreement which applies to the Service the terms of this clause will take precedence over that agreement to the extent of any inconsistency.

#### 14.2. Customer Data and Privacy

14.2.1. Customer acknowledges that EITC, its Affiliates and their respective agents will, by virtue of the

provision of the Service, come into possession of Customer Data. Customer acknowledges and agrees that EITC, its EITC Affiliates and their respective agents may use, process and/or transfer Customer Data (including intra-group transfers and transfers to entities in countries that do not provide statutory protections for personal information): (i) in connection with the provision of the Service; (ii) to incorporate Customer Data into databases controlled by EITC and its Affiliates for the purpose of administration, provisioning, billing and reconciliation, verification of Customer identity and solvency, maintenance, support and product development, fraud detection and prevention, sales, revenue and customer analysis and reporting, market and customer use analysis; and (iii) to communicate to Customer regarding products and services of EITC and its Affiliates by voice, letter, fax or email.

- 14.2.2. Customer may withdraw consent for such use, transfer or processing of Customer Data as set out above, unless it is required to (a) provision, manage, account and bill for the Service; (b) carry out fraud detection; or (c) comply with any statutory obligation, regulatory requirement or court or other public authority order, by sending notice to EITC in the prescribed form, available from EITC on request.
- 14.2.3. Customer warrants that it has obtained and will obtain all legally required consents and permissions from relevant parties (including data subjects) for the use, processing and transfer of Customer Data as described in this clause 14.2.

## 15. Miscellaneous

- 15.1. **Records.** Each Party must maintain all records reasonably necessary to substantiate all financial, operational and billing data for a period of at least 2 years, unless otherwise agreed by the Parties in writing. Such records and data are Confidential Information under clause 15.
- 15.2. **Assignments.** Neither Party may assign the Agreement without the written consent of the other Party (which consent will not be unreasonably withheld or unduly delayed), except that (a) EITC may assign any and all of its rights and obligations hereunder (i) to any Affiliate or Provisioning Entity, (ii) pursuant to any sale or transfer of substantially all the assets or business of EITC, or (iii) pursuant to any financing, merger, or reorganisation of EITC, and (b) subject to applicable law and regulation, Customer may assign any and all of its rights and obligations hereunder to any Affiliate that satisfies the standard credit requirements of EITC.
- 15.3. **Amendments.** This Agreement may only be varied by written amendment signed by duly authorised representatives of the Parties.
- 15.4. **Waiver.** No waiver by either Party of any provision in this Agreement will be binding unless expressly confirmed by written variation in accordance with clause 15.3. Further, any such waiver will relate only to such particular matter, non-compliance or breach to which it is expressly stated to relate, and will not apply to any subsequent or other matter, non-compliance or breach.
- 15.5. **Notices.** Any notice required or permitted to be given in writing under the Agreement (and for the avoidance of doubt unless otherwise specified all notices must be in writing) will be in English, and sent via email, facsimile, courier, hand delivery or ordinary, certified or registered mail, to a Party at

the addresses set out in the Service Order in the case of Customer, and in the case of Supplier:

Emirates Integrated Telecommunications Company, PJSC  
Al Salam Tower  
Dubai Media City  
PO Box 502666  
Dubai  
United Arab Emirates  
Attn: General Counsel & Senior Vice President – Legal  
and Regulatory Affairs  
Fax: +971 4 360 4440

A Party may from time to time designate another address or addresses by notice to the other Party in compliance with this clause. Such notice will be deemed effective: (a) the day after being sent, if by email; (b) when electronic confirmation is received, if sent by facsimile; (c) as of the delivery date, if sent by courier; (d) when received, if hand delivered; or (e) 10 Business Days after being sent, if sent via ordinary, certified or registered mail. Customer may not use email to notify EITC of termination of the Service. Notice of termination of a Service must be signed by an authorized representative of Customer to be effective.

- 15.6. **Survival.** Certain provisions of the Agreement are intended to have effect after the expiration or termination of the Agreement including but not limited to clauses 2 (Definitions), 3 (Precedence), sub-clause 6.6 (Indemnification by Customer), 7 (Charges and Payment), 8 (Disputed Invoices), clause 9 (Taxes and Interest), sub-clause 10.4 (offsets), 12 (Limitations of Liability), sub-clause 13.1.7 (Authorisations), clause 14 (Confidentiality, Customer Data and Privacy), sub-clause 15.4 (waiver), 15.7.4 (Consequences of Termination), sub-clause 15.8 (Severability), sub-clause 15.10 (No Publicity), clause 16 (Governing Law), clause 17 (Arbitration), and this sub-clause 15.6 will continue to bind, and to be enforceable by, the Parties to the Agreement.

### 15.7. Force Majeure

- 15.7.1. **General.** Neither Party will be liable for any failure to perform or for breach of this Agreement caused by a Force Majeure Event, provided that neither Party will be relieved of its obligations to make any payments for Services rendered under this Agreement. Both Parties must use reasonable commercial endeavors to minimize the effects of a Force Majeure Event
- 15.7.2. **Notices.** The affected Party claiming a Force Majeure Event has impacted its ability to perform this Agreement must immediately inform the other Party in writing of the occurrence of the Force Majeure Event, and the estimated extent and duration of such inability to perform its obligations.
- 15.7.3. **Termination Right.** Each Party shall make all reasonable efforts to minimize the effects of the Force Majeure Event. If the affected Party is prevented by the Force Majeure Event from performing its obligations under the Agreement for 30 days or such other period as the Parties agree in writing, then either Party may in its sole discretion immediately terminate the Agreement by giving notice of termination to the other Party.



- 15.7.4. **Consequences of Termination.** Where the Agreement is terminated by a Party in accordance with sub-clause 15.7.3:
- 15.7.4.1. EITC shall be entitled to payment of: (a) all accrued but unpaid Charges incurred through the date of such termination; together with (b) any termination charges or other costs or expenses incurred by EITC for the cancellation of the Local Access or related services or equipment provided to EITC in connection with the Service; and
- 15.7.4.2. the Parties shall otherwise bear their own costs and shall be under no further liability to perform the Agreement.
- 15.8. **Severability.** If any provision of the Agreement, including in particular any limitation, is held by a court or any government agency or authority to be invalid, void, or unenforceable, the remainder of the Agreement will nevertheless remain legal, valid and enforceable.
- 15.9. **No Partnership.** Nothing in the Agreement and no action taken by the Parties pursuant to the Agreement will constitute or be deemed to constitute between the Parties, a partnership, association, joint venture, or other cooperative entity.
- 15.10. **No Publicity.** Neither Party may use the other Party's name, trademarks, trade names or other proprietary identifying symbols, or issue any press release or public statement relating to the Agreement, any Service Order, or the other Party, without the prior written permission of the other Party.
- 15.11. **Export and Import.** Customer acknowledges that the export, re-export, import and use of certain hardware, software and technical data provided hereunder may be regulated by the UAE and other governments and agrees to comply with all applicable laws and regulations. Customer represents and warrants that Customer is not subject to any government order suspending, revoking or denying export or import privileges.
- 15.12. **Reliance.** Customer confirms that, in agreeing to enter into the Agreement, it has not relied on any representation except as set out herein and Customer agrees it shall have no remedy in respect of any misrepresentation that has not become a term of the Agreement, excluding any fraudulent misrepresentation.
- 15.13. **Intellectual Property.** Customer acknowledges that any and all patents, registered and unregistered designs, copyrights, trademarks and all other intellectual property rights whatsoever and wheresoever enforceable, which are used in connection with the Service and/or Service Equipment shall remain the sole property of EITC or EITC Affiliates or the third party vendor or supplier of EITC.
- 15.14. Nothing in this Agreement will be deemed to restrict or prejudice the rights of either Party to enter into Agreements for the provision of services similar to the Services with third parties.
- 15.15. **English Language Shall Prevail.** If the Agreement is made available in a language other than English, such other version shall be for reference only. In the event of any inconsistency between the English and any other language version of the Agreement, the English version shall prevail.
16. **Governing Law.** This Agreement is governed by the federal Laws of the United Arab Emirates and the Laws of the Emirate of Dubai.
17. **Arbitration**
- 17.1. If the Parties are unable to settle any dispute or difference between them arising out of or in relation to this Agreement by negotiation, including the formation, performance, interpretation, nullification, termination or invalidation of this Agreement, the dispute will be referred to arbitration in Dubai, UAE.
- 17.2. Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Arbitration Rules of the Dubai International Finance Centre / London Court of International Arbitration ("DIFC-LCIA") Arbitration Centre, which Rules are deemed to be incorporated by reference into this clause. The seat, or legal place, of arbitration shall be Dubai International Finance Centre, UAE. The language to be used in the arbitration shall be English. Subject to clause 17.4 below, the arbitral tribunal will comprise 3 arbitrators. Each Party will appoint an arbitrator, and the third arbitrator, who will preside over the arbitral tribunal, will be appointed by the LCIA Court. The award of the arbitral tribunal will be written in English. The award of the arbitral tribunal is final and binding on the Parties.
- 17.3. If either of the Parties fails to appoint an arbitrator within the applicable time period, such appointment will be made in accordance with the DIFC-LCIA Arbitration Rules.
- 17.4. If the amount in dispute as specified in the notice of arbitration or statement of claim is less than US \$250,000 the arbitration panel will consist of only 1 arbitrator who will be selected by agreement between the Parties. If the Parties fail to agree on an arbitrator within the applicable time period, such appointment will be made in accordance with the DIFC-LCIA Rules.
18. **Entire Agreement.** The Agreement expresses the entire understanding of the Parties and replaces any and all former agreements, understandings, solicitations, offers and representations relating to EITC's or its Affiliate's performance in connection with the Agreement and contains all the terms, conditions, understandings, representations and promises of the Parties hereto.

**SERVICE SCHEDULE**  
**DU WHOLESALE BROADBAND BACK-UP VPN SERVICE**

The following terms and conditions apply when du provides the wholesale broadband access back-up VPN ("**Backup VPN Service**") to the Customer.

**1 SERVICE DESCRIPTION**

- 1.1 The du Backup VPN Service provides a redundancy solution for Customers by providing them with a backup VPN for the L3 VPN, IPLC and Ethernet Services ("**Primary Services**"). The Backup VPN Service removes any single-point-of-failures (SPOF) from single international backhaul networks.
- 1.2 The Backup VPN is only available with one or more of the Primary Services.
- 1.3 The Backup VPN Service comprises:
  - 1.1.1 internet access with 4 or 8 static IP addresses per Back up VPN. Charges apply if additional IP addresses are required; and
  - 1.1.2 symmetric upload and download speeds.

**2 TERMINOLOGY DEFINITIONS**

- 2.1 In this Service Schedule, the following terms shall have the following meanings:

"**Available**" or "**Availability**" means that a Circuit is not Unavailable.

"**Backup VPN Service**" means the service described in this Service Schedule.

"**Cancellation Charge**" means the charge which is payable by the Customer to du on cancellation of a Circuit in accordance with clause 3.5 of this Service Schedule.

"**Charges**" means the charges payable by the Customer for the Backup VPN Service as set out in the Service Order.

"**Circuit**" means a point-to-point transmission channel provided by du for the Customer's use for the conveyance of voice, data and/or information services between the du Network Termination Points.

"**Customer Service Centre**" means du's fault management centre, which operates the du Network Management System.

"**Dual Access**" means customer CE is connected to du access network with two Backup VPN links from two access devices.

"**du Network**" means the communication network operated by du.

"**du Network Management System**" means du's network integrated fault management system.

"**du Network Termination Points**" means the points at which the du Network terminates on the Customer-facing side of the du distribution frame as specified in the Service Order.

"**Monthly Review Period**" means the calendar monthly periods commencing on the 1st day of each month during the Initial Term and any subsequent term, over which Service Availability is calculated, provided that the first Monthly Review Period will commence on the Service Commencement Date.

"**Non Service-affecting Fault**" means a fault that does not result in a Circuit being Unavailable.

"**Off-net**" means provided partially or wholly on a network other than the du Network.

**“On-net”** refers to du’s network in the United Arab Emirates and if applicable, to du international POP (e.g. London, Singapore, Amsterdam, etc.) excluding the third-party local access used to provide the remote local tail of the circuit.

**“Planned Outage”** means any routine maintenance or upgrade work to be performed by du which may affect the availability of the IPLC Service, notified by du to the Customer with at least 5 days prior written notice.

**“Protected Circuit”** means a Circuit which is provided on a ‘redundant ring’ basis, so that if the du Network ring is broken, the telecommunications traffic passing over the relevant Circuit can be re-routed so as to avoid the Service being Unavailable.

**“Quarterly Review Period”** means the quarterly review period commencing on the 1st day of each quarter (1 January, 1 April, 1 July or 1 September) during the Initial Term and any subsequent term, over which Service Availability is calculated, provided that the first Quarterly Review Period will commence on the Service Commencement Date and end on the last day of that quarter.

**“Service-affecting Fault”** means a fault that result in a Circuit being Unavailable.

**“Service Availability”** has the meaning given to it in clause 4.3 of this Service Schedule.

**“Service Commencement Date”** means the date that the IPLC Service is made available to the Customer as notified to the Customer by du.

**“Service Credits”** means an amount which will be credited towards the Charges payable by the Customer for the IPLC Service in accordance with clause 4 of this Service Schedule.

**“Severely Errored Second”** means a full second with a bit error ratio greater or equal to 1 in 1000.

**“Single Access”** means customer CE is connected to du access network via only one Backup VPN link from the access device.

**“Target Service Commencement Date”** means the date specified as such on a Service Order by which du has agreed to provision the IPLC Service.

**“Unavailable” or “Unavailability”** means that:

- a. signals cannot be transmitted over a Circuit in either or both directions due to a total break in transmission (in which case Unavailable time begins when a trouble ticket is raised and ends when the same trouble ticket is closed); or
- b. 10 consecutive Severely Errored Seconds have been observed. Such ten Severely Errored Seconds shall be considered to be part of Unavailable time. The end of the period of Unavailable time shall occur when 10 consecutive seconds without any Severely Errored Seconds have been observed. Such 10 seconds shall be deemed to be Available time.

**“Unprotected Circuit”** means a Circuit which is not provided on a ‘redundant ring’ basis, so that if the du Network over which the Circuit runs is broken, the telecommunications traffic passing over the relevant Circuit cannot be re-routed, and the Backup VPN service will become Unavailable.

**“Working Day”** means any day from Sunday to Thursday (inclusive) which is not a 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.

2.2 Other capitalized words in this Service Schedule have the meanings set out in the Standard Terms and Conditions.

### 3 SERVICE PARAMETERS

#### 3.1 Backup VPN bandwidths (symmetric)

The bandwidth will be specified in the Service Order. The following bandwidths are currently available for the Backup VPN Service and du may notify the Customer if any further bandwidths become available:

- 2Mbps
- 4Mbps
- 8Mbps

- 12Mbps
- 16Mbps
- 20Mbps
- 30Mbps
- Up to 100Mbps (with increments of 10Mbps)

### 3.2 Static IP Addresses

The following options are available for the number of IP addresses that the Customer requires for the Backup VPN Service:

- 4, 8, 16, 32, 64, 128 and 255 IP addresses

### 3.3 Access interfaces supported (Customer facing ports)

The Backup VPN Service supports the following interfaces and du may notify the Customer if any further interfaces are supported:

- 100BaseT – RJ45 (802.3u)
- 1000BaseT – RJ45 (802.3ab)
- 1000BaseSX – LC (802.3z)
- 1000BaseLX – LC (802.3z)

### 3.4 Off-net Access for Backup VPN Service

Backup VPN is currently only available On-net. du will notify the Customer if it becomes available Off-net.

## 4 CHARGES

- 4.1 The Customer must pay du the Installation Charge and the Monthly Charge for providing the Backup VPN Service. The Installation Charge and the Monthly Charge are specified in the relevant Service Order.
- 4.2 The Installation Charge and Monthly Charge will be invoiced in accordance with the Standard Terms and Conditions for the amounts detailed in the Service Order.
- 4.3 In addition, if the Customer requests that du provision the Backup VPN Service beyond the du Network Termination Points, du may invoice the Customer additional charges in relation to such provisioning.
- 4.4 Installation Charges may be invoiced by du to the Customer on a cost incurred basis.
- 4.5 Cancellation Charges may be invoiced by du to the Customer on a cost incurred basis or as otherwise calculated in accordance with clause 4.6.
- 4.6 If all or part of a Service is cancelled or the Service details are significantly modified, including without limitation a change in the du Network Termination Points or capacity, prior to the Target Service Commencement Date, du may charge the Customer a Cancellation Charge to cover the reasonable costs incurred by du as a result of such cancellation or modification. The applicable Cancellation Charge will be in accordance with Table 1 below:

**Table 1**

Number of full Working Days before Target Service Commencement Date	Cancellation Charge as % of Installation Charge
0 to 1 days	100%
2 to 5 days	90%
6 to 10 days	70%
11 to 20 days	50%
21 to 30 days	25%
more than 30 days	0%

## 5 SERVICE CREDITS

5.1 Subject to clause 5.7 of this Service Schedule, du will provide the Customer with Service Credits, as set out below, for failure to meet the following targets:

5.1.1 Target Service Commencement Date; and

5.1.2 Service Availability.

### 5.2 Target Service Commencement Date

5.2.1 du will provide a Target Service Commencement Date for the installation of the Backup VPN Service(s) specified in a Service Order. Subject to clause 5.7 of this Service Schedule, the Customer will be entitled to a Service Credit if the Target Service Commencement Date is not met, which will be calculated as set out in Table 2 below:

**Table 2**

Number of full Working Days by which the Service Commencement Date exceeds the Target Service Commencement Date	Service Credits as % of Installation Charge of affected Service:
1 - 5 days	5%
6 - 10 days	10%
11- 20 days	15%
More than 20 days	20%

5.2.2 If only part of a Service Order is delayed, valid Service Credits will be payable only in respect of the Services that are not delivered by the Target Service Commencement Date.

### 5.3 Service Availability

5.3.1 The following equation will be used to calculate Service Availability. References to hours are to the number of hours (rounded up to nearest hour) in the applicable Quarterly Review Period:

$$\frac{(\text{Total hours} - \text{Total hours Unavailable})}{\text{Total hours}} \times 100$$

#### 5.3.2 Service Availability

- du will use reasonable endeavors to ensure that all Unprotected Circuits provided wholly On-net are Available for at least 99.5% of the time in each Quarterly Review Period following the Service Commencement Date.
- Subject to clause 5.7 of this Service Schedule, where Service Availability falls below the Service Availability levels set out in Table 7 below during any Quarterly Review Period, the Customer will be entitled to Service Credits on the applicable 1 x Monthly Charge as follows:

**Table 3**

Service Availability (during Quarterly period)	Service Credits for On-net (as % of 1x Monthly Charge)	Service Credits for Off-net as % of 1x Monthly Charge (Port Only)
99.5% or greater	0%	0%
99.4% to 99.0%	10%	10%
98.9% to 98.0%	20%	20%

97.9% to 95.0%	30%	30%
94.9% to 90.0%	40%	40%
89.9% or less	50%	50%

## 5.4 Fault Management

### 5.4.1 Definition of Fault Severity Levels

Faults will be classified in accordance with the Fault Severity Levels set out in Table 4 below.

**Table 4**

Fault Severity Levels	Urgency	Description
1 - Critical	1 - Corrective action is required immediately	Service is completely down with critical business impact.
2 – Major	2 - Corrective action is required as soon as possible	Service goes down for a particular time period but remains mostly normal or an important function is not available.
3 – Minor	3 - Corrective action is required to prevent intermittent disruption to business activity	Service becomes degraded intermittently with minor business impact for brief periods but remains mostly normal.

## 5.5 Fault resolution for On-net traffic

du will use its best endeavours to:

- a. prioritize faults in accordance with the Fault Severity Levels; and
- b. resolve faults reported by the Customer in a timely manner and in accordance with the restoration times specified in Table 8 below.

**Table 5**

Faulty Severity Levels	Restoration Times	Initial Response / Acknowledge to Customer after the Trouble Ticket received	Customer Updates
1	4 hours	15 minutes	30 minutes
2	8 hours	15 minutes	1 hour
3	12 hours	15 minutes	8 hours

## 5.6 Calculation of Service Credits

- 5.6.1 Where a Quarterly Review Period of applicable Service Credits incorporates part of a month, any Service Credit will apply to a pro-rated Monthly Charge.
- 5.6.2 Service Credits will be calculated quarterly, aggregated and credited towards the total of the Charges in the Customer's next monthly invoice.

- 5.6.3 If a Service is cancelled during any quarterly period, no Service Credit will be payable to the Customer in respect of that Service for that quarter period, unless the Service is cancelled as a result of termination of the Agreement by the Customer under clause 21 (Termination) of the Standard Terms and Conditions.
- 5.6.4 The Customer must claim any Service Credit in writing within 21 Working Days of the date on which the Customer could reasonably be expected to become aware of a failure by du to meet the targets specified in clauses 8.2 and 8.3 of this Service Schedule. The Customer shall not be entitled to any Service Credits in respect of a claim unless and until du has received notice of the claim in writing. Should du require additional information from the Customer, the Customer shall not be able to claim any Service Credits until du has received all information it reasonably requests.

#### **5.7 Exclusions from payment of Service Credits**

Service Credits will not be payable by du to the Customer in relation to the Target Service Commencement Date or the Service Availability for faults or disruptions to the Ethernet Service caused by any of the following:

- 5.7.1 the fault or negligence of the Customer, its employees, agents or contractors;
- 5.7.2 the Customer failing to comply with this Agreement;
- 5.7.3 a fault in, or any other problem associated with, equipment connected on the Customer's side of the du Network Termination Point;
- 5.7.4 any event described in clause 21 (Force Majeure) of the Standard Terms and Conditions;
- 5.7.5 a failure by the Customer to give du access to any equipment related to the provision of the Ethernet Service after being requested to do so by du for the purposes of investigating and rectifying any fault; or
- 5.7.6 maintenance during any Planned Outage, except where such Planned Outage exceeds or causes the aggregate time for each Planned Outage during a monthly period to exceed 8 hours.

### **6 LIABILITY**

The provision of Service Credits in accordance with this Service Schedule shall be the Customer's sole and exclusive remedy with respect to failure by du to meet the Target Service Commencement Date and Target Service Availability, and shall be in lieu of any other remedy which the Customer may have at law or otherwise.