

VIRTUAL UNBUNDLING LOCAL ACCESS REFERENCE OFFER

ANNEX A

General Terms and Conditions

GO plc

This Reference offer for Virtual Unbundled Access to the FTTP network and collocation related facilities is published in accordance with the Malta Communications MCA Final Decision Market 4 – Wholesale Unbundled Infrastructure Access Market dated 6th March 2013 in line with Regulation 12(2) of the Electronic Communications Network and Services (General) Regulations (Chapter 399.28 of the Laws of Malta).

Undertakings are advised that the Malta Communications Authority may impose changes to this Reference Offer in accordance with its powers under Regulation 12(4) of the Electronic Communications Network and Services (General) Regulations (Chapter 399.28 of the Laws of Malta)

v 10.04.15

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1. Definitions and Interpretation

- 1.1 The following documents, as may be amended from time to time, form part of this VULA Reference Offer and, in the event of any inconsistencies between them, the order of precedence shall (unless the contrary is expressly stated or the context otherwise requires) be as follows:

Annex A General Terms and Conditions

Annex B Service Descriptions

- Annex B1 VULA FTTP Connection
Annex B2 VULA FTTP Profiles

Annex C Technical Specifications

- Annex C1 VULA Technical Characteristics

Annex D Price List

Annex E Processes and Procedures

- Annex E1 High Level Operations and Planning Manual
Annex E2 Pre-Provisioning and Post-Provisioning Processes
Annex E3 Service Level

Annex F Non-Disclosure Agreement

Annex G List of GO Optical Line Terminal Sites with access to the GO Gigabit-capable Passive Optical Network

Annex H Terms and Conditions for Collocation Service for Backhauling of VULA Traffic from the Handover Point.

- 1.2 References to the OAO and GO shall include their respective employees, agents, successors (whether by operation of the law or otherwise) and legally permitted assignees, transferees or sub-contracted persons.
- 1.3 The headings of the Clauses of this Annex are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of any of the said Clauses.
- 1.4 References to any applicable legislation are to such legislation as amended from time to time.

2. Commencement and Duration

- 2.1 The Agreement negotiated on the basis of this RO takes effect on the date of signature of such Agreement and shall remain in force for a period of three (3) years therefrom, unless terminated in accordance with Clause 10 below. Following agreement by both parties, a new two (2) year contract term shall come into effect upon the expiry of the first 3 year term. Where agreement is not reached on contract renewal terms by the expiry date of the first Agreement, the latter shall continue to run until such time as the new Agreement takes effect or when the outcome of a dispute resolution mechanism or court action is known.

3. Obligations of GO

- 3.1 GO will provide the Service to an OAO that enters into an Agreement with GO on the basis of this RO. The Service will be provided as described in this RO and in accordance with the terms and conditions contained in the various documents making up this RO and subject to the prices listed in the RO Price List at Annex D.
- 3.2 GO will endeavour to use all reasonable resources and skills to provide the Service to the OAO in a non-discriminatory manner.
- 3.3 GO will grant the OAO on a non-exclusive and non-transferable right to use the Service for the sole purpose of providing a broadband connection to the User in accordance with the terms and conditions of the Agreement.
- 3.4 GO will, as a rule, provide a new wholesale Service four (4) weeks prior to the launch of own retail service. In exceptional circumstances where GO's ability to compete in the market is weakened if it cannot respond quickly to market developments, and/ or when designing and producing a wholesale Service in advance of retail launch would significantly slow its ability to offer the retail product, GO will provide a new wholesale Service not later than eight (8) weeks from the launch of own retail service.

GO may amend the price for VULA FTTP Connections subject to a minimum of two (2) weeks' notice to the OAO. GO will also provide non-discriminatory wholesale access in a way which ensures technical and economic replicability for the OAO.

4. Obligations of the OAO

- 4.1 An OAO making a request to GO for the Service is obliged to enter into the Agreement with GO in order to obtain the Services. The Agreement will be based all the documents making up this RO.
- 4.2 The OAO shall guarantee that at the end of the first year from the date of formal acceptance by the OAO of the executed works of the first VULA Service “**End of Year**” and thereafter for each subsequent year, the OAO shall be charged for a minimum of 1,500 VULA FTTP Connections. In the first End of Year this will be calculated on the basis of the lowest VULA profile price, whereas in subsequent Ends of Year it will be calculated at 65% on the lowest profile price, 20% on the second lowest profile price and 15% on the third lowest profile price. In case there are less than three and more than one available profiles, the minimum number of VULA FTTP connections will be calculated at 70% on the lowest profile and 30% on the second lowest profile.
- 4.3 The OAO shall, independently of GO, manage all aspects of the relationship with its Users and shall be fully responsible for all User inquiries, including but not limited to inquiries concerning product and service information, fault reports, and technical issues and settlement. For the avoidance of doubt, GO is not obliged to respond to queries from and/or handle customer care issues of the Users of the OAO.
- 4.4 The OAO shall take all necessary measures to ensure that the use of the Service under this Agreement will not cause any damage, disturbance, interruptions or the like to any of the other services provided over the GO infrastructure delivering the Service.
- 4.5 The OAO shall ensure that its Users do not make unauthorised use of and/or damage to GO’s equipment and/or installations and do not in any way interfere in the same.
- 4.6 The OAO shall further ensure that its Users will at all times maintain the existing marking of equipment, including but not limited to the ONT, or installations indicating that they are the property of GO.
- 4.7 The OAO acknowledges that despite GO’s efforts and good intentions it is not possible for GO to provide a fault free Service. Any such faults shall be dealt with and resolved as per the fault reporting and fault resolution procedure spelt out in Appendix 3 of Annex E2 and any applicable service level as contained in Annex E3.

5. The Service

- 5.1 Annexes B, C, E and G of this RO provide descriptions of the Service provided by GO under this RO and the specific terms and conditions on which GO is offering such Service.
- 5.2 Annex E of this RO identifies and describes the processes and procedures that need to be undertaken in relation to the VULA Services requested by the OAO as well as the procedures relating to the continued operation and maintenance of such Services.
- 5.3 Annex H of this RO outlines the terms and conditions for collocation service which the OAO may opt for to backhaul the VULA traffic from the HP.

6. Charging for VULA Services

- 6.1 The charges applicable for each VULA FTTP Connection are those published in the RO Price List at Annex D, as this Annex may be amended by GO from time to time in accordance with Clause 3 above. The minimum period for which a VULA Connection shall be charged is of 12 months.
- 6.2 Services for which no charge is specifically indicated either in the RO Price list or made reference to in the Annexes may be subject to bespoke charges unless the contrary is otherwise expressly stated. Except for when the timeframe of the bespoke charge is determined in a particular Annex, bespoke charges will be provided by GO to the OAO within a reasonable time but not exceeding 60 (sixty) working days of the OAO's request for such information. It is understood that any such request for the bespoke charges shall not be interpreted as binding the OAO to request the relative service to which such bespoke charges relate. The charges will be based on efficiently incurred costs which are consistent with the principles of cost causality, transparency and non-discrimination. Should the OAO not be in agreement with the charges provided by GO in accordance with this Clause the OAO may resort to the Dispute Resolution procedure described in Clause 19.

7. Billing and Payment

- 7.1 GO shall bill the OAO for the Service which it provides to the OAO. Invoices will be generated on a calendar monthly basis in advance and will indicate the quantity of VULA Services provided to the OAO and the relative charges payable by the OAO.
- 7.2 Detailed itemised billing may be requested by the OAO. GO reserves the right to charge for invoices having additional details.
- 7.3 The charges in the RO Price List are quoted net of VAT or any other similar tax that may be applicable from time to time (unless such charges are expressly stated to be inclusive of VAT or any such other tax). Any such VAT or other similar tax not already so quoted shall be charged over and above such quoted charges.
- 7.4 Invoices are payable by the OAO within one month of the invoice date **“Due Date”**.
- 7.5 For the avoidance of doubt, the date of issue of an invoice shall be the date of despatch of that invoice.
- 7.6 Though GO will endeavour to issue correct invoices, the OAO hereby acknowledges that GO cannot warrant that the billing information is free of error. GO shall incur no liability whatsoever for the preparation of an incorrect invoice.
- 7.7 Interest at the maximum Interest Rate allowed by Law shall be payable from and including the day after the Due Date.

8. Network Safety and Standards

- 8.1 Each Party is responsible for the safe operation of its network and all equipment relating thereto, including but not limited to the OAO equipment connected to the ONT **“Terminal Equipment”**, and shall take all reasonable and necessary steps in its operation and implementation of the Agreement to ensure that its network and all equipment relating thereto does not:
- 8.1.1 Endanger the safety or health of employees, contractors, agents, customers or other authorised personnel of the other Party;
or
 - 8.1.2 Damage, interfere with or cause any deterioration in the operation of the other Party’s network or any equipment relating thereto.

- 8.2 Neither Party shall do or permit anything to be done or omit or permit the omission of anything in relation to the other Party's network or equipment which either causes damages to the other Party's network or equipment or will, save as permitted under or pursuant to the Agreement, result in modification of the proper and normal operation of the other Party's network or equipment.
- 8.3 Each Party shall conform with the relevant EU and Maltese Legislation as well as to all relevant national and international standards in communications industry including but not limited to those standards and operating guidelines laid down by the International Telecommunication Union (ITU) and the European Telecommunications Standards Institute (ETSI).
- 8.4 The OAO shall not connect or knowingly permit the connection to its network of any equipment or apparatus, including but not limited to any Terminal equipment, which does not meet the requirements specified in the preceding sub-clause or which shall degrade the quality of GO's network or equipment.

9. Insurance Requirements

- 9.1 At all times during the currency of the Agreement, the OAO shall keep in full force and effect, at its sole expense, the following insurance policies issued by companies authorised to do business in Malta and approved by GO:
- 9.1.1 A public liability insurance policy in connection with any works or services rendered by or on behalf of the OAO under the Agreement. Such policy shall name both GO and the OAO as insured and shall have limits of liability of not less than two million and five hundred (2,500,000) Euros for injury or death to any one person, per occurrence, and five hundred thousand (500,000) Euros for damage to property per occurrence. Cover shall include the standard Cross Liability Clause wording;
- 9.1.2 An employer's liability policy providing insurance cover against accidents at work for the OAO's employees.
- 9.2 The OAO shall procure that in respect of each of the above-mentioned insurance policies, the OAO's insurers shall waive all rights of subrogation against GO.

10. Breach, Suspension and Termination

- 10.1 In the event that either Party is in breach of a material obligation under Agreement, not being a breach described in Clauses 10.2 and 10.3 hereunder, and such breach is capable of remedy, the other Party “the **Terminating Party**” shall send the Party in breach a written notice giving full details of the breach and requiring the Party in breach to remedy the breach or in the case of an urgent need to remedy the breach so as to safeguard end-to-end connectivity, within such shorter period as the Terminating Party may reasonably specify.

If the Party in breach does not remedy the breach within the time period stipulated in the said notice, the Agreement may be suspended at the option of the Party not in breach provided that the Party being suspended shall have right of recourse to the MCA if it feels that such suspension was unjustified in the circumstances.

If the Party in breach does not remedy the breach within thirty (30) days from the date of receipt of the written notice, the Agreement may be terminated at the option of the Terminating Party. In this case termination shall occur immediately upon written notification by the Terminating Party to the Party in breach. Provided that if the breach is not capable of remedy within thirty (30) days, the Terminating Party may extend the said period as required in the circumstances.

Provided further that each of the Parties’ right to terminate or suspend performance of the Agreement pursuant to the above is without prejudice to any other rights available to the Parties, in particular the referral of the matter to the MCA for determination in accordance with the MCA Guidelines for Inter-Operator Complaints, Disputes and Own Initiative Investigations, or to the Courts of Law of Malta.

- 10.2 In the event that the OAO delays any three (3) payments, in any consecutive twelve (12) month period, of any uncontested amounts owed to GO for services rendered under the Agreement, GO shall have the right to terminate the Agreement; provided that upon the second delay, GO shall warn the OAO that in the event of another delay, the VULA shall be terminated forthwith.
- 10.3 In the grave event that either Party's network adversely affects the normal operation of the other Party's network, or is a threat to any person's safety, the other Party “the Terminating Party” may, after giving the first Party two (2) days written notice, suspend its obligations under the Agreement, to the extent necessary, and for such period as it may consider reasonable, to ensure the normal operation of its network, or to reduce the threat to safety;

provided that the Party being suspended shall have right of recourse to the MCA if it feels that such suspension was unjustified in the circumstances.

- 10.4 In addition to the provisions of the clauses above, the Agreement may be terminated by either Party by written notice forthwith (or on the termination of such other period as such notice may specify) if the other Party:
- (a) is unable to pay its debts; or
 - (b) ceases to carry on business; or
 - (c) has a liquidator or an administrator appointed; or
 - (d) has an order made or a resolution passed for its winding up (other than for the purpose of amalgamation or reconstruction); or
 - (e) ceases to hold an authorisation in accordance with the ECRA.
- 10.5 In addition to the provisions of the clauses above, GO may terminate the Agreement with a two month notice, if GO is no longer obliged legally or by regulation to offer the Service: provided that where withdrawal of the obligation to provide the Service results from a decision by the MCA in the relative market analysis in accordance with regulation 10(3) of the Electronic Communications Networks and Services (General) Regulations (Chapter 339.28 of the Laws of Malta), the termination notice period by GO shall be in line with the provisions of said MCA market analysis decision.
- 10.6 Upon termination or expiry of the Agreement, the Parties shall co-operate with each other to ensure that such steps are taken as are necessary for recovery by each Party of any equipment or apparatus supplied by the other Party (even where that equipment or apparatus is on the premises of the other Party or third parties).
- 10.7 On termination or expiry of the Agreement either Party shall be entitled after reasonable prior notice in writing to the other Party to enter the premises of the other Party for the purposes of carrying out necessary disconnection works and repossessing any plant, equipment or apparatus of that Party or a third party installed by or for that Party. The Party on whose premises such plant equipment or apparatus was installed shall be responsible for compensating the other for any such plant equipment apparatus or things belonging to the other or such third party which are not so delivered in good condition (fair wear and tear excepted) and the Party carrying out such disconnection works shall indemnify the other Party in respect of any damage thereby caused to the premises fixtures and fittings, apparatus and equipment of such other Party. Neither Party shall be responsible for any damage to plant, equipment or apparatus belonging to the other Party which has been caused by any negligence or failure to perform necessary or timely maintenance by such other Party.

- 10.8 Termination or expiry of the Agreement shall not be deemed a waiver of a breach of any term or condition of the said Agreement and shall be without prejudice to either Party's rights, liabilities or obligations that would have accrued prior to such termination or expiry.
- 10.9 Notwithstanding the termination or expiry of the VULA Agreement, the preceding sub-clause and Clauses 11, 12 and 14 shall continue in full force and effect.
- 10.10 GO's right to terminate or suspend performance of the Agreement pursuant to this Clause is without prejudice to any other rights or remedies available to either Party at law.

11. Confidentiality

- 11.1 The Parties agree to treat all Confidential Information in accordance with the terms and conditions of the Non Disclosure Agreement in Annex F of this RO.

12. Intellectual Property Rights

- 12.1 Except as expressly otherwise provided in this RO, Intellectual Property Rights shall remain the property of the Party creating or owning the same and nothing in the Agreement shall be deemed to confer any assignment or right or title whatsoever or licence of the Intellectual Property Rights of one Party to the other Party, and nothing in the Agreement shall be deemed to restrict the rights of any Party to own, use, enjoy, license, assign or transfer its own Intellectual Property.

13. Force Majeure

- 13.1 Neither Party to the Agreement shall be liable for any delay or failure in performance of any part of the Agreement from any cause beyond its reasonable control and without its fault or negligence including, without limitation, acts of God, acts or omissions of civil or military MCA, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, floods, compliance with any statutory, regulatory or legal obligation, work stoppages, industrial disputes of any kind (whether or not involving that Party's employees), major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers, subsidence, acts or omissions of persons or bodies for whom the Party affected by the force majeure is not

responsible or any other cause whether similar or dissimilar outside the reasonable control of that Party.

- 13.2 The Party affected by a force majeure shall as soon as reasonably practicable notify the other Party in writing of the force majeure, the date on which the force majeure started and the effects of the force majeure on its ability to perform its obligations under the Agreement.
- 13.3 If the Party affected by a force majeure complies with the preceding sub-clause, the actual non-performance or delay in performance of any of its obligations under the Agreement shall not be deemed to be a breach of the Agreement and it shall be excused the performance of its obligations under the Agreement for as long as such performance is thereby prevented, delayed or hindered.
- 13.4 If the Party affected by a force majeure does not comply with the provisions of sub-clause 13.2, such Party shall remain liable for the performance of all its obligations under the Agreement.
- 13.5 Both Parties shall make every reasonable effort to minimise the effect of force majeure upon the performance of the Agreement.
- 13.6 Upon cessation of the effects of the force majeure the Party affected by a force majeure shall promptly notify the other of such cessation.
- 13.7 If as a result of a force majeure the performance by either Party of such Party's obligations under the Agreement is only partially affected, such Party shall nevertheless remain liable for the performance of those obligations not affected by the force majeure.

14. Indemnity

- 14.1 The OAO shall fully indemnify and keep GO fully indemnified against:
 - 14.1.1 all liabilities, costs and expenses in respect of claims brought against GO by any person in relation to death or injury to individuals or loss of or damage to property where and to the extent that such death, injury, loss or damage is attributable to the wilful or negligent acts or omissions of the OAO, its employees, its agents, its Users or any other person acting on the OAO's behalf; and
 - 14.1.2 any damages, losses or expenses arising from the failure by the OAO, its employees, its agents, its Users or any other person acting on the OAO's behalf to comply with the provisions of any law.

- 14.2 The remedies contained in this Clause are without prejudice and in addition to any warranties, indemnities, remedies or other rights provided by law and/or statute and/or under any other provision of the Agreement for the benefit of GO.

15. Assignment of Rights and Obligations

- 15.1. Unless otherwise agreed in writing, and subject to clause 15.2, no rights, benefits or obligations under this Agreement may be assigned, sub-contracted or transferred, in whole or in part, by a Party without the prior written consent of the other Party, which consent shall not be unreasonably delayed or withheld and in any case said consent or refusal shall be communicated within fifteen (15) working days from the receipt of the formal request as per communication clause.

Provided that each Party may assign, subcontract or transfer this Agreement to an entity under its direct or indirect control or an entity acquiring all, substantially all or parts of its equity without the consent required under this Clause 15.1. The assigning Party shall promptly give notice to the other Party of any assignment or transfer permitted to be made without the other Party's consent. Nevertheless, no notification shall be required in the case of a sub-contracting which can be made without the other Party's consent, provided that in such cases the Party making the sub-contracting shall remain exclusively liable vis-à-vis the other Party for the due and proper performance of all its obligations under this Agreement, and provided further that no relationship whatsoever shall be created between the sub-contractor and such other Party.

- 15.2 Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assignees. No assignment shall be valid unless the assignee/successor agrees in writing to be bound by all provisions of this Agreement.

16. Credit Assessment and Credit Risk Management

- 16.1 GO may, at any time in its sole discretion, require the OAO to enter into bank or other guarantees (or to provide some other form of financial security, for example a deposit) which in the reasonable and fair opinion of GO is/are appropriate as security against the OAO's non-compliance with or non-observance of any of the provisions of the Agreement (including failure to pay charges due thereunder).

- 16.2 Refusal to provide such security or failure to provide such security within thirty (30) days of the date of GO's request for the same shall be deemed to be a material breach of the Agreement by the OAO.

17. Amendments to RO and Review of Agreement

- 17.1 The Parties acknowledge that the MCA has the right to effect any amendments it deems fit to any of the terms and conditions stipulated in the RO in accordance with its powers under Regulation 18(2) of the Electronic Communications Network and Services (General) Regulations (Chapter 399.28 of the Laws of Malta).
- 17.2 Any party to an existing Agreement shall be entitled, upon request to the other party in accordance with clause 17.3, to obtain the terms and conditions included in the most recent version of the RO published from time to time.
- 17.3 A Party may seek to amend this Agreement by serving on the other a review notice if:
- 17.3.1. either Party's General Authorisation is materially modified ; or
 - 17.3.2. a material change occurs in the law or regulations governing electronic communications in Malta or the EU; or
 - 17.3.3. this Agreement makes express provision for a review or the Parties may agree in writing that there shall be a review; or
 - 17.3.4. a material change occurs, which affects or reasonably could be expected to affect the commercial or technical basis of this Agreement; or
 - 17.3.5. there is a review of the RO by the MCA;
 - 17.3.6. there is a material change to the terms and conditions of the Agreement.
- 17.4 A review notice shall set out in reasonable detail the issues to be discussed between the Parties.
- 17.5 Save for the provisions of the Agreement, a Party may initiate a general review of this Agreement at least once during the twelve month period beginning from the Commencement Date of this Agreement and subsequent anniversary. However, provided a Party complies with Clause 17.4, a review may be initiated as deemed appropriate by either Party serving a review notice.
- 17.6 On service of a review notice, the Parties shall forthwith negotiate in good faith the matters to be resolved with a view to agreeing the relevant amendments to this Agreement.

- 17.7 For the avoidance of doubt, the Parties agree that notwithstanding service of a review notice this Agreement shall remain in full force and effect.
- 17.8 If the Parties fail to reach agreement on the subject matter of a review notice within one (1) month in each case from the date of service of such review notice, either Party may escalate the dispute for determination by the Courts of Law or the MCA, in the latter case in accordance with the MCA Guidelines for Inter-Operator Complaints Disputes and Own Initiative Investigations. The MCA shall endeavour to determine:
- 17.8.1. the matters upon which the Parties have failed to agree;
 - 17.8.2. whether this Agreement should be modified to take account of such matters; and, if so
 - 17.8.3. the amendment or amendments to be made.

The Parties shall enter into an agreement to modify or replace this Agreement in accordance with what is agreed between the Parties to conform to the determination of the MCA.

- 17.9 Except for Annexes B2 and D, any amendments and supplements to this Agreement, including its Annexes, Appendices and Service Schedules shall in order for them to be valid, have been drawn up in writing, dated and signed by both Parties. Such amendment and supplements shall not affect the validity or enforceability of any of the remaining provisions of this Agreement.

18. Relationship of Parties

- 18.1 The relationship between the Parties is that of independent contractors. Nothing in the Agreement shall be construed as making either Party hereto an agent, joint venturer or partner of or with the other. Neither Party is granted any right of MCA or agency, expressly or implicitly, on behalf of, or in the name of the other, nor any right to legally bind the other in any manner whatsoever. Neither Party shall become liable through any representation, act or omission of the other which is contrary to or unauthorised by the provisions of the Agreement.

19. Dispute Resolution

- 19.1 This clause shall not be applicable in the event that a Party to this agreement intends to contest a claim of breach of this agreement or to contest a notice of suspension or termination, as such matters are governed separately under Clause 10.
- 19.2 Save as provided in Clause 19.1 above, each Party shall use its best endeavours to resolve any disputes arising concerning implementation, application or interpretation of this Agreement in the first instance through negotiation between the Parties through the normal contacts. This phase of the dispute resolution shall be referred to as 'Level 1'.
- 19.3 In the event of the Parties failing to resolve the dispute at Level 1 negotiation within two (2) weeks either Party shall have a right to invoke the dispute procedures specified herein on the service of notice "the **Dispute Notice**" on the other Party. The Party serving the notice "the **Disputing Party**" shall include in the Dispute Notice all relevant details including the nature and extent of the dispute.
- 19.4 Service of the Dispute Notice shall constitute escalation to Level 2. Level 2 shall consist of consultation between the parties in good faith to resolve the dispute.
- 19.5 If the endeavours of the parties to resolve the dispute at Level 2 are not successful within two (2) weeks of escalation of the Dispute to Level 2, either Party may upon service of notice ("the Level 3 Notice") on the other, escalate the dispute for determination by the MCA, hereinafter referred to as Level 3, in accordance with the MCA Guidelines for Inter-Operator Complaints, Disputes & Own Initiative Investigations. The Level 3 Notice shall be served on both the MCA and the other Party. The Level 3 Notice shall include all details relevant to the dispute together with a submission as to the nature and extent of the dispute.

19.6 The normal contact for GO is:

Level 1:

.....

GO plc Fra Diego Street Marsa MRS 1501

Tel: 2594 3022

@go.com.mt

Level 2:

Ing. Mario Cachia

GO plc Fra Diego Street Marsa MRS 1501

Tel: 2594 6400

mario.cachia@go.com.mt

The normal contact for the OAO is:

Level 1:

Name

Address

Tel:

Email address

Level 2:

Name

Address

Tel:

Email address

No change to the normal contact details shall be effected until same has been notified to the other Party.

- 19.7 The time limits specified at paragraphs 19.3 and 19.5 above may be extended by mutual agreement between the parties.
- 19.8 The above procedures are without prejudice to any rights and remedies that may be available to the Parties in respect of any breach of any provision of this Agreement.
- 19.9 Any disputes or queries that arise in relation to the charging principles of this Agreement or invoices furnished by GO to the OAO shall be subject to the dispute resolution provisions of this clause.

- 19.10 Where a dispute arises in relation to an amount payable in respect of an invoice then the OAO shall be entitled to withhold payment of the disputed amount due for payment, upon serving GO with a Level 1 notice and provided that the disputed amount is greater than ten percent (10%) of the total invoice amount due for payment. Provided that in the event that the dispute is decided in favour of GO, GO shall have the right to charge interest due on the amount so withheld.
- 19.11 Where the OAO invokes the provisions of this Clause 19 after the Due Date of a disputed invoice, then the OAO shall not be entitled to withhold any portion of the amount due and payable.
- 19.12 Following resolution of the dispute, the Parties will issue a credit or tender payment as appropriate.

20. New Services

- 20.1 The OAO may, at any time, make a written request to GO in accordance with Clause 17 requesting GO to enter into an agreement for the provision of a new VULA FTTP Connection in accordance with the terms and conditions of Annex E. The request will be subject to the profiles in Annex B2.
- 20.2 Following a request pursuant to Clause 20.1, GO may offer VULA FTTH Connection as specified in the Agreement, subject to the profiles in Annex B2.

21. Provisioning, Operation and Maintenance

The procedures for the provision, operation and maintenance of the Service as for the continued operation and maintenance thereof shall be governed by the provisions of the Main Body and all applicable annexes.

22. Provision of Information

- 22.1 Subject to any confidentiality obligations the OAO shall provide GO with the necessary information which is reasonably required by GO in the efficient provision of Service to the OAO.
- 22.2 The Parties shall use reasonable endeavours to ensure that information disclosed is correct to the best of its knowledge at the time of provision of such information.

- 22.3 The Parties shall consult together on a timely basis in relation to the operation of the Agreement and apply their best endeavours to resolve any problems arising from such consultation or otherwise encountered in relation to the Agreement. In the event that any disagreement occurs in this respect, the Parties shall have recourse to Clause 19 above.
- 22.4 Without prejudice to the provisions of Clause 22.1 each of the Parties shall appoint a representative for the purposes of overseeing the organisation of the day-to-day practical implementation of the Agreement each of them shall liaise with the other and report to the Party appointing him on any problem which has not proved capable of resolution. On receipt of such report the Parties shall consult with a view to achieving a mutually acceptable solution to such problem.
- 22.5 Subject to Clause 11 hereof, both Parties shall indemnify the disclosing Party and keep it indemnified against all liabilities, claims, demands, damages, costs and expenses arising as a consequence of any failure by the receiving Party to comply with any written conditions imposed, including those relating to confidentiality as per Clause 11 or arising as a consequence of any failure by the receiving Party or any third party authorized by the receiving Party to comply with any obligations of confidentiality in accordance with Clause 11 or with any obligation under the Data Protection Act “**DPA**” and any regulations promulgated thereunder.
- 22.6 Nothing in this Agreement shall require a Party to do anything in breach of any statutory or regulatory obligation of confidentiality, including without prejudice to the generality of the foregoing, any obligation pursuant to the ECRA, the DPA or any other applicable legislation.

23. Other Obligations

- 23.1 Each Party has an obligation to the other Party to exercise reasonable skill and care of a competent electronic communications operator in performing its obligations under the Agreement and under any and all applicable legislation.
- 23.2 If a Party is in breach of any of its obligations under the Agreement to the other Party (excluding the liability to settle any charges incurred in relation to the Service or any new service contemplated by this Agreement), such Party's liability for damages to the other shall be limited to one million euro ((€1,000,000) for any one event or series of connected events and two million euro (€2,000,000) for all events, whether connected or not, in any period of twelve (12) calendar months.

- 23.3 Each Party "the **Indemnifying Party**" shall defend and indemnify the other Party "the **Indemnified Party**", its officers, directors, employees and permitted assignees and hold such indemnified Party harmless against any loss to the indemnified Party and/or to any third party including any loss arising out of the negligence or wilful misconduct by the indemnifying Party, its employees, agents, customers, contractors, or others retained by such parties, in connection with its provision of services under the Agreement or arising out of the Indemnifying Party's failure to comply with the provisions of any law and/or the terms and conditions of the Agreement.
- 23.4 Neither Party excludes or restricts its liability for death or personal injury caused by its own negligence or for any fraudulent mis-statement or fraudulent misrepresentation made by it in connection with the Agreement.

Nothing in this Clause shall render either Party liable to the other for loss of profits, business revenues, missed opportunities or anticipated savings whether incurred directly or indirectly, or for any indirect or consequential damage whatsoever either in contract, tort or otherwise (including negligence or breach of statutory duty).

24. Waiver

A failure to exercise or delay in exercising a right or remedy provided by the Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies or in any way affects the validity of the Agreement. No single or partial exercise of a right or remedy provided by the Agreement or by law prevents further exercise of the right or remedy or the exercise of another right or remedy. Provided that either Party may decide to make any such waiver, in which case the said waiver must be in writing and signed by such Party making the waiver in order for it to be valid.

25. Severability

The invalidity, illegality or unenforceability of any Clause of the Agreement or part thereof for any reason whatsoever shall not affect the validity, legality or enforceability of the remaining Clauses of the Agreement.

Both parties shall negotiate in good faith with respect to an equitable modification of the provisions, or application thereof, held to be invalid, illegal or unenforceable. Provided that if the parties fail to reach agreement on an equitable modification, the parties shall have right of recourse to Clause 19 above.

26. Governing Law and Jurisdiction

The interpretation, validity and performance of the Agreement shall be governed in all respects by Maltese Law.

The Parties irrevocably submit to the jurisdiction of the Maltese Courts of Law.