



DISCUSSION PAPER

**Public consultation on Reference  
Interconnection Offer from PNG DataCo  
Limited on various wholesale access services**

*Issued on 19 August 2020*

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## 1 INTRODUCTION

- 1.1 On 18<sup>th</sup> February 2019, the Minister for Communications and Information Technology declared a number of wholesale services pursuant to Section 130 of the *National Information and Communications Technology Act 2009 (the Act)* including the following:
- the international submarine cable transmission capacity service; and
  - the wholesale broadband capacity service (being via optic fibre within PNG).
- 1.2 On 17<sup>th</sup> December 2019, following extensive consultation with stakeholders, NICTA gazetted a number of Determinations containing service-specific pricing principles, including for the wholesale access services referred to above. The Determinations came into effect on 1<sup>st</sup> January 2020.
- 1.3 In the case of the service-specific pricing principles relating to the international submarine cable transmission capacity service maximum prices were also included in relevant Determination. In the case of the domestic wholesale broadband capacity services, no maximum prices were set by NICTA in the relevant Determination.
- 1.4 NICTA has reviewed the service-specific pricing principles and the maximum price structure and level associated with the international submarine cable transmission capacity service, and has commenced a public consultation process. A discussion paper was published together with a proposed amended determination in the case of this service on 24<sup>th</sup> July 2020 pursuant to Section 135(4) of the Act. Interested parties were invited to provide their submissions to NICTA by 24<sup>th</sup> August 2020.
- 1.5 PNG DataCo Limited (DataCo) has provided NICTA with a reference interconnection offer (RIO) in relation to a number of wholesale services, pursuant to Section 141 of the Act. These services and the nature of the RIO are described further in later sections of this Discussion Paper, as well as the relationship between the current consultative process and the consultative process that was commenced on 24<sup>th</sup> July 2020 in relation to the proposed amendment to Service-Specific Pricing Principles (Submarine Cable Services) Determination 2019, referred to above.
- 1.6 Section 142(4) of the Act requires NICTA, after considering the RIO, to either accept or reject it.
- 1.7 Section 142(5) of the Act requires NICTA not to accept the RIO unless –
- (a) NICTA has first –
    - i. published the RIO and engaged in public consultation in accordance with Section 229 of the Act; and
    - ii. considered any submissions that were received within the time limit specified by NICTA when it published the RIO which must be at least four (4) weeks after the date of that publication; and
  - (b) NICTA is satisfied that the RIO –
    - i. is consistent with the requirements of Section 141; and

- ii. is consistent with any non-discrimination obligations that are applicable to the access provider; and
  - iii. contains terms and conditions that are reasonable in accordance with Section 126; and
  - iv. is consistent with the general pricing principles and any service-specific pricing principles.
- 1.8 This Discussion Paper and the consultative process that has been initiated has been undertaken in accordance with the requirements of Sections 142 and 229 of the Act.

## 2 INVITATION TO MAKE WRITTEN SUBMISSIONS

- 2.1 NICTA invites interested parties to consider and comment on the RIO and, in particular, whether NICTA should accept or reject it. **Written submissions should be submitted via email to [consultation.submsission@nicta.gov.pg](mailto:consultation.submsission@nicta.gov.pg) and must be received by 4 pm on Friday 18<sup>th</sup> September 2020.**
- 2.2 Copies of all submission received will be published on NICTA's Public Register consistent with the requirements on NICTA under subsection 229(3) of the Act. Additional procedural information is set out in NICTA's Guidelines on the submission of written comments to public consultations and public inquiries, which are available on NICTA Public Register ([www.nicta.gov.pg](http://www.nicta.gov.pg)). Any respondent that wishes to claim confidentiality over information that it submits as part of this consultation should follow the procedures described therein.

## 3 KEY MATTERS FOR CONSIDERATION

- 3.1 The key matters associated with the RIO which NICTA considers should be highlighted are:
- a. The form and minimum requirements of the RIO
  - b. Previous involvement in this RIO by NICTA
  - c. Services covered in the RIO
  - d. Relationship between the RIO and the proposed amendment to the *Service-Specific Pricing Principles (Submarine Cable Services) Determination 2019*
- 3.2 Each of these matters is discussed in turn below. Respondents may well find other matters and issues on which to comment, and should do so in their submissions to NICTA if they wish.

### A. The form and minimum requirements of the RIO

- 3.3 The RIO submitted by DataCo to NICTA on 13<sup>th</sup> August 2020 is annexed to this Discussion Paper exactly as received. The RIO comprises the following: -
- (a) the covering letter from DataCo setting out the information required pursuant to Section 141 of the Act;

- (b) a Master Service Agreement (MSA) between DataCo and a customer, containing detailed general terms and conditions applicable to all the services covered by the RIO (Attachment A to the RIO);
  - (c) a Schedule of Prices for the Wholesale International Submarine Cable Services and other services covered (Attachment B to the RIO);
  - (d) the Service Order Form, by which customers may apply for a relevant service (Attachment C to the RIO); and
  - (e) the Service Level Terms and Conditions being the minimum service level terms and conditions for a service covered by the RIO (Attachment D to the RIO).
- 3.4 Set out below are the requirements for a RIO in Section 141 of the Act and in relation to each any preliminary view or comment that NICTA has to make at this stage:
- (a) Written statement of prices (with price-related terms), or standard non-price terms and conditions, or both – s. 141(1)(a): These are included. Comment on the price levels and on the relation of the prices to the services covered in the RIO is to be found later in this Discussion Paper.
  - (b) Undertaking by DataCo as access provider to comply with the RIO terms and to comply with non-discrimination and related access obligations – s. 141(1)(b): NICTA understands that this is DataCo’s intention, but whether the words of the letter and of the MSA are adequate is a matter upon which respondents, including DataCo itself, might wish to comment.
  - (c) Clearly written, organised in a logical and consistent manner, and in any form specified by NICTA in rules made for the purposes of the section – s. 141(1)(c): NICTA has not made any rules relating to specified form for a RIO. NICTA’s preliminary view is that the RIO is clearly written and organised in a logical and consistent manner.
  - (d) Expressed to come into effect immediately after the RIO is accepted by NICTA – s. 141(2)(a): The letter from DataCo explicitly says this.
  - (e) Specify an expiry date conforming to the Act – s. 141(2)(b): The letter from DataCo does this.
  - (f) Must provide sufficient information for an access seeker to determine the basis on which the access provider (DataCo) will provide the relevant declared service – s. 141(3): NICTA is of the preliminary view that the RIO meets this requirement, but will carefully consider any views on this aspect from respondents in their submissions.

## **B. Previous involvement in this RIO by NICTA**

- 3.5 NICTA has discussed the requirements for a RIO in general terms with DataCo prior to the RIO being submitted on 13<sup>th</sup> August 2020, but the main focus of discussions has related to the services that are covered in the RIO and the prices that are included in what has become the schedule at Attachment B to the RIO.
- 3.6 NICTA has *not* engaged with DataCo in relation to the content of the MSA (Attachment A). NICTA understands that most of the clauses of that agreement have been drawn

by DataCo from its standard agreements that are currently in use. There is no issue in that, but it does not preclude other interested parties from making comments as they see fit about whether the MSA submitted with the RIO conforms to the requirements of the Act. This comment relates to also to Attachments C and D.

- 3.7 DataCo has shared its detailed modelling of service costs with NICTA via a number of presentations. DataCo has developed costs on a top down (fully allocated historical cost) basis and also on the basis of Building Block Modelling (BBM). DataCo's models contain information on all of its costs and incorporate information of the highest level of commercial sensitivity. The same applies to the forecasts and other assumptions that DataCo has made about service demand. DataCo's network comprises a very high level of fixed costs, and, consequently, unit costing and pricing is very sensitive to demand levels.
- 3.8 NICTA has reviewed the cost model detail that DataCo has presented. NICTA will not be sharing any of DataCo's commercially sensitive information with other parties. However, NICTA will encourage DataCo to provide direct briefing on its overall modelling process to other parties who may seek such briefings. DataCo will be in a position to determine the extent to which particular data and assumptions might be shared without comprising commercial confidentiality, and whether experts retained for the purpose by other parties might gain improved conditional access to some information.

### **C. Services covered in the RIO**

- 3.9 The RIO covers a number of services. The services covered are set out in Schedule B to the RIO, namely:
- (1) **WIS**: Wholesale Internet Service, delivered to Customer Premises;
  - (2) **DP2P-M1**: Domestic P2P up to 1 Km Metro service, delivered over fibre to customer premises;
  - (3) **DP2P-M1+**: Domestic P2P over 1 Km Metro Service, delivered over fibre to customer premises;
  - (4) **DP2P-LH**: Domestic P2P Longhaul Service, delivered over fibre to customer premises; and
  - (5) **IP2P**: International P2P service over subsea fibre, delivered at the Cable Landing Station.
- 3.10 The prices for the services listed above are shown in the boxes of the same number at Schedule B to the RIO.
- 3.11 The services covered in the RIO comprise one or more of the declared services, as follows:
- (1) **WIS**: Utilises the international submarine cable transmission capacity service; and the wholesale broadband capacity service together with IP transit;
  - (2) **DP2P-M1**: Utilises the wholesale broadband capacity service;
  - (3) **DP2P-M1+**: Utilises the wholesale broadband capacity service;
  - (4) **DP2P-LH**: Utilises the wholesale broadband capacity service; and
  - (5) **IP2P**: Is in effect the international submarine cable transmission capacity service.

- 3.12 An access seeker is not bound by the selection of services set out in the RIO. An access seeker may require DataCo to provide a service that matches the specification of any declared service in the declaration decision, even if such a service is not covered in the RIO.

**D. Relationship between the RIO and the proposed amendment to the *Service-Specific Pricing Principles (Submarine Cable Services) Determination 2019***

- 3.13 The prices shown in Schedule 1 to the amended Determination attached to the Discussion Paper published on 24<sup>th</sup> July 2020 are maximum average prices for each year shown in schedule. The average is not the price that will be charged to any particular customer, but the weighted average of all of the prices chargeable during the time period shown in the amended Determination. The prices included in the Schedule at Attachment B to the RIO are the actual prices that DataCo is proposing to charge, depending on the capacity purchased by the customer.
- 3.14 Both the maximum average price in the amended Determination and the proposed prices in Attachment B of the RIO were derived from the same models with the same cost data and demand assumptions as described in paragraphs 3.7 and 3.8 above. In that respect they are consistent in their underlying cost assessments.

**ANNEX: REFERENCE INTERCONNECTION OFFER  
SUBMITTED BY DATACO TO NICTA ON 13<sup>TH</sup> AUGUST 2020**



13 August 2020

Mr. Charles Punaha  
**Chief Executive Officer**  
National Information & Communication Technology Authority  
P O Box 8444  
**BOROKO**  
National Capital District  
Papua New Guinea

Dear Mr. Punaha,

**RE: REFERENCE INTERCONNECTION OFFER – INTERNATIONAL SUBMARINE TRANSMISSION SERVICES**

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For the purposes of *section 141 of the National Information and Communication Act 2009* (“**NICT Act**”), PNG DataCo Limited (“**DataCo**”) hereby submits a Reference Interconnection Offer (“**RIO**”) for International Submarine Transmission Services for acceptance by the National Information and Communication Authority (“**NICTA**”) pursuant to *section 142 of the NICTA Act*.

**A. Composition of the RIO**

The RIO submitted by DataCo to NICTA under *section 141 of the NICT Act* comprises the following documents:

- 1) the Master Service Agreement between DataCo and a customer – which contains the detailed general terms and conditions applicable to all the services captured by the RIO (refer to **Attachment A**);
- 2) the Schedule of Prices for the Wholesale International Submarine Cable Services – lists the services captured by the RIO and their prices (refer to **Attachment B**);
- 3) the Service Order Form – the application form used a customer to order a service covered by the RIO (refer to **Attachment C**); and
- 4) the Service Level Terms and Conditions – contains the minimum service level terms and conditions for a service covered by the RIO (refer to **Attachment D**).

It should be noted that the Schedule of Prices for the Services, the Service Order Form and the Service Level Terms and Conditions are included in the Master Service Agreement document.



## **B. Commencement and Term of the RIO**

The RIO shall:

- 1) come into effect immediately upon acceptance of it by NICTA pursuant to *Section 142 of the NICT Act*; and
- 2) expire the earlier of:
  - (a) 18<sup>th</sup> February 2024; or
  - (b) three (3) years after the date of acceptance of the RIO by NICTA pursuant to *section 142 of the NICTA Act*.

We trust that the RIO hereby submitted by DataCo meets the requirements of a RIO as contemplated under *section 141 of the NICTA Act* and request that NICTA accordingly accepts the RIO as proposed by DataCo herein.

If you have any questions or queries regarding this matter, please do contact me on email at [pkomboi@pngdataco.com](mailto:pkomboi@pngdataco.com) or mobile 76997579.

Sincerely,



**PAUL KOMBOI**  
Chief Executive Officer

Enclosed....

*Attachment A: Master Service Agreement*

*Attachment B: Schedule of Prices for Wholesale International Submarine Cable Services*

*Attachment C: Service Order Form*

*Attachment D: Service Level Terms and Conditions*

**Attachment A:**  
**Master Service Agreement**

# MASTER SERVICE AGREEMENT

This Master Service Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_ 2020.

By and Between

**PNG DATACO LIMITED**, incorporated in Papua New Guinea with company number 1-15739 and having its registered office at Level 1 Wokples Building, Section 531, Allotment 12, Savannah Heights, Waigani, Port Moresby, National Capital District, Papua New Guinea (hereafter "**DataCo**")

and

**[CUSTOMER NAME]** incorporated in **[place of incorporation]** with company number **[insert]** and having its registered office at **[registered business address]** (hereafter "**Customer**")

(each a 'party' and together the 'parties')

## 1. PURPOSE AND SCOPE OF MASTER SERVICE AGREEMENT

This Master Service Agreement ("MSA") sets out the rights and obligations of the parties with respect to the provision of a Service to Customer by DataCo. This MSA shall be read and construed together with the Annexure and Service Agreement hereto attached and each shall form an integral part of this MSA. By executing this MSA, the Customer hereby agrees that a Service procured under this MSA shall be provided by DataCo on a non-exclusive and non-discriminatory basis to Customer in accordance with and subject to the terms and conditions of this MSA and any Service Agreement related to that Service established under this MSA.

## 2. MANNER OF CONSTRUCTION

Any discrepancy or ambiguity in or between any documents comprising this MSA is to be read and construed by adopting the following manner of construction in order of precedence-

- (a) the terms of the Service Agreement relating to a Service;
- (b) the terms of this MSA; and
- (c) any other document relating to the terms of this MSA and/or comprising this MSA.

## 3. TERM

This MSA shall remain in effect until the earlier of:

- (a) three (3) years from the date of NICTA's acceptance of the Reference Interconnection Offer; or
- (b) the expiry of the NICTA Declaration of the International Submarine Transmission Capacity Service.

Notwithstanding the foregoing, this MSA shall continue to apply to a Service provided under a Service Agreement for that Service so long as such Service Agreement remains in effect.

## 4. EFFECTIVENESS

This MSA shall be binding and effective upon the last date of execution by a party to this MSA. A Service Agreement shall not be binding or effective on either party until the MSA and the Service Agreement are fully executed by both parties. DataCo reserves any and all rights to refuse execution of this MSA or any Service Agreement with Customer, as the case, may be for any reason subject to it having a reasonable and proper basis for doing so.

## 5. INTERPRETATION AND DEFINITION

### 5.1 Interpretation

Unless the context otherwise requires:

- (a) a word in its singular form also includes its plural; and
- (b) a reference to ‘day’ or ‘Day’ or ‘days’ or ‘Days’ refers to a weekday except for Saturday, Sunday or any day appearing in the National Gazette as a public holiday in Papua New Guinea.
- (c) A reference to ‘party’ or ‘Party’ or ‘parties’ or ‘Parties’ refers to a party or parties to this MSA as they case may be.

### 5.2 Definition

The following words are defined herein:

“**Annexure**” refers to an annexure, schedule or addendum to this MSA and any subsequent annexure, schedule or addendum agreed by the parties to be annexed to this MSA and any lawful amendments made to any of them.

“**Acceptance Testing**” a test or series of tests conducted by DataCo to ensure a Service meets the requirements stated for that Service in the Service Agreement before it is commissioned by DataCo for use by Customer.

“**Customer Facilities**” refers to Customer’s (and its End User) physical business locations including its equipment, network, systems and infrastructure.

“**Commission Date**” means the date specified in the notice from DataCo to Customer where a Service under a Service Agreement for that Service is stated to be commissioned by DataCo for use by Customer.

“**Confidential Information**” means any and all information that:

- (a) is marked or stated by the Disclosing Party as confidential;
- (b) a Receiving Party knows or ought to know is confidential; or
- (c) is by its nature confidential.

“**Confirmed Outage(s)**” means failure (whether full failure or partial failure) or degradation of Service suffered by the Customer or in the event that a Service, or any portion thereof, fails to meet the applicable service specifications for the Service as stated in the Service Agreement for that Service.

“**DataCo**” refers to PNG DataCo Limited.

“**DataCo Facilities**” refers to DataCo’s physical business locations including the DataCo Network, systems and infrastructure.

“**DataCo Network**” means the network owned and/or managed by DataCo which enables it to provide a Service to Customer under a Service Agreement for that Service.

“**DataCo Equipment**” means any equipment belonging to DataCo (or third-party equipment being utilised by DataCo) which is used in connection with the provision of a Service to Customer under a Service Agreement for that Service.

“**Declaration of the International Submarine Transmission Capacity Service**” refers to the NICTA determination of specific pricing principles (submarine cable services) dated 17<sup>th</sup> December 2019 made effective 01<sup>st</sup> January 2020.

“**Disclosing Party**” means the party disclosing their Confidential Information to the Receiving Party.

“**Dispute**” means any issue, dispute or claim arising out of this MSA.

“**Emergency Maintenance**” refers to any unscheduled maintenance activity undertaken by DataCo to a DataCo Equipment, DataCo Facility, DataCo Network or a Service under a Service Agreement.

**“End User”** refers to Customer’s client.

**“Execution Date”** means the date last signed by a party to this MSA.

**“Force Majeure”** means any of the following and the effects thereof if and only to the extent that such event is not caused by, and the effects are beyond the reasonable control of the affected Party or parties including law or directive or policy of an applicable governmental entity or regulating body or authority, governmental action (whether in its sovereign or contractual capacity), industrial action on a national or provincial level, war or civil war (whether declared or undeclared) or armed conflict, invasion and acts of foreign enemies, blockades and embargoes; acts of government or local authority or regulatory body; civil unrest or rebellion or disorder; strikes, any act or credible threat, terrorism; sabotage; cyber security or cybercrime, nuclear, chemical or biological contamination; epidemics; quarantines; embargoes; explosion, including any acts of God such as earthquake, extraordinary storm or weather conditions, fire, flooding or hurricane.

**“IPLC”** refers to International Private Leased Circuit which means a dedicated international point to point transmission service delivered over submarine cable to a cable landing station in either Madang or Port Moresby.

**“Incident”** means an incident or issue arising in relation to a Service provided to Customer under a Service Agreement for that Service.

**“Incident Classification Matrix”** refers to the Incident Classification matrix at clause 7.5 of the Service Level Terms and Conditions.

**“Incident Report”** refers to a report submitted by Customer about an Incident.

**“Installation Fee”** refers to the installation fees for installing a Service to a Customer and which is payable by Customer to DataCo.

**“Law(s)”** refers to all laws and regulations in force in Papua New Guinea from time to time.

**“Licences”** means any and all licences, permits, approvals and authorisations issued by a relevant regulating authority in order to receive a Service or provide a Service.

**“Maintenance Events”** refers to any scheduled maintenance activity undertaken by DataCo to a DataCo Equipment, DataCo Facility, DataCo Network or a Service under a Service Agreement.

**“MSA”** refers to this Master Service Agreement entered into between DataCo and Customer and includes any lawful amendments made to it.

**“Monthly Fee”** means the monthly recurring service fees for a Service which is payable by the Customer to DataCo.

**“NICTA”** refers to National Information and Communication Technology Authority of Papua New Guinea.

**“NOC”** refers to DataCo Network Operations Centre.

**“Outage Credit”** means the service credits which Customer is entitled to for any relevant outages in relation to a Service provided under a Service Agreement.

**“Purchase Order”** means the standard purchase order document by the Customer which contains a reference number and maximum value payable by the Customer to DataCo for the provision of Services (by DataCo) described in it.

**“Receiving Party”** means the party to whom Confidential Information is disclosed to by the Disclosing Party.

**“Reference Interconnection Offer”** refers to the Reference Interconnection Offer registered with the NICTA containing the standard terms and conditions of offer for a Service.

**“Service Agreement”** comprises the Service Level Terms and Conditions and a duly signed

Service Order between DataCo and Customer describing the Service to be provided by DataCo to Customer and any specific terms and conditions associated with the Service.

“**Service Application**” means an application by the Customer for Service to be provided by DataCo and such application shall include an accompanying Purchase Order.

“**Service Bond**” refers to the service bond stated in the Service Agreement for the Service.

“**Service Commissioning Certificate**” refers to the written certificate issued by DataCo confirming the successful Acceptance Testing of a Service to Customer under the Service Agreement for that Service.

“**Service Level Terms and Conditions**” refers to the service level terms and conditions for a Service attached as **Annexure C** to this MSA.

“**Service Order**” means the service order for a Service which shall be in the form attached as **Annexure B** to this MSA.

“**Service**” means any one or more services listed in **Annexure A** to this MSA which Customer may procure from DataCo.

“**Service Connectivity Work**” refers to the connectivity work undertaken by DataCo to connect Customer to a Service under a Service Agreement for that Service.

“**WIS**” refers to Wholesale Internet Service which means a carrier grade, bundled international and domestic transmission service delivering global internet (IP Transit) to the Customer.

“**TT**” refers to Trouble Ticket and is a unique reference number assigned by the NOC to Customer when an Incident is reported to NOC.

“**Unavailable Time**” refers to the time in which a Service does not meet the minimum Service level indicated for that Service as stated in the Service Agreement.

## **6. PROCURING SERVICES**

### **6.1 Ordering a Service**

- (a) Customer shall order a Service from DataCo by completing a Service Order and submitting the completed Service Order to DataCo for consideration. Upon receipt of a Service Order from Customer, DataCo shall consider the Service sought by Customer in the Service Order including any special terms and conditions associated with the Service requested which shall include service delivery time.
- (b) Where the terms and conditions in a completed Service Order is mutually accepted by the parties, the parties shall execute the Service Order. Upon dual execution of the Service Order, DataCo shall undertake the Service Connectivity Work to the Customer subject to any special conditions stated in the Service Order for the Service which shall include payment of the Initial Deposit by the Customer.

### **6.2 Service Agreement**

A duly executed Service Order signed under clause 6.1 and the Service Level Terms and Conditions shall together constitute a Service Agreement between DataCo and Customer for that Service. This Service Agreement shall form part of the MSA and shall constitute an individual and binding agreement between DataCo and Customer for the provision of the Service described therein. The Service Agreement shall become effective upon the date of execution of the Service Order by the last party to the Service Order.

### **6.3 Service Acceptance Testing**

- (a) Prior to commissioning a Service to Customer under a Service Agreement, the parties shall first perform Acceptance Testing to confirm that the provision of the Service to the Customer under a Service Agreement is successful and its operation meets the requirements specified in the relevant Service Agreement to which the Service relates.
- (b) The Acceptance Testing shall be conducted at a mutually agreed date and time and may include a series of tests to be conducted over a time period. On practical completion of the Acceptance Testing, DataCo shall issue to Customer a written notice confirming the results of the Acceptance Testing within two (2) days of practical completion of the Acceptance Testing.

### **6.4 Service Commissioning**

- (a) Where the Acceptance Testing of a Service under a Service Agreement is confirmed as successful, the notice from DataCo to Customer shall include a Service Commissioning Certificate which shall state the success of the Acceptance Testing including the Commission Date of the Service under its Service Agreement. Customer is required to execute the Service Commissioning Certificate and return it within three (3) days of receipt. Failing return of a signed Service Commissioning Certificate with that period, DataCo shall be entitled at any time at its absolute discretion to suspend or terminate the Service to Customer without any penalty or liability. Any reconnection of the Service to Customer shall incur a reconnection fee which shall be at cost to Customer.
- (b) In the event that the Acceptance Testing for the Service is unsuccessful, DataCo shall state so in the notice to Customer and the relevant Service Agreement for that Service shall be deemed terminated as at the date of the notice from DataCo to Customer. Where Acceptance Testing is unsuccessful, neither party shall be liable to the other for any costs incurred by each of them. Any Installation Fee paid by the Customer to DataCo shall be non-refundable and any Service Bond and Monthly Fee paid in advance shall be refunded to Customer less any additional costs and expenses incurred by DataCo in undertaking the Service Connectivity Work and Acceptance Testing

### **6.5 Cancellation of Service Agreement prior Commission Date**

- (a) Where Customer cancels a Service under a Service Agreement after DataCo commences the Service Connection Work and during an Acceptance Testing, Customer shall be liable for all costs and expenses incurred by DataCo as a direct consequence of the cancellation of the Service Agreement. and/or DataCo Facilities; and
- (b) updating the Customer regularly on any TT given for an Incident.

### **6.6 Service Assurance**

DataCo shall be responsible for managing the Service to Customer in accordance with the Service Agreement, in particular:

- (c) managing the Service assurance;
- (d) receiving and handling Incident Reports from Customer;
- (e) repairing any Incident occurring in the DataCo Network and/or DataCo Facilities; and
- (f) updating the Customer regularly on any TT given for an Incident.

### **6.7 Maintenance and Modification**

- (a) Customer acknowledges that DataCo may at times undertake modifications to a Service, the DataCo Network and/or DataCo Facilities which may be connected to a Service provided under a Service Agreement. Where in DataCo's opinion, such modifications are likely to affect the features

and functionalities of a Service provided under a Service Agreement with Customer, DataCo shall provide a written notice to Customer explaining the modification undertaken by it and the features and/or functionalities of the Service affected by the modification.

- (b) DataCo may also suspend a Service provided to Customer under a Service Agreement during any such modification work or during a Maintenance Event and/or Emergency Event. Any notice required to be given by DataCo for any Maintenance Event or Emergency Maintenance shall be so given in accordance with the Service Level Terms and Conditions.

## **7. CHARGES AND PAYMENT**

### **7.1 Service Charge**

The charges for a Service under a Service Agreement for that Service shall generally consist of:

- (a) the Installation Fee;
- (b) the Monthly Fee; and
- (c) the Service Bond.

### **7.2 Initial Deposit**

Unless otherwise specified in the Service Agreement for a Service, the Installation Fee, the Monthly Fee, and the Service Bond (collectively the '**Initial Deposit**') shall be due and payable within five (5) days of execution of the Service Agreement. Provision of a Service to a Customer is subject to DataCo receiving from Customer the Initial Deposit prior to the Commission Date of a Service.

### **7.3 Service Bond**

The Service Bond for a Service under the Service Agreement for that Service shall be held by DataCo for the term of the Service Agreement related to that Service and shall be refunded to Customer at the expiration of the Service Agreement less any outstanding amounts that may be owed by Customer to DataCo for that Service.

### **7.4 Payment**

Unless otherwise specified in the Service Agreement for a Service, the Monthly Fee for a Service under a Service Agreement is due and payable in advance on the first day of each calendar month. Customer shall make all payments in the currency indicated in the Service Agreement without offset, deduction or withholding either by way of bank transfer to a bank account as designated by DataCo or by way of Bank Cheque made payable to DataCo.

### **7.5 Taxes**

- (a) The charges for a Service under a Service Agreement for that Service are exclusive of any applicable taxes, levies, duties, usage or other fees (including, without limitation, withholding taxes, value added taxes, stamp duty taxes, and other similar taxes, if any) (collectively, "**Taxes**").
- (b) Customer shall indemnify DataCo for all and any Taxes that are asserted and assessed against DataCo or Customer by any governmental or regulatory body or entity with respect to or arising out of a Service Agreement for the Service.
- (c) If any Taxes are so required to be deducted or withheld from any charges payable under a Service Agreement for a Service, such charges shall be increased such that DataCo receives an amount equal to the charge it would have received under the Service Agreement for the Service without any deduction or withholding.
- (d) Neither party shall be liable for any taxes on the other party's income or profits.

## **7.6 Invoicing**

- (a) DataCo shall invoice Customer in advance for all charges for a Service under a Service Agreement. Customer shall settle the invoice in full (without offset or deduction) within thirty (30) days of the date of the invoice. Any sum that is not paid when due shall incur an interest charge of 12% per annum from the date after the due date of the invoice and shall be charged to Customer's account monthly until the over-due balance is settled in full inclusive of interest charges.
- (b) A rebate shall be considered for Customer if the invoice is settled in full prior to 25<sup>th</sup> of the month of invoicing and shall be calculated at 1% of the invoice value that is paid in full subject to confirmation and verification with the bank records. If Customer settles the invoice for more than one (1) month in advance, Customer shall be entitled to a rebate calculated at 1% for each month in advance settled to the value of one (1) month invoice.
- (c) Subject to any change in law, regulatory or License condition, DataCo reserves the right to vary the charges for a Service provided under a Service Agreement at any time to reflect any increased costs to DataCo incurred in providing the Service to Customer. Where changes to charges for a Service are necessitated by or as a result of any government or regulatory policy or directive, DataCo shall give Customer thirty (30) days' notice prior to effecting such changes.
- (d) If there is a bona fide dispute on an invoice issued by DataCo to Customer relating to a Service provided under a Service Agreement, Customer must no later than five (5) days after receipt of the invoice from DataCo:
  - (i) notify DataCo of the dispute under the invoice;
  - (ii) the amount of charge(s) which is/are in dispute in the invoice; and
  - (iii) the ground(s) upon which the charge(s) in an invoice is/are in dispute.
- (e) Notwithstanding the above, any invoice under dispute must be settled in full whilst the parties investigate the dispute with a view to resolve the matter. A dispute on invoice shall be dealt with in accordance with the dispute resolution procedure in clause 17 of this MSA.
- (f) DataCo may include charges omitted from an earlier invoice or make adjustments for amounts incorrectly charged in a subsequent invoice provided to Customer. Where bank fees occur, such expenses imposed by the payor bank or any intermediate bank shall be borne by Customer.

## **8. CUSTOMER RESPONSIBILITIES**

### **8.1 Compliance**

A Service provided under a Service Agreement for that Service is subject to the Laws and Licences of DataCo. Customer shall ensure that its actions or omissions do not in any way cause DataCo to be in breach of such Laws or its Licences. In the event, this occurs, Customer shall fully indemnify DataCo for any loss, costs and expenses arising out of such act or omission of the Customer causing DataCo to be in breach of the Laws or its Licences.

### **8.2 Use of Services**

- (a) Customer shall follow established practices and procedures and Laws (including those under its Licence) governing the use of a Service provided under a Service Agreement for that Service and shall use the Service for the purposes for which it is being provided by DataCo. Any breach of such practice and procedure or Laws or its Licence by Customer or expected use of the Service shall entitle DataCo to suspend the provision of the Service to Customer and no Outage Credits shall apply to Customer.
- (b) Any suspension of a Service by DataCo under this clause will not affect any Monthly Fee payable by Customer to DataCo under the Service Agreement. Monthly Fee shall continue to be billed by DataCo to Customer and Customer shall continue to be liable for the Monthly Fee.

### **8.3 Maintenance of Licenses**

Throughout the term of the MSA, Customer shall procure and maintain all Licences required by applicable law and regulations in order to receive, use a Service, including where permitted under the Service Agreement to lease, distribute, sub- lease, resell, promote, and provide to End User any Service under a Service Agreement for that Service.

### **8.4 Care of DataCo Equipment**

Where DataCo provides and/or installs any DataCo Equipment in connection with the Service at Customer's Facilities, Customer acknowledges and agrees that unless otherwise specified in the Service Agreement for the Service:

- (a) title to the DataCo Equipment provided or installed by DataCo at the Customer's premises in connection with the Service remains with DataCo;
- (b) Customer is responsible for preparing the Customer Facilities for installation, including providing adequate space, heating and cooling and electrical power for the DataCo Equipment;
- (c) Customer shall provide DataCo with reasonable access to Customer Facilities for installation and maintenance of the DataCo Equipment;
- (d) Customer shall use reasonable care in protecting the DataCo Equipment from damage or loss and repair or replace any DataCo Equipment that is damaged or lost due to theft, negligence, intentional acts, unauthorized acts or other causes that are within Customer's reasonable control;
- (e) upon termination of the Service Agreement or the MSA or any reason, make available all DataCo Equipment for removal or return in the same condition as originally installed (ordinary wear and tear excepted);
- (f) not hold DataCo liable for any interruption of or inability to use the Service under a Service Agreement for that Service where such event is caused by Customer's failure to comply with any of the foregoing; and
- (g) be responsible for connection from Customer's Facilities to DataCo Equipment.

## **9. SUSPENSION OF SERVICE AND DENIAL OF ACCESS TO SERVICE**

### **9.1 Customers Request to Suspend Service**

Customer may upon fifteen (15) days written notice to DataCo request DataCo to suspend a Service provided under a Service Agreement. Where a Service is suspended under this clause at the request of the Customer, any Outage Credit shall not apply and Monthly Fee shall continue to be billed to Customer by DataCo for which Customer is liable to pay during the term of the Service under the Service Agreement for that Service.

### **9.2 DataCo's Right to Suspend Service**

- (a) Customer recognizes that DataCo may suspend a Service provided to Customer under a Service Agreement for that Service where:
  - (i) it has the right to do so for breach by Customer of a term of the MSA, Service Agreement, Laws, Licence or some practice or procedure related to the provision of the Service to Customer; or
  - (ii) suspension to Customer's use of the Service is solely in order to protect the overall health and performance of the Service or to maintain or regain the legal right or regulatory permission to continue to provide the Service to the Customer (through no fault of Customer).
- (b) Suspension exercised under this clause 9.2 shall be made in DataCo's sole discretion. To the extent technically feasible, DataCo shall give Customer at least twenty-four (24) hours' notice

of such suspension. Any suspension under clause 9.2(a) shall not attract any Outage Credit to Customer and DataCo shall continue to bill the Monthly Fee to Customer during the term of the Service Agreement for that Service. Any suspension under clause 9.2(b) may entitle Customer to Outage Credit for the period of suspension.

## **10. TERMINATION**

### **10.1 Termination of Service Agreement for Confirmed Failure**

DataCo may terminate a Service Agreement on one (1) day notice to Customer in the event of a confirmed failure of a particular Service provided under such Service Agreement and DataCo does not restore the failed Service within the time indicated in the Service Agreement.

### **10.2 Customer's Right to Terminate Service Agreement**

- (a) Without prejudice to any other accrued rights or remedies, Customer may terminate a Service Agreement by providing thirty (30) days' notice to DataCo if DataCo:
  - (i) commits a material breach of the Service Agreement for a Service and fails to remedy that breach within thirty (30) days of receipt of such notice of the breach from Customer;
  - (ii) commits a material breach of the Service Agreement for a Service which is incapable of being remedied;
  - (iii) fails to perform or comply with any one or more of its obligations under the Service Agreement for a Service for more than thirty (30) days; and
  - (iv) is subject to any material change in the business, ownership or control unless otherwise advised by the DataCo and it is demonstrated by DataCo to Customer that this shall not affect the performance of the Service Agreement relating to that Service.
- (b) For any termination of a Service Agreement by Customer under clause 10.2(a):
  - (i) DataCo shall refund the Service Bond for that Service to Customer less any amounts owing to DataCo; and
  - (ii) DataCo shall be entitled to payment of all charges up to and including the date of termination of the Service Agreement for that Service.

### **10.3 DataCo's Right to Terminate MSA and/or Service Agreement**

DataCo may terminate this MSA and/or a Service Agreement:

- (a) immediately, where: -
  - (i) Customer fails to make payment of any amount due under a Service Agreement for a Service; or
  - (ii) Customer fails to cease any other activity in violation of the MSA and/or Service Agreement despite being given notice by DataCo of such violation.
- (b) Upon thirty (30) Days' notice, where:
  - (i) the Service is no longer offered or available as a Service to Customer;
  - (ii) due to regulatory changes or changes to its licensing conditions, DataCo is not able to provide the Service to Customer;
  - (iii) Customer is subject to any material change in its business, ownership or control unless otherwise advised by DataCo and it is demonstrated by Customer that this shall not affect their performance of the MSA and/or Service Agreement;
  - (iv) Customer breaches a term of the MSA and/or Service Agreement;

- (v) Customer breaches any Laws and/or Licences relating to the MSA and/or Service Agreement;
- (vi) a Force Majeure is not able to be remedied within the period specified in the notice from DataCo to Customer; or
- (vii) where the Customer and/or DataCo is declared bankrupt or insolvent or is the subject of any proceedings relating to its liquidation, insolvency, bankruptcy or has a receiver or receiver administrator appointed over or in respect of its assets.

#### **10.4 Effect of Termination**

At termination of an MSA and/or Service Agreement, DataCo may in addition to any other rights and remedies it may have available to it, also apply the Security Bond under a Service Agreement against any other amounts owing to DataCo by Customer. Upon termination of a Service Agreement, DataCo shall be entitled to use the Service for whatever purpose DataCo sees fit and Customer shall have no further right to use the Service and shall not be entitled to any equitable relief with respect to such use or any refund of amounts paid to DataCo.

#### **11. FORCE MAJEURE**

Any failure or delay in the performance by DataCo of its obligation to commence or to continue to provide a Service under a Service Agreement shall not be a breach of the Service Agreement if such failure or delay results from a Force Majeure.

#### **12. SURVIVAL**

The termination of the MSA and/or a Service Agreement for any reason under clause 10 shall extinguish all of DataCo's obligations to provide the Service to Customer, and Customer's obligations to accept the Service, but shall not relieve either party of any obligation to the other that may have arisen prior to such termination.

#### **13. LIABILITY, INDEMNITY AND INSURANCE**

##### **13.1 Limitation of Liability**

- (a) Any and all express and implied warranties, including, but not limited to, warranties of merchantability or fitness for any purpose or use, are expressly excluded and disclaimed. It is expressly agreed that DataCo's sole obligation and Customer's exclusive remedy for any cause whatsoever arising out of relating to this MSA and/or Service Agreement under any theory of law or equity are limited to those set forth herein, where applicable, and all other remedies, including without limitation, any that might otherwise apply under other applicable law or any uniform commercial code of any kind are expressly excluded.
- (b) In no event shall DataCo be liable for any incidental or consequential damages or loss of revenue, whether foreseeable or not, occasioned by:
  - (i) any defect in DataCo Facilities or in any facility provided or arranged for Customer by DataCo; or
  - (ii) the provision of a Service to Customer; or any delay in the provision of a Service to Customer; or any failure of DataCo to provide a Service to Customer; or
  - (iii) any cause whatsoever.
- (c) In addition, without limiting the generality of the foregoing, Customer acknowledges and agrees that it shall have no right of recovery for the satisfaction of any cause whatsoever, arising out of or relating to the Agreement, against:

- (i) any parent company of DataCo or any of its affiliated or commonly controlled entities, and all officers, employees, agents, partners and shareholders of any of them;
- (ii) any supplier of services or equipment to DataCo necessary for the provision of the Service to Customer in any circumstances in which DataCo would be obligated to indemnify the supplier; or
- (iii) any officer, director, employee, agent, partner or shareholder of DataCo, any DataCo Companies and/or any such supplier.

### **13.2 Indemnification**

Customer shall indemnify DataCo from any claims, liabilities, losses, costs, or damages, including reasonable attorneys' fees and costs, arising out of or relating to the provision of any Service from, or Customer's use of, the DataCo Facilities, including, but not limited to,

- (a) Customer's breach of its obligations, or
- (b) those arising out of any claims brought by any End User; or
- (c) any warranty, representation, or statement Customer may make to a third party in connection with any Service.

### **13.3 Insurance**

Each party warrants to the other that it has all relevant and adequate insurances in place for the receipt and/or provision (as the case may be) of a Service under a Service Agreement and that each shall where necessarily required note the other party's interest on those insurances during the term of the MSA and any Service Agreement. DataCo may at its discretion request Customer to provide copies of any certificates of insurance and Customer shall provide them to DataCo within thirty (30) days upon request by DataCo.

## **14. CONFIDENTIALITY AND PROPERTY INTEREST**

### **14.1 No Property Interest Created**

This MSA and any Service Agreement does not grant, and Customer shall not assert, any right, interest, or lien upon the property or assets of DataCo, including, but not limited to any DataCo Facilities, DataCo Network and DataCo Equipment.

### **14.2 Confidential Information**

- (a) The Receiving Party shall hold the Confidential Information of the Disclosing Party in confidence for such the Disclosing Party. Except as otherwise required by the Laws of Papua New Guinea or authorised by the Disclosing Party to the Receiving Party, the Receiving Party shall not, during the Term or at any time thereafter, transmit Confidential Information of the Disclosing Party to any third party either in whole or in part.
- (b) The Receiving Party shall take reasonable precautions to safeguard the Confidential Information of the Disclosing Party from unauthorized disclosure and, at a minimum, shall afford the Confidential Information of the Disclosing Party such precautions and safeguards as it affords to its own Confidential Information of a similar nature. The Receiving Disclosing Party to any person within its organization not having a need to know and shall only use such information in connection with its obligations hereunder.
- (c) The obligations under this clause continue indefinitely and survive termination of this Agreement.

## **15. PERSONAL DATA**

- (a) Customer acknowledges and agrees that DataCo may at any time and during the term of the

MSA and/or any Service Agreement for a Service obtain and gather personal data of Customer and/or its End User and may utilise it for the following purposes:

- (i) for the provision of or the improvement in the provision of a Service under a Service Agreement to Customer and/or its End User;
  - (ii) for use in market research and/or marketing of a Service or other service offered by DataCo;
  - (iii) authenticating, analyzing or checking Customer's and/or End User's credit worthiness with third parties including for processing payment instructions; or
  - (iv) disclosure as required by Law, regulating authority, or by a court order or for the prevention or detection of a crime by relevant or investigating authorities.
- (b) Unless otherwise prevented by Law, regulating authority, court order, investigating authority or similar, consent shall be obtained from Customer and/or its End User for DataCo to obtain, gather and/or use the personal data in accordance with this clause.

## **16. REPRESENTATIONS, WARRANTIES AND COVENANTS**

### **16.1 Representations, Warranties and Covenants**

DataCo and Customer each represents and warrants to, and agrees with, the other that:

- (a) it has the right, power and authority to enter into and perform its obligations under this MSA;
- (b) it has taken all requisite partnership or corporate action, as applicable, to approve execution, delivery and performance of this MSA, and this MSA constitutes a legal, valid and binding obligation upon itself;
- (c) the fulfillment of its obligations will not constitute a material violation of any existing applicable law, rule, regulation or order of any governmental authority, or contract to which it is subject;
- (d) all public or private consents, permissions, agreements, licenses or authorizations necessary for the performance of its obligations under this MSA which it is subject have been obtained, or it will use all reasonable efforts to obtain, in a timely manner; and
- (e) it does not know of any broker, finder or intermediary involved in connection with the negotiations and discussions incident to the execution of this MSA, or of any broker, finder or intermediary who might be entitled to a fee or commission upon the consummation of the transactions contemplated by this MSA.

## **17. DISPUTE RESOLUTION**

- (a) Any disputes, controversies or claims ("**Dispute**") arising out of this MSA shall be addressed by parties to this MSA.
- (b) Where a Dispute arises between the parties, the disputing party shall send written notice to the other party. The notice shall contain all relevant details including the nature and extent of the Dispute. On receipt of the notice, the parties must appoint at least nominate a senior representative, who must, within five (5) working days from the date of a party receiving the notice of the Dispute, meet with each other, and attempt to resolve the Dispute.

### **17.1 Structured Negotiations**

- (a) Following notice under clause 17.2, the parties shall consult in good faith to try to resolve the Dispute.
- (b) Either party may propose to the other in writing that structured negotiations be entered into with the assistance of a neutral mediator ("**Neutral Mediator**") provided that neither

party shall be compelled to participate in structured negotiations unless the Dispute relates to a claim (made reasonably) for an amount of PGK50,000 (or equivalent in foreign currency value) or more.

- (c) If the parties are unable to agree on a Neutral Mediator or if the Neutral Mediator agreed upon is unable or unwilling to act, the President of the Papua New Guinea Law Society may appoint the Neutral Mediator at a party's request. To the extent practicable, the Neutral Mediator must have expertise relevant to the subject matter of the Dispute and is a duly accredited Mediator pursuant to the Alternative Dispute Resolution Rules of the National and Supreme Courts of Papua New Guinea.
- (d) The Parties will within fourteen (14) days of the appointment of the Neutral Mediator meet with the Neutral Mediator to agree a program for the exchange of any relevant information and the structure to be adopted for the negotiation to be held at Port Moresby or other place as agreed to by the Parties.
- (e) Request the Neutral Mediator to complete the structured negotiations within the shortest possible time and as informally and as inexpensively as possible.
- (f) If the parties accept the Neutral Mediator's recommendations or otherwise reach agreement on the resolution of the dispute, such agreement shall be reduced to writing and once, it is signed by their duly authorised representatives, shall be final and binding on the Parties.
- (g) Failing agreement, any of the Parties may invite the Neutral Mediator to provide a non-binding but informative opinion in writing as to the merits of the Dispute and the rights and obligations of the Parties. Such opinion will be provided on a without prejudice basis and will be private and confidential to the Parties and may not be used in evidence in any proceedings commenced pursuant to the terms of this MSA without the prior written consent of all the parties.

## **17.2 Costs**

The costs of the Neutral Mediator and all other costs associated with the structured negotiation will be borne equally by the parties.

## **17.3 Confidentiality**

Any information or documents disclosed by a Party under this clause 17:

- (a) must be kept confidential;
- (b) may only be used to attempt to resolve the Dispute; and
- (c) must not be used as evidence in court proceedings arising out of this Agreement.

## **17.4 Other Rights and Remedies**

The above procedures are without prejudice to any other rights and remedies that may be available in respect of any breach of any provisions of this MSA.

## **18. MISCELLANEOUS**

### **18.1 Governing Law**

This MSA including any Service Agreement shall be governed by and constructed in accordance with the Laws of Papua New Guinea. Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Papua New Guinea and waives any right it has to object to an action being brought in those courts including, but not limited to claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

## **18.2 Further Assurances**

Either Customer or DataCo shall from time to time execute and deliver all such further documents and instruments and do all acts and things as the other Party may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this MSA.

## **18.3 Benefit of the Agreement**

This MSA and any Service Agreement shall ensure to the benefit of and be binding upon the respective successors and permitted assigns of the Parties hereto.

## **18.4 Entire Agreement**

- (a) This MSA Agreement and any Service Agreement including any Annexure to this MSA and Service Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and cancels and supersedes any prior understanding and agreements between the Parties hereto with respect thereto.
- (b) There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties other than as expressly set forth in this MSA.

## **18.5 Waiver**

No waiver of a right or any breach of any term or provision of this MSA or Service Agreement is effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided, is limited to the specific breach or right waived.

## **18.6 Publicity and Advertising**

Neither Party shall publish or use any advertising, sales promotion, press releases or other publicity which uses the other party's name, logo, trademarks or service marks without the prior written consent of the other Party except that DataCo may list Customer as a user of its Service in DataCo's advertising and sales promotion materials.

## **18.7 Relationship**

The relationship of DataCo and Customer to each other provided for herein shall be that of independent contractors, and neither Party shall be the agent or legal representative of the other for any purpose. Neither Party shall have the right or authority to bind or obligate the other to any third Party for any purpose whatsoever.

## **18.8 Severability**

If any provision of this MSA or Service Agreement is determined to be unenforceable, it shall attach only to such provision thereof and the remaining provisions hereof and in the Service Agreement shall continue in full effect.

## **18.9 Assignment**

- (a) DataCo may upon notice to Customer, assign its rights and interests under this MSA including any of its rights and obligations under any Service Agreement to a Third-Party. Customer agrees that upon notice from DataCo of such assignment, Customer shall continue to perform all of its obligations directly for the benefit of the assignee and shall pay all sums due or to become due directly to the assignee, if so directed by DataCo. Upon notice of such assignment, Customer agrees to execute and deliver to DataCo such documentation, based on mutually agreed upon terms and conditions as assignee may reasonably require from DataCo.

- (b) Customer shall not assign any of its rights and obligations under this MSA or any Service Agreement without the prior written consent of DataCo.

**18.10 No Third-Party Beneficiaries**

This MSA is not intended to be for the benefit of any Third-Party, is not enforceable by a third party and does not confer upon any third party any remedy, claim or right.

**18.11 Regulatory Changes**

- (a) Customer acknowledges and agrees that a Service provided under a Service Agreement may be subject to laws and regulations in one or more jurisdictions. If the provision of a Service under a Service Agreement in a jurisdiction is found to be in breach or violation of any law or regulation of that jurisdiction or would result in any additional licensing requirement, DataCo may suspend or cancel the Service upon notice to Customer.
- (b) Any costs associated with such suspension or cancellation or reconnection of the Service following compliance to the law or regulation in that jurisdiction or any provision of an equivalent substituted service to Customer shall be borne by Customer.

**18.12 Variation and Amendments**

Any modifications to or variation of this MSA and any Service Agreement must be consented to in writing and signed off by the authorized representatives of both Parties.

**18.13 Notices**

Any notice, demand, consent or other communication (for the purposes of this clause, a Notice) given or made under this MSA and Service Agreement:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by email and prepaid post (if posted to an address in another country, by registered airmail) or by hand as indicated for the Parties below or last notified by the intended recipient to the sender.

<b><i>DATA CO</i></b>	
<b>Attention:</b>	Chief Executive Officer
<b>Mailing Address:</b>	PNG DataCo Limited P.O Box 1774, Port Moresby National Capital District Papua New Guinea
<b>Email:</b>	<a href="mailto:pkomboi@pngdataco.com">pkomboi@pngdataco.com</a>
<b>Residential Address:</b>	Level 1 Wokples Building, Savannah Heights, Section 531, Allotment 12, Waigani Drive, Port Moresby National Capital District Papua New Guinea

<b>CUSTOMER</b>
<b>Attention:</b>
<b>Mailing Address:</b>
<b>Email:</b>
<b>Residential Address:</b>

- (c) will be taken to be duly given or made in the case of:
- (i) delivery in person, when delivered; and
  - (ii) email, on receipt by the sender of a delivery receipt report or return email confirming received within one (1) Business Day of being sent; and

if the result is that a Notice would be taken to be given or made on a day that is not an ordinary business day in the place to which the Notice is sent or is later than 4.00pm (local time) it will be taken to have been duly given or made at the start of business on the next business day in that place.

Executed by the Parties this                      day of                      2020:

SIGNED for and on behalf of  
**PNG DATACO LIMITED,**  
by its duly Authorised Officer with the Company Common Seal:

-----  
**PAUL KOMBOI**  
**Chief Executive Officer**

in the presence of:

.....  
**MADSMOLLY IKOSI**  
**Company Secretary**

SIGNED for and on behalf of  
**[CUSTOMER],**  
by its duly Authorised Signatory with the Company Common Seal

.....  
**[INSERT NAME]**  
**[Insert Position]**

in the presence of:

.....  
**[INSERT NAME]**  
**[Insert Position]**

## ANNEXURE A

SERVICE PRICING OFFER EFFECTIVE 1<sup>ST</sup> JULY 2020

	Service	Capacity (Mbps)	Unit Price/Month (PGK)	Conditions
1	Wholesale Internet Service (WIS)	Up to 300	309	1. WIS over Fibre can be delivered in all locations were DataCo has a fibre PoP. 2. The Service can be delivered to customer's single PoP. 3. This service is protected in the core network only. Other Protection requirements will be at an additional cost.
		500	294	
		1000	280	
		2000	263	
		5000	235	
		10000	223	
2	Domestic P2P Metro (up to 1km) -over Fibre delivered to Customer Premises	10	145	1. DP2P-M1 over Fibre can be delivered in all locations were DataCo has a fibre PoP. 2. The Service can be delivered to customer's single PoP. 3. This service is unprotected. Protection will be at additional cost.
		50	145	
		100	100	
		150	70	
		300	60	
		500	52	
		1000	40	
		2000	30	
		5000	20	
		10000	16	
3	Domestic P2P Metro (more than 1km) - over Fibre delivered to Customer Premises	10	99	1. DP2P-M1+ over Fibre can be delivered in all locations were DataCo has a fibre PoP. 2. The Service can be delivered to customer's single PoP. 3. This service is unprotected. Protection will be at additional cost.
		50	99	
		100	68	
		150	47	
		300	41	
		500	35	
		1000	27	
		2000	20	
		5000	14	
		10000	11	
4	Domestic P2P Longhaul (DP2P-LH) over Fibre delivered to Customer Premises	10	400	1. DP2P-LH over Fibre can be delivered in all locations were DataCo has a fibre PoP. 2. The Service can be delivered to customer's single PoP. 3. This service is unprotected. Protection will be at additional cost.
		50	340	
		100	300	
		150	283	
		300	266	
		500	246	
		1000	225	
		2000	214	
		5000	191	
		10000	169	
5	International P2P (IP2P) over Subsea Fibre delivered to at the CLS	10	380	1. IP2P Product over Subsea Fibre is only delivered in Madang and Port Moresby. 2. The Service is only delivered between Cable Landing Stations (Kila-Pad and Mad-GS). 3. DataCo can deliver to customers premise and to other international PoP but at additional cost. 4. This service is unprotected. Protection will be at additional cost.
		50	323	
		100	285	
		150	269	
		300	253	
		500	234	
		1000	214	
		2000	203	
		5000	182	
		10000	160	

**ANNEXURE B**

**TELECOMMUNICATION SERVICE ORDER FORM**

<b>Customer Name</b>	
<b>Contact Details</b>	Name: _____ Email: _____ Ph: _____
<b>Service Order for</b>	<input checked="" type="checkbox"/> New <input type="checkbox"/> Relocation <input checked="" type="checkbox"/> Upgrade <input type="checkbox"/> Downgrade
<b>Service Type</b>	<input checked="" type="checkbox"/> WIS <input type="checkbox"/> P2P LH <input checked="" type="checkbox"/> P2P-Metro <input type="checkbox"/> IEPL
<b>Service Description</b>	<input checked="" type="checkbox"/> Speed/Bandwidth <input type="checkbox"/> 1000 Mbps
<b>Service Locations</b>	<b>A End:</b> _____ <b>B End:</b> _____
<b>Service Availability</b>	98.9 % guaranteed availability per month
<b>Term</b>	12months
<b>Establishment Fee</b>	K _____
<b>Recurring Fee</b>	K _____ per month excluding 10% GST
<b>Reconnection Fee</b>	K _____
<b>Early Termination Fee</b>	0-6 months : Penalty fee equivalent to 3 month's rental 7-12 months : Penalty fee equivalent to 2 month's rental 13-24 months : Penalty fee equivalent to 1 month's rental
<b>Special Terms and Conditions</b>	

Signed for and on behalf of:

<b>PNG DATACO LTD</b>	<b>Customer</b>
Name: <b>PAUL KOMBOI</b>	Name: _____
Position: <b>CHIEF EXECUTIVE OFFICER</b>	Position: _____
Signature: _____	Signature: _____
Date: _____	Date: _____

## **ANNEXURE C**

# **SERVICE LEVEL TERMS AND CONDITIONS**

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### **1. SERVICE AGREEMENT**

- 1.1 This Service Level Terms and Conditions together with the duly signed Service Order signed between Customer and DataCo constitutes the Service Agreement for the Service specified in the signed Service Order.
- 1.2 The Service Agreement forms part of the MSA between DataCo and Customer and commences on the date the Service Agreement for that Service is established.

### **2. INTERPRETATION AND DEFINITION**

- 2.1 All word(s) or phrase(s) that is/are emphasized in this Service Agreement shall carry the same meaning as provided in the MSA.
- 2.2 Any interpretation required in this Service Agreement shall be interpreted in accordance with the interpretation clause in the MSA.

### **3. TERM**

- 3.1 The Service Agreement commences on the last date in which the last party to the Service Order executes the Service Order for the Service.
- 3.2 The term of the Service shall be stated in the duly signed Service Order between Customer and DataCo and shall become effective from the Commission Date of the Service.

### **4. DURATION OF SERVICE**

- 4.1 For the duration of the Service Agreement, DataCo agrees to:
  - (a) Provide the Customer with the Service on the terms of the Service Agreement;
  - (b) Exercise the reasonable skill and care of a competent communications provider in providing the Service and if required, in determining how best to provide the Service to the Customer; and
  - (c) Use its reasonable endeavors to provide the Service by the Commission Date and in accordance with the Service Agreement.
- 4.2 It is technically impracticable to provide a fault free Service and DataCo does not undertake to do so. However, DataCo agrees to repair any faults in accordance with the service standards as set out in this Service Agreement.
- 4.3 The minimum downtime for restoration of the Service is as provided for in the table at clause 6.5 below.

### **5. DESCRIPTION OF SERVICE**

- 5.1 DataCo will provide the Service as described in the Service Agreement to and at the locations identified in the Service Agreement.

## 6. SUPPORT SERVICES

### 6.1 Network Operations Centre

The DataCo Network Operation Centre (“NOC”) shall provide customer service and administration for the benefit of Customer. This service is available 24 hours a day 7 days a week. NOC shall accept calls for English language telephone support in connection with the Service Agreement and Incidents.

### 6.2 NOC Contact Details

- (a) The NOC is operated by DataCo to receive calls for reporting on all Incidents via telephone numbers + (675) 326 1119; + (675) 326 1281; + (675) 326 1341 or email [noc@pngdataco.com](mailto:noc@pngdataco.com)
- (b) A support function will deliver proactive updates via [customer@pngdataco.com](mailto:customer@pngdataco.com) to Customer.

### 6.3 Maintenance

- (a) From time to time DataCo may interrupt the Service to maintain, update or enhance software equipment or other aspects of the Service and/or the DataCo Network and/or DataCo Facility (“**Maintenance Events**”).
- (b) Wherever possible, Customer will be given a minimum of three (3) days advance notice of such events and where possible will schedule Maintenance Events so as to cause minimum interruption to the provision of the Service to Customer. For avoidance of doubt, it may not be possible to give such advance notice where interruption to the Service is necessary to deal with Incidents occurring in connection with the Service.
- (c) From time to time DataCo may with or without notice interrupt the Service to carry out immediate maintenance to the DataCo Network and/or DataCo Facility in order to protect the overall health, performance of the Service or safeguard the DataCo Network and/or DataCo Facility from degradation or other threat or otherwise to maintain appropriate levels of service and quality of the Service to the Customer (“**Emergency Maintenance**”). Where Emergency Maintenance is carried out, DataCo will ensure to provide where possible minimum impact to the Service.
- (d) Customer shall give all reasonable assistance to DataCo to enable Maintenance Events to commence on the planned date and time and for them to be completed efficiently and to support and assist DataCo where requested by DataCo during Emergency Maintenance.
- (e) Any Maintenance Events shall not be considered a Confirmed Outage and will not entitle Customer to any Outage Credits. However, an Emergency Maintenance shall be considered a Confirmed Outage for the purpose of service availability measurement set out in clause 6 and may entitle Customer to Outage Credit.

## 6.4 Customer Support

The table below sets out the contact details for Customer Support.

LEVEL	TIME FRAME	TIMING	NAME	ESCALATION	KEY TASK	DESIGNATION/ RESPONSIBILITY
1	Day 1	15-30 Minutes	DataCo NOC	Shift Officers	1. Record Fault and Issuance of TT. 2. Tier 1 Network Support	Email: <a href="mailto:noc@pngdataco.com">noc@pngdataco.com</a> Phone: 326 1119/3133936/3133937 HQ Contact: 313 3900
2	Day 1	15-30 Minutes	Customer Account Managers	Customer Account Managers	1. Receive Fault and Escalate. 2. Provide Updates	Mr. Kaime Kipi (Customer Account Manager) Phone: 7565 7221/313 3900 Email: <a href="mailto:kkipi@pngdataco.com">kkipi@pngdataco.com</a>  Mr. James Lani (Customer Account Manager) Phone: 7888 0290/3133900 Email: <a href="mailto:jlani@pngdataco.com">jlani@pngdataco.com</a>
3	Day 1	30-60 Minutes	NOC/Network Management Restorations	Network Operations Managers/Technical Vendor Support	1. Perform Tier 1&2 Technical Support to restorations. 2. Provides timely updates to customer. 3. Vendor support as per SLAs	Mr. Henry Gima Manager Network Operations Phone: 78290814/3133931 Email: <a href="mailto:hgima@pngdataco.com">hgima@pngdataco.com</a>  Mr. Shannon Sariman Manager IP Core & Network Management Phone: 3133930/78880025 Email: <a href="mailto:ssariman@pngdataco.com">ssariman@pngdataco.com</a>
4	Day 1	1-24 Hours	Management Team	General Manager Engineering Services	1. Escalate to resolve by Vendor Technical Support. 2. Decision by management going forward.	Mr. Tony Morisause General Manager Engineering Services Phone: 76060309/73545155/78428929/3133908 Email: <a href="mailto:tmorisause@pngdataco.com">tmorisause@pngdataco.com</a>

## 7. SERVICE MANAGEMENT

### 7.1 Incident Reporting

- In the event that any Incident is experienced by Customer that has not been identified by DataCo, Customer must submit a report of the Incident (“**Incident Report**”) to the NOC by telephone or via email.
- An Incident Report submitted by Customer to the NOC must provide a complete description of the Incident and any other information reasonably requested by the NOC.
- The NOC will allocate a unique Trouble Ticket (“**TT**”) reference number to identify an Incident after first line diagnostics have been performed as an initial assessment of the cause of an Incident. The NOC will require the Customer to conduct first line diagnostics with any of its End Users where appropriate.
- After allocation of a TT to Customer, all corresponding communications made by Customer to the NOC must reference the TT. Regular updates will be provided to Customer through email by the NOC.
- An Incident Report will be allocated a priority level by the NOC in accordance with the Incident Classification Matrix in clause 7.2.

## 7.2 Incident Response Timescales

- (a) DataCo shall use best endeavours to assign an Incident to a DataCo team or officer within 30 minutes of receipt of receiving an Incident Report.
- (b) DataCo shall use best endeavours to provide an update to Customer on an Incident Report via email within the response times specified in clause 7.2.

## 7.1 Incident Resolution Targets

The NOC shall use reasonable endeavours to resolve an Incident within the timescales specified within the Incident Classification Matrix set out in clause 7.2.

## 7.2 Incident Classification Matrix

- (a) The Incident Classification Matrix below outlines the description, resolution and response times for the associated Incident priority levels.

Priority Level	Description of Fault/Incident	Target Resolution Time	Response Time
<b>Critical</b>	Total loss of Service or outage of Service or inability to transmit/receive due to total break on communication link either fiber or wireless where customers operates.  IP Transit Failure to main gateways, routers or switches.	<b>20 Minutes</b>	<ul style="list-style-type: none"> <li>• Immediate; followed by updates per hour.</li> <li>• Must be immediately escalated to DataCo Account Managers or NOC Management for immediate action.</li> </ul>
<b>Major</b>	Partial loss of Service or degradation of Service resulting from one event.  Severe degradation of the Internet Service from IP Transit.	<b>20 Minutes</b>	<ul style="list-style-type: none"> <li>• Immediate; followed by updates per hour.</li> <li>• Fault registration with DataCo NOC and system engineers.</li> </ul>
<b>Minor</b>	Degradation of Service whereby the service can still operate but with reduced performance.	<b>8 Hours</b>	<ul style="list-style-type: none"> <li>• No follow up.</li> <li>• Fault reported to DataCo NOC.</li> </ul>
<b>Low</b>	There exists a potential for future problems or there is a minor issue.	<b>12 Hours</b>	<ul style="list-style-type: none"> <li>• No follow up.</li> <li>• Issue reported to DataCo NOC.</li> </ul>
<b>Warning</b>	Service Enhancement Upgrades that requires a change to the existing Service and/or Network components that will facilitate Service.	<b>3 Business Days</b>	<ul style="list-style-type: none"> <li>• Nil</li> </ul>

- (b) Customer understands and accepts that it may be necessary to extend the timescales in the Incident Classification Matrix above due to the complexity of the Incident or where it is dependent on DataCo's third party for resolution of the Incident. In such circumstances, DataCo shall use reasonable endeavours to eliminate or reduce the impact of the Incident on the Service by provision of a workaround, with permanent correction to follow.

## 7.3 Resolving an Incident

An Incident reported by Customer shall be resolved in accordance with this Service Agreement. An Incident Report will be considered to have been resolved where either:

- (a) it is corrected/resolved by DataCo (including provision of a temporary fix) in accordance with the Incident Classification Matrix; or

- (b) the Incident has been investigated and the initial fault diagnostic testing indicates that the Incident is not found and/or is not the fault of DataCo; and this has been relayed to Customer.

#### 7.4 Escalation Process

A fault escalation process will be provided to Customer where an Incident is understood as a clear request for the support of a higher technical or management level in order to resolve the Incident.

### 8. SERVICE AVAILABILITY AND OUTAGE CREDITS

#### 8.1 Overall Service Availability

- (a) End to end availability for each Service is guaranteed to be at least 98.9% over a calendar month [based on twenty-four (24) hours/day, seven (7) days/week network availability] following the Commission Date of Service. Where the availability of the Service falls below the availability level above (excludes service outage caused by event of Force Majeure and Maintenance Events), Customer shall be entitled to Outage Credits described in clause 8.3(a).
- (b) For the purposes of clause 8.1(a), overall service availability excludes:
  - (i) repairs completed within the Target Resolution Times in the Table at clause 7.2;
  - (ii) scheduled Maintenance Events as described in clause 6.3;
  - (iii) Customer-caused; or
  - (iv) outages or disruptions attributable in whole or in part to Force Majeure.
- (c) For the purpose of calculating Service Availability, "**Unavailable Time**" means the period of time failure (whether full failure or partial failure) or degradation of Service suffered by Customer or in the event that a Service, or any portion thereof, fails to meet the applicable Service specifications in the Service Agreement.

#### 8.2 Limit on Compensation

The maximum compensation for Unavailable Time the Customer can receive in any month is an amount equal to the Outage Credit calculated in clause 8.3(a).

#### 8.3 Service Outage Credits

- (a) Customer shall be entitled to Outage Credit for a Confirmed Outage in the event that a Service fails to meet the applicable Service Availability or uptime commitment described in clause 8.1(a) or in a Service Agreement for that Service. Outage Credit is calculated when the total Service Availability in the month is below the Service Availability commitment according to the formula below:

$$\text{Outage Credit (K)} = [\text{Service Availability Commitment (\%)} - \text{Monthly Availability (\%)}] \times \text{Monthly Charge (K)}$$

- (b) Outage Credit is only applicable where the Service Availability commitment is **LESS THAN** the monthly availability.
- (c) If a failure to maintain Service Availability has occurred, the Confirmed Outage shall be measured as commencing from the later to occur of:

- (a) Customer's cessation of use of the Service; and
  - (b) notice from Customer to DataCo of such outage within seven (7) days of occurrence.
- (d) Any such Confirmed Outage shall be deemed to have ended upon the earlier to occur of: -
- (i) Customer's resumption of use of the Service; and
  - (ii) notice from DataCo to Customer that the Service Availability described in clause 8.1.1 or in a Service Agreement for that Service has been satisfactorily met.
- (e) Customer shall make all claims for Outage Credit within thirty (30) days from the date of the first occurrence of the relevant Confirmed Outage. Under no circumstances shall any Outage Credit exceed the amount to which Customer would have been entitled during the period of failure to meet the applicable Service specifications.
- (f) Any compensation payable under clause 8.3(a) above will be credited to Customer's tax invoice for the Monthly Fee for the following month unless the Service is terminated in which case a specific payment may be made to Customer. DataCo may offset all or part of any such amounts against any outstanding amounts due for the Service which has not been paid by the Customer, except where these amounts may be disputed.

#### **8.4 Non-Entitlement of Service Outage Credit**

Customer is not entitled to any Outage Credit if:

- (a) the failure by DataCo is due to Customer Facilities, or its own network or equipment or any other network or equipment outside the DataCo Network and/or DataCo Facilities;
- (b) Customer is in breach of any part of the Service Agreement and/or the MSA;
- (c) through no fault of its own or because of circumstances beyond its reasonable control, DataCo is unable to carry out any necessary work at, or gain access to the Customer's Facility;
- (d) Customer and DataCo agree on a different timescale for performance of the Service, but will apply to any new Commission Date agreed, provided that the new date is after any previous Commission Date(s) and it is agreed between Parties that clause 8.4 will apply; or
- (e) reasonable assistance is required, or information is reasonably requested by DataCo from the Customer and such assistance or information is not provided; or
- (f) the failure is due to Force Majeure; or
- (g) the failure is due to a Maintenance Event; or
- (h) the failure is due to an inaccurate Service being requested by Customer and DataCo has provisioned the Service in relation to such inaccuracy provided by Customer.

### **9. DATACO EQUIPMENT**

**9.1** All DataCo Equipment remains the property of DataCo at all times.

**9.2** Customer agrees to:

- (a) prepare Customer Facilities and provide a suitable place, condition, connection points and electricity for the DataCo Equipment in accordance with DataCo's reasonable instructions, if any;
- (b) obtain all necessary consents, including for example, consents for any necessary alterations to buildings, permission to cross third party land or permission to put Equipment on their property; and

- (c) be responsible for DataCo Equipment installed at Customer Facilities and agrees to take reasonable steps to ensure that it or any person on its premises (other than someone authorised by DataCo) adds to, modifies or in any way interferes with it. Customer will be liable to DataCo for any loss of or damage to DataCo Equipment, except where such loss or damage is due to fair wear and tear or is caused by DataCo, or anyone acting on DataCo's behalf.

## **10. CONNECTION OF EQUIPMENT**

**10.1** Any Customer Facilities, network or equipment connected to a Service must be:

- (a) technically compatible with the Service and not harm the DataCo Network, the Service or DataCo Equipment;
- (b) connected and used in line with any relevant instructions from DataCo or any Laws and Licences held by DataCo and Customer; and
- (c) connected and used in line with any relevant standards including, in the order of precedence set out as below:
  - (i) any legal requirements imposed upon the parties including requirements arising from NICTA Act;
  - (ii) any recommendations by the International Telecommunications Union (ITU); and
  - (iii) any recommendations by the Regional Telecommunications Regulatory Authorities which DataCo has membership.
- (d) Customer agrees to connect Customer Facilities, network or equipment to a Service only by using equipment approved by DataCo with the Service.
- (e) DataCo will not be liable for failure to meet any Service level or other obligations under this Service Agreement if any Customer Equipment is found to be connected otherwise than in accordance with this clause 10.
- (f) DataCo reserves the right to disconnect any Customer Facilities, network or equipment if Customer does not fulfil its obligations under this clause 10 or if in the reasonable opinion of DataCo Customer Facilities, network or equipment is liable to cause the death of, or personal injury to any person.

## **11. ACCESS AND SITE REGULATIONS**

**11.1** Customer agrees to take reasonable steps to provide DataCo with access to the Customer's Facilities for the purpose of installation and use of the DataCo Equipment at the Customer's Facilities.

**11.2** DataCo agrees to observe the Customer Facilities reasonable site safety and security requirements.

**11.3** Customer agrees to provide and agrees to take reasonable steps to ensure it provides a suitable and safe working environment for DataCo at the Customer Facilities. Customer agrees to indemnify DataCo against all loss, damages, liabilities, costs and expenses arising or incurred in respect of any actions, claims or legal proceedings which are brought or threatened against DataCo if Customer is in breach of this sub-clause. The limitation of liability provisions of the MSA does not apply to this indemnity.

**11.4** It is the responsibility of Customer to carry out any making good or decorator's work required but DataCo accepts responsibility for any property damage caused by DataCo's negligence subject to the limitation of liability provisions of the MSA.

## **12. CHARGES**

- 12.1** This section should be read and interpreted in conjunction with section 7 of the MSA.
- 12.2** Customer shall pay to DataCo all charges due under the Service Agreement. Such charges shall be invoiced monthly in advance. The first billing period shall commence on the Commission Date.
- 12.3** All charges payable hereunder by Customer shall be payable to DataCo in Papua New Guinean national currency (Kina and Toea) and/or United States Dollars (USD) for payments originating overseas no later than thirty (30) days after receipt of DataCo's tax invoice.
- 12.4** Where any Commission Date is delayed at Customer's request or by virtue of the Customer's act, neglect or failure to fulfil its obligations hereunder, the charges for the first billing period for that Service shall be payable no later than the Commission Date for that Service unless otherwise agreed in writing between the Parties.
- 12.5** Without prejudice to DataCo's right to treat non-payment or late payment as a repudiatory breach of the Service Agreement, in the event of non-payment of any tax invoice which is not the subject of a bona fide dispute DataCo reserves the right to charge daily interest on any outstanding amounts until payment is received in full as current from time to time whether before or after judgment until the date actual payment is received together with all external costs reasonably and necessarily incurred by DataCo in securing such payment and/or obtaining such judgment, as the case may be. The rate of such interest shall not exceed the interest rate stated in clause 7.6 of the MSA.
- 12.6** All sums due to DataCo under the Service Agreement shall be payable by Customer in full (without any set-off, deductions or withholding whatsoever) by direct debit or bank transfer or bank cheque payable to DataCo.
- 12.7** DataCo reserves the right when Customer defaults in payment of the charges to require the Customer to issue a Security Bond, irrevocable letter of credit or other form of security acceptable to DataCo of the Customer's financial circumstances or payment history is or become unacceptable to DataCo.

### **13. USE OF THE SERVICE**

- 13.1** Customer shall use the Service strictly in accordance with any reasonable operating instructions issued by DataCo from time to time.
- 13.2** Customer shall not itself or knowingly permit any of its End Users to use the DataCo Network or Services to do any of the following:
- (a) publish, post, distribute or disseminate defamatory, infringing, obscene, indecent or other unlawful material or information;
  - (b) threaten, harass, stalk, abuse, disrupt or otherwise violate the rights (including rights of privacy and publicity) of others;
  - (c) engage in illegal or unlawful activities through the DataCo Network;
  - (d) knowingly make available or upload and download files that contain software or other material, data or information not owned by or licensed to Customer, the End User or additional user (as appropriate);
  - (e) knowingly make available or upload and download files that contain a virus or corrupt data;
  - (f) falsify the true ownership of software or other material or information contained in a file that the Customer, any End User or additional user makes available via the DataCo Network;

- (g) "spam" or otherwise deliberately abuse any part of the DataCo Network;
- (h) obtain access, through whatever means, to notified restricted areas of DataCo Network.

**13.3** If Customer becomes aware that any of its End User is using the DataCo Network to perform any of the activities listed in clause 13.2 it shall use all best endeavors to stop such End User from doing so.

**13.4** In the event that DataCo becomes aware that a Customer's End User is performing any of the activities listed in clause 13.2, DataCo shall bring the activity to the attention of Customer as soon as is reasonably practicable. If DataCo has not received, within one (1) day of dispatch of such a message, a satisfactory response from Customer detailing the actions that have been taken to stop the violation by its End User, then DataCo shall have the right to restrict the access of and/or disconnect the Customer's End User in question, and if necessary restrict the access of/disconnect Customer from the entire Service.

**13.5** Each Party shall provide the other with all reasonably necessary co-operation, information and support to prevent and/or stop any misuse of DataCo Network by Customer's End User.

#### **14. ASSIGNMENT**

**14.1** Any assignment of a right or obligation under this Service Agreement shall follow the requirements under clause 18.9 of the MSA.

#### **15. THIRD PARTIES**

**15.1** A person who is not a Party to this Service Agreement and/or the MSA has no rights under this Service Agreement to enforce any term stated therein.

#### **16. DISPUTES**

**16.1** Any Dispute arising under this Service Agreement shall be addressed in accordance with the procedure stated under clause 17 of the MSA.

**Attachment B:**  
**Schedule of Prices for Wholesale**  
**International Submarine Cable**  
**Services**

## ANNEXURE A

SERVICE PRICING OFFER EFFECTIVE 1<sup>ST</sup> JULY 2020

	Service	Capacity (Mbps)	Unit Price/Month (PGK)	Conditions
1	Wholesale Internet Service (WIS)	Up to 300	309	1. WIS over Fibre can be delivered in all locations were DataCo has a fibre PoP. 2. The Service can be delivered to customer's single PoP. 3. This service is protected in the core network only. Other Protection requirements will be at an additional cost.
		500	294	
		1000	280	
		2000	263	
		5000	235	
		10000	223	
2	Domestic P2P Metro (up to 1km) -over Fibre delivered to Customer Premises	10	145	1. DP2P-M1 over Fibre can be delivered in all locations were DataCo has a fibre PoP. 2. The Service can be delivered to customer's single PoP. 3. This service is unprotected. Protection will be at additional cost.
		50	145	
		100	100	
		150	70	
		300	60	
		500	52	
		1000	40	
		2000	30	
		5000	20	
		10000	16	
3	Domestic P2P Metro (more than 1km) - over Fibre delivered to Customer Premises	10	99	1. DP2P-M1+ over Fibre can be delivered in all locations were DataCo has a fibre PoP. 2. The Service can be delivered to customer's single PoP. 3. This service is unprotected. Protection will be at additional cost.
		50	99	
		100	68	
		150	47	
		300	41	
		500	35	
		1000	27	
		2000	20	
		5000	14	
		10000	11	
4	Domestic P2P Longhaul (DP2P-LH) over Fibre delivered to Customer Premises	10	400	1. DP2P-LH over Fibre can be delivered in all locations were DataCo has a fibre PoP. 2. The Service can be delivered to customer's single PoP. 3. This service is unprotected. Protection will be at additional cost.
		50	340	
		100	300	
		150	283	
		300	266	
		500	246	
		1000	225	
		2000	214	
		5000	191	
		10000	169	
5	International P2P (IP2P) over Subsea Fibre delivered to at the CLS	10	380	1. IP2P Product over Subsea Fibre is only delivered in Madang and Port Moresby. 2. The Service is only delivered between Cable Landing Stations (Kila-Pad and Mad-GS). 3. DataCo can deliver to customers premise and to other international PoP but at additional cost. 4. This service is unprotected. Protection will be at additional cost.
		50	323	
		100	285	
		150	269	
		300	253	
		500	234	
		1000	214	
		2000	203	
		5000	182	
		10000	160	

**Attachment C:  
Service Order Form**

**ANNEXURE B**

**TELECOMMUNICATION SERVICE ORDER FORM**

<b>Customer Name</b>	
<b>Contact Details</b>	Name: _____ Email: _____ Ph: _____
<b>Service Order for</b>	<input checked="" type="checkbox"/> New <input type="checkbox"/> Relocation <input type="checkbox"/> Upgrade <input type="checkbox"/> Downgrade
<b>Service Type</b>	<input checked="" type="checkbox"/> WIS <input type="checkbox"/> P2P LH <input type="checkbox"/> P2P-Metro <input type="checkbox"/> IEPL
<b>Service Description</b>	<input checked="" type="checkbox"/> Speed/Bandwidth <input type="checkbox"/> 1000 Mbps
<b>Service Locations</b>	<b>A End:</b> _____ <b>B End:</b> _____
<b>Service Availability</b>	98.9 % guaranteed availability per month
<b>Term</b>	12months
<b>Establishment Fee</b>	K _____
<b>Recurring Fee</b>	K _____ per month excluding 10% GST
<b>Reconnection Fee</b>	K _____
<b>Early Termination Fee</b>	0-6 months : Penalty fee equivalent to 3 month's rental 7-12 months : Penalty fee equivalent to 2 month's rental 13-24 months : Penalty fee equivalent to 1 month's rental
<b>Special Terms and Conditions</b>	

Signed for and on behalf of:

<b>PNG DATACO LTD</b>	<b>Customer</b>
Name: <b>PAUL KOMBOI</b>	Name: _____
Position: <b>CHIEF EXECUTIVE OFFICER</b>	Position: _____
Signature: _____	Signature: _____
Date: _____	Date: _____

**Attachment D:  
Service Level Terms and  
Conditions**

## **ANNEXURE C**

# **SERVICE LEVEL TERMS AND CONDITIONS**

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### **1. SERVICE AGREEMENT**

- 1.1 This Service Level Terms and Conditions together with the duly signed Service Order signed between Customer and DataCo constitutes the Service Agreement for the Service specified in the signed Service Order.
- 1.2 The Service Agreement forms part of the MSA between DataCo and Customer and commences on the date the Service Agreement for that Service is established.

### **2. INTERPRETATION AND DEFINITION**

- 2.1 All word(s) or phrase(s) that is/are emphasized in this Service Agreement shall carry the same meaning as provided in the MSA.
- 2.2 Any interpretation required in this Service Agreement shall be interpreted in accordance with the interpretation clause in the MSA.

### **3. TERM**

- 3.1 The Service Agreement commences on the last date in which the last party to the Service Order executes the Service Order for the Service.
- 3.2 The term of the Service shall be stated in the duly signed Service Order between Customer and DataCo and shall become effective from the Commission Date of the Service.

### **4. DURATION OF SERVICE**

- 4.1 For the duration of the Service Agreement, DataCo agrees to:
  - (a) Provide the Customer with the Service on the terms of the Service Agreement;
  - (b) Exercise the reasonable skill and care of a competent communications provider in providing the Service and if required, in determining how best to provide the Service to the Customer; and
  - (c) Use its reasonable endeavors to provide the Service by the Commission Date and in accordance with the Service Agreement.
- 4.2 It is technically impracticable to provide a fault free Service and DataCo does not undertake to do so. However, DataCo agrees to repair any faults in accordance with the service standards as set out in this Service Agreement.
- 4.3 The minimum downtime for restoration of the Service is as provided for in the table at clause 6.5 below.

### **5. DESCRIPTION OF SERVICE**

- 5.1 DataCo will provide the Service as described in the Service Agreement to and at the locations identified in the Service Agreement.

## 6. SUPPORT SERVICES

### 6.1 Network Operations Centre

The DataCo Network Operation Centre (“**NOC**”) shall provide customer service and administration for the benefit of Customer. This service is available 24 hours a day 7 days a week. NOC shall accept calls for English language telephone support in connection with the Service Agreement and Incidents.

### 6.2 NOC Contact Details

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- (b) A support function will deliver proactive updates via [customercare@pngdataco.com](mailto:customercare@pngdataco.com) to Customer.

### 6.3 Maintenance

- (a) From time to time DataCo may interrupt the Service to maintain, update or enhance software equipment or other aspects of the Service and/or the DataCo Network and/or DataCo Facility (“**Maintenance Events**”).
- (b) Wherever possible, Customer will be given a minimum of three (3) days advance notice of such events and where possible will schedule Maintenance Events so as to cause minimum interruption to the provision of the Service to Customer. For avoidance of doubt, it may not be possible to give such advance notice where interruption to the Service is necessary to deal with Incidents occurring in connection with the Service.
- (c) From time to time DataCo may with or without notice interrupt the Service to carry out immediate maintenance to the DataCo Network and/or DataCo Facility in order to protect the overall health, performance of the Service or safeguard the DataCo Network and/or DataCo Facility from degradation or other threat or otherwise to maintain appropriate levels of service and quality of the Service to the Customer (“**Emergency Maintenance**”). Where Emergency Maintenance is carried out, DataCo will ensure to provide where possible minimum impact to the Service.
- (d) Customer shall give all reasonable assistance to DataCo to enable Maintenance Events to commence on the planned date and time and for them to be completed efficiently and to support and assist DataCo where requested by DataCo during Emergency Maintenance.
- (e) Any Maintenance Events shall not be considered a Confirmed Outage and will not entitle Customer to any Outage Credits. However, an Emergency Maintenance shall be considered a Confirmed Outage for the purpose of service availability measurement set out in clause 6 and may entitle Customer to Outage Credit.

## 6.4 Customer Support

The table below sets out the contact details for Customer Support.

LEVEL	TIME FRAME	TIMING	NAME	ESCALATION	KEY TASK	DESIGNATION/ RESPONSIBILITY
1	Day 1	15-30 Minutes	DataCo NOC	Shift Officers	1. Record Fault and Issuance of TT. 2. Tier 1 Network Support	Email: <a href="mailto:noc@pngdataco.com">noc@pngdataco.com</a> Phone: 326 1119/3133936/ 3133937 HQ Contact: 313 3900
2	Day 1	15-30 Minutes	Customer Account Managers	Customer Account Managers	1. Receive Fault and Escalate. 2. Provide Updates	Mr. Kaime Kipi (Customer Account Manager) Phone: 7565 7221/313 3900 Email: <a href="mailto:kkipi@pngdataco.com">kkipi@pngdataco.com</a>  Mr. James Lani (Customer Account Manager) Phone: 7888 0290/3133900 Email: <a href="mailto:jlani@pngdataco.com">jlani@pngdataco.com</a>
3	Day 1	30-60 Minutes	NOC/Network Management Restorations	Network Operations Managers/Technical Vendor Support	1. Perform Tier 1&2 Technical Support to restorations. 2. Provides timely updates to customer. 3. Vendor support as per SLAs	Mr. Henry Gima Manager Network Operations Phone: 78290814/3133931 Email: <a href="mailto:hgima@pngdataco.com">hgima@pngdataco.com</a>  Mr. Shannon Sariman Manager IP Core & Network Management Phone: 3133930/78880025 Email: <a href="mailto:ssariman@pngdataco.com">ssariman@pngdataco.com</a>
4	Day 1	1-24 Hours	Management Team	General Manager Engineering Services	1. Escalate to resolve by Vendor Technical Support. 2. Decision by management going forward.	Mr. Tony Morisause General Manager Engineering Services Phone: 76060309/73545155/78428929/ 3133908 Email: <a href="mailto:tmorisause@pngdataco.com">tmorisause@pngdataco.com</a>

## 7. SERVICE MANAGEMENT

### 7.1 Incident Reporting

- (a) In the event that any Incident is experienced by Customer that has not been identified by DataCo, Customer must submit a report of the Incident (“**Incident Report**”) to the NOC by telephone or via email.
- (b) An Incident Report submitted by Customer to the NOC must provide a complete description of the Incident and any other information reasonably requested by the NOC.
- (c) The NOC will allocate a unique Trouble Ticket (“**TT**”) reference number to identify an Incident after first line diagnostics have been performed as an initial assessment of the cause of an Incident. The NOC will require the Customer to conduct first line diagnostics with any of its End Users where appropriate.
- (d) After allocation of a TT to Customer, all corresponding communications made by Customer to the NOC must reference the TT. Regular updates will be provided to Customer through email by the NOC.
- (e) An Incident Report will be allocated a priority level by the NOC in accordance with the Incident Classification Matrix in clause 7.2.

## 7.2 Incident Response Timescales

- (a) DataCo shall use best endeavours to assign an Incident to a DataCo team or officer within 30 minutes of receipt of receiving an Incident Report.
- (b) DataCo shall use best endeavours to provide an update to Customer on an Incident Report via email within the response times specified in clause 7.2.

## 7.1 Incident Resolution Targets

The NOC shall use reasonable endeavours to resolve an Incident within the timescales specified within the Incident Classification Matrix set out in clause 7.2.

## 7.2 Incident Classification Matrix

- (a) The Incident Classification Matrix below outlines the description, resolution and response times for the associated Incident priority levels.

Priority Level	Description of Fault/Incident	Target Resolution Time	Response Time
<b>Critical</b>	Total loss of Service or outage of Service or inability to transmit/receive due to total break on communication link either fiber or wireless where customers operates.  IP Transit Failure to main gateways, routers or switches.	<b>20 Minutes</b>	<ul style="list-style-type: none"> <li>• Immediate; followed by updates per hour.</li> <li>• Must be immediately escalated to DataCo Account Managers or NOC Management for immediate action.</li> </ul>
<b>Major</b>	Partial loss of Service or degradation of Service resulting from one event.  Severe degradation of the Internet Service from IP Transit.	<b>20 Minutes</b>	<ul style="list-style-type: none"> <li>• Immediate; followed by updates per hour.</li> <li>• Fault registration with DataCo NOC and system engineers.</li> </ul>
<b>Minor</b>	Degradation of Service whereby the service can still operate but with reduced performance.	<b>8 Hours</b>	<ul style="list-style-type: none"> <li>• No follow up.</li> <li>• Fault reported to DataCo NOC.</li> </ul>
<b>Low</b>	There exists a potential for future problems or there is a minor issue.	<b>12 Hours</b>	<ul style="list-style-type: none"> <li>• No follow up.</li> <li>• Issue reported to DataCo NOC.</li> </ul>
<b>Warning</b>	Service Enhancement Upgrades that requires a change to the existing Service and/or Network components that will facilitate Service.	<b>3 Business Days</b>	<ul style="list-style-type: none"> <li>• Nil</li> </ul>

- (b) Customer understands and accepts that it may be necessary to extend the timescales in the Incident Classification Matrix above due to the complexity of the Incident or where it is dependent on DataCo's third party for resolution of the Incident. In such circumstances, DataCo shall use reasonable endeavours to eliminate or reduce the impact of the Incident on the Service by provision of a workaround, with permanent correction to follow.

## 7.3 Resolving an Incident

An Incident reported by Customer shall be resolved in accordance with this Service Agreement. An Incident Report will be considered to have been resolved where either:

- (a) it is corrected/resolved by DataCo (including provision of a temporary fix) in accordance with the Incident Classification Matrix; or

- (b) the Incident has been investigated and the initial fault diagnostic testing indicates that the Incident is not found and/or is not the fault of DataCo; and this has been relayed to Customer.

#### 7.4 Escalation Process

A fault escalation process will be provided to Customer where an Incident is understood as a clear request for the support of a higher technical or management level in order to resolve the Incident.

### 8. SERVICE AVAILABILITY AND OUTAGE CREDITS

#### 8.1 Overall Service Availability

- (a) End to end availability for each Service is guaranteed to be at least 98.9% over a calendar month [based on twenty-four (24) hours/day, seven (7) days/week network availability] following the Commission Date of Service. Where the availability of the Service falls below the availability level above (excludes service outage caused by event of Force Majeure and Maintenance Events), Customer shall be entitled to Outage Credits described in clause 8.3(a).
- (b) For the purposes of clause 8.1(a), overall service availability excludes:
  - (i) repairs completed within the Target Resolution Times in the Table at clause 7.2;
  - (ii) scheduled Maintenance Events as described in clause 6.3;
  - (iii) Customer-caused; or
  - (iv) outages or disruptions attributable in whole or in part to Force Majeure.
- (c) For the purpose of calculating Service Availability, "**Unavailable Time**" means the period of time failure (whether full failure or partial failure) or degradation of Service suffered by Customer or in the event that a Service, or any portion thereof, fails to meet the applicable Service specifications in the Service Agreement.

#### 8.2 Limit on Compensation

The maximum compensation for Unavailable Time the Customer can receive in any month is an amount equal to the Outage Credit calculated in clause 8.3(a).

#### 8.3 Service Outage Credits

- (a) Customer shall be entitled to Outage Credit for a Confirmed Outage in the event that a Service fails to meet the applicable Service Availability or uptime commitment described in clause 8.1(a) or in a Service Agreement for that Service. Outage Credit is calculated when the total Service Availability in the month is below the Service Availability commitment according to the formula below:

$$\text{Outage Credit (K)} = [\text{Service Availability Commitment (\%)} - \text{Monthly Availability (\%)}] \times \text{Monthly Charge (K)}$$

- (b) Outage Credit is only applicable where the Service Availability commitment is **LESS THAN** the monthly availability.
- (c) If a failure to maintain Service Availability has occurred, the Confirmed Outage shall be measured as commencing from the later to occur of:

- (a) Customer's cessation of use of the Service; and
  - (b) notice from Customer to DataCo of such outage within seven (7) days of occurrence.
- (d) Any such Confirmed Outage shall be deemed to have ended upon the earlier to occur of: -
- (i) Customer's resumption of use of the Service; and
  - (ii) notice from DataCo to Customer that the Service Availability described in clause 8.1.1 or in a Service Agreement for that Service has been satisfactorily met.
- (e) Customer shall make all claims for Outage Credit within thirty (30) days from the date of the first occurrence of the relevant Confirmed Outage. Under no circumstances shall any Outage Credit exceed the amount to which Customer would have been entitled during the period of failure to meet the applicable Service specifications.
- (f) Any compensation payable under clause 8.3(a) above will be credited to Customer's tax invoice for the Monthly Fee for the following month unless the Service is terminated in which case a specific payment may be made to Customer. DataCo may offset all or part of any such amounts against any outstanding amounts due for the Service which has not been paid by the Customer, except where these amounts may be disputed.

#### **8.4 Non-Entitlement of Service Outage Credit**

Customer is not entitled to any Outage Credit if:

- (a) the failure by DataCo is due to Customer Facilities, or its own network or equipment or any other network or equipment outside the DataCo Network and/or DataCo Facilities;
- (b) Customer is in breach of any part of the Service Agreement and/or the MSA;
- (c) through no fault of its own or because of circumstances beyond its reasonable control, DataCo is unable to carry out any necessary work at, or gain access to the Customer's Facility;
- (d) Customer and DataCo agree on a different timescale for performance of the Service, but will apply to any new Commission Date agreed, provided that the new date is after any previous Commission Date(s) and it is agreed between Parties that clause 8.4 will apply; or
- (e) reasonable assistance is required, or information is reasonably requested by DataCo from the Customer and such assistance or information is not provided; or
- (f) the failure is due to Force Majeure; or
- (g) the failure is due to a Maintenance Event; or
- (h) the failure is due to an inaccurate Service being requested by Customer and DataCo has provisioned the Service in relation to such inaccuracy provided by Customer.

### **9. DATACO EQUIPMENT**

**9.1** All DataCo Equipment remains the property of DataCo at all times.

**9.2** Customer agrees to:

- (a) prepare Customer Facilities and provide a suitable place, condition, connection points and electricity for the DataCo Equipment in accordance with DataCo's reasonable instructions, if any;
- (b) obtain all necessary consents, including for example, consents for any necessary alterations to buildings, permission to cross third party land or permission to put Equipment on their property; and

- (c) be responsible for DataCo Equipment installed at Customer Facilities and agrees to take reasonable steps to ensure that it or any person on its premises (other than someone authorised by DataCo) adds to, modifies or in any way interferes with it. Customer will be liable to DataCo for any loss of or damage to DataCo Equipment, except where such loss or damage is due to fair wear and tear or is caused by DataCo, or anyone acting on DataCo's behalf.

## **10. CONNECTION OF EQUIPMENT**

**10.1** Any Customer Facilities, network or equipment connected to a Service must be:

- (a) technically compatible with the Service and not harm the DataCo Network, the Service or DataCo Equipment;
- (b) connected and used in line with any relevant instructions from DataCo or any Laws and Licences held by DataCo and Customer; and
- (c) connected and used in line with any relevant standards including, in the order of precedence set out as below:
  - (i) any legal requirements imposed upon the parties including requirements arising from NICTA Act;
  - (ii) any recommendations by the International Telecommunications Union (ITU); and
  - (iii) any recommendations by the Regional Telecommunications Regulatory Authorities which DataCo has membership.
- (d) Customer agrees to connect Customer Facilities, network or equipment to a Service only by using equipment approved by DataCo with the Service.
- (e) DataCo will not be liable for failure to meet any Service level or other obligations under this Service Agreement if any Customer Equipment is found to be connected otherwise than in accordance with this clause 10.
- (f) DataCo reserves the right to disconnect any Customer Facilities, network or equipment if Customer does not fulfil its obligations under this clause 10 or if in the reasonable opinion of DataCo Customer Facilities, network or equipment is liable to cause the death of, or personal injury to any person.

## **11. ACCESS AND SITE REGULATIONS**

**11.1** Customer agrees to take reasonable steps to provide DataCo with access to the Customer's Facilities for the purpose of installation and use of the DataCo Equipment at the Customer's Facilities.

**11.2** DataCo agrees to observe the Customer Facilities reasonable site safety and security requirements.

**11.3** Customer agrees to provide and agrees to take reasonable steps to ensure it provides a suitable and safe working environment for DataCo at the Customer Facilities. Customer agrees to indemnify DataCo against all loss, damages, liabilities, costs and expenses arising or incurred in respect of any actions, claims or legal proceedings which are brought or threatened against DataCo if Customer is in breach of this sub-clause. The limitation of liability provisions of the MSA does not apply to this indemnity.

**11.4** It is the responsibility of Customer to carry out any making good or decorator's work required but DataCo accepts responsibility for any property damage caused by DataCo's negligence subject to the limitation of liability provisions of the MSA.

## **12. CHARGES**

- 12.1** This section should be read and interpreted in conjunction with section 7 of the MSA.
- 12.2** Customer shall pay to DataCo all charges due under the Service Agreement. Such charges shall be invoiced monthly in advance. The first billing period shall commence on the Commission Date.
- 12.3** All charges payable hereunder by Customer shall be payable to DataCo in Papua New Guinean national currency (Kina and Toea) and/or United States Dollars (USD) for payments originating overseas no later than thirty (30) days after receipt of DataCo's tax invoice.
- 12.4** Where any Commission Date is delayed at Customer's request or by virtue of the Customer's act, neglect or failure to fulfil its obligations hereunder, the charges for the first billing period for that Service shall be payable no later than the Commission Date for that Service unless otherwise agreed in writing between the Parties.
- 12.5** Without prejudice to DataCo's right to treat non-payment or late payment as a repudiatory breach of the Service Agreement, in the event of non-payment of any tax invoice which is not the subject of a bona fide dispute DataCo reserves the right to charge daily interest on any outstanding amounts until payment is received in full as current from time to time whether before or after judgment until the date actual payment is received together with all external costs reasonably and necessarily incurred by DataCo in securing such payment and/or obtaining such judgment, as the case may be. The rate of such interest shall not exceed the interest rate stated in clause 7.6 of the MSA.
- 12.6** All sums due to DataCo under the Service Agreement shall be payable by Customer in full (without any set-off, deductions or withholding whatsoever) by direct debit or bank transfer or bank cheque payable to DataCo.
- 12.7** DataCo reserves the right when Customer defaults in payment of the charges to require the Customer to issue a Security Bond, irrevocable letter of credit or other form of security acceptable to DataCo of the Customer's financial circumstances or payment history is or become unacceptable to DataCo.

### **13. USE OF THE SERVICE**

- 13.1** Customer shall use the Service strictly in accordance with any reasonable operating instructions issued by DataCo from time to time.
- 13.2** Customer shall not itself or knowingly permit any of its End Users to use the DataCo Network or Services to do any of the following:
- (a) publish, post, distribute or disseminate defamatory, infringing, obscene, indecent or other unlawful material or information;
  - (b) threaten, harass, stalk, abuse, disrupt or otherwise violate the rights (including rights of privacy and publicity) of others;
  - (c) engage in illegal or unlawful activities through the DataCo Network;
  - (d) knowingly make available or upload and download files that contain software or other material, data or information not owned by or licensed to Customer, the End User or additional user (as appropriate);
  - (e) knowingly make available or upload and download files that contain a virus or corrupt data;
  - (f) falsify the true ownership of software or other material or information contained in a file that the Customer, any End User or additional user makes available via the DataCo Network;

- (g) "spam" or otherwise deliberately abuse any part of the DataCo Network;
- (h) obtain access, through whatever means, to notified restricted areas of DataCo Network.

**13.3** If Customer becomes aware that any of its End User is using the DataCo Network to perform any of the activities listed in clause 13.2 it shall use all best endeavors to stop such End User from doing so.

**13.4** In the event that DataCo becomes aware that a Customer's End User is performing any of the activities listed in clause 13.2, DataCo shall bring the activity to the attention of Customer as soon as is reasonably practicable. If DataCo has not received, within one (1) day of dispatch of such a message, a satisfactory response from Customer detailing the actions that have been taken to stop the violation by its End User, then DataCo shall have the right to restrict the access of and/or disconnect the Customer's End User in question, and if necessary restrict the access of/disconnect Customer from the entire Service.

**13.5** Each Party shall provide the other with all reasonably necessary co-operation, information and support to prevent and/or stop any misuse of DataCo Network by Customer's End User.

#### **14. ASSIGNMENT**

**14.1** Any assignment of a right or obligation under this Service Agreement shall follow the requirements under clause 18.9 of the MSA.

#### **15. THIRD PARTIES**

**15.1** A person who is not a Party to this Service Agreement and/or the MSA has no rights under this Service Agreement to enforce any term stated therein.

#### **16. DISPUTES**

**16.1** Any Dispute arising under this Service Agreement shall be addressed in accordance with the procedure stated under clause 17 of the MSA.