



**ADDITIONAL TERMS FOR  
VIRTUAL DATA CENTRE SERVICE  
SCHEDULE 2N**



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**1 SERVICE DESCRIPTION**

Interoute's Virtual Data Centre is a cloud service that enables the delivery of processing, storage, networks, and other fundamental computing resources and associated services, used to deploy and run arbitrary software, which can include operating systems and applications.

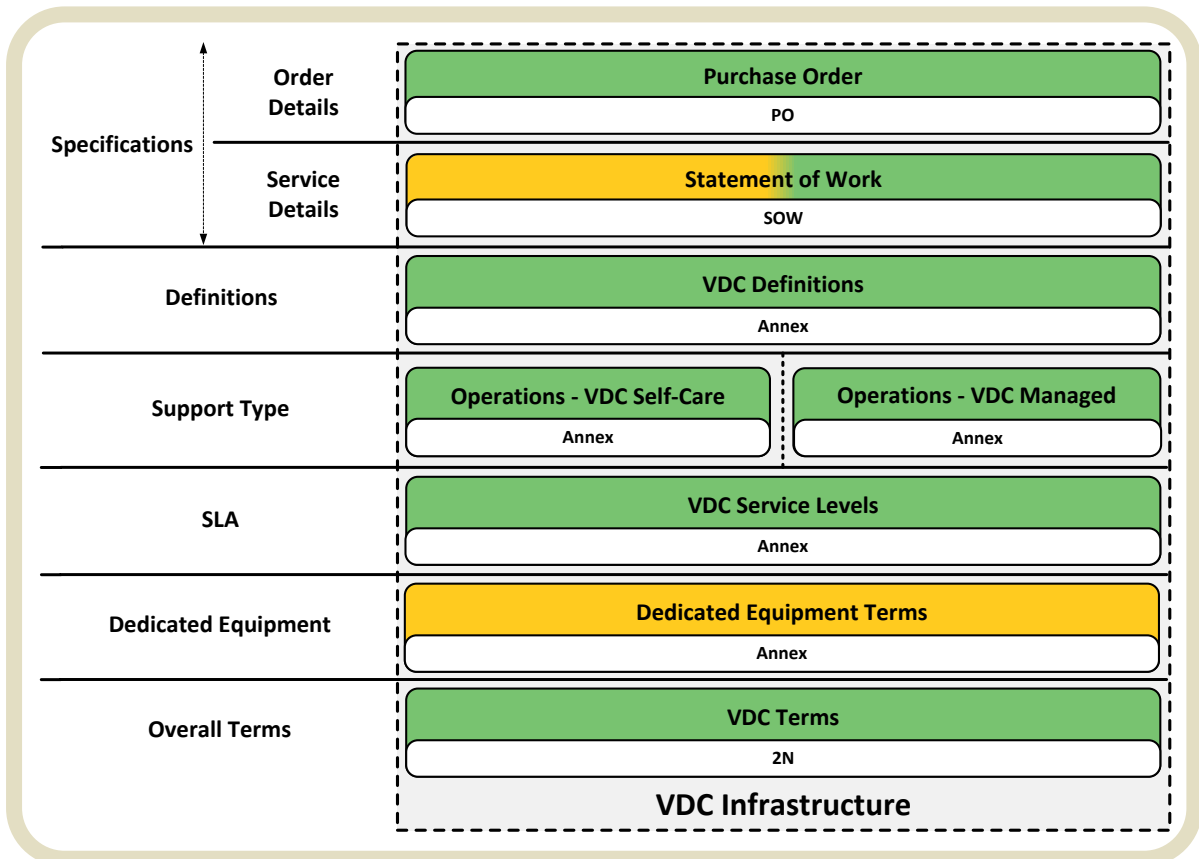
Any capitalised terms shall have the meaning set out in the Definitions Annex.

**1.1 CONTRACT STRUCTURE**

Any annexes hereto are fully incorporated and form part of this Schedule 2N.

In case of conflict or inconsistency, the following order of precedence shall apply

- a. Purchase Order;
- b. A statement of work (SOW) attached to the relevant Purchase Order(s), where applicable;
- c. The Definitions Annex;
- d. The Support Annex(es);
- e. The Service Level Agreement Annex;
- f. The Dedicated Equipment Annex, and
- g. The general VDC terms in this Schedule 2N.



## **2 SERVICE RESOURCE USAGE**

### **2.1 LOCATION**

Prior to deployment of the Service Resources, the Customer has the option (either as stated in the SOW or on the web portal) to select the Zone in which the Service Resources will be deployed. If selected, the Zone in which Service Resources are deployed (including those used for the processing and storage of Customer's data) will not change without Customer's consent.

### **2.2 UTILITY CAPABILITY**

The Customer may use the Service Resources on a Utility basis. Interoute will provide Service Resources to enable this on a first come, first served basis only.

### **2.3 NETWORK SERVICE RESOURCES**

Interoute allocates a set amount of network resources relating to VLANs and IP Addresses to each customer. The details of these resources allocated to the Customer are communicated at the time of purchase. If the allocated VLAN and Internet IP addresses are unused for greater than thirty (30) consecutive days, Interoute reserves the right to reclaim some or all of these network resources from the Customer without any liability.

### **2.4 RIGHT TO THROTTLE SERVICE RESOURCES**

Interoute reserves the right to throttle or limit Service Resources where use of the Virtual Data Centre Environment by the Customer detrimentally impacts other Interoute Customers.

## **3 LIMITATIONS**

Customer acknowledges that Services deployed in high-availability configurations and/or deployed in multiple Data Centre facilities, while designed to reduce the impact of downtime and data loss, do not provide complete guarantees against data loss, breach of data protection, or for indirect or direct loss of business.

## **4 THIRD PARTY SOFTWARE**

Save as otherwise expressly provided, for the purposes of this Agreement Third Party Software supplied hereunder shall be considered Services.

### **4.1 SERVICE PROVIDER LICENSE AGREEMENTS (SPLA)**

- a. Interoute has partnered with a number of vendors, as a service provider under their relevant usage based programs (SPLA). Licenses are treated as license rentals of software. Upon termination of the Customer's service provided by Interoute, the licenses granted to the Customer will be returned to Interoute. Where Interoute provides licensing under a SPLA agreement, the license granted to the Customer is subject to the terms and conditions of the SPLA Agreement or end user license agreement (EULA), which will be provided to the Customer by Interoute upon request.
- b. Where the Customer is responsible for obtaining software licenses, the Customer will ensure that the products are appropriately licensed and will indemnify Interoute against any claim, loss or damage incurred by Interoute as a result of the Customer supplying unlicensed software or breaching the licensing terms for such software.

### **4.2 END USER LICENSE AGREEMENTS**

- a. The licence granted to the Customer in respect of any Third Party Software is as set out in the relevant End User Licence Agreement (EULA). The Customer's right to use the Third Party Software is as set out in the EULA and use by the Customer of the Third Party Software is subject to compliance by the Customer with the terms of the EULA. In the event of any breach by the Customer of the relevant

EULA, the Third Party Supplier may terminate the licence granted to the Customer and the Customer shall indemnify Interoute in full in respect of any and all Claims arising in connection with such breach. Such termination shall be without prejudice to the Customer's obligation to make payment of any charges due in respect of the Third Party Software, any associated Third Party Support and all other Services contracted hereunder for the remainder of the term of that licence.

- b. Interoute's sole Liability in respect of any Third Party Software shall be to make the same available to the Customer in the form provided by the relevant Third Party Supplier on and subject to the terms of the applicable EULA. Interoute neither makes nor gives any representation or warranty in respect of the functionality or performance of the Third Party Software and the Customer shall hold Interoute harmless in respect of any Claims to the contrary. Save as otherwise expressly provided in the relevant Service Description, in the event of any fault or defect in the Third Party Software, the Customer shall be entitled to the support set out in the EULA and Interoute shall have no Liability in respect of such fault or defect, it being acknowledged that support and maintenance of Third Party Software may be subject to the payment of additional charges by the Customer.
- c. Any indemnity offered by the Third Party Supplier to the Customer in respect of a breach by Third Party Software of Intellectual Property Rights is set out in the EULA. Interoute shall have no Liability to the Customer and offers no indemnity in respect of Third Party Software.

## **5 SERVICE ALTERATIONS**

- a. Interoute may from time to time vary the technical parameters applicable to the provision of the Service including but not limited to circumstances where an underlying supplier implements a technology change. Such change will not require the Customer's consent except where such change is likely to have a material adverse effect on the Service Levels following its implementation.
- b. Interoute may retire any Service or feature. Interoute shall endeavour to provide Customer at least 3 months' notice, unless security, legal or system performance considerations require an expedited removal. Any such change will be effective as of the date indicated by Interoute. Where such retirement has a material adverse effect on the Service Levels for Committed Usage, the Customer may terminate the Service with thirty (30) days' notice without the termination charges set forth in clause 6.3 of Schedule 1. Where the Customer exercise such termination right Interoute shall have no Liability to Customer for the failure to achieve the Service Levels.

## **6 CHARGES**

Charges for the Service are set out in the paragraphs 6.2 to 6.5 below. Unless otherwise agreed between the Parties in this Agreement, Charges for the Service(s) and any applicable other charges will be invoiced in accordance with the terms specified in this Schedule.

### **6.1 PAYMENT OF CHARGES**

The Customer shall make payment of all Charges using the payment method(s) from time to time required or permitted by Interoute.

#### **6.1.1 Payment due date**

Where the Charges are invoiced to it, the Customer shall pay such amounts within thirty (30) days of the date of invoice. Where payment is required by direct debit, credit or debit card, the Customer shall notify Interoute of and make available to Interoute an appropriate method of payment (being a method accepted by Interoute at the time the relevant payment is due). The Customer shall ensure that Interoute is able to collect the Charges with effect from the date the same are due and shall be liable to Interoute for and pay on demand any additional costs incurred by Interoute and/or its Associated Companies as a result of (i) funds not being available to satisfy any payment liability as and when required: and/or (ii) a payment being reclaimed or withdrawn by the relevant bank or card issuer and/or (iii) its full costs incurred in the recovery of sums due.

**6.1.2 Increase of Charges**

- a. Subject to the provisions set out in this paragraph 6.1.2, and save as specifically agreed in relation to any Non-Interoute Products, the Charges shall be fixed for the Initial Term and thereafter may be increased by Interoute on thirty (30) days' prior written notice.
- b. The Charges for Third Party Software and Third Party Support may be increased as provided in the relevant Service Description (and if not so provided may be increased as provided in this paragraph 6.1.2).
- c. In the event that at any time Interoute's costs of providing any Service are increased, Interoute may increase the Charges on thirty (30) days' notice to Customer (the "Increase Notification"). Customer shall be entitled to terminate this Agreement in respect of the Service in question (but not in respect of any other Service) by thirty days' notice to Interoute, such notice to be served within fourteen (14) days of the date of the Increase Notification.

**6.1.3 Currency**

All amounts shall be paid free of currency exchange costs, bank charges, withholding or deductions. To the extent that any deduction or withholding is required by applicable law, Customer shall increase the amount of such payment to ensure that Interoute receives the amount it would have received had no deduction or withholding been required.

**6.2 INFRASTRUCTURE CHARGES**

Charges for the VDC Service shall comprise a Fixed Rate Charge based on the Committed Usage ("Committed Base Charge") and any usage Charges as set out in paragraph 6.2.1.

**6.2.1 Usage Charges**

- a. Upon receiving a Purchase Order, Interoute shall issue a Rate Card detailing rates for Service Resources. The rates in the Rate Card shall be valid unless and until amended by Interoute upon one month's advance notice.
- b. Service Resources usage duration units are specified in the Rate Card, and shall be rounded up to the nearest whole unit.
- c. The Charges for the provision of Service Resources are calculated by the following formula:

$$C = [\text{Service Resource usage} \times \text{charge rate (as set out in the Rate Card)}]$$

Where C = the Charge that shall be rounded to the nearest relevant smallest unit of the applicable currency.

**6.3 NETWORK BANDWIDTH**

Interoute reserves the right to apply Utility Charges if aggregate data transfer continuously exceeds the Fair Use Policy, as set out in paragraph 10, as follows:

Data Movement	Utility Charge
Internet bandwidth Utility Rate	Excess bandwidth will be charged at €10 per additional Mbps.
Inter-Region Utility Rate	Excess bandwidth will be charged at €30 per additional Mbps.

**6.4 VDC MANAGED CHARGES**

Charges for the VDC Managed Service may comprise an Installation Charge, a Fixed Rate Charge for the Service and any Additional Charges (as defined in paragraph 6.5 below).

**6.5 ADDITIONAL CHARGES**

Interoute reserves the right to apply the following additional charges in conjunction with those applicable for the VDC Services:

- a. Implementation of changes at the rates set out in the Change Order.
- b. Technical assistance at the Professional Service Charges rate, invoiced monthly in arrears.



**6.6 CHARGE CHANGES AND NOTIFICATIONS**

Interoute will provide Customer with a list of Charges through My Services. From here, Customer is able to view and print Charges. Customer is responsible for printing or saving a copy, and retaining such copy for Customer's records.

Charges for usage will be calculated and included within the invoices provided to the Customer. Any usage or spend amounts displayed anywhere other than in a invoices are estimates provided for information purposes only and may not include recent activity or may comprise projections based on previous usage patterns.

**6.7 NON-INTERROUTE PRODUCT BILLING**

Where a Customer purchases a Non-Interoute Product and Interoute relies on the Customer to report usage for billing purposes the Customer shall report to Interoute usage of such specific product in accordance with the instructions provided by Interoute at the time of purchase. Interoute shall have the right to audit such Customer usage and reports. If the Customer fails to report in accordance with Interoute's instructions and a cost or liability is incurred or is likely to be incurred by Interoute, Interoute reserves the right to treat the failure to report as a material breach of this Agreement by the Customer.

**7 SERVICE CREDITS**

**7.1 CLAIMING SERVICE CREDITS**

Failure to meet an SLO for a Service entitles the Customer to claim Service Credits (subject to the exceptions set out herein). The SLOs are set out in the VDC SLA Annex attached hereto. The Customer must provide to Interoute all reasonable details regarding the relevant Service Credits claim, including but not limited to, detailed descriptions of the Incident, its duration and any attempts made by Customer to resolve it. Interoute will use all information reasonably available to it to validate claims and make a good faith judgment on whether the Service Levels apply to the claim.

Unavailability of the Service cannot be used to claim failure of another Interoute service. Interoute shall not be responsible for any cross default.

**7.2 EXCLUSIONS TO PAYMENT OF SERVICE CREDITS**

In addition to those matters set out in Schedule 1, Service Credits will not be payable by Interoute to the Customer in relation to Incidents or disruptions to the Service caused directly or indirectly by any of the following:

- a. Incidents relating to the use of the Service by the Customer or their customers such as excessive traffic load and penetration testing;
- b. Denial of Service attacks; (unless an applicable DDoS Protection Service has been purchased from Interoute);
- c. Ongoing data restore from a backup;
- d. Applications or databases not explicitly defined as managed by Interoute;
- e. Bad/corrupt content or Customer data;
- f. Customer Serviced Software.

The SLA will not apply where the Customer has outstanding payments due to Interoute, which are more than 10 days overdue. Service Credits cannot be claimed retrospectively after a period of non-payment.

## **8 CUSTOMER RESPONSIBILITIES**

### **8.1 TECHNICAL REPRESENTATIVES**

The Customer must designate one or more qualified persons as their technical representatives and support points of contact with Interoute. These technical contacts can be updated online, by phone, or email and must be provided for both pre and post installation, and during Incident Management.

### **8.2 CONTENT**

In addition to the rights and obligations set out in Schedule 1, where the Service consists of the storage of information, Interoute reserves the right to remove or disable access to the information immediately where Interoute will otherwise be subject to any liability envisaged by Article 14 of Directive 2000/31/EC (the Directive on Electronic Commerce) or the respective applicable national law implementing this directive without having any liability towards the Customer.

### **8.3 CUSTOMER SERVICED SOFTWARE**

Customer Serviced Software may be installed at Customer's own risk. The Customer is solely responsible for the following with regards to Customer Serviced Software;

- a. performance
- b. licensing
- c. Incidents or problems
- d. interoperability with the Service

Customer will indemnify Interoute against any claim, loss or damage incurred by Interoute as a result of the Customer supplying unlicensed software or breaching the licensing terms for the Customer Serviced Software

### **8.4 OTHER RESPONSIBILITIES**

Customer undertakes that it shall:

- a. report any Incidents or problems with the Services to the Customer Contact Centre as soon as such problems have been identified;
- b. provide feedback on any Interoute maintenance approval requests passed to the Customer within the reasonable times specified within such requests;
- c. be responsible for the delivery of Customer Serviced Software;
- d. do such other things and provide such information as Interoute may reasonably request in order for Interoute to provide the Service;
- e. not initiate a penetration test without agreeing and complying to the current Interoute Penetration Test Agreement. In case a penetration test is undertaken and no respective Interoute Penetration Test Agreement was signed, Customer hereby agrees that the Interoute Penetration Test Agreement is deemed to have been signed and that its stipulations bindingly apply.

## **9 INCIDENT MANAGEMENT**

### **9.1 CUSTOMER CONTACT CENTRE**

When notifying the Customer Contact Centre of an Incident or request, the following information should be provided:

- a. Organization name
- b. Service Identifier (SID)
- c. Issue description



**9.2 INCIDENT REPORTING**

Any suspected Incidents should be reported to the Interoute Customer Contact Centre using the procedures detailed in the Service Handover Document to be provided on the Ready for Service Date. When reporting an Incident, the Customer should identify the affected Service and provide details of the Incident.

**9.3 INCIDENT DURATION**

All Incidents recorded will be reconciled against the corresponding ticket raised by the Customer Contact Centre. The exact Incident duration will be calculated as the elapsed time between the Incident being reported to the Customer Contact Centre and the time when Service is restored.

**9.4 INCIDENT PRIORITIES**

Interoute shall prioritise all Tickets based on its reasonable assessment of the impact a reported Incident has on the Service into one of four Priority Levels: Priority Level 1 (Critical), Priority Level 2 (Major), Priority Level 3 (Minor), or Priority Level 4 (Requests) (each a “Priority Level” or, together, the “Priority Levels”). Interoute may downgrade the priority level if the Customer does not provide adequate resources or responses to enable Interoute to continue with Incident Management.

Any Incidents relating to a security Incident which requires post-restoration investigation are considered out of scope for Incident Management

Each Priority Level is categorized as follows:

Priority	Description
Priority 1 (Critical)	An Incident may be considered critical where a VDC Component Service within a Zone is Unavailable as set out in the SLA Annex.
Priority 2 (Major)	An Incident may be considered major where a VDC Component Service within a Zone is degraded and has a significant impact to the Service but the Service is still Available.
Priority 3 (Minor)	An Incident may be considered minor where a VDC Component Service within a Zone is degraded but has no significant impact to the Service.
Priority 4 (Requests)	Any request from a Customer for information, advice, standard changes or for access to a Service.

**9.5 INCIDENT RESOLUTION**

**9.5.1 Incident Management Efforts**

Upon responding to an Incident with Priority 1 (Critical) or Priority 2 (Major), Interoute will work continuously to resolve the incident, in line with the hours of Operation as set out within the applicable Support Annex.

**9.5.2 Hours of Operation**

Depending on the Priority Level, Incident Management is performed on:

- a. an 24/7 basis: Interoute will provide support on a 24x7x365 basis; or
- b. a Working Day basis: Interoute will provide support during a Working Day only.

Priority	Hours of Operation
Priority 1 (Critical)	24/7
Priority 2 (Major)	
Priority 3 (Minor)	Working Day
Priority 4 (Requests)	

**10 FAIR USE POLICY**

Interoute provides network bandwidth for the movement of data using the Interoute Network between Zones as well as to and from the Internet without charge but subject to the Fair Use Policy as set forth in this paragraph 10.

Interoute reserves the right to exercise the Fair Use Policy at its sole discretion.

The Fair Use allowed (free of charge) is directly proportionate to the total Charges for the Service across all Zones (in Euros and excluding charges for software licenses) in the relevant calendar month. The Fair Use allows for a maximum bandwidth measured in megabits per seconds (Mbps).

**10.1 DATA MOVEMENT**

What is considered as Fair Use varies depending on the source and the destination of data as follows:

Data Movement	Fair Use
<b>Intra-Region data movement</b>	For all data movement, both inbound and outbound, between any Zone(s) within the same Region the Fair Use is unlimited (subject to service constraints) for all Regions.
<b>Internet data movement</b>	For all data movement, both inbound and outbound, between any of the Zones and the Internet all Regions have a Fair Use of up to 0.05 Mbps bandwidth per 1 Euro of Charges for the Service in the calendar month.
<b>Inter-Region data movement</b>	For all data movement both inbound and outbound between any Zone within a specific Region and another Region, all Regions have a Fair Use up to 0.05 Mbps free bandwidth per 1 Euro of Charges for the Service in the calendar month.

**10.2 ALLOCATIONS**

Data Fair Use allocations are not compound; each Euro of Charges can be effectively allocated to one use only (for example Internet data).