

BY INDICATING YOUR ACCEPTANCE OF THE TERMS AND CONDITIONS CONTAINED IN THE RELEVANT SPECIFIC SERVICE ORDER, YOU ARE DEEMED TO ACKNOWLEDGE AND AGREE TO BE BOUND BY ALL THE FOLLOWING TERMS AND CONDITIONS FOR THE USE OF THE SERVICES PROVIDED BY THE SERVICE PROVIDER.

THE SERVICE PROVIDER RESERVES THE RIGHT TO UPDATE OR REVISE THESE TERMS AND CONDITIONS FROM TIME TO TIME FOR ANY REASON WHATSOEVER OR IF UPDATING OR REVISION FROM TIME TO TIME IS REASONABLY NECESSARY IN THE INTEREST OF AND FOR ENSURING A FAIR LEVEL OF AVAILABILITY OF THE SERVICES TO A MAJORITY OF THE SERVICE PROVIDER'S CUSTOMERS.

THE SERVICE PROVIDER MAY GIVE NOTICE OF AMENDMENT TO THE CUSTOMER IN SUCH A MANNER AS THE SERVICE PROVIDER DEEMS NECESSARY AND APPROPRIATE. CONTINUATION IN THE ACCESS OR USE OF THE SERVICES SIGNIFIES ACCEPTANCE OF THE CHANGES TO THESE TERMS AND CONDITIONS.

THIS DOCUMENT CONTAINS PROPRIETARY INFORMATION THAT CAN ONLY BE USED BY PERSON OR PERSONS WITH PRIOR WRITTEN PERMISSION FROM THE SERVICE PROVIDER.

## GENERAL TERMS AND CONDITIONS OF MASTER SERVICE AGREEMENT

### CLAUSE1: DEFINITIONS AND INTERPRETATIONS

#### 1.1 Definitions

In this Agreement and unless the context otherwise requires, the following words and expressions shall bear the following meaning ascribed to them: -

**"Acceptance"** means the acceptance of the Services and/or the Work and/or the Deliverables by the Customer, as the case may be, established for the Services (if any) as stated in the relevant Specific Service Order and/or the Specific Service Terms;

**"Acceptance Test"** where applicable, shall mean the relevant test(s) to be performed by the Service Provider for the Acceptance;

**"Addendum"** means the specific agreement including any supplemental agreement by which the Parties may agree, as additions or in amplifications of, the terms of this Agreement or the relevant Specific Service Terms;

**"Affiliate"** shall mean in relation to a Party, (i) any entity under the Control of such Party; or (ii) any entity Controlling such Party; or (iii) any other entity under the Control of a controlling entity under (ii) hereof. For the purpose of this definition, the term "Control" (including the correlative meanings of the terms "Controlling", "Controlled by", and "under the Control of"), as used with respect to any Party, means a Party's (a) ownership, directly or indirectly, of equity securities or shares entitling it to exercise in the aggregate of more than fifty percent (50%) of the voting power of the entity in question; or (b) possession directly or indirectly, of the power to direct or cause the direction of the management policies of or with respect to the entity in question, whether through ownership of securities, by contract or otherwise;

**"Agreement"** shall mean the signature page of this Agreement, the General Terms and Conditions, the relevant Specific Service Order and the relevant Specific Service Terms for the relevant Services including any schedules, appendices, exhibits, amendments and supplements that may be entered into by the Parties from time to time;

**“Business Days”** means Mondays through Fridays or Sundays through Thursdays, inclusive, as the case may be, but does not include national or state or public holidays in the state or locality where the relevant action is to be taken;

**“Cancellation Charge”** means an agreed charges imposed on the Customer by the Service Provider for the cancellation of the relevant Services after Customer’s application has been accepted and approved by the Service Provider in accordance with Clause 4.1(d) hereof in circumstances where the said clause applies or otherwise, on the actual cost incurred for the preparation, installation and/or provisioning of the relevant Services (which includes but shall not be limited to administrative charges as may be reasonably determined by the Service Provider);

**“Certificate of Acceptance”** where applicable, means a certificate to Customer by Service Provider signifying the Acceptance of the relevant Services and/or the Deliverables established in relation to the relevant Services (if any);

**“Change Request”** means a written request for addition, reduction, modification, or change to any aspect of this Agreement.

**“Charges”** shall include any payment due, charges and/or fees exclusive of the applicable Taxes and any other monies or charges as shown in the Service Provider’s invoice, payable by the Customer for the utilization of the relevant Services and as specified in the relevant Specific Service Order or the Specific Service Terms;

**“Commencement Date”** or **“Service Commencement Date”** shall mean the date of commencement of the relevant Service as notified by the Service Provider to the Customer through the issuance of the relevant Notice of Commencement of Service;

**“Confidential Information”** shall mean all and any confidential information disclosed by the disclosing party to the receiving party including, without limitation to: (a) all confidential and restricted information disclosed during discussions, negotiations, transactions and dealing of the disclosing party; or (b) any information, technical data, or know-how including, but not limited to, that which relates to research, product plans, product, services, customers, markets, software, developments, inventions, process, designs, drawings, engineering, hardware and software configuration information, marketing or finance or any form of business plans of the disclosing party; or (b) any information which is marked as confidential, proprietary and restricted at the time of disclosure and is confirmed promptly in writing as having been disclosed as confidential or proprietary by the disclosing party; or (c) any information which is unmarked (e.g., orally disclosed) but treated and declared as confidential and restricted at the time of disclosure and is designated as confidential and restricted in a written notice sent to the receiving party within thirty (30) days of disclosure, summarizing the Confidential Information sufficiently for identification; or (d) that part of all notes and other records prepared by the disclosing party incorporating the information referred to in para (a) above, whether in the same or a modified form or any information derived from such information; or all copies of the information and those parts of the notes and other records referred to in any of para (a) to (e), whether in written, pictorial or oral form or in any other medium;

**“Customer”** refers to the Customer as specified in the Specific Service Order and the Customer shall include its successors-in-title, personal representative, executors permitted assigns, employees and agents, as the case may be;

**“Customer’s Equipment”** shall include but not limited to routers, hubs, terminal servers, printer servers, modem and other related communication peripheral and equipment, owned, installed and maintained by the Customer or subscribed by the Customer from any third party provider to facilitate access to the relevant Services which has obtained the necessary type approval by an approving body as recognized by the Service Provider;

**“Customer’s Premises”** shall mean the premises which is owned or leased by the Customer or which is within the Customer’s reasonable control designated in the installation address or site as stipulated in the relevant Specific Service Order or at such other location for the provisioning of the relevant Services;

**“Days”** shall mean calendar days;

**“Deliverables”** where applicable, means the items specifically developed for the Customer in connection to the relevant Services, as specified in the relevant Specific Service Terms;

**“Due Date”** shall mean the due date on which payment of the Charges for the relevant Services shall be made by the Customer to the Service Provider. For the avoidance of any doubt, the Due Date of the relevant the Service Provider’s invoice shall be determined as follows: - (a) thirty (30) days from the invoice date; or (b) the date stipulated in the Service Provider’s invoice whichever is the later;

**“Effective Date”** refers to the Effective Date as specified in the Specific Service Order;

**“End User”** means any person or entity receiving or using the relevant Services and whom may be a person or entity to whom the Customer or its customer provides telecommunications or related services that employ, in part, the relevant Services provided under this Agreement;

**“Extended Subscription Period”** shall mean an automatic extension period on a year to year basis after the expiry of the Subscription Period of the relevant Services;

**“Fault”** shall mean the inability of the Customer to use the relevant Services;

**“Taxes”** shall mean all taxes imposed by the authorities from time to time for the provision of the relevant Services;

**“Intellectual Property”** means all intellectual property rights throughout the world, whether existing under statute or at common law or equity, now or hereafter in force or recognized, including all patents, trademarks, service marks, logos, trade names, internet domain names, designs, copyrights (including rights in computer software) and moral rights, database rights, semi-conductor topography rights, utility models, trade secrets, tangible and intangible work products, concepts, methodologies, engineering details, discoveries, inventions, techniques, information, rights in know-how and other intellectual property or similar rights;

**“In-Service Date”** where applicable, means the date Customer is notified by the Service Provider that the relevant Services is/are available for testing. This date marks the commencement of the Test Period;

**“Minimum Subscription Period”** shall mean the minimum period for which the Customer shall subscribe a Service, as stated in the Specific Service Order and/or the Specific Service Terms, as the case may be, and commencing from the Commencement Date;

**“Notice of Commencement of Service”** shall mean a form issued by the Service Provider notifying the Customer of the Commencement Date for the relevant Service;

**“Network”** means a network comprising a system, or a series of systems that carries or is capable of carrying communications through any acceptable medium of access by means of guided or unguided electromagnetic energy or both.

**“Payment Terms”** refers to the terms of payment for the relevant Services including the frequency of payment for the relevant Charges, as selected by the Customer in the Specific Service Order and/or as provided under the relevant Specific Service Terms, as the case may be;

**“Professionals”** where applicable, means the competent, skilled and suitably qualified personnel employed or hired by the Service Provider to undertake the performance or execution of the relevant Services;

**“Ready for Service Date”** or **“RFS Date”** where applicable, refers to the date as specified in the Specific Service Order where the relevant Service is to be made available to the Customer;

**“Scheduled Outage/Maintenance”** where applicable, shall mean preventive or corrective maintenance, inspection, improvement, repair, service configuration, migration or upgrading of any of the relevant Services as scheduled by the Service Provider;

**“Security Deposit”** if applicable, means such amount as may be reasonably required by and deposited with the Service Provider as security for the due and faithful observance of all stipulations, conditions and obligations herein by the Customer;

**“Services”** shall mean the applicable service or services to be provided by the Service Provider or any of its Affiliates, as specified in the relevant Specific Service Terms;

**“Service Availability”** where applicable, shall mean the percentage of available time with respect to the relevant Services in an anniversary year, if any;

**“Service Level”** where applicable, shall mean the service availability level of the relevant type of Services committed by the Service Provider to the Customer;

**“Service Provider”** refers to the Service Provider as specified in the Specific Service Order;

**“Service Provider’s Equipment”** means routers, network terminating devices and other communication peripheral, which are owned or maintained by the Service Provider and/or leased to the Customer;

**“Site”** where applicable, means the installation site or sites as specified from time to time by the Customer in the relevant Specific Service Order where the relevant Services is to be provided;

**“Specific Service Order”** shall mean the Service Provider’s standard specific service order form for the relevant Services or such other alternative order form as shall be determined and accepted by the Service Provider, to be executed by the Customer and the Service Provider on the subscription of the relevant Services;

**“Specific Service Terms”** shall mean the relevant terms and conditions of the relevant Services as specified in the relevant schedule or the Addendum to this Agreement and/or the Specific Service Order;

**“Subscription Period”** shall mean the subscription period for which the Customer agrees to subscribe a Service, as stated in the Specific Service Order and commencing from the Commencement Date;

**“Term”** refers to the term of this Agreement as stipulated in Clause 3.1 hereof;

**“Test Period”** where applicable, means the period of time between the In-Service Date and the Service Commencement Date or Commencement Date during which the Customer has been provided with the relevant Services and is able to perform testing on the relevant Services;

**“Value Added Service”** refers to any additional service that is provided over and above the relevant Services described in the Specific Service Order and/or the relevant Specific Service Terms or under an Addendum; and

**“Work”** where applicable, shall mean all the activities necessary for the provision of required Services as specified in the relevant Specific Service Terms.

## 1.2 **Interpretations**

In the interpretation of this Agreement, unless the context requires otherwise: -

- (a) Words importing the singular also include the plural and vice versa where the context requires;
- (b) Any gender includes every gender;
- (c) Words importing people include corporations, associations, partnerships, Government Authorities, and other legal entities;
- (d) Reference to a Party to this Agreement includes a reference to its principal, agents, successors and permitted assigns;
- (e) Reference to statutes include statutes amending, consolidating and replacing the statutes referred to and all regulation, orders-in-council, rules, by-laws and ordinances made under those statutes;
- (f) Reference to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;
- (g) A period of days from the occurrence of an event or act shall be inclusive of the day on which such event or act took place and if the last day of the period is a weekly holiday or a public holiday, the deadline for an event or act shall fall on the next day following the weekly holiday or public holiday;
- (h) Where any word or phrase is given a defined meaning, any other grammatical form of that word or phrase has a corresponding meaning;
- (i) If a word or phrase is defined, another grammatical form of that word or phrase has a corresponding meaning;
- (j) The rule of contra proferentum shall not apply to any party who was responsible for the preparation of this Agreement or any part thereof;
- (k) A reference to a body, other than a Party to this Agreement (including an association, authority, corporation, body corporate or institution), whether statutory or not: (i) which ceases to exist; (ii) which is reconstituted, renamed or replaced; or (iii) whose powers or functions are transferred to another body, is a reference to the body which replaces it or which serves substantially the same purpose or has the same powers or functions.
- (l) Reference to a schedule or other attachment shall refer to a schedule or attachment to this Agreement; and
- (m) Titles and headings to Clauses herein are inserted for convenience of reference only and shall not have any effect on the interpretation thereof.

### 1.3 **Individual Contract and Order of Precedence**

Each Specific Service Order shall be deemed to be an individual contract for the respective Services which shall be governed by and forming an integral part of this Agreement. In the event of inconsistency between any provisions of the Specific Service Order, the General Terms and Conditions and of the Specific Service Term, the following order of precedence will apply: (i) Specific Service Order shall be taken as the highest order of precedence; (ii) Specific Service Terms for the respective Service; and (iii) the General Terms and Conditions.

### 1.4 **Application of Agreement**

- (a) Subject to Clause 1.4(b) hereof, the Service Provider agrees and acknowledges that the Customer may, at any time during the Term, order any of the Services from any of the Affiliates of the Service Provider subject to the following:
  - (i) any request by the Customer for the supply and provisioning of the relevant Services from any of the Affiliates of the Service Provider shall be submitted to the relevant Affiliate via a duly completed and executed relevant Specific Service Order as provided and/or approved by the relevant Affiliate;
  - (ii) the relevant Specific Service Order shall make express and specific reference to this Agreement and the parties express agreement to incorporate and adopt the General Terms and Conditions, in addition to the applicable Specific Service Terms;
  - (iii) where required by the relevant Affiliate, a copy of this Agreement shall be attached to the applicable Specific Service Order and for all purposes and intent, reference to “the Service Provider” under the General Terms and Conditions shall mean the relevant Affiliate; and
  - (iv) where required by the relevant Affiliate, the General Terms and Conditions may be amended and any amendments thereto shall be binding and enforceable, upon its acceptance in writing by the Customer.
- (b) Customer agrees and acknowledges that the rights under Clause 1.4(a) hereof may be revoked by the Service Provider at any time with or without notice and without assigning any reason whatsoever.

## **CLAUSE 2: SCOPE OF AGREEMENT/SERVICES**

- 2.1 The Service Provider shall, in consideration of the Charges and any other monies to be paid by the Customer and subject to the terms and conditions hereof, supply the relevant Services and/or the Work and/or the Deliverables (if any) as more particularly specified in a Specific Service Order and/or the relevant Specific Service Terms attached or to be attached herewith and the Customer agrees to subscribe for the specific Services and perform its duties and obligations as contained herein.
- 2.2 The scope of the relevant Services may be changed or expanded from time to time by means of substitution of the existing Specific Service Terms with a new Specific Service Terms or by the incorporation of an Addendum, to be mutually agreed and signed by both Parties.

- 2.3 The Parties shall at its own expense and cost procure and install each Party's own equipment and shall be responsible for the operation, maintenance, performance or reliability of its equipment including all necessary facilities, services or computer hardware, cabling and software necessary for the purpose of the provision of the relevant Services. When the relevant Services expire or terminated, and unless governed by new term, all the Service Provider's Equipment and material located or installed at Customer's Premises will forthwith be returned by Customer to the Service Provider failing which the Service Provider shall be entitled to enter upon the Customer's Premises upon reasonable notice for the purpose of retrieving the relevant Service Provider's Equipment and material.
- 2.4 For the relevant Services to be provided under this Agreement the Customer agrees, acknowledges and accepts that the relevant Services and incidental facilities thereof may be provided by the Service Provider's Affiliate, licensed affiliates or third party service providers and that any obligation by the Service Provider by this Agreement to possess the requisite regulatory and governmental licenses, waivers, consents, registrations, permission and approvals for the provision of the relevant Service to the Customer shall be deemed satisfied in the event the Service Provider's Affiliate or licensed affiliate or third party services provider providing the relevant Services to the Customer possesses the requisite regulatory and governmental licenses, waivers, consents, registrations, permissions and approvals.
- 2.5 Where the relevant Services requires the interconnection of the Customer's systems with systems of the Service Provider's Affiliate or any third party service provider, the Service Provider may, at its discretion, extend reasonable assistance to the Customer with regards to the standards and methods to be followed for any such interconnection, or may direct the Customer to relevant person(s) from its Affiliate or any third party service provider who can provide such information and any associated guidance reasonably necessary for the Customer to effect or allow any required interconnection for the provision of the relevant Services and incidental facilities.

### **CLAUSE 3: TERM**

#### **3.1 Term of Agreement**

The term of this Agreement shall commence from the Effective Date and shall be in force until terminated by either Party as stipulated in Clause 12 herein provided however, this Agreement will continue to remain in effect with respect to any Specific Service Order already issued at the time of such termination until such Specific Service Order is terminated or expired, as the case may be. The term of each Specific Service Order will be as indicated therein, and may be extended upon mutual agreement. Termination of an individual Specific Service Order shall not constitute termination of this Agreement.

#### **3.2 Subscription Period for the Services**

The term of the relevant Services shall commence on the Commencement Date for the duration of the Subscription Period and shall be automatically renewed and extended for the Extended Subscription Period unless otherwise terminated by either Party to this Agreement by giving ninety (90) Days prior written notice. The Subscription Period shall not in any case be less than the duration of the Minimum Subscription Period.

## **CLAUSE 4: ORDER AND PROVISIONING, SECURITY DEPOSIT AND SERVICE LEVEL**

### **4.1 Order and Provisioning**

- (a) The Customer may, from time to time, request the supply and provisioning of the relevant Services by submitting to the Service Provider a duly completed and executed relevant Specific Service Order. Such request shall be binding on both Parties upon execution of the relevant Specific Service Order by the authorized personnel of the Customer and duly accepted by the Service Provider, whereupon the relevant Specific Service Order shall be incorporated into and become part of this Agreement.
- (b) Service Provider may perform any of its obligations or exercise any of its rights under this Agreement by itself or through its appointed Affiliate.
- (c) If at any time the Service Provider is unable to obtain or maintain any license or permission required for the purpose of providing or maintaining the relevant Services (due to any changes in the laws or regulations applicable to the provision of the relevant Services), the Service Provider shall endeavour to identify a suitable replacement and ensure uninterrupted relevant Services to the Customer until the time Customer identifies a suitable replacement for such relevant Services on its own.
- (d) Unless otherwise specifically stated in the relevant Specific Service Terms, in the event that any Specific Service Order is cancelled by the Customer within two (2) weeks before the commissioning of the relevant Services at the relevant Site, the Customer shall pay the Service Provider forthwith Cancellation Charge of ten per cent (10%) of the value of the relevant Specific Service Order (including, but not limited to the cost of project initialisation), if any, of which such value of the relevant Specific Service Order may be determined by the Service Provider in its sole and absolute discretion, failing which such amount shall be deemed to be a debt which is due and owing to the Service Provider and be recoverable by the Service Provider from the Customer by way of civil suit or otherwise.
- (e) The Customer shall, upon the completion of installation and satisfactory performance of the relevant Services, pay the Charges as and when it is due and payable under this Agreement failing which the Service Provider shall have the option of withholding the provision of any part or all of the relevant Services to the Customer.
- (f) When required by the Service Provider and for the purpose of installation of the relevant Services at the Customer's Premises, Customer shall submit to the Service Provider, via fax or mail or hand delivered, at least three (3) working days prior to the date of appointment for installation, with a copy or original, as the case may be, of a letter of confirmation and authorization (in form and substance acceptable to the Service Provider) for the purpose of installation and the appointment of an authorized representative for the purpose of service acceptance. Authorized representative present during installation shall be required to furnish to the Service Provider authorized representative with the original of his NRIC or passport for verification. Service Provider shall not be liable to Customer for any delay in the installation of the relevant Services in the event of failure by Customer to comply with the terms herein.

### **4.2 Security Deposit**

- (a) Service Provider may notify the Customer after receipt of the Specific Service Order that it requires financial statement or further information to process the Specific Service Order, with details of the further information required including from a reporting agency to enable the Service Provider to access the Customer's credit history and current credit standing;

- (b) Service Provider may require the Customer at the Customer's own cost and expense to provide a Security Deposit in the form of cash or an on-demand, irrevocable and unconditional bank guarantee issued by any local or foreign bank acceptable to Service Provider) in favour of the Service Provider as security and/or guarantee for the due observance and performance by the Customer of all terms and conditions of this Agreement.
- (c) The Security Deposit shall be deposited and/or maintained for duration as shall be specified by the Service Provider and shall not, without the prior written consent of the Service Provider first being had and obtained, be deemed to be or treated as payment of any amount due to the Service Provider. However, the Service Provider may at any time and from time to time set-off or make a demand on the Security Deposit or use other overpayment made by the Customer from time to time in the event the Customer fails to perform or fulfill its obligations under this Agreement. Within ninety (90) days after the expiration or termination this Agreement, the Security Deposit shall be returned to the Customer or cancelled less any such sum due and owing to the Service Provider (if any).
- (d) If payment or set-off is made to the Service Provider pursuant to any claim under the Security Deposit, the Customer shall deposit or issue to the Service Provider further security in the form of additional bank guarantee or sum for the amount not less than the amount so paid or set-off to or by the Service Provider on or prior to the date of such payment so that the total value of the Security Deposit shall be maintained at all times. The failure on the part of the Customer to provide or maintain the Security Deposit or shall be treated as a breach of the term of this Agreement.

#### 4.3 **Service Level**

- (a) Where applicable, the Service Provider shall use its reasonable endeavours to provide the relevant Services in accordance with the relevant Service Level as requested by the Customer in the relevant Specific Service Order or as annexed to the relevant Specific Service Terms.
- (b) Any Fault shall be reported to the Service Provider at the designated address/contact point. The Customer must ensure that the Fault is not caused by the Customer's Equipment malfunction before making the report and provide all the necessary information and cooperation required by the Service Provider to remedy the problem. The Service Provider, upon receiving the report, shall as soon as practicable log the report and opens a docket number. Service Provider shall ensure the Customer's personnel in charge of the problem reporting have been briefed on the reporting procedure. When the problem is resolved, the docket number is closed.
- (c) Rebate or service credit, if any, will only be applied to a Fault for which a docket number is logged subject to terms and conditions of the respective Service Level.
- (d) If the Customer exercises its right to any rebate or service credit for a breach of Service Level, the rebate or service credit shall be the Customer's sole and exclusive remedy for such breach and constitute liquidated damages and shall be in lieu of and the Customer hereby expressly waives any and all other remedies in respect of the Service Provider's breaches that resulted in such rebate or service credit. Rebate or service credit is rebate or service credit against the monthly Service Charges fees only. In no event shall the Service Provider be required to make any payment in respect of rebate or service credit nor agreement to any rebate or service credit be deemed or construed as evidence of or an admission of wrongdoing by the Service Provider.

- (e) In the event of any dispute between the Service Provider and the Customer in respect of any rebates, the records at the Service Provider's service management system shall prevail.
- (f) The calculation and determination of the relevant Service Level, relevant service availability and rebate/service credit amount (if any) shall be stipulated in the relevant Specific Service Terms covering each separate Services.

## **CLAUSE 5: INSTALLATION AND ACCEPTANCE OF THE SERVICES**

- 5.1 At the request in writing of the Customer, the Service Provider may, at its discretion, extend the relevant RFS Date for the relevant Services for not more than thirty (30) days from the relevant RFS original date PROVIDED ALWAYS such request is made not less than seven (7) Days prior to the actual relevant RFS Date. Any cost associated with the extension of the relevant RFS Date shall be borne by the Customer.
- 5.2 Where applicable:
  - (a) the Service Provider shall be responsible for the installation and commissioning of the relevant Services and perform the Acceptance Tests for the relevant Services before or on the relevant RFS Date as contained in the relevant Specific Service Order;
  - (b) the Customer shall carry out all necessary preparations and give the Service Provider's representative(s) all assistance which they may reasonably require to facilitate the installation and testing of the relevant Services;
  - (c) Upon completion of the Acceptance Tests, the Service Provider shall issue a Certificate of Acceptance or Notice of Commencement of Service, as the case may be, together with Acceptance Tests result, to the Customer notifying the Commencement Date of the relevant Services.
- 5.3 In the event the Customer requests to defer the completion of Work and/or the Deliverables to a date after the originally agreed relevant RFS Date, the Customer shall be liable to pay a reservation fee at the Service Provider's then prevailing rates. The period of reservation shall be the period between the originally agreed relevant RFS Date and the date of completion of the Work and/or the Deliverables.
- 5.4 In the event that prior to the Commencement Date of the relevant Services, the Customer requests a change in the scope of the Work and/or the Deliverables, the said request shall be deemed as a cancellation of the Work and/or the Deliverables and the relevant RFS Date. The Customer shall be liable to pay the charges for the said cancellation to the Service Provider at the applicable rates for cancellation, and to pay for the charges for the new work or deliverables at the service Provider's then prevailing rates. In such situation, the Customer acknowledges that the request for change will result in downtime to the required relevant Services. The Customer acknowledges that the extent of downtime will depend on the change requested by the Customer.
- 5.5 Service Provider shall be entitled, at its absolute discretion, to reject or suspend Customer's application or registration or installation of the relevant Services if (a) Customer is blacklisted in the Service Provider's system and record due to outstanding or non-payment of subscription fee or charges for any of the Service Provider's or its Affiliates' services and subscribed by Customer; or; (b) subscription by Customer of any of the Service Provider's or its Affiliates' services is suspended or terminated for any reason attributable to the Customer's default; or (c) if Customer has criminal record or attempt to defraud the Service Provider; or (d) the Service Provider is of the reasonable opinion that Customer will use the relevant Services for any illegal activities; or (e) upon Customer's credit or other worthiness check, the Service Provider is of the reasonable

opinion that the Customer may not likely be able to perform its obligations under the terms herein. Subject however that in case of the matter falling under (a) above, the Service Provider may, at its absolute discretion, consider Customer's application when all outstanding payment due to the Service Provider or its affiliates has been fully paid.

- 5.6 Customer agrees that notwithstanding acceptance by the Service Provider of Customer's application and/or registration of the relevant Services, Customer hereby consent to and allows the Service Provider to attend to credit or other worthiness check on the Customer or the Customer's Premises where the relevant Services will be or has been installed and if, in the reasonable opinion of the Service Provider, the Customer may not likely be able to perform its obligations under the terms herein or if the Customer's Premises may likely or is used for any illegal activities, the Service Provider may cancel or suspend or terminate Customer's subscription or installation.

## **CLAUSE 6: CHARGES AND PAYMENT TERMS**

### **6.1 Pricing and Billing**

- (a) The Customer shall pay the Charges and any other monies or charges as shown in the Service Provider's invoice for utilizing of the relevant Services.
- (b) The Charges shall be calculated, determined and paid in the manner as stipulated in the corresponding Specific Service Order as one-time charges and recurring (monthly, quarterly, half yearly or yearly) charges.
- (c) Recurring Charges shall be invoiced to the Customer monthly in advance. Non-recurring Charges shall be set forth in the first invoice.
- (d) The Customer shall be billed by the Service Provider for the relevant handling and/or service charges, if any, for the relevant Services at the Service Provider's prevailing rate in the first month's invoice.
- (e) The Charges shall be made payable by the Customer to the Service Provider on or before the Due Date of the relevant Service Provider's invoice and no part of any invoice amount shall be refunded to the Customer in the event of any suspension and/or termination of the relevant Services.
- (f) If an invoice is found to be incorrect, the Service Provider shall be entitled to issue a revised invoice to the Customer. In the event that the payment for the incorrect invoice has been received by the Service Provider, any overpayment or underpayment shall be recoverable by or from the Customer (as the case may be) and without limiting the recourse to any other means, may be credited or set off against (as the case may be) any amount which may subsequently be due from or payable to the Customer.
- (g) In the event that there is an over-payment made by the Customer which is agreed upon by both Parties, the Service Provider may either deduct or set-off such amount from the next invoice.

### **6.2 Billing Dispute**

- (a) If Customer wishes in good faith to dispute an invoice, the Customer must notify the Service Provider of its dispute before the Due Date of the relevant invoice, otherwise, the Customer shall be deemed to have accepted the relevant invoice and the Charges there under shall be payable in accordance with this Clause 6.
- (b) For the purpose of Clause 6.2 (a) hereof, the notice provided by the Customer must specify: -

- (i) the reasons why the invoice is disputed;
  - (ii) the amount in dispute; and
  - (iii) any written records supporting the Customer's dispute.
- (c) Notwithstanding that the Customer shall not be required to pay any reasonably disputed amounts pending resolution of the dispute and in any case shall not exceed a sum equivalent to twenty per centum (20%) of the disputed invoice, Customer shall still be liable to make payment on the portion of the relevant invoice that is not in dispute in accordance with the terms and conditions set out under this Clause 6.
- (d) The Parties agree to use their reasonable endeavours to promptly resolve any dispute notified under Clause 6.2(a) herein within thirty (30) days from the date of notice thereof. For this purpose, the Service Provider will promptly investigate the Customer's claim with a view toward resolving the dispute.
- (e) If the disputed invoice is determined by the Service Provider to have been a legitimate invoice, the Customer must pay the total amount due and owing within five (5) Business Days of the date of such determination by the Service Provider.
- (f) If the Charges, fees, costs, expense, loss or damages or any other monies which are judicially adjudicated as due hereunder by the Customer to the Service Provider shall be required to be recovered through any process of law, or if such monies or any part thereof shall be placed in the hands of or deposited with solicitors for collection, the Customer shall pay (in addition to such monies) to the Service Provider's solicitors, all legal fees (on a solicitor and client basis) together with any other costs and expense incurred in respect of or in connection with such collection.

### **6.3 Method of Payment**

- (a) All Charges are in the currency described in the Specific Service Order and/or the Specific Service Terms and exclude all taxes and/or other applicable governmental fees, unless otherwise indicated. The payment currency shall be in the currency described in the Specific Service Order and/or the Specific Service Terms.
- (b) For payment due to the Service Provider, Telegraphic Transfer (TT) in the currency as described in the Specific Service Order shall be made in favour of the Service Provider to the Service Provider's bank account as shall be notified in writing from time to time.
- (c) For the avoidance of doubt, any exchange rate loss and/or risk in relation to payments made other than in Ringgit Malaysia (RM) shall at all times be borne solely by the Customer.
- (d) For all non-domestic payments (issued from outside Malaysia), all intermediary bank charges shall be borne solely by the Customer.

### **6.4 Payment Details**

- (a) All details of payment specified in the relevant Specific Service Order shall be deemed accurate as at the date of execution of the relevant Specific Service Order by both Parties.
- (b) Charges and all other payments payable by the Customer under this Agreement including taxes, applicable governmental levies shall be made without any deduction, set-off or counterclaim and, except to the extent required by any law or regulation, free and

clear of any deduction or withholding on account of any tax, duty or other charges of whatever nature imposed by any taxing or governmental authority. If Customer is required by any law or regulation to make any such deduction or withholding the Customer shall, together with the relevant payment of the Charges, pay such additional amount as will ensure that the Service Provider actually receives and is entitled to retain, free and clear of any such deduction or withholding, the full amount which it would have received if no such deduction or withholding had been required.

- (c) In addition to the Charges and where appropriate, Customer agrees that the Service Provider reserve the right to charge Customer for any additional payment due to any change request, or for the continuation of the relevant Services due to relocation, or Service malfunction arising from unauthorized modifications or repair or change configuration by Customer or any other third party not authorized by the Service Provider of any part of the Services, the Customer's Equipment or the Service Provider's equipment, fault or negligence by Customer in failing to ensure that Customer's Premises are environmentally conducive for the Services such as in insufficient ventilation and air-conditioning, or unprotected electrical power within Customer's Premises, or due to Service upgrades including bandwidth upgrade of class of service or additional requirement of hardware, software or computer peripherals. Any additional payment including Service upgrade fees shall be charged in accordance with prevailing rate as shall be reasonably determined by the Service Provider.

## **6.5 Late Payment**

In the event that the Charges or any part thereof remains unpaid after the Due Date or by such date as stipulated in the Specific Service Terms, then notwithstanding other remedies or rights that the Service Provider may have under this Agreement, the Service Provider shall be entitled to impose late payment charges on the overdue payment at the rate of twelve per centum (12%) per annum or at such other rate as shall be stipulated in the Specific Service Order or the Specific Service Terms, calculated on a yearly rest basis and based on a three hundred and sixty five (365) days and on the number of actual days elapsed beginning the next day of the Due Date or such date as stipulated in the Specific Service Order or the Specific Service Terms until the date of full and final settlement.

## **6.6 Unclaimed Moneys**

- (a) In the event that there are moneys to the credit of the Customer under this Agreement or the Customer's account, which have been closed due to the termination of the Services either by the Service Provider or the Customer, for whatsoever reason, and remained dormant for a period of not less than one (1) year, such monies shall be surrendered to the Registrar of Unclaimed Moneys in accordance with the provisions of the Unclaimed Moneys Act, 1965, the Service Provider shall use all its reasonable effort to return any monies which are payable to the Customer under the user account.
- (b) The Customer acknowledges and agrees that the Service Provider may offset any outstanding payment from Customer with any refund of any unclaimed moneys that may be due to Customer. For this purpose, 'unclaimed moneys' means all sums of money which are legally payable to the Customer and have remained unpaid for a period of not less than one (1) year after they have become payable.

## 6.7 **Contra Payment**

The Customer hereby acknowledges and agrees that in the event the Customer made over payment of any account to the Service Provider, the Service Provider reserves the right to use the over payment amount, including but not limited to any Security Deposit and other payments made by the Customer from time to time, to clear any account(s) registered under the Customer's name (with similar Identification company number or business registration number), In the event where there is no outstanding amount in any account(s), the Service Provider shall refund the over payment made to the Customer.

## 6.8 **Credit Limit**

Customer agrees that the Service Provider may, at any time and from time to time, implement credit limit to Customer's usage of the relevant Services subject to prior notice to Customer either by direct communication to Customer via written notice or email or notification and updates via the Service Provider's website. If implemented, Customer further acknowledges that the Service Provider may block Customer's usage of the relevant Services once the credit usage has reached its limit. Customer further understands that credit limit as may be imposed by the Service Provider to its customers may vary with each customer.

## **CLAUSE 7: CUSTOMER'S EQUIPMENT**

7.1 Unless otherwise agreed, the Customer shall obtain and maintain at its costs all necessary equipment and facilities necessary to access and use the relevant Services and the Customer agrees and undertakes to: -

- (a) be responsible for the Customer's Equipment and except with due consent in writing from the Service Provider, the Customer shall not at any point of time connects the Customer's Equipment to the Service Provider's Equipment for the relevant Services. If requested by the Customer, the Service Provider shall perform the connectivity work, and the Customer shall be billed with the direct cost or any other incidental cost reasonably incurred by the Service Provider in performing such work;
- (b) be responsible to ensure that all other equipment, facilities or software used by the Customer is compatible and may properly function and operate with the relevant Services or equipment and facilities which the Service Provider may provide under this Agreement and be held responsible or liable for reduction of quality, accuracy or delay in transmission of the relevant Services once it is connected to the Customer or third party's equipment;
- (c) upgrade the Customer's Equipment at its own expense in the event that the Service Provider upgrades any of the Service Provider's equipment in order to ensure that such upgrades shall continue to be compatible with the Customer's Equipment, to maintain speed, connectivity and efficiency and also to ensure that the Service Provider shall continue to be able to meet its obligations under this Agreement;
- (d) maintain and manage the facilities and equipment to minimise disruption of the relevant Services and where any disruption to the relevant Services is caused by or attributable to such facilities or equipment, to take such measures as may be necessary to restore the relevant Services as soon as is reasonably practicable;
- (e) maintain at its own expense sufficient and suitably qualified employees and using such premises and facilities to enable the Customer to perform its obligations under this Agreement; and ensure or cause to ensure that its employees shall comply with such

instructions, notices, guidelines or directions issued by the Service Provider or the relevant authority(ies) in relation to the installation, use or operation of the equipment from time to time

- (f) be responsible for the operation, performance or reliability of the Customer's Equipment when it is connected to the Service Provider's Equipment and for the inter-networking of the Customer's Equipment with the relevant Services;
- (g) inform the Service Provider of any substitute of the Customer's Equipment with other equipment or any changes, adjustments or modification to the Customer's Equipment after the installation of the Customer's Equipment and its acceptance by the Service Provider and take the necessary steps to remedy or repair the Customer's Equipment if the result of the test and inspection indicates that the problem or breakdown is caused by the Customer's Equipment; and
- (h) take all necessary and proper steps to prevent and avoid abuse, misuse or exploitation of the Customer's Equipment during the term of this Agreement. The Customer further agrees to take the necessary and proper steps as may or may not be recommended by the Service Provider to ensure security of the Customer's Equipment. The necessary and proper steps may include, but not limited to conduct regular maintenance of security of the Customer's Equipment even if the monitoring and maintenance of the Customer's Equipment is under the Service Provider's responsibility.
- (i) accept responsibility for all activities that run through the Customer's Equipment whether or not within the Customer's knowledge. Notwithstanding to the contrary, in the event the Service Provider discovers or has reasonable suspicion of any irregular and/or fraudulent activity being conducted through the Customer's Equipment, the Service Provider reserves the right to refuse Service, terminate and/or suspend the Service in its sole discretion without prior notice.

## **CLAUSE 8: CUSTOMER'S PREMISES**

- 8.1 The Customer shall ensure that the Customer's Premises conform to all the Service Provider's requirement for installation and maintenance of the relevant Services and that it has been approved by local authorities (if applicable) for such installation of the relevant Services or equipment and that the same complies with all the statutory requirements under any law or by-laws.
- 8.2 Where the Service Provider places or otherwise provides any equipment or facilities at the Customer's Premises, the Customer agrees and undertakes to: -
- (a) provide a suitable place and conditions for the Service Provider 's equipment at the Customer's Premises and/or Site for the provision of the relevant Services and provide relevant assistance when required by the Service Provider and facilitate the means of entry and exit by the Service Provider or its personnel, contractors or agents to the Customer's premises where the equipment is located;
  - (b) be responsible for the security and safe use of the equipment and/or facilities in good condition, fair wear and tear excepted and prevent any modification, change or re-location of the same without the Service Provider's prior written consent. In the event any of equipment or facilities are faulty, lost or damaged due to any fault or negligence of the Customer, the Customer shall bear the cost of the equipment according to its depreciated value that shall be determined by the Service Provider; and

- (c) be responsible to ensure that all other equipment, facilities or software used by the Customer is compatible and may properly function and operate with the relevant Services or equipment and facilities which the Service Provider may provide under this Agreement.

## **CLAUSE 9: USE OF SERVICES**

### **9.1 Customer undertakes that:**

- (a) it shall comply with applicable laws, rules and regulations, or any license applicable to it in any country where the relevant Service is provided;
- (b) it will not use or cause its customers to use the relevant Services to send any communication which is illegal or in a manner which is fraudulent, deceptive or misleading; and
- (c) it shall remain responsible for any access and use of the relevant Service by its customers, all charges incurred and compliance with all terms and conditions of this Agreement by it and its customers

9.2 So far as may be permitted by relevant laws and regulations, it is agreed that the Service Provider will have no liability and Customer will make no claim in respect of any matter arising from any use of the relevant Services which is contrary to Clause 9.1 and/or the Service Provider's specific and reasonable instructions, such instructions to be provided in writing according to Clause 21 (Notice).

9.3 Except as may be otherwise specifically provided under this Agreement, the obligations and responsibilities of the Service Provider under this Agreement are solely to the Customer and not to any third party and Customer's customers. Customer will keep harmless and will indemnify the Service Provider, its Affiliate, officers, employees, agents and third party service providers against any liabilities or costs arising from any and all claims by any third party and Customer's customers in connection with the use of the relevant Services.

## **CLAUSE 10: REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE PARTIES**

### **10.1 The Service Provider**

- (a) The Service Provider represents, warrants and covenants with the Customer that: -
  - (i) it has full power and authority to execute this Agreement and has taken all requisite approvals and licenses in connection with the delivery of the relevant Services under this Agreement and this Agreement constitutes valid and legally binding obligations of the Service Provider;
  - (ii) where necessary, it shall upon receiving any report made by the Customer in accordance with terms and conditions of this Agreement, jointly conduct series of test and inspections with the Customer to determine the cause of the problem or breakdown;
  - (iii) it shall take necessary steps to restore the relevant Services as soon as practicable if the result of the test and inspection shows that the problem or breakdown is due to the Service Provider's fault; and
- (b) Subject to the terms and conditions of this Agreement, the Service Provider further undertakes to be responsible for its Professionals and, the provisioning of the Services in accordance with the terms of this Agreement, in a timely and efficient manner, with due

diligence and efficiency and in conformity with acceptable professional standards, skill and quality of service, in a good manner with care as is reasonably expected of a company of this nature in carrying out the relevant Services.

## **10.2 The Customer**

The Customer represents warrants and covenants with the Service Provider that the Customer shall: -

- (a) be responsible for making all payments to the Service Provider in accordance with the provisions of this Agreement;
- (b) provide and ensure free access to the Service Provider's personnel, agents or contractors with the presence of the Customer's representative to all areas within the Customer's control to enable the Service Provider to perform its duties and obligations required under this Agreement;
- (c) be responsible to prepare the Site or location where the Work and/or the Deliverables is to be performed, in accordance with the Service Provider's approved specifications or recommendations;
- (d) provide sufficient notice to the Service Provider's representative to verify that the Site or location is ready for commencement when it has been so prepared;
- (e) obtain and maintain, at its own expense, all relevant licences, permissions, waivers or permits required to operate and use the Services and shall comply with all applicable laws, regulations standards and codes;
- (f) not to use the relevant Services for any unlawful or improper purposes or to violate the rights of any other party;
- (g) continue to be responsible for and pay the Charges relating to the period of any temporary suspension, interruption or loss of the relevant Services resulting from the Customer's default and any disconnection and/or re-connection charges in this regard;
- (h) take all reasonable steps to prevent fraudulent, improper or illegal use of the relevant Services;
- (i) be fully responsible for its use of the relevant Services whether such use is for its own purposes, for resale (if duly authorized by the Service Provider) or for the provision of the relevant Services to other parties;
- (j) carry out inspection to ascertain the cause of any problem or disruption of the relevant Services before reporting the said problem to the Service Provider. If the result of inspection indicates that the cause of the problem or disruption is due to the Service Provider's fault, the Customer shall promptly forward a written report to the Service Provider and carry out joint inspection with the Service Provider to confirm the cause of the problem or disruption;
- (k) take the necessary steps as soon as practicable to remedy or repair the Customer's Equipment at its own cost if the result of the test and inspection shows that the problem or breakdown is caused by the Customer's Equipment;
- (l) provide details and accurate information in the relevant Specific Service Order;

- (m) obtain the Service Provider's prior written approval before making any changes to the relevant Services that might adversely affect the Service Provider's Equipment or facilities; and
- (n) the Customer undertakes to inform the Service Provider of any change to the Customer's information provided earlier to the Service Provider within seven (7) Days of such change. Failure on the Customer to notify such change shall constitute a breach of this Agreement and the Service Provider reserves the right to suspend, disconnect or terminate the relevant Services.
- (o) where applicable, the Customer further undertakes to be responsible for: -
  - (i) system owned or under the control of Customer that directly related to the provision by the Service Provider of the relevant Services;
  - (ii) allowing the Service Provider to participate in any system changes or user sign off test relating to the Service Provider's operation thereof with the relevant Services;
  - (iii) informing the Service Provider within a reasonable time prior to any scheduled and non-scheduled down time of Customer's system; and
  - (iv) any changes in any of Customer's application systems used by the Service Provider in fulfilling its obligations herein and Customer shall endeavor to ensure continuity of management information provided to the Service Provider for its day-to-day operations.

## **CLAUSE 11: COST FOR LOSSES OR DAMAGES**

11.1 The Customer shall, on demand, pay to the Service Provider all costs for repairing, replacing or changing any part of the relevant Services in the Customer's Premises which was stolen or lost or damaged or destroyed by fire or other causes for reasons attributable to any negligent act or omission of the Customer, its employees, agent or servants.

## **CLAUSE 12: SUSPENSION AND TERMINATION**

### **12.1 Suspension of Services**

- (a) The Service Provider may, without terminating this Agreement and without liability (solely as a result of exercising its right, immediately suspend whole or part of relevant Services it provides to the Customer under this Agreement until further notice if:
  - (i) Customer fails to pay any sums due under this Agreement provided that the Service Provider shall give fourteen (14) days' prior written notice to the Customer to such effect; or
  - (ii) Customer commits a breach of any material obligation under this Agreement and in the case of a remediable breach, fails to remedy such breach after receiving thirty (30) days' written notice to do so; or
  - (iii) Service Provider is obliged to suspend whole or part of the relevant Services in compliance with an order, instruction or request of the government authority, emergency services organization or other competent authority; or

- (iv) Service Provider need to safeguard the integrity and security of its network and/or repair, maintain or enhance the performance of its network; or
- (v) repair a fault in its network or in any network equipment as a result of any unplanned outage or any other reason beyond the Service Provider's control.

## **12.2 Consequences of Suspension of Services**

- (a) If it is necessary for the Service Provider to suspend whole or part of the relevant Services it provides under this Agreement under Clause 12.1(a) (iv) or (v), it shall do so for as short a period as is practicable in the circumstances.
- (b) Where the Service Provider suspend the whole or part of the relevant Services under Clauses 12.1(a) (i) or (ii) or (iii), the Charges for the relevant Services will continue to accrue during the period of suspension until the Customer cures the breach and the Service Provider reactivates the provision of the relevant Services. In any event where the Service Provider suspend whole or part of the relevant Services pursuant to this Clause 12.1(a), the Service Provider shall not be precluded to exercise its right to terminate this Agreement later in respect of that or any other event.

## **12.3 Termination of Agreement or Services**

- (a) Without prejudice to any right or remedy a Party may have against the other for breach or non-performance of this Agreement, either Party may at any time give a notice in writing to the other to terminate this Agreement or the relevant Services immediately if any one of the following events shall occur: -
  - (i) If any Party shall fail to observe or perform any of its obligations herein and shall fail to remedy such breach (if capable of being remedied) within thirty (30) days after written notice thereof to the defaulting Party by the non-defaulting Party specifying the nature of the breach;
  - (ii) if any Party shall become insolvent or is wound up or shall go into liquidation whether compulsorily or voluntarily except for the purpose of a bona fide amalgamation or reconstruction with the consent of the Party;
  - (iii) if any Party shall have a receiver appointed over any of its assets or undertaking;
  - (iv) if any distress execution, sequestration or other process shall be issued against any property of the defaulting Party and is not settled within thirty (30) days thereof;
  - (v) if any Party shall cease or threaten to cease to carry on the whole or any substantial part of its business other than in the course of reconstruction or amalgamation with the consent of the other Party; or
  - (vi) if any Party shall infringe or violate any law or regulation pertaining to the use of the relevant Services and that Party shall fail to remedy the infringement or violation within the time frame stipulated by the relevant authority, or
  - (vii) the occurrence of Force Majeure in pursuant to Clause 15.4; or
  - (viii) if any Party is served with a winding up petition, the other Party shall by notice in writing terminate this Agreement effective from the date of receipt of such written notice of termination to the other Party.

- (b) The Service Provider has the right at any time, without cause and/or without assigning any reason whatsoever and at its absolute discretion, to terminate this Agreement or any of the relevant Services by giving not less than thirty (30) days prior written notice to the Customer. The notice of termination shall specify the date upon which such termination becomes effective.

#### **12.4 Termination of the relevant Services**

- (a) Termination Before Commencement Date

In addition to the Service Provider's right under Clause 4.1(e) herein, in the event the Customer cancel or terminates the relevant Services prior to its Commencement Date, the Customer shall be liable to pay the Service Provider for Service charges and/or any cost associated with the installation and provisioning of the relevant Services or such cost as stated in the relevant Specific Service Order and its Specific Service Terms covering the relevant Services.

- (b) Termination During Minimum Subscription Period

During the Minimum Subscription Period, the Customer shall not terminate the relevant Services prematurely. In the event the Customer terminates the relevant Services during the Minimum Subscription Period, the Customer shall be liable to pay the remainder of the Charges for the unexpired period remained in the Minimum Subscription Period to the Service Provider within thirty (30) Days from the date of termination. The Customer acknowledges and agrees that such payments to be made are agreed and reasonable liquidated damages and not a penalty for premature termination. The Customer shall further be liable for all relevant Services rendered to it by the Service Provider up to and including the date of termination.

- (c) Termination During Subscription Period or Extended Subscription Period

Subject first to the expiry of the Minimum Subscription Period, the Customer may terminate the relevant Services during the remaining part of the Subscription Period or the Extended Subscription Period by giving a ninety (90) Days' notice in writing to the Service Provider and the Customer shall not be liable to pay liquidated damages to the Service Provider for such termination save and except for the relevant Services rendered to it by the Service Provider up to and including the date of termination.

- (d) Termination Due to Material Adverse Change

At any time during the Subscription Period or Extended Subscription Period, the Service Provider may terminate all or part of the relevant Services by giving notice in writing if there is any change, effect, event, occurrence, fact, condition or development that individually or in aggregate would reasonably cause a material adverse change to the Service Provider's business or operation in providing the relevant Services to the Customer. The material adverse change shall include without limitation unable to obtain or maintain any license, easement or permissions require for the purpose of providing or maintaining the relevant Services or changes in or introduction of laws or regulations applicable to the relevant Services that prohibits, substantially impairs or makes impractical the provision of any Services under this Agreement. Termination under this Clause shall not entitle the Customer to claim for any payment, damages or compensation.

#### **12.5 Consequences of Termination**

Notwithstanding Clause 12.2, upon expiration or early termination of this Agreement and/or the relevant Services in accordance with the provisions of this Agreement: -

- (a) all outstanding amounts owed by the Customer to the Service Provider will become immediately due and payable;
- (b) the Service Provider may immediately cease providing relevant Services;
- (c) the Customer shall promptly and at its own cost and expense disconnect and remove any equipment and any cable owned by the Customer from the Service Provider's premises and Site;
- (d) the Service Provider shall have the right to enter the Customer's Premises, during reasonable hours, in order to disconnect and remove any the Service Provider's Equipment and cable;
- (e) the Service Provider shall have the right to impose a reasonable fee for de-installation at the Customer's Premises, in the event the termination is a result of any breach on part of the Customer;
- (f) it shall not affect any rights that have accrued to the Parties hereto either prior to the expiration or early termination of this Agreement; and
- (g) within thirty (30) days after such expiration or termination, each Party shall return all Confidential Information of the other Party in its possession at the time of expiration or termination and shall not make or retain any copies of such Confidential Information except as required to comply with any applicable legal or accounting record keeping requirement.

#### **CLAUSE 13: DISCLAIMER/LIMITATION OF LIABILITY**

- 13.1 The Service Provider does not warrant that the relevant Services (a) will not be interrupted or error-free, or, (b) will prevent unauthorised access by third parties. The Service Provider does not authorize anyone to make a warranty of any kind on its behalf and the Customer should not rely on anyone making such statements.
- 13.2 Save for gross negligence or willful default or where liability may not otherwise be limited or excluded under any applicable law, the Service Provider shall not be liable to the Customer, or any third party for any loss or damage, whether direct or indirect, special or consequential or loss of business, loss of data, goodwill, revenue or profits of any nature whatsoever suffered by the Customer or any person authorized by the Customer or any injury caused to or suffered by a person or property arising from or occasioned by: -
- (a) any malfunction, degradation or defect in the relevant Services; or
  - (b) the connection of the Customer's Equipment to the relevant Services; or
  - (c) any claim for libel, slander, infringement of copy right and other rights arising from the transmission and/or receipt of any material in connection with the relevant Services and any claim arising out of any act or omission of the Customer or such third party in relation to the relevant Services; or
  - (d) any loss (whether of profit or otherwise) or damage caused to the Customer or such third party as a result of the suspension or termination of this Agreement or the suspension, interruption or loss of the relevant Services howsoever caused.
- 13.3 The Service Provider shall not be liable for any damage or disaster caused by high capacity, voltage flow or current that may be brought to the Customer's Premises for the provisions of the

relevant Services. Notwithstanding the foregoing, the Service Provider shall take all reasonable steps to prevent damage or disaster from this source.

- 13.4 The Service Provider's liability to the Customer arising under this Agreement or the relevant Services shall be limited to direct, proven damages and shall not exceed the recurring charges paid by the Customer to the Service Provider for the relevant Service to which the damages relate during the twelve (12) months period immediately preceding the date of breach.
- 13.5 Save for death or personal injury or damage to property, movable or immovable, caused by wilful misconduct and/or gross negligence, in no event shall the Service Provider be liable to the Customer for any and all indirect, consequential, incidental, special or punitive losses, damage, liabilities, claims, actions, proceedings, costs, charges or expenses (including legal/attorney fees), business interruption, loss of business, loss of anticipated savings, loss of revenue, loss of profits, loss of contracts, loss of data or loss of goodwill of whatever nature arising out of or in connection with this Agreement notwithstanding that any such losses may not have been foreseeable or within the reasonable contemplation of the Customer or the Service Provider and even if Customer has been advised of their possible existence.

#### **CLAUSE 14: INDEMNITY**

- 14.1 Each Party shall defend, indemnify and hold harmless the other Party and its respective officers, directors, employees, agents and permitted assigns from and against all claims, proceedings, actions, judgments, costs, damages and all related expenses in connection with: personal or bodily injury, illness or death of any person caused by the Party's negligent acts or omissions; damage to or the loss of use of tangible, personal or real property, to the extent that such injury or damage arises from the negligence of or breach of this Agreement by the indemnifying Party, any of its personnel or sub-contractor; claims for infringement, misuse, exploitation or misappropriation of any third-party Intellectual Property rights or breach of confidentiality caused by the indemnifying Party, any of its personnel or sub-contractor; imposition or claims by Government regulators or agencies for fines, penalties, sanctions or other remedies arising from or in connection with the Party's failure to comply with its regulatory obligations or on account of default of its tax obligations; or claims on account of any fraud, wilful misconduct, gross negligence, misrepresentation, breach of statutory duty.
- 14.2 The indemnified Party agrees to: (a) notify the indemnifying Party promptly upon becoming aware (and in any event within thirty (30) Days of any claim); (b) make no admissions or statements without the indemnifying Party's consent (not to be unreasonably withheld or delayed); (c) reserve for the indemnifying Party the right if it chooses to take exclusive control of the litigation and to conduct/settle litigation and negotiations as the indemnifying Party sees fit (subject to keeping the indemnified Party reasonably informed) and provided that the indemnifying Party's actions in this regard do not result in any expenses for the indemnified Party which it has not previously authorised; (d) give the indemnifying Party, at the indemnifying Party's cost, such assistance as may be reasonably required; (e) preserve and not waive legal professional or any other privilege attaching to any of the records, documents, or other information in relation to such claim without the prior consent of the indemnifying Party; and (f) not enter into any binding agreement or arrangement to settle such claim without the prior written consent of the indemnifying Party, such consent not to be unreasonably withheld or delayed
- 14.3 In addition to Clause 14.1 hereof, the Customer agrees to indemnify and hold harmless TM, its Affiliates and any of its officers, directors, employees, agents and representatives from and against any loss, damage, expense or cost arising out of or in connection with any breach or violation by the Customer of applicable law or governmental regulation; any claims of whatever nature by third parties with respect to the Service provided to the Customer or the Customer's access or use of the Service; and any administrative or other costs associated with or arising from

the Customer's failure to obtain or maintain the necessary approvals, consents, governmental authorizations, licenses and permits required of the Customer in order to access or use the Service.

#### **CLAUSE 15: FORCE MAJUERE**

- 15.1 Other than with respect to failure to make payment due hereunder, the Parties to this Agreement shall be excused from fulfilling its obligations under this Agreement if and to the extent that such fulfillment is hindered or impeded by any event of Force Majeure which term refers to any cause which is not reasonably within the control of the Service Provider or the Customer, including, but not limited to any cause arising from Act of God, insurrection or civil disorder or commotion, war, act of terrorism, strike or military operations, national or local emergency, acts or omissions of Government or other competent authority, imposition of government, sanction, embargo or similar action, government requirement, civil or military authority, act or omission of carriers or suppliers (other than the parties themselves) natural disaster including fire, lightning, flood, earthquake inclement weather, power failure, cable cut, explosion, industrial action, criminal damage or destruction to equipment of the Service Provider or disruption to any network service of the Service Provider caused by any software virus, worms, the inability of any equipment belonging to the Service Provider to operate optimally due to any unauthorized action such as spamming, sabotage acts, hacking attacks or omissions of person or bodies for whom the Service Provider has no control or any other cause whether similar or dissimilar outside the Service Provider's control.
- 15.2 In the event of Force Majeure situation which hinders the Customer or the Service Provider in the discharge of its respective obligations under this Agreement, the Party claiming to be affected thereby shall promptly notify the other Party giving full particulars thereof and shall use its best endeavours to remedy the situation and the Parties shall consult each other with respect to the appropriate measures to be taken.
- 15.3 The performance of any obligation or obligations suspended while Force Majeure is operative shall be resumed as soon as such Force Majeure event ceases. Any loss or damage or delays in, or failure of performance by either Party hereto shall not constitute default hereunder or give rise to any claims for damages or loss of anticipated profits, if and to the extent that such loss, damage, delay or failure is caused by Force Majeure.
- 15.4 If the event of Force Majeure persists for a period of more than sixty (60) days, then either Party may give to the other Party a notice of termination of this Agreement. In this event, termination shall take effect seven (7) days after the receipt of such notice of termination.

#### **CLAUSE 16: GOVERNING LAW & JURISDICTION**

- 16.1 This Agreement shall be governed by and construed in accordance with the laws of Malaysia and no suit or other proceeding relating to this Agreement shall be brought or filed in any court other than a court of competent jurisdiction in Malaysia, which shall have exclusive jurisdiction to hear and determine all suits or proceedings arising out of this Agreement.

## **CLAUSE 17: INTELLECTUAL PROPERTY RIGHTS**

- 17.1 Each Party shall retain all rights, title and interest in any Intellectual Property and all materials, facilities, equipment, and other assets provided by such Party pursuant to this Agreement. No Party will have any rights to any Intellectual Property or materials, facilities, equipment, or other assets provided by the other Party hereunder except as specifically provided in this Agreement.
- 17.2 In the event of any third party claims for infringement of such third party's Intellectual Property rights, the Service Provider shall defend and hold the Customer harmless from and against any such claim/action and shall pay all costs, damages, liabilities and all related expenses, that a court may finally award or as may be agreed in an out of court settlement.
- 17.3 The Customer acknowledges that the Service Provider's obligations to perform any Service will be impacted when the Customer's infringing materials, facilities, equipment, and other assets provided by the Customer are subject to an injunction or court order, precluding their use or infringes any third party's Intellectual Property rights. Consequently, the Service provider will use commercially reasonable efforts to continue performing the Service using non-infringing materials, facilities, equipment, and other assets to the extent the Customer makes such items available subject however that the Service Provider will not be liable or held responsible, in any manner whatsoever, for any damages caused by the affected items during the affected period.

## **CLAUSE 18: AMENDMENT, MODIFICATION, CHANGES OR VARIATION**

- 18.1 This Agreement may be amended, modified, changed or varied during the term of this Agreement with the prior written agreement of both Parties. Notwithstanding any other provision of this Agreement to the contrary, Parties hereby agrees that any modification of the terms hereof or the Specific Service Term may be concluded by a mere written notification from the Service Provider to the Customer and upon the Customer's acknowledgement of its acceptance thereof, such modification or amendment thereunder shall be deemed valid, effective and enforceable.

## **CLAUSE 19: SEVERABILITY**

- 19.1 If one or more of the provisions of this Agreement shall be invalid, illegal or unenforceable under any applicable law or decision, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired in any way and such invalid, illegal or unenforceable provision(s) shall be deemed deleted. Each Party shall, in any such event, execute such additional documents as the other Party may reasonably request in order to give valid, legal and enforceable effect to any provision, which is determined to be invalid, illegal or unenforceable, to the extent permitted by law. If any provision shall be void, illegal or unenforceable but would be valid and enforceable if read down, then that provision shall be read down to the extent necessary to render the provision valid and enforceable.

## **CLAUSE 20: NON-WAIVER/WAIVER OF IMMUNITY**

- 20.1 Failure by either Party to exercise any of all its rights, powers, privileges or remedies under this Agreement or any single or partial exercise of a right, power, privilege or remedy, shall not act as a waiver of such rights, powers, privileges or remedies and such rights, powers, privileges or remedies may be exercised with or without having to wait for the occurrence or re-occurrence of a similar or any other event giving rise to such rights, powers, privileges or remedies. Without limiting the foregoing, no waiver by any Party of any breach of any provision hereof shall be deemed to be a waiver of any subsequent breach of that or any other provision of this Agreement (all of which are several and cumulative and are not exclusive of each other) or of any other rights or remedies otherwise available to a party at law or in equity. Any waiver by any Party hereto of a breach or default of any provisions in this Agreement shall be in writing.

20.2 The Parties acknowledge that this Agreement is commercial in nature, and each Party hereto expressly and irrevocably waives any claim or right which it may have to immunity (whether sovereign immunity, act of state or otherwise) for itself, or with respect to any of its assets, in connection with an arbitration, arbitral award or other proceeding to enforce this Agreement, including, without limitation, immunity from service of process, immunity of any of its assets from pre- or post-judgment attachment or execution, and immunity from the jurisdiction of any court or arbitral tribunal.

#### **CLAUSE 21: NOTICES**

21.1 Every notice or demand or other communication required or permitted to be given or made hereunder shall: -

- (a) be in writing and delivered personally or by registered post or legible facsimile;
- (b) be deemed to have been received, subject as otherwise provided in this Agreement, in the case of a letter, when delivered personally or five (5) business days after it has been put into the post box and, in the case of a facsimile, at the time of despatch with confirmed answer back of the addressee appearing at the beginning and end of the transmission (provided that if the date of despatch is not a business day it shall be deemed to have been received at the opening of business on the next such business day); and
- (c) be sent to the Parties at the respective addresses set out in the in this Agreement and/or Specific Service Order.

#### **CLAUSE 22: ASSIGNMENT**

22.1 Customer shall not assign or transfer to any other person (save and except with the prior written agreement of the Service Provider), all or any part of its rights, title, interests or obligations herein this Agreement and any purported assignment or transfer in any form whatsoever shall be deemed to be null and void.

22.2 The Service Provider may assign or novate the whole or any part of this Agreement or any of its rights, benefits or interest or liabilities hereunder or novate this Agreement or any part thereof to its Affiliates or any body or corporate which is within the Service Provider's group of companies and consent for the aforementioned is hereby given by the Customer. If so required, the Customer shall execute such document required for the novation within seven (7) days from the date of presentation thereof by the Service Provider.

#### **CLAUSE 23: CONFIDENTIALITY, PERSONAL INFORMATION AND PRIVACY POLICY**

23.1 Except with the prior written consent of the other Party and unless as otherwise expressly permitted in accordance with the terms of this Agreement and specifically, in pursuant to this Clause 23:

- (a) neither Party hereto shall at any time disclose, divulge or communicate by any means to any third party, any Confidential Information belonging to the relevant party hereto as may have been disclosed pursuant to or in connection with this Agreement;

- (b) each Party shall allow access to the Confidential Information to its own employees, servants, agents or sub-contractors only to the extent that they need to know the same in order to perform their duties for that Party.

23.2 Customer understand that by submitting the Specific Service Order and subscribing to the relevant Services, Customer is providing information to the Service Provider including where applicable, personal information. Customer hereby agrees and consent to the Service Provider's processing of Customer's information including personal information provided in the Specific Service Order and/or further information and data that may be required by the Service Provider either from Customer or from any third parties especially from credit bureau, banks, credit reporting agencies and other businesses that provide like information or reference agencies from time to time. Customer understands and agrees that the purposes of such processing would include: -

- (a) assessing Customer's application and/or continued provisioning of the relevant Services provided herein (whichever is applicable);
- (b) customizing advertisements and content on the website(s) and the sites of the Service Provider and its group of companies;
- (c) responding to Customer's enquiries;
- (d) research purposes including historical and statistical purposes;
- (e) general operation and maintenance of the relevant Services or goods provided herein including audit and its related website(s);
- (f) matching any data held by the Service Provider or its group of companies relating to Customer from time to time;
- (g) provide Customer with regular communications (other than direct marketing materials) from the Service Provider relating to the relevant Services or goods provided herein; and
- (h) investigation of complaints, suspected suspicious transactions and research for the relevant Services or goods improvement.

23.3 By submitting the Specific Service Order and/or subscribing to the relevant Services, Customer consent and authorises the Service Provider for the purpose of obtaining and verifying any information about Customer which the Service Provider may require in connection with Customer's application or subscription of, any of the Service Provider's services and/or review of the existing account with the Service Provider from any third party, especially credit bureau or reference agencies. Such consent and authorization herein will extend to any information obtained from any of the account(s) presently maintained for Customer, any new application for any form of services rendered or goods provided by the Service Provider, such historical financial or credit records, data or information whether or not provided personally or by any other sources relating to Customer which was collected, gathered, received, captured, compiled, secured and/or obtained by the Service Provider through or by whatever means or methods or forms. The information as required herein (unless stated otherwise) is obligatory on Customer and failure by Customer to provide any information as required may affect Customer's application or the continued provisioning of the relevant Services provided herein.

23.4 Customer agrees that in the course of processing Customer's application or during Customer's subscription of the relevant Services, the Service Provider may disclose Customer's information including personal information to the following parties for the purposes stated above: -

- (a) the Service Provider or agents who are involved in providing the relevant Services or goods provided herein;
- (b) third parties (including those overseas) who provide data processing services;
- (c) any credit reference agencies or, in the event of default, any debt collection agencies;
- (d) any person, who is under a duty of confidentiality to which has undertaken to keep such data confidential, which the Service Provider has engaged to fulfil its obligations to Customer; and

- (e) any actual or proposed assignee, transferee, participant or sub-participant of the Service Provider's rights or business.
- 23.5 The Service Provider may also disclose Customer's information including personal information if required to do so by law or in good faith, if such action is necessary to (i) comply with any law enforcement agency requirement, court orders or legal process or; (ii) protect and defend the rights or property of the Service Provider and its group of companies and their users.
- 23.6 If Customer would like to make any inquiries or complaints or request access or correction of Customer's information including personal information, Customer may also contact the Service Provider Contact Centre. Any request of access of correction of personal data may subject to a fee and also to any privacy or data protection laws.
- 23.7 Where Customer elect to limit the Service Provider's right to process personal information, Customer may contact the Service Provider in writing. For avoidance of doubt, the limitation does not include processing of mandatory personal data.
- 23.8 The Service Provider may review and update its privacy policy from time to time to reflect changes in the law, changes in the Service Provider's business practices, procedures and structure, and the community's changing privacy expectations. While it is not generally feasible to notify Customer of changes to the Service Provider's privacy policy, the latest version of the privacy policy may be available on the Service Provider's website.

#### **CLAUSE 24: PRESS RELEASES**

- 24.1 The Parties shall discuss and agree before any public announcement is made in regard to their discussion, the existence of any agreement between or involving them, their plans and all similar matters. No press release shall be issued by either Party in regard to the matters addressed herein, which has not also been approved by the other Party. Each Party shall use its best efforts to provide immediate feedback and approval/request for change for any press release, which is proposed for issuance. Notwithstanding the above, Customer agrees that the Service Provider reserves the right to disclose, advertise or otherwise publicise in good faith on the Customer 's subscription to the relevant Services from the Service Provider in general.

#### **CLAUSE 25: BINDING EFFECT**

- 25.1 This Agreement shall be binding and enure to the benefits of the permitted assigns and the successors-in-title of the Customer and the assigns and successors-in-title of the Service Provider. It is further provided that this Agreement shall not be discharged or in any way affected by any change in the composition or identity of the Parties hereto by amalgamation, reconstruction or otherwise.

#### **CLAUSE 26: TIME IS OF THE ESSENCE**

- 26.1 Time for the performance of the obligations under this Agreement, whenever stated in this Agreement, shall be of the essence.

#### **CLAUSE 27: LEGAL COSTS AND STAMP DUTY**

- 27.1 Each Party shall be responsible for its own legal costs incurred in relation to the preparation of this Agreement.

- 27.2 The Customer shall bear all stamp duty in respect of this Agreement and/or the Specific Service Terms and/or the Specific Service Order and/or any cost imposed by law from time to time.
- 27.3 The Customer shall also bear all legal cost and expenses incurred by the Service Provider in recovering any money, charges, costs or expenses due and outstanding by the Customer under this Agreement or in bringing any action or proceeding to recover the same.

#### **CLAUSE 28: RULES AND REGULATIONS**

- 28.1 This Agreement is made expressly subject to all present and future valid orders, approvals, directives and regulations of any regulatory body having jurisdiction over the subject matter hereof and to the laws of the Malaysia. In the event that this Agreement, or any of its provisions, shall be found contrary to or in conflict with any such order, rule, regulation, directive or law, this Agreement or such provision(s) shall be deemed modified to the extent necessary to comply with any such order, rule, regulation, directive or law and shall be modified in such a way as is consistent with the form, intent or purpose of this Agreement.

#### **CLAUSE 29: REVIEW OF THIS AGREEMENT**

- 29.1 The Parties herein agree to negotiate, as soon as practicable and in good faith such amendments, variations, changes or modifications to this Agreement as may be necessary or appropriate to ensure compliance of this Agreement with the requirements of the Communications and Multimedia Act 1998 ("the CMA") or any other laws, by-laws, regulations, rules or others of a similar nature or any the Service Provider license condition in any of the following events:
- (a) the CMA and/or any other rules, regulations, by-laws, acts or ordinances, are amended;
  - (b) the introduction of any new laws in connection with the provision of any of the relevant Services;
  - (c) any instrument and any amendments made thereto pursuant to the CMA, including, but not limited to any directions, determinations or declarations issued thereto; or
  - (d) any condition of the Service Provider's license which grants the Service Provider the right to provide any of the relevant services is amended, modified, changed, deleted or a new condition or requirement is imposed.
- 29.2 If the Parties are unable to agree to such amendments, variations, changes or modifications to this Agreement as may be necessary or appropriate to ensure compliance of this Agreement with the requirements of the Communications and Multimedia Act 1998 (Act 588) or any other laws, by-laws, regulations, rules or others of a similar nature or any Service Provider's license condition that affect both Parties then either Party may provide a notice to the other Party stating its intention to terminate the same pursuant to Clause 12.4(d).

#### **CLAUSE 30: TAXES**

- 30.1 All Charges under this Agreement are exclusive of any taxes, levies, duties or similar governmental charges including but not limited to the service tax ("Taxes") required to be paid by law and this Charges and Taxes shall be payable to the Service Provider by the Customer in full. In the event where Taxes are required to be paid by law, the Service Provider is obliged to charge and the Customer shall pay such Taxes in addition to the Charges in full.

## **CLAUSE 31: AUTHORISED REPRESENTATIVES AND RELATIONSHIP**

- 31.1 Any action required or permitted to be taken and any documents required or permitted to be executed under this Agreement, shall be taken or permitted to be executed by the authorised representative of the Parties.
- 31.2 The position of the Service Provider under this Agreement shall be of an independent contractor. The Customer and the Service Provider shall not at any time be construed to have a relationship of principal and agent, master and servant or a joint venture.

## **CLAUSE 32: SURVIVAL**

- 32.1 No termination shall relieve a Party of any accrued payment or other obligations accrued at the time of termination. Further, any and all rights and obligations which by their nature and context are intended to survive such expiration or termination shall so survive, including Service Charges payment obligations contained in this Agreement; any and all surviving provisions of any Specific Service Order and/or Specific Service Terms (as expressly provided therein); Clause 6 (Service Charges and Payment Terms), Clause 12 (Suspension and Termination), 12.5 (Consequences of Termination), Clause 13 (Disclaimer; Limitation of Liability), Clause 23 (Confidentiality), Clause 27 (Legal Costs and Stamp Duty) and Clause 30 (Taxes).

## **CLAUSE 33: BRIBERY, CORRUPTION AND FRAUDULENT ACTS AND INDUCEMENT**

- 33.1 Each Party hereby represents, warrants and undertakes that it shall comply, and shall procure that its directors and employees shall comply with the following:
- (a) comply with all applicable laws in Malaysia and, to the extent that it is relevant, any other jurisdiction in respect of bribery, corruption and/or fraudulent acts in the course of performing and/or carrying out its obligations under and/or in connection with this Agreement;
  - (b) put in place and implement its own anti-bribery and anti-corruption policies and procedures including adequate measures, controls and accurate records of transactions so as to ensure compliance with such applicable laws; and
  - (c) comply with each Party's anti-corruption policy and procedures and/or any other relevant anti-corruption policy and procedures as may be amended from time to time in the course of performing and/or carrying out its obligations under and/or in connection with this Agreement.
- 33.2 Notwithstanding any provision of this Agreement, either Party shall have the right to terminate this Agreement with immediate effect by written notice to the other Party if:
- (a) any representation or warranty or undertaking in Clause 33.1 above by the other Party is found and/or is known to be untrue or misleading;
  - (b) the other Party, its directors or employees breach of any of the terms set out in this clause; and/or
  - (c) the other Party, its directors or employees are found guilty for bribery, corruption and/or fraudulent acts prohibited under the applicable laws in Malaysia and, if applicable, any other jurisdiction in the course of performing and/or carrying out its obligations under and/or in connection with this Agreement.

and, the defaulting Party shall be liable for losses, damages, costs and expenses incurred by the other Party as a result of such breach under this clause and/or termination of this Agreement ("Losses"). The defaulting Party shall indemnify and render the other Party harmless from such

Losses and to the extent such Losses are actual damages and shall not exceed the recurring charges paid by the Customer to the Service Provider for the relevant Service to which the damages relate during the twelve (12) months period immediately preceding the date of breach.

#### **CLAUSE 34: COVENANT ON ANTI-COMPETE**

34.1 The Parties shall co-operate in order to ensure that their respective performance under this Agreement does not bring about any anti-competitive prohibition within the meaning as provided under the Competition Act 2010 or the Communications and Multimedia Act 1998 or any rules or regulations made in pursuant thereto, as the case may be.

34.2 If any provision of this Agreement is deemed unenforceable due to any anti-competitive restriction pursuant to the operation of the Competition Act 2010 or the Communications and Multimedia Act 1998 or any rules or regulations made in pursuant thereto, the Parties shall in good faith consult with each other to agree an alternative provision which achieves a result as similar as possible to the result which would have been achieved by the provision deemed unenforceable.

#### **CLAUSE 35: ENTIRE AGREEMENT**

35.1 This Agreement hereto contains the entire agreement and understanding of the Parties with respect to the subject matter herein and supersedes all prior agreements, understandings and representations between the Parties hereto.

\*\*\*\*\* END OF CLAUSES \*\*\*\*\*