

SCHEDULE 9 - SUPPLY TERMS

1 COMMENCEMENT AND REVIEW

- 1.1 As set out in Clause 2 of the Main Body of the Reference Offer (Making an Agreement under the Reference Offer), and taking account of any existing contractual arrangement between the Access Provider and the relevant Licensed Operators in the Kingdom, the Access Seeker and the Access Provider shall execute in writing the Agreement by signing the present Schedule 9 (Supply Terms), which incorporates, by reference, all the other Schedules and parts of the Reference Offer, as effective at the time of the signature, and altogether form the Agreement between the Parties. For the avoidance of doubt, the Agreement shall not include any other term and/or condition not set out in the Reference Offer unless expressly approved in writing by the Authority.
- 1.2 As of the Agreement Effective Date, these Supply Terms apply to any Services ordered by an Access Seeker alongside other Schedules and parts of the Reference Offer.
- 1.3 If the Authority approves or mandates any change to the Reference Offer following the Agreement Effective Date, then the Agreement between the Parties including these Supply Terms shall be automatically amended to incorporate the same change in respect of the Services and other terms covered by such changes.
- 1.4 If the rights and obligations of either Party under the Agreement are or may be affected by:
- (a) amendments to or repeals of the Law or of a condition of a Party's License; or
 - (b) Decision of the Authority (other than any adverse effect on the Access Provider as a result of a mandated or approved change to the Reference Offer), or
 - (c) Force Majeure Event, or
 - (d) ruling of any court in the Kingdom of Bahrain
- the Parties shall meet as soon as practicable and negotiate in good faith any amendment to the Agreement necessary or appropriate to ensure that they remain consistent with the Law and/ or the Decision of the Authority and in accordance with the principles of equivalence and non-discrimination. If the Parties cannot agree any amendment, clause 21 applies.
- 1.5 If the Access Provider reasonably believes, based on an action of the Authority, that any part of the Supply Terms contravenes or may contravene any provision of the Law, the Access Provider's License or other statutory requirements, the Access Provider shall consult with the Authority before introducing any amendment to these Supply Terms, which amendment may be subject to the relevant process, including any applicable approval from the Authority, if and where required, for introducing any amendments to the Reference Offer.
- 1.6 Unless provided otherwise in the Reference Offer, the Access Provider shall not amend the Charges unless it has obtained a prior written approval from the Authority. The approval may be subject to conditions, which the Authority considers appropriate, including conditions relating to the effective

date of the changes to the Charges, which shall not pre-date the Agreement Effective Date, and process and timeline for communication of the changes to Licensed Operators.

2 DUTY TO PROVIDE SERVICES AND PROVISIONING

- 2.1 The Supply Terms apply to the supply of Services as set out in the respective Schedule 6 (Service Descriptions) of the Reference Offer.
- 2.2 The Access Provider shall supply the Services requested by the Access Seeker in accordance with and subject to the requirements specified in these Supply Terms.
- 2.3 The Access Seeker shall comply with Forecasting Procedures as set out in Schedule 5 – (Forecasting) of the Reference Offer. Any specific terms in Schedule 6 (Service Descriptions) may override, vary or supplement those procedures.
- 2.4 Each Party shall comply with the provisions of Schedule 6 (Service Description) and each relevant Operations Manual in so far as they apply to the provision of the Services.

3 CHARGES

- 3.1 The Access Seeker shall pay the Access Provider the relevant Charges determined in accordance with Schedule 3 – (Pricing) or any additional provisions in the relevant Service Descriptions of the Reference Offer.
- 3.2 The Charges exclude all applicable Government taxes and surcharges, including any value added tax, sales taxes, duties, fees and levies, all of which shall be the sole responsibility of the Access Seeker and paid promptly when due.

4 BILLING AND PAYMENT

- 4.1 Each Party agrees to comply with the terms and procedures set out in Schedule 4 – (Billing) of the Reference Offer in relation to billing and payment.
- 4.2 The Access Seeker is solely responsible for billing and collecting its charges for services supplied to the Access Seeker Customers using the Services.

5 NETWORK PROTECTION AND SAFETY

- 5.1 Each Party is responsible for the safe operation of its Network, and shall, so far as is reasonably practicable, take all necessary steps to ensure that its Network, its Network operations and implementation of the Agreement:
 - (a) do not endanger the safety or health of any person, including the People of the other Party;
and
 - (b) do not cause physical or technical harm to the other Party's Network, including but not limited

to causing damage, interfering with or causing deterioration in the operation of that Party's Network.

5.2 Each Party will manage its Network to minimize disruption to Services and in the event of interruption or failure of any Services, will restore those Services as soon as is reasonably practicable.

5.3 A Party shall:

(a) not use or knowingly permit the use of any Service, or install, connect, link or use (or permit the installation, connection, linking or use of) any telecommunications equipment, in contravention of any applicable law; and

(b) be responsible to the Access Provider for anyone else who uses any Service or any part of any Service provided to the Access Seeker, or does anything unauthorized relating to a Service or any part of any Service.

5.4 Each Party shall ensure that its Network and operating procedures comply in all respects with the safety requirements established by, or under the Joint Working Manual and the Law.

6 NETWORK ALTERATIONS AND CHANGES

6.1 Where the Access Provider intends to make any material alterations or changes to its Network and where such changes would materially impact the provision of the Services, the Access Provider shall give prior written notice of thirty (30) days to the Authority and all Licensed Operators that use the Services.

6.2 Where the Authority considers that a change in the Access Provider's Network referred to in clause 6.1 would cause any Licensed Operator to be compelled to make major changes to its own systems in order to access and/or connect and/or utilise the Access Provider's Network, the Access Provider shall be required to obtain the prior written approval of the Authority before implementing such a change.

6.3 The notice required by clause 6.1 shall set out the technical details of the proposed change, the timetable of the proposed change and any known impact to the inter-working of the Parties' Networks relevant to Services provided under the Agreement.

6.4 The Access Provider shall update any affected party from time to time of any additional modifications to the proposed changes in the Access Provider's Network referred to in clause 6.1, including the timetable for implementation.

6.5 Subject to any requirements of the Reference Offer and/ or the Access Provider's License to obtain approval of the Authority, the Access Provider has the right to modify, change or substitute underlying infrastructure, hardware, software or other technology or the specifications of the Services to improve the functioning or performing of the Services or its Network provided that such modifications do not adversely alter the functioning or performance of the Services supplied to the Access Seeker. Such modifications may include replacement of elements of existing Network infrastructure or systems with alternate technology. The Access Provider shall not make any changes that would restrict

Licensed Operators' ability to choose Customer Premises Equipment (CPE) from a range of multiple vendors subject to compliance with the Law and international standards.

- 6.6 Nothing in the Agreement may be construed to preclude the Access Provider from using, modifying or substituting any equipment as reasonably required to provide any of the Services within the scope of the Agreement, provided that the Access Provider shall not restrict Licensed Operators' ability to choose the CPE.

7 EQUIPMENT AND ACCESS TO END USER'S RESPONSIBILITIES

- 7.1 Where the Access Provider provides the Access Seeker with any equipment; or provides, manages or locates equipment at the Access Seeker's (or End User's) premises; as part of any Service (the "**Access Provider's Equipment**"), the Access Provider shall:

- (a) provide or manage the Access Provider's Equipment in accordance with the provisions of the relevant Service Description (Schedule 6); and
- (b) ensure that the Access Provider's Equipment is approved in accordance with Article 38 of the Law.

- 7.2 In relation to such Access Provider's Equipment, the Access Seeker shall:

- (a) arrange for the Access Provider's Equipment to be installed in an accessible and suitable place, free of charge to the Access Provider, leave it installed there and not interfere with it;
- (b) subject to the necessary time to coordinate with the End User, where applicable, ensure access by the Access Provider in order to operate, manage, inspect, repair or replace the Access Provider's Equipment, as and when required;
- (c) provide adequate instructions to the Access Seeker's End User regarding the Access Provider's Equipment;
- (d) pay for repairing or replacing the Access Provider's Equipment if it is lost, stolen or damaged. If the Access Provider's Equipment is lost, stolen or damaged, the Access Seeker will notify the Access Provider promptly upon becoming aware of such loss, theft or damage;
- (e) make sure that any software installed or otherwise deployed by the Access Seeker on the Access Provider's Equipment or on any equipment connected by the Access Seeker to the Access Provider's Equipment, if permitted under this Agreement, (other than software provided by the Access Provider) is not affected by any virus or similar defect;
- (f) follow the Access Provider's reasonable directions, and any directions from the equipment manufacturer, when using the equipment and never use the Access Provider's Equipment for purposes for which it is not designed;
- (g) only use the Access Provider's Equipment at the agreed site location, where one has been specified;
- (h) unless otherwise provided in this Agreement, ensure that the Access Provider's

Equipment, shall at all times remain an article of movable property of the Access Provider, who retains full ownership and title to it, including that such equipment must not be made part of or affixed to any real property or any other property; and

- (i) not encumber the Access Provider's Equipment or expose the Access Provider's title to the Access Provider's Equipment to third party claims and will notify the Access Provider if it becomes aware of any third party claim.

7.3 When any of the Access Provider's Equipment is no longer required:

- (a) The Access Provider shall be responsible for the recovery or removal of its equipment, at the Access Provider's sole discretion.
- (b) The Access Seeker shall be obliged to provide reasonable cooperation and shall allow the Access Provider access to the Access Seeker's or the End User's premises at all reasonable times upon reasonable advance notice to enable the Access Provider to remove its equipment, and to provide any reasonable assistance required; and
- (c) The Access Seeker shall not have any responsibility to the Access Provider for Access Provider's Equipment that has not been removed by the Access Provider within a reasonable timeframe after it is no longer required.

7.4 If the Access Provider fails to remove its equipment under clause 7.3 within a reasonable timeframe or as otherwise agreed between the Parties, then the Access Seeker may remove it with no liability to the Access Provider.

7.5 For the Access Seeker's own safety, and so that provision of the Services to the Access Seeker, the End Users and other Licensed Operators is not disrupted, the Access Seeker shall help safeguard the Access Provider's Network and the Access Provider's Equipment.

7.6 The Access Seeker shall:

- (a) Ensure that the Access Provider have reasonable and safe access to the Access Seeker's (or End User's) premises:
 - (i) to maintain, operate, manage, inspect, repair, replace or develop the Access Provider's Network or the Access Provider's Equipment;
 - (ii) to fix any Fault or replace any equipment; or
 - (iii) for any other reasonable purpose,

provided that the People whom the Access Provider uses carry proof of their identity and follow the Access Seeker's reasonable access management procedures. The Access Seeker shall ensure any applicable access management procedures are communicated to the Access Provider;

- (b) follow the Access Provider's reasonable directions when connecting any Customer Premises Equipment to the Access Provider's Network or the Access Provider's Equipment and make sure it is installed to the Access Provider's specifications and has obtained the type approvals

as required by the Law;

- (c) unless expressly authorised by the Access Provider in writing, never interfere, tamper or connect any other equipment to the Access Provider's Network or the Access Provider's Equipment, as applicable, and ensure only People the Access Provider authorizes may work on it;
- (d) pay the Access Provider's costs for repairing or replacing any part of the Access Provider's Network or the Access Provider's Equipment, which is lost or damaged by the Access Seeker, or by anyone the Access Seeker is responsible for except for normal wear and tear; and
- (e) make sure everyone the Access Seeker is responsible for also meets these responsibilities.

7.7 Without prejudice to the provisions governing a particular Service as set out in the relevant Service Description, the responsibility of the Access Provider for the supply of any Service including compliance with any associated Service Levels, shall be limited to the Access Provider's Network up to the respective Network Termination Point (NTP), which represents a general demarcation between (i) the Access Provider's Network and responsibility, and (ii) the Access Seeker's Network or any equipment or facility of End User and their respective responsibilities. As a general rule, and subject to any other provision of this Agreement, any equipment or facility connected to the Access Provider's Network beyond such NTP remains the sole responsibility of the Access Seeker, or the End User, as the case may be.

7.8 Notwithstanding the above, the availability of, and access to, any fixed passive physical infrastructure, beyond the Distribution Point, which may be required for extending the Access Provider's Network to provide the relevant Service, is not part of the Access Provider's Network and falls outside of the Access Provider's responsibility under this Reference Offer. The availability of, and access to, such civil infrastructure associated with the access to End User's premises, including in particular but without limitation any lead-in ducts or similar conduits, in-building wiring beyond the building entry point or a telecom room in multi-dwelling units up to the NTP, remains the sole responsibility of the Access Seeker and the Access Seeker Customer, as the case may be. For the avoidance of doubt and in the case of multi-dwelling units, this excludes scenarios where the Access Provider, pursuant to an agreement with the building owner, has fully deployed the internal wiring or in-building solution connecting each individual unit in the multi-dwelling unit.

7.9 The detailed allocation of responsibility of the Access Provider and the Access Seeker in relation to a particular Service and in particular the Access Seeker's responsibility for making available such infrastructure and access to End Users, are described in the Service Descriptions.

8 QUALITY OF SERVICE

8.1 To the extent permitted by law, and unless provided otherwise in the Agreement, the Access Provider has no obligation to the Access Seeker in respect of the quality of any Service, except as set out in this clause 8.

8.2 Subject to trivial differences as determined by the Authority or any other differences to be agreed

between the Access Provider and the Authority, as well as other instances provided for in the Access Provider's Licence, the Access Provider shall:

- (a) ensure that each Service that it provides to an Access Seeker is of an equivalent quality, including in relation to the availability of any enhanced features, to that which it supplies to all other Licensed Operators that receive the same Service; and
- (b) maintain and repair Faults in Services in an equivalent manner to the manner in which it maintains and repairs Faults in Services for all other Licensed Operators.

8.3 Subject to clauses 8.4 and 8.5, the Access Provider shall:

- (a) provide, but does not guarantee the provision of, continuous or Fault-free Services to the Access Seeker; and
- (b) comply with any Quality of Service requirements set out in the relevant Service Description in Schedule 6 (Service Descriptions) of the Reference Offer, and
- (c) provide the Service at the relevant Service Levels set out in Schedule 7 (Service Levels) of the Reference Offer.

8.4 Save to the extent required under applicable law, or as expressly set out in Schedule 7 (Service Levels), the Access Provider does not give or make any warranty, representation, undertaking or commitment in respect of the quality of service applicable to any Service, and any implied warranty to this effect is excluded, including any warranty, representation, undertaking or commitment (whether made to the Access Seeker before the Agreement Effective Date or otherwise) in respect of any difficulty or Fault resulting in a failure to establish any Service, in-service interruption, or loss, or distortion, of communication.

8.5 If any applicable law implies warranties or conditions or imposes obligations on the Access Provider in respect of the quality of service of any Service, which cannot be or can only to a limited extent be, excluded, restricted or modified, then to the extent to which the Access Provider is entitled to do so, the liability of the Access Provider under the applicable law is limited:

- (a) to the supply of relevant Services again or the payment of the cost of having the relevant Service supplied again, at the Access Provider's option;
- (b) to the repair or replacement of property or paying the cost of repair or replacement, at the Access Provider's option; or
- (c) to any other remedy prescribed by applicable law.

8.6 The Access Provider shall have no liability (including without limitation liability to provide Service Level Penalty or Penalties/ credit any Service Credit) for any failure to meet a Service Level for the period and to the extent Access Provider's ability to perform in accordance with the Service Level is adversely affected or materially contributed to by:

- (a) any act or omission of the Access Seeker that is not in accordance with this Agreement or that is otherwise unlawful, including a breach by the Access Seeker of the terms of the Agreement in relation to any Service;

- (b) any event or circumstance to the extent caused or contributed to by:
 - i. the Access Seeker's Network, platform, system, software or equipment; or
 - ii. the network, systems, equipment, software or facilities of any End Users, or
 - (c) failure by the Access Seeker Customer to provide cooperation, assistance or other liaison with the Access Provider that is reasonably required for the supply or maintenance of any Service including any time required by the Access Seeker to coordinate with the End User to arrange for access by the Access Provider to the End User's premises where such access is required to operate, manage, repair or replace any Access Provider's Equipment or perform activity on the Access Provider's network;
 - (d) any Force Majeure Event;
 - (e) any failure of, or inability to supply products, services, facilities or infrastructure by a third party, where the third party is unable to perform its obligations to Access Provider as a result of an event that would have otherwise constituted a Force Majeure Event and where the Access Provider is reasonably unable to procure supplies from alternative suppliers, if the obligations to be performed by the third party had arisen under this Agreement;
 - (f) the implementation of any material Network or system upgrade, relocation or replacement of any Access Provider's Facilities or technology in accordance with the terms of this Agreement;
 - (g) any event or circumstance beyond the reasonable control of the Access Provider, which does not otherwise constitute a Force Majeure Event or is not otherwise due to an act or omission of the Access Provider such as, for example, major network break down or Facility disruption caused by third party's act or omissions; or any third party equipment not operated or managed by or on behalf of the Access Provider;
 - (h) inability to obtain or delays in obtaining by the Access Provider the necessary wayleaves NOCs, and/or permissions from government authorities, municipalities or any third parties as long as (i) the Access Provider made all reasonable efforts to obtain them, including (ii) making the relevant applications in a timely manner, (iii) notifying the Access Seeker of such requirement and (iv) keeping the Access Seeker updated on the progress, or
 - (i) a Regulatory Event.
- 8.7 The Access Provider shall have no obligation to meet any Service Level during any period for which the relevant Service(s) are suspended pursuant to clause 11.
- 8.8 Non-compliance with any Service Level as set out in Schedule 7 (Service Levels) by the Access Provider, despite not constituting a breach of the Agreement, establishes the right of the Access Seeker to raise with the Access Provider a Service Credit Claim no later than (i) two (2) calendar months of becoming aware of such non compliance and (ii) no later than three (3) calendar months after it occurred.
- 8.9 Where the Access Seeker monitors Quality of Service to measure the actual performance of the Access Provider against the relevant Service Level(s) within certain periods of time chosen by it,

then the Access Seeker may, following the end of each such period but no later than within the timelines stipulated in clause 8.8, raise a Service Credit Claim for additional Service Credit (subject to any Total Service Credit Cap specified in the relevant Schedule 7 (Service Levels), which additional credit if valid, will be credited by the Access Provider in the same way as described below in clause 8.10. For avoidance of doubt, irrespective of the method that may be chosen by the Access Seeker for claiming any Service Level Penalties, a breach of a particular Service Level by the Access Provider cannot give rise to more than one Service Level Penalty.

- 8.10 The Access Provider shall be obliged to review any Access Seeker's Service Credit Claim submitted to it and respond to the Access Seeker within a reasonable time frame, but in any case no longer than in 30 calendar days following its submission by the Access Seeker.
- 8.11 After verifying the Access Seeker's entitlement to a Service Credit and where the Access Provider has accepted the Service Credit Claim, and subject to any Total Service Credit Cap in respect of any Service Level, the Access Provider shall apply the amount of that Service Credit as a credit towards the Charges payable by the Access Seeker, for the billing period following such verification and, where required, for each subsequent period until the total amount of the applicable Service Credit (subject to a Total Service Credit Cap) has been applied in full.

9 NEW SERVICES AND SERVICE ORDERS

- 9.1 A request from a Licensed Operator for a New Service shall be processed in accordance with the relevant provisions of Annex 1 to the Main Body (New Service Order and New Service Order Process).
- 9.2 Subject to an Agreement between the Parties, the Access Provider shall process a Service Order in accordance with Schedule 2 – (Notification and Acceptance of Service Order) within the timescales set out in Schedule 7 – (Service Levels) and in accordance with the other terms of the Agreement.

10 USE OF THE SERVICES

- 10.1 The Access Provider acknowledges that the Access Seeker may use the Services provided by the Access Provider as part of services or products that the Access Seeker offers to the Access Seeker Customers. The Access Seeker agrees that where it provides services or products to the Access Seeker Customer using any Service, or part of any Service:
- (a) the Access Seeker will indemnify the Access Provider for any damage, loss or cost (including legal costs) and protect the Access Provider from any claim or proceeding:
- (i) arising from the failure by the Access Seeker to obtain, or a claim by an End User that the Access Seeker failed to obtain, that End User Consent relevant to the supply of Services relating to that End User;
 - (ii) to the extent caused, contributed to or brought by any Access Seeker Customer directly or indirectly in connection with the Services;

- (b) the Access Provider will not be responsible to the Access Seeker or any Access Seeker Customer for any failure or delay in provision of a Service where such failure or delay is caused by or contributed to by any action or inaction of the Access Seeker or of any Access Seeker Customer; and
- (c) the Access Seeker will be solely responsible for any misuse of a Service or part of a Service by the Access Seeker Customers and the Access Seeker will be liable accordingly.
- (d) The Access Seeker shall not re-sell or re-supply the Service to any other Licensed Operator for that Licensed Operator's provision of its own retail services. For the avoidance of doubt, a re-sell or re-supply of the Service means to sell or supply the Service to any other Licensed Operator.

11 SUSPENSION

11.1 The Access Provider may only suspend a Service to the extent necessary to address:

- (a) an emergency requiring suspension as further detailed in clauses 11.2 to 11.4; or
- (b) a request from the Authority to suspend a Service.

The parties acknowledge that suspension may be potentially disruptive for users of telecommunications networks in Bahrain and that an assessment of whether or not to suspend a Service in particular circumstances should consider the interests of potentially affected users as a whole.

11.2 Subject to clause 11.1, the Access Provider may suspend the supply or use of a Service provided to the Access Seeker, by giving the Access Seeker forty-eight (48) hours' written notice if, in the reasonable opinion of the Access Provider, the Access Seeker's Network has a material adverse effect on the safe, secure or normal operation of the Access Provider's Network or similar detrimental impact on the continuous and uninterrupted supply of Services to other Licensed Operators, and the Access Seeker has failed to rectify the material adverse effect before the end of a notice period of (i) not less than thirty (30) days in usual circumstances, and (ii) not less than seven (7) days in urgent cases, provided that:

- (a) before suspending the supply or the use of a Service, the Access Provider has notified the Authority at least forty-eight (48) hours ahead of its intended suspension; and
- (b) the Access Provider will not suspend the supply or use of a Service where the Authority having received the notice referred to earlier in this clause, objects in writing to that suspension.

11.3 The Access Provider may suspend the supply or use of a Service, where:

- (a) the Access Seeker committed a Material Breach, and has failed to rectify the Material Breach after the Access Provider has taken all the following consequential steps, each time giving the Access Seeker at least seven (7) calendar days to rectify such Material Breach:

1. the Access Provider notified the Access Seeker in writing of the Material Breach and invited it to rectify it, and
2. the Access Provider suspended the application of all Service Levels and Service Level Penalties to the relevant Access Seeker; and
3. the Access Provider has suspended processing of any new Service Orders raised by that same Access Seeker,

unless the Authority, after having been notified by the Access Provider at least 30 days in advance of its intention to suspend the Service and the reason for such suspension, objects against it in writing or has issued a determination prohibiting the Access Provider from the suspension on the grounds of an overriding public interest in continuation of any such Service; or

- (b) the Access Seeker knowingly or recklessly used, attempted to use, or has communicated or demonstrated an intention to use, any Service supplied under the Agreement in contravention of any law; or
- (c) with the exception of operation matters or inaccurate forecasts as provided for in Schedule 5 (Forecasting), any material information provided, or material representation made, by the Access Seeker to the Access Provider is untrue, false, grossly misleading or inaccurate and the difference between the effect of the Access Provider's reliance on the information and what would otherwise be the case if the information or representation had been true or accurate, is reasonably considered material by the Access Provider (with respect to the provision of the relevant Services).

11.4 Subject to clause 11.1 the Access Provider may suspend the Agreement or a Service, respectively, provided to the Access Seeker, on not less than seven (7) days' notice if in the reasonably justified opinion of the Access Provider:

- (a) the Access Seeker's Network or the supply of any Service to the Access Seeker poses:
 - (i) a threat to life or safety of any person (which shall not include a threat to life or safety of any person via the supply of any Service to the Access Seeker);
 - (ii) a material hazard to equipment or the property of any person, including the Access Provider; or
 - (iii) an imminent threat to the normal operation, access, integrity or security of the Access Provider's or continuous and uninterrupted supply of Services to other Licensed Operators or Access Provider's or other Licensed Operator Network;
- (b) the Access Seeker becomes Insolvent, provided that this right will not be exercised:
 - (i) for so long as the Access Seeker fulfils all its obligations, including paying

all amounts, as and when they fall due in the course of any Insolvency; and

- (ii) for so long as the Security provided by the Access Seeker remains effective and is sufficient to meet the sum of debts actually payable and reasonably foreseeable in the course of the Insolvency;
 - (c) there is an emergency situation that in the Access Provider's reasonable opinion may lead to a state of danger to the national safety or martial law being announced and the requisition by a competent authority of the Access Provider's telecommunications networks or services used to provide one or more of the Services;
 - (d) the continued supply of any Service would be unlawful, or compliance with legal or regulatory obligations or any instruction, order, direction, decision or request from any competent or government authority in the Kingdom requires the suspension of one or more of the Services and where such unlawfulness or non-compliance has been confirmed by the Authority; or
 - (e) the Authority or a relevant governmental authority directs the Access Provider to do so.
- 11.5 If, pursuant to clauses 11.1 to 11.4, a Service has been suspended in accordance with the Agreement due to reasons attributable to the Access Seeker, the Access Seeker shall continue to pay the relevant Charges for that Service during the period of suspension, and shall pay the Access Provider any Charge payable for the reconnection or reinstatement of that Service, except that where the cause of suspension was outside the control of the Access Seeker. The Access Seeker may request, where the cause of suspension was outside the control of the Access Seeker, that the Access Provider provide a waiver of reconnection or reinstatement Charges and a waiver of Charges applicable during the period of suspension.
- 11.6 If any Service is suspended under clause 11.2 or 11.3 for more than thirty (30) calendar days, then either Party may terminate the relevant Service with immediate effect by giving the other a written notice.
- 11.7 The Access Provider's exercise of its right to suspend a Service does not prejudice any other right or remedy available to it at law or in contract, including any subsequent right to suspend or terminate that Service or a different Service.
- 11.8 If the circumstances giving rise to a right of suspension are cured during any period of notice or suspension and such cure is objectively explained and evidenced in writing to the Access Provider:
- (a) before the right is exercised, then the right to suspend may not be exercised; or
 - (b) after the right is exercised, then the Access Provider shall lift the suspension as soon as reasonably practicable and in any event within forty-eight (48) hours of the notice of cure, except with respect to a right of suspension exercised pursuant to clauses 11.2 in relation to which the Access Seeker shall give an undertaking that, as far as it is reasonably aware, the circumstances giving rise to the right of suspension are unlikely to recur, or that the Access Provider is otherwise protected against the consequences of the circumstances.

12 TERMINATION

- 12.1 The Access Provider may terminate the supply of any Service, by giving the Access Seeker (and copying the Authority) thirty (30) calendar days' written notice if any of the circumstances exist, which would give the Access Provider the right to exercise a right of suspension under clause 11.2 in respect of that Service.
- 12.2 The Access Provider may also terminate the supply of any Service by giving the Access Seeker (and copying the Authority) thirty (30) calendar days' written notice if:
- (a) the Access Seeker committed a Material Breach, and
 - I. the Access Provider has suspended the Service, or the Agreement, or
 - II. has taken any other step envisaged pursuant to clause 11.3(a)but the Access Seeker has failed to rectify the Material Breach within additional seven (7) calendar days after the Access Provider has taken the last of the steps described in clause 11.3(a);
 - (b) the Access Seeker becomes Insolvent, provided that this right will not be exercised for so long as the Access Seeker fulfils all its obligations, including paying all amounts as and when they fall due in the course of any Insolvency;
 - (c) subject to clause 14, notified Force Majeure Event or Regulatory Event substantially adversely affects the ability of the Access Provider to perform its obligations under the Agreement for a continuous period of forty-five (45) calendar days, provided that the Access Seeker may require during the notice period that the Parties, on reasonable notice, engage in discussions with each other, the ECTC, or the Authority, as applicable, to establish whether alternative terms of supply can apply. Any amendment shall be made only in accordance with the provisions of the Reference Offer.
- 12.3 The Access Provider may terminate any Service by giving the Access Seeker (and copying the Authority) ninety (90) calendar days' written notice if:
- (a) the Access Seeker is no longer eligible to that Service, and the Access Provider has evidence to prove it; or
 - (b) the applicable law or the Authority no longer imposes an obligation on the Access Provider to provide that Service and the Authority has approved the removal of the relevant Service from the Reference Offer.
- 12.4 Either Party may terminate the supply of any Service by giving the other Party (and copying the Authority) seven (7) days' written notice if:
- (a) the continued operation of the Agreement would be unlawful or contravene legal or regulatory obligations of either Party; or
 - (b) the Access Seeker ceases to be a Licensed Operator; or
 - (c) the Access Provider's License is revoked by the Authority.

- 12.5 If the Authority revokes the Reference Offer, then the Agreement automatically and immediately terminates on the date of such revocation.
- 12.6 If the circumstances giving rise to a right of termination are cured during any notice period or period of remedy and such remedy is objectively evidenced in writing to the terminating party before the expiry of that notice period or period of remedy then (except in cases where the terminating party is terminating for a persistent curable breach or the breach is of its nature past and incurable) the Agreement or the relevant Service shall not terminate.
- 12.7 Where in this clause a reference is made to a notice of termination copying the Authority, it is deemed that Access Provider is entitled to proceed with the termination of the relevant Service, subject to the Authority not issuing, within the same notice period and pursuant to the applicable law, any express order or direction prohibiting the Access Provider from such termination.

13 CONSEQUENCES OF TERMINATION

13.1 On termination of a Service:

- (a) all sums payable to the Access Provider under the Agreement up to the date of termination, including any Charges in respect of termination, are immediately due and payable;
- (b) the Access Provider shall refund any amount or proportionate amount paid by the Access Seeker in respect of any period after the date of termination;
- (c) unless provided otherwise, all Services, leases, licenses and other rights conferred on the Access Provider or the Access Seeker under the Agreement immediately terminate;
- (d) each Party shall at its own expense immediately return all of the other Party's equipment or other property used for any of the Service (other than any Access Provider's Equipment, which shall be dealt with in accordance with Clause 7.3 and 7.4) in good working condition, other than fair wear and tear;
- (e) to the extent permitted by the applicable law, each Party shall at its own expense and for a period of two (2) years after termination of the Agreement in accordance with this clause 13, immediately comply with any written notice from the other Party to deliver, destroy, or erase any Confidential Information belonging to that other Party.

13.2 Each Party shall reimburse the other Party for any cost incurred by that other Party in repossessing or replacing any property (other than any Access Provider's Equipment, which shall be dealt with in accordance with Clause 7.3 and 7.4) that was not returned within thirty (30) calendar days after the date of termination, or was returned in a damaged or defective condition.

13.3 Termination or expiry of the Agreement or any Service:

- (a) is deemed not to be a waiver or breach of any term or condition of any element of the Agreement; and
- (b) does not prejudice any right, liability or obligation that accrued to either Party before the date of termination or expiry.

13.4 All rights that each Party accrued before termination or expiry of the Agreement or any Service, and clauses 4 (Billing and Payment), 15 (Liability and Indemnity), 16 (Intellectual Property), 19 (Confidentiality) and 21 (Dispute Resolution) and 22 (General), survive termination or expiry of this Agreement or that Service (as the case may be), and continue in full force and effect.

14 FORCE MAJEURE AND REGULATORY EVENTS

14.1 Subject to clause 14.2, neither Party shall be liable for any failure to comply with or observe any term of the Agreement to the extent that a Force Majeure Event or a Regulatory Event caused that failure.

14.2 Each Party remains liable for the performance of each obligation, and to comply with and observe each term, of the Agreement, which is not affected by the Force Majeure Event or Regulatory Event.

14.3 The Access Seeker remains liable for all sums payable in respect of each Service provided by the Access Provider during the Force Majeure Event or Regulatory Event, which is not affected by the Force Majeure Event or Regulatory Event.

14.4 If a Party fails to comply with or observe any term of the Agreement because of a Force Majeure Event or a Regulatory Event, then that Party shall notify the other Party:

(a) as soon as practicable upon its occurrence, giving details of the Force Majeure Event or Regulatory Event, and its estimated extent and duration, if foreseeable to it; and

(b) immediately after the end of the Force Majeure Event or Regulatory Event.

15 LIABILITY AND INDEMNITY

15.1 To the extent permitted by law, neither Party is liable to the other Party except as provided in:

(a) this clause 15; or

(b) in relation to supply or use of a particular Service, the relevant Service Description in Schedule 6 – (Service Descriptions) of the Reference Offer.

15.2 If any applicable law implies warranties or conditions or imposes obligations on the Access Provider that cannot be, or can only to a limited extent be, excluded, restricted or modified, then to the extent to which the Access Provider is entitled to do so, the liability of the Access Provider under the applicable law is limited:

(a) subject to agreement of the Parties, to the supply of Services again or the payment of the cost of having the Services supplied again; or

(b) subject to agreement of the Parties, to the repair or replacement of property or paying the cost of repair or replacement; or

(c) to any other remedy prescribed by the applicable law.

15.3 Neither Party is liable to the other Party for or in relation to any Consequential Loss.

15.4 Subject to clauses 15.1, 15.2, 15.3, 15.5, 15.6, 15.7, 15.8 and 15.9, each Party's maximum liability

under the Agreement is limited to:

- (a) BHD300,000,- (three hundred thousand Bahraini Dinar) for any one event or series of connected events, and
- (b) BHD1,000,000 (one million Bahraini Dinars) in the aggregate for all events (connected or unconnected) occurring in a Calendar Year.

15.5 Clause 15.4 does not apply to any obligation arising under the Agreement to pay monies in the ordinary course of business, including without limitation, the Charges and any other payments in respect of liabilities under clauses 15.6, 15.7 and 15.8.

15.6 Each Party indemnifies the other Party against all awards, judgments, costs, charges and expenses directly and reasonably incurred by that other Party as a result of or in connection with any claim against it arising out of a death of or personal injury to the People of the other Party, to the extent that the damage or loss is caused by a negligent act or omission or an act or omission intended to cause death or personal injury, by the Indemnifying Party or any of the People of the Indemnifying Party.

15.7 Each Party indemnifies the other Party against all costs, charges and expenses directly and reasonably incurred by the other Party as a result of or in connection with any damage to equipment, Network or other tangible property of the other Party or any third party to the extent that the damage or loss is caused by a negligent act or omission by the Indemnifying Party or any of the People of the Indemnifying Party.

15.8 Subject to clause 15.9, each Party indemnifies the other Party against all costs, charges and expenses directly and reasonably incurred by the other Party as a result of or in connection with any claim by a third party against the other Party to the extent that the claim relates to any breach of obligations under the Agreement by the Indemnifying Party or any of the People of the Indemnifying Party.

Except where the action, claim or demand brought or made by a third party arises as a result of or is directly connected with the wrongful termination or suspension by the Indemnifying Party of the Agreement or any Service, the Indemnifying Party is not liable to the other Party to the extent that liability is incurred in connection with an action, claim or demand brought or made against the other Party by a third party to whom that other Party provides a telecommunications service under a contract, where that liability could legally have been excluded or where that liability could legally have been reduced in that contract by that other Party.

15.9 Each provision of this clause 15 is a separate limitation applying and surviving even if one or more limitations is inapplicable or held unreasonable in any circumstance.

15.10 Subject to clause 8.6, if any Schedule of the Agreement contains a specific remedy for the failure of either Party to perform its obligations under that Schedule, in particular but without limitation to provide a specific Service Level and failing that to provide a specific Service Penalty, then that remedy is, to the extent permitted by the applicable law, the sole and exclusive liability of that Party, its Affiliates, and its People, in connection with the non-performance or a delay in performance with

that obligation, and it is also the sole remedy of the other Party against the first Party, its Affiliates and its People in connection with the performance of that obligation. The aforementioned limitation of either Party's liability shall not apply in case the failure to perform the contractual obligation or delay in the performance thereof by such Party, is due to to fraud or gross negligence on the side of that Party.

15.11 The Indemnifying Party is not obliged to indemnify the other Party to the extent to which the subject of the indemnity claim is the result of a breach of the Agreement, or a negligent act or omission, of that other Party.

15.12 The Party seeking the benefit of an indemnity from the Indemnifying Party shall take all reasonable steps to minimize the loss it has suffered or is likely to suffer as a result of the event giving rise to an indemnity under this Agreement, and if that Party does not take reasonable steps to minimize loss, then the damages payable by the Indemnifying Party shall be reduced as is appropriate in each case.

15.13 A Party's liability to the other Party for any loss or liability of any kind arising out of the Agreement or in connection with the relationship established by it, is reduced to the extent (if any) that the other Party causes or contributes to that loss or liability. This reduction applies whether the first Party's liability is in contract, tort (including negligence), under any statute or otherwise.

15.14 Without limiting either Party's liability under this Agreement, each Party shall have in force and maintain for the term of the Agreement, with an insurance company licensed in Bahrain and on terms and for coverage limited by only standard industry exclusions or exceptions:

- (a) a broad form public liability policy of insurance to the value of at least BHD250,000 (two hundred fifty thousand Bahrainin Dinars) in respect of each claim; and
- (b) property insurance for those assets used by it under or in relation to this Agreement to the value of at least BHD100,000 (one hundred thousand Bahrainin Dinars) in respect of each claim.

15.15 On request by a Party, the other Party shall promptly produce evidence that it has complied and is continuing to comply with its obligations under clause 15.14.

16 INTELLECTUAL PROPERTY

16.1 Except as otherwise expressly provided in the Agreement, all Intellectual Property Rights remain the ownership of the Party creating or owning them.

16.2 Nothing in this Agreement and/or the supply of any Service by the Access Provider to the Access Seeker shall be construed, as:

- (a) an assignment of any Intellectual Property Rights of one Party to the other Party; or
- (b) the grant of any license to any Intellectual Property Rights of one Party to the other Party.

16.3 Without prejudice to or limiting clause 16.1, neither Party is entitled to use any trade marks or service marks (whether registered or not) of the other Party, without the prior written consent of that Party.

- 16.4 Each Party indemnifies the other Party and the other Party's People, against any action, claim, loss, liability, cost or expense that may be brought against, suffered or incurred by any of them arising directly or indirectly from a claim by a third party that the use of the Indemnifying Party's Intellectual Property Rights as permitted under this Agreement infringes the rights of that third party.
- 16.5 The indemnity in clause 16.4 is the only remedy and form of compensation available to a Party in respect of Intellectual Property Rights arising under this Agreement.
- 16.6 The Access Seeker is responsible and liable for obtaining and maintaining in its own name and at its own expense, all licenses, permits, consents, waivers or authorizations related to any Intellectual Property Rights required for it to:
- (a) use any Service provided under this Agreement; or
 - (b) install or use any equipment in connection with the use of any Service provided under this Agreement; or
 - (c) provide any services to Access Seeker Customers based on the Service provided to it by the Access Provider.

17 ACCESS SEEKER'S FORECASTING OBLIGATIONS

- 17.1 The Access Seeker shall provide forecasts to the Access Provider during the term of the Agreement in accordance with the requirements and procedures stipulated in Schedule 5 – (Forecasting) of the Reference Offer.
- 17.2 The Access Seeker shall provide all forecasts in good faith and shall use all reasonable endeavors to ensure that forecasts are accurate. Forecasting accuracy is of paramount importance for efficient engagement of resources to the benefit of legitimate end users, avoiding unnecessary costs or incurring losses by the Access Provider and thus the overall cost of provision of these critical services.

18 CREDIT MANAGEMENT AND SECURITY

- 18.1 The Access Provider may require the Access Seeker to provide Security in relation to the provision of the Services under the Agreement. This may be in response to the first Service Order ("**Initial Security**") or as varied from time to time under this clause 18.
- 18.2 If Security is required by the Access Provider, the Access Seeker shall provide, at its sole cost and expense, and maintain for the term of the Agreement, Security of the type and value required by the Access Provider in accordance with this clause 18.
- 18.3 The Access Provider may at any time review the creditworthiness of the Access Seeker and take action under clause 18.7 if any of the following circumstances exist:
- (a) where the Access Seeker is rated by Moody's Investor Services or Standard & Poors, it ceases to have an Acceptable Long Term Credit Rating and/or the Access Seeker does not provide to

the Access Provider an appropriate Security;

- (b) the Access Seeker becomes Insolvent;
- (c) a Change of Control occurs in respect of the Access Seeker;
- (d) the Access Seeker has failed to pay undisputed Charges when due at any time during the term of the Agreement;
- (e) the Access Seeker breaches the terms of any Security provided under this clause 18;
- (f) in Access Provider's reasonable opinion, there has been a material adverse change in the Access Seeker's financial position;
- (g) the total Charges disputed by the Access Seeker in a three (3) month period exceeds the total Initial Security (as varied from time to time);
- (h) the Access Seeker wishes to obtain new or additional Services and obtaining of such Services would result in the amount of Security required from the Access Seeker (as calculated in accordance with the general principle set out in Clause 18.10 below) increasing by twenty-five percent (25%) or more from the Initial Security (as varied from time to time) provided by the Access Seeker; or
- (i) a period of nine (9) months has lapsed since the last review of the Access Seeker's creditworthiness.

18.4 Where the Access Provider conducts a creditworthiness review pursuant to clause 18.3, the Access Seeker shall provide the Access Provider with all information reasonably requested by the Access Provider in respect of the Access Seeker's creditworthiness within five (5) Working Days after the Access Provider's request.

18.5 If having conducted a creditworthiness assessment of the Access Seeker in good faith in accordance with clause 18.4, the Access Provider considers that the Security coverage of the Access Seeker does not meet the Access Provider's reasonable requirements, or if the Access Seeker fails to comply with any provision of this clause 18, then the Access Provider may require the Access Seeker to provide a new Security or to vary the amount or type of an existing Security.

18.6 If the Access Provider requests new or varied Security under clause 18.5, then the Access Seeker shall provide the new or varied Security, in the form and on terms acceptable to the Access Provider acting reasonably, within five (5) Working Days of the request being made.

18.7 Where the request for new or varied Security under clause 18.5 is the result of a creditworthiness assessment carried out by the Access Provider pursuant to clause 18.3(g), the Access Provider shall indemnify the Access Seeker against all costs, charges and expenses directly and reasonably incurred by the Access Seeker in providing the new or varied Security, where (i) the aggregate amount of Charges billed in error compared to (ii) the total amount of the disputed Charges, to be determined as an outcome of a Billing Dispute pursuant to Schedule 4 – (Billing), is more than five (5) per cent of the aggregate of the disputed Charges.

18.8 The Access Seeker shall, unless otherwise agreed to by the Access Provider:

- (a) maintain any Security provided to the Access Provider under this clause 18 until the expiry of a six (6) month period after the last to occur of:
 - (i) termination or expiry of the Agreement; and
 - (ii) payment to the Access Provider of all outstanding Charges and other amounts payable by the Access Seeker under the Agreement.
- (b) the Access Provider may exercise its rights under any Security in respect of any amounts payable by the Access Seeker to the Access Provider under the Agreement, other than any Charges which are the subject of a Billing Dispute.

18.9 The Access Seeker warrants to the Access Provider that by providing information to the Access Provider under clause 18.5, except to the extent otherwise disclosed in writing to the Access Provider at the time of the provision of such information that:

- (a) such information constituted true and fair statements of the financial or other positions of the Access Seeker as at the date to which they were prepared; and
- (b) there has been no material adverse change in the Access Seeker's financial or other position between the date on which any such information was prepared and the date on which the information was provided.

18.10 The amount of any Security under this clause 18 will be calculated:

- (a) as a statement of general principle, by reference to the aggregate value of the Charges likely to be payable by the Access Seeker to the Access Provider under the Agreement over a three (3) month period;
- (b) together with the combined value of any equipment and other assets that the Access Provider has reasonably procured specifically for the provision of a Service to the Access Seeker by the Access Provider which are:
 - (i) sited on premises owned or controlled by the Access Seeker; or
 - (ii) directly accessible to authorised People of the Access Seeker; and
- (c) will be recalculated at the request of either Party if the period since the last review of the amount of Security is greater than nine (9) months.

18.11 Each Party may use any current estimates, forecasts or any other statements made or provided by the other Party in making any calculations pursuant to clause 18.10.

18.12 In addition to the Access Provider's other rights and remedies and Schedule 4 – (Billing), if the Access Seeker has at any time failed to pay undisputed Charges by the Due Date, the Access Provider may require the Access Seeker to pay all Charges in respect of Services on presentment of invoice or monthly in advance, in which case the assessment of future Charges will be based on either:

- (a) the highest level of actual monthly Charges; or
- (b) where the relevant Services have not been provided for three (3) calendar months, the greater

of the higher level of actual monthly Charges or the higher level of forecast monthly Charges; in respect of such Services in the three (3) calendar months prior to that in respect of which the Charges are to be paid for such Services.

19 CONFIDENTIALITY

19.1 Either Party shall ensure privacy and confidentiality of Confidential Information of the other Party obtained under or in relation to this Agreement and protect it against unauthorised disclosure, by establishing and implementing reasonable procedures for maintaining privacy and confidentiality of such information subject to any requirement under applicable law.

19.2 The Access Provider shall not in any circumstances disclose in breach of any applicable law to any of its Affiliates, which is a Licensed Operator or which engages in retail communications operations in relation to any Service under this Agreement, directly or indirectly, any Confidential Information relating to any other Licensed Operator. The Access Provider shall establish and maintain, at all times, organisational measures including in particular appropriate information barriers, processes and systems to prevent the disclosure of such Confidential Information by the Access Provider to any such Affiliate.

19.3 Unless otherwise provided in this Agreement, the Access Provider shall not in any circumstances disclose to any Licensed Operator directly or indirectly, any Confidential Information relating to any other Licensed Operator.

19.4 A Party may not disclose the provisions of this Agreement to any person except:

(a) after obtaining the written consent of the other Party, and only to the extent of that consent;

(b) subject to clause 19.2, to:

i. its officers, employees and professional advisers; or

ii. third party suppliers, vendors or contractor which are engaged in provision of Services covered by the Agreement;

(c) to Emergency Services;

(d) to any arbitrator or expert appointed under the Dispute Resolution Procedures; or

(e) as otherwise specified in this Agreement,

and shall use all its reasonable endeavors to ensure all permitted disclosures are kept confidential, other than a disclosure required to be made to a recognized stock exchange.

19.5 Subject to the specific provision of the Agreement already being in the public domain by virtue of publication of the present Reference Offer by the Authority, a Party may disclose the this Agreement in whole or in part:

(a) to the Authority including for the purpose of providing it with any completed agreement under the Reference Offer as required by the Law, or for the purpose of a review or determination by

the Authority or any disputes or complaints submitted to it;

- (b) as required by applicable law, the Authority, the Law, a License, a court order, or any other governmental authority.
- 19.6 Despite any other provision of this Agreement, the Parties shall not reveal, make known or divulge to any third party in any manner whatsoever the Charges and contents of those aspects of the Agreement (in whole or in part) that the Authority has withheld from publication.
- 19.7 Except as otherwise provided in this Agreement, a Party that receives Confidential Information ("**Receiving Party**") shall keep confidential all Confidential Information of the other Party ("**Disclosing Party**"):
- (a) disclosed, communicated or delivered to the Receiving Party under the Agreement; or
 - (b) that comes into the Receiving Party's knowledge or possession in connection with the Agreement.
- 19.8 The Receiving Party shall not use or copy the Confidential Information of the Disclosing Party except in connection with and for the purposes of exercising its rights and performing its obligations under this Agreement or in connection with the provision of Services.
- 19.9 If the Receiving Party visits any of the facilities of the Disclosing Party, the Receiving Party undertakes to keep strictly confidential any Confidential Information that comes to its knowledge as a result of such visit, and any Confidential Information relating to any plant and equipment seen at the facilities, their methods of operation and their various applications, and and subject to clause 19.2 not to divulge the Confidential Information to any third party, other than for the purpose of and only to the extent necessary to perform its obligations under this Agreement.
- 19.10 Except as otherwise provided in this Agreement and subject to clause 19.2, the Receiving Party shall not disclose or communicate, cause to be disclosed or communicated or otherwise make available Confidential Information to any third party other than:
- (a) the Receiving Party's professional advisers, but only to the extent necessary for those advisers to provide advice or protect the rights of the Receiving Party under this Agreement or at law; and
 - (b) the Receiving Party's appointed financial advisers or appointed bankers only to the extent necessary for those financial advisers or appointed bankers to provide financial advice or services to the Receiving Party,
- (each an "**Authorized Person**", and collectively "**Authorized Persons**").
- 19.11 The Receiving Party shall advise each Authorized Person of the obligation to protect the Disclosing Party's Confidential Information in a manner consistent with the Agreement.
- 19.12 The Receiving Party may disclose some or all of the Confidential Information to the Authorized Persons, provided that:
- (a) prior to disclosure, in the case of Authorized Persons referred to in clauses 19.10(a) or (b), the

Receiving Party shall ensure that Authorized Persons to whom all or any Confidential Information is disclosed hold it strictly confidential and do not disclose it to any other person; and

- (b) prior to disclosure, in the case of Authorized Persons referred to in clause 19.10(c), the Receiving Party must obtain and provide to the Disclosing Party a written undertaking in favor of the Disclosing Party from the Authorized Persons, agreeing to comply with the provisions of this clause 19 of this Agreement as if the Authorized Person were a party to thereto; and
- (c) the Access Provider in its capacity as the Receiving Party is expressly prohibited from disclosing the Confidential Information in breach of any applicable law to any Affiliate of the Access Provider, which is a Licensed Operator or which engages in retail communications operations in relation to any Service under this Reference Offer in the Kingdom, or to any Authorized Person who is reasonably likely to disclose that Confidential Information to such Affiliate of the Access Provider.

19.13 For the purposes of this clause, "Confidential Customer Information" means Confidential Information relating to Access Seeker Customer or any person who is in the process or becoming or may reasonably become Access Seeker Customer; and Confidential Customer Information shall be understood to include all information related to such Access Seeker Customer, to the extent to which the Access Seeker will use any Service under the Agreement for supply of its own products or services to such customer, that is reasonably considered to be commercially confidential (regardless of whether it has been formally designated as such).

19.14 The Parties acknowledge that:

- (a) the provisions of clause 19.2 shall also apply to the Access Provider in respect of any Confidential Customer Information;
- (b) in relation to the Access Seeker only, the Authorized Persons referred to in clause 19.10(a) may engage in multiple roles or functions and the Access Seeker will not be in breach of this clause 19 merely because Confidential Customer Information is provided to an Authorized Person referred to in clause 19.10(a) who has a role or function, including any sales or marketing role or function, other than in connection with or for the purpose of this Agreement, or for any other purpose related to the provision of Services by the Access Provider under the Agreement; and
- (c) Confidential Customer Information does not include information which was generated from a party's own billing records relating to its customers.

19.15 In any event, the Receiving Party is liable for any disclosure by the Authorized Persons to any other person.

19.16 The Receiving Party may only issue news releases, public announcements or any other form of publicity concerning the Agreement if it has first obtained the Disclosing Party's written consent.

19.17 A Receiving Party shall exercise no lesser security or degree of care than that party applies to its own Confidential Information of an equivalent nature, but in any event not less than the degree of

care that a reasonable person with knowledge of the confidential nature of the information would exercise.

19.18 Confidential Information provided by one Party to the other Party is provided for the benefit of that Party only and may only be used for the purposes for which it is disclosed.

19.19 Each Party acknowledges that a breach of this clause 19 by one Party may cause the other Party irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, in addition to other remedies that may be available, a Party may seek injunctive relief against that breach or threatened breach.

19.20 All and any part of written Confidential Information (including information incorporated in computer software or held in electronic storage media) together with any analyses, compilations, studies, reports or other documents or materials prepared by the Receiving Party or on its behalf, which reflect or are prepared from any of the Confidential Information provided by the Disclosing Party, must be returned to the Disclosing Party or destroyed by the Receiving Party, as directed and when requested by the Disclosing Party at any time, or when the Receiving Party's need for that information has ended or when these Supply Terms expire or terminate, whichever is earlier. In the event of destruction, the Receiving Party shall certify in writing to the Disclosing Party within thirty (30) calendar days that destruction has been accomplished. The Receiving Party shall make no further use of that Confidential Information nor retain that Confidential Information in any form whatsoever.

19.21 The Parties acknowledge that the provisions of this clause 19 continue in full force and effect regardless of variations, assignments or termination of other provisions of this Agreement. The obligation to maintain the confidentiality of the Confidential Information and the undertakings and obligations in this clause 19 continue until the later of two (2) years after the expiry or termination of this Agreement, or when the information ceases to be confidential.

19.22 Notwithstanding anything else in this clause 19, the Access Provider may collect and further process information about the Access Seeker and the Access Seeker Customers. The information may originate from the Access Seeker, other persons or generated by the Access Provider's Network or its systems in connection with the supply and use of the Services.

19.23 The Access Provider may (subject to clause 19.2):

- (a) hold the information and share it with its officers, employees, contractors, suppliers, vendors or other agents, but only where this is necessary to enable the Access Provider to provide the Access Seeker with Services, send the Access Seeker invoices, check that the Access Seeker's responsibilities are being met, or otherwise exercise its rights or perform its obligations, administer and enforce the terms of the Agreement;
- (b) share with Access Seekers any information needed to enable the Access Seeker to send or receive messages of any kind through those networks;
- (c) use any information about the Access Seeker in order to ensure compliance with non-discrimination or similar clauses in contracts between the Access Provider and other Access Provider customers (including other Licensed Operators); and

- (d) use any information about the Access Seeker for statistical purposes, so long as the Access Seeker is not identified.

20 RELATIONSHIP BETWEEN THE PARTIES

- 20.1 The relationship between the Parties is one of independent contractor only and nothing in this Agreement may be construed to constitute a relationship of agency or partnership between the Parties. Each Party remains fully responsible for its own acts and defaults (including those of its employees or agents). Neither Party is authorized to bind the other Party to any obligation. The Parties and their employees, agents and representatives shall not engage in any conduct that may lead any person to believe that it is an employee, agent or representative of the other Party.
- 20.2 The Access Seeker shall not imply or represent that the Access Provider:
 - (a) participates (other than as a wholesale supplier to the Access Seeker) in the provision of the Access Seekers' services, or is a supplier to the Access Seeker's Customers, or that the Access Seeker is approved by, or an agent or dealer of, or affiliated with, the Access Provider; or
 - (b) has a preferred relationship with the Access Seeker, including in respect of special prices or services.
- 20.3 The Access Seeker shall not in relation to its services to the Access Seeker's Customers falsely attribute to the Access Provider:
 - (a) any blame for a fault or other circumstance;
 - (b) any need for maintenance or upgrade of a network; or
 - (c) any interruption or suspension, or partial interruption or suspension of a service.
- 20.4 In making any representation contemplated by clause 20.3, the Access Seeker shall not engage in any unfair, unethical, misleading or deceptive conduct.
- 20.5 The Access Provider shall not be involved in or seek to involve itself in a direct relationship with the Access Seeker's End Users or Access Seeker Customers.

21 DISPUTE RESOLUTION

- 21.1 The Parties shall resolve any dispute, controversy or claim arising between them in respect of this Agreement ("**Dispute**") in accordance with the procedures below. Any Billing Dispute shall be dealt with in accordance with the provisions of Schedule 4 – (Billing). The process for reviewing, responding to, consulting on and implementing any New Service Order shall be dealt with in accordance with the provisions of Annex 1 to the Main Body.
- 21.2 The Parties shall continue to comply with their respective obligations during a Dispute.
- 21.3 Subject to Clause 19 (Confidentiality), a Party shall not use information obtained in the course of any Dispute Resolution Procedure for any purpose other than to resolve the relevant Dispute.

21.4 Either Party's compliance with the Dispute Resolution Procedures does not prejudice any right or remedy available to that Party in respect of any breach of this Agreement. Nothing in this Agreement prevents a Party from seeking urgent interlocutory, injunctive or other immediate relief, or exercise its right to refer to the Authority any dispute that arises between the Parties with respect to matters of access as provided for in the Telecommunications Law including any requirements stipulated therein.

Dispute Officer and CEO

21.5 If a Dispute arises between the Parties, then either Party may, by written notice to the other Party, refer the Dispute to the Dispute Officer of each Party, or a nominee of the Dispute Officer, to resolve the Dispute.

21.6 The Parties shall first refer any Dispute to the Dispute Officers before pursuing any other step in the applicable dispute resolution procedure.

21.7 The Dispute Officers shall confer and endeavor in good faith on a "without prejudice" basis to resolve the Dispute by negotiating a commercial settlement.

21.8 If the Dispute remains unresolved ten (10) Working Days after referral to the Dispute Officers under clause 21.6, then either Party may by written notice to the other Party, refer the dispute to the Chief Executive Officer of each Party, or a nominee of the Chief Executive Officer, who shall confer and endeavor in good faith and on a "without prejudice" basis to resolve the Dispute by negotiating a commercial settlement.

21.9 The Parties shall refer the Dispute to the Chief Executive Officers before pursuing any further dispute resolution described below.

Mediation or Determination by the Authority

21.10 If the Dispute remains unresolved ten (10) Working Days after referral to the Chief Executive Officers of the Parties under clause 21.9, then either Party may:

- (a) with the express consent of the other Party, refer the Dispute for mediation. The preferred option for mediation in respect of a Dispute shall be for the Parties to jointly appoint a mediator in accordance with the mediation procedures of the International Chamber of Commerce. If the Parties fail to agree on a mediator, the Parties shall request the Authority to appoint a mediator; or
- (b) refer the Dispute to the Authority for determination in accordance with the Law and any conditions stipulated therein.

21.11 The time periods set out in respect of (i) mediation or (ii) determination by the Authority, are intended to coincide with the period of negotiation under the Law, such that a Party makes use of sufficient escalation identified in this clause 21 before referring a Dispute to the Authority for determination.

Arbitration

21.12 If:

- (a) a Dispute remains unresolved sixty (60) Working Days after the appointment of a mediator under clause (a) and neither Party has referred the matter to the Authority for determination; or
- (b) in any case in which the Authority has chosen not to make a determination, then either Party may (except in any case covered by clause 21.10 (b), where the Authority's choice not to determine is expressly or by clear implication dispositive of a question in which specific terms or charges are sought by determination and declined), by written notice to the other Party, refer the dispute for final resolution by compulsory arbitration conducted by three arbitrators in accordance with the Bahrain Arbitration Law (No. 9/2015) provided that the Parties agree that in addition to any other provision or requirement the arbitration and all its proceedings (except the most minimal of formalities if required by law) will be conducted in English.

21.13 Subject to any provision stating otherwise in the Bahrain Arbitration Law (No. 9/2015), the decision of the arbitrators in any arbitration arising under clause 21.12 is final and binding.

Communications

21.14 All discussions and information relating to a Dispute must be communicated or exchanged through each party's Dispute Officer. A party is not entitled to rely on an invoice made, or information provided, in respect of a Dispute by a representative of the other party who is not that other party's Dispute Officer.

22 GENERAL

22.1 Variation

- (a) The Access Provider may only vary the price and non-price terms for the Services and/or the Service Descriptions in Schedule 6 of the Reference Offer with the prior written approval of the Authority.

22.2 Assignment

- (a) Subject to clause 22.2(b), a Party may only assign or transfer its rights, obligations or interests under this Agreement if it has first obtained the other Party's written consent, which shall not be unreasonably delayed or withheld. The Access Provider shall not assign, transfer, subcontract, sublet or otherwise dispose of its rights, duties, liabilities, obligations and privileges under the Agreement to any Affiliate, Person or Persons except with the prior written approval of the Authority. Any such approval shall be given subject to terms and conditions, which the Authority at its discretion may impose. The Authority may revoke its approval pursuant to this clause 22.2 at any time by providing reasonable advance notice to the Access Provider in writing.
- (b) The Access Seeker may only transfer its rights, obligations or interests under the Agreement if:
 - (i) the assignee or transferee is a Licensed Operator and provides the

Security required by the Access Provider; and

- (ii) the Access Seeker remains fully responsible for the performance of all obligations under the Agreement.

22.3 **Non-impairment**

Neither Party may engage in any conduct that impairs or might impair the other Party's ability to provide services.

22.4 **Non-exclusivity**

Nothing in this Agreement restricts the rights of either Party to enter into similar agreements with other parties.

22.5 **Entire agreement**

- (a) Except with respect to any prior agreement which the Parties agree in writing to remain in full force and effect after the Agreement Effective Date, this Agreement supersedes all previous understandings, commitments, representations and agreements between the Parties in respect of the Services covered by the Reference Offer, and contains the entire agreement of the Parties about their subject matter.
- (b) A Party may not rely on any representation or warranty about the subject matter of this Agreement except as expressly provided therein.

22.6 **Severance**

- (a) Subject to clause 22.6(b), if the whole or any part of any provision of this Agreement is unenforceable, partly unenforceable, void or illegal, then it is severed to the extent necessary to make this Agreement enforceable in the remaining part.
- (b) This clause 22.6 does not apply if the severance materially changes the intended effect of this Agreement, alters its basic nature, or is contrary to public policy.

22.7 **Language**

The Agreement or the Reference Offer may be translated into other languages, but the English version prevails.

22.8 **Waiver**

- (a) A right may only be waived in writing and signed by an authorized officer of the Party granting the waiver.
- (b) No conduct of a Party, including a failure to exercise, or any delay in exercising, a right, operates as a waiver of the right or otherwise prevents the exercise of that right.
- (c) A waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again.

22.9 **Exercise of rights**

A Party may exercise a right, power or remedy at its discretion, and separately or concurrently with

another right, power or remedy. A single or partial exercise of a right, power or remedy by a Party does not prevent a further exercise of that or of any other right, power or remedy.

22.10 Counterparts

This Agreement may be executed in any number of counterparts and all those counterparts together make one instrument.

22.11 Governing law and jurisdiction

- (a) This Agreement and the Reference Offer are governed by the laws of the Kingdom of Bahrain.
- (b) Unless provided otherwise in the Agreement, the Parties irrevocably submit to the exclusive jurisdiction of the courts of the Kingdom of Bahrain, and each Party waives any right that it has to object to an action being brought in the courts of the Kingdom of Bahrain, including any objection that the action has been brought in an inconvenient forum, or that the courts of the Kingdom of Bahrain do not have jurisdiction.

22.12 Notices

A notice or other communication given under this Agreement including, but not limited to, a request, demand, consent or approval, to or by a Party to this Agreement shall be:

- (a) in legible writing and in English;
- (b) addressed to the addressee at the physical address or an email set out below or to any other address or email a Party notifies to the others under this clause:

(i) **if to the Access Provider:**

Address: Building No. 1095
Road 1425
Block 1014
Al Hamalah
Kingdom of Bahrain

Attention: Chief Commercial Officer

Email: -----

CC: Director of Legal and Regulatory Affairs

Email: -----

(ii) **if to the Access Seeker:**

Address:

Attention: []

Facsimile: []

- (c) must be signed by an authorized officer of the sender; and
- (d) is deemed to be received by the addressee in accordance with clause 22.12(g).
- (e) Without limiting any other means by which a Party may be able to prove that a notice has been received, a notice is deemed to be received:
 - i. if sent by hand, when delivered to the addressee;
 - ii. if by post, three (3) Working Days after and including the date of postage; and
 - iii. if by email, on receipt by the sender of an acknowledgment or an automatically generated report from the email application confirming delivery to the addressee,
 - iv. but if the delivery or receipt is not on a Working Day or is after 2:45 pm (addressee's time), it is deemed to be received at 7.00 am on the following Working Day.
- (f) In this clause 22.12, a reference to an addressee includes a reference to an addressee's officers, agents or authorized representatives.
- (g) Without prejudice to the above and depending on the nature of the communication between them, the Parties may also rely on established channels of communication at the working level, in particular in relation to operational and technical matters related to ordering and provisioning, repair or maintenance or similar matters.
- (h) In addition, the Access Seeker may submit certain requests, orders, notification or similar forms of communication with the Access Provider in writing using the relevant Access Provider's service platforms, portals or systems consistent with any instruction or manual provided by the Access Provider to the Access Seeker in writing or using other means of communication established between the Parties under this Agreement.

22.13 Legal advice and allocation of risk

Each Party acknowledges that it has received legal advice or had the opportunity to receive legal advice about the Agreement.

22.14 Cumulative rights

The rights, powers and remedies of a Party under this Agreement are cumulative with and do not exclude or limit any other right, power or remedy provided by law or equity independently of the terms of the Agreement.

22.15 Non-merger

The conditions and provisions in the Agreement do not merge on execution.

22.16 Third party rights

Only the Parties have or are intended to have a right or remedy under this Agreement or obtain a benefit under it.

SIGNED on [insert date]

SIGNED BY [INSERT NAME OF SIGNATORY]

Signature of **[insert name of signatory]**

as authorised signatory for

Bahrain Network (BNET) B.S.C (closed) in the presence of:

Signature of witness

Name of witness (print)

SIGNED by **[INSERT NAME OF SIGNATORY]** as authorised signatory

For **[INSERT NAME OF COMPANY]**

Signature of **#insert name of signatory**

in the presence of:

Signature of witness

Name of witness (print)