

## datamena General Terms and Conditions

1. This Agreement is made between **Emirates Integrated Telecommunications Company, PJSC**, with a nominal share capital of 4,571,428,571 AED, the amount of which has been fully paid up, registered at the Dubai Department of Economic Development with commercial register number 77967, and with its main office at Dubai Media City, Al Salam Tower, PO Box 502666, Dubai, United Arab Emirates ("**Supplier**" or "**EITC**"), and the signatory to this Agreement ordering Services on an approved Service Order ("**Customer**").
2. **Scope of Agreement.** The Agreement consists of: (a) the terms and conditions set out in clauses 3 to 19 of this document (the "**Standard Terms**"), (b) the Service Schedule(s) applicable to Service(s) ordered, (c) the Service Level Agreement, and (d) the Service Order, (all of which are incorporated herein by reference and collectively, the "**Agreement**").
3. **Definitions.** In the Agreement the following capitalized words and phrases shall have the following meanings:

**Affiliate** means any entity or person Controlled by, Controlling, or under common Control with, a Party.

**Authorisations** means any and all permissions, rights, licences, licence conditions, consents, approvals, authorities, registrations, filings, agreements, notices of non-objection, notarisations, certificates, exemptions and any and all analogous authorisations which may be required from time to time by Law or by any regulator or other competent authority or government agency.

**Business Day** means every day excluding Fridays, Saturdays, and any national holidays in the United Arab Emirates.

**Cancellation Charge** means a Charge payable in relation to cancellation of a Service before the Service Commencement Date.

**Charges** means the Installation Charges, Monthly Charges, Termination Charges, or Cancellation Charges payable in respect of Service (as specified in a Service Order or invoice), and any other applicable charges payable by Customer to the Supplier under this Agreement.

**Confidential Information** means information (in whatever form) (i) designated as confidential; (ii) relating to the Agreement or to potential changes to the Agreement; (iii) relating to the Party's business affairs, networks, customers, products, developments, trade secrets, know-how or personnel (including in the case of Customer, Customer Data); or (iv) received or discovered during the term by a Party (including through an Affiliate or other agent) which should reasonably have been understood as confidential to the Party (or one of its Affiliates or subcontractors), either because of legends or other markings, the circumstances of disclosure or the nature of the information itself, but does not include information that: (a) is in the possession of the receiving Party free of any obligation of confidentiality at the time of its disclosure; (b) is or becomes publicly known other than by a breach of this provision; (c) is received without restriction from a third party free to disclose it; or (d) is developed

independently by the receiving Party without reference to the confidential information.

**Control**, "**Controlled**", or "**Controlling**", as the context requires, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any entity whether through the ownership of voting securities, by contract, or otherwise.

**Customer** means the Party identified as Customer on the Service Order.

**Customer Data** means data transmissions containing voice, video, electronic data, including, but not limited to, IP addresses, information about date, time and duration of data transmissions, and other data necessary for the establishment, billing or maintenance of the transmission, data containing personal and/or private information of Customer, its employees or authorised End Users of the Service, and other data provided to or obtained by Supplier, its Affiliates and their respective agents in connection with the Service(s).

**Customer Equipment** means equipment, systems, cabling and facilities provided by Customer and used in conjunction with the Customer Premise Equipment and the Service Equipment, as applicable, in order to obtain and, or, use the Service.

**Customer Premise Equipment** means equipment, whether owned or rented by Customer, which is located at the Customer Site for the purposes of receiving the Service.

**Customer Site** means the property or building specified in the Service Order to which the Service will be provided and may include, if the context requires, third party or Supplier premises at which Customer Premises Equipment or Customer Equipment is located.

**Emergency Works** means works undertaken by Supplier to repair a fault in its Network, equipment or facilities as a result of any unplanned outage, to prevent a potential Network or customer outage, or to repair a chronic customer impacting problem that would result in unavailability of the Service if the works are not undertaken or for any other reason beyond Supplier's reasonable control.

**End User** means a person who has a contractual relationship with the Customer for the Supply of a Service by the Customer (including any other third party or Customer Affiliate who uses that service).

**Force Majeure** means (each individually) an act of God, insurrection or civil disorder, war or military operations, national or local emergency, terrorist acts, industrial disputes or action including lock-out, partial or total strikes or other labour unrest (save where such industrial disputes or action solely affect the claiming party), epidemic, blockage of means of transport or supplies, earthquake, fire, storm, lightening, explosion, flood, water damage, land subsidence, weather of exceptional severity, unavailability or restricted supply of gas or electricity, acts or omissions of persons for whom neither Party is responsible including

any third party telecommunications operator, acts or omissions of, or, restrictions imposed by any regulator or government agency (except to the extent such government or regulatory actions, omissions or restrictions take place or are imposed because the claiming Party has breached an applicable law), and compliance with a statutory obligation, but does not include changes in economic, business or competitive conditions or fluctuations.

**Indemnitees**, means Supplier, its Affiliates and Provisioning Entities and their respective, employees, officers, agents and subcontractors.

**Initial Term** means the initial minimum period of 12 months, or such other period specified in a Service Order, starting from the Service Commencement Date, for which Customer agrees to acquire the Service(s) specified on a Service Order.

**Insolvency Event** means the occurrence of any one or more of the following events, in relation to a Party:

- (a) the Party makes or proposes a general arrangement, composition, moratorium, deed of company arrangement, or agreement involving one or more of its creditors, or applies to a court for general protection from its creditor;
- (b) an application is made to a court for an order, or an order is made, that the Party be wound up, declared bankrupt or that a liquidator, provisional liquidator, administrator, controller, or receiver be appointed to it or any of its assets;
- (c) a resolution is passed by the Party for its winding-up or dissolution, and administration order is made in relation to its assets, or a receiver is appointed over any of its assets;
- (d) the Party is insolvent as disclosed in its accounts, states that it is insolvent, is presumed to be insolvent under an applicable Law, or otherwise is or states that it is unable to pay all its debts as and when they become due and payable;
- (e) a writ of execution, a judgment of possession, or similar order of a court under the Laws of either Party's jurisdiction, is levied against the Party or a material part of its property;
- (f) the Party ceases to carry on business or threatens to do so, other than for the purposes of reorganization or restructuring while solvent; or
- (g) an analogous event, to those set out in the clauses above, occurs in relation to the Party under applicable foreign Laws.

**Installation Charge** means the one-off Charge payable by Customer to Supplier for installation, commissioning, and configuration of the Service as specified in a Service Order or invoice.

**Intellectual Property Rights** means any patent, copyright, trademark, trade name, service mark, moral right, design right, database right, know how, and any and all other intellectual property rights whether registered or not or capable of registration and whether subsisting in the United Arab Emirates or any other part of the world together with any and all goodwill relating to such rights.

**IP** means Internet Protocol.

**Law** means any and all:

- (a) legislation (including statute, statutory instrument, law (including common law), code, treaty, regulation, directive, by-law, decree or mandatory guideline) and any analogous law enacted by a legislative authority or body;
- (b) binding notices, rulings, directions, determinations, decisions/interim decisions or requests issued by a regulator; and
- (c) judgments, resolutions, decisions, orders, notices or demands of a competent court, tribunal, regulator, government agency or other analogous competent authority or body that has legal effect,

In any jurisdiction relevant to the Parties, the Services or to matters dependent on or affected by the Services.

**Local Access** means the connection between the Customer Premise Equipment and the Network and may be provided by Supplier or a Provisioning Entity.

**Loss or Losses** means in respect of any matter, event or circumstances, and subject to the terms of clause 13, all damages, payments, losses, costs, expenses or other liabilities including legal costs;

**Monthly Charge** means the monthly recurring charges payable by the Customer to Supplier for providing the Service, as specified on a Service Order.

**Network** means any network, system, cable, or transmission facility owned, leased, operated or managed by, or on behalf of, Supplier.

**Normal Business Hours** means the hours of 9 am to 5 pm, United Arab Emirates Standard Time, on a Business Day.

**On-shore** means locations in the United Arab Emirates served by a UAE-licensed carrier and include data centre space other than a Transit Zone data centre space.

**Party** means Supplier or Customer, as the context requires, and collectively referred to as the **Parties**.

**Personnel** means each of a Party's directors, officers, employees, agents, contractors, advisers and representatives but does not include that Party's End Users or the other Party;

**Planned Outage** means any routine maintenance or upgrade work to be performed by Supplier which may

affect the availability of a Service, notified by Supplier to the Customer with at least 5 days prior written notice.

**Provisioning Entity** means the entity providing or assisting in providing the Service to Customer and may include any Supplier Affiliate or sub-contractor, including licensed carriers or other third party service providers.

**Security** means a cash deposit, director's guarantee, parent company guarantee, credit card payment, direct debit guarantee or bank guarantee or any combination of these as determined by Supplier.

**Standard Terms** means the terms and conditions set out in clauses 4 to 19 of this Agreement.

**Service** means telecommunication services, including, but not limited to, broadcast, collocation, network connectivity, uplink services and any related support, consulting or other ancillary services associated with such service, to be provided by the Supplier to the Customer as specified in a Service order, and as further described in the relevant Service Schedule.

**Service Commencement Date** has the meaning given in clause 5.2.

**Service Equipment** means the equipment, systems, cabling and facilities provided by, or on behalf of, Supplier, at Customer Site in order to make the Service available to Customer and, for the avoidance of doubt, excludes the Network. Ownership of the Service Equipment does not pass to Customer from Supplier.

**Service Level Agreement** or "SLA" means a set of key performance indicators for any particular Service, as more particularly specified in the Service Level Agreement document.

**Service Order** means an order for specific Services by the Customer, using a Supplier approved order form, which has been accepted by the Supplier in accordance with clause 5.2.

**Service Schedule** means each schedule relating to the Services being provided by Supplier to Customer under a Service order.

**Supplier** means the Party providing Services under a Service Order;

**Tax** means any tax, duty or other charges of whatever nature (but excluding any tax, duty or other charge levied on income accruing to Supplier hereunder) imposed by any taxing or government authority including, but not limited to, a value added, goods and services or withholding taxes.

**Term** means the period from the applicable Service Commencement Date until the Service is terminated in accordance with this Agreement and includes the Initial Term together with any agreed (whether express or implied) upon extension period.

"**Termination Charge**" has the meaning given in clause 6.4 and, to avoid any doubt, refers to a Charge payable in

relation to cancellation of a Service after the Service Commencement Date, but before expiry of the Initial Term.

**Transit Zone** means Supplier's, or Provisioning Entity's, data centre space that is physically or logically separated by Supplier for the purpose of allowing parties in the physically or logically separated zone to exchange data with each other prior to (i) delivery via a UAE-licensed service provider to On-shore locations or (ii) transit out of the UAE for international destinations.

"**UAE**" means United Arab Emirates.

4. **Precedence.** If there is a conflict between the documents forming this Agreement, then the documents will be given the following order of priority (with clause 4.1 being first in the order of priority) such that the conflicting provision in the document lower in the order of priority will be read down or, if necessary, severed to the extent required to resolve the conflict:

- 4.1. the Standard Terms;
- 4.2. each relevant Service Schedule applicable to the Service ordered;
- 4.3. the Service Level Agreement; and
- 4.4. each Service Order executed by the Parties and accepted by the Supplier in accordance with clause 5.2.

5. **Service Orders and Delivery of Service.**

5.1. **Ordering Services.** To order the Service, Customer will complete a Service Order and submit it to Supplier. Customer warrants the accuracy of the Customer provided details contained in the Service Order.

5.2. **Acceptance of Service Orders.** Supplier will accept service order by establishing a start date for the Service ("**Service Commencement Date**"), upon the earlier of (i) the date that Supplier or its Provisioning Entity dispatches notice to Customer (or Customer's representative as stated in the Service Order) that the Service is ready for use unless Customer informs Supplier within 3 Business Days from the receipt of Supplier notice that the Service does not comply with the Agreement and is not ready for use; or (ii) the date Customer begins actual use of the Service. Supplier reserves the right to reject any submitted Service Order for any reason, whether previously accepted by Supplier or not, including but not limited to (a) inability or impracticality of providing the Service; or (b) the Service no longer being commercially offered by Supplier.

5.3. **Concurrent Service Orders.** Each accepted Service Order constitutes an independent contract for the provision of Services, in accordance with, and subject to, the terms and conditions of the Agreement. The Term of multiple Services may run concurrently, but shall not be co-terminus absent express provisions in a written amendment to this Agreement.

5.4. **Acceptance of Service by Customer.** Except as otherwise expressly stated in the Service Order, Customer is deemed to have accepted a Service upon the Service Commencement Date.

- 5.5. **Use of Provisioning Entities.** Without releasing it from any of its obligations, Supplier may at any time, and without notice, utilise the services of one or more Provisioning Entities in connection with the performance of its obligations under the Agreement.
- 5.6. **Modification of Service.** Supplier reserves the right to modify the Service including by substituting the Service Equipment used to furnish the Services or changing the configuration or routing of its Service Equipment and Network subject to providing the Customer with 10 days prior written notice. If a change to the Service has a material adverse effect on its functionality, Customer may notify Supplier in writing of the existence and nature of the material adverse effect within 30 days from the time the Service was modified. If Supplier fails to correct the material adverse effect within 30 days of receiving Customer's notice, Customer may, within 10 Business Days thereafter, terminate the Service without any termination liability (except for payment of all Charges up to the effective date of such Service discontinuance) upon 30 days' notice to EITC.
- 5.7. **Supplier Performance.** In performing its obligations under the Agreement Supplier will ensure that the Services are provided to the Customer with due care and skill.
- 5.8. **Service Level Agreement.** Supplier reserves the right to amend applicable SLAs from time to time effective upon posting of the revised SLA to Supplier's website, or otherwise providing the revised SLA to Customer in writing, provided that in the event of any amendment resulting in a material reduction of the SLA's service levels or credits, Customer may terminate the Service without early termination liability (except for payment of all Charges up to the effective date of such Service discontinuance) by providing Supplier at least 30 days' notice of termination during the 10 Business Days following notice of such amendment. The SLA sets forth Customer's sole remedies for any claim relating to the Service or the Network, including any failure to meet any guarantee set forth in the SLA. Supplier's records and data shall be the basis for all SLA calculations and determinations. Notwithstanding anything to the contrary, the maximum amount of credit in any calendar month under the SLA shall not exceed the Monthly Charge and/or Installation Charge which, absent the credit, would have been charged for the Service that month.
- 5.9. **Traffic Termination to the UAE.** The Customer agrees that it will only obtain access, and terminate traffic, to locations in the UAE via circuits provided by an operator licensed to provide Telecommunications Services in the UAE at prices approved by the Telecommunications Regulatory Authority of the UAE for international leased circuits.
- 5.10. **Delivery of Service.** Supplier will determine the most appropriate means of providing the Service including using a Provisioning Entity to deliver all or part of the Service and the method, technology and route of delivery of the Service to Customer. Prior to the provision of the Service Supplier may conduct such tests as it considers to be appropriate to determine that all necessary work has been done to provide the Service to Customer.
- 5.11. **Monitoring.** Customer acknowledges that Supplier (a) may monitor Customer's use of the Service to the extent required by law or for the maintenance of the Network or Customer's Service; and (b) will intercept any Service or data being transmitted over the Service as required by law. Nothing in this clause shall be construed as obliging Supplier to monitor Customer's use of the Service.
6. **Termination.**
- 6.1. **Termination of Service, Generally.** Either Party may terminate the Service on the occurrence of any of the following events: (a) on 30 days' notice to take effect on or at any time after the expiry of the Initial Term; (b) forthwith by notice for breach, of the terms of this Agreement, which a Party fails to remedy within 10 Business Days of having been notified in writing of the breach; or (c) immediately by notice on the occurrence of an Insolvency Event.
- 6.2. **Early Termination of Service by Supplier.** Notwithstanding any other provision of the Agreement, Supplier may terminate the Service immediately on notice to Customer if: (a) a suspension made pursuant to sub clauses 12.1.4, 12.1.5, 12.1.6, or 12.1.7 continues for a period of more than 10 Business Days; (b) Customer is past due on any invoice for the Service for more than 20 Business Days (excluding Disputed amounts); or (c) Customer fails to provide or increase the Security as requested by Supplier. Before the termination, Supplier should notify its intention to terminate the Service to Customer in writing and give Customer additional 10 days to rectify the breach of the Agreement.
- 6.3. **Early Termination of Service by Customer.** Subject to sub-clause 6.4, Customer may, by written notice to Supplier, terminate a Service.
- 6.4. **Early Termination Charges.** If the Customer terminates a Service prior completion of the Initial Term for any reason, Customer must pay Supplier:
- 6.4.1. if terminated during the first 12 months of the Initial Term, 100% of the Monthly Charges for each cancelled Service for each month remaining in the first 12 months of the Initial Term, including a pro rata amount for each part month commencing from the effective date of termination; and
- 6.4.2. if terminated after the first 12 months of the Initial Term (where applicable), the Customer must pay Supplier 50% of the Monthly Charges for each cancelled Service for each month remaining in the Initial Term, and on a pro rata basis for each part month commencing from the effective date of termination,
- 6.5. **Service Cessation.** Supplier may terminate the Service on 90 days' notice to Customer if it ceases to provide the Service on a commercial basis at the location where Customer is being provided the Service.
7. **Customer Obligations.**
- 7.1. **Access.** Where Supplier requires access to a Customer Site in order to provide a Service, Customer shall grant or shall procure the grant to Supplier, at no cost to Supplier, rights of



access to each Customer Site, including any necessary licenses, waivers or consents. Customer shall advise Supplier in writing of all health and safety rules and regulations and any other reasonable security requirements applicable at a Customer Site, and Supplier shall use all commercially reasonable efforts to observe and ensure that its employees and authorised representatives observe such regulations and requirements as advised whilst at a Customer Site.

7.2. **Assistance.** Customer shall provide Supplier with such facilities and information, as Supplier may reasonably require, for the performance of its obligations or exercise of its rights under the Agreement.

7.3. **Forecasting.** For certain services, Supplier may require that the Customer provide forecasts of its requirements for Services to assist Supplier in its planning and provisioning of services. In such event, Customer must provide such forecasts promptly, in good faith, in the form and at the frequency required by Supplier, and must use reasonable efforts to ensure that the forecasts are accurate.

7.4. **Service Equipment.**

7.4.1. Where Supplier provides Service Equipment in order to make the Service available, Customer warrants and undertakes that it shall:

- 7.4.1.1. use the Service Equipment only for the purpose of receiving the Service and in accordance with reasonable instructions of Supplier from time to time and/or any software license that may be provided with the Service Equipment;
- 7.4.1.2. not move, modify, relocate, or in any way interfere with the Service Equipment (or any words or labels on the Service Equipment) or the Network;
- 7.4.1.3. insure and keep insured all Service Equipment installed at each Customer Site against theft and damage;
- 7.4.1.4. not create or allow any charges, liens, pledges or other encumbrances to be created over the Service Equipment and agrees that title to the Service Equipment shall at all times belong and remain with Supplier, a Supplier Affiliate or their subcontractor;
- 7.4.1.5. permit Supplier to inspect, test, maintain and replace the Service Equipment at all reasonable times;
- 7.4.1.6. comply with the reasonable instructions of Supplier in relation to the modification of Customer Equipment to enable Customer to receive the Service, at its own expense; and
- 7.4.1.7. on termination of the Service, allow Supplier access to each Customer Site to remove the Service Equipment.

7.4.2. Should any construction or alteration to a Customer Site have occurred to facilitate the Service, Supplier is

not obliged to restore that Customer Site to the same physical state as prior to the Service being delivered.

7.4.3. Furthermore, Customer shall be liable for any and all damage to Service Equipment or the Network which is caused by:

- 7.4.3.1. the act or omission of Customer or Customer's breach of the terms of the Agreement; or
- 7.4.3.2. malfunction or failure of any equipment or facility provided by Customer or its agents, employees, or suppliers, including but not limited to Customer Equipment. Supplier is not liable for any costs incurred by Customer arising out of any malfunction or failure of any such equipment or facility, including Customer Equipment.

7.5. **Local Access.** When Local Access is to be provided, and Supplier is not the Provisioning Entity, Supplier will order the Local Access and Customer agrees to pay to Supplier all Charges, provided that such Charges were notified to Customer in a timely way prior to signature by Customer of the relevant Service Order associated with the Local Access (including any Supplier charges for administration). Where this has not occurred and the third party terms are not agreed by Customer, Customer shall be entitled to terminate the relevant Service Order without liability at any time within 10 days of receiving actual notification of the relevant third party terms. Local Access is provided to Customer subject to the applicable terms and conditions of use (including any applicable service term and cancellation fees) of the third party provider of the Local Access. Installation may be scheduled during the period notified by Supplier and if Customer requires installation outside of this period Supplier may charge additional fees. Any facilities and extra cabling necessary within Customer's building, in particular the connection between the Local Access entrance point and Customer's connection point, are not included and are Customer's responsibility and must be completed prior to the date that the Service is ready for use. Unless otherwise indicated on the Service Order, Supplier does not proactively monitor or manage Local Access.

7.6. **Compliance with Law and Regulation.** The Service is provided subject to all applicable Laws. Customer will comply, and ensure that End Users of the Service comply, with all applicable Laws without limitation. Supplier makes no representation as to whether any regulatory approvals, if any, required by Customer to use the Service will be granted. Supplier reserves the right to disconnect any Customer Equipment where Customer has failed to comply with the provisions of this sub-clause 7.6 and Supplier shall in no event be liable in respect of Customer's failure to comply with this sub-clause 7.6.

7.7. **Customer obligations in relation to End Users.**

7.7.1. Customer is solely responsible for:

- 7.7.1.1. selecting, supplying and maintaining (at its expense) its equipment, facilities and networks, and (as between Supplier and

- the Customer) the equipment, facilities and networks of its End Users;
- 7.7.1.2. the results and consequences of its use of the Services and of the use by each End User of the Services; and
- 7.7.1.3. the content of any data or information which the Customer or any End User sends or receives using the Service;
- 7.7.1.4. its relationships with its End Users;
- 7.7.1.5. serving as sole point of contact for its End Users;
- 7.7.1.6. ensuring that any arrangements it makes with its End Users (including the provisions in agreements with End Users) comply with applicable Laws and reflect the Customer's responsibilities under this Agreement;
- 7.7.1.7. ensuring that Customer and its End Users do not, use Services for any purpose that may result in a virus, worm, "Trojan" or similar harmful or destructive code being sent via a Service;
- 7.7.1.8. ensuring that its End Users comply, with Supplier's instructions or requests in connection with the Services; and
- 7.7.1.9. ensuring that its use, and its End User's use, of the Services conforms with any acceptable use policy published by Supplier from time to time.

7.8. **Indemnification by Customer.** The Customer shall pay all expenses and costs, including fines, costs of investigation, court costs, and reasonable attorneys' fees and expenses (including allocable costs of in-house counsel) incurred by Indemnitees on demand, and releases Supplier from all claims, arising out of or in connection with:

- 7.8.1. any proceedings instituted, demands, fines or claims made, or action taken by any third party (including an End User), regulator or government agency, relating to any re-supply or use of the Services by the Customer or End Users;
- 7.8.2. the reproduction, broadcast, use, transmission, communication or making available of any material (including data and information of any kind) to or by the Customer or to or by the Customer's End Users;
- 7.8.3. any breach of a person's rights or defamation by a person (or allegation of such a breach or defamation) involving the use of a Service or a re-sold service;
- 7.8.4. Customer's connection of the Service to any third-party service or network;
- 7.8.5. violation, misuse or misappropriation by Customer, or End Users, of the trademarks, copyrights, trade secrets, or other proprietary rights or Intellectual

Property rights of Supplier, Supplier Affiliate or of a third party (other than a third-party claim that Supplier does not own Supplier's service marks or trademarks);

- 7.8.6. the unauthorized use of or access to the Service or the Network by any person using Customer's systems or network; and
- 7.8.7. any breach of sub-clause 7.6.

This clause 7.8 will survive termination of this Agreement, or any part of it.

## 8. Charges and Payment.

8.1. **Accrual of Charges.** The Charges for a Service will be specified in the relevant signed Service Order, and shall be valid for the Initial Term of the applicable Service. Where an element of the Service is rendered directly from a third party carrier to Customer, and where that third party carrier does not have a "one stop" billing arrangement with Supplier that allows Supplier to invoice Customer on behalf of the third party, Customer shall pay for the element directly to the third party carrier.

8.2. **Variation of Charges.** Supplier may vary its Charges at any time upon the expiration of the Initial Term upon 30 days prior written notice to Customer.

8.3. **Currency Conversion.** If a conversion of currency is necessary the conversion rate shall be as notified by Supplier to Customer.

8.4. **Invoices.** All invoices will be in English and all Charges will be denominated in the same currency as appears in the Service Order.

8.4.1. The Charges will be invoiced monthly in advance (except for usage-based Charges which will be invoiced in arrears) via email (in PDF format).

8.4.2. Installation charges will be invoiced by the Supplier on a cost incurred basis. The Installation Charge will be invoiced on or after the Service Commencement Date via email (in PDF format), as soon as practicable in each month and before the start of the following month), for the next month during which the Services are to be provided.

8.4.3. Cancellation Charges will be invoiced by the Supplier on a cost incurred basis or as otherwise calculated in accordance with clause 8.4.4 .

8.4.4. If a Service Order permits early termination of a Service for the Customer's convenience, and the Customer cancels the Service after submitting a Service Order but prior to the Service Commencement Date, the Supplier may invoice and the Customer shall pay Cancellation Charges as follows:

Number of Days Before Service Commencement Date	Cancellation Charge as % of Installation Charge
0 to 5 days	100%
6 to 10 days	50%
11 to 20 days	25%
more than 20 days	0%

8.4.5. If Service details are significantly modified at the request of Customer, including without limitation a change in endpoints or the design of the Service, prior to the Service Commencement Date, Supplier reserves the right to charge the Customer additional Installation Charges as a result of such modification (the "Service Modification Charge"). The applicable charges shall be in accordance with the table below:

Number of Days before the Service Commencement Date	Service Modification Charge (% of Installation Charge)
More than 20 days	0%
11 – 20 days	25%
6 - 10 days	50%
Less than 5 days	100%

8.4.6. If any action, inaction, work, operation or use by the Customer in relation to the Service causes the Supplier to incur additional, direct, reasonable costs beyond the normal provisioning of the Service, the Supplier reserves the right to charge Customer for such additional work.

8.4.7. Notwithstanding the above, the Service Schedule may set forth accelerated payment terms, and in such event Supplier may invoice and Customer shall pay according to said accelerated payment terms.

8.5. **Upgraded Service.** Where Customer is current on its payment of Charges, Customer may upgrade a current Service to a new Service, with a higher or equivalent Monthly Charge, without incurring any Termination or Cancellation charges for the upgraded Service, in those instances where Supplier, in its own reasonable discretion, has deemed it commercially and economically expedient to permit Customer to upgrade the current Service to the new Service. Such upgraded Service, if any, shall be deemed to have a new Initial Term, commencing on the date that Supplier advises Customer of the successful upgrade of the Service, and to avoid any doubt, Customer agrees that Supplier shall be entitled to charge Customer for any provisioning costs associated with such upgrade.

8.6. **Delayed Invoicing.** Supplier may invoice Customer up to 6 months after the date a Charge accrues and for Charges invoiced after that, Customer may request a credit (except that in cases involving fraud or third party charges, Charges may be invoiced without the time limitation stated above applying provided that they are invoiced within a reasonable period after Supplier becomes aware of such Charges).

8.7. **Payment of Invoices.** Except in the case of a Disputed invoice (in which case clause 9 will apply) Customer will pay all invoices within 30 days of the invoice date as stated on the invoice, to the bank account of Supplier. The Customer must pay all undisputed amounts invoiced without set-off, counterclaim or deductions, free and clear of any withholding or deduction, by direct deposit/wire transfer as cleared available funds.

8.8. **Payment by Customer's Affiliate.** At Customer's request, invoices may, at the discretion of Supplier, be sent to and Charges may be collected from Customer Affiliates, but Customer shall remain fully responsible for payment of any such Charges whether in receipt of the invoice or not.

#### 9. Disputed Amounts.

9.1. Subject to clause 9.2, if the Customer disputes any amount on an invoice on a bona fide basis it must notify Supplier of the disputed amount no later than 10 Business Days prior to the due date for payment. If the Customer does not notify Supplier of any objection within this period, an invoice from Supplier will be deemed to be accepted by the Customer. Any billing dispute notification must clearly identify the disputed invoice, the disputed amount, the objection and include supporting data. The Parties will promptly investigate such disputes and use reasonable efforts to resolve any disputes.

9.2. The undisputed amount of an invoice is due and payable on the invoice due date in accordance with clause 8.7 of this Agreement. A disputed amount may be withheld, but will be settled as soon as the disputed facts have been determined and mutually agreed by the Parties.

9.3. For the purpose of resolving an invoice dispute, if either Party requests in writing, the other Party is obliged to provide any relevant records within 15 Business Days after the date of such request.

9.4. In the event the dispute is not deemed valid by Supplier (in its reasonable opinion) all withheld Charges will become due and payable on the later of: (a) the current due date under the relevant invoice; or (b) within 5 Business Days of notification by Supplier to Customer of that determination.

#### 10. Taxes and Interest.

10.1. All Charges are exclusive of all Taxes, unless otherwise specified in a Service Order.

10.2. Interest at a rate of 1.0% per month (or the highest rate permitted by applicable Law, whichever is lower) will be calculated daily on all overdue amounts which are not the subject of a bona fide invoice dispute raised by a Party in accordance with clause 9, starting the day after payment is due until payment is received by Supplier in full.

- 10.3. All payment charges imposed in the Customer's country (for example, Taxes, clearing charges, commissions) must be borne by the Customer.
- 10.4. If any withholding is required by relevant government authorities, the Customer shall gross up the amount remitted such that Supplier will receive full payment as stated on Supplier's invoice.
- 11. Security.**
- 11.1. In the event that Customer is late in paying three monthly payments, whether sequentially or non-sequentially, during the Term, Supplier may request Customer to provide Security or increase existing Security. For the avoidance of doubt, such Security will not exceed 2 Monthly Charges under the Agreement.
- 11.2. In the event that Security is required in accordance with clause 11.1 Customer agrees that Supplier is not required to supply any Services under this agreement until Customer has provided the required Security.
- 11.3. Failure to provide Security within 30 days after receipt of a request from Supplier will be considered a material breach of this Agreement. If the Customer fails to comply with any terms related to the Security, Supplier may suspend the Service or terminate this Agreement with immediate effect upon written notice to the Customer.
- 11.4. Supplier may offset against the Security any amounts due under this Agreement that are not paid by the Customer when due. If Supplier applies any or all of the Security against any invoice, the Customer must reinstate the Security to the full secured amount within 5 Business Days. Supplier is may suspend the Service or terminate this Agreement with immediate effect upon written notice to the Customer if the Customer fails to reinstate the Security as set out in this sub-clause 11.4.
- 11.5. If for any reason the Agreement or a Service Order is terminated, Supplier has the right to offset against the Security any amounts owed to Supplier by the Customer at the effective date of termination. The remaining Security amount (if such Security is held as a deposit) will be refunded, without interest.
- 11.6. Customer further agrees that, if, at any time during the Term, Supplier deems it necessary to verify the credit worthiness of Customer, Supplier may carry out a credit check against Customer. Customer will co-operate in providing Supplier with any financial information that may be reasonably required to assist Supplier with such credit check.
- 12. Service Suspension.**
- 12.1. **Grounds for Suspension.** Supplier may, without terminating this Agreement and without incurring any liability, immediately suspend all or part of the Services it provides under this Agreement, upon written notice to customer, if:
- 12.1.1. Supplier is obliged to do so to comply with a ruling, direction, directive, determination, decision/interim decision, order, instruction or request of a regulator, government agency, emergency services organisation or other competent authority;
- 12.1.2. There is a Planned Outage, for the duration of the Planned Outage ;
- 12.1.3. Supplier needs to carry out Emergency Works, for the duration of the Emergency Works, and Customer acknowledges and agrees that Supplier may not be able to give any prior notice of its need to suspend Services for this reason;
- 12.1.4. Supplier is entitled to terminate this Agreement for breach;
- 12.1.5. The Customer fails to make any payment due under this Agreement by the due date;
- 12.1.6. Suspension of the Service is necessary to prevent or protect against fraud, or otherwise protect persons or property, Supplier personnel, agents, facilities, or services;
- 12.1.7. Supplier has reasonable grounds to consider that use of the Service violates applicable Law; or
- 12.1.8. Supplier has reasonable grounds to believe that Customer is unable or otherwise will not make any payment which is, or is to fall, due to Supplier.
- 12.2. **Non-exclusive remedy.** Suspension of a Service under this clause does not exclude Supplier's right to terminate this Agreement in respect of any event resulting in the suspension of the Services or any other event.
- 12.3. **Resumption of Service.** If Supplier exercises its right to suspend the Service, pursuant to clause 12.1, Supplier will use reasonable efforts to resume the Service as soon as practicable after the reason for suspension no longer exists, subject to the exercise of any termination right on the part of Supplier.
- 12.4. **Reasonable Expenses.** If the Service (or part thereof) is suspended as a consequence of the breach, fault, act or omission of Customer or any Customer Affiliate, Customer will pay to Supplier reasonable costs and expenses incurred by the implementation of such suspension and/or reconnection of the provision of the Service.
- 13. Limitations of Liability.**
- 13.1. Subject to sub-clauses 7.8, 13.4, 13.5 and 13.8, each Party's liability in aggregate in any 12 month period during the term of this Agreement for all Loss arising out of or in relation to this Agreement, including all Service Orders, whether for breach of contract, in tort (including negligence), for breach of statutory duty or otherwise, will be limited the lesser of
- 13.1.1. direct damages proven by the moving Party; or
- 13.1.2. In respect of liability arising::
- 13.1.2.1. within the first 12 months of the term of this Agreement, the monthly average of Charges then paid to date (including any Charges due, but not yet paid) under this Agreement multiplied by 12; and
- 13.1.2.2. in each 12 month period occurring after the expiry of the first 12 months of the term of this



Agreement, 100% of the Charges paid under this Agreement.

13.2. Supplier will not be liable to the Customer or End User for:

13.2.1. any proceedings instituted, demands, fines or claims made, or action taken by any third party (including an End User), regulator or government agency, relating to any re-supply or use of the Services by the Customer or End Users; or

13.2.2. any amendment of the relevant laws of the UAE or change in the application of the existing laws of the UAE by the respective regulatory bodies that adversely affects the business of the Customer or its End Users.

13.3. The Customer shall ensure that any contracts it enters into with End Users contain an exclusion of liability to the same effect as clause 13.2.

13.4. Subject to clause 13.9, neither Party will be liable, in contract, tort (including negligence), for breach of statutory duty or in any other way for any:

13.4.1. economic loss, including any loss of goodwill, reputation, revenues, profits, contracts, business, or anticipated savings; or

13.4.2. special, punitive, exemplary, indirect, consequential or incidental losses,

regardless of whether such losses were within the contemplation of the Parties at the date of this Agreement, suffered or incurred by a Party arising out of or in connection with this Agreement, including the provision of the Services or any Contract entered into in accordance with this Agreement.

13.5. Neither Party excludes liability for death, personal injury or fraud.

13.6. Subject to clause 13.7, each Party (the "Indemnifying Party") indemnifies the other Party (the "Innocent Party") against:

13.6.1. a claim against the Innocent Party arising out of a death of or personal injury to the Innocent Party's People or fraud, to the extent that such Loss is caused by a negligent or intentional act or omission of the Indemnifying Party or any of its People; and

13.6.2. all Loss directly and reasonably incurred in relation to making good any damage to or loss of the network, facilities, equipment or other tangible property of the Innocent Party, to the extent that such damage is caused by an act or omission of the Indemnifying Party or any of its People.

13.7. An Indemnifying Party is not liable to the Innocent Party:

13.7.1. for or in respect of a claim brought against the Innocent Party by a third Party (including an end user of the third party) with whom the Innocent Party has a contractual relationship to the extent that such Loss could reasonably have been excluded or reduced by the Innocent Party in its contract with the third party; nor

13.7.2. under this clause 13 to the extent that the liability the subject of the indemnity claim is the direct result of a breach of this Agreement by the Innocent Party, or a negligent or intentional act or omission of the Innocent Party.

13.8. The limitations of liability set out in this clause 13 do not apply to a Customer's obligation to pay Charges or Supplier's obligation to pay any Service Credits, or Customer's indemnification obligations in sub-clauses 7.8 or 13.6.

13.9. The invalidity or unenforceability of any particular provision of this clause 13 will not affect or impair the remaining provisions of clause 13, and this Agreement will be construed in all respects as if such invalid or unenforceable provisions were omitted.

13.10. No cause of action, under any theory which accrued more than 1 year prior to the institution of a legal proceeding alleging such cause of action may be asserted by either Party against the other, to the extent permitted by Law.

13.11. The liability of Supplier with respect to the Service may also be limited pursuant to other terms and conditions of the Agreement. Customer acknowledges and accepts the reasonableness of the disclaimers, exclusions, and limitations of liability set forth in this clause 13 and the Agreement.

13.12. The provisions of this clause 13 will continue to apply notwithstanding the expiration or termination of this Agreement, regardless of the reasons for termination.

#### 14. Representations and Warranties.

14.1. Each Party represents, warrants and undertakes to the other that:

14.1.1. it is a corporation properly incorporated or registered under the Laws of its jurisdiction of incorporation or registration;

14.1.2. it has taken all necessary action to authorise the signing, delivery and performance of this Agreement in accordance with its terms;

14.1.3. it has power to enter into and perform its obligations under this Agreement and can do so without the consent of any other person;

14.1.4. the signing and delivery of this Agreement, and the performance by the Party of its obligations and exercise of its rights under it, complies with:

14.1.4.1. applicable law, regulation, and any Authorisations;

14.1.4.2. the Party's constitution, memorandum and articles of association or other document governing the Party; and

14.1.4.3. all security interests or documents binding on the Party;

14.1.5. there are no actions, suits or proceedings pending or, to such Party's knowledge, threatened, against such Party before any regulator or government agency that question or challenge such Party's right

to enter into or perform this Agreement, or which question or challenge the validity of this Agreement;

14.1.6. no event has occurred and remains current in respect of the Party that has resulted or would result in the Party being insolvent or unable to pay its debts as they fall due, and there are no circumstances which could give rise to such an event; and

14.1.7. it has all Authorisations required by Law in order to perform its obligations or exercise its rights under this Agreement, including any Authorisations required by the Customer to enable its proposed use and any re-supply of the Services.

14.2. Except as expressly set forth in the Agreement all warranties, representations or agreements whether oral or in writing and whether express or implied, either by operation of Law, statutory or otherwise, are hereby expressly excluded to the maximum extent permitted by Law.

## 15. Confidentiality, Customer Data & Privacy.

15.1. **Confidentiality.** Each Party agrees that during the Term and for 3 years after, it will use the other Party's Confidential Information only for purposes of the Agreement, not disclose it to third parties except as provided below, and protect it from disclosure using the same degree of care it uses for its own Confidential Information (but no less than a reasonable degree of care). A Party may disclose the other Party's Confidential Information only (a) to its employees, agents and subcontractors (including professional advisors and auditors), and to those of its Affiliates, who have a need to know for purposes of the Agreement and who are bound to protect it from unauthorized use and disclosure under the terms of a written agreement, or (b) pursuant to Law, regulation or court order. In any case, a Party is responsible for the treatment of Confidential Information by any third party to whom it discloses it under part (a) of the preceding sentence. Before disclosing the other Party's Confidential Information pursuant to Law, regulation or court order, a Party must notify the other Party as far in advance as commercially practicable (if not prohibited by Law) to enable the other Party to seek a protective order, and must make reasonable efforts to assure the disclosed information is treated confidentially. Confidential Information remains the property of the disclosing Party and, upon request of the disclosing Party, must be returned or destroyed when the Agreement ends. If there is a breach or threatened breach of this confidentiality provision, the disclosing Party will be entitled to specific performance and injunctive or other equitable relief as a non-exclusive remedy. In the event the Parties have signed a separate confidentiality agreement which applies to the Service the terms of this clause will take precedence over that agreement to the extent of any inconsistency.

### 15.2. Customer Data and Privacy.

15.2.1. Customer acknowledges that Supplier, its Affiliates and their respective agents will, by virtue of the provision of the Service, come into possession of Customer Data. Customer acknowledges and

agrees that Supplier, its Affiliates and their respective agents may use, process and/or transfer Customer Data (including intra-group transfers and transfers to entities in countries that do not provide statutory protections for personal information): (i) in connection with the provision of the Service; (ii) to incorporate Customer Data into databases controlled by Supplier and its Affiliates for the purpose of administration, provisioning, billing and reconciliation, verification of Customer identity and solvency, maintenance, support and product development, fraud detection and prevention, sales, revenue and customer analysis and reporting, market and customer use analysis; and (iii) to communicate to Customer regarding products and services of Supplier and its Affiliates by voice, letter, fax or email.

15.2.2. Customer may withdraw consent for such use, transfer or processing of Customer Data as set out above, unless it is required to (a) provision, manage, account and bill for the Service; (b) carry out fraud detection; or (c) comply with any statutory obligation, regulatory requirement or court or other public authority order, by sending notice to Supplier in the prescribed form, available from Supplier on request.

15.2.3. Customer warrants that it has obtained and will obtain all legally required consents and permissions from relevant parties (including data subjects) for the use, processing and transfer of Customer Data as described in this clause 15.2.

## 16. Miscellaneous.

16.1. **Records.** Each Party must maintain all records reasonably necessary to substantiate all financial, operational and billing data for a period of at least 2 years, unless otherwise agreed by the Parties in writing. Such records and data are Confidential Information under clause 15.

16.2. **Assignments.** Neither Party may assign the Agreement without the written consent of the other Party (which consent will not be unreasonably withheld or unduly delayed), except that (a) Supplier may assign any and all of its rights and obligations hereunder (i) to any Affiliate or Provisioning Entity, (ii) pursuant to any sale or transfer of substantially all the assets or business of Supplier, or (iii) pursuant to any financing, merger, or reorganisation of Supplier, and (b) subject to applicable Law and regulation, Customer may assign any and all of its rights and obligations hereunder to any Affiliate that satisfies the standard credit requirements of Supplier.

16.3. **Amendments.** This Agreement may only be varied by written amendment signed by duly authorised representatives of the Parties.

16.4. **Waiver.** No waiver by either Party of any provision in this Agreement will be binding unless expressly confirmed by an amendment in accordance with clause 16.3. Further, any such waiver will relate only to such particular matter, non-compliance or breach to which it is expressly stated to relate,

and will not apply to any subsequent or other matter, non-compliance or breach.

- 16.5. **Notices.** Any notice required or permitted to be given in writing under the Agreement (and for the avoidance of doubt unless otherwise specified all notices must be in writing) will be in English, and sent via email, facsimile, courier, hand delivery or ordinary, certified or registered mail, to a Party at the addresses set out in the Service Order in the case of Customer, and in the case of Supplier:

**Emirates Integrated Telecommunications Company, PJSC**

Floor 23, Al Salam Tower  
Dubai Media City  
PO Box 502666  
Dubai

United Arab Emirates  
Attn: Mahesh Jaishankar,  
VP datamena & Broadcasting, Commercial  
mahesh.jaishankar@du.ae

With a copy to:  
General Counsel & Senior Vice President – Legal & Regulatory Affairs  
Fax: +971 4 360 4440

A Party may from time to time designate another address or addresses by notice to the other Party in compliance with this clause. Such notice will be deemed effective: (a) the day after being sent, if by email; (b) when electronic confirmation is received, if sent by facsimile; (c) as of the delivery date, if sent by courier; (d) when received, if hand delivered; or (e) 10 Business Days after being sent, if sent via ordinary, certified or registered mail. Customer may not use email to notify Supplier of termination of the Service. Notice of termination of a Service must be signed by an authorized representative of Customer to be effective.

- 16.6. **Survival.** Certain provisions of the Agreement are intended to have effect after the expiration or termination of the Agreement including but not limited to clauses 3 (Definitions), 4 (Precedence), sub-clause 7.8 (Indemnification by Customer), 8 (Charges and Payment), 9 (Disputed Invoices), clause 10 (Taxes and Interest), sub-clause 11.4 (offsets), 13 (Limitations of Liability), sub-clause 14.1.7 (Authorisations), clause 15 (Confidentiality, Customer Data and Privacy), sub-clause 16.4 (waiver), 16.7.4 (Consequences of Termination), sub-clause 16.8 (Severability), sub-clause 16.10 (No Publicity), clause 17 (Governing Law), clause 18 (Arbitration), and this sub-clause 16.6 will continue to bind, and to be enforceable by, the Parties to the Agreement.

16.7. **Force Majeure.**

16.7.1. **General.** Neither Party will be liable for any failure to perform or for breach of this Agreement caused by a Force Majeure event, provided that neither Party will be relieved of its obligations to make any payments for Services rendered under this Agreement. Both Parties must use reasonable commercial efforts to minimize the effects of a Force Majeure event

16.7.2. **Notices.** The affected Party claiming a Force Majeure event has impacted its ability to perform this Agreement must immediately inform the other Party in writing of the occurrence of the Force Majeure event, and the estimated extent and duration of such inability to perform its obligations.

16.7.3. **Termination Right.** Each Party shall make all reasonable efforts to minimise the effects of the Force Majeure event. If the affected Party is prevented by the Force Majeure event from performing its obligations under the Agreement for 30 days or such other period as the Parties agree in writing, then either Party may in its sole discretion immediately terminate the Agreement by giving notice of termination to the other Party.

16.7.4. **Consequences of Termination.** Where the Agreement is terminated by a Party in accordance with sub-clause 16.7.3:

16.7.4.1. Supplier shall be entitled to payment of: (a) all accrued but unpaid Charges incurred through the date of such termination; together with (b) any termination charges or other costs or expenses incurred by Supplier for the cancellation of the Local Access or related services or equipment provided to Supplier in connection with the Service; and

16.7.4.2. the Parties shall otherwise bear their own costs and shall be under no further liability to perform the Agreement.

16.8. **Severability.** If any provision of the Agreement, including in particular any limitation, is held by a court or any government agency or authority to be invalid, void, or unenforceable, the remainder of the Agreement will nevertheless remain legal, valid and enforceable.

16.9. **No Partnership.** Nothing in the Agreement and no action taken by the Parties pursuant to the Agreement will constitute or be deemed to constitute between the Parties, a partnership, association, joint venture, or other cooperative entity.

16.10. **No Publicity.** Neither Party may use the other Party's name, trademarks, trade names or other proprietary identifying symbols, or issue any press release or public statement relating to the Agreement, any Service Order, or the other Party, without the prior written permission of the other Party.

16.11. **Export and Import.** Customer acknowledges that the export, re-export, import and use of certain hardware, software and technical data provided hereunder may be regulated by the UAE and other governments and agrees to comply with all applicable laws and regulations. Customer represents and warrants that Customer is not subject to any government order suspending, revoking or denying export or import privileges.

16.12. **Reliance.** Customer confirms that, in agreeing to enter into the Agreement, it has not relied on any representation except

as set out herein and Customer agrees it shall have no remedy in respect of any misrepresentation that has not become a term of the Agreement, excluding any fraudulent misrepresentation.

- 16.13. **Intellectual Property.** Customer acknowledges that any and all patents, registered and unregistered designs, copyrights, trademarks and all other Intellectual Property rights whatsoever and wheresoever enforceable, which are used in connection with the Service and/or Service Equipment, shall remain the sole property of Supplier, Supplier Affiliates, or the third party owner, as applicable.
- 16.14. **English Language Shall Prevail.** If the Agreement is made available in a language other than English, such other version shall be for reference only. In the event of any inconsistency between the English and any other language version of the Agreement, the English version shall prevail.
17. **Governing Law.** This Agreement is governed by the federal Laws of the United Arab Emirates and the Laws of the Emirate of Dubai.
18. **Arbitration.**
  - 18.1. If the Parties are unable to settle any dispute or difference between them arising out of or in relation to this Agreement by negotiation, including the formation, performance, interpretation, nullification, termination or invalidation of this Agreement, the dispute will be referred to arbitration in Dubai, UAE.
  - 18.2. Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Arbitration Rules of the Dubai

International Finance Centre / London Court of International Arbitration ("DIFC-LCIA") Arbitration Centre, which Rules are deemed to be incorporated by reference into this clause. The seat, or legal place, of arbitration shall be Dubai International Finance Centre, UAE. The language to be used in the arbitration shall be English. Subject to clause 18.4 below, the arbitral tribunal will comprise 3 arbitrators. Each Party will appoint an arbitrator, and the third arbitrator, who will preside over the arbitral tribunal, will be appointed by the LCIA Court. The award of the arbitral tribunal will be written in English. The award of the arbitral tribunal is final and binding on the Parties.

- 18.3. If either of the Parties fails to appoint an arbitrator within the applicable time period, such appointment will be made in accordance with the DIFC-LCIA Arbitration Rules.
- 18.4. If the amount in dispute as specified in the notice of arbitration or statement of claim is less than US \$250,000 the arbitration panel will consist of only 1 arbitrator who will be selected by agreement between the Parties. If the Parties fail to agree on an arbitrator within the applicable time period, such appointment will be made in accordance with the DIFC-LCIA Rules.
19. **Entire Agreement.** The Agreement expresses the entire understanding of the Parties and replaces any and all former agreements, understandings, solicitations, offers and representations relating to Supplier's or its Affiliate's performance in connection with the Agreement and contains all the terms, conditions, understandings, representations and promises of the Parties hereto.