

GENERAL TERMS AND CONDITIONS FOR SERVICES

These General Terms and Conditions for use of Internet, Applications & Services and other products offered by TCL from time to time (collectively referred to as the 'Services') are applicable to Customer Acquisition Form(s) ("CAF") entered into between Customer and Supplier (herein "TCL"/"Supplier"/"Service Provider") and for the customers subscribed to the services offered by TCL through various channels including but not limiting to its online Portal (collectively referred to as 'Customers/Orders'). Each CAF or acceptance (in case of online subscription), when submitted by Customer and accepted by the Supplier, shall incorporate and shall be subject to these General Terms and Conditions for Delivery of Services (hereinafter referred to as the "Terms and Conditions"). The Service Provider and Customer are sometimes hereinafter individually referred to as a "Party" and collectively, as the "Parties". TCL may make changes to these Terms from time to time and the same will be updated in the website also at <http://www.tatacommunications.com/sme>. Customer understands and agrees that if he uses the Services after the date on which the terms have changed, TCL will treat his use as acceptance of the updated Terms. The Terms and Conditions contained herein shall be applicable to all the services offered by TCL unless specifically mentioned otherwise. These terms form a legally binding agreement between the Customer and TCL.

1. INCORPORATION OF OTHER DOCUMENTS

The Parties expressly acknowledge and agree that, depending on the type of Services ordered by Customer, certain Service Schedules will be applicable to Customer's use and Service Provider's delivery of said Services.

2. DEFINITIONS

- **"Affiliate"** means an entity that now or in the future, directly or indirectly controls, is controlled by or is under common control with a Party. For purposes of the foregoing, "control" shall mean the ownership of more than fifty percent (50%) of the (i) voting power to elect the directors of the said entity, or (ii) ownership interest in said entity.
- **"Customer"** or **"Company"** means the entity so named on the CAF (if any).
- **"Customer Premises"** means the location or locations occupied by Customer or its end users to whom the Service is delivered.
- **"Customer Technology"** means the Customer's proprietary technology, including, without limitation, all text, pictures, sound, video, and log files, Customer's software (in source and object forms), user interface designs, architecture and documentation (both printed and electronic), know-how, and any related intellectual property rights throughout the world (whether owned by the Customer or licensed to the Customer from a third party).
- **"End Users"** means any person or entity deriving use of the Services through the Customer, including, but not limited to the Customer, an Affiliate of the Customer or a customer of the Customer.
- **"Facilities"** means any and all devices supplied by the Supplier that are used to deliver the Service Provider Services, including but not limited to all terminal and other equipment, wires, fibre optic cables, lines, circuits, ports, routers, switches, cabinets, racks, private rooms and the like. Facilities shall not include any such devices sold to Customer by the Service Provider or owned by the Customer.
- **"Force Majeure Event"** is any cause beyond a Party's reasonable control, including, without limitation, acts of war, acts of God, earthquakes, hurricanes, floods, fire or other similar casualty, embargo, riot, terrorism, sabotage, strikes, governmental act, insurrections, epidemics, quarantines, inability to procure materials or transportation facilities, failure of power, restrictive governmental laws or regulations, court orders, condemnation, failure of the Internet or other reason of a like nature not resulting from the actions or inactions of a Party.
- **"Governmental Authority"** means any national, state, regional, city, municipal, local, territorial, or any department, agency, bureau or other administrative or regulatory body obtaining authority from any of the foregoing, including without limitation, courts, public utilities and communications authorities.
- **"In Service Notification"** or **"Connection Notice"** means a written notice from Service Provider to Customer that the Service ordered has been installed by the Supplier and has been tested and is functioning properly in accordance with the Supplier's specifications for the Service.
- **"Interest Rate"** means 1.5% per month or if such amount is not permitted by law then the highest rate permitted by law.
- **"Local Loop"** means the connection between the Customer Premises and a Service Provider's Point of Presence.
- **"Customer Acquisition Form"** or **"CAF"** means the form(s) signed by Customer in order to subscribe to TCL Services and governed by these Terms and Conditions.
- **"Personal Information"** means any information that may identify an individual or an entity.
- **"Service Commencement Date"** means (i) the date the Customer has accepted or has been deemed to have accepted the Services in accordance with the provisions of the Service Schedule; or (ii) the date the Customer begins using the Services, other than for testing purposes, whichever date is earlier.
- **"Services Fees"** means charges for Supplier's / Service Provider's Services (including, but not limited to, monthly recurring charges and non-recurring charges) as identified and agreed to by the Customer in the CAF(s) or Service Schedules, as applicable.
- **"Service Schedules"** means the forms so entitled and applicable to each Service ordered by the Customer pursuant to the CAF.
- **"Service Provider Network"** means the telecommunications network consisting of fibres and optical and transmission equipment or any other form, which is owned and/or leased and operated and maintained by the Service Provider or its Affiliates.

- **"Service Provider Point of Presence"** means data center space owned or leased by the Service Provider or any of its Affiliates for the purpose of, among other things, locating and collocating communications equipment and to which the Service Provider Network is directly connected.

- **"Service Provider Services"** or **"Services"** means any and/or all the services set forth in the CAF, to be provided by the Supplier/Service Provider to the Customer.

- **"Service Provider Technology"** means the Service Provider's proprietary technology, including, without limitation, Service Provider Services, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), network designs, know-how, business methods, and any related intellectual property rights throughout the world (whether owned by the Service Provider or licensed to the Service Provider from a third party).

- **"Term"** means the period of time, if any, as set forth in the relevant CAF, during which the Service Provider and the Customer are obligated to perform under these Terms and Conditions.

3. SUPPLIER/SERVICE PROVIDER SERVICES

3.1 **General:** Customer may submit signed CAF, which constitutes an offer to buy the Service Provider Services. The Service Provider can accept that offer (at which time both the Customer and the Service Provider are legally bound) by the delivery of the Services. Except as otherwise agreed by the Parties, the Customer shall not be obligated to submit, nor shall the Service Provider be obligated to accept, any CAF.

3.2 **Credit Approval and Deposits:** Service Provider reserves the right to carry out a credit check of the Customer at any time prior to acceptance of the CAF or during the term of the services. The Customer hereby authorizes, and shall assist, the Service Provider in obtaining information about the Customer's commercial activities and financial condition from third parties, including, without limitation, banks, credit reporting agencies and other businesses that provide like information. Upon the Service Provider's request, the Customer will make a deposit, or other security for the payment of charges as specified by the Service Provider, (i) as a condition to the Service Provider's acceptance of any CAF, or (ii) in the event the Customer fails to comply with the payment terms twice in any twelve (12) month period, as a condition to the Service Provider's continuation of delivery of any Service. The deposit will be held by the Service Provider as security for payment of the Service Fees. When Service to the Customer is terminated, the amount of the deposit will be credited to the Customer's account and any remaining credit balance will be refunded within sixty (60) days of such termination. Customer acknowledges and agrees that any failure by it to comply with any request made by the Service Provider under this Section shall constitute a material breach of these Terms and Conditions.

3.3 **Term/Service Fees.** The Term and Service Fees for each Service Provider Service ordered under these Terms and Conditions shall be set forth in each CAF (and/or the Service Schedules) and the Customer agrees to pay for the Service Provider Services for such period of time or such longer time as the Customer actually uses the Service Provider Services. In the event that the Service Provider permits the Customer to continue to use the Service Provider Services after the end of the Term, set forth in the CAF, then the Term will automatically renew for successive one (1) year periods, and may be terminated at the end of the Term or any renewal term by either Party, by providing not less than thirty (30) days prior written notice of such termination to the other Party.

3.4 **Payment.** Unless otherwise agreed to between the Parties in writing, billing for the Service Provider Services shall commence on the Service Commencement Date regardless of whether the Customer is otherwise prepared to accept delivery of the Services. The Service Provider shall invoice all Service Fees, monthly (partial months will be pro-rated based on a calendar month) in advance except for charges that are dependant on usage, which shall be billed in arrears and/or as per the billing model of the services and terms of payment/security at the sole discretion of the Supplier. The Customer shall pay all amounts due within the due dates, as per the invoice thirty (30) days from the date of invoice, to the Service Provider from time to time. Any amount due but not received by the Service Provider will accrue interest from the due date of payment to the actual date of payment, at the Interest Rate (pro-rated on a daily basis). Furthermore, the Service Provider shall have the right to set off any amounts due hereunder, which are not paid when due, against any amounts owed to the Customer or its Affiliates by the Service Provider or its Affiliates pursuant to this Agreement or any other agreement between the Parties. Non-payment of bill/other dues to TCL with respect to the Services within the stipulated time would entail disconnection of services.

3.5 Taxes and Fees.

(a) All charges for Services are net of applicable taxes. Except for taxes based on the Service Provider's net income, the Customer will be responsible for payment of

- all applicable VAT, GST, consumption tax, use, excise, access, bypass, franchise, regulatory or other like taxes, fees, charges or surcharges, whether now or hereafter enacted, however designated, imposed on or based on the provision, sale or use of the Service Provider Services (hereafter "Taxes"). For the avoidance of doubt, the Customer shall reimburse the Service Provider for any regulatory fees charged to the Service Provider by any Governmental Authority or agency, including Telecom Regulatory Authority of India, in connection with Service(s) provided hereunder. In the event that any regulatory fees are imposed on the Service Provider in connection with the Service(s) provided hereunder, the Service Provider shall provide the Customer with an invoice for such regulatory fees along with supporting documentation and the Customer shall pay against such invoice within thirty (30) days from the date of the same. To the extent the Customer is, or believes it is, exempt from payment of certain Taxes, it shall provide to the Service Provider a copy of a valid tax exemption certificate. The Service Provider will give effect to all valid exemption certificates in the next full billing cycle following receipt of the certificate from the Customer, but only to the extent the Service Provider is permitted to do so under applicable laws. Notwithstanding the foregoing, in the event that the Customer's exemption certificate is or becomes invalid during the Term, and the Service Provider is assessed or responsible for additional Taxes, penalties or late charges, the Customer himself shall be responsible for such charges.
- (b) If the Customer is or was required by law to make any deduction or withholding from any payment due hereunder to the Service Provider, then, notwithstanding anything to the contrary contained herein, the gross amount payable by the Customer to the Service Provider will be increased so that, after any such deduction or withholding for Taxes, the net amount received by the Service Provider will not be less than the Service Provider would have received had no such deduction or withholding been required. If any taxing or Governmental Authority asserts that the Customer should have made a deduction or withholding for or on account of any Taxes with respect to all or a portion of any payments made hereunder, or that the Service Provider should have collected certain Taxes from Customer which the Service Provider did not collect, the Customer hereby agrees to indemnify the Service Provider for such Taxes and hold the Service Provider harmless on an after-tax basis from and against any Taxes, interest or penalties levied or asserted in connection therewith.
- 3.6 **Disputed Bills.** In the event the Customer disputes in good faith any portion of Service Provider's invoice, the Customer must pay the undisputed portion of the bill and submit a written claim for the disputed amount, documenting the basis of its claim. All claims must be submitted to the Service Provider within forty-five (45) days of receipt of billing for those Service Provider Services. The Customer acknowledges that it is able to and that it is reasonable to require the Customer to dispute bills within that time and the Customer therefore waives the right to dispute the charges not disputed within the time frame set forth above.
- 3.7 **Fraudulent Use of Services.** The Customer will be solely responsible for all charges incurred respecting the Services even if such charges were incurred through or as a result of fraudulent or unauthorised use of the Services.
- 3.8 **Credit Limit.** Customer shall be subject to the credit limit (the "Credit Limit") as may be specified in the CAF(s) or by way of subsequent communication by the Service Provider. The Credit Limit may be varied only with the written approval of Service Provider. At no time shall the sum of the outstanding invoiced amounts plus the unbilled accrued amounts payable by the Customer exceed its Credit Limit.
- 3.9.i Depending upon type of service and business model of TCL, the Customer, while subscribing to the TCL Services, agrees to furnish a Performance Bank Guarantee (hereinafter "said BG") from a nationalised bank or a Bank as specified by TCL for an amount as decided by TCL at its sole discretion, to avail uninterrupted services beyond the usage limit for which the usage charges have been already paid by the Customer.
- 3.9.ii. The Customer, at all times, shall ensure that the said BG is valid and operational during the entire tenure, the Customer is availing the TCL services till the full and final settlement of the account after termination of the services by either party.
- 3.9.iii. The Customer shall promptly ensure all the payments as and when they are due. Any Default in this regard shall be treated as a breach of the terms of TCL services.
- 3.9.iv. TCL shall be entitled to encash the said BG immediately upon the Customer committing breach of the obligations set forth in the Customer Acquisition Form (CAF) or upon breach of the payment terms as agreed by the Customer at the time of subscribing to TCL services.
- 3.9.v. Notwithstanding anything contained herein, TCL, at its sole discretion, shall be entitled to specify, enhance or reduce the usage limit of the Customer, at any point of time, beyond the usage limit for which the usage charges have been already paid by the Customer.
- 3.10 **Customer-Provided Equipment and Customer Configuration.** The Service Provider will not be responsible for the operation or maintenance of Customer-provided and/or Customer-configured equipment. The Customer shall be solely responsible for the compliance of its own equipment with applicable standards and for obtaining any necessary approvals or authorisations prior to its use. The Service Provider will not be responsible for the transmission or reception of signals by Customer-provided equipment or for the quality of, or defects in, such transmission or reception. The Customer shall ensure that Customer-provided equipment does not interfere with or otherwise degrade the operation of the Facilities or the Service Provider Network. The Service Provider shall have full control over the configuration of the Service Provider Network used in providing the Service and shall be entitled to alter the configuration.
- 3.11 **Services Provided by Service Provider Affiliates.** If a CAF requires the provision of Service to the Customer in a jurisdiction other than a jurisdiction within which the Service Provider is authorised to provide services, such Service may be provided to the Customer by an Affiliate of the Service Provider and the Service Provider acts as the agent of that Affiliate for the Services in that jurisdiction. Where an Affiliate of the Service Provider is providing the Service, then the relevant Service Provider Affiliate has the right to demand a letter of authorisation ("LOA") and/or such other documents from the End User in a format prescribed by the Service Provider Affiliate. The LOA may require the End User to comply with all laws, rules and regulations and give the Service Provider Affiliate a right to inspect the premises of the End User to ensure compliance and terminate the Service in the event of any non-compliance. The Service Provider and the Service Provider Affiliate shall have no obligation to provide any Service until it receives such LOA. If a CAF requires the delivery of Service, in order for such a CAF to be enforceable, additional terms must be added, the Parties shall incorporate such additional terms in the CAF (preserving to the fullest extent these Terms and Conditions).
- 3.12 **Services Provided by Third Parties.** The Service may be provided in conjunction with other "Third Party Service Providers". The Service Provider's obligations under this Agreement do not apply, unless otherwise specified, to the services provided by any **Third Party Service Provider**, for use in accessing the Service and in addition to these terms and conditions, the Customer is also governed by the respective End User License Agreement of the respective third parties.
4. **RESALE AND USE OF SERVICES**
- 4.1 **Resale of Services.** The Customer shall not have any right to market and/or re-brand the Services purchased by it as its own product and services, and/or to resell or sublicense the Services to End Users unless it has all required legal and/or regulatory licenses and written consents from the Service Provider as well as from all relevant Governmental Authorities. The Customer shall strictly comply with all the legal and/or regulatory licenses and consents from all relevant Governmental Authorities with respect to the resale of Services. The Customer shall be solely responsible and liable for any misuse of Services in respect of the Customer's resale of Services and shall indemnify and hold harmless the Service Provider against any and all claims or proceedings from such resale or sublicense of Services by the Customer. In case of unauthorised resale or sublicense of Services the Customer shall not (i) refer to Service Provider in any marketing or service literature except with the Service Provider's prior written consent; or (ii) act or purport to act on behalf of the Service Provider; or (iii) any resale or sublicense by Customer of the Services shall not relieve Customer of its obligations under any applicable CAF or these Terms and Conditions.
5. **OBLIGATIONS OF THE PARTIES**
- 5.1 **Representations and Warranties of Customer.** The Customer represents and warrants that (i) it has the legal right and authority, and will maintain the legal right and authority during the Term, to install and use the Service Provider Services as contemplated hereunder; (ii) the performance of the Customer's obligations under these Terms and Conditions and use of Service Provider Services will not violate any applicable law, rule or regulation or any applicable manufacturers' specifications or otherwise unreasonably interfere with the Service Provider's customers' use of the Service Provider Services or Network, and (iii) the Customer is authorised and has completed all required corporate actions necessary to execute the applicable CAF(s).
- 5.2 Registration with Department of Telecommunications (DoT) under Other Service Providers (OSP) Category: As per the guidelines issued by the DoT from time to time, Other Service Providers (OSP), such as Call Centers (both international and domestic), Network Operation Centres, Vehicle Tracking Systems, tele-banking, tele-medicine, tele-trading, e-commerce, etc., shall have to be registered with DoT for their respective services and location of operations. Any liability including civil and criminal liability for providing the said services without registration with DoT shall be treated as unauthorised use and any resulting event connected thereto shall be the Customer's sole responsibility and TCL shall be constrained to withdraw its services without any further notice in such eventuality and without any liability on its part.
- 5.3 **Representations and Warranties of the Service Provider.** The Service Provider represents and warrants that (i) it has the legal right and authority, and will maintain the legal right and authority during the Term, to provide the Service Provider Services ordered by the Customer hereunder; (ii) the performance of Service Provider's obligations under these Terms and Conditions will not violate any applicable law, rule or regulation; and (iii) the Service Provider is authorised and has completed all required corporate actions necessary to execute the applicable CAF(s).
- 5.4 **Customer Premises.** The Customer will allow the Supplier access to and use of the Customer Premises to the extent required by the Supplier for the installation, connection, inspection and scheduled or emergency maintenance or removal of the Facilities relating to the Services. The Service Provider shall have a right to inspect any Customer Premises or any premises used by an End User to ensure that the Customer and/or End User is complying with all applicable laws, rules and regulations. Any such inspection or non-inspection however, shall not relieve the Customer of any of its duties under these Terms and Conditions nor shall it cause the Service Provider to waive any of its rights hereunder or impose any duty, obligation or liability onto the Service Provider. The Customer

- represents to the Service Provider that the Customer has obtained or will obtain, on a timely basis, all permissions and consents from third parties necessary to allow the Service Provider access as set forth herein, including permission to cross real property to access the Customer Premises. Customer will be responsible for providing and maintaining, at its own expense, the level of power, heating and air conditioning necessary to maintain the proper environment for the Facilities on the Customer Premises. The Customer will provide a safe place to work and comply with all laws and regulations regarding the working conditions on the Customer Premises. In the event that the Customer fails to meet its obligations regarding the Customer Premises hereunder and, as a result, the Service Provider is unable to install or continue the delivery of Services, then (notwithstanding the absence of Services) the Customer will pay all charges for such Services during such time. Except for emergency repairs or for inspection at the instruction of Governmental Authority, the Service Provider will notify the Customer seven (7) days in advance of any regularly scheduled maintenance that will require access to the Customer Premises.
- 5.5 **Acceptable Use Policy.** Customer's use of Service shall at all times comply with the Service Provider's then-current Acceptable Use Policy ("AUP") and Privacy Policy, as amended by the Service Provider or Third Party Service Provider, as the case may be and communicated in writing to the Customer from time to time and which are available on the Service Provider's website (www.tatacommunications.com). The Customer hereby expressly acknowledges that it has reviewed, understands and accepts the Service Provider's AUP and the rights of the Service Provider as set out in the respective AUP.
- 5.6 **Customer Network Security.** The Customer is responsible for maintaining the security of its internal network from unauthorised access through the Internet. The Service Provider shall not be liable for unauthorised access to the Customer's network or other breaches of the Customer's network security.
6. **OWNERSHIP**
- 6.1 **Intellectual Property.** The Customer is and shall remain exclusively entitled to all right and interest in and to all Customer Technology and its confidential information, and the Service Provider is and shall remain exclusively entitled to all right and interest in and to all Service Provider Technology and its confidential information. Neither Party shall, directly or indirectly, reverse engineer, de-compile, disassemble or otherwise attempt to derive source code or other trade secrets from the property of the other Party.
- 6.2 **Facilities.** Except as otherwise agreed in writing, title to all Facilities shall remain with Supplier. The Supplier will provide and maintain the Facilities in good working order. The Customer shall not, and shall not permit others to, change, rearrange, disconnect, remove, repair, attempt to repair, or otherwise tamper with any Facilities, without the prior written consent of the Service Provider. The Customer shall ensure that the Facilities shall not be used for any purpose other than that for which Service Provider provides them. The Customer shall not take any action that causes the imposition of any lien or encumbrance on the Facilities. In no event will the Service Provider be liable to the Customer or any other person for interruption of service or for any other loss, cost or damage caused or related to improper use or maintenance of the Facilities by the Customer or third parties provided access to the Facilities by the Customer.
- While accessing certain Services, depending upon the contractual terms and understanding with the respective alliance partners, advertisements/promotions shall be displayed. The Customer agrees that he/she has no objection of any kind or manner to the placement of such advertisements/promos, etc., while using or availing the said services.
7. **LIABILITY AND LIMITATION OF LIABILITY**
- 7.1 **Indemnification.** Each Party shall indemnify the other from (i) any claims by third parties (including Government Authority) and expenses including legal fees and court costs respecting (i) damage to tangible property, personal injury or death caused by such Party's negligence or willful misconduct; (ii) a breach by either Party of Section 5.1 (ii) and 5.2 respectively; and (iii) in the event of any End User being in breach of any applicable law rule or regulation.
- 7.2 **Damages.** NOTWITHSTANDING ANY OTHER PROVISION HEREOF, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOST REVENUES, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, LOSS OF CUSTOMERS, LOSS OF DATA, INTERFERENCE WITH BUSINESS OR COST OF PURCHASING REPLACEMENT SERVICES) ARISING OUT OF THE PERFORMANCE OR FAILURE TO PERFORM UNDER ANY CUSTOMER ORDER OR THESE TERMS AND CONDITIONS, WHETHER OR NOT CAUSED BY THE ACTS OR OMISSIONS OR NEGLIGENCE OF ITS EMPLOYEES OR AGENTS, AND REGARDLESS OF WHETHER SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF THE LIKELIHOOD OF SUCH DAMAGES; PROVIDED HOWEVER, THAT THE FOREGOING LIMITATIONS SHALL NOT APPLY TO THE PARTIES' INDEMNITY OBLIGATIONS CONTAINED HEREIN
- 7.3 **Personal Injury and Death.** Nothing in these Terms and Conditions shall be construed as limiting the liability of either Party for personal injury or death resulting from the negligence of a Party or its employees.
- 7.4 **Limitation.** Service Provider's sole liability and Customer's sole remedy for damages arising out of the furnishing or the failure to furnish Service Provider Services (including but not limited to mistakes, omissions, interruptions, failure to transmit or establish connections, delays, errors or other defects) is limited to any applicable credit allowances due and/or Customer's right to terminate a particular Service under the applicable Service Level Guarantee as set forth in the relevant Service Schedules.
- 7.5 **Disclaimer of Warranties.** EXCEPT FOR WARRANTIES EXPRESSLY MADE IN THESE TERMS AND CONDITIONS, THE SERVICE PROVIDER MAKES NO WARRANTIES OR REPRESENTATIONS EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, AND FITNESS FOR A PARTICULAR USE OR NON-INFRINGEMENT.
8. **TERMINATION**
- 8.1 **Termination by either Party.** Either Party (the "Non-Defaulting Party") may terminate the CAF upon written notice of termination to the other Party ("Defaulting Party") if (i) the Defaulting Party breaches a material provision (including the payment provision) of these Terms and Conditions and, the Defaulting Party fails to cure such breach within thirty (30) days after receipt of written notice of breach from the Non-Defaulting Party; or (ii) the Defaulting Party breaches a payment provision of these Terms and Conditions and, the Defaulting Party fails to cure such breach within fifteen (15) days after receipt of written notice of breach from the Non-Defaulting Party; or (iii) any bankruptcy, insolvency, administration, liquidation, receivership or winding up proceeding is commenced in respect of the other Party.
- 8.2 **Additional Termination or Suspension by Service Provider.** The Service Provider shall have the right, upon written notice, to immediately terminate or suspend Services or any CAF(s), and discontinue or suspend the delivery of the affected Service Provider Services (without liability) in the event that:
- Customer has violated any law rule, regulation or policy of any Governmental Authority related to the Service Provider Services or Customer's or an End User's use thereof; or
 - Customer has engaged in conduct that has caused or may cause (in the Service Provider's sole reasonable judgment) damage to the Facilities, Service Provider Network or third parties; or
 - In the event that the Service Provider receives any direction, notification or instruction from any Governmental Authority to suspend or terminate the provision of Services to Customer (through no fault or negligence of Service Provider).
- 8.3 **Service Provider's Remedies.** The rates and charges set forth in each CAF are established in reliance on the Term commitment made therein. If the Customer cancels a Service or CAF during a Term commitment for any reason other than as provided in Sections 8.1 above or in a particular Service Schedule, or in the event Service Provider terminates a CAF because of any reasons set forth in Section 8.1 or 8.2, then the Customer agrees to pay to the Service Provider which the Customer acknowledges is a genuine pre-estimate of the Service Provider's loss, within ten (10) days of such termination: (i) an amount equal to the total of any and all waived installation charges as reflected on the terminated CAF(s), (ii) an amount equal to one hundred percent (100%) of the Service Fees payable for the unexpired remainder of the first twelve (12) months of the Service Term plus, if applicable, fifty percent (50%) of the Service Fees payable for the unexpired remainder of months thirteen (13) through the end of the Term of the terminated CAF(s), plus (iii) any documented third party expenses not covered by (i) and (ii) above incurred by Service Provider in respect of the terminated CAF (including any Local Loop charges). In any event, the Customer shall be obligated to pay the Service Provider for any Service delivered to the Customer up to the date of the termination.
9. **MISCELLANEOUS PROVISIONS**
- 9.1 **Publicity.** Neither Party shall have the right to use the other Party's or its Affiliates' trademarks, service marks or trade names or to otherwise refer to the other Party in any marketing, promotional or advertising materials or activities. Neither Party shall issue any publication nor any press release relating to any contractual relationship between the Service Provider and the Customer except as required by law or agreed in writing between the Parties.
- 9.2 **Confidentiality.**
- 9.2.1 The Customer and Service Provider must treat as confidential information: (a) the provisions of this Agreement; and (b) all information provided to a Party by the other Party under this Agreement, including without limitation technical, operational, marketing, billing, pricing and commercial information in relation to the supply of Services.
- 9.2.2 Notwithstanding the foregoing, confidential information shall not include information that: (a) is independently developed by the receiving party; or (b) is lawfully received by the receiving party free of any obligation to keep it confidential; or (c) becomes generally available to the public other than by breach of this Section 9.2.
- 9.2.3 The confidential information shall remain the property of the relevant Party. Each Party shall maintain the confidentiality of the confidential information of the other Party using at least the same degree of care as it employs in maintaining as secret its own trade secret, proprietary and confidential information but in any event always at least a reasonable degree of care. A Party must not disclose the other Party's confidential information to any person except: (a) to its employees (which for the Service Provider includes its Affiliates' and its Third Party Service Providers' employees) on a 'need-to-know' basis provided those persons first agree to observe the confidentiality of the information; (b) to legal and financial advisers; (c) with the other Party's prior written consent; or (d) if required by law, any stock exchange, or any Governmental Authority.
- 9.3 **Consent to Disclose.** The Service Provider reserves the right to provide any Customer or potential Customer bound by a nondisclosure agreement access to

- a list of the Service Provider's customers and a description of the Services purchased by such Customers. The Customer consents to such disclosure; including the listing of the Customer's name and the Services purchased by the Customer (financial terms relating to the purchase shall not be disclosed).
- 9.4 **Contents of Communications.** The Service Provider does not monitor and will have no liability or responsibility for the content of any communications transmitted via the Services, and the Customer will indemnify, defend and hold the Service Provider harmless from any and all claims (including claims by any Governmental Authority seeking to impose penal sanctions) related to such content or for claims by third parties relating to the Customer's use of the Service.
- 9.5 **Application of Tariffs.** In the event the Service Provider is required to file tariffs with a Governmental Authority, the terms set forth in the applicable tariff shall govern the Service Provider's delivery of, and the Customer's consumption or use of, such Service but only to the extent required by law, rule or regulation. In the event that there is any material change required to the Terms and Conditions and/or the Service Fees then the Customer shall have a right to terminate the affected Service.
- 9.6 **Personal Information.** The Customer acknowledges and agrees that the Service Provider may use, process and/or transfer Personal Information (including intra-group transfers and transfers between countries): (i) in connection with the provision of Services; (ii) to incorporate Personal Information into databases controlled by the Service Provider for the purpose of account administration, billing and reconciliation, operational maintenance and support activities, fraud detection and prevention, and customer and market analysis and reporting; and (iii) to communicate to the Customer by voice, letter, fax or email regarding products and services of the Service Provider. If the Customer believes that, in the course of providing Services under this Agreement, the Service Provider will have access to data the Customer does not want the Service Provider personnel to comprehend, the Customer should encrypt such data so that it will be unintelligible.
- 9.7 **Content of the Internet.** The Service Provider provides only access to the Internet. The Service Provider does not operate or control the information, services, opinions or other content of the Internet, and the Service Provider makes no warranties or representations regarding any such information, services, opinions or other content. The Customer agrees that it shall make no claim whatsoever against the Service Provider relating to the content of the Internet or respecting any information, product, service or software ordered through or provided by virtue of the Internet. The Service Provider reserves the right to take such measures as may be reasonably necessary, in the Service Provider's sole discretion, to ensure security and continuity of service on the Service Provider Network, including but not limited to identification and blocking or filtering of Internet traffic sources which the Service Provider deems to pose a security or operational risk or a violation of its AUP. In addition, the Customer understands that the Service Provider does not own or control other third party networks outside of the Service Provider Network, and the Service Provider is not responsible or liable for any filtering or access restrictions imposed by such networks or for the performance (or non-performance) within such networks or within interconnection points between the Service Provider Network and other third party networks.
- 9.8 **Force Majeure.** Except for the Customer's payment obligations under these Terms and Conditions and/or any CAF, neither Party shall be liable, nor shall any credit allowance or other remedy be extended, for any performance that is prevented or hindered due to a Force Majeure Event. If the Service Provider is unable to provide Service Provider Services for a period in excess of sixty (60) consecutive days for any reason set forth in this Section, then either Party may cancel the affected CAF upon written notice to the other Party, and both Parties shall be released from any further future liability under that particular CAF.
- 9.9 **Governing Law; Dispute Resolution.** These Terms and Conditions and any CAF shall be governed by the laws of India and the Parties irrevocably submit to the exclusive jurisdiction of the courts of Mumbai. In the event a Service Provider Invoice is not disputed and the Customer simply fails to pay, then the Service Provider may seek to recover the sum due in any court of competent jurisdiction without reference to its conflicts of law and the Customer hereby submits to the jurisdiction of any such court.
- 9.10 **Severability; Waiver.** In the event any provision of these Terms and Conditions is held by a court of competent jurisdiction to be invalid, void or unenforceable, such offending provision(s) shall be stricken and the remainder of these Terms and Conditions shall remain legal, valid and binding. The failure by either Party to exercise or enforce any right conferred by these Terms and Conditions shall not be deemed to be a waiver of any such right nor to operate so as to bar the exercise or enforcement of any such or other right on any later occasion.
- 9.11 **Assignment.** Neither Party may assign this Agreement without first obtaining the other Party's written consent; except that, however, either Party may assign this Agreement to an Affiliate or as part of a corporate reorganisation, consolidation, merger or sale of substantially all of its assets by providing advance written notice to the other Party of any such proposed assignment. Any purported assignment in contravention of this clause shall be invalid and the assigning Party shall remain bound. This Agreement will bind and inure to the benefit of each Party and each Party's successors and permitted assigns.
- 9.12 **Notice.** Any notice or communication required or permitted to be given hereunder may be delivered by hand, sent by overnight courier, email (with confirmation of delivery) or facsimile (with confirmation of delivery), at the addresses set forth in the CAF(s) or at such other address as may hereafter be furnished. Such notice will be deemed to have been given as of the date it is delivered, emailed, or faxed, as applicable.
- 9.13 **Relationship of Parties.** The Service Provider and the Customer are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between the Service Provider and the Customer.
- 9.14 **Regulatory and Legal Changes.** In the event of any change in applicable law, regulation, decision, rule or order that materially increases the costs or other terms of delivery of Service, the Service Provider and the Customer agree to negotiate regarding the rates to be charged to Customer to reflect such increase in cost and, in the event that the Parties are unable to reach agreement respecting new rates within thirty (30) days after the Service Provider's delivery of written notice requesting negotiation, then (a) the Service Provider may pass such increased costs through to the Customer upon thirty (30) days notice, and (b) the Customer may terminate the affected CAF without termination liability by delivering written notice of termination no later than thirty (30) days after the effective date of the rate increase.
- 9.15 **Insurance.** Each Party shall keep in full force and effect during the Term insurance cover which is no less than that required by applicable law and is customary in accordance with best industry standards. If requested in writing, either Party will provide certificates of insurance evidencing its insurance coverage.
- 9.16 **Third Party Beneficiaries.** The Service Provider and the Customer agree that there shall be no third party beneficiaries to these Terms and Conditions or any CAF, including, but not limited to, any sublicensee or End User of Customer or the insurance providers for either Party. To the extent it is allowed by law any legislation in any relevant jurisdiction giving rights to third parties is hereby excluded.
- 9.17 **Export Control.** The Parties acknowledge that products, software, and technical information (including, but not limited to Service, technical assistance and training) provided under these Terms and Conditions may be subject to the export and other applicable laws and regulations of the country and other countries, and any use or transfer of the products, software, and technical information must be in compliance with all applicable regulations. The Parties will not use, distribute, transfer, or transmit the products, software, or technical information (even if incorporated into other products) except in compliance with all applicable export regulations. If requested by either Party, the other Party also agrees to sign written assurances and other export-related documents as may be required to comply with all applicable export regulations.
- 9.18 **Entire Understanding.** These Terms and Conditions (including the Service Schedules and any applicable CAFs) constitute the entire understanding of the Parties related to the subject matter hereof. All prior written or oral agreements, understandings, communications or practices between the Customer and the Service Provider are hereby superseded insofar as they relate to the Service Provider Services hereunder. These Terms and Conditions may be amended only in writing signed by a duly authorised representative of each of the Service Provider and the Customer. In the event of any conflict between the documents comprising these Terms and Conditions, precedence shall be given to the documents in the following order: (i) the CAF; (ii) the Service Schedules, if applicable; and (iii) the General Terms and Conditions.