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## **Terms of Service**

Terms Of Service ("TOS") mentioned here include all the "Specific Terms", the "General Terms" and the "Acceptable Use Policy". The signing of Customer Agreement Form ("CAF") shall make the TOS mentioned herein binding on the subscriber. In case of any inconsistencies in the constituent parts of the Agreement or disputes arising with regard to the interpretation of the terms and conditions contained in the said Agreement, this document shall override any or all the other documents.

### **Specific Terms:**

1. **Provision of Service** shall include,
  - 1.1. Delivery of the subscriber service within the stipulated duration.
  - 1.2. Assignment of Internet Protocol (IP) address for accessing the internet.
2. **Use of Service**
  - 2.1. The Subscriber shall use the Service in accordance with our Internet Acceptable Use Policy ("Acceptable Use Policy"). The Acceptable Use Policy shall mean the current version of our Acceptable Use Policy provided on its website and may be changed by us from time to time. The IP address and IP Service provided by us shall only be used for the purpose it has been provisioned.
3. **Customer Premise Equipment ("CPE").**
  - 3.1. Subscribers may use their own CPE. However, such CPE's need to be approved by us.
    - 3.1.1. If the subscriber wishes to use their own CPE, then,
      - 3.1.1.1. No rental or security deposit will be applicable.
      - 3.1.1.2. The company would not be responsible for maintenance of the CPE.
      - 3.1.1.3. There could be performance issues because of such CPE and the company shall not be held liable for poor performance.
    - 3.1.2. If CPE is provided by the Company:
      - 3.1.2.1. Rentals/security deposit/charges as defined in the rate plan shall be applicable
      - 3.1.2.2. If any Manufacturing defects are found then the CPE is replaced free of material cost. Labor charges may apply.
      - 3.1.2.3. Repairs are chargeable to the subscriber. Separate charges may be applicable for parts and labor.
4. **Minimum System Requirements**
  - 4.1. Intel P IV 2 GHz or higher with 1GB RAM, 40 GB free HDD space and Fast Ethernet LAN Card.
5. **Exit Policy:** In case subscriber chooses to discontinue after signing the "CAF",
  - 5.1. If prior to service being provisioned due to our inability to deliver service within agreed period, no charges will be levied to the subscriber.
  - 5.2. If prior to service being provisioned due to decision of the subscriber, all one time charges will be forfeited.
  - 5.3. After service provisioning; all one time, recurring and other charges will be payable as applicable.
    - 5.3.1. Any refund, if applicable, will be paid to the subscriber within 30 working days from account termination. Account termination will be done on receipt of CPE (if applicable) in proper working condition and settlement of all balance outstanding if any.
  - 5.4. Simultaneous logins are not allowed.

### **General Terms**

#### **Definition:**

6. **"Agreement"** shall mean, unless otherwise specifically provided for, the CAF along with the Terms and conditions listed on our website.
7. **"Applicable Law"** shall mean any law that is applicable in a particular context and includes both Central and State legislations as may be amended or repealed from time to time, including specifically the Indian Telegraph Act, 1885, The Wireless Telegraphy Act, 1933, and the Telecom Regulatory Authority of India Act, 1997, the Information Technology Act, 2000 and any administrative, judicial and quasi-judicial rulings and delegated legislation such as regulations, rules, guidelines and notifications as may be issued by the Authorities from time to time.
8. **"Authority or Authorities"** shall mean the Government of India, Ministry of Communications and Information Technology, Department of Telecommunications (DOT), Telecom Regulatory Authority of India, Telecom Dispute Settlement Appellate Tribunal, the relevant State Government, or other statutory and local authorities, tribunals etc. as the case may be.
9. **"Business Day"** shall mean everyday excluding Saturdays, Sundays and Company declared holidays.
10. **"Charges"** shall include all payments under the Agreement which are due and payable by the Subscriber to us, whether invoiced or not, inclusive of one-time, registration, testing and installation, Service Equipment and Service rental, billing, network service/feature change, transfer /shifting, reconnection, usage based charges and Security as set out in the CAF and all other fees, rates, taxes, levies, penalties and fines for and in respect of provision of the Service and chargeable CPE to the Subscriber pursuant to the Subscriber applying for the Service as per the rates set out in the Tariff published by us from time to time or any special rates agreed to be granted by us, including charges for services availed through our Network or our correspondent networks.

11. **"Confidential Information"** means all information contained in any media and format, designated as such by either Party including
  - 11.1. Technical or business information or material;
  - 11.2. Proprietary or internal information of either Party, including but not limited to samples, apparatus and equipment, business policies, Subscriber databases, developments, trade secrets, know-how and personnel information regarding third parties;
  - 11.3. Information disclosed pursuant to the Agreement and
  - 11.4. All such other information which by its nature or the circumstances of its disclosure is confidential.
12. **"Due Date"** shall mean the date prescribed by us in its invoice or statement of charges, on or by which date the Subscriber shall make payment of the Charges whether invoiced or not.
13. **"License"** shall mean the license granted by DoT to us to provide and operate Internet Services.
14. **"Network"** shall mean our communications network through which Services are made available.
15. **"Party" and "Parties"** shall mean, respectively, either or both of the parties to the Agreement.
16. **"Provisioning Entity"** means any entity or affiliate providing a Service to Subscriber other than us, which may be our subcontractor, including licensed carriers or service providers in territories where we are not licensed to provide the Service.
17. **"Purchase Order" ("PO")** shall mean the Subscribers documents, if any, by which the Service may be ordered from us.
18. **"Security Deposit"** means a cash deposit, director's guarantee, parent company guarantee, credit card payment, direct debit guarantee or bank guarantee or any other valid security or any combination of these as determined by us.
19. **"Service"** shall mean the Service subscribed to, by the Subscriber as indicated in the CAF.
20. **"Service Activation Date"** means, the date on which the Subscriber commences use of the Service or when the Service is activated, whichever is earlier.
21. **"Service Equipment"** means the equipment, systems, cabling and facilities provided by or on behalf of us at Subscriber Premises in order to make the Service available to the Subscriber.
22. **"Service Contract Period"** means, the minimum committed subscription period subscribed to, by the Subscriber for provision of the Service as set out in the CAF.
23. **"Subscriber"** shall mean any person, association of persons, company, proprietary concern, partnership firm or any other entity that has subscribed for the Services under the CAF and includes their respective heirs, executors, administrators, successors, permitted assigns, holding, subsidiary and group companies and sister concerns.
24. **"Customer Premise Equipment (CPE)"** means the existing equipment, systems, cabling and facilities of Subscriber or provided to the Subscriber by any third party, which is required for Service provisioning and used in conjunction with the Service Equipment in order to avail of the Service.
25. **"Subscriber Premises"** shall mean the location /or Service Installation Address of the Subscriber as provided in the SRF where the Service is provided and the Service Equipment is installed.
26. **"Tariff"** shall mean the commercial plan or tariff schedule offered by us, including but not limited to fees, Charges, rates and related conditions as notified and published by us from time to time, in respect of provisioning of the Services.
27. **"Taxes"** shall mean all taxes applicable (whether existing or new) on the Service and Service Equipment, for which the Subscriber is being charged, including but not limited to sales and service tax, VAT, withholding tax, entry tax, octroi, property tax and other applicable taxes or duties.

#### Scope of Service

28. **Delivery of Services:** We shall provide the Services to the Subscriber as per the CAF, subject to the provisions of this agreement and the terms of our License. The Subscriber undertakes to accept and pay upon the Due Date for the said Services and chargeable Service Equipment in accordance with terms of this Agreement.
  - 28.1. We shall use all reasonable efforts to commence delivery of the Service on the Service Activation Date, subject however to the fulfillment by the Subscriber of its obligations as detailed in the Agreement.
  - 28.2. We shall be entitled to 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 the Subscriber.
  - 28.3. We reserve the right to vary, modify the Service at its sole discretion for technical, business or any other reasons. If a modification to a Service has a material adverse effect on the functionality of that Service, Subscriber may notify us in writing of the existence and nature of such effect.
  - 28.4. We may at any time, substitute or change the configuration or routing of our Service Equipment used to provide the Services.
  - 28.5. The Service Equipment provided hereunder is provided on an "as is" basis and the Subscriber's use of the same is at its own risk. We do not make and hereby disclaims, any and all other express/implied warranties, including but not limited to warranties of merchantability/quality, fitness for a particular purpose, title and non-infringement and any warranties arising out of the course of dealing, usage or trade practice.
  - 28.6. We may temporarily suspend whole or part of the Service at anytime without notice, if the Network fails or requires modification or maintenance.
  - 28.7. Provision of the Service to the Subscriber shall be subject to the terms of the License and the Agreement or any other special terms and conditions of a Provisioning Entity.
  - 28.8. We reserve the right to use any surplus capacity in the Service Equipment or Network to provide services to any other Subscriber.

#### Service Availability

29. **Service Quality:** during the Service Contract Period, we shall endeavor to maintain commercially acceptable levels of Service availability and ensure that the Subscriber is not prevented from making use of the Service as a result of any deficiency or problem in the Network.
- 29.1. We may enter into a separate service level agreements with the Subscriber, provided that all other parameters not covered in such agreements are governed by the terms and conditions of this Agreement.
- 29.2. Service quality, functionality, availability or reliability may be affected and we shall not be liable for such disruptions/ interruptions/ deficiency in case they are due to the following reasons;
- 29.2.1. Planned repairs, modifications or maintenance notified to Subscriber in advance,
- 29.2.2. Unauthorized changes to Service Equipment or CPE made by Subscriber without notifying us,
- 29.2.3. Any fault in equipment other than Service Equipment or a fault arising from outside the Network,
- 29.2.4. Suspension of Service by us as per Clause 38,
- 29.2.5. Force Majeure Events,
- 29.2.6. Any fault in or damage to Service Equipment or Network or components thereof for reasons beyond our reasonable control,
- 29.2.7. Refusal by Subscriber to allow testing or repair of Service or Service Equipment and use by Subscriber of the Service on an impaired basis, including refusal to allow access to Subscriber Premises to our personnel,
- 29.2.8. Failure in providing stable power and the other infrastructure required for Service Equipment and/or Subscriber Equipment,
- 29.2.9. Subscriber scheduled maintenance,
- 29.3. Any complaint by the Subscriber which we, after due investigation, finds to be without any basis.
- 29.3.1. The Subscriber shall pay all reasonable costs incurred by us in investigating and remedying any Service difficulty which is attributable to:
- 29.3.1.1. the negligence, act, omission, breach or fault of the Subscriber or its agents, or
- 29.3.1.2. the failure or malfunction of CPE that connects to the Service as and where applicable.
- 29.4. In the event of there being any deficiency in the Services or Service Equipment, the Subscriber shall within a period of seven (7) Business Days from the occurrence of the deficiency notify us, and thereupon we shall endeavor to rectify the same in a reasonable period.

#### **Representation and Warranties of Subscriber (Not Applicable for Individuals)**

30. **Compliance:** The Subscriber warrants that it is a duly organized entity, validly existing and fully compliant with all Applicable Law.
- 30.1. **Licenses & authorizations:-** The Subscriber warrants that it has all corporate, statutory and other authorisations, licenses and consents necessary to legally execute and perform its obligations under the Agreement and shall continue to have all such authorisations, licenses and consents as long as it avails of the Services or seeks to exercise and/or enforce any of its rights under the Agreement;
- 30.2. **Subscriber Premises:** The Subscriber warrants that it has full rights, title and interests in Subscriber Premises or such rights, approvals and permissions as are necessary to enable it to use the Subscriber Premises for the purpose of its business.
- 30.3. **No liquidation:** There are no bankruptcy, winding up or other liquidation proceedings pending or being contemplated by or against the Subscriber or threatened against the Subscriber;
- 30.4. **No litigation:** There are no other legal proceedings pending or contemplated by or against the Subscriber or threatened against the Subscriber, that would materially or adversely affect its ability to perform its obligations under the Agreement.
- 30.5. **No default:** The subscriber warrants that it is not in default of payment to any other service provider providing similar services.

#### **Billing and payment**

31. **Invoices:** We shall send bills/invoices/statement of charges (collectively the "Invoice") only through electronic media to the Subscriber. Subscriber may also obtain printed copies of invoices from our offices/authorized outlets for which we may levy additional Charges.
- 31.1. We reserve the right to raise and /or collect Invoice by itself directly or through any of its nominees, agents or franchisees. We represent that irrespective of the agency that raises the Charges in the Invoice, once the Subscriber has paid the Charges, it shall be deemed to have been paid to us provided the subscriber has obtained an electronic receipt of the same from us.
32. **Payment:** The subscriber shall pay all Charges to us, whether invoiced or not on the Due Date. Our acceptance of payment from a third party other than the Subscriber shall not amount to our having contractually assigned, transferred or modified any of the rights or obligations of the Subscriber under this Agreement to any third party.
- 32.1.1. If Subscriber fails to pay the Charges in accordance with the Agreement, we shall be entitled, in addition to any other remedy that it might have under Applicable Law, to do one or more of the following:
- 32.1.1.1. Set off /adjust against the Security, any amounts due and payable by the Subscriber to us pursuant to the Agreement or any other agreement between the Parties for provision of other telecommunication services.
- 32.1.1.2. Charge interest on overdue invoices from the Due Date until payment @ 2 % per month or part thereof. Interest shall continue to accrue notwithstanding expiry or termination of the Agreement for any reason.
- 32.1.1.3. Exercise a lien over any CPE whether pursuant to the Agreement or any other agreement with us.
- 32.1.1.4. Suspend or terminate the Services as per the Agreement.
33. **Security:** Subscriber shall deposit with us an interest free, refundable Security in such amount(s) as may be determined by us from time to time. We reserve the right to forfeit/ adjust/ apply the said Security amount in full or part for the setting off of any Charges, Taxes or such other sums/ debts due from the Subscriber to us at any time. Subscriber shall continue to be liable for balance amounts, if any. In such circumstances we shall be entitled to request that the Security be restored either to the original amount or be increased by such amounts or additional amounts as we may decide under the circumstances. The refund of the Security shall be subject to deductions/ set off or adjustments, if any, liable to be made by us under the provisions of the Agreement.

34. **No refund:** Except as may be provided in the Agreement, any and all Charges paid by Subscriber shall not be refunded by us under any circumstances.
35. **Currency:** The payment shall be made in such currency as specified in the invoice.
36. **Additional services:** The Subscriber shall pay the Charges for any additional Service Equipment or other services that it may require for customization or up-gradation of the Service and the Service Equipment and shall also provide such additional Security as we may require for the said purpose. Any such provisioning of customized or upgraded Services for the Subscriber shall not be deemed to constitute as a waiver of the Subscriber's obligations as per the Agreement for the Services already rendered by us. The Parties confirm that the provisions of the Agreement shall continue to be legal, valid and binding as regards any additional services.
37. **Multiple Locations:** Where we provide Services and /or Service Equipment at multiple locations of the Subscriber and /or associate, group, subsidiary, holding companies (collectively "Affiliates") of the Subscriber, then one of the Subscriber accounts must be designated as the "Main Account" under the Agreement and shall accept and undertake all financial responsibility for all the accounts of the Affiliates of Subscriber covered and included under the Service arrangement provided by the Company. In the event that an Affiliate account of Subscriber fails to pay the applicable Charges, Taxes or any other chargeable amounts then the Main Account shall be liable for all such Charges incurred as a result of Affiliate accounts use of Services and /or Service Equipment.
38. **Suspension/reconnection:** Except for circumstances described in clause 46.1 or 46.2 or 46.3 hereunder Subscriber shall remain liable for all applicable Charges during temporary suspension/ discontinuation of Services. Reconnection of the Services shall be at a cost, as decided by us from time to time. The Subscriber shall be liable to pay all Charges for reconnection of the Services, as notified by us from time to time.
39. **Variation:** We shall be entitled to change, vary and modify the Service or Service Equipment which may result in upward revisions in any/ all Tariff and/or Charges, withdraw discounts, increase surcharges, etc. at any time in its sole discretion for one, more or all of its Subscribers.
40. **Tariff:** Tariff/Charges are based on prevailing regulations, interconnect regime and interconnect arrangements entered into with other telecom & Internet service providers at the time of entering into the Agreement. In case of any change in such arrangements, we may impose additional applicable Charges.
41. **Collections Charges:** Subscriber shall pay all the costs of collection of dues and legal expenses along with interest in case we have to refer the matter to a collection agency or to legal recourse to enforce payment.
42. **Disputes in Billing & Payment:** In case Subscriber disputes any Invoice or part of an Invoice, Subscriber shall within seven (7) Business Days from the date of such Invoice, deliver a notice in writing to us setting out the nature of the dispute. Such notice shall in particular contain the following information:
- 42.1. Date and number of disputed Invoice or any relevant detail;
  - 42.2. Amount in dispute;
  - 42.3. Reason for dispute; and
  - 42.4. Supporting documentation as appropriate.
- If we do not receive any notice of dispute from Subscriber within such stipulated period, Subscriber shall be deemed to have accepted the Charges on the Invoice as being correct. Should Subscriber dispute the Charges on the Invoice, Subscriber shall pay in the first instance all Charges including disputed amount, upon the Due Date, and we will, upon resolution of the dispute settle any over payment, if any, in the form of a credit in the next Invoice.
43. **Taxes:** All Taxes present and future and any other additional Tax/ cess /duty levied by Authorities shall be to the account of Subscriber.

#### **Our Rights and Obligations**

44. In performing its obligations under this Agreement, we shall at all time exercise reasonable skill and care of an Internet Service Provider and will ensure that it complies with the Applicable Law while provisioning the Services.
- 44.1. **Warranties:** Except as expressly set forth in this Agreement all warranties, representations or agreements with respect to the provision of the Service, Service Equipment or otherwise, whether in oral or in writing and whether express or implied, either by operation of law, statutory or otherwise, are hereby expressly excluded to the extent permitted under Applicable Law. We shall not be liable for any act of commission or omission of any third party/ supplier/ manufacturer / agency/ company offering any privilege or benefits to Subscriber without our express permission or authority with reference to the Service or Service Equipment.
- 44.2. **Assignment:** We reserve the right to transfer or assign and /or delegate any and all or part of its rights and obligations hereunder
- 44.2.1. To any Provisioning Entity,
  - 44.2.2. Pursuant to any sale or transfer of all or a substantial portion of our assets or our business, or
  - 44.2.3. Pursuant to any financing, merger, or re-organisation, or
  - 44.2.4. In its business/commercial interests and in line with Applicable Law. Such transfer/ assignment shall release us from all liabilities under the Agreement.
- 44.3. **Disclosure:** Privacy of communication is subject to Applicable Law and the terms of the License. We may be required to disclose any information or particulars pertaining to the Subscriber to any Authority, including but not limited to any security agencies and reserves the right to comply with the directions of such Authorities at its discretion and without intimating the Subscriber.
- 44.4. **Verification and credit check-** We reserves the right to seek / verify particulars provided by the Subscriber to us, in any manner without notice or intimation and reserves the right to reject any CAF, for reasons including lack of technical feasibility, incorrect particulars provided by Subscriber or failure to furnish the same, and without any obligation to disclose such reasons or liability. Any information provided by a prospective Subscriber /gathered by us in relation to the CAF shall become our property even if the CAF is rejected and such information will be retained by us even in case of termination or discontinuance of the Service.

- 44.5. **Right to Refusal:** We reserve the right to refuse any request by the Subscriber to transfer /relocate the Service Equipment to an alternate Subscriber Premise and are not obliged to furnish any reasons for such refusal. In case we consent to such transfer/ relocation of Service Equipment, the Subscriber shall furnish fresh particulars with respect to the alternate Subscriber Premise and pay all Charges to us in respect of the transfer relocation.
- 44.6. **Access:** We, our agents or franchisees shall be allowed free access to the Subscriber Premises to remove the Service Equipment in case of termination, discontinuation or suspension of the Service.

**Duties and Obligations of the Subscriber:**

45. Subscriber shall

- 45.1. **Illegal Use:** Not use the Service for any improper, immoral, unlawful or abusive purpose or for sending obscene, indecent, threatening, harassing, unsolicited messages, which may cause any damage to us or any other person whomsoever and shall ensure that he/it and his/its employees, agents and persons using the Service through him/it comply with the above. Any such misuse shall under no circumstances be attributed to us and the Subscriber shall be solely responsible for such acts. The Subscriber shall not use the Service to gain access to any third party's information or websites or confidential information or do any act that may amount to breach of a third party's privacy.
- 45.2. **Relocation:** Bear all additional costs and Charges of transfer/ relocation of Service Equipment or alteration /modification of Service or Subscriber Premises that may have accrued, due to circumstances beyond our reasonable control, if required to facilitate the provisioning of or maintaining continuity of any Service. Further, we shall not be liable for any costs nor shall it be obliged to restore the Subscriber Premises to its original state in such cases of transfer/ relocation or alteration / modification.
- 45.3. **Cooperation:** At its own expense provide such assistance to us and/or the Provisioning Entity, as we may reasonably require providing the Service. We shall not be responsible for delay in commissioning of Services on account of the Subscriber's failure to provide appropriate infrastructure at Subscriber Premises.
- 45.4. **Access:** Permit our employees / authorised representatives to inspect the Subscriber Premises prior to provision of Service, install, configure, maintain, inspect, test, modify and substitute the Service Equipment or CPE, as applicable, at all reasonable times.
- 45.5. **Service Equipment:** Obtain all necessary municipal, statutory and other approvals from Authorities or any other entity from which such approval may be required for installation of Service Equipment at the Subscriber Premises.
- 45.6. **Indemnity:** Indemnify us from all Charges, Taxes and such other duties that may be levied, or imposed by the Authorities or any third party or by Subscriber in respect of any Service Equipment installed at the Subscriber Premises.
- 45.7. **Loss of Equipment:** In case our owned Service Equipment is lost, misplaced or stolen, the Subscriber shall inform us immediately and provide a copy of the FIR lodged for the lost, misplaced or stolen Service Equipment. Alternate Service Equipment will be provided and activated after receiving a fresh duly signed CAF from the Subscriber along with such charges as we may impose. We shall not be liable in any manner for misuse of lost, misplaced or stolen Service Equipment or damage to the same.
- 45.8. **Return:** Forthwith return our owned Service Equipment to us in the event we terminate the Service for any reason whatsoever or the Subscriber discontinues use of the Service.
- 45.9. **Misuse:** Undertake not to use the Service Equipment provided by us or any affiliate of us to procure any services of any other telecom service provider.
- 45.10. **Protect:** House the Service Equipment at Subscriber Premises in accordance with our instructions as may be given from time to time and in a suitable environment as per prevailing standards; including specifically provision of secured space to install Service Equipment and provision of infrastructure and convenient access.
- 45.11. **Relocate:** Not move, modify, relocate or in any way interfere with the Service Equipment or the Network and not allow any co-mingling of the Service Equipment with CPE except to the extent approved by us;
- 45.12. **Repair:** Not cause the Service Equipment to be repaired, serviced, or otherwise attended to except by our authorized representative;
- 45.13. **Safety:** Provide adequate security to Service Equipment, and shall make good to us any loss or damage to the same arising due to acts of omission and /or commission on the part of the Subscriber or its users.
- 45.14. **Lien:** Not create or allow any charges, liens, pledges or other encumbrances whatsoever to be created over the Service Equipment. Title to the Service Equipment shall at all times belong to us and remain with us. We shall not be liable for any damage or liability or any delay or failure in provisioning of the Service as a result of any liens, charges or encumbrances that may exist over the CPE or Subscriber Premise.
- 45.15. **Security:** Subscriber must comply with all relevant security procedures and standards with respect to CPE that interfaces with the Service or Service Equipment and shall co –operate with us in respect of the same including providing any assistance that may be required in configuration or modification of CPE as may be necessary to provide the Service.
- 45.16. **General:**
- 45.16.1. Be responsible for procurement, maintenance, compatibility and performance of CPE.
- 45.16.2. Be responsible for communicating with Subscriber's users of the Service and for handling all complaints and trouble reports made by such users.
- 45.16.3. Shall ensure that any wireless equipment if used in connection with this service shall be properly secured and appropriate encryption key/algorithm used before putting such equipment to use.
- 45.16.4. Shall not attempt to resell the service either in part or full without our permission.
- 45.17. **Personal Injury:** Be responsible and liable for any personal injury, death or tangible property loss arising at the Subscriber Premises resulting from negligent acts of omission or commission of the Subscriber, its employees and agents.
- 45.18. **Compliance with Applicable Law:**

- 45.18.1. Subscriber and its users shall comply with all Applicable Law, the relevant provisions of the License, and the terms and conditions of our Agreement and /or a Provisioning Entity, when using the Service or Service Equipment.
- 45.18.2. Not use the Service for or allow any connection to a Public Switch Telecommunication Network from Subscriber Premises. In the event Subscriber breaches the provisions of this clause its liability shall be unlimited as regards liquidated damages and undertakes to indemnify us against all or any losses or damages of any kind whether direct, indirect, special, pecuniary, exemplary arising as a result thereof.
- 45.18.3. Not terminate any third party services on our network.
- 45.19. **Assignment:** Subscriber is not entitled to transfer or assign its obligations and liabilities under the Agreement to any other party under any circumstances without our prior written permission. Any transfer affected in contravention of the express terms contained herein shall not absolve the Subscriber of its duty towards us in respect of Charges

#### **Service Suspension**

- 46. Suspension. We may, at its sole discretion and without prejudice to any other right which we may have to terminate the Service, elect to suspend forthwith the provision of a Service until further notice if we:
  - 46.1. are entitled to issue a notice to terminate or to otherwise terminate a Service pursuant to Clause 50;
  - 46.2. are obliged to comply with Applicable Law;
  - 46.3. Need to carry out emergency or planned works, any maintenance activity and/or planned outages to the Network or Service Equipment;
  - 46.4. Have reasonable grounds to believe that the Service is being used fraudulently, illegally or in association with illegal activities or otherwise not in accordance with any Applicable Law; or
  - 46.5. Have reasonable grounds to believe that Subscriber will not or is unable to pay any Charges that is due or is to fall due to us.
  - 46.6. Request the Subscriber to provide or increase the Security and Subscriber refuses or fails to do so within the stipulated time.
  - 46.7. Determine that Service transmission is limited due to physical obstruction, geographic, topographic, hydrological, meteorological and other causes of radio interference or faults in other telecommunication networks to which the Network is connected.
  - 46.8. Are subject to a Force Majeure Event.
  - 46.9. Any discrepancies / wrong particular (s) furnished by the Subscriber in the CAF.
  - 46.10. In case of any suspension due to failure to make payments by Subscriber, the Service shall not be re-connected till we realize payment of all pending Charges.
  - 46.11. During the period of such suspension for non payments, the Subscriber shall continue to be liable for all applicable Charges.
  - 46.12. If we exercise our right to suspend the Service pursuant to 46.1 or 46.2 or 46.3, we will, whenever reasonably practicable, give prior notice of such suspension and use all reasonable efforts to resume the Service as soon as practicable.

#### **Limitation of Liability and Indemnification**

- 47. Our liability for damages arising out of the provision or use of the Service, Service Equipment or failure to provide the Service or any matter hereunder including but not limited to mistakes, omissions, interruptions, delays, tortuous conduct or any representations, whether caused by acts of commission or omission shall be limited to the value of the Charges payable in the month in which the event giving rise to the liability occurred. The above shall be the sole remedy of the Subscriber.
  - 47.1. We shall under no circumstances be liable to the Subscriber for any indirect, incidental, special, consequential, exemplary or punitive damages including but not limited to damages for any adverse impact on business, loss of profits or loss of revenue or any payments to third parties, whether or not arising out of provision of Service, Subscriber's use of, or inability to access any part of the Service, Service Equipment or on use of information, services or merchandise provided on or through the Service and regardless of whether the Parties have been informed of the possibility of such damages.
  - 47.2. We shall not be liable to make any refunds whatsoever in case of non-utilization of the Service or Service Equipment by the Subscriber for any reason.
  - 47.3. The Subscriber shall defend, indemnify and hold us harmless against any and all liabilities incurred such as losses, damages, costs and expenses and third party claims against us due to the following reasons;
    - 47.3.1. Arising from any fraud or illegality in relation to or unauthorized use of the Services, Service Equipment or CPE by Subscriber or any third party or other person(s);
    - 47.3.2. Against any intellectual property infringement claims in relation to use of Service Equipment or CPE to make use of the Service.
    - 47.3.3. From any failure by Subscriber and/or its authorized users to comply with the provisions of the Agreement
    - 47.3.4. From any failure by Subscriber to comply with Applicable Law or relating to content, information or data transmitted using the Services or relating to the provision of the Service.
    - 47.3.5. From any and all claims for physical property damage, personal injury or wrongful death regardless of whether such claims arise out of the negligence or willful misconduct of the Subscriber or its employees, agents, or contractors in connection with the use or provision of the Service.
  - 47.4. If a Party ("Requesting Party") makes an indemnification request to the other ("Indemnifying Party"), the Requesting Party shall permit the Indemnifying Party to control the defense and disposition or settlement of the matter, as applicable, at its own expense; provided that the Indemnifying Party shall not, without the express prior written consent of the Requesting Party, enter into any settlement or agree to any disposition that imposes any criminal liability on or charge against the Requesting Party. The Requesting Party shall at all times have the option to participate in any matter or litigation through counsel of its own selection and at its own costs.

#### **Intellectual Property Rights**

48. We confirm that all corporate names, service marks, logos, trade names, trademarks, websites and domain names (collectively called the "**Trade Mark**") in respect of the Service and Service Equipment are and shall always remain our exclusive property and nothing in this Agreement, or any other agreement, shall grant the Subscriber the license to use, reproduce, or commercially exploit our Trade Mark for any purpose. We confirms that all other intellectual property rights such as copyrights, patents or designs whether registered or not, that exist in any software, hardware or firmware provided along with Service or Service Equipment and all proprietary information, trade secrets and know how (collectively the "**IPR**") in respect of the Service, and Service Equipment are the exclusive property of or are provided to Subscriber under valid licenses by us and/or our Affiliates(s) under the Applicable Laws. The Subscriber vide the Agreement is granted a non transferable/ non assignable exclusive single user license, till such time that the subscriber continues to subscriber our services, to use such IPR that may exist in the Services and Service Equipment, provided that such permissive use shall in no way be deemed to construe or operate as a transfer or assignment of any right, title or interest, in any of the said IPR.
- 48.1. The Subscriber undertakes not to copy, reproduce, modify, decompile or reverse engineer any software, hardware or firmware in the Service Equipment in any manner whatsoever.
- 48.2. Subscriber further undertakes not to directly or indirectly reproduce, distribute, publish, copy, download or otherwise exploit any third party content which is protected by copyright or similar rights unless Subscriber owns or controls the relevant rights thereto or have obtained all the requisite licenses and approvals from the third party. For the purpose of this clause "third party content" means and includes all information, software, any other material and media provided by any independent third party that can be accessed by Subscriber through or by virtue of the Service and /or Service Equipment.
- 48.3. The Subscriber agrees to indemnify, defend us and hold us harmless from all third party actions whether civil or criminal that may arise as a result of breach of undertaking in clauses 10.a, 10.b and 10.c by Subscriber, and /or infringement or violation of third party intellectual property rights by Subscriber or its users which may give rise to third party claims for damages, penalties and such other pecuniary liabilities.
- 48.4. The Subscriber acknowledges its obligation to immediately bring our notice any improper, wrongful or illegal use of Trade Mark or IPR, which it becomes aware of or which are brought to its notice.

### **Termination**

49. We may terminate the Service on the occurrence of one of the following events:
- 49.1. forthwith by notice if the Subscriber has committed a material breach of the Agreement which it fails to remedy within thirty (30) Business Days of having been notified of such breach; or
- 49.2. if the Subscriber has a receiver or an administrative receiver appointed over it or over any part of its undertaking or assets or passes a resolution for winding up (other than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect or
- 49.3. If the Subscriber becomes subject to an administration order or if it enters into any voluntary arrangement with its creditors or if it ceases or threatens to cease to carry on business, or undergoes or is subject to any analogous acts or proceedings under any Applicable Law.
- 49.4. Notwithstanding any other provision, we may terminate a Service immediately on written notice to Subscriber if:
- 49.4.1. Suspension made pursuant to Clause 38 hereinabove continues for a period of more than seven (7) days or
- 49.4.2. Subscriber fails to pay any Charges by the Due Date.
- 49.5. Subscriber may terminate a Service
- 49.5.1. On thirty (30) Business Days written notice to take effect on the expiry of the Service Contract Period or
- 49.5.2. On thirty (30) Business Days written notice provided such notice is issued prior to the Service Activation Date.
- 49.5.3. In the event Subscriber does not terminate the Agreement as indicated in 36.3.1 above then it shall be deemed to have automatically renewed the Service on the same terms and conditions of this Agreement on the first Business Day after the expiry of the Service Contract Period and further deemed to have accepted all the Charges that have accrued and become due and payable to us as on the date of renewal of the Service Contract Period and the Agreement.
- 49.5.4. In case Subscriber terminates the Service as per 36.3.2 or terminates the Service after Service Activation Date but prior to the expiry of the Service Contract Period then the Subscriber shall be liable to pay to us all the Charges as mentioned in the Exit Policy of this agreement.
- 49.6. **Service Cessation:** We may terminate the Service
- 49.6.1. upon thirty (30) Business Days written notice to Subscriber if it ceases to provide that Service on a commercial basis at the Subscriber Premises or
- 49.6.2. on thirty (30) Business Days written notice to take effect during or after the expiry of the Service Contract Period.
- 49.6.3. In the event that we terminate the Service under clause 36.4.1, we shall refund to Subscriber the balance rental Charges paid by the Subscriber to us for the un-expired portion of the Service Contract Period.
- 49.7. **No Relief:** Termination of any Service will not relieve Subscriber of its obligation to pay any Charges due, owing or incurred under the Agreement.

### **Force Majeure**

50. Neither Party will be liable for any delay or failure in performance under the Agreement resulting from acts beyond the control of such Party, including without limitation acts of God, acts or regulations of any Authorities or international authority, war or national emergency, whether declared or undeclared, terrorism, accident, fire, lightning, equipment failure, computer software malfunction or design defect, electrical grid/ power failure, telecommunication line or submarine cable failure, acts or omissions of other telecommunications providers, riots, strikes, lock-outs, industrial disputes (whether or not involving a Party's employees) or epidemics of infectious diseases ("Force Majeure Event").

### **Confidentiality**

51. Commencing from the date of the Agreement and continuing for a period of 2 years from the expiry or termination of the Agreement, each Party will protect as confidential, and will not disclose to any third party, any Confidential Information. We may disclose Confidential Information to debt collection agencies, credit bureaus or professional advisers, Provisioning Entities or affiliates for the purposes of debt collection from Subscriber. The Parties will use Confidential Information only for the purpose of the Agreement. The foregoing restrictions on use and disclosure of Confidential Information do not apply to information that: (a)
- 51.1. Is in the possession of the receiving Party at the time of its disclosure and is not otherwise subject to obligations of confidentiality;
  - 51.2. Is or becomes publicly known, through no wrongful act or omission of the receiving Party;
  - 51.3. Is received without restriction from a third party free to disclose it without obligation to the disclosing Party;
  - 51.4. Is developed independently by the receiving Party without reference to the Confidential Information, or;
  - 51.5. Is required to be disclosed by law, regulation, court or governmental order provided that the disclosing party is notified of such requirement.

#### **Data Protection and Privacy**

52. We shall take adequate measures of data protection and protection of privacy in respect of information and data regarding the Subscriber, its employees and end users as provided for under the License. This information and data ("Subscriber Data") may include, but not be limited to, nature or profile of data transmissions and other data gathered as part of providing the Service or necessary for the establishment, billing or maintenance of the transmission, data containing personal and/or private information, and other data provided to or obtained by us in connection with the provision of Service. Subscriber acknowledges and agrees that we may use, process and/or transfer Subscriber Data only
- 52.1. In connection with provisioning of Services;
  - 52.2. To incorporate Subscriber Data into databases controlled by us for the administration, provisioning, billing and reconciliation, verification of Subscriber identity and solvency, maintenance, support and product development, fraud detection and prevention, sales, revenue and Subscriber analysis and reporting, and market and Subscriber use analysis;
  - 52.3. To communicate to Subscriber information on our products and services or our partners products and services via voice, letter, facsimile or email from time to time and
  - 52.4. To comply with Applicable Law.
53. Subscriber warrants that it has obtained and will obtain all legally required consents and permissions from relevant parties for the use, processing and transfer of Subscriber Data as described in this clause.

#### **Notices**

54. The address for service of all notices in relation to any disputes shall be as under;
- 54.1. In case of notices to us the same shall be sent to our registered office;
  - 54.2. In case of notices to the Subscriber, the same shall be sent to the Subscribers Central Billing Address as stated in the CAF and/or Registered place of business.
  - 54.3. Any notice required or permitted to be given in writing hereunder will be in English, and sent via email, facsimile, overnight courier; hand delivery or certified/registered mail, to the Parties at the addresses set out in the CAF or such other addresses as may be specified by written notice. Notice sent in accordance with this clause will be deemed effective:
    - 54.3.1. the day after transmission, if sent by email,
    - 54.3.2. when electronic confirmation is received, if sent by facsimile;
    - 54.3.3. the acknowledged delivery date, if sent by overnight courier,
    - 54.3.4. when received, if hand delivered; or
    - 54.3.5. five (5) days after being sent, if sent via certified or registered mail.
  - 54.4. A Party may from time to time designate another address or addresses by notice to the other Party in compliance with this clause.

#### **Dispute Resolution**

55. **Informal Resolution:** The Parties shall in the first instance and prior to initiating arbitration pursuant to sub 55.3, attempt to resolve through negotiation, any or certain disputes informally, while maintaining strict confidentiality as per clause 51, in the following manner.
- 55.1. Upon written request of a Party notifying (the "Resolution Notification") the other about the existence of a dispute(s), each Party shall appoint a designated representative whose responsibility it shall be to meet and negotiate in order to resolve the disputes. The Resolution Notification shall clearly indicate
    - 55.1.1. the nature of the dispute,
    - 55.1.2. A written statement of facts and,
    - 55.1.3. A statement indicating the respective Party's position.
  - 55.2. The designated representatives shall negotiate in good faith and attempt to resolve the disputes within a period of thirty (30) Business Days from the date of the Resolution Notification.
  - 55.3. **Arbitration:** In the event the disputes cannot be resolved within the stipulated period, either Party may by written notice to the other, notify its intention to refer the disputes to arbitration clearly specifying in detail the disputes under reference. Within fourteen (14) Business Days of receipt of the said notice each Party shall nominate their respective arbitrator and the two appointed arbitrators shall in turn appoint a third presiding arbitrator. If either Party fails or neglects to appoint an arbitrator or the two arbitrators fail to agree upon the third presiding arbitrator within the stipulated period mentioned above, then the Parties shall apply to the court of competent jurisdiction for appointment of arbitrator. The venue of arbitration shall be at Mumbai and shall be conducted in accordance with the Indian Arbitration and Conciliation Act, 1996, and the rules framed there under or any re-enactment of the arbitration law then in force. All proceedings shall be in the English language. The Parties shall use their best efforts to complete the arbitration proceedings within a period of six (6) months from the date when the arbitrators enter upon reference.



- 55.4. **Costs:** The costs of the arbitration proceedings shall be paid as determined by the arbitrator. The Parties agree that the award of the arbitrator shall be final and binding upon the Parties and all persons claiming through or under them. The arbitration agreement may not be waived except upon mutual written consent of the Parties.

#### **Miscellaneous**

56. **Governing Law & Jurisdiction:** The validity, construction and performance of the terms and conditions of the Agreement shall be governed by, interpreted and construed in accordance with the Law of the Republic of India. The Parties hereto agree to submit to the exclusive jurisdiction of the courts at Coimbatore, India.
57. **Unenforceable Provisions:** If any provision of the Agreement is held by a court or any Authority to be invalid, void or unenforceable, the remainder of the Agreement will nevertheless remain legal, valid and enforceable.
58. **No Amendments:** Save as specified herein, this Agreement shall be modified only by the written agreement of both Parties.
59. **Entire Understanding:** The Agreement expresses the entire understanding of the Parties and replaces any and all former agreements, understandings, solicitations, offers and representations relating to our performance in connection with the Agreement and contains all the terms, conditions, understandings, representations and promises of the Parties hereto. For the purposes of this Agreement any additional clauses or terms contained in any PO or any commercial terms/proposals shall be deemed to be voidable at our option, to the extent they are in conflict with or are inconsistent with or deviate from the provisions of the Agreement.
60. **No Waiver:** Failure by either Party to exercise or enforce any right or benefit conferred by the Agreement, including our right to deliver invoices in accordance with the relevant clause hereinabove shall not be deemed to be a waiver of any such right or benefit nor operate so as to bar the exercise or enforcement thereof or of any other right or benefit on any later occasion. Our rights and remedies in respect of any misrepresentation or breach by Subscriber under the Agreement shall not be prejudiced by any investigation or credit check carried out by us or the execution or performance, in whole or in part of the Agreement or by any other action of ours that but for this clause might prejudice such rights and remedies.
61. **Principle to Principle:** 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 co-operative entity.
62. **Continuity:** The provisions of this Agreement that by their very nature shall survive expiry or earlier termination of the Agreement shall remain in full force and effect after such expiry or termination.
63. **Advertisements:** Our self care portal home page may have advertisements and promotions of third parties. These product/services are not provided by us. The subscriber's legal relationship in respect of those products, services and that information shall be with such third party supplier to whom the product belongs.
64. **Warranty:** We do not check or warrant the accuracy or completeness of the information or the suitability or quality of the products and services of the third parties. Subscriber must make their own enquiries with the relevant third party supplier directly before relying on third party information or entering into a transaction in relation to the third party products and services supplied via our Service. Subscriber should agree to the 'terms and conditions' laid down by such third party.
65. **Fees:** We may receive fees and/or commissions from third parties for goods and services of such third parties displayed or made available on self care portal or website or accessible through a hyperlink on any of the above
66. **Promotions:** If the Subscriber is using a promotional plan then Terms and Conditions of that plan will be applicable on and above this agreement. However in case of conflict the terms of this agreement shall prevail.

#### **Acceptable Use Policy(AUP)**

67. This is a policy defined by us and is applicable to all Subscribers. This policy defines what is acceptable and what is not acceptable while using the internet. We reserve the right to modify the AUP from time to time in accordance with changes in regulations, guidelines or directives from the government. These changes will be binding on all our subscribers.
- 67.1. **Governance of AUP:**
- 67.1.1. Compliance to AUP is a contractual requirement. If Subscriber violates the terms and conditions of the AUP, his account or service is likely to be suspended or terminated without prior notice.
- 67.1.2. Restoration of such blocked/suspended service is solely at our discretion & would involve a written compliance agreement from the Subscriber and payment of administrative charges if any.
- 67.1.3. We does not exercise editorial control or review over the content of any website, electronic mail transmission, newsgroup, or other material created or accessible over or through the Service. However, we may remove, block, filter, or restrict by any other means any materials that, at our sole discretion, may be illegal, may subject us to liability or may violate this agreement.
- 67.1.4. We are obliged under Indian laws to provide information to Law enforcement agencies and public or government bodies that are legally authorized to obtain such information
- 67.2. **The Subscriber agrees not to use the Service**
- 67.2.1. For sending and receiving any objectionable, obscene or unauthorized content
- 67.2.2. For any content, messages or communications infringing copyright, Intellectual property right and international & domestic cyber laws, in any form or inconsistent with the laws of India.
- 67.2.3. For hacking or gaining unauthorized access to any computer systems on the internet
- 67.2.4. To run any internet protocol ('IP') forging or port scanning software to deliberately affect remote machines
- 67.2.5. To use the Service for any anti-national activities would be construed as an offence punishable under the Indian Penal Code or other applicable law

- 67.2.6. To transmit any information or written, graphic or photographic material ("Material") (by uploading, posting, email or otherwise) that is unlawful, threatening, abusive, harassing, tortuous, defamatory, obscene, pornographic, libelous, invasive of another's privacy, threatening, menacing, offensive, hateful or racially, ethnically or otherwise objectionable
- 67.2.7. To transmit any Material (by uploading, posting, email or otherwise) in breach of this Agreement including any Materials that you do not have a right to make available under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);
- 67.2.8. To transmit any Material (by uploading, posting, email or otherwise) that infringes any patent, trademark, trade secret, copyright or other intellectual property rights of any third party;
- 67.2.9. To transmit (by uploading, posting, email or otherwise) any unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation;
- 67.2.10. To transmit any Material (by uploading, posting, email or otherwise) that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment.
- 67.2.11. To harm, or threaten to harm, minors in any way
- 67.2.12. To send emails from our Networks to recipient who do not wish to receive the emails
- 67.2.13. To send any emails with forged header information, nor should you attempt to impersonate any other individual or organization
- 67.2.14. To interfere with or disrupt the Service or servers or networks connected to the Service, or disobey any requirements, procedures, policies or regulations of networks connected to the Service;
- 67.2.15. To hack into the Website or any other related computer system, make excessive traffic demands, forward chain letters, surveys, contests, pyramid schemes or otherwise engage in any other behavior that may reasonably be expected to inhibit other users from using and enjoying the Website or any other website or damage or destroy our reputation of TDN or that of any third party;
- 67.2.16. to resell or advertise to resell the Services without our authorization;
- 67.2.17. to use the Service to send unsolicited commercial or bulk electronic mail messages to anyone