

## UAE-IX TERMS & CONDITIONS

22 October 2012

### § 1 Application of the terms and conditions

- (1) The Agreement consists of (i) the Service Order form executed by the Customer (ii) these UAE-IX Terms and Conditions, and (iii) any bilateral amendments to the preceeding (an "Addendum"), and shall be between "Supplier" and "Customer" as those entities are identified on the Service Order. Any purported acceptance by the Customer with reference to its terms and conditions of business or purchasing conditions is hereby rejected.
- (2) Departures from the present terms and conditions must be in writing signed by both Supplier and Customer. This also applies to any waiver of the requirement for written form. If statute sets more stringent requirements, these must be observed.
- (3) The representatives of Supplier are not authorized to enter into oral agreements or give oral guarantees.
- (4) Supplier is entitled at any time to revise or supplement these UAE-IX Terms and Conditions including all appendices such as conditions of use and service specifications and service agreements. Supplier will notify the Customer of any change in writing. If the Customer fails to object to the changed conditions within *four* weeks of receipt of the notification of change, the changes become effective as announced. Supplier will notify the Customer of this consequence separately in writing. If the Customer objects to the changes, the present agreement continues in force unchanged, subject to Customer's right to terminate this Agreement on 1 month's prior written notice any time during a period of *six* months from Customer's receipt of notice of changes to these terms and conditions. All notices mentioned in this section may be by email.

### § 2 Entry into the Agreement and provisioning of services

- (1) Supplier shall be deemed to have accepted a Service Order, thus creating a binding Agreement of the Supplier and Customer and establishing an "Effective Date" upon the earlier of (i) written notice by Supplier (either directly or through Supplier's Provisioning Entity) to Customer of acceptance of the Service Order, or (ii) Supplier provisioning the service and issuing a Ready For Service notification. Supplier reserves the right to reject any submitted Service Order for any reason, whether previously accepted by Supplier or not, including but not limited to (a) inability or impracticality of providing the Service; or (b) the Service no longer being commercially offered by Supplier. For avoidance of doubt, actual use of the services by the Customer is not required to establish an Effective Date.

- (2) Drawings, illustrations, documentation, advertising claims or other service data are merely information on state, condition and quality. A warranty of specific properties or assumption of warranty by Supplier requires explicit written agreement in each individual case.
- (3) Supplier can make entry into the agreement conditional on presentation of written power of attorney, an advance payment amounting to a quarterly fee or a bond from a international major bank.
- (4) If Supplier uses third parties (each, a "Provisioning Entity") to provide the services offered, these are not parties to the contract with the Customer. Supplier may at any time, and without notice, utilise the services of one or more Provisioning Entities in connection with the performance of its obligations under the Agreement.
- (5) There is no contractual relationship between Customers simply by virtue of the fact that they jointly use technical installations.

### § 3 Term, termination

- (1) This Agreement is entered into for a term of one year from the Effective Date (unless a different initial term is otherwise agreed in supplementary conditions of use), and this Agreement shall be extended for further one-year periods unless notice of termination is given in written form one (1) month before the end of the applicable one-year period. Supplier agrees to confirm receipt of notice of termination, but failure to do so will not extend the term of this Agreement.
- (2) This is without prejudice to the parties' respective rights to extraordinary termination for important cause. The extraordinary termination has to be effected in written form. Without limiting the generality of the foregoing Supplier has such right specifically if the Customer repeats or persists in a violation of its contractual obligations after unsuccessful complaint which sets a reasonable cure period to the Customer to produce relief. Supplier further has the right to extraordinary termination in written form, with or without notice at its own discretion, if the Customer declares that it is finally ceasing payments or Supplier can no longer reasonably be expected to provide the due services as a result of a fundamental change in the legal or technical standards for the Internet.

### § 4 Consequences of expiration of agreement

On expiration of this Agreement the Customer will remove all items in its possession from the relevant

data centre and restore areas used by it to the state on entry into force of the agreement, with the exception of fair wear and tear, within two weeks of the end of the agreement.

#### **§ 5 Technical Policy, rights and obligations of the parties**

- (1) The UAE-IX Technical Policy & SLA as of the Effective Date are hereby incorporated into this Agreement.
- (2) Supplier reserves the right to modify or expand the scope of the services and to make improvements if changing technical conditions require. Restrictions are permissible if they do not adversely affect the contracted functionality. Notwithstanding the foregoing, in the case of a change to UAE-IX infrastructure or other technology used to provide the contracted services to the Customer, Supplier will use reasonable efforts to notify the Customer of any such change and, unless otherwise agreed by the Customer and Supplier, provide the Customer - unless otherwise agreed by the parties - a reasonable period (at least 10 working days), to fully test the change and determine its impact on the Customer before the change is fully implemented. If the change would have an adverse impact on the Customer or the contracted services to the Customer, the Customer may object to the change within ten working days of the end of the test period. If the Customer objects to the change, this change will not be implemented in relation to the contracted services to the Customer. In this case Supplier is entitled to terminate the agreement within a period of six months of receipt of the notice of objection by giving thirty (30) days prior written notice.
- (3) Supplier reserves the right to amend the UAE-IX Technical Policy & SLA from time to time upon written notice to the Customer.

#### **§ 6 Underperformance, service work**

- (1) If Supplier fails to meet the level of service defined in the UAE-IX Technical Policy & SLA or other contractual agreement between the parties, the Customer will receive a credit. The Customer has no further claims with respect to a specific service level default.
- (2) The credit mentioned above will be applied to a subsequent Customer invoice.
- (3) Without prejudice to this the maximum amount of a credit in any one instance is at most the monthly fee, or annually at most three monthly fees paid by the Customer to Supplier for the relevant service. The Customer must file justified claims on credits within 4 weeks of obtaining knowledge of failure to meet the service level. Justified claims are offset against subsequent invoices.
- (4) Performance of service and/or repair work by the data centre operator and/or Supplier, which leads to underperformance or an interruption of service is not

taken into account in determining downtimes. The same applies in the case of relocation under Art. 7.

- (5) The standard service period for service work by Supplier itself is from 03.00 to 07.00 every Wednesday. If it is foreseeable that service or repair measures will result in an interruption of service, Supplier will notify Customers at least two weeks before carrying out the measure if it is a Supplier measure. If it is a third party measure, Supplier or its Provisioning Entity will make reasonable effort to promptly forward the corresponding information. In any case Supplier will endeavor to avoid interruptions of service by its own service and repair measures or those of its Provisioning Entity. If services are nevertheless interrupted, Supplier agrees that Supplier or its Provisioning Entity will provide to Customers a report to the extent this is actually and legally possible. In cases where the interruption of service is due to activities of 3<sup>rd</sup> parties, Supplier will endeavor to obtain a report from them.

#### **§ 7 Right of relocation**

Supplier is entitled to relocate the UAE-IX location within the data centre or to other data centres. This measure is subject to notification with 10 weeks' notice.

#### **§ 8 Obligations of the Customer**

- (1) The Customer is obliged to use the services provided by Supplier properly and in regard to the contract. It is obliged specifically
  - (a) to pay the agreed fee in accordance with the prevailing tariff,
  - (b) to enable Supplier to install technical equipment if and to the extent that this is necessary to use the services and that installations are not made by the Customer, (this also includes providing all information needed for the provision of service by Supplier),
  - (c) to notify Supplier on request which technical equipment is used to participate in the services,
  - (d) not to misuse access to the services and to avoid illegal acts,
  - (e) to comply with national and applicable international statutes and technical or legal guidelines, safety guidelines, manufacturer specifications and official orders and to obtain official permits if needed currently in future within the framework of the services provided by Supplier,
  - (f) to only bring items into the data centre which are required for the contracted service,
  - (g) to give Supplier and/or Supplier's Provisioning Entity access and/or entry at all times to the items

brought in if Supplier or Supplier's Provisioning Entity believes this is necessary,

- (h) to ensure that the items brought into the data centre for the specified purpose are suitable and do not pose any threat to the property of Supplier or third parties or adversely affect or prevent the functionality of the services provided to third parties by Supplier,
  - (i) not to affect items of third parties, not to gain access outside the contracted services to or investigate (data) systems not owned by the Customer,
  - (j) to notify Supplier without delay of identifiable complaints, defects or loss with regard to the services it offers (fault report),
  - (k) to do everything reasonable to make possible identification of the defect or damage and its causes or facilitate and speed the correction of the fault,
  - (l) after submission of a fault report to Supplier to reimburse work on inspecting the Customer's installations if and to the extent that the examination shows that the Customer was responsible for the fault, and
  - (m) to assure Customer's activities in relation to use of the services provided under this agreement comply with applicable law and regulation.
- (2) If the Customer fails to meet the obligations in Article 8(1) other than clause (a), Supplier may provide the Customer written notice of the violation and a ten (10) working day cure period. If the Customer fails to cure the violation with such period, Supplier is entitled to terminate the agreement with not less than five (5) working days' written notice; this shall not affect the right of the Supplier to block the connection without prior notice in cases under Article 8(1)(d) through Article 8(1)(e), inclusive, provided that Supplier agrees to make reasonable efforts to notify the Customer immediately of the blockage by giving the Customer details of Customer's breach. Absent a termination as mentioned above<sup>3</sup>, Supplier will use reasonable efforts to restore service promptly after the breach is remedied.
  - (3) Supplier can regulate details of collaboration among Customers through access conditions and user regulations. Violations of material provisions of these supplementary conditions entitle Supplier to terminate the agreement after written notice and a ten (10) days cure period.
  - (4) The services of the UAE-IX are provided subject to all applicable laws and regulations. Customer will comply, and ensure that it's personnel and subcontractors comply, with all applicable laws and regulations

including without limitation: (a) local license or permit requirements; and (b) applicable export/re-export, sanctions, import and customs laws and regulations. Supplier makes no representation as to whether any regulatory approvals, if any, required by Customer to use the service will be granted. Supplier reserves the right to discontinue service where Customer has failed to comply with the provisions of this sub-clause and Supplier shall in no event be liable in respect of Customer's failure to comply with this sub-clause.

#### **§ 9 Payment terms, escalator clause**

- (1) The fees under this Agreement are invoiced quarterly in advance. The invoice is payable within thirty (30) days following receipt thereof.
- (2) If there are older receivables outstanding under the agreement, Supplier is entitled to credit payments first to costs, then to interest and finally to the oldest outstanding receivable.
- (3) If the data centre operators where Supplier obtains its contractual services or parts thereof increase their prices to Supplier, the price increase may be passed on to the Customer subject to thirty (30) working days' written notice to the Customer.
- (4) Interest at a rate of 1.0% per month (or the highest rate permitted by applicable law, whichever is lower) will be calculated daily on all overdue amounts which are not the subject of a bona fide invoice dispute raised by Customer in writing, starting the day after payment was due until payment is received by Supplier in full.

#### **§ 10 Right of offset and retention**

The Customer has no right to offset any amounts invoiced to Customer. Any credits due to Customer must appear in a subsequent invoice issued by Supplier to be effective.

#### **§ 11 Default**

- (1) In the event of default by the Customer, Supplier is entitled to block the connection subject to two weeks' prior notice, starting from the date of mailing to the Customer. Supplier may send notification of blockage to the e-mail address designated by the Customer for the administrative contact or other e-mail address designated in writing by the Customer. Supplier can send written notice by post instead. Receipt of notification of blockage is not required. The Customer is obliged to pay the agreed fee even in the event that the connection is blocked.
- (2) In the event of default Supplier is further entitled to charge interest at a rate of 1.0% per month (or the highest rate permitted by applicable law, whichever is lower) from the relevant date. This is without prejudice to any claim for further damages.

- (3) If the Customer is in default on the fee or a substantial part of the fee for two successive quarters or is in default to an amount equal to the basic quarterly fee for one quarter for a period of more than two months after the start of a quarter, Supplier can terminate the agreement with not less than seven (7) working days' notice, provided the service has been already blocked under 11 (1).

#### **§ 12 Confidentiality, data protection**

- (1) Unless otherwise explicitly announced, information provided to Supplier is not confidential. The Customer agrees on notifying Supplier in written form in advance if the information provided shall be confidential. Exempt is hereby the processing of information to third parties (e.g. name, IP-address, rooting information in the customers area on the UAE-IX website), which is required for the supply of the contractual services.
- (2) The Customer is not entitled to obtain for itself or third parties through the services data or information not intended for itself or third parties.
- (3) If internationally recognized technical standards so provide and the Customer does not object, information on the Customer will be made available to third parties (directory services, looking glass etc).
- (4) The Customer is notified that the data centres which house the Supplier locations are monitored by video. The video recordings of persons entering the monitored areas of the data centre are stored for evidence purposes by the relevant data centre operator. The Customer is responsible for obtaining the necessary declaration of agreement required by its persons entering the data centre.

#### **§ 13 Limitation of liability for Supplier and the UAE-IX**

- (1) Each party's liability in aggregate in any 12 month period during the term of this Agreement for all loss arising out of or in relation to this Agreement, whether for breach of contract, in tort (including negligence), for breach of statutory duty or otherwise, will be limited the lesser of (a) direct damages proven by the moving party or (b) in respect of liability arising within the first 12 months of the term of this Agreement, the monthly average of Charges then paid to date (including any Charges due, but not yet paid) under this Agreement multiplied by 12; and in respect of liability arising in each 12 month period occurring after the expiry of the first 12 months of the term of this Agreement, 100% of the charges paid under this Agreement.
- (2) Neither Party will be liable, in contract, tort (including negligence), for breach of statutory duty or in any other way for any:

- (i) economic loss, including any loss of goodwill, reputation, revenues, profits, contracts, business, or anticipated savings; or
- (ii) special, punitive, exemplary, indirect, consequential or incidental losses,

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

- (3) Neither Party excludes liability for death, personal injury or fraud.
- (4) Supplier is not liable for nonperformance or delay due wholly or in part to force majeure, e.g. strikes, lockouts and governmental restrictions. This also applies if the force majeure affects suppliers or subcontractors of Supplier or their sub-suppliers or subcontractors. Supplier is released from the obligation to provide service for the duration of these disturbances and their effects.
- (9) In all other cases liability of Supplier and its Provisioning Entities are excluded for all damage irrespective of its cause in law.
- (10) Claims for liability lapse one year after occurrence of the event causing the liability and knowledge respectively ignorance by gross fault by the Customer in respect to the event causing the liability.

#### **§ 14 Liability of the Customer, indemnifications**

- (1) The Customer is fully liable for its own negligence and negligence of its auxiliary persons, and for any failure to obtain any requisite approvals or authorizations from individuals related to data privacy, and for any breaches of applicable law or regulation. This especially applies to all consequences and disadvantages arising to Supplier and third parties for the Customer's failure to meet its contractual obligations.
- (2) The Customer indemnifies Supplier on first demand from corresponding third party claims including the costs of legal action. due to negligence according to para 1, provided that Supplier provides the Customer with: (i) prompt written notice of an initial claim and, in the case where a lawsuit relating thereto has been filed, prompt written notice of such lawsuit; (ii) control over the defence and settlement of such claim at the Customer's option; and (iii) all available information, assistance, authority and cooperation to enable the Customer to defend, compromise or settle the claim or lawsuit. Notwithstanding the foregoing, the Customer shall not settle any such claim without the prior written approval of Supplier if such settlement requires any admission of wrongdoing or non-monetary future obligation on the part of Supplier,

such approval not to be unreasonably delayed, conditioned or withheld.

#### § 15 Final provisions

- (1) Place of performance is the place where the services are provided. This is currently Dubai, United Arab Emirates (UAE).
  - (2) This Agreement is governed by the federal Laws of the United Arab Emirates and the Laws of the Emirate of Dubai.
  - (3) No ancillary agreements are made. Customer confirms that, in agreeing to enter into the Agreement, it has not relied on any representation except as set out herein and Customer agrees it shall have no remedy in respect of any misrepresentation that has not become a term of the Agreement, excluding any intentional and fraudulent misrepresentation.
  - (4) The obligations under agreements entered into on the basis of the present terms and conditions are also binding on the legal successors of the parties.
  - (5) If any provision of this agreement is or becomes invalid this does not affect the validity of the remaining provisions. Instead, the invalid provision is deemed to be replaced by a provision which corresponds to or at least approximates the purpose of the agreement and which the parties would have agreed to achieve the same commercial result if they had been aware of the invalidity of the original provision. The same applies to incompleteness of the provisions.
  - (6) If the Parties are unable to settle any dispute or difference between them arising out of or in relation to this Agreement by negotiation, including the formation, performance, interpretation, nullification, termination or invalidation of this Agreement, the dispute will be referred to arbitration in Dubai, UAE.
    - (a) Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Arbitration Rules of the Dubai International Finance Centre / London Court of International Arbitration ("DIFC-LCIA") Arbitration Centre, which Rules are deemed to be incorporated by reference into this clause. The seat, or legal place, of arbitration shall be Dubai International Finance Centre, UAE. The language to be used in the arbitration shall be English. Subject to clause 15(6)(c) below, the arbitral tribunal will comprise 3 arbitrators. Each Party will appoint an arbitrator, and the third arbitrator, who will preside over the arbitral tribunal, will be appointed by the LCIA Court. The award of the arbitral tribunal will be written in English. The award of the arbitral tribunal is final and binding on the Parties.
  - (b) If either of the Parties fails to appoint an arbitrator within the applicable time period, such appointment will be made in accordance with the DIFC-LCIA Arbitration Rules.
  - (c) If the amount in dispute as specified in the notice of arbitration or statement of claim is less than US \$250,000 the arbitration panel will consist of only 1 arbitrator who will be selected by agreement between the Parties. If the Parties fail to agree on an arbitrator within the applicable time period, such appointment will be made in accordance with the DIFC-LCIA Rules.
- (7) Neither party may assign the Agreement without the written consent of the other party (which consent will not be unreasonably withheld or unduly delayed), except that (a) Supplier may assign any and all of its rights and obligations hereunder (i) to any Affiliate or Provisioning Entity, (ii) pursuant to any re-organization of the UAE-IX, (iii) pursuant to any financing, merger, or reorganisation of Supplier, and (b) subject to applicable law and regulation, Customer may assign any and all of its rights and obligations hereunder to any Affiliate that satisfies the standard credit requirements of Supplier. "Affiliate" as used in this Agreement means any entity or person controlled by, controlling, or under common control with, a party.
  - (8) Customer acknowledges that any and all patents, registered and unregistered designs, copyrights, trademarks and all other intellectual property rights whatsoever and wheresoever enforceable, which are used in connection with the service, shall remain the sole property of Supplier or Supplier Affiliates or the third party vendor or supplier of Supplier.
  - (9) The Agreement expresses the entire understanding of the Parties and replaces any and all former agreements, understandings, solicitations, offers and representations relating to Supplier's or its Affiliate's performance in connection with the Agreement and contains all the terms, conditions, understandings, representations and promises of the Parties hereto.