

DISHNET'S ONLINE CUSTOMER SERVICE TERMS AND CONDITIONS

THIS "DISHNET ONLINE CUSTOMER SERVICE TERMS AND CONDITIONS (AGREEMENT)" GOVERNS THE PROVISION OF DISHNET'S SERVICE (DEFINED IN AGREEMENT) TO THE CUSTOMER HEREIN.

THE CUSTOMER MUST READ AND UNDERSTAND THIS AGREEMENT BEFORE SIGNING THE DISHNET SERVICE ORDER FORM AND BEFORE AVAILING DISHNET'S SERVICES. THE CUSTOMER'S ACCEPTANCE OF THE TERMS AND CONDITIONS HEREIN CONSTITUTES THE CUSTOMERS AGREEMENT TO BE LEGALLY BOUND BY THIS AGREEMENT, INCLUDING ANY MODIFICATIONS AND OR CHANGES THAT DISHNET MAY MAKE FROM TIME TO TIME. IF THE CUSTOMER DOES NOT AGREE WITH THE TERMS OF THIS AGREEMENT, THE CUSTOMER SHALL NOT ACCEPT AND SIGN THE SERVICE ORDER FORM PROVIDED TO THE CUSTOMER.

THE CUSTOMER AGREES THAT BY SIGNING THE DISHNET SERVICE ORDER FORM CONSTITUTES THE CUSTOMER'S ACCEPTANCE TO BE BOUND BY THIS AGREEMENT. IF THE CUSTOMER DOES NOT UNDERSTAND ANY PROVISION IN THIS AGREEMENT, WE ENCOURAGE THE CUSTOMER TO CONTACT US BEFORE SIGNING THE SERVICE ORDER FORM. THE RIGHT TO PROVIDE THE SERVICES SHALL BE IN DISHNET'S SOLE DISCRETION.

AS A CONDITION FOR AVAILING THE SERVICES, THE CUSTOMER AGREES TO COMPLY WITH THESE TERMS AND CONDITIONS. DISHNET MAY, IN ITS SOLE DISCRETION, MODIFY, AMEND OR UPDATE THIS AGREEMENT AT ANY TIME WITHOUT ANY NOTICE. ANY CHANGES IN THE AGREEMENT WILL BE INCORPORATED INTO A REVISED CUSTOMER SERVICE AGREEMENT THAT WILL BE POSTED ON THIS WEBSITE. IT IS CUSTOMERS OBLIGATION TO REVIEW CHANGES TO THE CUSTOMER SERVICE AGREEMENT FROM TIME TO TIME UNLESS OTHERWISE SPECIFIED, SUCH CHANGES SHALL BE EFFECTIVE WHEN THEY ARE POSTED.

Terms & Conditions

This Agreement is deemed to have been executed at the place and on the Effective Date more fully stated in the Service Order executed by and between Dishnet Wireless Limited, a company incorporated under the Companies Act, 1956 having its registered office at Sterling Tower, 327, Anna Salai, Teynampet, Chennai - 600006 (hereafter referred to as the 'DWL or Dishnet', which expression shall, unless repugnant to the context thereof, mean and include its successors and permitted assigns) of the First Part; and the **Customer** more fully Identified more fully mentioned in the Service Order issued by Dishnet to the Customer which shall form part and parcel of the Agreement which expression shall unless repugnant or contrary to the meaning or context hereof, include their representatives, successors-in-interest, administrators, assigns of the **Other Part**.

(Hereinafter both **DWL** and the **Customer** shall collectively be referred to as "**Parties**" and individually as a "**Party**")

WHEREAS

DWL is a Cellular and all India Internet Service Provider (ISP) having license(s) issued by the Department of Telecommunications, Government of India, New Delhi.

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DWL is desirous of providing Internet Services and other value added services to customers desiring to avail the services on the terms and conditions set out below.

Now it is hereby agreed as follows: -

1. Definitions and Interpretation: -

- a. In this Agreement unless the context otherwise requires, the following expressions shall have the following meanings, namely: -
 - a. **"Additional Services"** means such services, which may be added from time to time to the scope or extent of the Service(s) at the date hereof, pursuant to the Change Control Procedure.
 - b. **"Affiliate"** shall mean any company, partnership or any other entity which directly or indirectly controls, is controlled by or is under common control with the entity in question, including a subsidiary or holding company as defined in Section 4 of the companies Act, 1956, as amended from time to time.
 - c. **"Agreement"** means this Agreement including the Service Orders(s).
 - d. **"DWL Equipment"** means DWL's hardware and software (not including stored data) and other tangible equipment used by DWL to supply the Service(s) to the Customer.
 - e. **"DWL Network"** means the Wireless ISP systems and associated equipment, without limitation, hardware and software, one hundred per cent (100%) dedicated to or owned by the DWL and or its Affiliates and utilized by or on behalf of DWL to provide services from its data centers.
 - f. **"DWL Network Problem"** shall mean either an actual or suspected failure of the Service(s).
 - g. **"DWL Service Manager"** means the person nominated by DWL and identified in the Service Order(s) who is, or directly reports to the person who is, primarily responsible within DWL for the day to day management of the provision of the Service(s) and the Customer client relationship or such other person as is notified to the Customer from time to time.
 - h. **"Change"** has the meaning given in Clause 7.
 - i. **"Code of Conduct"** means the rules and guidelines, as amended from time to time by DWL governing, without limitation, the Customer's access to the Data Center, receipt of Service(s) and the manner in which the Customer may utilize the Service(s).
 - j. **"Commencement Date"** means the date upon which DWL first delivers the Service(s) as agreed upon with the Customer and set out in the Service(s) Order(s).
 - k. **"Confidential Information"** means confidential information as defined in Clause 22.1.

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- l. **"Customer Area"** means that portion(s) of the Data Center made available to the Customer for the placement of the Customer Equipment, Customer Managed Equipment and/or DWL Equipment.
- m. **"Customer Group"** means, at any time, the Customer and its Affiliates.
- n. **"Customer Management Equipment"** means the hardware and software (not including stored data) and other tangible equipment placed by the Customer in the Customer area.
- o. **"Customer Service"** means the service provided by the Customer to Users;
- p. **"Customer Service Liaison"** means a person identified in the Service Order(s) or such other person notified to DWL by the Customer in writing from time to time who is primarily responsible for the Customer for the day to day liaison with DWL relating to the provision of the Service(s);
- q. **"Customer Equipment"** means the Customer's hardware and software (not including stored data) or Customer Managed Equipment, and other tangible equipment placed by the Customer in the Customer Area and/or the Customer Work Area. The Customer Equipment shall be identified by the Customer in the Service Order(s);
- r. **"Customer Work Area"** means those areas within the Data Center designated as such by DWL and which may be made available by DWL for the Customer's use in connection with the Service(s);
- s. **"Data Center"** means the data Center(s) specified in the Service Order(s);
- t. **"Dispute Resolution Procedure"** means the procedure for escalation and resolution of disputes between the parties set out in Clause 20;
- u. **"Equipment"** means the Customer Equipment, the Customer Managed Equipment and/or the DWL Equipment, either collectively or as the context permits;
- v. **"Expected Capacity Requirements"** means the customer's expected bandwidth requirements, Equipment and physical space requirements within the Data Center in relation to the Service(s) as determined in accordance with Clause 5 and specified in the Service Order(s);
- w. **"Force Majeure Event"** means such circumstances as are set out in Clause 21.1;
- x. **"Initial Term"** means the minimum term for which DWL will provide the Service(s) as specified in the Service Order(s);
- y. **"Instruction"** means any reasonable instruction given by DWL to the Customer or its representatives in connection with the service(s) including; without limitation, any

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technical specifications relating to the Customer Equipment and/or Customer Managed Equipment;

- z. **"Intellectual Property Rights"** means patents, inventions, utility models, petty patents, registered and unregistered design rights, Know flow, copyrights, semiconductor topography rights, rights of extraction relating to databases, the right to use software, marks, trade marks, trading name, domain names and all *other* similar proprietary rights which may subsist in any part of the world including, where such rights are obtained or enhanced by registration, any registration of such rights and applications and rights to apply for such registrations:
- aa. **"Know-how"** means confidential industrial and technical information and techniques in any form including, without limitation, paper, electronically stored data, magnetic media, film and microfilm relating to, including, without limitation, drawings, formulae, test results, reports, project reports and testing procedures, instruction and -training manuals, tables of operating conditions, specifications, tables and procedures;
- bb. **"Peak Time"** means the days and times of day within a calendar week which represent the highest User traffic expected by the Customer as determined in accordance with Clause 5 and specified in the Service Order(s);
- cc. **"Personnel"** means any person engaged in delivering the Service(s) on behalf of DWL;
- dd. **"Planned Maintenance"** means any maintenance or planned works to the Equipment carried out by DWL:
- ee. **"Reporting Period"** means each three (3) month calendar period from the Commencement Date;
- ff. **"Representatives"** means the individuals identified in writing in Service Order(s) as being authorised by the Customer and DWL, and such other third parties who the Customer requires, in relation to the receipt of the service(s), to enter the Data Center for the purpose of visiting the Customer Area for Customer Work Area.
- gg. **"Service"** means those services to be provided by DWL to the customer, as specified in the service order.
- hh. **"Service Order"** means the Service Order Form(s) attached to this Agreement either in print or online specifying, including without limitation the terms and conditions including the plan and the Service Charges for those services which DWL has agreed to provide the Customer, the relevant data Center, price, initial term and any customer equipment, customer managed equipment, DWL equipment to be located at the data Center and any other additional terms and conditions.
- ii. **"Service Levels"** means the performance standards and levels of service to be attained by DWL in its provision of service(s) as may be set out in a service order.

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- jj. "**Successor Operator**" means the customer, any customer assignee, or any other entity succeeding DWL in the provision of operation of all or any of the services.
- kk. "**Term**" means the initial term and any renewal term of this agreement as specified in the Service Order FORM.
- ll. "**Territory**" means India.
- mm. "**Test Points**" means the loop back address of the switch connecting the server farm of the customer within the data Center and the loop back address of the border router connecting to the upstream ISP provider;
- nn. "**Third Party Telecommunications Suppliers**" means any third party operators of the systems other than any member of the DWL Group or the Customer Group who provides bandwidth;
- oo. "**User**" means any person who is a user of goods or services offered by the Customer in connection with the Service(s): and
- pp. "**Virus**" means any construct or device which may impair or otherwise adversely affect the operation of any computer, prevent or hinder access to any program or data, impair the operation of any program or the reliability of any data (whether by rearranging the same within the Computer or any storage medium or device or by altering or erasing the program or data in whole *or* in part, or otherwise), including computer viruses.

In this agreement words importing the singular include the plural and vice versa and words importing one gender includes the other gender. The headings of clauses are for ease of reference and shall not affect the construction of this agreement. References in this agreement to clauses are references to clauses of this agreement. To the extent that there are any inconsistencies between the terms of this agreement and the provisions of a Service Order the order of precedence shall be as follows:

1. Provisions of a Service Order(s) (the latest Service Order shall prevail over earlier Services Order(s) in the case of inconsistency between two or more Service Orders);
2. Terms of this Agreement;
3. Any reference herein to any Act of Parliament shall be deemed to include any amendment, replacement or re-enactment thereof for the time being in force and to include any bye-laws, licenses, statutory instruments, rules, regulations, orders, notices, directions, consents or permissions made thereunder and any condition attaching thereto.

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Commencements and Duration

This Agreement shall be deemed to have commenced on the date upon which DWL accepts the application and the duly filled in Service Order form along with all documents as requested in writing and shall continue in force for the Initial Term and shall continue automatically for additional successive terms equal to the Initial Term ("Renewal Term") unless and until - terminated in accordance with Clause 10.

2. Provision of Services and Emergency

- 2.1** DWL shall provide the Service(s) from the Commencement Date in accordance with this Agreement.
- 2.2** The Customer may request DWL to replace Customer Equipment and/or Customer Managed Equipment (the "Emergency Services") which have or are likely to experience material performance problems (an "Emergency"). Upon receiving a request for Emergency Services, DWL shall notify the Customer of the relevant then current fee for the provision of the Emergency Services. Upon receiving notification from the Customer that the fee for the Emergency Services is acceptable, DWL shall provide the emergency services.
- 2.3** Where DWL in its reasonable opinion determines that emergency services are required, DWL may provide emergency services without the consent of the customer. The customer agrees to pay DWL the then relevant current fees charged for the provision of the emergency services. Whilst DWL will use commercially reasonable efforts to provide emergency services requested by the customer pursuant to this Clause 3, the customer acknowledges that DWL is under no obligation to determine the need for or to provide Emergency Services.

3. Obligations on the customer:

The Customer shall -

- a. comply with any and all technical specifications relating to the Service(s) or Emergency Service(s) made known to the Customer by DWL;
- b. be solely responsible for the operation and maintenance of the Customer Service and Customer Equipment;
- c. take such steps (in good faith) and provide such resources and personnel as are reasonably required to co-operate with and assist DWL in the provision of the Service(s) or Emergency Service(s);
- d. comply with all reasonable requests for information made by DWL in relation to the provision of the Service(s) or Emergency Service(s), such information to be provided Promptly;
- e. comply with any Instruction and the Code of Conduct; and
- f. ensure that any Customer Equipment and/or Customer Managed Equipment is fit for the purpose of receiving the Service(s) and meets any additional requirements made known by DWL.

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4. Equipment

- 4.1 DWL may relocate the customer equipment and customer managed equipment to another customer area or data Center operated by DWL if required. The customer shall cooperate in good faith with DWL to facilitate such relocation, provided that such relocation is based on the reasonable business needs of DWL, including, without limitation, the needs of other DWL customer's or the expansion of the space requirements of the customer, DWL will use commercially reasonable efforts, in cooperation with the customer, to minimise any interruption to the service(s).
- 4.2 Where, in the reasonable opinion of DWL, the Customer requires an increase of improvement in the Customer Equipment or Customer Managed Equipment and/or Services in connection with the service where, including, without limitation, such Customer Equipment or Customer Managed Equipment is likely to have an adverse effect on DWL equipment, the DWL network or the operation of the data Center, DWL may provide such equipment or Customer Managed Equipment and/or Services without the consent of the Customer, provide reasonable notice of and invoice the Customer a reasonable fee for such Equipment and/or Services. The Customer agrees to pay DWL the fees invoiced by DWL for the provision of such Equipment or Customer Managed Equipment and/or services. DWL shall have no obligation to monitor, assess or determine the need for or provide such additional Equipment or Customer Managed Equipment and/or services. The Customer shall promptly remove from the Data Center any Customer Equipment or Customer Managed Equipment replaced by DWL and if the Customer does not remove such Equipment, the provisions of Clause 11.1.(e) shall apply.
- 4.3 Since the CPE requires physical installation, Customer shall provide necessary support in terms of getting any building permissions, etc to facilitate early commissioning and provision of the Service in the Customer Premise.

5. Expected Capacity Requirement and Peak Time Usage

- 5.1 The Customer shall specify in the initial Service Order(s) its predicted bandwidth, interface type, demark point, equipment and/or physical space requirements within the Data Center for the twelve (12) month period immediately following the-Commencement Date and revise such estimates on each anniversary date thereafter (the Expected Capacity Requirement").
- 5.2 The Customer shall promptly notify DWL in writing of any predicted alterations to the Expected Capacity Requirements estimates throughout the Term.
- 5.3 DWL may recommend to the customer that it increases the level of bandwidth or equipment required to support the customer's need where in DWL's reasonable opinion, a failure to increase either the level of bandwidth or equipment is or is likely to result in DWL being unable to meet any of the obligations under this Agreement.
- 5.4 Where the Customer does not act on a recommendation given by DWL in accordance with clause 5.3, DWL shall not be liable to the customer for any loss or damage or whatever nature whether foreseeable or not caused by a failure of the Services to the extent that it relates directly or indirectly to a failure to act on such a recommendation.

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6 Price and Payment terms

- 6.1 Unless otherwise specified in the Service Order(s) or agreed by the parties, the Customer shall pay the amounts specified in the Service Order(s) for the Service(s), together with any other amount owing under this Agreement (including, without limitation any sums payable pursuant to an indemnity given under this Agreement), within seven (15) calendar days of the presentation of the invoice by DWL or as per the billing calendar of DWL as applicable from time to time.
- 6.2 The Customer shall pay DWL the charges as per the Services opted by the Customer and shall make the Payments of all sums due under this Agreement shall be made in full without any set-off, deductions or withholding.
- 6.3 The Customer agrees that the Charges are fixed based on the term of the Service Orders and that the Customer avails certain concessional rates based on the term as agreed in the Service Order and this Agreement. The Customer further agrees that if the Customer terminates the Services within the agreed term, the Customer shall pay DWL the differential Charges payable as per the agreed Service Orders as applicable for the remaining term without demur.
- 6.4 DWL reserves the right to charge daily interest on overdue amounts for the period from the date such payment is due until - the date such payment is received in full (irrespective of any earlier date of judgment) at the rate equal to 2 percent (2%) per calendar month.
- 6.5 All Sums due under this Agreement are exclusive from tax and any other applicable sales taxes which may from time to time be introduced shall be charged in accordance with the relevant -regulations in force at the time of making the taxable Services.

7. Change control

7.1 For the purposes of this Agreement a 'Change" shall mean:

- a) Changes to the service levels (if any)
- b) Adding additional services and
- c) Changes to the agreement

unless otherwise provided in this agreement, all changes shall be made pursuant to this clause 7 and shall be in writing.

- 7.2 The Customer may by notice in writing to the DWL service account manager request a change, such notice containing details of the proposed change and the proposed date of implementation. Upon the receipt of such notice, DWL shall provide the Customer, at the Customer's cost, with an evaluation of the proposed change which shall include but not be limited to feasibility, impact on the service, resource requirements, likely implementation date, an estimate of charges and any changes to the Agreement necessary to implement that change (the evaluation report).
- 7.3 The Customer will consider the Evaluation Report and will notify DWL in writing, within fourteen (14) calendar days of receipt, whether it:

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- a) wishes DWL to proceed with the Change in accordance with Evaluation Report, in which case the, Change process shall begin (or as otherwise agreed between the parties); or
- b) wishes to amend the provisions of the Evaluation Report, in which case the parties will negotiate with each other in good faith to achieve a basis for proceeding with the Change; or
- c) does not require the Change to be implemented, in which case the provisions of this Agreement shall continue as if the Change had not been requested.

7.4 Where a Change leads to the provision of Additional Services, such services shall be deemed to be part of the Service(s) for the purposes of the rights and obligations under this Agreement.

7.5 Where a Change in the Agreement is required to allow the implementation of Change in accordance with this Clause 7, the Agreement shall be amended as agreed between the parties,

7.6 Subject to Clause 7.7, DWL has the right to modify, change, add to or replace all or part of the Equipment or DWL Network ('Alterations') where the Alterations do not give rise to any separate or additional charges to the Customer or result in the Service(s) failing to comply with any relevant Service Levels that may apply.

7.7 Where Alterations arise out of mandatory legal or regulatory requirements to which the Service are subject ("Mandatory Alterations"), DWL, where it is reasonably practicable to do so, shall give the customer advance notice of any mandatory alterations and such mandatory alterations shall be at the customer's expense.

8. Contract Management

The parties may agree the frequency, with which the Customer Service Liaison and the DWL Service Account Manager may meet to discuss matters relevant to, including, without limitation, the continuous, efficient and timely delivery of the Service(s).

9. Compliance with Laws and Obligations under this Agreement

9.1 DWL, in relation to the provision of the service(s), and the Customer: in relation to the receipt of the Service(s), shall procure all necessary permissions, licenses, waivers, consents, registrations and approvals which shall be valid during the term of this Agreement. The Customer understands that the Services are provided subject to Statutory and regulatory directives and the Customer information may be disclosed to such regulatory authorities as and when required and the Customer shall agree to the same.

9.2 Prohibitory Clauses: -

- (a) The Service is given by DWL only for providing the Service to the Customer alone. The Customer may not reassign or resell the Service to any other third party.

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- (b) The circuit will be extended on point-to-point basis and no network will be connected. For any network connection the required approval of DoT/BSNL/MTNL/VSNL/DWL shall be taken in advance by the Customer.
- (c) The Customer shall ensure to use the Service as per the prevailing laws of the country.
- (d) The Customer shall not send unsolicited messages and shall not send messages (spamming*) to DWL or anyone else in a language that is prohibitive, defamatory, vulgar, vituperative, or otherwise via the Service. Should the Customer violate this condition, DWL reserves the right to disconnect the service and the connectivity permanently without prejudice to any other action under the laws of the country. (*For details please check the URL: corporate.DWL.net/usage_policy.htm).
- (e) The Customer is required to ensure that objectionable or obscene or pornographic messages or communications, which are inconsistent with the established laws of the country, are not made by him or by any other person using his facility. Should the Customer violate this condition, DWL reserves the right to disconnect the Service and the connectivity permanently without prejudice to any other action under the laws of the country.
- (f) The Customer shall not resort to hacking or destroying the Internet sites including the websites of DWL. The Customer is required to desist from putting unsolicited messages on server hosted at DWL's premises. Should the Customer violate this condition, DWL reserves the right to disconnect the Service and the connectivity permanently without prejudice to any other action under the laws of the country.
- (g) The Customer are prohibited from misusing or copying the software supplied by the DWL as the Copyright of the said software is protected and misusing or copying of the same is likely to attract legal action under Copyright Act, 1957.
- (h) The Customer is prohibited from transferring the rights and facilities to any other person. The Customer is not permitted to commercially exploit the Service without the prior written permission of DWL and upon compliance of such terms and conditions as may be determined by DWL. The Customer is given only a limited use of Service.
- (i) The Customer is required to fully comply with the provisions of the Indian Telegraph Act, 1885, and the Indian Telegraph Rules made thereunder and any amendments or replacements made thereto from time to time.
- (j) The Customer is required to ensure that IP Telephony is used as permitted by the Government of India, Ministry of Communication and Information Technology, which is as follows: -

IP Telephony Means a service to process and carry voice signals offered through public Internet by the use of Personal Computers (PC) or IP based Customer Premises Equipment (CPE) connecting the following: -

- a. PC to PC; within or outside India
- b. PC in India to Telephone outside India

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c. IP based H.323/SIP Terminals connected directly to ISP nodes to similar Terminals; within or outside India.

- (k) Except whatever is described in conditions above, no other form of Internet telephony is permitted.
- (l) The Customer who is desirous of obtaining interconnection with DWL who wants to use this interconnection for the provisioning of Internet services to its customers shall ensure to have a valid ISP license from the appropriate authority and will also need to have the express written permission of DWL, failure of the same is a violation of point (a) aforementioned.
- (m) The Customer shall not connect any device to the Service without the express written permission of DWL. The Customer is not authorised to change the setup without prior written approval from DWL.
- (n) The network setup connection to the Service at the Customer premises will be as per DWL's approval only. Any change or alteration of the same by the Customer or any person acting on their behalf is expressly prohibited. The Customer is obligated to sign the network connectivity setup diagram of the Service in the Customer's premises. Dishnet shall carry out periodical inspections at the premises of the Customer to ensure that there is no misuse of the Service.
- (o) DWL reserves the right to disconnect the Services and permanently, without notice, without prejudice to any other action under the laws of the country, should the Customer violate any of the conditions contained herein.

9.3 Each party shall comply with all laws, regulations and licence obligations in force from time to time.

9.4 The Customer shall, where requested by DWL, use reasonable efforts to assist DWL in acquiring any and all necessary permissions, licenses and consents required for DWL to deliver the services.

9.5 Without prejudice to the Customer's obligations under Clause 6, DWL may at any time in its sole discretion suspend all or part of the Service(s) if it Suspects or believes that the Customer is likely to fail to comply with or breach any provision of this agreement, any laws, regulation or codes of conduct, including without limitation, libel, defamation and obscenity laws and third party intellectual property rights or failure to pay any sums due under this agreement.

10. Termination

10.1 Either Party shall notify the other Party in writing at least thirty (30) calendar days prior to the end of the Initial term as agreed in the Service Order and that it has elected to terminate any or all Services, in which case such Services shall terminate at the end of such term. The termination of any individual Service will not affect the Customer's obligations to pay for any other Services.

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10.2 Without prejudice to any other rights or remedies the parties may have at law or under this Agreement, either party shall have the right to terminate this Agreement immediately by serving written notice to the other in the event that:

- a) liquidator, administrative receiver, administrator or receiver is appointed in respect of the whole or part of the assets of the other party, or the other party enters into an arrangement or composition with its creditors, or other circumstances arise which entitle the Court or a creditor to appoint a receiver, administrative receiver or administrator or to make a winding-up order in relation to the other party;
- b) the other party commits a material breach or persistent breach of any obligation under this Agreement and, in the case of a breach capable of remedy, fails to remedy the breach within Seven (7) days from the date of notice to do so; and/or
- c) any license under which either whole or part of the DWL Network operates, or any license under which DWL has the right to deliver the Service(s) is revoked or otherwise ceases to be valid and such license is not immediately replaced by another license conferring similar rights so that DWL is not able legally to fulfill all or a material part of its obligations' under this Agreement.
- d) Termination of services due to default of payment: as per the billing policy of DWL if the Customer does not pay the bill on time, the Services shall be disconnected first on expiry of the scheduled due date of payment and terminated permanently 15 days thereafter automatically if the default continues.

10.3 DWL may terminate this Agreement immediately upon written notice to the Customer where there is a Change in Control in the Customer Group or where the Customer fails to have paid any sum owing under this Agreement.

11. Consequences of Termination

11.1 Where this agreement terminates for whatever reason:

- a) DWL will immediately cease providing the services;
- b) any and all payment obligations of the, Customer under this Agreement for the Service(s) provided through to the date of termination will immediately become due and payable;
- c) DWL shall not entertain any refund of the port charges paid in advance under any circumstances if the Service is terminated before the contracted period as the Customers are provided the Services with special terms and rates.
- d) within fourteen (14) calendar days of such termination, each party will return all Confidential Information of the other party in its possession and will not make or retain any copies of such Confidential Information except as required to comply with any applicable legal or accounting record keeping requirement; and
- e) within five (5) calendar days of such termination the Customer shall:

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- (i) remove from the Data Center all Customer Equipment and Customer Managed Equipment and any other Customer property;
 - (ij) deliver or make available all DWL Equipment to an authorised representative of DWL;and
 - (iii) return the Customer Area and the Customer Work Area to DWL in the same condition as it was on the Commencement Date, normal wear and tear accepted.
- f) If the Customer does not remove the Customer Equipment or the Customer Managed Equipment and its other property within the five-day calendar period specified in Clause 11.1.d, DWL will have the option to:
- (i) move any and all such property to secure storage and charge the Customer for the cost of such removal and storage; and/or
 - (ii) liquidate the property in any reasonable manner to satisfy any sums owed by the customer to DWL.

11.2 If the customer fails to pay DWL all undisputed amounts owed to DWL under this agreement when due, the customer agrees that, upon delivery of written notice to the customer, DWL may:

- a) restrict the customer's physical access to the customer area, customer work area, customer equipment and/or customer managed equipment; and/or
- b) take possession of any customer equipment and/or customer managed equipment and store it, at the customer's expense, until taken in full or partial satisfaction of any lien or judgment, all without being liable to prosecution or for damages.

11.3 Termination of this Agreement for whatever reason will not affect any accrued rights or obligations of the parties at the date of termination.

11.4 Clauses 6, 9.5, 11, 12, 13, 14, 17, 20 and 22 and any other provisions expressed to survive termination and those provisions necessary for the interpretation or enforcement of this Agreement shall survive its termination.

12. Representations and Warranties

12.1 The Customer warrants, undertakes and represents that:

- (a) it has the right to enter into this Agreement;
- (b) it owns or is legally licensed to use (including the Intellectual Property Rights comprised therein) and allow DWL to use the Customer Equipment and/ or Customer Manage Equipment in connection *with* the Service(s);

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- (c) the Customer Equipment and, as at the Commencement Date, the Customer laws, regulation within the Territory or Managed Equipment will be fit for purpose and of a satisfactory quality to receive the Service(s) and will not adversely affect the DWL Equipment, the DWL Network, other customer equipment, or the operation of the Data Center(s), including, without limitations in relation to the introduction of any Viruses;
- (d) the performance of its obligations under this Agreement and its use of the Service(s) by the Customer and/or its Users will not violate any applicable laws, regulation or the Code of Conduct or cause a breach of any agreements with third parties or unreasonably interfere with any other DWL customers' use of DWL services;
- (e) it understands and acknowledges that DWL exercises no control whatsoever over the content of the information passing through the customer's website(s) and that it is the sole responsibility of the customer to ensure that the information the customer and its users transmit and receive via their websites complies with all applicable laws, regulations and the code of conduct.
- (f) it shall carry out its obligation's under this Agreement with reasonable skill and care:
- (g) it has (or will have) ownership or licenses to all the Intellectual Property Rights necessary to provide the Customer Service and to use the Customer Equipment and Customer the Service(s):
- (h) all Customer Equipment will be used in accordance with all applicable manufacturer specifications; and
- (i) the information provided in the Service Order(s), other than Expected Capacity Requirement and Peak Time predictions provided pursuant to Clause 5, is accurate.

12.2 DWL represents warrants and undertakes that:

- (a) it has the right to enter into this Agreement;
- (b) the performance of its obligations under this Agreement and the use of the Service(s) by the Customer and its Users will not violate any applicable laws, regulation within the Territory or cause a breach of any agreements with third parties or unreasonably interfere with any other DWL customers' use of DWL services: and
- (c) it shall carry out its obligations under this Agreement with reasonable skill and care.
- (d) The express warranties, undertakings and obligations of each party stated in this Agreement are in lieu of all other conditions, warranties, representations or other terms whether express or implied, including, without limitation, any implied warranties or conditions as to satisfactory quality or fitness for a particular purposes which are expressly excluded to the extent permitted by law. DWL does not warrant that the services will be uninterrupted, error-free or completely secure.

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13. Indemnities

- 13.1 DWL shall indemnify the customer for all losses or damages of whatever nature whether foreseeable or not arising in respect of any negligent act or omission of DWL in the performance of any of its obligations under this Agreement;
- 13.2 The Customer shall indemnify DWL for all losses or damages of whatever nature whether foreseeable or not arising out of or in connection with:
- (a) any negligent act or omission of the Customer or its Representatives, employees, sub-contractors or agents in the performance of its obligations under this Agreement;
 - (b) the breach by the Customer or any of its Representatives, employees, sub-contractors or agents of any of its warranties or obligations under this Agreement;
 - (c) any act of fraud or dishonesty committed by the Customer or its Representatives, employees, sub-contractors or agents and act or mission in violation of Clause 9 ;
 - (d) the Customer not acting in accordance with, DWL's Instructions and/or any recommendation made pursuant to Clause 5; and
 - (e) any claim made against DWL by any of the Users or any other third party relating to the Service(s), the Customer Service or any other provisions of this Agreement.

14. Infringements of Intellectual Property Rights

- 14.1 The Customer shall indemnify DWL for all losses or damages of whatever nature whether foreseeable or not arising out of or in connection with the infringement of any third party Intellectual Property Rights relating to DWL's use of the Customer Equipment and/or the Customer Managed Equipment in connection with this Agreement.
- 14.2 DWL shall indemnify the Customer for all losses or damages of whatever nature whether foreseeable or not arising out of or in connection with the infringement of any Intellectual Property Rights where such rights reside in any DWL equipment owned by or purported to be owned by DWL.
- 14.3 The indemnified party shall notify the other promptly in writing of any allegation of infringement of which it becomes aware and make no admissions or prejudicial statements relating to the alleged infringement.
- 14.4 In the event that DWL is obliged to indemnify the Customer pursuant to Clause 14.2, DWL may, at its option and expense, procure for the Customer the right to continue to receive the Service(s) free of any liability for such infringement, or to modify the infringing use so that it becomes non-infringing, provided that such action shall not materially change the Service(s).
15. Service Level Agreement: DWL shall offer standardized services to the customer. However, upon specific request from the customer, a separate Service Level Agreement (SLA) shall be executed with the customer.

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16. General Conduct of Proceedings

Where a situation arises or an event Occurs which gives rise to the right by a party to claim an indemnity under this Agreement, the indemnifying party shall, at its option, have conduct of all negotiations and proceedings and the indemnified party shall provide such assistance reasonably required by the indemnifying party. If such option is exercised the indemnifying party undertakes to conduct negotiations and proceedings diligently and to endeavour in so doing not to materially adversely affect the indemnified party's reputation or goodwill.

17. Limitation of Liability

17.1 Nothing in this Agreement will exclude or restrict any party's liability for:

- (a) death or personal injury resulting from its negligence, Willful or reckless misconduct or that of its employees while acting in the course of their employment;
- (b) fraud and fraudulent misrepresentation;
- (c) breach of obligations to make required payments, including those pursuant to an indemnity, under this Agreement; or
- (d) any matter to the extent that such liability cannot be lawfully excluded.

17.2 Each Representative visiting the Data Center(s) does so at its *own* risk. DWL assumes no liability whatsoever for any harm to such Representatives resulting from any cause other than the negligence or willful or reckless misconduct of DWL.

17.3 Subject to Clause 17.1, DWL assumes no liability for any damage, to, or loss of any Customer Equipment or Customer Managed Equipment resulting from any cause, other than the negligence, willful or reckless misconduct of DWL to the extent that DWL is liable for any damage to, or loss of, Customer Equipment or Customer Managed Equipment for any reason. such liability will be limited only to the then-current replacement value of the Customer Equipment, or, as the case may be, or Customer managed Equipment excluding lost data and software.

17.4 Subject to clause 17.1, DWL's liability arising out of or in connection with this agreement whether arising in contract (including, without limitation, the obligations pursuant to an indemnity), tort (including, without limitation, negligence), misrepresentation and/or breach of statutory duty or otherwise, notwithstanding that loss may have been foreseeable or within the reasonable contemplation of the parties, and whether for a single event or a series of events in any twelve (12) calendar month period from the date of this Agreement, is limited to the fees paid by the Customer in the twelve (12) calendar months preceding the date upon which the cause of action was identified by the Customer and notified in writing to DWL.

17.5 In no circumstances, including the negligent act or omission of itself, its employees or agents, shall either party be liable to the other in contract (including, without limitation, the obligations pursuant to an indemnity), tort (including, without limitation, negligence), misrepresentation *or* breach of statutory duty for loss of revenue, loss of profits, loss of

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business, loss of contracts, loss of data, loss of anticipated savings or loss of goodwill, or any indirect, consequential or special loss arising out of or in connection with this Agreement, notwithstanding that any such loss may have been foreseeable or was within the reasonable contemplation of either party.

- 17.6 Notwithstanding any other provision of this Agreement DWL does not and cannot control the flow of data to or from the DWL Network and other portions of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by third parties whose actions or inactions can impair or disrupt the Customer's connections to the Internet. Accordingly, DWL disclaims any and all liability of whatever kind resulting from or related to such events.
- 17.7 Neither party shall be liable to the other for any failure to comply with its obligations under this Agreement to the extent that this liability arises as a result of the failure by the other party to fulfill its obligations under this Agreement.

18. **Insurance**

Each party shall maintain at its own expense adequate insurance as may be necessary to cover all its liability, or potential liability, arising out of or in connection with this Agreement or the performance of its obligations under this Agreement.

19. **Ownership of Rights in intellectual property and data**

- 19.1 The customer grants DWL and its affiliates a non-exclusive, royalty-free license to use, copy interface with and sub-license any intellectual property rights in the Customer service, any Customer equipment, customer managed equipment and the information and data in the customer service solely for the purpose of performing its obligations under this agreement.
- 19.2 DWL grants to the Customer a non-exclusive, revocable, royalty-free license to use and interface with any Intellectual Property Rights in the DWL Equipment and DWL Network solely for the purpose of receiving the Service(s). Other than to the extent permitted by law, the Customer shall not reverse engineer, de-compile or disassemble the DWL Equipment or DWL Network or any part thereof.
- 19.3 If DWL develops any customized software for the Customer or makes any modifications or enhancements to Customer Equipment or Customer Managed Equipment under this Agreement, DWL shall have sole ownership of the Intellectual Property Rights in such software, modifications and enhancements and agrees to grant the Customer a non-exclusive, revocable, royalty-free, non-assignable license to use such software, modifications and enhancements solely for the Customer's own internal purposes. The Customer shall, unless otherwise agreed, have no right to commercially exploit such software, modifications or enhancements, either during the term of this Agreement, including both the Initial Term and any successive Renewal Term, or any period after the termination of this Agreement.
- 19.4 As between the Customer and DWL, DWL has sole ownership of the Intellectual Property Rights in the DWL Equipment and the DWL Network and the Customer shall have sole

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ownership of the Intellectual Property Rights in the Customer Equipment and the Customer Managed Equipment.

19.5 Subject to Clause 22, notwithstanding anything to the contrary in this Agreement, DWL shall be permitted to use any skills or knowledge of a general nature acquired during the course of providing the Service(s), including, without limitation, information publicly known or available or of a type that could reasonably be acquired in similar work performed for another customer of DWL.

20. Dispute Resolution

20.1 Any dispute, controversy or claim (each an "Issue") arising out of or in connection with this agreement including the validity or existence of this agreement shall be resolved in accordance with this Clause 20.

20.2 An issue shall be referred by the aggrieved party to the other party by giving notice in accordance with Clause 25 and the deemed date of receipt of such notice shall be the "Notification Date". DWL and the customer shall procure that their respective representatives for the purposes of this clause 20.2 (being in the first instance the DWL service account manager and the customer service liaison or in their absence their duly appointed deputies as notified from time to time) discuss in good faith any issue with a view to resolving it. If an issue is not resolved to the satisfaction of the parties within fourteen (14) calendar days of the Notification date, then the issue shall be resolved in accordance with clause 20.3.

20.3 Where an Issue is not resolved under Clause 20.2, - the parties shall ensure that senior executive officers for DWL and the Customer respectively, meet together with a view to resolving the Issue. Where the Issue is not resolved within thirty-five (35) calendar days from the Notification Date either party may refer the same to Arbitration.

20.4 Except where clearly prevented by the nature of the Issue the parties shall continue performing their respective obligations under this Agreement while any Issue is escalated in accordance with this Clause 20.

21. Force Majeure

21.1 "Force Majeure Event" means an event beyond the reasonable control of that party and in this case of DWL /its sub-contractors, including, without limitations an act of God, tempest, failure or shortage of power supplies, flood, lightning or fire the act or omission of Government, regulators, highways authorities, Third Party Telecommunications Suppliers or other competent authority war, military operations or riot, which causes that party to be unable to comply with all or a material part of its obligations under this Agreement. A Force Majeure Event affecting any of DWL's subcontractors shall be construed as a Force Majeure Event affecting DWL.

21.2 On the occurrence of a Force Majeure Event affecting a party (the "Precluded Party") , the Precluded Party must notify the other party of the force Majeure Event as soon as reasonably practicable after that Force Majeure Event arises.

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21.3 To the extent and for the period that the precluded party is unable, due to the force majeure event, to comply with its obligations under this agreement, those obligations will be suspended for the duration of the force majeure event and the precluded party shall not be liable to the other party for any loss or damage which may be sustained by that other party during such period as a result of the force majeure event. In the event that a force majeure event continues for a period of ninety (90) calendar days, either party shall have the right to terminate this agreement upon written notice to the other.

22. Confidentiality

22.1 Except as contemplated for the purposes of performing this Agreement, a party (the "Recipient") shall not use, copy, publicize, adapt, alter, make available to any third party or part with possession of any information of the other party (the "Disclosing Party") which is disclosed or otherwise comes into its possession under or in respect of this Agreement and which is of a confidential 'Nature ("Confidential Information") provided that this obligation shall not apply to information:

- (a) which the Recipient can prove was in its possession at the date it was received or obtained (other than following a breach of an obligation of confidentiality);
- (b) which the Recipient obtains from some other person with good legal title thereto;
- (c) which is in or comes into the public domain otherwise than through the default or negligence of the Recipient;
- (d) which is independently developed by or for the Recipient;
- (e) the disclosure of which is required by law, order of court the requirements of any regulatory authority or the rules of any Stock Exchange; or
- (f) in respect of which the Recipient has the written consent of the Disclosing Party to so disclosed.

22.2 Confidential Information shall at all times remain the property of the Disclosing Party and must at the Disclosing Party's option be returned or destroyed on request, free of charge, and in any event within thirty (30) calendar days of the end of the Term (together with all copies).

22.3 Notwithstanding Clause 22.1, the recipient shall be able to disclose confidential information to its employees, professional advisers, agents, sub-contractors or potential investors and/or purchasers of either party's business (or any part thereof) on a need to know basis provided that the recipient procures that the person to whom such disclosure is made enters into confidentiality obligations with the relevant party, the terms of which not being inconsistent with this clause 22.

23. Publicity

23.1 The Customer agrees that during the Term DWL may publicly refer to the Customer, either orally or in writing, as a Customer of DWL.

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23.2 Neither party will use the other's name or identity in a way which could reasonably be expected to be derogatory to that party.

24. Assignment and Sub-Contracting

24.1 The Customer may not assign its rights or obligations under this Agreement to any third party without DWL's prior written consent.

24.2 DWL may transfer, assign or novate its rights or obligations under this Agreement without the Customer's prior written consent. DWL may sub-contract any of its rights or obligations under this Agreement without the Customer's prior written consent.

24.3 Any party who sub-contracts any of their rights or obligations under this Agreement shall be primarily liable to the other party for its obligations under this Agreement.

25. Notices

25.1 Any notice or other communication required to be given or made under this Agreement must be in writing (including electronic form) and addressed to the receiving party's principal contact at the address of the receiving party as set out below or such other person or address as notified from time to time:

For DWL:

Sterling Tower,
327, Anna Salai,
Teynampet,
Chennai -600006

For the Customer, the details set out in the Service Order(s),

25.2 Notices and communications will be considered given or made:

- a) if sent by hand, courier or certified mail, upon receipt;
- b) if sent by facsimile, upon entry into the log of the facsimile machine of a message that the facsimile machine of a message that the facimile has been successfully sent in its entirety to the facsimile number set out above or such other number as notified from time to time;
or
- c) if sent by email, upon proof of a "delivery receipt" from the sending party's email software application that the email has been successfully delivered to the email address set out above or such other email address as notified from time to time.

26. No Partnership

Nothing contained herein shall be construed as creating any agency, partnership, joint venture or any other form of joint enterprise between the parties.

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27. Variation

DWL may vary the terms and conditions of this Agreement upon giving written notice to the Customer, effective thirty (30) calendar days following such notice.

28. Services

DWL offers no warranty, whether express or implied, and makes no representation with regard to any merchandise, information, content and Service offered or made available or accessible on the Internet, nor shall be liable for the Location Owner of the Customer reliance on or use of such merchandise, information, content, and services offered or made available or accessible on the Internet

29. General

29.1 This Agreement represents the entire understanding between the parties in relation to the subject matter hereof and supersedes all agreements and representations made by either party, whether oral or written. The parties agree that, save as expressly set out herein, neither party will have any liability for any statement or representation made by it (whether innocently or negligently) upon which the other party relied in entering into this Agreement, unless such statement *or* representation was made fraudulently.

29.2 Failure by either party to enforce any of its rights hereunder shall not be taken as or deemed to be a waiver of such right.

29.3 If any part, term or provision of this Agreement is held to be illegal or unenforceable the validity or enforceability of the remainder of this Agreement shall not be affected. The parties may at the earliest possible opportunity thereafter, amend the Agreement for the purpose of removing or rectifying the invalid term or provision.

29.4 The parties shall, and shall use all reasonable endeavours respectively to procure that any necessary third party shall do execute and perform all such further deeds, documents, assurances, acts and things as any of the parties hereto may reasonably require by notice in writing to any other party to carry the provision of this agreement into full force and effect.

30. Dispute resolution

The Parties will endeavour to settle amicably by mutual discussions any disputes, differences, or claims whatsoever related to this Agreement. Failing such amicable settlement the dispute shall finally be settled by arbitration. The Arbitration and Conciliation Act, 1996, shall govern the arbitration proceedings. The arbitration will be held in Chennai, India. The language of the arbitration shall be English. The arbitral award shall be final and binding on both the parties. There will be three (3) arbitrators (the "Arbitration Tribunal"), the first of which will be appointed by the claimant in its notice of arbitration, the second of which will be appointed by the respondent within thirty (30) days of the appointment of the first arbitrator and the third of whom will be jointly appointed by the Party-appointed arbitrators within thirty (30) days thereafter. Any arbitration award will be final and binding on the Parties, and judgment

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thereon may be entered in any court of competent jurisdiction. This Agreement (including its jurisdiction Clause) shall be governed by, construed, and take effect in accordance with the Laws of India. The Courts of Chennai shall alone have jurisdiction in all matters.

31. Governing Law

This Agreement shall be governed by and construed and interpreted in accordance with the law of India.

I HAVE READ, UNDERSTOOD AND ACCEPT TO COMPLY AND BE BOUND BY THE ABOVE TERM AND CONDITIONS -CUSTOMER SERVICE AGREEMENT.

I ACCEPT