

REVISION HISTORY

| DATE | AMENDMENT | DESCRIPTION OF AMENDMENT |
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## **SCHEDULE 9 - SUPPLY TERMS**

### **1 DEFINITIONS, INTERPRETATION AND STRUCTURE**

- 1.1 Unless otherwise specified:
- (a) capitalised words used in these Supply Terms have the meaning given to them in the dictionary in Part 1 of Schedule 8; and
  - (b) the rules of construction and interpretation of these Supply Terms are in Part 2 of Schedule 8.
- 1.2 If there is any inconsistency between this document and the Reference Offer, then the inconsistency must be resolved in accordance with the following descending order of precedence:
- (a) Schedule 1 (Service Descriptions);
  - (b) Schedule 3 (Charges);
  - (c) the main body of these Supply Terms;
  - (d) the other Schedules; and
  - (e) the Joint Working Manual.
- 1.3 The Joint Working Manual is incorporated into these Supply Terms.

### **2. COMMENCEMENT, DURATION AND REVIEW**

- 2.1 These Supply Terms become effective on the date of execution or the date of the effect of an order of the Regulator that the most recently published Batelco Reference Offer is in effect between two Licensed Operators (**Effective Date**).
- 2.2 These Supply Terms continue in full force and effect, as varied from time to time, for an initial period of one (1) year from the Effective Date (**Minimum Term**) and shall automatically renew for further periods of one (1) year, unless terminated earlier in accordance with this clause or clauses 13.6 or 14.

2.3 Subject to clauses 2.4, 2.5 and 2.5A, if the Regulator approves or mandates any change to the Reference Interconnection Offer, or, if applicable, the Reference Access Offer, then these Supply Terms are automatically amended to incorporate the same change in respect of Regulated Services only, covered by the changes, or, if the same change does not directly apply, then with the necessary changes to ensure that these Supply Terms are consistent with the Reference Interconnection Offer or Reference Access Offer (as the case may be).

2.4 If the rights and obligations of either of the parties under these Supply Terms are or may be likely to be affected by:

- (a) amendments to or repeals of the Telecommunications Law or of a condition of a party's License; or
- (b) a ruling, determination, approval, order or directive of the Regulator (other than any adverse effect on Batelco as a result of a mandated or approved change to the Reference Interconnection Offer or Reference Access Offer); or
- (c) Batelco reasonably believing, based on some action of the Regulator, that a part of the Supply Terms contravenes or may contravene any provision of the Telecommunications Law, Batelco's License or other statutory requirements,

the parties must meet as soon as practicable and negotiate in good faith any amendment to these Supply Terms necessary or appropriate to ensure that they remain consistent with the Telecommunications Law, ruling, determination, approval order or directive of the Regulator or such other regulatory requirement. If the parties cannot agree any amendment, clause 23 applies.

2.5 Batelco shall have the right on reasonable notice to the Licensed Operator to change its Charges, provided that the Licensed Operator shall have the right to refer any Material Change as a Dispute (as defined at clause 24.1) to dispute resolution under clause 24 and if the Dispute is not resolved within the period of notice of the change the Licensed Operator may terminate the Services subject to the Material Change.

- (a) If any part of the Supply Agreement is terminated following any Material Change, then the Licensed Operator shall, notwithstanding the terms of Schedule 5 or any other schedule of this Supply Agreement, not be liable for

any compensation, other than where the Licensed Operator terminates a service in which discounts associated with the period of the service (1-year, 2-year, etc.) are applicable, with respect to that termination, whether by way of under-utilisation charges or removal of capacity charges or liquidated damages.

- (b) For the purposes of clauses 2.5 and 2.5A, “Material Change” means an increase in the relevant Charge by a rate greater than Batelco’s weighted average cost of capital (as determined by the Regulator) or the rate of inflation in the Kingdom of Bahrain over the period from the first effective date of the relevant Charge to the effective date of the increase.

2.6 Before the end of the Minimum Term, the parties may agree to extend the duration of these Supply Terms for an agreed period.

2.7 For the avoidance of doubt, and notwithstanding the interconnection of the parties' Networks, neither party shall hand over to the other party, nor have an obligation to convey, Telephone Calls or other traffic of any category, unless the other party has agreed to provide the relevant Service under these Supply Terms.

### 3. DUTY TO PROVIDE SERVICES AND PROVISIONING

3.1 The parties shall connect and keep connected their Networks at points of Interconnection using Customer Sited Interconnect or In-span Interconnect in accordance with these Supply Terms (to such extent permitted by the parties respective Licenses).

3.2 Subject to clause 3.3, each party (as **Access Provider**) must supply the Services requested by the other party (as **Access Seeker**) in accordance with and subject to the requirements specified in these Supply Terms.

3.3 The Access Seeker must comply with:

- (a) Forecasting Procedures; and
- (b) the Ordering and Provisioning Procedures (if applicable to a Service).

The terms in a Service Description may override, vary or supplement those procedures.

- 3.4 Each party shall comply with the Service Description, Joint Working Manual, and Specifications in so far as they apply to the provision of Services.
- 3.5 The parties shall apply standards and operating guidelines to the interconnection of their Networks in the order of precedence specified below:
- (a) any legal requirements imposed upon each of them including requirements under their License;
  - (b) Service Descriptions;
  - (c) Specifications;
  - (d) Joint Working Manual;
  - (e) any recommendations by ITU-T; and
  - (f) the GSM memorandum of understanding (where applicable).
- 3.6 Each party shall comply with the Bahrain Numbering Plan in relation to the Services and supply of services using the Services.

#### **4. CHARGES**

- 4.1 The Access Seeker shall pay the Access Provider the relevant Charges determined in accordance with Schedule 3 of this Reference Offer.

#### **5. BILLING AND PAYMENT**

- 5.1 Each party agrees to comply with the terms and procedures set out in Schedule 4 in relation to billing and collection.
- 5.2 Except where a Service Description expressly provides otherwise, the Access Seeker is solely responsible for billing and collecting its charges for services supplied to Access Seeker Customers using the Services.

## **6. NETWORK PROTECTION AND SAFETY**

- 6.1 Each party is responsible for the safe operation of its Network, and shall, so far as is reasonably practicable, take all necessary steps to ensure that its Network, its Network operations and implementation of these Supply Terms:
- (a) do not endanger the safety or health of any person, including the People of the other party; and
  - (b) do not cause physical or technical harm to the other party's Network, including but not limited to causing damage, interfering with or causing deterioration in the operation of that party's Network.
- 6.2 Each party will manage its Network to minimize disruption to Services and in the event of interruption or failure of any Services, will restore those Services as soon as is reasonably practicable.
- 6.3 A party shall:
- (a) not use or knowingly permit the use of any Service, or install, connect, link or use (or permit the installation, connection, linking or use of) any telecommunications equipment in contravention of any law; and
  - (b) be responsible to the Access Provider for anyone else who uses any Service or any part of any Service provided to the Access Seeker, or does anything unauthorized relating to a Service or any part of any Service.
- 6.4 Each party shall ensure that its Network and operating procedures comply in all respects with the safety requirements established by, or under the Joint Working Manual.

## **7. CLI**

- 7.1 If a party's Network requests CLI from the other Network, the originating Network shall generate and convey CLI to the Network requesting it to the extent that the originating Network has such a capability.
- 7.2 A party whose Network receives CLI following a request pursuant to clause 7.1 shall only use the CLI for the following purposes;

- (a) routing Telephone Calls;
- (b) compilation of inter-party invoices;
- (c) compilation of End User bills (provided that CLI is disclosed on the End User bill);
- (d) call trace, malicious call identification, compilation of statistics relating to call origin, and fraud prevention and detection; and
- (e) display to End Users, subject to the Joint Working Manual.

7.3 The cost of generating and conveying CLI is included in the relevant conveyance rates for Telephone Calls. Neither party shall apply additional charges for CLI.

7.4 If there is a change in applicable law or regulation materially affecting the operation of CLI, the parties shall change the operation of CLI to the extent necessary to comply with the applicable law or regulation.

## 8. NETWORK ALTERATIONS AND CHANGES

8.1 If a party (**the Altering Party**) proposes to undertake a material change to the architecture, standards or interfaces of its Network (**Network Change**), which is anticipated to require the other party to change the hardware or software, including interface software, of that other party's Network in order to maintain the inter-working of the Altering Party's Network with the Network of the other party as required by these Supply Terms, the Altering Party shall notify the other party as soon as is reasonably practicable of the proposed Network Change.

8.2 As far as practicable, the period of notice in clause 8.1 must be at least six (6) months.

8.3 The notice required by clause 8.1 shall set out the technical details of the proposed change, the timetable of the proposed change and any known impact to the inter-working of the Parties Networks relevant to Services provided under these Supply Terms.

- 8.4 The Altering Party must update the other party from time to time of any changes to the proposed change, including the timetable for implementation.
- 8.5 For the avoidance of doubt, a party has the right to modify, change or substitute underlying technology or the specifications of the Services to improve the functioning or performing of the Services or its Network provided that such modifications do not materially adversely alter the functioning or performance of the Services supplied to the other party. Such modifications may include replacement of elements of existing Network infrastructure or systems with alternate technology.
- 8.6 Nothing in these Supply Terms may be construed to preclude a party from using, modifying or substituting such of its equipment for other of its equipment as reasonably required to provide any of the Services within the scope of these Supply Terms.

## **9. EQUIPMENT RESPONSIBILITIES**

- 9.1 Where a party provides the other party (Access Seeker) with any equipment or the Access Provider manages any other equipment as part of any Service, or locates equipment with the Access Seeker's premises:
- (a) arrange for the equipment to be installed in an accessible and suitable place, free of charge to the Access Provider, leave it installed there and not interfere with it;
  - (b) pay for repairing or replacing the equipment if it is lost, stolen or damaged; if the equipment is lost, stolen or damaged the Access Seeker will notify the Access Provider promptly;
  - (c) make sure any software forming part of or loaded on the equipment (other than software provided by the Access Provider) is not affected by any virus at the time the Access Provider begins to manage the equipment;
  - (d) follow the Access Provider's reasonable directions, and any directions from the equipment manufacturer, when using the equipment and never use the equipment for purposes for which it is not designed;

- (e) only use the Access Provider's equipment at the agreed site location, where one has been specified;
- (f) ensure that the Access Provider's equipment shall at all times remain a chattel; and
- (g) not encumber the Access Provider's equipment or expose such title to third party claims and will notify the Access Provider if it becomes aware of any third party claim.

9.2 When any of the Access Provider's equipment is no longer required:

- (a) the Access Seeker shall remove the equipment and return it to the Access Provider. The Access Seeker shall be responsible for any damage to the Access Provider's equipment and for repairing or reinstating any premises, fixtures or other equipment from which the Access Provider's equipment is removed except for fair wear and tear; and
- (b) the Access Seeker shall pay all applicable rental charges (or a reasonable rental if none is separately specified) until such time as the Access Provider's equipment is returned to the Access Provider.

9.3 If the Access Seeker fails to remove the Access Provider's equipment under clause 9.2 within three (3) months of notification that the equipment is no longer required, then the Access Provider may remove it and the Access Seeker will get any consents required for the Access Provider to do this (such as landlord's or owner's consent). The Access Seeker shall be responsible for the Access Provider's reasonable costs to repair or reinstate any premises, fixtures or other equipment from which the Access Provider's equipment is removed.

9.4 For the Access Seeker's own safety, and so that Services to the Access Seeker and other Access Provider customers are not disrupted, the Access Seeker must help safeguard the Access Provider's Network and the Access Provider's equipment. The Access Provider will:

- (a) let the Access Provider have reasonable and safe access to the Access Seeker's premises:

- (i) to maintain or develop the Access Provider's Network or the Access Provider's equipment;
- (ii) to fix any fault or replace any equipment; or
- (iii) for any other reasonable purpose,

provided the people the Access Provider sends carry proof of their identity;

- (b) follow the Access Provider's reasonable directions when connecting anything to the Access Provider's Network or the Access Provider's equipment and make sure it is installed to the Access Provider's specifications and is approved;
- (c) never interfere with the Access Provider's Network or the Access Provider's equipment and ensure only people the Access Provider authorizes may work on it;
- (d) pay the Access Provider's costs for repairing or replacing any part of the Access Provider's Network or the Access Provider's equipment which is lost or damaged by the Access Seeker, or by anyone the Access Seeker is responsible for; there is no charge where damage occurs through normal wear and tear; and
- (e) make sure everyone the Access Seeker is responsible for also meets these responsibilities.

## **10. QUALITY OF SERVICE**

10.1 To the extent permitted by law, neither party has any obligation to the other party in respect of the quality of any Service, except as set out in this clause 10.

10.2 Each party must use reasonable endeavors to:

- (a) ensure that Services that it provides to the other party are of an equivalent quality to that which it supplies to itself; and
- (b) maintain and repair Faults in Services in an equivalent manner to that which it provides to itself.

- 10.3 Subject to clauses 10.4 and 10.5, the Access Provider must use its reasonable endeavors to:
- (a) provide, but does not guarantee, the provision of continuous or fault-free Services to the Access Seeker; and
  - (b) comply with any quality of service requirements set out in a Service Description in Schedule 1.
- 10.4 Each party in its capacity as Access Provider does not give or make any warranty, representation, undertaking or commitment in respect of the quality of service applicable to any Service, and any implied warranty to this effect is excluded, including without limitation any warranty, representation, undertaking or commitment (whether made to the Access Seeker before the Effective Date or otherwise) in respect of any difficulty or fault resulting in a failure to establish any Service, in-service interruption, or loss, or distortion, of communication.
- 10.5 If any applicable law implies warranties or conditions or imposes obligations on the access provider in respect of the quality of service of any Service, which cannot be or can only to a limited extent be, excluded, restricted or modified, then to the extent to which the Access Provider is entitled to do so, the liability of the Access Provider under the applicable law is limited:
- (a) to the supply of relevant Services again or the payment of the cost of having the relevant Service supplied again, at the Access Provider's option;
  - (b) to the repair or replacement of property or paying the cost of repair or replacement, at the Access Provider's option; or
  - (c) to any other remedy prescribed by applicable law.
- 10.6 If an Access Provider breaches any Service Level or quality of service requirement in Schedule 1, then the Access Seeker's sole, complete and final remedy is limited to:
- (a) the Access Provider, in the future, taking reasonable steps to comply with that quality of service requirement; and

- (b) the Access Provider making available or offering to the Access Seeker the Service Rebate or other specific remedy applicable to that Service Level or quality of service requirement, as set out in Schedule 1.
- 10.7 The Access Seeker must use reasonable endeavors to inform the Access Provider in advance of any event of which it becomes aware which would reasonably be expected to result in high-impact calling (such as attack dialing). The Access Provider may take steps it reasonably considers appropriate to minimize any detrimental effects of high-impact calling on the Access Provider's Network.
- 10.8 The parties must liaise with a view to eliminating any fraudulent use of the Services by the Access Seeker's Customers to the extent that the fraudulent use occurs as a result of the Access Provider providing Services to the Access Seeker, and establishing procedures for tracing malicious calls.
- 10.9 The Access Provider shall have no liability (including liability to credit any Service Rebate) for any failure to meet a Service Level where that failure has been caused or materially contributed to by:
  - (a) any acts or omissions of the Access Seeker, including a breach by the Access Seeker of the Supply Terms in relation to any Service;
  - (b) a Force Majeure event, which in this context is deemed to include:
    - (i) difficulties experienced by the Access Provider in interconnecting its Network with the Network of any other party (except where the Access Provider has not used all reasonable endeavors to interconnect its Network with the Network of the other party);
    - (ii) any third party Equipment not operated or managed by or on behalf of the Access Provider; or
  - (c) a Regulatory Event.
- 10.10 For the avoidance of doubt, the Access Provider shall have no obligation to meet any Service Level during any period for which the Services are suspended pursuant to clause 13.

- 10.11 If the Access Provider is not reporting Service Rebates to the Access Seeker and the Access Seeker becomes entitled to a Service Rebate, the Access Seeker may request that Service Rebate in writing from the Access Provider together with reasonable supporting documentation. If the Access Seeker records quality of service information in respect of an applicable service level and processes the information so as to produce information according to the applicable period and quality of service measure to show the actual performance of the Access Provider against the relevant service level, then the Access Seeker may claim an additional Service Credit (subject to any Total Service Credit Cap) (as defined in the relevant Service Description) for the provision of the information to the Access Provider in connection with the request for a Service Rebate, which additional credit will be credited in the same way as the aggregate of any Service Rebate under this clause 10.
- 10.12 The Access Provider shall, after verifying the Access Seeker's entitlement to a Service Rebate, and subject to any Total Service Credit Cap in respect of any service, apply the amount of that Service Rebate as a credit towards the Charges or Access Charges payable by the Access Seeker for that Service, for the billing period following such verification and for each subsequent period until the total amount of the applicable Service Rebate (subject to a Total Service Credit Cap) has been applied in full.

## **11. NEW SERVICES**

- 11.1 Where a request from a Licensed Operator for a New Service is for a new Interconnection Service or a new Access Service then the New Service Request shall be processed in accordance with this clause 11.
- (a) Subject to any written agreement between the parties, Batelco shall use all reasonable endeavours to implement a request for an Offered Service within the timescales set out in the timetable at clause 6.1 of the main body of the Reference Interconnection Offer, subject to Batelco and the Licensed Operator using all reasonable endeavours as necessary to implement the Offered Service to:
- (i) deliver information and reply to correspondence promptly;
  - (ii) procure prompt attendance at meetings by qualified personnel; and

- (iii) adopt a commercial approach to negotiation.

11.2 A New Service Request should contain:

- (a) a reasonably detailed description of the proposed New Service;
- (b) an outline of the technical and functional specifications which the Licensed Operator considers should apply to the New Service;
- (c) a preliminary forecast of the Licensed Operators' expected use of the New Service covering a period of at least 3 years, provided quarterly.

11.3 Batelco will consider in good faith any New Service Request provided to it and the parties shall meet promptly to discuss and negotiate in good faith the following:

- (a) whether the development of the proposed New Service is a Simple, Intermediate or Complex Case;
- (b) an appropriate technical and functional definition for the New Service;
- (c) the options available in connection with the provision of the New Service; and
- (d) the commercial terms applicable to the scoping, development, testing, implementation and supply of the New Service, including:
  - (i) the charges and pricing regime to apply to any or all of those activities considering the likely time and resources required;
  - (ii) the framework, dependencies for, and scope of, any proposed testing and acceptance processes;
  - (iii) a draft timetable for the scoping, development, testing, implementation and supply of the New Service; and
  - (iv) any other matters relevant to the New Service Request.

- 11.4 The parties shall use all reasonable endeavors to complete the consultation at clause 11.3 within the relevant period set out at clause 11.11 (the **New Service Consultation Period**) from the date of receipt of the New Service Request.
- 11.5 The Licensed Operator shall advise Batelco as soon as reasonably practicable if, at any time during the discussions, pursuant to clause 11.3 above, it decides that it wishes to withdraw its Request for New Service.
- 11.6 If the Licensed Operator wishes to proceed with its Request for New Service, then the Licensed Operator shall:
- (a) develop and submit to Batelco a comprehensive statement of requirements, setting out in detail the Licensed Operator's view of all resolved issues identified in clause 11.3 (the **Statement of Requirements**);
  - (b) provide to Batelco any further information Batelco may reasonably require to enable it to properly scope, develop, implement or supply the New Service.
- 11.7 Upon receipt of the Statement of Requirements Batelco shall use reasonable endeavors to complete the planning for development, testing, implementation and supply of the New Service within the relevant period set out at clause 11.11 (the **New Service Planning Period**), which shall include the preparation of a final description of the New Service (a **New Service Proposal**). For the avoidance of doubt, a New Service may vary between being a Simple Case, Intermediate Case or Complex Case at different stages of its development and implementation.
- 11.8 Upon completion of the planning for the New Service, the parties shall submit the New Service Proposal to the Regulator for approval, and once approved:
- (a) Batelco shall use reasonable endeavors to implement the New Service within the relevant time period set out at clause 11.11 (the **New Service Implementation Period**); and
  - (b) the Supply Agreement shall be amended to include the Service Description for the New Service and charges.

11.9 Either party may deem that a Request for New Service has been withdrawn if, other than as a result of its own acts or omission in default of these Supply Terms:

- (a) the matters to be negotiated cannot be agreed by the expiry of the New Service Planning Period or within any period set out in the Telecommunications Law; or
- (b) there is no legal obligation on the Access Provider to provide the New Service.

11.10 If the parties fail to reach agreement under this Clause 11, then without prejudice to the Dispute Resolution Procedures, either party may refer the matter to the Regulator for resolution. For the avoidance of doubt, negotiations in relation to the supply of a New Service may continue while the parties are engaged in any dispute resolution, provided that the negotiations are strictly confidential and without prejudice.

11.11 Subject to any written agreement between the parties, the following table sets out the timescales for the development and implementation of New Services under this clause 11 and each party shall use its reasonable endeavors:

- (a) to deliver information and to reply to correspondence promptly;
- (b) to procure prompt attendance at meetings by qualified personnel; and
- (c) to adopt a commercial approach to negotiation.

|                                                                                        | Simple Case | Intermediate Case | Complex Case |
|----------------------------------------------------------------------------------------|-------------|-------------------|--------------|
| Initial processing of New Service Request and arrangements for preliminary discussions | One week    | Two weeks         | Three weeks  |
| Discussions between parties ( <b>New Service Consultation Period</b> )                 | Two weeks   | Four weeks        | Six weeks    |
| Planning for New Service ( <b>New Services Planning Period</b> )                       | One week    | Two weeks         | Four weeks   |

|                                                                    | Simple Case | Intermediate Case | Complex Case |
|--------------------------------------------------------------------|-------------|-------------------|--------------|
| Implementation (New Service Implementation Period), consisting of: |             |                   |              |
| - development and testing of New Service                           | One week    | Three months      | Six months   |
| - implementation of New Service                                    | One month   | Three months      | Six months   |

11.12 Neither party may launch a new Interconnection Service or Access Service without giving the other party as much written notice as practicable that such a new Interconnection Service or Access Service will be available and in any event by the earlier of the commencement date of the New Service Implementation Period or on the same notice as that launching party's retail business receives of the new Interconnection Service or Access Service.

## 12. RESUPPLY

The Access Provider acknowledges that the Access Seeker may use Services provided by the Access Provider as part of services or products that the Access Seeker sells to the Access Seeker Customers. The Access Seeker agrees that where it provides services or products to the Access Seeker's Customers using any Service, or part of any Service:

- 12.1 the Access Seeker will indemnify the Access Provider for any damage, loss or cost (including legal costs) and protect the Access Provider from any claim or proceeding:
- (a) arising from the failure by the Access Seeker to obtain, or a claim by an End User that the Access Seeker failed to obtain, that End User's consent to the supply of Services relating to that End User;
  - (b) to the extent caused, contributed to or brought by any Access Seeker Customer directly or indirectly in connection with the Services;
- 12.2 the Access Provider will not be responsible to the Access Seeker or any Access Seeker Customer for any failure or delay in provision of a Service where such

failure or delay is caused by or contributed to by any action or inaction of the Access Seeker or of any Access Seeker Customer; and

- 12.3 the Access Seeker will be solely responsible for any use of a Service or part of a Service by the Access Seeker Customers and that the Access Seeker will be liable accordingly.

### 13. **SUSPENSION**

- 13.1 A party (the **Suspending Party**) may only suspend these Supply Terms or any Service to the extent necessary to address the relevant suspension event. The parties acknowledge that suspension may be potentially disruptive for users of telecommunications networks in Bahrain and note here that an assessment of whether or not to suspend the Supply Terms or any Service in particular circumstances should consider the interests of potentially affected users as a whole. The parties further acknowledge that, except in the case of an urgent suspension under clause 13.3, either party is free to copy or forward correspondence relating to an imminent suspension to the Regulator and that any such action is a permitted disclosure under clause 21.
- 13.2 Subject to clause 13.1, either party (**Suspending Party**) may suspend these Supply Terms, or the supply or use (as the case may be) of any Service, by giving the other party 48 hours written notice if in the reasonable opinion of the Suspending Party:
- (a) the other party's Network has a material adverse effect on the efficient or safe operation of the Suspending Party's Network and the other party has failed to rectify the material adverse effect before the end of a period of notice which is reasonable in the circumstances but in any case is not less than seven (7) days and except in urgent cases should be not less than thirty (30) days;
  - (b) the other party is in Material Breach and has failed to rectify the Material Breach within twenty one (21) calendar days after the Suspending Party notified it in writing of the Material Breach;
  - (c) the other party knowingly or recklessly used, attempted to use, or has communicated or demonstrated an intention to use, any Service supplied under these Supply Terms in contravention of any law, whether with or without the authorization or permission of the Suspending Party; or

- (d) any material information provided, or material representation made, by the other party to the Suspending Party is untrue, false, misleading or inaccurate and the difference between the effect of the Suspending Party's reliance on the information and what would otherwise be the case if the information or representation had been accurate is reasonably considered material by the Suspending Party (with respect to the provision of the relevant Services).

13.3 Subject to clause 13.1 and 13.4, a Suspending Party may suspend the whole of these Supply Terms, or the supply or use (as the case may be) of any Service, immediately without notice (provided that confirmation of any action is given within a reasonable time) if in the reasonably justified opinion of the Suspending Party:

- (a) the other party's Network or the supply of any Service to the other party poses:
  - (i) a threat to the life or safety of any person (which, for the avoidance of doubt, shall not include a threat to the life or safety of any person contained in any message, signal or telephone call conveyed over that other party's Network or via the supply of any Service to the other party);
  - (ii) a material hazard to equipment or the property of any person, including the Suspending Party; or
  - (iii) an imminent threat to the normal operation, access, integrity or security of the Suspending Party's or any other party's Network;
- (b) the other party becomes Insolvent, provided that this right will not be exercised:
  - (i) for so long as the other party fulfils all its obligations, including without limitation, paying all amounts, as and when they fall due in the course of any Insolvency; and
  - (ii) where the Suspending Party is Batelco, for so long as the Security provided by the other party remains effective and is sufficient to meet the sum of debts actually payable and reasonably foreseeable in the course of the Insolvency;

- (c) there is an emergency situation that in the Suspending Party's opinion may lead to a state of national safety or martial law being announced and the requisition by a competent authority of the Suspending Party's telecommunications networks or services used to provide one or more of the Services;
- (d) the continued operation of these Supply Terms or the supply of any Service would be unlawful, or compliance with legal or regulatory obligations requires immediate action which requires the suspension of the Supply terms or one or more of the Services;
- (e) the Regulatory or a relevant governmental authority directs the Suspending Party to do so; or
- (f) the other party is using the interconnection arrangements for the passing of traffic which is artificially inflated or the source of which is being disguised or not properly identified (including, for example, bypass traffic), provided that prior to the exercise of this right, the Suspending Party must make a reasonable attempt to discuss the incidence of the traffic with the other party to seek a view as to the source of the traffic.

13.4 Except in the case of suspension pursuant to clauses 13.3(a)(i), 13.3(a)(iii) or 13.3(c) above, an Access Provider shall not, in the case of Interconnection Services, suspend the Supply Terms or an Interconnection Service without the prior written approval of the Regulator. In the case of an Interconnection Link Service (as defined at sections 1-1 or 1-2 of Schedule 1) the Access Provider shall give 7 days prior written notice of such proposed suspension to the Regulator subject to obtaining that prior written approval of the Regulator.

13.5 If any Service has been suspended (whether or not at the request of the Access Seeker), the Access Seeker must continue to pay the relevant Charges for that Service during the period of suspension, and must pay the Access Provider any Charge payable for the reconnection or reinstatement of that Service, except that where the cause of suspension was outside the control of the Access Seeker, the Access Seeker may request and Access Provider shall provide a waiver of reconnection or reinstatement Charges and a fair and proportionate rebate in respect of such Charges as were paid as they fell due during the period of suspension.

- 13.6 If these Supply Terms are, or any Service is, suspended under clause 13.2 or 13.3 for more than 30 calendar days, then the other party than the Suspending Party may terminate these Supply Terms, or that suspended Service, with immediate effect by giving the other party written notice.
- 13.7 A party's exercise of its right to suspend these Supply Terms or any Service does not prejudice any other right or remedy available to that party, including without limitation any subsequent right to suspend these Supply Terms, that Service, or a different Service.
- 13.8 If the circumstances giving rise to a right of suspension are cured during any period of notice or suspension and such cure is objectively explained and evidenced in writing to the Suspending Party:
- (a) before the right is exercised, then the right to suspend may not be exercised; or
  - (b) after the right is exercised, then the Suspending Party must lift the suspension as soon as reasonably practicable and in any event within 48 hours of the notice of cure, except with respect to a right of suspension exercised pursuant to clauses 13.3(a) and 13.3(f) in relation to which a Suspending Party must give an undertaking that as far as it is reasonably aware the circumstances giving rise to the right are unlikely to recur, or that the Suspending Party is otherwise protected against the consequences of the circumstances.

#### 14. TERMINATION

- 14.1 Subject to clause 14.6, either party (**Terminating Party**) may terminate these Supply Terms, or the supply or use (as the case may be) of any Service, by giving the other party 30 calendar days written notice if in the reasonable opinion of the Terminating Party:
- (a) any of the circumstances exist which would give the Terminating Party the right to exercise a right of suspension under clause 13.2;
  - (b) that other party is in Material Breach, other than failure to pay any sum in respect of any Service, and has failed to rectify the Material Breach within twenty one (21) calendar days after the Terminating Party notified it in writing of the Material Breach;

- (c) that other party becomes Insolvent, provided that this right will not be exercised for so long as the other party fulfils all its obligations, including without limitation, paying all amounts, as and when they fall due in the course of any Insolvency;
- (d) subject to clause 16, a notified Force Majeure Event or Regulatory Event substantially adversely affects the ability of the Terminating Party to perform its obligations under these Supply Terms continuously for a period of 45 calendar days, provided that the party subject to the notice of termination may require during the period of notice that the parties must, on reasonable notice, engage in good faith negotiations to endeavor to establish whether replacement terms can apply.

14.2 Subject to clause 14.6, Batelco may terminate any Service by giving the Licensed Operator 90 calendar days' written notice if:

- (a) the Licensed Operator is no longer entitled to that Service; or
- (b) the Telecommunications Law or the Regulator no longer imposes an obligation on Batelco to provide that Service

provided that the party subject to the notice of termination may require during the period of notice that the parties must, on reasonable notice, engage in good faith negotiations to establish whether a replacement service or other terms can apply to the provision of such services.

14.3 Either party may terminate these Supply Terms, or the supply or use (as the case may be) of any Service, immediately without notice (provided that confirmation of any action is given within a reasonable time) to the other party if:

- (a) the continued operation of these Supply Terms would be unlawful, contravene legal or regulatory obligations; or
- (b) the Supply Terms or the supply of any Service is suspended by the other party under clause 13 for a continuous period of thirty days; or
- (c) either party ceases to be a Licensed Operator.

- 14.4 If the Regulator revokes the Reference Interconnection Offer, then these Supply Terms automatically and immediately terminate on the date of revocation.
- 14.5 If the circumstances giving rise to a right of termination are cured during any period of notice or cure and such cure is objectively evidenced in writing to the Terminating Party before the expiry of the last notice or cure period (as the case may be) then, except in cases where the Terminating Party is terminating for a persistent curable breach or the breach is of its nature past and incurable, the Supply Terms do not, on that occasion, terminate.
- 14.6 An Access Provider shall not, with respect to Interconnection Services, terminate the Supply Terms or an Interconnection Service, without the prior written approval of the Regulator. In the case of an Interconnection Link Service pursuant to clause 14.1 or 14.2, the Access Provider shall give 7 days prior written notice of such termination to the Regulator, subject to obtaining that prior written approval of the Regulator.

## **15. CONSEQUENCES OF TERMINATION**

- 15.1 On termination of these Supply Terms:
- (a) all sums payable to each party under these Supply Terms up to the date of termination, including without limitation any Charges in respect of termination, are immediately due and payable;
  - (b) each party must refund any amount or proportionate amount paid by the other party in respect of any period after the date of termination;
  - (c) all Services, leases, licenses and other rights conferred on Batelco or the Licensed Operator under these Supply Terms immediately terminate;
  - (d) each party must at its own expense immediately return all of the other party's Property in good working condition, other than fair wear and tear;
  - (e) each party must at its own expense and for a period of two (2) years after termination of these Supply Terms in accordance with this clause 15, immediately comply with any written notice from the other party to deliver, destroy, or erase any Confidential Information belonging to that other party.
- 15.2 On termination of any Service:

- (a) all sums payable to each party up to the date of termination, including without limitation any termination Charges, are immediately due and payable;
  - (b) each party must refund any amount or proportionate amount paid by the other party for that Service in respect of any period after the date of termination;
  - (c) all leases, licenses and other rights conferred on Batelco or the Licensed Operator under these Supply Terms in respect of that Service immediately terminate; and
  - (d) each party must at its own expense immediately return all of the other party's Property provided in respect of that Service, in good working condition, other than fair wear and tear.
- 15.3 Each party must reimburse to the other party any cost incurred by that other party in repossessing or replacing any Property that was not returned within 30 calendar days after the date of termination, or was returned in a damaged or defective condition.
- 15.4 Termination or expiry of these Supply Terms or any Service:
  - (a) is deemed not to be a waiver or breach of any term or condition of any element of these Supply Terms; and
  - (b) does not prejudice any right, liability or obligation that accrued to either party before the date of termination or expiry.
- 15.5 A party's exercise of its right to terminate these Supply Terms or any Service does not prejudice any other right or remedy available to that party.
- 15.6 All rights that each party accrued before termination or expiry of these Supply Terms or any Service, and clauses 4 (Billing and Payment), 17 (Liability and Indemnity), 18 (Intellectual Property), 21 (Confidentiality) and 25.8 (Waiver), survive termination or expiry of these Supply Terms or that Service (as the case may be), and continue in full force and effect.

## **16. FORCE MAJEURE AND REGULATORY EVENTS**

- 16.1 Subject to clause 16.2, neither party is liable for any failure to comply with or observe any term of these Supply Terms to the extent that a Force Majeure Event or a Regulatory Event caused that failure.
- 16.2 For the avoidance of doubt, each party remains liable:
- (a) for the performance of each obligation, and to comply with and observe each term, of these Supply Terms, which is not affected by the Force Majeure Event or Regulatory Event; and
  - (b) to pay all sums payable in respect of each Service provided by the other party during the Force Majeure Event or Regulatory Event which is not affected by the Force Majeure Event or Regulatory Event.
- 16.3 If a party fails to comply with or observe any term of these Supply Terms because of a Force Majeure Event or a Regulatory Event, then that party must notify the other party:
- (a) as soon as practicable, giving details of the Force Majeure Event or Regulatory Event, and its estimated extent and duration; and
  - (b) immediately after the end of the delay or failure caused by the Force Majeure Event or Regulatory Event.

## **17. LIABILITY AND INDEMNITY**

- 17.1 To the extent permitted by law, neither party is liable to the other party except as provided in:
- (a) this clause 17; or
  - (b) in relation to a particular Service, in the relevant Service Description in Schedule 1.
- 17.2 If any applicable law implies warranties or conditions or imposes obligations on a party that cannot be or can only to a limited extent be, excluded, restricted or

modified, then to the extent to which that party is entitled to do so, the liability of that party under the applicable law is limited:

- (a) to the supply of services again or the payment of the cost of having the services supplied again, at that party's option;
- (b) to the repair or replacement of property or paying the cost of repair or replacement, at that party's option; or
- (c) to any other remedy prescribed by the applicable law.

- 17.3 Neither party is liable to the other party for or in relation to any Consequential Loss.
- 17.4 Subject to clauses 17.1, 17.2, 17.3, 17.5, 17.6, 17.7, 17.8, 17.9, 17.10 and 17.11 a party's maximum liability under these Supply Terms or in respect of its performance under these Supply Terms is limited to **BHD300,000** for any one event or series of connected events, and **BHD1,000,000** in the aggregate for all events (connected or unconnected) occurring in a Calendar Year.
- 17.5 Clause 17.4 does not apply to any obligation arising under these Supply Terms to pay monies in the ordinary course of business, including without limitation, the Charges and any other payments in respect of liabilities under clauses 17.6, 17.7, 17.8, 17.10 or 17.11.
- 17.6 Each party indemnifies the other party against all awards, judgments, costs, charges and expenses directly and reasonably incurred by that other party as a result of or in connection with any claim against it arising out of a death of or personal injury to the People of the other party, to the extent that the damage or loss is caused by a negligent act or omission or an act or omission intended to cause death or personal injury, by the Indemnifying Party or any of the People of the Indemnifying Party.
- 17.7 Each party indemnifies the other party against all costs, charges and expenses directly and reasonably incurred by the other party as a result of or in connection with any damage to equipment, Network or other tangible property of the other party or any third party to the extent that the direct or indirect loss is caused by a negligent act or omission by the Indemnifying Party or any of the People of the Indemnifying Party.

- 17.8 Subject to clause 17.9, each party indemnifies the other party against all costs, charges and expenses directly and reasonably incurred by the other party as a result of or in connection with any claim by a third party against the other party to the extent that the claim relates to any breach of these Supply Terms by the Indemnifying Party or any of the People of the Indemnifying Party.
- 17.9 Except where the action, claim or demand brought or made by a third party arises as a result of or is directly connected with the wrongful termination or suspension by the Indemnifying Party of these Supply Terms or any Service, the Indemnifying Party is not liable to the other party to the extent that liability is incurred in connection with an action, claim or demand brought or made against the other party by a third party to whom that other party provides a telecommunications service under a contract, where that liability could legally have been excluded or where that liability could legally have been reduced in that contract by that other party.
- 17.10 Each party indemnifies the other party against all costs, charges and expenses directly and reasonably incurred by the other party as a result of or in connection with the reproduction, broadcast, use, transmission, communication or making available of any material (including data and information of any sort) by the Indemnifying Party or any end users of the Indemnifying Party who uses services provided by means of the Services.
- 17.11 Each party indemnifies the other party against all costs, charges and expenses directly and reasonably incurred by the other party as a result of or in connection with the breach of a person's rights or defamation of a person (or allegation of such a breach or defamation) by the Indemnifying Party or any end users of the Indemnifying Party who use services provided by means of the Services.
- 17.12 Each provision of this clause 17 is a separate limitation applying and surviving even if one or more limitations is inapplicable or held unreasonable in any circumstance.
- 17.13 If a Schedule to these Supply Terms contains a remedy for the failure of a party (**Liable Party**) to perform its obligations under that Schedule, then that remedy is the sole and exclusive liability of the Liable Party, its Related Corporations, and its People, in connection with the performance of that obligation, and is the sole remedy of that other party against the Liable Party, its Related Corporations and its People in connection with the performance of that obligation.

- 17.14 The Indemnifying Party is not obliged to indemnify the other party under these Supply Terms to the extent that the liability the subject of the indemnity claim is the direct result of a breach of these Supply Terms, or a negligent act or omission, by the other party.
- 17.15 The party seeking the benefit of an indemnity claim from the Indemnifying Party must take all reasonable steps to minimize the loss it has suffered or is likely to suffer as a result of the event giving rise to an indemnity under these Supply Terms, and if that party does not take reasonable steps to minimize loss, then the damages payable by the Indemnifying Party must be reduced as is appropriate in each case.
- 17.16 A party's liability to the other party for any loss or liability of any kind arising out of these Supply Terms or in connection with the relationship established by it is reduced to the extent (if any) that the other party causes or contributes to that loss or liability. This reduction applies whether the first party's liability is in contract, tort (including negligence), under any statute or otherwise.
- 17.17 If a party has provided a service credit to the other party under clause 17.13, then that party has no further liability for that breach.
- 17.18 Without limiting either party's obligations under these Supply Terms, each party must have in force and maintain for the term of these Supply Terms with an insurance company licensed in Bahrain and on terms and for coverage with only industry standard exclusions or exceptions:
- (a) a broad form public liability policy of insurance to the value of at least **BHD1,750,000** in respect of each claim; and
  - (b) property insurance for those assets used by it under or in relation to these Supply Terms to the value of at least **BHD900,000** in respect of each claim.
- 17.19 On request by a party, the other party must immediately produce evidence that it has complied and is continuing to comply with its obligations under clause 17.18.

## **18. INTELLECTUAL PROPERTY**

- 18.1 Except as otherwise expressly provided in these Supply Terms, all Intellectual Property Rights remain in the ownership of the party creating or owning them.

- 18.2 Nothing in these Supply Terms may be construed, and the provision of any Service by a party must not be construed, as:
- (a) an assignment of any Intellectual Property Rights of that party to the other party; or
  - (b) the grant of any license of any Intellectual Property Rights of that party to the other party.
- 18.3 Without prejudice to or limiting clause 18.1, neither party is entitled to use any trademarks or service marks (whether registered or not) of the other party in any document or other medium, without the prior written consent of that other party.
- 18.4 The parties may negotiate arrangements (including in respect of title) concerning Intellectual Property Rights jointly developed in the course of performing these Supply Terms or otherwise arising in respect of these Supply Terms.
- 18.5 Each party indemnifies the other party and the other party's People, against any action, claim, loss, liability, cost or expense that may be brought against or suffered or incurred by any of them arising directly or indirectly from a claim by a third party that use of the Indemnifying Party's Intellectual Property Rights as permitted under these Supply Terms infringes the rights of that third party.
- 18.6 The indemnity in clause 18.5 includes legal costs and expenses on a full indemnity basis, and the Indemnifying Party must defend any action or other thing described in clause 18.5 at its cost, using lawyers of its choice.
- 18.7 The indemnity in clause 18.5 is the only remedy and form of compensation available to a party in respect of Intellectual Property Rights arising under these Supply Terms.
- 18.8 Each party is responsible and liable for obtaining and maintaining in its own name and at its own expense, all licenses, permits, consents, waivers, authorizations and Intellectual Property Rights required for it to:
- (a) use any Service provided under these Supply Terms; or
  - (b) install or use any equipment in connection with the use of any Service provided under these Supply Terms.

- 18.9 Each party must reasonably co-operate with the other party at that other party's cost, to obtain all licenses, permits, consents, waivers, authorizations and Intellectual Property Rights required under clause 18.8.

**19. FORECASTING PROCEDURES**

- 19.1 The Access Seeker must give the Access Provider at least one month before the start of each calendar quarter, a forecast on a month by month basis of its expected requirements for each Service and by transaction type (for example, by new connections, disconnections or moves, adds and changes) in the following 12 months.
- 19.2 The parties acknowledge that during the initial period of supply of a Service, they will have limited experience with the changing levels of demand. Accordingly, to better assist the Access Provider meet the Access Seeker's requirements during this initial period, the Access Seeker shall provide a Forecast in respect of each Service:
- (a) together with the Service Request for that Service, on a month by month basis in the following 12 months; and
  - (b) during the first 12 months after commencement of supply of the Services, at least one month before the start of each month on a month by month basis in the balance of that 12 month period.
- 19.3 The Access Seeker must provide all Forecasts in good faith and use all reasonable endeavors to ensure that Forecasts are accurate.
- 19.4 If the Access Provider receives a Forecast and considers in good faith that any element of that Forecast is unreasonable, or that the work required based on that Forecast is not reasonably achievable within the Forecast time, then the Access Provider and the Access Seeker must promptly negotiate in good faith in accordance with a reasonable Forecast that both parties agree will enable the required work to be carried out within the new Forecast time periods.
- 19.5 In the good faith negotiations described in clause 19.3:
- (a) the Access Provider must provide information explaining why it believes that any Forecast work or time period is unreasonable;

- (b) the Access Seeker must provide information explaining why it believes that any Forecast work or time period is reasonable; and
  - (c) each party must in good faith use reasonable endeavors to propose work and time periods that form the basis of a reasonable Forecast that is satisfactory for both parties.
- 19.6 If after 25 Working Days, the parties are unable to agree a revised Forecast under clause 19.3, then clause 24 applies.
- 19.7 Pending the outcome of negotiations in respect of a Forecast:
  - (a) the Receiving Party has no obligation to provide for requirements in respect of any part of the Forecast that it considers unreasonable, is under negotiation, or is subject to a Dispute Resolution Procedure; and
  - (b) the Receiving Party must provide for requirements that it considers in good faith to be reasonable.
- 19.8 Subject to clause 19.9, for the avoidance of doubt, the parties acknowledge that no Forecast is legally binding and they do not intend to create binding legal relations in respect of any Forecast.
- 19.9 Subject to the terms of any Service Description and Schedule 4, if the provision of a Service by the Access Provider in accordance with a Forecast of the Access Seeker would require a commitment of resources by the Access Provider for the purposes of meeting its normal provisioning cycles, the Access Provider may request that relevant features of the Forecast be confirmed. The request for confirmation will include an indication of the Charges, or the basis for calculating Charges, which would be payable to the Access Provider on the basis of the Forecast if confirmed. If the Access Seeker confirms a Forecast and any later Forecast for the same period is different, the Access Provider must, within three months of the later Forecast, make reasonable endeavors to mitigate any loss by seeking to re-use relevant equipment or facilities within six months of the relevant later Forecast. The Access Seeker must pay the Access Provider the amount of any loss to the extent that it has not been mitigated, within 30 days of receipt of an invoice.
- 19.10 Where the actual traffic or use of a Service by an Access Seeker exceeds the relevant Forecast for that Service, other than as a result of Artificially Inflated Traffic,

the Access Provider shall use all reasonable endeavors to provide the Services to the Service Levels (for the avoidance of doubt, such reasonable endeavors shall not include any requirement to provision any additional Capacity over the applicable forecasted levels).

## **20. CREDIT MANAGEMENT AND SECURITY**

20.1 The Licensed Operator must provide, at its sole cost and expense, and maintain for the term of these Supply Terms, any Security required by Batelco in response to the first Service Request (**the Initial Security**) or as varied from time to time under this clause 20.

20.2 Batelco may at any time review the creditworthiness of the Licensed Operator if:

- (a) where the Licensed Operator is rated by Moody's Investor Services or Standard & Poors, it ceases to have an Acceptable Long Term Credit Rating;
- (b) the Licensed Operator becomes Insolvent;
- (c) a Change of Control occurs in respect of the Licensed Operator;
- (d) the Licensed Operator has failed to pay Charges when due at any time during the term of these Supply Terms other than as a result of a Billing Dispute;
- (e) the Licensed Operator breaches the terms of any Security provided under this clause 20;
- (f) in Batelco's reasonable opinion, there has been a material adverse change in the Licensed Operator's financial position;
- (g) the total Charges disputed by the Licensed Operator in a 3 month period exceeds the total Initial Security (as varied from time to time);
- (h) the Licensed Operator wishes to obtain new Services under these Supply Terms and the obtaining of such new Services by the Licensed Operator would result in the amount of Security required from that Licensed Operator (as calculated in accordance with the general principle set out in Clause 20.8 below) increasing by 25% or more from the Initial Security (as varied from time to time) provided by such Licensed Operator; or

- (i) a period of 9 months has elapsed since the last review of the Licensed Operator's creditworthiness.
- 20.3 Where Batelco conducts a creditworthiness review pursuant to clause 20.2, the Licensed Operator must provide Batelco with all information reasonably requested by Batelco in respect of the Licensed Operator's creditworthiness within 5 Working Days after Batelco's request.
- 20.4 If having conducted a creditworthiness assessment of the Licensed Operator in good faith in accordance with clause 20.3, Batelco considers that the Security coverage of the Licensed Operator does not meet Batelco's reasonable requirements, or if the Licensed Operator fails to comply with any provision of this clause 20, then Batelco may require the Licensed Operator to provide a new Security or to vary the amount or type of an existing Security.
- 20.5 If Batelco requests new or varied Security under clause 20.4, then the Licensed Operator must provide the new or varied Security, in the form and on terms acceptable to Batelco acting reasonably, within 5 Working Days of the request being made.
- 20.6 Where the request for new or varied Security under clause 20.4 is the result of a creditworthiness assessment carried out by Batelco pursuant to clause 20.2(g), Batelco shall indemnify the Licensed Operator against all costs, charges and expenses directly and reasonably incurred by the Licensed Operator in providing the new or varied Security where the aggregate amount of the relevant Statement Errors with respect to the disputed Charges is agreed by the parties or ruled by an Accounting Expert pursuant to clause 24 to be more than five (5) per cent of the aggregate of the disputed Charges.
- 20.7 The Licensed Operator must unless otherwise agreed to by Batelco:
  - (a) maintain any Security provided to Batelco under this clause 20 until the expiry of a six month period after the last to occur of:
    - (i) termination or expiry of the Reference Interconnection Offer or these Supply Terms; and

- (ii) payment to Batelco of all outstanding charges and other amounts payable by the Licensed Operator under the Reference Offer or these Supply Terms.
  - (b) Batelco may exercise its rights under any Security in respect of any amounts payable by the Licensed Operator to Batelco under the Reference Interconnection Offer, any Schedule, or these Supply Terms other than Charges which are the subject of a Billing Dispute.
- 20.8 The Licensed Operator warrants to Batelco that by providing information to Batelco under clause 20.4, except to the extent otherwise disclosed in writing to the Licensed Operator at the time of the provision of such information:
- (a) such information constituted true and fair statements of the financial or other positions of the Licensed Operator as at the date to which they were prepared; and
  - (b) there has been no material adverse change in the Licensed Operator's financial or other position between the date on which any such information was prepared and the date on which the information was provided.
- 20.9 The amount of any Security under this clause 20 will be calculated:
- (a) as a statement of general principle, by reference to either:
    - (i) the aggregate value of the Charges likely to be payable by the Licensed Operator to Batelco under these Supply Terms over a three month period of time (**Licensed Operator Charges**); or
    - (ii) where the aggregate value of the charges forecast to be payable by Batelco to the Licensed Operator under these Supply Terms over the same three month period of time (**Batelco Charges**) are more than twenty-five (25) per cent of the Licensed Operator Charges, the difference between the Licensed Operator Charges and the Batelco Charges; and
  - (b) together with the combined value of the equipment and other assets that Batelco has reasonably procured specifically for the provision of a Service to the Licensed Operator by Batelco which are:

- (i) sited on premises owned or controlled by the Licensed Operator; or
    - (ii) directly accessible to authorised People of the Licensed Operator; and
  - (c) will be recalculated at the request of either party if the period since the last review of the amount of Security is greater than 9 months.
- 20.10 For the avoidance of doubt, each party may use any current estimates, forecasts or any other statements made or provided by the other party in making any calculations pursuant to clause 20.9.
- 20.11 In addition to Batelco's other rights and remedies and Schedule 4 notwithstanding, if the Licensed Operator has at any time failed to pay Charges by the Due Date, Batelco may require the Licensed Operator to pay all Charges in respect of Services on presentment of invoice or monthly in advance, in which case the assessment of future Charges will be based on either:
- (a) the highest level of actual monthly Charges; or
  - (b) where the relevant Services have not been provided for three calendar months, the greater of the higher level of actual monthly Charges or the higher level of forecast monthly Charges;
- in respect of such Services in the three calendar months prior to that in respect of which the Charges are to be paid for such Services.

## **21. CONFIDENTIALITY**

- 21.1 A party may not disclose the provisions of these Supply Terms to any person except:
- (a) after obtaining the written consent of the other party, and only to the extent of that consent;
  - (b) subject to clause 21.6, to its officers, employees and professional advisers;
  - (c) to an Emergency Services;
  - (d) to any arbitrator or expert appointed under the Dispute Resolution Procedures;
- or

(e) as otherwise specified in these Supply Terms,

and must use its best endeavors to ensure all permitted disclosures are kept confidential, other than a disclosure required to be made to a recognized stock exchange.

21.2 A party may disclose the provisions of these Supply Terms:

(a) to the Regulator or for the purpose of a review or determination by the Regulator;

(b) as required by an applicable law, the Regulator, the Telecommunications Law, a license, a court order, or any other governmental authority.

21.3 Despite any provision in these Supply Terms, the parties must not reveal, make known or divulge to any third party in any manner howsoever the Charges and contents of those aspects of these Supply Terms (in whole or in part) that the Regulator has withheld from publication.

21.4 Except as otherwise provided in these Supply Terms, a party that receives Confidential Information (**Receiving Party**) must keep confidential all Confidential Information of the other party (**Disclosing Party**):

(a) disclosed, communicated or delivered to the Receiving Party under these Supply Terms; or

(b) that comes into the Receiving Party's knowledge or possession in connection with these Supply Terms.

21.5 The Receiving Party shall not use or copy the Confidential Information of the Disclosing Party except in connection with and for the purposes of these Supply Terms, or in connection with the provision of Services under these Supply Terms.

21.6 If the Receiving Party visits any of the facilities of the Disclosing Party, the Receiving Party undertakes to keep strictly confidential any Confidential Information that comes to its knowledge as a result of the visit, and any Confidential Information relating to plant and equipment seen at the facilities, their methods of operation and their various applications, and not to divulge the Confidential Information to any third party,

other than for the purpose of and only to the extent necessary to perform its obligations under these Supply Terms.

21.7 Except as otherwise provided in these Supply Terms, the Receiving Party must not disclose or communicate, cause to be disclosed or communicated or otherwise make available Confidential Information to any third party other than:

- (a) the Receiving Party's directors, officers, employees, agents, contractors, representatives or Related Corporations to whom disclosure is necessary in connection with and for the purposes of these Supply Terms, or for such other purposes related to the provision of Services under these Supply Terms;
- (b) the Receiving Party's professional advisers, but only to the extent necessary for those advisers to provide advice or protect the rights of the Receiving Party under these Supply Terms; and
- (c) the Receiving Party's appointed financial advisers or appointed bankers only to the extent necessary for those financial advisers or appointed bankers to provide financial advice or services to the Receiving Party,

(each an "Authorized Person", and collectively "Authorized Persons").

21.8 The Receiving Party must advise each Authorized Person of the obligation to protect the Disclosing Party's Confidential Information in a manner consistent with these Supply Terms.

21.9 The Receiving Party may disclose some or all of the Confidential Information to the Authorized Persons, provided that prior to disclosure:

- (a) in the case of Authorized Persons referred to in clauses 21.7(a) or 21.7(b), the Receiving Party must ensure that Authorized Persons to whom all or any Confidential Information is disclosed hold it strictly confidential and do not disclose it to any other person;
- (b) in the case of Authorized Persons referred to in clause 21.7(c), the Receiving Party must obtain and provide to the Disclosing Party a written undertaking in favor of the Disclosing Party from the Authorized Persons, agreeing to comply with the terms of these Supply Terms as if the Authorized Person were a party to these Supply Terms.

- 21.10 For the purposes of this clause, "Confidential Customer Information" means Confidential Information relating to an Access Seeker Customer or any person who is the subject of an Access Seeker process in order to become an Access Seeker Customer that an Access Seeker Customer intends to subscribe or has subscribed for an End User service. Each party agrees to use all reasonable care to ensure that, to the extent that it obtains any Confidential Customer Information from the other party, it does not use such information for targeted sales or marketing purposes designed to prevent or encourage the transfer of a customer from one party to the other party or the subscription by a customer to a service offered by a party, other than in accordance with an applicable code of practice issued by the Regulator or a representative industry or consumer body covering such activities and if there is no such code, then in accordance with principles set out in an instrument issued under the Law. The parties acknowledge that:
- (a) the Authorized Persons referred to in clause 21.7(a) may engage in multiple roles or functions and a party is not in breach of this clause 20 merely because Confidential Customer Information is provided to an Authorized Person referred to in clause 21.7(a) who has a role or function, including without limitation any sales or marketing role or function, other than in connection with or for the purpose of these Supply Terms, or for any other purpose related to the provision of Services under these Supply Terms; and
  - (b) Confidential Customer Information does not include information which was generated from a party's own billing records relating to its customers or the fact that a customer has ceased being a customer of that party and/or is receiving services from the other party by means of the Service (once the Service has commenced to be supplied in respect of that customer).
- 21.11 In any event, the Receiving Party is liable for any disclosure by the Authorized Persons to any other person.
- 21.12 The Receiving Party may only issue news releases, public announcements or any other form of publicity concerning these Supply Terms or the terms of these Supply Terms if it has first obtained the Disclosing Party's written consent.
- 21.13 The Receiving Party's obligations do not apply to Confidential Information:

- (a) if the same information is in or enters the public domain, other than by breach by the Receiving Party or any of its Authorized Persons of these Supply Terms;
- (b) known to the Receiving Party on a non-confidential basis before disclosure under these Supply Terms, at the time of first receipt, or becomes known to the Receiving Party or any of its Authorized Persons after disclosure under these Supply Terms without similar restrictions from a source other than the Disclosing Party, as evidenced by written records; or
- (c) is or has been developed independently by the Receiving Party without reference to or reliance on the Disclosing Party's Confidential Information.

21.14 A Receiving Party shall exercise no lesser security or degree of care than that party applies to its own Confidential Information of an equivalent nature, but in any event not less than the degree of care that a reasonable person with knowledge of the confidential nature of the information would exercise.

21.15 Confidential Information provided by one party to the other party is provided for the benefit of that party only and may only be used for the purposes for which it is disclosed.

21.16 Each party acknowledges that a breach of this clause 21 by one party may cause the other party irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, in addition to other remedies that may be available, a party may seek injunctive relief against that breach or threatened breach.

21.17 All and any part of written Confidential Information (including, without limitation, information incorporated in computer software or held in electronic storage media) together with any analyses, compilations, studies, reports or other documents or materials prepared by the Receiving Party or on its behalf, which reflect or are prepared from any of the Confidential Information provided by the Disclosing Party, must be returned to the Disclosing Party or destroyed by the Receiving Party, as directed and when requested by the Disclosing Party at any time, or when the Receiving Party's need for that information has ended or when these Supply Terms expire or terminate, whichever is earlier. In the event of destruction, the Receiving Party must certify in writing to the Disclosing Party within 30 calendar days that destruction has been accomplished. The Receiving Party must make no further use

of that Confidential Information nor retain that Confidential Information in any form whatsoever.

21.18 The Parties acknowledge that the provisions of this clause 21 continue in full force and effect regardless of variations, assignments or termination of other provisions of these Supply Terms. The obligation to maintain the confidentiality of the Confidential Information and the undertakings and obligations in this clause 21 continue until the later of two (2) years after the expiry or termination of these Supply Terms, or when the information ceases to be confidential.

21.19 Notwithstanding anything in this clause 21, the Access Provider may collect information about the Access Seeker and about the Access Seeker Customers. The information may be obtained from the Access Seeker and others or generated with the Access Provider's Network when the Access Seeker or anyone else uses the Access Provider's Services. The Access Provider may:

- (a) hold the information and share it with its employees, contractors and other agents, but only where this is necessary to enable the Access Provider to provide the Access Seeker with Services, send the Access Seeker invoices, check that the Access Seeker's responsibilities are being met, or otherwise to administer and enforce this master agreement;
- (b) share with other network operators any information needed to enable the Access Seeker to send or receive messages of any kind through those networks;
- (c) use any information about the Access Seeker in order to ensure compliance with non-discrimination or similar clauses in contracts between the Access Provider and other Access Provider customers (including other Network Operators); and
- (d) use any information about the Access Seeker for statistical purposes, so long as the Access Seeker is not identified.

## **22. CUSTOMER RELATIONSHIPS**

22.1 The relationship between the parties is one of independent contractor only and nothing in these Supply Terms may be construed to constitute a relationship of agency or partnership between the parties. Each party remains fully responsible for

its own acts and defaults (including those of its employees or agents). Neither party is authorized to bind the other party to any obligation. The parties and their employees, agents and representatives must not engage in any conduct that may lead any person to believe that it is an employee, agent or representative of the other party.

22.2 The Access Seeker has no right to set off bad debts arising from its provision of a service to a customer against any sum due, accrued or payable in respect of any Service supplied by the Access Provider under these Supply Terms that forms part of, or is incidental to, the provision of the relevant service.

22.3 The Access Seeker must not represent that the Access Provider:

- (a) participates (other than as a wholesale supplier) in the provision of the Access Seekers' services, or is a supplier, to the Access Seeker's customers, or that the Access Seeker is approved by, or an agent or dealer of, or affiliated with, the Access Provider; or
- (b) has a preferred relationship with the Access Seeker, including without limitation in respect of special prices or services.

22.4 The Access Seeker must not falsely attribute to the Access Provider:

- (a) any blame for a fault or other circumstance;
- (b) any need for maintenance or upgrade of a network; or
- (c) any interruption or suspension, or partial interruption or suspension of a service.

22.5 In making any representation contemplated by clause 22.4 an Access Seeker must not engage in unethical, misleading or deceptive conduct.

## **23. ARTIFICIALLY INFLATED TRAFFIC AND DISGUISED TRAFFIC**

23.1 Charges for Services are not payable in respect of AIT. The parties shall use reasonable endeavors to detect, identify, notify and prevent AIT, both singly and co-operatively, in accordance with this clause and the Joint Working Manual.

23.2 If a party (**the first party**) suspects AIT (taking into account, but not limited to, the criteria specified in the Joint Working Manual) it shall as soon as reasonably practicable pass to the other party the following information:

- (a) the estimated total duration of the relevant Telephone Calls;
- (b) the dates when the relevant Telephone Calls were made;
- (c) the telephone number/s of the originating line, and the CLI, if available;
- (d) such other information as the party considers relevant; and
- (e) such other information reasonably requested by the other party.

23.3 Any information passed between the parties in accordance with clause 23.2 shall only be used for the following purposes:

- (a) to monitor, prevent or detect AIT;
- (b) to assist the investigation of AIT and to undertake any associated criminal prosecutions;
- (c) to undertake civil proceedings to effect recovery of losses resulting from AIT;  
or
- (d) if the suspected AIT originates or terminates on another Network, to inform the other Network operator of the AIT.

23.4 If a party which would otherwise be required to pay Charges to the other party in respect of AIT (**the Paying Party**):

- (a) having passed information to, or received information from, the other party in accordance with clause 23.2; and
- (b) having reasonable grounds to suspect AIT in the case of the identified traffic calls,

gives written notification to the other party of the intention to withhold payment relating to the current billing period, then subject to such notification having been

passed to the other party not later than 14 calendar days from the end of such billing period, the Paying Party may withhold payment for the identified traffic.

- 23.5 If at any time after withholding payment under clause 23.4, the Paying Party ceases to have reasonable grounds to believe that is the result of AIT, the Paying Party shall immediately pay the amount of such withheld payment to the other party. If the Paying Party fails to pay such withheld payment within five Working Days, the other party shall be entitled to interest at the default interest rate with effect from the date such reasonable grounds cease.
- 23.6 If the Paying Party withholds payment made clause 23.4, the parties shall meet as soon as practicable to investigate and determine whether the traffic in respect of which the Paying Party has withheld payment is AIT. If the parties cannot agree within a 20 Working Days of the end of the relevant billing period that the traffic is or is not AIT, clause 24 applies.
- 23.7 The terms of clauses 23.2 and 23.3 relating to cooperation may also be used at the request of either party to identify fraudulent traffic or disguised traffic, for example traffic which should be passed under one Service Description which is being passed under another Service Description or using a retail service. Pursuant to clause 2.6, neither party shall have any obligation to pass such traffic by whatever means.

## **24. DISPUTE RESOLUTION**

- 24.1 Subject to clause 24.4, the parties must resolve any dispute, controversy or claim arising between them in respect of these Supply Terms (**Dispute**) in accordance with the procedures below.
- 24.2 The parties must continue to comply with their respective obligations during a Dispute.
- 24.3 A party must not use information obtained in the course of any Dispute Resolution Procedure for any purpose other than to resolve the relevant Dispute.
- 24.4 A party's compliance with the Dispute Resolution Procedures does not prejudice any right or remedy available to that party in respect of any breach of these Supply Terms. Nothing in these Supply Terms prevents a party from seeking urgent interlocutory, injunctive or other immediate relief.

24.5 In the rest of this clause:

**Billing Dispute** means any dispute about whether an invoice issued by a Billing Party contains any Statement Errors or other errors notified pursuant to clause 24.17.

**General Dispute** means any dispute, other than a Billing Dispute, arising between the parties in respect of these Supply Terms or the Reference Interconnection Offer.

#### **Dispute Officer and CEO**

24.6 If a General Dispute arises between the parties, then either party may by written notice to the other party refer the General Dispute to the Dispute Officer of each party, or a nominee of the Dispute Officer, to resolve the General Dispute.

24.7 The parties must first refer any General Dispute to the Dispute Officers before pursuing any other dispute resolution procedure.

24.8 The Dispute Officers must confer and endeavor in good faith on a “without prejudice” basis to resolve the General Dispute by negotiating a commercial settlement.

24.9 If the General Dispute remains unresolved 10 Working Days after referral to the Dispute Officers under clause 24.6, then either party may by written notice to the other party, refer the dispute to the Chief Executive Officer of each party, or a nominee of the Chief Executive Officer, who must confer and endeavor in good faith and on a “without prejudice” basis to resolve the General Dispute by negotiating a commercial settlement.

24.10 The parties must refer the General Dispute to the Chief Executive Officers before pursuing any further dispute resolution procedures.

#### **Mediation or Determination**

24.11 If the General Dispute remains unresolved 10 Working Days after referral to the Chief Executive Officers of the parties under clause 24.9, then either party may:

- (a) with the consent of the other party, refer the General Dispute for mediation. The preferred option for mediation in respect of a General Dispute is to request the Regulator in writing to act as the mediator in accordance with such rules as the Regulator thinks fit if the Regulator agrees to act as mediator and in

any other case, the mediation will take place in accordance with the mediation procedures of the International Chamber of Commerce; or

- (b) only in respect of a General Dispute regarding an interconnection or access matter, refer the dispute to the Regulator for determination in accordance with the Telecommunications Law.

24.12 Referral of a General Dispute to the Regulator for mediation under clause 24.11(a) does not preclude the referral of the same General Dispute to the Regulator under clause 24.11(b) if it is regarding an interconnection or access matter. For the avoidance of doubt, the time periods set out in clauses 24.6 to 24.11 are intended to coincide with the period of negotiation required by s 57(g) of the Telecommunications Law, such that a party must comply with the escalation procedure identified in this clause 24 before referring a General Dispute regarding an interconnection or access matter to the Regulator for determination.

#### **Arbitration**

24.13 If:

- (a) a General Dispute remains unresolved 60 Working Days after the appointment of a mediator under clause 24.11(a) and neither party has referred the matter to the Regulator for determination; or

- (b) in any case in which the Regulator has chosen not to make a determination

then either party may (except in any case covered by 24.11(b), where the Regulator's choice not to determine is expressly or by clear implication dispositive of a question in which specific terms or charges are sought by determination and declined), by written notice to the other party, refer the dispute for final resolution by compulsory arbitration conducted by three arbitrators in accordance with the Civil and Commercial Procedures Law, provided that the parties agree that in addition to any other provision or requirement:

- (c) the Chair of the arbitration panel must have at least 5 years experience as a legal, economic, accounting or competition regulatory practitioner (a top level regulatory policy decision maker; a lawyer; an economist, or a specialist accountant) in telecommunications regulation in a liberalizing or liberalized telecommunications market or markets; and

- (d) the arbitration and all its proceedings (except the most minimal of formalities if required by law) will be conducted in the English language.

24.14 The decision of the arbitrators in any arbitration arising under clause 24.13 is final and binding.

### **Communications**

24.15 All discussions and information relating to a General Dispute must be communicated or exchanged through each party's Dispute Officer. A party is not entitled to rely on an invoice made, or information provided, in respect of a General Dispute by a representative of the other party who is not that other party's Dispute Officer.

### **Billing Disputes**

24.16 An invoice of Charges issued under clause 4 must be paid in full by the Due Date unless the billed party, reasonably believing that there is a Statement Error in the invoice, gives the Billing Party a Billing Dispute Notice in accordance with clause 23.17. If the billed party fails to follow the Billing Dispute procedure in this clause, the Billing Party may treat, without further notice, the billed party as being in material breach of these Supply Terms.

24.17 Subject to clause 24.20, the billed party must give the Billing Party any Billing Dispute Notice within 10 Working Days after the date of the invoice of Charges, specifying:

- (a) the Charges in dispute and the amount of the claimed Statement Error (**Disputed Amount**); and
- (b) the basis of the claimed Statement Error; and
- (c) the facts on which the billed party relies to dispute the invoice Charges.

24.18 The Billing Party may by giving written notice to the other party within 5 Working Days after receiving a Billing Dispute Notice, reject any Billing Dispute Notice:

- (a) that is not complete, accurate or in the required form; or

- (b) given more than 10 Working Days after the date of the relevant invoice of Charges if that invoice of Charges, including without limitation any Disputed Amount, has not been paid in full.
- 24.19 If a billed party gives the Billing Party a Billing Dispute Notice that is not rejected under clause 24.18, the billed party may withhold the Disputed Amount but must pay the balance of the relevant invoice of Charges.
- 24.20 If:
  - (a) the Billing Party rejects a Billing Dispute Notice; and
  - (b) the billed party has not re-issued a rectified Billing Dispute Notice not less than 6 Working Days prior to the Due Date in accordance with the procedure in clause 24.17 and that rectified Billing Dispute Notice has not been rejected by the Billing Party under clause 24.18,

the billed party must pay the Disputed Amount by the Due Date in accordance with Schedule 4.
- 24.21 The parties must use their reasonable endeavors to negotiate in good faith to resolve the Billing Dispute arising from any Disputed Amount in a Billing Dispute Notice given under clause 24.17 that has not been rejected under clause 24.18.
- 24.22 If the parties are unable to resolve the Billing Dispute within 20 Working Days after the date of the Billing Dispute Notice, then either party may by written notice to the other party refer the matter to a suitable expert (**Accounting Expert**) agreed between the parties, and the Accounting Expert must resolve the Billing Dispute in accordance with clause 24.26.
- 24.23 If the Billing Dispute has been escalated to the Accounting Expert, the Billing Party may raise for determination any errors which the Billing Party reasonably believes have been made in the relevant invoice, provided the Billing Party disclosed those errors and explained the basis of the errors during the negotiations referred to in clause 22.21.
- 24.24 If the parties are unable to agree on the Accounting Expert within 5 calendar days after the date of the written notice referred to in clause 24.22, then either party may request the Chairman of the Board of Directors of the Arab Society of Certified

Accountants to appoint the Accounting Expert, who must resolve the Billing Dispute in accordance with clause 24.26.

24.25 The parties must co-operate with the Accounting Expert as reasonably required to resolve the Billing Dispute.

24.26 Within 30 calendar days after being appointed, the Accounting Expert must resolve the Billing Dispute and give written reasons for the decision.

24.27 Responsibility for the costs of the Accounting Expert shall be allocated between the parties as follows:

(a) if the Accounting Expert decides that:

(i) there is no Statement Error;

(ii) the Statement Error is less than the greater of 4000 dinars or five (5) per cent of the amount of the original invoice; or

(iii) the Accounting Expert increases the invoice amount,

the billed party shall pay the Accounting Expert's costs in full;

(b) subject to sub clause (a)(ii), if the Accounting Expert decides that there is a Statement Error and amount of the reduction is less than 10 per cent of the amount of the original invoice, the parties shall share the Accounting Expert's costs equally;

(c) if the Accounting Expert decides that there is a Statement Error and the amount of the reduction is less than any amount offered by the Billing Party to settle the Billing Dispute, the billed party shall pay the Accounting Expert's costs in full; or

(d) if the Accounting Expert decides that there is a Statement Error and the amount of the reduction is more than 10 per cent of the amount of the original invoice, the Billing Party, subject to sub-clause (c), shall pay the Accounting Expert's costs in full.

24.28 The Accounting Expert acts as an expert and not as an arbitrator.

24.29 Disputes over invoices which are not Billing Disputes shall be resolved as a General Dispute. Invoices shall not be disputed more than 365 days after the Due Date of the relevant invoice.

24.30 If the parties agree or the Accounting Expert determines:

- (a) the billed party should pay an additional amount in respect of a disputed invoice to the amount which the billed party paid, the billed party shall pay that amount not more than 10 Working Days after the date of the agreement or determination, together with interest on that additional amount at the Interest Rate (calculated on a cumulative daily basis) for the period from the Due Date of the disputed invoice to the date of payment; and
- (b) the Billing Party should refund an amount in respect of a disputed invoice to the billed party, the Billing Party shall pay that amount not more than 10 Working Days after the date of the agreement or determination, together with interest on that additional amount at the Interest Rate (calculated on a cumulative daily basis) for the period from the Due Date of the disputed invoice to the date of payment. Alternatively, the Billing Party may apply, or the billed party may direct the Billing Party in writing prior to the refund being paid, to apply the amount (including the interest) against any amount currently owing by the billed party or against the next invoice.

## **25. GENERAL**

### **25.1 Variation**

#### **Variation in respect of Interconnection and Access Services**

Batelco may amend or vary these Supply Terms in respect of Interconnection and Access Services in accordance with clauses 2.

### **25.2 Assignment**

- (a) Subject to clause 25.2(b), a party may only assign or transfer its rights, obligations or interests under these Supply Terms if it has first obtained the other party's written consent, which must not be unreasonably delayed or withheld.

- (b) The Licensed Operator may only transfer its rights, obligations or interests under these Supply Terms if:
  - (i) the assignee or transferee is a Licensed Operator and provides the Security required by Batelco; and
  - (ii) the Licensed Operator remains fully responsible for the performance of all obligations under these Supply Terms.

#### **25.3 Non-impairment**

Neither party may engage in any conduct that impairs or might impair the other party's ability to provide Services.

#### **25.4 Non-exclusivity**

Nothing in these Supply Terms restricts the rights of either party to enter into similar agreements with other parties.

#### **25.5 Entire agreement**

- (a) Except with respect to any prior agreement which the parties agree in writing to remain in full force and effect after the date of the Supply Agreement, these Supply Terms supersede all previous understandings, commitments, representations and agreements between the parties in respect of the Services, and contain the entire agreement of the parties about their subject matter.
- (b) A party may not rely on any representation or warranty about the subject matter of these Supply Terms except as expressly provided in these Supply Terms.

#### **25.6 Severance**

- (a) Subject to clause 25.6(b), if the whole or any part of a provision of these Supply Terms is unenforceable, partly unenforceable, void or illegal in a jurisdiction, then it is severed to the extent necessary to make these Supply Terms enforceable in that jurisdiction.

- (b) This clause 25.6 does not apply if the severance materially changes the intended effect of these Supply Terms, alters its basic nature, or is contrary to public policy.

#### **25.7 Language**

These Supply Terms may be translated into other languages, but the English version prevails.

#### **25.8 Waiver**

- (a) A right may only be waived in writing and signed by an authorized officer of the party granting the waiver.
- (b) No conduct of a party, including without limitation a failure to exercise, or any delay in exercising, a right, operates as a waiver of the right or otherwise prevents the exercise of that right.
- (c) A waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again.

#### **25.9 Exercise of rights**

A party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or of any other right, power or remedy.

#### **25.10 Counterparts**

These Supply Terms may be executed in any number of counterparts and all those counterparts together make one instrument.

#### **25.11 Governing law and jurisdiction**

- (a) These Supply Terms are governed by the laws of the Kingdom of Bahrain.
- (b) The parties irrevocably submit to the exclusive jurisdiction of the courts of the Kingdom of Bahrain, and each party waives any right that it has to object to an action being brought in the courts of the Kingdom of Bahrain, including without limitation any objection that the action has been brought in an

inconvenient forum, or that the courts of the Kingdom of Bahrain do not have jurisdiction.

#### 25.12 Notices

A notice or other communication given under these Supply Terms including, but not limited to, a request, demand, consent or approval, to or by a party to these Supply Terms:

- (a) must be in legible writing and in English;
- (b) must be addressed to the addressee at the address or facsimile number set out below or to any other address or facsimile number a party notifies to the others under this clause:

- (i) if to Batelco:

Address: Building 469  
Road 1705  
Manama Town

Attention: Head of Wholesale

CC: Head of Regulatory

Facsimile: +973 1753 7733

CC: +973 1761 0092

- (ii) if to the Licensed Operator:

Address:

Attention: [REDACTED]

Facsimile: [REDACTED]

- (c) must be signed by an authorized officer of the sender; and

- (d) is deemed to be received by the addressee in accordance with clause 25.12(g).
- (e) Without limiting any other means by which a party may be able to prove that a notice has been received, a notice is deemed to be received:
- (f) if sent by hand, when delivered to the addressee;
- (g) if by post, three (3) Working Days after and including the date of postage; and
- (h) if by facsimile transmission, on receipt by the sender of an acknowledgment or transmission report generated by the machine from which the facsimile was sent,

but if the delivery or receipt is not on a Working Day or is after 2:45 pm (addressee's time), it is deemed to be received at 7.00 am on the following Working Day.

- (i) A facsimile transmission is regarded as legible unless the addressee telephones or facsimiles the sender within 2 hours after the transmission is received or regarded as received under clause 25.12(b)(iii), and informs the sender that it is not legible.
- (j) In this clause 25.12, a reference to an addressee includes a reference to an addressee's officers, agents or authorized representatives.

#### **25.13 Legal advice and allocation of risk**

Each party acknowledges that it has received legal advice or had the opportunity to receive legal advice about these Supply Terms.

#### **25.14 Cumulative rights**

The rights, powers and remedies of a party under these Supply Terms are cumulative with and do not exclude or limit any other right, power or remedy provided by law or equity independently of these Supply Terms.

#### **25.15 Non-merger**

The conditions and provisions in these Supply Terms do not merge on execution.

#### **25.16 Third party rights**

Only the parties have or are intended to have a right or remedy under these Supply Terms or obtain a benefit under it.

#### **25.17 Costs and expenses**

Unless otherwise agreed under these Supply Terms, each party must bear its own legal and other costs incurred in the preparation, negotiation and execution of these Supply Terms and all documents contemplated by it.

**SIGNED** as an agreement on [insert date].

**SIGNED** by **#INSERT NAME OF SIGNATORY#** as authorised signatory for **BEYON B.S.C** in the presence of:

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Signature of witness

---

Name of witness (print)

---

Signature of **#insert name of signatory#**

**SIGNED** by **#INSERT NAME OF SIGNATORY#** as authorised signatory for **#INSERT NAME OF COMPANY#** in the presence of:

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Signature of witness

---

Name of witness (print)

---

Signature of **#insert name of signatory#**