

**REFERENCE INTERCONNECT OFFER**

**GTT Legal Framework 2.0**

*March 31, 2022*

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**THIS LEGAL FRAMEWORK AGREEMENT**

is made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_

**BY AND BETWEEN**

**[NAME] (“Telco”),**

a company organized and existing under the laws of Guyana, having its registered office at and having its registered office at [Legal Address];

and

**Guyana Telephone & Telegraph Company Limited (“GTT”),**

a limited liability company duly incorporated and existing under the laws of Guyana, having its registered office at 79 Brickdam, Stabroek, Georgetown, Guyana.

**RECITALS**

A. WHEREAS, pursuant to sections 23 and 93(4)(b) of the Telecommunications Act of 2016 (Act No. 18 of 2016 (the “Telecommunications Act”)), the Minister has granted Telco licences to own and operate certain facilities in Guyana and to provide certain domestic telecommunications services and facilities to the public;

B. WHEREAS, pursuant to sections 23 and 93(4)(b) of the Telecommunications Act, the Minister has granted GTT licences to own and operate certain facilities in Guyana and to provide certain domestic telecommunications services and facilities to the public;

C. WHEREAS, pursuant to such licences and to the provisions of the Telecommunications Act, Telco is entitled to connect its public network to and with GTT and GTT is entitled to connect its public network to and with Telco, in accordance with the Telecommunications Act; and

D. WHEREAS, Telco and GTT have requested to directly interconnect to and with the facilities and to and with the network of the other Party for the exchange of Traffic upon the terms and conditions contained in this Agreement;

E. WHEREAS, pursuant to section 41(a) of the Telecommunications Act, Telco and GTT agree to allow the other Party to directly interconnect to and with its facilities and to and with its network for the exchange of Traffic upon the terms and conditions contained in this Agreement.

E. NOW, THEREFORE, in consideration of the covenants and the consideration contained herein, which consideration is expressly agreed to by the Parties to be legally sufficient, the Parties hereby agree as follows:

## **1. Interpretation and Construction**

1.1 In this Agreement, unless the context otherwise requires or explicitly states otherwise, the terms used shall have the meanings assigned to them in Annex A (Definitions) and in Annex D (Joint Working Manual) of this Agreement.

1.2 For purposes of this Agreement, certain terms have been defined in this Agreement to encompass meanings that may differ from, or be in addition to, the normal or ordinary connotation of the defined word. A defined word intended to convey its special meaning is capitalized when used. Other terms that are capitalized and not defined in this Agreement will have the meaning in the Telecommunications Act, or in the absence of their inclusion in the Telecommunications Act, their customary usage in the telecommunications industry as of the Effective Date.

1.3 In this Agreement, unless the context otherwise requires or explicitly states otherwise:

1.3.1 The singular includes the plural and vice versa;

1.3.2 The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation” and/or “but not limited to”;

1.3.3 The words “will” and “shall” are used interchangeably throughout this Agreement and the use of either connotes a mandatory requirement;

1.3.4 Reference to an agreement or other instrument, inclusive of this Agreement, includes any variation or replacement;

1.3.5 References in this Agreement to either Party shall include any legitimate successors or assigns of that Party pursuant to Section 38 (Assignment).

1.3.6 All references to GYD or GY\$ or other payable amounts refer to the Guyanese Dollar unless otherwise stated, and all references to USD or US\$ refer to the United States Dollar;

1.3.7 If a day on which payment of money falls due is not a Business Day, the Bill Due Date for such payment shall be deemed to be the next following Business Day;

1.3.8 Reference to any statute, ordinance, code or other Law includes regulations and other instruments under it and any consolidations, amendments, re-enactments or replacements thereof at any time.

1.4 The headings and numbering of any sections or annexes to this Agreement are for convenience only and shall not be construed to define or limit any of the terms herein or affect the meaning or interpretation of this Agreement.

1.5 In the event of any inconsistency between this Legal Framework, Annexes, and any other attachments, this Legal Framework shall prevail first, then the Annexes shall prevail.

In any other event of an inconsistency between the Annexes and any other attachments, the following priority shall apply in order of priority:

- 1.5.1 Annex A (Definitions);
- 1.5.2 Annex B (Services);
- 1.5.3 Annex C (Rate Schedule);
- 1.5.4 Annex D (Joint Working Manual); and
- 1.5.5 Any other attachment.

## **2. Duration**

2.1 This Agreement takes effect on the Effective Date and, subject to Section 27 (Suspension and Termination), continues in full force and effect for an initial period of three (3) years (the “Initial Period”), and after expiration of the Initial Period, the Agreement shall, subject to Section 2.2, automatically renew for successive one (1) year periods (each a “Successive Period”) until Terminated. During the Initial Period and any Successive Periods, the Agreement may be terminated in accordance with Section 27 (Suspension and Termination), or otherwise varied in accordance with Section 26 (Review and Amendment), or replaced by a new, fully-executed agreement which specifically recites that it replaces this Agreement. In the event of any variation by agreement of the Parties pursuant to Section 26 (Review and Amendment), the Agreement as amended shall continue in full force and effect until Termination.

2.2 Either Party may provide written Notice to the other Party no later than one hundred (100) calendar days prior the end of the Initial Period or the end of any Successive Period that the Party does not desire to continue the Agreement for a Successive Period. In the event that a Notice is provided pursuant to this Section 2.2 then, subject to Section 2.3, the Agreement shall Terminate at the end of the then-current Initial Period or Successive Period.

2.3 Following any Notice provided by either Party pursuant to Section 2.2, the Parties shall engage in good faith negotiations to replace this Agreement with a new, fully-executed agreement. In the event that no new agreement is reached prior to the end of the then-current Initial Period or Successive Period, this Agreement shall Terminate. Following Termination, neither Party shall be obliged to continue to provide Services, unless specifically required by applicable Law, and neither Party shall be obligated to provide Services at the Charges described in this Agreement. For the avoidance of doubt, Termination under this Section of the Agreement shall be without prejudice to any rights accrued prior to Termination and any provision, which is expressly stated not to be affected by, or to continue after, such Termination.

## **3. Interconnection**

3.1 Subject to the provisions of this Agreement, the Parties shall connect to and keep connected to the other Party’s System in the manner described in this Agreement in order to convey the Traffic described in Annex B (Services) through an Interconnection Link provided by

either Party as described in Annex B (Services); *provided that* each Party's System and the Interconnects are suitable for the conveyance of the Services described in Annex B (Services), and that each Party ensures that all necessary Equipment and Facilities for the Interconnect conforms to the technical requirements in Annex D (Joint Working Manual). For clarity, Services under this Agreement shall solely be provided in accordance with in Annex B (Services) and Annex D (Joint Working Manual), and shall be subject to the Charges set forth herein and in the Annex C (Rate Schedule).

3.2 All Interconnects for Services shall be established between the Parties at an existing Interconnect Location, a list of which is set forth in Annex D (Joint Working Manual). Interconnects shall be used solely for Services, a list of which is set forth in Annex B (Services).

3.3 The Parties agree that the Services in this Agreement shall not be provisioned over Session Initiation Protocol ("SIP") connections through the Interconnects subject to this Agreement.

3.4 Each Party agrees to segregate Services through all Interconnects between the Parties pursuant to: (i) each Service in Annex B (Services) and (ii) the direction of Traffic (*i.e.* in-bound or out-bound); *provided that*, until six (6) months following the Effective Date, each Party may maintain unsegregated Traffic through all Interconnects between the Parties during a transition period (the "Segregation Transition Period"). The Parties agree to work cooperatively during the Segregation Transition Period to effectuate the segregation requirements of this Section 3.4 and agree that, upon written Notice, either Party may extend the Segregation Transition Period for a timeframe of three (3) months.

3.5 Each Party is individually responsible for the cost to provide any and all Facilities and Equipment within its System that are necessary for routing, transporting, measuring, and billing of Services to and from that Party's System to and from the other Party's System.

3.6 Each Party shall ensure that it routes, transports, measures, and bills Services in the standard format compatible with Annex D (Joint Working Manual), and shall ensure that it terminates the Traffic it receives in that standard format to the proper address on its System.

3.7 Except as specifically provided herein, nothing in this Agreement shall be taken as requiring a Party to share Facilities or to provide co-location space or Equipment.

#### **4. Limitations on Services**

4.1 Neither Party (in this clause, the "First Party") may provide Services to the other Party unless:

4.1.1 The First Party has received evidence reasonably satisfactory to the First Party that the other Party has a valid telecommunications licence that permits it to provide telecommunications services and operate a telecommunications network and to interconnect with the First Party and to provide a specific Service described in Annex A (Services);

4.1.2 The First Party has received evidence reasonably satisfactory to the First Party that the other Party has made its System operational and performed its obligations under any testing procedure relating to the Services;

4.1.3 The First Party has received evidence reasonably satisfactory to the First Party that the other Party operates a telecommunications network that provides telecommunications services to the public in Guyana; and

4.1.4 The Party has delivered a security deposit, if required, in accordance with the requirements set out in the Section 13 of this Agreement, if demanded by the First Party.

4.2 For the avoidance of doubt, and notwithstanding the Interconnect of the Parties' Systems, the Parties shall not convey to the other Party's System, and shall not have an obligation to convey, any services or continue to convey Services of any category, unless there is express provision to convey that category of Services in Annex B (Services) and in Annex C (Rate Schedule).

4.3 To the extent that the Parties desire to interconnect for services excluded from this Agreement, including for Traffic originating or terminating internationally, either Party shall request such services through separate agreements or through separate legal frameworks which incorporate service descriptions that are not incorporated into this Agreement. For clarity, the Services provided in this Agreement are limited solely to the Services recited in Annex B (Services) and do not include Traffic originating or terminating internationally. Neither party shall be obligated to provide a service that is not recited in Annex B (Services).

4.4 Each Party shall be solely responsible for the switching and routing of all Services on its System and shall not be liable for telecommunications services, products, or services that are outside all categories described in Annex B (Services).

4.5 Each Party is solely responsible for all products and services it provides to its Customers and to Third-Party Telecommunications Providers.

4.6 Unless otherwise expressly agreed in the writing by the Parties, the Charges payable by one Party (in this clause, the "First Party") to the other Party (in this clause, the "Second Party") for a Service shall be the same as the Charges payable by the Second Party to the First Party for the same Service ("Principle of Charge Reciprocity"). In the event that a Party's Charges for a Service are varied pursuant to Section 12, following written notice, the other Party may vary its Charges by the same amount for the same Service to reflect the Principle of Charge Reciprocity.

## **5. Forecasting, Ordering and Provisioning of Interconnect Capacity**

5.1 The Parties will exchange technical descriptions and Forecasts for each Service recited in Annex B (Services) in accordance with the procedures set out in Annex D (Joint Working Manual), and will comply with all the applicable provisions in Annex D (Joint Working Manual) relating to Forecasts.



5.2 The Parties will order and provision capacity in accordance with the procedures set out in Annex D (Joint Working Manual) and will comply with all applicable provisions in Annex D (Joint Working Manual) relating to ordering and provisioning.

5.3 In accordance with Annex D (Joint Working Manual), the Parties agree that the technical descriptions and Forecasts for each Service will be provided in sufficient detail necessary to establish the Interconnects required to assure Traffic completion to and from all Customers in their respective designated service areas.

## **6. Testing**

6.1 The Parties will carry out the testing procedures contained in Annex D (Joint Working Manual), or as agreed by both Parties in writing, including but not limited to Acceptance Testing, commissioning procedures, and testing specification plans.

## **7. Operation and Maintenance**

7.1 Subject to Section 5 (Forecasting, Ordering and Provisioning of Interconnect Capacity), each Party shall be responsible for planning, providing, operating and maintaining all Equipment and Facilities located on its side of the Interconnect Location.

7.2 Each Party shall manage Traffic on its System so as to avoid disruption to the other Party's System to the maximum extent reasonably practicable and each Party shall take all necessary steps as are reasonably practicable to minimise service failures and congestion and signaling system disturbances within its own System which would affect the ability of the other Party to carry Services across such other Party's System in accordance with the routing principles set out in the Joint Working Manual in Annex D (Joint Working Manual).

7.3 Each Party shall advise the other Party of any Faults or planned maintenance which may impact the Services in accordance with the procedures set out in Annex D (Joint Working Manual) and shall resolve the Faults or conduct the maintenance in accordance with the Annex D (Joint Working Manual).

7.4 Each Party may make reasonable tests and inspections of any Facilities and Equipment it provides to the other Party, if any, and may upon reasonable advance written Notice temporarily interrupt Services being tested or inspected in accordance with the provisions of Annex D (Joint Working Manual) relating to planned maintenance. Where a test or inspection will affect Traffic on the other Party's System, the testing or inspection shall be carried out in such a way as to minimise disruption to each Party's System.

## **8. System Changes**

8.1 Either Party shall notify the other Party of developments within its System that may impact on the provision of Services to the other Party upon finalization of a decision to make such a change. Such Notice shall be in advance, in writing, and shall be reasonable given the nature of the proposed development and potential impact on the provision of the Services.

8.2 Neither Party shall make or permit to be made any alteration, adjustment or addition to its System in such a way as to materially impair the operation of the other Party's System or otherwise to materially affect the conveyance of Services over an Interconnect unless the Party provides reasonable prior written Notice to enable the other Party to make modifications or upgrades to its own System which are necessary to maintain the Interconnect at the agreed standards. Each Party shall take appropriate and reasonable steps to minimize the impact on the other Party of such alteration, adjustment or addition (including but not limited to costs).

8.3 In the event that, at any time, either Party proposes to change any standards or implement additional standards or standards with different features which may materially affect the operation of the other Party's System, the Party shall so notify the other Party as soon as practicable and in any event at least six (6) months in advance, so that the other Party has a reasonable opportunity to attempt to meet such standards or adjust its System accordingly. Each Party shall take appropriate and reasonable steps to minimise the impact on the other Party's Systems of such alteration, adjustment or addition (including but not limited to cost).

8.4 Subject to Section 8.2 and Section 8.3, nothing in this Agreement shall limit either Party's ability to upgrade its System through the incorporation of new Equipment, new Facilities, new software, or otherwise, or to change, in part or in whole, the design, function, operation or layout of its System.

8.5 The applicable standards of operation of each Party's System for the purpose of the Services will be those specified in Annex D (Joint Working Manual) and, in the absence of any specified standards, will be such applicable international standards as the Parties may agree.

## **9. Telecommunication Services**

9.1 Interconnects under this Agreement shall solely be provided for the conveyance of Services as described in Annex B (Services). Traffic subject to the Services must be originated from a valid Guyanese telephone number issued for a Legitimate Use. For the avoidance of doubt, the provisions of Section 14 (Numbering) and Section 15 (CLI) apply to any such assigned number. For the purposes of this Section, a valid Guyanese telephone number is one which has been allocated by the Regulator for the purposes of assignment in Guyana under the Guyanese National Numbering Plan.

9.2 Subject to the terms of this Agreement, each Party shall provide the other Party with the Services described in Annex A (Services), provided that each Party's System and the Interconnects are suitable for the conveyance of Services pursuant to the relevant Service descriptions. Subject to Section 16 (Performance Measures and Standards), the Services shall be provided in accordance with the Service descriptions Annex B (Services) and with Annex D (Joint Working Manual).

9.3 For the avoidance of doubt, and notwithstanding the Interconnect between the Parties' Systems, neither Party shall convey to the other Party, nor have an obligation to convey Services of any category, unless the Parties have agreed to convey Services of that category pursuant to Annex B (Services). Upon execution of the Agreement and, thereafter, upon

reasonable prior written Notice (with such Notice constituting at least ninety calendar days), each Party shall inform the other Party of its election as to each Service described in Annex B (Services).

9.4 Each Party shall be solely responsible for the switching and routing of all telecommunication services on its System and, subject to Section 18 (Prevention of Fraud) and Section 32 (Indemnification), neither Party shall be liable to the other Party for telecommunications services provided by a Third Party Telecommunications Provider. All Service switching and routing shall be consistent with the Service descriptions Annex B (Services) and with Annex D (Joint Working Manual).

## **10. Charges and Payment**

10.1 Each Party shall pay to the other Party the relevant Charges applicable to each Service, as described herein and in Annex B (Services), with the corresponding rate contained in as more particularly described in Annex C (Rate Schedule). Each Party shall solely pay to the other Party only the relevant Charges for Services described in the Agreement.

10.2 Each Party shall render invoice(s) for the relevant Charges applicable to each Service, or for any other amounts expressed as being payable in accordance with the specific provisions of this Agreement, with sufficient detail to identify the nature of the Charges, with a remittance by the Bill Due Date, to the other Party at the applicable rates set forth in Annex C (Rate Schedule). All invoices shall be delivered via electronic mail to the email address indicated in Section 40 (Notices) with confirmation of received-receipt notification, providing the Deemed Receipt Date. Invoicing for a Joint Service, if any, shall be carried out in accordance with the relevant Service description in Annex B (Services) and all reasonable endeavours shall be used to ensure that all information necessary to produce a complete invoice for such Joint Services is obtained in a timely manner.

10.3 Any failure to deliver invoices in accordance with this Section 10, subject to Section 41 (Dispute Resolution), shall not be deemed to be a waiver of the invoicing Party's rights in respect of payment and shall not be deemed to be a breach of a material obligation.

10.4 Where appropriate, consistent with Section 11 (Taxes), any value added or other applicable Tax shall be detailed on the invoice associated the Services giving rise to the value added or other applicable Tax, and shall be denoted as a separate line item with sufficient detail for the Party receiving the invoice to ascertain the reason for the value added or other applicable Tax. Where a value added or other applicable Tax is assessed over a timeframe greater than the timeframe associated with an invoice, the value added or other applicable Tax shall appear on the last invoice associated with the Services associated with the value added or other applicable Tax.

10.5 Subject to Section 10.8 and Section 41 (Dispute Resolution), all Charges payable under this Agreement shall be payable no later than thirty (30) calendar days from the "Deemed Receipt" of an invoice (the "Bill Due Date"). "Deemed Receipt Date" for purposes of this Section shall mean the Business Day on which the invoicing Party receives a confirmation of the received-receipt of the emailed invoice or, if the invoicing Party receives a confirmation of the received-receipt of the emailed invoice on a non-Business Day, the first Business Day following

receipt of the received-receipt of the emailed invoices. For clarity, the Business Day on which the invoicing Party receives a confirmation of the received-receipt of the emailed invoice is not counted for purposes of calculating the Bill Due Date.

10.6 Subject to Section 10.8 and Section 41 (Dispute Resolution), in the event that a Party fails to pay any amount due hereunder on or before the Bill Due Date, the invoicing Party, at its sole option: (i) may charge and receive annual interest at the base lending rate of the Republic Bank of Guyana from time to time in force plus two percent (2%) on the unpaid Undisputed Charges, from and including the day following the Bill Due Date until the date of payment in full (an “Interest Charge”); (ii) may assess a monthly late fee of one percent (1%) of the unpaid Undisputed Charges, from and including the day following the Bill Due Date until the date of payment in full (a “Late Payment Charge”); or (iii) may deduct any Undisputed Charges it is owed from any amount it owes to the other Party under any agreement or arrangement upon at least seven (7) Business Days’ written Notice. For clarity, the Late Payment Charge and/or Interest Charge shall only apply to the portion of the payment that is not received by the invoicing Party on or before the Bill Due Date and which has not been properly Disputed pursuant to Section 10.7 and Section 41 (Dispute Resolution). The assessment of the Late Payment Charge and/or Interest Charge shall appear on an invoice to the other Party in an amount solely determined by the invoicing Party.

10.7 Subject to Section 10.8 and Section 41 (Dispute Resolution), the Parties may pay invoices “Net” of the other Party’s invoice. For clarity, payment of “Net” invoiced amounts means that, if one Party is owed an amount to the other Party under this Agreement in the same monthly invoice timeframe, that Party may deduct the amount it is owed from its invoice under this Agreement to the other Party and pay only the “Net” amount. The requirement to issue a detailed invoice of Charges indicated in this Section 10 is not modified by this provision. Further, nothing in this Section 10.7 shall preclude either Party, upon at least thirty (30) days written Notice, from requiring that payments no longer be accepted on a “Net” basis without the consent of the other Party.

10.8 In the event that either Party Disputes in good faith a specific amount of any invoice delivered by an invoicing Party under this Agreement, the Parties shall resolve the Dispute in accordance with the investigation and determination procedures set out in Section 41 (Dispute Resolution). Notwithstanding any Dispute as to any specific Charge, the Parties shall remain obliged to continue to observe and perform the provisions of this Agreement, including but not limited to the payment of all Undisputed Charges pursuant to Section 10.5 and the provision of Services. Any amount in Dispute shall, for the purposes of this Section, be deemed not payable pending resolution of the Dispute set out in Section 41 (Dispute Resolution); *provided however*, that nothing in this Section shall be taken as permitting a Party to withhold payment of an amount that is an Undisputed Charge, and that is not Disputed in good faith. A contention that the Party receiving the invoice no longer agrees with the Charges contained in this Agreement is not a good-faith Dispute unless supported by a written description of a Material Change in Law as part of the information required in Section 41 (Dispute Resolution). For the avoidance of doubt, where an invoice results in a payment that is partly in Dispute, the Undisputed Charge amount shall be paid on or before the Bill Due Date. Further, notwithstanding the reference of any Dispute investigation, if the amount in Dispute represents

less than two percent (2%) of the cumulative total amount of all invoices between the Parties (excluding any value added or other applicable Tax) in a particular month, the invoiced amount shall be deemed due and payable in full on or before the Bill Due Date, but subject to a future invoice credit in accordance with Section 41.12, depending upon the result of the Dispute resolution procedures specified in Section 41 (Dispute Resolution). If the amount in Dispute represents two percent (2%) or more of the cumulative total amount of all invoices between the Parties (excluding any value added or other applicable Tax) in a particular month and the amount is not an Undisputed Charge, the amount in Dispute shall not be deemed due and payable pending resolution of the Dispute under Section 41 (Dispute Resolution). Nothing in this Section shall be taken as permitting a Party to withhold payment of Charges that do not satisfy the Dispute criteria of Section 41 (Dispute Resolution). Failure to remit payment on or before the Bill Due Date shall be deemed to be a material breach of the Party's obligation under this Agreement.

10.9 Each Party shall be responsible for invoicing its own Customers.

10.10 All payments under this Agreement shall be paid by either: (i) electronic funds transfer (“EFT”) to the invoicing Party to which the payment is due, and such payment will be deemed made on the date of receipt of such funds by the invoicing Party; or (ii) by cheque to the invoicing Party to which the payment is due, and such payment will be deemed made on the date of receipt of cleared funds by the invoicing Party.

## **11. Taxes**

11.1 Except as otherwise provided in this Section 11, with respect to any purchase of Services under this Agreement, if any Tax is required or permitted by Law to be billed to and/or collected from the purchasing Party by the providing Party, then: (i) the providing Party shall have the right to bill the purchasing Party for such Tax; (ii) the purchasing Party shall pay such Tax to the providing Party; and (iii) the providing Party shall pay or remit such Tax to the respective Governmental Authority. Whenever possible, Taxes shall be billed as a separate item on the invoice; *provided however*, that failure to include Taxes on an invoice or to state a Tax separately shall not impair the obligation of the purchasing Party to pay any Tax. Nothing shall prevent the providing Party from paying any Tax to the appropriate Governmental Authority prior to the time: (i) it bills the purchasing Party for such Tax, or (ii) it collects the Tax from the purchasing Party. If the purchasing Party fails to pay any Tax properly billed by the providing Party, then, as between the providing Party and the purchasing Party, the purchasing Party shall be solely responsible for payment of the Tax and any penalties or interest thereon. Subject to the provisions of Section 41 (Dispute Resolution) and this Section 11 governing contests of Disputed Taxes, the purchasing Party shall be liable for and the providing Party may collect from the purchasing Party any Tax, including any interest or penalties for which the purchasing Party would be liable under this Section 11.1, which is paid by providing Party to the respective Governmental Authority within the applicable statute of limitations periods for assessment or collection of such Tax, including extensions; *provided however*, that the providing Party notifies the purchasing Party within the earlier of: (i) sixty (60) days following the running of such limitations period for, including extensions, or (ii) three (3) years following the purchasing Party's payment for the services to which such Tax relates.

11.2 With respect to any purchase under this Agreement of Services that are resold by the purchasing Party to a Third Party or used as a component part of or integrated into a Service sold to a Third Party, if any Tax is imposed on or with respect to such sale by the purchasing Party, the purchasing Party shall pay or remit such Tax to the respective Governmental Authority. If the purchasing Party fails to pay or remit any Tax as required by applicable Law, then, as between the providing Party and the purchasing Party, the purchasing Party shall remain liable for such Tax and any interest and penalties thereon. Notwithstanding any other provision of this Agreement, the purchasing Party agrees to protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any Tax, any interest or penalties thereon, and any costs or expenses (including attorneys' fees) incurred by the providing Party as a result of any claim asserted or actions taken by the respective Governmental Authority to assess against or collect from the providing Party any Tax related to any sale by the purchasing Party to a Third Party.

11.3 If either Party is audited by or on behalf of a Governmental Authority with respect to a Tax, and in any contest of a Tax by either Party, for Services subject to this Agreement, the other Party shall cooperate fully and timely by providing records, testimony and such additional information or assistance as may reasonably be necessary to expeditiously resolve the audit or pursue the contest.

## **12. Variation of Charges**

12.1 Subject to Section 41 (Dispute Resolution), either Party may from time to time provide written prior Notice of changes to Charges where the change is:

12.1.1 Charges approved by the Regulator; or

12.1.2 Charges determined by a decision of the court or by arbitrators appointed subject to Section 41 (Dispute Resolution).

Such Notice shall specify the date on which the variation is to become effective. In the case of changes falling within (Section 12.1.1) and (Section 12.1.2) above, the changes will take effect from the effective date approved by the Regulator or from the date of the issuance of an order or the effective date as determined by a court of competent jurisdiction or arbitrators appointed, with such date stated in the Notice.

12.2 The provisions of Section 41 (Dispute Resolution) apply to changes to Charges as a result of this Section 12.

12.3 Without limiting the applicability of other provisions of Section 41 (Dispute Resolution), in the event that a Dispute of a Notice issued pursuant to this Section 12 results in a determination that a Charge is an undercharge or overcharge, the provisions of Section 41.12, requiring a refund or compensation, and interest on the Disputed Charge, shall apply.

12.4 Subject to Section 4.6, if a Party (in this clause, the "First Party") changes its Charges in accordance with this Section 12, the other Party (in this clause, the "Second Party") may by written prior Notice to the First Party also change its Charges by the same amount for the

same Service or Services in accordance with the Principle of Charge Reciprocity specified in Section 4.7. Such Notice shall specify the date on which the variation is to become effective which shall be no earlier than the effective date of the Notice made pursuant to Section 12.1.

### **13. Security Deposit**

13.1 Either Party may, in its sole discretion, require the other Party to provide a payment bank guarantee or a security deposit in either of the following instances: (i) if the other Party has not held a telecommunications licence in Guyana for a minimum of five (5) years; or (ii) if the other Party has failed to pay the Party any Undisputed Charge by the Bill Due Date under this Agreement or has failed to pay to the Party undisputed charges when due under any other agreement or arrangement between the Parties or Affiliates of the Parties, each for at least three (3) invoices over a twelve (12) month timeframe.

13.2 If a Party demands a security deposit from the other Party, the other Party shall provide such security deposit prior to the inauguration of any Services or within fifteen (15) calendar days of the written Notice of demand. The amount of any such security deposit shall remain consistent with three (3) months Charges for all Services used, or Forecast to be used, by the Party providing the security deposit. Any security deposit furnished under this Section 13.2 shall be returned to the Party with interest, less any outstanding Charges, upon the later of: (i) an event of a Termination; and (ii) payment of all Undisputed Charges, on or before the Bill Due Date, for a period of twenty-four (24) months.

13.3 In the event that the usage of a Party providing a security deposit reasonably indicates that the security deposit amount, calculated pursuant to Section 13.2, is insufficient to maintain three (3) months of Charges for all Services used, or Forecast to be used, by the Party providing the security deposit, at any time upon written Notice, the Party requesting the security deposit may demand that the security deposit be increased so as to maintain three (3) months Charges for all Services used, or Forecast to be used, by the Party providing the security deposit. Any increase to the security deposit pursuant to this Section 13.3 shall be limited to the difference between the existing security deposit, and the sum of three (3) months Charges for all Services based on the Party's current usage pattern, or Forecast to be used, and such increase shall be paid within seven (7) days of receipt of the written Notice of demand. Failure to provide the increased security deposit within this timeframe shall be deemed to be a material breach of an obligation under this Agreement.

13.4 Any security deposit made pursuant to this Section 13 shall be shown as a credit on the invoice of the Party providing the security deposit. Charges on any monthly invoice will be paid or Disputed on or before the Bill Due Date so as to maintain three (3) months Charges for all Services used, or Forecast to be used, by the Party providing the security deposit.

13.5 If either Party requires the other Party to provide a bank guarantee, the bank guarantee shall be in a form agreed by the Parties and shall be issued from an approved commercial bank licenced in Guyana. The bank guarantee shall provide, at a minimum, a financial guarantee for the payment of the sum of three (3) months Charges for all Services used, or Forecast to be used, by the Party providing the bank guarantee, and shall be payable to the Party requesting the bank guarantee. In the event that the Party providing the bank guarantee

does not keep a valid guarantee in place continuously until Termination, the Party requesting the bank guarantee may terminate this Agreement pursuant to Section 27 (Suspension and Termination). For clarity, the provision of any and all Services is conditional upon the Party providing a bank guarantee keeping in place such guarantee for the Term of the Agreement. However, the Party requesting the bank guarantee may choose to waive the requirement for a bank guarantee for some or all of the required timeframe without prejudice to that Party's rights hereunder.

13.6 Notwithstanding Section 13.2, Section 13.3, Section 13.4, and Section 13.5, either Party may require a new security deposit, an additional bank guarantee, or an increase in an existing security deposit or bank guarantee, if there is a material adverse change in the other Party's creditworthiness or financial position.

## **14. Numbering**

14.1 Each Party shall make the necessary adjustments to its System in a timely manner to route Traffic Services to other Party's System in accordance with the Service descriptions in Annex B (Services).

14.2 Each Party shall use telephone numbers in accordance with the National Numbering Plan and shall use consistent and uniform dialing patterns.

14.3 Each Party agrees that all agreements it enters into with Third Party Telecommunications Providers for the exchange Traffic in Guyana shall require that the Third Party Telecommunications Providers shall use telephone numbers in accordance with the National Numbering Plan and shall use consistent and uniform dialing patterns.

14.4 The Parties agree that the Service descriptions in Annex B (Services) are limited solely to the exchange of Guyanese telephone numbers.

14.5 The Parties shall not alter or otherwise manipulate the telephone number dialled by the Calling Party for any purpose of call routing, this includes but is not limited to terminating Traffic Services on a telephone number other than the telephone number originally dialed, and re-originating Traffic Services.

## **15. CLI**

15.1 The Parties will pass CLI in accordance with Annex D (Joint Working Manual) and any agreed code of practice for CLI from time to time in force. For the avoidance of doubt, and subject to Section 15.2, both Parties are required to pass CLI for all Services where it is available, and neither Party is obligated to terminate Traffic where a legitimate CLI is not conveyed or where a legitimate CLI is not available. The conveyance of Traffic without a legitimate CLI is Unagreed Traffic.

15.2 No Party shall alter or amend a CLI or, permit or knowingly accept the alteration or amendment of a CLI, unless such alteration or amendment is agreed in advance in writing by both Parties. Without in any way restricting any other breaches of this Agreement being deemed



to be material breaches, a breach of this Clause 13.2 shall be deemed a material breach of the Agreement.

15.3 Each Party agrees to convey all Traffic with unaltered CLIs. For the avoidance of doubt, in relation to all Traffic conveyed to the other Party's System under this Agreement, the CLI must be preserved thereby enabling a Called Party to return the telephone call, if their handset allows, without alteration.

## **16. Performance Measures and Standards**

16.1 Subject to Section 16.3, the Parties shall use all reasonable endeavours to comply with the provisions relating to quality of service set out in the Joint Working Manual in Annex D (Joint Working Manual).

16.2 Subject to Section 16.3, the Parties shall use all reasonable endeavours to at all times apply standards (including signaling standards) and operating guidelines which are consistent with the Joint Working Manual in Annex D (Joint Working Manual).

16.3 Except as is set out in Section 16.1 and Clause 16.2, the Parties provide no other warranties, representations, undertakings or commitments in respect of quality of service including, but not limited to, warranties, representations, undertakings or commitments in respect of difficulties or faults which result in a failure to establish service, in-service interruption or loss of or distortion of communication and all implied warranties are hereby excluded, save those implied by statute.

16.4 In order to maintain service performance standards, the Parties shall ensure that all its Services and their respective Systems are monitored by an operations centre twenty-four (24) hours a day, seven (7) days a week.

## **17. Safety and System Protection**

17.1 Each Party shall be responsible for the safe operation of its System and shall take all steps reasonably necessary or required by Law to ensure that such operation and the implementation of this Agreement:

17.1.1 comply with any specific safety and protection requirements contained in this Agreement (including, without limitation, the Annex D (Joint Working Manual));

17.1.2 do not endanger the safety or health of the officers, employees, contractors, representatives, agents, invitees or Customers of the other Party;

17.1.3 do not damage, interfere with or cause any impairment to or deterioration in the operation of the other Party's System; and

17.1.4 do not interfere with the use or provision of licensed telecommunications services provided by the other Party, provided that this principle shall not preclude the taking of action by either Party in the normal operation of its System to protect its System, on condition

that any such action is in compliance with Annex D (Joint Working Manual) or in compliance with provisions in this Agreement.

17.2 In the event that it is agreed to be necessary or desirable for representatives of a Party to access the premises of the other Party, each Party shall use its reasonable endeavours to comply with all reasonable security and safety practices and procedures applicable to access to and operations on the premises of the other Party notified in advance in writing to it by the Party whose premises are being visited. Subject to the indemnified Party complying with Section 30 (Limitation of Liability) and Section 32 (Indemnity), and each Party shall indemnify and keep indemnified the other against all damages, costs, claims and expenses arising out of any breach by the indemnifying Party of this Section 17.

17.3 In the event that it is agreed to be necessary or desirable for a Party's Equipment or Facilities to be located on the premises of the other Party, the Party whose premises the Equipment or Facilities are located on will provide a secure and suitable environment for the Equipment or Facilities and shall not in any way adjust, alter, modify or tamper with the same without the consent of the other Party.

17.4 In the event of any Fault in, breakdown of or problem in respect of either Party's System where such Fault, breakdown or problem may impact on the provision of Services, the affected Party shall notify the other Party. Further, the affected Party and the other Party shall cooperate to resolve the Fault in, breakdown of or problem that is impacting on the provision of Services, including by providing reasonable operations and maintenance assistance, unless such Fault in, breakdown of or problem is solely within the affected Party's System.

## **18. Prevention of Fraud**

18.1 Services provisioned under this Agreement are limited to Traffic for Legitimate Uses.

18.2 To the extent permitted by Law, the Parties will, upon becoming aware of Fraudulent Use, non-Legitimate Use, theft, or other misuse of the Parties' respective Services and associated Equipment, promptly inform the other Party of such circumstances, and shall take all required action to work with the other Party to eliminate the Fraudulent Use, non-Legitimate Use, theft or misuse of the Parties' respective Services and associated Equipment.

18.3 The Parties shall not be obliged to convey, receive or terminate Traffic Services: (i) where the volume of such Traffic materially exceeds that which could reasonably be expected and such Traffic impedes the transmission of other Traffic on a Party's Systems, or (ii) where such Traffic is otherwise harmful to the integrity of the Party's System.

18.4 Subject to written Notice timeframes contained in Section 27.1, the Parties shall not be restrained from taking any reasonable actions, including not conveying, receiving or terminating Traffic Services, in the event of:

- (i) Fraudulent Use, non-Legitimate Use, theft, or other misuse of the Parties' respective Services and associated Equipment, each as described in Section 27.1; or
- (ii) fraud being carried out against the Party, provided that the same action is taken in respect of all affected Services.

18.5 If requested, the Parties shall cooperate in the provision of information to the Regulator in relation to Fraudulent Use, non-Legitimate Use, theft or misuse of the Parties' respective Services and associated Equipment.

18.6 On being notified of the activity described in this Section 18, the notified Party will promptly take any and all action it reasonably can to prevent the continuation of the Fraudulent Use, non-Legitimate Use, theft, or other misuse of the Parties' respective Services and Equipment. Notwithstanding the provisions of Section 30 (Limitation of Liability), if the notified Party fails to take such reasonable action to prevent the continuation of the fraudulent activity, it shall be liable to the other Party for any and all direct losses arising from Fraudulent Use, non-Legitimate Use, theft, or other misuse of the Parties' respective Services and Equipment, from the time at which the notified Party was so notified.

## **19. Bypass Operations**

19.1 No Party shall knowingly engage, facilitate or participate in Bypass Operations. Each Party acknowledges that the knowing conduct of Bypass Operations by one Party to the System of the other Party shall constitute a material breach of the terms of this Agreement.

19.2 Both Parties acknowledge the serious negative impact which Bypass Operations pose to their respective Systems and business operations in Guyana (*e.g.*, through unpaid government taxes and levies as may be applicable to telecommunications services from time to time), and undertake to use their reasonable endeavours to ensure that no Bypass Operations occur on each Party's respective Systems. Further, both Parties undertake to cooperate in good faith and to share information relating to any actual or potential Bypass Operations relating to the Parties' respective Systems.

19.3 Upon discovery of a potential Bypass Operation originating from the other Party's Systems, a Party may notify the other Party in accordance with the escalation list in Annex D (Joint Working Manual) of the potential Bypass Operation ("Bypass Operations Notice"). The Party initiating a Bypass Operations Notice must have a good faith basis for asserting that a potential Bypass Operation is originating from the other Party's System and must provide in the Bypass Operation Notice a description of the potential Bypass Operations. Upon receipt of a Bypass Operations Notice, the receiving Party shall have twenty-four (24) hours to either: provide information to the Party issuing the Bypass Operations Notice demonstrating that no Bypass Operations exists, or end the conveyance of Traffic Services associated with the alleged Bypass Operations as described in the Bypass Operations Notice (the "Bypass Operations Cure Period"). Pursuant to Section 27.1.2, either Party may suspend one or more Services during the Bypass Operations Cure Period.

19.4 Notwithstanding the provisions of Section 30 (Limitation of Liability), if either Party receives a Bypass Operations Notice and fails to take such reasonable action to prevent the continuation of the Bypass Operations after expiration of the twenty-four (24) hour opportunity to cure described in Section 19.3, that Party shall be liable to the other Party for any and all direct losses arising from the Bypass Operations, from the time at which the notified Party received the Bypass Operations Notice.

## **20. Unagreed Traffic**

20.1 “Unagreed Traffic” means: (i) Traffic of a type which is not specifically included in the Service descriptions contained in Annex B (Services); or (ii) Traffic of a type which is conveyed to the other Party on Interconnects not segregated for that Traffic type or that is not segregated for that direction of Traffic; or (iii) Traffic that includes no CLI; or (iv) Traffic which results from the artificial inflation of otherwise legitimate Traffic; or (v) Traffic which is not for a Legitimate Use; or (vi) Traffic which in the reasonable opinion of the receiving Party of the Traffic does not conform to the technical requirements of Annex D (Joint Working Manual). For clarity, Unagreed Traffic is not a Service.

20.2 Neither Party shall offer Unagreed Traffic to the other Party’s System on Interconnects designated to carry Services pursuant to this Agreement.

20.3 The Parties agree that Unagreed Traffic represents a significant threat to the security and integrity of each other’s Systems. In the event that a Party conveys Unagreed Traffic to the other Party, the receiving Party is, in addition to any other rights under this Agreement or at Law, entitled to block or not terminate the Traffic and to take such action as it deems necessary to protect its System.

20.4 In the event that a Party conveys any Unagreed Traffic to the other Party, and the Traffic results in a successful delivery, and the other Party receives any Unagreed Traffic, then the Parties agree that the rate for such Traffic shall be equal to US\$0.23 plus US\$0.07 for administrative fees for each 60 seconds of a Call, and be equal to US\$0.03 plus US\$0.07 for administrative fees for each SMS. The Parties agree that this rate reflects the additional operational activity and the business risk associated with receiving the Unagreed Traffic. For clarity, the Party receiving Unagreed Traffic is not obligated to convey, receive, or otherwise permit, or continue to convey, receive, or otherwise permit, any Unagreed Traffic.

20.5 Any Charges levied pursuant to Section 20.4 shall be included on the relevant invoice and shall be payable in accordance with the provisions of this Agreement.

20.6 Notwithstanding the non-payment of Disputed Charges contained in Section 10 (Charges and Payments) and Section 41 (Dispute Resolution), where a Party Disputes any Charges levied pursuant to Section 20.4, the amounts so levied shall be paid pending resolution of the Dispute. Where a Party Disputes a Charge for Unagreed Traffic, the burden of proof will be on the Party disputing the categorization of Unagreed Traffic to demonstrate that the Traffic in question was legitimate.

20.7 Where any Dispute in respect of Charges for Unagreed Traffic is resolved in favour of the Party disputing the categorization of Unagreed Traffic Charge, the other Party will credit the difference between the Charges levied pursuant to Section 20.4 and the rate for the Traffic in question as set out in Annex C (Rate Schedule) for the Service in accordance with Section 41.12.

20.8 The exercise of the provisions of this Section 20 are without prejudice to other rights in the Agreement, including the provisions of Section 27 (Suspension and Termination).

## **21. Confidentiality**

21.1 Subject to the following provisions of this Section 21, a Party receiving Confidential Information from the other Party shall keep in confidence the Confidential Information, and will not disclose such information to any Third Party, subject to the provisions of this Section 21. A Party receiving Confidential Information also shall use its best endeavours to ensure that its directors, employees, agents, representatives, Affiliates, and professional advisers will not disclose such information to any Third Party and shall ensure that any of its directors, employees, agents, representatives, Affiliates and professional advisers are bound by confidentiality and non-disclosure restrictions prior to receiving the other Party's Confidential Information.

21.2 A Party receiving Confidential Information from the other Party shall exercise no lesser security or degree of care over Confidential Information than that Party applies to its own Confidential Information and in any event such security or degree of care shall be no less than would be exercised by a reasonable person with knowledge of the confidential nature of the information.

21.3 A Party receiving Confidential Information from the other Party shall restrict disclosure of Confidential Information relating to the other Party to those who have a reasonable need to know. Confidential Information shall be used solely for the purposes for which it was disclosed.

21.4 A Party receiving Confidential Information from the other Party may disclose Confidential Information to a contractor or agent, subject to the contractor or agent having a reasonable need to know and agreeing, in writing, to comply in writing with obligations equivalent to those contained in this Section 21.

21.5 A Party receiving Confidential Information from the other Party may disclose Confidential Information to an Affiliate, subject to the Affiliate having a reasonable need to know and undertaking to strictly comply with obligations equivalent to those contained in this Section 21.

21.6 Unless otherwise agreed in writing, a Party receiving Confidential Information from the other Party shall not use the other Party's Confidential Information to provide commercial advantage and shall not for any reason share Confidential Information from the other Party with any Person responsible for sales and marketing (including supervisory responsibilities). Without in any way restricting any other breaches of this Agreement being

deemed to be material breaches, and subject to Section 27 (Suspension and Termination), a breach of this Clause 21.6 shall be deemed a material breach of the Agreement.

21.7 Unless otherwise agreed, the obligations of confidentiality and non-use do not apply to such Confidential Information that:

21.7.1 Was at the time of receipt, already known to the Party; or

21.7.2 Is, or becomes publicly known through no wrongful act of the Party; or

21.7.3 Is rightfully received from a Third Party having no direct or indirect secrecy or confidentiality obligation to the Party that maintains the Confidential Information; *provided that* such Party receiving Confidential has exercised commercially reasonable efforts to determine whether such Third Party has any such obligation; or

21.7.4 Is independently developed by an agent, employee representative or Affiliate of the Party and such Party is not involved in any manner with the provision of Services pursuant to this Agreement and does not have any direct or indirect access to the Confidential Information of the other Party; or

21.7.5 Is approved for release by written authorization of the Party, but only to the extent of the authorization granted; or

21.7.6 Is required to be made public or disclosed pursuant to applicable Law or regulation or court order or lawful process, but only after reasonable prior written Notice to the Party that disclosed the Confidential Information.

21.8 All Confidential Information is acknowledged by the Party receiving Confidential Information of the other Party to be the property of the disclosing Party; the disclosure of the Confidential Information shall not be deemed to confer any rights to that Confidential Information on the Party receiving the Confidential Information.

21.9 The Party providing Confidential Information may request in writing at any time that any written Confidential Information (and/or Confidential Information in machine readable form) disclosed pursuant to the terms and conditions of this Section 21, and any copies thereof, be returned with a written statement to the effect that, upon such return, the Party receiving Confidential Information has not knowingly retained in its possession or under its control, either directly or indirectly, any Confidential Information or copies thereof and the Party receiving Confidential Information shall comply with any such request within seven (7) days of receipt of such request.

## **22. Use of Customers' Information**

22.1 Information on a Party's Customers conveyed to the other Party shall not be used by that other Party to its own commercial advantage.

22.2 Information on a Party's Customers conveyed to the other Party shall not be used by that other Party's directors, employees, agents, representatives, Affiliates, contractors and

professional advisers for that other Party's commercial advantage, including but not limited to, for purposes relating to sales and marketing.

### **23. Intellectual Property Rights; Licenses**

23.1 Any Intellectual Property (herein referred to as "IPR") originating from or developed by a Party shall remain in the exclusive ownership of that Party. Except as otherwise expressly provided in this Agreement, no license under patents, copyrights or any other IPR right (other than the limited license to use consistent with the terms, conditions and restrictions of this Agreement) is granted by either Party or shall be implied or arise by estoppel with respect to any transactions contemplated under this Agreement.

23.2 Where any IPR is developed in connection with performance of this Agreement then, in the absence of any other Agreement between the Parties, the owner of the IPR shall remain the Party who developed the IPR. Each Party grants to the other a non-exclusive, royalty-free licence to use any IPR for the purposes of this Agreement and for its term subject to the other provisions in this Section 23.

23.3 Notwithstanding Section 30 (Limitation of Liability), each Party (the "IPR Indemnifying Party") agrees to indemnify the other Party (the "IPR Indemnified Party") against all liability or loss arising from, and all reasonable costs, charges and expenses incurred in connection with, any claim, action, suit or demand alleging infringement by the IPR Indemnified Party of the rights of a Third Party arising from the use by the IPR Indemnified Party of IPR disclosed or licensed by the IPR Indemnifying Party under this Agreement except where such IPR has been modified or used by the IPR Indemnified Party other than in accordance with this Agreement subject to the IPR Indemnified Party complying with this Section 30 (Limitation of Liability).

23.4 If a Party becomes aware of an infringement or threatened infringement of IPR belonging to the other Party (the "IPR Owner") disclosed or licensed by the IPR Owner under this Agreement, then that Party shall use reasonable endeavours to notify the IPR Owner in writing of all the relevant details relating to the infringement, or threatened infringement.

23.5 The IPR Owner may take such steps and proceedings as it considers necessary or desirable to protect its rights in respect of the IPR, and any rights of the other Party in the IPR, and the other Party must render all reasonable assistance to the IPR Owner in this regard at the IPR Owner's expense.

23.6 If a Party licenses IPR to the other Party for the purposes of this Agreement and that IPR infringes the rights of a Third Party, then the Party that licenses the IPR to the other Party must:

23.6.1 at its own expense, take such steps as are necessary to cure the infringement, or

23.6.2 if Section 23.6.1 is unreasonable having regard to the likely costs and other relevant matters, provide alternative technology as soon as reasonably practicable.

23.7 The Parties acknowledge that this Section sets out the only remedies and forms for compensation available in respect of any infringement of Third Party rights by IPR licensed for the purpose of this Agreement.

## **24. Publicity; Trade and Service Marks**

24.1 Neither Party nor its subcontractors or agents shall use in any advertising or sales promotion, press releases, or other publicity matters any endorsements, direct or indirect quotes, or pictures that imply endorsement by the other Party, its Affiliates, or any of its employees without such first Party's prior written approval. The Parties will submit to each other for written approval, prior to publication, all publicity matters that mention or display one another's name and/or marks or contain language from which a connection to said name and/or marks may be inferred or implied; the Party to whom a request is directed shall respond promptly.

24.2 Nothing in this Agreement shall grant, suggest, or imply any authority for one Party or its Affiliates to use the name, trademarks, service marks, logos, proprietary trade dress or trade names of the other Party or its Affiliates in any advertising, press releases, publicity matters, marketing and/or promotional materials or for any other commercial purpose without prior written approval from such other Party.

24.3 A Party shall not use the name, trademarks, service marks, logos, proprietary trade dress or trade names of the other Party without the prior written consent of that other Party.

## **25. Authorised Representatives**

25.1 Each Party shall appoint the representatives referred to in the Joint Working Manual in Annex D (Joint Working Manual) to be responsible for the matters indicated in the Joint Working Manual in Annex D (Joint Working Manual). Each Party shall notify the other of the identity of the representative(s) in writing no later than five (5) Business Days following signature of this Agreement.

25.2 Except as otherwise provided herein, all correspondence, meetings and other communications (including notification of matters in Dispute) pertaining to issues pertaining to their responsibilities shall be directed to and conducted by and through those representative(s). The representative(s) shall keep an appropriate record of all communication with their counterpart(s).

25.3 Each Party is entitled to change the representative(s) by Notice in writing to the other Party.

## **26. Review and Amendment**

26.1 This Agreement is the result of negotiations between the Parties. Except as otherwise provided for in this Agreement, no provision of this Agreement shall be deemed amended or modified by either Party unless such an amendment or modification is in writing, dated, and signed by an authorized representative of both Parties. In entering into this Agreement and any amendments to such Agreement and carrying out the provisions herein, neither Party



waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other regulatory, legislative or judicial action(s) which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further review.

26.2 Without prejudice to the provisions of Section 12 (Variation of Charge), either Party may seek to amend this Agreement by serving on the other a “Review Notice” if:

26.2.1 a Material Change in Law occurs or a material change in regulations governing telecommunications in Guyana subject to this Agreement occurs (including, without limitation, licence changes, and court decisions affecting this Agreement) that necessitate the amendment of this Agreement;

26.2.2 a material change occurs (including, without limitation, enforcement action by any regulatory authority, Regulator determinations, and changes to the company constitution of the Parties) which affects or reasonably could be expected to affect the commercial or technical basis of this Agreement;

26.2.3 a revised Reference Interconnection Offer is approved in whole or in part by the Regulator for either Party;

26.2.4 the Regulator exercises its powers to modify a material aspect of the Agreement; or

26.2.5 both Parties agree in writing that there should be a review.

26.3 A “Review Notice” shall be sent, in writing, providing reasonable detail of the events giving rise to the review and the nature of the amendments sought by the Party serving the Notice.

26.4 With the exception of reviews arising under Section 26.2.4, a Party must serve a Review Notice within six (6) months of the event giving rise to the review.

26.5 Upon service of a Review Notice, the Parties shall forthwith negotiate the matters to be resolved in good faith with a view to agreeing the relevant amendments to this Agreement; *provided that*, if the event giving rise to the review is as specified in either Section 26.2.3 or Section 26.2.4, this Agreement shall be modified accordingly by the Parties without the need for renegotiation and the Agreement shall be deemed amended in accordance with such determination, pending the formal amendment of the agreement in accordance with the determination by the Parties. If nevertheless the Parties shall disagree on the nature or extent of the modification(s) required pursuant to this Section 26, they shall resolve the Dispute in the manner provided in Section 41 (Dispute Resolution).

26.6 If, after a period of 60 (sixty) days from commencement of such review, the Parties fail to reach agreement, the Parties shall resolve the Dispute in accordance with the Dispute resolution procedure adopted pursuant to Section 41 (Dispute Resolution).

26.7 For the avoidance of doubt, the Parties agree that the terms and conditions of this Agreement shall remain in full force and effect during such review until the Parties complete an agreement replacing or amending this Agreement or until such time as this Agreement is terminated in accordance with its terms.

26.8 In entering into this Agreement and any amendments thereto, and carrying out the provisions herein, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other regulatory, legislative or judicial action(s) which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further review.

## **27. Suspension and Termination**

27.1 Notwithstanding any other provision of this Agreement, either Party may, to the extent permitted by Law, suspend or Terminate this Agreement, at the sole discretion of the suspending or Terminating Party:

27.1.1 upon at least nine (9) months' Notice in writing to the other Party, contingent upon written agreement of the Parties relating to the costs and procedures relating to Termination; or

27.1.2 immediately suspend one or more Services following written Notice, where the other Party engages in conduct which is harmful to the Party, where the Traffic is not for Legitimate Use or is for Fraudulent Use, or where the Traffic is unlawful or interferes with the obligations of the Party under its licence, the Law or regulations, and may Terminate one or more Services if such conduct does not cease within seven (7) days after Notice;

27.1.3 immediately suspend Services where the other Party engages in conduct that would endanger life or safety, or damage the property of the Party, and may Terminate if such conduct is not ceased within thirty (30) days of written Notice being given;

27.1.4 immediately suspend on Notice in writing to the other Party, in the event that any license necessary to entitle a Party to Interconnect or to enable a Party to carry out its obligations under this Agreement at any time expires or is revoked by the Regulator and is not immediately replaced or re-issued or is in the process of being replaced or re-issued; or

27.1.5 on written five (5) days' written Notice to the other Party, either Party may suspend where suspension is necessary to deal with a material degradation or impairment of either Party's System caused by the other Party, and may Terminate Services if the conduct does not cease within seven (7) days after Notice.

27.2 Unless otherwise governed by the requirements detailed in this Legal Framework, each of which supersedes this provisions requirements, including with respect to Section 27.1 or as provided in Section 19 (Bypass Operations), either Party, at its sole option, may suspend or Terminate this Agreement on written Notice for failure perform a material obligation or for a breach or breaches of a material term of this Agreement, and the breaching Party fails to cure such nonperformance or breach within thirty (30) calendar days after written Notice thereof (the

“Cure Period”) unless a shorter timeframe is provided in the Agreement. If the breaching Party fails to cure such nonperformance or breach(es) within the specified timeframe provided for within the original Notice, then the non-breaching Party will provide a subsequent written Notice of the Termination of this Agreement and such Termination shall take effect immediately upon delivery of written Notice to the other Party. The Parties agree that, *inter alia* and without prejudice to others, the following are material breaches of the Agreement:

27.2.1 A Party fails to pay the Undisputed portion of any Charges payable, when due, and fails to remedy such non-payment within the Cure Period;

27.2.2 A Party materially fails to perform under the Agreement and fails to remedy such non-payment within the Cure Period;

27.2.3 A Party fails to maintain a demanded security deposit or bank guarantee as required by Section 13 (Security Deposit); or

27.2.4 A Party ceases or threatens to cease to carry on business, enters into liquidation (other than for the purpose of merger or reconstruction where the emergent company assumes its obligations hereunder), or is dissolved or becomes bankrupt or insolvent, or takes or suffers any similar action in consequence of debt.

27.3 In each case where Service is suspended pursuant to Section 27.1 or Section 27.2, Service shall promptly be restored once the circumstances warranting suspension have ceased to apply if such restoration occurs within the Cure Period. Exercise of a right to suspend under Section 27.1 or Section 27.2 shall not prejudice the suspending Party’s right to exercise any other existing right(s), including to Terminate pursuant to Section 27.1 or Section 27.2. Except in the case of Section 29 (Force Majeure), each Party shall remain liable for any Charges in respect of the Service throughout the period of suspension and thereafter.

27.4 Notwithstanding Section 27.1 or Section 27.2, neither Party may suspend or Terminate without giving the Regulator prior Notice in accordance with Law, except as to Terminations pursuant to Section 18 (Prevention of Fraud), Section 19 (Bypass Operations), and Section 20 (Unagreed Traffic). Any such Notice to the other Party of suspension or Termination shall become effective in accordance with such Notice, unless the other Party applies to the Regulator for relief prior thereto and the Regulator issues a Preliminary Order preventing such suspension or Termination.

27.5 Notwithstanding Section 27.1, neither Party may Terminate this Agreement during the pendency of Dispute resolution proceedings under Section 41 (Dispute Resolution) for matters relating to the Dispute, unless authorised to do so by the Regulator, a Dispute resolution settlement, or a court of law.

27.6 Neither Party shall be liable for any direct or indirect losses arising from the exercise of any of the provisions of this Section 27.

## **28. Effects of Termination**

28.1 Termination or expiry of this Agreement shall be without prejudice to the rights and obligations of the Parties accruing prior to such Termination or expiration, and such Termination or expiration shall not affect the continuance in force of any provision of this Agreement which is expressly or by implication intended to continue in force (including but not limited to the requirements of the Joint Working Manual in Annex D (Joint Working Manual)).

28.2 Termination or expiry of this Agreement shall not operate as a waiver of any breach by a Party of this Agreement and shall be without prejudice to any rights, liabilities or obligations of either Party which have accrued up to the date of Termination or expiration.

## **29. Force Majeure**

29.1 Neither Party shall be liable to the other for any delay or failure to perform or observe any provision of this Agreement by reason of Force Majeure Event other than the obligation to make monetary payments if the Party experiencing the Force Majeure Event circumstance makes commercially reasonable efforts to remove or overcome the effects of such circumstance. A Party shall be relieved of its obligations under this Agreement by reason of Force Majeure Event only for the period of time during which the Force Majeure Event circumstance applies.

29.2 A “Force Majeure Event” is defined as acts or occurrences beyond the reasonable control of a Party or the Parties, including acts of nature, acts of civil or military authority, any law, order, regulation, ordinance of any Governmental Authority, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, hurricanes, floods, labor difficulties, including without limitation, strikes, slowdowns, picketing, boycotts or other work stoppages, equipment failures, cable cuts, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation Facilities or acts or omissions of transportation carriers, individually and collectively a Force Majeure Event.

29.3 The Party affected by any Force Majeure Event shall use reasonable efforts to promptly notify the other of the estimated extent, including specifying the nature and date of inception of the Force Majeure Event, and duration of the Party’s inability to perform its obligations under this Agreement, whereupon such obligation or performance shall be suspended to the extent such Party is affected by such Force Majeure Event during the continuance thereof or be excused from such performance depending on the nature, severity and duration of such Force Majeure Event (and the other Party shall likewise be excused from performance of its obligations to the extent such Party’s obligations relate to the performance so interfered with). Upon cessation of the delay or failure resulting from Force Majeure Event, the Party affected shall promptly notify the other of such cessation.

29.4 If, as a result of a Force Majeure Event, performance by either Party of its obligations under this Agreement is only partially affected as described in the Notice provided pursuant to Section 29.3, that Party shall nevertheless remain liable for the performance of those obligations not affected by Force Majeure Event.

29.5 If the Force Majeure Event lasts for six (6) months or less from the date of any notification under Section 29.3, any obligation outstanding shall be fulfilled by the Party affected as soon as possible after cessation of the Force Majeure Event, save to the extent that such fulfilment is no longer practically possible or is not required by the other Party to the extent so agreed to in writing by the unaffected Party.

29.6 If the Force Majeure Event lasts for more than six (6) months from the date of any such notification and Notice of cessation has not been given and such Force Majeure Event prevents the affected Party from performing its obligations in whole or in part during that period, the unaffected Party shall be entitled (but not obliged) to Terminate this Agreement by giving not less than thirty (30) days' written Notice to the other after expiry of such six month period, unless Notice of cessation of the Force Majeure Event is received by the unaffected Party prior to the expiry of such thirty (30) days' Notice. If this Agreement is not so terminated under the provisions of this Section 29, any obligations outstanding shall be fulfilled by the Party affected by the Force Majeure Event as soon as possible after the Force Majeure Event has ended, save to the extent that such fulfilment is no longer possible or is not required by the other Party to the extent so agreed to in writing by the unaffected Party.

### **30. Limitation of Liability**

30.1 Except as provided in Section 30.2, Section 30.4, Section 30.9, under no circumstances will either Party (as used in this Section 30, the "First Party") or its Affiliates, or any of their respective officers, employees, contractors or agents, be liable in contract, in tort (including but not limited to negligence), in equity, for breach of statutory duty, or otherwise to compensate the other Party (as used in this Section 30, the "Second Party") for any loss, injury, liability, damage, costs or expense arising directly or indirectly from, under or in relation to this Agreement, including with respect to the following:

- 30.1.1 any act, omission or delay of the First Party or its Affiliates, or any of their respective officers, employees, contractors or agents;
- 30.1.2 any act, omission or delay in respect of the making available, continued availability, provision, use or termination of the First Party's Services;
- 30.1.3 the failure by the first party or its Affiliates, or any of their respective officers, employees, contractors or agents to connect the first party's network to the second party's network or to make available, continue to make available or provide the first party's Services;
- 30.1.4 any failure of the First Party's Services;
- 30.1.5 any failure of anything which is part of, or associated with, the First Party's Services;
- 30.1.6 any interception, distortion or interruption of any communication or attempted communication (including but not limited to any Traffic) using the First Party's Services; or

30.1.7 subject to Section 30.2.3, any act or omission of any Customer of the First Party or its Affiliates and any other third party for whom the First Party or its Affiliates is not responsible.

30.2 Notwithstanding Section 30.1, but subject to all other provisions of this Section 30, the First Party does not by this Agreement exclude liability, whether imposed by the Regulatory, by an arbitrator, or by a court:

30.2.1 for Losses (as defined below) suffered by the Second Party as a result of the wilful misconduct (including wilful misconduct causing breach) or fraud of the First Party or its Affiliates, or any of their respective officers, employees, contractors or agents, in each case in the course of their performance of this Agreement;

30.2.2 for Losses suffered by the Second Party as a result of the gross negligence of the First Party or its Affiliates, or any of their respective officers, employees, contractors or agents, in each case in the course of their performance of this Agreement, (for purposes of this Section 30, *gross negligence* is any conscious or voluntary act or omission which results in injury or damage by a person who was aware of a clear and present threat or danger that such injury or damage would occur or was reasonably likely to occur);

30.2.3 for physical damage to the Second Party's property occurring in the course of the use, provision, operation, servicing or termination of the First Party's Services that is attributable, directly or indirectly and in whole or in part, to:

(a) the negligence of the First Party or its Affiliates, or any of their respective officers, employees, contractors or agents in each case in the course of their performance of this Agreement; or

(b) the acts or omissions of a Customer of the First Party in the course of making use of the Services provided by or on behalf of the First Party;

30.2.4 to indemnify the Second Party under Section 32 or any other express indemnity, from time to time, under this Agreement, but only to the extent that the liability arises in the course of or out of the provision, operation, servicing or termination of Services or the performance or non-performance of obligations by the First Party or its Affiliates, or any of their respective officers, employees, contractors or agents, in each case in the course of their engagement by the First Party, under or in relation to this Agreement.

For the purposes of Sections 30.2.2 *Losses* means:

the revenues:

(a) which would be directly attributable to the First Party, or which would be attributable to the First Party as a reasonably foreseeable consequence:

- (i) each Service which could not reasonably be provided by the Second Party (the “Relevant Service”); or, as the case may be,
- (ii) a part of a Service which could not reasonably be provided by the Second Party (the “Relevant Part of a Service”);

because of wilful misconduct or the gross negligence; and

(b) which the Second Party would reasonably expect to gain (but which the Second Party did not in fact gain) from the Relevant Service or the Relevant Part of a Service, as the case may be (but not other Services or other parts of Services) for the period during which the wilful misconduct or gross negligence directly affected the Relevant Service or the Relevant Part of a Service, as the case may be;

- (i) less the costs and expenses that would reasonably be expected to have been incurred by the Second Party (but which the Second Party did not in fact incur) in providing the Relevant Service (or the Relevant Part of a Service, as the case may be) during that period; together with
- (ii) any costs and expenses which the Second Party has reasonably incurred in mitigating such wilful misconduct or gross negligence; less

any revenues:

- (A) which the Second Party gained as a result of any mitigation by the Second Party of the wilful misconduct or gross negligence; and
- (B) which would not have been gained by the Second Party except for the mitigation by the Second Party of the wilful misconduct or gross negligence.

30.3 In any event, under no circumstances (except to the extent necessary to give effect to Section 30.2.1 and Section 30.2.2) will the First Party or its Affiliates, or any of their respective officers, employees, contractors or agents be liable to the Second Party in contract, in tort (including but not limited to negligence), in equity, for breach of statutory duty, or otherwise for loss of profits, business or anticipated savings or for any indirect or consequential loss whatever, under or in relation to this Agreement, notwithstanding that the First Party or its Affiliates, or any of their respective officers, employees, contractors or agents have been advised of the likelihood of such losses.

30.4 If for any reason the first party, its Affiliates and/or any of their respective officers, employees, contractors and/or agents is or are liable to the second party in contract, in tort (including but not limited to negligence), in equity, for breach of statutory duty, or otherwise, the combined maximum liability of the first party, its Affiliates and their respective officers, employees, contractors and agents to the second party under or in relation to this Agreement shall be:

30.4.1 US\$1.0 million in respect of any one event or related series of events; and

30.4.2 in any 12 month period, US\$1.5 million irrespective of the number of events.

30.5 Each limitation or exclusion of this Section 30 and each protection given to the First Party or its Affiliates, or any of their respective officers, employees, contractors or agents by any provision of this Section 30 is to be construed as a separate limitation, exclusion or protection applying and surviving even if for any reason any of the other provisions is held inapplicable in any circumstances.

30.6 Nothing in this Section 30 shall exclude liability of the First Party to pay when due the Charges, interest or other amounts specified to be payable to the Second Party under this Agreement (including amounts payable pursuant to an indemnification obligation set forth in this Agreement).

30.7 The Second Party shall use its reasonable endeavours to ensure that a provision shall (to the extent that it is not now included) be included in:

30.7.1 each contract with a Customer of the Second Party for the provision of its service which excludes (to the maximum extent permitted by Law) any liability of:

- (a) the First Party, its Affiliates, and their respective officers, employees, contractors and agents; and
- (b) any Third Party Telecommunications Provider (whose System is connected to and with the First Party's System), and their respective officers, employees, contractors and agents;

arising directly or indirectly from or in connection with the Second Party's service; and each contract with any Third Party Telecommunications Provider (where the Third Party Telecommunications Provider's System is connected to and with the Second Party's System) which excludes (to the maximum extent permitted by Law) any liability of the First Party, its Affiliates, and their respective officers, employees, contractors and agents arising directly or indirectly from Service provided by the Second Party to the Third Party Telecommunications Provider.

30.8 The Second Party agrees that under no circumstances will any Third Party Telecommunications Provider (whose System is connected to and with the First Party's System), or its subsidiaries now or from time to time, or any of their respective officers, employees, contractors or agents, be liable to compensate the Second Party for any loss, injury, liability, damage, costs or expense arising directly or indirectly from the provision by the First Party of a Service that includes a component provided to the First Party by that Third Party Telecommunications Provider.

30.9 Notwithstanding anything to the contrary, the provisions of this Section 30 (i) shall not apply to a breach by the First Party, its Affiliates and/or any of their respective officers, employees, contractors and/or agents, of Section 17, Section 18, Section 19, Section 20, Section



21, Section 22, Section 23, Section 24, Section 32, Section 46 of the Agreement; or (ii) limit a Party's right to seek equitable or interim relief.

### 31. Disclaimer of Representations and Warranties

**DISCLAIMER. EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES TO THE OTHER PARTY CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES PROVIDED UNDER THIS AGREEMENT. THE PARTIES DISCLAIM, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE.**

### 32. Indemnity

32.1 Except as otherwise expressly provided herein, each Party shall be responsible only for the Services which are provided by that Party, its authorized agents, subcontractors, or others retained by such Parties, and neither Party shall bear any responsibility for the services, provided by the other Party, its agents, subcontractors, or others retained by such Parties.

32.2 Except as otherwise expressly provided herein, and to the extent not prohibited by Law, each Party (the "Indemnifying Party") shall release, defend and indemnify the other Party (the "Indemnified Party") and hold such Indemnified Party harmless against any loss to a Third Party arising out of the negligent, reckless, or willful misconduct ("Indemnification Fault") of such Indemnifying Party, its agents, its Customers, contractors, or others retained by such Parties, in connection with the Indemnifying Party's provision of Services under this Agreement; *provided, however*, that (i) with respect to employees or agents of the Indemnifying Party, such Indemnification Fault occurs while performing within the scope of their employment, (ii) with respect to subcontractors of the Indemnifying Party, such Indemnification Fault occurs in the course of performing duties of the subcontractor under its subcontract with the Indemnifying Party, and (iii) with respect to the Indemnification Fault of employees or agents of such subcontractor, such Indemnification Fault occurs while performing within the scope of their employment by the subcontractor with respect to such duties of the subcontractor under the subcontract.

32.3 In the case of any loss alleged or claimed by a Customer of either Party, the Party whose Customer alleged or claimed such loss (the "Indemnifying Party") shall defend and indemnify the other Party (the "Indemnified Party") against any and all such claims or losses by its Customer, regardless of whether the underlying Service giving rise to such claim or loss was provided or provisioned by the Indemnified Party, unless the claim or loss was caused by the reckless or willful misconduct of the Indemnified Party.

32.4 A Party (the "Indemnifying Party") shall also defend, indemnify and hold harmless the other Party ("Indemnified Party") against any claim or loss arising from the Indemnifying Party's use of Services provided under this Agreement involving:

32.4.1 Any claim or loss arising from such Indemnifying Party's use of Services offered under this Agreement, involving any claim for libel, slander, invasion of privacy, or infringement of Intellectual Property rights arising from the Indemnifying Party's or its Customer's use.

(a) The foregoing includes any claims or losses arising from disclosure of any Customer-specific information associated with either the originating or terminating numbers used to provision Services provided hereunder and all other claims arising out of any act or omission of the Customer in the course of using any Services provided pursuant to this Agreement.

(b) The foregoing includes any losses arising from claims for actual or alleged infringement of any Intellectual Property Right of a Third Party to the extent that such loss arises from an Indemnifying Party's or an Indemnifying Party's Customer's use of Services, provided under this Agreement; provided, however, that an Indemnifying Party's obligation to defend and indemnify the Indemnified Party shall not apply where an Indemnified Party or its Customer modifies Services provided under this Agreement and no infringement would have occurred without such modification.

32.5 Each Party acknowledges that its right under this Agreement to interconnect with the other's Systems may be subject to or limited by Intellectual Property rights (including without limitation, patent, copyright, trade secret, trade mark, service mark, trade name and trade dress rights) and contract rights of third parties.

32.6 The Parties do not and shall not indemnify, defend or hold the other Party harmless, nor be responsible for indemnifying or defending, or holding the other Party harmless, for any claims or losses for actual or alleged infringement of any Intellectual Property right or interference with or violation of any contract right that arises out of, is caused by, or relates the other Party's use of Equipment, Facilities, or Services furnished under this Agreement.

32.7 A Party shall reimburse the other Party for damage to Equipment and Facilities utilized to provide Services hereunder caused by the negligent, reckless, or willful act of the Party, its agents or subcontractors or the Party's Customers or resulting from the Party's improper use of Equipment and Facilities, or due to malfunction of any Equipment, Facilities, functions, products, services or equipment.

32.8 Indemnification Procedures:

32.8.1 Whenever a claim shall arise for indemnification under this Section 32, the relevant Indemnified Party, as appropriate, shall promptly notify the Indemnifying Party and request in writing the Indemnifying Party to defend the same. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such claim.

32.8.2 The Indemnifying Party shall have the right to defend against such liability or assertion, in which event the Indemnifying Party shall give written Notice to the Indemnified Party of acceptance of the defense of such claim and the identity of counsel selected by the Indemnifying Party.

32.8.3 Until such time as the Indemnifying Party provides written Notice of acceptance of the defense of such claim, the Indemnified Party shall defend such claim, at the expense of the Indemnifying Party, subject to any right of the Indemnifying Party to seek reimbursement for the costs of such defense in the event that it is determined that Indemnifying Party had no obligation to indemnify the Indemnified Party for such claim.

32.8.4 Upon accepting the defense, the Indemnifying Party shall have the exclusive right to control and conduct the defense and settlement of any such claims, subject to consultation with the Indemnified Party. So long as the Indemnifying Party is controlling and conducting the defense, the Indemnifying Party shall not be liable for any settlement by the Indemnified Party unless such Indemnifying Party has approved such settlement in advance and agrees to be bound by the agreement incorporating such settlement.

32.8.5 At any time, an Indemnified Party shall have the right to refuse a compromise or settlement, and, at such refusing Party's cost, to take over such defense; provided that, in such event the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify the refusing Party against, any cost or liability in excess of such refused compromise or settlement.

32.8.6 With respect to any defense accepted by the Indemnifying Party, the Indemnified Party will be entitled to participate with the Indemnifying Party in such defense if the claim requests equitable relief or other relief that could affect the rights of the Indemnified Party, and shall also be entitled to employ separate counsel for such defense at such Indemnified Party's expense.

32.8.7 If the Indemnifying Party does not accept the defense of any indemnified claim as provided above, the Indemnified Party shall have the right to employ counsel for such defense at the expense of the Indemnifying Party.

32.8.8 In the event of a failure to assume the defense, the Indemnified Party may negotiate a settlement, which shall be presented to the Indemnifying Party. If the Indemnifying Party refuses to agree to the presented settlement, the Indemnifying Party may take over the defense. If the Indemnifying Party refuses to agree to the presented settlement and refuses to take over the defense, the Indemnifying Party shall be liable for any reasonable cash settlement not involving any admission of liability by the Indemnifying Party, though such settlement may have been made by the Indemnified Party without approval of the Indemnifying Party, it being the Parties' intent that no settlement involving a non-monetary concession by the Indemnifying Party, including an admission of liability by such Party, shall take effect without the written approval of the Indemnifying Party.

32.8.9 Each Party agrees to cooperate and to cause its employees and agents to cooperate with the other Party in the defense of any such claim and the relevant records of each

Party shall be available to the other Party with respect to any such defense, subject to the restrictions and limitations set forth in Section 21 (Confidentiality).

### **33. Relationship of the Parties**

33.1 In giving effect to this Agreement, the relationship of the Parties to each other shall be that of independent contractors. Nothing in this Agreement shall be construed as or shall constitute the relationship of the Parties as an agency, partnership, franchise, employment, joint venture or other joint venture relationship between the Parties.

33.2 Each Party has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of its employees assisting in the performance of such obligations. Each Party and each Party's contractor(s) shall be solely responsible for all matters relating to payment of such employees, including the withholding or payment of all applicable taxes, contributions or other obligations with respect to its employees. Each Party has sole authority and responsibility to hire, fire and otherwise control its employees.

33.3 Nothing contained herein shall constitute the Parties as joint venturers, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other. Nothing herein will be construed as making either Party responsible or liable for the obligations and undertakings of the other Party. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

33.4 No Party shall have the right to enter into contracts or pledge the credit of or assume or incur expenses or liabilities or any obligation of any kind (including but not limited to the making of any representation or warranty), express or implied, on behalf of the other Party unless otherwise expressly permitted by such other Party in writing.

33.5 The only Parties to this Agreement are [NAME] ("Telco") and Guyana Telephone & Telegraph Company Limited ("GTT"). This Agreement confers benefits and imposes burdens only upon the Parties to this Agreement and does not confer any benefit of any kind whatsoever or impose any burden of any kind whatsoever upon any person or entity who is not a Party.

33.6 Subject to any express provision of this Agreement to the contrary, this Agreement does not provide any Person who is not a Party with any remedy, defense, claim, action, claim of action or other right of any kind, or impose any liability upon such person that that person did not have before this Agreement commenced.

### **34. Representations of the Parties**

34.1 Each Party represents that it is now and will remain in all material compliance with all applicable Laws, regulations, and orders applicable to its performance of its obligations under this Agreement and that it is in material compliance with all obligations as a holder of a valid licences deemed or granted under the Telecommunications Act. Each Party shall promptly notify the other Party in writing of any governmental or regulatory action that suspends, cancels, withdraws, limits or otherwise materially affects its ability to perform its obligations under this Agreement.

34.2 Each Party represents and warrants to the other that it:

(a) is a limited liability company duly incorporated or continued and validly existing under the laws of Guyana and has all necessary corporate power and capacity to own its properties and carry on its business in Guyana as presently carried on and is duly licensed, registered or qualified under the relevant company or corporate legislation in all jurisdictions where the character of its property owned or leased or the nature of the activities conducted by it makes such licensing, registration or qualification necessary or desirable;

(b) has all necessary corporate power, authority and capacity to enter into this Agreement and to carry out its obligations in accordance with their terms subject to necessary regulatory approval, and that the execution and delivery of this Agreement have been duly authorised by all necessary corporate action on its part; and

(c) is duly qualified to act as a Telecommunications Provider under the Telecommunications Act and shall hold all valid licences or permits as deemed or granted under the Telecommunications Act to entitle it to Interconnect and to own and operate the telecommunications Facilities and to provide the specified services necessary to enable it to carry out its obligations under this Agreement.

### **35. Severability**

35.1 The invalidity or enforceability for any reason of any part of this Agreement shall not prejudice or affect the validity or enforceability of the remainder of this Agreement.

35.2 If further lawful performance of this Agreement or any part hereof shall be rendered impossible by the final judgement or final order of any court of competent jurisdiction, Regulator, or governmental agency or similar authority having jurisdiction over either Party, the Parties undertake that they will exert their best efforts to agree on an amendment or amendments to this Agreement or on modifications of their practices hereunder in such manner as will fully comply with such judgement or order and render further performance lawful.

35.3 The enforceability of all rights or obligations of the Parties under this Agreement or the portion thereof judged invalid, illegal or otherwise unenforceable by such judgement or order, shall be suspended as from the date thereof pending the outcome of negotiations between the Parties as aforesaid though without prejudice to all or any accrued rights of the Parties in respect of the past performance or observance thereof.

**36. No Waiver**

36.1 Failure or delay by either Party at any time to enforce any of the provisions of this Agreement shall not be construed by the other as a waiver of any such provision nor in any way to affect the validity of this Agreement or any part thereof.

36.2 Waiver by either Party of any default by the other Party shall not be deemed a waiver of any other default.

36.3 Subject to Section 26 (Review and Amendment), no variation, modification or waiver of any provisions of this Agreement shall in any event be of any force or effect, unless the same is in writing signed by each of the Parties hereto.

36.4 No forbearance, delay, course of dealing, or indulgence by either Party in enforcing the provisions of this Agreement or in insisting on performance of any term or condition of this Agreement shall prejudice or restrict the rights of such Party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for either Party is exclusive of any right, power or remedy available to such Party and each such right, power or remedy shall be cumulative.

**37. Entire Agreement**

37.1 This Agreement incorporates a number of annexes, and valid amendments which, together with this Legal Framework, constitute the entire Agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written between the Parties during the negotiations of this Agreement and through the execution and/or Effective Date of this Agreement. This Agreement shall not operate as or constitute a novation of any agreement or contract between the Parties that predates the execution and/or Effective Date of this Agreement.

37.2 This Agreement shall be construed without regard to the Party or Parties responsible for its preparation. This Agreement shall not be deemed to have been prepared or construed against any Party hereto on the basis that a Party prepared or drafted a particular provision to this Agreement.

**38. Assignment**

38.1 Neither Party may assign the whole or any part of this Agreement or its rights or obligations hereunder, whether by operation of Law or otherwise, other than with the prior consent in writing of the other Party. Such consent not to be unreasonably withheld or delayed. Notwithstanding the foregoing, neither Party shall require the consent of the other Party to assign the whole or any part of this Agreement or its rights or obligations hereunder to a subsidiary, parent or Affiliate. Any attempted assignment or transfer that is not permitted is void *ab initio*.

38.2 A Party may only perform an assignment under Section 38.1 if:

38.2.1 the assignee is granted all applicable licences by the Minister with respect to the ownership and operation of all or part of the Facilities of the assigning Party and the provision of all or part of the telecommunications services of the assigning Party and necessary to entitle the assignee to Interconnection;

38.2.2 in cases where the assignee is an Affiliate of the assigning Party and ceases to be an Affiliate, the assigning Party shall give prior notification of that fact to the other Party hereto and shall procure that prior to such cessation such assignee reassigns such rights and obligations to it; and

38.2.3 the assigning Party shall procure that the assignee enters into an agreement with the other Party whereby the assignee agrees to observe all of the terms and conditions of this Agreement and, if required by the other Party, the assigning Party shall join in such agreement to guarantee the performance of it by the assignee.

### **39. Subcontracting**

39.1 Either Party may engage subcontractors for the provision of its Services or obligations under this Agreement, provided that, in such case, it will not be relieved of its obligations as specified in this Agreement.

39.2 If either Party retains or engages any subcontractor to perform any of that Party's obligations under this Agreement, each Party will remain fully responsible for the performance of this Agreement in accordance with its terms, including any obligations either Party performs through subcontractors.

39.3 Each Party will be solely responsible for payments due to that Party's subcontractors.

39.4 No subcontractor will be deemed a Third Party beneficiary for any purposes under this Agreement.

39.5 No contract, subcontract or other agreement entered into by either Party with any Third Party in connection with the provision of Services hereunder will provide for any indemnity, guarantee or assumption of liability by the other Party to this Agreement with respect to such arrangement, except as consented to in writing by the other Party.

39.6 Any subcontractor that gains access to Confidential Information covered by this Agreement shall be required by the subcontracting Party to protect such Confidential Information to the same extent the subcontracting Party is required to protect such Confidential Information under the terms of this Agreement.

### **40. Notices**

40.1 Any Notice which may be given by either Party under this Agreement shall be deemed to have been duly given if: (i) hand delivered or by facsimile transmission (confirming the same by post); (ii) where the Parties expressly agree in writing, by electronic mail, to an

electronic e-mail address to which Notices, invoices or other documents may be sent; or by post to a Party's principal place of business as set out in Section 40.3.

40.2 Unless otherwise stated in this Agreement, any such Notice shall be deemed to have been served on the other Party: (i) if hand delivered, on the date of delivery or if by facsimile, on the first Business Day after the transmission of the facsimile; (ii) if by electronic mail, on the day on which the communication is first stored in the receiving Party's electronic mailbox; or (iii) if by post to a Party's principal place of business, on the third Business Day after posted.

40.3 All Notices under this Agreement shall be sent:

To GTT:

79 Brickdam, Stabroek  
Georgetown, Guyana  
Fax [\_\_\_\_\_]   
Attention: [Name and Title]  
Email: [\_\_\_\_\_]   
Invoice Email: [\_\_\_\_\_]

To Telco:

Address Line One [\_\_\_\_\_]   
Address Line Two [\_\_\_\_\_]   
Fax [\_\_\_\_\_]   
Attention: [\_\_\_\_\_]   
Email: [\_\_\_\_\_]   
Invoice Email: [\_\_\_\_\_]

40.4 Either Party may unilaterally change its designated contact name, address, and/or facsimile number for the receipt of Notices by giving written Notice to the other Party in compliance with this Section 40. Any Notice to change the designated contact name, address, and/or facsimile number for the receipt of Notices shall be deemed effective ten (10) calendar days following receipt by the other Party.

40.5 If either Party undertakes a change of address (physical or electronic), that Party is responsible for notifying the other Party of such change

## **41. Dispute Resolution**

41.1 Subject to the provisions of this Agreement including in the Annex D (Joint Working Manual) and Part VII of Regulations, should a Dispute arise with respect to, but not limited to, differences with respect to Services, a demand for payment or Charges, quality of service, or any other aspect of this Agreement, which are not otherwise settled under other terms of this Agreement, the Parties agree to use the following procedures to resolve the Dispute.

41.2 Finality of Disputes:

41.2.1 Except as otherwise specifically provided for in this Agreement, unless otherwise agreed to in writing by both Parties, no claim may be brought for any Dispute arising from this Agreement more than six (6) months from the date the occurrence which gives rise to the Dispute is discovered or reasonably should have been discovered with the exercise of due care and attention.



41.2.2 Notwithstanding anything contained in this Agreement to the contrary, a Party shall be entitled to Dispute only those Charges which appeared on a bill dated within the six (6) months immediately preceding the date on which the billing party received Notice of such Disputed Amounts unless otherwise agreed to in writing by both Parties.

41.3 The Parties desire to resolve Disputes arising out of this Agreement without litigation, if possible. Accordingly, the Parties agree to use the following Dispute resolution procedures with respect to any controversy or claim arising out of or relating to this Agreement or its breach before instituting any regulatory or legal adjudication of any Dispute.

41.4 A Party that wishes to invoke Dispute resolution procedures shall indicate its intention to do so by Notice in writing to the other Party. Such Notice shall be served on the other Party within the timeframe indicated in Section 41.2.1 and Section 41.2.2, and shall contain all relevant details including the nature and extent of the Dispute, including, at a minimum, the following information relating to a Disputed Charge(s):

41.4.1 the date of the invoice in question;

41.4.2 the account number and invoice number or identifier of the invoice in question;

41.4.3 telephone number, circuit ID number or trunk number in question;

41.4.4 any descriptive information relating to the item questioned;

41.4.5 amount billed;

41.4.6 amount in question; and

41.4.7 the reason that the disputing party Disputes the billed amount.

41.5 Each Party shall maintain reports, records and data relevant to this Agreement, including billing, invoices, and Charges for any Services that are the subject matter of this Agreement, for a period of not less than twenty-four (24) months after creation thereof, unless a longer period is required by Law.

41.6 A Party in receipt of the written Dispute Notice shall acknowledge receipt of such Notice within five (5) Business Days.

41.7 Within fifteen (15) Business Days of receipt of the Dispute Notice pursuant to Section 41.6, the Parties shall commence good faith negotiations with the objective of resolving the Dispute. If the Dispute is not resolved within thirty (30) calendar days following receipt of the Dispute Notice, either Party may escalate the Dispute pursuant to Section 41.8.

41.8 If the Dispute is not resolved pursuant to the process in Section 41.7, either Party may request in writing that the Dispute be escalated, identifying the Party's representative to whom that Party has escalated the Dispute. The Party in receipt of such Notice shall

acknowledge receipt of the Notice within five (5) Business Days, and will identify its representative to whom it has escalated the Dispute within five (5) Business Days.

41.9 The Parties shall continue to negotiate in good faith to try to resolve the Dispute at the level of the appropriate senior managers.

41.10 In the event that the Dispute is not resolved within fifteen (15) calendar days of receipt of the second Notice under Section 41.8, the Parties shall agree to refer the Dispute to: (i) the International Chamber of Commerce (“ICC”) arbitration in Guyana or other mutually agreeable location and in accordance with the rules agreed to in writing by the Parties and in compliance with applicable legislation and procedural convention for commercial issues; or (ii) to the Regulator for resolution for regulatory issues. If referred to ICC arbitration, the arbitration will adjudicated by one (1) arbitrator to be selected in accordance ICC rules and practices. The Parties will request the ICC to attempt to appoint an arbitrator who is knowledgeable in the area of telecommunications. If no such arbitrator can be appointed, the normal appointment process shall apply. The arbitrator shall issue a reasoned decision in support of the award. The language of the arbitration shall be English. Judgment upon the award rendered by the arbitrator may be entered and enforced in any court of competent jurisdiction. The cost of the arbitration, including the fees and expenses of the arbitrator or arbitrators, and the administrative and other fees of the ICC, shall be shared equally by the Parties unless the award otherwise provides; provided, however, that the prevailing Party in the arbitration shall in all events be entitled to recover its reasonable attorneys’ fees from the non-prevailing Party. In no event shall the arbitrator have the power to award any punitive, consequential, indirect, exemplary damages or other damages in excess of the limitations of liability set forth herein. If the Parties are unable to agree, within ten calendar (10) days of the commencement of discussions regarding the referral of the Dispute to either ICC arbitration (*e.g.*, for commercial issues) or the Regulator (*e.g.*, for regulatory issues), on whether the Dispute should be referred to arbitration or the Regulator, the Dispute shall be referred to the Regulator.

41.11 Nothing herein shall prevent a Party from:

41.11.1 Using other dispute resolution procedures agreed to by the Parties in writing;

41.11.2 Seeking (including obtaining or implementing) interim relief in circumstances where the Party is, or will immediately be, subject to a substantial and immediate harm due to the conduct of the other Party. Notwithstanding any application for interim relief, the Parties shall resolve the substantive issue in Dispute in accordance with Sections 41.4 to 41.10; or

41.11.3 Referring the Dispute to the Regulator for resolution.

41.12 Upon resolution of a Dispute, any Disputed Charges not already paid must be included on the invoice for the first full billing cycle after the Dispute is resolved. For any Charges already paid, upon resolution of a Dispute relating to those Charges: (i) if the resolution of a Dispute results in a finding that Charges were overcharged, the Party that erred must make a full refund of the overcharge amount in the form of a credit on the invoice for the first full billing

cycle after the Dispute is resolved; (ii) if the resolution of a Dispute results in a finding that Charges associated with those Services were undercharged, the Party that erred must include the total undercharge amount due as a result of the resolved Dispute in a separate line item on the invoice for the first full billing cycle after the Dispute is resolved, and the other Party must make a full payment of the undercharge amount as payment to the invoice; and (iii) in the case of (i) and (ii), interest may be assessed on the unpaid undercharge amount or overcharge amount, with interest being the based lending rate of the Republic Bank of Guyana from time to time in force plus two percent (2%) compounded annually assessed on the number of calendar days from the date on which such undercharge or overcharge originated until the invoice date for such credit or additional Charge. Charges and credits described in this Section 41.12 shall not be Disputed.

**42. [Section Intentionally Omitted]**

**43. Insurance**

43.1 At all times during the term of this Agreement, each Party shall keep and maintain in force at its own expense the following minimum insurance coverage and limits and any additional insurance and/or bonds as may be required by Law:

43.1.1 With respect to each Party's performance under this Agreement, and in addition to each Party's obligation to indemnify, each Party shall, at its sole cost and expense:

(a) maintain the insurance coverage and limits required by this Section 43 and any additional insurance and/or bonds required by Law at all times during the term of this Agreement and until completion of all work associated with this Agreement is completed, whichever is later;

(b) require each subcontractor who may perform work under this Agreement or enter upon the work site to maintain coverage, requirements, and limits at least as broad as those listed in this Section 43 from the time when the subcontractor begins work, throughout the term of the subcontractor's work; and

(c) deliver to the other Party certificates of insurance stating the types of insurance and policy limits. The Party shall provide or will endeavor to have the issuing insurance company provide at least thirty (30) days advance written Notice of cancellation, non-renewal, or reduction in coverage, terms, or limits to the other Party. Each Party shall deliver such certificates: prior to execution of this Agreement and prior to commencement of any work; and prior to expiration of any insurance policy required in this Section 43.

43.2 The Parties agree that:

(a) the failure to demand such certificate of insurance or failure to identify a deficiency will not be construed as a waiver of the obligation to maintain the insurance required under this Agreement;

(b) that the insurance required under this Agreement does not represent that coverage and limits will necessarily be adequate to protect a Party, nor be deemed as a limitation on the Party's liability in this Agreement;

(c) The Party may meet the required insurance coverages and limits with any combination of primary and umbrella/excess liability insurance; and

(d) The Party is responsible for any deductible or self-insured retention.

43.3 The insurance coverage required by this Section 43 includes:

43.3.1 Workers' compensation insurance with benefits afforded under the laws where the work is to be performed and employers liability insurance with limits of at least GY\$500,000 for bodily injury, for each accident; and

43.4 The commercial general liability insurance policy must include the other Party, its Affiliates, and their directors, officers, and employees as Additional Insureds. The additional insured endorsement may either be specific to the other Party or may be "blanket" or "automatic" addressing any person or entity as required by contract. A copy of the additional insured endorsement must be provided within sixty (60) calendar days of execution of this Agreement and within sixty (60) calendar days of each commercial general liability policy renewal; include a waiver of subrogation in favor of the other Party, its Affiliates, and their directors, officers and employees; and be primary and non-contributory with respect to any insurance or self-insurance that is maintained.

43.5 This Section 43 is a general statement of insurance requirements and shall be in addition to any specific requirement of insurance elsewhere required by Law or otherwise.

#### **44. Regulatory Approval**

44.1 The Parties understand and agree that this Agreement and any amendment or modification hereto will be filed with the Regulator for approval in accordance with the Telecommunications Act. The Parties believe in good faith and agree that the services to be provided under this Agreement are in the public interest. Each Party covenants and agrees to fully support approval of this Agreement by the Regulator without modification.

#### **45. Governing Law and Venue**

45.1 This Agreement shall be governed by and construed and interpreted in accordance with the Telecommunications Act, rules and regulations interpreting the Telecommunications Act, and other Laws of Guyana. Proper venue shall be in Georgetown, Guyana.

#### **46. Compliance**

46.1 Each Party shall comply at its own expense with all Laws that relate to that Party's obligations to the other Party under this Agreement. Nothing in this Agreement shall be

construed as requiring or permitting either Party to contravene any mandatory requirement of applicable Law.

46.2 Each Party warrants that it has obtained all necessary licences, certifications, and authorizations required prior to ordering any Services from the other Party pursuant to this Agreement. Upon request, each Party shall provide proof of all necessary licences, certifications, and authorizations.

46.3 Each Party shall be responsible for obtaining and keeping in effect all approvals from, and rights granted by, Governmental Authorities, building and property owners, other Telecommunications Providers, and any other Third Parties that may be required in connection with the performance of its obligations under this Agreement.

#### **47. Law Enforcement**

47.1 GTT and Telco shall reasonably cooperate with the other Party in handling law enforcement requests.

47.2 If a Party receives a request for information for law enforcement or Governmental Authorities concerning a Person the Party knows to be Customer of the other Party, it shall refer the request to the requesting party with an indication that the other Party is the responsible company.

47.3 Each of the Parties agree to comply with the applicable law enforcement authorities, laws, and requirements, and to report to any applicable enforcement authorities as required by law.

#### **48. [Section Intentionally Omitted]**

#### **49. Conflict of Interest**

49.1 The Parties represent that no employee or agent of either Party has been or will be employed, retained, paid a fee, or otherwise received or will receive any personal compensation or consideration from the other Party, or any of the other Party's employees or agents in connection with the negotiation of this Agreement or any associated documents.

**50. Counterparts**

50.1 This Agreement may be executed in counterparts. Each counterpart shall be considered an original and such counterparts shall together constitute one and the same instrument.

Signed as an Agreement on the [\_\_\_\_\_] day of [\_\_\_\_\_], [\_\_\_\_\_]

Signed for and on behalf of Guyana Telephone & Telegraph, Ltd.

By: \_\_\_\_\_

Signed for and on behalf of [NAME]

By: \_\_\_\_\_

**Annexes**

Annex A (Definitions);

Annex B (Services);

Annex C (Rate Schedule);

Annex D (Joint Working Manual);

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