

# JEDIX TERMS & CONDITIONS

## 1 Application of the JEDIX Terms and Conditions

- (1) Together
  - (i) the signed Service Order;
  - (ii) these JEDIX Terms and Conditions (“T&C”);
  - (iii) the JEDIX Technical Policy & SLA (“SLA”); and
  - (iv) any other document provided by the Supplier from time to time
  - (v) shall collectively form the “Agreement” between the “Supplier” and “Customer” as identified on the Service Order (together the “Parties” and each a “Party”).
- (2) The Effective Date of the Agreement shall be upon Customer’s signature of the Service Order. The Customer agrees that actual use of the services by the Customer is not required to establish the Effective Date. Commencing on the Effective Date, the Customer shall be bound by all documents comprising the Agreement.
- (3) The Supplier does not, under any circumstances, accept the terms and conditions of the Customer, its business practice terms, or any other Customer purchasing conditions unless there is written agreement from the Supplier.
- (4) In the event of any inconsistency between the Agreement and any applicable laws and/or regulations, the law and/or regulation shall apply to the extent of the inconsistency. Neither the Customer nor the Supplier’s representative are authorized to enter into oral agreements or provide oral guarantees.
- (5) In the event of a conflict or inconsistency between the documents comprising the Agreement the following order of precedence shall apply to the extent of the inconsistency:
  - (i) these T&C,
  - (ii) SLA,
  - (iii) Service Order
- (6) Supplier reserves its right to modify, change, revise or supplement any document comprising the Agreement between the Customer and Supplier. The Supplier will use reasonable efforts to notify the Customer of any changes in writing.

## 2 Services

- (1) “Services” shall mean the services provided by the Supplier to the Customer over the Jeddah Internet Exchange Platform including any and all services provided through this platform.
- (2) Supplier reserves the right to reject any submitted Service Order for any reason, whether previously accepted by Supplier or not, including but not limited to (a) inability or impracticality of providing the Service; or (b) the Service no longer being commercially offered by Supplier.
- (3) Any warranty of the Services by Supplier requires a written agreement between the Parties and shall be provided on a case-by-case basis. Drawings, illustrations, documentation, advertising claims or other service data does not constitute a warranty by the Supplier.
- (4) The Supplier may at any time, and without notice, utilise the services of one or more third parties to provide the Services in connection with the Supplier’s performance of its obligations under the Agreement.
- (5) There is no contractual relationship between the Customer and other customers receiving the Service.

## 3 Term and termination

- (1) The Term of the Agreement is for a period of one (1) year commencing on the Effective Date (unless a different Term is otherwise agreed in writing between the Parties) ("Term"). The Term shall be automatically renewed for further one-year periods unless notice of termination is provided by either Party upon one (1) month written notice prior to the expiration of the Term or applicable one-year period.

- (2) The Supplier has the right to terminate the Agreement for material breach of any obligation, undertaking, and/or warranty contained in any document agreed between the Parties (including but not limited to these T&Cs, the SLA, and/or the Service Order) by the Customer upon written notice, including but not limited to the following grounds:
  - (i) repeated or persistent violation of Customer's contractual obligations and Customer's failure to remedy such breach during a reasonable cure period;
  - (ii) with or without notice in Supplier's sole discretion if the Customer expressly or impliedly declares that it is finally ceasing payments and/or ceases to comply with its payment obligations in accordance with clause [xx] of these T&C; or
  - (iii) Supplier can no longer reasonably be expected to provide the due services as a result of a fundamental change in the legal or technical standards for the Internet.
- (3) **Early Termination Charges:** In the event the Customer terminates the Service prior to completion of the Term for any reason, the Customer must pay to the Supplier:
  - a. if terminated during the first twelve (12) months of the Term for any reason, 100% of the Monthly Charges for each cancelled Service for each month remaining in the first twelve (12) months of the Initial Term, including a pro rata amount for each part month commencing from the effective date of termination; and
  - b. if terminated, for any reason, after the first twelve (12) months of the Term (where applicable), the Customer must pay the Supplier, 50% of the Monthly Charges for each cancelled Service for each month remaining in the Initial Term, and on a pro rata basis for each part month commencing from the effective date of termination.

#### 4 Consequences of termination

Within two (2) weeks following the expiration and/or termination of the Agreement, the Customer must:

- (i) remove from the relevant data centre all items in its possession; and
- (ii) restore areas used by the Customer to its original state as existed upon entry into this Agreement (excepting only fair wear and tear as determined by the Supplier in its sole discretion).

#### 5 SLA

- (1) The SLA shall govern the service level agreement between the Parties.
- (2) Supplier reserves the right to modify or expand the scope of the services and to make improvements. Restrictions shall also be permissible provided such restriction does not adversely affect the Customer's ease of use of the service. Any such modifications (including restrictions) shall be determined by the Supplier in its sole discretion, however the Supplier shall use reasonable efforts to provide at least ten (10) business days' notice of any such change to the JEDIX infrastructure or other technology used to provide the contracted services notice period to fully test the change and determine its impact on the Customer before the change is fully implemented ("Test Period"). The Supplier may require reduced notice of the Test Period. In the event the change will have an adverse impact on the Customer's use of the services, the Customer has the right to object to the change, by way of a written statement providing reasons and evidence within ten (10) business days of the end of the Test Period ("Objection"). If the Supplier is unable to accommodate the Objection (to be determined by the Supplier in its sole discretion) the Supplier has the right to terminate the Agreement upon thirty (30) days' prior written notice to the Customer.

## 6 Service level

- (1) If Supplier fails to meet the level of service defined in the SLA (or other document comprising the Agreement from time to time), the Customer must provide a written statement to the Supplier setting out the evidence of the service level default within ten (10) business days from the date on which the Customer could reasonably be expected to become aware of a failure by the Supplier to meet the targets specified in clause 8.2 of the SLA. If the Supplier is satisfied that the default occurred (to be determined in the Supplier's sole discretion), the Supplier shall award a service credit ("Credit") to the Customer. The Customer will not have any further claim against the Supplier (in law, equity, or contractually) with respect to a specific service level default. Credits shall be calculated in accordance with clause 8.2 of the SLA.
- (2) Downtime of the service shall not include any repair work by the data centre operator and/or Supplier, or relocation of JEDIX within the current data centre or to another data centre (subject to ten (10) weeks' notice to the Customer), which directly or indirectly leads to underperformance or an interruption of service.

## 7 Customer Obligations

- (1) The Customer must, at all times utilize the Services provided by the Supplier in accordance with international best practices, the applicable laws and/or regulations, and in accordance with the terms of this Agreement.
- (2) The Customer agrees and undertakes to:
  - (a) settle any and all fees owing to the Supplier in accordance with any applicable Service Order from time to time;
  - (b) enable Supplier to install any technical equipment if required;
  - (c) provide any information to the Supplier that is required for the provision of the Service and/or requested by the Supplier from time to time;
  - (d) access to the Services in compliance with all applicable laws and regulations, technical, legal, or regulatory guidelines in force in the Kingdom of Saudi Arabia, safety guidelines, manufacturer specifications and official orders and to avoid illegal, immoral, or other unsavoury acts;
  - (e) obtain, at the Customer's own cost any official or regulatory permits, licenses, or approvals required to access the Service;
  - (f) only bring items into the data centre which are required for the Service;
  - (g) give Supplier and/or Supplier's Provisioning Entity access and/or entry at all times to the items brought in if Supplier or Supplier's Provisioning Entity as determined necessary in Supplier's sole discretion;
  - (h) ensure that the items brought into the data centre for the specified purpose are suitable and do not pose any threat to the property of Supplier or third parties or adversely affect or prevent the functionality of the services provided to third parties by Supplier; and
  - (i) not to affect items of third parties, not to gain access outside the contracted services to or investigate (data) systems not owned by the Customer.
- (3) Fault Report: The Customer must immediately notify Supplier of complaints, defects or loss with regard to the services and use best efforts to identify the defect or damage and suggest remedial action to correct the fault ("Fault Report"). Following submission of the Fault Report the Supplier shall inspect the Customer's installations and shall be reimbursed for all reasonable inspection costs if the damage in the Fault Report is the responsibility of the Customer (to be determined by the Supplier in its sole discretion).
- (4) If the Customer fails to meet the obligations in Article 8(1) other than clause (a), Supplier may provide the Customer written notice of the breach and a ten (10) business day cure period ("Cure Period"). If the Customer fails to cure the breach violation in the Cure Period Supplier is entitled to terminate the Agreement on five (5) business days' written notice.

- (5) The Supplier reserves all its rights to immediately suspend the Customer's connection without prior notice. The Supplier agrees to make reasonable efforts to notify the Customer immediately of the blockage and to provide to the Customer details of Customer's breach. In the event of a suspension of the Customer's access to the service, the Supplier will use reasonable efforts to restore the Customer's service promptly upon remedy of the breach.
- (6) Supplier reserves the right to control collaboration among Customers through access conditions and user regulations. Material breaches of any supplementary conditions entitle Supplier to terminate the Agreement after written notice the Cure Period.
- (7) The Services are provided subject to all applicable laws and regulations. Customer must at all times comply, and ensure compliance by its personnel and subcontractors, with all applicable laws and regulations including without limitation: (a) local license or approval requirements; and (b) applicable export/re-export, sanctions, import and customs laws and regulations. Supplier makes no representation as to whether any regulatory approvals, if any, required by Customer to use the service will be granted. Supplier reserves the right to discontinue service where Customer has failed to comply with the provisions of this sub-clause and Supplier shall in no event be liable in respect of Customer's failure to comply with this sub-clause.

## **8 Payment and Taxation**

- (1) The fees under this Agreement (as set out in the Service Order) are invoiced quarterly in advance. The Customer must pay the invoice within thirty (30) calendar days of receipt.
- (2) The Supplier reserves the right to vary the prices payable by the Customer subject to thirty (30) business days' written notice to the Customer.
- (3) Each Party shall be responsible for its own tax obligations in accordance with applicable laws and/or regulations, including but not limited to any withholding tax, zakat, and value added tax (VAT). The Parties acknowledge that any fees payable under the Service Order are exclusive of VAT or other sales tax. The Customer agrees that it is not entitled to charge the Supplier, or set-off or withhold any amount or any costs relevant to its tax obligations or liabilities or any other fees from the fees due to the Supplier.
- (4) The Parties acknowledge that revenue originating from, or otherwise generated in, the Kingdom of Saudi Arabia may be subject to withholding tax. If withholding tax is applicable, Customer is not entitled to withhold (and therefore deduct) from the Fees due to the Supplier any taxes imposed on account of performance of this Agreement and any subsequent further agreement. The fee to be received by the Supplier shall be the amount stated in the applicable Service Order.
- (5) In the event a reduced rate of withholding is applicable due to a taxation treaty, the Customer must provide Supplier with sufficient documentation to verify the Customer's eligibility to a reduced rate of withholding pursuant to an applicable tax treaty. Customer agrees to indemnify, defend and hold the Supplier harmless from any taxes or claims, causes of action, costs (including, without limitation, reasonable attorneys' fees) and any other liabilities of any nature whatsoever related to such taxes to the extent such taxes relate to amounts paid or credited under this Agreement.
- (6) In the event the Saudi Value Added Tax ("VAT") apply to the goods and/or services delivered by the Supplier pursuant to this Agreement, such VAT amount shall be added to the Service Order as a separate line item payable by the Customer at the rates set out in the applicable law and regulation. For the avoidance of doubt, the VAT amount must be added to the Service Order and invoice as a separate line item even if such VAT amount is zero.
- (7) The Customer agrees to provide the following documents to the General Authority of Zakat and Taxation in the territory ("GAZT");
  - (a) Customer to submit a valid restricted certificate issued by GAZT for normal dues; and (b)  
Customer to submit a valid certificate or release letter issued by GAZT for final dues.
- (8) If required and requested by the Supplier, the Customer shall provide all necessary documents requested by the Supplier from time to time.

## 9 No right to offset

The Customer has no right to offset, withhold, or deduct any amounts payable by the Customer. Any Credits due to Customer must appear in a subsequent invoice issued by Supplier to be effective.

## 10 Payment default

- (1) In the event of default by the Customer, Supplier shall issue the Customer a notice of default. If the Customer continues to fail to pay the fees due and owing, the Supplier shall send the Customer a suspension notice stating that the Service shall be disconnected until full payment is received. The Supplier shall disconnect the Customer's Service within fortyeight (48) hours of the suspension notice. is entitled to block the connection subject to two Supplier may send notification of the suspension to the e-mail address designated by the Customer for the administrative contact or other e-mail address designated in writing by the Customer, or via registered postal service. Receipt of notification of blockage is not required. The Customer is obliged to continue to pay the fee (as set out in the relevant Service Order) even in the event that the Customer's connection is blocked. The Customer will not be released from its payment liabilities.
- (2) In the event of default by the Customer, Supplier is further entitled to charge interest at a rate of 1.0% per month (or the highest rate permitted by applicable law, whichever is lower) from the date of notice of the default. The Supplier reserves all other rights in contract and at law.
- (3) If the Customer persistently defaults on payment of the the fee or a substantial part of the fee (determined by the Supplier in its sole discretion) for two (2) successive quarters or is in default to an amount equal to the basic quarterly fee for one quarter for a period of more than two months after the start of a quarter, Supplier can terminate this Agreement with not less than seven (7) business days' notice, provided that the Supplier has issued to the Customer the required notices of default and notice of suspension as set out above in clause 10(1).

## 11 Confidentiality

- (1) Information provided by the Customer to the Supplier will not be protected on a confidential basis unless the Customer notifies the Supplier of confidential information. Under no circumstances shall the processing of information to third parties (e.g. name, IP-address, rooting information in the customers area on the JEDIX website) be deemed to be confidential information as it is required for the supply of the contractual services.
- (2) The Customer is not entitled to access or obtain (or procure any other third party to access or obtain) data or information not intended for the Customer. Customer information may be supplied to third parties in accordance with internationally recognized technical standards and the Customer does not object.
- (3) The Customer acknowledges that the data centre locations are monitored by video. The video recordings of persons entering the monitored areas of the data centre are stored by the relevant data centre operator. The Customer is responsible for obtaining the necessary clearances for any person entering the data centre.

## 12 Limitation of liability

- (1) Nothing in this Agreement shall exclude or limit any Party's liability for (1) fraudulent misrepresentation or gross negligence; (2) death or personal injury caused by its negligence; (3) in the case of Customer, any loss, damage, cost or expense (including reasonable legal expenses) to Supplier on account of any infringement by the Customer of any intellectual property rights of any third party; or loss of or damage to any property; and (5) any other liability which cannot be lawfully excluded or limited.
- (2) The maximum aggregate liability of either Party whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement and any shall be limited to:
  - (a) in respect of all claims (connected or unconnected) in any consecutive twelve (12) month period, the equivalent of the total charges paid by Customer in that period in respect of which the claim has arisen.

- (3) Nothing in this Agreement or in this clause shall limit the Customer's liability for its own negligence and negligence of its personnel or sub-contractors, and for any failure to obtain any required approvals, clearances, or authorizations from individuals related to data privacy and/or data protection and for any breaches of applicable laws or regulations in the Territory. Customer's failure to meet its contractual obligations.
- (4) Customer shall indemnify Supplier and keep Supplier indemnified and safe and harmless at all times, against any and all claims, liabilities, damages, losses, costs, charges, expenses, proceedings and actions of any nature whatsoever made or instituted against or caused to or suffered by Supplier directly or indirectly by reason of any theft, robbery, fraud or other wrongful act or omission by the Customer and/or any Customer personnel.
- (5) The limitation period for bringing a liability claim is one (1) year after the claim arose.

### **13 Indemnity**

- (1) Customer shall indemnify Supplier for and against all direct damages, losses, liabilities, costs and expenses (including reasonable legal expenses) suffered or incurred by Supplier as a consequence of or in connection with any breach by the Customer, Customer Personnel, contractors or agents or person for whom the Customer is responsible, of any provision of this Agreement or any supplementary document agreed between the Parties from time to time.

### **14 General**

- (1) Territory means the place where the services are provided, which is currently Jeddah, in the Kingdom of Saudi Arabia.
- (2) This Agreement is governed by the laws of England and Wales.
- (3) Customer may not rely on any representation except as set out in the Agreement.
- (4) The obligations of each Party under the Agreement shall be binding on the legal successors, heirs, and assignee of each Party.
- (5) Force Majeure: Neither Party shall be liable for any failure to perform its obligations under the Agreement, if it is prevented or delayed in performing those obligations by an event of force majeure. An event of force majeure is an event or circumstance which is beyond the control and without fault or negligence of the Party affected and which, notwithstanding the exercise of reasonable diligence, the Party affected was unable to prevent. If either Party is prevented or delayed in the performance of any of its obligations under the Agreement due to an event of force majeure, it shall immediately provide written notice to the other Party, specifying in reasonable detail the nature, extent, and effect of the force majeure, and shall also notify the other Party in writing upon cessation of the force majeure event. Upon removal or cessation of the event of force majeure, all obligations under the Agreement shall resume. However, in the event that the force majeure event exceeds thirty (30) consecutive days, the Supplier shall have the right to immediate termination of the Agreement without any further liability to the Customer.
- (6) If any provision of the Agreement is or becomes invalid, or is incomplete, this does not affect the validity of the remaining provisions. Instead, the invalid provision is deemed to be replaced by a provision which corresponds to or at least approximates the purpose of the Agreement and which the parties would have agreed to achieve the same commercial result if they had been aware of the invalidity of the original provision.
- (7) If the Parties are unable to settle any dispute or difference between them arising out of or in relation to this Agreement by negotiation, including the formation, performance, interpretation, nullification, termination or invalidation of this Agreement, the dispute will be referred to arbitration in Dubai, UAE.
  - a. Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Arbitration Rules of the Dubai International Finance Centre / London Court of International Arbitration ("DIFC-LCIA") Arbitration Centre, which

Rules are deemed to be incorporated by reference into this clause. The seat, or legal place, of arbitration shall be Dubai International Finance Centre, UAE. The language to be used in the arbitration shall be English.

- (8) The Customer may not assign its rights, obligations, or liabilities under the Agreement without the prior written consent of the Supplier (not to be unreasonably withheld or unduly delayed). The Supplier may assign its rights, obligations, or liabilities to any third party upon notice (but not approval) of the Customer.
- (9) Customer agrees that any and all patents, registered and unregistered designs, copyrights, trademarks and all other intellectual property rights whatsoever and wheresoever enforceable, which are used in connection with the service, shall remain the sole property of Supplier, Supplier Affiliates or other third party. "Affiliate" as used in this Agreement means any entity or person controlled by, controlling, or under common control with, a party.
- (10) The Agreement expresses the entire understanding of the Parties and replaces any and all former agreements, understandings, solicitations, offers and representations relating to Supplier's or its Affiliate's performance in connection with the Agreement and contains all the terms, conditions, understandings, representations and promises of the Parties.