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## PUBLIC VERSION

February 19, 2015

Mindel De La Torre  
Chief, International Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

**Re: Request for Review of Service Agreement, IB Docket No. 10-95;  
IDT Telecom, Inc., International Telecommunications Certificate ITC-214-  
20100804-00318**

Dear Ms. De La Torre:

On behalf of IDT Domestic Telecom, Inc. (“IDT Domestic”), attached hereto for review by the Federal Communications Commission (“Commission”) is IDT Domestic’s Confidential version of its Service Agreement, the terms of which comply with the terms and conditions of the waiver of the benchmark policy applicable to U.S. carriers seeking to provide telecommunications services on a direct basis to Cuba as specified in the Commission’s April 8, 2011 *TeleCuba Waiver Order*,<sup>1</sup> as revised by the Commission’s *International Settlements Policy Reform Order*.<sup>2</sup>

The Service Agreement contains sensitive financial and proprietary business information that should be protected from public disclosure. Pursuant to Section 0.459 of the Commission's Rules, IDT Domestic hereby requests confidential treatment of such information (the “Information”). Such information is necessary for the Commission<sup>3</sup> – but not the public – to review the Service Agreement.

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<sup>1</sup> *IConnect Wholesale, Inc., d/b/a/ TeleCuba, Petition for Waiver of the International Settlements Policy and Benchmark Rate for Facilities-Based Telecommunications Services with Cuba*, IB Docket No. 10-95, IBFS File No. ISP-WAV-20100412-00007, Memorandum Opinion and Order, 26 FCC Rcd 5217 at ¶ 31 (2011) (“*TeleCuba Waiver Order*”). See also, *International Authorizations Granted*, Report No. TEL-01716, Public Notice (DA 15-225) (Feb. 19, 2015).

<sup>2</sup> *International Settlements Policy Reform*, IB Docket Nos. 11-80, 05-254, 09-10, RM 11322, Report and Order, 27 FCC Rcd 15521 (rel. Nov. 29, 2012) (eliminating the International Settlements Policy and applying a modified version to Cuba) (“*International Settlements Policy Reform Order*”).

<sup>3</sup> IDT Domestic understands that the Commission will coordinate its review of the Service Agreement with the State Department, as appropriate.

IDT Domestic is simultaneously submitting, under separate covers, a non-redacted and a redacted version of the Service Agreement. The non-redacted version is marked “DO NOT RELEASE - NOT FOR INCLUSION IN THE PUBLIC RECORD.” The fully redacted version is marked “PUBLIC VERSION.” This cover letter does not contain any confidential information.

As required by Section 0.459(b)<sup>4</sup> and in support of its request, IDT Domestic provides the following information:

1. *Identification of the specific information for which confidential treatment is sought.*

IDT Domestic requests that certain information in the Service Agreement be treated as confidential pursuant to Exemption 4 of FOIA<sup>5</sup> and Section 0.459, which protect confidential commercial and other information not routinely available for public inspection. The Information includes competitively sensitive, business confidential and proprietary commercial information that would not routinely be made available to the public and has been carefully guarded from IDT Domestic’s competitors. If the Information were disclosed, other parties could use it to determine information relative to IDT Domestic’s business plans, operations and performance.

2. *Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission.*

The Information for which confidentiality is requested concerns the *TeleCuba Waiver Order* as revised by the Commission’s *International Settlements Policy Reform Order*.

3. *Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.*

The Information contains competitively sensitive, business confidential and proprietary commercial information that would not routinely be made available to the public and has been carefully guarded from other parties.

4. *Explanation of the degree to which the information concerns a service that is subject to competition.*

The Information includes information about IDT Domestic’s operations and routing of international calls. If the Information is not protected, competitors and would-be competitors could be able to use the Information to their competitive advantage.

5. *Explanation of how disclosure of the information could result in substantial competitive harm.*

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<sup>4</sup> 47 C.F.R. § 0.459(b).

<sup>5</sup> See 5 U.S.C. § 552(b)(4).

Because the Information generally would not be subject to public inspection and would customarily be guarded from competitors, the Commission's rules acknowledge that release of the Information to the public is likely to produce competitive harm and therefore adversely affect IDT Domestic's deployment objectives and competitive position.

6. *Identification of any measures taken by the submitting party to prevent unauthorized disclosure.*

IDT Domestic maintains strict security concerning its financial information. Only IDT Domestic, the counterparty to the Service Agreement, and persons directly authorized by each party have access to the data required to produce the Information.

7. *Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties.*

The information is not available to the public and has not previously been disclosed to third parties.

8. *Justification of the period during which the submitting party asserts that material should not be available for public disclosure.*

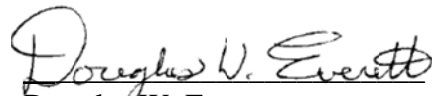
IDT Domestic requests that the Information be treated as confidential indefinitely because it is not possible at this time to determine any date certain by which the Information could be disclosed without risk of competitive harm to IDT Domestic.

9. *Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.*

If publicly disclosed, the Information may be harmful to IDT Domestic's plans to deploy direct telecommunications services to Cuba.

Should you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,

  
Douglas W. Everette

Counsel for IDT Domestic Telecom, Inc.

Enclosure

cc: David Krech, Associate Chief  
Policy Division, International Bureau

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SERVICE AGREEMENT

FOR THE OPERATION OF INTERNATIONAL TELECOMMUNICATIONS

THIS SERVICE AGREEMENT FOR THE OPERATION OF INTERNATIONAL TELECOMMUNICATIONS (hereinafter referred to as "Agreement") is made by and between IDT Domestic Telecom, Inc., a company organized and existing under the laws of the United States of America, or one of the States thereof (hereinafter referred to as "IDT," a "Party"), having its registered office at 520 Broad Street, Newark New Jersey 07102 USA, represented herein by Marcelo Fischer in his capacity as Chief Financial Officer and

EMPRESA DE TELECOMUNICACIONES DE CUBA, S.A., hereinafter referred to as "ETECSA," a "Party" (collectively with IDT, the "Parties"), a commercial company with independent legal personality and patrimony organized and existing in the Republic in Cuba under Law No. 77 Concerning Foreign Investment, having its registered office at Miramar Trade Center, Beijing Building, 3<sup>rd</sup> Ave between 78 and 80, Havana, Cuba, represented herein by Eng. Vivian Iglesias Barroso, in her capacity as Main Director of the Division of International Services, who was appointed by Agreement No. 86 and empowered to sign this Agreement subject to Agreement No. 44 on 15th May 2012 by the Board of Directors and by Agreement No. 4 on 13th February 2012 adopted by the Shareholders' meeting.

WHEREAS, IDT is a telecommunications company duly authorized under the laws of the United States of America to provide international telecommunications services to customers in the United States of America, Puerto Rico, the United States Virgin Islands and other territories and possessions of the United States (hereafter collectively, for convenience, the "United States"), and

WHEREAS, ETECSA is a telecommunications company duly authorized under the laws of Cuba to provide international telecommunications services to customers in Cuba, and subject to the authorization granted by the Cuban government;

INSOFAR AS IDT and ETECSA both wish to provide International Telecommunications Services between the United States and Cuba and other international destinations as agreed to in writing by the Parties.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. GENERAL ASPECTS

1.1 Subject to the terms and conditions established hereby: (a) IDT shall provide Services (as defined in Clause 2.1) to points in the United States, and some other countries as agreed

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by the Parties in the attached Annex B; and (b) ETECSA shall provide Services to points in Cuba and some other countries as agreed in writing by the Parties.

2. SERVICES

2.1. The communications channels that will be operated jointly by IDT and ETECSA shall be used to provide telecommunications services as agreed by the Parties in writing from time to time. The Service provision shall be detailed in the attached Annexes of this Agreement, which shall be an integral part of same (the "Services"). Except as stated in this Agreement, all conditions and warranties, whether express or implied, statutory or otherwise, including but not limited to warranties of merchantability and fitness for a particular purpose, are excluded to the extent permitted by law.

2.2. Neither Party authorizes anyone, whether an employee, agent or subcontractor or otherwise, to make a warranty of any kind on its behalf and the other Party should not rely on any such statement.

2.3. The Parties may use any Services provided by the other Party for their own purposes, provided that the Parties;

- (a) comply with the terms of any legislation on telecommunications, including applicable tariffs, and any license legally applicable to it in any country where the Services are provided;
- (b) do not use the Services to send any communication which is illegal under the laws of either country from which the communications are originated or terminated; and
- (c) shall remain responsible for any access to and use of the Services by its customers.

2.4. The Parties agree that, to the extent allowed by law or regulation, neither Party will have liability to claims by the other Party or third-parties arising from the other Party's acting contrary to the provisions of this Agreement; and/or the Party's specific reasonable instructions given in writing under Clause 14 "Notices."

2.5. Any further service required to be implemented between the Parties shall be agreed in a duly executed writing as an Addendum to this Agreement.

3. TECHNICAL REGULATIONS AND METHODS OF OPERATION.

Unless otherwise provided herein or if jointly agreed by the Parties in writing, as a general rule the technical regulations and methods of operations applied by the Parties shall be arranged

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according to the Recommendations of the International Telecommunications Union ("ITU") as they are now in effect and as they may become effective from time to time.

3.1.1. Operation

3.1.1. The Parties shall establish and provide international telecommunications services between the points in, or those that can be reached by transit through the United States or between the points in or those that can be reached through Cuba, supported by the circuits capacity of the telecommunications systems on submarine cable, satellite, radio or any other communications system available currently or in the future and shall be subject to all the required governmental authorizations. The circuits between the United States and Cuba will be provided jointly by IDT and ETECSA.

3.1.2. IDT and ETECSA agree on beginning the operation of international telecommunications circuits which may be upgraded upon previous agreement signed by both Parties.

3.1.3. Each Party shall have the right, without liability, to:

- (a) change the technical specification of the Services for operational reasons after providing reasonable notice in writing, provided that any such change does not materially decrease or impair performance of the Services;
- (b) suspend the Services in an event of emergency, and/or need to safeguard the integrity and security of its network;
- (c) immediately remove or disable access to any information or suspend or restrict the provision of the Services (wholly or in part) if a Party is aware of or has some documented evidence to suspect any abuse of the Services.
- (d) suspend the Services (wholly or in part) if a Party is properly required to do so by applicable law, or regulatory or governmental body to which the Party is subject or subordinate; and
- (e) disclose or grant access to any communication, content or data if so required by applicable law, or regulatory or governmental body to which the Party is subject or subordinate, in accordance with the fulfillment of the requirements established by law.

3.1.4. The Parties acknowledge and agree that neither Party has any obligation to monitor or actively seek facts or circumstances indicating any misuse of the Services or illegal activities except upon: (a) agreement between the Parties or (b) as relevant to an

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arbitration proceeding brought pursuant to Clause 16.3 and upon request of the other Party.

**3.2. Internal connections.**

3.2.1. IDT shall, at its own costs and expenses, carry out or entrust someone with the execution of all the required actions to achieve an adequate connection of the circuits hereby provided with the telecommunications systems in the United States. ETECSA shall, at its own costs and expenses, carry out or entrust someone with the execution of all the required actions to achieve an adequate connection of the circuits hereby provided with the telecommunications systems in Cuba.

3.2.2. A Party will, upon reasonable notice from the other Party, allow the notifying Party, its employees, agents and subcontractors access to the Party's premises if any of the notifying Party's telecommunications systems are located therein, as may be reasonably necessary for the performance by the Party under this Agreement, including installation, maintenance, recovery or removal of any of the notifying Party's equipment. The notifying Party will use its best effort and care to avoid damage in the removal of its equipment and leave the premises in its original condition. The notifying Party, its employees, agents and subcontractors, shall observe the other Party's strict fulfillment of site regulations.

**3.3. Quality of the Services**

Both Parties shall make best efforts to render a reliable and steady service with the usual internationally required quality. It is agreed that in the event any direct circuits become unworkable or its capacity becomes insufficient, both Parties shall upgrade the capacity and/or route the communications through alternative paths, in accordance with the agreements they may reach from time to time, signed to such effect.

**3.4. Interruptions**

Each Party shall advise the other Party, in writing, as soon as possible, of any telecommunications system failure which arises or is likely to arise from a cause within its area of operation that is expected to cause a material interruption of any or all the Services. In the event any interruption of any of the Services hereby provided takes place, the Parties shall approve the appropriate recommendations or arrangements for interruptions. The Parties shall restore any interrupted Service as soon as reasonably possible.

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3.5. Installation, Protection Devices.

3.5.1 Each Party shall ensure that the features and methods of operation of its terminal equipment, and those of its international circuits hereby provided, shall not damage the other Party's plants causing a worsening of the telecommunications system, which could bring about a danger for the public or employees of any of the Parties hereof while operating any of the telecommunications systems hereby provided.

3.5.2 Each Party shall bear the expenses for the installation of its equipment and the proper protection devices for its equipment, if required, subject to this paragraph. Each Party will comply with the other Party's reasonable requests which are necessary for reasons of health, security, safety or the quality and/or provision of any Service rendered to the other Party.

4. STARTING DATE OF THE SERVICES

In order to commence provision of the Services, either Party shall report in writing the availability of circuits and shall make tests for three (3) consecutive calendar days. If the outcome of such tests is positive, the commencement of the service provision shall be confirmed by either Party in writing. If, however, the tests are not positive, the Parties shall work together to remove the shortcomings and re-test the Services for positive results.

5. RATES TO APPLY

The rates that will be governing the International Telephone Service herein provided shall be as specified in Annex A and Annex B, as may be amended from time to time in accordance with the procedures and timelines set forth in such Annexes.

6. LIABILITY

6.1. Subject to Clause 6.2 and Clause 6.3, and to any limitation of liability set out in the relevant Annex, all the contractual liability or any other kind of liability from each Party to the other Party, including liability for negligence or breach of contractual duties under or directly connected with this Agreement, shall be limited to [REDACTED]

6.2. Notwithstanding any provision in the Agreement to the contrary, the Parties agree to the following Clauses, 6.2.1 and 6.2.2, concerning limitation of liability:

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- 6.2.1. The Parties do not reject or limit their liability in the case of death or physical injury to the natural person, when such is a direct consequence of negligence, recklessness, fraudulent behaviour or intention by one of the Parties.
- 6.2.2. Neither Party may leave out or limit its liability if the damage suffered by the other Party is caused by such Party's fraudulent misrepresentation.
- 6.3. The Parties agree on limiting the liability in the following respects, Clauses 6.3.1 and 6.3.2:
- 6.3.1. In no event shall either Party be liable to the other or to that Party's customers or any third party in any respect for any indirect, incidental, consequential, exemplary, punitive, reliance or special damages, or for any loss of revenue, profits, use, data, services of management or staff, goodwill or reputation, business opportunities of any kind or nature whatsoever, loss of use of any computer or any other equipment or plant, or losses or obligations under or in relation to any other contract with a third party, including customers, arising in any manner from this Agreement.
- 6.3.2. Neither Party will be liable for damages caused by any service or equipment that is not provided, furnished or managed by it, if such service or equipment caused or gave rise to such damage.
- 6.4. Neither Party shall withhold payments owed to the other Party for: sums uncollectible from the end customer because of fraud or other causes. Therefore, each Party shall be responsible for the sums related to the same.
- 6.5. Subject to Clauses 6.1, 6.2, and 6.3, each Party agrees to protect and hold harmless the other Party from any losses or legal procedure connected with claims of a third party arising from any negligence or intentional action or omission, and in which the other Party has not had participation or direct responsibility, provided that the indemnification and obligation to hold harmless is specifically conditioned on the following: (i) the Party against whom a claim is made by a third-party provides prompt notification in writing to the other Party of any such claim when it obtains knowledge thereof; (ii) if requested by the other Party, the Party against whom the claim has been made permits the other Party to have control of the defense, settlement and resolution of the claim; and (iii) the Party against whom the claim has been made cooperates, at its expense, in a reasonable way to facilitate the defense of such claim or the negotiations for its settlement.
- 6.6. Each Party shall implement reasonable precautions to prevent any unauthorized access by third parties to any of its telecommunications network used to provide the Services to the other Party, but the Parties shall not be liable for any loss or damage sustained by

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either Party in the event of any unauthorized access in spite of the reasonable precautions that the Parties undertook.

7. RELEVANT AUTHORITIES

7.1 The execution and performance of this Agreement by the Parties, shall be subject to all the existing and future relevant regulations and laws issued by any duly registered authority having a legitimate jurisdiction, and shall be subject to the obtaining and renewal of the governmental approvals, consents, authorizations, licenses and permits required for the entry into and performance of this Agreement according to each of its terms and conditions of this Agreement by the Parties hereof. Each of the Parties hereto shall make its best efforts to get and keep in effect such governmental approvals, consents, authorizations, licenses and permits, each of them in its respective country. Each Party shall ensure a fluency of information between them so as to allow the Parties to keep each other informed, to the extent they know of any information indicating any proposed, pending or adopted action by any regulatory or governmental body concerning the execution or performance of this Agreement, including, in the case of IDT, waivers of the Federal Communications Commission ("FCC"), if any. IDT shall send ETECSA a copy in writing of the authorizations granted it by the authorities of the United States; or otherwise applicable to IDT with respect to its execution or performance of this Agreement.

7.2 In no case does IDT require any specific authorization from any relevant authority of the Republic of Cuba to enter into and perform this Agreement, nor does ETECSA require the specific authorization of any relevant authority of the United States.

8. EXCHANGE OF INFORMATION: CONFIDENTIALITY

8.1 Each Party hereby undertakes to protect Confidential Information received from the other Party in relation to this Agreement in the same or at least in a reasonably similar manner as it protects its own Confidential Information. All information regarding this Agreement rendered by a Party to the other Party, the Agreement itself, all information concerning or generated by or arising from performance of this Agreement, and all information which by its nature is confidential or is disclosed in confidence by whatever means (whether written, oral or in any other form), shall be considered confidential for the purpose of this Agreement, including without limitation, all documentation, technical information, software and business information ("Confidential Information"). This obligation shall not apply to information: (i) in the public domain other than because of a breach of this Agreement, (ii) which is known by the receiving Party before such disclosure has taken place, (iii) obtained from a third party who is authorized to divulge the same, or (iv) which is required to be

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disclosed by law, provided that, with respect to (iv), the Party making disclosure or intending to make disclosure of Confidential Information shall inform the other Party as soon as possible of any demand for the disclosure of such information, any disclosure, and all pertinent details, and shall provide all related documents, to the extent permitted by law.

8.2 The Parties acknowledge and agree that Confidential Information, as well as any other information sent by any of the Parties to the other is and shall remain property of that Party, shall be kept strictly confidential, shall be used only for the purpose of this Agreement and shall not be disclosed to third parties without the prior written consent of the other Party, aside from either Party's or its Affiliates' employees and professional advisors who need to know the same for the performance of the Agreement. For the purpose of this Clause 8, a Party's "Affiliates" are the entities owned or controlled by that Party or an entity that has common ownership with that Party. Upon termination of this Agreement and upon request, each Party shall return any such Confidential Information to the other Party as soon as possible, and shall cease and desist from making further use of such Confidential Information. The Parties shall not disclose any Confidential Information acquired during the course of their relationship and for a period of three (3) years after termination of this Agreement (except in the case of software, which shall be for an indefinite period), and shall reasonably endeavor, including the respective contractual relations, to prevent their respective employees, assignees, subcontractors or agents from disclosing it.

8.3.1 It is acknowledged by the Parties that a violation of this Clause 8 might cause irreparable harm, for which monetary damages alone may not be adequate and, therefore, the Parties may seek injunctive relief for the breach of this Clause pursuant to the procedures set forth in Clause 16 of this Agreement.

8.3.2 Notwithstanding Clause 6.1, and except with respect to disclosures made pursuant to Clause 8.1(iv) above (as distinct from the notification requirement of Clause 8.1(iv)), and subject to Clauses 8.2 and 8.3, each Party shall be liable under this Agreement to the other Party in respect of any proven damage or loss to the other Party caused by its unauthorized use or disclosure of Confidential Information only up to the sum [REDACTED]

9. PUBLICITY AND MARKETING

9.1 Except as specified in this Clause 9, a Party shall not make any public statements, disclosure or announcements relating to this Agreement (except as expressly required by law) nor shall it utilize the name, trademarks or symbols that identify the other in any advertising, sales promotion, press releases or other publicity in connection to this

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Agreement, unless having received previous written authorization to such effect, which authorization shall not be withheld unreasonably. All announcements, marketing materials, press releases or other materials to be distributed to the public, or to the media where one of the Parties utilizes the name of the other, shall first receive written authorization from the other prior to their release or distribution.

9.2 IDT and ETECSA, at their own costs and expenses, may advertise, distribute marketing materials, and promote in any way the Services provided in this Agreement in their respective territories.

10. DURATION, EXTENSION AND TERMINATION; RIGHT OF SUSPENSION OR TERMINATION UPON THE OCCURRENCE OF CERTAIN EVENTS.

10.1 The Parties agree hereby that this Agreement shall become effective ("Effective Date") on the later of (a) the date when signed by both Parties or (b) issuance to IDT by the governmental authorities of the United States of all licenses, waivers, and authorizations required for IDT to enter into and perform this Agreement according to each of its terms and conditions, and it shall remain valid and in effect for an initial period of one (1) year from the Effective Date and will be automatically extended and shall continue in full force and effect for the same one (1) year consecutive periods, unless terminated by either Party by giving the other a notice in writing at least (30) calendar days prior to the expiration of the Agreement. The obligation to make payments of sums owed prior to termination of this Agreement or the expiration of the term of this Agreement, whether or not invoiced at the time of termination, shall not be affected by and shall survive such termination. The Parties shall send Invoices within ten (10) calendar days of any termination or expiration.

10.2 The Parties may, by agreement signed to this effect, terminate this Agreement at any time.

10.3. Notwithstanding anything in this Agreement to the contrary, either Party may terminate this Agreement or any Service immediately if the other Party:

- (a) commits a material breach of this Agreement which is capable of remedy and fails to remedy the breach within the term of thirty (30) calendar days of a written notice to do so; or
- (b) commits a material breach of this Agreement which cannot be remedied.

The Party terminating this Agreement pursuant to this Clause 10.3 shall promptly advise the other Party that it has terminated this Agreement.

10.3.1. If a Party terminates this Agreement or any Service pursuant to this Clause 10.3, the obligation to make payments of sums owed prior to termination, whether or not invoiced

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at the time of termination, shall not be affected by and shall survive such termination. The Parties shall send invoices within ten (10) calendar days of any such termination.

10.4. Termination for breach is without prejudice to any other available right or remedy arising from the breach.

10.5. **Right of Suspension or Termination upon the Occurrence of Certain Events**

10.5.1 Notwithstanding any other provision of this Agreement to the contrary, including without limitation Clause 7.1 and Clause 15 (Force Majeure), either Party may, in its unreviewable discretion, suspend its performance of, or terminate, this Agreement, or suspend or terminate any Service under this Agreement, in the event of any of the following, (a), (b), (c) or (d):

- (a) a court of the United States of America (including federal, state or local courts), or the Clerk thereof, or any attorney of the United States purporting to act under legal authority, issues a writ of attachment, garnishment, execution, injunction or restraint, or comparable actions, or a lien of its pendens or other lien, against any, some or all payments by IDT in favor of ETECSA under this Agreement ("measure"), including without limitation payments that are past due, currently due or yet to become due, and the payments provided for in Clause 11.3, and the measure is not vacated by the effective date of the suspension or termination specified by ETECSA in its Notice; or
- (b) the United States Department of the Treasury's Office of Foreign Assets Control issues a specific license pursuant to the Cuban Assets Control Regulations, 31 C.F.R. Part 615, authorizing any of the measures within the scope of Clause 10.5.1(a); or
- (c) any license, waiver or authorization granted by a governmental authority of the United States of America (including federal, state or local authorities) that is required for IDT to make any, some or all payments to ETECSA at ETECSA's account at the bank in Cuba specified by ETECSA in a confidential writing subject to Clause 8 for the receipt of payments due it under this Agreement, including without limitations payments that are past due, currently due or yet to become due, and the payments provided for in Clause 11.3, and at the rates and for the duration specified in this Agreement, including Annex A, is revoked, or not renewed prior to expiration, or any order is issued by governmental authorities of the United States or legislation is adopted by the United States blocking, freezing, confiscating or otherwise restraining, preventing or delaying any such payments being made by IDT to ETECSA at ETECSA's account at the bank in Cuba specified by ETECSA in a confidential writing subject to Clause 8 for the receipt of payments due it under this Agreement ("governmental order"), and at the rates and for the

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duration specified in this Agreement, including Annex A, and the license or other authorization is not restored or renewed, or the governmental order is not rescinded, by the effective date of the suspension or termination specified in ETECSA's Notice; or

- (d) any license, waiver or authorization granted by a governmental authority of the United States (including any federal, state or local authority) that is required for IDT to perform this Agreement according to each of its terms and conditions is revoked, modified or not renewed prior to expiration of the term of this Agreement; or any legislation, regulation, order or other measure is adopted or issued by such governmental authority, with the effect that IDT is prevented from performing this Agreement according to each of its terms and conditions; or any opinion or ruling is issued by any such governmental authority that it would be contrary to law for IDT to perform this Agreement according to each of its terms and conditions.

10.5.2. If IDT has knowledge of the occurrence of any of the events specified in subparagraph (a), (b), (c) or (d) of Clause 10.5.1, IDT will use best efforts to notify ETECSA as soon as possible by the means provided for in Clause 14 and, in addition, by telephone to the persons identified according to what is established in Clause 14. IDT is not responsible for monitoring or actively seeking information regarding the occurrence of any of the events specified in subparagraph (a), (b), (c) or (d) of Clause 10.5.1. ETECSA shall not rely on IDT to notify ETECSA of the occurrence of the events specified in subparagraph (a), (b), (c) or (d) of Clause 10.5.1. IDT shall provide ETECSA with all documents and papers served upon it in connection with the occurrence of any of these events as soon as possible by the fastest available means, unless the provision of such documents and papers is expressly prohibited by applicable law, including, but not limited to, statutes, regulations, judicial decrees, rulings, or orders, or agency decrees, rulings or orders.

10.5.3 A Party shall give Notice of its exercising its rights under Clause 10.5.1 in writing. Its exercise of its rights under this Clause 10.5.3 shall be effective immediately upon its giving such Notice, unless the Notice expressly provides otherwise.

10.5.4 The Parties agree to work together to preserve the security of their respective networks and communications against cyber crimes, illegal penetration or other similar actions. The occurrence of any cyber crime, illegal penetration or any other similar action is reason to cancel or suspend all or any Service.

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11 GENERAL OUTLINES, BILLING, PAYMENT, RECONCILIATION AND CLAIMS

11.1. General outlines

11.1.1 [REDACTED]

11.1.2 [REDACTED]

11.1.3. For all purposes of this Agreement, and notwithstanding any other provision of this Agreement to the contrary, payment shall be deemed to have been made to ETECSA, and a payment in favor of ETECSA shall be deemed to have been satisfied, only if, at the time, and to the extent the payment is received by ETECSA in Cuba at its account at the bank and branch in Cuba specified by ETECSA pursuant to Clause 11.3.7. For all purposes of this Agreement, and notwithstanding any other provision of this Agreement to the contrary, payment shall be deemed to have been made to IDT, and a payment in favor of IDT shall be deemed to have been satisfied, only if, at the time, and to the extent that the payment is received by IDT at its account at the bank and branch specified by IDT pursuant to Clause 11.3.8. This Clause 11.1.3. is of the essence of this Agreement, and shall be strictly construed and applied in every respect and circumstance. It is a material term of this Agreement.

11.1.4. Payments, including prepayments, which are not the subject of a pending conciliation or arbitration pursuant to Clauses 11.5 or 16, shall not be delayed by reason of the pendency of same. This Clause 11.1.4 is a material term.

11.1.5. The banking commission or any other expense for money transfer, charged in the Debtor Party's country will be the Debtor Party's responsibility. All the other expenses.

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by way of bank transfer, stated beyond the country of the Debtor Party, including the commission of international intermediary banks, will be covered at the expenses of the Creditor Party.

11.1.6. [REDACTED]

11.1.7. [REDACTED]

11.2. Billing

11.2.1. [REDACTED]

11.2.2. The invoices shall be sent by e-mail to the addresses set forth in a separate writing by a Party, which the Other Party shall keep confidential under Clause 8 and which the other Party shall not file with governmental authorities except with the prior written consent of the Party providing said information, which consent shall not be unreasonably withheld. Each Party will acknowledge receipt of the writing upon receiving it.

11.2.3. The invoice shall be deemed accepted by the Party it is issued to, if said Party does not raise any objection in writing within the term of [REDACTED] following the date the invoice is received. If either Party, in good faith, disputes the amount or appropriateness of any charge included in an invoice from the other, the disputing Party must provide the following documentation reasonably required to resolve the dispute. Minute Dispute - The disputing Party must provide the billing Party with a hard copy of the type of minute dispute being issued. All minute disputes must be accompanied by a call detail record from the billing Party's call detail records supporting the alleged erroneous calls or minute duration variances. Rate/Class Dispute - The disputing Party must provide documentation identifying the time period, appropriate rate/code, total minutes and amount in dispute for each country and documentation detailing the rate/code agreed upon and/or call detail records to support the claim.

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11.3.3.3 If IDT does not make the payment specified by ETECSA in its Notice within [REDACTED] ETECSA reserves the right to, and may, suspend the Services immediately for a temporary term, until the specified amount is received in full.

11.3.3.4 In the event that ETECSA does not receive the amount specified in the Notice as needed to cover in full the remaining of the traffic month, and IDT has made the prepayment for the following month, ETECSA may use the prepayment made for the following month to the extent required to cover the current month of traffic, and deduct the amount of prepayment so used from the prepayment balance for the following month. In the event of such deduction, IDT shall make an additional prepayment for the following month in the amount of the deduction no later than [REDACTED]

11.3.3.5 In the event that ETECSA provides Service in a traffic month which was not covered by a prepayment, ETECSA shall, at its election, either (a) provide Notice of the amount due for the uncovered Service, and, upon ETECSA's request in the Notice, IDT shall make payment of such amount at the same time that it makes its prepayment for the following traffic month, (b) include the amount due for the uncovered Service in its monthly settlement statement pursuant to Clause 11.4; or (c) request IDT to make payment of the amount due for the uncovered Service within [REDACTED]

11.3.3.6 Notwithstanding any other provision of this Agreement to the contrary, ETECSA may suspend Services immediately in the event that [REDACTED]

11.3.4. All the payments under this Agreement, including but not limited to prepayments under this Clause 11.3, will be made [REDACTED]

11.3.6. IDT may, at any time, request a refund of its unused prepayment balance. In the event of such a request, [REDACTED]

11.3.5. To send bank transfers, no U.S. bank (or branches or subsidiaries of same) located in any country, nor any non-U.S. bank (or branches or subsidiary of same) in the territory of the U.S., may be used as an Intermediary. [REDACTED]

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- 11.3.7 All payments to ETECSA that are required or permitted under this Agreement shall be made to ETECSA [REDACTED]. [REDACTED] IDT shall keep ETECSA's writing confidential pursuant to Clause 8 of this Agreement, and shall not file same with any governmental authority without ETECSA's prior written consent. Such consent shall not be unreasonably delayed, withheld or conditioned, provided, however, that it is understood that it is not unreasonable for a Party to condition consent upon a Party pursuing and exhausting available administrative procedures to relieve a Party from any obligation to file such writing or to have the writing maintained as confidential and not available to third-parties by the governmental authority.
- 11.3.8. In the event ETECSA has to make any payment in favour of IDT, such payment shall be made to [REDACTED]. [REDACTED] ETECSA shall keep IDT's writing confidential pursuant to Clause 8 of this Agreement, and shall not file same with any governmental authority without IDT's prior written consent.
- 11.3.9. Under this Agreement, neither Party shall set-off, seize or act against the amount(s) owed to the other Party on account of any obligations or debts the other Party may have to it under any other agreement or covenant in writing. Nevertheless, the Parties shall reconcile their mutually owed amounts on various Services rendered by virtue of this Agreement, as set forth in Clause 11.4.
- 11.3.10 Clause 11.3, including each of its provisions, is deemed to be material terms.

11.4. Reconciliation

- 11.4.1 ETECSA shall make monthly settlement statement of the invoices approved by both Parties, figuring out the net balance of same, that is the result of the difference between the amounts receivable and payable as per the Services provided each other between the Parties under this Agreement. The monthly settlement statement shall include the reconciliation between the volume of estimated traffic that was paid and the actual sent traffic.
- 11.4.2 The monthly settlement statement shall be sent to IDT for approval no later than the first five (5) calendar days following the receipt by ETECSA of IDT's monthly invoice.
- 11.4.3 If, as a result of such reconciliation, a net balance is due to ETECSA, IDT shall make payment of same within [REDACTED]. [REDACTED] If, as a result of such reconciliation, there has been a prepayment by IDT in excess of the amount that is due, [REDACTED].

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11.4.3 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**11.5 Disputes**

- 11.5.1 The Parties shall attempt in good faith negotiations to seek a solution for any differences, dispute, controversy or claim which may arise between them regarding the interpretation, performance or failure to perform under this Agreement, or otherwise arising under or concerning or as a consequence of the implementation of this Agreement (collectively "Dispute"). In accordance with the procedures set out in this Clause 11.5 and Clause 16.
- 11.5.2 All Disputes between the Parties shall be presented in writing and shall be notified to the relevant persons identified in Clause 14.
- 11.5.3 Except with respect to Disputes within the scope of Clause 11.2.3, the claims shall be presented no later than [REDACTED]  
[REDACTED]
- 11.5.4 The Party that receives the claim about the Dispute shall acknowledge receipt of it in writing.
- 11.5.5 The Party that receives the claim about the Dispute shall have to analyze the subject, conciliate it with the other Party and take the required actions, giving answer in writing to the disputing Party within the thirty (30) calendar days following the date of notification of the Dispute.
- 11.5.6 In the event that the Parties have not resolved in writing a Dispute within the scope of Clause 11.2.3 within the term stipulated in Clause 11.5.5, the matter may be referred to arbitration by either Party pursuant to Clause 16.3.1 through Clause 16.7.
- 11.5.7 In the event that the Parties have not resolved in writing a Dispute within the term stipulated in Clause 11.5.5 (other than Disputes within the scope of Clause 11.2.3), the matter shall be referred to more senior persons pursuant to Article 16.2.
- 11.5.8 All claims and other communications concerning a Dispute shall be kept confidential pursuant to Clause 8.

**12. FAILURE TO PAY**

- 12.1 Notwithstanding any other provision in this Agreement to the contrary, if a Party fails to make a payment at the time payment is required, the other Party may, after giving Notice of such failure to pay: (a) limit or suspend some or all of the Services provided under this Agreement until the owed balance is paid; or (b) terminate this Agreement. The Party may exercise its rights under (a) and (b) of this Clause 12.1 without any further procedures.

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12.2. In addition, or in the alternative, to the rights and remedies provided for in Clause 12.1, the non-breaching Party may:

- impose or apply any other remedies available to it for non-payment, and/or;
- apply a late payment penalty to the debtor Party, of 0,0333% over the total amount due, per each day in arrears, but such worth may not exceed eight percent (8%) per year of the total amount due, regardless of the damage that may arise out of it. Payment of the late payment penalty shall be deemed a material term, and subject to Clause 12.1. Notwithstanding the foregoing, IDT's failure to make a timely prepayment [REDACTED]

13. MODIFICATIONS

This Agreement may not be amended or modified in any way, except by means of a document signed by representatives duly authorized by each Party hereto

14. NOTICES.

All the notices, reports, writings and other communications required or permitted in relation to this Agreement shall be sent to all of the persons specified by each Party in a separate writing by: personal delivery, e-mail, courier service with the shortest available time for delivery, or fax. Said writings shall be maintained as confidential under Clause 8 and shall not be filed by either Party with any governmental authority without the other Party's prior written consent, which consent shall not be unreasonably withheld. Notice shall be deemed to have been given only at the earliest time of actual receipt by one of the methods detailed above. In order to fully comply with Clause 8 of the Agreement, certain sensitive strictly-corporate information of the Parties will be exchanged in accordance with the terms and conditions that the Parties may agree to in a document signed by both Parties.

15. FORCE MAJEURE

15.1. Non-performance of either Party's obligations pursuant to the Agreement or delay in performing same shall not constitute a breach of the Agreement if, and for as long as, it is due to a force majeure event, including, but not being limited to, governmental action, or requirement of regulatory authority, lockouts, strikes, shortage of transportation, war, rebellion or other military action, fire, flood, natural catastrophes, or any other unforeseeable obstacles that a Party is not able to overcome with reasonable efforts, or non-performance of obligations by a sub-contractor to a Party pursuant to any of the aforementioned reasons. The Party prevented from fulfilling its obligations shall, on becoming aware of such event, inform the other Party in writing of such force majeure event as soon as possible. The term for the performance of contractual obligations



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affected by the force majeure shall be understood as extended for the same period as the force majeure may last. If the force majeure event continues for more than sixty (60) calendar days, either Party shall have the right to terminate the Agreement or any Service with immediate effect by written notice, and neither Party shall have the right to be compensated for any loss related to such termination. For purposes of this Clause 15.1, the term "governmental action" includes, without limitation, governmental provisions, regulations, proclamations, orders, actions or revocation or denial of or failure to timely renew licenses of the Parties or any parent company of the Parties, or any writ or order issued by any judicial authority or attorney purporting to act under legal authority, that prevents or intends to prevent, fully or partially, the timely and full performance of this Agreement.

15.2 If the affected Party fails to inform the other Party of the occurrence of a force majeure event as set forth in Clause 15.1 above, then such Party thereafter shall not be entitled to refer such events to force majeure as a reason for non-fulfillment. This obligation does not apply if the force majeure event is known by both Parties or the affected Party is unable to inform the other Party due to the force majeure event.

16. **APPLICABLE LAW / SETTLEMENT OF DISPUTES.**

16.1 The Agreement and any matters relating hereto shall be governed by and construed in accordance with the laws of Spain.

16.2 If a Dispute other than a Dispute within the scope of Clause 11.2.3 (Billing) is not resolved pursuant to Clause 11.6.7, the Dispute shall be referred to more senior persons of the Parties who shall try to resolve the dispute within a further thirty (30) calendar day period. If no resolution is found each Party is entitled to commence the arbitration proceedings described below.

16.3.1 When entitled to submit a Dispute to arbitration pursuant to Clause 11.5.6 or Clause 16.2, a Party may submit the Dispute to be finally settled by the International Court of Arbitration of the International Chamber of Commerce (the "Court"), according to the Rules of Arbitration of the International Chamber of Commerce (ICC), by three arbitrators appointed in accordance with said Rules, provided that:

- (a) ETECSA and IDT shall each appoint an arbitrator, and that a person nominated by ETECSA to be an arbitrator is a citizen of Cuba, and that a person nominated by IDT to be an arbitrator is a citizen of the United States, shall not be grounds for challenge to the nominations or grounds for refusal to appoint the person so nominated;
- (b) the two (2) nominated and appointed arbitrators shall select the third arbitrator to serve in addition to the two arbitrators nominated by the Parties, which third arbitrator shall serve as President of the Arbitration Tribunal, and such third arbitrator shall not be a

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national of the United States or Cuba. In the event the two nominated and appointed arbitrators cannot agree on the appointment of the third arbitrator, the Court shall appoint the third arbitrator pursuant to its rules, provided, however, that it shall not appoint a national of the United States or Cuba; and

- (c) The arbitration shall be conducted in the English and Spanish languages.
- 16.3.2 The place of arbitration shall be Paris, France, or such other location as may mutually be agreed upon the Parties in writing.
- 16.3.3 Any monetary award by the arbitral tribunal shall be denominated in the currency specified in Clause 11.1.1 and payable in the currency specified in Clause 11.1.2 of this Agreement.
- 16.3.4 The Parties agree that that this Agreement and any dispute between the Parties arising out of or relating to same are commercial in nature.
- 16.3.5 The decision of the arbitral tribunal, including with respect to its jurisdiction, shall be final and binding on the Parties, who waive any recourse to judicial authorities for review of the arbitral award to the fullest extent permitted by law. The arbitral tribunal shall not have the power to award punitive or exemplary damages; any other liabilities, damages or remedies excluded by this Agreement, including limitations of liability and exclusions; or a Party's attorney fees and costs, which each Party shall bear.
- 16.3.6 Notwithstanding any provision of the Rules of Arbitration to the contrary, neither Party may seek interim nor conservatory measures from a judicial authority, including, but not limited to, requiring that the other Party continue the Services that have been suspended or terminated.
- 16.3.7 In no case shall the tribunal issue an interim or final decision that shall obligate the resumption or continuation of a Service.
- 16.4 The arbitration costs shall be paid as per the arbitration award.
- 16.5 Clause 16 shall be treated as an agreement independent of the other terms of the Agreement. A decision by the arbitration authority that this Agreement is null and void shall not entail ipso-jure the invalidity of the arbitration Clause.
- 16.6 Arbitration pursuant to this Clause 16 shall be the sole and exclusive means for the resolution of any dispute, controversy or claim which may arise between the Parties regarding the interpretation, performance, or failure to perform, or the exercise of any right, or the satisfaction of any obligation, under this Agreement, or otherwise arising

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under or concerning this Agreement.

- 16.7. An arbitration award rendered pursuant to this Clause 16 may be recognized and enforced by any court of competent jurisdiction.

17. MISCELLANEOUS.

17.1 **Entire Agreement:** This Agreement and the Annexes hereto are the Agreement and the full understanding reached by the Parties with respect to the purpose of this Agreement and they supersede all previous negotiations, undertakings or documents referred to what is provided for herein. Except otherwise stated specifically in this Agreement, the obligations and responsibilities of the Parties under this Agreement are only to the other Party and not to third parties, including any other client.

17.2 **Waiver:** Failure by any Party at any time or times to require performance of any provisions of the Agreement shall in no manner effect its rights to enforce the same, and the waiver by any Party of any breach of any provisions of the Agreement shall not be construed to be a waiver by such Party of any succeeding breach of such provision or waiver by such Party of any breach of any other provision hereof.

17.3 **Exercise of Rights without Prejudice:**

The exercise of any right by a Party deriving from this Agreement or from the law applicable to it shall take place without prejudice or limitation as to any other right or additional right or remedy that may exist in conformity with this Agreement, explicit or implicit, under the applicable law.

17.4 **Failure or Delay in Exercising Rights:**

No delay by a Party to exercise any right or a non-exercise of it by the Party under this Agreement or the applicable law shall operate as a waiver of such right. The exercise in part of a right shall not preclude any other exercise or future exercise of such right or remedy deriving from it.

17.5 **Severability:** If any provision of this Agreement is or becomes or is deemed invalid, illegal or unenforceable in any jurisdiction, such provision shall be deemed amended to conform to applicable law, so as to be valid and enforceable or, if it cannot be amended without materially altering the intention of the Parties, it shall be stricken and the remainder of this Agreement shall remain in full force and effect, provided, that this Clause 17.5 shall not apply to the following Clauses, and each of the provisions: Clauses 1.1, 2.1, 2.3, 3.1.1, 5, 6, 7, 8, 10, 11.1.2, 11.1.3, 11.1.7, 11.3, 11.5, 12.1, 16, 17.5, 17.8, 17.12, , 18, Annex A Annex B and Annex C, and, provided further, that, in

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the event any of foregoing Clauses, or any part or provision thereof, is or becomes or is deemed invalid, illegal or unenforceable in any jurisdiction, either Party may terminate this Agreement in its unreviewable discretion.

**17.6 Designation as material; other designations.**

The explicit designation of certain provisions in this Agreement as material terms does not imply other terms are immaterial and it shall not be used as evidence or indication that other terms are immaterial. The explicit provisions in this Agreement as to the exercise of a right being at the unquestionable discretion of a Party do not mean that the exercise of other rights is not within the unquestionable exercise at the discretion of a Party and shall not be used as evidence or indication that the exercise of other rights is not at the unquestionable discretion of a Party.

**17.7 Section Headings**

The headings of the Agreement are for the convenience of reference only and shall in no way limit or affect the meaning or interpretation of the provisions of the Agreement.

**17.8. Assignment; Controlling Interests**

**17.8.1.** Neither Party shall transfer or assign this Agreement or any of its rights and obligations herein to a third party, including without limitation a Parent or Affiliate, without the prior written consent of the other Party.

**17.8.2** If a Party wishes to transfer its rights and obligations herein to any entity which is its Parent company or an Affiliate, the Party shall give prior written notice to the other Party at least one hundred and twenty (120) calendar days prior to the scheduled date of assignment. The notice shall include a list of all the principal shareholders of the Parent or Affiliate to which the rights and obligations shall be transferred, unless this requirement is waived by the non-assigning Party. The other Party shall give written notice of its consent, or refusal to consent, to the assignment within thirty (30) calendar days of receipt of such notice. If consent is denied, the Party may terminate this Agreement upon thirty (30) calendar days written notice.

**17.8.2.1** In the event of a change in the direct or indirect controlling interest in IDT (other than a controlling interest being obtained by an entity that, at the time of the change, already had a controlling interest in IDT, IDT shall give written Notice to ETECSA of same within sixty (60) calendar days before such change, and ETECSA shall have the right to terminate this Agreement within ninety (90) calendar days of receiving the Notice. The Notice given by IDT shall include a list of all the principal persons with a direct or indirect controlling interest in IDT. For purposes of this Clause 17.8.2.1, "controlling

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interest" shall mean an interest that provides "control in fact" of IDT, that is, the authority or ability to establish the general policies or to control day-to-day operations of IDT.

- 17.8.3 It is a condition of an assignment permitted by Clause 17.8.1 that the assignee will undertake in a prior written agreement with the non-assigning Party to assume and fulfill those obligations, rights and interests as to which it succeeds the assigning Party in this Agreement; and the assigning Party shall be relieved of such obligations, rights and interests except those matters deriving from events which have occurred prior to such undertaking.
- 17.8.4 For the sake of clarity, this Agreement shall be binding on the Parties and it shall benefit the Parties and their authorized successors and assignees under the terms and conditions of the Agreement. A person who is not a Party to this Agreement or who is not an authorized successor or assignee under the terms and conditions of this Agreement shall not acquire any right whatsoever under it as a third-party beneficiary or other condition by virtue of this Agreement.
- 17.8.5 A non-fulfillment of the terms and conditions agreed for a transfer shall be deemed as a material non-fulfillment which shall give the other Party the right to end or terminate this Agreement immediately, without limitation, regardless the damages resulting from its actions.
- 17.9. **Data Protection:** Each Party will strictly comply with the applicable laws and regulations regarding telecommunications services and data privacy. To the extent that a Party processes the data of the other Party, the Party processing the data shall:
- (a) only process the data in accordance with the instructions of the other Party; and
  - (b) take appropriate technical and organizational measures against unauthorized or unlawful processing of data and against accidental loss, destruction or damage of the same.
- 17.10. **Survival of Obligations:**
- The rights and obligations of the Parties which by their nature remain valid after a termination, suspension, cancellation or expiry of this Agreement shall survive the termination, suspension, cancellation or expiry of this Agreement.
- 17.11 **Forecasts:**
- 17.11.1 A Party may request that the other Party provide written non-binding traffic forecasts to ensure that the Parties are able to provide adequate dimensioning of the telecommunications facilities between the Parties and with its interconnection partners.

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17.11.2 The Parties shall not be under any obligation to provide the Services with respect to traffic received from the other Party's network which:

- (1.1.a) exceeds to a material extent the volume of traffic specified in the forecast provided by the other Party in respect of the period to which the forecast relates;
- (1.1.b) is materially different from the profile of the traffic specified in the forecast provided by the other Party in respect of the period to which the forecast relates;
- (1.1.c) in the absence of a forecast for the relevant period, it exceeds to a material extent the volume of traffic received from the other Party's network during the preceding three month period; or
- (1.1.d) in the absence of a forecast for the relevant period, it is materially different from the profile received during the preceding three month period from the other Party's network.

**17.12 Separate Entity**

ETECSA and its properties are not and shall not be held or deemed, responsible or liable for the acts, omissions, obligations or debts of, or claims or judgments against, the Republic of Cuba or any entities, institutions and agencies controlled or owned by or affiliated with the Republic of Cuba as well as other entities incorporated under the Cuban law. Neither the Republic of Cuba nor its controlled, owned or affiliated agencies, institutions or entities is to be or shall be held accountable for acts, omissions, obligations, or debts of, or claims or judgments against, ETECSA.

No act or omission by the Republic of Cuba or its controlled, owned or affiliated agencies, institutions or entities shall be used as or deemed to be a basis for estoppel or similar legal doctrines against ETECSA or its representatives or controlled, owned or affiliated institutions and entities, nor shall any act or omission by ETECSA shall be used as or deemed to be a basis for a estoppel or similar legal doctrines against the Republic of Cuba or its controlled, owned or affiliated agencies, institutions or entities.

**17.13 Differences with Other Agreements/Entire Agreement**

Any differences between the provisions of this Agreement and any other agreement between the Parties shall not be considered in the interpretation of this Agreement. This Agreement, including any Annexes attached hereto, sets forth the entire agreement and understanding of the Parties hereto and supersedes and merges any and all prior proposals, negotiations,

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representations, agreements, arrangements or understandings, both oral and written, relating to the subject matter hereof.

**17.14 Anti-Bribery**

Each Party hereby represents, warrants and covenants that it will not, under any circumstances, and at all relevant times, make, or cause or authorize any third party acting on its behalf to make, directly or indirectly, any prohibited bribes, offers, promises or payments of money, or anything of value, to any Foreign Official (including but not limited to government officials, government employees, any political party or political party official, any candidate for political office, or any person otherwise acting in an official capacity) pursuant to all applicable laws (including but not limited to any local anti-bribery laws), or any other third party, for the purpose of influencing such party's acts or decisions or in order to obtain or retain business or secure an unfair business advantage for either IDT or ETECSA in performing its duties and obligations pursuant to this Agreement. Both IDT and ETECSA expressly agree that this Agreement is the result of arms-length negotiations, and that neither party has entered into this Agreement with a corrupt motive to obtain or retain business or to secure an unfair business advantage. Both Parties hereby warrant and undertake that they shall, at all material times, keep and maintain accurate and up to date accounting records to ensure that all transactions relating to this Agreement are sufficiently documented.

**17.15 No Special Concessions**

IDT represents and warrants that it will not agree to accept special concessions directly or indirectly from ETECSA with respect to any U.S. international route to the extent, if any, that IDT is prohibited by 47 C.F.R. § 63.14 of the FCC regulations from its doing so.

**17.16 Similar Services**

Notwithstanding any other provision of this Agreement to the contrary, ETECSA may disclose this Agreement (with the exclusion of Annex B) to a carrier with whom it is negotiating an agreement to provide "the same or similar services between the United States and Cuba." In the event that ETECSA intends to make such disclosure, it shall provide seven (7) calendar days prior written notice to IDT. ETECSA shall require that the carrier to whom such disclosure will be made agree in writing to keep any such disclosure confidential upon the same terms and conditions as ETECSA is required by Clause 8 of this Agreement to maintain the confidentiality of this Agreement.

**18 Taxes**

18.1 IDT, not ETECSA, shall be responsible for the payment in full of any U.S. taxes (including federal, state and local taxes) owed in connection with or arising out of this Agreement and the Services, including, without limitation, taxes imposed upon either

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Party. ETECSA shall not be obligated to reimburse IDT for any such payment, in whole or in part.

18.2 ETECSA, not IDT, shall be responsible for the payment in full of any Cuban taxes (including national, provincial and municipal) owed in connection with or arising out of this Agreement and the Services, including, without limitation, taxes imposed upon either Party. IDT shall not be obligated to reimburse ETECSA for any such payment, in whole or in part.

18.3 Notwithstanding anything in this Agreement to the contrary, including, without limitation, Clause 7.1 and Clause 16 (Force Majeure), ETECSA shall be entitled to terminate this Agreement upon thirty (30) calendar days written notice in the event that the IDT fails to or is prevented by law or otherwise from performing its obligations under this Clause 18, and IDT shall be entitled to terminate this Agreement upon thirty (30) calendar days written notice in the event that ETECSA fails to or is prevented by law or otherwise from performing its obligations under this Clause 18. This Clause 18 is a material term of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have entrusted their duly authorized officials with the execution of this Agreement in four originals, two originals in English language and two originals in Spanish language, all with the same legal force, on this 19<sup>th</sup> day of FEBRUARY 2015.



For ETECSA

*[Handwritten signature]*

Eng. Vivian Iglesias Barroso  
Main Director  
International Services.

For IDT

*[Handwritten signature]*

Marcelo Fischer  
Chief Financial Officer

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Bul Perreira, CEO

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ANNEX A

AGREEMENT FOR THE OPERATION OF INTERNATIONAL TELECOMMUNICATIONS  
INTERNATIONAL TELEPHONE SERVICE

The services to be rendered to customers will be the following:

1. Services:

Automatic: International Direct Dialing (IDD)

2. Period of Services:

The Parties will use commercially reasonable efforts to provide these services on a twenty four (24) hours a day, seven (7) days a week basis.

3. Rates relating to incoming traffic to Cuba and outgoing traffic from Cuba.

3.1

The incoming traffic to Cuba will be rated at [REDACTED] per minute and calls are billed in one (1) second increments with minimum call duration of one (1) second.

The outgoing traffic from Cuba to the United States (except for Alaska and Hawaii and Toll Free services, which will be agreed to in a separate writing between the Parties) will be rated at [REDACTED] per minute. Calls are billed in one (1) second increments with minimum call duration of one (1) seconds.

3.2

3.2.1 The Parties agree and acknowledge that the rate for the incoming traffic towards [REDACTED]

[REDACTED] represents a significant reduction with respect to 0.84 USD per minute and will remain in effect at least for three (3) years starting from the Effective Date of this Agreement. The rates for the outgoing traffic from Cuba to the United States will remain in effect at least for three (3) years starting from the Effective Date of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, each Party, in its discretion, may terminate this Agreement [REDACTED] in the event of any action of a governmental authority that prevents IDT from paying said rate for incoming traffic toward Cuba or charging said rate for outgoing traffic from Cuba for three (3) years from the Effective Date.

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3.2.2. The Parties have no obligation to continue the Services beyond the expiration of three years from the Effective Date of this Agreement. In the event that the Parties mutually wish to continue the Services beyond said date, they will, no later than thirty (30) calendar days prior to the expiration of three years from the Effective Date of this Agreement, and periodically thereafter, review the applicable rates with the goal of reaching a commercially negotiated reduction in such rates, taking into consideration the increase of the volume of traffic and its trends, any improvement in the efficiency and quality of the Services, the benefit received by final customers (perception rate) from the Effective Date of this Agreement, as well as the general behavior of the costs, and may sign, as they deem appropriate, relevant Addendums setting such reduced rates. Notwithstanding any other provision of this Agreement to the contrary, the sole and exclusive right and remedy with respect to any breach of this Clause 3.2.2 is for the Party claiming a breach to terminate this Agreement upon thirty (30) calendar days written notice, or not renew or extend the Agreement upon its expiration.

Given in four originals, two originals in English language and two originals in Spanish language, all with the same legal force on this 14<sup>th</sup> day of FEBRUARY, 2014.



For ETECSA

*[Handwritten signature]*

Eng. Vivlan Iglesias Barroso

Main Director

For IDT

*[Handwritten signature]*

Marcelo Fischer

Chief Financial Officer

*[Handwritten signature]*  
Bill Pereira, CEO

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ANNEX B

AGREEMENT FOR THE OPERATION OF INTERNATIONAL TELECOMMUNICATIONS

INTERNATIONAL SERVICES

The Parties hereby agree as follows:

1. Services

1.1 IDT will provide ETECSA with the opportunity to send international traffic to some chosen destinations by means of IDT's international network, in return for a per-minute rate. The chosen destinations, as well as the initial per-minute rate applied to them shall be listed and sent by IDT to ETECSA (via e-mail) once this Annex is signed. Hereinafter the listing will be referred to as "A-Z List".

1.2 Rates are shown in terms of full minutes and calls are billed in one (1) second increments after the initial one (1) second call duration with the exception of: (a) calls to Mexico which are billed in sixty (60) second increments with a minimum call duration of sixty (60) seconds; and (b) calls to Gambia which are billed in one (1) second increments with a minimum call duration of sixty (60) seconds. Availability of Services is dependent upon the availability of facilities. IDT may offer, in its sole discretion, rates decreases at any time upon written notice; any such decrease shall be effective immediately unless otherwise stated in the written notice. IDT reserves the right to increase its rates and change destination codes at any time upon five (5) days prior written notice and, for purposes of this Annex B, email shall be a valid method of "written notice". Notice of rate/code changes shall be sent via email to the email address designated by ETECSA in a separate writing, which IDT shall keep confidential under Clause 8 and shall not file same with any governmental authority without ETECSA's prior written consent. Such consent shall not be unreasonably delayed, withheld or conditioned, provided, however, that it is understood that it is not unreasonable for a Party to condition consent upon a Party pursuing and exhausting available administrative procedures to relieve a Party from any obligation to file such writing or to have the writing maintained as confidential and not available to third-parties by the governmental authority. Upon receipt of a notice regarding an increase of rates or a change in codes, ETECSA shall acknowledge receipt of the rate and/or code change notice by providing email confirmation of receipt of the notice to the email address designated by IDT in a separate writing, which ETECSA shall keep confidential under Clause 8 and shall not file same with any governmental authority without IDT's prior written consent ("Confirmation"). Such consent shall not be unreasonably delayed, withheld or conditioned, provided, however, that it is understood that it is not unreasonable for a Party to condition consent upon a Party pursuing and

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exhausting available administrative procedures to relieve a Party from any obligation to file such writing or to have the writing maintained as confidential and not available to third parties by the governmental authority. If ETECSA fails to submit such Confirmation in accordance with the terms of this paragraph, IDT reserves the right to suspend or terminate Services to the destination(s) subject to the rate and/or code change. ETECSA's continued use of the Services, regardless of whether or not a Confirmation is sent, shall constitute an acceptance of the changed rates and/or codes and agreement to pay all applicable charges. All Confirmations shall be sent to the email address from which ETECSA received the rates from IDT.

- 1.3 These rates will be confidential and they shall not be disclosed to third parties. The Parties agree that the time(s) or time zone(s) used for identifying effective times and dates for rate/code changes, all peaks, off peak and economy traffic, and invoicing and other time sensitive matters shall be New York Time. These rates shall not be filed by either Party with any governmental authority without the other Party's prior written consent, which consent shall not be unreasonably withheld.
- 1.4 For adding new destinations at the A-Z List, ETECSA will request IDT and/or IDT will request ETECSA the opening of the routes, and both Parties shall report each other on the volumes to be sent to the new destinations (this information is just for guidance so, it does not involve volume commitment for IDT or ETECSA). The proposals will be established as soon as agreed by the Parties and there shall be time enough for being able to carry out the required routing changes by the Parties.

**2. Billing and Payment.**

- 2.1 Every month IDT shall send ETECSA an invoice regarding the allocated transit traffic.
- 2.2 The invoice shall set forth the rate per minute to apply, destination country, traffic per minute and the amount due.
- 2.3 Such invoice shall be issued within ten (10) calendar days following the last calendar day of each month.
- 2.4 The payment of the invoice shall be included in the corresponding monthly settlement statement of the bilateral telephone traffic pursuant to Clause 11 of the Agreement.
- 2.5 Disputes of invoices shall be arranged under the procedures already set between the Parties to settle disagreements in respect of the monthly statements of terminal traffic as set by Clause 11 of the Service Agreement for the Operation of International Telecommunications.

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Given in four originals, two originals in English language and two originals in Spanish language, all with the same legal force, on this 19<sup>th</sup> day of FEBRUARY, 2014.

For ETECSA



Eng. Vivian Iglesias Barroso  
Main Director  
International Services

For IDT

Marcelo Fischer

Chief Financial Officer

  
Bill Pereira, CEO

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ANNEX C

AGREEMENT FOR THE OPERATION OF INTERNATIONAL TELECOMMUNICATIONS

INTERCONNECTION

Capacities:

[REDACTED]

[REDACTED]

Interconnection  
cost(s):

[REDACTED]

Given in four originals, two originals in English language and two originals in Spanish language,  
all with the same legal force, on this 1<sup>st</sup> day of FEBRUARY, 2011.



For ETECSA

*[Signature]*

Eng. Vivlan Iglesias Barroso

Main Director

International Services

For IDT

*[Signature]*

Marcelo Fischer

Chief Financial Officer

*[Signature]*

Bill Pecora, CEO

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*[Handwritten notes]*