

LOCAL DE-CIX TERMS AND CONDITIONS OF BUSINESS (UNITED STATES OF AMERICA)

1. **Scope**

These Local DE-CIX Terms and Conditions of Business, United States of America ("DE-CIX Terms and Conditions USA") of the DE-CIX group company ("DE-CIX"), as defined on the cover sheet of the DE-CIX Agreement (the "DE-CIX Agreement"), are an integral part of the DE-CIX Agreement between the contractual parties.

2. **DISCLAIMER.**

TO THE EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES MADE IN THE DE-CIX AGREEMENT, DE-CIX DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT, TITLE, ACCURACY OF INFORMATIONAL CONTENT, FITNESS FOR SYSTEM INTEGRATION, OR OTHERWISE THAT WOULD EXTEND BEYOND THE REPRESENTATIONS AND WARRANTIES CONTAINED HEREIN.

3. **Limitations of Liability.**

EXCEPT FOR BREACHES STIPULATED IN THE DE-CIX AGREEMENT, OR AMOUNTS PAYABLE PURSUANT TO THE DE-CIX AGREEMENT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL DE-CIX BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES UNDER ANY LEGAL THEORY (EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), ARISING FROM

PERFORMANCE UNDER OR FAILURE OF PERFORMANCE OF ANY PROVISION OF THE DE-CIX AGREEMENT (INCLUDING SUCH DAMAGES INCURRED BY THIRD PARTIES), SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS. EXCEPT FOR BREACHES STIPULATED IN THE DE-CIX AGREEMENT, OR AMOUNTS PAYABLE PURSUANT TO DE-CIX AGREEMENT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL DE-CIX BE LIABLE FOR DAMAGES IN EXCESS OF THE VALUE RECEIVED BY THE OTHER PARTY UNDER THE DE-CIX AGREEMENT. ALL CLAIMS BEYOND THOSE ALLOWED IN THESE DE-CIX TERMS AND CONDITIONS USA OR IN THE DE-CIX AGREEMENT FOR ANY LOSS OR DAMAGE FROM WHATEVER CAUSE ARISING, INCLUDING DAMAGE TO THE OTHER PARTY'S PROPERTY, SHALL BE EXCLUDED AND HEREBY WAIVED BY THE OTHER PARTY UNLESS SUCH CLAIM IS MADE BASED ON INTENTIONAL BAD ACTS OR GROSS NEGLIGENCE BY DE-CIX; IN SUCH CASE, DAMAGES SHALL BE LIMITED TO THOSE THAT ARE REASONABLY FORESEEABLE AS A RESULT OF THE INTENTIONAL BAD ACTS OR GROSS NEGLIGENCE BY DE-CIX.

4. **Collection Costs, Arbitration, and Governing Law**

4.1 If DE-CIX is required to commence collection procedures to collect fees and prevails, the other party agrees to pay DE-CIX's attorney fees and court costs.

4.2 In the event of a dispute arising from DE-CIX Terms and Conditions USA and the DE-CIX Agreement, the parties agree to submit any dispute to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Such arbitration shall

be binding and final. The proceedings shall be held in New York, be in English and any award shall be enforceable in any court of competent jurisdiction according to the laws of the state of New York and the United Nations Convention for the Enforcement and Recognition of Arbitral Awards unless the nature of the dispute is suitable to injunctive relief thereby affording a party the right to pursue redress in court without proceeding to arbitration. Any dispute arising under the DE-CIX Terms and Conditions USA and the DE-CIX Agreement that cannot be arbitrated as provided herein shall be brought only before the United States District Court Southern District of New York, with the parties waiving any defense of venue or personal jurisdiction.

- 4.3 The parties agree to attempt to select a mutually acceptable arbitrator. If this cannot be accomplished, one arbitrator shall be selected by each party within thirty (30) days and those two arbitrators shall appoint a third arbitrator, and a majority decision of the three (3) person panel will be binding and final. If a party fails to choose an arbitrator within the thirty- (30) day period, such failure to act will constitute a waiver of the right to select an arbitrator and the arbitrator selected by the other party will arbitrate the matter. Initial payment for arbitration services shall be shared equally between the parties. However, the prevailing party will be reimbursed for its arbitration expenses.
- 4.4 These DE-CIX Terms and Conditions USA are entered into, and shall be interpreted, construed, and enforced in accordance with the laws of the State of New York.

5. Severability clause

All provisions of the DE-CIX Terms and Conditions USA are intended to be severable. In the event any provision or restriction contained herein is held to be invalid or unenforceable in any respect, in whole or in part, such finding will in no way affect the validity or enforceability of any other provision of the DE-CIX Terms and Conditions USA and the DE-CIX Agreement. The parties hereto further agree that any such invalid or unenforceable provision will be deemed modified so that it will be enforced to the greatest extent permissible under law, and to the extent that any court of competent

jurisdiction determines any restriction herein to be unreasonable in any respect, such court may limit the DE-CIX Terms and Conditions USA to render it reasonable in the light of the circumstances in which it was entered into and specifically enforce the DE-CIX Terms and Conditions USA as limited.