

**DATED June 11, 2013**

**“SUMGAYIT RES” LIMITED LIABILITY COMPANY**

**and**

**“AZERFON” LIMITED LIABILITY COMPANY**

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**AGREEMENT ON PROVISION OF CONNECTIVITY**

**for the**

**OPERATION OF ADVANCED METERING INFRASTRUCTURE**

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**THIS CONNECTIVITY AGREEMENT (the “Agreement”)** is made on this day **11<sup>th</sup> of June of 2013**,

**BETWEEN:**

- (1) **“Sumgayit RES” Limited Liability Company**, a company organized under the laws of the Republic of Azerbaijan (the **“CUSTOMER”**); and
- (2) **“AZERFON” Limited Liability Company**, a company organized under the laws of the Republic of Azerbaijan, having its registered address at 106A Haydar Aliyev avenue, Baku AZ 1029, Azerbaijan (the **"AZERFON"**).

**WHEREAS**, CUSTOMER is a company involved in distribution of the energy to its consumers in the Republic of Azerbaijan;

**WHEREAS**, AZERFON is a mobile operator company providing the telecommunication services to the users and subscribers within the network in the territory of the Republic of Azerbaijan;

**WHEREAS**, CUSTOMER desires to operate the Advanced Metering Infrastructure (defined below) for which AZERFON is willing to provide the connectivity;

**NOW THEREFORE**, the parties hereto, each in consideration of the promises and agreements of the other, hereby agree as follows:

## **1. DEFINITIONS**

1.1 In this Agreement, unless the context otherwise requires:

**“Acceptance Certificate”** means, in relation to SIM-Cards, a certificate in the form provided by AZERFON to be signed by CUSTOMER as required under Clause 2.7

**“Active SIM Cards”** shall mean, registered in the AZERFON Network SIM Cards, which are issued/delivered by AZERFON to CUSTOMER with respect to this Agreement;

**“Advanced Metering Infrastructure” (the “AMI”)** shall include all the components that allow two-way communication between smart meters and information management systems implemented to enable metering and other information exchange between CUSTOMER and its End Users.

**“Affiliates”** means any corporation or other business entity in which, but only for so long as, either Party owns or controls directly or indirectly more than 50% of the outstanding stock or other voting rights entitled to elect directors.

**“Agreement”** means this Agreement for provision of connectivity for the operation of advanced metering infrastructure together with all Appendixes hereto as the same may be supplemented or amended from time to time;

**“Agreement Period”** means the period during which CUSTOMER shall be entitled to the possession and use of the relevant SIM Cards in accordance with this Agreement;

**“Applicable law”** shall mean the legislation of the Republic of Azerbaijan.

**“APN”** means Access Point Name which is the specific parameter for secure connectivity for using by third parties.

**“Billing system”** – means the system managing all Azerfon subscribers’ accounts and SIM cards. Billing System is a part of Intelligent Network (IN) in AZERFON.

**“Central System”** – CUSTOMER’s Terminal Server which is the termination point of Smart Meter- CUSTOMER connectivity over AZERFON Network in the CUSTOMER side.

**“Confidential Information”** means “non-public information that a party designates as being ‘proprietary’ or ‘confidential’ or which by its nature or the circumstances reasonably ought to be treated as confidential. Confidential Information includes the party’s software and prototypes, AMI and any information relating to the party’s business affairs, including business methods, marketing strategies, pricing, competitor information, product development strategies, and financial results.” Confidential Information does not include information which (a) is known by the receiving party or its affiliates (as defined below), free of any obligation to keep it confidential; (b) is at the time of disclosure, or thereafter becomes, publicly available through no wrongful act of the receiving party or its affiliates; (c) is independently developed by the receiving party or its affiliates, without relying on or referring to the Confidential Information of disclosing party; or (d) is approved for release by prior written authorization of the disclosing party.

**“Delivery Date”** means, in relation to SIM Cards, the date on which the relevant SIM Cards are delivered to and accepted by CUSTOMER by signing Acceptance Certificate pursuant to the terms of this Agreement.

**“End User(s) or customers”** means an individual that subscribes to the services of the CUSTOMER for its own use.

**“Intellectual Property Rights”** means any copyrights, trademarks, service marks, trade secrets, patents, patent applications, know-hows, contractual rights of non-disclosure or any other intellectual property or proprietary rights, however arising, throughout the world.

**“Information Management System”** – shall mean the application system of CUSTOMER Central System

**“IMSI”** – means International Mobile Subscriber Identity.

“**ICCID**” – means Integrated Circuit Cards Identifier.

“**IMEI code or serial number**” – means International Mobile Equipment Identity which is the smart meter (mobile unit) identification parameter.

“**Keeping of SIM Card**” – means observation of all obligations as defined by AZERFON for the SIM Card configuration, access to network, proper use and application of SIM Card.

“**MSISDN**” – means Mobile Station Integrated Services Digital Number.

“**Mapped SIM card**” – means linking the IMSI, ICCID or MSISDN to the IMEI of the smart meter which shall be done by the CUSTOMER.

“**Material Adverse Effect**” - means a material adverse effect on the financial condition, results or operations of AZERFON caused by any event, including: (i) the assertion by the Government of any claim with regard to the services and SIM cards; or (ii) the commencement by any person of legal proceedings asserting an interest with regard to the services and SIM cards or seeking significant damages or other significant relief with regard to either or both of them;

“**M2M**” – machine to machine SIM cards with sms and data traffic.

“**Network**” means telecommunication systems, receivers-transmitters, electromagnetic waves, frequencies and other resources used by AZERFON for the provision of telecommunication services.

“**Protocol on Connectivity Requirements**”- shall mean Mobile Operator Requirements for Advanced Metering Infrastructure system (AMI system) solution over GSM Network (Appendix D hereto).

“**Relocated SIM card**” – means any change to the linkage between SIM Card and the smart meter.

“**Roll-out Schedule**” – shall mean the schedule agreed by both Parties reflecting the action plan for installation and connectivity provision to the smart meters in the specified area or location.

“**SIM /GPRS module**” – shall mean GSM module which is inbuilt or externally connected to the Smart Meter or Concentrator by using M2M SIM Card, which shall provide the possibility of communication with Central System over GSM Network (see APPENDIX C hereto).

“**SIM Card**” means identification module containing information about the Account holder, security data, as well as ensuring connectivity to the AZERFON Network, and which have to be delivered to CUSTOMER and are more particularly identified in the relevant Acceptance Certificate including the related capacity of Data and all other particularities installed thereon.

“**SIM Management platform**” – for the purposes of the present Agreement shall mean the existing Billing System of AZERFON.

“**Smart meter**” –are multi-channel meters, capable of two-way communications, which capture both the amount of power consumed and when it is being consumed.

“**SIM lock**” – means a functioning SIM Card due to disconnecting from the smart meter to which it has been linked.

“**Subscriber**”- means an individual (physical and or legal entity) that subscribes to the telecommunication services of Azerfon.

“**Term**” shall have the meaning defined in Section 1 of Appendix A.

“**Terminal Server**” – shall mean CUSTOMER’s terminal server which is the termination point of Smart meters.

“**Territory**” shall have the meaning defined in Section 2 of Appendix A.

“**Value Added Services**” – provision of mobile content and access to informational-entertainment services with special communication tariffs using designated short numbers

- 1.2 **Successors and Assignees.** The expressions "CUSTOMER" and "AZERFON" shall, where the context permits, include their respective successors and permitted assignees and any persons deriving title under them.
- 1.3 **Miscellaneous.** References to years, months, quarters and the passage of time shall be construed in accordance with the Gregorian calendar. References to any document, agreement or instrument hereunder shall be deemed references to such document, agreement or instrument as amended, modified or supplemented from time to time.

## 2.CONNECTIVITY FOR AMI

- 2.1 AZERFON shall provide two-way connectivity with CUSTOMER’s AMI system solution over the AZERFON Network and control all CUSTOMER’s connectivity over a centralized SIM Management platform, as described in “Customer Advanced Metering Infrastructure project” in Appendix B hereto.
- 2.2 Under this Agreement AZERFON shall:
  - 2.2.1 Provide free of charge activated SIM Cards ready to use and maintain the connectivity of CUSTOMER’s metering sites via its Network. The SIM Cards are not portable and shall be used by CUSTOMER exclusively within AZERFON Network.
  - 2.2.2 Provide SIM Cards management services via AZERFON Billing system or upon agreement with CUSTOMER create feasible conditions for SIM Cards’ management (description in Figure 1 “High level structure”, Appendix B hereto).

- 2.2.3 Control the Data usage (as defined in Appendix B hereto) of CUSTOMER's smart meters connected to the Central System; AZERFON shall not or cause it to illegally or improperly use data of clients' smart meters other than stipulated in this Agreement.
- 2.3 CUSTOMER shall be entitled to control the Information Management System.
- 2.4 CUSTOMER must strictly observe and follow-up the Protocol on Connectivity Requirements related to Smart Meters functionalities, and General Solution Design controlling the AMI so that not to cause overloading of AZERFON Network (see APPENDIX D to this Agreement).
- 2.5 CUSTOMER must provide and confirm to AZERFON that testing was satisfactorily completed in full compliance with the Protocol on Connectivity Requirements and AZERFON's Advanced Metering Infrastructure shall function in full compliance with Protocol on Connectivity Requirements. Otherwise, AZERFON shall not be responsible for any cases of failure in the Advanced Metering Infrastructure. AZERFON representative shall participate during the testing on the initial stage of the project during the installation of first 100 (hundred) smart meters on places selected by the Customer.
- 2.6 Conditions Precedent. AZERFON shall submit to CUSTOMER in writing the specific GSM connectivity parameters for devices, which CUSTOMER together with AZERFON representative should configure in devices. AZERFON shall undergo the testing of connectivity in the areas requested by CUSTOMER and as specified in Article 2.5 above. The obligation of CUSTOMER to use the SIM Cards under this Agreement is subject to the condition that AZERFON shall have received Acceptance Certificates evidencing acceptance by CUSTOMER of the relevant SIM Cards of AZERFON.
- 2.7 Delivery. Under this Agreement, AZERFON shall deliver to CUSTOMER the number of SIM Cards specified in Appendix A hereto (in the Commercial Terms). It is expressly agreed that CUSTOMER shall accept each of the SIM Cards and, subject to Clause 2.7, each of the SIM Cards shall be delivered to and accepted by CUSTOMER on the relevant Delivery Date as shall be defined in Roll-out Schedule between the Parties and shall become subject to and governed by this Agreement, the relevant Agreement Period shall commence and CUSTOMER shall thereupon sign and deliver to AZERFON the relevant Acceptance Certificate. CUSTOMER shall accept SIM Cards and sign an Acceptance Act at the same day when Delivery occurred. Within 10(ten) calendar days after the installation of SIM Cards in smart meters the CUSTOMER shall notify AZERFON in writing about the SIM Cards which have the manufacturer defects. Within 5 (five) calendar days AZERFON shall replace such SIM Cards with new ones.
- 2.8 Roll-out. Upon request of CUSTOMER, AZERFON shall provide the SIM Cards connected to the AMI according to Roll-out Schedules attached hereto. Such requests for the supply of SIM Cards must be provided to AZERFON in 30 (thirty) calendar days prior to the date when connectivity is required, and any changes in Schedules must be provided to AZERFON at least 2 (two) months prior to requested date.

- 2.9 Non-Delivery or Late Delivery. AZERFON shall provide the SIM Cards to the CUSTOMER in a timely manner as specified in the present Agreement. However, AZERFON shall not be responsible for late delivery of SIM Cards in cases of force majeure.
- 2.10 There are no implied intellectual property rights granted under this Agreement and all rights in AZERFON product or service, except those expressly granted to CUSTOMER, shall remain with AZERFON.
- 2.11 AZERFON shall deliver SIM Cards which:
- a) are new and unused;
  - b) correspond to their description under this Agreement;
  - c) are of the quantity required under the Roll-out Schedules for the supply of SIM Cards under this Agreement.
  - d) are free from any defects in design, material and workmanship (hereinafter “Defects”);
  - e) are free and clear of all liens, charges, limitations or any third party claims and rights;
- 2.12 AZERFON shall ensure that at all times it has and maintains all the licenses, permissions, authorizations, consents and permits required by the Applicable Law and any applicable statutory and regulatory requirements relating to the implementation of its obligations under the Agreement.

### **3. UNDERTAKINGS OF THE PARTIES**

#### **3.1 CUSTOMER shall:**

- 3.1.1 Obtain or cause to be obtained, maintain in full force and effect and comply in all material respects with the conditions and restrictions (if any) imposed in, or in connection with, every consent, authorization, license or approval of governmental or public bodies or authorities or courts and do, or cause to be done, all other acts and things, which may from time to time be necessary or desirable under the applicable laws of the Republic of Azerbaijan for the continued due performance of all its obligations under this Agreement;
- 3.1.2 For the avoidance of doubts, CUSTOMER shall remotely control clients’ smart electricity meters.
- 3.1.3 Check account on meters of electricity usage based on AZERFON requirements defined in Appendix D.
- 3.1.4 Make mapping each SIM Card upon IMSI, ICCID or MSISDN and information on unique ID of corresponding devices (IMEI code or serial number) on which the SIM Cards installed. CUSTOMER shall submit all this information to AZERFON, failure of which AZERFON shall not be responsible for timely elimination of troubleshooting and problems arising in the connectivity. The Customer shall be liable for the cases when this connectivity problem was caused by non-submission of such information by Customer to Azerfon.

- 3.1.5 Provide AZERFON with such information regarding the location, operation, use and condition of each of the SIM Cards within 7 (seven) business days as AZERFON may require from time to time.
- 3.1.6 Upon updating the SIM Card mapping register, CUSTOMER may relocate the SIM Cards and update the mapping according to clause 3.1.4 above. Information on updates shall be notified to AZERFON within 7 (seven) business days.
- 3.1.7 Possession.
  - (a) CUSTOMER shall not re-sell to the third parties from the second hand (repeatedly) the service, SIM Cards; (ii) not use the Network, SIM Card for any illegal or non-ethic, crime purposes or administrative offence; (iii) not use devices that may interfere with or adversely impact the Network.
  - (b) CUSTOMER shall ensure that the SIM Cards are maintained, serviced, in accordance with the technical specification for SIM Cards.
  - (c) CUSTOMER shall ensure that the SIM Card and or the information in SIM Card is not copied, not used for illegal commercial purpose and or not given to the use or lease to third party.
- 3.1.8 CUSTOMER undertakes and warrants that it will not use or cause to be used the number range and SIM Cards to be provided by AZERFON under this Agreement within the network of any other operators, Failure of this provision shall entitle AZERFON to terminate this Agreement and compensate costs of the investments made by AZERFON for this project purposes and claim the liquidated damages equal to the amount of annual payments.

**3.2 AZERFON shall:**

- 3.2.1 Provide the connectivity between the AMI and IMS system via AZERFON Network;
- 3.2.2 Configure AZERFON SIM Cards to the Smart meters;
- 3.2.3 Manage SIM Cards and provide conditions to CUSTOMER for functionality of SIM Cards Management:
  - 3.2.3.1 Activation/ Deactivation.
  - 3.2.3.2 SIM Usage/ Reporting on the status of SIM Cards (list of SIM Cards, active and not active SIM Cards) upon request of CUSTOMER.
- 3.2.4 Provide the maintenance / troubleshooting services as described in Service Level Agreement between the Parties in APPENDIX C hereto.
- 3.2.5 Upon written request of CUSTOMER as aligned with plans, introduce new and advance services.
- 3.2.6 Define and create specific dedicated APN for routing Data to proper direction security. This dedicated APN will be provisioned to all the SIM Cards allocated to CUSTOMER.



- 3.2.7 Problem Solving. AZERFON shall have one Account manager assigned to CUSTOMER which will register all problems in the connectivity, deliver the issues to AZERFON and solve them within the time frame and in the manner as described in the Service level Agreement. AZERFON should notify the CUSTOMER in case if Account Manager is changed or replaced within 5 (five) business days before such a change or replacement occurred.
- 3.2.8 In case if problems in connectivity are not solved within the required time described in SLA AZERFON will be subject to penalty in amount of damages incurred at that place where the problem arisen and 5 % of total cost of damaged SIM Cards corresponding to that affected area.
- 3.2.9 Notify CUSTOMER at least 10 (ten) calendar days in advance about the cases of merger of, acquisition or disposal of the property by AZERFON.

**3.3 AZERFON Represents and Warrants that:**

- (a) It is a company registered and validly existing under the laws of the Republic of Azerbaijan;
- (b) It has the full power, authority and right to execute, deliver and perform this Agreement and to grant to CUSTOMER the right to use its services and SIM cards stated in this Agreement;
- (c) AZERFON has obtained all licenses and approvals necessary or appropriate in connection with the execution, delivery and performance of this Agreement, and all such approvals are and shall remain in full force and effect
- (d) the execution of this Agreement does not and will not result in violation of any provision of Applicable Law; or (ii) does not and will not conflict with or result in the breach of any provision of Applicable Law.
- (e) does not and will not result in violation of any provision of Azerbaijani law; or (ii) does not and will not constitute a default on an event which, with the giving of notice, the passage of time or the making of any determination, or any combination thereof, would constitute a default under any such agreement or instrument, which would or is likely to have a Material Adverse Effect and/or raise reputational and/or integrity issues for Customer, as reasonably determined by them; and
- (f) the use of all services and SIM Cards by CUSTOMER under this Agreement shall not be interfered with or interrupted during the entire Term of the Agreement by AZERFON other than as may be necessary to conduct maintenance work or as otherwise may be necessary to protect the health and safety of the employees and visitors of CUSTOMER and AZERFON or as expressly provided in this Agreement. Azerfon shall notify the Customer in writing seven (7) calendar days prior to the day and time of planned maintenance works. Non planned maintenance works shall be notified to the Customer as soon as reasonably possible.

**4. FEE AND PAYMENT**

- 4.1 Under this Agreement, CUSTOMER shall pay to AZERFON a Monthly Fee per Billing Periods specified in APPENDIX A hereto (Commercial Terms). The Billing period shall start from the moment of signing of Acceptance Certificate according to clause 2.7.

Invoices. AZERFON shall prepare and issue invoices on a monthly basis till the 10<sup>th</sup> day of then each month for the connectivity services provided during the previous month in accordance with the terms of this Agreement.

CUSTOMER shall pay the undisputed portions of AZERFON invoice(s) within 30 (thirty) calendar days of receipt of the invoice(s) in the amount as defined in invoices.

In the event CUSTOMER disputes any portion of the invoice amount, it shall proceed with the payment of the total amount as indicated on the undisputed portion invoice and shall notify AZERFON in writing of the items disputed. Parties can then mutually discuss and settle the disputed amounts separately.

Payments by CUSTOMER that are more than 30 (thirty) calendar days overdue will be subject to a late charge equal to one (1%) per cent of the delayed amount per a week delayed or, if less, the maximum amount allowed by applicable law, on the overdue balance. Such an amount shall not exceed 10 (ten) % percent of the total Agreement Price.

- 4.2 Reimbursement of Expenses. CUSTOMER shall reimburse AZERFON for all costs or expenses of, or arising from, the abusive use, modification, change, alteration, loss, damage, removal, re-delivery, sale or disposal of SIM Cards which may be incurred by AZERFON, or relating to loss or destruction of or damage to any property, or other loss of whatsoever nature suffered by any third party caused by, relating to, or arising from or out of (in each case whether directly or indirectly) the use of the SIM Cards. The foregoing obligation to reimburse shall remain in force after the end of the relevant term of the Agreement to the extent that the relevant expenses are attributable to events or circumstances during the relevant term of the Agreement.

**5. TITLE**

Title to the SIM Cards. Title to all the SIM Cards shall always remain vested in AZERFON.

**6. LOSS AND DAMAGE**

- 6.1 Risk of Loss. Throughout the term of the Agreement CUSTOMER shall bear the full risk of any loss, destruction, confiscation, seizure or requisition of or damage to each of the SIM Cards and of any other occurrence of whatever kind which shall deprive CUSTOMER of the relevant SIM Cards for the time being of the use or possession thereof.

- 6.2 Total Loss. AZERFON will provide the replacement of all the damaged or lost SIM Cards free of charge. In any case of the loss or damage of the SIM Cards, AZERFON agrees to replace

free of charge up to the 20% from the total quantity of SIM Cards ordered under this Agreement. Above the 20%, the Customer shall compensate the costs of damages and/or losses of the SIM Cards in the amount of a real cost of SIM Cards specified in the Table of rates in the Appendix A. AZERFON shall deliver the new SIM Card to CUSTOMER within 10 (ten) calendar days after notification by the CUSTOMER.

## **7 CONNECTIVITY**

7.1 AZERFON shall ensure uninterrupted connectivity between the Automated Metering Infrastructure and IMS system via Network

7.2 Connectivity Outage procedures. The Service Level Agreement will reflect the procedure of Connectivity outages and their solvency. Each outage case shall be undertaken by Account Manager and delivered to the relevant contact persons for their solvency.

Both Parties shall inform each other in advance of any regular maintenance works that may impact the services under the Agreement.

## **8. NON-INTERFERENCE**

8.1 Noninterference. CUSTOMER shall not perform, permit or suffer to permit any act or omission, whether in respect of AZERFON or any other person, that prevents, interferes with or burdens in any respect AZERFON's ability to timely perform this Agreement.

8.2 Confidentiality and Publicity. Neither party shall disclose the other party's Confidential Information to third parties or use Confidential Information for any purpose other than for the proper fulfillment of this Agreement. Each party undertakes to keep in a strict confidence and safeguard the Confidential Information of the other party with the same degree of care as it would apply to its own Confidential Information and, in any case, with no less than reasonable care. Such obligations will survive the expiration of this Agreement for a period of 5 (five) years.

## **9. TERM AND TERMINATION**

9.1 The Agreement shall commence on the date of signing by both Parties ("**Effective Date**") and remain in force until the expiration of 6 (six) months from the commercial launch date ("**Term**"). The term of the Agreement may be extended for additional period upon mutual agreement of the Parties ("**Additional Term**"), no later than 60 (sixty) days prior to the expiration of the Term or then current Additional Term. In case of termination by CUSTOMER without cause earlier than the expiration of the 6 (six) months' Term, Customer shall pay to AZERFON the amount of liquidated damages of 10.000 AZN (ten thousand). In case of termination by the Customer without cause within the Additional Term, The Customer shall reimburse all the costs of investments made by Azerfon due to services to be provided within the Additional Term.

9.2 This Agreement may be terminated by either party if the other party is in material breach of this Agreement and such breach is not remedied for a period of sixty (60) calendar days after the party in breach has been notified in writing of such breach by the other party, the non-defaulting party may terminate this Agreement.

- 9.3 This Agreement terminates automatically, with no further act or action of either party, if a receiver is appointed for a party or its property, a party makes an assignment for the benefit of its creditors, goes bankrupt or is liquidated or dissolved.
- 9.4 AZERFON can suspend or terminate this Agreement at its own discretion if the CUSTOMER does not perform its payment obligations under this Agreement more than 30 (thirty) calendar days under the Clause 4.1, and if:
- a) if the connectivity has a negative impact on AZERFON technological equipment and quality of services according to the applicable Azerbaijan law and international standards; (b) in case of suspension: if suspension is related to carrying out of planned technical maintenance/ works of AZERFON, with prior written notification to CUSTOMER;
  - (c) when AZERFON has a reasonable grounds to believe that any offence causing damage to AZERFON, third parties or the state is committed by using AZERFON's Network or telecommunication channels.
  - (d) in case of privatization and or any cases which will change a control over the Customer.
- 9.5 CUSTOMER can suspend or terminate this Agreement at its own discretion in the following cases:
- a) AZERFON commits a breach of the Agreement and fails to remedy that breach within 30 (thirty) calendar days of receiving a notice from CUSTOMER specifying the details of the breach and requesting remedy of same;
  - b) If the Customer has good reason to suspect that AZERFON, at the date of the entering into force of the Contract and while carrying out its obligations under the Contract, itself, its directors, officers or employees, shareholders, subcontractors, agents have offered, promised, given, authorized, solicited or accepted any undue pecuniary or other advantage of any kind (or implied that they will or might do any such thing at any time in the future) in any way connected with the Contract.
  - c) AZERFON ceases to carry on, all or substantially the whole of its business.
  - d) AZERFON's financial position deteriorates to such an extent that in the CUSTOMER's opinion the AZERFON's capability to adequately fulfill its obligations under the Agreement has been placed in jeopardy.
  - e) in case of expiration of licenses, permits or any authorizations of AZERFON to carry out its obligations under this Agreement.
  - f) the consolidation, merger, or amalgamation or any proposal for consolidation, merger or amalgamation of AZERFON with any other company, association, partnership, firm or other legal entity or entry into any profit sharing arrangement or joint venture with any other person which may lead to a lower quality of the services provided by Azerfon.
  - g) any material change (i) in the nature or scope of the business of Azerfon (including expansion into other activities or new commercial areas); or (ii) in the manner in which the business of Azerfon is conducted or which comprises, or may comprise a significant change to Azerfon's pricing or commercial policies.
  - h) If CUSTOMER has good reason to suspect fraudulent activity or misuse of Data or any other breach by AZERFON under this Agreement.
- 9.6 Upon termination or expiration of this Agreement:
- a) CUSTOMER's rights under Section 2 shall immediately expire;

- b) Each party shall return to the other party or destroy (if so authorized in writing by the other party) any Confidential Information in the party's possession or control, and cause an officer of that party to certify in writing to the other party that it has done so;
- c) CUSTOMER shall forthwith cease all use of AZERFON's Network.

## **10. INDEMNIFICATION AND LIMITED LIABILITY**

- 10.1 AZERFON shall keep the CUSTOMER indemnified against the claim made by a third party if these defects are due a sole reason of SIM Cards and problems arising in the connectivity services.
- 10.2 CUSTOMER acknowledges and agrees that AZERFON shall in no case be liable for any costs, expenses and/or loss of CUSTOMER incurred as a result of damages caused to the SIM Cards or failures incurred in the AMI. CUSTOMER shall always indemnify, hold free and harmless of any and all claims brought against AZERFON by third parties for any damaged SIM Cards in meters/devices.
- 10.3 Neither party shall be liable to the other party in contract, tort or otherwise, whatever the cause, for any loss of profit, business or goodwill or any indirect, incidental or consequential costs, damages or expenses of any kind.
- 10.4 In no event will either Party's total cumulative liability for all claims arising out of or related to this Agreement exceed the total amount of fees received by AZERFON or paid by CUSTOMER under this Agreement during the 6 (six) months except for liability for claims arising out of: (i) either Party's breach of its confidentiality obligations under Section 8 above;
- 10.5 AZERFON shall be liable for the complete fulfillment of the obligations under this Agreement, material and other damages caused to the CUSTOMER due to the defaults in the services in the amount as described in Service Level Agreement under this Agreement.

## **11. LAW AND JURISDICTION**

- 11.1 Law. This Agreement is governed by and shall be construed in accordance with laws of the Republic of Azerbaijan.
- 11.2 In the event of a dispute arising out of or relating to this Agreement (including non-contractual disputes or claims), the parties shall first seek settlement of the dispute by negotiation between senior executives of the parties. If they are unable to settle the dispute within 30 (thirty) days, or such other period as the parties shall agree in writing, the dispute including any question regarding the subject matter of this Agreement, its existence, its validity or termination, and any non-contractual disputes or claims relating thereto shall, subject to the next paragraph, exclusively be referred to and finally be resolved by a competent court of the Republic of Azerbaijan.

## **12. MISCELLANEOUS**

- 12.1 Assignments. Neither Party may assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other Party. AZERFON may attract subcontractors or otherwise transfer any or all of its obligations to its affiliates under this Agreement with the consent of CUSTOMER at any time during the term of Agreement.

- 12.2 Force majeure. Neither party shall be liable to the other for any delay or failure in performing its obligations under the Agreement to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable, provided that AZERFON shall use all reasonable endeavors to cure any events or circumstances such as natural disasters, wars, and resume performance under the Agreement. If any events or circumstances prevent AZERFON from carrying out its obligations under the Agreement for a continuous period of more than 1 (one) month, CUSTOMER may terminate this Agreement immediately by giving written notice to AZERFON.
- 12.3 Severability. Waiver. If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force and effect. The parties agree to replace any invalid provision with a valid provision, which most closely approximates the intent and commercial effect of the provision held to be invalid. The waiver by either party of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.
- 12.4 Data protection. Both Parties agree to comply with data protection and privacy laws applicable to the use of the AZERFON product.
- 12.5 Survival. AZERFON's rights to be paid and CUSTOMER's obligations to pay AZERFON all amounts due hereunder shall survive termination of this Agreement.
- 12.6 Entire Agreement. This Agreement, including the Appendices, constitutes the entire agreement between the parties hereto and supersedes all other agreements between the parties in relation to the subject matter of this Agreement. The Agreement cannot be modified, supplemented or rescinded except in writing signed by both parties. The Parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement. However, this shall not apply to any statement, representation or warranty made fraudulently or to any provision of this Agreement that was induced by fraud so that nothing in this Agreement shall affect the remedies available to the Parties in respect of any fraudulent matters.
- 12.7 Counterparts. This Agreement may be executed in multiple counterparts (e.g. by fax or scanned PDF, TIF or other electronic format), each of which shall be deemed an original and all of which taken together shall constitute one and the same Agreement.
- 12.8 Expenses: Each Party shall bear all costs and expenses, including all fees and expenses of agents, representatives, counsel and accountants employed by the Parties, incurred by it in connection with entering into this Agreement, and the other Parties shall have no liability in respect thereof.
- 12.9 Notices:  
All notices and communications hereunder are required to be sent to the address or facsimile number stated below (or such other address or facsimile number as subsequently notified in writing to the other party according to the provisions of this section): (i) by facsimile with

confirmation of transmission, (ii) by personal delivery, (iii) by commercial courier or by certified mail with written verification of delivery, or (iv) by email with confirmation of transmission. Notices personally delivered or sent by a properly transmitted facsimile shall be deemed received on the date sent. Notices sent by courier shall be deemed received on the same or the next Business Day after the notice was dispatched. Notices sent by certified mail shall be deemed received on the second Business Day after the notice was sent; postage prepaid using first class certified mail. Notices sent by email shall be deemed received on the first (1<sup>st</sup>) Business Day following the date that the email was sent, provided however, that if no email confirmation is delivered by the recipient of the notice to the sender within 24 hours following the delivery of such notice, such notice must be resent via facsimile and shall be deemed received on the first (1<sup>st</sup>) Business Day following the date that such notice was resent via facsimile.

A notice sent to the Customer hereunder should be sent to:

**“SUMGAYIT RES” LLC**

Inshaatchilar settlement, Afandiyev street 8, AZ5002, Sumgayit, Azerbaijan

Tel: (99412) 497 41 42

Fax: (99412) 492 63 55

Attn.: **Mr. Saleh Mammadli, Acting Director Sumgayit RES LLC**

E-mail: [smemmedli@azerenerji.gov.az](mailto:smemmedli@azerenerji.gov.az)

- 12.9 Language: The present Agreement was drawn up in two identical copies in English and Azerbaijani languages, a copy for each party. In case of any inconsistencies between the languages, text in Azerbaijani shall prevail.

**IN WITNESS** whereof the parties hereto have entered into this Agreement the day and year first above mentioned.