

Agreement for provision of FTTB Residential Broadband Service

("Supplier") and  
("Purchaser") hereby agree that, with effect from \_\_\_\_\_, the Supplier shall provide the following telecommunications service to the Purchaser in accordance with the terms and conditions set out below:

**A. Service**

FTTB Residential Broadband Service ("Service")

**B. Service specifications**

The Service offers TBE room facilities and optical connection, which carries a maximum of \_\_\_\_\_ subscribers from the Supplier's designated TBE room facilities to the closest Purchaser's exchange. The Service also includes necessary passive optical components as well as the supply of electrical power and equipment rack space in the TBE room.

There are \_\_\_\_\_ Purchaser's exchanges that also facilitate the Supplier's fiber connections. Locating in different regions, these exchanges will serve as the point of demarcation between the Purchaser's network and the Supplier's network. The Purchaser is required to provision in-house cabling within the Purchaser's exchange if necessary.

<b>Service</b>	<b>Specification</b>
TBE Room Facilities	<u>Equipment rack space (19") for DSLAM shelf mounting with rack height to support 10 x 134mm DSLAM height space</u>
Power Supply	<u>220V AC, 2 Amp. AC per DSLAM shelf</u>
Optical Fiber Specification	<u>Low Water Peak Singlemode G652C compliant</u>

Mean-Time-To-Repair of the Service: \_\_\_\_\_ hours

**C. Price schedule**

<b>Once-off Installation Charge</b>	<b>HKD</b>
Passive optical fiber	Waived
DSLAM	HK\$15,000 / DSLAM

Remarks:

1. There is no extra installation cost for additional subscriber.

Monthly Charge	HKD
FTTB port	HK\$60 / subscriber

Remarks:

1. The Service includes:

- a. passive optical fiber connection from designated residential building to the closest Purchaser's exchange;
- b. TBE room facilities (supply of electricity and equipment rack space); and
- c. operation and maintenance cost of the facilities.

2. The Service excludes:

- a. in-house wiring within the Purchaser's exchange;
- b. fiber transceivers between DSLAMs and optical fibers;
- c. blockwiring within designated residential building;
- d. DSLAM and customer premises modem;
- e. installation of the customer premises modem; and
- f. operation and maintenance of the DSLAM and customer premises modem.

#### D. Terms and conditions of services

##### 1. DEFINITIONS AND INTERPRETATION

- 1.1 Unless the context otherwise requires, the following words shall have the meanings given to them in this paragraph:

**Affiliates** means, with respect to one entity, any other entity which, directly or indirectly, controls, is controlled by or is under common control with, such entity. For the purpose of this Agreement, the term "control" means an entity's (i) ownership, directly or indirectly, of share in another entity entitling it to exercise in the aggregate at least fifty per cent (50%) of the voting power of the entity in question; or (ii) possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of or with respect to the entity in question, whether through ownership of shares in such entity, by contract or otherwise.

**Agreement** means these terms and conditions.

**Applicable Law** means (i) any law of Hong Kong in relation to the subject matter of this Agreement; (ii) any applicable duties and obligations under any telecommunications licence; and (iii) any relevant lawful determination, code of practice, decision, policy or direction of a Government Agency (including the

Telecommunications Authority) in Hong Kong. A reference to a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity or a rule of an applicable stock exchange and is a reference to that law as amended, consolidated or replaced.

**Billing Dispute** means any claim or dispute relating to Charges or an Invoice.

**Billing Dispute Notice** means a notice relating to a Billing Dispute as issued by the Purchaser to the Supplier under paragraph 5.1 of this Agreement.

**Billing Dispute Response** means a response provided by the Supplier to the Purchaser under paragraph 5.3 of this Agreement.

**Business Day** means a day other than Saturday, Sunday or public holiday in Hong Kong on which banks in Hong Kong are open for business.

**Charges** means the charges payable by the Purchaser for the Service as set out or referred to in this Agreement.

**Confidential Information** of a Party means all confidential information of a Party or any of its Affiliates (regardless of its form and whether or not the other Party becomes aware of it before or after the Service Commencement Date). The terms of this Agreement are the confidential information of the Parties.

**Consequential Loss** means any indirect, special, incidental, punitive or collateral Loss, which includes loss of profits, goodwill, bargain, or opportunities or loss or corruption of data or loss of anticipated savings or business whether caused by negligence or otherwise and whether arising out of or relating to the Contract, this Agreement or the Service or any failure to supply or delay in supplying the Service.

**Contract** means each individual agreement for the provisioning of any Service pursuant to an Order.

**Customer Information** means information of the Purchaser within the meaning of any telecommunications licence issued to the Supplier or its Affiliates or any Applicable Law and includes information identifying the Purchaser, the Service it purchases and its expenditure on Service.

**Customer Service** means a telecommunications service, if any, supplied by the Purchaser to a third party using the Service.

**Equipment** means the equipment, if any, provided by the Supplier to make available the Service to the Purchaser, which may be installed at the Premises excluding any equipment belonging to the Purchaser or any third party.

**FC Licence** means the Fixed Carrier Licence or any equivalent replacement telecommunications licence issued by the Telecommunications Authority under the Telecommunications Ordinance.

**FTNS Licence** means the Fixed Telecommunications Network Services licence or

any equivalent telecommunications licence (including the FC Licence) issued by the Telecommunications Authority under the Telecommunications Ordinance.

**Force Majeure Event** means anything outside the reasonable control of a Party including, but not limited to, industrial disputes of any kind, war declared or undeclared, blockade, disturbance, a natural disaster (such as lightning, earthquake, storm, flood, explosion or meteor), law or any power lawfully exercised by a Government Agency, any change in any Applicable Law, inability or delay in granting governmental or other approvals, consents, permits, licences or authorities, or telecommunications network outage or degradation which a Party cannot reasonably control.

**Government Agency** means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in Hong Kong and includes the Telecommunications Authority.

**Hong Kong** means the Hong Kong Special Administrative Region of the People's Republic of China.

**HK\$** means the lawful currency of Hong Kong.

**Intellectual Property Rights** means all rights conferred under statute, common law and equity in and in relation to trade marks, service marks, trade names, logos and get up, inventions, patents, designs, copyrights, circuit layouts, know-how, trade secrets and all rights and interests in them or licences to use any of them which may now or in the future subsist anywhere in the world.

**Interest Rate** means the prime lending rate set by the Hongkong and Shanghai Banking Corporation Limited as current from time to time for loans made in Hong Kong.

**Invoice** means an invoice provided by the Supplier setting out the Charges and other fees payable for the Service provided by the Supplier.

**Loss** includes loss, cost, damage, expense, liability and charge.

**Network** means the telecommunications network owned or operated by the Supplier in accordance with its telecommunications licence including all facilities and associated equipment used in, or in connection with, the telecommunications network.

**Order** means an offer to take and pay for any Service and signed by the Purchaser in the form specified by the Supplier from time to time.

**Premises** means any premises or place of the Purchaser in which the Service is used from time to time.

**Service Commencement Date** means the date the Supplier informs the Purchaser that the Service is made available to the Purchaser.

**Taxes** means any present or future tax, levy, impost, charge, or duty (together with any related interest, penalty, fine and expense related thereto resulting from the Purchaser's action or inaction) including, without limitation, any income tax, profits tax, goods and service tax, value added tax, which is levied or imposed by any Inland Revenue Department or any Government Agency in relation to the Service.

**Telecommunications Authority** means the person appointed as the Telecommunications Authority under the Telecommunications Ordinance (Cap. 106) in Hong Kong.

**Unauthorized Activity** means any act or omission in relation to the Network, the Service or the Customer Service that is in breach of any Applicable Law.

1.2 In this Agreement, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words which are gender neutral or gender specific include all genders;
- (c) an expression "person" includes a company, partnership, joint venture, association, corporation or other body corporate and a Government Agency;
- (d) a reference to a paragraph is a reference to a paragraph of this Agreement;
- (e) a reference to a document includes all amendments or supplements to that document, or replacements or novations of it; and
- (f) a reference to the words "includes", "including" or "example" are references without limitations.

## 2. SUPPLY OF SERVICES

- 2.1 The Supplier will supply the Service to the Purchaser in accordance with the provisions of this Agreement.
- 2.2 Before accepting an Order, the Supplier will use its reasonable endeavours to ensure that the Service can be delivered with care and skill in accordance with the provisions hereof from the Service Commencement Date specified in the Order and is entitled to take into account the availability of the Service to the Premises in deciding whether or not to accept the Order.
- 2.3 The Supplier does not guarantee continuous or fault free provision of the Service and shall not be responsible beyond what is provided for in this Agreement for the transmission of the Service over any other telecommunications network or beyond the Network termination point.

## 3. USE OF SERVICE

- 3.1 The Purchaser shall:

- (a) use the Service in accordance with this Agreement and all Applicable Law;
- (b) not use the Service or the Network in any manner that would cause the Supplier to be in breach of any Applicable Law;
- (c) not be directly or indirectly involved in any Unauthorized Activity;
- (d) promptly notify the Supplier of any Unauthorized Activity in relation to the Service, the Customer Service or the Network of which the Purchaser becomes aware;
- (e) co-operate with the Supplier in establishing procedures to eliminate or reduce Unauthorized Activities and the opportunity for Unauthorized Activities;
- (f) provide such information to the Supplier as is available to the Purchaser which may be of assistance to the Supplier in identifying and preventing Unauthorized Activities;
- (g) not use the Service:
  - (i) for any improper purpose or for the purpose of sending any unsolicited advertising material or any material of an obscene and indecent nature;
  - (ii) in any manner which is unauthorized, fraudulent, or illegal whether under any Applicable Law or otherwise; or
  - (iii) in any manner which constitutes an infringement of the rights of any person (including, without limitation, copyright and other Intellectual Property Rights and rights of confidentiality) or a violation or infringement of any duty or obligation in contract, tort or otherwise, to any third party;
- (h) promptly notify the Supplier of any fault in the Service or deterioration in the quality of the Service of which the Purchaser becomes aware;
- (i) comply with reasonable directions given by the Supplier from time to time in relation to :
  - (i) modifications required to any apparatus or equipment at the Premises or other action necessary to be taken to eliminate any interference, impediment or impairment to the Service or the Network; or
  - (ii) any use of the Service that is reasonable or prudent to ensure that the Purchaser complies with this paragraph 3.1;
- (j) not, and shall ensure that its employees, agents, authorized representatives or subcontractors do not, either by act or omission, interfere with or impede the use of, or operation of, or do anything likely to interfere with or impede the use of, the Service or the Network or any telecommunications service or network of a third party; and
- (k) not take or allow its employees, agents, authorized representatives or subcontractors to take any unauthorized action in relation to the Network or the Service.

3.2 In promoting or supplying any Customer Service or making any public statement in relation to the Service or any Customer Service, the Purchaser shall not make any representation that :

- (a) the Customer Service is supplied using the Network;
- (b) passes off or misrepresents that the Customer Service is provided, in whole or in part, by the Supplier; or
- (c) the Purchaser is the Supplier, its agent or authorized representative or is otherwise authorized to act for and on behalf of the Supplier in any way.

#### 4. CHARGES AND TAXES

- 4.1 The Purchaser shall pay the Charges for each Service to the Supplier in accordance with the terms of this Agreement. If the calculation for any amount or Charges (including any termination or cancellation Charges) under this Agreement commences on a date other than the first day of a month or terminates on a date other than the last day of a month, the relevant amount or Charges due for the past month shall be calculated pro-rata, on the basis of the actual number of days in the relevant month.
- 4.2 Records generated by the Supplier's Network and/or any interconnected network (if any) and call-logging procedures adopted by the Supplier will be used to calculate the matters to which those records relate.
- 4.3 All payments made by the Purchaser under this Agreement shall be made free of any deduction or withholding for or on account of any Taxes. Subject to paragraph 4.4, if the Purchaser is or was required by law to make any deduction or withholding from any payment due to the Supplier under this Agreement, then notwithstanding anything to the contrary contained in the Contract and/or the Agreement, the gross amount payable by the Purchaser to the Supplier shall be increased so that, after any such deduction or withholding for Taxes, the net amount received by the Supplier will not be less than what the Supplier would have received had no such deduction or withholding be required.
- 4.4 The Purchaser shall pay any applicable goods and service tax, value-added tax, sales tax, business tax or any other similar taxes, duties or charges in accordance with the Applicable Law.
- 4.5 All other Taxes, including any Taxes that are imposed on the profits, income, property or capital of the Supplier or the Purchaser or Taxes imposed by reason of the carrying on a business in Hong Kong or being incorporated in Hong Kong by the Supplier or the Purchaser shall be paid by the Supplier or the Purchaser respectively and shall not be passed through to each other.
- 4.6 Subject to paragraph 5.2, the Purchaser shall pay the whole amount of the Charges shown on each Invoice:
- (a) directly by electronic transfer to the bank account notified by the Supplier or such other means as the Parties may agree in writing;

- (b) within \_\_\_\_\_ days of the date of the Invoice; and
- (c) in HK\$ unless otherwise specified in the Order.

- 4.7 If the Purchaser makes payment by cheque, electronic transfer or direct debit and it is dishonoured or cancelled, the Purchaser shall pay the Supplier any resulting bank or other charges incurred by the Supplier and a reasonable administrative charge imposed by the Supplier.
- 4.8 The Purchaser shall pay interest, calculated daily at the Interest Rate, on any overdue amount owed to the Supplier from the date payment is due until payment in full is made (both dates inclusive).
- 4.9 The Supplier may include Charges omitted from an earlier Invoice in a subsequent Invoice, provided that the Supplier invoices the Purchaser for the omitted Charges within \_\_\_\_\_ months of the date of the Invoice from which the Charges were omitted. In the event that the Supplier does not invoice the Purchaser within the \_\_\_\_\_ month period, the omitted Charges shall be waived.

## 5. BILLING DISPUTES

- 5.1 The Purchaser shall notify the Supplier in writing of any Billing Dispute (“Billing Dispute Notice”) by specifying:
- (a) the Invoice in dispute;
  - (b) the Charges which are the subject of the Billing Dispute (“Disputed Amount”); and
  - (c) the reasons for the Billing Dispute and the facts on which the Purchaser relies.
- 5.2 Where a Billing Dispute is notified under paragraph 5.1:
- (a) the Purchaser may withhold the Disputed Amount but shall pay the balance of the Invoice;
  - (b) the Supplier shall review the Billing Dispute Notice in good faith in order to resolve the Billing Dispute as soon as practicable; and
  - (c) each Party shall provide all cooperation and relevant documents reasonably requested by the other Party in order to review and evaluate the Billing Dispute.
- 5.3 The Supplier will notify the Purchaser of its determination within \_\_\_\_\_ days of receipt of the Billing Dispute Notice (“Billing Dispute Response”), provided that the Supplier’s failure to notify the Purchaser of a Billing Dispute Response shall not constitute acceptance of the Disputed Amount or a waiver of any of the Supplier’s rights, powers or remedies under the Contract, this Agreement or otherwise.
- 5.4 If the Billing Dispute is not resolved by the Billing Dispute Response, either Party may refer the Billing Dispute to be resolved in accordance with paragraph 5.7.
- 5.5 Any Disputed Amount determined to be payable to the Supplier, in whole or in part, shall accrue interest at the Interest Rate from the date originally due until paid in full (both dates inclusive).

5.6 Where an Invoice has been accepted (whether deemed or otherwise) by the Purchaser and the Purchaser has reason to believe that there has been a billing error in that Invoice, the Purchaser may, within \_\_\_\_\_ months of the date of the Invoice, make a claim for the error to be corrected by amendment to a subsequent Invoice. If no claim is made within \_\_\_\_\_ months of the date of an Invoice, the Purchaser agrees to waive any such claims relating to the Invoice.

5.7 If a Billing Dispute remains unresolved despite the reasonable good faith efforts of the Parties to resolve the Billing Dispute under this paragraph, either Party may (but shall not be obliged to) prior to the commencement of any legal proceedings (other than for urgent interlocutory relief) refer the Billing Dispute to the Hong Kong International Arbitration Centre (“HKIAC”) and finally resolved by arbitration in accordance with the Domestic Arbitration Rules. The number of arbitrators shall be one (1). The language to be used in the arbitral proceedings shall be English. The arbitrator shall be appointed by the HKIAC.

## 6. EQUIPMENT

6.1 The Equipment is and will at all times remain the property of the Supplier.

6.2 The Purchaser is responsible for the Equipment while in its Premises or while it is in the Purchaser’s control and custody and the Purchaser will be liable to the Supplier for any loss or damage to the Equipment, except in so far as any such loss or damage is due to the negligent act, omission or willful misconduct of the Supplier.

6.3 The Purchaser shall:

- (a) notify the Supplier immediately of any damage, fault, theft or loss of the Equipment;
- (b) not use or allow any person to use the Equipment for any purpose other than the purpose for which it was provided;
- (c) not alter, tamper with or attempt to repair the Equipment in any way without the Supplier’s prior written consent;
- (d) not, unless otherwise mutually agreed by the Parties, remove, tamper with or obliterate any identification mark affixed to the Equipment showing that it is the property of the Supplier or any other marks belonging to the Supplier;
- (e) not affix any Equipment to any part of any premises or land in a manner that causes it to become a fixture to those premises or that land;
- (f) not use the Equipment in any manner which would interfere with the efficient operation of any telecommunications network or service; and
- (g) not connect any Equipment to any other equipment or service without the prior written consent of the Supplier, which consent shall not be unreasonably delayed or withheld.

6.4 The Supplier will at its discretion repair or replace the Equipment and such repair and replacement will be:

- (a) free of charge for the Purchaser if required as a result of fair wear and tear on a negligent act, omission or willful misconduct of the Supplier; and
- (b) otherwise invoiced to the Purchaser at the Supplier's standard repair rates.

## 7. ACCESS TO PREMISES

The Purchaser shall:

- (a) ensure that the Supplier, its employees, agents, authorized representatives and subcontractors have access to the Premises at all reasonable time, upon reasonable prior written notice delivered by the Supplier to the Purchaser, to :
  - (i) install, inspect, maintain, repair, replace, remove or recover the Equipment prior to, during or, in case of removal of the Equipment, after the provision of the Service;
  - (ii) inspect any apparatus, including machinery, meters, transformers or fittings which the Supplier, upon duly justified reasons, considers is, or may be, causing or likely to cause any interference, impediment or impairment to the Service or the Network;
  - (iii) inspect any other equipment located in the Premises and used in connection with the Service or the Equipment; and
  - (iv) determine whether or not the Purchaser is engaging in any Unauthorized Activity in relation to the use of the Service or the Network; and
- (b) provide safe access to the Premises and safe conditions for the Supplier, its employees, agents, authorized representatives and subcontractors while on the Premises.

## 8. LIMITATION OF LIABILITIES

8.1 To the extent permitted by law:

- (a) the Parties shall not be liable for any Consequential Loss; and
- (b) conditions and warranties implied by custom, the general law or statute are excluded.

8.2 To the extent permitted by law, the Parties' liability under this Agreement for or in relation to any damage to property is limited to the repair or replacement of that property and paying the cost of repair or replacement, whichever is less. Nothing in

this Agreement excludes or restricts a Party's liability for death or personal injury resulting from the negligence of that Party.

8.3 Subject to paragraphs 8.1 and 8.2 and to the extent permitted by law, each Party's liability under this Agreement is limited to :

- (a) HK\$1,000,000 for any one incident or series of events arising from a single incident or common cause; and
- (b) an aggregate amount of HK\$2,000,000 for all liabilities arising out of or in connection with this Agreement.

This paragraph shall not apply to the obligations of the Purchaser to pay any Charges for the Service provided under this Agreement.

8.4 Subject to paragraphs 8.1, 8.2 and 8.3 above, the Purchaser shall indemnify and keep the Supplier fully indemnified against any Loss which the Supplier suffers or incurs as a result of or by reason of or in connection with :

- (a) any negligence in the performance or attempted performance of this Agreement by the Purchaser ;
- (b) any Unauthorized Activity by the Purchaser ;
- (c) any claim by any person or liability of the Supplier under any Applicable Law in relation to any claim for infringement of any Intellectual Property Right (including copyright or any right in trade name or design) or any claim arising out of or relating to the use of the Service to carry material of obscene, indecent or defamatory nature; and
- (d) the death or personal injury of any employee, agent, authorized representative or subcontractor of the Supplier as a result of access to the Premises under this Agreement if the death or personal injury is caused by any employee, agent, authorized representative or subcontractor of the Purchaser or by any equipment or facility of the Purchaser,

other than to the extent that such Loss is caused by the negligence or the willful default of the Supplier, its employee, agents, authorized representatives or subcontractors.

8.5 Subject to paragraphs 8.1, 8.2 and 8.3 above, the Supplier shall indemnify and keep the Purchaser fully indemnified against any Loss which the Purchaser suffers or incurs as a result of or by reason of or in connection with:

- (a) any negligence in the performance or attempted performance of this Agreement by the Supplier;
- (b) any Unauthorized Activity by the Supplier;

- (c) any claim by any person or liability of the Purchaser under any Applicable Law in relation to any claim for infringement of any Intellectual Property Right (including copyright or any right in trade name or design) or any claim arising out of or relating to the use of the Service to carry material of obscene, indecent or defamatory nature; and
- (d) the death or personal injury of any employee, agent, authorized representative or subcontractor of the Purchaser as a result of access to the Premises under this Agreement if the death or personal injury is caused by any employee, agent, authorized representative or subcontractor of the Supplier or by any Equipment,

other than to the extent that such Loss is caused by the negligence or the willful default of the Purchaser, its employees, agents, authorized representatives or subcontractors.

8.6 The Purchaser shall use all reasonable commercial efforts in any contracts in relation to any Customer Service ensure that it excludes to the fullest extent possible the liability of the Supplier.

## 9. SUSPENSION OR WITHDRAWAL OF THE SERVICES

9.1 Subject to paragraph 9.1(c) below, the Supplier may, at any time on such notice as is reasonably practicable to the Purchaser, suspend, withdraw or restrict all or part of the Service at any time until further notice to the Purchaser if :

- (a) the Supplier can provide the Purchaser with supporting evidence to demonstrate that Unauthorized Activities have occurred or are occurring in relation to the Service;
- (b) the provision of the Service would cause the Supplier to be in breach of any Applicable Law; or
- (c) such suspension, withdrawal or restriction of the Service is necessary for the Supplier to :
  - (i) carry out planned maintenance, repair or upgrading of any equipment, software or facility forming part of the Network and the Supplier has given the Purchaser Business Days' prior written notice; or
  - (ii) protect the integrity of the Network or to carry out unplanned maintenance, repair or upgrading of any equipment, software or facility forming part of the Network in emergency situations.

9.2 If any of the Service is suspended, withdrawn or restricted under paragraph 9.1(c), the Supplier undertakes to ensure there is a minimum disruption to the Service.

9.3 Without prejudice and in addition to paragraph 8, the Supplier shall not be liable to the Purchaser nor any third person for any Loss resulting from or in connection with a suspension, withdrawal or restriction of the Service under this paragraph 9.

9.4 The exercise of the Supplier's rights to suspend, withdraw or restrict all or part of the Service under this paragraph is without prejudice to any other rights or remedies available under the Contract and/or the Agreement and does not constitute a waiver of the Supplier's right to subsequently terminate this Agreement.

## 10. CONFIDENTIALITY, PUBLICITY AND INTELLECTUAL PROPERTY RIGHTS

10.1 Subject to paragraphs 10.2 to 10.4, each Party must:

- (a) use the other Party's Confidential Information only for the purposes of this Agreement and must keep confidential and not disclose to any person the other Party's Confidential Information without the prior consent of the disclosing Party; and
- (b) not make press or other public announcements or issue press releases about the Service, the Contract, this Agreement or the transactions related to it without the prior written approval of the other Party

10.2 A Party may disclose or use the Confidential Information without consent of the disclosing Party if the Confidential Information is:

- (a) lawfully in the possession of the receiving Party through sources other than the disclosing Party; or
- (b) generally and publicly available (except where such availability is due to a breach of the Contract or this Agreement); or
- (c) such disclosure or use is:
  - (i) required or authorized by the Applicable Law; or
  - (ii) required by the listing rules of a stock exchange on which the receiving Party's securities or the securities of an Affiliate of the receiving Party are or will be listed or quoted; or
  - (iii) strictly required in connection with legal proceedings or a dispute resolution procedure relating to the Contract or this Agreement.

To the extent possible, prior to any disclosure under paragraph 10.2(c), the receiving Party shall provide written notification to the disclosing Party as soon as is reasonably possible. Such written notification shall include the reason for the disclosure, and the information to be disclosed. Each Party shall assist the other Party, to the extent necessary, in the procurement or any protection of the other Party's rights to or in any of the Confidential Information.

10.3 A Party may disclose the Confidential Information of the other Party if that disclosure is to the employees, contractors, or professional advisers of that Party or its Affiliates who have a need to know that information in relation to provision of the Service and who have agreed to keep it confidential on terms corresponding to those set out in this paragraph 10.

10.4 Either Party may disclose Confidential Information of the other Party to the extent required by a lawful direction of any Government Agency.

## 11. TERM AND TERMINATION

- 11.1 This Agreement commences on \_\_\_\_\_ and shall continue to be in full force and effect unless otherwise terminated in accordance with this Agreement.
- 11.2 Either Party may immediately terminate any Services (in whole or in part), any Contract (in whole or in part) or this Agreement (in whole or in part) with or without prior notice if:
- a. the other Party is in material breach of the Contract and/or this Agreement;
  - b. the other Party becomes insolvent or bankrupt, subject to a winding up proceeding, has a receiver appointed, is dissolved or in the process of dissolution, makes any arrangement for the benefit of creditors, or initiates or becomes subject to any other form of insolvency proceeding;
  - c. the Supplier is prohibited from supplying the Services under any Applicable Law;
  - d. any Force Majeure Event referred to in paragraph 1.1 continues for more than \_\_\_\_\_ days;
  - e. the Supplier ceases to be the holder of an FTNS Licence in Hong Kong; or
  - f. the Purchaser ceases to be the holder of an FC Licence in Hong Kong.
- 11.3 On expiration of this Agreement, this Agreement shall continue to apply to any Contract existing at the time of termination of this Agreement until expiration or termination of that Contract in accordance with this Agreement.
- 11.4 On termination or expiration of the Contract, the Service or this Agreement (as the case may be):
- i. the Purchaser shall cease to use any of the Equipment and the relevant Services; and
  - ii. the Supplier is authorized to access the Premises, upon prior written notice delivered to the Purchaser, within usual business hours for the purposes of removing the Equipment or terminating the relevant Services; and
  - iii. each Party shall, at its own cost and expense, deliver to the other Party or, after notice from that other Party, destroy or erase the other Party's Confidential Information.
- 11.5 Termination or expiration of the Contract and/or this Agreement shall not affect the rights of the Parties, which have accrued prior to the date of termination or expiration.

## 12. GENERAL PROVISION

- 12.1 Notwithstanding any other provisions in this Agreement, the Parties shall not be liable for any failure to fulfill its duties and obligations under this Agreement if such a fulfillment is delayed, prevented, restricted or interfered with for any reason as a result of a Force Majeure Event provided that the Party affected by the Force Majeure Event (a) has used its best endeavours to avoid and mitigate the effect of the Force Majeure Event and to carry out its duties and obligations under this Agreement in any other way as reasonably practicable; and (b) notifies the other Party as soon as reasonably practicable of the event or circumstance and of the period for which it expects performance of its duties and obligations to be delayed, prevented, restricted or interfered with.
- 12.2 The rights, powers, authorities, discretions and remedies of a Party under this Agreement are cumulative with any other rights, powers, authorities, discretions and remedies provided by law independently of this Agreement. A Party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a Party does not prevent a further exercise of that or of any other right, power or remedy.
- 12.3 A provision or a right, power or remedy under this Agreement may not be waived except in writing signed by the Party granting the waiver, or varied except in writing signed by the Parties. Failure or delay of any Party at any time to take action against the other Party as provided in this Agreement will not affect such Party's right to require full performance of this Agreement at any time thereafter. Waiver by any Party of a breach of any provisions of this Agreement will not constitute a waiver of any subsequent breach nor in any way affect any right, power, or remedy of that Party under this Agreement.
- 12.4 Each of the provisions of this Agreement is several and distinct from the others, and if one or more of such provisions is or becomes invalid, illegal or unenforceable, it shall not affect the legality, validity and enforceability of the other provisions of this Agreement. The illegal, invalid or unenforceable provision will be treated as being deleted from this Agreement and no longer incorporated but all other provisions of this Agreement will continue to be effective and binding.
- 12.5 Nothing in this Agreement is to be construed as creating a partnership, association, trust or joint venture between the Supplier and the Purchaser. Neither the Supplier nor the Purchaser or any of their employees, agents, representatives, contractors or subcontractors is deemed an employee, agent, representative, contractor or subcontractor of the other Party. Neither the Supplier nor the Purchaser has the authority to bind or incur any liability for and on behalf of the other Party and no such authority is to be implied.
- 12.6 Time shall be of the essence in all respects for each Party to undertake and perform its duties and obligations under this Agreement.
- 12.7 Each indemnity in this Agreement is a continuing indemnity, separate and independent from the other obligations of the Parties and survives termination, suspension or expiration of this Agreement.

12.8 Unless expressly provided in this Agreement, this Agreement supersedes all previous arrangements, understandings or agreements in respect of this subject matter and constitutes the entire agreement between the Parties on the subject matter of this Agreement.

12.9 The Contract and/or this Agreement is governed by and construed with the laws of Hong Kong. Subject to paragraph 5.7, each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Hong Kong.

**E. Other terms and conditions**

1. The provision of the Service is subject to the availability of the Supplier's infrastructure; or availability of the suitable facilities at the installation addresses.
2. The Service is subject to a Minimum Service Period of \_\_\_\_\_ months ("Minimum Service Period"). The Purchaser agrees to settle the termination charge calculated as the rental payable from the date of early termination until the expiry of the Minimum Service Period when service termination is prior to the Minimum Service Period.
3. The Purchaser may terminate a Contract by giving \_\_\_\_\_ written notice to the Supplier at any time after expiration of the Minimum Service Period.
4. The Service shall be subject to paragraph 3 of Schedule 2 (on loyalty discount after the third anniversary of the Effective Date) and clause 11.9 of the Master Services Agreement For Network Services dated \_\_\_\_\_ entered into between the Supplier (as supplier) and the Purchaser (as purchaser).

For and on behalf of

For and on behalf of

\_\_\_\_\_

\_\_\_\_\_

Name:

Name:

Title:

Title:

Date:

Date: