

GENERAL TERMS ID No.

## GENERAL TERMS

### PARTIES

1.

2.

#### Agreement

1. All Services provided by \_\_\_\_\_ to the Customer will be governed by:

- (a) these General Terms;
- (b) the relevant Customer Order; and
- (c) the relevant Service Terms,

which together form a contract between the parties (Contract). All Contracts together form the entire agreement between the parties with respect to the provision by \_\_\_\_\_ of all Services (Agreement).

2. \_\_\_\_\_ shall supply each Service to the Customer from the applicable Service Commencement Date until the Service is terminated in accordance with the Contract or the Agreement.

3. The Contract is effective from the last date on which both parties execute each of the General Terms and the Service Terms and \_\_\_\_\_ accepts a Customer Order, and continues until terminated in accordance with the Contract or the Agreement.

Signed by the authorised representative of

Signed by the authorised representative of

\_\_\_\_\_  
Signature of Authorised Representative

\_\_\_\_\_  
Signature of Authorised Representative

\_\_\_\_\_  
Name of Authorised Representative (Print)

\_\_\_\_\_  
Name of Authorised Representative (Print)

\_\_\_\_\_  
Position

\_\_\_\_\_  
Position

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## GENERAL TERMS

Capitalised terms have the meaning given to them in the Definitions set out in clause 16.

### 1. THE CONTRACT

- 1.1 These General Terms shall govern all Customer Orders, except and to the extent amended by an annex to a specific Customer Order that has been executed by both parties.
- 1.2 The Customer Order and applicable Service Terms shall be automatically incorporated into the Contract at the time \_\_\_\_\_ notifies the Customer that it accepts the Customer Order.

### 2. VARIATION OF SERVICE TERMS AND CHARGES

- 2.1 Service Terms or Charges may be varied by \_\_\_\_\_ at any time after the end of the Minimum Commitment Period on \_\_\_\_\_ days' notice to the Customer, such variation to be effective on the later of the end of the Minimum Commitment Period or the end of the \_\_\_\_\_ day notice period.
- 2.2 In the event \_\_\_\_\_ notifies the Customer of its intention to vary Service Terms or Charges, the Customer has the right to terminate the affected Service effective on the later of \_\_\_\_\_ days' notice or the end of the Minimum Commitment Period.

### 3. CHARGES AND TAXES

- 3.1 The Customer shall pay the Charges for each Service to \_\_\_\_\_ in accordance with the terms of the Contract.
- 3.2 Records generated by the \_\_\_\_\_ Network or any interconnected network will be used to calculate the matters to which those records relate (e.g., including, but not limited to, Charges or Service Levels).
- 3.3 The Charges do not include any Tax. \_\_\_\_\_ shall be entitled to charge an additional amount equal to any Tax applicable to the Service or Charges.
- 3.4 Subject to this clause 3.4, the Customer shall make each payment to \_\_\_\_\_ without any set off or counterclaim, unless the parties agree and execute a separate set off arrangement which allows the Customer to set off such payments, and without deduction or withholding of any Taxes. If at any time an Applicable Law obliges the Customer to make a deduction, withholding or payment in respect of Taxes from any amount paid or payable to \_\_\_\_\_, the Customer shall:
- (a) notify \_\_\_\_\_ of the obligation as soon as the Customer becomes aware of it;
- (b) ensure that the deduction, withholding or payment does not exceed the minimum amount required by the Applicable Law;

(c) pay to the relevant government agency the full amount of the deduction, withholding or payment by the due date and promptly deliver to \_\_\_\_\_ a copy of any receipt, certificate or other proof of payment satisfactory to \_\_\_\_\_; and

(d) indemnify \_\_\_\_\_ against the deduction, withholding or payment in respect of any amount paid or payable to \_\_\_\_\_ by paying \_\_\_\_\_, at the time that the payment to \_\_\_\_\_ is due, an additional amount that ensures that, after the deduction or withholding is made, \_\_\_\_\_ receives a net sum equal to the sum it would have received if the deduction or withholding had not been made.

- 3.5 The indemnification in clause 3.4(d) shall not apply to any Tax deduction or withholding that \_\_\_\_\_ is entitled to subsequently recover from the relevant government agency.

### 4. INVOICING AND PAYMENT

- 4.1 Subject to clause 5.2, the Customer shall pay the whole amount of the Charges shown on each Statement:

- (a) directly by electronic transfer to the bank account notified by \_\_\_\_\_ or such other means as the parties may agree in writing;
- (b) within \_\_\_\_\_ days of the date of the Statement; and
- (c) in US dollars unless otherwise specified on the Customer Order.

- 4.2 Subject to clause 5, the Customer shall pay interest, calculated daily at the Interest Rate, on any overdue amount owed to \_\_\_\_\_ from the date payment is due until payment in full is made.

- 4.3 \_\_\_\_\_ may include Charges omitted from an earlier Statement in a subsequent Statement, provided that \_\_\_\_\_ invoices the Customer for the omitted Charges within \_\_\_\_\_ months of the date of the Statement from which the Charges were omitted.

- 4.4 \_\_\_\_\_ may deduct from any money owed by \_\_\_\_\_ to the Customer any amount:

- (a) owed by the Customer to \_\_\_\_\_ or to a \_\_\_\_\_ Affiliate, in which case \_\_\_\_\_ indemnifies the Customer against any further claim by the \_\_\_\_\_ Affiliate in respect of the amount deducted; or
- (b) owed by a Customer Affiliate to \_\_\_\_\_ or a \_\_\_\_\_ Affiliate, in which case \_\_\_\_\_ shall release or cause the \_\_\_\_\_ Affiliate to release the Customer Affiliate from the debt for the deducted amount.

- 4.5 \_\_\_\_\_ may deduct from any money owed by \_\_\_\_\_ to a Customer Affiliate any amount owed by the Customer:

(a) to \_\_\_\_\_, in which case the Customer indemnifies \_\_\_\_\_ against any further claim by the Customer Affiliate in respect of the deducted amount; or

(b) to a \_\_\_\_\_ Affiliate, in which case the Customer indemnifies \_\_\_\_\_ against any further claim by the Customer Affiliate in respect of the deducted amount and indemnifies the Customer against any further claim by the \_\_\_\_\_ Affiliate in respect of the deducted amount.

4.6 \_\_\_\_\_ may apply in satisfaction of any money owed by a \_\_\_\_\_ Affiliate to the Customer any amount owed by the Customer to \_\_\_\_\_, in which case \_\_\_\_\_ indemnifies the Customer against any further claim by \_\_\_\_\_ in respect of the applied amount.

## 5. BILLING DISPUTES

5.1 The Customer shall notify \_\_\_\_\_ of any Billing Dispute (**Billing Dispute Notice**) by specifying:

- (a) the Statement 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 Customer relies.

The Billing Dispute Notice must be received by \_\_\_\_\_ within \_\_\_\_\_ days of the date of the Statement, otherwise the relevant Statement is deemed accepted.

5.2 Where a Billing Dispute is notified under clause 5.1:

- (a) the Customer may withhold the Disputed Amount but shall pay the balance of the Statement;
- (b) \_\_\_\_\_ shall review the Billing Dispute Notice in good faith in order to resolve the Billing Dispute as soon as practicable; and
- (c) the Customer shall provide all cooperation reasonably requested by \_\_\_\_\_ in order to review and evaluate the Billing Dispute.

5.3 \_\_\_\_\_ will notify the Customer of its determination within \_\_\_\_\_ days of receipt of the Billing Dispute Notice (**Billing Dispute Response**), provided that \_\_\_\_\_ failure to notify the Customer of a Billing Dispute Response shall not constitute acceptance of the Disputed Amount or a waiver of any of rights under the Contract.

5.4 If the dispute is not resolved by the Billing Dispute Response, either party may enforce its rights and seek any remedy it has under the Contract, subject to clause 15.13.

5.5 Where a Statement is accepted (whether deemed or otherwise), then \_\_\_\_\_ may sue upon the amount due (**Debt**) in any court of competent jurisdiction and, at \_\_\_\_\_ option, under the law of that jurisdiction without reference to its conflicts of law principles.

5.6 Any Disputed Amount determined to be payable to \_\_\_\_\_, in whole or in part, shall accrue interest at the Interest Rate from the date originally due until paid in full.

5.7 Where a Statement has been accepted (whether deemed or otherwise) and the Customer has reason to believe there has been a billing error in that Statement, the Customer may, within \_\_\_\_\_ months of the date of the Statement, make a claim for the error to be corrected by amendment to a subsequent Statement, in accordance with clause 12 (Dispute Resolution). If no claim is made within \_\_\_\_\_ months of the date of a Statement, the Customer agrees to waive any such claims relating to the Statement.

## 6. NOT USED

## 7. USE OF THE SERVICES

7.1 The Customer shall:

- (a) use a Service and shall ensure that third parties use services supplied using the Service in accordance with all Applicable Laws;
- (b) promptly advise \_\_\_\_\_ of any fault in the Service; and
- (c) comply with reasonable directions given by \_\_\_\_\_ from time to time in relation to modifications required to any equipment connected to any Service or other action necessary to eliminate any impairment of a Service or the \_\_\_\_\_ Network.

7.2 The Customer shall promptly provide \_\_\_\_\_ (free of charge) with all information and co-operation which \_\_\_\_\_ may reasonably require from time to time to enable \_\_\_\_\_ to proceed with the performance of its obligations under the Contract without interruption.

## Equipment

7.3 Except where expressed otherwise in the Contract:

- (a) each party shall be responsible for the safe and proper operation and maintenance of its own network and equipment and third party networks and equipment which it permits to be connected to its network; and
- (b) the party who owns or occupies the premises on which the other party's equipment is located;

- (i) shall take reasonable steps to ensure the security and safety of the other party's equipment (including in relation to the supply of air-conditioning, electricity and other utility services and environmental conditions required to operate the equipment);
- (ii) shall notify the other party immediately of any damage, fault, theft or loss of such equipment;
- (iii) shall not and shall not allow a third party to alter, tamper with or attempt to repair such equipment without the other party's prior consent;
- (iv) shall comply with all reasonable instructions notified by the other party to protect the other party's ownership of such equipment;
- (v) shall not connect any such equipment to any other equipment or service except as expressly authorised by the other party; and
- (vi) shall provide the other party with access to the premises at all reasonable times and in accordance with all reasonable written access requirements to install or inspect, maintain, repair, replace or remove the other party's equipment.

- 7.4 shall repair or replace equipment which is located at Customer premises:
- (a) if required as a result of fair wear and tear or a deliberate, reckless or negligent act or omission of , free of charge; and
  - (b) otherwise, charged at reasonable time and materials rates.

Whether any such equipment shall either be repaired or replaced shall be at sole discretion.

#### Security

- 7.5 The Customer shall take every reasonable precaution in the use of the Services to prevent contamination of any software or hardware or diffusion of any software or hardware contamination, including computer viruses, worms or trojan horses.

#### Access to Premises

- 7.6 In order to allow to exercise its rights and perform its obligations under the Contract, the Customer shall permit , its employees, representatives and agents to enter any relevant premises owned or occupied by the Customer in

accordance with the Customer's reasonable access requirements, as notified to

#### Public statements

- 7.7 Except where a party has obtained prior consent from the other party, a party shall not make any representation or public statement regarding the existence of the Contract or the Services provided thereunder. Nothing in this clause 7.7 shall prevent the Customer from disclosing to its individual customers or its Affiliates, or from disclosing to its Affiliates or third party suppliers, that the parties have contracted for the provision of the Services.

#### 8. CUSTOMER INFORMATION

- 8.1 The Customer agrees that may collect, retain and use Customer Information in relation to the Services in order to enable to exercise its rights and perform its obligations under this Contract or as otherwise required by Applicable Law.

#### 9. LIABILITY AND INDEMNITY

- 9.1 Nothing in the Contract shall limit either party's liability for death or personal injury resulting from its negligence or the negligence of its employees, agents or contractors while acting in the course of their employment, or for any other liability to the extent that it cannot be limited by law.

- 9.2 shall provide the Services using reasonable care and skill. Except as expressly provided in the Contract or due to intentional or wilful misconduct, shall have no other obligation, duty or liability whatsoever in contract, tort or otherwise to the Customer arising from or in any way connected to the Contract.

- 9.3 The Customer's sole and exclusive remedy relating to the supply or failure to supply the Services, including a failure to meet the applicable Service Levels, shall be as provided by the relevant Service Terms.

- 9.4 Subject always to the contractual obligations to make payments pursuant to the terms of the Contract, neither party shall be liable to the other party in contract, tort or otherwise, including, without limitation, any liability for negligence or for breach of statutory duty for:

- (a) any loss of revenue, business, contracts, profits, or anticipated savings (in the form of an expense a party expects to avoid incurring or incur in a lesser amount as a result of using the Services); or
- (b) any indirect, incidental, special or consequential damages or loss of goodwill, howsoever arising.

- 9.5 Notwithstanding anything to the contrary in any Contract, except in the case of death or personal injury, maximum liability arising out of or in connection with a Contract shall be limited to:
- (a) for any one incident or series of events arising from a single incident or common cause; and
  - (b) an aggregate amount of for all liability arising out of or in connection with the Contract.
- 9.6 EXCEPT AS SPECIFICALLY PROVIDED HEREIN, MAKES NO WARRANTY, EXPRESS OR IMPLIED BY STATUTE, COMMON LAW OR OTHERWISE, TO THE CUSTOMER AS TO QUALITY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY OF THE SERVICES PROVIDED HEREUNDER, OR AS TO ANY OTHER MATTER. ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.
- 9.7 Subject to clause 9.4, each party (Indemnifying Party) shall hold harmless, indemnify and defend the other party and its employees, officers, directors, agents, shareholders and affiliates (Indemnified Party) from and against, and assumes all liability for all damages, losses, costs and expenses (including reasonable attorneys' fees, costs and expenses) resulting from the following:
- (a) any injury, loss or damage to any person, tangible property or facilities of any third person or entity arising under the Contract due to the negligence or wilful misconduct of the Indemnifying Party, its employees, agents or contractors (including, without limitation, the Customer's authorised local telecommunications providers); and
  - (b) any claims arising out of any violation by the Indemnifying Party of any regulation, rule, statute or court order of any governmental agency, court or body in connection with the Contract.
- 9.8 The Customer agrees to defend, hold harmless and indemnify and its Affiliates and employees, officers, directors, agents and shareholders against all direct damages, losses, costs, and expenses arising out of the Customer's use of the Services.
- 9.9 In satisfying any indemnity obligation under clause 9.7 or 9.8, the Indemnifying Party shall defend the Indemnified Party with counsel reasonably acceptable to the Indemnified Party. The Indemnifying Party cannot compromise or otherwise settle a claim or action against the Indemnified Party without the consent of the Indemnified Party, which consent shall not be unreasonably withheld, conditioned or delayed.
- 9.10 The obligations set forth in this clause 9 to defend, hold harmless and indemnify shall survive the expiry or termination of a Contract or the Agreement.
- 10. SUSPENSION AND TERMINATION**
- 10.1 The term of any Service provided under a Contract will automatically continue beyond the Minimum Commitment Period until terminated by either party in accordance with the terms of the Contract. Either party may terminate a Service at any time after the end of the Minimum Commitment Period on days' notice.
- 10.2 Prior to the end of the Minimum Commitment Period for a Service, the Customer may terminate the Service on days' notice, in which case the Customer shall pay the applicable Cancellation Charges as a genuine pre-estimate of loss and not as a penalty.
- 10.3 The Customer is not entitled to suspend or terminate a Contract or the Agreement, whether in their entirety or in respect of particular Services, as a result of any failure to meet any Service Levels for which is responsible, except where the right to terminate or suspend is expressly provided in the relevant Contract.
- 10.4 may suspend, restrict, de-activate or terminate the operation of any Service or suspend or terminate a Contract or the entire Agreement between the parties (including a Service prior to the end of the Minimum Commitment Period) as follows:
- (a) At any time on as much notice as is reasonably practicable (if any) until further notice to the Customer in the following circumstances:
    - (i) to comply with an order, instruction or request of a Government agency, emergency service or other competent authority; or
    - (ii) to reduce or prevent fraud or interference within the Network; or
    - (iii) in respect of a Regulatory Event, the parties have been unable to negotiate variations to the Contract as may be required by a Regulatory Event or reasonably believes that continued supply of the affected Service would, as a result of the Regulatory Event, expose to significant risk of adverse legal or economic consequences; or

- (iv) to carry out repairs, maintenance, servicing or upgrading of any equipment, software or facility forming part of Network, whether planned or required due to an emergency, provided that shall have no right to terminate a Service in order to carry out such activities and shall comply with notice requirements for scheduled activities in accordance with the relevant Service Terms.

In the event of any suspension, deactivation restriction or termination of a Service pursuant to 10.4(a), shall use reasonable endeavours to minimize disruption to the Customer.

- (b) For a breach of a Contract not involving payment of Charges by the Customer:

- (i) if the breach continues for Business Days after has given notice of the breach, may suspend a Service under that Contract immediately with no further notice; and
- (ii) if the breach continues for days after has given notice of the breach, may terminate the entire Agreement (including all or some Contracts or Services, at discretion) immediately on notice to the Customer.

- (c) For a breach of a Contract involving payment of Charges by the Customer:

- (i) If the breach continues for Business Days after has given notice of the breach, may suspend a Service or Services under that Contract immediately with no further notice; and
- (ii) if the breach continues for days after has given notice of the breach, may terminate the entire Agreement (including all or some Contracts or Services, at discretion) immediately on notice to the Customer.

In the event that exercises its right of termination for breach pursuant to clauses 10.4(b) or (c) prior to the end of the Minimum Commitment Period in respect of any particular Service, then the Customer shall pay the applicable Cancellation Charge(s) for that Service as a genuine pre-estimate of loss and not as a penalty.

- 10.5 Notwithstanding any other provision of a Contract, either party may suspend or terminate a Contract

or any particular Service thereunder upon notice (including in respect of Services which are subject to a Minimum Commitment Period) if:

- (a) the other party breaches any material term of the Contract which is not capable of remedy;
- (b) the other party breaches any material term of the Contract which is capable of remedy and the other party fails to remedy the breach within days after receiving notice to do so;
- (c) the other party becomes subject to an Insolvency Event;
- (d) provided a party has complied with its obligations under clause 13.1, a Force Majeure Event substantially and adversely affecting the ability of that party to perform its obligations under the Contract continues for a period of months;
- (e) the other party ceases to carry on business for a period of more than days without the prior consent of the terminating party.

In the event that exercises its right of termination pursuant to clause 10.5 (a), (b), (c) or (e) prior to the end of the Minimum Commitment Period in respect of any particular Service, then the Customer shall pay the applicable Cancellation Charge for that Service as a genuine pre-estimate of loss and not as a penalty.

#### 10.6 On termination of a Contract:

- (a) each party shall satisfy immediately any obligation that arose prior to the termination, including, without limitation, the obligation to pay all Charges for use of the Service up to and including the date of termination and all other amounts owing by the Customer to ;
- (b) the Customer shall cease to use the Services and all equipment supplied or made available by under the Contract;
- (c) if the Customer fails to remove any of its equipment from a premises within days of the termination of a Contract, then such equipment shall be deemed conclusively abandoned, may dispose of it as it sees fit, and the Customer shall be responsible for the cost of such removal, storage and disposal of said equipment; and
- (d) each party shall, at its own expense, deliver to the other party or, after notice from that other party, destroy or erase the other party's Confidential Information unless such Confidential Information is stored in, or is

essential to or would cause disproportionate disruption to the operation of a party's network.

10.7 If \_\_\_\_\_ has suspended the operation of the Contract due to an act or omission of the Customer under this clause 10 in respect of any particular Service, the Customer shall be required to pay a reconnection fee in advance of the Service being reconnected, as set forth in the Service Terms.

10.8 Suspension or termination of the Agreement (either in its entirety or in respect of a particular Contract or Service):

- (a) shall not operate as a waiver of any breach by a party of any of its provisions;
- (b) shall be without prejudice to any rights, liabilities or obligations which a party has accrued up to the date of termination or expiry, including a right of indemnity; and
- (c) shall not extinguish or otherwise affect the provisions of any Contract which by their nature survive such termination.

## 11. CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS

11.1 The Contract and all information in whatever form disclosed by one party to the other in connection with the Contract or the Services, or during the negotiations preceding the Contract (Confidential Information) shall be kept secret and confidential and treated at least as securely as the receiving party's own confidential information and may only be disclosed or used with the prior consent of the disclosing party.

11.2 Despite clause 11.1, the receiving party may:

- (a) disclose the Confidential Information to its officers, employees, contractors, professional advisers or Affiliates, provided that they do not further disclose the Confidential Information except in accordance with this clause 11; and
- (b) use the Confidential Information for the purposes of the Contract.

11.3 A party may disclose or use the Confidential Information without consent 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
- (c) such disclosure or use is:

(i) required or authorised by an 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.

11.4 \_\_\_\_\_ does not under a Contract or as a result of the provision of any Service:

- (a) assign any Intellectual Property Rights of or any third party to the Customer; or
- (b) grant any licence to the Customer in respect of any Intellectual Property Rights of or any third party unless otherwise agreed in writing.

## 12. DISPUTE RESOLUTION

12.1 The parties shall seek to resolve any Dispute in accordance with the procedures set out in this clause 12.

12.2 Subject to the other provisions of the Contract, the parties shall continue to comply with their respective obligations during the pendency of a Dispute.

12.3 A party shall not use information obtained in the course of any procedure established by this clause 12 for any purpose other than to resolve the particular Dispute.

12.4 The parties shall make reasonable, good faith efforts to resolve any Dispute arising out of the Contract within \_\_\_\_\_ days of receipt of a party's notice of the Dispute as follows:

- (a) the parties will attempt initially to resolve a Dispute through discussions at an operational level for \_\_\_\_\_ days;
- (b) in the event that the parties do not resolve the Dispute at the operational level within \_\_\_\_\_ days of the notice, the Dispute shall be escalated and negotiated for a further \_\_\_\_\_ days between legal counsel and/or senior executives of each party who have the requisite authority to settle the Dispute.

Each party shall be responsible for and bear its own costs associated with resolution of the Dispute pursuant to this clause 12.4.

12.5 If a Dispute remains unresolved despite the reasonable, good faith efforts of the parties to

resolve the Dispute under clause 12.4, either party may exercise its rights and seek any remedy it has under the Contract, subject to clause 15.12.

### 13. FORCE MAJEURE

13.1 If a party is unable to perform any obligation under a Contract because of a Force Majeure Event, that party shall have no liability to the other party for the failure to perform, unless the failure to perform is a failure to pay Charges. The party unable to perform shall notify the other party as soon as practicable, and shall use all reasonable endeavours to avoid, mitigate and remedy the consequences of the Force Majeure Event.

13.2 shall have no liability to the Customer for failing to supply a Service in the event of:

- (a) a refusal or delay by a third party through no fault of to supply a telecommunications service to and where there is no alternative service available at reasonable cost; or
- (b) a Regulatory Event.

### 14. NOTICES

14.1 Any notice or consent required to be given under any Contract shall be effective only if it is in writing and delivered by the following means to the person specified in the relevant Customer Order or as otherwise notified by the relevant party:

- (a) delivered personally; or
- (b) sent by courier, post or facsimile.

For the avoidance of doubt, any communication other than a notice or consent required to be given under a Contract is not subject to this clause 14.

14.2 The notice or consent shall be deemed to be received:

- (a) if delivered personally, on delivery;
- (b) if sent by courier, days after dispatch, unless actually received earlier;
- (c) if sent by regular post, days after the date of posting, unless actually received earlier; and
- (d) if sent by facsimile, when the machine that sent the facsimile produces a transmission report which confirms that the facsimile was sent in its entirety to the facsimile number of the recipient.

14.3 Communications received by a party outside of normal working hours in the place in which such communications are received (being 9:00am to 6:00pm on any Monday to Friday excluding recognised public holidays) will be regarded as

being received on the working day immediately following.

### 15. GENERAL

#### Variation and assignment

15.1 Subject to clause 2, the Contract (including any Customer Order) can only be varied, supplemented or replaced by another document signed by both parties.

15.2 Except as provided in clauses 15.3 and 15.4, neither party can assign or otherwise transfer its rights, interests or obligations under the Contract without the other party's prior consent, which consent shall not be unreasonably delayed, or withheld.

15.3 The parties acknowledge and agree that the Customer's Affiliates may order Services under this Agreement provided, however, any such Customer Affiliate ordering Services hereunder agrees that such Services are provided pursuant to and governed by the terms and conditions of this Contract. The Customer shall be jointly and severally liable for all claims and liabilities arising under this Contract related to Services ordered by any Customer Affiliate, and any event of default under this Contract by any Customer Affiliate shall also be deemed an event of default by the Customer. Any reference to Customer in this Contract with respect to Service ordered by a Customer Affiliate shall be deemed a reference to the applicable Customer Affiliate.

15.4 may assign or otherwise transfer its rights or interests under the Contract to an Affiliate of without obtaining the prior consent of the Customer.

#### Relationship of Parties

15.5 No provision of the Contract constitutes a joint venture, partnership or agency between the parties or merges the assets, liabilities and undertakings of the parties and neither party has the authority to bind the other in any way (except as provided by the Contract).

#### Services Provided by Third Parties

15.6 may subcontract with or appoint a third party, including an Affiliate, to provide any Services to the Customer on behalf or to perform any of obligations or exercise its rights under the Contract. If a Customer Order requires the provision of Service to Customer in a jurisdiction that requires an authorised entity to provide the Service in that jurisdiction, then such Service shall be provided by a Affiliate authorised to provide such Service in that jurisdiction. Notwithstanding any other provisions of a Contract, should the Affiliate be



required, under the Applicable Law, to provide such Service in accordance with terms and conditions approved by or filed with a governmental or regulatory authority, then such approved terms and conditions shall govern the delivery of, and Customer's consumption or use of, the Service in that jurisdiction. This clause 15.6 does not release from its obligations under the Contract.

#### Operation of the Contract

**15.7** The Contract supersedes all previous agreements between the parties in relation to the Services and contains the parties' entire agreement in relation to the Services provided from time to time to the Customer.

**15.8** Any provision of the Contract which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make the Contract enforceable, unless this would materially change the intended effect of the Contract.

**15.9** If there is any inconsistency between any of these General Terms, the Service Terms, or the Customer Order, the inconsistency will be resolved according to the following order of priority:

- (a) the Customer Order;
- (b) the Service Terms; and
- (c) these General Terms.

**15.10** While the Contract may be translated into other languages, the English version shall prevail.

#### Waiver

**15.11** A right may only be waived in writing, signed by the party granting the waiver, and

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent the further exercise of that right or any other right.

#### Execution

**15.12** The Contract may be executed in counterparts.

#### Governing law and Jurisdiction

**15.13** The Contract is governed by the laws of . The parties irrevocably submit to the non-exclusive jurisdiction of the courts of .

#### 16. DEFINITIONS

**16.1** In the Contract:

**Affiliate** means, in relation to an entity, any other entity which directly or indirectly controls, is controlled by, or is under common control with such entity.

**Applicable Law** means:

- (a) any applicable law, rule or regulation of any jurisdiction;
- (b) any applicable lawful determination, decision or direction of a government agency in any jurisdiction;
- (c) any applicable obligations under any telecommunications licence, any binding industry standard or industry code; and
- (d) any applicable international convention or agreement.

**Billing Dispute** means any claim or dispute relating to Charges or a Statement.

**Business Day** means a day other than a weekend day, or a public holiday in the location where the Services are provided or, if Services are provided in more than one location, such of those locations nominated by or if none nominated, Hong Kong.

**Cancellation Charge** means in relation to a Service the cancellation charge payable upon termination of the Service prior to expiry of the Minimum Commitment Period, as specified in the relevant Service Terms or Customer Order.

**Charges** means the charges for a Service, calculated in accordance with the relevant Customer Order and Service Terms.

**Confidential Information** has the meaning given to it in clause 11.1.

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

**Customer Order** means an offer to take and pay for a Service, signed by the Customer in the form specified by from time to time.

**Dispute** means a bona fide dispute, controversy or claim - other than a Billing Dispute, which shall be resolved in accordance with clause 5, or a Debt which is recoverable by - arising between the parties under or in relation to a Contract.

**Force Majeure Event** means an event beyond the reasonable control of the affected party, including but not limited to natural disasters, exceptionally severe weather, typhoon, earthquake, fire, explosion, acts of terrorism or war (whether declared or not), the mobilisation of armed forces, civil commotion or riot, industrial action or labour disturbance, embargo, governmental restraint, expropriation or prohibition, or a failure of a public utility or telecommunications system (except to the extent covered by a Service Level).

**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, copyright, circuit layouts, Confidential Information, know-how and 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.

**Insolvency Event** means:

- (a) an order is made or an effective resolution is passed for winding up or dissolution without winding up (otherwise than for the purposes of solvent reconstruction or amalgamation) of the other party and the order or resolution remains in effect for a continuous period of            days;
- (b) a receiver, receiver and manager, official manager, controller, administrator (whether voluntary or otherwise), provisional liquidator, liquidator, or like official is appointed over the whole or a substantial part of the undertaking and property of the other party and the appointment remains in effect for a continuous period of            days;
- (c) a holder of an encumbrance takes possession of the whole or any substantial part of the undertaking or property of the other party, or the other party enters or proposes to enter into any scheme of arrangement or any composition for the benefit of its creditors other than as part of a solvent reconstruction or amalgamation;
- (d) the other party seeks or is granted protection from its creditors under any Applicable Law; or
- (e) the other party is or will be unable to pay its debts as and when they fall due.

**Interest Rate** means the Prime Lending Rate set by the Hong Kong and Shanghai Banking Corporation Limited for loans made in Hong Kong, plus            per cent.

**Minimum Commitment Period** means in relation to a Service the period specified in the Customer Order or the Service Terms and commencing from the Service Commencement Date.

**Network** means the network operated by and its Affiliates as defined in the relevant Service Terms.

**Regulatory Event** means:

- (a) an amendment of or change in any Applicable Law;

- (b) the grant of an injunction against a party in relation to a breach or alleged contravention of an Applicable Law;
- (c) the making of a determination or direction by a competent authority;
- (d) failure to act or delay of any governmental authority in the granting of governmental, or other approvals, consents, permits, licenses, leases or authorisations; or
- (e) where a party reasonably believes that any event of the kind described in (a), (b), (c) or (d) will occur.

**Security Requirement** means security for the payment of Charges or the meeting of other obligations of the Customer under the Contract, the form of which may be any, or a combination, of the following:

- (a) a deposit from the Customer held by            or by any other entity agreed by the parties;
- (b) an irrevocable guarantee from the controlling entity of the Customer or such other entity as is acceptable to            ;
- (c) an irrevocable guarantee, performance bond or letter of credit from a bank or other financial institution reasonably acceptable to            ; or
- (d) some other form of security interest or obligation.

**Service** means all telecommunications services supplied by            to the Customer from time to time under a Contract as specified in the Customer Order.

**Service Commencement Date** in relation to a Service has the meaning given to it in the applicable Service Terms.

**Service Levels** means the guaranteed levels of service in accordance with which            will use its reasonable endeavours to provide a Service, as specified in the relevant Service Terms.

**Service Level Dispute** means a dispute in relation to Service Levels, as more particularly defined in relevant Service Terms or in Service Levels notified to the Customer from time to time.

**Service Terms** means the specific terms applicable to each particular Service.

**Statement** means an invoice provided by            or its Affiliates (as the case may be) setting out the Charges payable for Services provided by            .

**Tax** means any present or future tax, levy, impost, deduction, charge, duty or withholding tax (together with any related interest, penalty, fine and expense in connection with any of them) including without limitation any goods and services tax, value added tax, or service tax or consumption tax, which is levied or imposed by any government agency, other than those imposed on overall income.

USD means US dollars.

**Interpretation**

**16.2** In the Contract unless the contrary intention appears:

- (a) headings are for convenience only and do not affect interpretation;
- (b) a word importing the singular includes the plural and vice versa;
- (c) a reference to:
  - (i) a day, week or month means a calendar day week or month;
  - (ii) a party to the Contract or to any other document or agreement includes a successor or permitted substitute or permitted assign of that party;
  - (iii) a document includes any amendment or supplement to, or replacement or novation of, that document;
  - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity;
  - (v) any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing it and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute.