

## 目錄

只提供英文版

- TraxComm Limited
- Standard Terms and Conditions of Service

FIXED TELECOMMUNICATIONS NETWORK SERVICES LICENCE  
TELECOMMUNICATIONS ORDINANCE (Chapter 106)

**TraxComm Limited**

The following services are provided by TraxComm pursuant to its Fixed Carrier Licence with effect from January 2004 and subject to its Standard Terms and Conditions of Service.

1. **Bandwidth Service** - a point-to-point, cost effective and high bandwidth transport service, available up to 10G is provisioned over a secure channel on the latest Dense Wavelength Division Multiplexing (DWDM) platform or the Synchronous Digital Hierarchy (SDH) platform.

Transmission Synchronization	Synchronous
Mode of Operation	Duplex
Data Transmission Rate/ Supporting Interface	Wavelength 2.5G & 10G, STM16/OC48, STM4/OC12, STM-1/OC-3, DS3, Gigabit Ethernet, Fast Ethernet, E1 (V.35 & G.703 interfaces), T1 (V.35 & G.703 interfaces)

**2. Tariff**

Service	Installation (per end)	Monthly Rental (per end)	Removal within the same building (per end)	Removal to a different building (per end)
Wavelength 10G	HK\$ 80,000	HK\$ 140,000	HK\$ 48,000	HK\$ 80,000
Wavelength 2.5G	HK\$ 60,000	HK\$ 70,000	HK\$ 36,000	HK\$ 60,000
STM16/OC48	HK\$ 70,000	HK\$ 90,000	HK\$ 42,000	HK\$ 70,000
STM4/OC12	HK\$ 48,000	HK\$ 60,000	HK\$ 28,800	HK\$ 48,000
STM1/OC3	HK\$ 32,000	HK\$ 40,000	HK\$ 19,200	HK\$ 32,000
DS3	HK\$ 22,500	HK\$ 29,000	HK\$ 10,000	HK\$ 22,500
Gigabit Ethernet	HK\$ 45,000	HK\$ 65,000	HK\$ 28,000	HK\$ 45,000
Fast Ethernet	HK\$ 14,000	HK\$ 26,000	HK\$ 10,000	HK\$ 14,000
E1 (V.35)	HK\$ 3,000	HK\$ 6,000	HK\$ 3,000	HK\$ 3,000
E1 (G.703)	HK\$ 3,000	HK\$ 5,000	HK\$ 3,000	HK\$ 3,000
T1 (V.35)	HK\$ 3,000	HK\$ 3,900	HK\$ 3,000	HK\$ 3,000
T1 (G.703)	HK\$ 3,000	HK\$ 3,500	HK\$ 3,000	HK\$ 3,000

**3. Conditions of Service:**

- The above services and tariffs apply to locations or buildings within the coverage of TraxComm. Service provision at other locations or buildings will be considered individually.
- The Standard Terms and Conditions of Service of TraxComm shall apply.
- Minimum Service Period: 1 year.

FIXED TELECOMMUNICATIONS NETWORK SERVICES LICENCE  
TELECOMMUNICATIONS ORDINANCE (Chapter 106)

**STANDARD TERMS AND CONDITIONS OF SERVICE**

Version 2.1 (issued on 1 June 2004)

This Standard Terms and Conditions of Service ('Terms & Conditions') between Customer and TraxComm Limited ('TraxComm') establishes the terms and conditions under which TraxComm will provide to Customer and Customer will receive Services under each accepted Customer Order. Each Customer Order, when accepted by TraxComm, shall: (i) be treated as having automatically incorporated, and be governed by, this Terms & Conditions as if though the provisions hereto are explicitly written into each Customer Order; and (ii) together with a copy of this Terms & Conditions, constitute a separate contract between the Customer and TraxComm.

**1. DEFINITIONS AND INTERPRETATIONS**

In this Terms & Conditions the following terms and phrases shall have the following meanings:

- 1.1 '**Confidential Information**' means all information in any format disclosed by or on behalf of a party to the other party, including without limitation any materials, trade secrets, know-how, formulas, processes, algorithms, ideas, strategies, inventions, data, network configurations, systems architecture, designs, flow charts, drawings, TraxComm's tariffs and rates table, proprietary information, business and marketing plans, financial and operational information, and all other information which may reasonably be regarded as confidential information of the disclosing party;
- 1.2 '**Customer**' means the person, firm, corporation or other entity so named as such on the Customer Order;
- 1.3 '**Customer Order**' means the TraxComm documents used by Customer to order Services, each of which, when accepted by TraxComm, together with a copy of this Terms & Conditions, and any amendments thereof notified to the Customer and not disagreed by the Customer, shall constitute a separate contract between the Customer and TraxComm;
- 1.4 '**Customer Premises**' means the location owned or occupied by Customer or its end users to which TraxComm has agreed to provide the Services;
- 1.5 '**Customer Equipment**' means telecommunications equipment provided by Customer;
- 1.6 '**Facilities**' means any and all devices supplied by or on behalf of TraxComm used to deliver Services but shall not include any such devices sold to Customer by TraxComm or owned by Customer or any third party;
- 1.7 '**OFTA**' means The Office of the Telecommunications Authority of Hong Kong and its replacement entity, if any;
- 1.8 '**Products**' means the equipment or materials to be licensed or leased by Customer from TraxComm pursuant to the Customer Order;
- 1.9 '**Services**' means any Product or service provided by TraxComm to or on behalf of Customer pursuant to the Customer Order;
- 1.10 '**Terms & Conditions**' means this Standard Terms and Conditions; and
- 1.11 '**TraxComm Affiliate**' means any other entity that controls, is controlled by or is under common control with TraxComm.

**2. PROVISION OF SERVICES**

- 2.1 *Acceptance of Customer Orders.* Customer may submit Customer Order for Services. Customer Orders shall be submitted in any format specified by TraxComm. The delivery to Customer by

TraxComm of an Order Acceptance Letter referencing the Customer Order shall constitute TraxComm's acceptance of the Customer Order. Each Customer Order shall be binding only after acceptance. TraxComm may reject any Customer Order without giving any reason.

**2.2 Credit Approval and Security Deposits.** At any time during the term of a Customer Order, TraxComm reserves the right to carry out a credit check against the Customer. Customer shall provide TraxComm with credit information as requested. Delivery of Services is subject to credit approval. As a condition of TraxComm's acceptance of any Customer Order and as a condition of TraxComm's continuation of delivery of any Services, Customer shall, upon TraxComm's request at any time, provide a deposit or other security for the payment of charges specified by TraxComm. Customer hereby authorises TraxComm to obtain, and shall provide a separate consent letter in a form stipulated by TraxComm upon the request of TraxComm to separately authorize TraxComm to obtain, information about Customer's commercial activities and financial condition from third parties including banks, credit reporting agencies and other businesses that provide like information. Customer acknowledges and agrees that any failure by it to comply with any request made by TraxComm under this Clause 2.2 shall constitute a material breach by Customer of all accepted Customer Orders entered into by the Customer.

**2.3 Access for TraxComm.** Customer shall provide or procure that any end user provide TraxComm prompt access to the Customer Premises with or without machinery, tools or equipment for site surveys, installation, accommodation, operation, connection, inspection and scheduled or emergency maintenance or removal of equipment, Facilities and systems relating to the Services. Customer represents to TraxComm that Customer has obtained all permissions and consents necessary to allow TraxComm such access. Customer shall be responsible for providing and maintaining at its expense, the level of power, heating and air conditioning necessary to maintain the proper environment for the Facilities and Services. Customer shall provide a safe place to work and comply with all laws and regulations regarding the working conditions on the Customer Premises. If Customer fails to provide or procure for TraxComm access or other services required for TraxComm to deliver the Services, Customer shall pay all charges for such Services from and after the date TraxComm is otherwise ready to deliver them. Except for emergency repairs, TraxComm shall notify Customer two (2) business days in advance of any regularly scheduled maintenance that will require access to the Customer Premises.

**2.4 Reservations.** In the event this Terms & Conditions or a Customer Order provides that TraxComm will make Services available on or before a particular date, it does so on a commercially reasonable efforts basis and is subject to availability and the provisions of and compliance by Customer with this Terms & Conditions and the Customer Orders.

**2.5 Facilities.** Except as otherwise agreed in writing, title to all Facilities and Products shall remain with TraxComm. Customer agrees that the Facilities may not exclusively serve the Service and TraxComm may share the Facilities with third parties. Customer shall take all reasonable actions and measures to prevent the Facilities from being tampered with, interfered with or damaged by others and shall not, and shall not permit others, to gain access to, rearrange, disconnect, remove, repair, attempt to repair, or otherwise tamper with any Facilities or Products, without the prior written consent of TraxComm and shall keep TraxComm fully indemnified against any actions, claims, demands, liabilities, costs and damages in respect of any failure so to do. Customer shall ensure that the Facilities and the Products shall not be used for any purpose other than that for which TraxComm provides them. Customer shall not take any action that causes the imposition of any lien or encumbrance on the Facilities or the Products. In no event will TraxComm be liable to Customer or any other person for interruption of Service or for any other loss, cost or damage caused or related to violation of this Terms & Conditions or any Customer Order. Customer agrees (which agreement shall survive the expiration, termination or cancellation of this Terms & Conditions and Customer Orders) to allow TraxComm to remove the Facilities and any Services from the Customer Premises:

- (i) after termination, expiration or cancellation of the relevant Customer Order(s) which this Terms & Conditions forms a part of; or

- (ii) for repair, replacement or otherwise as TraxComm may determine is necessary or desirable. Customer shall pay TraxComm for any damage to the Facilities, except for damage caused by TraxComm or its agents. Customer shall reimburse TraxComm for the depreciated cost of any Facilities that are not in the same condition as when delivered to the Customer Premises, normal wear and tear excepted.

2.6 **Customer Equipment.** TraxComm may install or configure Customer Equipment if requested by Customer and Customer shall reimburse TraxComm for its expenses incurred during the installation or configuration of any such Customer Equipment. Unless otherwise agreed by TraxComm in writing, TraxComm shall not be responsible for damage to or the operation or maintenance of Customer Equipment. Customer shall be solely responsible for the quality, reliability, performance and non-performance of, and damages from, the Customer Equipment and transmissions that enters or otherwise connects to TraxComm's network that may be required pursuant to the Customer Order, and for ensuring the compliance of Customer Equipment with applicable standards and for obtaining any necessary approvals or authorisations prior to its use and for the reliability and performance of its own equipment and facilities connecting to the Facilities and/or Product affecting the quality of the Service TraxComm will not be responsible for the transmission or reception of signals by Customer Equipment for the quality or defects in Customer Equipment or its transmission or reception.

2.7 **Commencement of Service.** The Service commencement date is the earlier of:

- (i) the date set out in any notice of connection from TraxComm to Customer; or
- (ii) the date Customer begins using the Service as determined by TraxComm.

### 3. SERVICE CHARGES, BILLING AND SETTLEMENT

3.1 **Charges and Billing.** All recurring and non-recurring charges for the Services shall be set out in each Customer Order. Customer shall be liable for and shall pay the charges from the Service commencement date specified in Clause 2.7 (Commencement of Service). TraxComm will bill monthly in advance charges for Services except for usage based charges which will be billed monthly in arrears. Billing for partial months will be pro-rated based on a calendar month.

If Customer makes its own local loop arrangements, Customer must provide to TraxComm the details of the local loop provider, all circuit facility assignment information, firm order commitment information and the design layout records necessary to enable TraxComm to make the cross-connection necessary to provide the Services. TraxComm may charge Customer a non-recurring cross-connect fee to make such connection. If Customer makes its own local loop arrangements, TraxComm will commence billing once it has installed and tested the Services up to the TraxComm side of the cross-connect circuit. Otherwise, TraxComm will commence billing once the Services are installed and tested.

3.2 **Payment of Bills.** Each bill is due thirty (30) days after the date of the bill. Customer may pay by cheque, telegraphic transfer/wire transfer or direct debit subject to execution of a direct debit agreement. Customer will pay interest at a rate of 1.5% per month (pro-rated on a daily basis) for overdue payments, from the due date until paid.

3.3 **Taxes and Duties.** Unless otherwise indicated all sums due to TraxComm are exclusive of taxes of any kind. Except for taxes based on TraxComm's net income, Customer will be responsible for payment of all taxes (whether existing or new) including but not limited to goods and services tax, withholding taxes and any other applicable sales tax or duty.

3.4 **Disputed Bills.** In the event that Customer disputes any portion of a TraxComm bill, Customer **must** pay the entire bill and submit a written claim for the disputed amount specifying the date and number of the disputed bill, the amount in dispute, the reason for the dispute and relevant supporting documentation. All claims must be submitted to TraxComm within thirty (30) days of receipt of billing for those Services. Customer acknowledges that it is able to and that it is reasonable to require Customer to dispute bills within that time, and Customer therefore waives the right to dispute charges not disputed within the time frame set out above.

3.5 **Unauthorised and Fraudulent use of Services.** Services shall at all times be used by Customer in compliance with applicable law. Customer will be solely responsible for all charges incurred for the Services even if such charges were incurred through or as a result of fraudulent or unauthorised use of the Services.

3.6 **Regulatory Changes.** In the event of any change in applicable law, regulation, decision, rule or order that materially increases the costs or other terms of delivery of Service, TraxComm and Customer agree to negotiate regarding the rates to be charged to Customer to reflect such increase in cost and, in the event that the parties are unable to reach agreement respecting new rates within thirty (30) days after TraxComm's delivery of written notice requesting renegotiation: (i) TraxComm may pass such increased costs through to Customer; and (ii) Customer may terminate the affected Customer Order without termination liability upon sixty (60) days' prior written notice.

#### 4. CANCELLATIONS

4.1 **Term of Service.** The term of each Service shall be as set out in the Customer Order and Customer agrees to pay for the Services for such period of time ('Term Commitment') or such longer time as Customer actually uses the Services. In the event TraxComm permits Customer to continue to use the Services after the end of the Term Commitment, the Term Commitment will automatically renew for successive thirty (30) day periods and may be terminated by Customer or TraxComm at the end of any thirty (30) day period upon thirty (30) days written notice.

4.2 **Cancellation by Customer.** If TraxComm materially breaches any material provision of a relevant Customer Order and TraxComm has not taken appropriate actions towards curing such breach within thirty (30) days after the delivery of written notice of breach to TraxComm, Customer may cancel that relevant Customer Order upon ten (10) days' prior written notice delivered at any time while such breach continues. In such event, Customer will not be liable for any cancellation fees. The rates and charges in each Customer Order are established on the basis of the Term Commitment. If Customer cancels a Service or Customer Order during a Term Commitment for any reason other than TraxComm's material breach of that relevant Customer Order, Customer will pay TraxComm the cancellation fees set out in Clause 4.4 (Cancellation Fee). In any event, Customer will pay for any Services actually provided.

4.3 **Cancellation by TraxComm.** TraxComm may terminate Customer Order(s) (in part or in whole) and/or discontinue Service (re-activating at the discretion of TraxComm) upon ten (10) days written notice to Customer without liability if:

- (i) Customer fails to pay any bill when due;
- (ii) Customer's use of Services materially exceeds Customer's credit limit, unless Customer provides adequate security for payment for Services within fourteen (14) days after delivery of written notice by TraxComm;
- (iii) Customer fails to cure its breach of any provision of a Customer Order, including this Terms & Conditions, within thirty (30) days after delivery of written notice of breach to Customer;
- (iv) Customer makes a material misrepresentation in any information submitted to TraxComm;
- (v) any bankruptcy, insolvency, administration, liquidation, receivership or winding up proceeding is commenced in respect of the Customer;
- (vi) any material breach by Customer of a Customer Order, including this Terms & Conditions;
- (vii) the licence, authorisation or exemption (as the case may be) issued by OFTA to the Customer is cancelled or withdrawn for any reason or the terms thereof varied such that the Service cannot reasonably be provided or operation of the Customer cannot be continued; or
- (viii) the Customer fails to obtain or is in breach of any provision of any permission, licence, permit or certificate required by law, regulation or by the direction of any agency or department or the Government of Hong Kong in connection with its use of the Service and fails to rectify and make good such breach within a reasonable time to the satisfaction of TraxComm.

Notwithstanding the foregoing, TraxComm may, in its sole discretion and without prejudice to any right it might have to terminate the relevant Customer Orders, elect to suspend provision of the Service until further notice in the event that: (a) TraxComm is entitled to terminate a Customer

Order; (b) TraxComm is obliged to comply with an order of any court or other government authority having jurisdiction which prevents TraxComm from furnishing Services; (c) TraxComm needs to carry out emergency works to the network or Facilities; or (d) the content of any communication transmitted via the Services was alleged to be illegal or contrary to the public policy of the TraxComm.

4.4 **Cancellation Fee.** If Customer cancels all or any portion of the Service or the relevant Customer Order other than due to a material breach by TraxComm, or if TraxComm cancels all or any portion of a Customer Order due to a breach by Customer (including those occurrences listed in Clause 4.3 (Cancellation by TraxComm)), in addition to any and all charges previously incurred by Customer for the Service prior to the date of any cancellation and any other loss or damage suffered by TraxComm or a TraxComm Affiliate, the Customer shall pay a cancellation fee in an amount equal to 100% of the charges which would have been incurred by Customer for the remainder of the Term Commitment from the date of cancellation. Without prejudice to other rights TraxComm may have, the parties acknowledge and agree that Customer's obligations and payments required under this Clause 4.4 (Cancellation Fee) is a fair and reasonable estimate of the minimum loss that TraxComm will suffer upon such termination and hence such payment shall not be considered or construed as a penalty payment given the inducement and consideration required for TraxComm to enter into each Customer Order and other contracts with its suppliers, TraxComm's reliance of a full term commitment from Customer, and TraxComm's exposures to its suppliers and underlying operators to continue to pay operations and maintenance charges, liquidated damages, and other charges. Termination of any and all Customer Orders does not affect and is without prejudice to any accrued rights or remedies TraxComm may have under each Customer Order that have accrued prior to or as a result of such termination or expiry.

## 5. LIMITATION OF LIABILITY

5.1 **Indemnification.** Each party shall indemnify the other from any claims by third parties and expenses (including legal fees and court costs) in respect of damage to tangible property, personal injury or death caused by such party's negligence or wilful misconduct. Notwithstanding the foregoing, Customer shall indemnify TraxComm and shall hold TraxComm harmless against any claims or proceedings brought by third parties against TraxComm in respect of the resale of the Services by the Customer. Customer undertakes to include provisions in its contracts with its subscribers to exclude to the fullest extent legally possible the liability of TraxComm.

5.2 **Damages.** Except for damages arising or resulting from Customer's breach of Clause 7.1 (Disclosure and Use), neither party shall be liable for any indirect, incidental, special, consequential, exemplary or punitive damages (including but not limited to damages for lost profits, lost revenues, loss of goodwill, loss of anticipated savings, loss of customers, loss of data or interference with business, or cost associated with the use of external restoration facilities), whether or not caused by reason of interoperability of application or processes or by the acts or omissions or negligence of its employees or agents, and regardless of whether such party has been informed of the possibility of the likelihood of such damages. TraxComm shall not be liable for any damages attributable to third party acts or the non-performance or fault of the Customer.

5.3 **Personal Injury and Death.** Nothing in this Terms & Conditions shall be construed as limiting the liability of either party for personal injury or death resulting from the negligence of a party or its employees.

5.4 **Limitation.** The provisions of this Terms & Conditions that exclude or limit TraxComm's liability apply to the extent permitted by law. To the extent that TraxComm's liability is not excluded under Clause 5 (Limitation of Liability), and to the extent permitted by law, that aggregate liability is limited to, at TraxComm's entire discretion, either: (i) re-perform, re-supply or replace such part of the affected Services; or (ii) provide a non-refundable credit in Customer's account (subject to maximum cap of credit allowances provided for under applicable Service Level Agreement) for further work or services to be performed by TraxComm. The parties agree that TraxComm's maximum aggregate liability in contract, tort (including negligence or breach of statutory duty) or

otherwise arising out of or in connection with the performance of TraxComm's obligations under all Customer Orders and contracts between TraxComm and the Customer, whether in respect of any one incident or series of incidents, whether or not arising from a common cause, shall not exceed the basic contract value of the Customer Order.

5.5 **Disclaimer of Warranties.** Except for warranties expressly made in this Terms & Conditions, to the extent permitted by law TraxComm makes no warranties or representations express or implied, either in fact or by operation of law, statutory or otherwise, including warranties of merchantability, satisfactory quality and fitness for a particular use, and without limiting the forgoing TraxComm does not warrant that the Services will be uninterrupted or error free or that the Services will meet Customer's own requirements.

5.6 **Force Majeure.** Neither party shall be liable or be in breach of this Terms & Conditions and the applicable Customer Orders which this Terms & Conditions forms a part of, nor will any credit allowance be extended for any failure of performance of or delivery of Services due to causes beyond such party's reasonable control, including but not limited to acts of God, fire, flood or other catastrophes, any law, order, regulation, direction, action or request of any governmental entity or agency, or any civil or military authority, national emergencies, insurrections, riots, strikes, lock-outs, work stoppages or other labour difficulties, line or cable failure or acts or omissions of other providers of telecommunications services ('Force Majeure Event'). In the event TraxComm is unable to deliver Services for 30 consecutive days as a result of a Force Majeure Event, Customer shall not be obliged to pay TraxComm for the affected Services for so long as TraxComm is unable to deliver them provided that the term of the Customer Order for those Services shall be extended for a period of time equal to the period of time for which TraxComm was unable to provide and Customer was not required to pay for the affected Service.

5.7 **Customer Obligations.** Customer shall provide all assistance reasonably required by TraxComm to provide the Service. Customer shall notify TraxComm of any existing facilities including, but not limited to, water and gas lines which could be damaged during the installation of Services at Customer's Premises. Customer shall also identify, monitor, remove and dispose of any hazardous materials prior to any work being performed by TraxComm at Customer's Premises and shall indemnify, defend, and hold TraxComm harmless from any liability incurred in the use of or in connection with hazardous materials at the Customer's Premises. TraxComm shall have no liability in respect of any damage or loss arising out of the Customer's failure to comply with this clause.

## **6. RAILWAY PARAMOUNT**

6.1 Notwithstanding any provisions of this Terms & Conditions to the contrary, Customer acknowledges and agrees that the efficient operation of the Mass Transit Railway is a paramount consideration in the performance of and in giving effect to any provision of this Terms & Conditions.

6.2 TraxComm reserves the right to suspend (and in its discretion reactivate) the Service in the event the MTR Corporation closes the Mass Transit Railway, any MTR Station or any part thereof at any time or conducts emergency operations.

6.3 If TraxComm exercises its rights under this Clause 6 (Railway Paramount) it shall not be considered a breach of this Terms & Conditions and it shall not be liable to the Customer for any loss, damage or liability sustained by the Customer or by any other person which is directly or indirectly attributable to such exercise, save where the same arises through TraxComm's negligent act or omission.

## **7. CONFIDENTIAL INFORMATION**

7.1 **Disclosure and Use.** Any Confidential Information disclosed by a party shall be kept by the receiving party in strict confidence and shall not be disclosed to any third party (except as explicitly authorised in this Terms & Conditions) without the disclosing party's prior written consent. Each party shall treat all Confidential Information of the other in the same manner as it treats its own, but in no case will the degree of care be less than reasonable care. Each party:

- (i) shall use Confidential Information only to give effect to this Terms & Conditions and the applicable Customer Order; and
- (ii) shall not make copies of Confidential Information unless expressly agreed by the disclosing party in writing.

Clauses 7.1 and 7.2 shall survive the termination of the applicable Customer Orders and upon termination of each applicable Customer Order the parties agree to forthwith destroy all documents and any materials containing any Confidential Information and/or the business of the receiving party provided by the disclosing party.

**7.2 Exceptions.** Information is not Confidential Information:

- (i) If it is already known to the receiving party and not otherwise subject to a confidentiality undertaking;
- (ii) When it becomes publicly available without restriction and without fault of the receiving party;
- (iii) If it is rightfully obtained by the receiving party from others having no obligation to hold such information in confidence;
- (iv) If it is developed independently by the receiving party without use of the disclosing party's Confidential Information;
- (v) If it is required to be disclosed by law;
- (vi) If it is required to be disclosed to external parties for the purpose of completing and/or progressing with the implementation of applicable Customer Orders; or
- (vii) If it is required to be revealed to its directors, officers, employers, professional advisors and their employees, contractors and their employees, financiers providing funding to the parties and their advisors so far as necessary to enable them to perform their duties for the purposes of applicable Customer Orders provided that each party shall require such persons receiving the revealed information to observe the obligation of confidentiality contained in this Clause 7 (Confidential Information).

**7.3 Publicity.** Except as stated herein, this Terms & Conditions grants no right to use any party's or its affiliates' trademarks, service marks or trade names or to otherwise refer to the other party in any marketing, promotional or advertising materials or activities. Neither party shall issue any publication or press release relating to, or otherwise disclose the existence of, or the terms and conditions of any contractual relationship between the parties including but not limited to this Terms & Conditions without the express written consent of the other party, except as may be required by law. Customer hereby consents and expressly allows TraxComm to disclose that the Customer uses TraxComm Services to other TraxComm customers or potential customers.

## **8. GENERAL TERMS**

**8.1 Transfer or Assignment.** Customer may not assign the Customer Order or transfer, sublicense, or assign the use of Services without: (i) first providing TraxComm a written undertaking from the proposed assignor, transferor or sublicensor, as the case may be and on a form specified by TraxComm, undertaking and warranting that it shall abide by and duly observe the provisions of this Terms & Conditions, the Customer Order and guidelines that may be issued by TraxComm from time to time; and (ii) the express prior written consent of TraxComm, which consent will not be unreasonably withheld but always subject to credit approval, requirement for fresh security deposit and such other terms as TraxComm may reasonably specify. No such permitted assignment, transfer or sublicense shall relieve Customer of its obligations hereunder.

TraxComm may assign any and all of its rights and obligations hereunder: (i) to any TraxComm Affiliate, (ii) pursuant to any sale or transfer of substantially all of the assets of TraxComm, or (iii) pursuant to any financing, merger, or reorganisation of TraxComm.

**8.2 Customer Dealings.** Both parties agree that the Services shall be supplied solely for the purpose of providing legally permitted telecommunication services in Hong Kong without exceeding that authorised in TraxComm's and Customer's respective licences issued by OFTA as at the date of the commencement of the Term Commitment unless the prior written approval and consent of TraxComm has been obtained. Customer may enter into all direct dealings and transactions with

consumers in connection with the provision of the Services but shall not part with the right of access and all rights granted under this Terms & Conditions or any physical control or possession of the Services or Facilities without the prior written consent of TraxComm. Customer here represents and warrants that it is duly established and in good standing under the laws of the jurisdiction of its incorporation, it is the holder of all relevant business and telecommunications licences under Hong Kong laws, and it has full power and authority to enter into and perform the legally binding Customer Order, including this Terms & Conditions.

8.3 **Notices.** Either party may deliver notices to the other by personal delivery or by postal delivery. Notices sent to Customer shall be addressed to the Customer's address listed on the Customer Order (or such other address as the Customer may notify TraxComm in writing).

Notices sent to TraxComm shall be sent by internationally reputable courier to MTR Tower, Telford Plaza, Kowloon Bay, Kowloon, Hong Kong (or such other address as TraxComm may notify Customer in writing) and marked to the attention of Manager, Customer Services Department. Notice shall be deemed delivered on the date of actual receipt.

8.4 **Contents of Communications.** TraxComm does not monitor and will have no liability or responsibility for the content of any communications transmitted via the Services, and Customer will indemnify and hold TraxComm harmless from any and all claims (including claims by governmental entities seeking to impose penal sanctions) related to such content attributable to Customer or its agents, employees or users.

8.5 **Governing Law.** This Terms & Conditions and the Customer Order shall be governed by the laws of the Hong Kong Special Administrative Region of the People's Republic of China and the parties irrevocably agree to the exclusive jurisdiction of the courts of Hong Kong and courts of appeal therefrom.

8.6 **No Waiver.** Failure by either party to exercise or enforce any right conferred by this Terms & Conditions shall not be deemed to be a waiver of any such right nor to operate so as to bar the exercise of enforcement of any such or other right on any later occasion.

8.7 **Severability.** If any provision of this Terms & Conditions or the Customer Order is held by a court or any governmental agency or authority to be invalid, void or unenforceable, such offending provision(s) shall be stricken to the extent possible and the remainder of this Terms & Conditions and the Customer Order shall remain legal, valid, and enforceable.

8.8 **No Partnership.** Nothing in this Terms & Conditions or the Customer Order and no action taken by the parties pursuant to this Terms & Conditions or the Customer Order shall constitute or be deemed to constitute between the parties a partnership, association, joint venture or other co-operative entity.

8.9 **Entire Understanding and Relationship with the Customer Order.** This Terms & Conditions, the Customer Order and the TraxComm Order Acceptance Letter constitutes the entire understanding of the parties related to the subject matter hereof. All prior written or oral agreements, understandings, practices or communications between Customer and TraxComm are hereby superseded insofar as they related to the Services hereunder. This Terms & Conditions forms part of the relevant Customer Order. This Terms & Conditions and the Customer Order may be amended at any time by TraxComm by service of prior written notice of thirty (30) days on the Customer provided that the Customer may, by written notice to TraxComm of no more than fourteen (14) days after receipt of the said notice of change, object to any change in its entirety upon which only those changes not objected to will take effect from the end of the said 30 days period. In the event of a conflict or inconsistent provisions, the TraxComm Order Acceptance Letter will take precedence over both the Customer Order and this Terms & Conditions, and the Customer Order shall take precedence over this Terms & Conditions.

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