

SUPPLY OF IT & TELECOMMUNICATIONS SERVICES AGREEMENT

PARTIES

1. **Hong Kong Cyberport Management Company Limited – Technology Centre (Supplier)**
2. **The customer specified in the related Cyberport Cloud Application Form (Customer)**

AGREEMENT

The parties agree that each Service provided by the Supplier to the Customer will be governed by:

- (a) the **Cyberport Cloud Application Form** (to the extent it relates to that Service)
- (b) the **General Terms and Conditions** (including the **Service Terms**); and
- (c) the **Specific Terms** relevant to that Service,; and
- (d) any relevant written Service Level Agreement provided to the Customer by the Supplier, which together form the agreement between the parties (**Agreement**).

GENERAL TERMS AND CONDITIONS

1. INTERPRETATION

The Dictionary in Attachment A:

- (a) defines some of the terms used in this Agreement; and
- (b) sets out the rules of interpretation which apply to this Agreement.

2. PROVISION OF SERVICES

2.1 Commencement Date

- (a) Subject to clause 2.4 (*Customer's obligations*), the Supplier will use its reasonable endeavours to provide each required Service in accordance with this Agreement from the Commencement Date for the Service until termination of the Agreement with respect to the Service.
- (b) If the Supplier is unable to supply a Service by the Commencement Date for that Service, the Supplier will notify the Customer as soon as practicable of a revised Commencement Date.

2.2 No warranty

- (a) The Supplier does not warrant, and the Customer acknowledges that it is impracticable to guarantee, that:
 - (i) the Services are free of faults or error;
 - (ii) any Service will meet a specific standard of quality;
 - (iii) there is always sufficient capacity to carry all transmission of data or content attempted using a Service;
 - (iv) the Services (whether server or application based) will be fully secured from hackers or tampering by any third party;
 - (v) all equipment, software or apparatus used, or all content or data provided or transmitted, under this Agreement will be free of defects or error or of merchantability quality; or
 - (vi) the Services will be fit or suitable for a particular purpose.

- (b) The Customer agrees that the Supplier is not responsible in any way for the transmission of any content via any Service:
 - (i) over any public telecommunications network; or
 - (ii) on the Customer's side of the network termination point of the Network.
- (c) The Customer acknowledges that it is not the Supplier's responsibility to check, edit or amend any content downloaded, uploaded or transmitted via any of the Services.

2.3 Delivery of Service

The Supplier may determine the most appropriate means of providing a Service, including the method, technology and route of delivery of the Service, at any time without notice to the Customer.

2.4 Customer's obligations

- (a) The Customer must comply with any reasonable direction given by the Supplier in connection with the:
 - (i) provision, use, operation, maintenance, removal, modification or installation of any Service, Equipment or Customer Equipment; and
 - (ii) any requirements or specifications referred to in any of the Specific Terms.
- (b) The Customer must satisfy all of the Customer's requirements set out in the Specific Terms for each Service prior to the Commencement Date for that Service.
- (c) The Customer is responsible for the back up of any data on the Customer Equipment.
- (d) The Customer must inform the Supplier if any configuration or installation by the Supplier is likely to invalidate any support arrangements or other functions of the Customer Equipment. The Supplier is not bound by this information or obliged to use this information for any purpose.
- (e) The Customer acknowledges that each Service will be provided in accordance with the relevant details provided in the Cyberport Cloud Application Form and the Specific Terms relevant to that Service.

2.5 Monitoring and interception of Services

The Customer acknowledges that the Supplier may:

- (a) monitor the Customer's use of the Services or the Customer Equipment for any of the purposes or circumstances contemplated under clause 11.1 (*Supplier's access rights*); and

- (b) may intercept any of the Services as required by Applicable Law.

2.6 Mandatory Services

The Customer acknowledges that it must acquire the Mandatory Services as pre-requisites for the provision and use of other Services.

2.7 Support Services

- (a) Upon acknowledgment of a Support Request, the Supplier will, or will procure a third party (which may include the Cyberport Help Centre) to, provide the Support Services to the Customer in accordance with the Service Terms.
- (b) For the purposes of receiving Support Services, the Customer must comply with the Customer's requirements set out in the Service Terms.

2.8 Service Literature

The Customer acknowledges that the Service Literature is provided to the Customer for information purposes only and does not form part of this Agreement.

3. VARIATION TO SPECIFIC TERMS AND SERVICES

3.1 Variation to Specific Terms

- (a) The Supplier may vary the Specific Terms for any Service from time to time and will give the Customer at least 30 days notice of such variation.
- (b) If the Customer does not accept the variation in the Specific Terms, the Customer may terminate this Agreement by notifying the Supplier prior to the effective date of the variation. If the Supplier does not receive such notice from the Customer prior to the effective date, the Customer is deemed to have accepted the variation in the Specific Terms.

3.2 Request for variation to or additional Services

- (a) If the Customer requests a variation to a Service or the provision of an additional Service, the Customer must complete a new Cyberport Cloud Application Form or other documentation as specified by the Supplier (**Variation Form**) and deliver that Variation Form to the Supplier.
- (b) Upon notification to the Customer of the acceptance by the Supplier of the Variation Form under paragraph (a), the Variation Form and the Specific Terms relevant to the varied Service or additional Service (as the case may be) will be deemed to be incorporated into this Agreement.

4. CHARGES, OTHER PAYMENTS AND TAXES

4.1 Calculation

- (a) The Customer must pay the Supplier the Charges for each Service:
 - (i) from the Commencement Date for that Service; and
 - (ii) in accordance with this clause 4.
- (b) The Customer agrees:
 - (i) to pay the Charges which the Supplier's records attribute to the Customer for each Service, regardless of whether that Service was used by the Customer or a third party with or without the authority or consent of the Customer;
 - (ii) that records held and call logging procedures adopted by the Supplier will be prima facie evidence of the usage of the Service and the Charges payable by the Customer; and
 - (iii) that it is responsible for all Charges incurred between the time that the Customer makes a request for termination of a Service and the time of the actual termination of the Service.
- (c) If the calculation for any amount or Charge (including a Cancellation Charge) 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 Charge due for the part month shall be calculated pro-rata, on a 30 days month basis.

4.2 Payment of reconnection fee

If the Supplier has terminated or withdrawn a Service under clause 13 (*Suspension or alteration of Service*) or 14 (*Term and Termination*) and the Supplier subsequently agrees to reconnect the Service, the Customer must pay any reconnection fee required by the Supplier as a precondition to the reconnection of the Service.

4.3 Payment for third party services

The Customer agrees to reimburse the Supplier for any fees or charges incurred by the Supplier resulting from the Customer's access to a third party's service whilst the Customer uses a Service, unless the third party service forms part of the Service.

4.4 Variation of Charges

- (a) The Supplier may vary the Charges from time to time and will give the Customer at least 30 days notice of any increase in the Charges.

- (b) If the Customer does not accept the increase in Charges, the Customer may terminate this Agreement by notifying the Supplier prior to the effective date of the increase. If the Supplier does not receive such notice from the Customer prior to the effective date, the Customer is deemed to have accepted the increase in the Charges.

4.5 Invoicing and Payment

- (a) Unless provided otherwise in the Specific Terms and subject to paragraph (b), the Supplier will issue or cause a third party to issue a monthly invoice to the Customer outlining the Charges due for each Service.
- (b) Any invoice issued on behalf or in lieu of the Supplier by any third party or parties for the Services and Charges under this Agreement is deemed to be an invoice issued by the Supplier under this Agreement. The Customer agrees to accept any such invoices as invoices issued under this Agreement.
- (c) The Supplier reserves the right to:
 - (i) vary the billing frequency at any time without prior notification;
 - (ii) issue an interim bill during a month for accrued Charges, which will become immediately due and payable;
 - (iii) re-issue any bill if any error is subsequently discovered; and/or
 - (iv) bill the Customer through a billing agent or any of its Affiliates.
- (d) The Supplier may include Charges omitted from an earlier invoice in a subsequent invoice.
- (e) The Customer must pay each invoice:
 - (i) in full;
 - (ii) on or before the date specified in the invoice or if no such date is specified, within 15 days from the date the Customer receives the invoice (**Due Date**);
 - (iii) without set off, counter claim or deduction for any amount (including Taxes); and
 - (iv) in the manner specified in the invoice, or if no such manner is specified, by cash, cheque, direct debit or other method permitted by the Supplier.
- (f) If a cheque or payment by direct debit is dishonoured or cancelled, the Customer agrees to pay to the Supplier any:
 - (i) resulting bank or other charges incurred by the Supplier; and

- (ii) a reasonable administration charge imposed by the Supplier.
- (g) If a payment due by the Customer to the Supplier under this Agreement is not received by the Due Date, the Customer must promptly pay:
- (i) interest in respect of the overdue amount, calculated daily from the Due Date at an interest rate equal to 2% per annum above the then current prime lending rate of The Hong Kong and Shanghai Banking Corporation Limited; and
 - (ii) any additional charges or expenses incurred by the Supplier in recovering outstanding amounts due under this Agreement (including the cost of engaging a debt recovery agent or instituting legal proceedings).
- (h) All enquiries concerning any invoice must be made by the Customer to a third party nominated by the Supplier or, if no such nomination is made, to the Supplier. Enquiries must be made within 10 days of the relevant invoice date. After the 10 day period, the invoice will be deemed to be accepted by the Customer.
- (i) The Supplier may set off any amount owed by the Customer to the Supplier against any amount owed by the Supplier to the Customer under or in relation to this Agreement.

4.6 Taxes

- (a) The Charges are exclusive of any Taxes.
- (b) The Customer is responsible for any Taxes which may be imposed in relation to a Service or a Charge for a Service, whether existing at the Effective Date or coming into effect at any later time.
- (c) Without prejudice to paragraph (b) and unless otherwise agreed, if at any time an Applicable Law obliges the Customer to make a deduction, withholding or payment in respect of Taxes from the Charges payable to the Supplier, the Customer must indemnify the Supplier against such deduction, withholding or payment by paying on the Due Date an additional amount that ensures the Supplier receives a sum equal to the sum it would have received if the deduction, withholding or payment had not been made.

5. SECURITY DEPOSIT

- (a) The Supplier may at any time request the Customer to provide a reasonable security deposit (**Security Deposit**):
 - (i) for Charges to be incurred in relation to provision of the Services; or (ii) as security for the Customer meeting its obligations under this Agreement.
- (b) The Customer must:
 - (i) pay the Security Deposit indicated in the Cyberport Cloud Application Form (if any) or otherwise requested by the Supplier within 7 days of the Effective Date;

- (ii) comply with the Supplier's request pursuant to paragraph (a) within 7 days of the Supplier making such request;
 - (iii) pay the Security Deposit to the Supplier or its nominee; and
 - (iv) vary the form or value of the Security Deposit within 7 days of receiving written notice from the Supplier requiring it to do so.
- (c) A Security Deposit, and any interest earned from the Security Deposit, may be held by the Supplier or its nominee until:
- (i) termination of this Agreement under clause 14 (*Term and Termination*); and
 - (ii) all of the Customer's liabilities to the Supplier in respect of the Services are discharged.
- (d) The Supplier or its nominee may apply the Security Deposit in whole or part to satisfy any amount due by the Customer to the Supplier under this Agreement.
- (e) A Security Deposit does not affect any right of the Supplier to suspend, cancel or terminate this Agreement for non-payment by the Customer of its Charges under clause 4 (*Charges, other payments and taxes*).

6. CUSTOMER OBLIGATIONS AND WARRANTIES

6.1 Obligations for use of Services

Without prejudice to clause 2.4 (*Customer's obligations*), the Customer must:

- (a) use the Services in accordance with this Agreement and all Applicable Laws;
- (b) promptly notify the Supplier of any fault in the Service or deterioration in the quality of the Service;
- (c) promptly comply with any directions given by a Supplier from time to time:
 - (i) in relation to the installation, replacement, removal, configuration, interfacing, repair or modification of any Equipment, Customer Equipment or apparatus at the Premises for the purposes of:
 - A. providing or using any of the Services; or
 - B. eliminating any interference, impediment or impairment to a Service or the Network; or
 - (ii) in relation to the use of any Service; or

- (iii) for the purposes of clause 15(c) (*regarding modification, replacement or alteration of Software*);
- (d) promptly provide the Supplier with any information reasonably required in relation to the provision of the Services or any Equipment, Customer Equipment or apparatus;
- (e) promptly provide all information available to the Customer which may be of assistance to the Supplier in identifying any activities which are not authorised under this Agreement or any Applicable Law;
- (f) provide any assistance reasonably required by the Supplier in relation to the provision of the Services; and
- (g) have suitably qualified and adequately trained staff for the operation and use of the Software, Customer Equipment and Services.

6.2 Restrictions on use of Service

The Customer must not, and must ensure that its customers and any third parties within its control do not, use any of the Services or the Network:

- (a) in any manner that would cause the Supplier to be in breach of any Applicable Law;
- (b) for any improper purpose or for the purpose of sending any material of an obscene or indecent nature;
- (c) in any manner which is unauthorised, fraudulent, suspicious or illegal; or
- (d) in a manner which constitutes an infringement by the Customer or the Supplier of the rights of any person (including Intellectual Property Rights) or a violation or infringement of any duty or obligation in contract, tort or otherwise, to any third party.

6.3 Prohibited conduct

The Customer must not, and must ensure that its customers and any third parties within its control do not:

- (a) interfere with or impede or impair use or operation of any of the Services or the Network or any telecommunication service or network of a third party; or
- (b) take, or allow any other person to take, any action not authorised by the Supplier or under this Agreement in relation to the Network or a Service.

6.4 Customer warranties

The Customer represents and warrants that:

- (a) the Customer is the legal owner, lessee or licensee of each item of Customer Equipment;
- (b) the installation and use of the Customer Equipment will conform with the specifications set out in the Specific Terms and any directions given by the Supplier under this Agreement;
- (c) the Customer's use of the Customer Equipment complies with all Applicable Laws;
- (d) the Customer Equipment used in relation to the Services is fit and suitable for the purposes for which that equipment is used; and
- (e) all and any information supplied under or in relation to this Agreement is correct.

6.5 Public Statements

Unless otherwise agreed, the Customer must not make any representation or public statement that:

- (a) any Customer Service is supplied using the Services or the Network;
- (b) any Customer Service is supplied by the Supplier; or
- (c) the Customer is authorised to act for on behalf of the Supplier.

7. PROVISION OF CUSTOMER DATA

7.1 Consent

The Customer consents to the Supplier collecting and retaining Customer Data.

7.2 Use of Customer Data

Unless otherwise agreed, the Supplier may use Customer Data or permit use of Customer Data by any third party or assignees of the Supplier for any and all of the following purposes:

- (a) inclusion in printed directories or directory enquiry services;
- (b) provision and improvement of the Service and goods and services supplied in connection with the Service;
- (c) matching (as defined in the Personal Data (Privacy) Ordinance) the Customer Data with other data collected for other purposes and from third party sources in relation to the provision of the Service;

- (d) analysing, verifying and checking of the Customer's credit, payment and status;
- (e) processing of any payment instructions, direct debit facilities or credit facilities, or operation of the Customer's account with the Supplier;
- (f) enabling the Supplier to comply with obligations to interconnect, other industry practices or obligations to third parties in relation to the Services;
- (g) as required by any Applicable Law;
- (h) prevention or detection of crime; and
- (i) for any other purposes as may be agreed by the parties.

7.3 Customer obligations

- (a) The Customer must, as soon as practicable, notify the Supplier of any change in any information or particulars provided to the Supplier (including any information provided in the Cyberport Cloud Application Form) which may affect the provision of the Service to the Customer.
- (b) The Customer agrees to provide the Supplier promptly with information relating to the Customer and its use of the Service as reasonably required by the Supplier:
 - (i) to assist the Supplier in complying with its obligations under any Applicable Law and reporting to any government or regulatory body regarding compliance with those obligations; and
 - (ii) to assess whether or not the Customer has complied and will be able to continue to comply with all its obligations under this Agreement.

8. SERVICE ADDRESSING INFORMATION

- (a) The Customer acknowledges that any telephone or service numbers or other network addressing information assigned by the Supplier to the Customer are governed by numbering plans and guidelines issued by the Telecommunications Authority or other relevant government or regulatory body.
- (b) The Customer has no title, goodwill or interest in any such numbers assigned to the Customer.
- (c) Without prejudice to clause 13 (*Suspension or alteration of Service*), the Supplier may withdraw or change any number or network addressing information assigned to the Customer.

9. PERSONAL IDENTIFICATION

- (a) The Supplier may allocate one or more personal identification numbers, passwords, IP addresses, login identification codes or other forms of access codes (collectively, **Personal Identifications** or **PIDs**) to the Customer for the purposes of using a Service.
- (b) The Supplier may, at any time, vary any PIDs.
- (c) Each PID issued to the Customer is confidential and personal to the Customer and the Customer is responsible for the security of each PID.
- (d) The Customer must use each PID in accordance with the directions given to it by the Supplier from time to time and this Agreement.
- (e) The Customer must immediately notify the Supplier if the Customer has grounds for believing that any person has discovered or is making use of a PID without its knowledge or consent. The Supplier may allocate a new PID to the Customer in such instances.
- (f) If a Service is suspended, withdrawn, restricted or terminated, or this Agreement is suspended or terminated, the Supplier may withdraw any or all of the PIDs.

10. EQUIPMENT

10.1 Property in Equipment

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

10.2 Liability for Equipment

The Customer is:

- (a) responsible for the Equipment while it is in the Customer's custody or control or on the Premises; and
- (b) liable to the Supplier for any loss or damage to the Equipment in the Customer's custody or control (except in so far as any such loss or damage is due to the negligent act or omission of the Supplier).

10.3 Customer's obligations

At the Customer's expense, the Customer must:

- (a) immediately notify the Supplier 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 consent;
- (d) not remove, tamper with or obliterate any identification mark affixed to the Equipment;
- (e) not affix any Equipment to any part of the Premises in a manner that causes it to become a fixture;
- (f) not connect any Equipment to any other equipment or service except as expressly authorised by the Supplier; and
- (g) not use the Equipment in any manner which would interfere with the efficient operation of any telecommunications network or service.

10.4 Repair and replacement of Equipment

The Supplier may, at its discretion, repair or replace the Equipment located at the Premises. Such repair and replacement will be:

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

The Customer must pay any invoice under paragraph (b) in accordance with clause 4 (*Charges, other payments and Taxes*).

11. PREMISES

11.1 Supplier's access rights

From the Effective Date, the Customer must:

- (a) ensure that the Supplier, its representatives and agents have access to the Premises at all times in the case of emergency and otherwise at reasonable times to be agreed with the Customer:
 - (i) for the purposes of clause 15(c) (*regarding modification, replacement or alteration of Software*);
 - (ii) to install, inspect, configure (including reconfigure), interface, maintain, repair, replace, remove or recover the Equipment, Customer Equipment (if requested by the Customer) or any other equipment prior to, during or after the provision of any Service;
 - (iii) to determine whether or not the Customer or third parties using Customer

Services are engaging in any activity not authorised by the Supplier or under this Agreement;

- (iv) to inspect any equipment or apparatus including machinery, meters, transformers or fittings which the Supplier considers is, or may be, causing or likely to cause any interference, impediment or impairment to any Service or the Network;
 - (v) if applicable, for the purposes of providing Support Services in accordance with clause 2.7 (*Support Services*); and
- (b) provide safe access to the Premises and safe conditions for the Supplier, its representatives and agents while on the Premises.

11.2 Environment specifications

The Customer must provide, supply or arrange for the supply of air-conditioning, electricity and other utility services and environmental conditions at the Premises which are:

- (a) required by the Supplier from time to time; and
- (b) reasonably necessary to operate the Equipment and to support or use the Services.

12. LIABILITY

12.1 Exclusion of liability and implied warranties

Notwithstanding any term of this Agreement and to the extent permitted by law:

- (a) the Supplier excludes liability for any Consequential Loss:
 - (i) whether arising from negligence (or other tort), breach of contract, under indemnity or otherwise;
 - (ii) whether or not such Consequential Loss was foreseeable; and
 - (iii) whether the Supplier has been advised of the possibility of such Consequential Loss;
- (b) conditions and warranties implied by custom, the general law, statute or any Applicable Law are excluded from this Agreement; and
- (c) the Customer must ensure that all contracts in relation to any Customer Services exclude any liability of or for the Supplier.

Nothing in this Agreement excludes or restricts a party's liability for death or personal injury resulting from the negligence of that party.

12.2 Limitation of Liability

- (a) Subject to clauses 12.1 and 12.2(b) and to the extent permitted by law, the Supplier's liability under or in connection with this Agreement is limited at its election to:
 - (i) supplying the relevant Service again or paying the cost of supplying the Service again (where applicable); or
 - (ii) the repair or replacement of the property damaged or paying the cost of such repair or replacement (where applicable).
- (b) Subject to clause 12.1 (*Exclusion of liability and implied warranties*) and to the extent permitted by law, the Supplier's total liability under or in connection with this Agreement, whether arising from negligence (or other tort), breach of contract, under indemnity or otherwise (**Default**), is limited as follows:
 - (i) for any one incident or series of events arising from a common incident or cause and subject to paragraph (b)(ii):
 - A. the total Charges paid in the six month period immediately preceding the Default; or
 - B. if the Default arises during the first six month period following the Effective Date, the actual total Charges paid up to the date of Default; and
 - (ii) for all liability arising out of or in connection with this Agreement:
 - A. the total Charges paid in the twelve month period immediately preceding the last Default; or
 - B. if that Default arises during the twelve month period following the Effective Date, the actual total Charges paid up to the date of that Default.

12.3 Indemnity from Customer

The Customer must indemnify the Supplier, its employees, contractors, Affiliates and agents against any claims and Loss, howsoever arising, which the Supplier suffers or incurs in connection with this Agreement, including any Loss or a claim resulting directly or indirectly from:

- (a) any act or omission of the Customer or any third party within the Customer's control;
- (b) any claim by any person relating to any delay or failure to provide the Service;
- (c) a breach by the Customer of this Agreement;

- (d) any activity by the Customer or any third party to whom a Customer Service is provided;
- (e) any claim for infringement of any Intellectual Property Right due to an act or omission of the Customer; and
- (f) the Supplier's access to the Premises,

except to the extent that the claim or Loss is the result of the wilful breach of this Agreement by the Supplier.

12.4 Duty to mitigate

The Customer agrees that it has a duty to mitigate its Losses in the event of a breach of this Agreement by the Supplier. Nothing in this Agreement will be taken as in any way reducing or affecting this obligation.

13. SUSPENSION OR ALTERATION OF SERVICE

13.1 Right to suspend or alter Service

The Supplier may suspend, de-activate, restrict, expand, reduce or modify all or part of any Service, or the content transmitted over any Service, at any time until further notice to the Customer in any of the following circumstances:

- (a) the Supplier has grounds for terminating the Service under clause 14 (*Term and Termination*);
- (b) the Supplier reasonably suspects that any activities not authorised under this Agreement have occurred or are occurring in relation to the Service, whether or not such activities are carried out by the Customer;
- (c) the provision of the Service would cause the Supplier to be in breach of any Applicable Law;
- (d) the Customer is not complying with the requirements in the relevant Specific Terms;
- (e) the provision of a Service is causing an interference with the Network or the provision of other Services; or
- (f) in the Supplier's reasonable opinion, it is necessary or desirable to suspend the Service in order for the Supplier to:
 - (i) carry out planned maintenance, repair, testing or upgrading of any equipment or facility forming part of the Network; or

- (ii) protect the integrity of the Network, or to carry out unplanned maintenance, repair, testing or upgrading of any equipment or facility forming part of the Network.

13.2 Notice for suspension of Service

- (a) Subject to paragraph (b), the Supplier must give as much notice as is reasonably practicable (if any) before suspending a Service under clauses 13.1(a) and f(i) (*Right to suspend Service*).
- (b) The Supplier may suspend a Service under clauses 13.1(b), (c), (d), (e) and (f)(ii) (*Right to suspend Service*) without any notice.

13.3 Obligations of the Supplier for suspension of Service

- (a) If a Service is suspended, de-activated or restricted under paragraph 13.1(f)(i) (*Right to suspend Service*), the Supplier will use reasonable endeavours to ensure that there is minimum disruption to the Service.
- (b) Without prejudice to clause 12 (*Liability*), the Supplier is not liable to the Customer or any third person for any Loss resulting from, or in connection, with a suspension, withdrawal or restriction of a Service under this clause 13.
- (c) The exercise of any of the Supplier's rights under this clause 13 is without prejudice to any other remedy available to the Supplier under this Agreement.

14. TERM AND TERMINATION

14.1 Term

This Agreement takes effect on the Commencement Date and continues until terminated in accordance with this clause 14.

14.2 Termination without cause

- (a) Either party may terminate this Agreement in its entirety without cause after the expiration of the Minimum Commitment Period for the Agreement, by giving the other party at least 30 days written notice.
- (b) Either party may terminate this Agreement in respect of a particular Service without cause after the expiration of the Minimum Commitment Period for the Service by giving the other party at least 30 days written notice.
- (c) Unless there is a pending Cyberport Cloud Application Form pursuant to clause 3 (*Variation to Specific Terms and Services*), this Agreement shall automatically terminate if all Services are terminated under this Agreement for any reason.

- (d) Notwithstanding any term of this Agreement, the Customer cannot terminate this Agreement with respect to a Mandatory Service unless the Agreement is terminated in its entirety under this clause 14.

14.3 Termination by Supplier

Subject to clause 14.2(d), the Supplier may terminate this Agreement, either in its entirety or in respect of one or more Services nominated by the Supplier, with immediate effect by notice if:

- (a) the Customer has had Charges outstanding on any Service or equipment provided to the Customer by the Supplier or an Affiliate for a period of 30 days or more after their due date for payment;
- (b) the Customer has breached a provision of this Agreement;
- (c) the Supplier suspects fraud or misuse of a Service, or an activity not authorised by the Supplier or this Agreement in relation to use of the Service, by any person, regardless of whether the Customer consented to or had knowledge of such fraud, misuse or unauthorised activity;
- (d) the Supplier is named as a defendant or threatened with suit in any action or proceeding in which it is alleged that a Service has been used to carry defamatory content;
- (e) where the Customer is an individual, the Customer dies;
- (f) where the Customer is a legal entity (including a partnership), the Customer becomes or appears likely to become 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 or appears likely to become subject to any other form of an insolvency proceeding;
- (g) the Supplier is prohibited from supplying a Service under any Applicable Law;
- (h) any Force Majeure Event continues for more than 90 days;
- (i) the Supplier has a specific right to terminate a Service under the Specific Terms; or (j) the Customer vacates the Premises.

14.4 Customer's right to terminate

The Customer may terminate this Agreement if the Supplier breaches any clause of this Agreement and such breach is not remedied within 30 days of written notice by the Customer to the Supplier (such notice providing sufficient details of the breach).

14.5 Cancellation Charge

- (a) If a Service or this Agreement is terminated by:

- (i) the Customer other than under clause 14.4 (*Customer's right to terminate*); or
- (ii) the Supplier under clause 14.3 (other than under clause 14.3(g) (*Termination regarding Applicable Law*) or clause 14.3(h) (*Termination regarding Force Majeure Event*)),

before the expiration of the relevant Minimum Commitment Period, then the Customer must immediately on termination pay the Supplier the relevant Cancellation Charge.

- (b) The parties agree that the Cancellation Charge is an agreed reasonable pre-estimate of the anticipated losses suffered by the Supplier if a Service or the Agreement is terminated before the expiration of the Minimum Commitment Period.

14.6 Consequences of termination

- (a) Upon the date of termination of this Agreement, all licences, rights and privileges granted to the Customer under this Agreement shall cease.
- (b) On termination of this Agreement, the Customer must:
 - (i) immediately pay all Charges for use of the Services up to and including on the date of termination and all other amounts owing by the Customer to the Supplier;
 - (ii) cease use of the Equipment and all Services;
 - (iii) promptly return all Software and Service Literature to the Supplier; and
 - (iv) and is deemed to authorise the Supplier to access the Premises at any time for the purposes of removing the Equipment, Software and Service Literature and terminating the Service.
- (c) Without prejudice to clause 12 (*Liability*), the Supplier will not be liable to the Customer or to any third party for any Loss resulting from or in connection with termination of this Agreement under this clause 14.

14.7 Survival

- (a) Termination of this Agreement will not extinguish or otherwise affect any rights of any party against the other which accrued before the date of termination of this Agreement.
- (b) To the extent possible, clauses 4 (*Charges, other payments and taxes*), 5 (*Security Deposit*), 10 (*Equipment*), 12 (*Liability*), 14 (*Term and Termination*), 16 (*Confidentiality and Intellectual Property Rights*) and any other clause of the Agreement, which by its nature is intended to survive termination of this Agreement, will survive termination of this Agreement.

15. SOFTWARE LICENCE

- (a) The Supplier grants to the Customer a non-exclusive and non-transferable licence to store, run and use the Software and Service Literature for the purposes only of using the Services in accordance with the terms of this Agreement.
- (b) The customer must not alter, modify, adapt, translate, decompile, disassemble or reverse engineer or commercially exploit the Software or Service Literature.
- (c) The Supplier may upgrade, replace or modify the Software at any time and for any reason, whether or not on the Customer Equipment.

16. CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS

16.1 Confidentiality

- (a) All information supplied by a party under or in relation to this Agreement, including the terms of this Agreement, is confidential.
- (b) Each party must keep confidential, and must not disclose to any person, any confidential information of the other party or its Affiliates without the prior written consent of the other party, unless the disclosure is required by an Applicable Law.

16.2 Intellectual Property Rights

Subject to clause 15 (*Software licence*), the Customer agrees and acknowledges that nothing in this Agreement:

- (a) assigns any Intellectual Property Right of the Supplier or any third party to the Customer;
or
- (b) grants any licence to the Customer in respect of any Intellectual Property Right of the Supplier or any third party.

16.3 Supplier's licence to use content

To the extent permitted by the law and necessary for the operation of the Services by the Supplier, the Customer is deemed to have granted to the Supplier an irrevocable perpetual licence to copy, distribute, publish and transmit any content unloaded, downloaded or transmitted by the Customer via any of the Services.

17. DISPUTE RESOLUTION PROCEDURES

- (a) Any dispute or difference which arises between the parties in respect of any aspect of this agreement must be dealt with in accordance this clause.

- (b) Either party may, by serving notice in writing upon the other party, refer a dispute or difference to each party's managing director, or that managing director's nominee, for resolution.
- (c) If the managing directors or their nominees (as the case may be) of each party are unable to resolve the dispute or difference within 7 days of its referral (or such longer period agreed between the parties), either party may refer the dispute to mediation to be conducted in Hong Kong in accordance with the Mediation Rules of the Hong Kong International Arbitration Centre (HKIAC) in force from time to time.
- (d) English shall be the language of all proceedings.

18. GENERAL

18.1 Notices and Communications

- (a) A notice, consent or any other communication under this Agreement must:
 - (i) be in writing and in English;
 - (ii) be delivered by any of the delivery means specified in paragraph (b) to the relevant person specified in the Cyberport Cloud Application Form or as otherwise notified by the relevant party.
- (b) A written communication is deemed to be received:
 - (i) if by hand delivery, when it is delivered;
 - (ii) if a letter, three days after posting (seven, if posted to or from a place outside Hong Kong);
 - (iii) if a facsimile, at the time of dispatch if the sender receives a transmission report which confirms that the facsimile was sent in its entirety to the facsimile number of the recipient; and
 - (iv) if an email, at the time of dispatch if the sender receives a delivery report which confirms that the email was sent in its entirety to the email address of the recipient.
- (c) Communications received by a party outside of normal working hours (being 9:00 am to 5:00 pm on any business day) will be regarded as being received on the immediately following business day.

18.2 Amendment of Agreement

- (a) The Supplier may amend the terms and conditions of this Agreement at any time in accordance with a Licence.
- (b) Subject to paragraph (a) and the terms of this Agreement, this Agreement may only be amended by written agreement between the parties.

18.3 Force Majeure

Notwithstanding any other provision of this Agreement, the Supplier is not liable for any failure to fulfil an obligation under this Agreement if such a fulfilment is delayed, prevented, restricted or interfered with for any reason as a result of a Force Majeure Event, provided that the Supplier has used its reasonable endeavours to mitigate the effect of the Force Majeure Event.

18.4 Assignment

- (a) The Customer may not assign, transfer or sublicense all or any part of its rights or obligations under this Agreement, without the prior written consent of the Supplier, which consent may be granted with conditions or withheld in the Supplier's sole discretion.
- (b) The Supplier may assign, transfer or sublicense all or any part of its rights or obligations under this Agreement to a third party or appoint a third party to perform any of the Supplier's obligations, or exercise any of the Supplier's rights, under this Agreement.

18.5 Entire Agreement

- (a) Subject to the terms of this Agreement, this Agreement supersedes all previous agreements in relation to the Service and embodies the entire agreement between the parties in relation to the Service.
- (b) In entering into this Agreement the parties do not rely on any representations or warranties in relation to the Service except as expressly provided in this Agreement.

18.6 Order of Precedence

- (a) In the event of any inconsistency between the General Terms, the Specific Terms and the Cyberport Cloud Application Form , the inconsistency will be resolved in the following order:
 - (i) the General Terms and Conditions;
 - (ii) the Specific Terms; and
 - (iii) the Cyberport Cloud Application Form .

- (b) If the Customer includes requirements or information in the Cyberport Cloud Application Form other than as expressly provided for in the Cyberport Cloud Application Form, it will not form part of this Agreement.
- (c) This Agreement may be translated into Chinese or some other language. The English version of this Agreement will prevail.

18.7 Governing law and Jurisdiction

The laws of Hong Kong govern this Agreement. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Hong Kong.

18.8 Invalidity

Each of the provisions of the Agreement is severable and distinct from the others, and if one or more of such provisions is or becomes invalid, unenforceable or illegal, the other provisions will continue to be effective and binding.

18.9 Waivers

Any failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on that party by the Agreement does not operate as a waiver of that power or right unless expressed in writing to be a waiver.

18.10 Cumulative rights

The rights and remedies of a party under this Agreement do not exclude any other right or remedy provided by law.

18.11 Non-merger

No provision in this Agreement, including the warranties given under it, merges on termination of this Agreement.

18.12 Continuing indemnities and survival of indemnities

- (a) Each indemnity contained in this Agreement is a continuing obligation despite a settlement of account or the occurrence of any other thing, and remains fully effective until all money owing, contingently or otherwise, under an indemnity has been paid in full.
- (b) Each indemnity contained in this Agreement:
 - (i) is an additional, separate and independent obligation and no one indemnity limits the generality of another indemnity; and

(ii) survives the termination of this Agreement.

SCHEDULE

SERVICE TERMS (clause 2.7)

1. REQUIREMENTS FOR PROVIDING SUPPORT SERVICES

- (a) A Support Request should be made by the Customer by telephone or in writing.
- (b) Upon request by the Supplier, the Customer must promptly provide the Supplier such information as the Supplier requires.
- (c) The Customer shall also ensure that the Supplier is provided with all information, facilities, services and accessories reasonably required to enable the Supplier to supply the Support Services.
- (d) The Supplier may at its discretion submit a quote for the provision of support services required by any of the circumstances set out in clause 3 of this Schedule.

2. FORM OF SUPPORT SERVICES

Support Services to be provided under the Agreement may, at the sole option of the Supplier, take the form of:

- (a) telephone advice;
- (b) remote error correction;
- (c) on-site attendance followed by such advice, repair and/or re-configuration as the Supplier considers necessary or desirable;
- (d) replacement of defective Equipment;
- (e) provision of Software updates (if available); and/or
- (f) such other services as the Supplier may consider necessary or desirable at its own discretion.

3. EXCLUSION OF SUPPORT SERVICES

The Customer agrees that the Support Services to be provided by the Supplier under the Agreement do not include:

- (a) diagnosis or rectification of Defects associated with the Customer Equipment;

- (b) rectification of Defects caused by incorrect use of any Equipment, Software or Service;
- (c) diagnosis or rectification of Defects associated with Software on the Customer Equipment during the periods that the Customer Equipment is being used for the purposes of the Wireless LAN Service;
- (d) correction of Defects caused by the failure of the Customer to provide suitably qualified and adequately trained staff or subcontractors for the operation and use of the Software, Customer Equipment and Services;
- (e) training of the Customer's employees, personnel and agents in relation to Service;
- (f) diagnosis or rectification of Defects not associated with or caused by the Supplier or the
- (g) Network;
- (h) diagnosis or rectification of Defects associated with the use of software other than the Software;
- (i) damage to a Service, equipment or apparatus located on the Premises, or Software, caused by inappropriate or non-recommended physical, environmental or electrical stress, dropping, liquid spills, faulty power sources or power spikes;
- (j) in-house consumables or cabling requirements of the Customer; or
- (k) enhancements designed to extend or modify any Software or Service to provide a service feature not provided for or contemplated under this Agreement.

4. SERVICE LEVELS

- (l) The Supplier will use reasonable endeavours to provide the Support Services in accordance with the following service levels acknowledge all Support Requests within 4 hours of receipt at the Supplier's network operations centre during Office Hours;
- (m) from the acknowledgment of the relevant Service Request and if the parties agree that a Support Service is required to be performed on-site at the Premises, a support personnel of the Supplier will attend the Premises within:
 - (i) 3 hours during Office Hours; and
 - (ii) 5 hours outside Office Hours.

5. NO LIABILITY

To the extent permitted by law, the Customer agrees that the Supplier will not be liable for any Support Services consisting of technical advice only.

ATTACHMENT A

DICTIONARY AND RULES OF INTERPRETATION (clause 1)

Part 1

In this Agreement:

Agreement means the General Terms and Conditions, Service Terms, Specific Terms for each Service and the Cyberport Cloud Application Form relating to each Service.

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 laws, statutes or ordinances,
- (b) any lawful determination, decision or direction of a government or regulatory body or 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.

Cancellation Charge is calculated in accordance with the following:

- (a) with respect to a Service,

the average monthly Charges paid by x the number of months in the remainder of the the Customer for that Service up to the Minimum Commitment Period on the date of date of termination of the Service termination of the Service

- (b) with respect to the termination of this Agreement, the sum of the Cancellation Charges for each of the Services (calculated in accordance with paragraph (a)).

Charges means the charges payable by the Customer to the Supplier for each Service as advised to the Customer by the Supplier from time to time.

Commencement Date means, with respect to a Service, the date indicated on the Cyberport Cloud Application Form or notified by the Supplier as the date for commencement of the Service.

Consequential Loss means:

- (a) any loss of profit, loss of goodwill, loss of production, loss of business, loss of opportunity, business interruption, loss of revenue, loss of contract, loss of anticipated savings, loss or corruption of data or loss of privacy of communications; and
- (b) any consequential, special, indirect, exemplary or punitive damages, of any nature.

Customer Data means any information in relation to the Customer and includes personal data (as defined in the Personal Data (Privacy) Ordinance) about the Customer.

Customer Equipment means all hardware, software and consumables owned by the Customer or licensed or leased to the Customer by a third party and used in relation to the Services.

Customer Service means a telecommunications service, if any, supplied by the Customer to any third party through the means of a Service provided under this Agreement.

Defect means a defect, error or problem in a Service or Software.

Due Date has the meaning given in clause 4.5(e) (*Invoicing and payment*).

Effective Date means the date that both parties sign this Agreement.

Equipment means the equipment (including any Software contained in that equipment) provided or used by the Supplier to make available the Services to the Customer which may be installed at the Premises, including any equipment licensed or leased to the Customer by the Supplier under this Agreement, but excluding any Customer Equipment.

Force Majeure Event means an event outside the reasonable control of the Supplier, 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, licenses or authorities, or telecommunication network outage or degradation.

Intellectual Property Rights means all intellectual property rights subsisting throughout the world conferred under statute, common law and equity, including:

- (a) patents, copyright, rights in civil layouts, registered designs, trademarks and any right to have confidential information kept confidential; and
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a).

Licence means a licence issued by a government agency to the Supplier from time to time authorising the Supplier to provide the Service.

Loss includes any loss, costs, damages, expense, liability and charge incurred by a party, including Consequential Loss.

Mandatory Services means the Services (if any) indicated as such by the Supplier.

Minimum Commitment Period means:

- (a) with respect to a Service, 3 months from the Commencement Date for that Service; and
- (b) with respect to this Agreement, 3 months from the Effective Date.

Network means the telecommunications network owned or operated by the Supplier and used in connection with providing the Services, including the Internal Private Network (as described in the relevant Specific Terms) and all facilities and associated equipment used in, or in connection with, that network, but excluding the Customer Equipment.

Office Hours means 9.00 am to 5.00 pm on week days, excluding Saturday, Sunday and public holidays, in Hong Kong.

Premises means the premises indicated in the Cyberport Cloud Application Form.

Schedule means a schedule to this Agreement.

Security Deposit has the meaning given in clause 5(a) (*Security Deposit*).

Service means a technology or telecommunications service supplied by the Supplier to the Customer under this Agreement pursuant to a Cyberport Cloud Application Form or clause 3 (*Variation to Specific Terms and Services*), which service is more fully described in the Specific Terms relevant to that service.

Services means any or all of the services supplied by the Supplier to the Customer under this Agreement.

Service Literature means any brochure, tariff schedule, customer guide, code of practice, device description, instructions or manual issued by the Supplier from time to time in connection with the provision of a Service.

Cyberport Cloud Application Form means an online application (in a form approved by the Supplier) made by the Customer requesting provision by the Supplier of one or more Services or modification to one or more Services.

Service Terms means the additional terms relevant to the Support Services, set out in the Schedule entitled 'Service Terms'.

Software means the software specified (if any) in the Specific Terms for each Service and any other software used or supplied by the Supplier in relation to the Services.

Specific Terms means the specific terms applicable to a Service set out in the Schedule relating to that particular Service.

Support Request means a communication by the Customer to the Supplier or a third party nominated by the Supplier to perform a Support Service or Support Services to rectify a Defect or answer a Customer query in relation to a Service.

Support Services means those services provided by the Supplier or a third party nominated by the Supplier to resolve Defects or Customer queries in relation to a Service and which are further described in the Service Terms.

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) levied or imposed by any government or regulatory body or agency, other than those imposed on overall income.

Part 2

- (a) In this Agreement, unless the context otherwise requires:
- (i) words importing the singular include the plural and vice versa;
 - (ii) words which are gender neutral or gender specific include each gender;
 - (iii) other parts of speech and grammatical forms of a word or phrase defined in the agreement have a corresponding meaning;
 - (iv) a reference to a clause, schedule or attachment in the General Terms of this Agreement is a reference to a clause, schedule or attachment to the General Terms of this Agreement;
 - (v) subject to paragraph (iv), a reference to a clause, party, schedule or attachment is a reference to a clause, party, schedule or attachment to this Agreement and a reference to the Agreement includes a schedule and attachment to this Agreement;
 - (vi) 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;

- (vii) a reference to a document includes all amendments or supplements to that document, or replacements or novations of it;
 - (viii) a reference to a party to a document includes that party's successors and permitted assigns; and
 - (ix) an agreement on the part of two or more persons binds them jointly and severally.
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- (b) Where the day on or by which something must be done is not a business day, that thing must be done on or by the following business day.
 - (c) Headings are for convenience only and do not affect the interpretation of this Agreement.
 - (d) Any words in this Agreement appearing after the words 'includes', 'includes' or 'including' do not limit anything else that might be included.