

## GENERAL TERMS AND CONDITIONS FOR CUHK SERVICES

*Capitalised terms have the meaning given in Clause O.*

### A. Contract

1. These General Terms apply to Services supplied to you. Additional specific terms and conditions that apply to distinct Service are set out in the relevant Service Terms.
2. All Services provided by CUHK to you will be governed by these General Terms and for each Service, an Order and the Service Terms (as may be varied in accordance with the General Terms) which together form the contract between you and CUHK. You must complete an Order for each Service you wish to acquire.
3. CUHK shall advise you in writing as soon as reasonably practicable after receipt of an Order that it:
  - (a) accepts your Order; or
  - (b) rejects your Order, in which circumstances neither Party shall have any rights or obligations in respect of the particular Service; or
  - (c) requires further information or particulars to process the request for a Service.
4. At the time CUHK notifies you that it accepts an Order, the Order and applicable Service Terms shall be automatically incorporated into and form, together with the General Terms, an agreement between CUHK and you for the provision of the relevant Service for the Term. References in the General Terms to "this agreement" or "the agreement" shall be construed accordingly
5. In the event of any conflict between the General Terms, the Service Terms and, the Order, the following order of precedence will apply to resolve the conflict:
  - (a) (highest) Order;
  - (b) Service Terms;
  - (c) (lowest) General Terms.
6. CUHK may vary the Service Terms:
  - (a) upon seven (7) days' written notice to you, if such variations are minor (which may include changes in Service description which do not materially adversely affect the functionality or quality of the relevant Services) but does not include a change of Charges; or
  - (b) on two (2) months' notice to you in other circumstances.
7. If you wish to vary a Service (such as to increase capacity), you must submit a new Order to CUHK.
8. CUHK may require you to provide an estimate of your Service requirements but such will not be binding upon CUHK.

### B. Term

CUHK shall provide the relevant Service to you for the Term. You shall specify a Minimum Period for a Service in the relevant Order which shall be at least one (1) year from the Service Commencement Date for the relevant Service. Upon conclusion of the Minimum Period (unless terminated earlier) the Service will automatically renew on annual basis unless and until terminated earlier. Termination provisions appear in Clause H.

### C. Implementation & Service Test

1. A requested ready for service date (RRFS Date) is any tentative date agreed in writing between the Parties for the provision of a Service by CUHK. An RRFS Date set forth in an Order or otherwise specified by us is subject to our standard and expedited delivery intervals for the applicable Service from time to time. Although we shall use our reasonable efforts to provide the Service on, or before, the RRFS Date, an inability or failure to do so (for any reason) or to meet any other target date will not constitute a breach by us of the agreement for provision of the relevant Service.
2. Prior to any RRFS Date for the Service at any location, you may postpone the RRFS date for that location by giving CUHK prompt written notice to such effect. If the rescheduled RRFS is more than thirty (30) days following the original RRFS Date, CUHK shall have the right to invoice you for any charges or expenses incurred by it as a result of the rescheduling. Such expenses may include local access fees. In any event, you shall not postpone the RRFS date for any location by more than sixty (60) days from the original RRFS date.
3. If you request delivery of the Service on Local Circuits or Non-CUHK Circuit, you are deemed to have appointed us or our Affiliate as an agent to arrange Local Circuits or Non-CUHK Circuit from the requested CUHK POP to your specified location and we shall accordingly entered into Third Party Service Agreement with such third party operator. You must cooperate with us in securing arrangements for Local Circuits or Non-CUHK Circuit from third party operators. You will reimburse us for any charges or liability incurred by us (including, without limitation, any cancellation or genuine pre-estimated penalties incurred if all or a portion of the applicable Service is terminated or cancelled) for all or part of any Service supplied by third party operators including Local Circuits and other Non-CUHK Circuits.
4. If a Service Test is contemplated in the Order or Service Terms, then a Service Test shall commence when CUHK notifies you in writing that the Service is available for testing by you. The Service Test period shall be for five (5) Business Days before the Service Commencement Date. The Service Test shall be performed between the demarcation points identified in the Order. During the period of the Service Test, you shall be entitled to conduct your tests and CUHK shall use reasonable endeavours to provide necessary access rights to you.
5. You are entitled to accept or reject the Service during the period of the Service Test. The date of receipt by CUHK of your written or oral confirmation stating that the Service Test is satisfactory will be the Service Commencement Date. In the event that you fail to confirm a satisfactory Service Test by the end of the Service Test period, the Service shall be deemed accepted and the Service Commencement Date will be fixed as the next Business Day after the end of the Service Test period.

#### D. Charges & Payment

1. You must pay the Charges for each Service to CUHK in accordance with the relevant Service Terms and this Clause D.
2. Particulars of all Charges will be set forth in the Order Form and/or the Service Terms.
3. Where Charges are on a periodic lump sum basis, they will begin to accrue on the Service Commencement Date and we shall invoice you in advance. Where Charges are on a periodic usage basis, we shall invoice you in arrears. We shall invoice and you will pay the invoices in Hong Kong Dollars (or another currency agreed in writing or as notified by us to you in circumstances where payment is made to a location other than in Hong Kong). You must pay our invoices by the Due Date.
4. You may be required to give us a security deposit and/or your use of the Service may be subject to credit limits. In each case the applicable details will be set forth in the Order.
5. We reserve the right to vary the Charges at any time after expiry of the Minimum Term (if any) to reflect changes in governmental policies, fluctuation in exchange rates or to reflect the changes in the costs CUHK incurs in providing the Service to you. In the case of increases We shall give you not less than thirty (30) days' prior written notice to give effect to such changes.
6. All Charges are exclusive of any and all applicable Tax (if any). These amounts will be charged separately in the relevant invoice where practicable.
7. You must make each payment to CUHK without any set off (whether in law or in equity) or counterclaim and without deduction or withholding of any Tax.
8. If you are required at any time by Applicable Law to withhold, make a deduction or payment of Tax with respect to amounts that we have invoiced, you must:
  - (a) notify us as soon as you become aware of the obligation;
  - (b) ensure that the withholding, deduction or payment does not exceed the minimum amount required by Applicable Law;
  - (c) pay the full amount of the withholding, deduction or payment by the due date and promptly deliver to us a copy of any receipt, certificate or other proof of payment; and
  - (d) indemnify us against the withholding, deduction or payment by paying us, by the time the relevant invoice is due and payable, such additional amount so that the net amount received by CUHK after such withholding, deduction or payment is equal to the gross amount invoiced and as if the withholding, deduction or payment had not been made.
9. Any sum that is not paid when due will incur Interest from the Due Date (until payment in full of the principal sum and any unpaid Interest) which shall be payable in addition to CUHK.
10. You acknowledge that records generated by us, our Affiliates and/or partners in respect of Services provided or concerning any interconnected network shall be *prima facie* evidence of the matters to which those records relate absent fraud or manifest error.

#### E. Payment Dispute Resolution

1. You must notify us of any dispute to an invoice on, or before, the Due Date by specifying:
  - (a) the invoice in dispute;
  - (b) the amount of Charges which are the subject of the dispute; and
  - (c) the grounds of the dispute and the facts on which you rely.If you fail to dispute the invoice prior to its Due Date, such invoice shall be deemed accepted by you.
2. Where the disputed amount is less than 5% of an invoice, you must pay the invoice in full. Where the disputed amount is equal to, or more than, 5%, you must pay the undisputed amount in full. In the event of withholding an amount as permitted by Clause D, the Parties must negotiate in good faith to resolve the dispute as soon as practicable.
3. If a dispute concerning an invoice is not resolved within forty-five (45) days of the date of notification of the dispute either Party may by written notice to the other refer the matter to an expert agreed between the Parties or, failing agreement within fourteen (14) days of the written notice, as appointed by the Chairman of the Hong Kong Institute of Certified Public Accountants (**Expert**). The Parties shall assist the Expert as he reasonably requires.
4. The Expert must give a written decision in relation to the disputed invoice within sixty (60) days of his appointment. On resolution of the dispute concerning an invoice (whether by agreement or by expert determination):
  - (a) if the disputed amount or part of it is agreed or determined to be owing to CUHK, that amount shall become immediately payable, together with Interest in addition from the Due Date of the original invoice to the date of payment;
  - (b) If the disputed amount of the invoice or part of it is agreed or determined not to be owing to CUHK, a revised invoice shall be issued by CUHK as soon as practicable; or if it is agreed or determined that CUHK issued the relevant invoice for less than the correct amount, CUHK shall issue a further invoice for that additional amount, which shall be due and payable by the Due Date of that invoice.
5. The Expert's costs and CUHK's reasonable costs of participating in the Expert determination shall be payable:
  - (a) if the disputed amount is determined to be payable in full, by the Customer;
  - (b) if none of the disputed amount is determined to be payable, by CUHK; and
  - (c) if the disputed amount is determined to be payable in part by the Customer, proportionally by the Customer and CUHK.
6. Where an invoice is accepted (whether deemed or otherwise), then the amount due may be sued upon in any court of competent jurisdiction.

#### F. Modification and Maintenance

1. CUHK may modify the network or technical specifications applicable to any Service so long as such modifications do not result in any significant changes to the features and functionalities of the Service at the time you contracted for it.

2. We may in our sole discretion wholly or partially suspend a Service in connection with network or equipment modification, preventive or emergency maintenance, or as may be required by Applicable Law. For any maintenance scheduled beforehand and undertaken by us, we shall to the extent reasonably practicable, give you advance notice of such scheduled maintenance and suspension of Service. For unscheduled or emergency maintenance, we shall give you as much prior notice as is reasonably practicable. The notice given under this Clause F.2 will provide such details as are available concerning the maintenance and duration of suspension. To the extent commercially possible, we shall discuss the scheduled maintenance with you in advance and we would intend implementing the suspension with a view to minimising the impact on you and your users.
  3. We use our best endeavours to provide a coordinated, single point of contact maintenance function for Customers on a 24/7 basis. We will notify you of the details of this point of contact.
- (d) shall provide us or our agents with reasonable access to the location for installation and maintenance;
  - (e) use reasonable care in protecting the equipment from damage or loss and repair or replace any equipment that is damaged or lost due to theft, negligence, intentional acts, unauthorised acts or other causes that are within your reasonable control;
  - (f) upon termination of the Service or the agreement for any reason, shall make available all CUHK Equipment for removal or return in the same condition as originally installed (ordinary wear and tear excepted) or pay a mutually negotiated restoration or retention fee; and
  - (g) hold us harmless for any interruption of or inability to use the Service where such event is caused by your failure to comply with any of the foregoing;
3. Unless otherwise agreed in writing, risk in all CUHK Provided Equipment shall pass to you on delivery to you by CUHK in accordance with these General Terms. Title in all CUHK Provided Equipment shall pass to you upon payment in full to CUHK of the price for CUHK Provided Equipment.

#### **G. Customer Responsibilities**

1. In addition to your other obligations under the agreement you shall:
    - (a) procure for CUHK and its subcontractors and agents access to the premises and [points of contact] at all Circuit Location Addresses;
    - (b) provide us with all such additional documentation, such as letters of agency as may be necessary for us to procure local access for you in connection with the Service;
    - (c) assume all responsibilities for all local access arrangements procured by CUHK in connection with the Service;
    - (d) upgrade Customer Equipment as necessary to support the Service and provide environmentally suitable equipment rooms that comply with Applicable Laws and other requirements as may be applicable to the relevant equipment or otherwise reasonably specified by CUHK; and
    - (e) participate in any testing procedures and provide services of accompaniment as well as a secure and safe environment for any personnel of CUHK or its subcontractors while they are on your premises for the purposes of installation, testing or maintenance.
  2. To the extent that we have agreed to provide any network terminating or other CUHK Equipment and/or CUHK Provided Equipment in connection with the Service, you:
    - (a) acknowledge that title to any CUHK Equipment placed by CUHK or a subcontractor on your premises in connection with a Service remains with us or such subcontractor;
    - (b) are responsible for CUHK Equipment placed by CUHK or a subcontractor and must not move, add to, modify or in any way interfere with CUHK Equipment, nor allow anyone else (other than those authorised by CUHK in writing) to do so. You will be liable to CUHK for any loss of or damage to CUHK Equipment, except where the loss or damage is due to fair wear and tear or is caused by CUHK or anyone acting on behalf of CUHK;
    - (c) are responsible for preparing the location for installation, including providing adequate space, heating and cooling and electrical power;
4. You shall:
    - (a) use the Service only for the purposes for which it is designed and provided;
    - (b) possess or obtain and maintain in force all necessary licenses and permits and comply with any laws, directives, regulations and conventions which may be applicable to the possession or use of the Service by you or third parties using it through you;
    - (c) not use the Service or permit third parties using it through you to do so in a manner which:
      - (i) violates the acceptable usages of any networks, equipment or services which are accessed through CUHK's network;
      - (ii) infringes the Intellectual Property Rights of others;
      - (iii) is fraudulent, deceptive, or misleading;
      - (iv) is excessively burdensome or otherwise results in network interruptions of any kind; or
      - (v) involves illegal or unauthorised access, exploitation, interruptions or monitoring.
  5. You hold harmless and indemnify us for any failure to comply with your obligations under this Clause G.

#### **H. Suspension of Service**

1. CUHK may, without terminating this agreement and without liability, immediately suspend the whole or any part of the Service it provides to you under this agreement until further notice if:
  - (a) you fail to pay any Charges due and payable under this agreement and such Charges remaining outstanding following CUHK giving seven (7) days' prior written notice of suspension to you ; or
  - (b) you commit a breach of any material obligation under this agreement and in the case of a remediable breach, fail to remedy such breach after receiving thirty (30) days' written notice to do so;
  - (c) CUHK is obliged to suspend the whole or any part of a Service in compliance with an order, instruction or request of a government authority, emergency services

organisation or other competent authority or in connection with any Applicable Law;

- (d) CUHK considers it necessary to safeguard the integrity and security of its network and/or repair, maintain or enhance the performance of its network or prevent fraud or misuse; or
  - (e) CUHK repairs a fault in its network or in any network equipment as a result of any unplanned outage or for any other reason beyond its reasonable control; or
  - (f) the provision of a Service in any applicable jurisdiction is found to violate any Applicable Laws or would result in any additional licensing requirements.
2. If CUHK suspends the whole or any part of the Service it provides under this agreement under Clause H.1(c), (d), (e) or (f) it shall use reasonable endeavours to do so for as short a period as is practicable in the circumstances.
  3. Where CUHK suspends the whole or any part of a Service under Clauses H.1(a) or (b), Charges for the relevant Service will continue to accrue during the period of suspension until you cure the breach and pay the reconnection fees as required by CUHK and CUHK reactivates the provision of Service. In any event where CUHK suspends the whole or part of Services pursuant to Clause H, CUHK shall not be precluded from exercising its right to terminate this agreement in respect of that or any other event.

#### **I. Termination**

1. Termination By CUHK. CUHK may immediately terminate a Service and/or this agreement, or may cancel the provision of a Service or all Services provided by it to you without liability by serving prior written notice on you, if:
  - (a) you fail to pay any Charges due and payable and such Charges remaining outstanding following CUHK giving fourteen (14) days' prior written notice of termination to you;
  - (b) you commit a breach of any material obligation under this agreement and in the case of a remediable breach, fail to remedy such breach after receiving thirty (30) days' written notice to do so;
  - (c) any governmental or regulatory authority with competence and/or jurisdiction over CUHK, its Affiliates or agents decides that the provision of such Service under this agreement is contrary to existing laws, rules or regulations or any decision, law or other official governmental order makes the provision of such Service illegitimate; or
  - (d) you are the subject of a winding up order, or become insolvent, or make any arrangement or composition with or assignment for the benefit of your creditors, or if any of your assets are the subject of any form of seizure or distraint, or goes into liquidation, either voluntary (other than for reconstruction or amalgamation) or compulsory or if a receiver or administrator is appointed over your assets (or the equivalent of any such event occurs in the jurisdiction of incorporation or your place of business).
2. In the event of termination of a Service and/or this agreement under Clause I.1, you agree that:
  - (a) CUHK may, subject to Applicable Laws, enter onto any land or property and attach, distraint, take possession of and/or remove any Customer Equipment, CUHK Equipment and CUHK Provided Equipment located in

CUHK's premises in connection with the applicable Service and sell or otherwise dispose of Customer Equipment and CUHK Provided Equipment in full or partial satisfaction of amounts you owe CUHK;

- (b) CUHK may exercise such other remedies as are available to CUHK or its Affiliates at law or in equity; and
  - (c) you must pay, in addition to all Charges accruing prior to termination of this agreement, the termination charges in accordance with Clause I.5 below.
3. Termination By Customer. If CUHK materially breaches this agreement and has not remedied such failure after receiving thirty (30) days' written prior notice to do so, you may terminate the applicable Service. You will not be liable for any Charges in respect of the Services from the time of termination.
  4. Save as otherwise specified in this agreement, either Party may terminate any Service:
    - (a) following the end of the Minimum Period, upon thirty (30) days' written notice to the other Party without prejudice to your obligation to pay CUHK all sums due, including outstanding Charges and connection and/or disconnection fees for such Service so terminated;
    - (b) by giving twenty-four (24) hours' prior written notice if any Force Majeure Event occurs in accordance with Clause N.9 in which case neither Party will incur any liability or penalties other than the obligations to pay any outstanding Charges of the such Service.
  5. Termination Charge. No early termination of any Service during the Minimum Period is allowed except by CUHK in accordance with Clause I.1, in which case you shall pay the following termination charges:
    - (a) all unpaid installation fees, service fees and any other expenses properly accrued up to and including the date of termination;
    - (b) the total amount of service fees for the balance of the Minimum Period of the relevant Services;
    - (c) any amount payable by CUHK under a Third Party Service Agreement; and
    - (d) any Tax payable by the Customer.Customer acknowledges and agrees that the charges payable by it under Clause I.5(b) & (c) is a genuine pre-estimation of the loss and damages that would have been suffered by CUHK.
  6. For the avoidance of doubt, termination of one Service will not affect the Parties' rights and obligations with regard to other Services which have not been terminated.

#### **J. Third Party Use**

You may resell and permit third parties to use the Service, subject to the following conditions: (a) no such resale or third party use will lessen or modify your obligations under this Agreement; (b) use of the Service by third parties must comply with this agreement and all applicable laws; (c) you must possess or maintain all licenses, permits and other requirements that may be applicable to such resale or third party use. You hereby indemnify, defend and hold harmless CUHK and its Affiliates, employees, agents, partners, subcontractors and suppliers for and from all liabilities and costs (including reasonable legal fees) arising from any and all claims by any third party in connection with the Services

(including, without limitation, any claims regarding content transmitted using the Services or violation of data protection legislation), regardless of the form of action, whether in or due to contract, tort, breach of statutory duty, or strict liability. However, you have no obligation to indemnify anyone for liability in respect of personal injury or death.

#### **K. Warranty and Limitation of Liability**

1. CUHK warrants that it will deliver the services using the reasonable skill and care of a competent telecommunications service provider and will use reasonable efforts to restore the services in the case of a network failure insofar the same is within its control.
2. To the extent permitted by law, CUHK, its Affiliates and/or agents are not liable to the Customer for any Loss, except to the extent that CUHK has failed to meet applicable Service Levels, in which case the Customer's exclusive remedy in respect of that failure shall be, subject to Clause H, as provided by the relevant Service Levels.
3. A Party's maximum liability in relation to a Service supplied under the agreement or in relation to the performance of a Service supplied under the agreement is limited to the total amounts paid and payable by the Customer to CUHK for the provision of the relevant Service within twelve (12) months preceding the date the cause of action arose (or if twelve (12) months have not been elapsed since the acceptance of the relevant Order by CUHK, the date from the acceptance of the Order by CUHK up to the event or events in question), providing that nothing in this Clause K excludes or restricts:
  - (a) the rights and obligations of the Parties in relation to the Service Levels;
  - (b) the liability of a Party for death or personal injury;
  - (c) the liability of a Party (**Defaulting Party**) for damage to the property of the other Party or the property of any third party resulting from the Defaulting Party's breach of the agreement or the negligent or unlawful act, omission or default of the Defaulting Party or of any third party under the direct control of the Defaulting Party;
  - (d) the liability of a Party for breach of an obligation of confidentiality under Clause L; or
  - (e) the liability of each Party for infringement of the Intellectual Property Rights of the other Party or any third party in connection with providing the Services.
4. If any applicable law implies warranties or conditions or imposes obligations on CUHK, its affiliates or agents which cannot be excluded, restricted or modified, or to only a limited extent, then to the extent to which CUHK, its affiliates or agents is entitled to do so, the liability of CUHK, its affiliates and agents under the applicable law shall be limited:
  - (a) to the supply of services again or the payment of the cost of having the services supplied again, at CUHK's option;
  - (b) to the repair or replacement of property or paying the cost of repair or replacement, at CUHK's option; or
  - (c) to any other remedy prescribed by the applicable law, except in relation to CUHK's, its affiliates' and agents' liability for: (1) personal injury or death; or (2) breach of an obligation of confidentiality under clause 1.
5. The Customer indemnifies CUHK, its Affiliates and agents against all claims, other than to the extent that they are the result of a breach of the agreement by CUHK, or the

negligent or wrongful act, omission or default of CUHK or of any person within its reasonable control. Nothing in this agreement limits the liability of either Party for death or personal injury.

6. Without limiting the exclusions or limitations contained anywhere in this agreement or liability for death or personal injury, CUHK, its affiliates and agents will in no circumstances be liable to you or any third party or any person claiming through you for any consequential loss, regardless of the form of action, whether in contract, breach of statutory duty, strict liability or tort, including, without limitation, negligence. CUHK, its affiliates and agents will in no circumstances be liable for any damages attributable to any service, product or actions of any person other than CUHK, its affiliates and partners.

#### **L. Confidentiality**

1. From the time the Parties entering into the negotiations preceding this Agreement until the expiration of three (3) years following the termination of this agreement, a Party receiving (**Recipient**) Confidential Information must keep confidential and not disclose without the disclosing Party's consent the Confidential Information and will use at least the same level of care with respect to the Confidential Information as the Recipient employs with respect to its own confidential or proprietary information. For purposes of maintaining the confidentiality of this agreement, both Parties are the Recipients of the Confidential Information contained in this agreement.
2. Notwithstanding the above, Confidential Information will not be deemed confidential and the Recipient will have no obligation with respect to any Confidential Information which:
  - (a) is already known to the Recipient not due to a breach of confidentiality of which the Recipient is aware;
  - (b) is or becomes publicly known through no negligent or wrongful act of the Recipient;
  - (c) is received by the Recipient from another source without similar restriction and without breach of this agreement; or
  - (d) is furnished to a third party by the disclosing Party without similar restrictions on the third party's rights.
3. If the Recipient receives lawful process requesting or requiring it to disclose any Confidential Information, the Recipient will promptly notify the disclosing Party in order that the disclosing Party may seek an appropriate protective order, or consent to the release of the Information.
4. To the extent CUHK collects any Personal Data in connection with the administration and operation of this agreement, such Personal Data will be considered Confidential Information but subject to CUHK's right and obligations set out in Clause L.

#### **M. Personal Data**

1. CUHK will request Personal Data from you for the provision of the Service. You may decline to provide the Personal Data but CUHK reserves the right to decline the provision of the Service to you.
2. You agree and understand that CUHK may use your Personal Data for:

- (a) the provision of the Services to you including the transfer of such Personal Data to other telecommunications network providers or third parties as necessary for the provision of the Service to you and/or transfer of such Personal Data to Affiliates and partners as necessary for the provision of any service by such Affiliates or partners;
  - (b) matching (as defined in the Personal Data (Privacy) Ordinance (Cap.496, Laws of Hong Kong)) Personal Data with other data collected for other purposes and from other sources including third parties in relation to the provision of the Service;
  - (c) marketing of goods and/or services provided by us, our agents, Affiliates, partners or subsidiaries, in relation to the Service or the services provided by our Affiliates and agents;
  - (d) improving the Service or the provision of services by Affiliates and agents;
  - (e) analysing, authenticating and checking your credit, payment and/or status in relation to the provision of the Service;
  - (f) processing any payment instructions, direct debit facilities and/or credit facilities in relation to the provision of a Service or requested by you; and
  - (g) enabling the daily operation of your accounts with CUHK or our Affiliates and/or the collection of amounts outstanding from you (which may include disclosing your Personal Data to debt collection agents) in relation to the Services or any products or services provided by our Affiliates; and
  - (h) disclosure as required by law or prevention or detection of crime.
3. You shall notify us of any changes of Personal Data which may affect the provision of the Service to you. Upon request, you shall provide us with information reasonably required by us relating to you and your use of Services to:
    - (a) assist us in complying with our obligations under any Applicable Law;
    - (b) report to any government agency regarding compliance with those obligations; or
    - (c) assess whether you have complied, are complying and will be able to comply with all of your obligations under this agreement.
  4. You authorise us to disclose or transfer Personal Data in Hong Kong or elsewhere to our Affiliates, agents, contractors, partners, telecommunication operators or third parties, including without limitation, collection agents, credit reference agents, credit providers or financial institutions.
  5. CUHK will be permitted to process Personal Data received from you for the purposes of the administration and operation of this agreement and the provision of the Services. Such processing may also include storage of Personal Data in a local or foreign database.
2. Governing Law. These General Terms and the agreement created by it is governed by the laws of the Hong Kong Special Administrative Region. Subject to Clause E, each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the Courts of the Hong Kong Special Administrative Region.
  4. Title. Nothing in this Agreement is intended to or will create or vest in you any right, title or interest in any Service, its configuration or the underlying equipment and assets used to provide it.
  5. Severability. If a court of competent jurisdiction holds any provision of this agreement to be invalid or unenforceable, the relevant provision will be deemed severed from this agreement, and the remaining provisions will remain in full force and effect and the Parties will promptly negotiate in good faith a replacement provision, if necessary.
  6. Assignment and Subcontracting. Subject to Clause J, this agreement may not be assigned or transferred by either Party unless the other Party gives its prior written consent. However, notwithstanding the foregoing, we may: (a) freely assign or transfer this agreement to any of our Affiliates, partners or agents; (b) freely assign our right to receive payments for the Services; and (c) subcontract a Service or a portion of it provided that we will remain liable for the performance of any of our subcontractors. Any purported assignment that is inconsistent with this Clause will be void. The Parties agree that they will execute all documents and do all such acts reasonably necessary to give effect to this Clause N.6.
  7. Independent Contractors. Under these General Terms, both Parties are independent contractors which maintain complete control over their own personnel and operations. Except as expressly set forth in Clauses C.3 and G.1(b), above, neither Party will become a partner, agent, fiduciary or legal representative of the other.
  8. No Third Party Beneficiaries. This Agreement is not intended to be for the benefit of any third party, is not enforceable by any third party, and does not confer upon any third party any remedy, claim or rights.
  9. Force Majeure. Neither you nor CUHK may be held responsible for any delay or failure in performance of any part of this agreement if and to the extent that it is caused by acts of God or nature, war or war-like conditions, mob violence, acts or failures to act of any governmental authority, or any other events or circumstances beyond the reasonable control of the concerned Party (**Force Majeure Event**). However no Force Majeure Events or circumstances will excuse you from your obligation to make any payments that are owed to us for Services delivered before the Force Majeure Event or that accrue due to your continued use of the Services thereafter. A Party who intends to invoke the exemption under the Force Majeure Event must give the other Party reasonable written notice of any Force Majeure Event setting out the anticipated impact upon its obligation under this agreement. If any Force Majeure Event affecting a Party lasts for more than 3 months, either Party may terminate the affected the Service upon twenty-four (24) hours prior written notice to the other Party. Neither Party will incur any liability or penalties other than the obligations to pay any outstanding Charges in the event a Service is terminated due to the Force Majeure Event.

## **N. General Terms**

1. Publicity and Advertising. Neither Party may publish or use any advertising, sales promotions, press releases or other publicity which use the other Party's name, logo, trademarks or service marks without the prior written approval of the other Party, provided that CUHK may list you as a user of the Service in our advertising and sales promotion materials.

10. **Regulatory Changes.** The Services may be subject to laws and regulations in one or more jurisdictions. If the provision of a Service in any applicable jurisdiction is found to violate any Applicable Laws or would result in any additional licensing requirements, CUHK may cancel or suspend such Service upon reasonable prior notice to you. You must pay any Charges for such Service prior to its cancellation or suspension, but will not be liable for any other amounts. CUHK will make commercially reasonable efforts to restore the Service, or to provide a functionally equivalent Service that is permitted under the Applicable Laws of the relevant jurisdiction. CUHK will seek to agree with you pricing terms for a functionally equivalent substitute Service. We shall not be liable for any damages or costs incurred by any person due to changes to Applicable Laws for a Service.
11. **Notices.** All notices required or permitted under this agreement must be made in writing or via email and will be treated as having been received by the intended recipient: (a) upon delivery in person to the recipient; or (b) three (3) Business Days following delivery with payment to a courier service; or (c) if sent by facsimile or by email upon receipt being confirmed by the sender's equipment (or if none then the next Business Day after dispatch). Either Party may change their address for notices as shown on the Order by giving not less than seven (7) days' prior written notice to the other Party.
12. **Survivability.** Any provision of these General Terms which by its context is intended to apply after termination will survive termination.
13. **Waiver.** The waiver by either Party of any breach of the agreement created by these General Terms by the other Party in a particular instance will not operate as a waiver of any subsequent breaches of a same or different kind. The failure of either Party to exercise any rights in a particular instance will not operate as a waiver of the Party's right to exercise the same or different rights in any subsequent instance.
14. **English Language.** These General Terms are in the English Language which language will be controlling in all respects. No translation into any other language will be of any force or effect in the interpretation of these General Terms.
15. **Set Off.** CUHK may in our sole discretion set off any amounts CUHK owes you against any amounts owed by you to us.

## O. Definitions

1. In these General Terms, the following words have the following meanings:
  - 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, including an entity with 50% or more equity or more in an entity.
  - Applicable Law** means (a) any applicable law, rule or regulation of any jurisdiction; (b) any applicable lawful determination, decision or direction of a government agency in any jurisdiction; (c) any applicable obligations under any telecommunications licence, any binding industry standard or industry code; and (d) any applicable international convention or agreement.
  - Business Day** means a day other than a Saturday, Sunday or public holiday in the location of the premises of the

Customer or of its customer to which the Services are supplied or, if Services are supplied in more than one location, such of those locations nominated by CUHK or if none are nominated, Hong Kong.

**Charges** means the charges for a Service calculated in accordance with the relevant Order and Service Terms or applicable tariff generally or these terms which shall include: (a) initial charges which include installation and other non-recurring charges imposed by local access providers, per Port installation charges and per PVC installation charges; (b) monthly recurring charges which will be charged on a lump sum basis or usage basis monthly or yearly; (c) local access charges and/or related expenses if CUHK is procuring local access for you in connection with the relevant Service; and (d) any other miscellaneous charges or levies.

**Circuit Location Address** means the location specified by the Customer in the Order for one or both ends of the Service, if the Service is to be delivered at a location otherwise than at a CUHK POP.

**Confidential Information** means this agreement and all information in whatever form disclosed by one Party to the other in connection with this agreement or the Services, or during the negotiations preceding this Agreement including information marked or otherwise reasonably understood to be confidential or proprietary.

**Consequential Loss** of a Party means any loss of profits, indirect, special, economic, punitive or collateral loss including goodwill, revenue, bargain or opportunities or loss or corruption of data or loss of anticipated savings or business whether caused by negligence or otherwise and whether arising out of or relating to the agreement, any Service, or any failure to supply or delay in supplying any Service.

**CUHK, we, us and our** refers to China Unicom (Hong Kong) Operations Limited.

**CUHK POP** means a network POP maintained by CUHK or its Affiliates or partners.

**CUHK Equipment** means equipment (including any Software) owned or licensed by CUHK, used by Customer in connection with the Services.

**CUHK Provided Equipment** means equipment sold to the Customer (including any Software licensed to Customer) pursuant to a Service owned or licensed by CUHK and placed on the Customer's premises by CUHK for the provision of a Service.

**Customer, you and your** refers to the customer identified on the Order.

**Customer Equipment** means equipment (including software embedded in or run on such equipment) other than CUHK Equipment and CUHK Provided Equipment, used by Customer in connection with the Services.

**Customer Interface** means either (a) the Customer connection to the Local Access Interface Equipment at a Circuit Location Address, or (b) the Customer connection to a CUHK POP, in each case as specified on the Order.

**Due Date** means thirty (30) days after the relevant invoice receipt date.

**General Terms** means the general terms and conditions constituted by this document.

**Intellectual Property Rights** means all rights conferred under statute, common law and equity in and in relation to

trade marks, trade names, logos and get up, inventions, patents, designs, copyright, circuit layouts, Confidential Information, know-how and trade secrets and all rights and interests in them or licences to use any of them.

**Interest** means interest at the rate *per annum*, compounded daily, which is equal to the Prime Lending Rate set by HSBC for loans made in Hong Kong plus 2%.

**Local Access Interface Equipment** means a jack or "tie down" supplied by the local access provider for purposes of connecting a circuit at the Customer Interface.

**Local Circuit** means a circuit connecting premises of the Customer or its subscriber to an international gateway located in the same country, territory or jurisdiction.

**Loss** means, whether arising in contract, in tort, under statute or otherwise:

- (a) any Consequential Loss arising out of this agreement or breach of this agreement;
- (b) any loss arising from, or consequential upon, any act or omission of any third party not under the reasonable control of a Party; or
- (c) any loss arising from, or in relation to:
  - (i) any delay in the initial provision of, or any interruption in the provision of any Services which CUHK is required to provide under this Agreement; or
  - (ii) any error or omission in relation to information transmitted through either party's network.

**Minimum Period** means the minimum commitment period for each Service specified in the Order (being at least one (1) year from the Service Commencement Date) and. If no minimum commitment period is specified in the Order, the minimum commitment term will be one (1) year commencing in all cases on the Service Commencement Date for the relevant Service.

**Non-CUHK Circuit** means a circuit on a third party network, including a Local Circuit or an international half circuit which is or is to be connected to a Service provided by CUHK.

**Order** means the order form for the relevant Service in the form determined by CUHK from time to time and shall include any schedules and annexes attached to or referred to in it.

**Party** means CUHK or you and **Parties** means CUHK and you.

**POP** means a point of presence or interconnection to the relevant Service.

**Port** means the equipment, or characteristics of equipment, set out in the Order and supplied by CUHK or its Affiliates or partners or agents at the CUHK POP to allow for interconnection to the relevant Service.

**Personal Data** means any name, address, service provisioning information, service billing information or other "Personal Data" as defined in the Personal Data (Privacy) Ordinance (Cap.496 of the Laws of Hong Kong).

**PVC** stands for "Permanent Virtual connection" or "Permanent Virtual Circuit" and means a virtual circuit that provides the functional equivalent of a dedicated private line service over a packet switching network between two pieces of data terminal equipment.

**Services** means any telecommunications services supplied by CUHK from time to time, as described in the Order.

**Service Commencement Date** means the earliest of: (i) the date when you are notified that the Service has been connected to the Customer Interface; (ii) the date when you begin using the Service, or (iii) the acceptance date after the Service Test as stated in Clause C.5.

**Service Levels** means the committed levels of service in accordance with which CUHK will use its reasonable endeavours to provide a Service, as specified in the relevant Service Terms or Customer Order or as notified to the Customer from time to time.

**Service Terms** means the specific terms and conditions from time to time applicable to the relevant Service.

**Service Test** means an opportunity for you to test the Service before the Service Commencement Date.

**Software** means any software supplied or licensed to use by or CUHK from time to time.

**Tax** means any tax (including value added and sales tax), duty, surcharge, levy, impost, deduction, charge, duty, withholding tax and stamp or transaction duty and in each case whether existing at the Service Commencement Date or not) plus all and any interest, expense, fine, penalty, levy or other charge arising directly or indirectly as a result of the existence or operation of the agreement created or otherwise relating to the Service or from the obligation to pay such taxes, fees, duties and surcharges but not income or capital gains tax liabilities of CUHK in relation to the supply of Services or sale of equipment.

**Term** means the term of the agreement to supply the relevant Service to you, being from the Service Commencement Date until termination of the particular agreement to provide the Service.

**Third Party Service Agreement** means an agreement between CUHK and a third party operators entered into pursuant to these General Terms as more specifically described in Clause C.3 for such third party operators to provide all or part of any Service including Local Circuits and other Non-CUHK Circuits.

2. Headings are inserted for ease of reference only and do not affect the interpretation of these General Terms.
3. References to Clauses are references to clauses of these General Terms.
4. Unless the context other requires, the singular includes plural, the masculine gender includes the feminine and neuter genders and *vice versa*.



**P. Entire Agreement**

---

These General Terms, including the Order and/or Service Terms comprises the entire Agreement between the Parties concerning the applicable Service and it supersedes

all prior agreements, proposals, representations, statements, or understandings, whether written or oral, concerning the applicable Service. No change, modification or waiver of any of the terms of this Agreement will be binding unless included in a written agreement and signed by both Parties.

For and on behalf of  
**China Unicom (Hong Kong) Operations Limited**

For and on behalf of

---

(Authorized Signature & Company Chop)

Name:

Title:

Date:

---

(Authorized Signature & Company Chop)

Name:

Title:

Date: