



DATED \_\_\_\_\_ [ \_\_\_\_\_ ]

**CHINA TELECOM GLOBAL LIMITED**

- and -

[PLEASE FILL IN NAME OF AWS MARKETPLACE  
CUSTOMER ]

**MASTER SERVICES AGREEMENT**

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**SCHEDULE 1****错误!未定义书签。****RESALE SERVICE TERMS**



THIS MASTER SERVICES AGREEMENT ("MSA") is dated [ ]

**BETWEEN:**

- (1) **China Telecom Global Limited**, a company incorporated under the laws of Hong Kong with its registered address at 28/F, Everbright Centre, 108 Gloucester Road, Wanchai, Hong Kong (the "**Company**"); and
- (2) **[\*]**, a company incorporated under the laws of **[\*]**, with its registered address at **[\*]** (the "**Customer**").

**WHEREAS:**

- (A) The Company, directly and through its Affiliates and Third Party Providers, is a provider of certain telecommunications and information technology services.
- (B) Under this MSA, the Company and the Customer wish to set up a framework arrangement whereby the Customer and its Affiliate may from time to time order Service from the Company and its Affiliate through the AWS Marketplace platform, and the Company and its Affiliate may accept and fulfil such orders, in accordance with and subject to the terms and conditions of each Agreement.

**IT IS NOW AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1** In this MSA and each Agreement, unless the context otherwise requires:

**"Affiliate"** means in respect of a company, any other company directly or indirectly Controlling, directly or indirectly Controlled by or under direct or indirect common Control with such company;

**"Agreement"** has the meaning given in Clause 2.1;

**"Applicable Laws"** means in relation to any party, all laws, statutes, orders, rules, provisions, regulations, directives, and guidelines which have legal effect, whether local, national, international or otherwise existing from time to time, including all Regulator's rules, requirements, standards, guidelines and recommendations which have legal effect, and all notices and letters issued by the Company or relevant Affiliate of the Company to the Customer from time to time for the purpose of compliance, including but not limited to *the Notice on MIIT Regulations of the Internet Access Service Market* (有关工信部清理规范互联网网络接入服务市场的通知函) as applicable to any party's business, **"applicable"** meaning as applicable to the relevant party, Third Party Provider or Affiliate or as applicable to the relevant obligations;

**"Applicable Privacy Laws"** means all applicable data protection laws, rules and regulations of the relevant jurisdiction;

**"Business Day"** means a day other than a Saturday, Sunday or a public or general holiday in (a) the location where the obligation is to be performed; (b) Hong Kong; or (c) a jurisdiction in which the relevant Affiliate of the Company is located who has entered into an Order Form (whichever is appropriate);

**"Charge(s)"** means all or any of the: (a) Non-Recurring Charges; (b) Recurring Charges; and (c) Other Charges;

**"China"** means the People's Republic of China, and, for the purposes of this MSA, excludes Hong Kong, Taiwan and Macau;

**"Commencement Date"** means the date on which the last party to this MSA has executed this MSA;

**"Confidential Information"** means any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or whatever media it is stored) including information which relates to the business affairs, properties, assets, trading practices, goods/services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party and/or its Affiliates and all personal and private data and includes the terms of and information in this MSA and each Agreement;

**"Consequential Loss"** means all or any of the following: (a) loss of profits, use, anticipated savings, revenue, business opportunity, goodwill, reputation, economic loss or loss of data; and/or (b) indirect loss or damages, special, punitive or consequential loss;

**"Control"** means with regard to an entity the legal, beneficial or equitable ownership, directly or indirectly, of 50% or more of the capital stock (or other ownership interest, if not a corporation) of such entity ordinarily having voting rights, or the equivalent right under contract to control management decisions with regard to relevant subjects, and **"Controlling"** and **"Controlled"** shall be defined accordingly;

**"Data Subject"** means the natural person to which the Personal Data relates;

**"Dispute"** has the meaning as defined in Clause 18.1;

**"End User"** means any person who uses a Service or to whom a Service is resold or sublet and includes the Customer;

**"Force Majeure Circumstances"** means circumstances beyond the reasonable control of a party including but not limited to any inability or delay caused through fire, flood, earthquake, riot, act of God, severe weather, lightning, explosion, civil commotion, labour shortage or labour dispute, failure or shortage of power supplies, malicious damage, storm, tempest, act or threat of terrorism, war, military operations, epidemic (including COVID-19), pandemic or contagious disease, changes in Applicable Law, act of government or other competent regulatory authority including but not limited to a Regulator or other telecommunications operators or Third Party Provider or administrations or other competent authority, and any other events and circumstances falling under the definition of "Force Majeure Circumstances" in the Service Level Agreement;

**"HKIAC"** has the meaning given in Clause 18.1;

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

**"Indemnified Party"** has the meaning given in Clause 11.5;

**"Initial Term"** has the meaning given in Clause 3.1;

**"Insolvency Event"** means a situation where a party is unable to pay its debts or stops or threatens to stop or suspend payment of all or a material part of its debts, has a receiver, manager or liquidator appointed in respect of it or enters into or resolves to enter into any arrangement with its creditors;

**"Intellectual Property Rights"** means all rights conferred under statute, law and equity in and in relation to trademarks, trade names, logos, inventions, patents, designs, copyright, and related rights, moral rights, mask works, domain names, circuit layouts, know-how and any other intellectual property rights, in each case whether registered or unregistered trade secrets and all rights and interests in them or licences to use any of them;

**"Local Jurisdiction"** has the meaning given in Clause 4.3(a);

**"Loss"** means any and all loss, damages, liabilities, actions, proceedings, claims, demands, costs, expenses, charges, Tax, duties, levies, interest, penalties, fines, assessments, and reimbursement orders (including all legal, professional and other expenses and amounts reasonably paid in settlement) paid, suffered or incurred directly as a result of a breach of any obligation under this MSA and each Agreement;

**"MSA"** means this agreement together with its schedule(s);

**"Network"** means the communications network used to provide and/or receive the relevant Service;

**"Non-Recurring Charges"** means a one-off non-recurring charge (including the installation fee) as set out in the Order Form;

**"Order Form"** means an order form for each particular Service as executed between the parties from time to time, in the form as specified by the Company or otherwise agreed between the parties ;

**"Other Charges"** means charges other than Non-Recurring Charges and Recurring Charges payable for the Service set out in the Service Terms and/or Order Form, including the reconnection charge pursuant to Clause 9.3(b);

**"Other Party's Confidential Information"** has the meaning given in Clause 14.1(a);

**"Personal Data"** means any information relating to an identified or identifiable natural person that is Processed by the Company as a result of, or in connection with, the provision of the Services under the Agreement (an "identified or identifiable natural person" is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person) or as defined in the Order Form under Applicable Privacy Laws;

**"Personal Data Breach"** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed.

**"Personnel"** means employees, officers, agents, consultants, contractors, sub-contractors and their employees, officers, agents, consultants, contractors and sub-contractors;

**"Processing, Processes and Process"** means either any activity that involves the use of Personal Data or as the Applicable Privacy Laws may otherwise define Processing, Processes or Process. It includes any operation or set of operations which is performed on

Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction. Processing also includes transferring Personal Data to third parties;

**"Ready for Service Date"** has the meaning given in the Service Terms;

**"Recurring Charges"** means the monthly recurring charges payable for the Service as set out in the Order Form;

**"Regulator"** means any ministry, authority, agency or institution that may, from time to time, regulate, supervise and/or otherwise exercise state authority in relation to either party or the provision of telecommunications services;

**"Renewal Term"** has the meaning given in Clause 3.1;

**"Representatives"** has the meaning given in Clause 14.1(a);

**"Service"** means a service described in the Service Terms and/or Order Form, including the Service Information set out in the Order Form for the relevant Service;

**"Service Credits"** means the service credits as set out in the Service Level Agreement;

**"Service Information"** means the service information in relation to each Service as set out in the Order Form;

**"Service Initial Term"** has the meaning given in Clause 3.2;

**"Service Level Agreement"** means the detailed description of the Service Levels and Service Credits applicable to a Service as attached to the applicable Service Terms, if any;

**"Service Levels"** means any service levels set out in the Service Level Agreement;

**"Service Renewal Term"** has the meaning given in Clause 3.2;

**"Service Terms"** means the detailed description of a Service and service-specific terms and conditions applicable to that Service as attached to an Order Form and, unless otherwise specified in an Agreement, shall be the general service terms shown on this webpage: <http://www.chinatelecomglobal.com/other/serviceTerms.html>;

**"Start Billing Date"** means (a) the commencement of the billing date as set out in the relevant Order Form; or (b) if the Customer is deemed to have accepted the relevant Service pursuant to the applicable Service Terms, the same date as the Ready for Service Date if the Ready for Service Date is earlier than the commencement of the billing date as set out in the relevant Order Form;

**"Taxes"** means all taxes, levies, duties, imposts, charges and withholdings of any nature, including taxes on gross or net income, profit or gains and taxes on receipts, sales, use and/or occupation and including value add tax and other supply taxes, income tax withholdings and social security, state health insurance and other employment related taxes, levies and contributions of any jurisdiction whether central, regional or local;

**"Term"** has the meaning given in Clause 3.2;

**"Termination Fee"** means, unless as otherwise specified in the Service Terms and/or Order Form, an amount that covers:

- (a) a lump sum equal to the remaining balance of the total Recurring Charges that would have been payable by the Customer if the Customer has continued to receive the Service from the date of termination until the expiry of the applicable then-current Service Initial Term or Service Renewal Term (as the case may be) in which the Service is terminated; and
- (b) liability, if any, imposed on the Company or the Customer (as the case may be) by any Third Parties, such as local exchange carriers or telecommunication service carriers, as a result of the Customer's early termination.

The Parties agree that the Termination Fee is a reasonable estimate of the liquidated damages that would be suffered by the Company upon early termination of this MSA or an Agreement in the circumstances specified in clause 10.4 herein;

**"Third Party"** means a legal entity, company or person that is not a party to this MSA, and is not an Affiliate of any party to this MSA;

**"Third Party Provider"** means any Third Party who provides services to the Company to enable the Company to provide all or part of the Service or provides services forming part of the Service to the Customer on the Company's behalf; and

**"Third Party Provider Contract"** has the meaning given in Clause 4.3(a).

## 1.2 Interpretation

In this MSA and each Agreement, unless the contrary intention appears:

- (a) the headings are inserted for convenience only and shall not affect construction of this MSA and each Agreement;
- (b) the singular includes the plural and vice versa;
- (c) references to one gender include all genders;
- (d) references to any legislation includes all amendments, modifications, consolidation or re-enactment of that legislation;
- (e) reference to a document are references to that document as amended or replaced from time to time;
- (f) a reference to "\$", "US\$" or "USD" is a reference to the currency of the United States of America, provided that if the parties agree that any invoices or payments under this MSA or any Agreement will be in a currency other than US\$ then for the purpose of calculating liability arising under Clause 11 such amounts shall be deemed converted into US\$ using such exchange rate as the Company shall reasonably determine;
- (g) a reference to "CNY", "Renminbi" or "Yuan" is a reference to the currency of China;
- (h) a reference to a "party" is to either the Company or the Customer (or its respective Affiliate, as applicable) and references to the "parties" are, in each case, to both of them (or their respective Affiliates, as applicable);

- (i) reference to a "**day**":
  - (i) including within the phrase Business Day, shall mean a period of 24 hours running from midnight to immediately before the following midnight; and
  - (ii) where such day falls on a non-Business Day, shall be construed as referring to the next day that is a Business Day;
- (j) references to a time of day are to the time in Hong Kong, unless any other relevant local time is specified in the Service Terms or any Order Form;
- (k) mentioning anything after "**include**", "**includes**" or "**including**" does not limit the reference to anything else which might be included; and
- (l) other grammatical forms of defined words and expressions have corresponding meanings.

## 2. **STRUCTURE OF AN AGREEMENT**

### 2.1 An "**Agreement**" comprises:

- (a) the terms and conditions of this MSA;
- (b) the Service Terms for the relevant Service;
- (c) the Service Level Agreement for the relevant Service; and
- (d) the Order Form for the relevant Service.

### 2.2 If any inconsistencies exist between any provision(s) within the documents referred to in Clause 2.1, then the documents will prevail in the descending order set out in Clause 2.1 to the extent of the inconsistency.

### 2.3 Each Agreement forms a separate agreement between the parties. Except as expressly provided under this MSA, breach of each Agreement shall not be regarded as a breach of this MSA.

### 2.4 For the avoidance of doubt, subject to Applicable Laws and Applicable Privacy Laws, the terms and conditions of this MSA and each Agreement shall prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, quotation, confirmation of order or specification, or implied law, trade custom, practice or course of dealing.

## 3. **TERM OF THIS MSA**

### 3.1 This MSA begins on the Commencement Date and continues for a period of **[3]** years (the "**Initial Term**"), and shall thereafter automatically renew on a yearly basis for a period of 1 year (the "**Renewal Term**"), unless either party gives the other party prior written notice no less than **[90]** days before the expiry date of the Initial Term or the relevant Renewal Term of its intention to terminate the MSA upon expiration of the Initial Term or the relevant Renewal Term, in each case unless terminated earlier in accordance with this MSA.

### 3.2 The "**Term**" means, collectively, the Initial Term and any Renewal Term. The Service Initial Term and the Service Renewal Term (if any) for a Service are set out in the Order Form or in the absence of which, in the corresponding Service Terms.



- 3.3 For the avoidance of doubt, the expiration or termination of this MSA does not affect the validity of or terminate any Agreement executed between the parties prior to the expiration or termination of this MSA.

#### 4. SUPPLY OF SERVICES

- 4.1 The Services may be acquired by the Customer (or its Affiliate) from the Company (or its Affiliate) and the Order Form shall be executed between the relevant parties accordingly. In respect of such Order Form and the Agreement that it relates, the terms "Customer", "Company", "parties" or "party" shall be interpreted accordingly as referring to the relevant contracting parties of the Order Form.

- 4.1A Upon receipt of an Order Form from the Customer (or its Affiliates) ordering the relevant Service, the Company shall be entitled to run an internal credit check on the Customer (or its Affiliates). If the Customer (or its Affiliates) fails to pass the Company's internal credit check, the Company may either: (1) reject such Order Form; or (2) impose certain conditions for such Order Form. On execution of an Order Form for the relevant Service, the Company agrees to supply the Service to the Customer, and the Customer agrees to acquire the Service from the Company, for the duration, at the Charges and on the terms set out or referred to in the relevant Agreement (including this MSA, the Order Form, Service Terms and Service Level Agreement (if applicable)) for that Service.

- 4.2 For the avoidance of doubt, the Company:

- (a) does not guarantee the provision of continuous or fault-free Services;
- (b) may, subject to Applicable Laws, sub-contract the provision of all or part of the Service to any Affiliate of the Company or to a Third Party Provider, but the Company will remain primarily liable for the performance of its obligations under this MSA and each Agreement; and
- (c) shall not, by virtue of this MSA and each Agreement, be an exclusive supplier of any services (including the Service) to the Customer.

- 4.3 The Customer acknowledges and agrees that:

- (a) the Company is currently, or may be in the future, prohibited by Applicable Laws in certain jurisdictions (each, a "**Local Jurisdiction**") from providing certain part or all of the Service within such Local Jurisdiction. In order to ensure that the Services are available to the Customer in each such Local Jurisdiction, the Company has entered into contractual arrangements (each, a "**Third Party Provider Contract**") with its Affiliates or other Third Party Providers to provide such Service within each such Local Jurisdiction to the Customer, as necessary, pursuant to this MSA. Each Third Party Provider Contract shall comply with the Applicable Laws of the Local Jurisdiction and shall conform, in all material respects, with the terms and conditions set forth herein;
- (b) the Company may procure each Affiliate or Third Party Provider (as the case may be) to: (1) execute such other instruments as may be necessary to effect the Third Party Provider Contracts; and (2) make such filings and take such other actions that may be required by the Applicable Laws of each such Local Jurisdiction to effect the Third Party Provider Contracts;
- (c) if the Service is to be delivered in a Local Jurisdiction, the Customer shall comply with all requirements of such Local Jurisdiction and the relevant Third Party Provider

Contract, as communicated to the Customer by the Company. To that end, prior to the delivery of any Service in a Local Jurisdiction, upon request of the Company, the Customer shall: (1) execute any required contract directly with the Company's Affiliate or Third Party Providers (as the case may be); and/or (2) execute an Order Form containing additional required terms, preserving, to the fullest extent possible, the terms of this MSA; and

- (d) to the extent that the Company is prohibited from rendering Services in a Local Jurisdiction and the Customer either enters into such contract directly with the Company's Affiliate or Third Party Providers or a modified Order Form or both, as required by the Company, (1) all references herein or in any Order Form to "**the Company**" shall be deemed to refer to the Company's Affiliate or Third Party Provider (as the case may be) to the extent that such Company's Affiliate or Third Party Provider (as the case may be) renders to the Customer Services in a Local Jurisdiction; and (2) such Company's Affiliate or Third Party Provider (as the case may be) may directly invoice the Customer for such Services in accordance with this MSA.

## 5. USE OF SERVICES

### 5.1 The Customer:

- (a) must comply with the Applicable Laws in relation to the use of the Service;
- (b) must ensure that it has all necessary licences and authorisations to use or resupply (as the case may be) each Service;
- (c) shall not resell or sublet the Service in violation of any Applicable Laws;
- (d) may only resell or sublet the Service to any End User to the extent permitted by Applicable Laws and, if it so resells or sublets the Service, is solely responsible for dealing with End Users concerning billing, fault reports and other complaints or enquiries about a Service and no resale or sublet shall relieve the Customer of its obligations under this MSA or any Agreement;
- (e) is solely responsible for the content and security of any data or information which the Customer or any End User sends or receives using the Service;
- (f) is solely responsible for any use of the Service or any equipment connected to the Service;
- (g) must ensure that each End User complies with the obligations under this Clause 5.1 to the extent applicable as if references to "Customer" were references to each End User; and
- (h) will not, and will ensure that each End User does not, use or attempt to use a Service:
  - (i) to breach any Applicable Laws and Applicable Privacy Laws;
  - (ii) to infringe any other person's rights, including any Intellectual Property Rights;
  - (iii) to expose the Company to any liability;

- (iv) to transmit, publish or communicate material which is illegal, defamatory, offensive, abusive, indecent or menacing;
- (v) in any way which damages, interferes with or interrupts the Service, the Network or any Third Party's Network including contaminating or diffusing contamination of any software or hardware including computer viruses; or
- (vi) with an intent to avoid incurring charges.

5.2 The Customer agrees that it will, in addition to the terms and conditions contained in this MSA or an Agreement, also be bound by the terms and conditions set out in Schedule 1 (*Resale Service Terms*) if a Service is provided by the Company in its capacity as a re-seller. In case of any inconsistency between the terms and conditions contained in Schedule 1 (*Resale Service Terms*) and this MSA, the former shall prevail.

5.3 The Customer agrees to act in a timely manner and to provide properly competent and qualified Personnel with respect to its obligations under this MSA and each Agreement and to any tasks to be undertaken by it, whether expressly set out in this MSA or each Agreement or otherwise reasonably requested of it by the Company. Subject to due fulfilment by the Customer and its Personnel of their obligations and tasks on time and as stated, the Service will be provisioned in accordance with the terms of the MSA and the Agreement.

5.4 If, as a result of any act or omission by the Customer, its End Users or its Personnel (howsoever caused) which is not directly and wholly caused by the Company (including the provision of any incorrect or inadequate information or data by the Customer), the Company is prevented or delayed from performing all or any part of a Service or the cost of such performance increases, then:

- (a) the time for performance of the Company's obligations will be extended for a reasonable period; and
- (b) the Customer shall pay the Company on demand:
  - (i) at the Company's standard time and materials rates for any additional time spent and materials used by it with respect to any delays or extra work caused by such act or omission; and
  - (ii) all other reasonable costs, loss or damage which it sustains as a direct result of such act or omission, subject to the Company confirming such costs, charges and losses to the Customer in writing.

## 6. INVOICES AND PAYMENT

6.1 The Customer must pay the Company the following Charges for the Service:

- (a) the Non-Recurring Charges;
- (b) the Recurring Charges; and/or
- (c) the Other Charges,

as such charges may be updated in accordance with the Service Terms and/or the Order Form.

6.2 The Company will issue an invoice:

- (a) for the Non-Recurring Charge in advance upon the execution of the Order Form for the relevant Service by the Company;
  - (b) for the Recurring Charges on a monthly basis and in advance with the initial invoice issuable upon the Start Billing Date, provided that:
    - (i) if the Start Billing Date occurs on a date other than the first day of a calendar month the initial Recurring Charge shall be reduced to an amount equal to the remaining days of said calendar month following the Start Billing Date (including the Start Billing Date) multiplied by a rate equal to one-thirtieth (1/30<sup>th</sup>) of the Recurring Charge; and
    - (ii) if a Service does not expire or terminate on the last day of a calendar month, the final Recurring Charge in respect of that Service shall be an amount calculated as follows:  
  
[No. of days from first day of the said calendar month to the expiry or termination date of the Service (both dates inclusive)] / [total number of days in that calendar month] x Recurring Charge per month; and
  - (c) for the Other Charges in arrears at the start of the month following the month in which the charge is incurred.
- 6.3 The Customer acknowledges and agrees that invoices issued by the Company in Hong Kong will be sent by email only, and that the Company is not required to send a hardcopy of the invoice by post under Clause 20.3(a)(iv) for it to be duly served. If the Customer requires a hardcopy invoice, the Company may charge an administrative fee for its issuance.
- 6.4 Subject to Clause 8, the Customer must pay all invoices in full:
- (a) within thirty (30) days of the date of the invoice;
  - (b) in the currency specified in the Order Form; and
  - (c) without any withholding, deduction, set off or counterclaim.
- 6.5 The Company reserves the right at its sole discretion to appoint from time to time an Affiliate and/or a Third Party as its agent:
- (a) to issue invoices to the Customer on behalf of the Company; and/or
  - (b) to collect and receive payments due under this MSA or any Agreement from the Customer on behalf of the Company,
- and the Customer acknowledges and agrees to such arrangements.
- 6.6 In addition and without prejudice to any other remedies the Company may have, if the Customer fails to pay any amount when due, the Company may, without notice to the Customer,:
- (a) charge interest on the overdue amount from the due date of such amount until the date on which the amount is paid at the rate of 1.5% per month. Such interest shall accrue on a daily basis from the due date until the date of the actual payment of the overdue amount. The Customer shall pay any interest due immediately on demand by the Company; and/or

- (b) net or set off amounts payable by the Company to the Customer under that or any other Agreement or contract between the parties against any overdue amounts and/or interest owed by the Customer to the Company.
- 6.7 Unless expressly specified in this MSA, the Customer's obligation to make payment of invoiced Charges is absolute, and the Customer shall not withhold payment of the invoiced Charges for any reason whatsoever, including for a change of the Customer's billing party or the Customer's internal restructuring.
- 6.8 The Customer agrees that, any request to pay the Charges in Renminbi shall be subject to the approval of and conditions imposed by the Company. As a precondition to the payment in Renminbi, the Customer may be requested by the Company to:
- (a) designate a Chinese entity as the receiving party of all or part of the designated Services and as a payer entity and furthermore, the Customer shall (i) execute a Services and Payment Agreement with the Company; and (ii) procure its designated Chinese entity to execute an Onshore Services and Payment Agreement with 中国电信股份有限公司国际业务事业部 (English name for reference purpose: China Telecom Corporation Limited - Global Business Department, being the designated Chinese entity of the Company). Both agreements shall be in the form prescribed by the Company; and
- (b) carry out any other action and/or execute any other agreement which the Company may subsequently inform the Customer of for the purposes of payment in Renminbi.
7. **TAXES**
- 7.1 The Charges are exclusive of all applicable Taxes imposed by any taxing authority in relation to the amount payable under this MSA, whether existing on the date of this MSA, or coming into effect on a later date.
- 7.2 Each party agrees to pay all Taxes imposed on such party by the taxing authority in its jurisdiction. The Customer shall bear all applicable Taxes imposed by the taxing authorities in the relevant jurisdictions other than the jurisdictions of the parties.
- 7.3 If the Customer is required by all Applicable Laws relating to the Service to deduct any Taxes or make withholding from any amount payable under this MSA or any Agreement then, notwithstanding anything to the contrary contained in this MSA or any Agreement, the gross amount payable by the Customer to the Company shall be increased so that, after any such deduction or withholding for Taxes, the Company receives an amount equal to the sum it would have received had no such deduction or withholding been made. The Customer must also notify the Company in writing regarding the requirement and provide the Company with appropriate documentation to support such withholding or deductions.
- 7.4 The Customer shall make timely payment of the amount withheld (before penalties attach thereto or interest accrues thereon) to the relevant taxing authority and promptly provide to the Company sufficient evidence of such payments. The evidence includes but not limited to official tax receipts issued by the local authority evidencing payment of Taxes
- 7.5 Each party undertakes to the other to supply promptly to the other on request of such other from time to time such information and assistance which the other may reasonably require to enable it to perform its obligations under this MSA or an Agreement or to verify any Charges levied hereunder..

## 8. BILLING DISPUTES

- 8.1 If the Customer reasonably disputes any Charges (each a “**Billing Dispute**”), the Customer shall:
- (a) pay the undisputed portion of the invoiced charges by the due date for the relevant invoice, without any set-off, deduction, withholding, restriction or condition whatsoever; and
  - (b) notify the Company in writing in relation to the disputed amount specifying (i) the invoice number; (ii) the amount in dispute; (iii) detailed reasons as to why the amount is in dispute; and (iv) supporting documents, within 5 Business Days of the date of the relevant invoice.
- 8.2 Any Billing Dispute shall not be cause for any delay of payment of any undisputed amount, nor may it be grounds for the Customer to withhold payment of any undisputed amount. A Billing Dispute may not be brought where the amount of disputed Charges constitutes less than two per cent (2%) of the total Charges for that month.
- 8.3 In the event of a Billing Dispute, the parties will investigate the matter and use reasonable endeavours to resolve the disputed amount within 20 Business Days of the receipt of notice of the Billing Dispute. If the parties are unable to resolve the Billing Dispute informally (in good faith and in writing) within those 20 Business Days, without prejudice to its other rights and remedies the Company has the right in its sole discretion to suspend or terminate the relevant Service.
- 8.4 Following resolution of the Billing Dispute, the adjustment (if any) will be applied to the payment of the Customer's next Recurring Charge. If it is ultimately determined that the disputed amount is payable by the Customer, the Company may charge interest on the disputed amount from the original due date for payment at the rate of 1.5% per month. Such interest shall accrue on a daily basis for each day thereafter until actual payment is received, whether before or after the resolution of the Billing Dispute. The Customer shall pay the interest immediately on demand by the Company.

## 9. SUSPENSION OF SERVICE

- 9.1 Subject to Clause 9.2, the Company may suspend the provision of all or any part of each Service to the Customer at any time:
- (a) in an emergency or to comply with any Applicable Laws or an order, instruction or request of a Regulator;
  - (b) if in the Company's reasonable opinion the provision of a Service is liable to cause death or personal injury or damage to property;
  - (c) if any Regulator directs or recommends the same;
  - (d) if a Third Party Provider ceases, or intends to cease, to supply to the Company services that form part of the Service;
  - (e) if the Customer fails to pay any amount under this MSA or any Agreement between the parties by its due date and that outstanding amount is not paid within 5 Business Days of the Customer receiving notice requiring that outstanding amount to be settled;



- (f) if the Customer is in breach of Clause 5.1; or
  - (g) where the Company has a right to terminate this MSA or an Agreement.
- 9.2 Unless otherwise specified, where possible and subject to Applicable Laws the Company will provide the Customer with advance notice of its intention to suspend a Service. Where advance notice is not possible, the Company will notify the Customer of the suspension as soon as reasonably possible.
- 9.3 Where a Service has been suspended in accordance with:
- (a) Clause 9.1(a), 9.1(b), 9.1(c) or 9.1(d), the Customer will not be liable to pay the Recurring Charges for the Service during the suspension period; or
  - (b) Clause 9.1(e), 9.1(f) or 9.1(g), during the suspension period:
    - (i) the Customer must continue to pay the Recurring Charges for the Service; and
    - (ii) the Customer may be required to pay the Company a reconnection charge when the Service is reconnected.

## 10. TERMINATION

10.1 Subject to Clause 10.2, either party may terminate this MSA or an Agreement:

- (a) where the other party is, respectively in material breach of any of its warranties, obligations or undertakings under this MSA or the relevant Agreement (as the case may be) and that breach is not remedied within 20 Business Days after the breaching party has received notice to do so;
- (b) where a Force Majeure Circumstance continues for more than twenty (20) Business Days; or
- (c) in accordance with the Service Terms and/or the Order Form which includes any early termination of this MSA or an Agreement by the Customer for its own convenience before expiry of the then-current Service Initial Term or Service Renewal Term (as the case may be),

provided always that if the Service is provided by an Affiliate of the Company or any Third Party Provider pursuant to Clause 4.3, the notice required for termination of this MSA or such Agreement shall, in order to comply with Applicable Laws in the relevant Local Jurisdiction and the terms and conditions of the relevant Third Party Provider Contract and the contract executed between the Customer and the Company's Affiliate or Third Party Provider under Clause 4.3(c)(1), be that notice period specified in the Order Form.

10.2 The Customer may not terminate this MSA or an Agreement (including to discontinue or not commence a Service Renewal Term) unless it has first signed and served a termination notice not less than thirty (30) days' prior to the intended date of termination on the Company in the Company's prescribed form and in the manner as required in the Agreement, specifying inter alia, the relevant information, including detailed descriptions of the event of termination, date when such event took place, the relevant termination clause relied on by the Customer, the Service and Agreement to be terminated and the date of termination.

10.3 The Company may terminate this MSA and any or all Agreements immediately without further liability by notifying the Customer if:

- (a) there has been a change in any Applicable Law and/or any Applicable Privacy Laws which may result in any prohibition or restriction on the Company's ability to perform its obligations under this MSA or any Agreement or result in this MSA or any Agreement or any material obligations under it being unenforceable or contrary to Applicable Laws and/or any Applicable Privacy Laws;
- (b) any breach by the Customer of any Applicable Laws and/or any Applicable Privacy Laws would result in any prohibition or restriction on the Company's ability to perform its obligations under this MSA or any Agreement or result in this MSA or any Agreement or any material obligations under it being unenforceable or contrary to Applicable Laws and/or any Applicable Privacy Laws;
- (c) the Customer suffers an Insolvency Event; or
- (d) any person agrees to acquire or acquires Control of the Customer. For the avoidance of doubt, a change of Control event includes the following events:
  - (i) where a change of Control occurs via a single transaction or series of related transactions;
  - (ii) where all or substantially all of the assets of the Customer are acquired by any Third Party;
  - (iii) where the Customer is merged with or into another entity to form a new entity; or
  - (iv) the Customer disposes of its division responsible for acquiring the Service by spin-off, public offering or sale to a Third Party,

under which circumstances the Customer shall give the Company notice in writing of any acquisition or agreement to acquire giving rise to any right for the Company to terminate pursuant to Clause 10.2 as soon as practicable and in any event (subject to Applicable Laws) within ten (10) Business Days of the agreement giving rise to such right.

10.4 On termination of this MSA or an Agreement (as the case may be) by:

- (a) the Company in accordance with Clause 10.1(a)(a), 10.3(b), 10.3(c) or 10.3(d); or
- (b) the Customer in accordance with Clause 10.1(c),

without prejudice to the Company's other rights and remedies, the Customer must pay the Company:

- (i) the Termination Fee in addition to any outstanding Charges payable pursuant to Clause 10.5(b); and
- (ii) the aggregate Charges (if any) incurred by the Company to any Affiliate or Third Party Providers of the Company under the relevant Third Party Provider Contract in connection with any such termination.

10.5 On termination of this MSA or an Agreement (as the case may be) by either party for any reason:



- (a) all Confidential Information of the Company must at the request of the Company be destroyed or returned to the Company by the Customer;
- (b) all outstanding Charges and invoices which have yet to be paid must be paid by the Customer;
- (c) the Customer will promptly surrender to the Company any equipment and other property owned by the Company, its Affiliates or Third Party Providers that has been supplied to the Customer in connection with that Agreement;
- (d) accrued rights and obligations of a party are not affected; and
- (e) Clauses 5, 10.4, 10.5, 11, 12, 13, 14, 15, 16, 17, 18 and 20.15 will survive termination.

10.6 Nothing in this MSA or any Agreement shall limit or exclude the Customer's liability for any of the following:

- (a) any Charges properly incurred, invoiced and due and payable to the Company in accordance with this MSA or any Agreement; and
- (b) any Termination Fees due and payable following a proper termination of this MSA or any Agreement.

## 11. LIABILITY

11.1 Subject to Clauses 11.2 and 11.4, the Company's maximum liability to the Customer (whether in contract, tort (including without limitation negligence) or otherwise) for Loss suffered or incurred in connection with:

- (a) each Service under an Agreement, shall be limited in aggregate to an amount equal to 100% of the total aggregate amount paid by the Customer under that Agreement during the Service Initial Term of that Agreement, except that if a Service Renewal Term has been agreed for that Agreement between the Parties then the Company's maximum liability to the Customer for Loss suffered or incurred in connection with an Agreement is limited in aggregate to 100% of the total amount paid by the Customer under that Agreement during the Service Renewal Term of that Agreement; and
- (b) this MSA (including all Agreements placed under this MSA) is limited in aggregate to US\$500,000.

11.2 Nothing in this MSA or any Agreement shall limit or exclude either party's liability for any Loss arising from:

- (a) death or personal injury caused by negligence;
- (b) fraudulent misrepresentation or fraud;
- (c) any breach of Clause 13 or 14; or
- (d) any other liability to the extent it cannot be limited or excluded under Applicable Laws.

- 11.3 Subject to Clause 11.2, neither party shall be liable under or in connection with this MSA or any Agreement (whether in contract, tort (including without limitation negligence) or otherwise) for any Consequential Loss.
- 11.4 A party's liability to the other party for Losses under Clauses 11.5 and 11.6 shall not be limited by Clause 11.1 above.
- 11.5 Each party shall indemnify the other party ("**Indemnified Party**") for any Loss suffered or incurred by the Indemnified Party arising from:
- (a) personal injury or death to the Indemnified Party's Personnel; and/or
  - (b) damage to the Indemnified Party's physical property,
- to the extent it is caused directly by the negligence of the indemnifying party in connection with this MSA and/or an Agreement (as the case may be).
- 11.6 The Customer shall indemnify the Company for all Loss suffered or incurred by the Company, its Personnel, Affiliates or Third Party Providers arising from:
- (a) any claim by the Customer's Personnel;
  - (b) any claim by any End User or the Customer's Personnel; and
  - (c) breach of any Applicable Laws by the Customer, any End User or its Personnel.
- 11.7 Without prejudice to Clause 11.6 above, to the extent possible, the Company excludes any and all liability to End Users except to the extent that the Customer is the End User.
- 11.8 Other than as set out in the Service Levels, the Company excludes all liability to the Customer for any interruptions to the Service. The Customer's sole remedy for any failure of the Service to meet the Service Levels is the provision of the Service Credits.
- 11.9 To the maximum extent permitted by Applicable Laws, the Company further excludes any liability including Loss and Consequential Loss to the Customer for any suspension implemented pursuant to Clause 9.

## 12. **WARRANTIES**

- 12.1 Each party represents, warrants and undertakes to the other that:
- (a) it is validly incorporated and duly registered under Applicable Laws, and has power to conduct its business as conducted at the Commencement Date;
  - (b) this MSA and each Agreement shall, when executed, constitute valid and binding obligations of the party who is party to it and shall be enforceable in accordance with its terms;
  - (c) the execution, delivery and performance of this MSA and each Agreement do not violate the terms of any agreement, undertaking, judgment or court order which binds it;
  - (d) it has the power, capacity and authority required to enter into and perform its obligations under this MSA and each Agreement; and

- (e) no claim, litigation, proceeding, arbitration, investigation or material controversy is pending, has been threatened or is contemplated which would have a material adverse effect on each party's ability to enter into this MSA and each Agreement or perform its obligations under this MSA and each Agreement.
- 12.2 Except as expressly provided in this MSA or an Agreement, neither party makes any representations or warranties to the other party, and each party hereby excludes all conditions, terms, representations and warranties regarding any matter including any representation or warranty or condition of fitness for purpose or in relation to the results to be derived or expected to be from the performance of either party's obligations, except to the extent expressly provided in this MSA or an Agreement or to the extent that such conditions, terms, representations or warranties may not be excluded under Applicable Laws.
- 12.3 The Company makes no representations, warranties or undertakings that any Service is at any time uninterrupted, error-free or virus-free, and accepts no responsibility for any loss or damage occasioned in relation to the Customer's use or failure to use the Service. The relevant Service is delivered on an "as-is" and "as-available" basis.
13. **DATA PRIVACY**
- 13.1 In relation to the obligations contained in this Clause 13, the Company is acting as the data Processor (or equivalent) for the Customer in accordance with Applicable Privacy Laws. The Customer remains at all times the data controller and/or data user (or equivalent) in accordance with Applicable Privacy Laws and the Company only Process Personal Data in accordance with the terms and conditions of the Agreement and/or the Applicable Privacy Laws, and under the instructions of the Customer.
- 13.2 To the extent that the Company is required to Process Personal Data on behalf of the Customer, the Customer shall, to the extent reasonably practicable, identify the Personal Data, notify the Company of the nature of the Personal Data and provide for the Processing instructions to the Company.
- 13.3 The Customer retains control of the Personal Data; remains responsible for its compliance obligations under the Applicable Privacy Laws, inter alia, providing the required notice, conducting data protection impact assessments and warrants to the Company in obtaining the required consent and authorisation, under any Applicable Privacy Laws, from any relevant Data Subjects and/or End Users to permit the Processing of any Personal Data by the Company and/or the Affiliates of the Company and/or its Third Party Providers in order to provide Services in accordance with the Agreement and in accordance with this Clause 13.
- 13.4 The Customer acknowledges and agrees that the Company may collect and hold information about the Customer and the End Users. Such information may be obtained from the Customer or generated within the Network or through the Customer's use of the Services. The Company may retain such Personal Data as long as is necessary to implement, administer and manage the reasonable purpose(s) for which such Personal Data was collected. When the Company no longer needs such Personal Data, the Company will remove it from its systems. If the Company retains such Personal Data longer, it would be to satisfy the Company's legal obligations and in compliance with any Applicable Privacy Laws.
- 13.5 The Company may share the information it collects about the Customer and End Users with its employees, contractors, agents, suppliers, Affiliates and Network operators (collectively

referred to as "**Agents**") for all lawful purposes connected with the provision of the Services. The Company acknowledges and agrees to maintain the confidentiality of all Personal Data and will not disclose the Personal Data to any other person, unless the Customer's prior written consent has been obtained in each case or the Agreement specifically authorises the disclosure, or as required by law. If a law, court, regulator, supervisory authority or other relevant law enforcement authority requires or permits the Company to Process or disclose Personal Data, the Company must first inform the Customer of the legal or regulatory requirement and give the Customer an opportunity to object or challenge the requirement, unless the Applicable Law or authority prohibits such notice.

- 13.6 The Company and the Customer shall protect any Personal Data in their possession or under their control by implementing appropriate technical and organizational measures to prevent unauthorized or unlawful Processing, access, collection, use, disclosure, copying, modification, disposal, storage, reproduction, display or distribution of Personal Data and against Personal Data Breach or similar risks. The Customer acknowledges and agrees that the Company may monitor and/or record calls made between the Customer and the Company for the purpose of maintaining and improving the quality of the Services.
- 13.7 The Customer acknowledges that, in providing the Services to the Customer, the Company may consume products and services based in non-Hong Kong jurisdictions which may necessitate the need for the Company to transfer, store and/or host the Customer's data (which may include End Users' personal information) outside of Hong Kong. The parties shall ensure that for any Personal Data that is transferred out of Hong Kong, sufficient steps have been taken to comply with any Applicable Privacy Laws, including obtaining sufficient consent and authorisation from any relevant Data Subjects.
- 13.8 The Company shall not be liable for any complaint, claims or action by the Customer or any Third Party relating to the obligations set out in this Clause 13 arising from the acts or omissions of the Company to the extent that such act or omission result from:
- (a) any failure by the Customer to comply with this Clause 13; or
  - (b) the Company's compliance with the express instructions of the Customer and/or with this Clause 13.
- 13.9 The Customer agrees to indemnify, keep indemnified and defend at its own expense the Company against all costs, claims, damages or expenses incurred by Company or for which the Company may become liable due to any failure by the Customer or its employees, subcontractors or agents or End Users to comply with any obligations under this Clause 13 or any Applicable Privacy Laws.

#### 14. **CONFIDENTIALITY**

##### 14.1 Each party shall:

- (a) keep confidential, and procure that its Personnel, Affiliates and any Third Party Provider (collectively, its "**Representatives**") keep confidential, all Confidential Information of the other party and its Representatives, including the fact of the existence of this MSA and any Agreement (the "**Other Party's Confidential Information**");
- (b) use the same degree of care (which shall in no event be less than a reasonable standard of care) in relation to the Other Party's Confidential Information as it normally uses to avoid unauthorised disclosure of its own Confidential Information;

- (c) use, and procure that its Representatives use the Other Party's Confidential Information only in the performance of its obligations under this MSA or any Agreement and make no further disclosure of the Other Party's Confidential Information, except as required by Applicable Laws; and
- (d) only disclose to its Representatives the Other Party's Confidential Information that is strictly required for the performance of its obligations under this MSA or any Agreement.

14.2 The obligations in this Clause 14 shall not apply to any information that:

- (a) is required to be disclosed:
  - (i) by Applicable Laws and Applicable Privacy Laws;
  - (ii) at the request or recommendation of any Regulator having authority over the party making the disclosure; or
  - (iii) by the rules of any relevant stock exchange,provided, in each case, that the disclosing party will, to the extent permissible under Applicable Laws and Applicable Privacy Laws, promptly notify the other party of its requirement to disclose, and co-operates with the other party's reasonable actions and requests in avoiding or limiting the disclosure;
- (b) was already in the possession of the party receiving the information without an obligation of confidentiality when it was disclosed by the other party or its Affiliates;
- (c) was already in the public domain at the time of disclosure, except as a result of a breach of this MSA or any Agreement;
- (d) was independently developed without access to the other party's or any of its Affiliates' Confidential Information; or
- (e) is disclosed for the purpose of any arbitral or judicial proceedings arising out of this MSA, an Agreement or any other document entered into pursuant to this MSA or any Agreement.

14.3 Nothing in this Clause 14 shall restrict either party from disclosing:

- (a) this MSA and any Agreement or any Confidential Information to its consultants, legal advisers and other professional advisors, auditors and bankers; or
- (b) the fact of the existence of this MSA and any Agreement and the terms and subject matter of this MSA and any Agreement to any permitted assignee of this MSA and such Agreement,

provided, in each case, that disclosure is made under terms of confidentiality no less restrictive than those set out in this Clause 14.

## 15. **SANCTIONS AND EXPORT CONTROL**

15.1 Each party represents, warrants and undertakes that it has policies and procedures in place to ensure its compliance with Sanctions. Each party further acknowledges and agrees that any failure by a party to comply with the provision of this sub-clause shall constitute a material and incurable breach of this MSA for the purpose of Clause 10.1(a).

15.2 The Customer will not, directly or indirectly, use the Company's products or services, or export, re-export, transfer, or otherwise make available such products or services to any subsidiary, joint venture partner, or any other person:

- (a) in any country, region or territory that is, at that time, subject to comprehensive Sanctions defined in Clause 15.3 below;
- (b) to facilitate, directly or indirectly, any activities or business of, with, or related to, any person who is a designated target of any Sanctions or for any prohibited end-use; or
- (c) in any other manner that will result in a violation of any Sanctions by any person.

15.3 For the purpose of this Clause 15, "**Sanctions**" means:

- (a) United Nations sanctions imposed pursuant to any United Nations Security Council Resolution;
- (b) U.S. sanctions administered by the Office of Foreign Assets Control ("**OFAC**"), the U.S. Department of the Treasury or the Bureau of Industry and Security ("**BIS**") or any other U.S. Government authority or department;
- (c) EU restrictive measures adopted pursuant to any EU Council or Commission Regulation or Decision adopted pursuant to a Common Position in furtherance of the EU's Common Foreign and Security Policy;
- (d) UK sanctions administered by HM Treasury, the Export Control Organisation, or any other UK Government authority or department; and
- (e) any other economic sanctions or export control laws and regulations applicable to the Company or the Customer.

## 16. **ETHICAL BUSINESS PRACTICES / ANTI-BRIBERY**

16.1 Each party represents, warrants and undertakes that it shall not make or offer to make any payment or gift directly or indirectly to any government entity, public entity, State-owned enterprise, political party (or candidate for political office), privately-owned entity, or any employee, officer, or representative thereof under circumstances in which such payment could constitute a bribe, kickback or illegal payment under all Applicable Laws in relation to anti-bribery (including but not limited to the U.S. Foreign Corrupt Practices Act, UK Bribery Act, the Prevention of Bribery Ordinance of Hong Kong, the Criminal Law of the People's Republic of China, and the Anti-Unfair Competition Law of the People's Republic of China).

16.2 Without limiting the generality of the foregoing, each party further represents and warrants that under no circumstances, shall it make, cause or authorise any third party to make or cause any bribes, kickbacks, or illegal payments for the purpose of influencing a person's acts or decisions or in order to obtain or retain business, or obtain undue competitive advantages, in connection with the Service provided/received hereunder. Each party agrees to comply with all Applicable Laws in relation to anti-bribery and further agrees that any failure by a party to comply with the provisions of this Clause shall constitute a material and incurable breach of this MSA for the purpose of Clause 10.1(a).



**17. COMPETITION LAW**

- 17.1 Each party represents, warrants and undertakes that it shall not engage in any agreement, arrangement, practices or conduct which would amount to an infringement of the prohibitions under all applicable Competition Law, including but not limited to Chinese Anti-Monopoly Law and relevant regulations. Each party further acknowledges and agrees that any failure by a party to comply with the provision of this Clause shall constitute a material and incurable breach of this MSA for the purpose of Clause 10.1(a).
- 17.2 For the purpose of this Clause, "**Competition Law**" means the national and directly effective legislation of any jurisdiction which governs the conduct of companies or individuals in relation to restrictive or other anti-competitive agreements or practices (including, but not limited to, cartels, pricing, resale pricing, market-sharing, bid-rigging), dominant or monopoly market positions and the control of acquisitions or mergers.

**18. DISPUTE RESOLUTION**

- 18.1 Any dispute, controversy, difference or claim arising out of or in connection with this MSA and/or an Agreement, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding non-contractual obligations arising out of or relating to either of them ("Dispute") shall be referred to and finally resolved by arbitration administered by the Hong Kong International Arbitration Centre ("**HKCIAC**") under the Hong Kong International Arbitration Centre Administered Arbitration Rules in force when the Notice of Arbitration is submitted.
- 18.2 The law of this arbitration clause shall be Hong Kong law. The seat of the arbitration shall be Hong Kong. The arbitration proceedings shall be conducted in the English language.
- 18.3 Where the Dispute primarily involves a claim by the Company for unpaid Charges, the parties agree that, subject to the decision of the HKIAC, the Expedited Procedures in the HKIAC Administered Arbitration Rules shall apply.
- 18.4 Notwithstanding Clauses 18.1, 18.2 and 18.3, nothing in this MSA and/or an Agreement prevents:
- (a) either party from seeking urgent interim relief from any court of competent jurisdiction if needed to enforce its rights under this MSA or an Agreement; or
  - (b) the Company from bringing any legal action or proceedings in the courts to recover any unpaid charges,

and to this end each of the parties irrevocably agrees that courts of Hong Kong have non-exclusive jurisdiction over any such applications.

**19. AGENT FOR SERVICE OF PROCESS**

- 19.1 The Customer shall at all times maintain an agent for service of process and any other documents in proceedings in Hong Kong or any other proceedings in connection with this MSA or any Agreement. Such agent shall be [ ● ] with its address at [●], and any claim form, judgment or other notice of legal process shall be sufficiently served on the Customer if delivered to such agent at its address for the time being. The Customer irrevocably undertakes not to revoke the authority of this agent and if, for any reason, the Company requests the Customer to do so it shall promptly appoint another agent with an address in Hong Kong and advise the Company. If, following such a request, the Customer fails to

appoint another agent, the Company shall be entitled to forthwith appoint one on behalf of the Customer at the Customer's expense.

## 20. **GENERAL**

### 20.1 **Intellectual property**

Neither party shall have the right to use the other party's or its Affiliates' trademarks, service marks or trade names or to otherwise refer to the other party in any marketing, promotional or advertising materials or activities without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except that the Company may list the Customer as a customer of the Company's services in sales, promotional and advertising materials.

### 20.2 **Force majeure**

- (a) Neither party shall be in breach of this MSA or an Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this MSA or the Agreement if such delay or failure results from Force Majeure Circumstances. In such circumstances the time for performance of the affected obligations will be extended by the time of the delay caused by the Force Majeure Circumstances.
- (b) The party prevented from fulfilling its obligations shall on becoming aware of such event inform the other party in writing of such Force Majeure Circumstances as soon as possible. If the affected party fails to inform the other party of the occurrence of a Force Majeure Circumstances as soon as possible, then such party thereafter shall not be entitled to refer such events to Force Majeure Circumstances as a reason for non-fulfilment. This obligation does not apply if the Force Majeure Circumstances is known by both parties or the affected party is unable to inform the other party due to the Force Majeure Circumstances.

### 20.3 **Notices**

- (a) A notice given to a party under or in connection with this MSA or an Agreement shall be in writing and sent to the party in charge of the relevant matters as set forth in the Order Form or as otherwise notified in writing to the other party in accordance with this Clause 20.3. Any notice shall be duly served:
  - (i) on delivery if such notice is delivered by hand;
  - (ii) forty-eight (48) hours after sending such notice if it is sent by pre-paid post or recorded delivery;
  - (iii) on the date and at the time that the courier's delivery receipt is signed, if such notice is delivered by commercial courier; or
  - (iv) at the time of transmission, if such notice is sent by fax or email, unless such notice is sent after 17:00 to the place of the recipient, in which case such notice shall be deemed to have been received on the next Business Day at the place of the recipient and, subject to Clause 20.3(b), provided that a copy of such notice has also been sent by post as set out in Clause 20.3(a)(ii).
- (b) The Customer acknowledges and agrees that notices issued by the Company in connection with acceptance testing, Service Levels and Service Credits will be sent



by email only and that for any such notices the Company shall not be required to send a copy of the notice by post under Clause 20.3(a)(iv) for it to be duly served.

#### 20.4 Variation

Save as expressly provided in this MSA or an Agreement, no variation of this MSA and/or an Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

#### 20.5 Assignment and Sub-contracting

- (a) Subject to Clauses 4.2(b), 6.5 and 20.5(b), this MSA and each Agreement is personal to the parties and neither party shall assign, novate, transfer, mortgage, charge, subcontract or deal in any other manner with any of its rights and obligations under this MSA and/or an Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).
- (b) The Company has the right to assign, transfer or novate to any of its Affiliates part or all of its rights and obligations under this MSA and/or an Agreement without the Customer's consent.

#### 20.6 Entire agreement

This MSA and each Agreement constitute the entire agreement between the parties relating to their subject matter and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.

#### 20.7 Severability

- (a) If any court or competent authority finds that any provision of this MSA or an Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this MSA or the Agreement shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of this MSA or an Agreement would be valid, enforceable and legal if some part of it were deleted, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

#### 20.8 Waiver

No failure or delay by a party to exercise any right or remedy provided under this MSA or an Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. A waiver of any right or remedy under this MSA or an Agreement is only effective if given in writing.

#### 20.9 Third party rights

A person who is not a party to this MSA or any Agreement has no right to enforce any terms of this MSA or any Agreement under the Contracts (Rights of Third Parties) Ordinance (Cap.

623) or otherwise, except that the Company's Personnel, Affiliates or Third Party Providers may enforce their rights under Clause 11.6.

#### 20.10 **Non-exclusive arrangements**

Nothing in this MSA or any Agreement diminishes, restricts or prejudices the rights of either party to enter into similar agreements with a Third Party or to otherwise compete with each other.

#### 20.11 **No partnership or agency**

Nothing in this MSA or any Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute a party the agent of the other party, nor authorise a party to make or enter into any commitments for or on behalf of the other party.

#### 20.12 **Further assurances**

Each party shall, and shall use all reasonable endeavours to procure that any necessary Third Party shall, execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this MSA and each Agreement.

#### 20.13 **Counterparts and Electronic Signatures**

- (a) This MSA (and each Agreement, each Order Form, Service Terms and Service Level Agreement) may be executed in several counterparts, each of which when executed shall constitute a duplicate original, but all of which together shall constitute one agreement.
- (b) For the purpose of the effectiveness of this MSA (and each Agreement, each Order Form, Service Terms and Service Level Agreement),
  - (i) scanned copies or facsimile copies of signatures shall be deemed to have the same legal effect as the originals; and
  - (ii) each party agrees that this MSA (and each Agreement, each Order Form, Service Terms and Service Level Agreement) may be executed by electronic signature, and that any electronic signatures appearing on the said documents that comply with Applicable Laws shall be deemed original signatures.

#### 20.14 **Language**

- (a) This MSA and each Agreement is drafted in the English language. If this MSA or any Agreement is translated into any other language, the English language text shall prevail.
- (b) Any notice given under or in connection with this MSA and each Agreement shall be in the English language. All other documents provided under or in connection with this MSA and each Agreement shall be in the English language, or accompanied by a certified English translation. If such document is translated into any other language, the English language text shall prevail.

#### 20.15 **Governing law**

This MSA and all documents made under this MSA (including each Agreement, each Order Form, Service Terms and Service Level Agreement) shall be governed by and construed and enforced in accordance with the laws of Hong Kong.

**This MSA has been entered into on the Commencement Date.**

Executed for and on behalf of )  
**China Telecom Global Limited** )  
 )  
By: *[please fill in name]*  
Title: *[please fill in title]*  
Date:

Executed for and on behalf of [ ] )  
 )  
 )  
By: *[please fill in name]*  
Title: *[please fill in title]*  
Date:

**SCHEDULE 1**

**RESALE SERVICE TERMS**