TOWNGAS TELECOMMUNICATIONS FIXED NETWORK LIMITED

CLOUD SERVICE – GENERAL TERMS AND CONDITIONS

1. **Definitions**

   1.1. In this Agreement, the following expressions have the meanings shown:

   "**Affiliate**" means, with respect to an entity, any person or entity that directly or indirectly owns, is owned by, or is under common ownership with that entity. For purposes of this definition, ownership means control of more than a 50% interest in an entity.

   "**Agreement**" means these Conditions, together with all policies, Schedules, addenda and attachments that are incorporated by reference, including the AUP and privacy policy.

   "**APIs**" means application programming interfaces.

   "**AUP**" means Acceptable Use Policy set out below, as may be updated from time to time by the Company.

   Neither the Customer nor those that access the Services through the Customer may use the Services:

   - in a way prohibited by law, regulation, governmental order or decree;

   - to violate the rights of others;

   - to use the Services to try to gain unauthorized access to or disrupt any service, data, account or network by any means;

   - to falsify any protocol or email header information (e.g., "spoofing");

   - to spam or distribute malware;

   - in a way that could harm the Services or impair anyone else's use of them; or

   - for any high risk use (where failure or fault of the Services could lead to death or serious bodily injury of any person, or to severe physical or environmental damage).

   "**Authorised User**" means any person authorised by the Customer to use and/or access the Services (including but not limited to Customer's employees, officers, contractors, representatives and agents).

   "**Company**" means Towngas Telecommunications Fixed Network Limited of 23rd Floor, 363 Java Road, North Point, Hong Kong.

   "**Computer Contaminant**" means any set of computer instructions that are designed or has the capability to contaminate, modify, damage, corrupt, consume, destroy, disrupt, record, or transmit any data, information, image, program, signal or sound contained in a computer, computer system or computer network without the knowledge or consent of the person who owns the data, information, image, program, signal or sound or the computer, system or network. They include, but not limited to, a group of computer instructions commonly called virus or worms or Trojan horse, that are self-replicating or self-propagating and are designed to contaminate other computer programs or computer data, or in some other fashion usurp the normal operation of the computer, computer system, or computer network.

   "**Conditions**" means these general terms and conditions and any other terms and conditions which the Company may impose in respect of the use of the Services.

   "**Confidential Information**" means (i) with respect to the Company, server configurations, software configurations, proprietary information, proprietary technology, proprietary software, information regarding product development, information regarding the Company's data centres, information contained in manuals, proposals and memoranda, and anything that is designated as "confidential" or "proprietary" at the time of disclosure whether verbally or in writing; (ii) with respect to the Customer, non-public Customer Content transmitted to or from, or stored on, the servers of the Company as part of the Services; and (iii) with respect to both Parties, information that is conspicuously marked as "confidential" or "proprietary", information disclosed verbally that is designated as "confidential" or "proprietary" at the time of disclosure, and information that, by its nature, would reasonably be considered as confidential to any other person, but shall not include (a) information that is independently developed by a non-disclosing party without the use of the disclosing party's Confidential Information; (b) information that is known or rightfully obtained by a non-disclosing party prior to disclosure; or

(c) information that is or becomes generally available to the non-disclosing party or the public other than through a violation of this Agreement.

"**Contract Period**" means the fixed contract period or initial contract period as stated in the Quotation and any further period(s) as may be renewed pursuant to the terms of this Agreement.

"**Customer**" means individual or entity that has executed this Agreement.

"**Customer Applications**" means all software programs, including any source code for such programs, that Customer or Authorised Users provide and load onto, or create using or interacting with any of the Services.

"**Customer Content**" means all text, files, images, graphics, illustrations, information, data, records, audio, video, photographs, software, web pages and any other content and material, in any format, provided by Customer or Authorised Users that are received, stored, or transmitted using the Services.

"**DNS**" means the domain name system, the network responsible for translating Internet domain names into Internet protocol addresses.

"**Fees**" means the fees as set out in the Quotation and all other charges payable by the Customer pursuant to this Agreement.

"**Force Majeure Event**" means any event outside the reasonable control of the party affected including acts of God, pandemic, industrial disputes of any kind, war declared, blockade, disturbance, lightning, fire, earthquake, storm, flood, explosion or meteor, or by law or any power lawfully exercised by a government agency or telecommunication network outage or degradation which the party cannot reasonably control, or a decision or determination by a government agency or court of law.

"**Intellectual Property Rights**" means all rights conferred under statute, common law and equity in and in relation to patents, trade and service marks, trade names, design rights, topography rights, copyright (including rights in computer software and moral rights), database rights, rights in know-how and other intellectual property rights and analogous rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection which have a similar effect to any of the foregoing anywhere in the world.

"**IPP**" means Internet Platform Provider.

"**ISP**" means Internet Service Provider.

"**KPIs**" means key performance indicators.

"**Objectionable**" means unlawful, false, fraudulent, misleading, offensive, pornographic, harassing or obscene, derogatory, discriminatory, racist or promoting bigotry, hatred or harm, defamatory, inflammatory, malicious, threatening, causing nuisance or anxiety or unsolicited mass mailing, mail-bombing, spamming; or likely to infringe Company's rights or the rights of third parties (including infringement of intellectual property right or other proprietary rights) or likely to expose the Company to claims or liability, prosecution or disrepute, or otherwise actionable by any third party.

"**Party**" means Customer or Company.

"**Services**" means the cloud services and/or software made available or provided by the Company, details of which are listed in the Quotation, including any related support services which the Company may provide**.**

"**Schedules**" means the pricing schedule (whether in a formal or informal quotation), the service descriptions, the service level agreements and the guidelines for use of the Services.

"**Quotation**" means the quotation or agreement duly signed by the Company and the Customer to which these Conditions are attached.

1.2. Construction of certain references

In this Agreement where the context admits:

(a) any reference to the singular shall include the plural and vice-versa;

(b) any references to the masculine, the feminine and the neuter shall include each other;

(c) any reference to a "**person**" includes any individual, firm, partnership, body corporate wherever incorporated or registered, corporation sole or aggregate, state or agency of a state, joint venture, partnership and any unincorporated association, in each case, whether having separate legal personality or not;

(d) any reference to any statute or statutory provision shall include such provision as from time to time amended, modified, re-enacted or consolidated (whether before or after the date of this Agreement) to the extent such amendment, modification, re-enactment or consolidation applies or is capable of applying to any transactions entered into under this Agreement.

2. **Company's Obligations and Rights**

2.1. The Company warrants that it has all necessary authority, licenses, rights, permissions and consents to enter into the Agreement.

2.2. Subject to the Customer's payment obligations, the Company grants the Customer a non-exclusive, non-transferable right to use the Services and to permit Authorised Users to use the Services during the Contract Period.

2.3. The Company will perform the Services with reasonable skill and care of a competent provider of services of a type similar to the Services and in all material respects in accordance with the applicable service description and service level agreement as may be stated in the Schedules. The Company will use commercially reasonable efforts to achieve the KPIs; availability targets and respond, restore or fix times and any other service metrics and maintenance regimes as set out in the Schedules.

2.4. In performing its obligations, the Company will adhere to the privacy policy published at www.towngas.com and which is incorporated herein by reference. This privacy policy is subject to change at the Company's discretion; however, the Company's policy changes will not result in a material reduction in the level of protection afforded to Customer's personal data.

2.5. The Company may modify, amend, block or delete the Customer Content without liability to the Customer or any other persons whatsoever, or suspend or deny the access to all or any part of the Services if Company becomes aware of a complaint or suspects that all or any part of the Customer Content violates the law, misappropriates or infringes the intellectual property rights of a third party, or contravenes any terms or conditions of this Agreement, or pursuant to an order issued by a court or government agency.

3. **Customer's Obligations**

3.1. *(Payment of Fees)* In return for the performance of the Services, the Customer shall pay the Fees to the Company in accordance with Section 4 (Suspension and Consequences of Suspension) below.

3.2. *(Customer's Warranties)* The Customer represents and warrants that:

(a) it has all necessary authority, rights, permissions and consents to enter into the Agreement;

(b) it shall comply with all applicable law, including but not limited to the Personal Data (Privacy) Ordinance (Cap 486);

(c) it has all necessary authority, rights, consents and licenses required for both Parties to legally access and use the Customer Applications and Customer Content and any third party software that Customer places on the Company's servers in connection with the Services;

(d) it will abide by the license terms and conditions for all software forming part of the Services in accordance with Section 11 (Software); and

(e) that all information provided to the Company for the Services is accurate, up-to-date and complete.

3.3. *(Responsible for Authorised Users)* The Customer shall ensure all Authorised Users' compliance of this Agreement. The Customer is liable for any extra charges, act, omission or negligence incurred or caused by Authorised Users and any breach of this Agreement by any Authorised User is deemed to be a breach of this Agreement by the Customer. Apart from the Authorised Users, the Customer is also responsible for the use of the Services by any person who gains access to the Services as a result of the Customer's failure to use reasonable security precautions, even if such use was not authorised by the Customer.

3.4. *(Undertakings)* The Customer undertakes that it shall not:

(a) access, store, distribute or transmit any Objectionable Customer Content or use the Services for any Objectionable activity or purpose; and

(b)   introduce any kind of Computer Contaminant into the systems or services of the Company, its suppliers or customers.

3.5.   *(Access by Authorised Users)* The Customer is responsible for identifying and authenticating all Authorised Users, for approving access by such Authorised Users to the Services, for controlling against unauthorized access by Authorised Users, and for maintaining the confidentiality of all login credentials such as usernames, passwords and account information.

3.6.   *(Responsible for unauthorized access)* The Customer shall be responsible for all Fees incurred through unauthorised access of its account, unless such unauthorised access results solely from the Company's failure to meet its security obligations stated in this Agreement. If the Customer discovers any unauthorised access, it must immediately notify the Company and may ask the Company to suspend the Customer's account in which case the provisions of Section 4 (*Suspension and Consequences of Suspension*) shall apply.

3.7.   *(Non-circumvention of security measures of Company)* The Customer shall not and it shall ensure that Authorised Users shall not attempt to circumvent any security measures relating to the Services or infrastructure nor access the Company's infrastructure except in accordance with the instructions and APIs specified by the Company.

3.8.   *(Maintaining service boundary)* The Customer shall be solely responsible for procuring and maintaining its systems and services from and to the Company service boundary. The Company service boundary is defined in the Agreement.

3.9.   *(Responsible for Customer Applications and Customer Content)* The Customer shall be solely responsible for the development, operation, maintenance and use of the Customer Applications and Customer Content, including, without limitation, the accuracy, security, appropriateness of such Customer Applications and Customer Content for compliance with any third party AUP or other policies, regulations or laws relating to the same. The Customer uses third party products and services in connection with the Services at its sole risk and is liable for any costs incurred by the Company as a result of the Customer's use of the same.

3.10. *(Responsible for security and backup)* The Customer shall be responsible for properly configuring and using the Services and it shall take its own steps to maintain appropriate security, protection and backup of the Customer Applications and Customer Content, which may include the use of encryption technology to protect the Customer Applications and Customer Content from unauthorised access and routine archiving. Unless the Services include backup services, the Company recommends that the Customer maintains an up to date copy of the Customer Applications and Customer Content by other means.

3.11. *(Responsible to its own users)* The Customer shall be solely responsible for providing all support to its users and customers. The Company shall provide support to the Customer for the Services as described in the Agreement but does not provide any support for the Customer's services or systems that interact with the Services.

3.12. *(Assistance to Company)* The Customer shall provide any assistance to Company reasonably necessary for Company to perform its obligations under this Agreement.

3.13. *(No subcontracting without consent)* The Customer may provide services to its own customers but must not, without Company's prior written approval, subcontract, sublicense, supply, re-sell or allow any third party to use the Services provided by the Company.

3.14. *(Acknowledgement by Customer)* The Customer acknowledges that:

(a)   the Company may deactivate all or part of the Services to carry out system maintenance, upgrading, testing or repair and the Customer agrees to provide all necessary assistance to Company in relation to any such activities;

(b)   the Company may be required by law to monitor the Customer Applications and Customer Content and use of the Services and to provide details of the same which may include identification of login credentials and their usage. The Company shall not be liable for any effect on the Services caused by the obligation to comply with any requests made under any statutory authority. The Customer agrees that the Company may also monitor the Customer's use of the Services and accumulate statistics for purposes connected with the Agreement and so as to be able to develop and improve the Services; and

(c)   it is solely responsible for the data security of the Customer's use of the Services. The Company's security obligations with respect to Customer's data are limited to those obligations described in Section 2 (*Company's Obligations and Rights*) above. The Customer is solely responsible for determining the suitability of the Services in light of the type of Customer Content used with the

Services. The Customer must maintain the security of the Customer's login credentials and may not share login credentials except as required to establish and authorize users in the Customer's account. The Customer shall be responsible for designating authorized users under the Customer's account and limiting access of login credentials associated with the account;

(d) internet connection is required for provision of the Services by the Company and the Customer acknowledges that computer and telecommunication systems are not fault-free and occasional period of downtime occur. Accordingly, the Services may be subject to limitations, delays and other problems inherent in the use of the Internet, computer and telecommunication systems. Company cannot guarantee that the Services will be uninterrupted, timely, secure, or error-free or that content loss will not occur.

3.15.(Indemnity) The Customer shall defend and indemnify the Company against any claim arising out of a violation of the Customer's obligations under this Section.

4. Suspension and Consequences of Suspension

4.1. Without prejudice to any of its other rights, the Company may immediately suspend the Services in whole or in part without prior notice, where:

(a) the Company reasonably believes that the Services are being used (or have been or will be used) in breach of this Agreement;

(b) the Customer exceeds the usage or financial cap, if any, for its account or in the event of any extended delay in settlement of any invoice;

(c) the Company reasonably believes that the owner of any intellectual property in the Customer Content or Customer Applications has withheld, withdrawn or failed to give its permission for the Customer's use of the same;

(d) the Company reasonably believes there to be a material breach, or persistent lesser breach by the Customer of any of the other terms and conditions in this Agreement, including the AUP;

(e) the Company determines, in its sole discretion, that the Customer's use of the Services poses a threat to the security or performance of the Company's network or to any of the Company's clients or suppliers;

(f) the Company determines, in its sole discretion, that the Customer's use of the Services is illegal, or that it misappropriates or infringes the property rights of third party; or

(g) The Company is requested to do so by any statutory authority.

4.2. The Company may suspend the Services in whole or in part until the circumstances causing the suspension have ceased.

4.3. The Customer shall continue to pay the Fees during the period of suspension. The Customer shall be liable for any additional costs incurred by the Company caused by or relating to the circumstances giving rise to the suspension.

4.4. The Customer may not have access to the Customer Content or Customer Applications during the period of suspension.

4.5. The Company shall not be liable for any of its obligations under any service level agreement that is affected by the suspension.

5. Payment

5.1. In consideration for the provision of the Services, the Customer will pay to Company the Fees notified by Company to the Customer from time to time. The calculation of all Fees for the Services will be based solely on the Company's records and data.

5.2. The Customer shall be solely responsible to pay any tax, levy, charge, impost, duty, compulsory loan or withholding which is assessed, levied, imposed or collected by any governmental agency and any interest, fine, penalty, charge, fee or other amount imposed in respect of the use of Services, except for taxes based on the Company's income. All Fees specified in our invoices are exclusive of such taxes, duties, levies or fees.

5.3. Invoicing and settlement must take place in accordance with the standard procedures of Company from time to time or such alternative procedures as may be listed in the Quotation.

5.4. Company may charge a late payment interest charge calculated at the lesser of the rate of 2% per month above the base rate from time to time in force of HSBC or the maximum rate permitted by law. Such interest will be calculated on a daily basis from the date payment was due until the date payment is received.

5.5. If there is a dispute with respect to any portion of an invoice, the Customer shall pay the undisputed portion of the Fees promptly and provide written details specifying the basis of any dispute. The Company and the Customer agree to work together to promptly resolve any disputes. Fees that are not disputed within sixty (60) days of the date on which they are charged will be conclusively deemed to be accurate.

5.6. Unless and until the Customer shall have complied with this sub-clause in respect of the relevant payment, Company shall be entitled to treat such payment as due and outstanding.

6. **Term; Expiration and Termination**

6.1. Unless terminated earlier in accordance with this Section, this Agreement commences on the date when this Agreement is duly executed by both Parties (the "**Effective Date**") and continues for the period stated in the Quotation (the "**Initial Contract Period**"). If no period is stated in the Quotation, then the Initial Contract Period shall be one (1) month. Upon expiration of the Initial Contract Period, this Agreement will automatically be renewed for successive periods of such duration equal to the Initial Contract Period from the expiration of the Initial Contract Period, unless either Party gives written notice of non-renewal to the other Party prior to the expiration of the Initial Contract Period, or then-current renewal period, as applicable.

6.2. Either Party may terminate this Agreement if the other Party:

   (a) is unable to pay its debts or enters into liquidation or cease for any reason to carry on business or takes or suffers any action which means that it may be unable to pay its debt; or

   (b) fails to meet any material obligation stated in this Agreement and do not remedy that failure within thirty (30) days" of the other Party's written notice describing the failure.

6.3. The Company may terminate this Agreement forthwith by written notice if:

   (a) the Company discovers that the information which the Customer provided for the purpose of establishing the Services is materially inaccurate or incomplete; or

   (b) the Customer did not have the legal right or authority to enter into this Agreement on behalf of the person represented to be the customer; or

   (c) any of the circumstances set out in Section 4.1 giving rise to the Company's right to suspend Services exists and is not cured within thirty (30) days after the Company's notice thereof.

7. **Consequences of Termination or Expiration**

7.1. The Customer shall be responsible for removing all Customer Content from the Company's infrastructure prior to the date of expiration or termination of the Agreement.

7.2. Upon expiration or termination of the Agreement, the Company shall be entitled to re-assign all IP addresses and server names previously assigned to the Customer and the Customer shall promptly update all corresponding DNS entries for the Customer's domain name(s).

7.3. Upon the expiration or termination of the Agreement, the Customer shall stop using any hardware and/or Software (as defined in Section 11 (Software)) provided by the Company. The Customer shall, within seven (7) days of such expiration or termination and at its own costs, uninstall, disconnect and/or return such hardware and/or Software to the Company's office in Hong Kong or the nearest Company's depots where the Services are provided as advised by Company in good working condition and with proper packing.

7.4. If the Customer fails to uninstall, disconnect and/or return the hardware and/or Software as set out in Section 7.3 and/or continue to use the same, Company shall be entitled to charge the Customer for, and the Customer shall within fourteen (14) days from the date of demand, pay the market price as determined by Company as replacement cost of the hardware and/or Software.

7.5. If there is Service suspension, expiration or termination of the Agreement during the Contract Period, the Customer agrees that there shall be no refund and it shall continue to pay the Company until the Contract Period ends, including but not limited to any interest accrued due to late payment or indemnities or damages arisen due to breach of the Agreement.

8. **Ownership of Intellectual Property; Restrictions and Indemnity**

8.1. Each of the Party retains all right, title and interest in and to their respective trade secrets, inventions, copyrights, and other intellectual property. In particular, the Customer retains all ownership and intellectual property rights in and to the Customer Applications and Customer Content; and the Company retains all ownership and intellectual property rights to the Services, and derivatives thereof, and any intellectual property developed by the Company or on its behalf during the performance of the Services shall belong to the Company unless the Company has agreed with the Customer in advance in writing that the Customer shall have an interest in the intellectual property.

8.2. The Company warrants that it is the owner or licensee of all Intellectual Property necessary for the performance of the Services. All Intellectual Property relating to the Services and derivative works thereof arising under or during the Agreement shall be owned exclusively by the Company or its licensors.

8.3. The Customer warrants that it is the owner or licensee of all Intellectual Property in the Customer Applications and Customer Content. All Intellectual Property relating to the Customer Applications / Customer Content and derivative works thereof arising under or during the Agreement shall be owned exclusively by the Customer or its licensors.

8.4. The Customer grants the Company the right to use the Customer's Intellectual Property to the extent necessary for the Company to perform its obligations under this Agreement.

8.5. The Customer may not, or cause or permit others to:

(a) remove or modify any program markings or any notice of the Company's or its licensor's proprietary rights;

(b) make the programs or materials resulting from the Services (excluding the Customer Applications and Customer Content) available in any manner to any third party for us in the third party's business operations (unless such access is expressly permitted for the specific Services Customer has acquired); and

(c) modify, make derivative works of, disassemble, decompile, or reverse engineer any part of the Services (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by programs), or access or use of the Services in order to build or support, and/or assist a third party in building or supporting, products or Services competitive to the Company.

8.6. The Customer agrees to indemnify and keep indemnified the Company and each of its Affiliates in relation to Company (including but not limited to any company or business entity which directly or indirectly has a controlling interest or exerts significant influence over the management and policies from time to time), from all claims alleging that the Customer Applications and Customer Content or any of the Customer's Intellectual Property infringes the rights of any third party provided that the Company:

(a) has used the Customer Applications and Customer Content in accordance with the Agreement;

(b) does not knowingly make or intimate any admission, settlement, opinion or undertaking that may be detrimental to the Customer's defense;

(c) gives the Customer prompt notice of any claim and the right to defend and settle any such claims in its own discretion; and

(d) gives the Customer reasonable assistance to defend any such claims at the Customer's cost;

8.7. If any such infringement occurs or may occur, the Customer may at its sole option and expense:

(a) procure the right for the Company to continue using the Intellectual Property for the purpose of supplying the Services; or

(b) modify or amend the Customer Applications and Customer Content so as to remove or avoid the infringement.

9. **Confidential Information**

9.1. Each Party agrees to keep the other's Confidential Information in confidence and only disclose such Confidential Information (i) on a need-to-know basis to its employees, agents, representatives or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than required under this Agreement; (ii) pursuant to the order of any competent court or government agency or in order to comply with any rule or regulation of any internationally recognized securities exchange; or (iii) necessary to perform its obligations under this Agreement.

9.2. The Customer agrees that the Company may include the Customer in its list of customers in its marketing materials (including press releases). Each Party will obtain the other's prior written approval for any other publicity concerning the Agreement or which mentions the other Party.

10. Changes to Services or Terms

10.1. In order to continuously improve its operations, the Company may from time to time alter the Services, the service level agreements, these Conditions or other terms of service incorporated by reference herein without prior notice to Customer. Revisions or amendments may be posted on Company website.

10.2. The Customer may change the selected Services in accordance with the process in the Agreement. However, handling fee will be charged.

10.3. Changes in monthly service fees are effective only at the end of any calendar quarter for which Customer has already prepaid. The use of the service by the Customer following the effective date of such changes shall be proof of acceptance of Customer of such change(s).

11. Software

11.1. All software that the Company provides to the Customer as part of the Services for use with the Services is subject to the terms of this Agreement, including software that we may authorize the Customer to install on devices located outside of our datacenter (hereinafter "**Software**").

11.2. The Customer may not use any software the Company provided after the expiration or termination of this Agreement, or the particular service for which it was provided, and the Customer may not copy the software unless expressly permitted under the Agreement.

11.3. The Customer may not remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear on any software that the Company provided. Unless permitted by the terms of an open source software license, the Customer may not reverse engineer, decompile or disassemble any software the Company provided except to the extent that the Customer is expressly permitted by applicable law to do this by following at least ten (10) days advance written notice to Company. Any additional restrictions which may apply to software that the Company utilizes in the performance of the Services will be specified in this Agreement.

11.4. In the event the Company distributes any open source / free software to the Customer as part of the Services (included but not limited to Linux based software, OpenStack software, and software licensed under the Apache, GPL, MIT or other open source licenses) then such open source / free software is subject to the terms of the applicable open source license. There are no warranties provided with respect to any open source / free software and all implied warranties are disclaimed. In the event of any conflict between the terms herein and the applicable open source license with respect to any open source / free software, the terms of the applicable open source license shall prevail.

12. Security

Without prejudice to Section 3 *(Customer's Obligations)*, the Customer acknowledges that it bears the sole responsibility for the security of the Services. The Customer agrees to implement security measures that are commercially reasonable for the Customer's use of the Services, included but not limited to encryption technologies, password and user ID requirements, and procedures regarding the application of security patches and updates. Neither the Company nor any of its employees, agents, representatives, service suppliers or licensors will be liable for unauthorized access (i.e. hacking) into the cloud servers or the Customer's transmission facilities, premises or equipment, or for unauthorized access to data files, programs, procedures or information thereon, unless and only to the extent that this disclaimer is prohibited by applicable law.

13. No High Risk Use

Notwithstanding anything to the contrary in the Agreement, the Customer shall not use the Services for any high risk activities where a failure or fault of those Services could result in death, serious injury, environmental damage or property damage. Examples of prohibited uses include medical life support devices, water treatment facilities, nuclear facilities, weapons systems, chemical facilities, mass transportation, aviation

and flammable environments. The Customer acknowledges that the Company makes no assurances that the Services are suitable for any high-risk use.

14. **IP Addresses**

Any public or private IP address allocated for the Customer to use as a part of the Services will remain allocated to the Customer until (i) Customer releases the IP address using the Services portal; (ii) the Customer's Services are terminated for any reason; or (iii) the Company decides to change any IP address, which the Company may do at any time and in its sole discretion. Upon termination of this Agreement, the Customer may no longer use any IP addresses or address blocks provided by the Company for its use in connection with the Services.

15. **Domain Registration**

Domain Registrar reserves the right to approve any domain registration. If the domain is rejected, domain fee and setup free are non-refundable. If the Customer requires another new domain registration, domain fee and setup fee will be charged. Expired domain will be imposed and go into redemption period, which requires additional charge and longer processing time for domain renewal. For any .hk domain registration through Company, the Customer shall renew the domain or enquire its procedures from Hong Kong Domain Name Registration Company Limited.

16. **Email Abuse /SPAM**

16.1. Without prejudice to Sections 3 (*Customer's Obligations*) and 4 (*Suspension*), Email Abuse, spamming, or the sending of mass unsolicited email, from or through Company server(s) or using an email address that is maintained on Company's machine(s) is strictly prohibited. If the Customer engages in any of the foregoing activities using the service of another ISP or IPP but channeling activities through Company's server(s) as a maildrop for responses, or sending bulk emails which affect, directly or indirectly, our server operation, traffic loading or other customers, the Customer will be regarded as being in violation of this Agreement. In such instance, the Customer may face an immediate suspension or termination, without refund or data retrieval. Company is not liable for any loss due to the suspension or termination.

16.2. Email Abuse / Spam refers to bulk unsolicited e-mail messages or news articles sent via electronic mail without the recipients' prior request or consent. For details of the Email Abuse Policy legal regulations, please refer to http://www.ofta.gov.hk/

17. **Fax Abuse / Unsolicited Fax Advertisements**

17.1. Distribution of unsolicited fax advertisements, junk fax or spamming through the Services provided by Company is strictly prohibited. Company does not permit its customers to use their DFax number as a "drop-box" for responses to email or fax spam offers. Company reserves the right to suspend or terminate the Services at any time for customers who violate this provision, without refund or data retrieval. Company is not liable for any loss due to the suspension.

17.2. "Unsolicited fax advertisements" are messages promoting goods or services sent to recipients not at the recipient's request or with the recipient's agreement from someone who does not have an established business relationship with the recipient. Legal regulations refer to http://www.ofta.gov.hk/.

18. **Disclaimers and Limitation of Liability**

18.1. The Company does not guarantee that (a) the Services will be performed error-free or uninterrupted, (b) the Services will operate in combination with Customer Content or Customer Applications, or with any other hardware, software, systems or data not provided by the Company and (c) the Services will meet the Customer's requirements, specifications or expectations. The Customer acknowledges that there are risks inherent in Internet connectivity that could result in the loss of the Customer's privacy, Customer Content, Confidential Information, and property. The Company has no obligation to provide security other than as stated in this Agreement. The Company disclaims any and all warranties not expressly stated in the Agreement, including the implied warranties of merchantability, fitness for a particular purpose, and noninfringement. The Customer is solely responsible for the suitability of the service chosen, including the suitability as it relates to the Customer Content. The Services are subject to any applicable Service Level Agreement.

18.2. Some of the Services are designed to help the Customer to comply with various regulatory requirements that may be applicable to the

Customer. However, the Customer is responsible for understanding the regulatory requirements applicable to the Customer's business and for selecting and using those Services in a manner that complies with the applicable requirements.

18.3. Subject to Section 18.4, but without prejudice to the Customer's right to service credits under the applicable service level agreement:

(a) the maximum aggregate liability of the Company for direct loss or damages whether in tort (including, without limitation, negligence), contract or otherwise in connection with the Services shall not exceed the greater of (i) the amount of fees Customer paid for the Services for the three (3) months prior to the occurrence of the event giving rise to the claim, or (ii) Ten Thousand Hong Kong Dollars (HK$10,000) or the equivalent sum in the currency applicable to your order.

(b) neither Party (nor any of such Party's employees, agents, Affiliates or suppliers) shall be liable to the other for:

(i) any indirect, special, incidental or consequential loss or damages of any kind;

(ii) any loss of profit;

(iii) any loss of business;

(iv) any loss of data;

(v) any anticipated savings or revenue; or

(vi) any loss that could have been prevented by the damaged party's use of reasonable diligence, even if the party responsible for the damages has been advised or should be aware of the possibility of such damages.

18.4. Nothing in this Agreement limits or excludes either Party's liability for any loss or damages resulting from:

(a) death or personal injury caused by its negligence; and

(b) any fraud or fraudulent misrepresentation.

18.5. Unless otherwise provided in the applicable Schedule or Quotation, the service credits stated in the applicable service level Agreement are Customer's exclusive remedy for the Company's failure to meet the guarantees for which service credits apply.

19. **Unsupported Configuration Elements or Services**

If Customer requests the Company to implement a configuration element (hardware or software) or other service in a manner that is not customary at the Company, or that is in "end of life" or "end of support" status, Company may designate the element or service as "unsupported," "non-standard," "best efforts," "reasonable endeavor," "one-off," "EOL," "end of support," (referred to in this Section as an "**Unsupported Service**"). The Company shall make no representation or warranty whatsoever regarding any Unsupported Service, and Customer agrees that the Company will not be liable for any loss or damage arising from the provision of the Unsupported Service. The Service Level Agreement will not apply to the Unsupported Service, or any other aspect of the Services that is adversely affected by the Unsupported Service. Customer acknowledges that Unsupported Services may not interoperate with the Company's other services.

20. **Force Majeure**

If a Party is prevented, hindered or delayed from performing any of its obligations under this Agreement (save for its obligations to pay) ("**Affected Party**") by a Force Majeure Event:-

(a) each Party's obligations under this Agreement will be suspended while the Force Majeure Event continues only to the extent that it is so prevented or delayed;

(b) as soon as reasonably possible after the start of the Force Majeure Event, the Affected Party shall notify the other Party in writing of the Force Majeure Event, the date on which the Force Majeure Event started, the effects of the Force Majeure Event on its ability to perform its obligations under this Agreement and its likely duration; and

(c) the Affected Party shall notify the other party once the Force Majeure Event has ended and resume performance of its obligations under this Agreement.

Neither Party shall be under any liability for failure to perform any of its obligations hereunder (save for any payment obligations) where such failure to perform arises from a Force Majeure Event.

21. Notice

Any notice required or permitted to be given under this Agreement shall be given in writing and shall be effective from the date sent by registered or certified mail, by hand, facsimile, e-mail or overnight courier to the addresses set forth on the Quotation.

22. Governing Law and Jurisdiction

22.1. This Agreement shall be governed by and construed in accordance with the laws of Hong Kong, excluding its conflict of laws rules.

22.2. Except as provided in this Section, all disputes, controversies or differences arising out of or related to this Agreement that are not settled by mutual agreement through friendly consultations shall be exclusively and finally settled by arbitration. The said arbitration shall be conducted in Hong Kong under the auspices of the Hong Kong International Arbitration Centre ("HKIAC"), according to its rules (except as modified hereby). Arbitration shall be conducted and decided by a tribunal consisting of a sole arbitrator jointly appointed by the Parties jointly. Should the Parties be unable to agree on the choice of the sole arbitrator, the Parties shall request HKIAC to recommend one arbitrator, and such recommended arbitrator shall be accepted by the Parties as the jointly appointed sole arbitrator. The language of the arbitration shall be English. Nothing herein contained shall bar the Parties from seeking equitable remedies in a court of appropriate jurisdiction to prevent or remedy a breach or other conduct potentially resulting in irreparable harm. Each Party shall bear its own attorney fees, tribunal fees and other expenses as may be incurred by the parties to enforce the terms of this Agreement.

22.3. The ruling and award of the arbitral tribunal shall be final and binding, and may not be contested by either Party nor may relief therefrom be sought in any court. Any court having jurisdiction may enforce the arbitral ruling and award. Each Party shall bear its own costs and expenses, including attorney's fees, in connection with the arbitration.

23. Miscellaneous

23.1. *(Modification)* The Agreement may be modified by the written agreement of the Parties; such written agreement shall state that it is intended to revise the Agreement and supersede all such prior agreement between them.

23.2. *(Accrued Rights)* The expiration or termination of this Agreement does not affect the accrued rights or remedies of either Party.

23.3. *(Illegality and Invalidity)* If any provisions of this Agreement are construed to be illegal or invalid, they shall not affect the legality, validity and enforceability of the other provisions of this Agreement. The illegal or invalid provisions shall be deleted from this Agreement and no longer incorporated herein but all other provisions of this Agreement shall continue. The parties expressly agree that this Agreement shall not give rise to any third party being a beneficiary or being entitled to any rights whatsoever.

23.4. *(Assignment)* Neither Party may assign the Agreement without the prior written consent of the other Party except that the Company may assign the Agreement to an Affiliate. The Company may use third party service providers to perform all or any part of the Services, but the Company remains responsible to the Customer under this Agreement for Services performed by its third party service providers to the same extent as if the Company performed the Services itself.