

# TGT HONG KONG DATA CENTRE

## TERMS AND CONDITIONS

### 1. Definitions

In this Agreement, unless the context requires otherwise the following expressions shall have the following meanings respectively:-

“**Agreement**” means these terms and conditions, the Data Centre Rules and any amendments or supplements to this Agreement.

“**Centre Operator**” means Towngas Telecommunications Fixed Network Limited.

“**Customer**” means the person, firm or company subscribing for the Services under this Agreement.

“**TGT Hong Kong Data Centre 1**” means the Centre Operator’s data centre located at 19/F, Two Portside, 9 Pat Tat Street, San Po Kong, Kowloon, Hong Kong.

“**TGT Hong Kong Data Centre 2**” means the Centre Operator’s data centre located at No.22, Chun Cheong Street, Tseung Kwan O Industrial Estate, New Territories, Hong Kong.

“**Charges**” means the installation charge, monthly charge and all other charges from time to time applicable in respect of the Services as described in the Quotation and such other charges for the Services for which the Customer is liable.

“**Data Centre**” means TGT Hong Kong Data Centre 1 and TGT Hong Kong Data Centre 2 or, where context requires, any one of them.

“**Data Centre Rules**” means the rules specified by the Centre Operator regarding use of the Services, which rules may be revoked, amended or modified, either in whole or in part, from time to time at the Centre Operator’s discretion on fourteen (14) days’ notice to the Customer.

“**Deposit**” means the deposit payable by the Customer to the Centre Operator in accordance with Clause 4(a).

“**Equipment**” means any equipment, including but not limited to the servers, peripherals, wiring and other equipment provided by the Customer.

“**Fees**” means the fee(s) as set out in the Quotation and all other charges payable by the Customer pursuant to these Conditions;

“**Quotation**” means the quotation and/or agreement signed by the Centre Operator and the Customer to which these Conditions are attached;

“**Services**” means the services as set out in the Quotation as modified from time to time and such other types of services as may be provided by the Centre Operator from time to time.

“**Term**” means the term of this Agreement as stated above, or such other longer term as may be agreed between the Centre Operator and the Customer.

### 2. Service Overview (applied to TGT Hong Kong Data Centre 2 only)

- (a) Both the Customer and Centre Operator acknowledge that as part of the conditions under which TGT Hong Kong Data Centre 2 is held, the Centre Operator undertakes, and the Customer hereby confirms that nothing in this Agreement shall conflict or undermine with the fundamental basis, that the Centre Operator will not and does not agree to assign, demise, underlet or part with the possession of TGT Hong Kong Data Centre 2 or any part thereof or otherwise dispose of the Facility Management Centre or any part thereof or any interest therein or enter into any agreement so to do nor to permit any other party by way of a licence or otherwise to occupy TGT Hong Kong Data Centre 2 or any part thereof.
- (b) Notwithstanding any provisions of this Agreement, the Customer and the Centre Operator acknowledge and agree that the Centre Operator must use reasonable commercial endeavors to comply with the relevant conditions under which TGT Hong Kong Data Centre 2 is held.
- (c) Notwithstanding any provisions of this Agreement, the Customer and the Centre Operator acknowledge and agree that the Customer must ensure that it may only use TGT Hong Kong Data Centre 2 for IT projects.
- (d) The Customer acknowledges that the Services provided by the Centre Operator under the Quotation are facilities management services and not data centre services. In making any statement or announcement in relation to the Services, neither the Customer and the Centre Operator shall make any representation that the Services are data centre services or describe the Services as data centre services.
- (e) The Customer agrees, confirmed and acknowledges that any right or rights granted to the Customer for use of or access to any part of TGT Hong Kong Data Centre 2 (including without limitation those part or parts for housing the Equipment) are limited for the purpose of receiving the Services to be provided by the Centre Operator only, but not further or otherwise.

### **3. Rules**

The Customer will comply with the Data Centre Rules. The Customer will perform its obligations under this Agreement in a manner consistent with any standard, procedure, condition or restriction set out in the Data Centre Rules.

### **4. Customer Access**

- (a) The Customer acknowledges and agrees that it will not have any right of access to any part of the Data Centre, unless permitted by the Centre Operator at its absolute discretion on any conditions which the Centre Operator may impose.
- (b) The Centre Operator hereby expressly reserves unto itself exclusive control of access over all parts of the Data Centre, and any right of the Customer to access or to control access to the relevant premises (if any) shall be subject to the above reservation and rights of the Centre Operator.

### **5. Charges**

The Customer will:

- (a) pay the Centre Operator the deposit in accordance with the Quotation to secure the due observance and performance of this Agreement.
- (b) pay the Centre Operator the Charges together with all taxes, tariffs, duties assessments and other charges relating to its use of the Services in accordance with the Quotation:
  - i. in the case of repeating charges, on the first business day of every calendar month during the Term. The first payment will be made upon signing of the Quotation and if the Agreement does not start on the first day of a calendar month the payment will be calculated according to the number of remaining days in that month on a pro rata basis using a thirty (30) day month; and
  - ii. in the case of occasional Charges, on the date for payment specified in the Quotation, or in any event no later than thirty (30) days after the date of the notice of the Charges to the Customer.
- (c) The Centre Operator reserves the right to change the Charges by giving the Customer thirty (30) days' notice.
- (d) The Deposit will be retained by the Centre Operator free of any interest to the Customer.

Without affecting any right or remedy which the Centre Operator may have, the Centre Operator may deduct from the Deposit the amount of any loss, damages or expenses sustained or incurred by the Centre Operator as a result of any breach of this Agreement by the Customer. Upon demand by the Centre Operator, the Customer will immediately pay to the Centre Operator an amount equivalent to the deducted amount to replace the part of the deposit so used by the Centre Operator. Subject to the foregoing, the Centre Operator will repay any unused Deposit within thirty (30) days after the expiry of the Term, or within thirty (30) days after the settlement of the last outstanding claim by the Centre Operator against the Customer, whichever is later.

### **6. Payment Terms**

- (a) The Customer shall pay to the Centre Operator the Fees, inclusive of all applicable taxes and tariffs.
- (b) This Agreement shall continue after the expiry of the Term until terminated by either party giving one month's written notice to the other.
- (c) All charges which would have been paid during the unexpired portion of the Term should be paid and settled on or before the date of termination of the Agreement.
- (d) The Fees shall be paid by the Customer without set-off or counterclaim.
- (e) Unless otherwise set out in the Quotation, all one-off fees shall be payable upon signing of the Agreement, and all monthly fees shall be payable on the first business day of each calendar month except that the first month's payment shall be paid on the signing of the Agreement.
- (f) The Customer acknowledges that the provision of the Services is conditional on the Centre Operator receiving payment of the Fees in full. In the event of any non-payment of the Fees or suspected fraudulent activity in relation to payment of the Fees by the Customer, the Centre Operator reserves the right to forthwith withhold, suspend or cancel the Services or License.

- (g) Interest will be charged on overdue accounts at a rate of 2% per month above the base rate from time to time in force of HSBC. Such interest will be calculated on a daily basis from the date payment was due until the date payment is received and will be compounded monthly. The outstanding Charges and interest will be recoverable by the Centre Operator as a debt.
- (h) If the customer fails to settle any debt due, Centre Operator shall have a lien on the Equipment and is entitled to retain such Equipment or to sell the Equipment at any price in such manner as it deems fit for payment of any such debt and the cost of sale shall be solely borne by the Customer.

## **7. Maintenance**

- (a) The Centre Operator may conduct routine scheduled maintenance of the Data Centre according to a maintenance schedule notified by the Centre Operator to the Customer in advance.
- (b) The Centre Operator may also perform emergency maintenance at any time without prior notice. The Centre Operator will endeavour to notify the Customer of the event and estimated time period of the emergency maintenance.
- (c) During scheduled and emergency maintenance, the Equipment or other elements of the systems associated with the Services may function below normal levels, or not function at all, including failing to transmit and receive data. The Customer may be unable to access the Equipment, whether physically or remotely. The Customer must decide whether to make arrangements to minimize any loss or inconvenience arising from maintenance events, as the Centre Operator will not be responsible for such loss or inconvenience.

## **8. Centre Management**

- (a) The Centre Operator will provide the Services and use commercially reasonable endeavour to maintain the Equipment and facilities in a good and workmanlike manner. The Centre Operator does not warrant or represent that the Services or the use of the Equipment will be uninterrupted or error free nor warrant or represent any result from the use of the Services or the Equipment. A service level agreement in relation to particular Services may set out the exclusive remedy for any interruption or error in the Services.
- (b) The Centre Operator may upgrade, modify or discontinue any aspect of the Services or the Equipment at its discretion on notice to the Customer as set out in the Data Centre Rules. If the Customer can show that a proposed modification or discontinuation will materially adversely affect the Customer's business then the Centre Operator will negotiate in good faith to continue the Services or the supply of the Equipment on charges altered to reflect the carrying costs of the Services or the Equipment (as the case may be) shared among the Customers requiring it.
- (c) The Centre Operator may investigate suspected violations of any of the terms and conditions of this Agreement (which includes the Data Centre Rules). The Customer will provide such assistance and information in its possession as may be required to help the Centre Operator in its investigation. The Customer consents to the Centre Operator requiring information from the Customer and the Customer's users and clients. The Centre Operator may deny access at the router or other level to the Equipment during an investigation. If the Centre Operator has reasonable cause to believe that a violation has occurred or is about to occur, it may take such responsive action to stop or prevent such violation as it deems fit including, but not limited to, suspension or termination of the Services or the supply of the Equipment.

## **9. Intellectual Property Rights**

- (a) Unless otherwise agreed in writing, any internet resource (including an internet protocol address) held, provided or procured by a party will remain the property of that party and the other will have no right, title or interest in that resource. The controlling party will have the right to withdraw any internet resource at any time.
- (b) Any internet protocol address allocated by the Centre Operator to the Customer will, as between the parties, remain the property of the Centre Operator, and the Customer will acquire no right to such address.
- (c) The Customer will not use, imitate or reference the name, logo, trade name, trade mark or get-up of the Centre Operator without the prior written consent of the Centre Operator.

## **10. Traffic Management**

The Customer will not utilize the Services in a manner which, in the view of the Centre Operator, significantly distorts traffic balance on the Centre Operator's circuits which are shared with other users. If, in the reasonable view of the Centre Operator, the Customer's traffic patterns cause or may cause such distortion, the Customer should have a dedicated circuit capability. If the Customer declines to do so then the Centre Operator may suspend the Services while the matter is being resolved. If there is no resolution within five (5) business days then either party may terminate the Agreement.

## 11. Limitation of Liability

The Centre Operator will not under any circumstances be liable for:

- (a) any loss or damages due to the overflow of water, influx of rain water or sea water into the Data Centre, or the activities of rats or other vermin in the Data Centre, or the escape of fumes, smoke, fire or any other substance or thing from anywhere within the Data Centre, or caused as a result of burglary or robbery or due to the defect in or breakdown or suspension of services of the lifts, escalators, fire and security services, air-conditioning plant, telecommunication infrastructure, power supply system, fire protection system or other services of the building of which the Data Centre form part;
- (b) any loss or damages due to the neglect or default of the customers, tenants or and occupiers of any other parts of the Data Centre or the building and their employees, agents, licensees and visitors;
- (c) any incidental, indirect, consequential, special or economic loss or damage (including but not limited to loss of profit, business, management time, data, records, goodwill or claims of customers) by the Customer howsoever arising out of this Agreement, the provision of the Services or the Equipment or the operation of the Data Centre;
- (d) any loss or damages due to or in respect of any inherent defect or design defect in the Equipment or systems in the Data Centre or any objection relating to the rights of user in relation to the building; or
- (e) or obliged to rectify or to improve the quality or defect in connectivity, Equipment or performance level which may have been caused by acts, default or negligence of any third party, or due to depreciation of any system or facilities, or due to any reason not attributable to the Centre Operator's default in carrying out routine maintenance to the Centre Operator's Equipment or facilities.

Except in relation to personal injury or death, the aggregate liability of the Centre Operator to the Customer whether arising in contract, tort (including negligence), statutory liability or otherwise will under no circumstances exceed the amount of the Charges paid to the Centre Operator during the period of six months prior to the event giving rise to the cause of action. Where a service level agreement provides a remedy in respect of downtime or other service issues, that remedy will be the Customer's sole right in relation to any claim.

## 12. Indemnity

The Customer will, as applicable, defend, indemnify and hold harmless the Centre Operator from and against the following, including all costs, losses, damage and expenses (including legal fees):

- (a) any third party claim in respect of or concerning any hardware, software or other systems of the Customer that the Customer has designed, installed and/or operates or claiming a breach of the third party's intellectual property rights;
- (b) any claim that any subcontractor or agent of the Customer may make against Centre Operator in respect of or concerning any work carried out in the Data Centre;
- (c) any claim, demand, action, proceeding whatsoever by any user of any system in the Internet Applications Centre connected to the Customer's system;
- (d) any loss or expense suffered by the Centre Operator due to the misuse of the Centre Operator's system by, or any act or default of, the Customer, its representative, employee, contractor, agent or customer; and
- (e) all claims, actions, proceedings, loss, damage, costs, expenses and liabilities whatsoever arising from any improper use, or any use in violation of law or third party rights, of the Services or the Equipment by the Customer or any person authorized or permitted by the Customer.

## 13. Suspension of Services

- (a) The Centre Operator shall have the right to modify or discontinue any aspect of the Services at its discretion upon ten (10) days prior written notice to the Customer.
- (b) The Centre Operator reserves the right to suspend or terminate the Services immediately for the following reasons:
  - i. in order to upgrade, repair or maintain the Services (including any telecommunications link, hardware or software);
  - ii. where the Customer fails to pay the Fees;

- iii. where, in its reasonable opinion, it suspects that the Customer has breached its obligations under the Agreement;
  - iv. where the Customer does or suffers anything to be done which jeopardizes the Services or any network to which it is from time to time connected; and
  - v. where the Customer network or Customer Equipment is being used or is suspected of being used by a third party for spamming, hacking, or any other action that is or may be detrimental to the Services or the network.
- (c) The exercise of Centre Operator's rights of suspension under this clause will not (i) exclude its rights to terminate the Services later in respect of that or any other event, nor (ii) prevent it from claiming damages from the Customer in any respect of any breach.

#### **14. Termination of Services**

The Agreement commences on the day specified in the Quotation and ends at the expiration of the Term. The Customer shall in writing notify the Centre Operator not less than one month before the expiry of the Term if it does not wish to renew the Agreement. In the absence of such notice and unless the Centre Operator terminates the Agreement in writing, the Agreement shall automatically be renewed on a monthly basis on the same terms with the same amount of Fee payable by the Customer and either party may by one month's written notice terminate the Agreement during such renewed term.

- (a) This Agreement will terminate:-
- i. at the end of the Term;
  - ii. immediately on notice from either the Customer or the Centre Operator if the Centre Operator is unable to offer the Services to the Customer due to any law, regulation, or other reason beyond its control;
  - iii. immediately on notice from the Centre Operator to the Customer if the Customer has failed to remedy a breach of this Agreement within 48 hours of notice to do so;
  - iv. fourteen (14) days from the service suspension; or
  - v. if this Agreement is deemed to be a tenancy due to any law, regulation or other reason beyond the Company's control.
- (b) The Customer will be liable for all Charges up to the date of termination without prejudice to the Centre Operator's right to any claim against the Customer for any breach of this Agreement.
- (c) Without prejudice to any other provision, if the Customer commits a breach of the Agreement, Centre Operator shall have the right, without the obligation to provide any prior notice to Customer, to (i) suspend and/or terminate all of any of the Services; and (ii) deny Customer's access to the Equipment, disconnect electricity supply to the Equipment and/or remove the Equipment of the Customer. Once the Services have been suspended or terminated or access to the Equipment denied, reinstatement shall be at the sole discretion of Centre Operator and subject to such conditions as Center Operator may think fit. For the avoidance of doubt, Centre Operator shall not be liable to the Customer for any loss or damage whatsoever in the event it exercises its suspension or termination rights hereunder.
- (d) Upon termination, whether under Clause 14(a) above or otherwise, the Customer will, without prejudice to the Centre Operator's rights to claim damages, become immediately liable to pay to the Centre Operator an amount comprising the aggregate of:
- i. all arrears of Charges and other monies accrued due and unpaid under the terms of this Agreement together with any interest thereon;
  - ii. any costs and expenses incurred by the Centre Operator in restoring the Equipment or collecting any payments due under this Agreement, or otherwise in obtaining the due performance of the obligations of the Customer under this Agreement;
  - iii. the aggregate of all Charges that would have been payable during the unexpired term of the Term; and
  - iv. all and any other sums due under this Agreement.
- (e) For the avoidance of doubt, any payment in advance will not be refunded. Where applicable, credit will be given to the Customer to take account of the early receipt of payment by the Centre Operator and any cost savings as a result of early termination. The amount of such credit will be determined solely by the Centre Operator.
- (f) The Customer will remove any Equipment not provided by the Centre Operator (if any) within five (5) business days of termination.
- (g) If the Customer does not comply with its obligations in clause 14(f) within five (5) business days of termination of this Agreement, the Centre Operator will be entitled to remove any Equipment not provided to the Customer by the Centre Operator and dispose of it in a

manner as the Centre Operator thinks fit without any compensation or being liable to the Customer in any way. The cost of removal and disposal or sale will be recoverable from the Customer as debt. The proceeds of sale (if any) after deduction of all relevant costs will be credited to the Customer. Customer is not allowed to access or to remove Equipment until all outstanding payment is settled and confirmed by Towngas Telecom account department.

- (h) The Customer will return any manuals or other materials provided by the Centre Operator or the Manufacturer for use of the Equipment or the Services within five (5) business days of termination.
- (i) Without prejudice to anything which may appear in any lease, the Centre Operator reserves all rights to re-possess, uninstall and remove the Equipment and/or any Equipment leased to the Customer if the Customer breaches this Agreement or on termination of this Agreement.

## 15. General

- (a) The parties do not intend to create any tenancy or estate or interest or licence or other right of occupation in land and nothing in this Agreement will be construed as creating such relationship between the Centre Operator and the Customer.
- (b) This Agreement supersedes all prior agreements, arrangements and understandings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof. No addition to or modification of any provision of this Agreement will be binding upon the parties unless made by a written instrument signed by a duly authorized representative of each of the parties.
- (c) If any of the provisions of this Agreement are held to be illegal or invalid, it will not affect the legality, validity, or enforceability of the other provisions of this Agreement. The illegal and invalid provision will be deemed to have been deleted from this Agreement.
- (d) The Customer will keep the terms of this Agreement confidential.
- (e) The Customer will abide by all applicable laws (whether of Hong Kong or of any relevant jurisdiction) in relation to the use of the Services and the Equipment. The Customer further warrants that its use of the Services and the Equipment does not infringe any third party rights or violate any law.
- (f) The Centre Operator may assign or charge this Agreement or its rights hereunder to any person. The Customer may not without the prior written consent of the Centre Operator assign, transfer or charge or purport to assign, transfer or charge this Agreement or its rights or obligations hereunder whether in whole or in part to any person.
- (g) The Centre Operator reserves the right to alter, add to or delete any of these Conditions at any time without giving prior notice to the Customer. The Customer agrees that the use (whether or not by the Customer) of the Services will constitute the Customer's acceptance of these Conditions (as from time to time amended).
- (h) This Agreement will be construed in accordance with the laws of the Hong Kong Special Administration Region of the PRC and the Centre Operator and the Customer hereby submit to the exclusive jurisdiction of the courts of the Hong Kong Special Administration Region of the PRC.
- (i) Data Centre Rules are listed in Schedule 1.

### Schedule 1 – Data Centre Rules

#### DEFINITIONS

**Prohibited Materials:** means materials which may jeopardize the safety, harmony and normal operation of the Internet Applications Centre(s), including, but not limited to, those listed in item 2.1.3.

**Representatives:** means individuals who have been identified and authorized in writing by the Customer on the "Customer Service Implementation Form".

#### 1. Access to Data Centre

##### 1.1 Registration and Representation

- 1.1.1 The Centre Operator's "Customer Service Implementation Form" should be filled in and signed by the authorized person with company chop and submitted, either by post or by fax, to the Centre Operator prior to the commencement of the Agreement.

### TGT Hong Kong Data Centre 1

Postal Address: 19/F, Two Portside, 9 Pat Tat Street, San Po Kong, Kowloon.

Fax Number: 2908-6966

### TGT Hong Kong Data Centre 2

Postal Address: 22 Chun Cheong Street, Tseung Kwan O Industrial Estate, New Territories, Hong Kong.

Fax Number: TBA

- 1.1.2 Should there be any changes to any information on the “Customer Service Implementation Form” or the list of Representatives, the Customer shall deliver prior written notice to the Centre Operator. One day’s notice of the revised version of the “Customer Service Implementation Form” should be filled in and signed by the authorized person with company chop and submitted, either by post or by fax, to the Centre Operator.

## 1.2 Admission to the Data Centre

- 1.2.1 The Customer and its Representatives will not be given access to the Data Centre, except as permitted by the Centre Operator in its absolute discretion and then only on any conditions which the Centre Operator may impose.
- 1.2.2 If given access to the Data Centre, the Customer and its Representatives should make prior booking (at least one day in advance) for the date and time of accessing and entering the Data Centre.
- 1.2.3 The Customer and its Representatives should strictly follow the Centre Operator’s Security Access Policy.
- 1.2.4 The Customer and its Representatives should observe the verification process of the Centre Operator prior to entering the Data Centre, including presenting identity, bearing the Centre Operator’s visitor card on every visit and return such visitor card immediately when leaving the Data Centre.
- 1.2.5 The activity of the Customer and its Representatives are confined to only accessing or enter restricted area of the Data Centre unless otherwise approved and accompanied by an authorized personnel of the Centre Operator.
- 1.2.6 If the Customer or its Representatives wants to bring any type of telecommunication Equipment, tester, computer machine, etc in/out or to/from the Data Centre, he/she should fill in and present the Gate pass mentioned in the Centre Operator’s “Security Access Policy” at the reception counter.
- 1.2.7 The Customer agrees, confirms and acknowledges that any right or rights granted to the Customer for use of or access to any part of the Data Centre (including without limitation those part or parts for housing the Equipment) are limited for the purpose of receiving the Services to be provided by the Centre Operator only, but not further or otherwise. The Centre Operator hereby expressly reserves unto itself exclusive control of access over all parts of the Data Centre, and any right of the Customer to access or to control access to the relevant premises (if any) shall be subject to the above reservation and rights of the Centre Operator.

## 2. Use of the Data Centre Facility

### 2.1 Conduct at the Data Centre

- 2.1.1 The Customer and its Representatives should at all time not commit, but are not limited to, the following:
  - a. misuse, abuse or damage, directly or indirectly or whatever, any of the Centre Operator’s property or Equipment or third party’s Equipment; and/or
  - b. make any unauthorized use of or interfere with any property or Equipment of any other customers of the Centre Operator; and/or
  - c. harass any individual, including the Centre Operator’s personnel and representatives of other customers of the Centre Operator; and/or
  - d. engage in any activity that is in violation of the law or that aids or assists in any criminal activity while inside the Centre Operator’s property or in connection with the provision of services of the Data Centre.

2.1.2 If given access to the Data Centre, the Customer and its Representatives shall keep the Data Centre clean and free and clear of debris and refuse. The Customer and its Representatives shall not, except as otherwise agreed to in writing by the Centre Operator, commit, but are not limited to, the following:

- a. place any computer hardware or other Equipment in the Data Centre; and/or
- b. store or place any paper products or other combustible materials of any kind in the Data Centre; and/or
- c. bring any Prohibited Materials into the Data Centre.

2.1.3 The Customer and its Representatives are at all time prohibited to bring the following “Prohibited Materials”, but by no means exhaustive, into the Data Centre, except as otherwise permitted by the Centre Operator:

- a. food and drink; and/or
- b. tobacco products; and/or
- c. explosives and weapons; and/or
- d. hazardous materials; and/or
- e. alcohol, illegal drugs and other intoxicants; and/or
- f. heavy machinery such as driller; and/or
- g. electro-magnetic devices which could interfere with computer; and/or
- h. telecommunications Equipment, which may cause interference or safety problem; and/or
- i. radioactive materials; and /or
- j. photographic or recording Equipment of any kind (other than tape back-up Equipment)

## 2.2 Schedules Maintenance

2.2.1 The Centre Operator will conduct routine scheduled maintenance of the Data Centre and Data Centre services according to the maintenance schedule.

2.2.2 In the event of critical maintenance, the Centre Operator may need to perform emergency maintenance at any time.

2.2.3 During these scheduled and emergency maintenance periods (as listed in Item 2.2.1 and 2.2.2 above), Equipment may be interrupted and unable to transmit and receive data.

2.2.4 Customer agrees to cooperate with the Centre Operator during the scheduled and emergency maintenance periods.

## 3. Use of the Data Centre Online Services

### 3.1 Customer’s Contents

3.1.1 Customer acknowledges that the Centre Operator exercises no control whatsoever over the contents of the information passing through Customer’s site(s).

3.1.2 It is the sole responsibility of Customer to ensure that the information and its users transmit and receive complies with all applicable laws and regulations and the Data Centre Rules expressed hereunder.

### 3.2 Prohibited Activities

3.2.1 Customer will not be permitted and should not permit any persons (“Users”) using Customer’s online facilities and for services, including Customer’s Web Site(s) and transmission capabilities, to do, but are not limited to, any of the following (“Prohibited Activities”):

- a. send unsolicited commercial messages or communications in any form (“SPAM”), including, but are not limited to, sending



mass advertisements for products or services, quick-getting-rich schemes, chain letters, or any unsolicited commercial e-mails, except:

- i. a notice at the top of the e-mail specifying that bulk e-mail was sent to a list of subscribers and not sent to unwilling recipients; or
  - ii. a notice at the top of the e-mail describing an easy manner to unsubscribe from the subscriber list; or
  - iii. recipient's e-mail address not be masked in any way; or
  - iv. iv. sender's e-mail address not be masked in any way, with a valid Reply-To header in the e-mail; and
- b. engage in any activities or actions that infringe or misappropriate the intellectual property rights of others, including, but not limited to, using third party copyrighted materials without appropriate permission, using third party trademarks without appropriate permission or attribution, and using or distributing third party information protected as a trade secret information in violation of a duty of confidentiality; and/or
  - c. engage in any activities or actions that would violate the personal privacy rights of others, including, but not limited to, collecting and distributing information about Internet users without their permission, except as permitted by applicable law; and/or
  - d. send, post or host harassing, abusive, libelous, illegal or obscene materials or assist in any similar activities related thereto; and/or
  - e. store or distribute certain prohibited materials including, but not limited to, programs containing viruses or Trojan horses and tools to compromise the security of other sites; and/or
  - f. intentionally omit, delete, forge or misrepresent any transmission information, including headers, return mailing and Internet protocol addresses; and/or
  - g. engage in any activities or actions intended to withhold or cloak Customer's or its User's identity or contact information; and/or
  - h. use the Centre Operator's connectivity services for any illegal purposes, in violation of any applicable laws or regulations or in violation of the rules of any other service providers, web sites, chat rooms or the like; and/or
  - i. assist or permit any persons in engaging in any of the activities described above.

3.2.2 If the Centre Operator receives complaints from third party or detects any violation of online use policy, the Customer will be notified in the matter and should co-operate with the Centre Operator to resolve violation of any prohibited activities in the future.

3.2.3 If Customer becomes aware of any Prohibited Activities, Customer should use best efforts to remedy such Prohibited Activities immediately, including, if necessary, limiting, blocking, suspending or terminating User's access to Customer's online facilities.

#### 4. Suspension and Termination of Services

##### 4.1 Breach of these Data Centre Rules

4.1.1 The Centre Operator reserves the right to suspend and/or terminate the Services at any time for any material failure of Customer, its Representatives, or its Users to comply with these Data Centre Rules without prior notice.

4.1.2 Any pre-payment of services will not be refunded or assigned to any third party.

#### 5. Modification of these Data Centre Rules

5.1 The Centre Operator may change these Data Centre Rules upon fifteen (15) days' written notice to the Customer. The new Data Centre Rules shall be provided by the Centre Operator to Customer.