

## GENERAL TERMS AND CONDITIONS

### 1. Agreement

These General Terms and Conditions and any additional attachments, if any (the "Agreement"), which will be deemed an integral part hereof for all purposes, when referenced in the Order Form properly filled out and duly executed by BUYER and SELLER, will constitute an agreement entered into between BUYER and SELLER for the provision of SELLER's Service (for purposes of this Agreement, the "Service").

### 2. Definition

#### 2.1 In this Agreement, the following terms have the following meanings:

"Affiliate" means with respect to any person, any other person Controlling, Controlled by or under common Control with such person. For the purposes of this definition, "Control" of a person means (a) with respect to a corporate person, direct or indirect ownership of more than fifty (50) percent of the outstanding voting securities of such corporate person or the ability to appoint more than half of the directors of the board or equivalent governing body of such person or the ability to direct or cause the direction of the management and policies of such person, (b) with respect to a non-corporate person, the comparable voting interest (as set forth in (a) above) for such non-corporate person or (c) the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person; and the terms "Controls", "Controlling" and "Controlled" shall have corresponding meanings.

"BUYER" means the party named on the Order Form who will acquire the Service from SELLER.

"BUYER Interface" means either (i) BUYER connection to local access interface equipment at a Circuit Location Address; or (ii) BUYER connection to a SELLER POP, in each case as specified on the Order Form.

"Charges" mean the charges for the Service as set forth in Clause 4.1.

"Circuit Location Address/Location Address/Service Location" means the location specified by BUYER in the Order Form for one or both ends of the Service.

"Day" means calendar day if not specifically defined.

"Initial Term" or "Service Initial Term" means the term specified in the Order Form.

"Order Form" means the Order Form for the Service that, when executed by BUYER and SELLER, together with these General Terms and Conditions comprises a binding agreement between the Parties in respect of the Service.

"Party" means SELLER or BUYER and "Parties" mean SELLER and BUYER.

"POP" means point of presence.

"Ready For Service Date" means the date on which the Parties agree to place IPLE and/or IEPL into operation for the Service.

"Service(s)" means the telecommunications service(s) to be provided by SELLER pursuant to an Order Form signed by SELLER and this Agreement.

"Service Commencement Date" means the earliest of: (i) the date when BUYER is notified that the Service has been connected to the BUYER Interface; (ii) the date when BUYER being using the Service; or (iii) the fourth (4<sup>th</sup>) day following SELLER notifying BUYER that SELLER has successfully completed all circuit testing on the Service, unless BUYER notifies SELLER during that period of any objections to such test results.

"SELLER" means China Mobile International Limited or its Affiliate, which has accepted Order Form with the BUYER for the provision of Services.

"SELLER POP" means the POP maintained by SELLER or its Affiliates and partners.

"Specific Terms and Conditions/Service Annexure" means the specific terms and conditions applied to the Service as set out in an Oder Form.

"Working Day" means Mondays through Fridays, inclusive, but does not include national or public or bank holidays.

#### 2.2 Headings are inserted for ease of reference only and do not affect the interpretation of this Agreement.

#### 2.3 References to Clauses are references to clauses of this Agreement.

- 2.4 Unless the context other requires, the singular includes plural, the masculine gender includes the feminine and neuter genders and vice versa.

### **3. Term**

- 3.1 An accepted Order Form between BUYER and SELLER for a Service will commence and remain in force until the end of the term specified therein unless terminated earlier in accordance with this Agreement. BUYER must specify an initial term for each Service in the Order Form which shall be at least one (1) year's period. If no term is specified, the initial term of the Service will be one (1) year commencing on the Service Commencement Date ("Initial Term" or "Service Initial Term"). Upon conclusion of the Initial Term, the subject order will be automatically renewed on a monthly basis unless and until terminated by either Party upon giving the other Party not less than one (1) month's prior written notice. Such termination shall be without prejudice to the antecedent rights and obligations of the Parties accrued as of the date of termination and Clause 10.3 hereof.

### **4. Charges and Payment**

- 4.1 Charges for a Service generally consists of: (a) one-time installation charges ("Initial Charge"); (b) monthly recurring charges which will be charged on lump sum basis or usage basis ("Monthly Service Charge"); (c) local access charges and/or related expenses if SELLER is procuring local access for BUYER in connection with the Service; and (d) any other miscellaneous charges (collectively "Charges"). Particulars of all Charges will be set forth in the Order Form and Service Annexure.
- 4.2 The Charges are exclusive of any applicable taxes, tariff surcharges or other like amounts assessed by any governmental or regulatory body and/or department arising from or as a result of the provision of the Services under this Agreement. BUYER shall be responsible for the payment of the above-mentioned taxes, irrespective of the taxes imposed on SELLER or BUYER. If the BUYER is required by law to deduct or withhold any taxes, duty or levy from any amounts payable under this Agreement, such amount shall be increased as necessary so that SELLER receives an amount equal to the sum it would have received without any deduction or withholding. BUYER shall provide a copy of the withholding tax certificate to SELLER without undue delay.
- 4.3 The level of Charges during the Initial Term shall be fixed. Subject to applicable law, after the expiry of the Initial Term, SELLER reserves the right to adjust upward the Charges at any time to reflect the increased costs SELLER incurs in providing the Service to BUYER. SELLER shall give BUYER thirty (30) Days' prior written notice to give effect to such changes. Notwithstanding the foregoing, at all times SELLER reserves the right to vary the Charges at any time to reflect changes necessitated or resulted in the imposition of governmental policies and SELLER shall give BUYER thirty (30) Days' prior written notice to give effect to such changes.
- 4.4 The Monthly Service Charge will begin to accrue on the Service Commencement Date and SELLER shall invoice BUYER in advance for all Charges in SELLER's first invoice. SELLER shall invoice and BUYER will pay the invoices in the currency specified in the Order Form. BUYER must pay SELLER's invoices in full within thirty (30) Days of the invoice date ("Due Date"). BUYER must pay all amounts invoiced or otherwise owed to SELLER under this Agreement without withholding, set-off or deduction. Any sum that is not paid when due will incur an interest charge at a rate of 10% per annum, or the maximum amount permitted by law, whichever shall be the higher, commencing on the Due Date. Where bank fees occur, such expenses imposed by BUYER's bank(s) and/or other intermediate bank(s) located in the BUYER's country shall be borne by BUYER and expenses imposed by SELLER's bank(s) and/or other intermediate bank(s) located outside the BUYER's country shall be borne by SELLER.
- 4.5 Unless otherwise specified in this Agreement, BUYER must pay all the Charges without any withholding, set off or deduction.
- 4.6 If there is a bona fide dispute on SELLER's invoice, BUYER must give written notice to SELLER of such dispute no later than twenty (20) Days before the Due Date by specifying:
- (a) the invoice in dispute;
  - (b) the amount of Charges which are the subject of the dispute; and
  - (c) the grounds of the invoice in dispute and the facts on which BUYER relies

provided however that the undisputed portion Charges is paid in full on or before the Due Date. The Parties shall investigate and resolve the matter as soon as practicable but in any event no later than twenty (20) Days from the date the bona fide dispute is submitted. When such negotiation fails, the dispute shall be resolved in accordance with Clause 30 hereof. An invoice for Charges payable shall be deemed to have been accepted by BUYER if BUYER does not object in writing within ten (10) Days after the invoice is issued by SELLER.

### **4A Security Requirement**

- 4A.1 SELLER shall be entitled to request a security deposit in the form specified in the Order Form ("Security Requirement"). BUYER shall provide such security deposit upon execution of the Order Form by BUYER and SELLER.
- 4A.2 BUYER shall vary the value of the Security Requirement within seven (7) Days of receiving notice from SELLER requiring it to do so in the event of either:
- (a) that BUYER failing to pay Charges owing under the Agreement (that are not subject of a bona fide billing dispute); or
  - (b) SELLER having reasonable grounds to believe that BUYER's financial position has materially changed such that SELLER believes that BUYER may fail to pay Charges in the future.
- 4A.3 If BUYER fails to pay any Charges owing under this Agreement (that are not subject of a bona fide billing dispute) when they fall due:
- (a) SELLER may apply the Security Requirement, or part of it, in satisfaction of the unpaid Charges; and
  - (b) BUYER shall immediately restore or procure the restoration of the Security Requirement to the required level.
- 4A.4 On termination of Service or the Agreement, SELLER may apply the Security Requirement, or part of it, in satisfaction of any unpaid Charges. BUYER shall be entitled to request in writing for the release of the Security Requirement after payment in full for all Charges and SELLER shall release the Security Requirement (or the balance thereof) to BUYER within thirty (30) Days after receiving such request. SELLER reserves the right to retain interest, if any, accruing on the Security Requirement.
- 4A.5 Provision by BUYER of any Security Requirement does not:
- (a) relieve BUYER of its obligation to pay the Charges to SELLER; or
  - (b) affect any right of SELLER to suspend or terminate the operation of a Service or the Agreement in whole or in part in accordance with its terms.

## **5. Implementation, Testing and Acceptance and Service Provision**

- 5.1 Requested Ready For Service Date ("RRFS Date") will be confirmed after SELLER has carried out the site feasibility survey upon BUYER's request.
- 5.2 SELLER will start testing from the RRFS Date which is indicated in Order Form. The Service will be considered as accepted if BUYER does not reject such Service in writing to SELLER within three (3) Day from the Ready For Service Date.
- 5.3 A RRFS Date is a tentative date agreed to between the Parties for the provision of the Service by SELLER. Any RRFS Date set forth in the Order Form or otherwise specified by SELLER is subject to SELLER's standard and expedited delivery intervals for the Service. These intervals may change from time to time. Although SELLER will use its reasonable efforts to provide the Service on or before the RRFS Date, SELLER's inability to do so or to meet any other target date will not constitute a breach by SELLER under this Agreement. However if SELLER fails to make Service available to BUYER within ninety (90) Days of the applicable RRFS Date, BUYER may by giving ten (10) Days' prior written notice to SELLER cancel the Service so delayed and any advance payments made by the Buyer to SELLER shall be refunded by SELLER. Such refund will be BUYER's sole remedy under this Agreement.
- 5.4 Prior to any RRFS Date for the Service at any location, BUYER may postpone the RRFS Date for that location by giving SELLER prompt written notice to such effect. If the rescheduled RRFS Date is more than thirty (30) Days following the original RRFS Date, SELLER shall have the right to bill BUYER for any charges or expenses incurred by SELLER as a result of the rescheduling. Such expenses may include local access fees. In any event, BUYER shall not postpone the RRFS Date for any location by more than sixty (60) Days from the original RRFS Date.
- 5.5 If BUYER requests delivery of the Service at a location other than a SELLER POP, SELLER or SELLER's designated Affiliate will arrange local access from the requested SELLER POP to BUYER's specified location and BUYER shall solely bear the additional charges, if any, incurred which will be specified in the Order Form. BUYER must cooperate with SELLER in securing local access arrangements from local access providers. If SELLER arranges local access on BUYER's behalf in connection with a Service, BUYER is deemed to have agreed all applicable acceptable use and security policies provided those policies are reasonably and ordinarily imposed by the local access provider(s) and provided the applicable charges are in accordance with the amount of charges specified in the Order Form that have been agreed upon by BUYER, and BUYER will pay SELLER for any such charges imposed by the local access provider(s).

- 5.6 SELLER agrees to provide the Service or cause the Service to be provided directly to BUYER in accordance with this Agreement. If, for regulatory or other reasons, SELLER is not able to provide the Service in whole or in part itself, SELLER will act as BUYER's agent outside Service Location to procure from third party in its sole discretion and arrange for provision of the Service to BUYER under the one stop shop or similar arrangement. In such event, SELLER could present to BUYER consolidated or separate invoices for the Service and remit such payments as are appropriate to any other entity providing the Service in whole or in part.

## **6. Order Cancellation**

- 6.1 The termination of a Service by BUYER prior to delivery shall be a cancellation of an order for that Service. BUYER shall be liable to pay SELLER: (a) installation charge and three-month recurring charge provided in relevant Order Form, (b) all payments contractually required to be made and actually made by SELLER and its subcontractors to a third party as a direct consequence of the cancellation; (c) any other direct actual costs (including reasonable allocation of overhead expenses) that SELLER incurred or will incur as a direct consequence of the cancellation.

## **7. Modification and Maintenance**

- 7.1 SELLER may modify the network or technical specifications applicable to the Service so long as such modifications do not result in any significant changes to the features and functionalities of the Service at the time BUYER purchased it.
- 7.2 SELLER may at SELLER's sole discretion wholly or partially suspend the Service in connection with network or equipment modification, preventive or emergency maintenance, or as may be required by applicable law. For any maintenance scheduled beforehand and undertaken by SELLER, SELLER shall to the extent reasonably practicable, give BUYER advance notice of such scheduled maintenance and suspension of Service. For unscheduled or emergency maintenance, SELLER shall give BUYER as short a prior notice as is reasonably practicable. The notice given under this Clause 7.2 will provide such details as are available concerning the maintenance and duration of suspension. To the extent commercially possible, SELLER shall discuss the scheduled maintenance with BUYER in advance and implement it in a manner which could minimize the impact as much as possible on BUYER and BUYER's users.
- 7.3 SELLER provides a coordinated, single point of contact maintenance function for BUYER on a 24/7 basis. SELLER will notify BUYER of the details of this point of contact.

## **8. Service Assurance**

SELLER will be responsible for:

- (a) managing the service assurance;
- (b) receiving and handling fault reports from BUYER;
- (c) repairing the fault in the part of the network which is under SELLER's control; and
- (d) updating trouble ticket on fault progress.

SELLER shall promptly handle reasonable complaints from BUYER. In the event of delay, BUYER shall be provided a notice in writing or via telephone of the reason for delay and when the issue will be resolved.

## **9. BUYER Responsibilities**

- 9.1 In addition to BUYER's other obligations under this Agreement and where appropriate, BUYER shall:
- (a) procure for SELLER and its subcontractors and agents access to the premises and points of contact at all Circuit Location Addresses;
  - (b) provide SELLER with such additional documentation, such as letters of agency as may be necessary for SELLER to procure local access for BUYER in connection with the Service;
  - (c) assume all responsibility for all local access arrangements procured by SELLER in connection with the Service;
  - (d) upgrade BUYER-provided equipment as necessary to support the Service and provide environmentally suitable equipment rooms that comply with applicable laws and other requirements as may be applicable to the relevant equipment or otherwise reasonably specified by SELLER;
  - (e) participate in any testing procedures and provide escort services and a secure and safe environment to any personnel of SELLER or its subcontractors while they are on BUYER's premises for purposes of installation, testing or maintenance;

- (f) to the extent that SELLER has agreed to provide any network terminating or other equipment in connection with the Service, BUYER must:
  - (i) acknowledge that title to any equipment placed by SELLER or SELLER's subcontractor on BUYER's premises in connection with the Service remains with SELLER or such subcontractor;
  - (ii) be responsible for preparing the location for installation, including providing adequate space, heating and cooling and electrical power;
  - (iii) be responsible for connection from BUYER's end equipment to SELLER's terminating equipment.
  - (iv) provide SELLER or SELLER's agents with reasonable access to the location for installation and maintenance;
  - (v) use reasonable care in protecting the equipment from damage or loss and repair or replace any equipment that is damaged or lost due to theft, negligence, intentional acts, unauthorized acts or other causes that are within BUYER's reasonable control;
  - (vi) upon termination of the Service or the Agreement for any reason, make available all equipment for removal or return in the same condition as originally installed (ordinary wear and tear excepted) or pay a mutually negotiated restoration or retention fee;
  - (vii) not hold SELLER liable for any interruption of or inability to use the Service where such event is caused by BUYER's failure to comply with any of the foregoing;
- (g) Use the Service only for the purposes for which it is designed and provided and be prohibited from for any unlawful, harmful or offensive activities using the Service: (a) that it may be exposed to sanctions or prosecution; (b) that such violation may cause harm to or interfere with the integrity or normal operations or security of SELLER's network or networks with which SELLER is interconnected or interfere with another customer's use of the Services;
- (h) possess or obtain and maintain in force all necessary licenses and permits, and comply with any laws, directives, regulations and conventions which may be applicable to the possession or use of the Service by BUYER or third parties using it through BUYER;
- (i) not use the Service or permit third parties using it through BUYER to do so in a manner which:
  - (i) violates any applicable law, regulation, treaty or tariff;
  - (ii) violates the acceptable usages and security policies of any networks, equipment or services which are accessed through SELLER's network (subject to change from time to time);
  - (iii) infringes on the intellectual property rights of others;
  - (iv) is fraudulent, deceptive, or misleading;
  - (v) is excessively burdensome or otherwise results in network interruptions of any kind; or
  - (vi) involves illegal or unauthorized access, exploitation, interruptions or monitoring.

9.2 BUYER must hold harmless and indemnify SELLER and its Affiliates, directors, officers and employees against any claims made by third parties for any failures to comply with BUYER's obligations under this Clause.

## 10. Termination

10.1 If:

- (a) BUYER fails to pay any outstanding Charges due under this Agreement within thirty (30) Days of SELLER notifying BUYER of the delinquency; or
- (b) BUYER fails to comply with any other material provision of this Agreement and has not remedied the failure within one (1) month of SELLER notifying BUYER,

BUYER will be in default of this Agreement. Once BUYER is in default of this Agreement, SELLER may at SELLER's sole discretion do any or all of the following:

- (i) terminate or temporarily suspend all of the Service or just the Service that are the subject of the default;

- (ii) terminate this Agreement;
- (iii) request BUYER to take possession of and/or remove any equipment BUYER has in SELLER's facilities in connection with the Service and, if BUYER fails to do so within seven (7) Days of such request, SELLER may arrange for the removal of such equipment at the reasonable cost of the BUYER; and/or
- (iv) exercise such other remedies as are available to SELLER at law or in equity.

If SELLER terminates Service or the Agreement, in addition to all Charges accruing to the Service up to and including the termination date, BUYER must also pay SELLER the termination charges described in Clause 10.3. In the event SELLER suspends Service pursuant to this Clause, Charges will continue to accrue during the period of suspension until

- (a) either Party terminates the Service or this Agreement or
- (b) BUYER cures the applicable default pursuant to which SELLER reactivates the Service.

10.2 If SELLER fails to perform a material obligation under of this Agreement and has not remedied such failure within thirty (30) Days of BUYER notifying SELLER, BUYER may terminate the Service. BUYER will not be liable for any Charges accruing to the Service from the date of termination. In addition, BUYER could exercise other remedies as are available to SELLER at law or in equity. If SELLER's failure to perform (and no other factors attributed by BUYER) resulted in BUYER not being able to use the Service BUYER will not be liable for any Charges accruing to the Service after the date the Service became unusable.

10.3 If the Service is terminated after delivery, but prior to the end of the applicable Initial Term

- (a) by BUYER other than due to breach by SELLER or
- (b) by SELLER due to breach by BUYER,

BUYER must pay the following termination charges:

- (i) all unpaid and/or outstanding Charges incurred up to and including the date of termination;
- (ii) all Monthly Service Charge that would have been payable for the remainder of the Initial Term;
- (iii) any Initial Charge waived by SELLER;
- (iv) any taxes payable by BUYER as stipulated under Clause 4.2.

10.4 If any proceedings in bankruptcy, reorganization, insolvency, liquidation or receivership are commenced by or against either Party, the other Party may, upon twenty-four (24) hours written notice, terminate this Agreement within immediate effect.

## 11. Third Party Use

11.1 BUYER may resell and permit third parties to use the Service, subject to the following conditions:

- (a) no such resale or third party use will lessen or modify BUYER's obligations under this Agreement;
- (b) use of the Service by third parties must comply with this Agreement and all applicable laws;
- (c) BUYER must possess or maintain all licenses, permits and other requirements that may be applicable to such resale or third party use.

11.2 BUYER must, and hereby agrees to, indemnify, defend and hold harmless SELLER and SELLER's Affiliates, employees, agents, subcontractors and suppliers for and from all liabilities and costs (including reasonable legal fees) arising from any and all claims by any third party in connection with the Service, (including, without limitation, any claims regarding content transmitted using the Service or violation of data protection legislation) regardless of the form of action, whether in contract, tort, warranty, or strict liability.

## 12. Warranty

12.1 SELLER warrants that it will deliver the Service using the reasonable skill and care of a competent telecommunications service provider and will use reasonable efforts to restore the Service in the case of a network failure. SELLER makes no other warranty or guarantee, express or implied, under this Agreement or otherwise.

SELLER further expressly disclaims any implied warranties of merchantability, satisfactory quality and/or fitness for a particular purpose.

12.2 Each Party's ("Defaulting Party") entire liability to the other Party ("Non-Defaulting Party") and the Non-Defaulting Party's exclusive remedies against the Defaulting Party for any damages arising from any act or omission relating to this Agreement, regardless of the form of action, whether in contract, tort, strict liability or otherwise, are limited to the following:

- (a) for direct damages to real or tangible personal property, Non-Defaulting Party's proven direct damages, a maximum amount equal to the aggregate Monthly Service Charge paid by BUYER under this Agreement;
- (b) for death, dismemberment, disfigurement, incapacitation, mutilation or other personal injury, unlimited but subject to proven direct damages; and
- (c) in respect of SELLER as Defaulting Party, for events entitling BUYER to Service Credits under Service Annexure, the specified Service Credits.

12.3 Each Party will in no circumstances be liable to the other Party or any person claiming through that other Party for any indirect, incidental, consequential, reliance, or special damages or for lost revenues, loss of data, lost savings or lost profits of any kind, regardless of the form of action, whether in contract, warranty, strict liability or tort, including, without limitation, negligence of any kind whether active or passive. Each Party will in no circumstances be liable for any damages attributable to any service, product or actions of any person other than that Party, its employees and agents.

### 13. Service Provisioning Information

13.1 SELLER will request for certain company particulars and service provisioning information (the "Information") from BUYER for the provision of the Service. BUYER may decline to provide such information but SELLER may reserve the right to decline the provision of the Service.

13.2 BUYER agrees and understands that SELLER may use the Information for

- (a) provision of the Service to BUYER including the transfer of such Information to other telecommunications network providers or third parties as necessary for the provision of the Service to BUYER and/or transfer of such Information to Affiliates as necessary for the provision of any service by such Affiliates;
- (b) improving the Service or the provision of services by Affiliates;
- (c) analyzing, authenticating and checking BUYER's credit, payment and/or status in relation to the provision of the Service.
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities in relation to the provision of the Service or requested by BUYER.
- (e) enabling the daily operation of BUYER's accounts with SELLER or SELLER's Affiliates and/or the collection of amounts outstanding from BUYER (which may include disclosing or debt collection agents) in relation to the Service or any products or services provided by SELLER's Affiliates; and
- (f) disclosure as required by law or prevention or detection of crime.

13.3 BUYER shall notify SELLER of any changes of the Information which may affect the provision of the Service to BUYER. On SELLER's request, BUYER shall provide SELLER with information relating to BUYER and BUYER's use of Service reasonably required by SELLER to

- (a) assist SELLER in compliance with any applicable law;
- (b) report to any government agency regarding compliance with those obligations; and
- (c) assess whether BUYER has complied, is complying and will be able to comply with all of BUYER's obligations under this Agreement.

### 14. Confidentiality

14.1 From the date of the Agreement until the expiration of three (3) years following the termination of this Agreement, a Party receiving ("Recipient") information marked or otherwise reasonably understood to be confidential or proprietary of the disclosing Party ("Information") must keep confidential and not disclose without the disclosing Party's consent the Information, and will use the same level of care with respect to the Information as the Recipient employs with respect to its own confidential or proprietary information. For purposes of maintaining the confidentiality of this Agreement, both Parties are the Recipients of the Information contained herein.

- 14.2 Notwithstanding the above, Information will not be deemed confidential and Recipient will have no obligation with respect to any Information which
- (a) is already known to Recipient,
  - (b) is or becomes publicly known through no negligent or wrongful act of Recipient,
  - (c) is received by Recipient from another source without similar restriction and without breach of this Agreement, or
  - (d) is furnished to a third party by the disclosing Party without similar restrictions on the third party's rights.
- 14.3 If Recipient receives lawful process requesting or requiring it to disclose any Information, Recipient will promptly notify the disclosing Party in order that the disclosing Party may seek an appropriate protective order, or consent to the release of the Information.
- 14.4 SELLER will be permitted to process information received from BUYER for the purposes of the administration and operation of this Agreement and the provision of the Service. Such processing may also include storage of information in a local or foreign database.

## **15. Force Majeure**

Neither BUYER nor SELLER may be held responsible for any delay or failure in performance of any part of this Agreement if and to the extent that it is caused by acts of God or nature (including wild animals), war or war-like conditions, mob violence, acts or failures to act of any governmental authority, or any other events or circumstances beyond the reasonable control of the concerned Party ("Force Majeure Event"). However no force majeure events or circumstances will excuse BUYER from BUYER's obligation to make any payments that are owed to SELLER for Service delivered before the Force Majeure Event or that accrue due to BUYER's continued use of the Service thereafter. A Party who intends to invoke the exemption under the Force Majeure Event must give the other Party reasonable written notice of any Force Majeure Event setting out the anticipated impact upon its obligation under this Agreement and use reasonably commercial efforts to mitigate the effect of the Force Majeure Event. If any Force Majeure Event affecting a Party lasts for more than three (3) months, either Party may terminate the affected Service upon seven (7) Days' prior written notice to the other Party. Neither Party will incur any liability or penalties other than the obligations to pay any outstanding Charges in the event Service is terminated due to the Force Majeure Event.

## **16. Regulatory Changes and/or Government Requirements**

Services may be subject to laws and regulations in one or more jurisdictions. If the provision of a Service in any applicable jurisdiction is found to violate any applicable laws or regulations or would result in any additional licensing requirements, SELLER may suspend or terminate such Service by giving 30 days advance written notice to BUYER when the above situation occurs, including, without limitation, directed, notified, or instructed by a governmental authority to suspend or terminate the provision of the Services to BUYER. BUYER must pay any Charges incurred for such Service prior to its suspension or termination, but will not be liable for any other amounts. SELLER will make commercially reasonable efforts to restore the Service, or to provide under this Agreement a functionally equivalent Service that is permitted under the applicable laws and regulations of the relevant jurisdiction. SELLER will agree with BUYER separately upon pricing terms for a functionally equivalent substitute Service. SELLER will not be liable for any other damages or costs incurred due to the changes of laws and regulations affecting such Service.

## **17. Publicity and Advertising**

Neither Party may publish or use any advertising, sales promotions, press releases or other publicity which use the other Party's name, logo, trademarks or service marks without the prior written approval of the other Party.

## **18. Title**

Nothing in this Agreement is intended to or will create or vest in BUYER any right, title or interest in any Service, its configuration or the underlying equipment and assets used to provide it.

## **19. Severability**



If a court or administrative body holds any provision of this Agreement to be invalid or unenforceable, the relevant provision will be deemed severed from this Agreement, and the remaining provisions will remain in full force and effect and the Parties will promptly negotiate a replacement provision, if necessary.

**20. Private Carriage**

Pursuant to this Agreement, SELLER shall only provide BUYER with private carriage telecommunications services for resale, the scope of the Services including but not limited to volume, technical solutions, specifications, quality of service and specific pricing shall be established on a case-by-case basis in accordance with BUYER's specialized needs and requests.

**21. Survivability**

Any provision of this Agreement which by its context is intended to apply after termination of this Agreement will survive its termination.

**22. Waiver**

The waiver by either Party of any breach of this Agreement by the other Party in a particular instance will not operate as a waiver of any subsequent breaches of a same or different kind. The failure of either Party to exercise any rights under this Agreement in a particular instance will not operate as a waiver of the Party's right to exercise the same or different rights in any subsequent instance.

**23. Language**

This Agreement has been executed in English language, which language will be controlling in all respects. No translation of the Agreement into any other language will be of any force or effect in the interpretation of the Agreement or in the determination of the intent of the Parties.

**24. Assignment and Subcontracting**

This Agreement may not be assigned or transferred by either Party unless the other Party gives its prior written consent. However, notwithstanding the foregoing, SELLER may:

- (a) freely assign or transfer this Agreement to any of SELLER's Affiliates;
- (b) freely assign SELLER's right to receive payments for the Service; and
- (c) subcontract Service or a portion thereof provided that SELLER will remain liable for the performance of any of SELLER's subcontractors.

Any purported assignment that is inconsistent with this Clause will be void. The Parties agree that they will execute all documents and do all such acts reasonably necessary to give effect to this Clause.

**25. Independent Contractors**

Under this Agreement, both Parties are independent contractors which maintain complete control over their own personnel and operations. Subject to Clause 5.6, neither Party will become a partner, agent, fiduciary or legal representative of the other through operation of this Agreement.

**26. No Third Party Beneficiaries**

This Agreement is not intended to be for the benefit of any third party, is not enforceable by any third party, and does not confer upon any third party any remedy, claim or rights.

**27. Entire Agreement**

This Agreement, together with the Order Form, is the entire Agreement between the Parties concerning the Service and supersedes all prior agreements, proposals, representations, statements, or understandings, whether written or

oral, concerning the Service. No change, modification or waiver of any of the terms of this Agreement will be binding unless included in a written agreement and signed by both Parties.

## **28. Notices**

28.1 All notices, requests, or other communications hereunder shall be in writing, addressed to the Parties as follows:

(a) If to SELLER:

Level 30, Tower 1,  
Kowloon Commerce Centre,  
No.51 Kwai Cheong Road,  
Kwai Chung, New Territories,  
Hong Kong.

Attention: Legal Department  
Facsimile: +852 3188 1660  
Telephone: +852 3975 6688  
Email: legal@cmi.chinamobile.com

(b) If to BUYER, shall be sent to the address specified in the Order Form.

28.2 Notices mailed by registered or certified mail shall be conclusively deemed to have been received by the addressee on the seventh (7<sup>th</sup>) Working Day following the mailing thereof. Notices sent by facsimile or email shall be conclusively deemed to have been received when the delivery confirmation is received. If either Party wishes to alter the address to which communications to it are sent, it may do so by providing the new address in writing to the other Party.

## **29. Governing Law**

This Agreement shall be governed by the laws of the jurisdiction as set out in the Order Form without reference to its conflict of law provisions and the Parties irrevocably submit to the exclusive jurisdiction of the courts of the jurisdictions set out in the Order Form and any court of appeal therefrom. If the Order Form does not state a governing law or jurisdiction, then the laws of the region, state and/or country (as applicable) where the SELLER contracting entity which signs the Order Form is registered or incorporated will apply and the Parties irrevocably submit to the exclusive jurisdiction of the courts of such jurisdiction and any court of appeal therefrom. In the event BUYER fails to pay any invoiced amount which it has not disputed in accordance with Clause 4, then SELLER may seek to recover the sum due in any court of competent jurisdiction without reference to its conflicts of law and BUYER hereby submits to the jurisdiction of any such court.

## **30. Dispute Resolution**

All disputes arising out of or in connection with this Agreement may be referred to and finally resolved by arbitration in accordance with the rules of the International Chamber of Commerce. The arbitration proceedings will be conducted in Hong Kong and the language of the arbitration proceedings will be in English. Each party shall bear its own fees and costs of arbitration.

## **31. Order of Precedence**

In the event of any discrepancies between this Agreement, Service Annexure or the Order Form, the following order of precedence will apply:

- (a) (highest precedence) Order Form (including any special terms specified therein);
- (b) Service Annexure;
- (c) (lowest precedence) this Agreement.