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Circuit)

FIXED TELECOMMUNICATION NETWORK SERVICES LICENCE
TELECOMMUNICATION ORDINANCE (Chapter 106)

In accordance with General Condition 21 of the Fixed Telecommunication Network Services Licence, Reach Networks Hong Kong Limited hereby publishes the revised terms and conditions with effect from 21st May 2002.

REACH NETWORKS HONG KONG LIMITED
GENERAL TERMS

Capitalised terms have the meaning given to them in the dictionary set out in clause 18.

1. AGREEMENT

1.1 All Services provided by Reach to the Customer will be governed by:

- (a) these General Terms; and
- (b) for each Service:
 - (i) the relevant Service Terms; and
 - (ii) the relevant Customer Order,

which together form the agreement between the parties (**Agreement**).

1.2 Reach must supply each Service to the Customer from the applicable Service Commencement Date until termination of that Service or this Agreement in accordance with clause 10.

1.3 The agreement is effective from the last date on which a party executes these General Terms (**signing date**) and continues until terminated in accordance with this Agreement.

1.4 The Customer must complete a Customer Order for each Service it wishes to acquire.

1.5 Reach must notify the Customer as soon as reasonably practicable after receipt of a Customer Order that it:

- (a) requires further information to process the Customer Order;
- (b) rejects the Customer Order, in which case neither party has any further right or obligation in respect of the relevant Service; or
- (c) accepts the Customer Order.

1.6 The Customer Order and applicable Service Terms shall be automatically incorporated into this Agreement at the time Reach notifies the Customer that it accepts the Customer Order.

1.7 Reach may advise the Customer of a Target Service Date either:

- (a) at the time Reach accepts the Customer Order; or

- (b) if Reach is to arrange any Non-Reach Circuit in relation to the Service, after Reach has been notified of delivery dates for such circuit.

1.8 Reach must use its reasonable endeavours to supply a Service on or before the Target Service Date, if any. If Reach will be unable to do so, Reach must:

- (a) notify the Customer as soon as practicable of a revised Target Service Date; and
- (b) meet the other requirements of the relevant Service Terms in respect of late delivery.

1.9 A Customer Test Period, if provided for in the Customer Order or the Service Terms, begins when Reach notifies the Customer that a Service is ready. If, before conclusion of the Customer Test Period:

- (a) the Customer notifies Reach of a Service fault, Reach must investigate and rectify any problem which is Reach's responsibility before re-notifying the Customer that the Service is ready for use, when a new Customer Test Period shall begin; or
- (b) the Customer does not notify Reach of a Service fault, the Customer is deemed to accept the Service.

1.10 To request a variation in a Service (eg increased capacity) the Customer must submit a new Customer Order.

1.11 If requested by Reach, the Customer must provide a forecast of its Service requirements. A forecast is not binding on Reach or the Customer.

2. VARIATION OF SERVICE TERMS AND CAPACITY

2.1 Service Terms may be varied by Reach:

- (a) in the case of minor variations (including changes in the Service description which do not materially adversely affect the quality or functionality of the Services), upon 7 days' written notice to the Customer; or
- (b) in all other cases, on 3 months' notice to the Customer but the Customer may terminate the Service by giving notice in writing to Reach not less than 60 days prior to expiry of the 3 months' notice period.

3. CHARGES AND TAXES

3.1 The Customer must pay the Charges for each Service to Reach in accordance with the relevant Service Terms and this clause 3.

3.2 The Customer acknowledges that records generated by the Reach Network or any interconnected network are prima facie evidence of the matters to which those records relate (eg Charges or compliance with Service Levels).

3.3 Subject to clause 3.4, Reach may vary the Charges for a Service after expiry of the relevant Minimum Commitment Period (if any) by giving notice of the amended Charges, which in the case of Charge increases will not be less than 30 days. Reach may give notice of the amended Charges by posting the varied Charges on its web site.

3.4 Variations for tariffed Charges shall be notified and take effect in accordance with applicable tariff procedures.

3.5 The Customer must reimburse Reach for any charges incurred by Reach as a result of the Customer utilizing the Services to access services of a third party, except where those third party services form part of the Services.

- 3.6** Notwithstanding clause 3.3, Reach may vary the Charges for a Service to the extent reasonably necessary to account for fluctuations in exchange rates between the currencies in which Reach buys underlying network elements and renders the Charges.
- 3.7** The Charges do not include any Tax, whether existing at the relevant Service Commencement Date or coming into effect at any later time.
- 3.8** Subject to this clause 3.8, the Customer must make each payment to Reach without any set off or counterclaim and without deduction or withholding of any Taxes. If at any time an Applicable Law obliges the Customer to make a deduction, withholding or payment in respect of Taxes from any amount paid or payable to Reach, the Customer must:
- (a) notify Reach of the obligation as soon as the Customer becomes aware of it;
 - (b) ensure that the deduction, withholding or payment does not exceed the minimum amount required by the Applicable Law;
 - (c) pay to the relevant government agency the full amount of the deduction, withholding or payment by the due date and promptly deliver to Reach a copy of any receipt, certificate or other proof of payment satisfactory to Reach; and
 - (d) indemnify Reach against the deduction, withholding or payment in respect of any amount paid or payable to Reach by paying Reach, at the time that the payment to Reach is due, an additional amount that ensures that, after the deduction or withholding is made, Reach receives a net sum equal to the sum it would have received if the deduction or withholding had not been made.
- 3.9** The indemnification in clause 3.8 shall not apply to any Tax deduction or withholding that Reach is entitled to subsequently recover from the relevant government agency.

4. INVOICING AND SETTLEMENT

- 4.1** Subject to clause 5.2, the Customer must pay the whole amount of the Charges shown on each Statement:
- (a) directly by electronic transfer to the bank account nominated in writing by Reach or such other means as Reach may expressly approve;
 - (b) within 30 days of the date of the Statement or, in respect of a particular Service, by the date specified in relevant Service Terms; and
 - (c) in the currency specified in the Customer Order or as notified by Reach from time to time.
- 4.2** The Customer must pay interest on any overdue amount, calculated daily at the Interest Rate, from the date payment is due until payment in full is made.
- 4.3** Reach may include Charges omitted from an earlier Statement in a subsequent Statement.
- 4.4** If requested by the Customer, Reach shall arrange for the Charges for a Service to be included in statements issued by an Affiliate of Reach (in which case the Affiliate acts as Reach's billing agent), subject to:
- (a) the Customer continuing to obtain services from that Affiliate; and
 - (b) the agreement of the relevant Affiliate.
- 4.5** Reach may, at its sole discretion, deduct from any money owed by Reach to the Customer any amount:
- (a) owed by the Customer to Reach or to a Reach Affiliate, in which case Reach indemnifies the Customer against any further claim by the Reach Affiliate in respect of the amount deducted; or

- (b) owed by a Customer Affiliate to Reach or a Reach Affiliate, in which case Reach shall release or cause the Reach Affiliate to release the Customer Affiliate from the debt for the deducted amount.

4.6 Reach may, at its sole discretion, deduct from any money owed by Reach to a Customer Affiliate any amount owed by the Customer:

- (a) to Reach, in which case the Customer indemnifies Reach against any further claim by the Customer Affiliate in respect of the deducted amount; or
- (b) to a Reach Affiliate, in which case the Customer indemnifies Reach against any further claim by the Customer Affiliate in respect of the deducted amount and Reach indemnifies the Customer against any further claim by the Reach Affiliate in respect of the deducted amount.

4.7 Reach may, at its sole discretion, apply in satisfaction of any money owed by a Reach Affiliate to the Customer any amount owed by the Customer to Reach, in which case Reach indemnifies the Customer against any further claim by the Reach Affiliate in respect of the applied amount.

5. BILLING DISPUTES

5.1 The Customer must raise any Billing Dispute by notice in writing to Reach specifying:

- (a) the Statement in dispute;
- (b) the Charges which are the subject of the Billing Dispute (**Disputed Amount**); and
- (c) the reasons for the Billing Dispute and the facts on which the Customer relies,

(**Billing Dispute Notice**), within 15 days of the date of the Statement, otherwise the relevant Statement is deemed accepted.

5.2 Where a Billing Dispute is notified under clause 5.1:

- (a) the Customer may withhold the Disputed Amount but must pay the balance of the Statement; and
- (b) the parties must negotiate in good faith to resolve the Billing Dispute as soon as practicable.

5.3 If a Billing Dispute is not resolved within 60 days of the date of the Billing Dispute Notice either party may by written notice to the other party refer the matter to a suitable expert agreed between the parties or, failing such agreement within 14 days of the referral notice, as appointed by the Chairman of the Local Accounting Society (**'Expert'**). The parties must provide the co-operation the Expert reasonably requires. The Expert must:

- (a) reach a decision in relation to the Billing Dispute within 60 days of the Expert's appointment; and
- (b) give written reasons for the decision within 7 days of reaching a decision.

5.4 On resolution of a Billing Dispute (whether by agreement or by expert determination):

- (a) if the Disputed Amount or part thereof is agreed or determined to be owing to Reach, that amount shall become immediately payable, together with interest calculated at the Interest Rate from the due date of the original Statement to the date of payment;
- (b) if the Disputed Amount or part thereof is agreed or determined not to be owing to Reach, a corrected Statement shall be issued by Reach as soon as practicable; or
- (c) if it is agreed or determined that Reach issued the relevant Statement for less than the correct amount, Reach shall issue a further Statement for that additional amount, which shall be due and payable within 7 days of the date of that Statement.

- 5.5** The Expert's costs and Reach's reasonable costs of participating in the Expert determination shall be payable:
- (a) if the Disputed Amount is determined to be payable in full, by the Customer;
 - (b) if none of the Disputed Amount is determined to be payable, by Reach; and
 - (c) if the Disputed Amount is determined to be payable in part by the Customer, proportionally by the Customer.
- 5.6** Where a Statement is accepted (whether deemed or otherwise), then the amount due ('Debt') may be sued upon in any court of competent jurisdiction.

6. CREDIT MANAGEMENT

Security Requirement

- 6.1** Reach may require the Customer to provide and maintain the Security Requirement.
- 6.2** The Customer must vary the form or value of the Security Requirement within 14 days of receiving written notice from Reach requiring it to do so.
- 6.3** If the Customer fails to pay any Charges owing under this Agreement (except pursuant to a Billing Dispute):
- (a) Reach may enforce the Security Requirement, or part of it, in satisfaction of unpaid Charges; and
 - (b) the Customer must immediately restore or procure the restoration of the Security Requirement to the required level.
- 6.4** On termination of this Agreement, Reach may enforce the Security Requirement, or part of it, in satisfaction of any unpaid Charges, provided that within 6 months following termination the Security Requirement (or any balance) must be released to the Customer. Reach reserves the right to retain interest, if any, accruing on the Security Requirement.
- 6.5** Provision by the Customer of any Security Requirement does not:
- (a) relieve the Customer of its obligation to pay the Charges to Reach; or
 - (b) affect any right of Reach to terminate or suspend the operation of this Agreement in whole or in part under clause 10.

7. USE OF THE SERVICES

- 7.1** The Customer must:
- (a) use a Service and must ensure that third parties use services supplied using the Service in accordance with:
 - (i) Reach's Acceptable Use Policy; and
 - (ii) all Applicable Laws;
 - (b) not pass any traffic across a physical point of demarcation between the parties' networks of a type or with technical specifications to which Reach has not agreed;
 - (c) promptly notify Reach of any fault in the Service; and
 - (d) comply with directions given by Reach from time to time in relation to modifications required to any equipment connected to any Service or other action necessary to eliminate any impairment of a Service or the Reach Network.

7.2 On request by Reach, the Customer must provide information relating to the Customer and its use of the Services (including information relating to customers of the Customer) reasonably required by Reach:

- (a) to assist Reach in complying with its obligations under any Applicable Law; and
- (b) to assess whether or not the Customer has complied, is complying and will be able to continue to comply with all its obligations under the Agreement,

and such information shall be treated by Reach as Confidential Information.

Equipment

7.3 Except where expressed otherwise in this Agreement:

- (a) each party is responsible for the safe and proper operation and maintenance of its own network and equipment and third party networks and equipment which it permits to be connected to its network; and
- (b) the party who owns or occupies the premises on which the other party's equipment is located:
 - (i) must take reasonable steps to ensure the security and safety of the other party's equipment (including in relation to the supply of air-conditioning, electricity and other utility services and environmental conditions required to operate the equipment); and
 - (ii) must notify the other party immediately of any damage, fault, theft or loss of such equipment;
- (c) must not and must not allow a third party to alter, tamper with or attempt to repair such equipment, without the other party's prior consent; and
- (d) must comply with all reasonable instructions issued by the other party to protect the other party's ownership of such equipment;
- (e) must not connect any such equipment to any other equipment or service except as expressly authorised the other party; and
- (f) must provide the other party with access to the premises at all reasonable times to install or inspect, maintain, repair, replace or remove the other party's equipment (including to remove equipment no later than 14 days after termination of this Agreement).

7.4 Reach will at its discretion repair or replace Reach equipment which is located at Customer premises:

- (a) if required as a result of fair wear and tear or a negligent act or omission of Reach, free of charge; and
- (b) otherwise, charged at Reach's time and materials rate.

Security

7.5 Reach makes no representations or warranties concerning, and is not liable for, the security of traffic transmitted over any Service.

7.6 The Customer must take every reasonable precaution in the use of the Services to prevent contamination of any software or hardware or diffusion of any software or hardware contamination, including computer viruses, worms or trojan horses.

Access to Premises

7.7 The Customer licences Reach, its employees, representatives and agents to enter any premises owned or occupied by the Customer at all reasonable times to:

- (a) determine whether or not the Customer is complying with clause 7.1(a) or (b);
- (b) inspect any equipment or facilities which Reach considers is, or may be, causing or likely to cause any interference to a Service or the Reach Network; or
- (c) obtain any information requested under clause 7.2 if the Customer has not complied with that request within 48 hours.

Public statements

7.8 Except where the Customer has obtained prior written consent from Reach, the Customer must not make any representation or public statement that:

- (a) any service provided by the Customer is supplied using the Reach Network or is provided in whole or in part by Reach; or
- (b) the Customer is authorised to act for or on behalf of Reach.

8. CUSTOMER INFORMATION

8.1 The Customer agrees that Reach may collect and retain Customer Information.

8.2 The Customer agrees that Reach may use or permit use of Customer Information for any and all of the following purposes in relation to the Services:

- (a) provision, and improvement in the provision, of the Services;
- (b) matching the Customer Information with other data collected for other purposes and from other sources including third parties in relation to the provision of the Services;
- (c) marketing of goods and services to the Customer by Reach, its agents or Affiliates and determining entitlements to discounts or other benefits offered by Reach and its Affiliates and keeping the Customer informed of other services of Reach;
- (d) analysing, verifying and checking the Customer's credit;
- (e) processing any billing or payment instructions, direct debit facilities or credit facilities;
- (f) enabling the daily operation of the Customer's account and billing and collection of Charges;
- (g) enabling Reach to comply with its obligations to interconnect and for other industry processes; and
- (h) as required by law enforcement or other competent government authorities or as otherwise required or permitted by law,

to the extent permitted by the Applicable Law, including those regulating privacy.

8.3 Reach may, for any of the purposes listed in clause 8.2:

- (a) disclose Customer Information to Reach's Affiliates, agents, contractors, telecommunications operators, any other third parties including collection agencies, credit reference agencies, security agencies, credit providers or other financial institutions and to any actual or proposed assignee or transferee of Reach under this Agreement; and
- (b) transfer Customer Information from one jurisdiction to another in the course of such disclosure,

to the extent such disclosure or transfer is permitted by the Applicable Law.

9. LIABILITY AND INDEMNITY

9.1 To the extent permitted by law, Reach is not liable to the Customer for any Loss, except to the extent that Reach has failed to meet applicable Service Levels, in which case the Customer's exclusive remedy in respect of that failure shall be as provided by the relevant Service Levels.

9.2 A party's maximum liability under the Agreement or in relation to the performance of the Agreement is limited to:

- (a) USD 500,000 for any one incident or series of events arising from a single incident or common cause; and
- (b) an aggregate amount of USD 1,000,000 for all liability arising out of or in connection with the Agreement,

providing that nothing in this clause 9.2 excludes or restricts:

- (c) the rights and obligations of the parties in relation to the Service Levels; or
- (d) the liability of a party for death or personal injury resulting from the negligence of that party.

9.3 IF ANY APPLICABLE LAW IMPLIES WARRANTIES OR CONDITIONS OR IMPOSES OBLIGATIONS ON REACH WHICH CANNOT BE EXCLUDED, RESTRICTED OR MODIFIED, OR TO ONLY A LIMITED EXTENT, THEN TO THE EXTENT TO WHICH REACH IS ENTITLED TO DO SO, THE LIABILITY OF REACH UNDER THE APPLICABLE LAW SHALL BE LIMITED:

- (a) TO THE SUPPLY OF SERVICES AGAIN OR THE PAYMENT OF THE COST OF HAVING THE SERVICES SUPPLIED AGAIN, AT REACH'S OPTION;
- (b) TO THE REPAIR OR REPLACEMENT OF PROPERTY OR PAYING THE COST OF REPAIR OR REPLACEMENT, AT REACH'S OPTION; OR
- (c) TO ANY OTHER REMEDY PRESCRIBED BY THE APPLICABLE LAW.

9.4 The Customer indemnifies Reach against all Claims, other than to the extent that it is the result of the wilful breach of the Agreement by Reach. Nothing in this Agreement limits the liability of either party for death or personal injury.

10. TERMINATION

10.1 Either party may terminate this Agreement in respect of a Service on 5 days' written notice if 3 months have passed since the original Target Service Date, if any, and the Service Commencement Date has not yet occurred.

10.2 This Agreement may be terminated on 30 days' written notice without cause by either party, either in its entirety or in respect of particular Services nominated by the terminating party in its notice, provided that:

- (a) subject to clause 10.5, Reach is not permitted to terminate a Service prior to expiry of the applicable Minimum Commitment Period; and
- (b) if the Customer terminates a Service prior to expiry of the applicable Minimum Commitment Period, the Customer must pay the applicable Cancellation Charge as a genuine pre-estimate of loss and not as a penalty.

10.3 The Customer is not entitled to terminate or suspend this Agreement, whether in its entirety or in respect of particular Services, as a result of any failure to meet any Service Levels for which Reach is responsible, except where the right to terminate or suspend is expressly provided in the Service Levels.

10.4 Reach may immediately terminate or suspend the operation of this Agreement without prior notice (either in its entirety or in respect of a particular Service, and including in respect of Services which are subject to a Minimum Commitment Period) if:

- (a) provision of the Services would cause Reach to be in breach of any Applicable Law; or
- (b) Reach becomes unable to provide any Service or meet relevant Service Levels as a result of the termination or suspension of its access to the infrastructure used by Reach for supply of the Services (including without limitation undersea telecommunications cables, local loop or backhaul, and associated facilities and equipment);
- (c) Reach has reasonable grounds to suspect that the Customer is in breach of clauses 7.1(a);
- (d) the Customer has failed to pay any monies owing under this Agreement (except a Disputed Amount) 30 days after the due date; or
- (e) the Customer fails to provide or maintain or vary a Security Requirement in accordance with clause 6.

10.5 Notwithstanding any other provision of this Agreement, either party may immediately terminate or suspend this Agreement upon written notice (including in respect of Services which are subject to a Minimum Commitment Period) if:

- (a) the other party breaches any material term of this Agreement which is not capable of remedy;
- (b) the other party becomes subject to an Insolvency Event;
- (c) provided the Notifying Party has complied with clause 15.2, a Force Majeure Event substantially and adversely affecting the ability of the other party to perform its obligations to the Notifying Party under this Agreement continues for a period of 3 months;
- (d) for any reason, the parties have been unable to negotiate such variations to this Agreement as may be required under clause 15.1 by the time that the Regulatory Event commences to have legal effect;
- (e) the other party ceases to carry on business for a period of more than 14 days without the prior written consent of the terminating party; or
- (f) the other party breaches any material term of this Agreement which is capable of remedy and the other party fails to remedy the breach within 30 days after receiving a notice to do so.

10.6 On termination of the Agreement:

- (a) all Charges for use of the Service up to and including the date of termination and all other amounts owing by the Customer to Reach shall become immediately due and payable;
- (b) the Customer must cease to use the Services and all equipment supplied or made available by Reach under the Agreement; and
- (c) each party must, at its own expense, deliver to the other party or, after notice from that other party, destroy or erase the other party's Confidential Information unless such Confidential Information is stored in, or is essential to the operation of a party's network.

10.7 WITHOUT LIMITING THE EXCLUSIONS OR LIMITATIONS OF LIABILITY CONTAINED ANYWHERE IN THIS AGREEMENT, REACH SHALL NOT BE LIABLE TO THE CUSTOMER NOR TO ANY THIRD PARTY FOR ANY LOSS (INCLUDING ANY CONSEQUENTIAL LOSS) ARISING FROM, OR CONSEQUENTIAL UPON, TERMINATION OR SUSPENSION OF THE OPERATION OF THIS AGREEMENT UNDER THIS CLAUSE 10 OR CLAUSE 11.

- 10.8** If Reach has suspended the operation of the Agreement under this clause 10 in respect of any particular Service, the Customer may be required to pay a reconnection fee in advance of the Service being reconnected.
- 10.9** Suspension or termination of this Agreement (either in its entirety or in respect of a particular Service):
- (a) will not operate as a waiver of any breach by a party of any of its provisions;
 - (b) will be without prejudice to any rights, liabilities or obligations which a party has accrued up to the date of termination or expiry, including a right of indemnity; and
 - (c) will not extinguish or otherwise affect the provisions of this Agreement which by their nature survive such termination.

11. SUSPENSION OF SERVICES IN EXTRAORDINARY CIRCUMSTANCES

- 11.1** Reach may suspend, de-activate or restrict all, or any part, of a Service at any time on giving as much notice as is reasonably practicable (if any) until further notice to the Customer in the following circumstances:
- (a) to comply with an order, instruction or request of a Government agency, emergency service or other competent authority; or
 - (b) to reduce or prevent fraud or interference within the Reach Network; or
 - (c) to carry out repairs, maintenance, servicing or upgrading of any equipment, software or facility forming part of Reach's Network, whether planned or required due to an emergency; or
 - (d) in respect of a Regulatory Event, Reach reasonably believes that continued supply of the affected Service during the Regulatory Event would expose Reach to significant risk of adverse legal or economic consequences.
- 11.2** If a Service is suspended, de-activated or restricted under clause 11.1, Reach must use its reasonable endeavours to minimize disruption to the Customer.

12. CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS

- 12.1** This Agreement and all information in whatever form disclosed by one party to the other in connection with this Agreement or the Services, or during the negotiations preceding this Agreement (Confidential Information) must be kept secret and confidential and treated at least as securely as the receiving party's own confidential information and may only be disclosed or used with the prior written consent of the disclosing party.
- 12.2** Despite clause 12.1, the receiving party may:
- (a) disclose the Confidential Information to its officers, employees, contractors, professional advisers or Affiliates, provided that they do not further disclose the Confidential Information except in accordance with this clause 12; and
 - (b) use the Confidential Information for the purposes of this Agreement.
- 12.3** A party may disclose or use the Confidential Information without consent if the Confidential Information is:
- (a) lawfully in the possession of the receiving party through sources other than the disclosing party; or
 - (b) generally and publicly available (except where such availability is due to a breach of this Agreement); or
 - (c) such disclosure or use is:

- (i) required or authorised by an Applicable Law; or
- (ii) required by the listing rules of a stock exchange on which the receiving party's securities or the securities of an Affiliate of the receiving party are or will be listed or quoted; or
- (iii) strictly required in connection with legal proceedings or a dispute resolution procedure relating to this Agreement.

12.4 Reach does not under this Agreement or as a result of the provision of any Service:

- (a) assign any Intellectual Property Rights of Reach or any third party to the Customer; or
- (b) grant any licence to the Customer in respect of any Intellectual Property Rights of Reach or any third party unless otherwise agreed in writing.

13. DISPUTE RESOLUTION

13.1 The parties must seek to resolve any bona fide dispute, controversy or claim arising between them under or in relation to this Agreement in accordance with the procedures set out in this clause 13, other than:

- (a) a Billing Dispute, which must be resolved in accordance with clause 5 ;
- (b) a Service Level Dispute, which must be resolved in accordance with clause 14; or
- (c) a Debt which is recoverable by Reach,

(**'Dispute'**).

13.2 Subject to the other provisions of this Agreement, the parties must continue to comply with their respective obligations during the pendency of a Dispute.

13.3 A party must not use information obtained in the course of any procedure established by this clause 13 for any purpose other than to resolve the particular Dispute.

13.4 A Dispute between the parties must be referred to the Chief Executive Officer of each of the respective parties, or their nominee, who must confer and endeavour in good faith to resolve the dispute.

13.5 If a Dispute remains unresolved 28 days after referral to the parties' Chief Executive Officers, either party may by written notice to the other party, refer the dispute to compulsory arbitration to be conducted in Hong Kong in accordance with the Arbitration Rules of the Hong Kong International Arbitration Centre (HKIAC) in force from time to time (**'Arbitration Rules'**) and the provisions of this clause 13, which will prevail over the Arbitration Rules to the extent of any inconsistency. English shall be the language of all proceedings

14. SERVICE LEVEL DISPUTES

14.1 If Reach and the Customer are in dispute about:

- (a) whether a breach of a particular Service Levels commitment has occurred or is occurring;
- (b) the duration, extent or nature of any alleged breach;
- (c) which Service Level, if any, may have been breached; or
- (d) whether the alleged breach was Reach's fault, (Service Level Dispute), Reach and the Customer will seek to resolve the Service Level Dispute in accordance with the following procedure:
- (e) if the parties cannot resolve the Service Level Dispute, either party may request that both parties escalate the Service Level Dispute to their respective Chief Executive Officer or his or her nominee, who shall endeavour to resolve the Service Level Dispute in good faith;

- (f) if the parties' Chief Executive Officers or their nominees are unable to resolve the Service Level Dispute within 14 days of escalation to them, either party may by notice in writing to the other party refer the dispute to an independent expert for investigation and resolution;
- (g) if the parties are unable to agree on an independent expert within 14 days of the notice under paragraph (f) either party may request the President of the Local Engineering Association to appoint a suitably qualified expert (**Expert**);
- (h) the Expert will make his or her decision within 14 days of the Service Level Dispute being referred to him or her for resolution;
- (i) the Expert will not function as an arbitrator but as an expert and his or her decision will be final;
- (j) if the Expert determines that a Service Level rebate is owed by Reach, Reach must:
 - A. credit the rebate against Charges in the next Statement issued by Reach to the Customer; and
 - B. pay the Expert's costs; and
- (k) if the Expert determines that a rebate is not owed by Reach, the Customer must pay the Expert's costs.

15. REGULATORY EVENT AND FORCE MAJEURE

15.1 If the rights or obligations of either party under this Agreement are materially affected by a Regulatory Event:

- (a) the party affected by the Regulatory Event shall not be taken to have breached this Agreement due to any action or inaction of that party as a consequence of the Regulatory Event; and
- (b) the parties agree to negotiate in good faith to vary this Agreement to reflect or accommodate the Regulatory Event,

subject to Reach's suspension rights under clause 11.1.

15.2 If either party fails to comply with or observe any term of this Agreement, and such failure is caused by a Force Majeure Event, that party must notify the other party as soon as practicable, and use all reasonable endeavours to avoid, mitigate and remedy the consequences of the Force Majeure Event.

15.3 Neither party is liable to the other by reason of any failure in performance under this Agreement if such failure arises out of a Regulatory Event or Force Majeure Event, unless that failure is a failure to pay Charges.

16. NOTICES

16.1 A notice, consent or other communication under this Agreement is only effective if it is in writing and delivered by the following means to the person specified in the relevant Customer Order or as otherwise notified by the relevant party:

- (a) delivered personally; or
- (b) sent by pre-paid registered post, facsimile or in electronic form (such as e-mail), in which case a copy of the electronic notice must be sent by facsimile as soon as possible afterwards.

16.2 The notice, consent or other communication is deemed to be received:

- (a) if delivered personally, on delivery;

- (b) if sent by prepaid registered post, 7 days after the date of posting, unless actually received earlier;
- (c) if sent by facsimile, when the machine that sent the facsimile produces a transmission report which confirms that the facsimile was sent in its entirety to the facsimile number of the recipient; and
- (d) if sent in an electronic form, on the date on which the recipient's e-mail system logs the e-mail message as being received.

16.3 Communications received by a party outside of normal working hours in the place in which such communications are received (being 9:00am to 5:00pm on any Monday to Friday excluding recognised public holidays) will be regarded as being received on the working day immediately following.

17. GENERAL

Variation and assignment

- 17.1** Subject to clause 2, the Agreement (including any Customer Order) can only be varied, supplemented or replaced by another document signed by both parties.
- 17.2** Except as provided in clause 17.3, neither party can assign or otherwise transfer its rights or interests under this Agreement without the other party's prior written consent, which consent must not be unreasonably delayed or withheld.
- 17.3** Reach may assign or otherwise transfer its rights or interests under this Agreement to an Affiliate of Reach without obtaining the prior consent of the Customer.

Relationship of Parties

- 17.4** No provision of this Agreement constitutes a joint venture, partnership or agency between the parties or merges the assets, liabilities and undertakings of the parties and neither party has the authority to bind the other in any way (except as provided by this Agreement).

Subcontracting

- 17.5** Reach may appoint a third party, including an Affiliate, to provide any Services to the Customer on Reach's behalf or to perform any of Reach's obligations under the Agreement. This clause 17.5 does not release Reach from its obligations under this Agreement.

Operation of this Agreement

- 17.6** This Agreement supersedes all previous agreements between the parties in relation to the Services and contains the parties' entire agreement in relation to the Services provided from time to time to the Customer.
- 17.7** Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.
- 17.8** If there is any inconsistency between any of any applicable tariff, these General Terms, the Service Terms, or the Customer Order, the inconsistency will be resolved according to the following order of priority:
- (a) the applicable tariff approved by a competent authority;
 - (b) the Customer Order;
 - (c) the Service Terms; and
 - (d) these General Terms.
- 17.9** The Agreement may be translated into other languages, however, the English version shall prevail.

Waiver

17.10 A right may only be waived in writing, signed by the party granting the waiver, and

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent the further exercise of that right or any other right.

Execution

17.11 This Agreement may be executed in counterparts.

Governing law and jurisdiction

17.12 The Agreement is governed by the laws of Hong Kong Special Administrative Region. The parties irrevocably submit to the exclusive jurisdiction of the courts of Hong Kong Special Administrative Region.

18. DICTIONARY

18.1 In the Agreement:

Acceptable Use Policy means Reach's policies governing the permitted use and restrictions on use of the Services posted at Reach's website (www.Reach.com) and as varied from time to time.

Affiliate means, in relation to an entity, any other entity which directly or indirectly controls, is controlled by, or is under common control with, such entity and in the case of Reach includes Reach Communications Services (Thailand) Limited, TeleWeb Networks (India) Pvt Ltd, and Reach Networks (Philippines) Inc.

Agreement comprises these General Conditions of Service and the Special Conditions and Customer Order applicable to each Service which is supplied to the Customer.

Applicable Law means:

- (a) any applicable law, rule or regulation of any jurisdiction;
- (b) any applicable lawful determination, decision or direction of a government agency in any jurisdiction;
- (c) any applicable obligations under any telecommunications licence, any binding industry standard or industry code; and
- (d) any applicable international convention or agreement.

Billing Dispute means any claim or dispute relating to Charges or a Statement.

Cancellation Charge means in relation to a Service the cancellation charge payable upon termination of the Service prior to expiry of the Minimum Commitment Period, as specified in the relevant Service Terms or Customer Order or applicable tariff.

Charges means the charges for a Service, calculated in accordance with the relevant Customer Order and Service Terms or applicable tariff.

Claims means claims, losses, damages, costs, charges and expenses (including Consequential Loss and including legal costs on an indemnity basis) arising out of, or as a consequence of:

- (a) the supply or failure to supply any Service or any service provided by the Customer using the Service;

- (b) the use or attempted use of any Service or equipment, or any service provided by the Customer using the Service, by the Customer or by any third person (with or without the Customer's permission) which gives rise to a breach of the Customer's obligations under this Agreement; or
- (c) Reach's access to any premises owned or occupied by the Customer in accordance with clauses 7.3 or 7.7.

Confidential Information has the meaning given to it in clause 12.1.

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

Customer Information means information of a customer within the meaning of relevant conditions of any licence issued to Reach or its Affiliates under any Applicable Law and includes information identifying the customer, the services it purchases and its expenditure on services and also includes personal data within the meaning of the Personal Data (Privacy) Ordinance (Cap 486 of the laws of Hong Kong).

Business Day means a day other than a Saturday, Sunday or public holiday in Hong Kong or such other place nominated by Reach.

Company means Reach Networks Hong Kong Limited (also called Reach)

Customer means the party which has requested Reach to supply the relevant Service.

Customer Order means an order for a Service in the form specified by Reach from time to time (also called an Application).

Customer Test Period means in relation to a Service the period, if any, specified in the Customer Order during which the Customer has the opportunity to test the Service.

Force Majeure Event or Force Majeure means an event beyond the reasonable control of the affected party, including but not limited to natural disasters, acts of terrorism or war (whether declared or not), the mobilisation of armed forces, civil commotion or riot, industrial action or labour disturbance, currency restriction, embargo, governmental restraint, expropriation or prohibition, or a failure of a public utility or telecommunications system (except to the extent covered by a Service Level).

General Terms or General Conditions of Service means these terms and conditions.

Intellectual Property Rights means all rights conferred under statute, common law and equity in and in relation to trade marks, trade names, logos and get up, inventions, patents, designs, copyright, circuit layouts, Confidential Information, know-how and trade secrets and all rights and interests in them or licences to use any of them.

Insolvency Event means:

- (a) an order is made or an effective resolution is passed for winding up or dissolution without winding up (otherwise than for the purposes of solvent reconstruction or amalgamation) of the other party and the order or resolution remains in effect for a continuous period of 14 days;
- (b) a receiver, receiver and manager, official manager, controller, administrator (whether voluntary or otherwise), provisional liquidator, liquidator, or like official is appointed over the whole or a substantial part of the undertaking and property of the other party and the appointment remains in effect for a continuous period of 14 days;
- (c) a holder of an encumbrance takes possession of the whole or any substantial part of the undertaking or property of the other party, or the other party enters or proposes to enter into any scheme of arrangement or any composition for the benefit of its creditors other than as part of a solvent reconstruction or amalgamation;
- (d) the other party seeks or is granted protection from its creditors under any Applicable Law; or

(e) the other party is or will be unable to pay its debts as and when they fall due.

Interest Rate means the Prime Lending Rate set by the Hong Kong and Shanghai Banking Corporation Limited for loans made in Hong Kong plus 2 per cent.

Local Accounting Society means the local member association of the International Federation of Accountants in the country in which the Customer's Reach account manager is based or, if none or if unable or unwilling to act as the Expert, such other independent accountant as nominated by Reach.

Local Circuit means a circuit connecting premises of the Customer or its customer to an international gateway located in the same country.

Local Engineering Association means the local chapter of the Institute of Electrical and Electronic Engineering in the country in which the relevant Reach Customer account manager is located or, if there is no such local chapter, such other independent communications engineering association as Reach nominates.

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

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

Minimum Commitment Period means in relation to a Service the period specified in the Customer Order or the Service Terms and commencing from the Service Commencement Date.

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

Reach Network means the network owned and operated by Reach and its Affiliates.

Regulatory Event means:

- (a) an amendment of or change in any Applicable Law;
- (b) the grant of an injunction against a party in relation to a breach or alleged contravention of an Applicable Law;
- (c) the making of a determination or direction by a competent authority; or
- (d) where a party reasonably believes that any event of the kind described in (a), (b) or (c) will occur.

Security Requirement means security for the payment of Charges or the meeting of other obligations of the Customer under the Agreement, the form of which may be any, or a combination, of the following:

- (a) a deposit from the Customer held by Reach or by any other entity agreed by the parties;
- (b) an irrevocable guarantee from the controlling entity of the Customer or such other entity as is acceptable to Reach;
- (c) an irrevocable guarantee, performance bond or letter of credit from a bank or other financial institution reasonably acceptable to Reach; or
- (d) some other form of security interest or obligation.

Service Commencement Date means in relation to a Service the date on which either:

- (a) if there is not a Customer Test Period, the earlier of the date Reach notifies the Customer the Service is ready for use or the Customer commences using the Service; or
- (b) if there is a Customer Test Period, the Customer accepts the Service in accordance with clause 1.9.

Service Levels means the committed levels of service in accordance with which Reach will use its reasonable endeavours to provide a Service, as specified in relevant Service Terms or Customer Orders.

Service Level Dispute means a dispute in relation to Service Levels, as more particularly defined in relevant Service Terms or in Service Levels notified to the Customer from time to time.

Services means all telecommunications services supplied by Reach to the Customer from time to time under this Agreement.

Service Terms means the specific terms applicable to each particular Service (also known as Special Conditions).

Statement means an invoice provided by Reach setting out the Charges payable for Services provided by Reach.

Target Service Date means, the date notified by Reach to the Customer as the target date for commencement of the Service or of the Customer Test Period, as the case may be.

Tax means any present or future tax, levy, impost, deduction, charge, duty or withholding tax (together with any related interest, penalty, fine and expense in connection with any of them) levied or imposed by any government agency, other than those imposed on overall income.

Unauthorised Activity means any conduct in breach of any Applicable Law.

USD means US dollars.

Interpretation

18.2 In the Agreement unless the contrary intention appears:

- (a) headings are for convenience only, and do not affect interpretation;
- (b) a word importing the singular includes the plural and vice versa;
- (c) a reference to:
 - (i) a day, week or month means a calendar day week or month;
 - (ii) a party to this Agreement or to any other document or agreement includes a successor or permitted substitute or permitted assign of that party;
 - (iii) a document includes any amendment or supplement to, or replacement or notation of, that document;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity;
 - (v) any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing it and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute.

FIXED TELECOMMUNICATION NETWORK SERVICES LICENCE
TELECOMMUNICATION ORDINANCE (Chapter 106)

In accordance with General Condition 21 of the Fixed Telecommunication Network Services Licence, Reach Networks Hong Kong Limited hereby publishes the revised terms and conditions with effect from 21st May 2002.

SERVICE TERMS FOR GLOBAL BANDWIDTH SERVICE – GBS HALF CIRCUIT

These Service Terms form part of the Agreement between Reach and the Customer dated _____, on and from the date Reach accepts the first Customer Order for the Global Bandwidth Service.

Capitalized terms are defined in the Dictionary for these Service Terms or, if not, have the same meaning as in the General Terms. A reference to a numbered clause means a clause in these Service Terms.

1. ORDERING AND PROVISIONING PROCEDURE

- 1.1 The GBS Half Circuit Service provides dedicated international private leased transmission capacity for point to point communications between the Near End POP and the effective mid-point between the Near End POP and the Distant End POP.
- 1.2 The Customer must submit a completed Customer Order to Reach to request supply of the GBS Half Circuit Service.
- 1.3 The GBS Half Circuit Service shall be supplied in accordance with Service Levels notified to the Customer from time to time. At no time shall the Service Levels notified to the Customer be less favourable to the Customer, considered overall, than the Service Levels applying at the Service Commencement Date.
- 1.4 The Customer must submit a new Customer Order to Reach to request reconfiguration of, or increased capacity for, an existing GBS Half Circuit Service on the existing route or routes.

2. SUPPLY OF SERVICE

- 2.1 Reach shall provide and the Customer shall acquire the GBS Half Circuit Service for the Minimum Commitment Period, following which the GBS Half Circuit Service shall continue unless terminated in accordance with the Agreement.
- 2.2 Reach shall provide the GBS Half Circuit Service in accordance with the relevant Service Levels and, if it does not, a rebate may be payable in accordance with the Service Level Attachment to these Service Terms.
- 2.3 The Customer Test Period shall be 2 Business Days, commencing on and from the date Reach notifies the Customer that the GBS Half Circuit Service is ready for testing.
- 2.4 If the Customer cancels the GBS Half Circuit Service prior to the commencement of the Minimum Commitment Period the Customer is required to pay one month's Charges as a genuine pre-estimate not as a penalty.

3. LOCAL CIRCUIT AND DISTANT END HALF CIRCUIT PROVISIONING

3.1 In relation to:

- (a) any Local Circuit;
- (b) any Distant End Half Circuit; or
- (c) any replacement of or change in (a) or (b),

(**Non-Reach Circuit**), the Customer shall notify Reach whether the Customer:

- (d) wishes Reach or a Reach Affiliate to provide such Non-Reach Circuit (by Reach resupplying the Non-Reach Circuit which Reach acquires);
- (e) wishes Reach to arrange on behalf of the Customer (i.e. as agent of the Customer) for provisioning of such Non-Reach Circuit; or
- (f) will arrange for provisioning of such Non-Reach Circuit directly with a suitable Third Party Operator.

3.2 If Reach or a Reach Affiliate agrees to supply a Non-Reach Circuit, then:

- (a) the Customer must promptly pay all amounts invoiced by Reach for the Non-Reach Circuit; and
- (b) the Customer shall indemnify Reach against liability for any charges, cancellation charges or other amounts payable by Reach in relation to that Non-Reach Circuit upon termination of the Service by the Customer.

3.3 If Reach agrees to arrange, on the Customer's behalf, for provisioning of any Non-Reach Circuit, then:

- (a) the Customer appoints Reach to act as the Customer's agent for the purposes of arranging provisioning of the Non-Reach Circuit, for which the Customer must pay Reach's reasonable administration charges;
- (b) unless the Customer nominates a particular Third Party Operator, Reach shall have authority to order the appropriate Non-Reach Circuit on behalf of the Customer from either a Reach Affiliate or a Third Party Operator selected by Reach, on that operator's standard terms and conditions (including charges);
- (c) the Customer shall contract as principal with the Third Party Operator or the Reach Affiliate, as the case may be, for the Non-Reach Circuit;
- (d) the Customer acknowledges that Reach is under no duty to obtain the Non-Reach Circuit on the best terms and conditions available;
- (e) any representation by Reach as to the availability of any proposed Non-Reach Circuit is only indicative unless confirmed in writing as final;
- (f) Reach will notify the Customer if Reach is unable to obtain the required Non-Reach Circuit, in which case the Customer may itself endeavour to obtain that circuit;
- (g) if the Customer is unable to obtain appropriate Non-Reach Circuit within 30 days of Reach's notice pursuant to subclause (f), the Customer Order will be deemed to be cancelled;
- (h) if requested by the Customer, Reach may agree to provide:
 - (i) single party billing; or
 - (ii) single party fault reporting,

in respect of any Non-Reach Circuit, for which the Customer shall pay Reach's reasonable administration charges;

- (i) the Customer must promptly pay all amounts for the Non-Reach Circuit; and
- (j) the Customer indemnifies Reach against any liability to the Third Party Operator or the Reach Affiliate (as the case may be) in its dealings concerning provisioning and operation of any Non-Reach Circuit for the Customer.

3.4 If either:

- (a) the Customer elects to arrange provisioning of the Non-Reach Circuit itself; or
- (b) Reach notifies the Customer that Reach declines its request pursuant to clause 3.1 to arrange for provisioning or to provide such Non-Reach Circuit,

the Customer must use its reasonable efforts to ensure that:

- (c) the Non-Reach Circuit is installed, tested and made available in good time to enable the GBS Half Circuit Service to be provided on or before the Target Service Date;
- (d) the interfaces between the Non-Reach Circuit and the GBS Half Circuit Service conform to Reach's technical standards and specifications;
- (e) the Third Party Operator deals directly with, and provides reasonable assistance to, Reach in relation to the connection and inter-working between the GBS Half Circuit Service and the Non-Reach Circuit; and
- (f) the Customer ensures the continued operation of the Non-Reach Circuit during the Service Period, including by promptly settling all invoices.

3.5 If supply of a Non-Reach Circuit expires or is suspended, withdrawn or terminated for any reason before the expiry of the Minimum Commitment Period, the Customer continues to be liable for all Charges until the expiry of the Minimum Commitment Period. If the GBS Half Circuit Service is terminated or cancelled, the Customer shall indemnify Reach or the Reach Affiliate against any charges (including cancellation charges) in respect of the Non-Reach Circuit.

4. CUSTOMER OBLIGATIONS

4.1 The Charges are payable monthly in advance in accordance with monthly Statements. Charges must be paid within 30 days of the date of the relevant Statement.

4.2 The Customer must:

- (a) provide Reach and any employee, agent, Affiliate or contractor of Reach and any relevant Third Party Operator with all information and assistance that person may reasonably require to design, test, commission and maintain the GBS Half Circuit Service and any relevant Non-Reach Circuits, including access to relevant Customer premises at reasonable hours and on reasonable notice;
- (b) provide and upgrade its equipment as necessary to support the GBS Half Circuit Service and provide equipment rooms compliant with Applicable Laws and suitable for housing Reach's equipment; and
- (c) participate in any testing procedures that may be reasonably requested by Reach or any agent, Affiliate or contractor of Reach or any Third Party Operator.

5. DICTIONARY

5.1 For the purposes of these Service Terms:

Cancellation Charges means:

- (a) the cancellation charges set out in the Customer Order or, if none are set out, calculated by multiplying the months (including parts thereof) remaining of the Minimum Commitment Period by the monthly Charges for GBS Half Circuit Service; together with
- (b) any charges or cancellation charges incurred by Reach, a Reach Affiliate, or Reach supplier or contractor to a Third Party Operator after termination of the Service in respect of any Non-Reach Circuits.

Distant End Half Circuit means, in relation to any GBS Half Circuit Service, the corresponding dedicated capacity between the Distant End POP and the effective mid-point between the Near End POP and the Distant End POP.

Distant End POP means the distant end point of presence at which the Distant End Half Circuit terminates.

GBS Half Circuit Service means the service provided under these Service Terms and more particularly described in clause 1.1. The GBS Half Circuit Service is also known as **International Private Leased Circuit Service** or **IPLC Service**.

Near End POP means the Reach point of presence at which the GBS Half Circuit Service terminates, or such other point as may be designated by Reach.

Third Party Operator means:

- (a) in relation to any Distant End Half Circuit, a telecommunications operator that is able to provide Distant End Half Circuit service and authorised under applicable laws to provide Distant End Half Circuits in the relevant jurisdiction; and
- (b) in relation to any Local Circuit, a telecommunications operator that is authorised to provide Local Circuits in the relevant jurisdiction,

and includes PCCW-HKT Telephone Limited and its Affiliates and Telstra Corporation Limited and its Affiliates.