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**FIXED CARRIER LICENCE
TELECOMMUNICATION ORDINANCE (Chapter 106)**

In accordance to the Special Condition 7 of the Fixed Carrier Licence, Reach Networks Hong Kong Limited, Reach Cable Networks Limited and Reach Global Services Limited hereby publish the revised terms and conditions with effect from 17 October 2005.

GENERAL TERMS

Agreement

1. All Services provided by REACH to the Customer will be governed by:
 - (a) these General Terms;
 - (b) the relevant Customer Order; and
 - (c) the relevant Service Terms,which together form a contract between the parties (**Contract**). All Contracts together form the entire agreement between the parties with respect to the provision by REACH of all Services (**Agreement**).
2. REACH shall apply each Service to the Customer from the applicable Service Commencement Date until the Service is terminated in accordance with the Contract or the Agreement.
3. The Contract is effective from the last date on which both parties execute each of the General Terms and the Service Terms and REACH accepts a Customer Order, and continues until terminated in accordance with the Contract or the Agreement.

1. The Contract

- 1.1 These general terms shall govern all customer orders, except and to the extent amended by an annex to a specific customer order that has been executed by both parties.
- 1.2 the customer order and applicable service terms shall be automatically incorporated into the contract at the time reach notifies the customer that it accepts the customer order.

2. VARIATION OF SERVICE TERMS AND CHARGES

- 2.1 Service Terms or Charges may be varied by REACH at any time after the end of the Minimum Commitment Period on 90 days' notice to the Customer, such variation to be effective on the later of the end of the Minimum Commitment Period or the end of the 90 day notice period.
- 2.2 In the event REACH notifies the Customer of its intention to vary Service Terms or Charges, the Customer has the right to terminate the affected Service effective on the later of 60 days' notice or the end of the Minimum Commitment Period.

3. CHARGES AND TAXES

- 3.1 The Customer shall pay the Charges for each Service to REACH in accordance with the terms of the Contract.
- 3.2 Records generated by the REACH Network or any interconnected network will be used to calculate the matters to which those records relate (e.g., including, but not limited to, Charges or Service Levels).
- 3.3 The Charges do not include any Tax. REACH shall be entitled to charge an additional amount equal to any Tax applicable to the Service or Charges.
- 3.4 Subject to this clause 3.4, the Customer shall make each payment to REACH without any set off or counterclaim, unless the parties agree and execute a separate set off arrangement which allows the Customer to set off such payments, 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 shall:
 - (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.
- 3.5 The indemnification in clause 3.4(d) shall not apply to any Tax deduction or withholding that REACH is entitled to subsequently recover from the relevant government agency.

4. INVOICING AND PAYMENT

- 4.1 Subject to clause 0, the Customer shall pay the whole amount of the Charges shown on each Statement:
- (a) directly by electronic transfer to the bank account notified by REACH or such other means as the parties may agree in writing;
 - (b) within 30 days of the date of the Statement; and
 - (c) in US dollars unless otherwise specified on the Customer Order.
- 4.2 Subject to clause 5, the Customer shall pay interest, calculated daily at the Interest Rate, on any overdue amount owed to REACH 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, provided that REACH invoices the Customer for the omitted Charges within 6 months of the date of the Statement from which the Charges were omitted.
- 4.4 REACH may 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.
- 4.5 REACH may 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.
- 4.6 REACH may 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 REACH in respect of the applied amount.

5. BILLING DISPUTES

- 5.1 The Customer shall notify REACH of any Billing Dispute (**Billing Dispute Notice**) by 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.
- The Billing Dispute Notice must be received by REACH within 30 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 shall pay the balance of the Statement;

- (b) REACH shall review the Billing Dispute Notice in good faith in order to resolve the Billing Dispute as soon as practicable; and
 - (c) the Customer shall provide all cooperation reasonably requested by REACH in order to review and evaluate the Billing Dispute.
- 5.3 REACH will notify the Customer of its determination within 30 days of receipt of the Billing Dispute Notice (**Billing Dispute Response**), provided that REACH's failure to notify the Customer of a Billing Dispute Response shall not constitute acceptance of the Disputed Amount or a waiver of any of REACH's rights under the Contract.
- 5.4 If the dispute is not resolved by the Billing Dispute Response, either party may enforce its rights and seek any remedy it has under the Contract, subject to clause 15.13.
- 5.5 Where a Statement is accepted (whether deemed or otherwise), then REACH may sue upon the amount due (**Debt**) in any court of competent jurisdiction and, at REACH's option, under the law of that jurisdiction without reference to its conflicts of law principles.
- 5.6 Any Disputed Amount determined to be payable to REACH, in whole or in part, shall accrue interest at the Interest Rate from the date originally due until paid in full.
- 5.7 Where a Statement has been accepted (whether deemed or otherwise) and the Customer has reason to believe there has been a billing error in that Statement, the Customer may, within 6 months of the date of the Statement, make a claim for the error to be corrected by amendment to a subsequent Statement, in accordance with clause 12 (Dispute Resolution). If no claim is made within 6 months of the date of a Statement, the Customer agrees to waive any such claims relating to the Statement.

6. CREDIT MANAGEMENT

Security Requirement

- 6.1 REACH may require the Customer to provide and maintain the Security Requirement, the form and value of which shall be agreed by the parties prior to acceptance of the Customer Order.
- 6.2 The Customer shall vary the form or value of the Security Requirement within 14 days of receiving notice from REACH requiring it to do so in the event of either:
 - (a) the Customer failing to pay Charges owing under the Agreement (except pursuant to a Billing Dispute); or
 - (b) REACH having reasonable grounds to believe that the Customer's financial position has materially changed such that REACH believes that the Customer may fail to pay Charges in the future.
- 6.3 If the Customer fails to pay any Charges owing under the Contract (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 shall immediately restore or procure the restoration of the Security Requirement to the required level.
- 6.4 On termination of a Contract or the Agreement, REACH may enforce the Security Requirement, or part of it, in satisfaction of any unpaid Charges, provided that within 30 days after receiving payment in full for all Charges, the Security Requirement (or any balance) shall 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 suspend or terminate the operation of a Contract or the Agreement in whole or in part under clause 0.

7. USE OF THE SERVICES

- 7.1 The Customer shall:
 - (a) use a Service and shall ensure that third parties use services supplied using the Service in accordance with all Applicable Laws;

- (b) promptly advise REACH of any fault in the Service; and
 - (c) comply with reasonable 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 The Customer shall promptly provide REACH (free of charge) with all information and co-operation which REACH may reasonably require from time to time to enable REACH to proceed with the performance of its obligations under the Contract without interruption.

Equipment

- 7.3 Except where expressed otherwise in the Contract:
- (a) each party shall be 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) shall 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);
 - (ii) shall notify the other party immediately of any damage, fault, theft or loss of such equipment;
 - (iii) shall not and shall not allow a third party to alter, tamper with or attempt to repair such equipment without the other party's prior consent;
 - (iv) shall comply with all reasonable instructions notified by the other party to protect the other party's ownership of such equipment;
 - (v) shall not connect any such equipment to any other equipment or service except as expressly authorised by the other party; and
 - (vi) shall provide the other party with access to the premises at all reasonable times and in accordance with all reasonable written access requirements to install or inspect, maintain, repair, replace or remove the other party's equipment.
- 7.4 REACH shall repair or replace REACH equipment which is located at Customer premises:
- (a) if required as a result of fair wear and tear or a deliberate, reckless or negligent act or omission of REACH, free of charge; and
 - (b) otherwise, charged at REACH's reasonable time and materials rates.
- Whether any such equipment shall either be repaired or replaced shall be at REACH's sole discretion.

Security

- 7.5 The Customer shall 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

- 7.6 In order to allow REACH to exercise its rights and perform its obligations under the Contract, the Customer shall permit REACH, its employees, representatives and agents to enter any relevant premises owned or occupied by the Customer in accordance with the Customer's reasonable access requirements, as notified to REACH.

Public statements

- 7.7 Except where a party has obtained prior consent from the other party, a party shall not make any representation or public statement regarding the existence of the Contract or the Services provided thereunder. Nothing in this clause 7.7 shall prevent the Customer from disclosing to its individual customers or its Affiliates, or REACH from disclosing to its Affiliates or third party suppliers, that the parties have contracted for the provision of the Services.

8. CUSTOMER INFORMATION

- 8.1 The Customer agrees that REACH may collect, retain and use Customer Information in relation to the Services in order to enable REACH to exercise its rights and perform its obligations under this Contract or as otherwise required by Applicable Law.

9. LIABILITY AND INDEMNITY

- 9.1 Nothing in the Contract shall limit either party's liability for death or personal injury resulting from its negligence or the negligence of its employees, agents or contractors while acting in the course of their employment, or for any other liability to the extent that it cannot be limited by law.
- 9.2 REACH shall provide the Services using reasonable care and skill. Except as expressly provided in the Contract or due to REACH's intentional or wilful misconduct, REACH shall have no other obligation, duty or liability whatsoever in contract, tort or otherwise to the Customer arising from or in any way connected to the Contract.
- 9.3 The Customer's sole and exclusive remedy relating to the supply or failure to supply the Services, including a failure to meet the applicable Service Levels, shall be as provided by the relevant Service Terms.
- 9.4 Subject always to the contractual obligations to make payments pursuant to the terms of the Contract, neither party shall be liable to the other party in contract, tort or otherwise, including, without limitation, any liability for negligence or for breach of statutory duty for:
- (a) any loss of revenue, business, contracts, profits, or anticipated savings (in the form of an expense a party expects to avoid incurring or incur in a lesser amount as a result of using the Services); or
 - (b) any indirect, incidental, special or consequential damages or loss of goodwill, howsoever arising.
- 9.5 Notwithstanding anything to the contrary in any Contract, except in the case of death or personal injury, REACH's maximum liability arising out of or in connection with a Contract shall be limited to:
- (a) USD 1,000,000 for any one incident or series of events arising from a single incident or common cause; and
 - (b) an aggregate amount of USD 2,000,000 for all liability arising out of or in connection with the Contract.
- 9.6 EXCEPT AS SPECIFICALLY PROVIDED HEREIN, REACH MAKES NO WARRANTY, EXPRESS OR IMPLIED BY STATUTE, COMMON LAW OR OTHERWISE, TO THE CUSTOMER AS TO QUALITY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY OF THE SERVICES PROVIDED HEREUNDER, OR AS TO ANY OTHER MATTER. ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.
- 9.7 Subject to clause 9.4, each party (**Indemnifying Party**) shall hold harmless, indemnify and defend the other party and its employees, officers, directors, agents, shareholders and affiliates (**Indemnified Party**) from and against, and assumes all liability for all damages, losses, costs and expenses (including reasonable attorneys' fees, costs and expenses) resulting from the following:
- (a) any injury, loss or damage to any person, tangible property or facilities of any third person or entity arising under the Contract due to the negligence or wilful misconduct of the Indemnifying Party, its employees, agents or contractors (including, without limitation, the Customer's authorised local telecommunications providers); and
 - (b) any claims arising out of any violation by the Indemnifying Party of any regulation, rule, statute or court order of any governmental agency, court or body in connection with the Contract.
- 9.8 The Customer agrees to defend, hold harmless and indemnify REACH and its Affiliates and employees, officers, directors, agents and shareholders against all direct damages, losses, costs, and expenses arising out of the Customer's use of the Services.

- 9.9 In satisfying any indemnity obligation under clause 9.7 or 9.8, the Indemnifying Party shall defend the Indemnified Party with counsel reasonably acceptable to the Indemnified Party. The Indemnifying Party cannot compromise or otherwise settle a claim or action against the Indemnified Party without the consent of the Indemnified Party, which consent shall not be unreasonably withheld, conditioned or delayed.
- 9.10 The obligations set forth in this clause 9 to defend, hold harmless and indemnify shall survive the expiry or termination of a Contract or the Agreement.

10. SUSPENSION AND TERMINATION

- 10.1 The term of any Service provided under a Contract will automatically continue beyond the Minimum Commitment Period until terminated by either party in accordance with the terms of the Contract. Either party may terminate a Service at any time after the end of the Minimum Commitment Period on 60 days' notice.
- 10.2 Prior to the end of the Minimum Commitment Period for a Service, the Customer may terminate the Service on 60 days' notice, in which case the Customer shall pay the applicable Cancellation Charges as a genuine pre-estimate of loss and not as a penalty.
- 10.3 The Customer is not entitled to suspend or terminate a Contract or the Agreement, whether in their 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 relevant Contract.
- 10.4 REACH may suspend, restrict, de-activate or terminate the operation of any Service or suspend or terminate a Contract or the entire Agreement between the parties (including a Service prior to the end of the Minimum Commitment Period) as follows:

- (a) At any time on as much notice as is reasonably practicable (if any) until further notice to the Customer in the following circumstances:

- (i) to comply with an order, instruction or request of a Government agency, emergency service or other competent authority; or
- (ii) to reduce or prevent fraud or interference within the REACH Network; or
- (iii) in respect of a Regulatory Event, the parties have been unable to negotiate variations to the Contract as may be required by a Regulatory Event or REACH reasonably believes that continued supply of the affected Service would, as a result of the Regulatory Event, expose REACH to significant risk of adverse legal or economic consequences; or
- (iv) 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, provided that REACH shall have no right to terminate a Service in order to carry out such activities and shall comply with notice requirements for scheduled activities in accordance with the relevant Service Terms.

In the event of any suspension, de-activation restriction or termination of a Service pursuant to 10.4(a), REACH shall use reasonable endeavours to minimize disruption to the Customer.

- (b) For a breach of a Contract not involving payment of Charges by the Customer:
- (i) if the breach continues for 5 Business Days after REACH has given notice of the breach, REACH may suspend a Service under that Contract immediately with no further notice; and
 - (ii) if the breach continues for 30 days after REACH has given notice of the breach, REACH may terminate the entire Agreement (including all or some Contracts or Services, at REACH's discretion) immediately on notice to the Customer.
- (c) For a breach of a Contract involving payment of Charges by the Customer:
- (i) if the breach continues for 3 Business Days after REACH has given notice of the breach, REACH may suspend a Service or Services under that Contract immediately with no further notice; and

- (ii) if the breach continues for 30 days after REACH has given notice of the breach, REACH may terminate the entire Agreement (including all or some Contracts or Services, at REACH's discretion) immediately on notice to the Customer.

In the event that REACH exercises its right of termination for breach pursuant to clauses 10.4(b) or (c) prior to the end of the Minimum Commitment Period in respect of any particular Service, then the Customer shall pay the applicable Cancellation Charge(s) for that Service as a genuine pre-estimate of loss and not as a penalty.

10.5 Notwithstanding any other provision of a Contract, either party may suspend or terminate a Contract or any particular Service thereunder upon notice (including in respect of Services which are subject to a Minimum Commitment Period) if:

- (a) the other party breaches any material term of the Contract which is not capable of remedy;
- (b) the other party breaches any material term of the Contract which is capable of remedy and the other party fails to remedy the breach within 30 days after receiving notice to do so;
- (c) the other party becomes subject to an Insolvency Event;
- (d) provided a party has complied with its obligations under clause 13.1, a Force Majeure Event substantially and adversely affecting the ability of that party to perform its obligations under the Contract continues for a period of 3 months;
- (e) the other party ceases to carry on business for a period of more than 14 days without the prior consent of the terminating party.

In the event that REACH exercises its right of termination pursuant to clause 10.5 (a), (b), (c) or (e) prior to the end of the Minimum Commitment Period in respect of any particular Service, then the Customer shall pay the applicable Cancellation Charge for that Service as a genuine pre-estimate of loss and not as a penalty.

10.6 On termination of a Contract:

- (a) each party shall satisfy immediately any obligation that arose prior to the termination, including, without limitation, the obligation to pay 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;
- (b) the Customer shall cease to use the Services and all equipment supplied or made available by REACH under the Contract;
- (c) if the Customer fails to remove any of its equipment from a REACH premises within 30 days of the termination of a Contract, then such equipment shall be deemed conclusively abandoned, REACH may dispose of it as it sees fit, and the Customer shall be responsible for the cost of such removal, storage and disposal of said equipment; and
- (d) each party shall, 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 or would cause disproportionate disruption to the operation of a party's network.

10.7 If REACH has suspended the operation of the Contract due to an act or omission of the Customer under this clause 10 in respect of any particular Service, the Customer shall be required to pay a reconnection fee in advance of the Service being reconnected, as set forth in the Service Terms.

10.8 Suspension or termination of the Agreement (either in its entirety or in respect of a particular Contract or Service):

- (a) shall not operate as a waiver of any breach by a party of any of its provisions;
- (b) shall 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) shall not extinguish or otherwise affect the provisions of any Contract which by their nature survive such termination.

11. CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS

11.1 The Contract and all information in whatever form disclosed by one party to the other in connection with the Contract or the Services, or during the negotiations preceding the Contract (Confidential Information) shall 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 consent of the disclosing party.

- 11.2 Despite clause 0, 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 0; and
 - (b) use the Confidential Information for the purposes of the Contract.
- 11.3 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 the Contract); 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 the Contract.
- 11.4 REACH does not under a Contract 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.

12. DISPUTE RESOLUTION

- 12.1 The parties shall seek to resolve any Dispute in accordance with the procedures set out in this clause 12.
- 12.2 Subject to the other provisions of the Contract, the parties shall continue to comply with their respective obligations during the pendency of a Dispute.
- 12.3 A party shall not use information obtained in the course of any procedure established by this clause 12 for any purpose other than to resolve the particular Dispute.
- 12.4 The parties shall make reasonable, good faith efforts to resolve any Dispute arising out of the Contract within 30 days of receipt of a party's notice of the Dispute as follows:
- (a) the parties will attempt initially to resolve a Dispute through discussions at an operational level for 15 days;
 - (b) in the event that the parties do not resolve the Dispute at the operational level within 15 days of the notice, the Dispute shall be escalated and negotiated for a further 15 days between legal counsel and/or senior executives of each party who have the requisite authority to settle the Dispute.
- Each party shall be responsible for and bear its own costs associated with resolution of the Dispute pursuant to this clause 12.4.
- 12.5 If a Dispute remains unresolved despite the reasonable, good faith efforts of the parties to resolve the Dispute under clause 12.4, either party may exercise its rights and seek any remedy it has under the Contract, subject to clause 15.13.

13. FORCE MAJEURE

- 13.1 If a party is unable to perform any obligation under a Contract because of a Force Majeure Event, that party shall have no liability to the other party for the failure to perform, unless the failure to perform is a failure to pay Charges. The party unable to perform shall notify the other party as soon as practicable, and shall use all reasonable endeavours to avoid, mitigate and remedy the consequences of the Force Majeure Event.

- 13.2 REACH shall have no liability to the Customer for failing to supply a Service in the event of:
- (a) a refusal or delay by a third party through no fault of REACH to supply a telecommunications service to REACH and where there is no alternative service available at reasonable cost; or
 - (b) a Regulatory Event.

14. NOTICES

- 14.1 Any notice or consent required to be given under any Contract shall be effective only 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 courier, post or facsimile.
- For the avoidance of doubt, any communication other than a notice or consent required to be given under a Contract is not subject to this clause 14.
- 14.2 The notice or consent shall be deemed to be received:
- (a) if delivered personally, on delivery;
 - (b) if sent by courier, 2 days after dispatch, unless actually received earlier;
 - (c) if sent by regular post, 7 days after the date of posting, unless actually received earlier; and
 - (d) 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.
- 14.3 Communications received by a party outside of normal working hours in the place in which such communications are received (being 9:00am to 6:00pm on any Monday to Friday excluding recognised public holidays) will be regarded as being received on the working day immediately following.

15. GENERAL

Variation and assignment

- 15.1 Subject to clause 2, the Contract (including any Customer Order) can only be varied, supplemented or replaced by another document signed by both parties.
- 15.2 Except as provided in clauses 15.3 and 15.4, neither party can assign or otherwise transfer its rights, interests or obligations under the Contract without the other party's prior consent, which consent shall not be unreasonably delayed, or withheld.
- 15.3 The parties acknowledge and agree that the Customer's Affiliates may order Services under this Agreement provided, however, any such Customer Affiliate ordering Services hereunder agrees that such Services are provided pursuant to and governed by the terms and conditions of this Contract. The Customer shall be jointly and severally liable for all claims and liabilities arising under this Contract related to Services ordered by any Customer Affiliate, and any event of default under this Contract by any Customer Affiliate shall also be deemed an event of default by the Customer. Any reference to Customer in this Contract with respect to Service ordered by a Customer Affiliate shall be deemed a reference to the applicable Customer Affiliate.
- 15.4 REACH may assign or otherwise transfer its rights or interests under the Contract to an Affiliate of REACH without obtaining the prior consent of the Customer.

Relationship of Parties

- 15.5 No provision of the Contract 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 the Contract).

Services Provided by Third Parties

- 15.6 REACH may subcontract with or 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 or exercise its rights under the Contract. If a Customer Order requires the provision of Service to Customer in a jurisdiction that requires an authorised entity to provide the Service in that

jurisdiction, then such Service shall be provided by a REACH Affiliate authorised to provide such Service in that jurisdiction. Notwithstanding any other provisions of a Contract, should the REACH Affiliate be required, under the Applicable Law, to provide such Service in accordance with terms and conditions approved by or filed with a governmental or regulatory authority, then such approved terms and conditions shall govern the delivery of, and Customer's consumption or use of, the Service in that jurisdiction. This clause 15.6 does not release REACH from its obligations under the Contract.

Operation of the Contract

- 15.7 The Contract 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.
- 15.8 Any provision of the Contract which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make the Contract enforceable, unless this would materially change the intended effect of the Contract.
- 15.9 If there is any inconsistency between any of these General Terms, the Service Terms, or the Customer Order, the inconsistency will be resolved according to the following order of priority:
- (a) the Customer Order;
 - (b) the Service Terms; and
 - (c) these General Terms.
- 15.10 While the Contract may be translated into other languages, the English version shall prevail.

Waiver

- 15.11 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

- 15.12 The Contract may be executed in counterparts.

Governing law and jurisdiction

- 15.13 The Contract is governed by the laws of England and Wales. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of England.

16. DEFINITIONS

- 16.1 In the Contract:

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.

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.

Business Day means a day other than a weekend day, or a public holiday in the location where the Services are provided or, if Services are provided in more than one location, such of those locations nominated by REACH or if none nominated, Hong Kong.

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.

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

Confidential Information has the meaning given to it in clause 11.1.

Customer Information means information of a Customer within the meaning of any licence issued to REACH or its Affiliates or any Applicable Law and includes information identifying the Customer, the Services it purchases and its expenditure on Services.

Customer Order means an offer to take and pay for a Service, signed by the Customer in the form specified by REACH from time to time.

Dispute means a bona fide dispute, controversy or claim – other than a Billing Dispute, which shall be resolved in accordance with clause 5, or a Debt which is recoverable by REACH – arising between the parties under or in relation to a Contract.

Force Majeure Event means an event beyond the reasonable control of the affected party, including but not limited to natural disasters, exceptionally severe weather, typhoon, earthquake, fire, explosion, acts of terrorism or war (whether declared or not), the mobilisation of armed forces, civil commotion or riot, industrial action or labour disturbance, 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).

Intellectual Property Rights means all rights conferred under statute, common law and equity in and in relation to trade marks, service 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 which may now or in the future subsist anywhere in the world.

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 4 per cent.

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.

REACH Network means the network operated by REACH and its Affiliates as defined in the relevant Service Terms.

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 Contract, 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 means all telecommunications services supplied by REACH to the Customer from time to time under a Contract as specified in the Customer Order.

Service Commencement Date in relation to a Service has the meaning given to it in the applicable Service Terms.

Service Levels means the guaranteed levels of service in accordance with which REACH will use its reasonable endeavours to provide a Service, as specified in the relevant Service Terms.

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.

Service Terms means the specific terms applicable to each particular Service.

Statement means an invoice provided by REACH or its Affiliates (as the case may be) setting out the Charges payable for Services provided by REACH.

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) including without limitation any goods and services tax, value added tax, or service tax or consumption tax, which is levied or imposed by any government agency, other than those imposed on overall income.

USD means US dollars.

Interpretation

16.2 In the Contract 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 the Contract 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 novation 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.

SERVICE TERMS FOR GLOBAL BANDWIDTH SERVICE

These Service Terms form part of the Contract between REACH and the Customer, on and from the date REACH accepts the first Customer Order for the Global Bandwidth Service.

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

DEFINITIONS

For the purposes of these Service Terms:

Actual Delivery Date means the date the Customer is notified by REACH that the Service is available for testing. This date marks the commencement of the Customer Test Period.

Backhaul Service means a dedicated private leased digital connection from a REACH point of presence to a Cable Station or Satellite Teleport, as specified in the Customer Order.

Cable Station means a location where a termination point of a submarine or terrestrial cable system is located.

Credit means the sole financial remedy for failure to meet the Service Levels, calculated in accordance with these Service Terms.

Customer Test Period means the period of time between the Actual Delivery Date and the Service Commencement Date, during which the Customer has been provided a Service and is able to perform testing on and evaluation of the Service.

Day means a calendar day.

Estimated Delivery Date (EDD) means the date specified in the Customer Order as the target date for delivery of a Service.

Extreme Outage means a Service Unavailability event that lasts for a continuous period of more than thirty (30) Days.

Firm Delivery Date (FDD) means the date notified by REACH to the Customer after receipt of the Customer Order by which REACH guarantees delivery of the Service. The calculation of this date includes the duration of the Customer Test Period.

GBS Half Circuit means a dedicated private leased digital connection from a REACH point of presence to the effective mid-point between the REACH point of presence and a distant end point.

GBS Whole Circuit means a dedicated private leased digital connection between two REACH points of presence.

Global Bandwidth Service (GBS) means any of GBS Whole Circuit, GBS Half Circuit, Managed Extension Service and Backhaul Service, as specified in the Customer Order.

Managed Extension Service means a combination of a GBS Half Circuit and a GBS Whole Circuit.

Monthly Recurring Charge (MRC) means the monthly recurring charge for the REACH Network as stated in the Customer Order.

Non-REACH Circuit means a circuit on a third party network, including a local circuit or an international distant end half circuit, which is or is to be connected to the REACH Network.

Non-Restored Service means Service that has no protect path and would not be switched automatically or manually to a protect path in the event the primary work path is cut or disrupted.

Protected Service means Service that is provided on a cable system that is designed with a built-in redundant path that should automatically switch to a protect path in the event that the primary work path is cut or disrupted.

Provisioning Fault means the failure of the Service to meet the relevant ITU specifications for establishing an international private leased circuit.

REACH Network means the network operated by REACH between REACH points of presence or between a REACH point of presence and:

- (a) a Cable Station and/or Satellite Teleport; or
- (b) the effective mid point in the case of a GBS Half Circuit.

REACH Service Provisioning Point means the demarcation point for delivery of a Service as specified in the Customer Order.

Reconnection Fee means a maximum of one month of MRC.

Restored Service means Service with a dedicated protect path that would usually require a manual switching process to switch to the protect path which can require a time lag of several hours to effect in the event that the primary work path is cut or disrupted.

Satellite Teleport means a satellite earth station through which international telecommunications traffic is processed for transmission to and reception from satellites.

Scheduled Maintenance means those activities which REACH may undertake to repair and/or change the REACH Network such that there is or is likely to be an impact (Service Unavailability) on the Service, and REACH has notified the Customer of the details of the activities (scope, duration, impact, etc.) at least 10 Days in advance.

Service means the Global Bandwidth Service provided by REACH pursuant to these Service Terms and the Customer Order.

Service Commencement Date means the date at the end of the Customer Test Period on which the Customer accepts or is deemed to have accepted a Service.

Service Levels means the service provisioning and service quality guarantees applicable to the Service and made by REACH in accordance with clause 5.

Service Unavailability means the duration of a break in transmission measured from the first of ten (10) consecutive severely erred seconds (SESSs) on the particular Service until the first of ten (10) consecutive non-SESSs, which has been recorded by REACH or reported by the Customer to REACH and confirmed by REACH. An SES is a second with a bit error ratio of greater than or equal to 1 in 1000.

Third Party Operator means a telecommunications operator other than REACH.

Third Party Premises means property and assets owned or controlled by a third party.

1. ORDERING AND PROVISIONING PROCEDURE

1.1 The Customer shall sign a completed Customer Order for a Service, or for any variation or reconfiguration to an existing Service, it wishes to acquire.

1.2 REACH shall notify the Customer within five (5) Business Days after receipt of a Customer Order either that:

- (a) it requires further information to process the Customer Order, with details of the further information required;
- (b) it rejects the Customer Order, in which case neither party has any further right or obligation in respect of the relevant Service;
- (c) it accepts the Customer Order and that the EDD becomes the FDD;
- (d) is unable to meet the EDD, but proposes an alternative FDD, which the Customer may reject within three (3) Business Days, otherwise the FDD is deemed accepted; or
- (e) for GBS Half Circuits or Managed Extension Service, it accepts the Customer Order and shall subsequently notify the Customer of the FDD within three (3) Business Days of receipt by REACH of the delivery date of the distant end half circuit from the relevant Third Party Operator.

The Customer shall have the right to give REACH notice to withdraw a Customer Order at any time prior to acceptance under clauses 1.2 (c), (d) or (e) above.

1.3 The Customer Test Period shall be two (2) Business Days commencing on and from the Actual Delivery Date. If, prior to the conclusion of the Customer Test Period:

- (a) the Customer notifies REACH of a Provisioning Fault, REACH shall investigate and rectify the Provisioning Fault before re-delivering the Service to the Customer, when a new Customer Test Period shall begin; or
- (b) the Customer does not notify REACH of a Provisioning Fault, the Customer is deemed to accept the Service.

In the event of a dispute, if REACH is able to certify through tests that the Service meets the relevant ITU specifications for establishing an international private leased circuit, the Customer shall be deemed to accept the Service.

2. SUPPLY OF SERVICE

2.1 REACH shall provide and the Customer shall acquire the Service for the Minimum Commitment Period, following which the Service shall continue unless terminated in accordance with the Contract.

2.2 The Service shall be provisioned and supplied in accordance with the Service Levels set out in clause 5.

2.3 In the event the Service is suspended pursuant to the Contract due to an act or omission of the Customer, the Customer shall, in addition to its obligation to pay the Charges, pay a Reconnection Fee prior to the reactivation or other continued delivery of the Service.

2.4 Either party may terminate the Service by written notice to the other party if 2 months have passed since the Firm Delivery Date, and the Service Commencement Date has not yet occurred through no fault of the Customer. In any such case, the Customer shall not be liable for any Cancellation Charges, and any Credits that have accrued under clause 5.1 may be applied by the Customer toward the purchase of any new Global Bandwidth Service within 6 months from the date of termination.

3. NON-REACH CIRCUITS

- 3.1 If the Customer orders and REACH agrees to procure a Non-REACH Circuit, the provision of such circuit by REACH shall form part of the Service, subject to clause 5.3, and the following shall apply in respect of the Non-REACH Circuit:
- (a) the Customer shall indemnify REACH for all charges payable by REACH for the Non-REACH Circuit, which charges shall be set out separately in the Customer Order or separately notified to the Customer;
 - (b) unless the Customer nominates a particular operator, REACH shall have authority to order the appropriate Non-REACH Circuit from any Third Party Operator, on that operator's standard terms and conditions (including charges); and
 - (c) if applicable the Customer shall promptly pay all Non-REACH Circuit charges invoiced directly to the Customer by or on behalf of the Third Party Operator.
- 3.2 If the Customer arranges provisioning of the Non-REACH Circuit itself, the Customer must use its reasonable endeavours to ensure:
- (a) the Non-REACH Circuit is installed, tested and made available in time to enable the Service to be provided on or before the Firm Delivery Date;
 - (b) the interfaces between the Non-REACH Circuit and the Service conform to REACH's technical standards and specifications as notified to the Customer;
 - (c) the Third Party Operator deals directly with, and provides reasonable assistance to, REACH in relation to the connection and inter-working between the Service and the Non-REACH Circuit; and
 - (d) the continued operation of the Non-REACH Circuit during the term of the Contract, including by promptly settling all invoices therefor.

4. CHARGES

- 4.1 The Charges are payable monthly in advance on and from the Service Commencement Date and in accordance with clause 4 of the General Terms.
- 4.2 The Cancellation Charges are:
- (a) a charge calculated by multiplying the months (including parts thereof) remaining in the Minimum Commitment Period by the MRC; and
 - (b) any charges incurred directly or indirectly by REACH from a Third Party Operator after termination of the Service in respect of any Non-REACH Circuit.
- 4.3 If the Customer cancels the Service anytime after REACH accepts the Customer Order but prior to the Service Commencement Date, the Customer shall pay any and all actual costs incurred by REACH in provisioning the Service.

5. SERVICE LEVELS

The following Service Levels shall apply to all Service that is 64K and above, routed over fibre.

5.1 Service Provision Guarantee

- (a) REACH shall provide the Service on or before the Firm Delivery Date (**Service Provision Guarantee**).
- (b) If REACH fails to meet the Service Provision Guarantee, the Customer shall be entitled to a Credit calculated as follows:

Length of Delay	Credit
For each Day after the FDD	1.5% of the MRC

- (c) The Credit payable for the failure to meet the Service Provision Guarantee shall not exceed 100 percent of the MRC.
- (d) The Service Provision Guarantee shall apply only in relation to the original Firm Delivery Date and the Credit shall accrue only from that originally notified date until the Service is provided.

5.2 Service Availability Guarantee

- (a) On and from the relevant Service Commencement Date, availability of a Protected or Restored Service is guaranteed at 100% (**Service Availability Guarantee**).
- (b) If Service Unavailability occurs during the period covered by a Statement, the Customer is entitled to a Credit calculated as follows:

Cumulative Duration of Service Unavailability	Credit
1 minute - 60 minutes	3% of MRC
61 minutes - 240 minutes	5% of MRC
241 minutes - 480 minutes	10% of MRC
481 minutes - 720 minutes	15% of MRC
721 minutes - 960 minutes	20% of MRC
961 minutes - 1200 minutes	25% of MRC
1201 minutes – 1440 minutes	30% of MRC
Each 24 hour period thereafter	3% of MRC per day

- (c) The Credit for a failure to meet the Service Availability Guarantee in any month shall not exceed 100% of the relevant MRC.
- (d) Subject to clause 5.3, if an Extreme Outage occurs, the Customer shall have the right to terminate the Service within 30 Days of the end of the period during which the Extreme Outage occurred by 5 Days written notice to REACH. In such case, the Customer shall not be liable for any Cancellation Charges.

5.3 Exclusions

The Service Provision Guarantee and Service Availability Guarantee shall exclude delay, unavailability or service degradation due to:

- (a) suspension of the Service in accordance with the Contract;
- (b) inability of REACH to access the Customer's premises or Third Party Premises where such inability does not result from REACH's negligence or default;
- (c) the Customer failing to release or make available the Service for maintenance;
- (d) Service Unavailability reported by the Customer but not confirmed by REACH nor any relevant Third Party Operator;
- (e) Scheduled Maintenance notified in accordance with the Contract or any other interruptions or service changes agreed by REACH and the Customer;
- (f) an individual service outage which lasts less than one minute;
- (g) any failure of power supply at the Customer's premises or Third Party Premises;
- (h) unavailability of permits or licences from third parties, including road digging permits and licences from a building owner or manager that are required for the provision of the Non-REACH Circuit or required to enable the REACH network to access the Customer premises;
- (i) any delay in provisioning of or any fault in or service quality issue with any Non-REACH Circuits, Customer Equipment or other equipment or software that does not form part of the REACH Network; or
- (j) any act or omission by the Customer, its agents, or contractors including failure to comply with and observe REACH procedures or service guides (that have previously been provided in writing to the Customer) or unavailability of relevant personnel at times necessary for testing or connection of the Service;
- (k) Force Majeure Events or Regulatory Events.
- (l) outages or service degradation on Non-Restored Services; or
- (m) the first four (4) hours of outage or service degradation on Restored Service.

The Customer shall not be entitled to any Credit in respect of failure to meet any of the Service Levels where the failure is due to any of the events covered by the exclusions listed above.

5.4 Credit Procedure

- (a) The Customer shall notify REACH at cs@reach.com of any alleged failure to meet the Service Availability Guarantee or the Service Provision Guarantee:
 - (i) promptly and not more than 30 days after the month in which the alleged breach occurred; and
 - (ii) by providing details, including, circuit ID, relevant dates and test or performance data.
- (b) If it is found that REACH is in breach of the Service Availability Guarantee or the Service Provision Guarantee and both parties are in agreement on provision delay or outage time and the credit due, REACH shall credit the Customer in the next practicable Statement.
- (c) If a Credit is outstanding after the Service has been terminated, the Credit may be applied toward the purchase of other new GBS Services from REACH.
- (d) Any claim for a Credit must comply with the requirements set out in this clause 5.4. If the Customer fails to make a claim in accordance with these requirements, the Customer is taken to have unconditionally and irrevocably waived its right to claim the Credit.

SERVICE TERMS FOR GLOBAL INTERNET ACCESS SERVICE

These Service Terms form part of the Agreement between REACH and the Customer on and from the date REACH accepts the first Customer Order for Global Internet Access Service.

Capitalized terms are defined in the Definitions in 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.

DEFINITIONS

For the purposes of these Service Terms:

Acceptable Usage Policy means the code of practice for the Customer to use the Service, as published from time to time on REACH's internet site.

Access Port means an internet access port on the REACH Edge Router which is connected to the Customer's or End User's router and which is the demarcation point for delivery of the Service to the Customer.

Access Port IP Address means the IP address notified by REACH to the Customer from time to time for use as the REACH gateway IP address for the Access Port.

Actual Delivery Date means the date notified by REACH to the Customer from which the Service will be available for testing. This date marks the commencement of the Customer Test Period.

Additional Usage Charge is the additional charge incurred if the Customer Traffic Sent or Customer Traffic Received for an Access Port exceeds the respective Committed Usage as set out in the relevant Customer Order.

Average Packet Delivery means, for a particular zone specified in Tables 3 or 4 below, the actual average for the month of the Packet Delivery for the routes associated with that zone.

Average Transit Delay means, for a particular zone specified in Tables 3 or 4 below, the actual average for the month of the Round Trip Delay times for the routes associated with that zone.

Committed Usage means the minimum amount of bandwidth, as set out in the relevant Customer Order (in Mbit/s), for which the Customer agrees to pay and which REACH agrees to provide to the Customer.

Credit means the sole financial remedy for failure to meet the Service Levels, provided in the form of Service Credits and calculated in accordance with these Service Terms.

Customer Equipment means the hardware and software used by the Customer to connect to, access or use the Service.

Customer Equipment IP Address means the IP address provided by REACH to the Customer from time to time for use as the IP address for the Customer Equipment that will use the Service.

Customer Fault means a service-affecting or non-service-affecting fault that is identified by REACH as not attributable to the REACH Network or REACH equipment.

Customer Test Period means the period of time between the Actual Delivery Date and the Service Commencement Date, during which the Customer has been provided a Service and is able to perform testing on and evaluation of the Service.

Customer Traffic Received means the traffic (in Mbit/s) sent by REACH to the Customer via the Access Port.

Customer Traffic Sent means the traffic (in Mbit/s) sent by the Customer to REACH via the Access Port.

Day means a calendar day.

GIA Service means the service provided by REACH pursuant to the Customer Order, for the connectivity between the Customer and the internet using the REACH Network as more particularly set out in these Service Terms.

GIA Economy Service means the Service option more particularly described in clause 7.1.

GIA Economy Plus Service means the Service option more particularly described in clause 7.2.

End User means the ultimate user of the Service who does not resupply the Service to another customer.

Estimated Delivery Date (EDD) means the date specified in the Customer Order as the target date for delivery of a Service.

Extreme Outage means three consecutive calendar months of the Service being available less than 98 percent of the time the Service is guaranteed by REACH.

Firm Delivery Date (FDD) means the date notified by REACH to the Customer after receipt of the Customer Order by which REACH guarantees delivery of the Service. The calculation of this date includes the duration of the Customer Test Period.

Installation Charge means the non-recurring charge specified in the Customer Order for the connection of a Service or change to or re-connection of an existing Service.

Local Circuit means any local transmission capacity connecting the Customer site to:

- (a) the REACH Edge Router; or
- (b) an international gateway (operated by REACH or another party) which is, in turn, connected to a REACH Service Provisioning Point in another country.

Minimum Commitment Period means the contract period stated in a Customer Order from the Service Commencement Date for each Access Port.

Monthly Recurring Charge (MRC) means the monthly charges for the Access Port, including the fixed and usage-based charges, specified in the Customer Order.

Non-REACH Circuit means a circuit on a third party network, including but not limited to a Local Circuit or an international half circuit, which is or is to be connected or used to connect to the REACH Network.

Non-Restored Capacity means international transmission capacity that has no protect path and would not be switched automatically or manually to a protect path in the event the primary work path is cut or disrupted.

On-Line Service Support System (OLSS) means the REACH web site as advised to the Customer by REACH which can be accessed by the Customer to ascertain and change information about the Service and log a Service difficulty notification.

Packet Delivery means one hundred minus the average percentage over a month, measured at five-minute intervals, of IP ping packets that are lost between pairs of routers within the REACH Network.

Provisioning Fault means any packet drop when REACH performs a once-off ping test (using 1,000 IP ping packets) from the REACH Edge Router to a loopback IP address on the Customer Equipment that will use the Service.

REACH Edge Router means the edge router assigned by REACH to which the Service will be connected at the REACH Service Provisioning Point.

REACH Global Help Desk means the REACH operations centre (as advised to the Customer by REACH from time to time) where Service difficulties are to be reported.

REACH Network means the data communication network delineated by edge routers operated by REACH and used by REACH to provide the Service, based on the TCP/IP protocol suite, using any form of transmission medium.

REACH Service Provisioning Point means the premises where the REACH Edge Router and the Access Port are located.

Reconnection Fee means a maximum of 20% of one month of MRC.

Round Trip Delay means the average time over a month, measured at five-minute intervals, taken to send IP ping packets from one REACH router to another and receive back at the first router acknowledgements for the IP ping packets.

Scheduled Maintenance means those activities which REACH may undertake to repair and/or change the REACH Network such that there is or is likely to be an impact (Service Unavailability) on the Service, and REACH has notified the Customer of the details of the activities (scope, duration, impact, etc.) at least 10 days in advance.

Service means the Global Internet Access Service, the GIA Economy Service and/or the GIA Economy Plus Service as applicable.

Service Commencement Date means the date on which the Customer accepts the Service or is deemed to have accepted the Service in accordance with clause 1.3.

Service Credit means 1/30th of:

- (a) the flat rate monthly charges specified in the Customer Order; or
- (b) the Committed Usage charge specified in the Customer Order.

Service Levels mean the service provisioning and quality guarantees applicable to the Service and made by REACH as set out in clause 8.

Service Unavailability means the unavailability of the Access Port for the Customer to exchange IP traffic with the internet.

Target Average Transit Delay means, for a particular zone specified in Tables 3 or 4 below, the relevant value specified in these Tables.

Third Party Operator means a telecommunications operator other than REACH.

Third Party Premises means property and assets owned or controlled by a third party.

1. ORDERING AND PROVISIONING PROCEDURE

- 1.1 The Customer shall sign a completed Customer Order for a Service, or for any variation or reconfiguration to an existing Service, it wishes to acquire.
- 1.2 REACH shall notify the Customer within five (5) Business Days after receipt of a Customer Order either that it:
 - (a) requires further information to process the Customer Order, with details of the further information required;
 - (b) rejects the Customer Order, in which case neither party has any further right or obligation in respect of the relevant Service;
 - (c) accepts the Customer Order and that the EDD becomes the FDD; or
 - (d) is unable to meet the EDD, but proposes an alternative FDD, which the Customer may reject within three (3) Business Days, otherwise the FDD is deemed accepted.The Customer shall have the right to give REACH written notice to withdraw a Customer Order at any time prior to acceptance under clauses 1.2(c) or (d) above.
- 1.3 The Customer Test Period shall be three (3) Business Days commencing on and from the Actual Delivery Date. If, prior to the conclusion of the Customer Test Period:
 - (a) the Customer notifies REACH of a suspected Provisioning Fault, REACH shall investigate and rectify any Provisioning Fault before re-delivering the Service to the Customer, when a new Customer Test Period shall begin; or
 - (b) the Customer does not notify REACH of a suspected Provisioning Fault, the Customer is deemed to accept the Service.In the event of a dispute, if REACH is able to certify through tests that there is no Provisioning Fault, the Customer shall be deemed to accept the Service.

2. SUPPLY OF SERVICE

- 2.1 REACH shall provide and the Customer shall acquire the Service for the Minimum Commitment Period, following which the Service shall continue unless terminated in accordance with the Contract.
- 2.2 The Service shall be provisioned and supplied in accordance with the Service Levels in clause 8.
- 2.3 In the event the Service is suspended, pursuant to the Contract due to an act or omission of the Customer, the Customer shall, in addition to its obligation to pay the Charges, pay a Reconnection Fee prior to the reactivation or other continued delivery of the Service.
- 2.4 Either party may terminate the Service by written notification to the other party if two (2) months has passed since the Firm Delivery Date and the Service Commencement Date has not yet occurred. In any such case, the Customer shall not be liable for any Cancellation Charges, and any Credits that have accrued under the Service Provision Guarantee in clause 8 may be applied by the Customer toward the purchase of any Service within 6 months from the date of termination.

- 2.5 If the Customer wishes or needs to connect to a REACH Service Provisioning Point in a different country from which the Customer is based, the Service may include connectivity via REACH network facilities, as described in the Order Form, between the relevant REACH Service Provisioning Point and:
- (a) a cable station or cable termination point located in the same country;
 - (b) the effective midpoint between the international gateway serving that REACH Service Provisioning Point and the international gateway serving the Customer's locality; or
 - (c) the international gateway serving the Customer's locality.
- 2.6 The Service does not include the provision or maintenance of any Customer Equipment.
- 2.7 The Customer acknowledges and agrees that multiple Services provided from the same REACH Service Provisioning Point may not terminate on the same edge router.
- 2.8 For the purpose of improving the Service, the policy for routing packets through the REACH Network may be changed from time to time at REACH's discretion without notice to the Customer, but without affecting the Service Levels guaranteed by REACH in clause 8.
- 2.9 REACH may suspend the Service and/or terminate the Service or the Contract if the Customer fails to ensure that the Service is used in accordance with the Acceptable Usage Policy. Such suspension or termination may occur:
- (a) if the Customer has not cured such failure after 5 Business Days following notification from REACH; or
 - (b) immediately upon notice from REACH if the failure is or could adversely affect the operation of the REACH Network or the provision of services to other customers.

3. NON-REACH CIRCUITS

- 3.1 If the Customer orders and REACH agrees to procure a Non-REACH Circuit, the provision of such a circuit by REACH shall form part of the Service, subject to clause 8.5, and the following shall apply:
- (a) the Customer must indemnify REACH for all charges payable by REACH for the Non-REACH Circuit, which charges shall be set out separately in the Customer Order or separately notified to the Customer;
 - (b) unless the Customer nominates a particular operator, REACH shall have authority to order the appropriate Non-REACH Circuit from any Third Party Operator, on that operator's standard terms and conditions (including charges); and
 - (c) if applicable, the Customer shall promptly pay all Non-REACH Circuit charges invoiced directly to the Customer by or on behalf of the Third Party Operator.
- 3.2 If the Customer arranges provisioning of the Non-REACH Circuit itself, the Customer shall use its reasonable endeavours to ensure:
- (a) the Non-REACH Circuit is installed, tested and made available in time to enable the Customer Test Period to occur before the Firm Delivery Date;
 - (b) the interfaces between the Non-REACH Circuit and the Service conform to REACH's technical standards and specifications as notified to the Customer;
 - (c) the Third Party Operator deals directly with, and provides reasonable assistance to, REACH in relation to the connection and inter-working between the Service and the Non-REACH Circuit; and
 - (d) the continued operation of the Non-REACH Circuit during the term of the Contract, including by promptly settling all invoices therefor.

4. IP ADDRESSES

- 4.1 REACH grants to the Customer a non-exclusive, non-transferable, revocable licence to use the Access Port IP Address and Customer Equipment IP Address (**Licensed IP Addresses**) in the Customer Equipment for the sole purpose of enabling the Customer Equipment to access the REACH Network.
- 4.2 The Customer shall only use the Licensed IP Addresses as follows:
- (a) Access Port IP Address – as the gateway IP address for that Access Port; and

- (b) Customer Equipment IP Address – as the IP address for the Customer Equipment that will use the Service.
- 4.3 The Customer's licence to use the Licensed IP Addresses terminates immediately upon REACH ceasing to provide the Service via the relevant Access Port.
- 4.4 REACH may change a Licensed IP Address from time to time:
 - (a) on at least 14 Days' notice to the Customer; or
 - (b) immediately upon notice to the Customer, if the change is reasonably necessary for REACH to continue to provide the Service or operate the REACH Network.
- 4.5 If the Customer advertises IP addresses into the Access Port which are not provided by REACH and for which the Customer is not the registered owner, REACH may route those IP addresses on the Customer's behalf. If REACH receives a reasonable written request from the registered owner of those IP addresses to cease such routing, it shall do so as soon as reasonably practicable. REACH reserves the right to refuse to route such IP addresses through the REACH Network without written permission from the registered owner.

5. CHARGES

- 5.1 The Charges are payable by the Customer in accordance with monthly Statements. Flat rate monthly Charges shall be billed in advance. Other Charges shall be billed as they are incurred and shall appear on the monthly Statement. Billing for partial months will be pro-rated.
- 5.2 The Charges shall comprise:
 - (a) an Installation Charge, as set out in the relevant Customer Order; and
 - (b) a Monthly Recurring Charge, which is either:
 - (i) a flat-rate monthly Charge specified in the Customer Order; or
 - (ii) a monthly Committed Usage Charge, as set out in the relevant Customer Order, for use of bandwidth up to and including the level of Committed Usage for the relevant Access Port and a monthly Additional Usage Charge, which shall be the greater of:
 - (A) if the 95th percentile of Customer Traffic Sent exceeds the Committed Usage for Customer Traffic Sent, the difference between the 95th percentile of Customer Traffic Sent and that Committed Usage multiplied by the applicable rate (determined in accordance with the table of Charges set out in the relevant Customer Order) for the 95th percentile of Customer Traffic Sent; or
 - (B) if the 95th percentile of Customer Traffic Received exceeds the Committed Usage for Customer Traffic Received, the difference between the 95th percentile of Customer Traffic Received and that Committed Usage multiplied by the applicable rate (determined in accordance with the table of Charges set out in the relevant Customer Order) for the 95th percentile of Customer Traffic Received; or
 - (C) zero if neither (A) or (B) are applicable.
- 5.3 Customer Traffic Sent and Customer Traffic Received for each Access Port shall be measured over approximately 5-minute consecutive periods and, at the end of each calendar month the resulting measurements shall respectively be ranked from least to greatest. The highest 5% of the measurements for each of the Customer Traffic Sent and Customer Traffic Received shall be discarded and the remaining highest measurement (in Mbit/s) is the 95th percentile for that traffic direction for that Access Port for that calendar month.
- 5.4 The Cancellation Charges are:
 - (a) a charge calculated by multiplying the number of months (including parts thereof) remaining of the Minimum Commitment Period by the MRC for the cancelled Access Ports; and
 - (b) any charges incurred directly by REACH from a Third Party Operator after termination of the Service in respect of any Non-REACH Circuit.
- 5.5 If the Committed Usage applies across more than one Access Port, the Customer Traffic Received and the Customer Traffic Sent respectively from those Access Ports shall be aggregated together for the purposes of calculating the 95th percentile pursuant to clause 5.3 and those Access Ports shall be treated as if they were a single port for the purposes of determining whether additional charges are payable under clause 5.2(b)(ii).

- 5.6 If the Customer cancels the Service prior to the Service Commencement Date, the Customer shall pay the Installation Charge as a genuine pre-estimate of REACH's loss and not as a penalty, and must reimburse REACH for any and all actual costs incurred by REACH from Third Party Operators in respect of any Non-REACH Circuit.

6. CUSTOMER FAULT AND REPORTING

- 6.1 The Customer shall promptly notify the REACH Global Help Desk or log a report on the OLSS of any Service difficulty and provide all available details necessary to assist REACH in investigating the Service difficulty.
- 6.2 In the event of a Customer Fault:
- (a) the Customer may be required to reimburse REACH for the costs directly incurred by REACH in investigating the fault at REACH's then current reasonable time and materials rates; and
 - (b) EACH may cease work at any time without incurring any liability for failing to correct the Customer Fault.
- 6.3 If the Customer uses the OLSS, the Customer agrees to abide by the terms of use for the OLSS provided on the main page of the OLSS, and the Customer's use of the OLSS system shall constitute its agreement.
- 6.4 Traffic data provided by the OLSS showing Customer's use of the Service for each Access Port will be held by REACH for 3 months after which it may be destroyed.

7. GIA ECONOMY AND GIA ECONOMY PLUS SERVICES

- 7.1 The Customer may select the GIA Economy Service option as stated in the Customer Order and where that option has been selected by the Customer, the Customer's traffic may share a limited amount of capacity on the REACH Network with other GIA Economy Services provided in that same country.
- 7.2 The Customer may select the GIA Economy Plus Service as stated in the Customer Order and where that option is selected the Customer's traffic may be transmitted over Non-restored Capacity to connect between a REACH Service Provisioning Point and the REACH Network.

8. SERVICE LEVELS

REACH shall meet the following Service Levels with respect to the Service.

8.1 Service Provision Guarantee

- (a) REACH shall provide the Service on or before the Firm Delivery Date (**Service Provision Guarantee**).
- (b) If REACH fails to meet the Service Provision Guarantee, the Customer shall be entitled to claim a Credit determined in accordance with Table 1 below.
- (c) The Credit payable for the failure to meet the Service Provision Guarantee for a Service shall not exceed 100 percent of the MRC.
- (d) The Service will be deemed to be provisioned on the Service Commencement Date.

Table 1

No. of days provision of the Service is delayed	Credit
For every day after Firm Delivery Date	1 Service Credit

8.2 Service Availability Guarantee

- (a) On and from the Service Commencement Date, REACH guarantees availability of the Service at 100% (**Service Availability Guarantee**).
- (b) In the event of Service Unavailability, the Customer shall be entitled to claim a Credit determined in accordance with Table 2 below. Service Unavailability shall be deemed to commence at the time REACH records it being reported to the REACH Global Help Desk and shall conclude at the time REACH records the Service as being restored.

Table 2

Total Service Unavailability in any calendar month	Credit
5 min – 1 hour	1 Service Credit
Over 1 hour – 4 hours	2 Service Credits
Over 4 hours – 8 hours	3 Service Credits
Over 8 hours – 16 hours	5 Service Credits
Over 16 hours – 24 hours	6 Service Credits
For every subsequent 24 hour period	3 Service Credits

- (c) The Credit payable for the failure to meet the Service Availability Guarantee in any month shall not exceed 100% of the MRC, except in the case of GIA Economy Plus Services where it will not exceed three (3) Service Credits.
- (d) Subject to clause 8.5, and excluding the GIA Economy Plus Service, in the event of an Extreme Outage, the Customer shall have the right to terminate the Service within 30 Days of the end of the period during which the Extreme Outage occurred by 5 Days' written notice to REACH. In such case, the Customer shall not be liable for any Cancellation Charges.

8.3 Transit Delay Guarantee

- (a) On and from the Service Commencement Date, the Average Transit Delay in any relevant zone in a calendar month shall not exceed the Target Average Transit Delay for that zone set out in Tables 3 or 4 below (**Transit Delay Guarantee**).
- (b) Table 3 shall apply to GIA Economy Services and Table 4 shall apply to all Services other than GIA Economy Services and GIA Economy Plus Services. For GIA Economy Plus Services, Table 4 shall apply but with the Australia to Hong Kong, Japan and Singapore and Trans-Pacific (Japan to US) zones replaced by a single India to US zone having a Target Average Transit Delay of 345 ms.
- (c) In the event the Transit Delay Guarantee is not met for a particular zone, the Customer shall be entitled to claim one (1) Service Credit for that zone for that month.

Table 3 (for GIA Economy Services)

Zone	Hong Kong to Asian Countries	Hong Kong to Australia	Trans-Pacific	Trans-Atlantic	Domestic US
Delay	56 ms	154 ms	190 ms	100 ms	70 ms

Table 4 (for Services other than GIA Economy Services)

Zone	Intra-Asia	Australia to Hong Kong, Japan and Singapore	Trans-Pacific (Japan to US)	Trans-Atlantic	Domestic US
Delay	120 ms	154 ms	125 ms	100 ms	70 ms

Notes:

- The routes associated with each zone are specified in the OLSS or are as notified in writing by REACH from time to time.
 - The Average Transit Delay and the Average Packet Delivery for each zone will be reported in the OLSS for at least the previous full calendar month.
- (d) The Credit for failure to meet the Transit Delay Guarantee in any particular month shall not exceed one (1) Service Credit per zone.

8.4 Packet Delivery Guarantee

- (a) On and from the Service Commencement Date, the Average Packet Delivery in any relevant zone in a calendar month shall be 99% or more (**Packet Delivery Guarantee**).
- (b) The zones specified in Table 3 shall apply to GIA Economy Services and the zones specified in Table 4 shall apply to all other GIA Services, except GIA Economy Plus Services where no Packet Delivery Guarantee shall apply.
- (c) In the event the Packet Delivery Guarantee is not met for a particular zone, the Customer shall be entitled to claim a Credit determined in accordance with Table 5 below:

Table 5

Average Packet Delivery	Credit
Less than 99% to 98%	1 Service Credit
Less than 98% to 95%	2 Service Credits
Less than 95%	3 Service Credits

- (d) The Credit for failure to meet the Packet Delivery Guarantee in any particular month shall not exceed three (3) Service Credits per zone.

8.5 Exclusions

Notwithstanding any other provision in the Contract, the Service Provision Guarantee, the Service Availability Guarantee, the Transit Delay Guarantee and the Packet Delivery Guarantee shall exclude failure, delay, unavailability or service degradation due to:

- (a) suspension of the Service in accordance with the Contract;
- (b) if relevant, the inability of REACH to access the Customer's premises or Third Party Premises where such inability does not result from REACH's negligence or default;
- (c) the Customer failing to release or make available the Service for maintenance;
- (d) Service Unavailability reported by the Customer but not confirmed by REACH nor any relevant Third Party Operator;
- (e) Scheduled Maintenance notified in accordance with these Service Terms or any other interruptions or service changes agreed by REACH and the Customer;
- (f) any failure of the power supply at the Customer's premises or Third Party Premises;
- (g) unavailability of permits or licences from third parties, including licences from a building owner or manager that are required for the provision of a Non-REACH Circuit or required to enable the REACH Network to access the Customer's premises;
- (h) any act or omission by the Customer, its agents, or contractors including failure to comply with and observe REACH procedures or service guides (that have previously been provided in writing to the Customer) or unavailability of relevant Customer personnel at times necessary for connection or testing of the Service;
- (i) Force Majeure Events or Regulatory Events;
- (j) any fault in or service quality issue with any international transmission circuit (or half circuit) provided as part of the Service where either of clauses 2.5(b) or (c) above apply and the Customer has selected on the Order Form that the Service is to use un-protected international capacity;
- (k) any emergency maintenance notified to the Customer as soon as reasonably practicable;
- (l) any unauthorised change made to REACH equipment by the Customer;
- (m) any delay in provisioning of or any fault in or service quality issue with any Non-REACH Circuits, Customer Equipment or other equipment or software that does not form part of the REACH Network; or
- (n) any abuse or fraud or failure to comply with the Acceptable Usage Policy, on the part of the Customer or its End Users.

The Customer shall not be entitled to any Credit in respect of failure to meet any of the Service Levels where the failure is due to any of the events covered by the exclusions listed above.

8.6 Credit Claim Procedure

- (a) The Customer shall notify REACH at cs@reach.com of any alleged failure to meet the Service Levels:
 - (i) promptly and not more than 30 days after the month in which the alleged breach occurred; and
 - (ii) by providing details, including the circuit or service ID, relevant dates and test or performance data.
- (b) If it is found that REACH is in breach of the Service Levels and both parties are in agreement on the Credit due, REACH shall credit the Customer in the next practicable Statement.
- (c) If a Credit is outstanding after the Service has been terminated, the Credit may be applied toward the purchase of other Services from REACH within six (6) months of the termination date.
- (d) Any claim for a Credit must comply with the requirements set out in this clause 8.6. If the Customer fails to make a claim in accordance with these requirements, the Customer is taken to have unconditionally and irrevocably waived its right to claim the Credit.