

GENERAL TERMS AND CONDITIONS

This Agreement to provide and purchase Services is entered into as of the Effective Date by and between China Telecom (Europe) Ltd (hereinafter "CTE") and the Customer. CTE and Customer agree that unless otherwise specified in Service Order, the terms of this Agreement apply to the provision and use of all CTE Services (including but not limited to the IPLC, IEPL, IP-VPN and IP Transit) except Equipment and Maintenance Services. **If the Customer is purchasing Internet Data Centre Service the terms of this Agreement and the additional terms and conditions set out in Annex 1 to these terms shall apply. If the Customer is purchasing Equipment and Maintenance Services, the Terms and Conditions for Equipment and Maintenance Services shall apply.**

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

"**Affiliate**" means in relation to a Party any corporation or other business entity Controlled by, Controlling, or under the common Control of a party at any relevant time and a "change of Control" when applied to any party shall be deemed to have occurred if any person or persons who Control that party at the date of execution of this Agreement (or, if later, the date that party becomes bound by the terms of this Agreement) subsequently cease to Control it or if any person or persons subsequently acquire Control of it;

"**Agreement**" means the Service Order, the terms and conditions in this document, the Service Level Agreement for the Service (if applicable) and any other document incorporated by express reference;

"**Bank Guarantee**" has the meaning set out in clause 28.3;

"**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for business in London;

"**Confidential Information**" has the meaning set out in clause 24.1;

"**Control**" (including the terms "Controlling" and "Controlled") means the direct or indirect power to direct or cause the direction of the management and policies of an entity, whether through ownership of more than 50% of the voting interest, by contract, or otherwise;

"**Credit Limit**" has the meaning set out in clause 28.1;

"**CTE**" means China Telecom (Europe) Limited;

"**CTE Equipment**" means any equipment and other property, including any Network Terminating Units (NTUs), provided by CTE, its affiliates or underlying carriers for the purposes of providing the Services as set out in the Service Order;

"**Customer**" means the entity described as such on the Service Order form;

"**Customer Facilities**" has the meaning set out in clause 6.2;

"**Default Rate**" means the annual rate of two percent (2%) above the then current base rate of The Bank of England;

"**Discloser**" has the meaning set out in clause 24.1;

"**Dispute**" has the meaning set out in clause 27.1;

"**Due Date**" has the meaning set out in clause 4.4;

"**Effective Date**" means the date on which the last Party to sign the Service Order signs the Service Order;

"**Extra Charge**" has the meaning set out in clause 4.3;

"**Force Majeure Event**" has the meaning set out in clause 12.1;

"**Local Loop**" has the meaning set out in clause 9.1;

"**Loop Provider**" has the meaning set out in clause 9.1;

"**Party**" means CTE or the Customer and "**Parties**" means both of them;

"**Payment Dispute**" has the meaning set out in clause 5.1;

"**Ready for Service Date**" has the meaning set out in clause 10.1;

"**Recipient**" has the meaning set out in clause 24.1;

"**Monthly Recurring Charges**" means the monthly recurring charges for provision of the Services set forth in the Service Order;

"**Non-Recurring Charges**" means the once-off charges, if any, specified in the Service Order and includes charges incurred for installation Services, any equipment purchased from or via CTE, delivery charges and other expenses that are not included in the Monthly Recurring Charges;

"**Service Level Agreement**" means the document by that name which contains the service level commitments for the Service and which, if applicable to this Agreement, shall be incorporated by indicating as such on the Service Order;

"**Service Order**" means the agreed order for Services (evidence by signature of both parties) including any applicable price list to which these Terms and Conditions are incorporated;

"**Services**" means the telecommunications and related services to be provided to the Customer as set out in the Service Order, but excluding any Local Loop;

"**Termination Payment**" has the meaning set out in clause 11.4; and

"**Website**" means CTE's official website whose URL address is <http://www.cteurope.net/>

- 1.2 In this Agreement the words “including” and “in particular” and any similar words or expressions are by way of illustration and emphasis only and do not operate to limit the generality or extent of any other words or expressions
- 1.3 In this Agreement the singular includes the plural and vice versa and reference to any gender includes the other genders.
- 2. SERVICES**
- 2.1 CTE shall itself or through its affiliates or underlying carriers provide the Services as described in the Service Order.
- 2.2 In the event of any conflict between the terms and conditions set out in any parts of the Agreement, the terms shall be applied in the following order in decreasing order of precedence:
- (a) the Service Order;
 - (b) the terms and conditions in this document, or in any Annex to the same;
 - (c) the Service Level Agreement; and
 - (d) any other document incorporated by express reference.
- 2.3 Notwithstanding anything to the contrary set forth in this Agreement, CTE may suspend any applicable Service: (a) immediately and without notice if any misuse of such Service or misconduct with respect to such Service on the part of Customer or its customers would, in CTE’s reasonable opinion, cause material damage to CTE’s network, facilities or other property or (b) upon twenty four (24) hours’ written notice on request of a governmental authority. CTE shall have no liability for any suspension of, or a failure to provide, the relevant Service in these circumstances and, in the case of sub-clause (b), shall use reasonable endeavours to restore full provision of the applicable Services as soon as practicable.
- 2.4 CTE shall supply the Service in accordance with the Service Level Agreement, if applicable, for that Service.
- 2.5 Additional terms may apply in respect of specific Services as set out in the applicable Service Order. In addition, Annex 1 to these terms sets out the additional terms applicable to Internet Data Centre Services.
- 3. TERM**
- 3.1 This Agreement commences on and from the Effective Date and shall continue in force unless and until it is terminated in accordance with this clause 3 or clause 11. The Service Order shall set out the individual terms of any Services to be provided pursuant to this Agreement. If no term is specified for the relevant Service in the Service Order, the initial term of that Service shall be one year from the relevant Ready for Service Date.
- 3.2 Upon the expiry of the initial or the then current term for the relevant Service under the Service Order, the term for the Service shall automatically be extended until that Service is terminated by either Party upon sixty (60) Business Days’ written notice to the other Party.
- 3.3 To avoid doubt, termination or expiry of a Service shall not be deemed to terminate this Agreement unless or until all Services subject to the Service Order have terminated.
- 4. PRICING AND BILLING**
- 4.1 Commencing on the Ready for Service Date for the relevant Service, the Customer shall pay CTE the Monthly Recurring Charges and any Non-Recurring Charge for that Service incurred so far.
- 4.2 The Monthly Recurring Charges will be invoiced in advance at the beginning of each month. If the Ready for Service Date occurs on a date other than the first day of a calendar month, the first Monthly Recurring Charges shall be reduced to an amount equal to the remaining days of the month in which the Ready for Service Date falls (including the Ready for Service Date) multiplied by a rate equal to one-thirtieth (1/30th) of the Monthly Recurring Charges. CTE shall invoice the Non-Recurring Charges on and from the Ready for Service Date, but reserves the right to invoice earlier if Customer cancels a Service or CTE terminates or cancels a Service for Customer’s breach. CTE shall invoice the Non-Recurring Charges on the basis set out in the Service Order.
- 4.3 The Monthly Recurring Charges for Services may be aggregated and invoiced on a periodic basis other than monthly. Apart from the Monthly Recurring Charges, if the Service Order specifies that additional charges may be incurred due to the actual usage of Services by Customer (“Extra Charge”), CTE reserves the right to invoice Customer Extra Charge at the end of each calendar month following the relevant Ready for Service Date.
- 4.4 Customer shall pay each invoice issued pursuant to this Agreement within 30 calendar days of the date of the invoice (“**Due Date**”).
- 4.5 In addition and without prejudice to any other remedies CTE may have, if Customer fails to pay any amount when due, CTE may charge interest on the unpaid balance compounded daily from the Due Date until the date paid at the Default Rate. CTE may also net or set-off amounts payable by CTE to Customer under this Agreement or otherwise against any unpaid balance if Customer fails to pay any amount when due.
- 4.6 The charges payable by Customer under this Agreement are exclusive of, and Customer shall assume and pay promptly, all applicable taxes, including value added tax and consumption taxes directly comparable therewith such as goods and sales taxes, including any non-deductible taxes and duties on services rendered by subcontractors of CTE, and duties or levies imposed by any authority, government or government agency (except income tax attributable to CTE). The payment of such sums shall be made in full without any set-off, deduction or withholding whatsoever.
- 4.7 If any tax or duty has to be withheld or deducted from any payment under this Agreement, Customer will increase payments under this Agreement by such amount as shall ensure that after such withholding or deduction CTE receives an amount equal to the agreed charges.

- 4.8 If for any reason CTE receives in respect of any obligation of Customer under this Agreement an amount (the "**received amount**") in a currency other than in the currency specified in the Service Order (the "**contractual currency**"), the received amount shall only constitute a discharge of Customer's obligation to the extent the amount (the "**converted amount**") in the contractual currency which CTE is able to purchase with the received amount (at the prevailing market rate in the normal course of CTE's business as soon as reasonably possible after receipt) is at least the amount of the contractual currency due to CTE. If the converted amount is less than the amount in the contractual currency expressed to be due to CTE, Customer shall forthwith on demand pay to CTE an amount in the contractual currency equal to the deficit and reimburse CTE for all costs and expenses incurred in converting the received amount to the contractual currency.
- 4.9 Without limiting CTE's other rights and remedies under this Agreement, CTE may suspend all or part of the applicable Services with written notice if any part of an undisputed invoice related to those Services remains unpaid for more than 14 days after the Due Date.
- 4.10 Starting on and from the first anniversary of the Ready for Service Date, CTE may, by providing 14 calendar days' written notice, increase the Monthly Recurring Charges once annually by the prevailing Retail Price Index ("**RPI**") (as determined at the date of the notice). In addition to this, at CTE's request, the parties shall meet to undertake in good faith a review of the pricing.
- 5. BILLING DISPUTES**
- 5.1 If Customer reasonably disputes any matter contained in any invoice ("**Payment Dispute**"), the Customer shall pay the undisputed portion of the invoiced charges in accordance with clause 4. Written notice regarding any Payment Dispute must be provided to CTE identifying the charges in dispute, by the Due Date, otherwise the invoice is deemed to have been accepted by the Customer. A Payment Dispute shall not be grounds for the Customer to withhold or delay payment of any undisputed amount.
- 5.2 In the event of a Payment Dispute, the Parties shall in good faith investigate the matter and endeavour to resolve the disputed charges within thirty (30) days following notice of the Payment Dispute. If the Parties are unable to informally resolve the Payment Dispute in good faith within thirty (30) days following notice of the Payment Dispute, the Payment Dispute shall be addressed in accordance with the provisions of clause 27, during which period CTE reserves the right to suspend or terminate the relevant Services. Nothing herein shall be construed to constitute a waiver of CTE's right to terminate this Agreement or relevant Service Order or to exercise any other rights under this Agreement or at law or in equity.
- 5.3 If any disputed amount is found to be payable, interest shall accrue at the Default Rate from the Due Date, compounded daily until the date payment is made.
- 6. RESPONSIBILITIES OF CUSTOMER**
- 6.1 Unless otherwise stated in the Service Order, Customer will, without limitation, if applicable:
- 6.1.1 at its own expense, provide all reasonable preparations required to comply with the installation and maintenance specifications of CTE, its affiliates or underlying carriers, including (but not limited to) arranging access to any of the rights-of-way, conduits and equipment space necessary for CTE to provide Services to the Customer's sites;
- 6.1.2 comply with the reasonable instructions of CTE regarding installation and provision of the Services; and
- 6.1.3 be responsible for the costs of relocation of Services once installed.
- 6.2 Customer will, if applicable, provide at the Customer's sites (without limitation) the necessary equipment, protective apparatus, space, conduits, ventilation, air conditioning and electrical power ("**Customer Facilities**") required to maintain the facilities used to provide Services to Customer's sites without charge or cost to CTE in accordance with CTE's specifications. Customer will be responsible for maintaining its sites as safe places to work, which are insured against fire, theft, vandalism and other casualty. Customer shall carry out adjustments, modifications, alterations, repairs or replacements at its own expense to any Customer Facilities when so reasonably required by CTE. Customer will also be responsible for ensuring that the Customer Facilities comply with all applicable laws, governmental rules and regulations, and any reasonable rules that CTE imposes uniformly in good faith on all users of CTE facilities and services, provided that in no case shall such rules materially adversely affect Customer's access to or enjoyment of the Services provided in accordance herewith. CTE may immediately suspend, and shall not be liable for a failure to supply the relevant Services, if the Customer is in breach of this clause 6.2. CTE shall confirm such suspension by written notice within 48 hours after the event.
- 6.3 Customer will comply with all applicable laws and regulations relevant to this Agreement and its use of the Services. Customer will be responsible for obtaining and maintaining all necessary licences, permits and approvals required by any and all governmental authorities to permit Customer to receive Services and comply with its obligations under this Agreement. Customer shall use the Services in accordance with such licences, permits and approvals, and will not use Services for any unlawful or unauthorized purpose. The Customer hereby indemnifies CTE from and against all costs, losses, damages, claims or proceedings which CTE may incur, suffer or for which it becomes liable, arising out of any breach of this clause 6.3 or clause 6.5.
- 6.4 Customer hereby indemnifies CTE against any and all loss of or damage to the CTE Equipment located on Customer's sites which CTE incurs, suffers or for which it becomes liable in connection with the negligence or wilful misconduct of persons other than CTE, its affiliates, or the underlying owner. Upon expiration or termination of this Agreement, Customer will promptly return to CTE any equipment and other property owned by CTE, its affiliates or underlying carriers and provided to Customer.
- 6.5 Customer will not, nor will it permit or assist others to, and will ensure that its own employees, customers and third

parties do not, misuse, abuse or fraudulently use the Services, including, but not limited to, the following:

- 6.5.1 obtaining or attempting to obtain services by any means or device with intent to avoid payment; or
- 6.5.2 unauthorized access, alteration, destruction or any attempt thereof, of any information of another CTE customer by any means or device; or
- 6.5.3 using Services so as to impair or interfere with the use of equipment or facilities of CTE, its affiliates or underlying carriers by other customers or authorized users, or in violation of the law or in aid of any unlawful act; or
- 6.5.4 using Services to impair or interfere with the privacy of any communications; or
- 6.5.5 using Services to send, transmit or communicate any material, data, images or information which is (a) in breach of any law, regulation, code of practice or acceptable use policy; or (b) defamatory, false, abusive, indecent, obscene or menacing or otherwise offensive; or (c) in breach of confidence, copyright or other intellectual property rights, privacy or any other right of any third party.

6.6 Customer will take every reasonable precaution in its use of the Services to prevent contamination of any software or hardware or diffusion of any software or hardware contamination including computer viruses.

6.7 Customer shall be solely responsible for, and shall be the controller of:

- 6.7.1 the content of information and communications transmitted by its use of the Services; and
- 6.7.2 Customer's use and publication of communications and/or information using the Services.

6.8 Without limiting any other rights or remedies of CTE, if the Customer continues to engage in any activities in breach of this clause 6 after written notice from CTE and a 30 day cure period, CTE may suspend its performance without liability to Customer and/or terminate the relevant Services with no further obligation to Customer, provided that CTE shall be entitled to immediately suspend or terminate the relevant Services (without a cure period) if, in CTE's reasonable opinion, it is at risk of incurring legal liability in relation to Customer's breach of this clause 6. In the event of such termination, Customer shall be liable for Termination Payments.

7. CTE EQUIPMENT AND INTELLECTUAL PROPERTY

7.1 CTE Equipment shall at all times remain the sole and exclusive property of CTE, its affiliates or underlying carriers, and Customer shall have no interest or rights in it except for quiet possession and the rights to use such CTE Equipment pursuant to the terms of this Agreement. If

any CTE Equipment is lost, damaged or removed by Customer or whilst in Customer's possession, other than as a result of reasonable wear and tear, Customer hereby indemnifies CTE for an amount representing the value of such CTE Equipment immediately preceding such loss, damage or removal. The Customer shall obtain the prior written approval of CTE before connecting any equipment to CTE's or its affiliates' or underlying carriers' networks or the CTE Equipment.

7.2 Unless otherwise provided for in the Service Order, all intellectual property belonging to a Party or its licensors prior to the Effective Date or the date of any relevant Service Order, and all modifications thereto, will remain vested in that Party or its licensors.

8. OPERATIONAL AND COMMERCIAL MATTERS

8.1 The Customer shall, upon prior and reasonable notice from CTE, and subject to CTE's compliance with the Customer's reasonable security procedures, allow agents and employees of CTE, its affiliates or underlying carriers reasonable entry and access to the sites at which Services will be provided in order to, without limitation, install, inspect, maintain or repair or remove its facilities and/or equipment.

8.2 CTE reserves the right to limit any and all communications or traffic from the Customer on any route during conditions of network congestion or for any other reason which CTE in its sole discretion may determine.

9. LOCAL LOOP

9.1 If Customer desires CTE to order and administer local tail circuits (each a "**Local Loop**") in order to interconnect Customer's network and equipment with the Services, CTE reserves the right to order Local Loops from the local circuit provider (the "**Loop Provider**") of its choice. If the Loop Provider does not provide test results regarding the Local Loop to CTE, then CTE may test the Local Loop based on International Telecommunication Union recommendations. CTE may accept or reject the Local Loop in its reasonable discretion based on such test results. CTE may suspend or terminate any Local Loop upon written notice to Customer without liability to Customer in order to comply with the order or request of any court, government agency or regulatory authority, or with any applicable law, governmental rule or regulation.

9.2 In the event of interruptions to or other problems with a Local Loop, Customer shall notify CTE's designated technical point of contact via phone, fax and/or e-mail. CTE's sole obligation with regard to such interruptions shall be to use its commercially reasonable efforts to cause the Loop Provider to promptly remedy such problems.

9.3 Upon at least sixty (60) days prior written notice to Customer, CTE may change the Loop Provider for a Local Loop. Such changes shall be at CTE's sole cost and expense. Customer may request a change in a Loop Provider upon at least sixty (60) days prior written notice to CTE. If CTE accepts Customer's request the Parties shall enter into a new Service Order. Changes requested by Customer shall be at Customer's sole cost and expense, including all costs or penalties incurred by CTE due to the early termination of the original Local Loop.

- 9.4 Customer shall be liable for all reasonable termination charges incurred by CTE due to its cancellation of a Local Loop, unless (i) such cancellation is initiated by CTE pursuant to clause 9.3 or (ii) provision for sharing any such termination charge is set forth in the Service Order.
- 9.5 If Customer does not indicate on the Service Order that it desires CTE to provide (or, where necessary, to order and administer) a Local Loop on its behalf, then Customer shall be solely responsible for ordering and administering that Local Loop. CTE shall not be liable for any delays in the Ready for Service Date caused by Customer's failure to place a timely order for a Local Loop, nor for any delays in Local Loop delivery caused by Customer's Loop Provider.
- 10. ACCEPTANCE AND TESTING**
- 10.1 CTE shall provide the Customer written notice once the Services are deemed ready and available for use. Customer will have three (3) Business Days to test the Services, at Customer's expense, and notify CTE in writing if the Services are in material non-compliance with the applicable technical specifications set forth in the relevant Service Order. If no written notice is received from Customer within such three (3) Business Day period, Customer shall be deemed to have accepted the Services and the "**Ready for Service Date**" shall be the date on which CTE provided the notice of availability to Customer. If Customer delivers notice of material non-compliance within the three Business Day period, CTE shall promptly take such reasonable action as is necessary to correct any such non-compliance in the Services and shall notify Customer of a new Ready for Service Date upon correction. The Customer shall be charged on and from the Ready for Service Date.
- 11. TERMINATION RIGHTS; TERMINATION PAYMENT**
- 11.1 CTE, without prejudice to its other rights at law or in equity, may terminate this Agreement immediately with written notice if (a) if the Customer fails to provide the necessary security, Bank Guarantee or prepayment in accordance with clause 28; or (b) the Customer is in default in the payment of any undisputed amount due thereunder and has failed to remedy such default within twenty (20) days of receipt of written notice of such default from CTE.
- 11.2 Either Party may terminate this Agreement immediately with written notice to the other Party ("**Defaulting Party**") if:
- (a) the Defaulting Party is in material breach of this Agreement other than a payment default which is governed by clause 11.1), and such breach is either not capable of being remedied or has not been remedied within thirty (30) days after receipt by the Defaulting Party of written notice thereof from the non-defaulting Party. For the purposes of this clause, a 'material breach' shall be deemed to include any breach of clause 8.1 (where the Customer is the Party in breach), or a breach by either Party of clauses 15, 16, or 22; or
- (b) any of the following events occurs in respect of the Defaulting Party (i) in the event of any evidence of the potential or imminent insolvency of the Defaulting Party or that Party's insolvency, dissolution or cessation of business operations; (ii) if the Defaulting Party files a petition in bankruptcy or if a petition in bankruptcy is filed against it; (iii) if the Defaulting Party makes an assignment for the benefit of any of its creditors or similar arrangement pursuant to any bankruptcy law or similar law of an applicable jurisdiction; or (iv) the Defaulting Party is resident in a jurisdiction other than England and Wales and an event similar or equivalent to any of those specified in clauses 11.2(b)(i)(ii) or (iii) occurs in relation to such Party.
- 11.3 CTE may terminate this Agreement by providing as much notice (in writing) as reasonably practicable, if pursuant to a change to, revision or repeal of, any applicable statute or regulation, it is prohibited or restricted in its entitlement to run an electronic communications network or provide electronic communications services.
- 11.4 Without prejudice to the Customer's obligation to pay to CTE any amounts owing by the Customer in respect of charges incurred up to the date of termination and expiry of the Agreement, in the case of termination of this Agreement (a) by Customer for any reason other than pursuant to the terms of clauses 11.2, 11.3 or 17 or (b) by CTE pursuant to the terms of clauses 11.1(b) or 11.2, Customer shall remain liable to pay CTE an amount equal to (a) any Non-Recurring Charges owing by the Customer plus (b) the Monthly Recurring Charges for the remainder of the then current term under the Service Orders (ignoring any automatic extensions of the same) plus (c) the aggregate charges payable to any Affiliates or underlying carriers (if any) for which CTE is or becomes contractually liable in connection with any such termination ("**Termination Payment**"). Customer acknowledges and agrees that the Termination Payment is a genuine pre-estimate of CTE's loss in the event of early termination of this Agreement, and is not intended as a penalty.
- 11.5 Any termination of this Agreement does not affect any accrued rights or liabilities of any Party nor any provision which is expressly or by implication intended to come into force on, or continue in force after, termination.
- 12. FORCE MAJEURE**
- 12.1 Neither Party shall be liable for any delays or failures to perform its obligations under this Agreement (except the payment of money due by Customer) to the extent such delays or failure is due to any event that is beyond the affected Party's reasonable control (a "**Force Majeure Event**").
- 12.2 If either Party is delayed in performing its obligations under this Agreement as a result of a Force Majeure Event, it shall give to the other Party at the earliest possible time after the Force Majeure Event becomes known, written notice of its claim for any extension of time for its performance, together with a description of the Force Majeure Event on which it bases its claim of force majeure.
- 12.3 If a Force Majeure Event continues for a period of thirty (30) days, either Party may terminate this Agreement without penalty by giving notice in writing to the other Party.

13. LIMITATIONS

- 13.1 The Parties recognize that neither Party has control over the laws or regulations of governments pertaining to international telecommunications services or the rules and conditions established by third parties. The Services are provided on an "as is" and "as available" basis. To the fullest extent permitted by applicable law, except as expressly provided in this Agreement, CTE expressly disclaims all warranties, conditions or other terms of any kind, whether express or implied, by statute or otherwise, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose and non-infringement. Whilst CTE shall implement reasonable security measures and protocols in respect of the Services, CTE does not guarantee or warrant that the Service(s) will meet the Customer's requirements, nor that the Service(s) will be uninterrupted, timely, secure, or error free. No advice, information, or expectation, whether oral or written, obtained by Customer through use of the Service shall create any warranty not expressly made herein.
- 13.2 Provisions of applicable legislation may imply warranties or conditions or impose obligations upon CTE which cannot be excluded, restricted or modified, or which cannot be excluded, restricted or modified except to a limited extent. This Agreement must be read and construed subject to any such legislation. If any such legislation applies, then to the extent to which CTE is entitled to do so, the liability of CTE under that legislation will be limited at CTE's option to:
- 13.2.1 re-supply of the Services;
- 13.2.2 payment of the cost of having the Services supplied again; or
- 13.2.3 any other remedy prescribed by any applicable law.
- 13.3 Except as otherwise provided in this Agreement, neither Party will be liable, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, under or in connection with this Agreement for any indirect, consequential or special loss or damage, even if such loss was foreseeable or the Party who would otherwise be liable for such loss has been advised of the possibility of such loss or damage. This clause does not relieve the Customer of its obligation to make any payment hereunder.
- 13.4 CTE shall not be liable, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, under or in connection with this Agreement for (a) loss of profit, (b) loss of business or contracts, (c) loss of production or operation time, (d) loss of, or corruption to data, or e) loss of goodwill or anticipated savings.
- 13.5 Subject to clauses 13.3, 13.4, and 13.6, Customer hereby agrees that CTE's maximum aggregate liability, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with this Agreement, shall be limited to the total amount of payments made by Customer under this Agreement in the 6-month period preceding the latest event out of which liability arose.
- 13.6 The exclusions and limitations on a Party's liability in this clause 13 do not apply in the case of (i) fraud or fraudulent

misrepresentation by it or its employees; (ii) death or personal injury caused by its or its employees' negligence; or (iii) a breach by that Party of obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or (iv) under any indemnities in this Agreement; or (v) any other liability that cannot be excluded or limited under applicable law.

14. REGULATORY EVENTS AND REGULATIONS

This Agreement is made expressly subject to all present and future valid orders, approvals, directives and regulations of any regulatory body having jurisdiction over the subject matter hereof and to the laws of England and Wales, or any other governmental agency having jurisdiction, including, without limitation, the People's Republic of China. In the event that this Agreement, or any of its provisions, shall be found contrary to or in conflict with any such order, rule, regulation, directive or law, the Agreement or such provision(s) shall be deemed modified to the extent necessary to comply with any such order, rule, regulation, directive or law and shall be modified in such a way as is consistent with the form, intent or purpose of this Agreement.

15. NO AGENCY

Neither Party is authorized to act as an agent for, or legal representative of, the other Party, and neither Party shall have the authority to assume or create any obligation on behalf of, in the name of, or binding upon the other Party. No provisions of this Agreement will be considered to constitute a joint venture, partnership or agency between the Parties or to merge the assets, liabilities and undertaking of the Parties.

16. BINDING EFFECT; ASSIGNMENT

- 16.1 This Agreement is personal to, shall be binding upon and inure only to the benefit of the Parties and their permitted assigns. Nothing in this Agreement is intended to create or confer any right or remedy on any third party. Subject to the sub-contracting rights set out in clause 16.2, neither Party shall assign or otherwise transfer its rights or duties under, or other interests in, this Agreement or the proceeds of it without the other Party's prior written consent, which consent shall not be unreasonably withheld or delayed. However, either Party may assign this Agreement without consent to any Affiliate, or any successor in interest (whether by merger, reorganisation or transfer of all or substantially all of its assets). No assignment by CTE shall release the Customer of its obligations under this Agreement. Any attempt to assign any rights or duties in violation of this provision shall be null and void.
- 16.2 Notwithstanding clause 16.1, CTE may sub-contract the performance of all or part of its obligations under this Agreement. CTE shall remain primarily responsible for the acts or omissions of its sub-contractors to the extent that, if they were the acts or omissions of CTE, they would be in breach of the terms of this Agreement.

17. AMENDMENT

Subject to clause 4.10 above (or clause 16 of Annex 1 if applicable), CTE may vary the terms of this Agreement at any time by posting the changes on the Website and where reasonably practicable, giving the Customer prior notice.

18. ENTIRE AGREEMENT

This Agreement contains the entire contractual arrangements between the Parties with respect to the subject matter set out herein and all prior negotiations, correspondence, arrangements, understandings, promises and agreements with respect to such subject matter cease to have any effect.

does not include information that: i) was in Recipient's possession before receipt from Discloser free from restriction as to disclosure; ii) is independently developed by or for Recipient without reference to Discloser's Confidential Information; iii) is rightfully received by Recipient from a third party without a duty of confidentiality; or iv) is or becomes available to the public through no fault of Recipient.

19. INTERPRETATION

The words and phrases in this agreement shall have the meaning generally understood in the telecommunications industry. This Agreement shall be construed in accordance with its fair meaning and is not to be construed for or against either Party on account of which Party drafted this Agreement.

24.2

Recipient shall keep Discloser's Confidential Information confidential, and may use Discloser's Confidential Information only in connection with this Agreement, and may not disclose any such Confidential Information except as follows: a) to employees, agents, contractors or professional advisers and consultants of Recipient who have a need to know and who have been informed of Recipient's obligations hereunder; b) when disclosure is required under applicable law, if Recipient first gives Discloser notice of the required disclosure and cooperates with Discloser, at Discloser's expense, in seeking reasonable protective arrangements (however, Recipient is not required to act in a manner which would result in sanctions or other penalties); or c) with the Discloser's prior written consent to the disclosure.

20. SEVERABILITY

Any provision of this Agreement which is or becomes illegal, invalid or unenforceable shall be severed herefrom and shall be ineffective to the extent of such illegality, invalidity or unenforceability and shall not effect or impair the remaining provisions hereof, which provisions shall otherwise remain in full force and effect.

24.3

Recipient will be primarily liable to Discloser for the compliance of each person described in clause 24.2(a) with this clause 24. Recipient will preserve all proprietary markings on Discloser's Confidential Information provided to Recipient. At Discloser's request, Recipient will return all originals and copies of Confidential Information to Discloser or securely destroy it and certify its destruction.

21. REPRESENTATION OF AUTHORITY

Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is validly and legally binding on such Party and enforceable in accordance with its terms.

25. NOTICES

22. FURTHER ASSURANCES

Each of the Parties agrees to execute and deliver any and all further agreements, documents or instruments necessary to give effect to this Agreement and the transactions referred to herein or contemplated hereby or reasonably requested by any other Party to evidence its rights hereunder.

25.1

All notices, requests, or other communications hereunder shall be in writing, addressed to the Parties at the addresses set forth on the Service Order.

25.2

Notices or requests must be in writing in the English language and must be delivered by a method providing for proof of delivery (including express courier, and facsimile or email if evidence of receipt is obtained). Any notice or request will be deemed to have been given on the date of receipt.

23. GOVERNING LAW

This Agreement is governed by and construed in accordance with the laws of England and Wales.

26. PUBLICITY; USE OF NAME

Neither Party (i) shall issue any publication or press release relating to this Agreement or the relationship of the Parties under this Agreement except as may be required by law or securities exchange or agreed to in a separate written agreement between the Parties or (ii) may use the name, logo, trade name, service marks, trademarks or printed material of the other Party in any promotional or advertising material, statement, document, press release or broadcast without the prior written consent of the other Party, which consent may be granted or withheld at the other Party's sole discretion.

24. CONFIDENTIALITY

24.1 "Confidential Information" means the terms of this Agreement including the Service Order and other information of any type and form related to the Agreement and the Services that the receiving Party ("Recipient") knows or has reason to know is confidential, proprietary or trade secret information of the other Party ("Discloser"), either a) because the information is marked as confidential or proprietary at the time of disclosure or promptly after disclosure or b) because of the nature of the information and the context in which it was disclosed. Without limitation, information concerning business models and strategies, network design and traffic, Service performance, customers, requirements, and pricing is in all cases deemed to be Confidential Information, subject to the following sentence. The term "Confidential Information"

27. DISPUTE RESOLUTION

27.1

Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof ("Dispute"), must follow the dispute resolution process set out in this clause 27 before commencing proceedings. To avoid doubt, Payment

- Disputes shall be dealt with under clause 5.
- 27.2 All Disputes not able to be resolved internally by the Parties shall be finally determined by arbitration in the UK under the Arbitration Rules of the International Chamber of Commerce, which rules are deemed to be incorporated into this clause by reference. The arbitrator shall allocate all the costs of the arbitration, including the fees of the arbitrator and the reasonable attorney's fees of the prevailing party, against the party who does not prevail.
- 27.3 Nothing in this clause 27 prevents either Party from seeking urgent injunctive or interlocutory relief from a court of competent jurisdiction.
28. **FINANCIAL INFORMATION AND SECURITY**
- 28.1 If requested by CTE, the Customer shall provide financial information to determine its credit worthiness as well as any information on its identity and legal and contractual capacity within twenty-one (21) days of written notice. CTE reserves the right to withhold initiation or full implementation of Services without penalty pending the completion of a satisfactory credit evaluation. The Customer may be required to pay a deposit or, with respect to usage-based Services, become subject to a limit on the charges that the Customer may incur before a payment is required ("**Credit Limit**"). CTE may require the Customer to provide a deposit amount or Credit Limit as a pre-condition to providing the Services, notwithstanding that a credit evaluation has or has not been carried out. The amount of the deposit shall not exceed charges (or, as the case may be, estimated charges).
- 28.2 The following clauses 28.3 to 28.5 shall not apply if CTE has exercised its rights under clause 28.1 and the Customer has complied with its obligations with respect to a deposit amount or Credit Limit prior to CTE providing the Services.
- 28.3 The Customer shall, if demanded by CTE prior to the provision of Services, provide to CTE a bank guarantee acceptable to CTE ("**the Bank Guarantee**"), which is duly filled in and issued in favour of CTE, and signed by a first-rate bank located in the UK. The amount of the Bank Guarantee shall be reasonably equivalent to three (3) months of charges under this Agreement.
- 28.4 CTE is entitled to demand from the Customer a new or revised Bank Guarantee during the term, at CTE's election, when either: (i) a Bank Guarantee is already in force but the amount guaranteed no longer meets or exceeds an amount equivalent to three months' average charges (ii) in CTE's sole discretion, there is a material and adverse change in the Customer's financial conditions, business prospects or payment history.
- 28.5 The Customer must renew the Bank Guarantee before it expires, otherwise CTE may immediately suspend all or part of the Services. The Customer shall ensure the Bank Guarantee is valid or renewed until three (3) months following the expiry or termination of the Agreement.
- 28.6 At any time during the term, and provided a Bank Guarantee is not already in force, CTE may require or revise a deposit amount or Credit Limit if, in its sole discretion, there is a material and adverse change in the Customer's financial condition, business prospects, or payment history. The amount of the deposit shall not exceed the average total charges for two months for the Services.
- 28.7 If the Customer fails to provide CTE with a new or revised deposit or Bank Guarantee (where applicable) within fifteen (15) Business Days of a request from CTE under this clause 28 (as applicable), then CTE shall have the right to suspend the provision of Services to the Customer without liability upon notice to the Customer. CTE shall have the right to apply the deposit or Bank Guarantee to cure any payment defaults, and shall refund any amount of deposit or allow a discharge of the Bank Guarantee, less any amount for payments still owing to CTE by the Customer, no later than thirty (30) Business Days (in respect of the deposit) or three months (in respect of the Bank Guarantee) after termination or expiry of the Agreement. If the Customer fails to pay any charges incurred in excess of the Customer's Credit Limit within one Business Day of a request from CTE, then CTE shall have the right to suspend the provision of Services to the Customer without liability upon notice to the Customer.
29. **ANTI-BRIBERY**
- 29.1 It shall be a condition of this Agreement that, in pre-contract negotiations and in the performance of the Services: (a) the Customer has and shall at all times comply with the terms of the Bribery Act 2010; and (b) the Customer will take all necessary steps to ensure that those conducting business on behalf of the Customer (including but not limited to its workers) comply at all times with the Bribery Act 2010.
- 29.2 CTE shall be entitled to immediately terminate this Agreement at any time by written notice to the Customer (and without a payment in lieu of notice) if the Customer (or personnel of the Customer) are guilty of any fraud, dishonesty, or act of bribery.
30. **MISCELLANEOUS**
- 30.1 No waiver by either Party of any provisions of this Agreement shall be binding unless made expressly and confirmed in writing. Any such waiver shall relate only to such matter, non-compliance or breach as it relates to and shall not apply to any subsequent or other matter, non-compliance or breach. The failure of either Party to enforce or insist upon compliance with any of the provisions of this Agreement or the forbearance or waiver thereof, in any instance, shall not be construed as a general waiver or relinquishment of any such right.
- 30.2 This Agreement may be executed in several counterparts, each of which shall constitute an original, but all of which shall constitute one and the same instrument.
- 30.3 A person who is not a Party has no right to enforce any terms of this Agreement under the Contracts (Rights of Third Parties) Act 1999.

ANNEX 1

INTERNET DATA CENTRE (IDC)
 TERMS AND CONDITIONS

The following additional terms will apply in relation to the Internet Data Centre Service.

1. **DEFINITIONS**

1.1 In addition to the definitions in the Agreement, in this Annex 1 the following words shall have the corresponding definition:

Basic Remote Hands Service has the meaning given to it in Annex 1 clause 2.6.

Business Hours mean 9am to 5pm on an IDC Business Day.

Co-location Space / Customer Co-location Space means the space within the Data Centre designated by CTE for the Customer to install and operate Customer Equipment, as more particularly described in the Service Order.

Concierge Services includes Basic Remote Hands Service, Customer Equipment Receipt and Temporary Storage Service.

Cross-connect means an interconnection that exists in the Co-location Space (including interconnections that use the Data Centre environment as a carrier, such as wireless and infrared connections) which is used by the Customer to connect Customer Equipment to:

- (a) the network termination point of a domestic network located within the Data Centre or within the Data Centre Building;
- (b) Customer Equipment located elsewhere within the Data Centre;
- (c) equipment or facilities of other parties located within the Data Centre; or
- (d) the interface point within the Data Centre or Data Centre Building for the relevant Services supplied by CTE.

CTE Network means the network operated by CTE between CTE points of presence.

Customer Authorised Representative means a person notified to CTE as authorised by Customer to access the Customer Colocation Space in accordance with the IDC Service procedures.

Customer Cross-connect means an interconnection that runs between:

- (a) Customer Equipment located within the same Cabinet Space in the Co-location Space; or

- (b) consecutive Cabinet Spaces that are in the same cabinet row and which are supplied to the same Customer; or

- (c) Customer cabinets that are within the same Private Cage Space, Private Room Space or Floor Plate within Co-location Space which is wholly supplied to the same Customer.

Customer Equipment means for each Customer, all hardware, software and consumables owned and operated by the Customer, or its customers, Affiliates, or service providers, and which are housed in the Co-location Space.

Customer Equipment Receipt has the meaning given to it in Annex 1 clause 2.6.

Data Centre means the facility at which CTE provides Co-location Space which can be on one or multiple floors of the Data Centre Building.

Data Centre Building means the building where the Data Centre is located.

Emergency Maintenance means maintenance which is required to be performed urgently in order to prevent loss or damage to the Co-location Space, Data Centre, Data Centre Building, Customer Equipment or any equipment or services of any third party using the Data Centre or Data Centre Building.

Environmental Services means air-conditioning, climate control and fire protection services provided by CTE in relation to the Co-location Space.

Floor Plate has the meaning given to it in Annex 1 clause 2.3.

Internet Data Centre (IDC) Service means the provision of the Co-location Space, and may include the Concierge Services, Cross-connects, Power Service, Managed Equipment Installation Service, and any other ancillary support services as specified in the Service Order.

IDC Business Day means a day other than a Saturday or Sunday on which the banks are open for general banking business in the place where the relevant Data Centre is located.

IDC Service Guide means the document headed "CTE Data Centre Service Guide and Policies" which sets out the technical specifications and service descriptions of the IDC Service.

Month means a calendar month.

Power Feed means an electrical power cable between the nearest local power distribution point for the power system of the Data Centre to the cabinet where the Customer Equipment is located.

Power Service means the Power Feed(s) provided by CTE to Customer Equipment together with the associated electricity consumption of the Customer Equipment through the Power Feed(s), unless otherwise specified in the Service Order.

Private Cage Space has the meaning given to it in Annex 1 clause 2.3.

Private Room Space has the meaning given to it in Annex 1 clause 2.3.

Scheduled Maintenance means those activities which CTE may undertake to repair and/or change the CTE Network and/or Data Centre such that there is or is likely to be an impact (Service unavailability) on the Service, and CTE has notified the Customer of the details of the activities (scope, duration, impact, etc.) at least 14 days in advance.

Temporary Storage Service has the meaning given to it in Annex 1 clause 2.6.

2. SUPPLY OF SERVICE

2.1. The Internet Data Centre Service does not include the provision of co-location or connectivity and cabling within CTE premises provided pursuant to:

- (a) CTE's obligations as a landing party for an international submarine cable system; or
- (b) CTE's interconnection or facilities access obligations under any applicable laws, which are supplied under other CTE contractual terms and conditions.

2.2. CTE grants the Customer a licence to install, operate, maintain and repair Customer Equipment in the relevant Co-location Space for the term. The Customer, in the course of providing its own services, may allow its customers or Affiliates to install equipment in and use the Colocation Space. However, the Customer remains responsible to CTE for the Co-location Space and the Customer must ensure third parties using the Co-location Space comply with the requirements set out in this Annex 1. The Customer hereby indemnifies CTE from and against any loss, costs, damages, expenses or liabilities which CTE suffers, incurs or for which it becomes liable:

- (a) arising from claims brought against CTE by third parties in connection with the acts or omissions of the Customer; or
- (b) in connection with any third parties which are directly or indirectly authorised by the Customer to access the Co-location Space (whether or not the Customer has knowledge of the third party or its access).

2.3. The types of Co-location Space which the Customer may order and CTE may agree to provide are:

- (a) Cabinet Space – a lockable space in a cabinet or rack provided by CTE. In some special cases, CTE may provide partial Cabinet Space (e.g. quarter or half Cabinet Space), in such special cases, the Customer needs to share the same rack or cabinet (and same power feed to that rack or cabinet) with other customers;
- (b) Private Cage Space – a wire cage for use exclusively by the Customer, lockable by a mechanical key or, if the Customer requests, a card lock or key-pad lock or the like;

- (c) Private Room Space – a hard-walled room for use exclusively by the Customer, lockable by a mechanical key or, if the Customer requests, a card lock or key-pad lock or the like; or

- (d) Floor Plate – an area of bare floor space on which the Customer installs its own racks or cabinets and around which the Customer may elect to build its own cage.

2.4. As specified in the IDC Service Guide, some types of Co-location Space may not be available at every Data Centre. Where CTE agrees to provide Floor plate, Private Cage Space or Private Room Space, CTE shall provide the Customer with a floor plan attached to the Service Order which describes the layout of the Co-location Space.

2.5. Installation of Cross-connects requires CTE's written approval, which shall not be unreasonably withheld. Cross-connects shall be provided by (at CTE's discretion as far as local laws permit) either:

- (a) CTE, for which the Customer will pay the Non-Recurring Charges specified in the Service Order; or
- (b) the building owner or manager, as arranged by CTE and at the Customer's expense; or
- (c) an appropriately licensed operator arranged either by CTE at the Customer's request or by the Customer (with CTE's prior written approval) and, in each case, at the Customer's expense.

2.6. Unless the Service Order specifies that they are not available, CTE will provide the following Concierge Services:

- (a) "Customer Equipment Receipt" and "Temporary Storage Service" are services provided by CTE where CTE can receive shipments of Customer Equipment to the Data Centre during Business Hours and store the Customer Equipment in a storage space for a period not exceeding 3 calendar weeks. For any storage period greater than 3 calendar weeks, this service shall be subject to additional charges and CTE also reserves the right, in its sole discretion acting reasonably, to dispose of Customer Equipment shipped to a Data Centre which has not been removed or installed by the Customer, with the cost of disposal to be borne by the Customer. In respect of this service CTE shall not be responsible for verifying that the delivered shipments match any delivery note or packing list accompanying the shipment. CTE shall bear no responsibility for the correctness and condition of the delivered shipments even if CTE personnel have acknowledged receiving the shipments on the shipper's delivery note. CTE is not responsible for any loss, theft, or damage to the Customer Equipment shipped to the Data Centre save for in respect of CTE's negligence or wilful default. The Customer shall make its own arrangements for all shipping and equipment insurances in respect of the Customer Equipment received and stored in accordance with this clause. This service is also available to the Customer for Customer Equipment that is made available for being shipped away from the Data Centre. All other aspects of this service shall be provided by CTE to Customer in accordance with the IDC Service Guide;

- (b) "Basic Remote Hands Service" is a service where CTE provides first-line maintenance services to the Customer in

respect of Customer Equipment installed in the Co-location Space. This service involves an on-site CTE technician acting as the Customer's hands and eyes supervised remotely by a Customer Authorised Representative by telephone or other method of communication to perform simple maintenance tasks in relation to Customer Equipment which include:

- (i) Powering Customer Equipment on or off;
- (ii) Pushing a button, a reset button, or changing a toggle;
- (iii) Securing cabling and connectors that connect to the Customer Equipment;
- (iv) Reporting lights / displays on machines / terminals / consoles;
- (v) Changing of pre-labelled, press-button-removable media (tapes, CDs) on demand and not on a routine basis;
- (vi) Basic maintenance support for Cross-connects provided by CTE, confined to the checking of physical cable connections and the simple swapping of the Cross-connect cables if the Customer has provided the Co-location Space with additional Cross-connect cables for redundancy; and
- (vii) Basic inspection of the environmental conditions of the Co-location Space.

2.7 The provision of the Basic Remote Hands Service shall be remotely supervised always by a Customer Authorised Representative by telephone or other means of communication. CTE is not responsible for this service or for troubleshooting of Customer Equipment without supervision, and CTE shall not be liable for faults or damage to Customer Equipment where CTE is acting solely upon the instructions of the Customer Authorised Representative. CTE shall provide this service according to the IDC Service Guide.

2.8 The Concierge Services shall be provided at the Customer's request and:

- (a) in relation to Floor plate, according to the additional Non-Recurring Charges as specified in the Service Order; and
- (b) in relation to Cabinet Space, Private Cage Space and Private Room Space, at no additional charge to the Customer unless otherwise specified in the Service Order, although replacement of Crossconnects will be separately chargeable.

2.9 By agreement between the Customer and CTE on a case by case basis and as specified in a Service Order, CTE may provide a Managed Equipment Installation Service where CTE will install the Customer Equipment to a rack or cabinet in the Co-location Space with the scope of the works and the relevant Non-Recurring Charges to be specified in the Service Order. The Managed Equipment Installation Service shall only be offered after a feasibility study has been conducted by CTE. In order to complete the feasibility study, the Customer must provide details and drawings of the installation task, the date of the Customer Equipment delivery, and the specification of the

Customer Equipment. Testing and software configuration of the Customer Equipment is not included with this service unless otherwise specified in the Service Order.

3. CTE'S RESPONSIBILITIES

3.1. CTE shall use its reasonable endeavours to ensure that, at the Ready for Service Date:

- (a) the Co-location Space is in good condition and available in accordance with the IDC Service Guide; and
- (b) any Cross-connect installed by CTE is operational and maintained in accordance with the specification.

3.2. CTE shall monitor the Environmental Services to ensure the Co-location Space complies with the temperature and other environmental requirements set out in the IDC Service Guide.

3.3. CTE must, if it intends to do any maintenance which may materially adversely affect the Internet Data Centre Service, notify the Customer:

- (a) in the case of Scheduled Maintenance, in writing at least 14 days in advance; and
- (b) in the case of Emergency Maintenance, by the best available means as soon as reasonably practicable.

3.4. CTE retains the right to access the Co-location Space, at any time and without notice, to inspect, maintain and repair the Co-location Space.

4. CUSTOMER EQUIPMENT

4.1. The Customer must follow all guidelines and policies related to Customer Equipment as specified in the IDC Service Guide. In addition, the Customer shall:

- (a) not install Customer Equipment that exceeds the Customer equipment weight loading guidelines specified in the IDC Service Guide. If the Customer Equipment weight exceeds the maximum weight loading, Customer must order additional Co-location Space or CTE may refuse to allow the installation of Customer Equipment in excess of the maximum loading;
- (b) not connect Customer Equipment that consumes electrical power that exceeds the level of the Power Service supplied to the Customer as specified in the Service Order. Customer is also required to follow the Customer Equipment loading guidelines specified in the IDC Service Guide. If Customer Equipment draws a power loading exceeding the Power Service supplied and these guidelines, Customer must order additional capacity for the Power Service. If Customer refuses to order additional capacity, CTE reserves the right to reduce the power supplied to the Customer Equipment or disconnect some of the Customer Equipment in order to bring the power loading within the ordered Power Service; and
- (c) update the Customer Equipment list that in respect of all Customer Equipment installed in the Colocation Space according to the guidelines in the IDC Service Guide.

5. CUSTOMER EQUIPMENT DELIVERY TO AND COLLECTION FROM A DATA CENTRE

5.1. Customer must follow the policies and guidelines concerning the delivery of Customer Equipment to, and the collection of Customer Equipment from, a Data Centre as specified in the IDC Service Guide.

6. POLICIES AND PROCEDURES ON USING THE CO-LOCATION SPACE

6.1. Customer must follow the policies and procedures on using the Co-location Space as specified in the IDC Service Guide.

7. SECURITY ACCESS POLICIES

7.1. CTE shall provide Customer access to the Co-location Space according to the policies outlined in the IDC Service Guide. Customer and any Customer Authorised Representative must follow the Security Access Policies when accessing the Data Centre.

8. CUSTOMER EQUIPMENT MAINTENANCE

8.1. The Customer is responsible for maintaining Customer Equipment.

8.2. CTE may, with the prior consent of Customer and without such consent in an emergency situation, suspend operation of Customer Equipment if CTE reasonably suspects the Customer Equipment is interfering with the CTE Network, other equipment in the Data Centre or the safe and efficient operation of the Data Centre.

9. RELOCATION

9.1. The Customer is entitled to rearrange or relocate Customer Equipment in the Co-location Space without CTE's prior consent, provided that as rearranged the Co-location Space still complies with the IDC Service Guide.

9.2. Subject to Annex 1 clause 9.3, CTE shall not move, alter or affix attachments to Customer Equipment without the Customer's prior written consent.

9.3. CTE shall not re-locate Customer Equipment to another location unless:

- (a) such relocation is reasonably necessary for material technical, operational or commercial purposes; and
- (b) CTE has obtained the Customer's prior written consent, such consent not to be unreasonably withheld.

9.4. CTE, working with the Customer, will use its reasonable endeavours to minimise any adverse impact on the Customer's connectivity.

10. TITLE

10.1. Title to each item of the Customer Equipment remains with the Customer or the Customer's customer, representative, vendor, contractor or Affiliate (as the case may be), and CTE shall have no right, title or interest in or to Customer Equipment, except as expressly provided in these terms.

10.2. Title to the Co-location Space and other CTE equipment that support the provision of Co-location Space (including but not limited to: CTE supplied cabinets, racks, cable trays, patch panels, cage/room partition, electrical systems, air-conditioning systems, fire protection system, security access control system) remain with CTE.

10.3. Except where the building owner or manager provides and retains ownership in the Cross-connects, title to cabling used in Cross-connects passes to the Customer on installation. CTE grants the Customer a licence during the term of this Agreement to keep the Cross-connects installed in the Co-location Space and to use them for the purposes contemplated by these terms.

10.4. Title in Cross-connects will revert, at no charge, to CTE on termination of this Agreement.

11. NO LEASE

11.1 This is a services agreement and does not constitute a lease or sublease of real property. Customer acknowledges and agrees that it has been granted only a limited and non-exclusive licence to use the Co-location Space and the Data Centre in accordance with this Contract.

12. REMOVAL

12.1. The Customer must, at its own expense, remove all Customer Equipment and Customer Cross-connects from the Data Centre within 5 IDC Business Days after the date of expiry or termination of these Service Terms. Customer shall return the Co-location Space to CTE in the same condition as it was on the Ready for Service Date, normal wear and tear excepted.

12.2. CTE is entitled to retain Customer Equipment until the Customer pays all outstanding amounts owed to CTE and CTE Affiliates. If CTE terminates this Agreement in accordance with clause 11.1 of the Agreement as a result of Customer's failure to pay the outstanding amounts, title to and all ownership rights in Customer Equipment (which is not subject to a mortgage or legal security interest in favour of a third party) will immediately transfer to CTE for no payment.

12.3. Title to and all ownership rights in Customer Equipment (which is not subject to a mortgage or legal security interest in favour of a third party) will transfer to CTE for no payment if Customer Equipment is not removed from the Data Centre by the Customer within 15 IDC Business Days after expiry or termination of this Agreement (unless the delay is not caused by the Customer's own acts or omissions, in which event CTE shall grant the Customer an additional period to remove the equipment).

12.4. CTE may dispose of Customer Equipment which is transferred to CTE as it sees fit and may charge the Customer for any reasonable costs of disposal.

13. CUSTOMER WARRANTIES

13.1. The Customer represents and warrants that:

- (a) the Customer or its relevant customer is the owner, valid licensee, or authorised user of each unit of Customer Equipment;

- (b) the installation and use of Customer Equipment by the Customer will conform with the specifications for the Co-location Space set out in the IDC Service Guide; and
- (c) the Customer's use of all Cross-connects complies with all applicable laws.

14. INSURANCE

- 14.1 CTE is not liable for any theft, damage or loss to the Customer Equipment while located within the Data Centre, except to the extent caused by CTE's negligence or breach of its obligations in this Agreement, and then only to the extent that such theft, damage or loss is covered by CTE's policies of insurance. Any damage or loss to Customer Equipment located within the Data Centre caused by sabotage, terrorism or similar events are not covered by CTE's policies of insurance.
- 14.2 The Customer shall obtain, maintain and pay for valid and enforceable insurance policies with insurers reasonably satisfactory to CTE and with a minimum limit of USD1,000,000 per occurrence for personal injury and equipment or property damage (in respect of property owned by CTE, the Customer and third parties) within the Data Centre or arising from the Customer's use of the Internet Data Centre Service, or as otherwise required by applicable law, and, in particular, any applicable law relating to employer's or employee compensation.
- 14.3 CTE shall obtain, maintain and pay for valid and enforceable insurance policies with reputable insurers at least as good as the coverage required of the Customer by CTE.
- 14.4 The Customer shall produce to CTE on request by CTE certificates of insurance evidencing the levels of insurance required under these terms.

15. FORCE MAJEURE AND REINSTATEMENT

- 15.1 If the Data Centre and/or the Co-location Space is wholly or partially damaged by fire, typhoon, flood or by similar causes (to the extent such events are Force Majeure Events) to such an extent as to render it unsuitable for the contemplated uses under this Agreement, then either Party may elect, subject to the remaining terms in this clause 15 and within thirty (30) days after such damage, to terminate this Contract by giving the other written notice of termination. If either Party shall so elect to terminate on this basis, both Parties shall be released from further liability under the terms of the Agreement. If the Data Centre suffers only minor damage and is not rendered wholly unsuitable for the contemplated uses under this Agreement, or it is substantially damaged but the option to terminate is not exercised by either Party, CTE shall proceed promptly to repair the damage. CTE shall have a reasonable time within which to rebuild or make any repairs. Customer is responsible for repairing and replacing any damaged or destroyed Customer Equipment.
- 15.2 If CTE is unable to provide the Internet Data Centre Services as a result of Force Majeure for a period in excess of thirty (30) consecutive days, either Party may terminate this Agreement without liability upon written notice to the other Party.

16. PRICE INCREASES

- 16.1 CTE has the right by notice in writing to the Customer in any calendar year to increase the fees payable for the Internet Data Centre Services by whichever is the greater of (a) 3% of the applicable existing fee; or (b) the percentage increase from the

preceding 12 months in the Retail Price Index (or the official national price index of the country where the IDC Services are provided if not the UK), or, if this index ceases to be published, any other retail price index published in substitution; or (c) if CTE is able to provide the Customer with valid evidence that the underlying costs of providing the Internet Data Centre Services (or any of them) have increased by more than 3% over the preceding 12 months, by the relevant evidenced costs. The applicable fee adjustment shall take effect from the beginning of the applicable calendar year. By charging fees that are not increased on the basis of this clause or receiving payments for such fees CTE does not, either explicitly or tacitly, waive its right to the difference between the charged fees and the fees as they would have been if CTE would have increased on the basis of this clause.

- 16.2 In addition to the right to increase fees under Annex 1 clause 16.1 and clause 4.10 of the Agreement, CTE also has the right to charge an additional price increase for the IDC Service, provided CTE informs the Customer by notice to the Customer ("**Price Increase Notice**") stating: (i) the reason for such price rise (ii) the effective date of such price increases. The Customer has the right to object the price increase of this paragraph, by objection notice to CTE within 30 days of receipt of the Price Increase Notice. Upon expiry of the 30 day period and in the event that:
- (a) the Customer has objected to the price increase, the Agreement shall terminate after 60 days from the date of the notice of the objection, without the Parties being required to provide a further termination notice. In the period between the Price Increase Notice and the date of the termination of Agreement, the price prior to the Price Increase Notice will continue to apply; and
 - (b) CTE has not received an objection notice from the Customer, this shall be considered as a tacit acceptance of the price increase and the Customer shall be bound by the increased price as of the effective date as set forth in Price Increase Notice.