

# Specific Terms and Conditions for IDC Service (On-net Data Centers)

## 1. Service Annexure

- 1) These Specific Terms and Conditions for IDC Service and any additional attachments, if any (the "Service Annexure"), which will be deemed an integral part hereof for all purposes, when attached to or referenced properly filled out and duly executed by BUYER and SELLER in the Order Form, will constitute an agreement entered between BUYER and SELLER for the provision of IDC Service (for purposes of this Service Annexure, collectively the "IDC Service" or the "Service").
- 2) For the avoidance of doubt, Clause 11 of the Agreement shall not apply with the prior written consent from SELLER.

## 2. Definitions

- 1) "Additional Security System" means the extra physical and/or technological security feature(s) to be provided by SELLER upon BUYER's request to prevent unauthorized access or modification.
- 2) "BUYER's Personal Property" means, collectively, all cable, wiring, connecting lines, and other installations, equipment or property, including information technology equipment and infrastructure, installed or placed by, for, through, under or on behalf of BUYER or anywhere in the IDC, including in the Rack / Rack Space. Additionally, for the purposes of clarity, each of the Parties acknowledge that BUYER's Personal Property includes all equipment or property installed and/or placed anywhere in the IDC, Rack / Rack Space by any Party specifically and solely in order to provide any Service to BUYER (such as data storage / archiving and data recovery type equipment that is utilized by or for BUYER in Rack / Rack Space, but which is actually owned by a third party, other than SELLER).
- 3) "CMCC" means China Mobile Communications Group Co., Ltd., a company incorporated in China and having its registered address at 28 Jinrong Avenue, Xicheng District, Beijing, 100032.
- 4) "DE1" means the premises located at Starkenburgstraße 12, 64546 Mörfelden-Walldorf, Germany.
- 5) "GSOC" means the premises located at 3 Chun Cheong Street, Tseung Kwan O Industrial Estate, Hong Kong.
- 6) "HKSTP" means Hong Kong Science and Technology Parks Corporation.
- 7) "IDC" means SELLER's data centers located at different cities, including but not limited to DE1, GSOC, SG1 and UK1.
- 8) "Initial Term" means the term specified in the Order Form.
- 9) "Lease" means the Lease dated 18 February 2016 and registered in the Land Registry by Memorial No. 16022502070094 made between HKSTP of the one part and SELLER of the other part including all variations, amendments and supplements thereto made from time to time.
- 10) "Other Services" means various services provided by SELLER and/or CMCC, including but not limited to internet services (such as IPLC / IEPL / DPLC, IP Transit, MPLS VPN, dedicated internet access, content delivery network, SD-WAN, Cloud Connect, etc), multi-cloud services, international mobile roaming services, long distance voice services, cable interconnection, route management system, and/or local mobile television services.
- 11) "Rack" means the secured environment rack(s) ordered by BUYER pursuant to the Order Form.

- 12) "Rack Space" means the space designated for the Rack in the IDC by SELLER.
- 13) "Ready for Service Date" means the date for the commencement of the Service to be specified in the Order Form as agreed between the Parties after execution of the Agreement.
- 14) "SG1" means the premises located at 15A Tai Seng Drive, Singapore 535225.
- 15) "UK1" means the premises located at 536 Ipswich Road, Slough, SL1 4EP, UK.
- 16) "Unavailability" means power supply outage.

### **3. Service Overview**

- 1) The IDC Service set forth in the Order Form will be provided to BUYER's Personal Property to be installed, operated and maintained at the Rack / Rack Space. SELLER operates the IDC to provide connectivity to telecommunication networks and information technology equipment.
- 2) Condition Precedent. In the event of the IDC Service located at GSOC, it is SELLER's standard policy that SELLER will not provide BUYER the IDC Service as a standalone except BUYER will procure or has procured one of the Other Services.
- 3) Interconnection. BUYER acknowledges and agrees that all interconnections between the systems of BUYER and the systems of other entities must be performed in the meet-me-room ("MMR"), MDF room, telecom and broadcasting equipment ("TBE") room, telecom-entrance-room ("TER") and/or telco room by SELLER. Access to the MMR, MDF room, TBE room, TER and/or telco room is limited only to SELLER.
- 4) Security. SELLER shall operate a check-in desk at the IDC's main entrance twenty-four (24) hours per day, seven (7) Days per week. If BUYER shall require any further security system to be adopted by SELLER to protect data, both Parties shall co-operate and devise Additional Security System to serve such purpose, it being understood that if there shall be any additional costs to BUYER in implementing the Additional Security System, such costs as the Parties shall agree to be added to the Monthly Service Fee per month, and the Additional Security System shall be managed by SELLER, and comply with all applicable laws, regulations and industry standards.
- 5) No additional representations and warranties. To the extent permitted by law and except those expressly provided under this Agreement, SELLER has not made any representations or warranties regarding any of the IDC Service, including without limitation, warranties of merchantability, accuracy, or fitness for purpose.
- 6) No Lease or License. For the avoidance of doubt, this Agreement is a service agreement and nothing in this Agreement constitutes a lease, sublease, license or sublicense of real property to BUYER within the IDC, and hence BUYER has no power or right to create any sublease, sub-sublease, sublicense or sub-sublicense any part of the IDC to or share the use of the IDC with any third party.
- 7) SELLER's rights to enter the Rack / Rack Space. For the avoidance of doubt, SELLER, SELLER's agents and employees shall have the right to enter upon any and all parts of the Rack / Rack Space to examine the condition thereof, to clean, to make any repairs, alterations or additions required to be made by SELLER hereunder, to determine whether BUYER is complying with all of its obligations under this Agreement, and to exercise any of SELLER's rights or remedies hereunder and for any other purpose deemed reasonable by SELLER. In addition, BUYER does not have the exclusive right to the use of any part of the premises at IDC and SELLER has the absolute right to allocate alternative Rack/Rack Space for the user by BUYER.
- 8) Except for content which is customized and/or produced specifically for the Services, in particular, internet services, it is not SELLER's policy to exercise any editorial control over or edit or amend any content before it is transmitted or made available through SELLER. However, SELLER shall have the right to request BUYER to amend or delete any content which is uploaded or otherwise provided by BUYER where any such content is, in SELLER's sole opinion, defamatory, in breach of copyright, illegal or otherwise inappropriate to be accessed by or through the Services.

- 9) SELLER shall comply with the laws, rules, regulations, any orders or directives of government/authority having jurisdiction regarding the provision of the Service during the Term.

#### **4. Term**

- 1) An accepted Order Form between BUYER and SELLER for a Service will commence and remain in force until the end of the specified term for such Service unless terminated earlier. BUYER must specify an Initial Term for each Service in the Order Form which shall be at least one (1) year. If no Initial Term is specified, the Initial Term shall be at least one (1) year. The Initial Term will commence on the Service Commencement Date.
- 2) Upon expiry of the Initial Term, the Service will automatically renew on annual basis unless and until terminated by either Party at any time during its renewed tenure by giving not less than thirty (30) Days' prior written notice of termination to the other Party.
- 3) BUYER acknowledges and agrees that use of the Service at GSOC is subject to the terms and conditions contained in the Lease and BUYER agrees to comply with the provisions contained in the Lease that are applicable to BUYER.

#### **5. Service Pricing**

- 1) Initial Charge: (i) IDC installation charges; (ii) other non-recurring charges applicable to the Service.
- 2) Monthly Service Charge: (i) a fixed monthly amount charged by SELLER specified in the Order Form ("IDC Monthly Service Charge"); and (ii) other monthly service charges applicable to the Service, if any, which will be specified in the Order Form.
- 3) In addition to Monthly Service Charge and Initial Charge, BUYER may incur additional non-recurring charges including: (i) any non-recurring charges imposed by local access providers in connection with Service reconfigurations or cancellations; (ii) Service upgrade or modification; (iii) Service cancellation or disconnection; and (iv) miscellaneous additional charges to the extent that SELLER's extra services to install, upgrade, modify or disconnect any aspect of the Service due to BUYER's delay or default.
- 4) If SELLER's electrical supply costs increase, SELLER shall be entitled to increase the current MRC in IDC Services and NRC in Extra Power Usage Charges immediately by such rate of increase in SELLER's electrical supply costs.
- 5) Except for a change in SELLER's electrical supply costs as described above, all MRC prices in CHARGES may be subject to an upward adjustment based on the rate of inflation in accordance with the Consumer Price Index (CPI) or FIVE percent (5%) to the current MRC prices in CHARGES per year, whichever is higher.

#### **6. Service Level**

- 1) SELLER shall use all commercially reasonable endeavours to maintain the power supply level ("Service Level") on service availability ("Service Availability") at 99.99% per month.
- 2) Service Availability is measured and calculated monthly for the Service as a percentage based on the following formula:

$(A - B) / A = \text{Service Availability}$ , where:

A = the total number of minutes in the relevant month

B = the total number of minutes of duration of Unavailability of that month

#### **7. Environment Index**

- 1) SELLER shall use all commercially reasonable endeavours to maintain the environment Service Level inside the IDC at [ 99.99% ] per month (“Environment Index”).
- 2) Environment Index is defined as below two factors which SELLER targets to achieve following environment Service Level inside the IDC:

Average temperature of sensors setup in major corridors to be 24°C +/- 2°C

Average humidity of sensors setup in major corridors to be 50% +/- 20%

## 8. Service Credit Claim

- 1) If SELLER fails to meet the Service Availability for any relevant month, SELLER shall pay a service credit to BUYER calculated in accordance with the table below and paid in accordance with Paragraph 8(4) of this Service Annexure (“Service Credit”). The amount of the Service Credit will be calculated by multiplying the Service Credit Percentage as listed in the table below by the IDC Monthly Service Charge.

| Duration of Unavailability (Monthly) | Service Credit Percentage |
|--------------------------------------|---------------------------|
| >44 minutes – 4 hours                | 1%                        |
| >4 hours – 8 hours                   | 2%                        |
| >8 hours – 12 hours                  | 3%                        |
| >12 hours                            | 5%                        |

- 2) The total Service Credit for a failure to meet the Service Availability in any month shall not exceed [ 5% ].
- 3) BUYER shall notify SELLER in writing of any alleged failure to meet the Service Level promptly and not more than thirty (30) days after the end of the month in which the alleged failure occurred.
- 4) The Service Credit shall be paid not more than sixty (60) days after the end of the month in which the alleged failure occurred.

## 9. BUYER Responsibilities

- 1) BUYER shall:
  - i. be solely responsible for the content of any posting, data or transmissions via using the Service and BUYER shall indemnify and hold harmless SELLER in this respect for any loss and damage that may be suffered by it;
  - ii. be solely liable to any third party claims for the loss or damages arising from or caused by BUYER’s negligence, omission, fraud or misconduct for the use of the Service. SELLER is not liable for any theft, fire, damage or loss to BUYER, except to the extent caused by SELLER’s gross negligence or willful misconduct;
  - iii. procure and maintain, at BUYER’s expense, throughout the Term:
    - a) Commercial General Liability Insurance in an amount not less than USD 100,000 or the local currency equivalent per occurrence and unlimited per insurance period for third party bodily injury, death and/or property damage, which policy will include contractual liability coverage related to the Agreement and/or this Annexure;
    - b) Property All Risks Insurance covering BUYER’s Personal Property under this Service Annexure;
    - c) Worker’s Compensation and employer’s liability insurance in an amount not less than that prescribed by law.

All insurance policy required to be maintained by BUYER under this Annexure shall name SELLER as an additional insured. All such insurance policies should be issued by a reputable insurance company acceptable to SELLER and shall include an "absolute waiver or subrogation" clause against SELLER.

- iv. not place or handle hazardous materials, about, in, at, above or beneath the Rack / Rack Space or any portion of the IDC by or on behalf of SELLER, its transferees or partners, or their respective contractors, clients, officers, directors, partners, employees, servants, representatives, licensees, agents, or invitees;
  - v. not make or cause to be made any material alterations, additions, improvements or replacements to the Rack / Rack Space, or any other portion of the IDC without prior written consent and approval of SELLER. Upon expiry of the Term or termination or early termination of the Agreement and/or this Annexure, BUYER shall reinstate the Rack / Rack Space to its original state immediately before commencement of the Service and deliver the same to SELLER which is the owner thereof;
  - vi. only place information technology equipment, computer, switches, servers, cables and/or other communications equipment being the subject or for the purpose of enable SELLER to provide the Service in the Rack / Rack Space;
  - vii. implement anti-spamming measures with respect to any mail servers which form part of BUYER's Personal Property;
  - viii. fully cooperate and comply with all reasonable directions or requests of SELLER in relation to the installation, maintenance and use of and any modifications to BUYER's Personal Property and/or software or any renovation work done to the Rack / Rack Space or any other section within the IDC, failing which will constitute a material breach of the Agreement;
  - ix. not use the Services to host, circulate, publish, transmit, distribute any unsolicited promotional information or any content that is seditious, obscene, defamatory, indecent, threatening, offensive, liable to incite racial hatred, discriminatory, menacing or in breach of confidence;
  - x. not reproduce, distribute, publish, copy, download, upload, transmit or otherwise exploit any content which is protected by copyright or other intellectual property rights or similar rights unless BUYER owns or controls the relevant rights thereto or have obtained all the requisite licenses and approvals therefor;
  - xi. not hack, break into, access or use or attempt to hack, break into, access or use any part of the Services, the content and/or any data areas on SELLER's server(s) for which BUYER has not been authorized by SELLER; and
  - xii. take the necessary corrective action for BUYER's Personal Property (including but not limited to reinstallation, repair, maintenance or cleaning up), if SELLER is of the opinion that BUYER's Personal Property located in the said portion of the IDC is adversely affecting SELLER's or any third person's network or operating requirements.
- 2) In addition to BUYER's other obligations under the Agreement (including those in Clause 10 of the Agreement) and the obligations herein, BUYER must comply with SELLER's Acceptable Use and Security Policies and Data Centre Policy. SELLER may modify such policies at any time.
  - 3) For the avoidance of doubt, this Agreement is a service agreement and nothing in this Agreement constitutes a lease, sublease, license or sublicense of real property to BUYER within the IDC, and hence BUYER has no power or right to create any sublease, sub-sublease, sublicense or sub-sublicense any part of the IDC to or share the use of the IDC with any third party.

#### **10. Handing Over the Rack / Rack Space**

- 1) BUYER's Personal Property may be removed by BUYER at any time during the Term without damage to the IDC or the premises within which the IDC is situated provided that BUYER shall be bound by the terms of SELLER's Acceptable Use and Security Policies.

- 2) BUYER agrees that, upon the expiration or early termination of the Agreement and/or this Annexure, or the termination of BUYER's right to use the Service, BUYER (or, failing which, a contractor entrusted by SELLER) shall at BUYER's sole cost and expense, promptly remove all BUYER's Personal Property, deliver up the Rack / Rack Space to SELLER and shall restore those portions of IDC damaged by such removal of (or by the initial installation of) BUYER's Personal Property to their condition immediately prior to the installation or placement of such items.
- 3) If BUYER fails to promptly remove any such BUYER's Personal Property pursuant to Paragraph 10(2) above, SELLER shall have the right to put BUYER's Personal Property in a reasonable suitable storage space assigned by SELLER or to remove or dispose of BUYER's Personal Property at the sole discretion of SELLER and to restore those portions of IDC damaged by such removal to their condition immediately prior to the installation or placement of BUYER's Personal Property, in which case BUYER shall reimburse SELLER within fourteen (14) Days of SELLER's demand therefor, all of SELLER's costs and expenses of storage, removal and disposal of BUYER's Personal Property and restoration of SELLER's properties.

#### **11. Exclusions**

BUYER shall not be entitled to a Service Credit in respect of failure to meet the Service Level where the failure is due to any of the events covered by the exclusions listed as follows:

- 1) scheduled maintenance or any other interruptions or service changes agreed in advance in writing to the other Party at least five (5) Days in advance of the scheduled maintenance (except for emergency situation that is or is reasonably likely to have a material impact on the Service, the Party will notify the other Party as soon as reasonably practicable of any emergency work);
- 2) failure or fault of applications, equipment or facilities located on the Rack / Rack Space, whether or not supplied by SELLER and failure or fault of BUYER's applications, equipment or facilities wherever located;
- 3) acts or omissions of BUYER or its employees, agents or contractors or any user of the Service authorized by BUYER;
- 4) any fault caused by negligence or default of third parties;
- 5) any act or omission by BUYER, its employees, agents or contractors over which BUYER exercises control including failure to comply with and observe SELLER's procedures or service policies or unavailability of relevant BUYER's personnel at times necessary for testing or connection of the Service; or
- 6) any Force Majeure Events.