

電郵及有關數據中心服務

條款及細則 (此條款及細則只提供英文版本)

The Customer hereby agrees to observe and be bound by the following terms and conditions in relation to the provision of the maintenance services by the Company:

1. Definitions and Interpretation

1.1 In this Agreement, unless the context otherwise requires:

- **"Agreement"** means the agreement between the Company and the Customer in respect of the same kind of Service; an Agreement comprises of the Application as accepted by the Company, these General Terms and Conditions of Service as may be amended from time to time and Special Conditions (if any).
- **"Application"** means the written application made by the Customer to the Company requesting for provision of Service to the Customer.
- **"Charge(s)"** means the charges payable by the Customer in respect of the Service as set by the Company from time to time.
- **"Company"** means New World Telecommunications Limited.
- **"Customer"** means any bona fide person including without limitation any individual, government agency, organisation, incorporated or unincorporated company.
- **"Equipment"** means the equipment installed at the Customer's premises as more particularly described in the Application Form.
- **"Minimum Service Period"** means the period specified in the Application Form or Special Conditions and commencing on the day when the Company informs the Customer that the Service is made available to the Customer, or if no such period is specified, the period of (12) twelve months.
- **"Service(s)"** means the Equipment maintenance services provided by the Company as more particularly described in the Application Form.

- **"Special Conditions"** means those conditions specifically applicable to the identified Services for the time being and from time to time, and if there is any inconsistency between these General Terms and Conditions of Maintenance Service and Special Conditions, the terms of Special Conditions shall prevail.
- 1.2** Words importing the singular number include the plural number and vice versa and words importing masculine gender shall include the feminine and neuter genders and words importing persons shall include corporations.
- 1.3** Where two or more persons are comprised in the expressions "Customer", the Agreement herein contained shall be deemed to be made by such persons jointly and severally.
- 1.4** Headings are for convenience only and do not affect the interpretation of this Agreement.

2. Provision of Service

- 2.1** Subject to the terms and conditions set out herein, the Company shall provide and the Customer shall subscribe to the Service.
- 2.2** The Service shall commence and shall become chargeable from the date the Company first makes the Service available to the Customer or the date of Agreement, whichever is earlier.

3. Application for Service

- 3.1** All request for provision of Service shall be made in writing in the quotation, order or form prescribed by the Company ("Application Form"). The Application Form may be signed and sent to the Company either in its original form or by facsimile. If signed and transmitted by fax, the facsimile copy shall to all practical intents and purposes be deemed to be and take effect as the original, whether or not the original form is at the same time or subsequently sent to the Company. The Customer acknowledges that the Application Form may be scanned by a computer imaging system whereby the information and/or image of the Application Form will be converted into a digital format and stored in the Company's computer systems. Such stored information may from time to time be reproduced and printed on paper. A hard copy thus reproduced shall to all practical intents and purposes be deemed to be and take effect as the original, and the Customer shall not be entitled to enquire as to whether the original Application Form is still retained or has been otherwise disposed of by the Company.
- 3.2** The Customer agrees to provide all necessary information as to its identity, its use of the Service and evidence as to its credit worthiness as may be reasonably requested by the Company to assess the Application and thereafter to provide the Service. In the event that the

Customer declines to provide such information requested by the Company, the Company may decline to provide the Service to the Customer.

- 3.3** The Customer agrees that the Company may use or disclose the personal information furnished by the Customer and any information relating to the Agreement to any appointed nominee or agent of the Company for the purpose of credit reference checks, market research, publication in telephone directory and debt collection and that the Company shall be entitled to send or otherwise deliver to the Customer certain information in relation to any products or services of the Company or any of its associated company. The Company shall not be liable for any act, omission, negligence or default of such nominee or agent.
- 3.4** The Service provision lead time is subject to variation depending on availability, geographical location and other relevant circumstances.
- 3.5** The Company shall not be obliged to provide any Services to the Customer. Service provision is subject to geographic availability and credit approval.

4. Payment

- 4.1** Unless otherwise agreed, the Charges for the Service shall be payable on a yearly basis. The Customer shall punctually pay the Charges without any deduction in the manner and currently indicated on the invoices issued by the Company to the Customer or the Application Form. In the event of any dispute between the Company and the Customer relating to any charges invoiced by the Company, the books and records of the Company shall be conclusive evidence of those charges payable by the Customer.
- 4.2** Any enquiries or disputes regarding any invoice must be made to the Company within (1) one month of the issue date of the invoice. Nothing in this clause shall relieve the Customer from paying the Charges on or before the payment due date specified in the relevant invoice and/or Application Form.
- 4.3** The Company shall be entitled to charge interest on all outstanding amounts under the Agreement at the rate of 2% above the prime lending rate of The Hongkong and Shanghai Banking Corporation Limited as current from time to time calculated from the date on which the same is payable until the date of actual payment.
- 4.4** The Company shall have the right at any time to require the Customer to provide any amount of deposit to the Company (the "Deposit") as security for due payment of any Charges and performance and observance of the terms and conditions herein stipulated and on the part of the Customer to be performed and observed. The Deposit shall be refunded to the Customer without interest after termination of the Agreement and the settlement by the Customer of all outstanding Charges or claims brought by the Company in respect of any breach, non-observance or non-performance on the part of the Customer of any of the terms, conditions and obligations under the Agreement.

- 4.5** Where the Customer has more than one agreement with the Company, the Company may transfer any credit balance under one agreement to pay an amount due under any other agreement.
- 4.6** The Company may employ any person to collect any or all sums owed by the Customer to the Company under this Agreement in which case the Company shall not be liable to any act, omission, negligence or default of any such person.
- 4.7** The Customer hereby agrees that the Company may collect, store and disclose details of and information relating to the Customer (including any transactions and dealings between the Customer and the Company) to any person appointed by it in accordance with Clause 4.6 and the Customer agrees that any such person or entity may utilise such information in the course of any business carried on by such person or entity; and
- 4.8** The Customer shall indemnify the Company for all cost and expenses incurred by the Company in employing debt collecting agencies or institutions.

5. Access

The Customer shall permit the Company, its representatives or agents access to the Customer's premises at reasonable times to perform the Service.

6. Limitations and Exclusions

- 6.1** The Service is offered subject to the availability of facilities and the provisions mentioned herein. The Company reserves the right whenever necessary at its absolute discretion to suspend the Service owing to conditions beyond its reasonable control.
- 6.2** In the event that the Equipment is beyond reasonable maintenance or repair due to broken, damage, depreciation or any other reason determined by the Company, the Company may at its sole option:
- (a) terminate this Agreement without liability and compensation to the Customer by giving (30) thirty days' prior written notice to the Customer; or
 - (b) perform the overhaul of the Equipment at an additional charge to be mutually agreed with the Customer.
- 6.3** The Company shall not be obligated to repair the Equipment if the Customer fails to use and keep the Equipment in accordance with the Company's guidance and direction.
- 6.4** The Company shall not be liable or responsible to perform the Service on any system, equipment or devices not supplied or approved by the Company.

7. Customer's Obligations

- 7.1** The Customer shall keep the Equipment in accordance with the guidance and direction as advised by the Company from time to time.
- 7.2** The Customer shall keep an Equipment fault log and make available to the Company upon request.
- 7.3** The Customer shall not alter, modify or otherwise tamper with the Equipment without the written consent of the Company. In default, the Company shall have the right to reject maintenance request or to impose additional charges for the Service.

8. Liability and Indemnity

- 8.1** Save and except for any liability of the Company which cannot be excluded at law, neither the Company nor any third party service providers which are involved in the provision of the Service shall be liable to the Customer or any other person whatsoever in contract tort or otherwise at law for any cost, expenses, losses, damages or other actual, indirect or consequential losses or liabilities whatsoever, suffered or incurred by the Customer or by other person arising directly or indirectly from or out of or relating to (i) the provision and/or termination of the Service and/or in any way arising out of or in connection with the agreement under which the Service is provided and/or (ii) any accident or any willful negligent or wrongful act or omission on the part of the Company and/or the aforesaid third party service providers, their respective agents, employees or contractors, sub-contractors or suppliers in relation to this Agreement and/or (iii) the Customer's use of the Equipment, or any part thereof.
- 8.2** Customer undertakes to hold the Company harmless and to indemnify the Company for any liability, loss, damage, cost or expense which the Company may incur in connection with this Agreement. In particular, Customer agrees to hold the Company harmless and to indemnify the Company for any liability, loss, damage, cost or expense which the Company may incur as a result of any misleading, untrue or incorrect information or representations which the Customer gives to the Company in connection with this Agreement.
- 8.3** The above clauses 8.1 and 8.2 shall survive the termination of this Agreement.

9. Suspension

The Company shall be entitled to forthwith suspend the Service without notice to the Customer if:

- (a) in the reasonable opinion of the Company there is or has been fraudulent or unauthorised use of the Services;

- (b) the Customer fails to pay in full any Charges or other sum whatsoever payable by Customer to the Company when due;
- (c) the Customer is in breach of any of its obligation under the Agreement;
- (d) the relevant credit limit or usage limit has been exceeded; or
- (e) the Company is obliged to comply with an order of a court, order, instruction or request of any other competent government authority.

10. Term and termination

- 10.1** The Agreement shall come into force on and with effect from the date of acceptance by the Company of the Application and shall continue unless terminated pursuant to the provisions of the Agreement.
- 10.2** The Customer may terminate the Agreement by giving to the Company not less than (1) one month's prior notice for the termination to take effect at any time after expiration of the Minimum Service Period. The Customer may terminate before expiration of the Minimum Service Period by given reasonable notice and paying a cancellation charge to the Company equals to the amount by which the aggregate Charges for the Minimum Service Period exceeds the aggregate Charges already paid by the Customer.
- 10.3** The Company may terminate the Agreement at any time for whatever reason by giving (1) one month's notice to the Customer.
- 10.4** The Company shall be entitled to terminate the Agreement forthwith at any time in the event that:
- (a) the Customer is in breach of any of its obligation under the Agreement for the Service or other Services and the same remains unremedied for (1) one month after notice in writing thereof;
 - (b) the Customer becomes, threatens, or resolves to become or is in jeopardy of becoming the subject of bankruptcy, winding up or receivership proceedings;
 - (c) any permit, license or consent which the Company may require to possess in order to carry out its obligations under this Agreement being refused or withdrawn, provided however that in any such event the Company shall give to the Customer the maximum notice practicable in the circumstances then prevailing; or
 - (d) the Company ceases to make the Services available for whatsoever reason.

11. Consequences of Termination

- 11.1** If the Agreement is terminated by the Company or the Customer, the Customer shall pay to the Company all amounts due and payable up to the date of termination as soon as possible from the date of issue of the notice.
- 11.2** Upon termination of the Agreement, the Company shall be entitled to remove the all equipment of the Company from the Customer's premises during normal business hours.
- 11.3** If the Agreement is terminated prior to the expiry of the Minimum Service Period by the Customer or otherwise by the Company in accordance with Clause 10.4(a) or 10.4(b), the Customer shall pay to the Company the cancellation charge in accordance with Clause 10.2.
- 11.4** Termination hereunder shall be without prejudice to any then existing rights and/or claims that the Company may have against the Customer and shall not relieve the Customer from fulfilling his obligations including payment of all outstanding charges prior to date of termination.

12. Waiver of remedies

Failure or delay of the Company at any time to take action against the Customer or any other person as provided in the Agreement shall not affect the Company's right to require full performance of the Agreement at any time thereafter. Waiver by the Company of a breach of any provision of the Agreement shall not constitute a waiver of any subsequent breach nor in any way affect any right, power or remedy of the Company under the Agreement.

13. Assignment

- 13.1** The Company may transfer, assign, delegate or sub-contract any of its rights and obligations under the Agreement.
- 13.2** The Customer shall not assign, transfer, convey, license or otherwise dispose of its rights and obligations under the Agreement to any other party without the prior consent of the Company.

14. Force Majeure

The Company shall not be liable for any loss, damage or delay consequent upon strikes, lookouts, shortage of labour or materials, disputes, delays in delivery of goods or services of any subcontractor, fire, theft, storm, explosion, war, civil commotion, Act of God or any other circumstances beyond its reasonable control howsoever arising or howsoever caused.

15. Notices

Any notice required or permitted hereunder shall be in writing and left at the address of the addressee, or sent by prepaid post to the address of the addressee or sent by facsimile to the facsimile number of the addressee. A notice is deemed to be received if by hand delivery, when it is delivered; if a letter, 3 business days after posting and if a facsimile at the time of dispatch if the sender receives a transmission report which confirms that the facsimile was sent in its entirety to the facsimile number of the recipient.

16. Variation

The Company may revise the Agreement and/or introduce additional terms and conditions from time to time and such revision and/or addition shall become effective when displayed, advertised or brought to the attention of the Customer by such means as the Company thinks fit and shall be binding on the Customer if the Customer continues to use any of the Services after the effective date thereof.

17. Invalidity

If at any time any provision of the Agreement is or becomes illegal, invalid or unenforceable in any respect, the illegal, invalid or unenforceable provision shall be deemed to have been deleted from the Agreement but other provisions of the Agreement shall remain in full force and effect and shall not be affected or impaired thereby.

18. Governing Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of Hong Kong.