

## **MASTER SERVICE AGREEMENT**

**Between**

**GOIP SECUNET LIMITED**

**and**

**XXXX**

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THIS **AGREEMENT** is made the **XX** day of **XXXX**, 2023 (“Effective Date”)

## BETWEEN

- (1) **GOIP SECUNET LIMITED**, a company incorporated in Hong Kong Special Administrative Region of the People's Republic of China with company registration number 61397567, whose registered office is situated at Suite 3606, 36/F, Skyline Tower, 39 Wang Kwong Road, Kowloon Bay, Kowloon, Hong Kong (“**GOIP**”); and
- (2) **XXXX**, a company incorporated in **XXXX** with company registration number **XXXX**, whose registered office is situated at **XXXX** (“**Customer**”).

(hereinafter referred to jointly as “**Parties**” and individually as “**Party**”).

## RECITALS

- (A) GOIP provides Telecommunications and ICT services in Hong Kong Special Administrative Region of the People's Republic of China pursuant to a license of Service-Based Operators (SBO) granted by the Office of the Communications Authority (OFCA) in Hong Kong Special Administrative Region of the People's Republic of China.
- (B) **XXXX** is a telecommunications carrier duly authorized to provide international telecommunications services to its customers in **XXXXX**.
- (C) The Parties agree that GOIP will provide the respective Telecommunications and ICT services to Customer and Customer will procure from GOIP such Telecommunications and ICT services, as agreed and signed by both Parties in the respective Order Forms.

## NOW IT IS HEREBY AGREED AS FOLLOWS:

### 1. Definitions and Interpretations

#### 1.1 In this Agreement the following words have the following meaning:

“**Affiliate**” means, in relation to a Party, (i) any entity under the Control of such Party; or (ii) any entity Controlling such Party; or (iii) any other entity under the Control of a controlling entity under (ii) hereof. For the purpose of this definition, the term “Control” (including the correlative meanings of the terms “Controlling”, “Controlled by”, and “under the Control of”), as used with respect to any Party, means a Party’s (a) ownership, directly or indirectly, of equity securities or shares entitling it to exercise in the aggregate of more than fifty percent (50%) of the voting power of the entity in question; or (b) possession directly or indirectly, of the power to direct or cause the direction of the management policies of or with respect to the entity in question, whether through ownership of securities, by contract or otherwise.

“**Business Day**” means Mondays through Fridays, inclusive, but does not include national, public or bank holidays in the country or locality where the relevant action is to be taken. If the day on or by which anything is to be done is not a Business Day, that thing must be done on or by the next Business Day.

“**Charges**” means the fees payable for Service under this Agreement and are further specified in the Order Form and/or the Service Schedule of the relevant Service.

“**Confidential Information**” means all documentation, technical information, Software, business information or other materials of a confidential nature and/or that are disclosed in confidence by

either Party to the other during the term of this Master Services Agreement.

**“Force Majeure Event”** shall mean, in relation to a Party, an event out of such Party’s reasonable control and not caused by such Party’s default or negligence, including without limitation any flood, fire, lightning, earthquake, storm, explosion, meteor, accident, embargo, blockade, strikes, riot, any kind of war, act of terrorism or of the public enemy, power outage, labour dispute or shortage, or act of God; provided that for the avoidance of doubt, any inability to pay amounts due shall not be considered as a Force Majeure Event.

**“Government Authority”** means, in relation to each Party, any relevant government bodies, ministries, agencies, departments, commissions or the like of those countries where such Party and/or its Affiliate provides or uses Service.

**“Minimum Commitment Term”** means the minimum duration for each Service or each component of Service, as defined in the relevant Order and/or Service Schedule and commenced from the Service Commencement Date.

**“Order”** means the Order Form, placed by Ordering Party requesting for Service, which is accepted upon countersigned by Providing Party.

**“Order Form”** means the form specifying the information that Providing Party required when Ordering Party places a request for Service.

**“Ordering Party”** means Customer.

**“Ordering Party Equipment”** means equipment, other than Providing Party Equipment and Providing Party Sold Equipment, used by Ordering Party in connection with Service.

**“Ordering Party Premises”** means the location owned or occupied by Ordering Party or its Users to which Providing Party has agreed to provide Services.

**“Providing Party”** means GOIP.

**“Providing Party Equipment”** means equipment (including any software) owned or licensed by Providing Party and placed on Ordering Party’s premises by Providing Party for the provision of Service.

**“Providing Party Sold Equipment”** means equipment sold by Providing Party to Ordering Party (including any software licensed to Ordering Party) pursuant to a Service owned or licensed by Providing Party and placed on the Ordering Party premises by Providing Party for the provision of Service.

**“RSF Date”** has the meaning giving to it in Clause 5.3.

**“Service”** means any telecommunications services provided by Providing Party pursuant to an accepted Order and the relevant Service Schedule where applicable.

**“Service Commencement Date”** means, in respect of each Service to be provided under this Agreement, (a) the date on which Providing Party notifies Ordering Party that such Service is available for use, or (b) the date when Ordering Party first uses such Service or any part of such Service, or (c) the next day following expiry of the Trial Period of the Service unless Ordering Party notify Providing Party of any rejection and/or objections to the test results during the Trial Period, whichever is the earlier.

**“Service Schedule”** means the Service Schedule for a Service that is appended to this Agreement on the Effective Date (and those subsequently signed by the Parties stated to be part of this Agreement) which describes the Service to be provided to Ordering Party and any specific rates, terms and conditions for the provision of Service to Ordering Party. The Service

Schedule may be added or revised from time to time by mutual agreement of the Parties and in accordance with the terms of this Agreement.

“**Service Test**” means the test on Service carried by Ordering Party before the Service Commencement Date.

“**Third Party Service Agreement**” means an agreement entered into between Ordering Party and a third party service provider pursuant to this Agreement, as more specifically described in Clause 11.

**Trial Period** has the meaning given to it in Clause 5.4.

“**User**” means anyone who is properly permitted by Ordering Party to use or access the Service provided by Providing Party.

- 1.2 A reference in this Agreement to an ordinance, law or regulation includes any amendment, replacement or re-enactment and includes any by-laws, rules, regulations, orders, notices, directions, consents or permissions of the Governmental Authority made under it and any condition imposed by it.
- 1.3 Headings are inserted for ease of reference only and do not affect the interpretation of this Agreement.
- 1.4 References in this Agreement to Clauses and Schedules are references to clauses of and schedules to this Agreement. References to Paragraphs are references to paragraphs of the Schedule in which the reference is made, unless otherwise explicitly provided.
- 1.5 Unless the context otherwise requires, the singular includes the plural, the masculine gender includes the feminine and neuter genders and vice versa.

## **2. Order of Precedence**

In the event of any conflict or inconsistency between the terms of this Agreement, the order of precedence shall be as follows:

- (1) Order;
- (2) Service Schedule (if any); and
- (3) This Agreement.

## **3. Term & Duration**

- 3.1 Unless otherwise terminated earlier in accordance with this Agreement, this Agreement shall commence on the Effective Date and shall continue in full force and effect for an initial term of one year and then automatically renew on annual basis unless and until terminated by either Party in accordance with the terms and conditions of this Agreement.
- 3.2 Each Service shall have a Minimum Commitment Term as specified by Providing Party in the Order and/or Service Schedule. Unless otherwise specified and/or in the absence of mutual agreement between the Parties, the Minimum Commitment Term shall be twelve (12) months from the Service Commencement Date.
- 3.3 Unless the Parties agree otherwise as evidenced in the Order and/or Service Schedule, upon expiry of Minimum Commitment Term, the Order will automatically renew on a monthly basis unless and until terminated by either Party upon thirty (30) days written notice prior to the end of the Minimum Commitment Term or such renewed term.

#### 4. Service to be Provided

The Service to be provided hereunder shall be agreed between the Parties from time to time. Details of the Service are set out in the Service Schedule attached to this Agreement or in the Service Schedule hereafter agreed and signed by the Parties making reference to this Agreement.

#### 5. Order, Provision and Testing of Service

5.1 The Service to be provided by Providing Party to Ordering Party under this Agreement shall be on a non-exclusive basis.

5.2 To place an order for Service, Ordering Party shall sign and submit an Order Form (either the original by post or by hand or a softcopy by fax or by email) to Providing Party. Providing Party shall confirm the accuracy of information on the Order Form and availability of Service requested. Counter-signature and delivery of the Order Form (either the original by post or by hand or softcopy by fax or by email) by Providing Party to Ordering Party shall constitute an acceptance of the order for Service.

5.3 The Parties may agree in the Order Form a tentative ready for service date ("**RFS Date**") for the provision of Service by Providing Party. The RFS Date is however subject to the standard and expedited delivery intervals for the relevant Service of Providing Party and such intervals may change from time to time. The inability of Providing Party to provide the Service on or before the RFS Date or to meet any other target date will not constitute a breach by Providing Party under this Agreement. If Providing Party fails to make the Service available to Ordering Party within ninety (90) days of the relevant RFS Date, Ordering Party may by ten (10) days prior written notice to Providing Party to cancel the Service so delayed. Such cancellation will be the sole remedy of Ordering Party under this Agreement.

5.4 Once the Service is available for testing by Ordering Party, Providing Party shall inform Ordering Party in writing via email that there will be a three (3) days trial period ("**Trial Period**") for Service Test before the Service Commencement Date. Service Test shall be performed between the demarcation points identified in the Order Form. During the Trial Period, Ordering Party shall be entitled to conduct its tests and Providing Party shall provide all necessary access rights to Ordering Party to enable it to do so.

5.5 Ordering Party should not unreasonably refuse to accept the Service during the Trial Period. The date of receipt by Providing Party of Ordering Party's written confirmation stating its acceptance of Service will constitute the date of acceptance. In the event that Ordering Party fails to response during the Test Period, Service shall be deemed as accepted and the date of acceptance will be fixed as the next day following expiry of the Trial Period.

#### 6. Obligations of the Parties

6.1 Ordering Party shall be responsible for:

- (a) payment of all Charges for its use of Service on a timely manner in accordance with Clause 8;
- (b) payment of all additional fees or charges arising from its own requests and/or usage of facilities, bandwidth and/or network capacity above and beyond its entitlement as set forth in the applicable Service Schedule or Order;
- (c) upgrading and maintaining Ordering Party Equipment in line with traffic growth and expectations of the relevant Service;

- (d) providing, if Service is provided from Ordering Party Premises, a suitable and safe working environment and keeping Providing Party Equipment free and clear of any liens or encumbrances;
- (e) participating in Service Test;
- (f) obtaining and maintaining in force all necessary licences and permits, and comply with any laws, directives, regulations and conventions which may be applicable to the possession or use of Service by Ordering Party or by third parties using it through Ordering Party.

6.2 Providing Party shall be responsible for:

- (a) providing Service to Ordering Party from the Service Commencement Date pursuant to the relevant Order or Service schedule;
- (b) using its reasonable endeavors to resume the normal operation of Service with the least practicable delay in the event of interruption to Service; and
- (c) reviewing and confirming as soon as commercially practicable the Order Form placed by Ordering Party.

6.3 Each Party shall ensure that it:

- (a) obtains and maintains all licenses, approvals, consents or authorizations of the Government Authority that are necessary for it to perform its obligations under this Agreement; and
- (b) complies and remain in compliance at all times with all relevant laws, rules, ordinances, regulations and obligations of the Government Authority during its provision or use of Service (as the case may be).

6.4 Neither Party shall have any liability under this Agreement for failure to comply with its obligations in any case where the other Party does not comply with any such relevant laws, rules, ordinances, regulations or obligations or does not obtain necessary licenses, consents, authorizations or approvals from the Governmental Authority, unless such failure was within the control of such Party.

## 7. Use of Service

7.1 Ordering Party may use any Service for its own purposes, provided that:

- (a) it complies with any telecommunications legislation, including applicable tariffs, or any licence applicable to it in any country where Service is provided;
- (b) it or any User does not use Service to send any communication which is illegal;
- (c) the use of Service by it or any User does not violates the acceptable usages of any networks, equipment or services which are assessed through Providing Party's network;
- (d) it or any User does not use Service in a manner which is fraudulent, deceptive or misleading;
- (e) it shall remain responsible for any access and use of Service by its Users, all charges incurred and compliance with all terms and conditions of this Agreement by it and its User; and
- (f) it ensures that its list of User is kept current, and that it terminates access immediately for

anyone who is no longer a User.

7.2 So far as may be permitted by relevant law and regulation, it is agreed that Providing Party will have no liability and Ordering Party will make no claim in respect of any matter arising from any use of Service which is contrary to Clause 7.1 and/or Providing Party's specific reasonable instructions, such instructions to be provided in writing according to Clause 18.

7.3 Except as may be otherwise specifically provided under this Agreement, the obligations and responsibilities of Providing Party under this Agreement are solely to Ordering Party and not to any third party and User. Ordering Party will keep harmless and will indemnify Providing Party, its Affiliates, officers, employees, agents and subcontractors against any liabilities or costs arising from any and all claims by any third party and User in connection with the use of Service.

## **8. Charges, Billing and Payment**

8.1 The Charges for Service, including but not limited to installation fee, monthly service fee and other expenses, are set out in and will be calculated in accordance with the applicable Order and/or Service Schedule. Providing Party will issue invoice to Ordering Party covering the installation fee (if applicable) upon countersigning the Order Form. Upon receipt of such invoice, Ordering Party shall pay for the installation fee within thirty (30) days.

8.2 Charges for monthly recurring charges and other expenses on lump sum basis will begin to accrue on the Service Commencement Date and Providing Party will invoice Ordering Party in advance. For Charges on periodic usage basis, it will be calculated in accordance with the details recorded by, or on behalf of, Providing Party and Providing Party will invoice Ordering Party in arrears. Providing Party shall, on the 1st day of each month, issue invoice to Ordering Party. For the avoidance of doubt, where an invoice of an Order only covers a fraction of the month, the monthly recurring charges shall be calculated on pro rata basis by dividing the total calendar days of that month.

8.3 Ordering Party must pay all invoices in full within thirty (30) days after the issue date of Providing Party's invoice without any set-off, counterclaim or deduction. Where applicable, Providing Party may set-off any amounts it owes to Ordering Party against any amounts owed by Ordering Party to Providing Party under this Agreement. Providing Party may, in its sole discretion, charge interest from the due date, to any past due amounts at a monthly rate of two (2) percent.

8.4 Delay or non-payment of charges may lead to a suspension or termination of Service. The reconnection fee of USD250 will be charged for each reconnected service. The Customer may only request reconnection of the Services when the outstanding Fees and Charges have been settled.

8.5 Unless otherwise provided in the Order and/or the Service Schedule, Providing Party will invoice Charges and Ordering Party will pay all Charges in United States Dollars. Charges are exclusive of applicable value-added, sales, use, excise, customs, duties or other taxes including but not limited to value added tax and withholding tax, fees or surcharges (including but not limited to regulatory fees or surcharges) ("**Taxes**"), relating to the sale, purchase, transfer of ownership, delivery, installation, license, use or processing of Providing Party Equipment and/or Providing Party Provided Equipment or provision of Service under this Agreement. Each Party shall be responsible to pay such Taxes, which it is liable to pay under the applicable law in connection with or as a result of the signing of this Agreement.

8.6 In the event that payment of any amount of the Charges becomes subject to withholding tax, levy or similar payment obligation on sums due to Providing Party under this Agreement, such withholding tax shall be borne and paid by Ordering Party.

8.7 Ordering Party will promptly, but in no event later than thirty (30) days from the date of invoice, notify Providing Party in writing of any dispute to the invoice, together with all the information

relevant to the Dispute, including the invoice in Dispute, the disputed amount, reason of Dispute and the facts on which Ordering Party relies to support the Dispute. If no Dispute is raised within thirty (30) days from the date of invoice, Ordering Party irrevocably waives all rights to raise Dispute it may otherwise have or had had to do so.

- 8.8 Ordering Party must pay all undisputed amount of an invoice in accordance with Clause 8.3 unless the disputed amount is less than five percent (5%) of the invoice amount in which case Ordering Party must pay for the invoice in full. Where the disputed amount is equal to or more than five percent (5%) of the invoice amount, Ordering Party must pay the undisputed amount in full.
- 8.9 The Parties shall cooperate with each other to resolve any disputed invoice. Any disputed amount, which is subsequently determined or resolved to be sustained but has already been paid by Ordering Party, shall be credited to Ordering Party in the invoice for the next month. If the disputed amount is not sustained, Ordering Party shall pay such amount within seven (7) days with interest at a rate determined in the manner described in Clause 8.3 from the date on which payment of the invoice was due until full payment.

## **9. Providing Party Equipment and Providing Party Sold Equipment**

- 9.1 If Providing Party Equipment or Providing Party Sold Equipment is required to be installed at a location at which Providing Party agrees to provided Service so as to enable Providing Party to provide Service, Ordering Party will, unless otherwise agreed, prior to installation work by Providing Party at its own expenses,
- (a) prepare the location for installation, including but not limited to providing adequate space, heating and cooling and electrical power;
  - (b) obtain all necessary consents, including consents for any necessary alterations to the buildings;
  - (c) provide Providing Party or Providing Party's agents and/or subcontractors with reasonable access to the location for installation and maintenance;
  - (d) provide a suitable and safe working environment, including but not limited to all necessary trunks, conduits and cable trays, in accordance with the relevant installation standards;
  - (e) provide any electricity and telecommunication connection points required by Providing Party; and
  - (f) provide any openings in the buildings required to connect such equipment to appropriate transport facilities.
- 9.2 Ordering Party is responsible for Providing Party Equipment and must not move, add to, modify or in any way interfere with Providing Party Equipment, nor allow anyone else (other than those authorized by Providing Party) to do so. Ordering Party will be liable to Providing Party for any loss of or damage to the Providing Party Equipment, except where the loss or damage is due to fair wear and tear or is caused by Providing Party or anyone acting on behalf of Providing Party.
- 9.3 Unless otherwise agreed, risk in all Providing Party Sold Equipment shall pass to Ordering Party on delivery to Ordering Party by Providing Party in accordance with the terms of this Agreement. Title in all Providing Party Sold Equipment shall pass to Ordering Party upon payment in full to Providing Party of the price for Providing Party Sold Equipment.
- 9.4 Upon termination of a Service or this Agreement for any reason, Order Party shall within seven (7) days make available all Providing Party Equipment for removal or return in the same condition when as originally installed (except fair wear and tear) or pay a mutually agreed restoration or

retention fee.

## 10. Connection of Ordering Party Equipment to Service

- 10.1 Ordering Party must ensure that any Ordering Party Equipment connected to or used with Service is connected and used in accordance with any instructions, safety and security procedures applicable to the use of that equipment.
- 10.2 Ordering Party must ensure that any Ordering Party Equipment attached (directly or indirectly) to Service is technically compatible with Service and approved for that purpose under any applicable laws and regulations. Ordering Party shall be responsible for upgrading Ordering Party Equipment to support Service and providing environmentally suitable equipment rooms that comply with applicable laws and regulations.

## 11. Third Party Service Provider

It may be necessary for any reasons for Providing Party to obtain Service (in whole or in part) directly from a third party service provider pursuant to a separate agreement ("**Third Party Service Agreement**"). At the request of Ordering Party, Providing Party may arrange Third Party Service Agreement to be negotiated for and on behalf of Ordering Party. Upon Ordering Party's acceptance of all the terms conditions in the Third Party Service Agreement, Providing Party may act as an agent of Ordering Party whereby its responsibility will be limited to performance of the specific obligations as set for the in the applicable Order Form and will not assume any liability under the Third Party Service Agreement. Ordering Party will indemnify Providing Party for any costs or liabilities that Providing Party may incur under such Third party Service Agreement, including without limitation, any cancellation penalties incurred if all or a portion of the applicable Service is terminated or cancelled.

## 12. Suspension of Service

- 12.1 Providing Party may, without terminating this Agreement and without liability (solely as a result of exercising its right) immediately suspend whole or part of Service it provides to Ordering Party under this Agreement until further notice if:
- (a) Ordering Party fails to pay any sums due under this Agreement provided that Providing Party has given seven (7) days' prior notice to Ordering Party; or
  - (b) Ordering Party commits a breach of any material obligation under this Agreement and in the case of a remediable breach, fails to remedy such breach after receiving thirty (30) days' written notice to do so
  - (c) Providing Party is obliged to suspend whole or part of Service in compliance with an order, instruction or request of the Government Authority, emergency services organization or other competent authority; or
  - (d) Providing Party needs to safeguard the integrity and security of its network and/or repair, maintain or enhance the performance of its network; or
  - (e) Providing Party needs to repair a fault in its network or in any network equipment as a result of any unplanned outage or any other reason beyond Providing Party's control.
- 12.2 If it is necessary for Providing Party to suspend whole or part of Service it provides under this Agreement under Clause 12.1(c), (d) and (e) it shall do so for as short a period as is practicable in the circumstances and shall use its best endeavour with the least time to resume the Service. If Providing Party fails to resume the Service within sixty (60) days after suspension under Clause

12(c), (d) and (e), Ordering Party may by giving a thirty-day prior written notice to the Providing Party terminate the applicable Service without obligation to pay any Charges accruing to the Services from the date of termination.

- 12.3 Where Providing Party suspends whole or part of Service under Clauses 12.1(a) and (b), Charges for the relevant Service will continue to accrue during the period of suspension until Ordering Party cures the breach and Providing Party reactivates the provision of Service. In any event where Providing Party suspends whole or part of Services pursuant to Clause 12, Providing Party shall not be precluded to exercise its right to terminate this Agreement later in respect of that or any other event.

### 13. Termination

- 13.1 Termination by Providing Party: Providing Party may immediately terminate an Order and/or this Agreement by serving prior written notice on Ordering Party if Ordering Party:

- (a) fails to pay any Charges due and payable under this Agreement and such Charges remaining outstanding after Providing Party giving seven (7) days' written notice to Ordering Party;
- (b) commits a breach of any material obligation under this Agreement and in the case of a remediable breach, fails to remedy such breach after receiving thirty (30) days' written notice to do so; and
- (c) is the subject of a bankruptcy order, or becomes insolvent, or makes any arrangement or composition with or assignment for the benefit of its creditors, or if any of its assets are the subject of any form of seizure, or goes into liquidation, either voluntary (other than for reconstruction or amalgamation) or compulsory or if a receiver or administrator is appointed over its assets (or the equivalent of any such event in the jurisdiction of such other Party).

- 13.2 In the event of termination of an Order and/or this Agreement under Clause 13.1, Ordering Party agrees that:-

- (a) Providing Party may attach, take possession of and/or remove any Ordering Party Equipment and Ordering Party Sold Equipment located in Providing Party's premises in connection with the applicable Service and subject to the applicable laws and regulations, sell or otherwise dispose of the same in full or partial satisfaction of amounts Ordering Party owes Providing Party under this Agreement.
- (b) Providing Party may exercise such other remedies as are available to Providing Party or Providing Party Affiliates at law or in equity.
- (c) Ordering Party must pay, in addition to all Charges accruing prior to termination of this Agreement, the termination charges in accordance with Clause 13.3 below.

- 13.3 Subject to other provisions of this Clause 13, no early termination of an Order during the Minimum Commitment Term is allowed. In the event that this Agreement is terminated by Providing Party in accordance with Clause 13.1 or by Ordering Party prior to the Minimum Commitment Term, Ordering Party shall pay the following termination charges:-

- (a) all unpaid installation fee, monthly service fee and any other expenses properly accrued up to and including the date of termination;
- (b) the total amount of monthly service fee for the balance of the Minimum Commitment Term of the relevant Service;

- (c) any amount payable by Providing Party under Third Party Service Agreement; and
- (d) any Taxes payable by Ordering Party.

Both Parties acknowledge and agree that the termination charges payable by it under this Clause 13.3 is a genuine pre-estimation of the loss and damages that would have been suffered by the Providing Party and is not a penalty.

- 13.4 **Termination by Ordering Party:** If Providing Party fail to perform a material obligation under of this Agreement and has not remedied such failure after receiving thirty (30) days' written prior notice to do so, Ordering Party may terminate the applicable Service. Ordering Party will not be liable for any Charges accruing to the Services from the date of termination. If the failure of Ordering Party to use a Service is solely caused by Providing Party's failure to perform and not by any other factors, Ordering Party will not be liable for any Charges after the termination of such Service.
- 13.5 Save as otherwise specified in this Agreement, either Party may terminate any Order or this Agreement by prior written notice if:
- (a) at the end of (i) the Minimum Commitment Term of an Order or (ii) during the renewed term of this Agreement or of an Order (as the case may be) upon thirty (30) days prior written notice to the other Party subject to payment by Ordering Party to Providing Party of any sums due, including outstanding Charges and connection and/or disconnection fees for such Service so terminated; or
  - (b) any Force Majeure Event occurs; or
  - (c) if any Government Authority requires that the Service be terminated; or
  - (d) if either Party's telecommunications license permitting it to provide the Service under this Agreement is revoked or terminated and is not immediately replaced with an equivalent license or authorization.
- 13.6 For the avoidance of doubt, termination of one Order will not affect the Parties' rights and obligations with regard to other Orders made under this Agreement.

## 14. Warranty and Disclaimer

- 14.1 Providing Party provides a limited warranty for its Service as more specifically set out in the applicable Service Schedule and/or Order, if any.
- 14.2 Except for the limited warranty set out in this Agreement, each Party excludes and waives all representations, conditions, terms and warranties, whether express, implied or collateral, arising by operation of law or otherwise, including but not limited to implied warranties, terms or conditions of satisfactory, quality or fitness for a particular purpose, except to the extent such representations, conditions, terms or warranties may not be excluded by law.

## 15. Limitation of Liability

- 15.1 Nothing in this Agreement excludes or restricts in any way either Party's liability for death or personal injury resulting from negligence of that Party or its employees or agents acting in the course of their employment or agency or for fraudulent misrepresentation.
- 15.2 Subject to Clause 15.1, neither Party shall be liable to the other or to any third party, whether in contract, tort, under statute or otherwise, for any of the following types of loss or damage arising

under or in relation to this Agreement or any part of it:

- (a) any loss of profits, business contracts, anticipated savings, goodwill, or revenue; and/or
- (b) any loss or corruption or destruction of data; and/or
- (c) any special, indirect or consequential loss or damage whatsoever; and/or
- (d) any loss arising from the transmission of viruses,

whether or not that Party was advised in advance of the possibility of such loss or damage.

- 15.3 Providing Party's liability to Ordering Party for failure to provide Service in accordance with the relevant Service Schedule shall be limited to the amounts payable to Ordering Party by way of performance credits as set out in the Service Schedule and/or the Order.
- 15.4 Subject to Clauses 15.1, 15.2 and 15.3 and any limitation of liability as set out in the relevant Service Schedule or Order Form, either Party's liability to the other Party for any cause of actions howsoever arising under this Agreement and/or any applicable Order Form shall be limited to the amounts paid by the Ordering Party to the Providing Party under the applicable Order Form within 12 months preceding the date the cause of action arose.
- 15.5 Subject to clause 14 hereinabove, each Party acknowledges that no representation or warranty is given to the other Party in relation to the description, quality, merchantability, completeness or fitness for any purpose of the Service.

## **16. Confidentiality**

- 16.1 The Parties agree to keep and procure to be kept secret and confidential of the Confidential Information disclosed by the other Party pursuant to this Agreement or during the course of negotiations relating to it. Each Party shall hold and keep in strict confidence any and all Confidential Information and shall take such steps to preserve the confidentiality of the Confidential Information with at least the same degree of care and protection (but in no event less than reasonable care) as it would take to preserve the confidentiality of its own Confidential Information.
- 16.2 Each Party shall be entitled to reveal Confidential Information relating to the other Party only to its directors, officers, employees, professional advisors and their employees, contractors and their employees and financiers providing funding to it and its advisors so far as necessary to enable them to perform their duties for the purpose of this Agreement. Each Party shall require its directors, officers, employees, professional advisors and contractors to observe the obligation of confidentiality contained in this Clause 16.
- 16.3 Each Party shall not at any time divulge, disclose or otherwise furnish to any third party any Confidential Information relating to the affairs or business of the other Party. Each Party shall not reproduce any Confidential Information in any kind without the written consent of the other Party.
- 16.4 This Clause 16 shall not apply, however, to any part of the Confidential Information which:
  - (a) was already known to the receiving Party prior to receipt thereof;
  - (b) was acquired by the receiving Party from a third Party having the right to convey the Confidential Information to the receiving Party without any obligation of confidentiality not to disclose the same;
  - (c) is approved for release by prior written authorization by the owner of the Confidential

Information;

- (d) is in the public domain other than in breach of this Agreement;
- (e) is legally required to be disclosed.

16.5 Each Party agrees that the entirety of this Clause 16 shall survive after the expiration or termination of this Agreement for a period of three (3) years and shall return or dispose of any Confidential Information exchanged or disclosed by the other Party.

16.6 It is acknowledged by the Parties that a violation of this Clause 16 would cause irreparable harm to the disclosing Party, for which monetary damages would be inadequate and injunctive relief may be available for a breach of this Clause 16.

## **17. Force Majeure**

17.1 Notwithstanding any other provision of this Agreement, neither Party shall be liable for failure to perform its obligations under this Agreement (save for the obligation to pay Charges) caused by or resulting from Force Majeure Event.

17.2 The Party affected by the Force Majeure Event will be granted a reasonable extension of time to perform its duties and obligations under this Agreement if:

- (a) it notifies the other Party as soon as reasonably practicable of the Force Majeure Event and of the period for which the performance of its duties and obligations are expected to be delayed or prevented; and
- (b) it takes all reasonable steps to minimize the effects of the Force Majeure Event.

17.3 Both Parties agree that they shall be in good faith and use their best endeavors to minimize the effects of the Force Majeure Event. Should the Force Majeure Event or a series of Force Majeure Event continue for a continuous period of thirty (30) days, either Party may serve a prior written notice to terminate this Agreement with immediate effect. In the event that this Agreement is terminated under this Clause 17.3 and notwithstanding any other provision of this Agreement, Ordering Party shall only be liable to pay all the outstanding Charges accrued up to and including the date of Termination.

17.4 In the event of:

- (a) a refusal or delay by a third party to supply to Providing Party a telecommunications service relevant to the Service and where there is no alternative service available at reasonable costs; or
- (b) Providing Party being prevented by restrictions of a legal or regulatory nature from supplying Service,

Providing Party will have no liability to Ordering Party for failure to supply Service. Ordering Party may, as a result of such event, terminate the affected Service with no obligation to pay the total amount of monthly service fee for the balance of the Minimum Commitment Period of the affected Service and any other charges in relation to the affected Service accrued after the date of termination.

## **18. Notices**

18.1 Each notice, demand or other communication to be given or made hereunder shall, except as

otherwise provided herein, be given in writing and delivered personally or sent by pre-paid post or by facsimile or email transmission to the Party at its address set out below (or such other address, facsimile numbers as a Party has by three (3) days' prior written notice specified to the other Party):

**- To GOIP**

Postal Address: Suite 3606, 36/F, Skyline Tower, 39 Wang Kwong Road, Kowloon Bay, Kowloon  
Phone: +852 2138 9388  
Email: info@goipgroup.com

**- To XXXXX**

Postal Address:  
Fax:  
Phone:  
Email:  
Attention:  
Title:

- 18.2 Any notice, demand or other communication given in accordance with this Agreement is deemed to be received, in the absence of evidence of earlier receipt:
- (a) if delivered personally, on delivery;
  - (b) if sent by pre-paid post, seven (7) days after the date of posting; and
  - (c) if sent by facsimile or email, on the next working day following transmission.

## 19. Assignment

- 19.1 Either Party may assign all or part of this Agreement at any time to an Affiliate which can sufficiently execute the obligations under this Agreement, subject to providing the other Party with 7 seven (7) days prior written notice of such assignment. Any assignment to any other third party other than an Affiliate requires prior written consent of the other Party, which shall not be unreasonably withheld and delay.
- 19.2 This Agreement will be binding on, and inure to the benefit of, the Parties and their successors and permitted assigns.
- 19.3 GOIP may subcontract the performance of any of its obligations under this Agreement to its Affiliates, but without relieving GOIP from any of its obligations to XXXX. XXXX agrees and understands that it may need to interact directly with a subcontractor for ordering, provisioning or maintaining the subcontracted Service.

## 20. Miscellaneous Provisions

- 20.1 **Entire Agreement:** This Agreement (including the Technical Reference Document, Annexes, Schedules and such other agreement as may be amended or added from time to time) constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes and merges any and all prior written and oral agreements, promises, understandings, statements, representations, warranties, indemnities and covenants regarding the subject matter hereof.

- 20.2 **Change:** No amendment or variation of this Agreement shall be effective unless agreed in writing and signed by duly authorized representatives of both Parties.
- 20.3 **Inducement:** The Parties acknowledge and agree that they have not been induced to enter into this Agreement by any representation, warranty or other assurance not expressly incorporated into this Agreement.
- 20.4 **No Waiver:** Either Party's failure to insist upon strict performance of the terms of this Agreement or to exercise any rights or remedies hereunder shall not waive any of its rights to require strict performance of such terms, to assert any of the same rights, or to rely on any such terms any time thereafter. No waiver of any right hereunder shall be deemed effective unless in writing signed by the Parties against which the waiver is disclaimed. No waiver of any right arising from any breach or failure to perform shall be deemed to be a waiver of any future such rights or other rights arising under this Agreement.
- 20.5 **Severance:** In the event that one or more of the provisions herein shall for any reason be held to be illegal or unenforceable by a court of competent jurisdiction or telecommunications regulator, this Agreement shall be revised only to the extent necessary to make such provision(s) legal and enforceable; provided, however, that the Agreement as revised is consistent with the Parties' original intent. The remaining provisions shall remain in full force and effect and the Parties may promptly negotiate a replacement provision, if necessary.
- 20.6 **Survival of Obligations:** Clause 16 and any other provision of this Agreement which are, expressly or by implication, intended to survive expiration or termination of the Agreement, shall survive expiration or termination of this Agreement for three (3) years from the date of expiration or termination.
- 20.7 **Publicity:** Neither Party shall issue a news release, public announcement, advertisement, or other form of publicity concerning the existence of this Agreement or the supplies or services to be provided under this Agreement without obtaining prior written approval from the other Party.
- 20.8 **Independent Contractor:** Except where a principal-and-agent relationship is expressly established in writing under Clauses 11 and 19 hereinabove, each Party is an independent contractor of the other Party and nothing in this Agreement shall constitute the Parties as principal and agent, partners, joint ventures, or employer and employee. Either Party has no authority to bind the other Party to any obligation whatsoever.
- 20.9 **No Intellectual Property Rights:** Nothing in this Agreement creates in a Party any intellectual property rights in the Marks of the other Party. For purposes of this Agreement, the term "**Marks**" means corporate or trade names, logos, trademarks, patents, copyrights, or service marks, or other symbols that serve to identify and distinguish a Party or its products from its competitors.
- 20.10 **Industrial Term:** The words and phrases not specifically defined herein shall have the meaning generally understood in the telecommunications industry. This Agreement shall be construed in accordance with its fair meaning and not for or against either Party on account of which Party drafted this Agreement.
- 20.11 **Dispute Resolution:** Any dispute arising out of or in connection with this Agreement, including but not limited to any question regarding its existence, validity or termination, shall be referred and governed by and construed in accordance with the laws of Hong Kong.
- 20.12 **Governing Law:** This Agreement and transactions contemplated by this Agreement are governed by the laws of Hong Kong.

**IN WITNESS** whereof the Parties or their authorized representatives have set their hands the day and year first above written.

**For and on behalf of  
GOIP SECUNET LTD**

**For and on behalf of XXXXX**

Signature:

Signature: \_

Name (print):

Name (print):

Title:

Title: