



1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Save where the context otherwise admits, the following words and phrases carry the meanings set opposite them:-

Application - means the agreement for the Services made between Setia Haruman Technology Sdn. Bhd. (SHTech) and the Customer in accordance with these terms and conditions.

Commencement Date - means the first day of the provision by SHTech of each of the Services subscribed by the Customer.

Connection Fee - means a non-refundable fee payable by the Customer at the time the application is accepted by SHTech.

Customer - means the individual, sole proprietorship, partnership, company or entity who has agreed to subscribe for the Services.

Equipment - means the customer premises equipment ("CPE") purchased by the Customer from their suppliers.

Services - means such high speed Internet access (Broadband) services as shall be provided to the Customer by SHTech.

Service Payments - means the charges, fees, prices and rates payable by the Customer to SHTech for the services.

System - means the line, wire or cable installed at the Customer's premises for the provision of the Services.

1.2 Construction

Words denoting the singular number include the plural number and vice versa Words denoting the masculine gender shall include the feminine and neuter genders and vice versa. Reference to any statute or legislation includes any statutory amendment, modification or revision thereof and all subsidiary legislation there under References to any agreement or document herein include references to the same as from time to time varied in any manner or respect whatsoever and any other instruments from time to time executed supplemental or in addition thereto or in substitution thereof unless the context otherwise requires. Where there are two or more persons included in the term "Customer", their liabilities under this Agreement shall be joint and several.

2. SERVICES

2.1 SHTech shall provide the Services as from the date of acceptance by SHTech of the Customer's application.

2.2 Unless specified otherwise, Services taken up by the Customer must be for a minimum period of twelve (12) months ("Minimum Period"). Termination prior to the expiry such Minimum Period shall entitle SHTech to the fixed monthly portion of the Service Payment for each of the Services terminated for the un-expired term of the Minimum Period and such other sums as may be specified by SHTech provided such termination is not occasioned by SHTech default.

2.3 All IP addresses issued by SHTech are the property of SHTech. Assigning an IP address for the purposes of providing the Services in no way conveys any right or title to the IP address. Upon IP address reassignment, expiration, cancellation or termination of the Agreement or any service provided by SHTech, Customer shall relinquish any IP addresses or address blocks assigned to Customer by SHTech. SHTech may choose to assign Customer a new IP address at anytime.

3. SERVICES PAYMENTS

3.1 In consideration of SHTech providing to the Customer the Services and license to use the Services upon the terms and subject to the conditions contained herein, the Customer shall make payment to SHTech the charges due to the Customer in a manner and mode as shall be agreed by SHTech.

3.2 SHTech shall be entitled at any time upon issue of notice to the Customer vary the charges for the provisions of the Services. The new charges shall take effect from the date of the notice issued by SHTech to the Customer.

3.3 The Customer shall pay promptly on demand all fees, deposit, charges, costs, rentals or any other monies whatsoever as shown in the bill/invoices issued by SHTech. All payments made by the Customer shall first be applied towards arrears of any sums due and owing to SHTech.

3.4 Whenever requested by SHTech, the Customer shall make the payment of such deposit as SHTech may require. Upon termination or expiration of this Agreement, such deposit may be used to set off any other bill(s) due and owing to SHTech by the Customer before the balance, if any, to be refunded.

3.5 In the event any Services payment shall be in arrears and unpaid at any time after becoming due, SHTech shall be entitled to charge interest and any other third party costs incurred on the overdue payments at the rate of 1.5% per month or at such other rates as may be advised to the Customer in writing from time to time and the Customer shall continue to be liable pay such amounts, including any accrued interest thereon.

3.6 Unless specified otherwise, Service payment shall be paid within fourteen (14) days from the date of the relevant bill.

3.7 If any amounts outstanding shall be required to be recovered by SHTech through the process of law, the Customer shall be responsible for the payment of all fees and expenses including solicitor's fee (on a client and solicitor basis) as may be incurred by SHTech.

3.8 SHTech shall be entitled at any time upon issue of notice to the Customer vary the charges for the provisions of the Services. The new charges shall take effect from the date of the notice issued by SHTech to the Customer.

4. UNDERTAKINGS BY THE CUSTOMER

4.1 Obtain effect and keep effective all permissions, licenses and permits other than licenses under the Communications and Multimedia Act 1998 save where customers are required to secure such and to pay all rates, rents, taxes and charges which may be required in connection with the use of the System and the premises upon which they are situated;

4.2 Comply with all the laws, rules and regulations in relation to the System;

4.3 At its own expense to add or install any safety measures required by any applicable law or regulation;

4.4 Implement, execute and undertake the instructions or directions given by SHTech to the Customer on the utilisation and maintenance of the System so as to optimise its use more efficiently; to reasonably use the Services provided by SHTech and to conform to any current policies/rules imposed by SHTech which include but not limited to any rules of acceptable use, privacy policy and/or any other policies/rules that is/will or may be imposed by SHTech;

4.5 Agree to provide true and accurate information about themselves;

4.6 To undertake to promptly disconnect the Equipment from the System if requested by SHTech;

4.7 Shall strictly comply with and ensure compliance with all the instructions given by SHTech regarding the use and installation of the Equipment;

4.8 Not use the Services for any illegal purpose, or for the transmission of information that is libelous, unlawful, harassing, abusive, threatening, abusive of another's privacy, harmful, vulgar, defamatory, obscene, pornographic, or in anyway that may infringe the laws governing, but not exhaustively covering, copyright, intellectual property rights, trademarks, pornography or might cause offence in anyway;

4.9 Not engage in any action that might be considered system abuse, these include

- i. attempting to circumvent Customer authentication or security of any host network, or account on SHTech's systems or the World Wide Web at large;
- ii. attempting, in anyway, to interfere with or deny service to any other Customer or host on the World Wide Web
- iii. forging e-mail;
- iv. sending any unsolicited messages, this includes adding or attempting to add addresses to any mailing list without the express consent of the addressee;
- v. forwarding or posting 'chain letters' of any type;
- vi. posting inappropriate messages to SHTech's newsgroups such as posting large numbers of unsolicited posts indiscriminately;

4.10 Shall where necessary purchase the Equipment and provide his own external wiring and sockets.

5. INSTALLATION OF THE SYSTEM

5.1 The Customer shall notify SHTech of the suitable time for the installation of equipment for use of the System at of the premises occupied by the Customer and at which the System is to be utilised. Such date of notification shall, however, not be less than three (3) days before the date the Customer wishes to commence utilisation of the System.

6. RIGHT OF WAY

6.1 The Customer shall notify SHTech of the suitable time for the installation of equipment for use of the System at of the premises occupied by the Customer and at which the System is to be utilised. Such date of notification shall, however, not be less than three (3) days before the date the Customer wishes to commence utilisation of the System.

6.2 If at any time, SHTech, its servants or agents is/are unable to gain entry to the premises to carry out works, SHTech may terminate the provision of the Services and at any time thereafter disconnect the System from the SHTech network.

7. VACATION OF PREMISES

7.1 If the Customer intends to vacate the premises where any part of the System is installed, the Customer shall immediately notify SHTech of its intention thereof, whereupon SHTech shall be entitled to remove the System and all equipment related thereto and retain it for safekeeping without in any way affecting the Customer's liability under this Agreement.

8. SAFETY OF THE SYSTEM

8.1 The Customer is responsible for the System upon installation of the same in the premises occupied or controlled by the Customer and shall not cause or permit the removal or the relocation of any part of the

System or perform any joining or splicing or remove any mark, word or number on the System. The Customer shall on demand indemnify SHTech for expenses incurred by SHTech as a result of any breach of this condition.

9. DAMAGE TO SYSTEM

9.1 The Customer shall on demand, pay to SHTech the cost and expenses incurred by SHTech, which sums stated in such demand shall be final and conclusive, of repairing, replacing, substituting, altering, removing or making additions to the System or any part thereof in the Customer's premises that may be stolen or lost, or which may be damaged by fire or any other unforeseen causes including any Act of God.

10. WARRANTIES AS TO THE SYSTEM

10.1 The System installed by SHTech shall be in good working order;

10.2 SHTech shall as soon as practicable investigate any breach of warranty set out herein and shall remedy the same free of charge by:-

- i. carrying out such repairs, modifications or alterations to the System; and/or
- ii. replacing the System or any component parts thereof; and
- iii. SHTech will perform periodic preventive maintenance for all the transmission and other supporting equipment which form part of the System and corrective maintenance if any such equipment fails.

11. LIMITATION AS TO LIABILITY

11.1 SHTech's liability (including any liability for the acts and omissions of its employees, agents and sub-contractors) to the Customer shall be limited as follows:

- i. SHTech shall not be liable for any losses or damages sustained by reason of any disclosure, inadvertent or otherwise of any information concerning the Customer's account or for any disclosure required to be made pursuant to law or a court order. Further SHTech shall not be liable for any error, omission or inaccuracy with respect to any information disclosed.
- ii. SHTech shall not be liable for any losses or damages which may be occasioned through the interruption or loss of use of the Services from any cause whatsoever, but in case of such interruption or loss of use of the Services and unless specified otherwise, SHTech shall make every effort to restore the Services as soon as reasonably practicable.

11.2 SHTech reserves the right to alter and/or allocate any IP addresses at any time without being liable for any losses or inconvenience attributable to the change/allocation of the same whatever the cause for the change/allocation.

11.3 Any act or omission of SHTech or any termination (whether lawful or otherwise) of the Agreement by SHTech even if such loss was reasonably foreseeable or SHTech had been advised by the Customer of the possibility of the Customer incurring the same.

12. INDEMNITY

12.1 The Customer agrees to indemnify and hold SHTech and its holding company, subsidiaries, affiliates, officers and employees from any claim or demand, including any made by a third party, arising out of the Customer's use of the System. The Customer agrees not to hold SHTech and its holding company, subsidiaries, affiliates, officers and employees responsible for any direct or indirect damage resulting from the use of the System.

13. CUSTOMER ACCOUNT, PIN NUMBER, PASSWORD AND SECURITY

13.1 The Customer has sole responsibility for maintaining the security and confidentiality of all passwords, Customer names, and PIN number or security access codes when using the System. The Customer accepts total responsibility for these codes and for any consequence of these codes being divulged.

14. PROPERTY RIGHTS

14.1 The Customer acknowledges that the content, including but not limited to text, software, graphics, images, music, sound, logos, video or any other material contained in or on SHTech's web site or those of any advertiser or sponsor are protected by copyrights, trademarks, patents and other proprietary rights in law. The Customer may not copy, distribute, reproduce or transmit such works, information or content without express authorisation.

15. SUSPENSION OF SERVICE

15.1 SHTech reserves the right, in its sole discretion,:-

- a. to suspend the provision of the Services for any reasons whatsoever deemed necessary by SHTech including but not limited to in the event of an Emergency ;
- b. to suspend the provision of any of the Services for the maintenance and upgrading of SHTech's telecommunications network;
- c. to interrupt the use of the Services by the Customer for the purpose of testing or investigating any faults reported by such Customer or detected by SHTech or suspected fault or malfunction of SHTech's network;

16. TERMINATION

16.1 SHTech may, without prejudice to any other rights or remedies accruing or accrued to it and notwithstanding the waiver of any previous breach, suspend or disconnect the provision of any of the Services if:-

- i. the charges, fees, costs, rentals or any other monies payable under this Agreement shall be in arrears and/or unpaid at any time after becoming due;
- ii. in the opinion of SHTech, there is an unreasonable usage of Services by the Customer;
- iii. the Customer shall be adjudged bankrupt or if a receiving order is made against him or if he makes any composition or arrangements with or assignment for the benefit of his creditors or have a winding-up petition presented against it or have a receiver appointed over its assets;
- iv. legal proceedings have been instituted against the Customer for non-payment of outstanding rental in respect of the Customer's premises;
- v. the Customer has provided any particulars which are incorrect or false;
- vi. terminate the provision of the Services at premises which are declared to be unauthorised or of an unsafe structure by the relevant authority;
- vii. terminate the provision of the Services where the Customer uses or permits the use of any equipment for which approval has not been obtained;
- viii. terminate the provision of the Services if SHTech shall not be able to or agree to obtain or continue to maintain or renew any relevant license, consent, approval, permit or easement to install or place the System or provide the Services.
- ix. the Customer fails to observe any of the requirements particularly in relation to the Services and the System and any other terms and conditions stipulated in this Agreement.

16.2 Termination hereunder shall not relieve the Customer of his obligation to pay for any other services performed by SHTech up to and including the date of termination.

16.3 Upon payment by the Customer of the arrears of Service Payments and any other charges due and owing to SHTech, SHTech in its absolute discretion may restore the provision of the Services provided the Services are not earlier disconnected and this Agreement shall continue to be in force and the Customer shall in such event, pay the connection charges and other charges deemed necessary by SHTech.

16.4 In the event the Services are disconnected, the Customer would have to execute a fresh Application before the Services could be restored by SHTech.

16.5 The Customer may terminate this Agreement by giving SHTech at least fourteen (14) days prior notice in writing provided that Customer pays SHTech the early termination fee set forth in Clause 2.2 above if the termination occurs within the Minimum Period. Upon the termination of this Agreement the Customer shall promptly pay all outstanding Service Payments and any other charges due to SHTech.

16.6 If the Customer vacates the Customer's premises or, if in the opinion of SHTech, the Customer's premises is no longer occupied by the Customer, SHTech reserves the right to summarily terminate the provision of the Services without being liable to the Customer for damages or otherwise, and also without prejudice to SHTech's rights under this Agreement.

17. EXPIRY

17.1 Upon the expiry of this Agreement each party's obligations under this Agreement shall terminate but any rights accrued hereunder shall continue to be enforceable.

18. SEVERABILITY

18.1 In the event any term or condition in this Agreement is found to be unlawful or illegal, such term or condition shall be excluded and such exclusion shall not affect the enforceability, legality and lawfulness of this Agreement in any way.

19. WAIVER

19.1 Any failure, delay or neglect by SHTech in enforcing any term, condition or provision of this Agreement shall not be deemed a waiver of any of SHTech's rights or as affecting the validity of the whole or any part of this Agreement or SHTech's right to take whatever action subsequently.

20. NOTICES

20.1 Every notice or demand or other communication required or permitted to be given or made hereunder shall be sent by e-mail to the IP address of the Customer as notified to SHTech or be in writing delivered personally or by registered post or facsimile; and shall be deemed to have been received, subject as otherwise provided in this Agreement, in the case of a letter, when delivered personally or five (5) days after it has been put into the post and, in the case of a facsimile, at the time of dispatch (provided that if the date of dispatch is not a business day it shall be deemed to have been received at the opening of business of SHTech on the next such business day).

20.2 Every such notice or demand or other communication required or permitted to be given or made hereunder shall be sent to the parties at the respective addresses notified by each party to the other.

21. LEGAL COSTS

22.1 The parties hereto agree that the stamp duties pertaining to this Agreement shall be borne by the Customer.