

## **SPECIFIC TERMS AND CONDITIONS OF SALE FOR CHINA DIA SERVICE**

### **1. Contract with SELLER**

- 1) Together with the Master Services Agreement (the "Agreement"), these Specific Terms and Conditions of Sale for China DIA and any additional attachments, if any, which will be deemed an integral part hereof for all purposes, when attached to or referenced in an Order Form (as defined in the Agreement) properly filled out and duly executed by BUYER and SELLER, will constitute an agreement entered between BUYER and SELLER for the provision of SELLER's China DIA Service (for purposes of this Annexure, the "China DIA Service" or the "Service").

### **2. Service Overview**

- 1) The China DIA Service provides BUYER IP connectivity to Internet terminated at Circuit Location Addresses, as specified in the Order Form.
- 2) The China DIA Service has 2 different type of service, including Static IP and BGP (International Transit, Domestic or Non-Transit) The option can be specified in the Order Form.
- 3) In order to ensure the use of the service, SELLER reserves the right to block, discard traffic or alter the routing of the traffic to any IP address suspected of being subject to service attack.

### **3. Definitions**

- 1) "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.
- 2) "BGP International Transit" means service include International and China routes
- 3) "BGP China Transit" means service include China route only
- 4) "BGP Non-Transit means service include China Mobile domestic route only
- 5) "DIA" means Dedicated Internet Access.
- 6) "ICMP" means Internet Control Message Protocol.
- 7) "Initial Term" means the term specified in the Order Form.
- 8) "MPOE" means minimum point of entry.
- 9) "Off-Net" means Service *not* provided on the connection to network owned (or operated and controlled) by SELLER / CMCC.
- 10) "On-Net" means Service provided on the connection to network owned (or operated and controlled) by operator that are served directly by operator owned (or operated and controlled) fiber and operator owned equipment. It does not include network partially owned (or operated and controlled) by operator such as cross border interconnection network , interconnection network with China Mobile, China Telecom , China Unicom or any other independent ISP ,ICP or peering company.
- 11) "POP" means point of presence.
- 12) "Protected" means any Service designated as such in the Order Form. Protected Services generally include a protection scheme that allows traffic to be re-routed in the event of a fiber cut or equipment failure. Services which are not Protected are "Unprotected".
- 13) "Ready for Service Date" means the date on which the Parties agree to place IP Transit and/or DIA into

operation for the Service.

- 14) "Terms of Acceptance" means the Terms of Acceptance for Accessing the Telecommunications Network as attached hereto.
- 15) "Unavailability" means China DIA port downtime.

#### **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's period. 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 be automatically renewed on a monthly basis unless and until terminated by either Party at any time during its renewed tenure by giving not less than one (1) month's prior written notice of termination to the other Party.

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

- 1) Initial Charge: (i) China DIA installation charges; (ii) other non-recurring charges applicable to the Service.
- 2) Monthly Service Charge: (i) flat monthly service charge, a fixed monthly amount charged by SELLER for the committed bandwidth specified in the Order Form ("China DIA Monthly Service Charge"), (ii) burstable service charge, a usage based charge which is calculated on monthly basis, the amount of burstable bandwidth is derived from the 95<sup>th</sup> percentile usage data recorded by SELLER. Such burstable bandwidth charge described above will be invoiced to BUYER in arrears and is in addition to the China DIA Monthly Service Charge; and (iii) other monthly service charges applicable to the Service, if any, which will be specified in the Order Form.
- 3) Off-Net Service Charge: additional charges may apply to either the Off-Net component or in the case of MPOE extensions as specified in the Order Form.
- 4) In addition to Monthly Service Charge, Initial Charge and Off-Net Service 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.

#### **6. Service Availability**

- 1) SELLER shall use all commercially reasonable endeavours to maintain the On-Net POP Service Level on Service Availability ("Service Availability") at 99.9% 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 the duration of Unavailability of that month.

## 7. MTTR

- 1) SELLER shall use all commercially reasonable endeavours to maintain the On-Net POP Service Level on Mean Time to Restore (MTTR) within 8 hours
- 2) MTTR is calculated by averaging Time-to-Restore (TTR) by number of Network Outage in a month.

## 8. Service Credit Claim

- 1) If SELLER fails to meet the Service Availability for any relevant month, SELLER shall pay the service credit to BUYER. The amount of such service credit will be calculated by multiplying the Service Credit Percentage as listed in the table below by the respective Monthly Service Charge of the affected China DIA port.

Duration of Unavailability (Monthly)	Service Credit Percentage
>44 minutes – 1 hours	5%
>1 hours	10%

- 2) If SELLER fails to meet the MTTR for any relevant month, SELLER shall pay the service credit(s) to BUYER. The amount of such service credit will be 3% of the respective Monthly Service Charge of the affected China DIA port.
- 3) The service credit(s) payable by SELLER to BUYER shall collectively be referred to as "Service Credits".
- 4) The maximum Service Credits payable in aggregate for all Service Level Failure in respect of the Service under a particular Order Form in any calendar month is ten percent (10%) of the Monthly Service Charges of the affected service under that Order Form.
- 5) 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.
- 6) The Service Credit shall be paid not more than sixty (60) Days after the end of the month in which the alleged failure occurred.
- 7) All relevant Service Credits do not apply to Burstable Bandwidth Service Charge

## 9. BUYER Responsibilities

- 1) In addition to BUYER's other obligations under the Agreement (including those in Clause 10 of the Agreement), BUYER and its customers shall comply with the Terms of acceptance.

## 10. Exclusions

- 1) BUYER shall not be entitled to any Service Credits 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:
  - i. 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 an material impact on the Service, the Party will notify the other Party as soon as reasonably practicable of any emergency work);
  - ii. failure or fault of application, equipment or facilities located on BUYER's premises supplied by SELLER unless it is caused or given rise by any act or omission by SELLER and failure or fault of the BUYER's applications, equipment or facilities wherever located.
  - iii. acts or omissions of BUYER or its agents, subcontractors or employees or any user of the service authorized by BUYER;

- iv. major cable fault caused by negligence or default of third parties;
- v. 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 guides or unavailability of relevant BUYER's personnel at times necessary for testing or connection of the Service;  
or
- vi. any Force Majeure Events.