



## **UNIVERSAL SERVICE AGREEMENT**

**THIS AGREEMENT** is made on the date of the Order Confirmation Form (“**the Order Form**”)

**BETWEEN: -**

- (1) **UDOMAIN WEB HOSTING COMPANY LTD.**, a company incorporated in Hong Kong whose registered office is situate at 18/F, Kinnox Centre, 9 Hung To Road, Kwun Tong, Kowloon, Hong Kong (“**UDOMAIN**”); and
- (2) The individual or entity (“**the Customer**”) as provided in the Order Form and its address is at the address provided in the Order Form.

**WHEREAS: -**

The Customer has agreed to use services supplied by UDOMAIN upon the following terms and conditions.

**NOW IT IS AGREED** as follows:

### **1 DEFINITIONS AND INTERPRETATION**

- 1.1 In this Agreement, and any other Term Sheets or Recitals, unless otherwise expressed or required by the context, the following expressions shall have the respective meanings set opposite thereto:-

<u>Expression</u>	<u>Meaning</u>
“ <b>Charges</b> ”	means the charges to be paid by the Customer for the Services as specified in the Order Form;
“ <b>Confidential Information</b> ”	means all business, technical, financial or other information communicated or made known to the Customer by UDOMAIN;
“ <b>Content</b> ”	means all text, graphics, logos, photographs, images, moving images, sound, illustrations, data, code and other material and related documentation featured, displayed, uploaded, transmitted, received, stored, or processed in connection with the Services;
“ <b>Customer Software</b> ”	means the software used in connection with the Services



owned by the Customer, or licensed to it by a third party or UDOMAIN, but shall not include UDOMAIN Software;

- “DNS”** stands for domain name server;
- “Initial Term”** means the initial period, which the Charges cover, for the supply of the Services;
- “Intellectual Property Rights”** means patents, trade marks, design rights, applications for any of the foregoing, copyright, topography rights, database rights, rights in know-how, trade or business names and other similar rights or obligations, in each case whether registrable or not in any country;
- “IP address”** stands for an internet protocol address;
- “ISP”** stands for internet service provider;
- “Migration Services”** means the services described in Clause 12.2;
- “Server”** means the server or servers as designated by UDOMAIN from time to time through which UDOMAIN provides the Services to the Customer in accordance with this Agreement;
- “Services”** means the service, including without limitation any service related to hosting, cybersecurity, networking, domain name registration, provided to the Customer by UDOMAIN chosen by the Customer and set out in the Order Form
- “Software”** means the Customer Software and UDOMAIN Software;
- “Term Sheets”** means the sheets of variable terms annexed to and forming part of this Agreement;
- “UDOMAIN Software”** means the software and related documentation owned by or licensed to UDOMAIN including any Upgrades or related documentation;
- “Upgrades”** includes all updates, upgrades, enhancements, corrections, modifications, new releases, new versions and bug fixes in object code form only from time to time issued or made available by UDOMAIN;
- “URL”** stands for universal resource locator;
- “Virus”** means a computer program that copies itself or is copied to



other storage media including without limitation magnetic tape cassettes, memory chips, electronic cartridges, optical discs and magnetic discs and destroys, alters or corrupts data, causes damage to the user's files or creates a nuisance or annoyance to the user and includes without limitation computer programmes commonly referred to as "worms", "Trojan Horses", "logic bombs" and "cancelbots";

**"Visitor"** means a third party who has accessed the Website;

**"Visitor Information"** means the data collected by UDOMAIN about Visitors and their behaviour when accessing the Website; and

**"Website"** means the website which the Customer intends to be hosted on the Server, including website which the Customer intends part of the website's Content to be hosted on the Server.

- 1.2 The expressions "UDOMAIN" and "the Customer" shall, where the context permits, include their respective executors administrators successors and permitted assigns (as the case may be).
- 1.3 The headings to the Clauses of this Agreement are for ease of reference only and shall be ignored in interpreting this Agreement.
- 1.4 Reference to Clauses, Recitals and Term Sheets are references to Clauses of, and the Recitals and Term Sheets to this Agreement which shall form part of this Agreement.
- 1.5 Unless the context otherwise requires, words and expressions in the singular include the plural and *vice versa* and words denote any gender shall include all genders.
- 1.6 Unless the context otherwise requires, references to a person include any public body and any body of persons, corporate or unincorporate.

## **2 DUTIES**

- 2.1 Subject to the terms and conditions of this Agreement, the Customer agrees that UDOMAIN itself or through its agents and/or other network providers shall provide the Services as specified in the Order Form to the Customer.
- 2.2 The Customer shall deliver the Website and the Customer Software to UDOMAIN in a format specified by UDOMAIN at a mutually convenient time.

## **3 CHARGES AND PAYMENT**



- 3.1 In consideration of the provision of the Services by UDOMAIN to the Customer, the Customer shall pay UDOMAIN the Charges in accordance with the UDOMAIN's price schedule.
- 3.2 The Charges are inclusive of all labour and materials.
- 3.3 UDOMAIN may charge the Customer interest in respect of late payment of any sum due under this Agreement, at a rate of 2% per month from the due date to the date of full payment.
- 3.4 UDOMAIN is entitled to levy additional charge against the Customer and the Customer shall pay such additional charge to UDOMAIN within 7 days upon demand if and whenever the access of the Website or the use of the Services consumes excessive CPU time, memory or storage space of the Server or other resources of the Server.
- 3.5 The Charges once paid shall not be refunded in whole or in part for whatsoever reason.
- 3.6 UDOMAIN reserves the right to change or modify the Charges from time to time.

#### **4 IP ADDRESSES**

- 4.1 In the performance of the Services, UDOMAIN may allocate IP addresses to the Customer. The Customer acknowledges that it has no right, title or interest in the IP address allocated to it, and that any IP address allocated to it is allocated as part of the Services and is not portable or otherwise transferable by the Customer in any manner whatsoever.
- 4.2 If an IP address is renumbered or reallocated by UDOMAIN, UDOMAIN shall use its reasonable endeavours to avoid any disruption to the Customer.
- 4.3 The Customer agrees that it will have no right, title or interest to the IP address upon termination of this Agreement, and that the acquisition by the Customer of a new IP address for the Website following termination of this Agreement shall be the exclusive responsibility of the Customer.

#### **5 SOFTWARE LICENCE AND RIGHTS**

- 5.1 If and to the extent that the Customer requires use of UDOMAIN Software in order to use the Services, UDOMAIN grants to the Customer a royalty-free, worldwide, non-transferable, non-exclusive licence to use UDOMAIN Software in object code form only. The Customer has the right to authorize its employees, agents and third party consultants and contractors to use UDOMAIN Software as aforesaid provided that such use is consistent with the terms of this Agreement.



- 5.2 The Customer grants to UDOMAIN a royalty-free, worldwide, non-exclusive licence to use the Content and the Customer Software in relation to its obligations under this Agreement in connection with the provision of the Services.
- 5.3 Except as expressly set out in Clauses 5.1 and 5.2, this Agreement does not:
- 5.3.1 transfer or grant to the Customer any right, title, interest or Intellectual Property Rights in UDOMAIN Software; or
  - 5.3.2 transfer or grant to UDOMAIN any right, title, interest or Intellectual Property Rights in the Customer Software.
- 5.4 The Customer agrees that it will not itself, or through any agent or other third party:
- 5.4.1 copy UDOMAIN Software except as expressly permitted under this Agreement or by law;
  - 5.4.2 sell, lease, license or sublicense UDOMAIN Software or the documentation connected with it; or
  - 5.4.3 use any Confidential Information of UDOMAIN.
- 5.5 If the Customer is permitted to make any copies of UDOMAIN Software, the Customer must reproduce all proprietary notices of UDOMAIN, if any, on the copies.

## **6 CHANGES TO THIS AGREEMENT**

- 6.1 The Customer agrees and acknowledges that UDOMAIN may, in its sole and absolute discretion, change or modify this Agreement, and any policies or supplementary agreements which are incorporated herein, and such changes or modifications shall be effective immediately upon posting to UDOMAIN's website. UDOMAIN may occasionally notify you of changes or modifications to this Agreement by email.
- 6.2 If the Customer does not agree with the revised Agreement or Charge, its sole and exclusive remedy will be to discontinue the use of the UDOMAIN's Services.
- 6.3 The Customer's continued use of the Services after such change will constitute Customer's consent to such changes.

## **7 USE OF SERVICES**

- 7.1 In connection with the use of the Services, the Customer may be allowed from time to time during the Initial Term to upload and update the Website, the Content, the Customer Software and other materials on the Server. For the purposes of accessing the upload and updating



services, the Customer will be identified by the Customer identification code (“ID”) and the password (“the Password”). The Customer is advised to keep the ID and the Password in secrecy. The Customer shall be fully responsible for any accidental or unauthorized disclosure of the ID and the Password to any other person and shall bear the risks of the ID and the password being used by unauthorized persons or for unauthorized purposes.

- 7.2 The Customer shall not use the Services to distribute, upload, store, transmit, receive or process any material or other information that:
- 7.2.1 infringes any Intellectual Property Rights;
  - 7.2.2 impersonates or falsely states or otherwise misrepresent the Customer’s identity or affiliation with any person or entity;
  - 7.2.3 is in breach of any applicable law, statute, or regulation;
  - 7.2.4 is defamatory, libellous, unlawfully threatening, politically sensitive or harassing;
  - 7.2.5 promotes hatred, violence, intolerance based on race, age, gender identity, ethnicity, religion, sexual orientation, national origin, against any individual, group or other organization;
  - 7.2.6 is likely to endanger national security;
  - 7.2.7 is obscene, pornographic or indecent;
  - 7.2.8 contains any form of Viruses, malware or other computer programs intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any personal information;
  - 7.2.9 willfully bypass or subvert security measures to gain unauthorized access anyone’s technology infrastructure or distribute information or computer programs designed to assist in doing so;
  - 7.2.10 transmit any spam, Junk-mail and unsolicited mass mail;
  - 7.2.11 jeopardize, interfere with, disrupt UDOMAIN’s services, technology infrastructure or ability to operate; or
  - 7.2.12 is not solicited.
- 7.3 For the avoidance of doubt, UDOMAIN does not monitor, and will have no liability for the Contents of and any communications transmitted by virtue of the Services.
- 7.4 The Customer grants to UDOMAIN a non-exclusive, royalty-free licence, during the term of this Agreement, to use, store and maintain the Content on the Server. UDOMAIN may make such copies as may be necessary to perform its obligations under this Agreement, including



backup copies of the Content.

- 7.5 This Agreement does not transfer or grant to UDOMAIN any right, title, interest in any Intellectual Property Rights in the Content, except for the rights expressly granted in this Agreement.
- 7.6 Although UDOMAIN is not obligated to monitor the Content and assumes no responsibility for the Customer's Content or the content of its other customers, UDOMAIN reserves the right, subject to all applicable laws, to investigate the Customer's Content and may shall at its sole discretion remove or restrict access to the Website, the Content, the Customer Software and other materials provided by the Customer that UDOMAIN deems to be in breach of this Clause. UDOMAIN shall be the sole and final arbiter what constitute a breach of Clause 7.2.
- 7.7 In the event that UDOMAIN receives any complaint by or from any third party or is threatened with the institution of legal proceedings by any third party in relation to the Website, the Content, the Customer Software and other materials provided by the Customer and any activity of the Customer regarding the use of the Services, UDOMAIN shall at its sole discretion remove the Website, the Content, the Customer Software and other materials provided by the Customer until the third party withdraws the complaint.
- 7.8 The Customer acknowledges and agrees that UDOMAIN shall comply with any lawful request, warrant or order by or from any competent judicial authority or law enforcement agency (a) to remove, restrict access by any person to any Website, Content, Customer Software, message, and other materials provided by the Customers; or (b) to disclose, furnish or produce information and materials provided by the Customer or in relation to the Customer's use of UDOMAIN Services. For the avoidance of doubt, UDOMAIN shall have no obligation to notify the Customer regarding its compliance with such request, warrant or order.

## **8 WARRANTIES**

- 8.1 The Customer warrants to UDOMAIN that:
- 8.1.1 UDOMAIN's use of the Content or the Customer Software in accordance with this Agreement will not infringe the Intellectual Property Rights of any third party in Hong Kong;
- 8.1.2 it has the right, power and authority to license the Content and the Customer Software to UDOMAIN; and
- 8.1.3 the Software is all the software used in the Website.



- 8.2 Save as expressly set out in this Agreement, all representations, warranties, terms and conditions whether oral or written, express or implied by law, custom, statute or otherwise and including but not limited to satisfactory quality or fitness for any particular purpose are excluded. In particular and without prejudice to that generality, whilst UDOMAIN shall take reasonable care to ensure the security, reliability, availability and quality of the Services, UDOMAIN shall not be liable to the Customer for any loss, costs or damages resulting from any cyberattack, including but not limited to any unauthorized access, intrusion, phishing, Denial-of-Service attack, any malware and virus introduced or passed on by third party to the Customer. The Customer is advised to check its Website regularly for vulnerabilities.

## **9 CONFIDENTIALITY**

- 9.1 Subject to Clause 9.2, the Customer:

9.1.1 may not use any Confidential Information for any purpose other than the performance of its obligations under this Agreement;

9.1.2 may not disclose any Confidential Information to any person except with the prior written consent of the UDOMAIN; and

9.1.3 shall make every effort to prevent the use or disclosure of the Confidential Information.

- 9.2 The obligations of confidence referred to in the provisions of this Clause shall not apply to any Confidential Information that:

9.2.1 is in the possession of and is at the free disposal of the Customer or is published or is otherwise in the public domain prior to its receipt by the Customer; or

9.2.2 is required to be disclosed by any applicable law or regulation.

- 9.3 Without prejudice to any other rights or remedies UDOMAIN may have, the Customer acknowledges and agrees that in the event of breach of this Clause UDOMAIN shall, without proof of special damage, be entitled to an injunction or other equitable remedy for any threatened or actual breach of the provisions of this Clause in addition to any damages or other remedies to which it may be entitled.

## **10 INDEMNITY AND LIMITATION OF LIABILITY**

- 10.1 The Customer agrees to defend, indemnify and hold harmless UDOMAIN against any and all claims, liability, loss, damages, costs, legal costs, professional and other expenses of any



nature whatsoever incurred or suffered by UDOMAIN whether direct, indirect or consequential arising out of any dispute or contractual, tortious or other claims or proceedings brought by a third party in relation to (a) the Website, the Content, the Customer Software and any activity of the Customer in connection with the use of UDOMAIN Services; (b) the Customer's violation of any third-party rights, including without limitation any intellectual property rights; (c) the Customer's violation of this Agreement, Term Sheets, other agreement referenced herein or any applicable law or regulation. The Customer shall give UDOMAIN all reasonable assistance in connection with any such claims or proceedings at the Customer's cost and expense.

- 10.2 UDOMAIN's entire and maximum liability to the Customer for any damages in respect of any breach of its contractual obligations, any breach of warranty, any representation, statement or tortious act or omission including negligence arising under or in connection with this Agreement shall not be more than the Charges paid by the Customer during the twelve (12) months period before the event giving rise to the liability.
- 10.3 Neither party will be liable to the Customer for any indirect, consequential or punitive damages arising out of contract, warranty, tort, statute, or any other legal theory, even if the loss is reasonably foreseeable or a party was advised of the possibility of the other party incurring it.
- 10.4 For the avoidance of doubt, UDOMAIN hereby declares and the Customer acknowledges that the Services may be provided jointly or solely through the agents of UDOMAIN and other network providers. The Customer hereby expressly waives all its rights to claim loss and damage against UDOMAIN arising from or incidental to the failure or malfunction of network or equipment not within the sole control of UDOMAIN or the act, omission or negligence of the agents of UDOMAIN and other network providers.
- 10.5 The Customer acknowledges that the Services are made available on an "as is" and "as available" basis, with the express understanding that UDOMAIN has no obligation to monitor, control or vet the content or data appearing on UDOMAIN's website.
- 10.6 Neither party will be liable for failure or delay in performance of its obligations under this Agreement (other than the obligation to pay any Charge due) if and to the extent such failure or delay is caused by circumstances beyond its reasonable control, including acts of God, natural disasters, terrorism, riots, pandemic, war or any Force Majeure event, provided that the non-performing party is without fault in causing such failure or delay and provided that such party gives the other party prompt notice of such cause and uses reasonable commercial efforts to correct such failure or delay in performance.

## **11 TERM, SUSPENSION AND TERMINATION**

- 11.1 This Agreement shall commence on the date designated by UDOMAIN and shall continue for the Initial Term unless terminated earlier pursuant to Clause 11.2.



- 11.2 UDOMAIN is entitled to suspend provision of Service or to terminate this Agreement with immediate effect by written notice to the other party on or at any time after the occurrence of any of the following events:
- 11.2.1 the Customer being in breach of any term or condition under this Agreement (including but not limited to failure to pay any Charge when due) and, if the breach is capable of remedy, failing to remedy the breach within 7 days after receipt of a written notice of the breach and requiring its remedy;
  - 11.2.2 the Customer passing a resolution for winding up or a court of competent jurisdiction making an order for the Customer's winding up (other than, in each case, for the purposes of solvent amalgamation or reconstruction where the entity resulting from the amalgamation or reconstruction effectively agrees to be bound by or assume the Customer's obligations under this Agreement);
  - 11.2.3 the making of an administration order in relation to the Customer or the appointment of a receiver over or an encumbrancer taking possession of or selling an asset of the Customer;
  - 11.2.4 the Customer making an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally;
  - 11.2.5 UDOMAIN reasonably believes that continued provision of any Service used by the Customer would violate applicable law(s); or
  - 11.2.6 any Force Majeure event substantially preventing, hindering, or delaying performance of the Service for more than five (5) consecutive days.
- 11.3 UDOMAIN is entitled to terminate this Agreement for convenience at any time with 30 days' prior written notice to the Customer.
- 11.4 Termination of this Agreement for whatever reason shall not affect:
- 11.4.1 the accrued rights of UDOMAIN and liabilities of the Customer arising in any way out of this Agreement as at the date of termination and in particular but without limitation the right to recover damages against the other;
  - 11.4.2 all Charges owed by the Customer to UDOMAIN; or
  - 11.4.3 provisions expressed to survive this Agreement, which shall remain in full force and effect.



## **12 MIGRATION SERVICES AND EXTENSION OF THE SERVICES**

- 12.1 No less than 14 days before the expiration of the Initial Term or within 3 days after the termination of this Agreement for any reason other than the expiration of the Initial Term, whichever is applicable, the Customer may request by notice in writing to UDOMAIN to provide the Migration Services to the Customer, or to a third-party service provider identified by the Customer or to extend the Services. UDOMAIN is entitled to charge for the Migration Services and the extension of the Services at its prices for such services current at that date and the Customer shall pay such charge within 7 days after receiving notice in writing by UDOMAIN.
- 12.2 Where the Customer requests the Migration Services and makes full payment of the relevant charge in accordance with Clause 12.1, UDOMAIN shall:
- 12.2.1 deliver the Customer Software and the Content to the Customer, or to any successor ISP at addresses and locations designated by the Customer;
  - 12.2.2 update its DNS tables to reflect the new IP addresses corresponding to the Website URLs as soon as reasonably practicable following receipt of notice from the successor ISP that it has established DNS service for the Website URLs; and
  - 12.2.3 continue to provide a DNS service for the Website URLs for a period of 30 days following the date of expiry or termination of this Agreement.
- 12.3 If no notice in writing is received by UDOMAIN or the Customer fails to make full payment of the relevant charge in accordance with Clause 12.1, UDOMAIN shall at its sole discretion :
- 12.3.1 remove, destroy and delete the Website, the Content, the Customer Software and other materials provided by the Customer or to terminate provision of the Services. The Customer hereby expressly waives all its rights to claim loss and damage arising from or incidental to such removal, suspension, termination, destroy and deletion against UDOMAIN. For the avoidance of doubt, UDOMAIN shall have no obligation to notify the Customer before such removal, destroy and deletion; or
  - 12.3.2 continue to provide the Services to the Customer for such period as UDOMAIN deems fit before such removal, suspension, termination, destroy and deletion as provided in Clause 12.3.1. UDOMAIN hereby expressly reserves its right to levy additional charge for such additional Service.

## **13 ASSIGNMENT**

The Customer shall not assign, transfer, or in any other manner make over to any third party the benefit and/or burden of this Agreement without the prior written consent of UDOMAIN.



## **14 WAIVER**

- 14.1 A waiver of any term, provision or condition of this Agreement on the part of UDOMAIN shall be effective only if given in writing and signed by UDOMAIN and then only in the instance and for the purpose for which it is given.
- 14.2 No failure or delay on the part of UDOMAIN in exercising any right, power or privilege under this Agreement shall operate as a waiver of it, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise of it or the exercise of any other right, power or privilege.
- 14.3 No breach of any provision of this Agreement on the part of the Customer shall be waived or discharged except with the express written consent of UDOMAIN.

## **15 INVALIDITY AND SEVERABILITY**

- 15.1 If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect under the law of any jurisdiction, whether or not pursuant to any judgment or otherwise:
- 15.1.1 the validity, legality and enforceability under the law of that jurisdiction of any other provision; and
- 15.1.2 the validity, legality and enforceability under the law of any other jurisdiction of that or any other provision,
- shall not be affected or impaired in any way.
- 15.2 If any provision of this Agreement is held to be void or declared illegal, invalid or unenforceable for any reason whatsoever, that provision shall be divisible from this Agreement and shall be deemed to be deleted from this Agreement and the validity of the remaining provisions shall not be affected. If any such deletion materially affects the interpretation of this Agreement, the parties shall use their best endeavours to negotiate in good faith with a view to agreeing a substitute provision as closely as possible reflecting the commercial intention of the parties.

## **16 NOTICES**

- 16.1 Each notice, demand or other communication to be given or made under this Agreement by UDOMAIN to the Customer shall be in writing and delivered or sent to the Customer at its



address or fax number or e-mail address set out below (or such other address or fax number or e-mail address as the addressee has by five (5) days' prior written notice specified to UDOMAIN):-

To the Customer :-

Address : address of the Customer provided in the Order Form  
Fax Number : fax number of the Customer provided in the Order Form  
E-mail address : e-mail address of the Customer provided in the Order Form

- 16.2 Each notice, demand or other communication to be given or made under this Agreement by the Customer to UDOMAIN shall be in writing and delivered or sent to UDOMAIN at its address or fax number set out below (or such other address or fax number as the addressee has by five (5) days' prior written notice specified to the Customer):-

To UDOMAIN :-

Address : 18/F, Kinox Centre, 9 Hung To Road, Kwun Tong, Kowloon,  
Hong Kong  
Fax Number : 2554 7215

- 16.3 Any notice, demand or other communication so addressed to the relevant party shall be deemed to have been delivered (a) if given or made by letter, when actually delivered to the relevant address; and (b) if given or made by fax or e-mail, as this Agreement may allow, when dispatched.

## **17 ENTIRE AGREEMENT**

This Agreement and relevant Term Sheet (if any) embodies and sets forth the entire agreement and understanding of the parties and supersedes all prior oral or written agreements, understandings or arrangements relating to the subject matter of this Agreement. Neither party shall be entitled to rely on any agreement, understanding or arrangement not expressly set forth in this Agreement save for any representation made fraudulently.

## **18 RELATIONSHIP OF THE PARTIES**

Nothing in this Agreement and no action taken by the parties pursuant to this Agreement shall constitute, or be deemed to constitute, the parties a partnership, association, joint venture, the agents of each other or any other co-operative entity.

## **19 PRIVACY POLICY**

The Customer has read UDOMAIN's Privacy Policy posted on UDOMAIN's website and consent to the use of its personal information as described therein. The Customer



acknowledges and agrees that UDOMAIN may, from time to time, in its sole and absolute discretion, change or modify the Privacy Policy, and such changes or modifications shall be effective immediately upon posting to UDOMAIN's website.

## **20 CONFLICT OF TERMS**

Except as otherwise expressly provided in this Agreement in the event of any conflict between the terms of this Agreement and the Term Sheets, the terms of the Term Sheets shall prevail.

## **21 GOVERNING LAW AND JURISDICTION**

- 21.1 This Agreement, and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this Agreement or its formation, shall be governed by and construed in accordance with the laws of Hong Kong.
- 21.2 The parties irrevocably submit to the exclusive jurisdiction of the courts of Hong Kong for the purpose of hearing and determining any suit, action, or proceedings and/or settling any disputes arising out of or in connection with this Agreement and the Term Sheet incorporated herein. The parties agree to continue performing its obligations under this Agreement while any dispute is being resolved except to the extent the issue in dispute precludes performance.



## **AGREEMENT FOR SERVICES RELATING TO DOMAIN NAME**

**THIS AGREEMENT** is made on the date of the Order Confirmation Form (“**the Order Form**”)

**BETWEEN: -**

- (1) **UDOMAIN WEB HOSTING COMPANY LTD.**, a company incorporated in Hong Kong whose registered office is situate at 18/F, Kinox Centre, 9 Hung To Road, Kwun Tong, Kowloon (“**UDOMAIN**”); and
- (2) The Domain Name Owner or Company Name (“**the Customer**”) as provided in the Order Form and its address is at the address provided in the Order Form.

**WHEREAS:-**

- (A) UDOMAIN is a service partner of Hong Kong Domain Name Registration Company Limited (“**HKDNR**”) which is the registry administrator of domain names under .hk country code top level domain.
- (B) UDOMAIN is a premier partner of Web Commerce Communications Limited (formerly known as WEBCC Limited) (“**WEBCC**”) through which UDOMAIN provides the service of registration of the domain names including, inter alias, .com .net .org .cc .biz and .info.
- (C) The Customer has agreed to register, renew and/or transfer a domain name (“the Customer’s Domain Name”) as provided in the Order Form through UDOMAIN.

**NOW IT IS AGREED** as follows:

### **1. GENERAL REGISTRATIONS, TRANSFERS AND RENEWALS**

- 1.1 In this Agreement, the term “Services” refers to the service(s) of registration of the Customer’s Domain Name, application for transfer of the registration of the Customer’s Domain Name and renewal of the registration of the Customer’s Domain Name provided by UDOMAIN itself or as offered through WEBCC or other registration service providers (“RSP”) and such service(s) which is/are chosen by the Customer and set out in the Order Form. The Customer also agrees to observe and comply with the rules and regulations set forth or introduced from time to time by the relevant RSP and domain name registry administrators including HKDNR.
- 1.2 The Customer agrees and acknowledges that UDOMAIN cannot guarantee that the Customer can register the Customer’s Domain Name even if an inquiry indicates that the Customer’s Domain Name is available.
- 1.3 The Customer agrees and acknowledges that UDOMAIN does not have obligation to check whether the Customer’s Domain Name or the use of the Customer’s Domain Name infringes legal rights of others. The Customer hereby undertakes to investigate whether the Customer’s Domain Name or its use infringes legal rights of others.



1.4 The Customer agrees and acknowledges that UDOMAIN is not liable or responsible in any way for any errors, omissions or any other actions by RSP or the registry administrator arising out of or related to the provision of the Services by UDOMAIN.

## 2. **FEE**

2.1 In consideration of the provision of the Services by UDOMAIN to the Customer, the Customer shall pay UDOMAIN the fee (“the Fee”) of the Services in accordance with the UDOMAIN’s price schedule.

2.2 The Customer’s Domain Name will not be registered or transferred or renewed, unless and until UDOMAIN receives full payment of the Fee. UDOMAIN reserves the right to revise the Fee, to charge the Customer surcharges or other fees at any time, for any reason, at its sole discretion.

2.3 The Fee once paid shall not be refunded in whole or in part for whatsoever reason provided that if and whenever registration of the Customer’s Domain Name, application for transfer of the registration of the Customer’s Domain Name or renewal of the registration of the Customer’s Domain Name is not successful owing to the sole fault of UDOMAIN, UDOMAIN may refund the balance of the Fee to the Customer after deducting the administrative expenses as UDOMAIN sees fit.

## 3. **ANNUAL RENEWAL OF DOMAIN NAME REGISTRATION**

3.1 The Customer acknowledges that it is its own obligation to renew the registration of the Customer’s Domain Name annually. UDOMAIN may, but is not obligated, to notify the Customer no less than thirty (30) days prior to the date when the Fee for renewal of the registration of the Customer’s Domain Name is due. If and whenever the Customer fails to pay the Fee for renewal of the registration of the Customer’s Domain Name on or before the due date, the registration of the Customer’s Domain Name will be subject to cancellation.

3.2 The Customer agrees and acknowledges that UDOMAIN shall have no obligation to renew the registration of the Customer’s Domain Name if the Customer fails to pay the Fee in full for renewal of the registration of the Customer’s Domain Name and UDOMAIN shall not be liable for any loss the Customer may suffer as a result of the cancellation of the registration of the Customer’s Domain Name.

## 4. **TRANSFER OF THE CUSTOMER’S DOMAIN NAME**

4.1 The Customer agrees that as a condition precedent of any transfer of the registration of the Customer’s Domain Name to a third party, the Customer shall procure the third party to agree,



before the effectiveness of the transfer, in writing to be bound by all terms and conditions of this Agreement and the rules and regulations set forth or introduced from time to time by the relevant RSP and domain name registry administrators.

- 4.2 The Customer's Domain Name will not be transferred until UDOMAIN receives the written agreement of the third party as mentioned in Clause 4.1 and full payment of the Fee for the transfer of the registration of the Customer's Domain Name.

## 5. **DISPUTE POLICY**

- 5.1 In the event of any dispute with respect to the Customer's Domain Name, the Customer agrees to be bound by the domain name dispute policy ("Dispute Policy"), as amended or introduced from time to time, by UDOMAIN or the relevant RSP or domain name registry administrators.
- 5.2 The Customer agrees that, in the event that any dispute of the Customer's Domain Name or its use arises, the Customer will indemnify UDOMAIN against any and all liability, loss, damage, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by UDOMAIN whether direct, indirect or consequential arising out of such dispute.

## 6. **CHANGES TO THIS AGREEMENT AND DISPUTE POLICY**

- 6.1 The Customer agrees and acknowledges that the domain name system and the practice of registering and administering domain names are subject to changes by the relevant RSP or domain name registry administrators and the Customer agrees that UDOMAIN may revise, amend, modify and supplement this Agreement and the Dispute Policy if necessary to comply with its various agreements with different RSP or domain name registry administrators, and any other similar agreements that UDOMAIN is currently bound by or will be bound by in the future, as well as to adjust to changing business circumstances.
- 6.2 The Customer's continued use of the Customer's Domain Name shall constitute the Customer's acceptance of this Agreement and the Dispute Policy with any such revision, amendment, modification and supplement.
- 6.3 If and whenever the Customer does not agree to any such revision, amendment, modification or supplement, the Customer may request that the registration of the Customer's Domain Name be cancelled. The Customer agrees that such cancellation will be its sole remedy.

## 7. **DOMAIN NAME REGISTRATION INFORMATION AND ITS USE**

- 7.1 The Customer acknowledges and agrees that, as part of the registration process, the Customer is required to provide certain information and to update promptly such information. The information includes but not limited to :- (i) the full name, postal address, email address and telephone number of the Customer; (ii) the Customer's Domain Name; (iii) the IP addresses of the primary nameserver and any secondary nameservers for the Customer's Domain Name;



and (iv). other information as UDOMAIN may reasonably require from time to time.

- 7.2 UDOMAIN may also maintain information including :- (i) the original creation date of the registration of the Customer's Domain Name; (ii) the submission date and time of the application for the registration of the Customer's Domain Name to UDOMAIN and by UDOMAIN to the relevant RSP or domain name registry administrators; (iii) the expiration date of the registration of the Customer's Domain Name; (iv) records of account of the Customer including dates and amounts of all payments and refunds; and (v) information regarding all other activity regarding the registration of the Customers' Domain Name and related services.
- 7.3 If and whenever the Customer fails to provide the information as mentioned in Clauses 7.1 or 7.2, UDOMAIN is entitled to deny the provision of the Services and forfeit the Fee paid.
- 7.4 The Customer undertakes and warrants that all information provided by it shall be reliable, accurate and up-to-date.
- 7.5 The Customer agrees and acknowledges that UDOMAIN will make available the information as mentioned in Clauses 7.1 and 7.2 to the relevant RSP and domain name registry administrators and to other third parties as the relevant RSP or domain name registry administrators and applicable laws may require or permit. The Customer agrees and acknowledges that UDOMAIN may disclose and make publicly available, or directly available to third parties, some or all, of the information as mentioned in Clauses 7.1 and 7.2, for the purposes of targeted marketing and other purposes as required or permitted by the relevant RSP or domain name registry administrators or applicable laws from time to time. The Customer hereby irrevocably waives any and all claims and causes of action the Customer may have arising from such disclosure or use of the information as mentioned in Clauses 7.1 and 7.2 by UDOMAIN.
- 7.6 The Customer may access the information as mentioned in Clauses 7.1 and 7.2 in UDOMAIN's possession and request UDOMAIN to modify or update such information.
- 7.7 UDOMAIN will take reasonable precautions to protect the information as mentioned in Clauses 7.1 and 7.2 from loss, misuse, unauthorized access or disclosure or use, or alteration or destruction, of that information. UDOMAIN will have no liability to the Customer or any third party to the extent such reasonable precautions are taken.

## **8. LIMITATION OF LIABILITY**

- 8.1 The Customer agrees that UDOMAIN shall not be liable, under any circumstances, for any (i) cancellation, suspension or loss of the registration of the Customer's Domain Name; (ii) use of the Customer's Domain Name; (iii) interruption of the Customer's business; (iv) access delays or access interruptions to the website(s) identified by the Customer's Domain Name; (v) data non-delivery, mis-delivery, corruption, destruction or other modification; (vi) events beyond UDOMAIN's reasonable control; and (vii) application of the Dispute Policy.



8.2 UDOMAIN shall not be liable for any indirect, special, incidental, or consequential damages of any kind (including loss of profit) regardless of the form of action whether in contract, tort (including negligence), or otherwise, even if UDOMAIN has been advised of the possibility of such damages. In no event shall UDOMAIN's maximum aggregate liability exceed the Fee.

## 9. **INDEMNITY**

The Customer agrees to indemnify, defend and hold harmless UDOMAIN, RSP and the respective registry administrators and their directors, officers, employees, and agents from and against any and all claims, damages, liabilities, costs, and expenses (including reasonable legal fees and expenses) arising out of, or related to, the use of the Services or the Customer's Domain Name.

## 10. **REPRESENTATIONS AND WARRANTIES**

10.1 The Customer warrants and undertakes that neither the registration of the Customer's Domain Name nor the manner in which it is directly or indirectly used infringes the legal rights of a third party.

10.2 All Services are provided to the Customer on an "as is" basis. UDOMAIN makes no representations or warranties of any kind whatsoever, express or implied, in connection with this Agreement or the Services, including but not limited to warranties of merchantability or fitness for a particular purpose, unless such representations and warranties are not legally excludable. Without any limitation to the foregoing, UDOMAIN makes no representations or warranties of any kind whatsoever that registration or use of the Customer's Domain Name under this Agreement will immunize the Customer either from challenges to the registration of the Customer's Domain Name, or from suspension, cancellation or transfer of the registration of the Customer's Domain Name.

## 11. **BREACH AND TERMINATION**

11.1 UDOMAIN shall have the right to suspend, cancel, transfer or modify the registration of the Customer's Domain Name and terminate this Agreement in the event (i) the Customer breaches any term or condition of this Agreement (including the Dispute Policy) and fails to remedy (so far as the same can be remedied) the breach within 7 days after the receipt of a written notice of the breach from UDOMAIN; (ii) the Customer uses or allows the use of the Customer's Domain Name to send unsolicited commercial advertisements, host adult, child-abuse or gambling contents in contradiction to any law or statute or any rules or regulations set forth or introduced from time to time by the relevant RSP and domain name registry administrators; or (iii) the Customer uses the Customer's Domain Name in connection with any unlawful activity.

11.2 The Customer further agrees that UDOMAIN shall have the right in its sole discretion to suspend, cancel, transfer or otherwise modify the registration of the Customer's Domain Name



with 7 day's prior written notice, or at such time as UDOMAIN receives a properly authenticated order from a court of competent jurisdiction, or arbitration award, requiring the suspension, cancellation, transfer or modification of the registration of the Customers' Domain Name.

## 12. RELATIONSHIP OF THE PARTIES

Nothing in this Agreement and no action taken by the parties pursuant to this Agreement shall constitute, or be deemed to constitute, the parties a partnership, association, joint venture, the agents of each other or any other co-operative entity.

## 13. NOTICES

13.1 Each notice, demand or other communication to be given or made under this Agreement by UDOMAIN to the Customer shall be in writing and delivered or sent to the Customer at its address or fax number or e-mail address set out below (or such other address or fax number or e-mail address as the addressee has by five (5) days' prior written notice specified to UDOMAIN):-

To the Customer :-

Address	:	address of the Customer provided in the Order Form
Fax Number	:	fax number of the Customer provided in the Order Form
E-mail address	:	e-mail address of the Customer provided in the Order Form

13.2 Each notice, demand or other communication to be given or made under this Agreement by the Customer to UDOMAIN shall be in writing and delivered or sent to UDOMAIN at its address or fax number set out below (or such other address or fax number as the addressee has by five (5) days' prior written notice specified to the Customer):-

To UDOMAIN :-

Address	:	18/F, Kinnox Centre, 9 Hung To Road, Kwun Tong, Kowloon
Fax Number	:	2554 7215

13.3 Any notice, demand or other communication so addressed to the relevant party shall be deemed to have been delivered (i) if given or made by letter, when actually delivered to the relevant address; and (ii) if given or made by fax or e-mail, as this Agreement may allow, when despatched.

## 14. GOVERNING LAW AND JURISDICTION

14.1 Except as otherwise set forth in the Dispute Policy, this Agreement and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this Agreement or its formation, shall be governed by and construed in accordance with the



T (852) 2554 7545  
F (852) 2554 7215

service@ud.hk  
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laws of Hong Kong.

The parties irrevocably submit to the exclusive jurisdiction of the courts of Hong Kong for the purpose of hearing and determining any suit, action or proceedings and/or settling any disputes arising out of or in connection with this Agreement and for the purpose of enforcement of any judgment against their respective assets.



## **TERMS AND CONDITIONS OF WEB-BASED E-MAIL SERVICES**

### **1. INTERPRETATION**

- 1.1 The term “the Agreement” shall mean the Universal Service Agreement.
- 1.2 For the sake of consistency of reference, unless otherwise stated, the expressions referred to in Clause 1 of the Agreement will be adopted hereunder.
- 1.3 This Term Sheet shall form part of the Agreement. Except as otherwise expressly provided in the Agreement in the event of any conflict between the terms of the Agreement and this Term Sheet, the terms of this Term Sheet shall prevail.

### **2. THE E-MAIL SERVICES**

- 2.1 UDOMAIN agrees to provide to the Customer during the Initial Term with the Web-Based E-Mail Services (“the E-Mail Services”) and grant the right to the Customer to use a number of (depending on the hosting package chosen by the Customer) e-mail accounts (“the E-Mail Account”) each of 10 mega bytes storing space (“the Maximum Capacity”) with respective address names in the format of a name designated by the Customer and permitted by UDOMAIN plus the suffix “@” “[the name of the Website]” (“the Account Name”) through which the Customer can send, receive and store e-mails subject to the terms and conditions set out hereunder.
- 2.2 The Customer shall pay the Charges to UDOMAIN for the use of the E-Mail Services in accordance with the Terms of Payment.

### **3. RULES OF USE OF THE E-MAIL SERVICES**

- 3.1 The Customer shall register the use of the E-Mail Account with UDOMAIN. Upon successful registration, the Customer will be assigned with a user name and a password for each E-Mail Account.
- 3.2 The Customer shall keep the user name and the password of each E-Mail Account confidential and shall procure that there is no unauthorized access to the E-Mail Account or unauthorized use of the E-Mail Services. The Customer shall notify UDOMAIN forthwith upon discovering any unauthorized access to the E-Mail Account or unauthorized use of the E-Mail Services.
- 3.3 In relation to any content which the Customer stores, copies, distributes, publishes transmits or otherwise exploits through the E-Mail Services, the Customer warrants that the Customer owns the Intellectual Property Rights of that content or possesses an



appropriate license and the Customer hereby grants to UDOMAIN a royalty-free, world wide, non-exclusive license to use that content

3.4 The Customer hereby warrants and undertakes that the Customer shall :-

- 3.4.1 use the E-Mail Services only for lawful purposes;
- 3.4.2 abide by all relevant applicable laws of Hong Kong and any rules or public policies, as amended or introduced in relation to the use of the E-Mail Services from time to time by UDOMAIN;
- 3.4.3 procure any user of the E-Mail Services to comply with all terms of this Term Sheet;
- 3.4.4 not hack, break into, access, use or attempt to hack, break into, access or use any part of the server (“the Server”) through which the E-Mail Services are provided to the Customer;
- 3.4.5 not use the E-Mail Services to publish, distribute, transmit or circulate any unsolicited advertisement or promotional information or any content or material or computer program or software that is obscene, indecent, seditious, offensive, defamatory, threatening, liable to incite racial hatred, discriminatory, menacing, breach of confidence, objectionable, unlawful or endangering national security or is any Virus or malware, or may interfere or interrupt the normal operation of the Internet, the Server or any computer or may create a nuisance or annoyance;
- 3.4.6 not use, or allow others to use the E-Mail Services for sending junk mails or chain letters or spamming;
- 3.4.7 not resell the use of the E-Mail Services without prior written authorization of UDOMAIN;
- 3.4.8 not store or receive e-mails in excess of the Maximum Capacity.

#### 4. SPAM, JUNK EMAIL OR MASS MAILING

- 4.1 Use of the UDOMAIN Services to transmit any spam, Junk-mail and unsolicited mass mail is solely prohibited. Violations of this type will result in the immediate suspension of the offending UDOMAIN account.
- 4.2 Spam, Junk-mail and mass mailing are defined as: the sending of the same, or substantially similar, unsolicited electronic mail messages, whether commercial or not, to more than one recipient. A message is considered unsolicited if it is posted in violation of a newsgroup charter or if it is sent to a recipient who has not requested or invited the message. This also includes e-mail with forged headers, compromised mail server relays, and false contact information. This prohibition extends to the sending of unsolicited mass mailings from



another service, which in any way implicates the use of UDOMAIN's services whether or not the message actually originated from our network.

- 4.3 UDOMAIN's mass mailing policy also applies to mailing lists, list servers, or mailing services you may be in contact with. The policy is stated as follows: An acceptable mailing list will be focused at a targeted audience that has voluntarily signed up for your e-mail information or that has made their e-mail address available for distribution of information from you. The list must also allow for automatic removal by the recipient using a system accessible on the World Wide Web and the method of removal should be stated clearly in all the email messages.
- 4.4 Anyone hosting web sites or services on server in our network that support spammers or cause any of our IP space to be listed in any of the various Spam Databases will have their server immediately removed from our network. The server will not be reconnected until such time that you agree to remove ANY and ALL traces of the offending material immediately upon reconnection and agree to allow us access to the server to confirm that all material has been COMPLETELY removed. Severe violations may result in immediate and permanent removal of the server from our network without notice to the customer. Any server guilty of a second violation WILL be immediately and permanently removed from our network without notice.
- 4.5 Malicious intent to impede another person's use of electronic mail services or news will result in the immediate suspension of the offending UDOMAIN's account. Besides, customer hosting websites in our servers is not allowed to send out newsletter, schedule email without our approval. Violation may result immediate deletion of email queue from our server without notice to the customer.

## 5. **CONFIDENTIALITY**

UDOMAIN may not disclose the user name, the password, the Account Name, the content of any e-mail to a party other than the Customer except :-

- 5.1 UDOMAIN has obtained prior consent of the Customer;
- 5.2 UDOMAIN is required by any applicable law or regulation to do so;
- 5.3 it is considered by UDOMAIN that the disclosure is in the public interest; or
- 5.4 the disclosure is for safeguarding the interest of UDOMAIN.

## 6. **WARRANTIES AND LIABILITIES**

- 6.1 To the extent permitted by law, UDOMAIN disclaims any representation or warranty



whether express or implied as to the title, fitness for a particular purpose, merchantability, accuracy or standard of quality of the E-Mail Services or that the E-Mail Services will be uninterrupted or error free or that UDOMAIN has the Intellectual Property Rights of the Account Name, unless otherwise specifically mentioned in this Term Sheet.

6.2 In the absence of UDOMAIN's negligence or deliberate act, UDOMAIN expressly disclaims any liability for :-

6.2.1 any damage to or loss of data suffered by the Customer arising from the use of the E-Mail Services;

6.2.2 any claim based in contract, tort, or otherwise for any loss of revenue (whether direct or indirect), loss of profits or any consequential loss whether of an economic nature or not;

6.2.3 any claim relating to the E-Mail Services, the E-Mail Account or the Account Name (or any part thereof), provided, sold or made available by or through UDOMAIN (or any failure or delay to supply, provide, sell or make available);

6.2.4 any disruption or suspension of the E-Mail Services or any part thereof which is attributable to an event or circumstance beyond the reasonable control of UDOMAIN.

6.3 The Customer agrees to indemnify UDOMAIN against any and all liability, loss, damage, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by UDOMAIN whether direct, indirect or consequential arising out of any dispute or contractual, tortious or other claims or proceedings brought by a third party in relation to the acts of the Customer, the use of the E-Mail Services or the content which is stored, copied, distributed, published, transmitted or otherwise exploited through the E-Mail Services.

6.4 The Customer hereby undertakes and agrees that the Customer shall be responsible for any use of the E-Mail Services whether or not such use is by or authorized by the Customer. Any acts of the user of the E-Mail Services shall be deemed to be the act of the Customer.

## 7. **TERMINATION**

7.1 Without prior notice and without prejudice to such other rights as UDOMAIN may have, UDOMAIN may terminate or suspend the E-Mail Services or this Term Sheet for any reason in its sole discretion, if the Customer breaches or fails to comply with any term of this Term Sheet and in such event all Charges paid shall not be refunded and the Customer is not entitled to claim against UDOMAIN for the return of the Charges (or any part thereof).

7.2 Any termination or suspension shall not affect any accrued rights of UDOMAIN or



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F (852) 2554 7215

service@ud.hk  
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liabilities of the Customer nor shall it affect the coming into force or the continuance in force of any provision contained in the Agreement or this Term Sheet which is expressed to survive the Agreement or this Term Sheet, which shall remain in full force and effect.