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資訊科技及廣播局局長

香港中環花園道
美利大廈一至二樓



SECRETARY FOR INFORMATION TECHNOLOGY
AND BROADCASTING

1/F-2/F Murray Building,
Garden Road,
Central, Hong Kong.

Our Ref.: ITBB (CR) 6/10/3 (99) Pt.2

2 March 1999

Mr Richard Li
Pacific Century Group
38/F Cityibank Tower
Citibank Plaza
Garden Road
Hong Kong

Dear Richard

CYBERPORT PROJECT

Following our discussions, I am pleased to enclose a letter setting out the Principal Terms of Heads of Agreement for the Cyberport project. I should be most grateful if you would indicate agreement to the terms contained therein by returning a copy of the letter.

The Principal Terms are of course SUBJECT TO CONTRACT and serve as a letter of intent only at this stage on the basis set out in the letter.

*Yours sincerely
Kump K. Kwong*

(K. C. Kwong)

Secretary for Information Technology
and Broadcasting

Encl.

This letter of intent containing the Principal Terms of the Heads of Agreement, and all negotiations and exchanges relating to this Cyberport Project, are on the following conditions:

- (a) "Subject to Contract";
- (b) subject to (a), the absence of any intention to create any legally binding obligations on the part of the Government of the Hong Kong Special Administrative Region ("Government") or any person, or to raise any legitimate expectations on the part of any person; and
- (c) subject to (a), any rights and obligations in relation to this Cyberport Project, a commercial venture, to be justiciable in private law only.

- Development Right

The Government will grant Pacific Century Group ("PCG") the exclusive development right (the "Development Right") to design, develop, construct and market the Cyberport portion (the "Cyberport Portion") and the Residential portion for sale (the "Residential Portion") as an integrated development (the "Cyberport Project"). Unless specifically agreed by the Government, the Development Right cannot be transferred or assigned, as collateral or otherwise, to any person other than a majority-owned subsidiary of PCG, the shares of which will also be restricted from such transfer or assignment subject to:

- (a) the subsidiary undertaking to bear PCG's full obligations; and
- (b) a parent company guarantee from PCG to ensure performance by the subsidiary,

to design, develop and construct the Cyberport Project as outlined in this document, such guarantee to be acceptable to the Government. PCG may mortgage the Development Right subject to adjustment to the Profit Sharing Scheme and the capital commitment conditions outlined in this document.

The Development Right allows PCG to share profits from the sale of the Residential Portion, subject to other terms and conditions as outlined in this document.

For the avoidance of doubt, the Development Right discussed herein does not include the right to receive and collect rental income from the Cyberport Portion. Such arrangements are discussed separately under the section headed "Management of the Cyberport Portion".

- Responsibility of Government
The Government will be responsible for contributing the site at Telegraph Bay. The Government will retain ownership and titles to the land. Moreover, the Government will be responsible for the cost of the associated investment in infrastructure. This infrastructure is to include (a) the northern access road and the advance site works, which will be carried out by the Government, and (b) the southern access road, road D1, road D2, public transport interchange and permanent sewage treatment plant and outfall, for which the design and construction works will be entrusted to PCG. The cost for such entrustment works (currently estimated by Government at HK\$548 million) has to be mutually agreed based on reasonable and professional quantity surveying principles and on the preliminary design of these work items.
- Responsibility of PCG
PCG will be the designer, developer and contractor for the Cyberport Project. PCG will be responsible for all construction costs (including any cost overrun) and bear any financing risk associated with the development of this project. PCG will provide performance guarantees as described below.
- Profit Sharing Scheme
In accordance with the equity contribution by Government and capital contribution by PCG. The land value on that part of the site for the Residential Portion assessed by Government will be the Government's deemed equity. In the event that PCG could not accept the land value on the Residential Portion assessed by Government, Government would be agreeable to the appointment of a mutually acceptable independent valuer to carry out the valuation as at the date of grant of the development right to PCG.

PCG's capital contribution (whether by debt or equity) will be the maximum amount actually funded by PCG, i.e., funding

requirement of the Cyberport Project net of project cashflow and net of debt raised by the mortgage, if any, of the Development Right.

- Capital Commitment by PCG

Capital contribution by PCG must be supported by a corporate guarantee or a Letter of Credit issued by an international bank or corporate entity with a guaranteed amount or face amount not less than the forecast cashflow requirement for six months in advance at any one time, provided that the corporate entity or the international bank providing the credit support, as the case may be, will be rated no less than A- by Standard and Poor's and A3 by Moody's or by other guarantee acceptable to the Government.

Should PCG raise debt by mortgage of the Development Right, the capital commitment to cover this amount of debt must be in a similar form of corporate guarantee or Letter of Credit but must extend to completion of the Cyberport Project.

- Profit Distribution

Profit is net of interest expense on debt raised by mortgage of the Development Right.

Unless otherwise agreed by the Government, no profit distribution is allowed prior to the completion of the Cyberport Portion and any such profit should be ploughed back to cover costs of the Cyberport Portion. After completion of the Cyberport Portion, profits in excess of those required to fund the completion of the Residential Portion and to provide for the Development Fund as described below, can be distributed in accordance with the Profit Sharing Scheme. No capital contribution made by PCG subsequent to any such profit distribution (up to aggregate amount of such profit distribution) will be deemed to be PCG's capital contribution for the purposes of profit sharing as defined in the section under Profit Sharing Scheme.

- Development Fund

A Development Fund will be set up with injection from the profits as defined under the Profit Sharing Scheme set out

above. Subject to the availability of profit distribution as described above, the total injection must be the greater of HK\$200 million or an amount sufficient to cover (a) the full replacement cost of shared facilities for use by tenants in the Cyberport Portion based on the original cost of such facilities, assuming replacement in year 5 from the start of operation; and (b) the accumulated deficit, if any, of the Cyberport Portion for the first 5 years of operation from the completion of the Cyberport Portion.

- Completion Guarantee

PCG will guarantee the timely completion of the Cyberport Project according to a pre-determined time table and a fixed price, and will guarantee completion to pre-agreed specification. If the Cyberport Project fails to be completed according to the pre-agreed timetable and pre-agreed specifications, then

- (a) PCG will, for the period of any such failure, pay to the Government an amount equal to the aggregate lost rental revenue from the Cyberport Portion based on the rental levels referred to below, such payment should not be counted as PCG's capital contribution; and
- (b) any additional expenses incurred by PCG as a result of cost overrun will not be deemed as capital contribution by PCG

for the purposes of profit sharing as defined in the section under Profit Sharing Scheme.

- Project Specification and Construction

To be agreed with Government. A consultation process, with Government and anchor tenants' participation to be set up. In addition, an independent engineering firm (to be mutually agreed) will be appointed to review the design and monitor construction.

- PCG's Take-Up Guarantee

PCG to undertake to sign a long-term lease as one of Cyberport Portion's anchor tenants. In addition, PCG would occupy at least 7,000 sq.m. of office space in Phase I, and if the remaining space of the Cyberport Portion was not taken up by other tenants 36 months after completion of construction of the Cyberport Portion, PCG will undertake to occupy not less than

20% and not more than 50% of the total office space within the first 5 years of the completion of Phase I and such residential space in the Cyberport Portion as permitted under an allocation mechanism to be agreed with Government.

- **Mix and Rights of Tenants** PCG must provide Letters of Intent signed by at least 5 anchor tenants to be agreed with the Government before announcement on 3 March 1999. In addition, tenants should enjoy unrestricted access to multi-media and telecommunication services.

- **Management of the Cyberport Portion** It is intended to establish suitable management arrangements subject to mutually acceptable terms agreed by PCG and the Government.

- **Rental Levels of the Cyberport Office** At a level to be agreed by the Government, and capable of being competitive with similar facilities elsewhere.

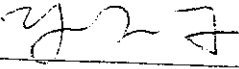
- **Change of Control of PCG** Upon a change of the majority shareholder of PCG, or PCG ceasing to be the majority shareholder of any subsidiary to which the Development Right has been transferred or assigned, or the failure by such majority shareholder to maintain absolute control of the Board of Directors of PCG or the subsidiary as the case may be, the Government may at its sole discretion terminate the Agreement hereunder without compensation to PCG, and/or the subsidiary as the case may be, nor any liability to the Government.

- **Provision of Financial Statements and Construction Costs** Government to have reasonable access to Cyberport Project accounts and to receive timely provision of audited financial statements of the Cyberport Project from PCG.

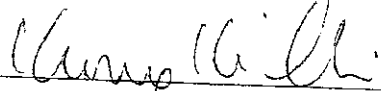
- **Segregation of Accounts** PCG will maintain separate and segregated accounts for the Residential Portion and the Cyberport Portion. Unless otherwise agreed by the Government, all revenues derived from the Cyberport Project shall be used solely for the development of the Cyberport Project, subject to the Profit Distribution provision above.

- Government's Equity Interest

Government may sell part of its deemed equity interest in the Cyberport Project to third parties after the grant of Development Right. Such sale will only confer to the purchaser an entitlement to profits under the Profit Sharing Scheme. For the avoidance of doubt, any purchaser is entitled to normal minority shareholder protection of rights, including access to relevant financial statements to verify entitlements to profits.

Signed : 
(Francis T F Yuen)
for and on behalf of
Pacific Century Group

Date : March 2, 1999

Signed : 
(Kwong Ki Chi)
for the Government of the
Hong Kong Special
Administrative Region
Date : 2 March 1999