

# Commercial Broadband Service - Terms and Conditions

## 1. Definitions

In this Agreement the following words and expressions have the following meanings:

Agreement	Refers to these terms and conditions and the Application
Application	Refers to the application form(s) or registration form(s) to be completed by you for subscription to services offered by us
Charges	Refers to any fees set out in the Application and/or its respective terms and conditions and payable by you from time to time for the use of the Service and/or Content
Content	Refers to any content in whatever language, format or medium that can be accessed by you using the Service, including without limitation all text, pictures, sound, graphics, video, diagrams, symbols, software and other data or goods or services, whether belonging to you, us or a third party
Domain Name	Refers to a hostname that identifies a computer or computers on the Internet
Designated System	Refers to a computer system on which the Equipment and/or Software are installed
Designated User	Refers to users who are authorized to use the Service and/or Content by you
Equipment	Refers to the equipment and facilities, including but not limited to modem, adapter, cables and power cord, provided by Towngas Telecommunications Fixed Network Limited to the Subscriber for the
Hong Kong	Refers to Hong Kong Special Administrative Region of the PRC
IP Address	Refers to an Internet Protocol Address
Personal Data	Refers to personal data as defined in the Personal Data (Privacy) Ordinance, Cap. 486 of the Laws of Hong Kong
Service	Refers to commercial broadband services provided by Towngas Telecommunications Fixed Network Limited
Site	Refers to the web-site located at <a href="http://www.towngastelecom.com">www.towngastelecom.com</a>
Software	Refers to the software we deliver to you to access the Service
Subscription Fee	Refers to the fee for subscribing to the Service
Usage Charges	Refers to the charges for use of the Service
we, us, our	Refers to Towngas Telecommunications Fixed Network Limited
you, your, Subscriber	Refers to a subscriber to or user of the Service and/or Content

## 2. Software Licence

- We hereby grant to you a non-exclusive and non-transferable licence to install, store, run and use the Software on your computer in accordance with the terms and conditions of this Agreement but not further or otherwise.
- Except to the extent permitted by law, you shall not, nor allow others to copy, sub-license, distribute, rent, loan, lease, sell, transfer, exploit, alter, modify, adapt or translate the Software nor decompile, disassemble or reverse engineer the same nor attempt to do such thing.

## 3. Our Responsibilities

- We will provide you with a login ID and password to access the Service.
- You should note that we may:
  - suspend the Service at any time without prior notice to carry out system maintenance, upgrading, testing and/or repairs;
  - upon a breach of this Agreement by you, limit or suspend your access to the Service without notice if the breach persists despite one warning having been given to you or without warning where such action is appropriate given the nature of your breach;
  - expand, reduce and/or modify any part or parts of the Service and/or Content;
  - amend the amount of any Charges and/or introduce new Charges at our discretion;
  - change these terms and conditions of use at any time, and/or amend any operating rules which govern your use of the Service, by notifying you of the details of such amendments by post or by email, such amendments to take effect 7 days after any such posting is made. Any continued use by you of the Service after such seven-day period shall constitute your acceptance of and agreement to the amendments so notified.
- We may also provide services for and on behalf of Third Party Service Providers. In such cases, we act as their agents and we are not responsible for disputes arising out of Third Party Service Providers' services and/or products. You should contact the relevant Third Party Service Provider directly. Further, the provision of such services is subject to terms and conditions signed between the Subscriber and the Third Party Service Provider.

## 4. Your Responsibilities

- You will be responsible for your use and any Designated User's use of the Service. You will ensure any Designated User complies with these terms and conditions.
- You will not:
  - part with, transfer nor sub-license any of your rights to use the Service. You will keep your login ID and password secret at all times. If you become aware of any unauthorised access to the Service by any person who has accessed the Services using your login ID and password without your permission, or if you believe that your password has been lost or stolen (or otherwise obtained by a third party without your permission), you shall immediately notify us. We shall not be liable for any loss or damage you sustain by reason of any such access to the Service;
  - copy, distribute, publish, transmit or otherwise exploit any Content unless you own that Content or possess an appropriate licence. Save to the extent permitted by this Agreement and by law, you will not reverse engineer, disassemble or decompile any of our Content or transmit software that may cause damage to or failure of our computer equipment or data or that of any other persons, including without limitation using the Service to upload a computer virus or any harmful software application or engage in denial of service attacks;
  - use the Service to publish, distribute, transmit or circulate any commercial, illegal, improper, immoral, defamatory, unsolicited advertising or promotional information (or any other form of spam) or any content that is obscene, indecent, seditious, offensive, threatening, liable to incite racial hatred, discriminatory, menacing or in breach of confidence, or in violation of any intellectual property or other rights, whether belonging to us or to any third party; or
  - hack, break into, access, use or attempt to hack, break into, access or use any part of our Service, our Content and/or any data areas on our server(s) for which you have not been authorised by us.
- You acknowledge and agree that:
  - the Service (including, for the avoidance of doubt, the Software and any Content) is supplied on an "as is" basis;
  - the provision of the Service may be subject to reconfiguration of the Designated System and installation of Equipment/Software and you agree to be bound by the terms set out in Clause 5 herein;
  - except for that Content which is supplied by us as principal, it is not our general policy to exercise any editorial control over or to edit or amend any Content before it is transmitted or made available through the Service. As a result, your use of or reliance upon any Content obtained via the Service is entirely at your own risk;
  - we are hereby authorised by you and reserve the right, either pursuant to a court order or where any such Content is deemed in our sole and absolute opinion to be in breach of your obligations under this Agreement or to be otherwise not suitable for access through the Service, to delete without prior notice any Content which is uploaded to the Service or otherwise provided to us by you;
  - save for any Content generated by you or a third party, as between you and us the intellectual property rights of all Content on the Site belongs to us, and you agree not to reproduce any part of that Content save for downloading to a local hard disk, or printing extracts of the Content, for your personal use only;
  - the information you supplied to us on the Application was true, accurate and complete at the time you submitted the Application. You shall notify us of any change or alteration to that information in writing as soon as practicable; and
  - our affiliates, agents or contractors may provide any part of the Service or perform any of our duties hereunder.
- Where Equipment is provided to you, you agree
  - not to part with possession or control of the Equipment;
  - to keep the Equipment in good order, condition and repair during the period of use of the Service, and use the Equipment in a proper and safe manner in accordance with user instructions. For any destruction, loss or damage howsoever caused to the Equipment (except for loss and damage caused by our action, omission or negligence), you agree to inform us immediately of any loss, destruction or damage caused to, or malfunctioning of, the Equipment, and pay us a compensation fee at an amount enough either to provision a new equivalent equipment (including installation fee) or to compensate our own supplier, whichever is higher;
  - not to alter or remove any labels or other markings which are on the Equipment when delivered;
  - not to tamper with, avoid or remove any integrated circuit, component or protection facility contained in the Equipment;
  - not to connect the Equipment on systems/equipment other than the Designated System without our prior written authorization;
  - unless otherwise authorised by us, the Equipment is for the sole purpose of accessing the Service and for such use as prescribed in the Application; and
  - not to permit any third party to carry out any repairs or maintenance services to the Equipment. If the Equipment proves to be defective under normal use due to defective materials, design and/or workmanship, we will at our option to either repair or replace the Equipment and our decision is final.
- You shall pay us for our Service on the following basis:
  - You agree that you shall be liable for Charges for Service or login account rendered to you or any Designated User;
  - You agree that you are required to pay us the charges for relocation of service installation address, change of service

installation telephone number, request of onsite checking or service plan upgrade;

- We shall invoice you by electronic mail or post (a) monthly in advance for Subscription Fee and/or (b) monthly in arrears for Usage Charges; however, we reserve the right to alter the invoicing period from time to time without prior notice. Charges paid in advance are non-refundable unless we specify otherwise. The Charges shall be charged on the payment due date against your credit card account or your Towngas bill or you may pay us Charges through cash or cheque settlement (only applicable to IDD connection service). All Charges shall be made so as to be received by us in cleared funds by the date specified on the invoice. Time of payment is of the essence of this Agreement. If you require a hard copy of the invoice or an itemized invoice (whether by post or by electronic mail), we may charge you for the cost of preparing any such invoice;
- In the event of late payment, we have the right to terminate the Service or the login account. We reserve the right to charge you the administration cost arising out of the termination of the Service or the login account;
- We may impose a credit limit for Charges incurred by you and may suspend your access to our Service or login account without prior notice, in whole or in part, if such limit is exceeded; and
- Any dispute on the Charges can only be raised within 10 days of the payment due date as stated on the invoice.

4.6 For services and products provided by Third Party Service Providers, you shall settle their charges directly with them.

## 5. Installation of Equipment/Software

- You agree that
  - the provision of access to the Service is subject to the reconfiguration of the Designated System and the installation of the relevant Equipment and Software;
  - the configuration and installation activities are subject to the Designated System computer meeting the configuration requirements as specified on the Application;
  - you are only allowed to use, install, load the Software on the Designated System and you will obtain necessary consent for configuration and installation activities required for the access to the Service if you do not own the Designated System;
  - prior to configuration and installation activities under this Clause, you shall back up data on the Designated System; and
  - you will not use other equipment in place of the Equipment to access the Service without our prior written consent.

## 6. Personal Data

- The Personal Data collected by us in connection with the provision of Service to you will be used by us for the purpose of performing our obligations under this Agreement and other purposes arising out of and in connection with this Agreement. We reserve the right to transfer such Personal Data to third parties including, but not limited to our related companies for direct marketing purposes. We undertake to comply with our Privacy Policy ([http://www.tgnet.com/html\\_eng/custService/privacy.htm](http://www.tgnet.com/html_eng/custService/privacy.htm)).

## 7. IP Address and Domain Name

- Any IP Address that is assigned to you under the Service is allocated to us by regional registries; you shall have no ownership of such IP Address and hold no other rights or any title thereto.
- Any Domain Name that is assigned to you under the Service is not owned by you and you hold no other rights or any title thereto.
- If we are of the opinion that such IP Address and/or Domain Name belongs to a third party or infringes a third party's rights or is in contravention of any applicable law, we shall have the right in its sole discretion to suspend or withdraw from any further use of any such IP Address and/or Domain Name at any time with or without notice to you, and without liability or compensation to you or any person or entity whatsoever and you shall have no claim whatsoever against us.

## 8. Limitation of Liability

- To the extent permitted by the laws of Hong Kong, we disclaim any implied representation or warranty:
  - as to the title, fitness for a particular purpose, merchantability, accuracy, completeness, non-infringement or standard of quality of, the Software, the Service and any Content;
  - that the Service or your use thereof will be uninterrupted, error-free, virus-free, or reliable;
  - as to any obligation to maintain the confidentiality of any information provided by you to us or obtained by us from you, save as set out in our Privacy Policy ([http://www.tgnet.com/html\\_eng/custService/privacy.htm](http://www.tgnet.com/html_eng/custService/privacy.htm)); and
  - as to the results to be obtained from use of any of our Services and/or any Content.We also reserve the right to suspend or terminate the Service or the login account without liability to you.
- In the absence of our gross negligence or deliberate act and to the extent permitted by the laws of Hong Kong, we hereby expressly exclude any liability for:
  - any damage to or loss of data from any computer system suffered by you arising from your use of the Software, the Service and/or any Content, including but not limited to configuration or installation activities required for the purpose of accessing the Service;
  - any claim based on contract, tort or otherwise for any loss of revenue (whether direct or indirect), loss of profits or any other type of consequential loss whether or not foreseeable as a consequence of a breach of this Agreement;
  - any claim relating to any part of the Service and/or any Content/Software supplied, provided, sold or made available by or through us (or any failure or delay to so supply, provide, sell or make available); and
  - any disruption or suspension of the Service or any part thereof.
- In the absence of a negligent or deliberate act by us or our employees, agents or sub-contractors, we hereby expressly exclude any liability for any injury, disease, seizure or loss of consciousness whether of a physical or psychological nature suffered by you [or any person who accesses the Service using your login ID and/or password], whether arising directly or indirectly from accessing and using any of our Services or playing any computer games accessed through or downloaded using the Service.
- We, our affiliates, agents and contractors take no responsibility and assume no liability for the content of the Site or for anything posted on or linked to it, including without limitation any mistake, error, omission, infringement, defamatory or falsehood which might offend or otherwise give rise to any claim or complaint.
- If any provision of this Agreement (and in particular this Clause 8) shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.
- Save where otherwise excluded, our liability to you for (a) any breach by us of this Agreement or of any warranty implied by law and (b) any representation statement or tortious act or omission including negligence arising under or in connection with this Agreement shall be limited to the total amount of Charges received by us from you up to the date of such breach, representation, statement, act or omission.

## 9. Activation and Termination of Login Account or Service

- We may terminate your login account or Service at any time upon giving at least 10 days' notice to you, or immediately by notice to you if you:
  - fail to install the Equipment and/or the Software for the purpose of accessing the Service within 10 days from the date when they are made available to you;
  - fail to pay any sums due to us; or
  - breach any term of this Agreement.
- You may terminate broadband login account by giving at least 30 days' prior notice written to us.
- Should this Agreement be terminated for any reason whatsoever, you:
  - hereby irrevocably authorise us to erase any or all of the subscriber/user's Content without prior notice to you;
  - shall immediately cease to use the Service or terminate login account;
  - shall be responsible for the full value of the Equipment if the Equipment is not returned to us within 14 days from the date of termination and you shall remain liable for the cost of all repairs required to the Equipment to put them in good condition consistent with the performance with your obligations under this Agreement;
  - shall remain liable to us for any arrears of Charges accrued up to the date of termination; and
  - shall within seven days of such termination pay us all outstanding Charges incurred pursuant to this Agreement up to and including the date of termination.
- If the login account or the Service is disconnected pursuant to Clauses 9.1 and 9.2, you may request a reactivation. We may at our option reactivate the Service or the login account PROVIDED THAT all sums due or owing to us together with a Reactivation Charge are paid. If a reactivation request is not made before date of termination, we shall have the right to dispose of your e-mail address(es), user ID(s) and/or password(s) at our sole discretion without notice and without liability to you.
- Termination of this Agreement shall not affect any rights or liabilities of the parties which have arisen prior to the date of termination.
- All indemnities, restrictions and obligations on your part contained in this Agreement shall survive termination of this Agreement.

## 10. Others

- You agree to indemnify us for all losses, damages, or expenses (including legal and other professional advisors' fees) incurred by us in connection with the breach or enforcement against you of this Agreement.
- This Agreement is subject to the laws of Hong Kong and the parties submit to the non-exclusive jurisdiction of the Hong Kong courts.