

TOWNGAS TELECOMMUNICATIONS FIXED NETWORK LIMITED

ACT SERVICE – TERMS AND CONDITIONS

This ACT Customer Agreement (this “Agreement”), together with the Cloud Services General Terms and Conditions found at www.towngastelecom.com (the “**Cloud Services General T&C**”) contains the terms and conditions that govern your access to and use of the Services (as defined below) and is an agreement between Towngas Telecommunications Fixed Network Limited (“we,” “us,” “our” or “Towngas Telecom”) and an individual or the entity you represent (“you” or “Customer”). This Agreement takes effect when you click an “I Accept” button or check box presented with these terms or, if earlier, when you use any of the Services (the “Effective Date”). You represent to us that you are lawfully able to enter into contracts (e.g., you are not a minor). If you are entering into this Agreement for an entity, such as the company you work for, you represent to us that you have legal authority to bind that entity.

It is effective on the date we provide you with the confirmation of your Subscription or the date on which your Subscription is renewed as applicable.

1. Use of the Services

1.1 You might access and use the Service Offerings (as defined below) in accordance with this Agreement. This “Agreement” means these terms and conditions, the AUP (as defined below) , the Subscription and any other documents that are expressly incorporated herein by reference. You will adhere to all laws, rules, and regulations applicable to your use of the Services, including the Service Terms, the AUP and the other Policies as defined in Section 13.

1.2 **Your Account.** To access the Services, you must create an ACT account associated with a valid e-mail address. Unless explicitly permitted by the Service Terms, you may only create one account per email address. You are responsible for all activities that occur under your account, regardless of whether the activities are undertaken by you, your employees or a third party (including your contractors or agents and those who gain access to your account without your permission) and, except to the extent caused by our breach of this Agreement, we and our affiliates are not responsible for unauthorized access to your account. You will contact us immediately if you believe an unauthorized third party may be using your account or if your account information is lost or stolen. You may terminate your account and this Agreement at any time in accordance with Section 6.

1.3 **End Users.** You control access by End Users, and you are responsible for their use of the Product in accordance with this Agreement. For example, you will ensure End Users comply with the AUP.

1.4 **Customer Data.** You are solely responsible for the content of all Customer Data. You will secure and maintain all rights in Customer Data necessary for us to provide the Services to you without violating the rights of any third party or otherwise obligating Towngas Telecom to you or to any third party. Towngas Telecom does not and will not assume any obligations with respect to

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Customer Data or to your use of the Services other than as expressly set forth in this Agreement or as required by applicable law

2. Changes

2.1 To the Services. We may change, discontinue, or deprecate any of the Services (including the Services as a whole) from time to time. We will provide you with a one (1) month' prior notice before removing any material feature or functionality, unless security, legal, or system performance considerations require an expedited removal.

3. Security

3.1 We agree to maintain reasonable and appropriate measures related to physical security to protect your Content. Other than responsibility for physical security, you shall be solely responsible for data maintenance, integrity, retention, and security and backup of Your Content. If you transfers or is otherwise involved in the transfer of any your Content (whether in connection with its business or otherwise) over the Public Network or Private Networks, then you are solely responsible for compliance with any applicable laws, rules and regulations in any and all applicable regions or countries regarding the security, privacy, legality and/or safe handling of such your Content.

3.2 You are responsible for properly configuring and using the Services and taking your own steps to preserve appropriate security, protection and backup of your Content, which may comprise the use of encryption technology to protect your Content from unauthorized access and routine archiving your Content. ACT log-in credentials and private keys generated by the Services are for your internal use only and you may not sell, transfer or sublicense them to any other entity or person, except that you may disclose your private key to your agents and subcontractors performing work on your behalf.

3.3 End User Violations. You will be deemed to have taken any action that you permit, assist or facilitate any person or entity to take related to this Agreement, your Content or use of the Services. You are responsible for End Users' use of your Content and the Services and are liable for any extra charges, act, omission or negligence incurred or caused by the End Users and any breach of this Agreement by any End User is deemed to be a breach of this Agreement by you. You will ensure that all End Users comply with your obligations under this Agreement and that the terms of your agreement with each End User are consistent with this Agreement. If you become aware of any violation of your obligations under this Agreement by an End User, you will immediately terminate such End User's access to your Content and the Services.

4. Purchasing Services

4.1 Ordering. By ordering or renewing a subscription, you agree to the offer details for that Subscription offer. Unless otherwise specified in those offer details Services are offered on an "as available" basis and we make no guarantee that a particular quantity of Services will be available at the time of request.

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4.2. Pricing and Billing. Payments are due and must be made according to the Offer Details for your Subscription.

4.3 We calculate and bill fees and charges periodically, typically once a month for monthly-based services and hourly for usage-based services. We may bill you more frequently for fees accrued if we suspect that your account is fraudulent or at risk of non-payment. You will pay us the applicable fees and charges for use of the Services as described on the ACT Portal using the payment methods we support and other arrangements authorized by us. All amounts payable under this Agreement will be made without setoff or counterclaim, and without any deduction or withholding. Fees and charges for any new Service or new feature of a Service will be effective when we post updated fees and charges on the ACT Portal unless we expressly state otherwise in a notice. We may increase or add new fees and charges for any existing Services by giving you at least 7 days' advance notice. We may charge you interest at the rate of 3% per month (or the highest rate permitted by law, if less) on all late payments.

4.4 For suspension and termination under Section 5 and Section 6 respectively, you are not entitled to a pro-rata refund for the unused portion of a Service.

5. Term, Termination and Suspension

5.1 Agreement term and termination. This Agreement will remain in effect until the expiration or termination of your Subscription, whichever is earliest. Your Subscription will expire at the end of the subscription period unless you choose to renew your Subscription by the renewal process found at the ACT Portal, in which case your Subscription will be renewed for the duration specified.

5.2 Subscription Term and termination. You may terminate this Subscription at any time during its Term in accordance with Section 6; however, you must pay all amounts due and owing before the termination is effective, and no refunds will be provided.

5.3 We may suspend your or any End User's use of the Service immediately upon notice to you if:

(a) it is reasonably needed to prevent unauthorized access to Customer Data; (b) you fail to respond to a claim of alleged infringement under Section 6 within a reasonable time; (c) you do not pay amounts due under this Agreement; or (d) you do not abide by the AUP or you violate other terms of this Agreement.

(b) law or a regulatory or government body requires the suspension of the Services

5.4 Effect of Suspension. If we suspend your right to access or use any portion or all of the Services:

(a) you remain responsible for all fees and charges you have incurred through the date of suspension and you shall be liable for any additional costs incurred by us caused by or relating to the circumstances giving rise to the suspension;

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(b) you remain responsible for any applicable fees and charges for any Service to which you continue to have access, as well as applicable data storage fees and charges, and fees and charges for in-process tasks completed after the date of suspension;

(d) we will not erase any of your Content as a result of your suspension but you may not have access to your Content during the period of suspension, except as specified elsewhere in this Agreement.

6. Termination

6.1 Termination.

(a) Termination for Convenience.

You may terminate this Agreement for any reason by:

- (i) providing us with at least [14] days advance notice; and
- (ii) closing your account for all Services for which we provide an account closing mechanism.

We may terminate this Agreement for any reason by providing you 7 days advance notice.

(b) Termination for Cause.

(i) By Either Party. Either party may terminate this Agreement for cause upon 30 days advance notice to the other party if there is any material default or breach of this Agreement by the other party, unless the defaulting party has cured the material default or breach within the 30 day notice period.

(ii) By Us. We may also terminate this Agreement immediately upon notice to you

(A) for cause, if any act or omission by you or any End User results in a suspension described in Section 5.3,

(B) if our relationship with a third party partner who provides software or other technology we use to provide the Service Offerings expires, terminates or requires us to change the way we provide the software or other technology as part of the Services,

(C) if we believe providing the Services could create a substantial economic or technical burden or material security risk for us,

(D) in order to comply with the law or requests of governmental entities, or

(E) if we determine use of the Service Offerings by you or any End Users or our provision of any of the Services to you or any End Users has become impractical or unfeasible for any legal or regulatory reason.

6.3. Effect of Termination.

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(a) Upon any termination of this Agreement:

(i) all your rights under this Agreement immediately terminate;

(ii) you remain responsible for all fees and charges you have incurred through the date of termination, including fees and charges for in-process tasks completed after the date of termination;

(iii) you will immediately return or, if instructed by us, destroy all ACT Content in your possession; and

(b) Post-Termination Assistance. Unless we terminate your use of the Service pursuant to Section 6.2(b), during the 7 days following termination:

(i) we will not erase any of your Content as a result of the termination;

(ii) you may retrieve your Content from the Services only if you have paid any charges for any post-termination use of the Services and all other amounts due; and

(iii) we will provide you with the same post-termination data retrieval assistance that we generally make available to all customers.

(c) All your Content will be erased after 7 days automatically by us

Any additional post-termination assistance from us is subject to mutual agreement by you and us.

7. Proprietary Rights

Each of the Party retains all right, title and interest in and to their respective trade secrets, inventions, copyrights, and other intellectual property. In particular, the Customer retains all ownership and intellectual property rights in and to the Customer Solution and Customer Data; and we retain all ownership and intellectual property rights to the Services, and derivatives thereof, and any intellectual property developed by us or on our behalf during the performance of the Services shall belong to us unless we have agreed with the Customer in advance in writing that the Customer shall have an interest in the intellectual property. This Agreement transfers to you neither the title nor any proprietary or intellectual property rights to the software, documentation, or any copyrights, patents, trademarks or any other intellectual property embodied or used in connection therewith, except for the rights expressly granted in Section 8 of this Agreement. You shall:-

i. not claim or assert title or ownership to the software (or modification thereto), or remove or alter any copyright or proprietary notice from copies of the software;

ii. use reasonable care and protection to prevent the unauthorized use, copying, publication or dissemination of the software; or

iii. not export or re-export the software without the consent of us or its software licensor.

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8. License

ACT adopts virtualization technologies to create virtual environments. All software is owned by us and /or its third party software partners. During the term of any applicable contract, we grant or will procure to grant you a non-transferable, non-exclusive license to use the software in object code form only, solely on company equipment used in conjunction with the Services.

9. License Restrictions

You agree that you will not, nor through any of your parent, subsidiary, affiliate, agent or third party:

- i. copy the software except as expressly allowed under this Agreement;
- ii. reverse engineer, decompile, disassemble, or otherwise attempt to derive source code from the software;
- iii. sell, lease, license, sub-license, modify, time share, outsource, or otherwise use or transfer the software or the documentation to an third party;
- iv. write or develop any derivative software or any other software program based upon the software or any Confidential Information;
- v. use the software to provide processing services to third parties;
- vi. alter or attempt to change the settings on the software products or rights of use intellectual property on the software.

INDEMNIFICATION BY CUSTOMER: Customer hereby agrees to indemnify, defend and hold harmless Towngas Telecom and its parents, Affiliates, licensors and providers of third party services, and their respective directors, officers, employees, contractors, agents, successors, and assigns, (collectively, the “**Towngas Telecom Parties**”) (Towngas Telecom and each of the Towngas Telecom Parties an “**Indemnified Party**”), from and against any and all liability (including, without limitation, attorneys’ fees and costs) incurred by the Indemnified Parties in connection with any actual or alleged claim (“**Claim**”) arising out of: (a) Customer’s use of the Services or third party services; (b) any breach or alleged breach by Customer of this Agreement; (c) any breach or alleged breach by Customer or End Users of a third party’s rights, including, without limitation, any actual or alleged infringement or misappropriation of a third party’s copyright, trade secret, patent, trademark, privacy, publication or other proprietary right; (d) any damage caused by or alleged to have been caused by Customer or End Users to the ACT Site or Services; or (e) any actual or alleged violation or non-compliance by Customer or End Users with any applicable law, court order, rule or regulation in any jurisdiction. The counsel which Customer selects for the defense or settlement of a Claim must be approved in writing in advance by Towngas Telecom prior to such counsel being engaged to represent the Indemnified Parties. Customer shall not in any event consent to any judgment, settlement, attachment, or lien, or any other act adverse to the interests of Towngas Telecom or any Towngas Telecom Party without the

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prior written consent of Towngas Telecom and/or the applicable Towngas Telecom Party(s). Customer and Customer's counsel will cooperate as fully as reasonably required, and provide such information as reasonably requested, by the Towngas Telecom or the Towngas Telecom Parties in the defense or settlement of any such matter.

10. Disclaimers

THE FOLLOWING DISCLAIMERS SHALL NOT LIMIT YOUR ABILITY TO SEEK ANY APPLICABLE SLA REMEDIES. THE SERVICES AND ANY RELATED EQUIPMENT, SOFTWARE AND OTHER MATERIALS PROVIDED BY ACT IN CONNECTION WITH THE SERVICES ARE PROVIDED WITHOUT ANY WARRANTIES OF ANY KIND, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, COMPLETENESS, COMPATIBILITY OF SOFTWARE OR EQUIPMENT, OR ANY RESULTS TO BE ACHIEVED THEREFROM. ACT MAKES NO WARRANTIES OR REPRESENTATIONS THAT ANY SERVICE WILL BE FREE FROM LOSS OR LIABILITY ARISING OUT OF HACKING OR SIMILAR MALICIOUS ACTIVITY, OR BE PERFORMED ERROR-FREE OR UNINTERRUPTED.

11. Limitation of Liability

WE AND OUR AFFILIATES OR LICENSORS WILL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, OR DATA), EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, NEITHER WE NOR ANY OF OUR AFFILIATES OR LICENSORS WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) YOUR INABILITY TO USE THE SERVICES, INCLUDING AS A RESULT OF ANY (I) TERMINATION OR SUSPENSION OF THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICE OFFERINGS, (II) OUR DISCONTINUATION OF ANY OR ALL OF THE SERVICE OFFERINGS, OR, (III) WITHOUT LIMITING ANY OBLIGATIONS UNDER THE SLAS, ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE SERVICES FOR ANY REASON, INCLUDING AS A RESULT OF POWER OUTAGES, SYSTEM FAILURES OR OTHER INTERRUPTIONS; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (c) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY YOU IN CONNECTION WITH THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICE OFFERINGS; OR (D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF YOUR CONTENT OR OTHER DATA. IN ANY CASE, OUR AND OUR AFFILIATES' AND LICENSORS' AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT YOU ACTUALLY PAY US UNDER THIS AGREEMENT FOR THE SERVICE THAT GAVE RISE TO THE CLAIM DURING THE 12 MONTHS PRECEDING THE CLAIM.

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Nothing in this Agreement limits or excludes either party's liability for any loss or damages resulting from (a) death or personal injury caused by its negligence; and (b) any fraud or fraudulent misrepresentation.

12. Miscellaneous

12.1 Notices.

(a) To You. You agree to receive electronic notices from us, which will be sent by email to the account administrator you specify in the Portal. Notices are effective on the date on the return receipt or, for email, when sent. You are responsible for ensuring that the account administrator email address that you specify in the Portal is accurate and current, and you agree that any email notice that we send to such email address will be effective when sent, whether or not you actually receive the email.

(b) To Us. To give us notice under this Agreement, you must contact ACT Customer Service as follows: (i) by facsimile transmission to 852-29119090; or (ii) by personal delivery, overnight courier or registered or certified mail to Towngas Telecom, 23/F, 363 Java Road, North Point, Hong Kong. We may update the facsimile number or address for notices to us by posting a notice on the ACT Site. Notices provided by personal delivery will be effective immediately. Notices provided by facsimile transmission or overnight courier will be effective one business day after they are sent. Notices provided registered or certified mail will be effective three business days after they are sent.

12.2 Assignment. You may not assign this Agreement either in whole or in part.

12.3 Severability. If any part of this Agreement is held unenforceable, the rest remains in full force and effect.

12.4 Waiver. Failure to enforce any provision of this Agreement will not constitute a waiver.

12.5 No agency. You and Towngas Telecom are independent contractors. This Agreement does not create an agency, partnership, or joint venture.

12.6 No third-party beneficiaries. There are no third-party beneficiaries to this Agreement.

12.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of Hong Kong, excluding its conflict of laws rules. Except as provided in this section, all disputes, controversies or differences arising out of or related to this Agreement that are not settled by mutual agreement through friendly consultations shall be exclusively and finally settled by arbitration. The said arbitration shall be conducted in Hong Kong under the auspices of the Hong Kong International Arbitration Centre (“**HKIAC**”), according to its rules (except as modified hereby). Arbitration shall be conducted and decided by a tribunal consisting of a sole arbitrator jointly appointed by the Parties jointly. Should the Parties be unable to agree on the choice of the sole arbitrator, the Parties shall request HKIAC to recommend one arbitrator, and such recommended arbitrator shall be accepted by the Parties as the jointly appointed sole

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arbitrator. The language of the arbitration shall be [English]. Each Party shall bear its own attorney fees, tribunal fees and other expenses as may be incurred by the parties to enforce the terms of this Agreement.

12.8 Entire agreement. This Agreement is the entire agreement concerning its subject matter and supersedes any prior or concurrent communications, save and except that the Cloud Services General Terms and Conditions found at www.towngatelecom.com (the “**General Cloud T&C**”) shall also apply to your use of the Services under this Agreement and where there is any inconsistency between the terms of this Agreement and the General Cloud T&C, the terms of this Agreement will prevail.

12.9 Force Majeure. We and our Affiliates will not be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond our reasonable control, including acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications, or other utility failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

12.10 Confidentiality. Neither party shall, without the prior written consent of the other party, use or disclose the Confidential Information of the other party during the Term of this Agreement and for 2 years following the expiration or termination hereof. Each party will take all reasonable precautions to protect the other party’s Confidential Information, using at least the same standard of care as it uses to maintain the confidentiality of its own Confidential Information. Notwithstanding the foregoing, a party may disclose Confidential Information:

- i. to any consultants, contractors, and counsel who have a need to know in connection with this Agreement and have executed a reasonably protective non-disclosure agreement with the disclosing party, or
- ii. pursuant to legal process; provided that, the disclosing party shall, unless legally prohibited, provide the non-disclosing party with reasonable prior written notice sufficient to permit it an opportunity to contest such disclosure.

12.11 Maintenance. You acknowledge that the Services may be subject to routine maintenance or repair and agrees to cooperate in a timely manner and provide reasonable access and assistance as necessary to allow such maintenance or repair.

13. Definitions

“Affiliate” means, with respect to an entity, any person or entity that directly or indirectly owns, is owned by, or is under common ownership with that entity. For purposes of this definition, ownership means control of more than a 50% interest in an entity.

“AUP” means the Acceptable Use Policy as below:

Neither you nor those that access the Services through you may use the Services:

- in a way prohibited by law, regulation, governmental order or decree;

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- to violate the rights of others;
- to use the Services to try to gain unauthorized access to or disrupt any service, data, account or network by any means;
- to falsify any protocol or email header information (e.g., “spoofing”);
- to spam or distribute malware;
- in a way that could harm the Services or impair anyone else’s use of them;
- or for any high risk use (where failure or fault of the Services could lead to death or serious bodily injury of any person, or to severe physical or environmental damage).

“Confidential Information” means (i) with respect to us, server configurations, software configurations, proprietary information, proprietary technology, proprietary software, information regarding product development, information regarding our data centres, information contained in manuals, proposals and memoranda, and anything that is designated as “confidential” or “proprietary” at the time of disclosure whether verbally or in writing; (ii) with respect to the Customer, non-public Customer Content transmitted to or from, or stored on, the servers of the Company as part of the Services; and (iii) with respect to both parties, information that is conspicuously marked as “confidential” or “proprietary”, information disclosed verbally that is designated as “confidential” or “proprietary” at the time of disclosure, and information that, by its nature, would reasonably be considered as confidential to any other person, but shall not include (a) information that is independently developed by a non-disclosing party without the use of the disclosing party’s Confidential Information; (b) information that is known or rightfully obtained by a non-disclosing party prior to disclosure; or (c) information that is or becomes generally available to the non-disclosing party or the public other than through a violation of this Agreement.

“Content” means software (including virtual machine images), data, text, audio, video, images or other content.

“Customer Data” means all text, files, images, graphics, illustrations, information, data, records, audio, video, photographs, software, web pages and any other content and material, in any format that are provided to us by, or on behalf of, you or your Affiliates through your use of the Services.

“Customer Solution” means any application you run in connection with Services.

“End User” means any user of a Customer Solution, or any person permitted by you to access Customer Data hosted in Services or otherwise use the Services.

“Offer Details” means the pricing and related terms applicable to a Subscription offer, as published in the Portal.

“Portal” or “ACT Portal” means the online portal from which you purchase a Subscription at www.tgtact.com or at an alternate site we identify.

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“Privacy Statement” means the Towngas Privacy Statement, published at or at an alternate site that we identify.

“Services” means one or more of the ACT services or features made available to you under this Agreement by Towngas Telecom and identified at www.tgtact.com. Services do not include Third Party Content.

“Service Terms” refers to the terms of the Services.

“Subscription” means an enrollment for Services for a defined Term as specified on the Portal. You may purchase multiple Subscriptions, which may be administered separately and which will be governed by the terms of a separate agreement.

“Term” means the term of this Agreement described in Section 5.

“Third Party Content” means Content made available to you by any third party on the ACT Site or in conjunction with the Services.