

# TOWNGAS TELECOMMUNICATIONS FIXED NETWORK LIMITED

## WIRELESS LAN SERVICE - TERMS AND CONDITIONS

### 1. Definitions

In these terms and conditions, the following words and expressions have the following meanings:

“**BMO**” means the building management office of the Site assigned by the developer or the owners' corporation, which formed under the Building Management Ordinance or any third person in charge for the management of the Site;

“**Content**” means any content in whatever language, format or medium that can be accessed by the User by means of the Wireless LAN Service, including but not limited to all text, pictures, sounds, graphics, video, diagrams, symbols, software and other data or goods or services, whether belonging to the User, the Company or any third party;

“**Login Information**” means the identification, login password, or any other information required to gain access to the Wireless LAN Service, provided by the Company to the Customer;

“**Service Equipment**” means all equipment, cabling facilities and systems provided and installed by the Company in order to provide the Wireless LAN Service, including but not limited to the wireless LAN access points, switches, authentication systems and antennas;

“**Site**” means the specific areas, with the Wireless LAN Service provided by the Company in accordance with the Quotation entered into by the Company and Customer;

“**User**” means the BMO, the tenants or guests of the Site or any other third party who gain access to the Wireless LAN Service with Login Information;

“**Wireless LAN Service**” means the wireless local area network (LAN) service, including but not limited to, the coverage of wireless LAN network, the wireless LAN internet access at user level, provided by the Company, details of which are listed in the Quotation.

- 1.1 Words and phrases (not otherwise defined in these terms and conditions) the definitions of which are contained or referred to in the General Terms and Conditions and the Quotation shall be construed as having the same meanings attributed to them.
- 1.2 Unless the context requires otherwise, words importing the singular include the plural and vice versa, words importing a gender include every gender and references to any person shall include references to an individual firm, or body corporate or incorporate.

### 2. Services Equipment

- 2.1 The Company reserves the right at all times to suspend the Wireless LAN Service without prior notice, in order to carry out system maintenance, upgrade, test and/or repair the Service Equipment, also the Company is entitled the right to substitute, rearrange, alter or reconfigure the Service Equipment used in providing the Wireless LAN Service at any time in order to maintain its service level and quality. The Company shall, where reasonably possible, give at

least ten (10) business days prior notice to the Customer before such changes or alternations take place.

- 2.2 In case of emergency or when the schedule of the maintenance work is not within control of the Company, the Company might notify the Customer as soon as is practicable, and least than ten (10) business days prior notice might be given to the Customer.
- 2.3 The Wireless LAN Service shall at all time provided in accordance with the Quotation. If the Customer transfers or otherwise changes the range of areas of which the Wireless LAN Service is delivered to, the Company may require the Customer to pay additional charges for the relocation and any cost supporting the Wireless LAN Service resulting from the agreed relocation.

### 3. Limitation of Liability

- 3.1 The Company shall not be liable to the Customer or any User for interruption of the Wireless LAN Service or for any other loss, cost or damage caused by or related to the violation of this agreement.
- 3.2 To the extent permitted by the laws of Hong Kong, the Company disclaims any implied representation or warranty:
  - (i) as to the title, fitness for a particular purpose, merchantability, accuracy, completeness, non-infringement or standard of quality of, the Wireless LAN Service and any Content;
  - (ii) that the Wireless LAN Service will be uninterrupted, error free, virus free or reliable;
  - (iii) as to the results to be obtained from use of any of the Wireless LAN Service and/or any Content.
- 3.3 In the absence of gross negligence or deliberate act of the Company and to the extent permitted by the laws of Hong Kong, the Company hereby expressly exclude any liability for:
  - (i) any damage to or loss of data from any computer system suffered by the User arising from his use of the Wireless LAN Service and/or any Content, including but not limited to any configuration or installation activities required for accessing the Wireless LAN Service;
  - (ii) any claim based on contract, tort or otherwise for any direct or indirect loss of revenue and contracts, loss of profits, damages, costs, expenses or other claims for consequential compensation whether or not foreseeable as a consequence of a breach of this agreement;
  - (iii) any claim relating to any part of the Wireless LAN Service and/or any Content supplied, provided, sold or made available by or through the Company (or any failure or delay to so supply, provide, sell or make available); and
  - (iv) any disruption or suspension of the Wireless LAN Service or any part thereof.
- 3.4 In the absence of a gross negligent or deliberate act by the Company or its affiliates, employees, agents or sub-contractors, the Company hereby expressly exclude any liability for any injury, disease, seizure or loss of consciousness whether of a physical or psychological nature suffered by the User or any other third person, whether arising directly or indirectly from accessing and using any of the Wireless LAN Services, including but not limited to playing

any computer games accessed through or downloaded using the Wireless LAN Service.

#### 4. Customer Obligations

4.1 The Customer shall be responsible for its and the User's use of the Wireless LAN Service. The Customer shall ensure itself and the User complies with these terms and conditions.

4.2 The Customer shall, at its own costs and ways, take precautions to prevent any unauthorized access to the Wireless LAN Service, including but not limited to request change of Login Information periodically, set clear guidelines and policies for Users about the use of Wireless LAN Service.

4.3 The Customer shall give at least ten (10) business day's prior notice to the Company for the change of Login Information.

4.4 If the Customer becomes aware of a defect, fault or impairment in the provision of the Wireless LAN Service or with the Service Equipment other than in accordance with Clause 2.1 above, the Customer shall promptly notify the Company of such defect, fault or impairment. Upon such notification to the Company, it shall use its reasonable efforts to resolve the defect, fault or impairment as quickly as reasonably possible.

4.5 If it is determined that any defect, fault or impairment is a result of:

- (i) the negligence, wilful acts, omissions, or faults of the Customer or the User;
- (ii) the breach of any term of this agreement by the Customer or the User; or
- (iii) the malfunction or failure of any equipment or devices use by the Customer or the User,

The Customer shall be liable for any and all damages to the Service Equipment and the Company is entitled to recover from the Customer all reasonable costs incurred in remedying such defect, fault or impairment.

4.6 The Customer agrees to provide the Company with continuous access and right of way to the Site when appropriate and necessary to allow the provision and maintenance of the Service Equipment and Wireless LAN Service.

4.7 The Customer shall make available to the Company, at no extra cost, the equipment space, electric power and any other mandatory facilities as reasonably required by the Company in order to assist the Company in providing the Wireless LAN Service.

4.8 The Customer shall permit the Company to inspect or test the Service Equipment at all reasonable times, and provide a safe working area that complies with all laws and regulations in Hong Kong regarding the working conditions in the Site. The Customer shall identify, monitor, remove and dispose of any hazardous materials prior to any work being performed by the Company in the Site and shall indemnify, defend and hold the Company harmless from any liability incurred in the use of or in connection with hazardous materials in the Site. The Company shall have no liability in respect of any damage or loss arising out of or in connection with the Customer's failure to comply with this clause.

4.9 The Customer undertakes:

- (i) to keep the Service Equipment at the Site and stationary at all times;

(ii) not to add, modify, relocate, reconfigure or in any way interfere with the Service Equipment;

(iii) not to cause the Service Equipment to be removed, repaired, serviced or otherwise attended to except with the permission of the Company;

(iv) not to remove, tamper with or obliterate any words or labels from the Service Equipment or any parts thereof;

(v) to return the Service Equipment in good state and condition to the Company on termination of this agreement;

(vi) to allow the Company to gain access to the Site in order to remove the Service Equipment;

4.10 The Customer shall ensure that the User will not:

(i) part with, transfer nor sub-license any of its rights to use the Wireless LAN Service. The Customer shall keep the Login Information available to authorize parties only. If the Customer becomes aware of any unauthorised access to the Wireless LAN Service, the Customer shall immediately notify the Company and request change of Login Information. The Company shall not be liable for any loss or damage the Customer and/or User sustain by reason of any such access to the Wireless LAN Service;

(ii) copy, distribute, publish, transmit or otherwise exploit any Content unless the User own that Content or possess an appropriate licence. Save to the extent permitted by this agreement and by law, the User will not transmit software that may cause damage to or failure of Service Equipment or data or that of any other persons, including without limitation using the Wireless LAN Service to upload a computer virus or any harmful software application or engage in denial of service attacks;

(iii) use the Wireless LAN Service to publish, deliver, broadcast or circulate any spam, including but not limited to commercial, illegal, improper, immoral, defamatory, unsolicited advertising or promotional information, 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 the Company or to any third party; or

(iv) send any messages promoting goods or services to a recipient not at the request, or with the agreement, of that recipient, from someone who does not have an established relationship with the recipient, which generally known as "Unsolicited fax advertisements", sometimes called "junk fax";

(v) hack, break into, access, use or attempt to hack, break into, access or use any part of the Wireless LAN service without authorisation.

4.11 The Customer shall acknowledge and agree that:

(i) the Wireless LAN Service is supplied on an "as is" basis;

(ii) the provision of the Wireless LAN Service may be subject to reconfiguration and/or installation of the User's device in accordance with the specification as set out in the Quotation, including but not limited to wireless LAN access card, laptop, handheld device;

(iii) The Company will not exercise any editorial control over or edit or amend any Content before it is transmitted or made available through the Wireless LAN Service. As a result, the use of or reliance upon any Content obtained via the Wireless

LAN Service is entirely at the Customer's and the User's own risk;

- (iv) The Company's affiliates, agents or contractors may provide any part of the Wireless LAN Service or perform any of the Company's duties hereunder.

## **5. Other terms and conditions**

- 5.1 If any provision of this agreement 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.
- 5.2 This agreement is subject to the laws of Hong Kong and the parties submit to the non-exclusive jurisdiction of the Hong Kong courts.